United States Copyright Office
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September 14, 2006

Heather C. Brunelli, Esq.
Thompson & Knight PC
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201

RE: GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS
GIFT WRAP WONDERLAND 2002 SQUARE SHORT – PRODUCTS
CONTROL NUMBER: 61-222-7302(T)

Dear Ms. Brunelli:

The Copyright Office Review Board has reviewed your request to reconsider the Examining Division's denial of the claims to register the GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS and GIFT WRAP WONDERLAND 2002 SQUARE SHORT – PRODUCTS on behalf of The Container Store, Inc. After reviewing the materials submitted in support of the claims, the Board has determined that the works cannot be registered because they represent uncopyrightable 3-dimensional useful articles when examined for any 3-dimensional sculptural authorship, and, they are also uncopyrightable when examined as functional subjects represented in drawings which drawings may, in themselves, be the subject of copyright but for which no claim is made.

DESCRIPTION OF THE WORKS

Both works, GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS and GIFT WRAP WONDERLAND 2002 SQUARE SHORT – PRODUCTS, depict an arrangement of rectangular shapes and lines that represent various types of shelving with annotations generally indicating the contents of particular areas. Representations of the deposits submitted for these works are displayed below and attached in the Appendix as Exhibit A and B, respectively.

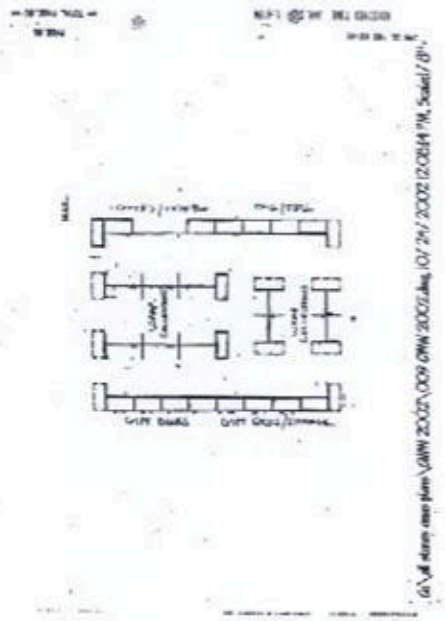


Exhibit A

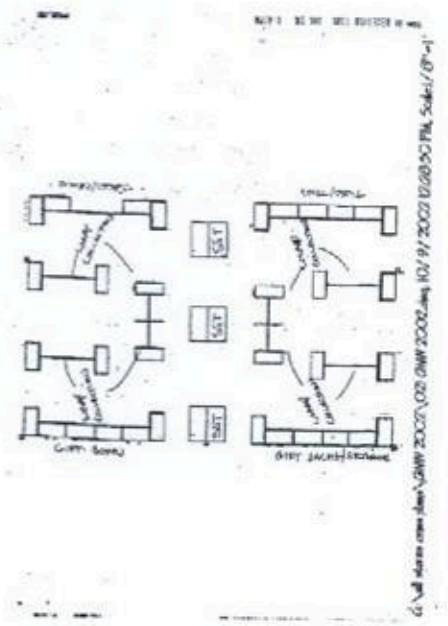


Exhibit B

I. ADMINISTRATIVE RECORD

The initial applications for GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS, GIFT WRAP WONDERLAND 2002 SQUARE LONG and GIFT WRAP WONDERLAND 2002 SQUARE SHORT – PRODUCTS were submitted by you, on behalf of The Container Store, Inc., and received by the Copyright Office on July 23, 2003. The applications claimed 3-dimensional sculptural authorship as the nature of authorship and "Interior Design" as the nature of the works. The registrations were refused by Visual Arts Examiner Ivan Proctor because the claims were determined to be for "the overall interior design" rather than the actual displays. Letter from Proctor to Brunelli of 9/29/2003. The letter of rejection stated that while copyright protection is available for an "architectural work," a claim for an architectural work does not include the arrangement of interior fixtures, furnishings, or other standard features. *Id.* Finding no basis for registration of these claims, Mr. Proctor rejected the applications.

