

U.S. Customs and Border Protection


CBP Dec. 12-01

**WESTERN HEMISPHERE TRAVEL INITIATIVE:
DESIGNATION OF AN APPROVED NATIVE AMERICAN
TRIBAL CARD ISSUED BY THE KOOTENAI TRIBE OF
IDAHO AS AN ACCEPTABLE DOCUMENT TO DENOTE
IDENTITY AND CITIZENSHIP**

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection (CBP) is designating an approved Native American Tribal Card issued by the Kootenai Tribe of Idaho (Kootenai Tribe) to U.S. and Canadian citizens as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Kootenai Tribe members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

DATES: This designation will become effective on January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, (202) 344-3003.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or

other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI land and sea final rule). It amended, among other sections of the Code of Federal Regulations (CFR), 8 CFR 212.0, 212.1, and 235.1. The WHTI land and sea final rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI land and sea final rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands¹ is a Native American Tribal Card that has been designated as an acceptable document to denote identity and citizenship by the Secretary, pursuant to section 7209 of IRTPA for the purposes of entering the United States at a land and sea port of entry. Specifically, 8 CFR 235.1(e), as amended by the WHTI land and sea final rule, states:

Upon the designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

A “United States qualifying tribal entity” is defined as a “tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards.”² Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents U.S. citizens may use to establish identity and citizenship when entering the United States.

¹ “Adjacent islands” is defined in 8 CFR 212.0 as “Bermuda and the islands located in the Caribbean Sea, except Cuba.” This definition applies to 8 CFR 212.1 and 235.1.

² *See* 8 CFR 212.0. This definition applies to 8 CFR 212.1 and 235.1.

See 8 CFR 235.1(b)(7).

The Secretary has delegated to the Commissioner of CBP the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain United States Native American tribal cards. See DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

Tribal Card Program

The WHTI land and sea final rule allows U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal identification cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP has been working with various U.S. federally recognized Native American tribes to facilitate the development of such cards.³ As part of the process, CBP will enter into one or more agreements with a U.S. federally recognized tribe that specify the requirements for developing and issuing WHTI-compliant tribal cards, including a testing and auditing process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of DHS or the Commissioner of CBP may designate the tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. A list of entities issuing WHTI-compliant documents and the kind of documents issued is available at <http://www.getyouhome.gov>.

Kootenai WHTI-Compliant Tribal Card Program

The Kootenai Tribe has voluntarily established a program to develop a WHTI-compliant tribal card that denotes identity and U.S. or Canadian citizenship. On March 3, 2009, CBP and the Kootenai Tribe signed a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate tribal cards to be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Kootenai Tribe who can establish identity, tribal membership, and

³ The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as “Enhanced Tribal Cards” or “ETCs.”

U.S. or Canadian citizenship. The cards incorporate physical security features acceptable to CBP as well as facilitative technology allowing for electronic validation of identity, citizenship, and tribal membership. CBP and the Kootenai Tribe finalized a service level agreement on December 1, 2009. This service level agreement memorializes the technical specifications for the production, issuance and use of the card.

CBP has tested the cards developed by the Kootenai Tribe pursuant to the above agreements and has performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP's continued acceptance of the tribal card as a WHTI-compliant document is conditional on compliance with the MOA and all related agreements.

Acceptance and use of the WHTI-compliant tribal card is voluntary for tribe members. If an individual is denied a WHTI-compliant tribal card, he or she may still apply for a passport or other WHTI-compliant document.

Designation

This notice announces that the Commissioner of CBP designates the tribal card issued by the Kootenai Tribe in accordance with the MOA and all related agreements between the tribe and CBP as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. or Canadian citizenship of Kootenai Tribe members who are entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Dated: January 25, 2012.

DAVID V. AGUILAR,
Acting Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, January 31, 2012 (77 FR 4822)]

General Notice**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS****(No. 1 2012)**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: The following copyrights, trademarks, and Trade names were recorded with U.S. Customs and Border Protection in January 2012. The last notice was published in the CUSTOMS BULLETIN on February 8, 2012.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, D.C. 20229-1177.

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 325-0088.

Dated: February 2, 2012

CHARLES R. STEUART
Chief,
Intellectual Property Rights & Restricted
Merchandise Branch

