



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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A-583-842
Scope Inquiry
Public Document
AD/CVD 1: MAR

August 7, 2012

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Susan Kuhbach
Office Director
AD/CVD Operations 1

SUBJECT: Raw Flexible Magnets from the People's Republic of China and
Taiwan: Scope Request from Accoutrements LLC - Final Scope
Determination

SUMMARY

We recommend finding that a formal scope inquiry is not warranted in this case because, based on our analysis of the scope language of the orders at issue, the description of the product contained in the scope-ruling request, and the Department's prior scope rulings, we are able to conclude that Accoutrements LLC's (Accoutrements) "Mustache Magnet" is outside the scope of the orders.

BACKGROUND

On June 7, 2012, Accoutrements submitted an application requesting that the Department of Commerce (the Department) determine whether its "Mustache Magnet" is subject to the antidumping and countervailing duty orders on raw flexible magnets from the People's Republic of China (PRC) and the antidumping duty order on raw flexible magnets from Taiwan.¹ Accoutrements' Scope Ruling Request contains descriptions and photographs of its "Mustache Magnet."² On June 28, 2012, in response to our letter of the same day,³ Accoutrements

¹ See *Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China*, 73 FR 53847 (September 17, 2008) (*Magnets PRC AD Order*); *Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order*, 73 FR 53849 (September 17, 2008) (*Magnets PRC CVD Order*); and *Antidumping Duty Order: Raw Flexible Magnets from Taiwan*, 73 FR 53848 (September 17, 2008) (*Magnets Taiwan AD Order*).

² See Letter from Accoutrements to the Secretary of Commerce, "Request for Scope Ruling on Raw Flexible Magnets from People's Republic of China and Taiwan (Case Nos. A-570-922, C-570-923, and A-583-842)" (June 7,



identified the product's current classification under the Harmonized Tariff Schedule of the United (HTSUS), *i.e.*, 8505.19.1000.⁴ The submission of this information completed the requirements of 19 CFR 351.225(c)(1)(i). For this reason, we determined that the Scope Ruling Request in conjunction with the Addendum fulfills the requirements of 19 CFR 351.225(c). Additionally, on July 2, 2012, Accoutrements submitted a representative sample of the "Mustache Magnet," in which it identified its product as article number 12117 with UPC code 739048121179.⁵ On June 25, 2012, the petitioner, Magnum Magnetics Corporation (Magnum), submitted comments on Accoutrements' Scope Ruling Request.⁶

Accoutrements' flexible magnet product is 26.5 inches wide and approximately 6 inches tall. *See* Scope Ruling Request at 3. It consists of a three layer "sandwich" of flexible magnet sheet, cardboard and thick paper, the latter layer of which bears an offset printed graphic image of stylized mustache hairs. *See* Scope Ruling Request at 5. The layers are glued together and permanently bonded through lamination. The laminated sandwich is die-cut to shape. *See* Scope Ruling Request at 2. The image cannot be removed from the magnetic material without damaging the product. *See* Scope Ruling Request at 5.

Pursuant to 19 CFR 351.225(c)(1)(ii), Accoutrements contends that its product is not within the scope of the orders because it meets the "printed flexible magnets" exclusion. *See* Scope Ruling Request at 5.

The petitioner agrees, but questions whether all versions of the product contain the printed layer given that in pictures of the product featured on a website identified by Accoutrements in its Scope Ruling Request at 3 the magnets do not appear to be printed.⁷ *See* Petitioner comments at 1-3. The petitioner argues that "any versions of this product...not laminated with printed material...would not fit the 'printed flexible magnet' exclusion and would be covered by the plain language of the orders." *See* Petitioner Comments at 2.

SCOPE OF THE ORDERS

The Department identified the scope of the investigations in its notices of initiation.⁸ In the final determinations,⁹ the Department clarified product coverage by reordering the scope language and

2012) (Scope Ruling Request).

³ *See* Letter from Mino Hatten to Accoutrements dated June 28, 2012.

⁴ *See* Letter from Accoutrements to the Secretary of Commerce, "Addendum to Accoutrements LLC Scope Inquiry Dated June 7, 2012 on Mustache Magnet; Raw Flexible Magnets; Case Nos. A-570-922; C-570-923; A-583-842 (June 28, 2012) (Addendum).

⁵ *See* Letter from Accoutrements to the Secretary of Commerce, "Request for Scope Ruling on Mustache Magnet; Raw Flexible Magnets; Case Nos. A-570-922; C-570-923; A-583-842; Manual Filing of Representative Sample" (July 2, 2012).

⁶ *See* Letter from Magnum to the Secretary of Commerce, "Raw Flexible Magnets from the People's Republic of China and Taiwan: Comments on Scope Ruling Request" (June 25, 2012) (Petitioner Comments).

⁷ For hard copy of the website in question *see* the Memorandum from Michael A. Romani to the File entitled "Raw Flexible Magnets From the People's Republic of China and Taiwan – Hard Copy of Website" (July 3, 2012) at attachment 1.

⁸ *Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of*

adding certain explanatory definitions. The revised scope language neither enlarged nor diminished product coverage.¹⁰ There have been no subsequent changes to the scope. The scope description as published in the orders is as follows:

The products covered by this order are certain flexible magnets regardless of shape,¹¹ color, or packaging.¹² Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized.

Subject flexible magnets may be in either magnetized or unmagnetized (including demagnetized) condition, and may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color. Subject flexible magnets may be uncoated or may be coated with an adhesive or any other coating or combination of coatings.

