

January 10, 2006

By Electronic Mail Notification

To All Interested Parties:

On September 13, 2005, the Department of Commerce (“the Department”) received a request from Eighteen Karat International Product Sourcing, Inc. (“18 Karat”) for a scope ruling on whether twelve “orchid” candles 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), the Department has determined that 18 Karat’s twelve “orchid” candles are not included within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department’s analysis. We will notify U.S. Customs and Border Protection of this decision. If you have any questions, please contact Julia Hancock at (202) 482-1394.

Sincerely,

Alex Villanueva
Program Manager
AD/CVD Operations, Office 9
Import Administration

Enclosure

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: James C. Doyle
Office Director
AD/CVD Operations, Office 9

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504);
Eighteen Karat International Product Sourcing, Inc.

Summary

On September 13, 2005, the Department of Commerce (“the Department”) received a request from Eighteen Karat International Product Sourcing, Inc. (“18 Karat”) for a scope ruling to determine whether its twelve “orchid” candles are included within the scope of the antidumping duty order on petroleum wax candles from the People’s Republic of China (“PRC”) (these candles included four small tea-light candles (product #96000), four large tea-light candles (product #96001), and four floating candles (product #96002-96006)). See 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 18 Karat’s twelve “orchid” candles are not within the scope of the Order.¹

Background

On September 13, 2005, the Department received a letter from 18 Karat requesting a scope ruling on its twelve “orchid” candles that, according to 18 Karat, will compose part of the company’s upcoming Spring/Summer 2006 product line. On September 27, 2005, the National Candle Association (the “NCA”) submitted comments on 18 Karat’s scope request. On September 30, 2005, the NCA submitted a letter clarifying its comments. 18 Karat did not submit any additional comments.

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.

18 Karat's Scope Request

18 Karat argues that its "orchid" candles qualify to be excluded from the scope of the Order pursuant to 19 CFR 351.225(k)(1), the July 1987 novelty candle exception,² and the novelty candle exception of the September 21, 1987, Customs Information Exchange ("CIE") scope determination.³ According to 18 Karat, these candles are identifiable objects, (i.e., orchid flowers), that, pursuant to the Department's requirements, are recognizable from a majority of angles. 18 Karat provided samples of the candles for the Department's review. Additionally, 18 Karat also provided photos of real phalaenopsis orchids as they appear in nature to support its request, after which these candles were modelled.

Each of 18 Karat's twelve "orchid" candles are made of 100 percent paraffin wax and a cotton wick. The four small "orchid" tea-light candles (product #96000) measure approximately 1.5" in height, 1.5" in length, and 1.5" in diameter. The four large "orchid" tea-light candles (product #960001) measure approximately 2" in height, 2" in length, and 2.25" in diameter. Additionally, the four floating "orchid" candles (product #96002-96006) have varying measurements. The first is 4" in length and 3.25" in width for the stripes candle (product #96003); the second is 4" in diameter for the spots candle (product #96004); the third is approximately 4.25" in length and 3" in width for the plasma candle (product #96005); and, the fourth is 4" in diameter for the freckles candle (product #96006). 18 Karat indicates that these candles are classified under HTSUS number 3406.00.0000.

18 Karat argues that these candles are: (1) in the shape of orchid flowers with a pistil and stamen that visibly protrude from the center; (2) hand-carved, hand-formed from a molded shape, which is hand-painted; (3) flowers with intricate petal shapes, visible from the underside of the flower, with etched or embossed veins; and (4) intended to be used as a decorative accent in the home. 18 Karat notes that, while the base of the eight "orchid" tea-light candles is not shaped in the form of a flower, the orchid flower attached to the top of each tea-light candle is distinguishable as a flower from all angles. Moreover, 18 Karat contends that, as in the Meijer Ruling and the Two's Company Ruling, the orchid is integral to the candle's design and removal of the orchid would destroy the decorative function of these tea-light candles. See Final Scope Ruling: Meijer, Inc. (June 11, 1998) (the Department found that the candle was outside the scope of the Order because the chick figurine could not be removed without damaging the candle); Final Scope Ruling: Two's Company, Inc. (January 13, 1995) (the Department found the taper candle with the attached angel figurine was outside the scope of the Order because the angel figurine could not be removed without damage to the candle).