CBP IPR RECORDATION — JANUARY 2012

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 05-01020	1/30/2012	11/27/2021	VANQUISH	ASTON MARTIN LAGONDA LIMITED	No
TMK 05-01024	1/30/2012	1/15/2022	XKR	JAGUAR CARS LIMITED	No
TMK 05-01036	1/30/2012	2/15/2022	RANGE ROVER	LAND ROVER	No
TMK 06-00164	1/30/2012	11/10/2021	BLACK & MILD	JOHN MIDDLETON CO.	No
TMK 06-00569	1/23/2012	11/16/2021	PULSAR	SEIKO WATCH KABUSHIKI KAISHA T/A SEIKO WATCH CORPORATION	No
TMK 01-00376	1/6/2012	9/26/2021	LAST-A-FOAM	GENERAL PLASTICS MANUFACTURING CO.	No
TMK 01-00451	1/6/2012	10/13/2021	MONTECRISTO	CUBAN CIGAR BRANDS, N.V.	No
TMK 02-00016	1/30/2012	11/17/2021	TOM KIITEN	FREDERICK WARNE & CO., INC.	No
TMK 02-00159	1/6/2012	6/8/2021	HUSH PUPPIES	WOLVERINE WORLD WIDE, INC.	No
TMK 02-00221	1/23/2012	11/23/2021	SWIFT AND DESIGN	SWIFT OPTICAL INSTRUMENTS, INC.	No
TMK 03-00099	1/23/2012	10/23/2021	ABERCROMBIE & FITCH	ABERCROMBIE & FITCH TRADING CO.	No
TMK 03-00355	1/30/2012	10/6/2022	TARGET DESIGN	MCGUIRE FURNITURE COMPANY	No
TMK 03-00744	1/30/2012	5/21/2022	3 BALLERINA	TRUONG GIANG CORPORATION	No
TMK 03-00746	1/30/2012	4/16/2022	DESIGN	TRUONG GIANG CORPORATION	No
TMK 04-00823	1/30/2012	12/29/2021	SWANSON SPEED	SWANSON TOOL CO., INC.	No
TMK 05-00090	1/23/2012	12/29/2021	ACTIVISION	ACTIVISION PUBLISHING, INC.	No
TMK 05-00466	1/23/2012	12/21/2021	CROSS	A.T.X. INTERNATIONAL INC.	No
TMK 12-00052	1/23/2012	12/6/2021	VELLUM	VELLUM WINE CRAFT, LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 05-00945	1/9/2012	4/9/2022	QUESTECH	QUESTECH CORPORATION	No
TMK 07-00900	1/30/2012	1/22/2022	JL AUDIO	JL AUDIO, INC.	No
TMK 04-01028	1/30/2012	1/22/2022	CLASSIFIED	FORTUNE DYNAMIC, INC.	No
TMK 06-00865	1/30/2012	1/7/2022	D D DESIGN	DOLBY LABORATORIES LICENSING CORPORATION	No
TMK 06-00935	1/30/2012	4/20/2022	KERSHAW	KAI U.S.A. LTD, DBA KERSHAW KNIVES	No
TMK 09-00293	1/30/2012	10/22/2022	THE SEVEN DEADLY ZINS	MICHAEL-DAVID, LLC	No
TMK 09-00243	1/23/2012	10/22/2021	DESIGN (INDIAN HEAD LOGO)	BOOT ROYALTY COMPANY, L.P.	No
TMK 07-00964	1/30/2012	8/27/2022	TEAVANA	TEAVANA CORPORATION	No
TMK 07-00459	1/23/2012	5/14/2022	GOLDEN SUN	SEATRADE INTERNATIONAL CO., INC.	No
TMK 07-00445	1/30/2012	4/9/2022	SEATRADE AND DESIGN	SEATRADE INTERNATIONAL CO., INC.	No
TMK 07-00654	1/30/2012	2/19/2022	HOME WEAR AND DESIGN	ROWE FINE FURNITURE, INC.	No
COP 12-00009	1/30/2012	1/30/2032	POKEPARK WII: PIKACHU'S ADVENTURE	THE POKEMON COMPANY	No
TMK 08-00251	1/9/2012	10/9/2021	OMNIEXPRESS	QUALCOMM INCORPORATED	No
TMK 08-00393	1/30/2012	3/30/2021	MARLBORO ULTRA LIGHTS AND DESIGN	PHILIP MORRIS USA INC.	Yes
TMK 08-01104	1/9/2012	11/3/2021	PAUL STUART	PAUL STUART, INC.	No
COP 12-00004	1/23/2012	1/23/2032	DEEP SEA	BNB ENTERPRISES, INC.	No
TMK 12-00051	1/23/2012	12/20/2021	DESIGN (CRESCENT-SHAPED KNIFE)	VELLUM WINE CRAFT, LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 09-00477	1/9/2012	10/20/2021	GISPERT	MAX ROHR, INC.	No
TMK 09-00474	1/9/2012	10/20/2021	JUAN LOPEZ	MAX ROHR, INC.	No
TMK 01-00546	1/6/2012	8/28/2021	DESITIN	JOHNSON AND JOHNSON	No
TMK 10-00586	1/23/2012	10/27/2021	RED VINES	AMERICAN LICORICE CO.	No
TMK 12-00112	1/31/2012	10/12/2020	C AND DESIGN	SENYX LLC	No
TMK 12-00053	1/23/2012	10/11/2021	GLOCK	GLOCK, INC.	No
TMK 12-00107	1/30/2012	6/19/2021	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 11-00319	1/23/2012	1/26/2022	DESIGN (CASTLE)	LORILLARD LICENSING COMPANY, LLC	No
TMK 12-00131	1/31/2012	11/22/2021	WII SPORTS RESORT	NINTENDO OF AMERICA INC.	No
TMK 12-00105	1/30/2012	10/11/2021	GLOCK	GLOCK, INC.	No
TMK 12-00104	1/30/2012	6/8/2019	FRESHLOOK COLOR BLENDS	NOVARTIS AG .	No
TMK 12-00108	1/30/2012	11/22/2015	KIMBERLY-CLARK PROFESSIONAL	KIMBERLY-CLARK WORLDWIDE, INC.,	No
TMK 12-00125	1/31/2012	9/20/2015	KIMBERLY-CLARK PROFESSIONAL	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00103	1/30/2012	5/27/2017	KATE SPADE	KATE SPADE, LLC	No
TMK 12-00106	1/30/2012	1/27/2018	SOCCER BALL AND STRIPES DESIGN	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00113	1/31/2012	8/5/2018	LA GALAXY SHIELD	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00054	1/23/2012	9/21/2020	LEGEND VALVES	K.T.I. HYDRAULICS, INC.	No
TMK 12-00006	1/9/2012	6/24/2017	KATE SPADE	KATE SPADE LLC	No
TMK 12-00007	1/9/2012	6/10/2017	KATE SPADE	KATE SPADE, LLC	No
TMK 12-00111	1/30/2012	1/12/2020	FTC TORONTO DESIGN	M.L.S CANADA LP	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 12-00110	1/30/2012	8/5/2018	COLORADO RAPIDS 96 WITH SHIELD	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00109	1/30/2012	7/19/2021	RED BULL NEW YORK AND DESIGN	RED BULL GMBH LIMITED LIABILITY COMPANY AUSTRIA	No
TMK 12-00008	1/9/2012	5/29/2021	JACK SPADE WARREN STREET NEW YORK	KATE SPADE, LLC	No
TMK 12-00114	1/31/2012	10/4/2021	PRESS TO PLAY	COTY DEUTSCHLAND GMBH	No
TMK 12-00010	1/9/2012	4/11/2020	JACK SPADE	KATE SPADE LLC	No
TMK 12-00009	1/9/2012	12/13/2021	TARS TARKAS	EDGAR RICE BURROUGHS, INC.	No
TMK 12-00116	1/31/2012	9/14/2020	PHILADELPHIA UNION WITHIN A CIRCLE DESIGN	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00118	1/31/2012	8/26/2017	COLUMBUS CREW	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00059	1/30/2012	11/1/2021	WORLD'S BEST WITH GLOBE DESIGN	WORLD'S BEST, LLC	No
TMK 12-00117	1/31/2012	2/18/2017	MLS	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00115	1/31/2012	7/19/2021	SOMA INTIMATES	CHICO'S BRANDS INVESTMENTS, INC.	No
TMK 12-00133	1/31/2012	10/25/2021	C (STYLIZED)	CLIFF ELECTRONIC COMPONENTS LTD	No
TMK 12-00011	1/9/2012	12/17/2012	VACULET	EXELINT INTERNATIONAL CO. (DBA, EXEL INTERNATIONAL)	No
TMK 12-00055	1/23/2012	2/1/2021	STARWALL	SOCIETE PARTITION MANUFACTURIER ASSOCIES (PMA) INC	No

