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Washington
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April 22, 1997

Re: WREATH CARD HOLDER
Control No. 60-500-7496(b)

Dear Ms. Alstadt:

This letter concerns the work WREATH CARD HOLDER, which your client, Adams Manufacturing Corporation, submitted for registration with the Copyright Office. Copies of the application, deposit, and correspondence between you and the Copyright Office were thoroughly reviewed by the Copyright Office Appeals Board in response to your letter of October 18, 1996, in which you requested that the Office reconsider its decision that WREATH CARD HOLDER is not a copyrightable work. Upon reconsideration, the Board concluded that your client's work cannot be registered by the Office because it does not contain sufficient original authorship to support a copyright claim.

The Administrative Record

The Copyright Office received a VA application from Adams Manufacturing Corporation June 26, 1995. The work, a greeting card holder, was described by the claimant as a three dimensional sculpture and two dimensional artwork.

In a letter dated September 20, 1995, the Office notified the claimant and explained that the WREATH CARD HOLDER could not be registered because it was a useful article; useful articles are not protected by copyright law. Examination did not reveal separable authorship that would constitute a copyrightable work of art. Two examples of separable authorship were cited from the House Report for the Copyright Act of 1976. See H.R. Rep. No. 1476, 94th Cong., 2d Sess. 55 (1976) (hereinafter, House Report).

You responded on October 5, 1995, writing that the product contained separable copyrightable authorship much like one of the examples given in the House Report. Therefore, you requested reconsideration of the Office's refusal to register the work.

The Office replied in a letter dated June 19, 1996. Visual Arts Attorney Advisor David Levy wrote that the tree shapes on the circular card holder appear to work with the two prongs on either side of each shape, and appear to be used to hold cards on the ring. He noted that aside from their functional nature, the shapes, all identical, consisted of a rectangle merging into a triangle, "or a minimal, unadorned and basic outline of a standard" Christmas tree shape. These are familiar shapes and, as such, are not copyrightable under 37 C.F.R. § 202.1.

In addition, Mr. Levy cited Forstmann Woolen Co. v. J.W. Mays, Inc., 89 F.Supp. 964 (E.D.N.Y. 1950), and Bailie v. Fisher, 258 F.2d 425 (D.C. Cir. 1958), for the proposition that simple variations of standard designs and their simple arrangements do not provide a basis upon which to support a copyright claim. He also distinguished the work's tree pattern from the copyrightable examples in the House Report, noting that the card holder did not appear to contain sufficient expressed authorship to be registered.

In your second appeal, dated October 18, 1996, you again asserted that the work embodied a distinctive, copyrightable pattern of tree shapes arranged around and projecting from a circular ring. You claimed that the work contained separable authorship copyrightable under 37 CFR 202.10(c), and stressed that the raised, molded tree patterns would be copyrightable if they were reproduced on paper as a drawing or were carved into a utilitarian object. You also wrote that the work's design did not simply represent a familiar symbol or design, because even if the tree shape were familiar, it was "unusual to see a tree within a tree."

The Appeals Board's Decision

The Copyright Office Appeals Board considered the points you raised in your appeals, and reviewed de novo the application and deposit.

This work was created for the functional purpose of attaching Christmas cards to a frame. The design of a useful article is copyrightable only to the extent that the 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. See 17 U.S.C. § 101 (definition of useful article); Norris Industries, Inc. v. International Telephone and Telegraph Corp., 696 F.2d 918 (11th Cir. 1983), cert. denied, 464 U.S. 818 (1983)(pattern formed by spokes of automobile wheel cover not separable from its utilitarian function); see also Compendium II Copyright Office Practices § 505 at 500-10 (1984).

Once the Copyright Office determines that a work is a useful article, it then examines the work to see if it contains any separable copyrightable authorship that could support a claim to copyright. This work consists of a ring and 24 Christmas tree shapes of trees within trees. There are two ovals below each tree on which to place the cards. The only pictorial aspect that can be considered separately from the useful article is the tree shape; the tree shape, as well as the ring and the oval holders, are common shapes that lack the originality and creativity needed to support a copyright claim under 17 U.S.C. § 102 and 37 CFR § 202.1(a). The three dimensional aspect of the work formed by the trees within trees is also insufficient authorship on which to base a copyright claim.

Nor would the tree shape, the ring or the ovals necessarily represent copyrightable authorship if they were reproduced as drawings on paper. The appearance of similar patterns on holiday wrapping paper, cards, and holiday decorations does not mean that the patterns are copyrightable. Each work must be evaluated on its own merit for the presence of copyrightable authorship.

In summary, the Copyright Office Appeals Board determined that there is not sufficient separable and copyrightable authorship in the WREATH CARD

HOLDER to support a copyright registration. This letter constitutes final agency action in this matter.

Sincerely,

Julia B. Huff

Julia B. Huff
Acting Chief, Examining Division
for the Appeals Board
U.S. Copyright Office

Lynn J. Alstadt
Buchanan Ingersoll, P.C.
One Oxford Centre
301 Grant Street
20th Floor
Pittsburgh, PA 15210-1410

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