



Republic of the Philippines,

Seizure Identification
No. CFZ **089-2023**

-versus-

Shipment said to contain **“WOMEN DRESS (MADE OF COTTON LINEN), WOMEN SHIRT (MADE OF COTTON LINEN), PANTS (MADE OF COTTON SPANDEX), FOLDABLE LUNCH BOX (MADE OF COTTON)”** bound to Missouri City, Texas, USA which will be shipped thru Federal Express (FedEx) Clark on 19 November 2022 under House Airway Bill No. 770542097410 but found to contain **7 Gucci Bags, 11 LV Bags and 1 MCM Wallet**

Exporter/Shipper:

MARCEL MONTOYA

202 M. De Castro St., Bagong Barrio, Brgy. 146,
Caloocan City 1400 PH

Claimant.

X-----X

DECISION

This resolves the seizure and forfeiture proceedings instituted against the above-captioned shipment for violation of Sections 118 (f) and 1113 (f) and (l) (3 & 4) of Republic Act (R.A.) No. 10863 otherwise known as the Customs Modernization and Tariff Act (CMTA) in relation R.A. No. 8293 otherwise known as the Intellectual Property Code of the Philippines.

As culled from the records, the material facts of the instant case are as follows:

On 19 November 2022, a shipment bound to Aspen, Colorado, USA (Consignee: Jason Shorter) under House Airway Bill No. 770542097410 said to contain **“WOMEN DRESS (MADE OF COTTON LINEN), WOMEN SHIRT (MADE OF COTTON LINEN), PANTS (MADE OF COTTON SPANDEX), FOLDABLE LUNCH BOX (MADE OF COTTON)”** under the name of MARCEL MONTOYA with address at 202 M. De Castro St., Bagong Barrio, Brgy. 146, Caloocan City 1400 PH arrived at the Federal Express (FedEx) gateway facility and marked for verification/physical examination by the X-ray Inspector on duty.

On 13 January 2023, a Mission Order was issued directing Trade Control Examiners to conduct inventory of various shipment for export suspected to contain counterfeit products and to obtain one (1) sample from each package for Intellectual Property Rights (IPR) verification.

On 03 February 2023, the Office of the District Collector received an After-Mission Report dated 30 January 2023 stating that Trade Control Examiners conducted a three-day inventory (17, 19 and 23 January 2023) on seventy-six (76) shipments suspected to contain counterfeit products and obtained one (1) sample from each package, including the subject shipment, in the presence of representatives from Enforcement and Security

Service (ESS), Customs Intelligence and Investigation Service (CIIS) and FedEx. The findings on the subject shipment were as follows:

AS DECLARED IN THE INVOICE	AS FOUND
<ul style="list-style-type: none"> • 6 PCS. WOMEN DRESS (MADE OF COTTON LINEN) • 6 PCS. WOMEN SHIRT (MADE OF COTTON LINEN) • 6 PCS. PANTS (MADE OF COTTON SPANDEX) • 10 PCS. FOLDABLE LUNCH BOX (MADE OF COTTON) 	<ul style="list-style-type: none"> • 7 Gucci Bags • 11 LV Bags • 1 MCM Wallet
<p style="text-align: center;">Value: USD 140.00 Gross Weight: 20.5 kgs.</p>	

In a letter dated 30 January 2023, Intelligence Officer II (IO2) Norma Del Rosario-Nucup, Field Station Chief, CIIS Port of Clark, requested Atty. Edmund Jason Baranda, authorized representative/duly authorized Attorney-in-Fact of Prada S.A., Yves Saint Laurent, Luxury Goods International (L.G.I.) S.A., Balenciaga and Guccio Gucci S.P.A. (the "Company"), to personally examine samples of various items bearing the mark Prada, Yves Saint Laurent, Bottega Veneta, Balenciaga and Gucci and a certification on their authenticity.

On 21 March 2023, the Office of the CIIS-Port of Clark received letters dated 16 and 20 March 2023 from Atty. Baranda attaching notarized Certifications confirming the examined samples to be **counterfeit** and said exporter's name is not included as authorized channel of the Company.

On 14 April 2023, the Office of the District Collector received a Memorandum dated 13 April 2023 from IO2 Rosario-Nucup, Field Station Chief, CIIS Port of Clark, recommending the issuance of a Warrant of Seizure and Detention (WSD) against the subject shipment based on the notarized Certifications from Atty. Baranda.

Based on the discrepancy between the goods found during the physical examination and goods declared in the commercial invoice, Ms. Maricar Go, Officer-In-Charge (OIC) Export Unit, and Trade Control Examiner Marife Follosa, thru Ms. Lilibeth Mangsal, then Deputy Collector for Operations, submitted a Memorandum dated 31 March 2023 recommending the issuance of a WSD against the subject shipment for violation of Section 1113 (l) (3 & 4) of the CMTA.

