

A-570-504
Scope Review
Public Document
IA/NME/IX: NB

By Electronic Mail Notification

To All Interested Parties:

On September 29, 2004, the Department of Commerce (“the Department”) received a request from Evans and Wood & Co. Inc. on behalf of Hobby Lobby Stores, Inc. (“Hobby Lobby”) for a scope ruling on whether three candles it plans to import are covered by the antidumping duty order on petroleum wax candles from the People’s Republic of China (“PRC”).

In accordance with 19 CFR 351.225(k)(1)(2004), the Department has determined that two of the three candles, “Fall Floating Leaf Candle” (FLF179C) and “Pumpkin Floating Candle” (FPF169C), are included within the scope of the antidumping duty order on petroleum wax candles from the PRC. The Department has further determined that one candle, “Floating Rose Candle” (513044), is not included within the scope of the order.

Enclosed is a memorandum containing the Department’s analysis. We will notify U.S. Customs and Border Protection (“CBP”) of this decision. If you have any questions, please contact Nicole Bankhead at (202) 482-9068.

Sincerely,

Alex Villanueva
Program Manager
China/NME Unit, Office IX
Import Administration

Enclosure

MEMORANDUM FOR: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

FROM: James C. Doyle
Office Director
AD/CVD Enforcement, NME Unit, Office IX

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504);
Evans and Wood & Co. Inc. on behalf of Hobby Lobby Stores, Inc.
("Hobby Lobby")

Summary

On September 29, 2004, the Department of Commerce ("the Department") received a request from Evans and Wood & Co. Inc. on behalf of Hobby Lobby for a scope ruling to determine whether its "Fall Floating Leaf Candle," "Pumpkin Floating Candle," and "Floating Rose Candle" are included within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"). Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order"). In accordance with 19 CFR 351.225(k)(1), the Department finds that two of Hobby Lobby's three candles, "Fall Floating Leaf Candle" and "Pumpkin Floating Candle," are included within the scope of the Order.¹ The Department further finds that one of Hobby Lobby's candles, "Floating Rose Candle," is not included within the scope of the Order.

Background

¹ The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the Order. This website lists all scope determinations from 1991 to the present. It can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/index>, and will be updated periodically to include newly issued scope determinations.

On September 29, 2004, the Department received a letter from Evans and Wood & Co. Inc. requesting a scope ruling on a “Fall Floating Leaf Candle,” “Pumpkin Floating Candle,” and “Floating Rose Candle,” that Hobby Lobby plans to import from the PRC. On November 5, 2004, the National Candle Association (the “NCA”) submitted comments on Hobby Lobby’s scope ruling requests.

Hobby Lobby’s Scope Request

Hobby Lobby argues that its “Fall Floating Leaf Candle,” “Pumpkin Floating Candle,” and “Floating Rose Candle” fulfill the July 1987 novelty candle exception because the candles are either specific to a holiday or in the form of identifiable objects and therefore qualify these candles to not be included within the scope of the Order pursuant to the novelty candle exception. See Russ Berrie & Co., Inc. v. United States, 57 F. Supp. 2d. 1184, 1194 (CIT 1999)(“Russ Berrie”). Hobby Lobby provided samples of the three candles for the Department’s review.

The first candle, identified as item number FLF179C, is described as a “Fall Floating Leaf Candle.” This candle is made of 100% paraffin wax and Hobby Lobby argues, is shaped like a maple leaf and comes in fall colors green, red, and gold. This candle is a full, three-dimensional leaf with clearly defined, molded, and colored brown, leaf veins. According to Hobby Lobby, the leaf candle has defined leaf edges with veins imprinted on the leaf surface which are visible from various angles. Hobby Lobby argues that “Fall Floating Leaf Candle” is similar to a leaf candle the Department previously found to be outside the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney (November 9, 2001) (“J.C. Penney Ruling”).

The second candle, identified as item number FPF169C, is described as a “Pumpkin Floating Candle.” This candle is composed of 100% paraffin wax and Hobby Lobby argues, is shaped like a pumpkin. According to Hobby Lobby, the candle is a three-dimensional orange colored pumpkin with defined grooves and a brown vine stem protruding from the top. Hobby Lobby contends that the vine stem protruding from the top of the candle and the ridges that further define the form on the candle which makes it identifiable as a pumpkin from various angles. Hobby Lobby also argues that this is a shape that has previously been found outside the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JCPenney Purchasing Corp. (May 21, 2001) (“J.C. Penney Corp. Ruling”).