A. First request for reconsideration [first appeal]

In a letter dated December 23, 2003, you filed a request for reconsideration of the refusal to register these works on behalf of your client, The Container Store, Inc. You stated that the original claims were submitted for the "interior designs of a section of a retail store." Letter from Brunelli to Examining Division of 12/23/2003, at 1. You took exception to Mr. Proctor's characterization of the designs as claims of "architectural works" as defined under the Copyright Act, arguing instead that "[r]egardless of whether the The Container Store's

designs can be categorized as "architectural works, the designs are "original works of authorship" that have been fixed in a tangible medium of express [sic] and are therefore qualified for copyright protection." *Id.* You note that the concept of what is a "work of authorship" under the Act is intentionally left vague in order to allow types of works not expressly enumerated in the Act to be recognized as protectible, citing Nimmer on Copyright and National Conference of Bar Examiners v. Multistate Legal Studies, Inc., 495 F. Supp. 34 (N.D. Ill. 1980). *Id.*

On May 13, 2004, Examining Attorney Advisor Virginia Giroux responded to your letter on behalf of the Examining Division. Ms. Giroux explained why these works were not registrable as architectural authorship and why the deposits were insufficient to support claims of 3-dimensional sculptural authorship. The Examining Division upheld the refusal to register these claims.

B. Second request for reconsideration [second appeal]

By letter dated August 30, 2004, you submitted a second request for reconsideration of the two claims entitled GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS and GIFT WRAP WONDERLAND 2002 SQUARE SHORT – PRODUCTS. In that letter you stated that, although Ms. Giroux suggested reapplying for registration on the basis of "technical drawings," your client is not seeking registration of technical drawings, but rather seeks to register "the overall design embodied in the drawings." Letter from Brunelli to Review Board of 8/30/2004, at 1.

Your letter also questions the legal basis for Ms. Giroux's statement that "interior design" is not protectible under the copyright law. Letter from Brunelli of 8/30/2004, at 1. You reiterate the statements made in your first request for reconsideration that copyright protection extends to "original works of authorship fixed in any tangible medium of expression" and that the concept of what constitutes a "work of authorship" under the Act "is intentionally left vague in order to allow types of works not expressly enumerated in the [A]ct to be recognized as protectible." *Id.* Regardless of whether the designs can be categorized as "architectural works," you argue that the designs are original works of authorship that are fixed in a tangible medium, and thus qualify for copyright protection. *Id.*

You further point out that the designs that your client seeks to register relate to actual "layout and design of a portion of their retail store." *Id.* You state that the deposits are representative drawings of actual 3-dimensional designs. You also note that The Container Store, Inc., is not claiming copyright in the individual elements of the designs, but is, instead, claiming copyright in the particular arrangement of those elements as reflected in the drawings. You accept that the works may not qualify as architectural works, but argue that they are nevertheless registrable as sculptural works or as "interior design." *Id.*, at 1-2.

You also argue that the Baldine case supports your view that works, like the ones at issue in this request, have been held to be registrable. Baldine v. Furniture Comfort

Corporation, 956 F. Supp 580 (M.D.N.C. 1996). You note that the registration in Baldine consisted of layout plans, shelving designs and models of furniture and shelving. You also point out that Ms. Giroux distinguished The Container Store's application from that in Baldine by stating that "no copyrightable sculptural work is represented in the deposit copies submitted for registration." Letter from Giroux of 5/13/2004, at 2. You also offered to provide additional deposit material capable of displaying the 3-dimensional nature of the work. Letter from Brunelli of 8/30/2004, at 2.

Although Ms. Giroux stated that the displays and fixtures depicted in the works are useful articles that contain no separable authorship, you argue that while the individual elements within the interior design may be functional in nature, "the designs themselves are not simply utilitarian." *Id.* at 2. You state that the designs include features that are capable of existing independently of the utilitarian aspect of the articles. In particular, you claim that, although the shelving serves the purpose of displaying retail items, the "arrangement of the shelves is original, as is the decision of which products to display on which shelves and the type, length and height of the various shelving." You conclude that the design of the interior displays is creative rather than functional, and is therefore entitled to copyright registration. *Id.*

Lastly, in response to Ms. Giroux's point that the authorship in GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS and GIFT WRAP WONDERLAND 2002 SQUARE LONG is largely the same, you selected GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS as the preferred work and effectively withdrew your independent claim on GIFT WRAP WONDERLAND 2002 SQUARE LONG.