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TMK 12-00124	1/31/2012	6/7/2021	DESIGN	SRS LABS, INC.	No
TMK 12-00119	1/31/2012	6/15/2019	CHICAGO FIRE DESIGN	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00123	1/31/2012	4/29/2018	RSL REAL SALT LAKE AND DESIGN	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00126	1/31/2012	7/20/2020	HOUSTON DYNAMO WITH SHIELD	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00128	1/31/2012	11/7/2020	D.C. UNITED AND DESIGN	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00132	1/31/2012	3/17/2012	HUGGIES	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00127	1/31/2012	8/18/2019	SEATTLE SOUNDERS FC DESIGN	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-00129	1/31/2012	4/3/2017	FC DALLAS 96	FC DALLAS SOCCER, L.L.C.	No
TMK 06-01064	1/9/2012	9/21/2021	DESIGN ONLY	A.T.X. INTERNATIONAL, INC.	No
TMK 12-00056	1/23/2012	4/24/2021	ZORBAND	EXELINT INTERNATIONAL CO. (DBA, EXEL INTERNATIONAL)	No
TMK 12-00122	1/31/2012	11/26/2022	SUPER JECT AND DESIGN	EXELINT INTERNATIONAL CO. (DBA, EXEL INTERNATIONAL)	No
TMK 12-00099	1/30/2012	5/20/2018	MOYNAT	RENAISSANCE 1849	No
TMK 12-00101	1/30/2012	12/25/2021	IRONCLAD	IRONCLAD PERFORMANCE WEAR CORP.	No
TMK 12-00120	1/31/2012	12/27/2021	DESIGN	LISA DIANE CRISLIP WILKINSON	No
TMK 12-00100	1/30/2012	10/18/2021	PERSONAL TRAINER COOKING	NINTENDO OF AMERICA INC.	No
TMK 03-00507	1/30/2012	12/8/2021	DESIGN (3 ARROWS AND 3 RINGS IN A DOUBLE CIRCLE)	FABBRICA D'ARMI P. BERETTA S.P.A	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 12-00134	1/31/2012	1/24/2022	UNIVERSAL SUN-V AND DESIGN	TIME PLAZA INC.	No
TMK 12-00087	1/30/2012	4/6/2020	SWISSGEAR	WENGER S.A.	No
TMK 12-00080	1/30/2012	7/10/2022	LOEHMANN'S	LOEHMANN'S OPERATING CO.	No
TMK 12-00092	1/30/2012	1/8/2022	THE FLOATY SUIT	FUTURE PRODUCTS CORPORATION	No
TMK 12-00097	1/30/2012	12/20/2021	DUSTY FEET	WORLD SERVE INTERNATIONAL	No
TMK 12-00091	1/30/2012	12/4/2021	POKEMON	NINTENDO OF AMERICA INC.	No
TMK 12-00081	1/30/2012	11/29/2021	NINTENDODSI DESIGN	NINTENDO OF AMERICA INC.	No
TMK 12-00058	1/23/2012	8/15/2018	CLIPPER	FLAMAGAS S.A.	No
TMK 12-00046	1/20/2012	2/4/2016	PULL-UPS	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00084	1/30/2012	7/1/2013	LITTLE SWIMMERS	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00032	1/13/2012	11/30/2016	GARRETT'S GRAVITY TRAP	GARRETT ELECTRONICS, INC.	No
TMK 12-00033	1/13/2012	10/29/2021	SCORPION DESIGN	GARRETT ELECTRONICS, INC.	No
TMK 12-00082	1/30/2012	5/19/2021	DEPEND	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00083	1/30/2012	7/12/2021	CUBICIN	CUBIST PHARMACEUTICALS, INC.	No
TMK 12-00088	1/30/2012	12/31/2021	POISE	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00085	1/30/2012	10/5/2020	EZ-JET	YSHIANG ENTERPRISE CO., LTD.	No
TMK 12-00034	1/13/2012	8/30/2021	GIRAFFE BRAND AND DESIGN	MAHALAXMI EXPORTS FZE	No
TMK 12-00037	1/13/2012	5/18/2020	GARRETT THD	GARRETT ELECTRONICS, INC.	No
TMK 12-00086	1/30/2012	11/5/2022	FIX	ZISSIS, ARIS A.	No
TMK 12-00035	1/13/2012	1/31/2016	COTTONELLE	KIMBERLY-CLARK WORLDWIDE, INC.	No

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TMK 12-00036	1/13/2012	8/20/2012	DESIGN	DORMONT MANUFACTURING COMPANY	No
TMK 12-00049	1/20/2012	6/21/2013	DESIGN	GARRETT ELECTRONICS, INC.	No
TMK 12-00093	1/30/2012	5/14/2021	SCORPION GOLD STINGER	GARRETT ELECTRONICS, INC.	No
TMK 12-00048	1/20/2012	11/15/2021	PL POSITION LOGIC AND DESIGN	POSITION LOGIC, LLC (FLORIDA LIABILITY COMPANY)	No
TMK 12-00089	1/30/2012	10/16/2021	DESIGN	NINTENDO OF AMERICA INC.	No
TMK 12-00095	1/30/2012	8/21/2013	COTTONELLE	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00098	1/30/2012	8/24/2020	NUBONAU ORGANIKA	NUBONAU, INC.	No
TMK 12-00038	1/20/2012	10/15/2022	DIGITRAY	PONICA INDUSTRIES CORPORATION	No
TMK 12-00039	1/20/2012	6/10/2013	PURDUE PHARMA	PURDUE PHARMA L.P.	No
TMK 12-00005	1/9/2012	11/22/2021	FENDI	FENDI ADELE S.R.L.	No
TMK 12-00001	1/6/2012	8/3/2013	KOTEX	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00028	1/13/2012	8/10/2020	U BY KOTEX	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00002	1/6/2012	7/26/2021	GARRETT QUALITY MADE IN USA ISO 9001 CERTIFIED	GARRETT ELECTRONICS, INC.	No
TMK 12-00029	1/13/2012	1/16/2018	VIVA	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00031	1/13/2012	11/18/2018	SCOTT	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00003	1/6/2012	4/6/2020	KLEENEX	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00015	1/13/2012	12/6/2021	BEDOL	BEDOL INTERNATIONAL GROUP, INC.	No

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TMK 12-00026	1/13/2012	5/2/2021	AIRFIELD	RAIDEN TECHNOLOGY, INC.	No
COP 12-00008	1/30/2012	1/30/2032	WII PARTY	NINTENDO OF AMERICA INC.	No
TMK 12-00040	1/20/2012	12/1/2018	KK KOUTURE AND DESIGN	NELISSA N. DASS-CLAVERIA C/O KOUTURE VENTURES INC	No
TMK 12-00030	1/13/2012	8/29/2020	KIMBERLY-CLARK	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00023	1/13/2012	9/6/2015	SCOTT	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00022	1/13/2012	8/24/2020	NUBONAU	NUBONAU, INC.	No
TMK 12-00021	1/13/2012	6/10/2018	CARBON COPY	DUNLOP MANUFACTURING, INC.	No
TMK 12-00004	1/6/2012	11/28/2015	SHANNON	GODINGER SILVER ART CO., LTD.	No
COP 12-00001	1/13/2012	1/13/2032	DERMOND PETERSON FEBRUARY 2006 COLLECTION.	DERMOND PETERSON LLC.	No
TMK 03-00210	1/23/2012	12/17/2021	POLYFLEX	BOEHRINGER INGELHEIM VET-MEDICA, INC.	No
TMK 12-00041	1/20/2012	10/3/2020	SMASHBOX	DJF ENTERPRISES	No
TMK 12-00090	1/30/2012	12/6/2021	NINTENDO	NINTENDO OF AMERICA INC.	No
TMK 03-00810	1/6/2012	11/6/2021	CYDECTIN	BOEHRINGER INGELHEIM VET-MEDICA, INC.	No
TMK 12-00045	1/20/2012	2/28/2015	GOODNITES	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00102	1/30/2012	10/18/2022	DILAUDID	PURDUE PHARMA L.P.	No
TMK 11-00472	1/30/2012	11/20/2021	POKEMON	NINTENDO OF AMERICA INC.	No

