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F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE		D É P O S É
	November 09, 2023 09 novembre 2023		
	Sherri Ally		
TOR		BETWEEN	

FEDERAL COURT OF APPEAL

SKECHERS USA CANADA, INC.

Appellant

– and –

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: CANADA BORDER SERVICES AGENCY
Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, Ontario
M5H 1T1
ATTN: Roger Flaim & Elizabeth Koudys

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of the Honourable Justice E. Susan Elliott of the Federal Court, dated November 1, 2023 (“**Order**”), dismissing the appellant’s appeal from the order of the Honourable Martha Milczynski of the Federal Court, brought by way of motion under Rule 51 of the *Federal Courts Rules* (“**Rules**”).

THE APPELLANT ASKS:

1. that this appeal be allowed;
2. for a judgment:
 - (a) setting aside the Order;
 - (b) extending the time for the respondent, Canada Border Services Agency (“**CBSA**”), to file any supporting affidavits by 30 days following the issuance of the judgment;
 - (c) in the alternative, leave to amend the appellant’s notice of application;
 - (d) for costs of this appeal and the prior motions; and
3. such further and other relief as counsel may advise and this Court may deem just.

THE GROUNDS OF APPEAL are as follows:

4. the appellant sought administrative relief in respect of four requests made to the CBSA (“**Requests**”):
 - (a) Request #1 | that the CBSA exercise its statutory discretion over the reassessment period prior to the issuance of a final report, due to its authority to conduct verifications and then make re-determinations that it considers appropriate, pursuant to section 42.01 and subsection 59(1) of the *Customs Act* (“**CA**”);¹

¹ Unless otherwise stated, all provision references are made to the *Customs Act*.

- (b) Request #2 | that the CBSA exercise its statutory discretion over the rescission of a final report, once issued, to temporarily relieve the appellant from having to make corrections and payments, due to its power to control the audit, examination, and verification processes and to make re-determinations, pursuant to sections 42, 42.01, and 59, so that issues in respect of Request #1 could be addressed without prejudice to the applicant;
 - (c) Request #3 | that the CBSA exercise its statutory discretion over the provision of extensions to the time period required to make corrections and payments, due to its ability to exempt what may be acceptable non-compliance, by declining to impose penalties under sections 109.1 and 109.3 or by waiving/cancellation penalties and interest otherwise payable, pursuant to section 3.3; and
 - (d) Request #4 | that the CBSA exercise its statutory discretion to provide for waiver or cancellation of penalties and interest otherwise payable, due to its broad authority to waive or cancel such penalties and interest, pursuant to section 3.3;
5. the CBSA denied each of the Requests (“**Decisions**”);
 6. the Decisions indicated a course of conduct which required censure;
 7. the appellant commenced an application for judicial review of the Decisions (“**Application**”);
 8. the CBSA brought a motion to strike the Application;
 9. the Associate Judge granted the CBSA’s motion to strike and ordered the Application struck on the ground that the Decisions were not subject to judicial review by the Federal Court;
 10. the appellant brought an appeal of the Associate Judge’s order, by way of motion under rule 51 of the Rules;
 11. the Judge dismissed the appellant’s appeal;

12. the Judge made palpable and overriding errors of fact, or of mixed fact and law, by:
 - (a) misapprehending the appellant's notice of application;
 - (b) conflating Request #1 and Request #2; and
 - (c) failing to consider Request #3 and Request #4;
- (b) the Judge made errors of law, by:
 - (a) misinterpreting the CA and the jurisprudence;
 - (b) holding that the Federal Court had no jurisdiction to hear the Application;
 - (c) finding that alternative relief was available in the form of a request to the Governor in Council; and
 - (d) exercising discretion based upon the wrong principles;
13. sections 2, 3.1 to 3.3, 32, 32.2, 33.7, 42.01, 44 to 48, 57.1 to 60, 61, 67, 68, 109.1, 109.3, and 128 to 135 of the CA;
14. sections 2, 5, 8, 9, and 12 of the Canada Border Services Agency Act;
15. sections 18, 18.1, 18.4, 18.5, 27, 28, and 52 of the Federal Courts Act;
16. section 51, 221, 306, and 307 of the Rules; and
17. 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 November 9, 2023.



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