II. DECISION

The Review Board has reviewed the applications as well as all material submitted in support of the registrations at both the first and second levels of reconsideration, including the supplementary information requested on the preexisting works on which these works were based as stated in space 6 of the applications, and has determined that GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS and GIFT WRAP WONDERLAND 2002 SQUARE SHORT – PRODUCTS cannot support a claim of copyright for the reasons set forth below.

A. Extent of claim

The authorship description which is stated on the application forms for the two works at issue here is "3-dimensional sculptural authorship;" you also describe the works as representing "interior design" with respect to the "nature of these works." The deposit materials submitted for these works are drawings of placements of shelving and general indications of the contents placed on that shelving. It appears that your client may be seeking

registration for two separate categories of authorship. We address first The Container Store's claim in 3-dimensional sculptural authorship.

1. 3-dimensional authorship

The statutory category of "pictorial, graphic, and sculptural works," 17 U.S.C. 101 (definitions), encompasses both 2-dimensional drawings and 3-dimensional sculptural works. The statute defines pictorial, graphic, and sculptural works as including "works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work 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."

You have, however, made it clear that your client, The Container Store, Inc., does not seek to register claims in the 2-dimensional drawings which have been submitted, but, rather, offers the 2-dimensional deposits only as representations of the 3-dimensional sculptural works, or, in your words, "at the very least, as 'interior design'." Letter from Brunelli of 8/30/2004, at 2. We will address your reference to 'interior design' further within this letter but, now, accepting your limitation of the claim, the Review Board will examine the works as 3-dimensional sculptural authorship.

The 3-dimensional objects in question here are shelves; these shelves are, we assume, of a general type of shelves upon which items or objects are placed or stored and may be used for the purpose of displaying retail items or objects. Letter from Brunelli of 8/30/2004, at 2. The law's definition of pictorial, graphic, or sculptural works makes it clear that protection does not extend to utilitarian aspects of any work. The statute further defines works which are essentially functional in their purpose, aspects, or design.

> A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a useful article.

17 U.S.C. § 101.

Taking the statutory definitions into consideration, all of the shelves, and any baskets and/or hangers which may accompany these shelves, *are* useful articles and they remain useful articles, in their individual essences and, as combinations or aggregations of themselves. As such, there is a requirement of separability in order for these useful articles, i.e., in order for any features of such articles, or in order for any combination of such articles, to be considered copyrightable.

When it enacted the 1976 Act, Congress explained that:

> [A]lthough the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it copyright protection under the bill. *Unless the shape of an industrial product contains some element that, physically or conceptually, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted* under the bill. The test of separability and independence from "the utilitarian aspects of the article" does not depend upon the nature of the design – that is, even if the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable. And, even if the three-dimensional design contains some such element (for example, a carving on the back of a chair or a floral relief design on silver flatware), copyright protection would extend only to that element and would not cover the over-all configuration of the utilitarian article as such. (emphasis added)

H.R. Rep. No. 94-1476, at 55 (1976).

a. Separability – physical

Physical separability would not be of assistance with respect to the works at issue here. Physical separability means that the graphic or sculptural features must be able to be separated from the useful article by ordinary means. Compendium of Copyright Office Practices II, § 505.03 - 505.04 (1984) [hereinafter Compendium II]. Removal of a shelf, or shelves, from among the particular placement of shelves, would still not create a separable work of authorship. Rather, removal of a shelf would simply isolate one useful article and leave a partial– or different– layout of other useful articles/shelves. In a case such as this, it would appear that the only possible form of separability that might apply would be conceptual separability.

b. Separability – conceptual

The test for conceptual separability is stated in Compendium II. Conceptual separability means that the subject features are "clearly recognizable as a pictorial, graphic, or sculptural work which can be visualized on paper, for example, or as a free-standing sculpture, as another example, independent of the shape of the useful article, *i.e.*, the artistic features can be imagined separately and independently from the useful article without destroying the basic shape of the useful article. The artistic features and the useful article could both exist side by side and be perceived as fully realized, separate works – one an artistic work and the other a useful article." Compendium II, § 505.03. For example, while a carving on the back of a chair cannot readily be physically separated from the chair, it can

easily be conceptually separated because one could imagine the carving existing as a drawing. The chair, meanwhile, would still remain a useful article having retained its basic shape, even absent the carving. The carving would therefore qualify as conceptually separable.