CBP IPR RECORDATION — JANUARY 2012

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 12-00094	1/30/2012	11/20/2021	POKÉ BALL DESIGN	NINTENDO OF AMERICA INC.	No
TMK 12-00024	1/13/2012	12/6/2021	ROBOTIKITS	OWI INC.	No
TMK 12-00096	1/30/2012	9/18/2017	BOCCI	BOCCI DESIGN & MANUFACTURING INC.	No
TMK 12-00016	1/13/2012	3/23/2020	RONCO	RONCO HOLDINGS, INC.	No
COP 12-00003	1/13/2012	1/13/2032	ANGRY BIRDS -GREEN BIRD	ROVIO MOBILE OY	No
TMK 12-00027	1/13/2012	1/25/2021	ZIP-IT	BANANAGRAMS, INC.	No
COP 12-00002	1/13/2012	1/13/2032	MIGHTY EAGLE	ROVIO MOBILE OY	No
TMK 12-00020	1/13/2012	3/18/2018	HEYDAY	HAGER DESIGN, INC.	No
TMK 12-00071	1/30/2012	8/4/2019	KONG	IRONCLAD PERFORMANCE WEAR CORP.	No
TMK 12-00025	1/13/2012	1/2/2020	GM	GENERAL MOTORS LLC	No
TMK 12-00019	1/13/2012	11/7/2021	MADHAWK 300	RAIDEN TECHNOLOGY, INC.	No
TMK 12-00018	1/13/2012	9/27/2021	PERFORMER	GLOBAL FINISHING SOLUTIONS, L.L.C.	No
TMK 12-00012	1/13/2012	11/1/2021	KG TECHNOLOGIES	CLODI L.L.C.	No
TMK 12-00063	1/30/2012	1/14/2013	ODYSSEY AND DESIGN	HSHAO & MONTANO, INC. DBA ODYSSEY INNOVATIVE DESIGNS	No
TMK 12-00064	1/30/2012	11/29/2021	NINTENDODSI AND DESIGN	NINTENDO OF AMERICA INC.	No
TMK 12-00065	1/30/2012	9/9/2013	ODYSSEY	HSHAO & MONTANO, INC. DBA ODYSSEY INNOVATIVE DESIGNS	No

CBP IPR RECORDATION — JANUARY 2012

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 12-00121	1/31/2012	6/13/2016	BARRICAS	DAVIS WINE COMPANY	No
TMK 12-00014	1/13/2012	3/29/2022	FRUTOMINOFES	BANAGRAMS, INC.	No
TMK 12-00013	1/13/2012	11/24/2019	PAIRS IN PEARS	BANAGRAMS, INC.	No
COP 12-00005	1/30/2012	1/30/2032	BROWN PASSION FLOWER	BNB ENTERPRISES	No
COP 12-00006	1/30/2012	1/30/2032	PAISLEY FISH WITH FRIEND	BNB ENTERPRISES, INC.	No
TMK 02-01004	1/23/2012	12/22/2021	NY (STYLIZED)	NEW YORK YANKEES	No
TMK 12-00078	1/30/2012	11/6/2021	DESIGN (POKÉ BALL)	NINTENDO OF AMERICA INC.	No
TMK 12-00067	1/30/2012	12/13/2021	P90X2	BEACHBODY, LLC	No
TMK 12-00050	1/23/2012	1/31/2016	BANANAGRAMS	BANANAGRAMS, INC.	No
TMK 12-00130	1/31/2012	12/16/2018	CRYSTAL AVENUE	RM MFG.CO	No
TMK 12-00042	1/20/2012	8/11/2020	PACO RABANNE	PUIG FRANCE SOCIETE	No
TMK 02-00338	1/23/2012	12/4/2021	NY (STYLIZED)	STERLING DOUBLEDAY ENTERPRISES	No
TMK 02-01030	1/30/2012	10/22/2021	GIANTS	SAN FRANCISCO BASEBALL ASSOCI- ATE	No
TMK 12-00068	1/30/2012	9/20/2021	ANNOYING ORANGE	ANNOYING ORANGE, LLC	Yes
TMK 12-00043	1/20/2012	7/3/2021	QUORUM	ANTONIO PUIG, S.A.	No
TMK 12-00057	1/23/2012	5/16/2016	EPSON	SEIKO EPSON KABUSHIKI KAISHA	No
TMK 12-00066	1/30/2012	11/19/2021	FOCUS	CIBA VISION CORPORATION	No
TMK 03-00009	1/30/2012	11/13/2022	D-BACKS	AZPB LIMITED PARTNERSHIP	No
TMK 12-00069	1/30/2012	5/20/2018	CIBA VISION	NOVARTIS AG	No

CBP IPR RECORDATION — JANUARY 2012

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 12-00077	1/30/2012	12/4/2021	POKÉMON	NINTENDO OF AMERICA INC.	No
TMK 12-00044	1/20/2012	1/3/2022	DESIGN	VELLUM WINE CRAFT, LLC	No
TMK 12-00047	1/20/2012	11/11/2016	AGUILA	BLUE AGAVE MARKETING COMPANY	NO
TMK 12-00073	1/30/2012	2/1/2021	CASECROWN	SENYX, LLC	No
TMK 12-00070	1/30/2012	7/19/2021	HBO AND DESIGN	HOME BOX OFFICE, INC.	No.
TMK 02-01031	1/30/2012	1/14/2022	YANKEES	NEW YORK YANKEES PARTNERSHIP	No
TMK 12-00072	1/30/2012	1/17/2022	READYLACE	HENRY E. BONSECOUR	No
TMK 12-00074	1/30/2012	3/30/2020	DESIGN (PERFUME BOTTLE)	BEAUTE PRESTIGE INTERNATIONAL S.A.	No
TMK 12-00075	1/30/2012	4/7/2019	PADILLA	PADILLA CIGAR COMPANY	No
TMK 12-00017	1/13/2012	11/24/2019	APPLETTERS	BANANAGRAMS, INC.	No
COP 12-00007	1/30/2012	1/30/2032	POKEMON SOULSILVER VERSION	NINTENDO OF AMERICA INC.	No
TMK 12-00079	1/30/2012	7/26/2015	H	HONDA MOTOR CO., LTD.	No
TMK 12-00076	1/30/2012	10/18/2021	NINTENDO DSI DESIGN	NINTENDO OF AMERICA INC.	No
TMK 12-00062	1/30/2012	12/25/2021	I IRONCLAD AND DESIGN	IRONCLAD PERFORMANCE WEAR CORP.	No
TMK 12-00061	1/30/2012	1/28/2013	CHICO'S	CHICO'S BRANDS INVESTMENTS, INC.	No
TMK 12-00060	1/30/2012	12/15/2019	SOMA INTIMATES	CHICO'S BRANDS INVESTMENTS, INC.	No

Total Records: 189

Date as of: 2/1/2012

GENERAL NOTICE

19 CFR PART 177

Revocation Of Ruling Letter and Revocation of Treatment Relating to Classification of a Sky Catch Ball Set From China

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of revocation of ruling letter and treatment relating to the classification of a sky ball catch set from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking a ruling concerning the classification of a Sky Catch Ball Set under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice proposing to revoke NY N02143 was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. A revised notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011 to a correct typographical error in the original notice. No comments were received in response to either notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide

the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling pertaining to the classification of a Sky Catch Ball Set. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N023143, dated March 7, 2008, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N023143, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter ("HQ") H092279, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625 (c), this ruling will become

effective 60 days after the publication in the *Customs Bulletin*.

