FDRA
FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

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Myles B. Harmon, Esq.,
Director, Commercial & Trade Facilitation Division
Regulations & Rulings
Office of International Trade
U.S. Customs & Border Protection
1300 Pennsylvania Avenue, NW (Mint Annex)
Washington, D.C. 20229

Clarification of the Definition of "Athletic" in Chapter 64 of The Harmonized Tariff Schedule of the United States

Dear Mr. Harmon:

I write on behalf of the members of the Footwear Distributors and Retailers of America (FDRA) concerning the understanding of what constitutes athletic footwear in Chapter 64 of the Harmonized Tariff Schedule of the United States (HTSUS). This issue is the utmost priority for our members and consumers alike.

Founded in 1944, FDRA represents the entire footwear industry from small family owned footwear businesses to global footwear companies. It also serves the full supply chain of the footwear industry from research, design and development, to manufacturing and distribution, to retailers selling to global consumers.

In all, FDRA supports over 150 companies and 250 brands, or 80% of total U.S. footwear sales, making it the largest and most respected American footwear trade association.

The term "athletic" footwear is shorthand for the term "tennis shoes, basketball shoes, gym shoes, training shoes, and the like". Additional U.S. note 2, Chapter 64 defines the term as "athletic footwear other than sports footwear [ ], whether or not principally used for such athletic games or purposes."

"Footwear Definitions", T.D. 93-88, 27 Cust. Bull. 321, 313 (1993) includes a somewhat expanded definition equating sneakers with gym shoes and joggers with training shoes, and excluding slip-ons other than gymnastic slippers, and highly decorative footwear.

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The ICP, Footwear (2012), provides:

> *"Athletic" footwear includes:*
>
> *Lightweight "sneaker" type flexible soled footwear capable of being used in athletic activities requiring fast footwork or extensive running. Some of the features found in athletic footwear include (but are not limited to) foxing or foxing-like bands, athletic outer sole tread, padded tongue, foot-bed and collar, toe bumpers, heel counters, anti-injury devices, secure means of closure and general athletic appearance. Athletic footwear for classification purposes need not exhibit all such features.*
>
> *It does not include:*
>
> *Open toe/heel footwear, sandals, or any footwear that does not enclose the foot as the named exemplars do.*
>
> *Slip-on footwear without a means of closure to secure the shoe to the foot.*

FDRA members have expressed concern that a great deal of footwear is classified as athletic based primarily on appearance and the presence of what at one time was considered an athletic-like bottom. The best examples of this are the Converse "Chuck Taylor All-Star" and the iconic "P-F Flyer". At a point in the distant past, this footwear was in fact used for athletic purposes. However, at present, use for that purpose would be fugitive.[1] Nevertheless, footwear of this type is consistently classified as athletic in this country but in subheading 6404.19 in other countries. This is incorrect and FDRA urges that CBP's understanding of what constitutes athletic footwear be updated and clarified.

The concern is not primarily a duty issue. In general, classification as athletic or non-athletic has little effect on duty rate. First, the term appears at the eight-digit level only in subheading 6404.11. In some cases, classification as athletic is advantageous, as for example where a textile upper athletic shoe provides protection against cold or inclement weather. On the other hand,

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[1] The following is how the "All Star's" distributor describes the shoe:

> *Converse began in 1908 as a rubber shoe company specializing in galoshes. Soon after, we started using our rubber to make sneakers. In 1920, we renamed our canvas basketball sneaker the "All Star." The name stuck. What didn't stick was their intention. We made them to sink jump shots on the court. You, however, saw them as something more... and started wearing our sneakers to do whatever you wanted. You played music, made art, skated the streets and kicked back. You wore them as fashion. You wore them to work. You customized them with your personal style. You did everything to them, and in them. You saw our sneakers' unlimited potential.*
>
> *To this day, this spirit continues with all of our sneakers and apparel for All Star, Cons and Jack Purcell. As soon as you put them on and start doing your thing, their true life begins. You define them. You determine their journey. They become a one-of-a-kind celebration of your individuality and self-expression. They become a part of you. They're Made by you.*

where the value of the footwear is in excess of $12, classification as athletic is a disadvantage.

The definition of "athletic footwear" creates what is in effect a use provision ("whether or not principally used"; "capable of being used"). It clearly is not a principal use provision; it is what is referred to as a "suitable for use" provision. A provision of this nature does not require a showing of principal of chief use. But, it requires more than a casual, incidental, exceptionable or merely possible use. To be classified as athletic, a shoe must exhibit features that make it "particularly suitable" for athletic use. *See* HQ 962575 (February 8, 2002). CBP's current approach leads to the classification as athletic footwear that is neither designed, intended, nor suitable for use in athletic pursuits.

The mere fact that a shoe has a flexible sole and/or "a general athletic appearance" is not a sufficient basis to classify footwear as athletic. There must be one or more features that demonstrate suitability for use in athletic endeavors.