The third candle, identified as item number 513044, is described as a “Floating Rose Candle.” This candle is composed of 100% paraffin wax in the shape of a rose, with detailed, distinct flower petals that form the three-dimensional flower shape. Hobby Lobby describes the “Floating Rose Candle” as being a fully bloomed rose which can be recognized from various angles. Hobby Lobby argues that its “Floating Rose Candle” is similar to a rose candle the Department previously found to be outside the scope of the Order. See J.C. Penney Ruling.

Hobby Lobby states that all three candles are classified under HTS # 3406.00.0000. According to Hobby Lobby, all three candles are easily recognizable as a leaf, pumpkin, and rose and therefore, are

identifiable objects and thus not covered by the scope of the Order. Hobby Lobby argues that these three candles are identifiable from “most” angles. Hobby Lobby points to the J.C. Penny ruling for uniform and consistent treatment of these items.²

NCA Comments

The National Candle Association (“NCA”) submitted comments regarding the above scope ruling request on November 5, 2004. In its comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. The NCA argues that the antidumping statute and antidumping duty orders are remedial in nature and exceptions to them should be construed as narrowly as possible to preserve the efficacy of the Order. In support of its assertion, the NCA cites a Court of International Trade d, with regard to the novelty exception, that “a candle must be specifically designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception.” See Russ Berrie. Thus, the NCA argues that the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for use only in connection with the holiday season.

In its submission, the NCA claims that all three of Hobby Lobby’s candles are:

petroleum wax candles made in China having fiber- or paper-cored wicks. Hobby Lobby’s candles are not in the shape of identifiable objects, they are not designed for use in connection with the holiday season and, therefore, they fall within the scope of the Order.

The NCA first argues that Hobby Lobby’s “Fall Floating Leaf Candle” is almost identical to the “leaf” candle submitted by Hallmark, which the Department found is not recognizable from multiple angles. See Final Scope Ruling Hallmark Cards (May 19, 2004) at 7-8 (“Hallmark Ruling”) (The Department determined that Hallmark’s “Red Maple Leaf” candle was within the scope of the Order because the candle was not easily recognizable as a “dark green leaf with red berries” from most angles, and therefore not an identifiable object pursuant to the novelty candle exception). Therefore, the NCA argues that Hobby Lobby’s “Fall Floating Leaf Candle” must included in the scope of the Order for the same reasons.

According to the NCA, Hobby Lobby’s “Pumpkin Floating Candle” is only identifiable as a pumpkin when looking straight down on it, not from the majority of angles. The NCA references a ruling for a similar “pumpkin” candle from Endar Corp. that the Department determined was within the scope of the Order. See Final Scope Ruling Endar Corp. (February 13, 2002) (“Endar 2002”) (the Department found Endar’s “floating pumpkin lantern candle” was not in the shape of an identifiable object (a pumpkin), but was a round, a shape clearly identified in the scope of the Order). Regarding Hobby Lobby’s “Floating Rose Candle,” the NCA argues that it is not recognizable as a flower from a

² Hobby Lobby does not specify which J.C. Penny ruling they are referencing in this instance.

majority of angles, including from the bottom and sides. According to the NCA, it is only discernable as a flower when looking straight onto the top of the candle. The NCA states that Hobby Lobby's "Floating Rose Candle" is similar to Premier's "tulip lantern" candle, which the Department found was not recognizable as a tulip from all angles. See Final Scope Ruling Premier Candle Corporation (February 25, 2004) at 5 ("Premier Candle Ruling"). The NCA also points to the ruling on Hallmark's leaf candles as additional support that Hobby Lobby's "Floating Rose Candle" does not qualify as an identifiable object and therefore must be included within the scope of the Order. See Hallmark Ruling.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225 (2004). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the U.S. International Trade Commission ("ITC"). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(k)(1).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case, the Department has evaluated Hobby Lobby's requests in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC are dispositive with respect to Hobby Lobby's "Fall Floating Leaf Candle," "Pumpkin Floating Candle," and "Floating Rose Candle." Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Documents and parts thereof from the underlying investigation that the Department deemed relevant to this scope ruling were made part of the record of this determination and are referenced herein. Documents that the Department did not present, or place on the record, do not constitute part of the administrative record for this scope determination.

