

COSTUME CLASSIFICATION

REVOCAION OF BINDING RULING L83457 CONCERNING THE CLASSIFICATION OF DISPOSABLE COSTUMES PACKAGED WITH HEADPIECES AND BAGS

In NY L83457, CBP determined that the articles packaged together for retail sale (jumpsuit, headpiece, bag) were not a “retail set” within the meaning of the HS, and the jumpsuit and hat were classified separately. It was also noted that CBP could not rule on the bag without a fuller description bag. CBP further held that the jumpsuit had met the flimsy, non-durable requirements for classification within Chapter 95 of the HTSUSA, and classified them under 9505.90.6000, which provides for “Festive, carnival or other entertainment articles, . . .”; the headpieces were classified in subheading 6505.90.8015, HTSUSA, which provides for “Hats and other headgear, . . .”

FACTS: These items are described as disposable Halloween costumes for infants and have been constructed of non-woven fabric consisting of 90 percent polypropylene, 5 percent elastic, and 5 percent hook and loop fasteners. Each of the three styles consists of a costume, headpiece, and bag packaged together. The costume submitted for our review is a jumpsuit that has been constructed with loose overlock stitching and straight stitching of a loose gauge. A decorative iron on appliqué design has been adhered to the front of the jumpsuit. Thin elastic, less than ¼ inch in width, has been sewn directly to the costume at the ankles, neck, and cuffs. Each leg panel has a split opening at the inside seam that allows the leg panels to be completely opened for diaper changes. There are six hook and loop fasteners attached to each leg panel for closure. There is a raw edged 3 inch slash opening at the back which closes with a hook and loop fastener. The neckline also has a raw edge. Hook and loop fasteners have been sewn to the front and back neckline to form a secure attachment with the headpiece. With respect to the devil costume, a stylized tail has been stuffed with fiber filling and sewn to the back center seam of the costume. The headpiece is constructed in five panels, with elastic, gathers, and darts to create a bonnet style headpiece. A string tie of matching fabric has been sewn to the lower edge to secure the headpiece. All other edges are unfinished/raw. With respect to the devil costume, two devil horns have been sewn to the top of the headpiece and incorporated into the seams which join the panels together at the crown. Hook and loop fasteners have been sewn to the lower edge so that the headpiece can fasten to the jumpsuit at the neckline. The bag is a small rectangular tote that is approximately 5 inches wide x 7 inches long. The bag has two 3 ½ inch loop handles sewn to the inside edge of the bag, no lining, and an iron on appliqué with a stylized notation of the words “Trick or Treat”

ISSUE: Whether the subject articles, which are packaged together for sale and importation into the United States, are classifiable pursuant to a GRI 3(b) analysis as retail sets. What is the proper classification for the merchandise?

LAW AND ANALYSIS: The merchandise contains three articles packaged together, which cannot be classified pursuant to a GRI 1 analysis because the articles are *prima facie*, classifiable in three different headings. If imported separately, the textile costume may be classifiable in heading 9505, HTSUSA, which provides, in part, for “Festive, carnival or other entertainment articles”, the hat would be classifiable in heading 6505, HTSUSA, which provides, in part, for “Hats or other headgear”, and the trick or treat bag may be classifiable in heading 4202, HTSUSA, which provides, in part, for “travel bags”. When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides in relevant part as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. * * * GRI 3 establishes a hierarchy of methods for classifying goods that fall under two or more headings. GRI 3(a) states that the heading providing the most specific description is to be preferred to a heading, which provides a more general description. However, GRI 3(a) indicates that when two or more headings each refer to part only of the materials or substances in a composite good or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the other. In this case, the headings 9505, 6505, and 4202, HTSUSA, each refer to only part of the items in the set. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b). In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character and a determination must be made as to whether or not these are “goods put up in sets for retail sale”. In relevant part, the ENs to GRI 3(b) state: (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable. (VIII) The factor which determines essential character will

vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. * * * (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (*e.g.*, in boxes or cases or on boards). In accordance with GRI 3(b), we find that the subject component articles are properly classified as “sets” because they consist of goods put up in a set for retail sale. In this instance, the bag is designed to coordinate with the Halloween costume in that it is constructed of the same fabric, bears a stylized “Trick or Treat” iron on appliqué, and is color coordinated to match the devil horns sewn to the headpiece. In addition, the bag is quite small (5 inches wide x 7 inches long) so that an older infant or toddler can easily grasp the handles and carry the bag for “Trick or Treating”. Thus, the jumpsuit/costume, coordinating hat and bag, are designed to carry out a specific activity, *i.e.*, “Trick or Treating” on Halloween. Furthermore, the components in this set are, *prima facie*, classifiable in different headings and have been put up in retail packaging suitable for sale directly to users without repacking. There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. The essential character of the subject sets can be determined by comparing each component as it relates to the use of the product. In this instance, it is the textile costume that imparts the essential character to the set. The jumpsuit is the largest component, uses the most material, and provides the wearer with an immediately recognizable character. Clearly, the jumpsuit was more costly to manufacture than the small tote bag and hat. In most instances, CBP has held that the costume and not the headgear imparts the essential character to a GRI 3(b) (HQ959545).

However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62. [emphasis supplied] The case of *Rubie’s Costume Company v. United States*, 337 F.3d 1350 (Fed Cir. 2003), considered HQ 961447 and upheld the reasoning set forth in that ruling, which classified textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, as “festive articles” in heading 9505. Of particular relevance to the merchandise now in question is the fact that the court specifically noted that HQ 961447 had correctly compared functional and structural deficiencies of “festive article” costumes with the standard features found in “wearing apparel” in order to determine whether articles are properly classified in Chapter 95 or Chapters 61 and 62. HQ 961447 affirmed CBP’s decision in HQ 959545. In HQ 959545, CBP set forth the criteria used to determine the textile costumes that were classifiable as “festive articles” in subheading 9505.90.6090. These textile costumes shared the following characteristics: There were no significant styling features and each costume had raw edges on fabrics that could “run” or fray. Additional characteristics used to distinguish between textile costumes classifiable as “Festive articles” of Chapter 95, HTSUSA, and fancy dress of Chapters 61 or 62, are found CBP’s Informed Compliance Publication (ICP), entitled “What Every Member of the Trade Community Should Know About: Textile...”. This ICP, notes the four areas in making classification determinations for textile costumes, *i.e.*, “Styling”, “Construction”, “Finishing Touches”, and “Embellishments”. See also rulings: HQ 957973, 958049, 958061, 957948, 957952, 959545, 959064, 960805, 960107, 961447, 962081, 962184 and 962441. In view of the foregoing, we find that the subject merchandise, identified in NY L83457, is properly classified as retail sets pursuant to a GRI 3(b) analysis and that the jumpsuit offers the essential character of the article. Although we concur with NY L83457 that the jumpsuits are flimsy, non-durable, and classifiable in subheading 9505.90.6000, HTSUSA, we find that NY L83457 incorrectly classified the jumpsuit and headpiece separately rather than as a GRI 3(b) set.

HOLDING: The subject merchandise, packaged for retail sale with a jumpsuit, headpiece, and bag, are properly classified as GRI 3(b) “sets”, with the jumpsuit providing the essential character, in subheading 9505.90.6000. which provides for “Festive, carnival or other entertainment articles etc.”.