Dated: January 13, 2012

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

HQ H092279

January 13, 2012

CLA-2 OT:RR:CTF:TCM HQ H092279 TNA**CATEGORY:** Classification**TARIFF NO.:** 9503.00.00

MR. JOSEPH HOFFACKER
BARTHCO TRADE CONSULTANTS
THE NAVY YARD
5101 S. BROAD STREET
PHILADELPHIA, PA 19112-1404

RE: Revocation of NY N023143; Classification of a Sky Catch Ball Set from China

DEAR MR. HOFFACKER:

This letter is in reference to New York Ruling Letter (“NY”) N023143, issued to K.B. Toys on March 7, 2008, concerning the tariff classification of a Sky Catch Set from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the Sky Catch Ball Set under subheading 9506.99.60, Harmonized Tariff Schedule of the United States (“HTSUS”), as “articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other.” We have reviewed NY N023143 and found it to be in error. For the reasons set forth below, we hereby revoke NY N023143.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N02143 was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. A revised notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011 to a correct typographical error in the original notice. No comments were received in response to either notice.

FACTS:

The subject merchandise consists of an outdoor game that is comprised of two plastic paddles and one plastic ball. The paddles are used to both throw and catch the ball. The game is designed for players ages three and older.

In NY N023143, dated March 7, 2008, CBP classified the Sky Catch Ball Set under subheading 9506.99.60, HTSUS, as: “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other.”

ISSUE:

Whether a Sky Catch Set is classified under heading 9503, HTSUS, as a toy, or under heading 9506, HTSUS, as an article or equipment for general physical exercise, gymnastics or other sports?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined

according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The HTSUS provisions under consideration are as follows:

9503.00.00 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * * * *

9506 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

Other:

9506.99

Other:

9506.99.60

Other

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN for heading 9503, HTSUS, states, in pertinent part:

This heading covers:...

(D) Other toys

This group covers toys intended essentially for the amusement of persons (children or adults)... This group includes:

All toys **not included in (A) to (C)**. Most of the toys are mechanically or electrically operated.

These include:...

(ix) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

The EN for heading 9506, HTSUS, states, in pertinent part:

(B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:

- (1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).
- (2) Water-skis, surf-boards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.
- (3) Golf clubs and other golf equipment, such as golf balls, golf tees.

- (4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.
- (5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.
- (6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls.
- (7) Ice skates and roller skates, including skating boots with skates attached.
- (8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.
- (9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.).
- (10) Fencing equipment: fencing foils, sabres and rapiers and their parts (e.g., blades, guards, hilts and buttons or stops), etc.
- (11) Archery equipment, such as bows, arrows and targets.
- (12) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).
- (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.
- (14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice.

In NY N023143, CBP classified the subject merchandise under heading 9506, HTSUS, as articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof. Multiple court cases and CBP rulings distinguish between objects which are used in competitive sports, and items that principally provide amusement, classifying the former in heading 9506, HTSUS, and the latter in heading 9503, HTSUS.

In particular, the Court of International Trade construes heading 9503 as a "principal use" provision insofar as it pertains to toys. See *Minnetonka Brands v. United States*, 110 F.Supp. 2d 1020, 1026 (Ct. Int'l Trade 2000). In order for the merchandise to be considered a toy under heading 9503, HTSUS, the item's principal use must be for amusement. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, C.D. 4688 (1977), the court noted that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian

purpose, or the utilitarian purpose incidental to the amusement.” *Ideal Toy Corp*, 78 Cust. Ct. 28 at 33.

Courts have also provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

Furthermore, *Newman Importing Co., Inc. v. United States* construed the term “sport” to include specific activities which possess, “to a meaningful degree, the same attributes of healthy, challenging and skillful recreation which characterize such acknowledged sports as scuba diving, skiing, horseback riding and mountain climbing.” *Newman Importing Co., Inc. v. United States*, 76 Cust. Ct. 143, 144.

Numerous CBP rulings distinguish between the items of heading 9503, HTSUS, and heading 9506, HTSUS, along these lines. HQ 950401, dated July 6, 1992, for example, classified a Frisbee under heading 9503, HTSUS, because it was a “source of fun and amusement” rather than being an activity that required “serious competition or intense testing of ones’ skills and athletic ability.” See HQ 950401. Other rulings have classified Velcro-surfaced paddles and a Velcro Ball as toys because their “relatively flimsy construction” indicated that they were “principally intended for use as a toy and not for rugged, serious athletic activity.” See HQ 950580, dated February 20, 1992. Other rulings have classified merchandise in heading 9503, HTSUS, based on a similar distinguishing between competitive sports and toys. See, e.g., HQ 953122, dated April 22, 1993 (“it is our determination that the item is a toy in that its principle use is to provide amusement to children or adults, not to equip them for competition and winning.”); HQ 959715, dated March 11, 1997; HQ 959885, dated December 30, 1997; HQ 961718, dated May 7, 1999.

In the present case, the subject merchandise consists of plastic paddles and a plastic ball, certainly a flimsier construction than the leather baseball gloves and hardballs used in competitive baseball, for example. Furthermore, the subject merchandise does little to foster participants’ athletic skills and competitive edge. As a result, we find that the sky catch ball set is designed as a source of amusement rather than as a serious athletic activity meant to equip its users for competition.

As a result, CBP finds that the Sky Catch Ball Set is classified under subheading 9503.00.00, HTSUS, as “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.”

HOLDING:

Under the authority of GRI 1, K.B. Toys’ Sky Catch Ball set from China is provided for in subheading 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other

toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.” The general, column one, duty rate is free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N023143, dated March 7, 2008, is REVOKED.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF RULING LETTER AND REVOCAION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF BAKED CRÈME BRULEE**

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to tariff classification of baked crème brulee.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) K86702, dated June 9, 2004, relating to the tariff classification of baked crème brulee under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 45, No. 49, on November 30, 2011. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the

Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY K86702 was published on November 30, 2011, in Volume 45, Number 49, of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

In NY K86702, CBP determined that baked crème brulee was classified in subheading 1901.90.42, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K86702 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of baked crème brulee in heading 1905, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H035563, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: January 13, 2012

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H035563

January 13, 2012

CLA-2 OT:RR:CTF:TCM H035563 CKG

CATEGORY: Classification

TARIFF NO.: 1905.90.90

MR. JOHN BORAH
STERLING FOODS, INC.
1766 FERN PLACE
LAKE OSWEGO, OR 97034

RE: Reconsideration of NY K86702; classification of baked crème brulee

DEAR MR. BORAH,

This is in reference to New York Ruling Letter (NY) K86702, issued by the Customs and Border Protection (CBP) National Commodity Specialist Division on June 9, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of frozen crème brulee. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of the crème brulee in heading 1901, HTSUS, is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY K86702 was published on November 30, 2011, in Volume 45, Number 49, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described in NY K86702 as follows:

The product is crème brulee, a custard-like dessert composed of approximately 37 percent cream, 17 percent water, 12 percent sugar, 12 percent skimmed milk, 9 percent egg yolk, 2 percent milk protein, 2 percent rice starch, and less than one percent each of xanthan gum, carrageenan, vanilla extract, and vanilla seeds. Two frozen crème brulees, each in a ceramic dish measuring approximately four inches in diameter and one inch deep, are packed for retail sale, with two sachets of brown sugar, in a cardboard box. Package instructions direct the user to sprinkle the brown sugar onto the frozen crème brulee, broil until golden brown, cool and serve.