In its petition of September 4, 1985, the NCA requested that the investigation cover:

{c}andles {which} are made from petroleum wax and contain fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. These

candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes.

See Antidumping Petition (September 4, 1985), at 7.

The Department defined the scope of the investigation in its notice of initiation. This scope language carried forward without change through the preliminary and final determinations of sales at less than fair value and the eventual antidumping duty order:

{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.

See Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); Petroleum Wax Candles from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986); Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) ("Final Determination"); and Order.

The ITC adopted a similar definition of the "like product" subject to its determinations, noting that the investigations did not include "birthday, birthday numeral and figurine type candles." See Candles from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-282 (Final), Publication 1888 (August 1986) ("ITC Determination"), at 4, note 5, and A-2.

Also of relevance to the present scope inquiry is the Department's instructions to the U.S. Customs Service (now renamed U.S. Customs and Border Protection ("CBP")) (see Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 ("CBP Notice") issued in connection with a July 1987 scope determination concerning an exception from the Order for novelty candles, which states:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum-wax candles from the People's Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols depicted in the candle design. Other novelty candles not within the scope of the order include candles having scenes or symbols of other occasions (*e.g.*, religious holidays or special events) depicted in their designs, figurine candles, and candles shaped in the form of identifiable objects (*e.g.*, animals or numerals).

See CBP Notice (*emphasis added*).

When determining whether a particular product claimed as a novelty candle is within the scope of the Order, the Department's first line of inquiry is whether the shape of the candle falls within those shapes listed by the inclusive language of the Order's scope, i.e., "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." If a candle falls within one of the above-delineated shapes, it will be determined to be within the Order's scope. Candles of a shape not listed by the inclusive language of the Order's scope will then be evaluated to determine whether they are "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks."

In November 2001, the Department changed its practice on the issue of candle shapes. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); J.C. Penney (November 9, 2001) ("J.C. Penney Ruling"). In this ruling, the Department reviewed the text of the scope of the Order, beginning with the text of the first sentence of the scope which covers "{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." See Order. The text following this broad inclusive sentence provides a list of shapes; this list is not modified by any express words of exclusivity. The result of our prior practice of not including within the scope of the Order candles of a shape other than those specifically listed in the Order was inconsistent with the fact that the candles were "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks."³ In the J.C. Penney Ruling, the Department determined to revise this practice because it had the effect of narrowing the broad coverage of the first sentence of the Order's scope. The list of shapes in the second sentence of the Order's scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order's scope. Accordingly, to give full effect to the first sentence of the inclusive language of the scope, the Department now will normally evaluate whether candles of a shape not listed by the inclusive language of the Order's scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.

This approach of evaluating such candles in light of the entire text of the Order's scope is in keeping with the opinion of the Court of International Trade ("CIT"), noting that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petition's language to determine whether the class or kind of merchandise at issue was expressly included. Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (May 29, 2001) ("Duferco Steel"). Such an approach is a departure from past CIT precedent that required the Department to give ample deference to the NCA's intent when examining a petition's description of the subject merchandise. See, e.g., Torrington Co. v. United States, 995 F. Supp. 117, 121 (CIT 1998).

³ See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Endar Corp. (January 11, 2000) ("Endar") ("dragonfly" candle, in the shape of a rough-hewn stone with a dragonfly carved on top, not within scope because it is of a shape not listed by the scope), and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (sphere or ball-shaped candle not within scope because it is a shape not listed by the scope).

Although the specific scope decision in Duferco Steel has been overturned by the United States Court of Appeals of the Federal Circuit (“CAFC”) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. 2002) (“Duferco Steel II”), we do not believe that the CAFC’s decision undermines the Department’s decision in the J.C. Penney Ruling. The plain language of the scope of the Order clearly states “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers” are included within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles included within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that “the petitions that led to the issuance of the order did not need to specifically identify the {product} in order to cover {it}; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity.”⁴ The CAFC further stated “{a}s a matter of law, a petition need not list the entire universe of products . . . in order {for the petition} to cover those products.”⁵ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁶ In fact, if the list were exhaustive, there would have been no need for the Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did render the novelty candle exception that offered a narrowly construed exception, leaving all other petroleum wax candles from the PRC covered by the Order.