On 17 April 2023, a WSD docketed as Seizure Identification (S.I.) No. CFZ 089-2023 was issued by then Officer-In-Charge of this Port, Collector John Simon, against the subject shipment.

On 04 May 2023, Atty. Ruther Martinez, Government Prosecutor, appeared at the designated hearing, however, no representative from claimant (exporter/shipper) appeared on the appointed date.

In a Memorandum dated 26 June 2023 from SA I Fitzgerald T. Borja, noted by SP/Capt. Arnel A. Baylosis, District Commander, this Port, it is stated that the WSD and Notice of Hearing were not served because the exporter/shipper is not a resident in the said address.

Thus, we resolve.

ISSUE:

Whether or not the subject shipment may be forfeited in favor of the government.

DISCUSSION:

In quasi-judicial proceedings, procedural rules governing service of notices/summons are not strictly construed. Substantial compliance thereof is sufficient. The constitutional requirement of due process with respect to service of summons only exacts that the service of summons be such as may reasonably be expected to give the notice desired.

In the case at hand, records show that SA I Fitzgerald T. Borja tried to locate and served the WSD and Notice of Hearing, however, the same was unsuccessful considering that the exporter/shipper is not a resident in the said address. Hence, the same was posted at the BOC Bulletin Board and Official Website in compliance with Sections 6.5.2 and 10.13 of Customs Administrative Order (CAO) No. 10-2020, to wit:

6.5.2. x x x If the owner is unknown, with insufficient address, or a foreign entity or individual, service shall be effected by posting of the WSD by the ESS in the bulletin board of the concerned collection district office, and by electronic posting through the BOC website, or printed publication, for fifteen (15) days.

10.13. Notice of Hearing shall be served by personal service or, if not practicable by reason of distance and lack of personnel to effect personal service, by private courier service; or posting in the bulletin board of the Law Division or equivalent office of the concerned Collection District for unknown claimants, with insufficient address or foreign claimants. x x x

Moreover, Section 1121 of the CMTA and Section 9.4 of the same CAO provides that "If, within fifteen (15) days calendar days after service of warrant and due notice, no owner or agent can be found or appears before the District Collector, the seized goods shall be forfeited *ipso facto* in favor of the government to be disposed of in accordance with the CMTA."

In this case, since no claimant appeared despite due notice and service of warrant, the seized goods should be forfeited *ipso facto* in favor of the government and disposed of in accordance with the law.

Furthermore, the subject shipment contains infringing goods, as evidenced by the notarized Certifications issued by Atty. Baranda confirming the examined samples to be counterfeit and that the said exporter's name is not included as authorized channel of the Company. As such, the same are considered prohibited goods subject to seizure and forfeiture under Sections 118 (f) and 1113 (f) of the CMTA, to wit:

SEC. 118. *Prohibited Importation and Exportation.* — The importation and exportation of the following goods are prohibited:

xxx

(f) Infringing goods as defined under the Intellectual Property Code and related laws; and

SEC. 1113. Property Subject to Seizure and Forfeiture. –
Property that shall be subject to seizure and forfeiture include:

XXX

(f) Goods, the importation or exportation of which are effected or attempted contrary to law, or **any goods of prohibited importation or exportation**, and all other goods which, in the opinion of the District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former.

XXX

WHEREFORE, by virtue of the authority vested in me by law, it is hereby ordered and decreed that **shipment said to contain “WOMEN DRESS (MADE OF COTTON LINEN), WOMEN SHIRT (MADE OF COTTON LINEN), PANTS (MADE OF COTTON SPANDEX), FOLDABLE LUNCH BOX (MADE OF COTTON)”** bound to Missouri City, Texas, USA which will be shipped thru Federal Express (FedEx) Clark on 19 November 2022 under House Airway Bill No. 770542097410 but found to contain **7 Gucci Bags, 11 LV Bags and 1 MCM Wallet**, subject of this seizure and forfeiture proceeding, be **FORFEITED** in favor of the Government to be disposed of in the manner provided for by law.

Let copies of the Order be furnished to all parties and offices for their information.

SO ORDERED.

Port of Clark International Airport, Clark Freeport Zone, Pampanga,


ATTY. ERASTUS SANDINO B. AUSTRIA, CESO V
District Collector, Port of Clark

Copy furnished:

1. Owner/Consignee/Shipper
2. Unit/Office in Custody of the Goods
3. Chief, ACDD

A Modernized and Credible Customs Administration That is Among the World's Best

Industrial Estate V, M.A. Roxas Highway, Clark Freeport Zone, Pampanga
(045) 499-0831- (045) 499-0828 | www.customs.gov.ph | clark@customs.gov.ph