The fact that a shoe has a flexible, lightweight sole is hardly an indication of athletic use. Even men's dress shoes are advertised as having a lightweight flexible sole. See for example the product descriptions attached as Exhibit A. This is not to say that a lightweight, flexible sole is not a relevant factor. Surely, the absence of a lightweight, flexible sole would preclude classification as athletic. On the other hand, the presence of an anti-pronation device or similar feature, such as an EVA midsole, EVA removable foot bed, padding at collar or ankle, heel stabilizer, vent holes, treaded sole pattern that, for example, provides lateral stability, multi-directional traction, and/or stability, indicates suitability for athletic use. There is agreement that an outsole can indicate suitability for athletic use. However, rulings take a very broad view of what constitutes an athletic outsole. For example, a picture of the outsole of what was once described as a "tennis shoe" is attached as Exhibit B. The outsole, which might be described a "textured", is not suitable for athletic purposes.

CBP treats the presence of a foxing or foxing-like band as an indicator of athletic use. In FDRA's view, the presence of a foxing or a foxing-like band is not an indication of suitability for athletic use. The wide variety of footwear (including dress, casual and protective footwear), which CBP treats as having a foxing or foxing like band itself establishes that the feature is not a reliable indication of suitability for athletic use.

Some features are incompatible with athletic use. These include a non-treaded outsole such as the sole pictured in Exhibit B, a fully collapsible upper, *i.e.,* one having no reinforcements, heel counters, or any other medial/lateral support features, a mid-sole wedge, an upper that evokes a traditional dress or casual shoe pattern (wingtip, moccasin, oxford, ballet, saddle, etc.), or uppers made of materials such as silk, wool or woven strips.

Moreover, some rulings classify infants footwear as athletic, *e.g.*, NY L82358 (February 16, 2005). Clearly infants are not capable of engaging in athletic activities.

Another area where CBP rulings classify non-athletic footwear as athletic is footwear designed, marketed and intended for walking. Walking is not an athletic activity. Rulings that classify

footwear designed for walking as athletic note that the footwear "may be used for athletic games or purposes". NY N247881 (December 13, 2013). The rulings typically note that the footwear may be used "to engage in activities requiring fast footwork or extensive running". *E.g.,* NY N247001 (December 23, 2013). This statement is inconsistent with holding that walking footwear is classified as athletic. Walking may be good exercise but it is the polar opposite of fast footwork or extensive running. Footwear that the importer demonstrates was designed and marketed for walking should not be classified as athletic.

FDRA's view is that neither general appearance nor one or two characteristics shared with athletic footwear is a sufficient basis on which to classify footwear as athletic. Other factors should be taken into consideration.

The other factors include the manner in which the footwear is marketed. FDRA does not mean to say that classification as athletic requires that the shoe be marketed as athletic. However, if the shoe is marketed as casual or dress, classification as athletic footwear should be precluded. Athletic footwear should be limited to shoes that have at least three of the features described above, which, unlike a foxing or foxing-like band, are found largely, if not exclusively, in footwear designed for athletic purposes. On the other hand, a shoe that exhibits a feature that is incompatible with suitability for athletic use should not be classified as such.

FDRA appreciates that it is suggesting a substantial change in the manner in which CBP classifies footwear as athletic or non-athletic. With that in mind, we would be happy to meet with you or your designee to discuss the proposed clarification, provide appropriate samples, and to generally review the issue.

Please contact me if you have any questions on the above or believe that additional information would assist in your consideration of FDRA's request.

Sincerely,

Matt Priest

Enclosures

cc:
NIS S. Kalkines
Ivea O'Rourke, Esq.
John B. Pellegrini, Esq.

Exhibit A

12117-215

Constable Wing Ox

~~was $210.00~~ $89.90

Color: Brown CH

Size: 8.5 | Width: D (medium) | Quantity: 1

Size Conversion Chart >>

ADD TO CART **FREE SHIPPING!** on orders $100+ within the lower 48 states

Walk to the beat of your own drum in the Florsheim Constable Wing Ox. Choose a classic leather shade or opt for a design with contrast stitching to mix up your look. The Constable Wing Ox transitions easily from casual to dress, making it a shoe you'll wear all day long.

- Upper: Smooth full-grain leather, suede, or Horween Chicago Crazy Horse type full-grain leather
- Linings: Breathable leather
- Insole: Fully cushioned footbed
- Sole: Lightweight, durable and flexible XL Extralight
- Construction: Genuine Goodyear welt

Product Details

Item # 289929
UPC # 889132843026

Comfort at the cost of style - no way! The Rockport Colben lace-up is an easy blend of comfort and classic style with it's ADIPRENE® cushioning technology and leather oxford look.

- Leather upper
- Lace-up closure
- Round toe
- Lightly padded collar for comfort
- Fabric lining
- Removable contoured insole provides great underfoot cushioning
- ADIPRENE® by adidas technology provides superior cushioning
- Flexible and lightweight synthetic sole
- Imported
- View more **Men's Rockport Shoes**

Average Overall Rating

Runs Short		Runs Long
Runs Narrow		Runs Wide
Not Comfy		Very Comfy

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Exhibit B