If the Department determines that the candle is made from petroleum wax and has a fiber or paper-cored wick, but the candle possesses characteristics set out in the CBP Notice, it will not fall within the scope of the Order. In order for a candle to qualify for this exception, the characteristic which is claimed to render it a novelty candle (i.e., the shape of an identifiable object or a holiday-specific design) should be easily recognizable in order for the candle to merit not being included within the scope of the Order. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, e.g., small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle is included within the scope of the Order. See J.C. Penney Corp. Ruling; Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); San Francisco Candle Co. (Feb. 12, 2001) (“SFCC”); and Endar. If a candle does not possess the characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having

⁴ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

⁵ Id.

⁶ See Petroleum Wax Candles from China, USITC Pub. No. 3226 Investigation No. 731-TA-282 (Review) (August 1999) (“USITC Pub. No. 3226”), at 18 (“Candles come in a wide variety of shapes and sizes. Major U.S. candle manufacturers reportedly will offer 1,000 to 2,000 varieties of candles in their product lines.”).

fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Analysis

With respect to the instant requests, we find that for the reasons outlined below, two of Hobby Lobby's three candles, "Fall Floating Leaf Candle" (FLF179C) and "Pumpkin Floating Candle" (FPF169C), fall within the scope of Order, because they are not recognizable objects. The Department has further determined that one candle, "Floating Rose Candle" (513044), is not included within the scope of the Order because it is discernible as a rose from multiple angles and thus falls within the July 1987 novelty exception. Our analysis of each of these candles is provided below.

"Fall Floating Leaf Candle" (FLF179C)

Hobby Lobby contends that because the "Fall Floating Leaf Candle" is in the shape of an identifiable object and is discernible as a leaf from a majority of angles, it qualifies for the novelty candle exception. Hobby Lobby points to the fact that its leaf shaped candle has defined edges with veins imprinted on the leaf surface which are visible from various angles.

We disagree with Hobby Lobby's argument that the "Fall Floating Leaf Candle" is in the shape of an identifiable object, and therefore, should not be included within the scope of the Order. Pursuant to the Department's change in practice stated in J.C. Penney Scope Ruling, if a candle is not in a shape specifically listed in the scope of the Order, it will not automatically be excluded from the scope of the Order. See J.C. Penney Scope Ruling. Instead, the Department will normally evaluate whether the candle is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick. Hobby Lobby's "Fall Floating Leaf Candle" is a petroleum wax candle with a wick.⁷ Therefore, we must evaluate whether the characteristics of this candle bring it outside the scope of the Order pursuant to the novelty candle exception detailed in the CBP Notice and our interpretation set forth in the J.C. Penney Scope Ruling.

Based on Hobby Lobby's comments, we examined whether this candle is in the shape of an identifiable object. We find that this candle is not recognizable from a majority of angles as a "leaf." See J.C. Penney Corp. Ruling (where J.C. Penney's "Autumn Leaf" candle was determined to be outside of the scope because it was identifiable as a leaf from most angles, i.e., when viewed from above, the sides and the bottom); see also SFCC, 265 F. Supp. 2d at 1379-1382. In the instant scope request, the supposed leaf characteristics consist of slightly raised brown lines (veins) on the top of the candle only and jagged edging, which does not render the candle easily recognizable as a leaf except when viewing the candle from above. The "veins" on the candle, a distinguishing feature of the leaf candle, are only visible when viewing the candle from above. Furthermore, when viewing the candle from multiple side views, it is not readily discernible as a leaf. The candle is only recognizable as a leaf when viewing it from the top. Therefore, because this candle is not easily recognizable as a "leaf" from multiple angles,

⁷ Hobby Lobby did not specify what type of wick is used in its "Fall Floating Leaf Candle."

it is not an identifiable object pursuant to the novelty candle exception and falls within the scope of the Order.

“Pumpkin Floating Candle”

Hobby Lobby contends that because the “Pumpkin Floating Candle” is in the shape of an identifiable object and is discernible as a pumpkin from a majority of angles, it qualifies for the novelty candle exception. Hobby Lobby points to the fact that its pumpkin shaped candle has defined grooves and a brown vine stem protruding from the top and argues that it is thus identifiable as a pumpkin from various angles.

