The Register of Copyrights
of the
United States of America

Library of Congress
Department 17
Washington, D.C. 20540

December 7, 1995

(202) 707-8350

Dear Mr. Kreten:

The Copyright Office is responding to your letter of June 30, 1995, in which you appeal the rejection (David Levy's letter of March 1, 1995) of your first appeal (your letter of October 28, 1994) regarding the refusal to register copyright claims in the work Bar-F Products, Inc. Design Patterns. Following receipt of your second appeal the Copyright Office's Appeals Board met and carefully examined the patterns and all previous correspondence regarding this application. The Board concluded that under current copyright law and practices, the Bar-F Products, Inc. Design Patterns do not contain the requisite original authorship to support registration of copyright in the work.

Bonnie E. Figoni claimed copyrightable authorship in "entire patterns." These patterns are intended to create templates for cutting layers of fabric. This makes the patterns "useful articles" which are not copyrightable under Sections 101 (definition of "useful article") and 102 (subject matter of copyright) of the Copyright Act.

Section 101 defines a "useful article" as "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." It further provides that "the design of a useful article...shall be considered a pictorial, graphic, or sculptural work [subject to copyright protection under section 102] only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article."

The Appeals Board finds the patterns to be two dimensional designs for useful articles, template-type tools for use in the manufacturing process of certain items. The drawings merely follow the outline of the item(s) to be manufactured without separable authorship on which registration can be based.

In your second appeal you note that dress patterns are copyrightable. For your information, the Board notes that the aspects of dress patterns that are copyrightable are the textual directions included with the paper patterns as well as the illustration showing the finished product generally shown on the pattern's outer package. The pattern pieces themselves are not protected by copyright.

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You also claim that the patterns are copyrightable drawings of utilitarian objects, and not useful articles themselves. You liken them to blueprints, which are copyrightable. But that analogy is inapposite. Architectural plans convey information of a technical nature; pattern pieces are, in and of themselves, the templates used to construct useful objects. The patterns you submitted are not technical drawings, diagrams, or models, nor do they portray the appearance of the objects manufactured. They are the outlines of the component parts used in the manufacture of products. They are intrinsically utilitarian and functional, and thus are not eligible for copyright protection. See Beverly Hills Design Studio (N.Y.), Inc. v. James Morris, 126 F.R.D. (S.D.N.Y. 1989); Brandir International, Inc. v. Cascade Pacific Lumber Co., 834 F.2d 1142 (2d Cir. 1987).

In conclusion, because there are no elements in the Bar-F Products, Inc. Design Patterns which support your claim to copyright protection, the Copyright Office must again refuse to register the work. The Appeal Board's decision as set forth in this letter constitutes final agency action.

Sincerely,

Marybeth Peters
Register of Copyrights

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