The question before the Board is whether the shelves and any associated baskets and hangers contain any features that are conceptually separable under Compendium II's test and are also copyrightable in themselves. The deposit materials do not show detail of the shelving sufficient for the Board to identify any conceptually separable features of the shelves. The representative drawing depicts only a layout of rectangular shapes and lines without any indication of details about the shelves themselves or about the types of goods, materials, or items which may be placed or stored on the shelves.

The deposit does provide generalized information in association with groups of the rectangles representing shelving which indicate terms, such as, "GIFT BOXES," "GIFT SACKS/STORAGE," "SACKS/CELLO," "WRAP COLLECTIONS," "TUBS/TINS," and "SST;" but this characterization gives nothing beyond a summary of various items meant for the shelves. You have indicated that your client had to decide on the "type, length and height of the various shelving" [Letter from Brunelli of 8/30/2004, at 2]. However, the length and height of the shelving, are, in essence, descriptive of the overall shape and configuration of the shelving and, thus, are not separable from the object itself – the length and height of the shelving *constitute the shape of the shelving itself.* We also note that the length and height of the shelving are, to the degree they are determined by products and objects to be placed on them, influenced by utilitarian considerations. The useful article that constitutes the shelving, in this case, the 3-dimensional authorship which is claimed on the applications submitted for these works, is not registrable.[1]

2. "Interior design"

Although you have indicated at the "nature of authorship" space on the applications for these works only the category "3-dimensional sculptural authorship," you have also completed the "nature of work" line on both applications with the phrase "interior design." The "nature of work" line is meant to provide a description of the general nature and character of the work being registered. Compendium II, 614.

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[1] *See, e.g., Esquire v. Ringer*, 591 F.2d 796, 800 (D.C. Cir. 1978), *cert. denied*, 404 U.S. 908 (1979) copyright protection is not available for the "overall shape or configuration of a utilitarian article, no matter how aesthetically pleasing that shape may be." In that case, the Copyright Office had refused to register an outdoor lighting fixture which arguably contained non-functional, purely aesthetic features. The court upheld the Office's refusal, noting that "Congress has repeatedly rejected proposed legislation that would make copyright protection available for consumer or industrial products." *Id.* Similarly in *Norris Industries, Inc. v. International Telephone & Telegraph Corp.*, 696 F.2d 918, 924 (11th Cir. 1983), *cert. denied*, 464 U.S. 818 (1983), the court held that a wire-spoked wheel cover was not entitled to copyright protection because it was a useful article used to protect lugnuts, brakes, wheels and axles from damage and corrosion, and it did not contain any sculptural design features that could be identified apart from the wheel cover itself.

You have admitted that these works may not qualify for protection as architectural works and have made it clear that your client does not desire a claim for these drawings on the basis of "technical drawing" authorship. Letter from Brunelli of 8/30/2004, at 1 - 2.

You have stated that the submission of "written designs and layout plans to tangibly express the actual in-store designs" are not claims in the individual elements of the designs but, instead, should be interpreted as claims in the "particular arrangement of those elements" as reflected in the drawings submitted for registration. You have also, several times, referred to the overall "interior design" as being the authorship for which you wish registration. Letter from Brunelli of 8/30/2004: "We are not seeking copyright protection for technical drawings, but rather are seeking to protect the overall design embodied in the drawings." [Letter at 1]. "The Container Store, Inc. has applied to register the copyright in designs relating to the layout and design of a portion of their retail store." [Letter at 1]. "We must argue that [the works] could be registered as '3-d sculpture' or at the very least as 'interior design.'" [Letter at 2].