We disagree with Hobby Lobby’s argument that the “Pumpkin Floating Candle” is in the shape of an identifiable object, and therefore, should not be included within the scope of the Order. Pursuant to the Department’s change in practice stated in J.C. Penney Scope Ruling, if a candle is not in a shape specifically listed in the scope of the Order, it will not automatically be excluded from the scope of the Order. See J.C. Penney Scope Ruling. Instead, the Department will normally evaluate whether the candle is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick. Hobby Lobby’s “Pumpkin Floating Candle” is a petroleum wax candle with a wick.⁸ Therefore, we must evaluate whether the characteristics of this candle bring it outside the scope of the Order pursuant to the novelty candle exception detailed in the CBP Notice and our interpretation set forth in the J.C. Penney Scope Ruling.

Based on Hobby Lobby’s comments, we examined whether this candle is in the shape of an identifiable object. We find that this candle is round in shape with a repeating pattern of vertical grooves on the outer surface, a flat bottom, and a rudimentary brown vine stem protruding on top. The Department agrees with the NCA that Hobby Lobby’s “Pumpkin Floating Candle” is only discernible as a pumpkin when viewing the candle from above, and even then the Department finds that the vertical grooves and flat bottom do not distinguish this candle exclusively as a pumpkin. Therefore, we find that the “Pumpkin Floating Candle” is not identifiable as a pumpkin from the majority of angles. See Endar 2002. When viewed from the side, this candle could appear to be an orange round with grooves, and therefore could be discerned as an object other than a pumpkin (*i.e.*, a tangerine, tomato, or simply a geometric design). We find that this candle lacks sufficient detail and sufficient accurate dimensional proportionality to make it identifiable exclusively as a pumpkin. For example, the top of the candle has a brown extrusion with a wick in its center, that is purportedly a stem; however, that design feature itself does not solely evoke a stem’s appearance. Because this candle is not readily recognizable and identifiable as a pumpkin from multiple angles, we find that it is not an identifiable object and, therefore, it does not qualify for the novelty exception as an identifiable object. Thus, the Department finds that Hobby Lobby’s “Pumpkin Floating Candle” does not fall under any exception, and is therefore included within the scope of the Order.

“Floating Rose Candle” (513044)

⁸ Hobby Lobby did not specify what type of wick is used in its “Pumpkin Floating Candle.”

Hobby Lobby contends that because the “Floating Rose Candle” is in the shape of an identifiable object and is discernible as a rose from a majority of angles, it qualifies for the novelty candle exception. Hobby Lobby points to the fact that its rose shaped candle has detailed, distinct petals that form a full three-dimensional flower shape which makes it identifiable as a rose from various angles.

We agree with Hobby Lobby’s argument that the “Floating Rose Candle” is in the shape of an identifiable object, and therefore, should not be included within the scope of the Order. Pursuant to the Department’s change in practice stated in J.C. Penney Scope Ruling, if a candle is not in a shape specifically listed in the scope of the Order, it will not automatically be excluded from the scope of the Order. See J.C. Penney Ruling. Instead, the Department will normally evaluate whether the candle is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick. Hobby Lobby’s “Floating Rose Candle” is a petroleum wax candle with a wick.⁹ Therefore, we must evaluate whether the characteristics of this candle bring it outside the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice and our interpretation set forth in the J.C. Penney Ruling.

Based on Hobby Lobby’s comments, we examined whether this candle is in the shape of an identifiable object. This candle is in the shape of an open rose blossom with carved individual petals rising from the base. When viewing the candle from multiple angles, the petals of the rose are layered and three dimensional and therefore identifiable as an open rose bloom from most angles. The candle is identifiable as a rose due to its three dimensional style with its clearly defined and individually molded petals that are visible rising from the base of the candle. The Department finds that this candle is shaped as an identifiable object (an open rose blossom) and is identifiable as such from most angles. See J.C. Penney Ruling. Therefore, this candle falls within the July 1987 novelty candle exception. The Department finds that Hobby Lobby’s “Floating Rose Candle” is an identifiable object and therefore, this candle is not included within the scope of the Order.

Recommendation

Based on the preceding analysis, we recommend that the Department find that two of Hobby Lobby’s three candles, “Fall Floating Leaf Candle” (FLF179C) and “Pumpkin Floating Candle” (FPF169C), fall within the scope of the Order. The Department further recommends finding that one candle, “Floating Rose Candle” (513044), is not included within the scope of the Order. If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determination.

_____ Agree

_____ Disagree

⁹ Hobby Lobby did not specify what type of wick is used in its “Floating Rose Candle.”

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date

Attachment