



Goldfarb Seligman
Law Offices | Established 1930

Issue 3

Customs & Trade in Israel

A Legal Newsletter

Adv. Gill Nadel, Chair of the firm's Import, Export and International Trade Law Practice, Tax Department

Update for Brand Importers: an Encouraging Ruling from the Supreme Court

Adv. Gill Nadel, Adv. Omer Wagner

A recently published ruling of the Supreme Court (from 1.11.16) bodes well for brand importers.

The Supreme Court rejected most of the Customs Authority's appeal, ruling that not all royalties paid by brand importers are subject to customs duty. On the contrary, a significant portion of these royalties are exempt from customs duty.

By virtue of its ruling, it is estimated that the Supreme Court has saved brand importers millions of ILS, a fact which may eventually benefit the consumers as well.

The ruling may have broad implications on the businesses of brand owners in a wide variety of sectors, including the clothing and shoes sector, the food sector, the electrical appliances sector, and any other sector in which the importer is required to pay additional payments to the brand owner beyond the price of the product itself.

This bodes well for the importers, as it limits the Customs Authority's duty demands relating to royalty payments by determining that not all royalties are dutiable.

The case involved the importers of the brands "Lee Cooper", "Rip Curl", "No Fear", Disney, "Tom & Jerry", "Scooby Doo", "Garfield", "Galit Levi", "Snoopy", "Pucca", and "The Simpsons", which paid factories to manufacture products for them, and separately paid royalties to the brand owners, as is customary in the field.

The Customs Authority argued that the royalties "adhere" to products, and therefore the duty on the products should be calculated based on the combined price of the product and its royalty. The importers argued that the duty should be calculated solely according to the price of the product itself.

The Customs Authority argued further that since payment of royalties is a precondition for sale of goods in Israel, they are an inherent part of the price of the product and therefore dutiable. The importers argued that payment of royalties is not a requisite for an import transaction, and therefore should be exempt from customs duty.

In a ruling given by the District Court in March 2013, the court accepted the importers arguments in principle, and ruled that for royalties to be dutiable, it must be proven that the importer had to pay them as a prerequisite for importing the goods to Israel (not as a precondition for sale in Israel). The District Court ruled that in order to determine whether an importer is required to pay the royalties as a prerequisite of the import process, the language of the individual contract between the importer and the brand owner must be examined, as well as the way both sides conduct themselves in practice.

The Supreme Court now ruled on the appeal, rejecting most of the Customs Authority's appeal. The Supreme Court ruled that in order for royalties to become dutiable, they must be connected to the products, and be a requisite of their import to Israel - not their sale in Israel.

The Supreme Court ruled further that examination of the language of the individual contract between an importer and a brand owner is insufficient on its own, and the way both sides conduct themselves in practice must be examined as well.

In other words, the court ruled that the testimony of a brand owner is an acceptable method to determine whether he supervised the importer, to what extent, etc., as a means to decide whether the royalties are a prerequisite of the import transaction.

Therefore, the Customs Authority's appeal was rejected, and it was determined that not all royalties are dutiable.

In a more general sense, it should be noted that the duty on the textile import has been fluctuating. Up to September 2012 there was a 12% customs duty, at which point the Finance Minister cancelled the duty for finished products, but a 6% duty was reimposed by mid-2013 due to pressure from local manufacturers. The current ruling is a clear boost to textile importers.

In the backdrop of this ruling comes another ruling given by the District Court in September 2016, in which a different conclusion was reached. In that case, the court ruled that the royalties paid by the importers of the brands "Zara", "PULL&BEAR", "Nautica", "Nine West", "Easy Spirit", and "Anne Klein" adhered to the products and are dutiable, even if they are paid for external services such as design and advertisement.

We feel that the Supreme Court's ruling is fair and balances the needs of both sides, while, with all due respect, the District Court ruling in September gravely mistreats the importers. It will be interesting to see how the Supreme Court settles the two differing rulings, if an appeal is submitted regarding the September ruling of the District Court. Even more interesting will be how the Customs Authority will act henceforth regarding the subject of imposing customs duty on royalties, in light of the Supreme Court's ruling.

It should be noted that the Supreme Court extensively examined the conduct of other countries in this matter, as well as the reference of international treaties to the subject, and ruled that action should be taken according to the international treaties, without fail. We feel this is a very important statement, especially in the subject of customs and international trade, in which the State of Israel is not a solitary player but a member of the family of nations.

* * *

**The above review is a summary. The information presented is for informative purposes only,
and does not constitute legal advice.**

**For more information, please contact Adv. Gill Nadel, Chair of the Import, Export and Trade
Law Practice**

Email: Gill.Nadel@goldfarb.com Phone: 03-6089979.