The original examiner in this case, Mr. Proctor, as well as the Examining Division's attorney advisor, Ms. Giroux, raised the topic of architectural works because the term "interior design" may imply an architectural work. We agree with your position that the categorization of a given work is not necessarily determinative of whether such category is or is not protected under the copyright law. As you have mentioned, copyright protects original works of authorship fixed in any tangible means of expression. 17 U.S.C. 102[a]. Although you have also cited Nimmer for the proposition that "the concept of what is a 'work of authorship' under the Act is intentionally left vague in order to allow types of works not expressly enumerated in the act to be recognized as protectible" [Letter from Brunelli of 8/30/2004, at 1], your request for reconsideration consistently indicates that, in addition to a claim in "3-d sculpture," you are also seeking a claim in "interior design" and, thus, the Board must determine whether "interior design" is a term which represents copyrightable and, thus, registrable authorship.

a. Architectural works

The statute's definition of architectural works reads as follows:

> An architectural work is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design but does not include individual standard features."

17 U.S.C. 101 (definitions). And, the legislative history of the amendment which added architectural works to the statute's protection speaks of the fact that "interior architecture may be protected." H.R. Rep. No. 735, 101st Cong., 2d Sess 18 (1990). You have not, however, submitted materials which show the interior structure of, or the composition of

multiple spaces within, a building, or architectural work; rather, you have submitted materials which show the contents of a retail showroom.

The contents and placement of the shelving and the goods which are to be placed on this shelving do not appear to fit the statutory definition of "architectural works." The design of the shelves is not the "design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings." The claim as you have stated it is not even the design of a single room; rather, it is the design of individual articles or objects –the shelves– in the configuration in which they are placed within a retail showroom in order to display merchandise. The Board interprets the reference in the House Report, *above at 8*, concerning the clause "interior architecture may be protected" to mean that protection may extend in an architectural work not only to its exterior design but also to its interior design elements. There is no indication within this submission for registration that any architectural work exists in which interior architectural elements, such as a composition of interior spaces, also exist.

b. Deposit: drawings and what is depicted in them

Although you have stated that your client, The Container Store, Inc., does not wish to pursue registration for the actual drawings submitted, your multiple references to "interior design" and the entry of that phrase on the application forms make it clear to the Board that what is sought is, indeed, a registration for the design, i.e., the layout of the objects [shelves] within a given rectangular or square showroom space.

Such layout or configuration of objects within a space is not the subject of copyright. We take this opportunity to draw an analogy between your claim and the copyright law prior to the 1990 amendment [Architectural Works Copyright Protection Act, Pub. L. No. 101-650, 104 Stat. 5089, 5133] which specifically added federal protection for the object that was portrayed in architectural plans or blueprints, i.e., for a building, structure, or edifice itself. The House Report to the 1990 Amendment explicitly explains the relationship between the architectural work itself and the plans or drawings which show it: "[A]n individual creating an architectural work by depicting that work in plans or drawings will have two separate copyrights, one in the architectural work (section 102(a)(8)), the other in the plans or drawings (section 102(a)(5))." H.R. Rep. No. 735, 101st Cong., 2d Sess 19 (1990).

Under the previous copyright law, 17 U.S.C. 5(i) (repealed 1976) (1909 Act), Congress had provided protection for "drawings or plastic works of a scientific or technical character." And, although this category, explicitly expanded, of "pictorial, graphic, and sculptural works" is now codified at 17 U.S.C. 102(a)(5), under the previous provision of 5(i) which provided for the protection of copyright blueprints and plans (drawings), "no copyrighted architectural plans under 5(i) may clothe their author with the exclusive right to reproduce the dwelling pictured." Imperial Homes Corp. v. Lamont, 458 F.2d 895, 899 (5th Cir. 1972). Imperial Homes relied on the principle articulated in Baker v. Selden, 101 U.S. 99 (1879) that the explanation or expression of an art or thing may be protected under

copyright but the art or thing itself remains unprotected, unless it falls within the province of patent law. *See also* Demetriades v. Kaufmann, 680 F. Supp. 658, 666 (S.D.N.Y. 1988): ("Construction of a building imitating that depicted in copyrighted architectural plans does not, consistent with Baker, constitute infringement of those plans."); DeSilva Construction Corp. v. Herrald, 213 F. Supp. 184, 195-196 (M.D. Fla. 1962): (copyright protects unauthorized copying or use of the architectural plans but does not extend to the structure itself).