Finally, 18 Karat contends that all of its candles, including the eight "orchid" tea-light candles and the four floating "orchid" candles, qualify for exclusion from the scope of the Order because they are in the shape of identifiable objects, i.e., "orchid flowers." 18 Karat points to the Dollar

² See pages 5 and 6 of this memorandum below for further details of the July 1987 novelty candle exception.

³ In CIE, the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for and used only in connection with a holiday season. See Customs Information Exchange, CIE N212/85, September 21, 1987.

Tree Ruling and the Hobby Lobby Ruling as further support for their request. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Dollar Tree Stores, Inc. (January 26, 2005) at 18 (“Dollar Tree Ruling”) (the Department found that Dollar Tree’s orchid stem was outside the scope of the Order because it was identifiable from multiple angles with petals, which have etched veins, rising from the center and extending outward); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Hobby Lobby, Inc. (January 14, 2005) at 9-10 (“Hobby Lobby Ruling”) (the Department found that the rose candle was outside the scope of the Order because it was shaped as an identifiable object with detailed, distinct flower petals forming a three-dimensional flower shape). Specifically, 18 Karat contends that there is no significant difference between their “orchid” candles and the orchid stem candle found outside the scope of Order in the Dollar Tree Ruling. In accordance with the Department’s requirements for the novelty candle exception, 18 Karat argues, these candles are all recognizable as “orchid flowers” from multiple angles. Thus, 18 Karat argues that its candles are in the shape of identifiable objects and are therefore outside of the scope of the Order.

NCA Comments

The National Candle Association (“NCA”) submitted comments regarding 18 Karat’s scope ruling request on September 27, 2005. In its comments, the NCA retraces the history of the antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers that 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 (“CIT”) decision, with regard to the novelty exception, that: “The Court will interpret the novelty candle exception . . . narrowly to preserve the efficacy of the Order. Consequently, 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 & Co., Inc. v. United States, 57 F. Supp. 2d 1184, 1194 (CIT July 1999) (“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 twelve of 18 Karat’s candles are:

petroleum wax candles made in China having fiber- or paper-cored wicks. 18 Karat’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 argues that the Department has determined that a candle will qualify for the identifiable object/novelty candle exception only if the shape of the alleged identifiable object is easily recognizable and identifiable from most angles. See Final Scope Ruling: J.C. Penney Purchasing Corp. (May 21, 2001) at 9 (“J.C. Penney Ruling”) (the Department determined that J.C. Penney’s red, white, and blue stacked star candles were within the scope of Order because the candles were not recognizable as a “star” from the sides). In support of its assertion, the

NCA points to San Francisco Candle II, where the court found that the Department’s application of the “identifiable from most angles” benchmark was appropriately applied not only to candles with alleged holiday-specific designs but also to candles in the shape of an identifiable object. See San Francisco Candle Company, Inc. v. United States, 265 F. Supp. 2d 1374, 1379-80 (CIT 2003) (“San Francisco Candle II”); affirmed by San Francisco Candle Company, Inc. v. United States, 104 Fed. Appx. 714, 26 ITRD 2024 (Fed. Cir. 2004).

The NCA argues that 18 Karat’s four small and four large “alleged” “orchid” tea-light candles are not in the shape of identifiable objects and, therefore, these candles should fall within the scope of the Order. Specifically, the NCA maintains that none of 18 Karat’s four small and four large “alleged” “orchid” tea-light candles, are recognizable as a flower from a majority of angles. The NCA argues that while each candle’s flower characteristic can be discerned from the top of the candle, the flower characteristic is not discernible from either the bottom or any side of the candle. Accordingly, the NCA contends that the four small and four large “orchid” tea-light candles are comparable to Premier’s “tulip lantern candle,” which the Department found was not recognizable from a multiple of angles. See Final Scope Ruling Premier Candle Corp. (February 25, 2002) at 5-6 (“Premier Ruling”) (the Department determined that Premier’s “tulip lantern candle” was not only not recognizable as a tulip from any angle, but was a wax-filled container that is included within the scope of the Order).

The NCA also contends that 18 Karat’s four small and four large “orchid” tea-light candles are wax-filled containers that are specifically listed in the scope of the Order. The NCA points to the ruling on New Spectrum’s Christmas snowmen and Santa tea lights for support that 18 Karat’s four small and four large “orchid” tea light candles do not qualify as an identifiable object. See Final Scope Ruling New Spectrum Gift Gallery, Inc. (May 10, 2005) at 46-47 (“New Spectrum Ruling”) (the Department determined that the Christmas snowmen and Santa tea-lights were wax-filled containers within the scope of the Order because the Department held that the application of molded decorations to the surface of a candle does not transform the candle into an identifiable object). As in the New Spectrum Ruling, the NCA contends that 18 Karat’s four small and four large “orchid” tea-light candles are wax-filled containers, despite the fact that the “orchid” rises above the candle’s metal case; thus, the NCA argues these candles should be included within the scope of the Order.

