

**FEDERAL COURT OF APPEAL**

B E T W E E N

**BEST BUY CANADA LTD.**

Appellant

– and –

**PRESIDENT OF THE CANADA BORDER SERVICES AGENCY**

Respondent

**NOTICE OF APPEAL**

**TO THE RESPONDENT:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the appellant. The relief claimed by the appellant appears below.

**THIS APPEAL** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPEAL**, to receive notice of any step in the appeal, or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** of being served with this notice of appeal.

**IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION** of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court, and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (t. 613.992.4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Date:

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office: Federal Court of Appeal  
180 Queen Street West, Suite 200  
Toronto, Ontario  
M5V 3L6

**TO: ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
50 O'Connor Street, Room 500  
Ottawa, Ontario  
K1A 0H8

**ATTN: Heather Kennedy, Adrian Johnston, & Nathan Joyal**

## **APPEAL**

**THE APPELLANT APPEALS** to this Court, pursuant to section 68 of the *Customs Act*, RSC 1985, c.1 (2nd Supp), from the decision of Presiding Member Cheryl Beckett of the Canadian International Trade Tribunal (“**Tribunal**”) in AP-2022-015, dated November 8, 2023 (“**Decision**”), dismissing the appellant’s appeal from a decision made on April 28, 2022 by the President of the Canada Border Services Agency.

This appeal is being brought in parallel with an application for judicial review of the Decision to this Court (“**Application**”), pursuant to sections 28 and 52 of the *Federal Courts Act*, RSC 1985, c F-7.

### **THE APPELLANT ASKS:**

1. that this appeal be allowed;
2. for a judgment, to the extent the requested relief is not otherwise available and/or granted in respect of the Application:
  - (a) setting aside the Decision; and
    - 1) rendering the decision the Tribunal ought to have made by finding that the goods in issue (“**Goods**”) are classifiable under tariff item No. 8418.69.90 in the Schedule to the *Customs Tariff*, SC 1997, c 36; or
    - 2) referring the matter back to the Tribunal for re-determination in accordance such directions as this Court considers appropriate; and
  - (b) for costs of this appeal; and
3. for such further and other relief as counsel may advise and this Court may deem just.

**THE GROUNDS OF APPEAL** are as follows:

4. the Decision is incorrect;

5. in reaching the Decision, the Tribunal erred by:
  - (a) misinterpreting and misapplying the jurisprudence, including, but not limited to, applying a presumption of ordinary meaning to the interpretation of subheadings in the Schedule to the *Customs Tariff*; and
  - (b) misapprehending the significant differences in the evidentiary record, procedural context, and legal arguments, in relation to questions of law;
6. in the alternative, if a presumption of ordinary meaning applies, the Tribunal erred by:
  - (a) failing to treat the presumption as rebuttable; and
  - (b) failing to conclude that the presumption had been rebutted on the facts;
7. the Goods are classifiable under tariff item No. 8418.69.90 in the Schedule to the *Customs Tariff*;
8. sections 2, 61, 67, and 68 of the *Customs Act*;
9. sections 2 to 4 and 10 to 12 of the *Customs Tariff*, and the Schedule thereto, including:
  - (a) the General Rules for the Interpretation of the Harmonized System;
  - (b) the Canadian Rules; and
  - (c) heading 84.18, and the subheadings and tariff items thereto;
10. World Customs Organization, *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading 84.18;
11. sections 18, 18.1, 18.4, 18.5, 28 and 52 of the *Federal Courts Act*;
12. sections 102, 105, and 400 of the *Federal Court Rules*, SOR/98-106; and
13. such further and other grounds as counsel may advise and this Court may deem just.

DATED at the City of Toronto, in the Province of Ontario, on December 7, 2023.



---

KPMG Law LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, Ontario  
M5H 2S5

Thang Trieu  
d. 416.777.8187  
e. ttrieu@kpmg.ca

Allison Blackler  
d. 250.244.0926  
e. ablackler@kpmg.ca

Katherine Grubisic  
d. 416.777.8092  
e. kgrubisic@kpmg.ca

f. 416.861.0624

Counsel for the appellant