ISSUE:

Whether the crème brulee is classified as a “cream” product in heading 1901, HTSUS, or as “bakers’ wares” in heading 1905, HTSUS?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions at issue are as follows:

- 1901: Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
- 1901.90: Other:
- Other:
- Dairy products described in additional U.S. note 1 to chapter 4:
- Dairy preparations containing over 10 percent by weight of milk solids:
- 1901.90.43: Other
- * * * *
- 1905: Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:
- 1905.90: Other:
- 1905.90.90: Other . . .
- * * * *

The classification of substantially similar merchandise was addressed in Headquarters Ruling Letter (HQ) H015429, dated December 11, 2007, which classified frozen crème brulees in heading 1905, HTSUS. The legal reasoning and analysis employed in HQ H015429 is incorporated by reference. HQ H015429 is attached to and made a part of this ruling letter.

HOLDING:

By application of GRI 1, the frozen crème brulees are classified in heading 1905, HTSUS, and are specifically provided for under subheading 1905.90.90, HTSUS, as: "Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa...: Other: Other." The 2011 column one, general rate of duty is 4.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the Internet at www.usits.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K86702, dated June 9, 2004, is hereby revoked.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

Proposed Revocation of Ruling Letter and Proposed Revocation of Treatment Relating to Classification of Saddle Blankets

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of saddle blankets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke a ruling concerning the classification of saddle blankets under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before March 16, 2012.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of saddle blankets. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) 082167, dated March 28, 1990 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In HQ 082167, CBP held that the subject saddle blankets were classified in heading 6301, HTSUS, but, because neither a sample nor information regarding the principle use of the merchandise had been received, we declined to advise as to a subheading in which the

merchandise was classified. Given that both samples and information regarding principle use have been submitted in connection with this reconsideration, we believe that the subject saddle blankets are classified in subheading 4201.00.60, HTSUS, which provides for “Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 082167, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ H161715 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 30, 2012

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ 082167

March 28, 1990

CLA-2 CO:R:C:G 082167 WAW

CATEGORY: Classification

TARIFF NO.: Heading 6301

MR. JAMES DRAKE
PRESIDENT, MAYATEX
5530 GATEWAY EAST
P.O. BOX 3L069
EL PASO, TX 79931

RE: Reconsideration of Headquarters Ruling Letter (HRL) 081285; Saddle blankets measuring 32 inches by 64 inches

DEAR MR. DRAKE:

This letter is in response to your request, dated April 14, 1988, for a change in tariff classification for certain handwoven saddle blankets measuring approximately 34 inches by 64 inches to 34 inches by 68 inches under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

In the past, the Customs Service has classified blankets up to a certain size as saddle blankets under the provision for harness, saddles, and saddlery, and parts thereof, in item 790.30, Tariff Schedules of the United States (TSUS). Other similar articles were classified as blankets, wall hangings, floor coverings, or as other textile articles.

You maintain that recently western saddles have been made with "over-size" saddle skirts which require larger saddle blankets to accommodate the new saddles. The issue we are asked to address in the instant case is whether the larger saddle blankets are classified as saddlery under Heading 4201, HTSUSA, or as an article of textile material under Heading 6301, HTSUSA. The issue here is identical to the one that we considered in HRL 081285, dated May 24, 1988. In that ruling letter, which was addressed to your company, we were unable to determine that the "chief use" of the larger saddle blankets was primarily as a saddle blanket and not as a floor covering or wall hanging. Thus, Customs held that "merchandise principally used as saddle blankets does not exceed 30 by 62 inches until it can be determined with a degree of accuracy that merchandise exceeding those measurements is chiefly used as saddle blankets." We also stated in that ruling that, depending upon the chief use of the particular articles imported, classification is proper under the provisions for floor coverings, bedding, or textile furnishings.

Since the issuance of HRL 081285, the use provision in the Additional United States Rules of Interpretation (1)(a), has changed from "chief use" to "principal use." It is the position of Customs, however, that this change in the use provision does not affect our classification of the subject merchandise in HRL 081285. Accordingly, we will continue to adhere to the position that merchandise "principally used" as saddle blankets does not exceed 30 by 62 inches until it can be determined with a reasonable degree of accuracy that merchandise exceeding those measurements is "principally used" as saddle blankets.

Moreover, as stated in our prior ruling letter, without the necessary sales information regarding the "principal use" of your merchandise, we cannot

expand the guidelines for classification of saddle blankets to include those blankets measuring over 30 inches by 62 inches. Although some saddle blankets measuring over 30 inches by 60 inches are sold by retailers for use as saddle blankets, this does not constitute the “principal use” of the article under the Additional United States Rules of Interpretation. Accordingly, based on your most recent submission, it is the position of this office that the principal use of saddle blankets measuring over 30 inches by 60 inches is as a textile product classified under Heading 6301, HTSUSA, rather than as an article of saddlery, or harness classified under Heading 4201, HTSUSA.

Since no sample was submitted along with your inquiry we are unable to advise you on the proper classification of your merchandise. It is possible that your merchandise may be classified under provisions dealing with floor coverings, bedding, or textile furnishings, depending on the “principal use” of the particular articles imported. The “principal use” will be determined after consideration of, among other things, its thickness, coarseness, tightness or looseness of weave, and the types of yarns used.

If we can be of any further assistance in this matter, please do not hesitate to contact this office.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT B]

HQ H161715
CLA-2 OT:RR:CTF:TCM H161715 TNA
CATEGORY: Classification
TARIFF NO.: 4201.00.60

MR. PAUL FITZPATRICK
MANAGING DIRECTOR, GLOBAL TRADE MANAGEMENT
MIQ LOGISTICS
20 CENTRAL STREET, SUITE 108
SALEM, MA 01970

RE: Request for Reconsideration of HQ 082167; Tariff Classification of Saddle Blankets

DEAR MR. FITZPATRICK:

This is in response to your request for reconsideration, dated April 11, 2011, made on behalf of Mayatex, Inc. (“Mayatex”), of Headquarters Ruling Letter (“HQ”) 082167, dated March 28, 1990, which pertains to the classification of saddle blankets under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HQ H082167 and found it to be in error. For the reasons set forth below, we hereby revoke HQ 082167.

FACTS:

HQ 082167 does not pertain to a specific article of merchandise, but rather addresses the general classification of saddle blankets of heading 4201, HTSUS. In your request for reconsideration, however, you have identified three styles of hand-woven blankets: the Doubleweave 1340–3, the Durango 1308B-5, and the Durango 1308–3. The Doubleweave 1340–3 measures 32” x 64” and is made of 85 percent Acrylic and 15 percent polyester. The Durango 1308B-5 measures 36” x 68” and the Durango 1308-B measures 32” x 64”; both are made of 90 percent wool and ten percent polyester. Samples of each style have been received and examined by this office.

