

Title : Country of origin marking on pens, markers, combination pen/markers, legible, conspicuous,

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CATEGORY: MARKING

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RE: Country of origin marking on pens, markers, combination pen/markers, legible, conspicuous, 19 CFR 134.41, T.D. 70-214(3) revoked

Dear Mr. Wiskin:

This is in response to your letter, dated October 3, 1990, submitted on behalf of your client, Faber Castell Corporation, requesting a binding ruling on the sufficiency of the country of origin marking on two pens, two combination pen/markers and a marker. In addition, we have received supplemental submissions dated April 17, 1991, and June 3, 1991. A meeting was held on February 22, 1991, with you, another member of your firm, and officials from the Customs Service at Customs Headquarters to discuss your ruling request. Samples of the pens and the markers in question were submitted for our review.

FACTS:

The sample pens are called the "Onyx Billboard" and "Onyx Micro". The combination pen/markers are called "Combi (current)" and "Combi (new)". The marker is known as the "Blazer". The body of each item is plastic and the country of origin, Japan, is molded into the plastic. Although the letters comprising the "JAPAN" marking on each of the samples are in the same color as the barrel, they are clear and distinct.

The "Onyx billboard" pen is a roller ball pen. A pocket clip is attached to the cap portion of the pen which has a flat "billboard" at the top of the clip approximately 1/2 inch high and 3/8 inch wide. This "billboard" area of the pen serves as a place where advertisers can silkscreen a logo or an emblem on the pen. The country of origin marking, Japan, appears on the cap portion of the pen near the bottom edge of the cap in raised molded capital letters which are in the same color as the cap and the barrel of the pen. The Office of Laboratories and Scientific Services at Customs Headquarters has measured the size

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of the letters to be about 1.7 mm in height. 1 (This is equivalent to approximately 5 point type). 2 In addition, the bottom of the barrel is color coded to indicate the color of the ink supply. The word "JAPAN" also appears on the bottom of the barrel in raised molded letters which are in a semicircle.

The "Onyx Micro" pen is also a roller ball pen. The cap has a pocket clip which runs almost the entire length of the cap. On one surface of the cap the trade name "Uniball" appears in sunken molded letters. The word "JAPAN" appears on the bottom edge of the cap in raised molded capital letters approximately 2.1 mm in height (approximately 6 point type) which are the same color as the cap and barrel of the pen. A colored circle appears on the top of the cap to indicate the color of the ink supply.

The "Combi (current)" is a combination ballpoint pen and marker. The marker is located at the bottom of the article, while the pen is located at the top. Each feature is accessible by removal of a plastic cap. The body of the Combi is comprised of plastic. A band of yellow is visible at the lower end of the marker indicating the location of the yellow marker. A pocket clip is permanently attached to the cap covering the ball point pen. The work "JAPAN" appears on the bottom edge of this cap in molded raised letters approximately 1.7 mm in height (approximately 5 point type). These letters are in the same color as the barrel and the cap of the Combi. When the cap for the ballpoint pen is on, the work "JAPAN" appears approximately 1/2 inch from the top of the article along the barrel.

The "Combi (new)" is essentially the same as the other Combi described above. The most significant difference in this version of the Combi is that the cap for the ballpoint has been shortened with a corresponding increase in the length of the barrel. The overall length of the "Combi (new)" is the same as the "Combi (old)". The article is marked with the country of origin, Japan, in molded raised letters on the bottom edge of the pen cap, that are approximately 1.7 mm (approximately 5 point type) in height. _____

1The importer indicated that the size of the country of origin marking on all the pens is approximately 1 mm. The Office of Laboratory and Scientific Services measured the size of the letters on all the articles to be approximately 1.7 mm and in the case of the "Onyx Micro" 2.1 mm. The references to size of the markings in this ruling are based on the Office of Laboratory and Scientific Services' measurements.

2A point is a unit of measurement approximately equal to 0.01384 inches or nearly 1/72 inch and all type sizes are multiples of this unit.

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The "Blazer" is a highlight marker. The barrel of the Blazer is tapered from the top to bottom and the sides are flat. At the top of the article, there is a pocket clip which is permanently attached to the body of the Blazer. In addition, there is a button made of plastic which extends above the top of the article and to which the pocket clip permanently attached. This button and clip are in a contrasting color which indicates the color of the marker. At the opposite end there is a removable plastic cap which covers the marker tip. The cap is slightly tapered and is in the same color as the body of the blazer. At the end of this cap there is a contrasting colored plastic piece which is in the same color as the pocket clip and button. The word "JAPAN" appears on the this piece at the end of the cap in the same color as this plastic piece in molded capital letters approximately 1.7 mm in height (approximately 5 point type).

ISSUE:

Is the country of origin marking on the pens sufficiently legible and conspicuous to satisfy the requirements of the marking law?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 USC 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 USC 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297 at 302 (1940). C.A.D. 104 (1940).