Finally, the NCA claims that 18 Karat’s four floating “orchid” candles do not qualify as identifiable objects and are therefore within the scope of the Order. Specifically, the NCA asserts that 18 Karat’s four floating “orchid” candles are comparable to Garden Ridge’s two “orchid” candles, which the Department found to not be identifiable objects. See Final Scope Ruling Garden Ridge (February 2, 2005) at 10 and 11 (“Garden Ridge Ruling”) (the Department determined that Garden Ridge’s two “orchid” floater candles were within the scope of the Order because only when viewed from above could one discern that the candle was in the shape of an “orchid”). Similarly, the NCA points out that one can only distinguish that 18 Karat’s four floating “orchid” candles are in the shape of a flower when viewed from above. Accordingly, the NCA concludes that the Department must also find that 18 Karat’s four floating “orchid” candles are within the scope of the Order.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225. 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, it 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 18 Karat's request 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 18 Karat's twelve "orchid" candles. 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 neither the Department nor the parties placed 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 Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986).

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 are 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 state:

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).

In November 2001, the Department changed its practice on the issue of candle shapes. See 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.”⁴ 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 CIT, noting that a better approach in scope rulings is to avoid subjective issues of intent and, instead, to 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 petitioner’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).

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 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.”⁵ 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.”⁶ Thus, as applied to this Order, there is no requirement, nor is

⁴ See 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”) (the Department found a “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); 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) (the Department found a sphere or ball-shaped candle not within scope because it is a shape not listed by the scope).

⁵ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

⁶ Id.

it possible, for all the shapes of candles to be listed.⁷ In fact, if the list were exhaustive, there would have been no need for the Department to determine whether any other candle that was not explicitly listed as a shape was included in the scope of the Order. However, the Department did render the narrowly construed novelty candle 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 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 candle having a 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 request, we find that, for the reasons outlined below, 18 Karat’s candles are not within the scope of Order. These candles are petroleum wax candles having a fiber, *i.e.*, cotton, wick. However, they are identifiable objects which qualify these candles for exclusion from the Order pursuant to the July 1987 novelty exception.

Four Small (Product #96000) and Four Large (Product #96001) Tea-Light “Orchid” Candles

18 Karat contends that because the four small and four large “orchid” tea-light candles are in the shape of an identifiable object and are discernible as an orchid from a majority of angles, these candles qualify for the novelty candle exception.

We agree with 18 Karat that the four small and four large “orchid” tea-light candles are 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 outlined in J.C. Penney 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

⁷ 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”).

petroleum wax and having a fiber or paper-cored wick. 18 Karat's four small and four large "orchid" tea-light candles are paraffin or petroleum wax candles with a cotton wick. Moreover, these candles are tea-lights, which the Department has previously determined are within the scope of the Order as wax-filled containers. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Simcha Candle Co. (February 12, 1993). Therefore, we must evaluate whether the characteristics of these candles bring them 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 Ruling.

In previous scope rulings regarding flowers, the Department has determined that a "flower" candle is within the scope based on whether the flower motif, (i.e., molded/carved flower shape, distinct individual petals, and other flower characteristics such as pistil, stamen or paint decoration to the petals or leaves), is visible from most angles. The Department finds that these previous flower scope rulings are relevant to our analysis of 18 Karat's "orchid" candles because these rulings provide definitive examples of when a candle was either found within or not within the scope of the Order. In the Noteworthy Ruling, the Department found that the "floater flower" candle was within the scope of the Order because the candle: (1) contained rudimentary molded petals only visible from above; (2) when viewed from the side, the candle did not show any identifiable flower motif. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Noteworthy, a Division of Papermates, Inc. (January 14, 2005) at 9 ("Noteworthy Ruling"). Accordingly, the Department found that Noteworthy's "floater flower" candle was not identifiable as a flower from multiple angles. However, in the Hobby Lobby Ruling, the Department found that the "floating rose" candle was not within the scope of the Order because the candle: (1) was in the shape of an open rose blossom with carved individually molded petals; (2) had layered, three-dimensional petals that are identifiable from multiple angles; and (3) was identifiable as a rose due to its three-dimensional style. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Hobby Lobby Stores, Inc. (January 14, 2005) at 10 ("Hobby Lobby Ruling"). These previous scope rulings are instructive because they illustrate the criteria the Department has used in its analysis of whether a flower candle was within the scope of the Order. Specifically, the Department has found a "flower" candle not within the scope of the Order when it is an identifiable object, and thus, the flower motif, (i.e., molded/carved flower shape, distinct individual petals, and other flower characteristics such as pistil, stamen or paint decoration to the petals or leaves), is identifiable from multiple angles. See Hobby Lobby Ruling; Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Home Interiors and Gifts, Inc. (May 13, 2005) (the Department found that the sunflower floater candle contains a flower design, including leaves with visible veins and layered petals decorated with two tones of yellow, that was recognizable and sufficiently detailed to be identifiable as a sunflower at multiple angles).

