The Register of Copyrights
of the
United States of America

[redacted]ry of Congress
Department 17
Washington, D.C. 20540

April 8, 1996

(202) 707-8350

Dear Mr. Robbins:

I write regarding the work SNO–BIZ HAWAIIAN SHAVE ICE BUILDING, and the question as to whether it was proper for the Copyright Office to refuse to allow your client, Specialized Buildings, Inc., to file a Form CA to redefine the instant work as an architectural work rather than a technical drawing. The work was registered originally as a technical drawing. The Copyright Office Appeals Board reviewed the application, the deposit, and all correspondence that has occurred between you and the Office. The Board concluded that the Office acted properly in your case by refusing to accept a Form CA to reclassify the nature of SNO–BIZ HAWAIIAN SHAVE ICE BUILDING. The facts in this case and the reasons for the Appeals Board's conclusion are stated below.

The work at issue was submitted as "architectural drawings" November 13, 1992, and was registered as a "technical drawing" under registration number VA 543–428. In a letter dated June 2, 1994, you filed a Form CA, a supplementary copyright registration, together with $20.00 and a request, on behalf of your client, to "correct an error that appears in the original registration." You requested that the work be registered not as a technical drawing, but rather as an architectural work.

Copyright Office Examiner Anne Zirkle spoke with you by telephone September 8, 1994, October 6, 1994, and October 26, 1994, and then sent you a letter dated October 27, 1994, explaining that in the case of a constructed work of architecture, copyright regulations required a deposit of one complete copy of the architectural drawing or blueprint, and photographs showing the exterior and interior views of the work being claimed. She explained further that a supplementary registration may not be made where the applicant has not submitted deposit materials that comply with deposit regulations for the work which the CA registration covers. No photos had been submitted for SNO–BIZ.

In addition, Ms. Zirkle wrote that the CA is meant to change facts concerning a registered work, and is not appropriate where the applicant wishes to change registration of a work from one class of authorship to a distinctly separate class of authorship which has different deposit requirements. She suggested that in order to register the work as an architectural work, the applicant should make a separate, basic registration for the architectural work and submit with that application the deposit materials required by copyright regulations.

You wrote to the Office February 8, 1995, requesting reconsideration of the denial of supplementary registration to classify SNO–BIZ as an architectural work rather than an architectural drawing or a technical drawing. You claimed that the materials originally deposited were sufficient to register copyright in an architectural work of an unconstructed building as the

facts and regulations existed as of date of application (November 9, 1992). Nonetheless, you enclosed photographs of a constructed SNO–BIZ building for the Copyright Office's records. You also noted that registration form VA is ambiguous as to whether it covers an "architectural work" or a "technical drawing".

You spoke with Copyright Office Attorney Advisor David Levy May 5, 1995, and said the SNO–BIZ building was **not** constructed as of the date of the original application for registration in 1992. Therefore, you asserted that photos were not required to be submitted at that time, and that you should be allowed to file a Form CA to update registration in SNO–BIZ from registration in technical drawings to registration in an architectural work. The original date of registration and copyright protection would hold as November 9, 1992. On August 17, 1995, you called Mr. Levy again, requesting a response from the Copyright Office.

In a letter dated August 31, 1995, Mr. Levy reviewed the SNO–BIZ application's history and the facts as the Copyright Office had them. He reviewed the function of a CA form, Congress' intent to protect architectural or technical drawings and architectural works as separate classes of works, and again he suggested that the situation could be resolved if the claimant would make a separate, basic registration for an architectural work.

On December 6, 1995, you appealed the Office's second refusal to recognize the original SNO–BIZ registration as one for an "architectural work".

Based on the regulations in effect at the time of original registration of the work, the facts of the case, the correspondence the applicant received from the Office regarding specific points of clarification, and the law, the Appeals Board concludes that it would not be appropriate to use a Form CA to change the original registration for technical drawing authorship to architectural work after the drawings have been registered.

Review must begin with the original submission of an application for registration for the work in question. That occurred November 13, 1992. At that time, the nature of the work was listed in Space 1 as "architectural drawings" and the nature of authorship was checked in Space 2a as "technical drawing." Works of architecture are distinct from the illustrations and plans for the building. The Form CA is meant to change facts concerning authorship or ownership, but not to change the character of the registration from one class to another.

The Form VA covers various categories or classes which may be selected by an applicant that allow the applicant to clarify the type of work submitted for registration. This allows the applicant to specify the type of work submitted, which is helpful in many Visual Arts cases where the interpretation of the nature of the work could be difficult. The classification procedure on the part of the applicant helps the Copyright Office to properly process the application, providing the appropriate legal protection for the applicant if the deposit shows copyrightable authorship. Distinctions among classes are important in differentiating works such as "technical drawings"

from "architectural works." See 17 U.S.C. 120; 37 C.F.R. 202.11; see also H.R. Rep. No. 735, 101st Cong., 2d Sess. 18–20 (1990).

In a letter dated December 11, 1992, the Office sent a letter to the copyright claimant's original counsel, Richard J. Zalasky of Rabbit, Pitzer & Snodgrass, specifically discussing the requirements for registering a claim in architectural drawings as compared to the requirements for registering an architectural work. The goal was to supplement the instructions found on a Form VA with specific advice, and to allow the claimant to make an informed decision as to which type of work he wished to register with the Copyright Office. The decision, as reflected in the Form VA, was to register the work as a "technical drawing." The category "architectural work" was available as a choice, but the description of the work chosen at that time was "technical drawing."

The Office suggested in its correspondence of October 27, 1994, and August 31, 1995, that there is a way to resolve the situation. To register a separate claim in SNO–BIZ HAWAIIAN SHAVE ICE BUILDING as an architectural work, the applicant should complete a new Form VA, claiming authorship in only "architectural work." As you know, the Office is already in possession of photographs of the constructed building, and has the $20.00 application fee. We would be pleased to resolve any conflict by making a new, separate registration.

The decision of the Appeals Board as set forth in this letter constitutes final agency action.

Sincerely

Marybeth Peters
Register of Copyrights

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