In HQ 082167, U.S. Customs and Border Protection (“CBP”) stated that blankets exceeding 30 inches by 62 inches would be classified in heading 6301, HTSUS, as a textile product. There, we stated that “without the necessary sales information regarding the ‘principal use’ of your merchandise, we cannot expand the guidelines for classification of saddle blankets to include those blankets measuring over 30 inches by 62 inches.” We also stated that, without a sample of the subject merchandise, we could not advise on classification beyond the heading level, because it was possible for the merchandise to be classified “under provisions dealing with floor coverings, bedding, or textile furnishings, depending on the ‘principal use’ of the particular articles imported. The ‘principal use’ will be determined after consideration of, among other things, its thickness, coarseness, tightness or looseness of weave, and the types of yarns used.” See HQ 082167.

ISSUE:

Whether the instant blankets should be classified in heading 4201, HTSUS, as saddle blankets; or in heading 6301, HTSUS, as blankets and traveling rugs?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

- 4201 Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material:
* * *
- 6301 Blankets and traveling rugs:

Additional U.S. Rule (1) states, in pertinent part, the following:

In the absence of special language or context which otherwise requires--

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 42.01 states, in pertinent part, the following:

This heading covers equipment for all kinds of animals, of leather, composition leather, furskin, textiles or other materials.

These goods include, *inter alia*, saddles and harness (including reins, bridles, and traces) for saddle, draught and pack animals, knee pads, blinkers and boots for horses, decorated trappings for circus animals, muzzles for any animal, collars, leads and trappings, for dogs or cats, saddle cloths, saddle cushions and saddle bags, horse blankets specially shaped for the purpose, coats for dogs.

The EN to heading 63.01 states, in pertinent part, the following:

Blankets and travelling rugs are usually made of wool, animal hair, cotton or man-made fibres, frequently with a raised pile surface, and generally of thick heavy-texture material for protection against the cold. The heading also covers rugs and blankets for cots or prams.

Travelling rugs usually have fringes (generally formed by projecting warp or weft threads), but the edges of blankets are normally preserved by blanket stitching or binding.

The heading includes fabrics in the piece which, by the simple process of cutting along defined lines indicated by the absence of weft threads, may be converted into separate articles having the character of finished blankets or travelling rugs....

The heading **does not include**:

(a) Specially shaped blankets for covering animals (**heading 42.01**).

In classifying the subject merchandise under heading 6301, HTSUS, HQ 082167 adhered to this office's established position that saddle blankets of heading 4201, HTSUS, cannot exceed 30 by 62 inches "until it can be determined with a reasonable degree of accuracy that merchandise exceeding those measurements is principally used as saddle blankets." See HQ 082167.¹ Upon reconsideration, we note that while saddle blankets might not exceed 30 by 62 inches very often in practice, no maximum size is articulated in the HTSUS or ENs. Accordingly, HQ 082167's restriction of saddle blankets according to their size is unduly restrictive and therefore incorrect.

We note that the two provisions at issue, headings 4201 and 6301, HTSUS, both describe the subject merchandise. As a result, the analysis moves from GRI 1 to GRI 3, which states, in pertinent part:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected 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.

Heading 4201, HTSUS, is a use provision, while heading 6301, HTSUS, is an *eo nomine* provision. The general rule of customs jurisprudence that "in the absence of legislative intent to the contrary, a product described by both a use provision and an *eo nomine* provision is generally more specifically provided for under the use provision." *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (quoting *United States v. Siemens Am., Inc.*, 68 C.C.P.A. 62, 653 F.2d 471, 477 (CCPA 1981)). However, this rule is not obligatory and only provides a "convenient rule of thumb for resolving issues where the competing provisions are in balance [i.e., equally descriptive]." *United States v. Carl Zeiss*, 195 F.3d at 1380 (1999) (quoting *Seimens Am.*, 653 F.2d at 478 n.6); see also *Totes, Inc. v. United States*, 69 F.3d 495, 500 (Fed. Cir. 1995). Thus, if the subject merchandise is of the class or kind of product principally used for animals, then it will be classified in heading 4201, HTSUS.

With respect to the application of principal use under Additional U.S. Rule of Interpretation 1(a), the courts have provided several factors to apply when

¹ We note that the prior ruling on which HQ 082167 relied for this position was HQ 081285, dated May 24, 1988. Because HQ 081285 was decided under the TSUS, it is not binding on decisions made pursuant to the HTSUS.

determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976) (“*Carborundum*”).

Mayatex has submitted evidence to show that the subject merchandise is used as a saddle blanket and is used exclusively in the equine industry, such as for trail riding and rodeo events. Mayatex is a saddle blanket manufacturer with over 60 years in the business of handweaving saddle blankets exclusively for the equine industry. The company has submitted links to its catalogue to show how the merchandise is marketed and sold, and has submitted links to the catalogues of other, unrelated retailers, to show how the industry as a whole promotes these products. Furthermore, Mayatex, citing NY D83889, dated November 3, 1998, and NY K84019, dated March 19, 2004, notes that CBP has classified similar merchandise in heading 4201, HTSUS, as saddle blankets based on comparable evidence of principle use. As such, Mayatex argues that its submitted information is sufficient to establish that its blankets are used as saddle blankets, and that as such, should be classified in heading 4201, HTSUS.

The subject blankets are thick, heavy blankets that could well act as padding between a horse and a rider. The Doubleweave 1340-3, in particular, when folded, provides the same level protection as two independent blankets of thinner construction. Furthermore, Mayatex is a recognized seller of saddle blankets. A search of the subject products in its catalogue and in the catalogues of independent retailers shows that the subject blankets are marketed in the “saddle blankets” and “sports and outdoors” categories, among others. *See, e.g.*, http://www.mayatex.com/store/show/1340_Ramrod_Double_Weave (last accessed July 7, 2011); http://www.amazon.com/Mayatex-Saddle-Blanket-DurangoRoyal/dp/B0002CPGG0/ref=sr_1_3?ie=UTF8&qid=1310149267&sr=8-3 (last accessed July 8, 2011).

Furthermore, not only are the subject blankets sold on Mayatex’s website, they are reviewed and sold by retailers that cater to outdoor sports, and to equine sports in particular. *See, e.g.*, <http://www.smithbrothers.com/ramrod-double-weave-blanket-by-mayatex/p/X3-1982/cn/860/> (last accessed July 7, 2011); <http://www.teamequineusa.com/pads/1308> (last accessed July 8, 2011); http://www.mainlineequine.com/shop/catalog/index.php?manufacturers_id=12&osCsid=5c586a5a75b965050283201983cb397c (last accessed July 8, 2011). Pictures on these sites show it being used as a saddle blanket or pad, and customers that purchase the subject merchandise expect to use it as such.