With regard to 18 Karat's "orchid" candles, the Department disagrees with the NCA that 18 Karat's four small and four large tea-light "orchid" candles do not qualify as identifiable objects. In contrast to the Premier Ruling and the New Spectrum Ruling, which was cited by the NCA in support of its argument that 18 Karat's "orchid" candles should be included within the Order, the Department finds the "orchid" molding and details on 18 Karat's candles are sufficient

to transform these tea-lights into identifiable objects.⁸ Each of the four small and four large tea-light “orchid” candles are in the shape of “orchids” with molded and then hand-carved distinct, intricate petals with etched veins rising from the base of the candle. The “orchid” candles have readily discernible layered petals, stamen and pistil that are characteristic of phalaenopsis orchids. The individual petals rise from the center of the molded “orchid” flower and extend outward with etched veins and have painted decorations consistent with the colors of phalaenopsis orchids. When viewing each candle from multiple angles, the petals are layered and three-dimensional and, therefore, identifiable as an “orchid” from most angles. The individual petals are detailed with molded edges that are easily recognizable from both the top and sides of each candle. Even when viewed from the bottom, the carved edges of the individual petals are readily discernible. Additionally, other characteristics (*i.e.*, pistil and stamen) of the “orchid” candles are also visible from the top and side of the candles. Accordingly, these tea-light “orchid” candles are identifiable objects because the flower motif, (*i.e.*, the shape of an “orchid” flower with individual petals and other flower characteristics), is visible from multiple angles.

These candles also possess distinguishing flower-like characteristics to show that they resemble “orchids” as they appear in nature. Specifically, the Department notes that 18 Karat submitted photo images of actual “orchid” flowers after which these candles are modelled and which the Department corroborated with its own independent research. See Attachment. While this information is not a requirement for the Department’s analysis of whether a candle is an identifiable object, the Department finds this information useful because the submitted photos show the natural variability of orchids of the scientific genus “phalaenopsis.” When comparing the actual photos to the “orchid” decoration on these candles, the Department finds that the various shapes and painted decorations of these candles are similar to the appearance of real orchids occurring in nature. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Pacific Enterprise (December 17, 2004) at 8 (“Pacific Enterprise Ruling”) (the Department found that Pacific Enterprise’s palm tree candles were identifiable objects and not within the scope of the Order because the colors and etchings on the tree trunk and leaves gave these candles the appearance of real palm trees). Additionally, the orchid decoration on each of the candles also closely resembles a real orchid flower with a pistil and stamen protruding from the center of the flower.

Moreover, we disagree with the NCA that we are precluded from finding these candles as identifiable objects based on previous rulings that found the application of molded decorations to the surface of an in-scope candle does not transform the candle into an identifiable object. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Greetings Corporation (May 4, 2000) (“American Greetings Ruling”) (the Department found that the candle is still in the form of a taper, with or without the decorative etched design, distinguishing this candle from other “identifiable object” rulings in the past). The Department has determined that the removal of decorations on candles, which would result in damage to the candle, are grounds for excluding these candles from the

⁸ See Premier Ruling (where the Department found that the candle was not recognizable as a tulip from all of its angles); New Spectrum Ruling (where the Department found that the decorations applied to these candles are not sufficient to transform these wax-filled containers into any identifiable object which would not be included within the Order).