We approach your claim in the "interior design" consisting of shelving in showrooms by way of analogy. We realize that your client, The Container Store, Inc., is not– and cannot– claim copyright in the design consisting of the shelves arranged and set out in square or rectangular showrooms as an architectural work. You have not pressed such a claim; indeed, you have stated that the works at issue here "may not qualify for registration as 'architectural works.'" Letter from Brunelli of 8/30/2004, at 2. You nevertheless have argued for the registrability of these works because you state that the arrangement of the shelves is original, as is the decision of which products to display on which shelves, the type, length and height of the various shelving, the combination of all of which you term "creative rather than functional." *Id.*

It appears to the Board, then, that you are seeking registration for the arrangement and layout of the shelving and other items within a showroom. We must refuse registration on the same basis which provided the reasoning for courts to deny protection to a building that was depicted in architectural plans prior to the 1990 architectural amendment– "this result protects against copying of copyrighted material, yet does not change the copyright act into a patent act and give the person holding the copyright a monopoly on the ideas there expressed." Robert R. Jones Associates, Inc. v. Nino Homes, 858 F.2d 274, 280 (6th Cir. 1988), citing Herman Frankel Organization v. Tegman, 367 F. Supp. 1051, 1054 (E.D. Mich. 1973). The contents of the showroom as depicted in the drawings which you have submitted for registration are not, as we have discussed, copyrightable in themselves because they are useful articles lacking the required separability, *above at 5 - 7.* Their depiction in the drawings represents a representation of useful articles, akin to the representation of a building in a pre-1990 blueprint or drawing, which cannot find protection merely because they are reproduced within a drawing which may be amenable to copyright [and for which you seek no registration.]

The block design of shelving with vague, generalized types of elements that would be contained on the shelves is essentially a claim for a particular layout of shelves with generalized contents; such a claim may fairly be referred to as the *idea* underlying the placement of the shelves and their content. While certain selection and arrangement of useful articles may rise to the level of copyrightable authorship [the current statute's definition of compilation– the selection, coordination, or arrangement of items in such a way that the resulting work as a whole constitutes an original work of authorship], the general layout or placement of utilitarian shelves within a given space is not such a resulting "work."

The overall layout[2] or placement of the shelves, any baskets and any hangers serves a utilitarian purpose: to hold, contain, or hang some kind of product or items. Again, that which is depicted in the drawings, like the pre-1990 building depicted in a blueprint, is not automatically copyrightable by extension from the drawing.

As Justice Bradley explained many years ago, care must be taken to limit protection only to expression, such that an idea itself is not protected. Baker v. Selden, 101 U.S. 99 (1880).[3] The works you have submitted for registration are, all functional elements being set aside as non-protectible as well as any possible protection for the drawings, essentially bare outlines of placeholders laid out in commonplace formats within common-shaped backgrounds to represent the placement of shelving and goods within a retail store. The particular layouts claimed do not reveal sufficient separable creative expression in their selection, coordination or arrangement to meet the minimal level of creative authorship required to support a claim of copyright; what is depicted in the drawings is essentially of a utilitarian nature. Again, the layout appears to be determined by taking functional factors into consideration– the shelves must be arranged in a way which adequately shows the goods or objects on them; the shelves must be positioned so that it is fairly easy for customers to navigate them as they shop within a given space; the shelves must be positioned so that customers can easily retrieve the objects on them. Even though the layout may be aesthetically pleasing, it remains inseparable from the functionality of the useful articles of the shelving and the goods placed on them. Thus, the Review Board affirms the denial of registration based on inseparable authorship in useful articles as they are depicted within a drawing.

B. Preexisting authorship

The Review Board further notes that these claims are for derivative authorship. The preexisting unregistered works entitled 2001 Giftwrap Wonderland CHP and 2001 Giftwrap Wonderland FTW & CCK were provided to the Copyright Office. See Exhibits C and D respectively appended to the decision. The Review Board does not believe that the derivative nature affects the analysis in such a way that it warrants discussion in this decision; the Board notes, however, that to the extent the instant claims do incorporate features from the preexisting works, those features cannot be considered as a basis of the new

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[2] The Copyright Office does not register claims of general format or layout, or, claims in a mere formatting of generic typographical placeholders or of commonplace and uncopyrightable symbols. Compendium II states that copyright does not protect either the general format or layout, or the idea expressed by either of these. Compendium II, § 305.06.