Part 134, Customs Regulations (19 CFR Part 134)), implements the country of origin marking requirements and exceptions of 19 USC 1304. As provided in section 134.41(b, Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

In T.D. 70-214(3), 4 Cust bull. 700 (1970, Customs determined that the marking of the English name of the country of origin required by section 304, Tariff Act of 1930, as amended (19 USC 1304)), on the end surface of the barrel or cap of imported pens is considered unacceptable as failing to be legible

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and conspicuous. The decision further specifies that country of origin marking on an imported pen preferably should appear in contrasting color to the surface of the barrel to what ?? it is applied in letter size sufficiently large to be read ?? observed from a casual examination, such as sizes similar to ?? in use for the brand, trade name, or trade mark. The ?? also indicates that if blind stamp marking is used (?? or stamped into the original background color), the letters should be such size and depth as the be clearly observed, generally not smaller than 3/16-inch in dimension.

We believe that the requirements for country of origin marking on pens set forth in T.D. 70-214(3) are unduly stringent and unrealistic. Our observation is that many pens presently being imported are not being marked with their country of origin in accordance with T.D. 70-214(3). Moreover, because of the large size requirements for the marking, strict compliance with T.D. 70-214(3) would be quite burdensome to the importers of pens. Most important we have concluded that, depending upon several considerations, a country of origin marking that is smaller than 3/16th-inch could be easy to find and easy to read and could satisfy the conspicuous requirement of 19 CFR 134.41 and 19 USC 1304. Also, while it is likely that the end of the barrel is not the best location for the name of the country of origin to appear, such location may be acceptable if other factors (such as large contrasting letters render the marking easy to find. Accordingly, T.D. 70-214(3) no longer represents Customs' position regarding marking of pens and is revoked.

There are certain factors that need to be considered in determining if the country of origin marking on an article is conspicuous within the meaning of 19 CFR 134.41 and 19 USC 1304. Among the factors that should be considered is the size of the marking, the location of the marking, whether the marking stands out, and the legibility of the marking. The size of the marking should be large enough so that the ultimate purchasers can easily see the marking without strain. The location of the marking should be in a place on the pen where the ultimate purchaser could expect to find the marking or where he/she could easily notice it from a causal inspection. Whether the marking stands out is dependent on where it appears in relationship to other print on the article and whether it is in contrasting letters to the background. The legibility of the marking concerns the clarity of the letters and whether the ultimate purchaser could read the letters of the marking without strain. No single factor should be considered conclusive by itself in determining whether a marking meets the conspicuous requirement of 19 CFR 134.41 and 19 U.S.C 1304. Instead, it is the combination of these factors which determines whether the marking is acceptable. In some cases, a marking may be unacceptable even when it is in a large size because the letters are too hard to read or it is in a location where it would not be

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easily notice. In other cases, even if the marking is small, the use of contrasting colors, which make the letters particularly stand out, could compensate to make the marking acceptable.

In applying these factors to the five sample pens, we first find that the size of the marking, 1.7 mm, (approximately 5 point type) and 2.1 mm (approximately 6 point type) in the case of the "Onyx Micro", is minimally acceptable so that an ultimate purchaser would see it. The markings, although not a contrasting color, are clear and distinct and in letters that can be read without great difficulty. With respect to location of the marking on the pens, we find that on four of the five pens, "Onyx billboard", "Onyx Micro", "Combi New", and "Combi Old", the marking on the bottom edge of the cap will be noticed from a causal inspection of the pens. However, on the fifth sample, the "Blazer" marker, the marking is on the end of the pen. This is a location where an ultimate purchaser may not notice the marking from a causal examination of the article. Considering the above factors together, we find that with the exception of the "Blazer", the country of origin marking on the pens satisfies the minimum requirements of 19 CFR 134.41 and 19 USC 1304. The "Blazer" does not. The location of the marking on bottom of the "Blazer", when coupled with the fact that the marking is small and appears in non-contrasting letters renders the marking unacceptable. Accordingly, we find that the marking on the "Blazer" marker does not satisfy the requirements of 19 CFR 134.41 and 19 USC 1304.

HOLDING:

The country of origin marking on four of the five pens and pen/markers; "Onyx Billboard", "Onyx Micro", "Combi New", and "Combi Old", minimally satisfies the requirements of 19 CFR 134.41 and 19 USC 1304 and is acceptable. The country of origin marking on the "Blazer" marker is in a location where an ultimate purchaser is unlikely to notice it, especially when coupled with the fact that the marking is small and appears in non-contrasting letters. Accordingly, the country of origin marking on the "Blazer" marker is not conspicuous and is

not

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acceptable under 19 CFR 134.41 and 19 USC 1304. T.D. 70- 214(3), which set forth specific country of origin marking requirements for pens, is revoked.

Sincerely,

John Durant, Director
Commercial Rulings Division

CC: Area Director
N.Y. Seaport
Attn: Chief, NIS Division

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