scope of the order. See J.C. Penney Ruling; American Greetings Ruling (the Department determined a candle in one of the shapes specifically named in the Order which includes an attached figurine is outside the Order if: (1) the candle is a holiday novelty candle or identifiable object; and (2) the holiday novelty candle or identifiable object cannot be easily removed). As discussed above, the Department finds that these four small and four large “orchid” tea-light candles are identifiable as “orchids” from multiple angles and thus fall within the novelty candle exception. See J.C. Penney Ruling (the Department found that a pinecone tea-light, a jack-o’lantern tea-light, and a ghost tea-light were outside the scope of the Order because the designs were significant decorations visible from multiple angles). Moreover, the Department agrees that these “orchid” decorations, which cannot be removed without damaging the candle, are grounds for excluding these four small and four large “orchid” tea-light candles from the scope of the Order. Unlike previous rulings, the molded orchid decoration is not merely attached to the candles; instead, the molded “orchid” flower and petals are intrinsic to the shape of the candle. Therefore, the Department finds that these four small and four large “orchid” tea-light candles are identifiable objects and are therefore not included within the scope of the Order.

Four Floater “Orchid” Candles (Product #96002-96006)

18 Karat contends that because the four floating “orchid” candles are in the shape of an identifiable object and are discernible as an “orchid” from a majority of angles, these candles qualify for the novelty candle exception.

We agree with 18 Karat’s argument that the four floating “orchid” candles are in the shape of identifiable objects, and therefore should not be included within the scope of the Order. Pursuant to the Department’s change in practice outlined 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. 18 Karat’s four floating “orchids” are petroleum wax candles with a cotton wick. 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 Ruling.

The Department disagrees with the NCA’s argument that 18 Karat’s four floating “orchid” candles do not qualify as identifiable objects because the Department finds the flower motif on 18 Karat’s candles is visible from multiple angles. See Garden Ridge Ruling (the Department found that an “orchid” candle was within the scope of the Order because the “orchid” motif was not discernible from multiple angles and when the “orchid” was viewed from the side, there were no readily discernible leaves or petals); see also Hobby Lobby Ruling. In contrast to the Garden Ridge Ruling, 18 Karat’s four “orchid” candles are visible as orchids from multiple angles and thus, the candles are identifiable as “orchids.” Each of the four floating “orchid” candles are in the shape of an “orchid” with molded and hand-carved distinct, intricate petals with etched veins rising from the base of the candle. The individual petals rise from the center of the molded “orchid” flower and extend outward with etched veins and have painted decorations consistent with the colors and shapes of phalaenopsis orchids. When viewing each candle from multiple

angles, the petals of the “orchid” are layered and three-dimensional and therefore, the detailing of the petals are visible from both the top and side views of the candle. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Dollar Tree Stores, Inc. (January 26, 2005) (the Department found that the individual petals on the “orchid stem” candle were visible and easily recognizable from multiple angles). Even when viewed from the bottom, the carved edges of the individual petals are readily discernible. Additionally, other characteristics (i.e., pistil and stamen) of the “orchid” flower of each candle are also visible from the top and side of the candle. Accordingly, these four floating “orchid” candles are identifiable objects because the flower motif, (i.e., the shape of an “orchid” flower with individual petals and other flower characteristics), is visible from multiple angles.

These candles also possess distinguishing flower-like characteristics such that each resembles an “orchid” as it appears in nature. Specifically, the Department notes that 18 Karat submitted photo images of actual “orchid” flowers after which these candles are modelled and which the Department corroborated with its own independent research. See Attachment. When comparing the actual photos to the “orchid” molding and decoration of these candles, the Department finds that the various shapes and painted decorations of these candles are similar to the appearance of real orchids. See Pacific Enterprise Ruling at 8 (the Department found that Pacific Enterprise’s palm tree candles were identifiable objects and not within the scope of the Order because the colors and etchings on the tree trunk and leaves gave these candles the appearance of real palm trees). Additionally, the flower motif of these candles also closely resembles a real orchid flower with a pistil and stamen protruding from the center of the flower in distinctive shapes. Accordingly, in contrast to the Garden Ridge Ruling, these four floating “orchid” candles possess distinguishing flower-like characteristics that indicate these candles are “orchids” from multiple angles. See Garden Ridge Ruling at 11. Given that these four floating “orchid” candles can be identified as “orchids” from multiple angles, these candles fall within the novelty candle exception, and therefore, should not be included within the scope of the Order.

Recommendation

Based on the preceding analysis, we recommend that the Department find that 18 Karat's 12 "orchid" candles fall outside of 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

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

Date

Attachment

Attachment

