The Register of Copyrights
of the
United States of America

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

(202) 707-8350

April 8, 1996

Dear Mr. Burlingham:

I am responding to a request for reconsideration of the Copyright Office's refusal to register a copyright claim in the work DISCUS TORCH. The request, dated October 24, 1995, was filed on your behalf by Brooks R. Bruneau, of the firm Mathews, Woodbridge & Collins, P.A. The work is a jewelry design applied to a casing for a flashlight, and was submitted to the Copyright Office for registration August 8, 1994. Mr. Bruneau asked that the Office reconsider its previous conclusions that DISCUS TORCH did not contain sufficient copyrightable authorship to support a copyright registration.

The Copyright Office Appeals Board carefully examined all material contained in the DISCUS TORCH application and deposit, and reviewed all correspondence between you or your attorney and the Office. The Appeals Board found the flashlight containing the DISCUS TORCH jewelry design to be attractive; however, the Board was not able to detect even the minimum amount of copyrightable subject matter required to support a copyright registration. A work may be attractive, commercially valuable, and the result of substantial creative effort, but it may not be copyrightable.

The deposit shows a flashlight with simple parallel lines and circular areas. The flashlight itself is a useful article, and cannot be copyrighted. See 17 U.S.C. 102 (subject matter of copyright), 17 U.S.C. 101 (definition of useful article). The overall shape of the flashlight, although attractive, is not copyrightable under Esquire v. Ringer, 591 F.2d 796 (D.C. Cir. 1976), cert. denied, 440 U.S. 908 (1979)(the overall design of a utilitarian object, even if determined by aesthetic as well as functional considerations, is not eligible for copyright). The designs that are applied to the flashlight's casing are familiar shapes that may not be copyrighted. See 37 C.F.R. 202.1. Even if the Board agreed that the flashlight contained separable authorship, the authorship in the arrangement of the parallel lines and circular areas where one presses the casing to turn on the light and where the light emerges from the casing do not contain the minimal amount of original authorship that must be detected in a pictorial, graphic, or sculptural work to support copyright registration. The instant case may be distinguished from Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989 (2d Cir. 1980) in that the belt buckles in Kieselstein-Cord contained original artistic design that "r[o]se to the level of creative art" and reflected a level of protectible sculptural authorship beyond the de minimis design authorship present in this work. See id. at 994.

In sum, because there are no elements in DISCUS TORCH which support a copyright registration, the Copyright Office must refuse to register the work. The Appeals Board's decision as set forth in this letter constitutes final agency action.

Sincerely,

Marybeth Peters
Register of Copyrights

Stephen Burlingham, Inc.
Attention: Stephen Burlingham, Pres.
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Princeton, New Jersey 08540