Specifically excluded from the scope of this order are printed flexible magnets, defined as flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (e.g., "print this side up," "this side up," "lamine here"); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use such as application of laminate) or on any other covering that is removed from the flexible magnet prior or subsequent to final printing and before use; non-

China and Taiwan, 72 FR 59071 (October 18, 2007); *Raw Flexible Magnets from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation*, 72 FR 59076 (October 18, 2007).

⁹ *Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China*, 73 FR 39669 (July 10, 2008) (*Magnets PRC AD Final Determination*); *Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 39667 (July 10, 2008) (*Magnets PRC CVD Final Determination*); *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673 (July 10, 2008) (*Magnets Taiwan AD Final Determination*).

¹⁰ See *Magnets PRC AD Final Determination*, 73 FR at 39671, *Magnets PRC CVD Final Determination*, 73 FR at 39667; and *Magnets Taiwan AD Final Determination*, 73 FR at 39673-4.

¹¹ The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

¹² Packaging includes retail or specialty packaging such as digital printer cartridges.

permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet to be re-printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of subject merchandise that are not specifically excluded are within the scope of this order. The products subject to the order are currently classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The HTSUS subheadings are provided only for convenience and customs purposes; the written description of the scope of the order is dispositive.

See Magnets PRC AD Order, 73 FR at 53847, *Magnets PRC CVD Order*, 73 FR at 53850, and *Magnets Taiwan AD Order*, 73 FR at 53848-9.

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope ruling request.¹³ Pursuant to the Department’s regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.¹⁴ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order. Where the descriptions of the subject merchandise are not dispositive, the Department will consider the following factors provided at 19 CFR 351.225(k)(2): (i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; (v) the manner in which the product is advertised and displayed.

In the instant case, as explained in the analysis section below, the Department finds that the issue of whether the magnet in Accoutrements’ Scope Ruling Request is within the scope of the orders can be determined based upon the application submitted by Accoutrements, the language of the scope of the orders, and the sources referred to in 19 CFR 351.225(k)(1). Therefore, the Department finds it unnecessary to consider the additional factors under 19 CFR 351.225(k)(2).

ANALYSIS

At issue in this scope inquiry is whether Accoutrement’s “Mustache Magnet” meets the exclusion for printed flexible magnets.¹⁵ In particular, the scope of the orders specifically

¹³ *See Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁴ *See* 19 CFR 351.225(k)(1).

¹⁵ Accoutrements’ “Mustache Magnet” consists of a flexible magnet bonded to a composite material consisting of cardboard and printed paper. In a prior scope determination concerning individual flexible magnets imported by It’s Academic we found that the orders covered flexible magnets bonded permanently to composite materials. *See* Memorandum from Laurie Parkhill to John M. Andersen entitled “Raw Flexible Magnets from the People’s Republic of China; Scope Request from It’s Academic – Final Scope Determination in Part” (March 4, 2009) at 6.

excludes:

...printed flexible magnets, defined as flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like.

Accoutrements argues that the printed “mustache hairs” are a “decorative motif” similar to those which adorned several magnets analyzed in Target Scope Ruling.¹⁶ In that decision, the Department explained that the phrase “decorative motif” referred to a “type of printed text and/or printed image that may appear on printed flexible magnets.” Examples of decorative motifs that led to products being excluded from the scope of the orders in the Target Scope Ruling are heart images printed on a magnet cut in the shape of a heart and an image of a bird printed on a magnet cut into the shape of a bird.

Not all printing, however, is exclusionary, and the scope of the orders enumerates several caveats to its printing exclusion:

This exclusion does not apply to such printed flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (*e.g.*, “print this side up,” “this side up,” “lamine here”); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use such as application of laminate) or on any other covering that is removed from the flexible magnet prior or subsequent to final printing and before use; non-permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet to be re-printed); printing on the back (magnetic) side; or any combination of the above.

These caveats or limits to the printed flexible magnet exclusion are not applicable to the printing borne by the “Mustache Magnet” because the printed mustache hair motif is not trade mark or origin identifying, nor is it instructional in nature. Further, the printed design continuously covers the topmost layer of the product in a permanent fashion and is not removable from the magnet for any reason short of destroying the product.

For these reasons, we agree that Accoutrements’ “Mustache Magnet” does not fall within the scope of the orders. In recognition of the concerns raised by the petitioner, we acknowledge that forms of this product that are not printed with mustache hairs are not covered by this ruling.

¹⁶ See Memorandum from Abdelali Elouaradia to Gary Taverman entitled “Final Scope Ruling on Certain Decorative Retail Magnets”, dated December 22, 2008 (Target Scope Ruling).

CONCLUSION

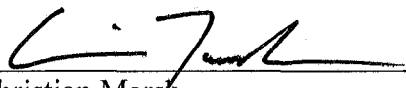
Pursuant to 19 CFR 351.225(d), we find that the scope language of the orders at issue, the descriptions of the product contained in the Scope Ruling Request, and the Department's prior scope rulings are dispositive. Accoutrements' Mustache Magnet (article number 12117 with UPC code 739048121179) is not within the scope of the orders because it is a printed flexible magnet, which is excluded by the plain language of the scope of the orders.

RECOMMENDATION

We recommend determining that Accoutrements' Mustache Magnet is not within the scope of the antidumping duty and countervailing duty orders on raw flexible magnets from the PRC and the antidumping duty order on raw flexible magnets from the PRC.

If you agree, we will notify U.S. Customs and Border Protection of our determination and send a copy of this memorandum to all interested parties on the scope service list via first-class mail as directed by 19 CFR 351.303(f).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

8/7/12
Date