

KIRKLAND ALERT

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Individual Found Personally Liable for Violation of U.S. Import Laws

Introduction

The U.S. Court of Appeals for the Federal Circuit (“CAFC”) recently found the president of an importing company personally liable for gross negligence in connection with undervaluing merchandise imported by the company.¹ The decision makes clear that individuals who act for or on behalf of importing companies can face civil liability under 19 U.S.C. § 1592 if merchandise imported into the United States is entered in violation of the U.S. import laws.

19 U.S.C. § 1592

19 U.S.C. § 1592 penalizes negligence, gross negligence, and fraud in the import process. Section 1592 (a)(1) reads as follows:

“no person by fraud, gross negligence, or negligence (A) may enter, introduce, or attempt to enter or introduce any merchandise into [U.S. commerce] by means of (i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or (ii) any omission which is material.”²

The Trek Leather Case

U.S. Customs and Border Protection (“CBP”) initially charged Trek Leather (“Trek”), the importer of record, and Harish Shadadpuri, the president and sole shareholder of Trek, with fraud for entering men’s suits into U.S. commerce by means of false acts, statements, and/or omissions that understated the dutiable value of the suits.³ Specifically, CBP alleged that Mr. Shadadpuri provided fabric to the non-U.S. manufacturer of the suits free of charge, or at a reduced cost, which would be considered an “assist”⁴ under the U.S. import laws. As an assist, the value of the fabric should have been included in the value of the suits when imported into the United States. However, according to CBP, the declared value of the suits did not include the value of the fabric. The Court of International Trade (“CIT”) viewed this omission as a “violation of statutory and regulatory obligations to state a proper value when filing the entry documentation required to secure the release of imported merchandise from CBP’s custody.”⁵ Mr. Shadadpuri argued that he could not be personally liable because liability under § 1592(a)(1)(A) is limited to the importer of record, which was Trek in this case.

On appeal from the CIT, the CAFC addressed: (i) whether Mr. Shadadpuri is a “person” covered by Section 1592(a)(1)(A); and, if so (ii) whether his actions came

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within the “enter, introduce, or attempt to enter or introduce” language of Section 1592(a)(1)(A).⁶

With respect to the first issue, the CAFC adopted a plain meaning approach to the term “person.” In so doing, the CAFC reviewed the legislative history of Section 1592, which demonstrated that Congress replaced the terms “consignor, seller, owner, importer, consignee, and agent” with “person.” This simplification suggested to the CAFC that the legislators intended the term “person” to have a broad meaning. Accordingly, the CAFC determined that Mr. Shadadpuri, as a corporate officer, could be considered a “person” under Section 1592. The CAFC then proceeded to address whether Mr. Shadadpuri could be held liable for his conduct.

In considering Mr. Shadadpuri’s conduct, the CAFC focused on the term “introduce” in Section 1592(a)(1)(A). Specifically, the CAFC determined that “introduce” was broad enough to “cover actions that bring goods to the threshold of the process of entry by moving goods into CBP custody in the United States and providing critical documents (such as invoices dictating value) for use in the filing of papers” for an anticipated release into U.S. commerce, even if it does not occur.⁷ Mr. Shadadpuri examined documents and forwarded them to his customs broker. However, Mr. Shadadpuri failed to include the value of the assists in the dutiable value of the men’s suits. The CAFC found that Mr. Shadadpuri did everything short of the final step of preparing the CBP entry forms, thereby “introducing” suits into U.S. commerce.⁸

In finding Mr. Shadadpuri liable for gross negligence, the CAFC firmly stated that it was not piercing the corporate veil, but rather that Mr. Shadadpuri’s own acts came within the language of Section 1592(a)(1)(A). The CAFC cited agency law, stating that “an agent who commits a tort is generally liable for the tort along with the principal, even though the agent was acting with the principal.”⁹ According to the CAFC, Mr. Shadadpuri personally committed a wrongful act under Section 1592(a)(1)(A) and was not relieved of liability because he was acting for Trek. The CAFC therefore affirmed a judgment holding Mr. Shadadpuri and Trek liable for \$45,245.39 in unpaid duties and \$534,420.32 in penalties, plus interest.

How the Trek Leather Decision Can Affect Your Company

Under *Trek Leather*, any corporate officer, compliance officer, or customs broker helping prepare or send invoices to be used for CBP entry has potential liability for “introducing” merchandise in violation of law. As always, company personnel involved in importing should be vigilant about evaluating their Customs compliance procedures by updating written policies and procedures and by documenting periodic testing and internal auditing. *Trek Leather* provides a strong incentive to do so in light of potential liability for individuals under Section 1592.

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¹ *United States v. Trek Leather, Inc.*, slip. op. No. 2011-1527 (Fed. Cir. Sep. 16, 2014).

² 19 U.S.C. § 1592(a)(1).

- 3 Trek subsequently admitted to gross negligence and the fraud charges against both were dropped.
- 4 An “assist” means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise: (i) materials, components, parts, and similar items incorporated in the imported merchandise; (ii) tools, dies, molds, and similar items used in the production of the imported merchandise; (iii) merchandise consumed in the production of the imported merchandise; and (iv) engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise. 19 C.F.R. §152.102(a).
- 5 *Trek Leather*, slip. op. No. 2011-1527 at 7.
- 6 *Id.* at 13.
- 7 *Id.* at 18.
- 8 *Id.* at 19.
- 9 *Id.*

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