

## **Customs Duty - Third party acting as buying agent**

### *Umbro International Ltd*

#### **Background**

This High Court decision concerns whether PNH Limited (PNH) acted as the buying agent for Umbro International Ltd (Umbro). Umbro argued that PNH was acting as its agent and therefore excluded buying commission from the price paid when calculating the amount of duty payable.

#### **Decision**

Umbro is an importer and wholesaler of sports goods who used PNH to import goods from China. Umbro would provide PNH with specifications of the purchases and target prices. PNH were then responsible for everything else from the production and cost through to quota requirements, insurance, storage and delivery. The shirts themselves were manufactured by Dongguan Haiqi Sports Garment Co Ltd (DHS) in China. A purchase order would be submitted by Umbro to PNH once a contract price was agreed. DHS invoiced PNH who in turn invoiced Umbro a higher amount. Commercial documentation made no reference to any form of agency arrangement. The Tribunal concluded that none of evidence established PNH's agency status and Umbro failed to establish on the balance of probabilities that PNH acted as Umbro's buying agent in its dealings with DHS.

In the High Court, Umbro challenged the Tribunal's decision on a number of grounds. These included: the lack of importance placed on PNH's perception that they were an agent; the fact that HMRC accepted a 2006 Buying and Sourcing agreement was evidence of a buying agency; and a disproportionate importance placed upon the terms and conditions of the purchase orders.

The court examined all Umbro's submissions in turn before finding the Tribunal had come to the correct decision that Umbro had failed to discharge its burden of proving PNH was in fact its agent. None of the grounds of appeal justified interfering with the Tribunal's decision which was accordingly upheld.

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