As for the economic practicality of using this merchandise, Mayatex’s products appear to sell for approximately the same price as competitor’s products, making it economically practical for them to be used this way. *See, e.g.*, http://www.amazon.com/s/ref=nb_sb_noss?url=search-alias%3Daps&field-keywords=saddle+blankets (last accessed July 8, 2011). Fur-

thermore, a search of “saddle blankets” turns up a number of Mayatex’s products, including the subject merchandise, as well as a number of competitor’s products. *Id.* Thus, the trade recognizes the use of the subject blankets as saddle blankets.

After weighing all of the factors of the *Carborundum* analysis, we find that the subject blankets are principally used as saddle blankets. As a result, the subject blankets are classified as such in heading 4201, HTSUS, as “Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material.” Classification in heading 4201, HTSUS, is also consistent with prior CBP rulings. *See, e.g.*, NY D83889; NY K84019.

Lastly, we note that following the issuance of HQ 082167, Mayatex began entering its merchandise under various subheadings of heading 5702, HTSUS, which provides for “Carpets and other textile floor coverings, woven, not tufted or flocked, whether or not made up, including “Kelem”, “Schumacks”, “Karamanie” and similar hand-woven rugs.” Heading 5702, HTSUS, was not under consideration in HQ 082167. Furthermore, pursuant to the analysis laid out above, we do not believe that the subject blankets are classified there.

HOLDING:

Under the authority of GRI 3(a), the Doubleweave 1340–3, the Durango 1308B-5, and the Durango 1308–3 are classified in heading 4201, HTSUS. Specifically, they are classified under subheading 4201.00.60, HTSUS, which provides for: “Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material: Other.” The column one general rate of duty is 2.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

HQ 082167, dated March 28, 1990, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF A RULING LETTER AND
MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TOY MONEY**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of ruling letter and modification of treatment relating to the classification of toy money.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is modifying a ruling letter relating to the tariff classification of toy money, featuring a redeemable coupon on the reverse side, under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also modifying any treatment previously accorded by it to substantially identical transactions. This notice does not alter the classification of the toy money clip in NY C89928. Notice of the proposed action was published on November 30, 2011, in Volume 45, Number 49, of the *Customs Bulletin*. CBP received no comments.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse or consumption on or after April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, at (202) 325-0104.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (“Customs Modernization”) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff

Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, CBP published notice proposing to modify one ruling letter pertaining to the tariff classification of toy money in the November 30, 2011 *Customs Bulletin*, Volume 45, Number 49. No comments were received.

As stated in the proposed notice, this modification will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice, memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is modifying any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY C89928, CBP classified the toy money featuring a coupon on the reverse side under heading 4907, HTSUS, as stock, share or bond certificates and similar documents of title. It is now our position that the toy money is properly classified under subheading 4911.99.80, HTSUS, which provides for: "Other printed matter, including printed pictures and photographs, other: other." This notice does not alter the classification of the toy money clip in NY C89928.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY C89928 and any other ruling not specifically identified, to reflect the proper classification of this merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") W968412 (Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is modifying any treatment previously accorded by CBP to substantially identical transactions.

EFFECT ON OTHER RULINGS:

NY C89928, dated July 30, 1998, is hereby modified with regards only to the play paper money

Dated: January 26, 2012

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ W968412**January 26, 2012****OT:RR:CTF:TCM W968412 HvB****CATEGORY:** Classification**TARIFF NO.:** 4911.99.80

EDWARD N. JORDAN
EXPEDITORS INTERNATIONAL OF WA., INC.
601 NORTH NASH STREET
EL SEGUNDO, CA 90245

RE: Modification of New York Ruling Letter C89928, dated July 30, 1998;
Classification of Toy Money

DEAR MR. JORDAN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (“NY”) C89928, dated July 30, 1998, issued to you on behalf of your client, Playworks, LLC. In that ruling, CBP classified toy money, featuring a redeemable coupon on the reverse side, under subheading 4907.00.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for, in part: “stock, share or bond certificates and similar documents of title.” We have reviewed the ruling and found this classification to be incorrect. This ruling does not alter the classification of the toy money clip in NY C89928.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, CBP published notice proposing to modify one ruling letter pertaining to the tariff classification of toy money in the November 30, 2011 *Customs Bulletin*, Volume 45, Number 49. No comments were received.

FACTS:

In NY C89928 we described the merchandise as follows:

The play paper money measures 5 3/4” by 2 3/4”. On one side a picture of the “Richie Rich” cartoon character is printed along with value denominations to resemble real money. The reverse side features a valuable coupon which may be redeemed at a popular children’s activity center.

ISSUE:

Is the toy money classifiable under heading 4907, HTSUS, as “Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; banknotes; check forms; stock, share or bond certificates and similar documents of title” or under heading 4911, HTSUS, as “Other printed matter, including printed pictures and photographs”?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2012 HTSUS provisions under consideration are as follows:

- 4907** Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; banknotes; check forms; stock, share or bond certificates and similar documents of title
- 4911** Other printed matter, including printed pictures and photographs:
- 4911.99 Other:

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 4907, HTSUS, provide, in part:

* * *

The characteristic of the products of this heading is that on being issued (if necessary, after completion and validation) by the appropriate authority, they have a fiduciary value in excess of the intrinsic value.

* * *

- (F) Stock, share, or bond certificate and similar documents of title. These are formal documents issued, or for issue, by public or private bodies conferring ownership of, or entitlement to, certain financial interests, goods or benefits named therein. Apart from the certificates mentioned, these documents include letters of credit, bills of lading, title deeds and dividend coupons. They usually require completion and validation.

* * *

Heading 4907, HTSUS, provides in part for “stock, share or bond certificates and similar documents of title.” In other words, heading 4907, HTSUS is intended for items that are describable as negotiable instruments, and as stated in EN 49.07, have a fiduciary value in excess of its intrinsic value.

Similarly, CBP has held, and as the EN for 49.07 provides, this heading contemplates printed products that act as formal documents which confer ownership or title. *See* NY I84754, dated August 5, 2002, and Headquarters Ruling Letter (“HQ”) 962499, dated February 16, 2000. Unlike items in this heading, the toy money is marketed to a certain age group and is not intended to have the value or transferability of stocks, bonds, or other commercial certificates. As such, we conclude that the toy money is not classifiable as a “stock, share or bond certificate and similar documents of title” of heading 4907, HTSUS.

CBP has consistently held that printed coupons are classifiable under subheading 4911.99, HTSUS. In rulings NY 869412, dated December 31, 1991, NY 870276, dated January 30, 1992, and NY 881459, dated December 30, 1992, CBP classified similar merchandise under subheading 4911.99, HTSUS. In HQ W968266, dated September 19, 2006, CBP held that a plastic gift card was classifiable under subheading 4911.99, and lacked any real value before it was activated at a cash register. Similarly, the toy money does

not hold value until it is redeemed at the cash register. As such, we find that the play money at issue is classified under heading 4911, in subheading 4911.99.80, HTSUS, as other printed matter, including printed pictures and photographs, other: other.

HOLDING:

By application of GRI 1, the subject toy money is classified in heading 4911, HTSUS, specifically in subheading 4911.99.80, which provides for: "Other printed matter, including printed pictures and photographs, other: other."

EFFECT ON OTHER RULINGS:

NY C89928, dated April January 20, 1998, is hereby modified with regards only to the play paper money.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division