[3] *See* Baker v. Selden also for the example of the suggestion that any copyright protection for patterns, for dresses or other clothes-making purposes, does not extend to the use of such patterns in actually making the dresses or clothing items; thus, the clothing items are not protected by extension via the pattern copyright. 101 U.S. at 107.

claim. However, because the Review Board finds that the works as a whole are unregistrable, the Board finds it unnecessary to address this further limitation.

C. Baldine

Lastly, you cite the Baldine case in support of your claims. Baldine v. Furniture Comfort Corporation, 956 F. Supp 580 (M.D.N.C. 1996). We point out that, procedurally, the decision in Baldine was in response to defendant's motion for summary judgment, and as such, the evidence was viewed in a light most favorable to the plaintiff. The court, however, found that the preexisting nature of the individual elements did not bar Ms. Baldine's claim because the plaintiff did not claim copyright in the individual elements, "but instead has copyrighted her particular arrangement of those elements as reflected by the models and drawings prepared by her." Baldine, at 584.

We have reviewed the registration referred to in the Baldine case. We cannot, however, locate the deposit materials sent to the Office in 1995. The work at issue in Baldine, as described in general terms in the court's opinion, appears to be an arrangement of furniture and other useful articles, similar to the two works now before the Review Board. In her registration, Ms. Baldine had claimed in 3-dimensional sculptural authorship and in technical drawing. The district court noted that Ms. Baldine's certificate of copyright carried a rebuttal presumption of validity. Given the application information and the registration principles we have explained in this letter, we question the correctness of the examiner's decision and believe that the Baldine claim should have been questioned when it was first submitted for registration. Thus, we do not consider the Baldine case strong precedent for your arguments.

III. CONCLUSION

For the reasons stated above, the Copyright Office Board of Appeals concludes that the GIFT WRAP WONDERLAND 2002 SQUARE LONG – PRODUCTS and GIFT WRAP WONDERLAND 2002 SQUARE SHORT – PRODUCTS cannot be registered. This decision constitutes final agency action.

Sincerely,

/S/

Nanette Petruzzelli,
Special Legal Advisor for Reengineering
for the Review Board
United States Copyright Office

EXHIBIT A

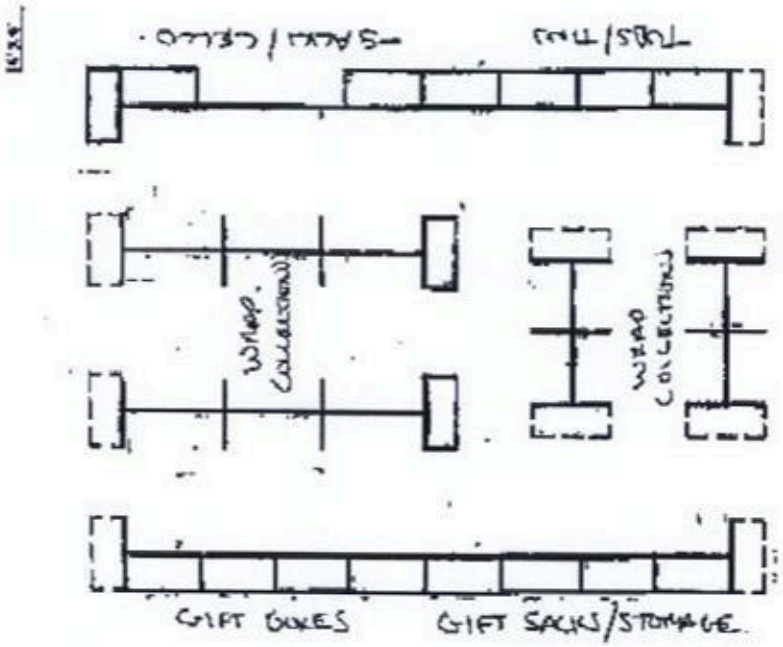


EXHIBIT B

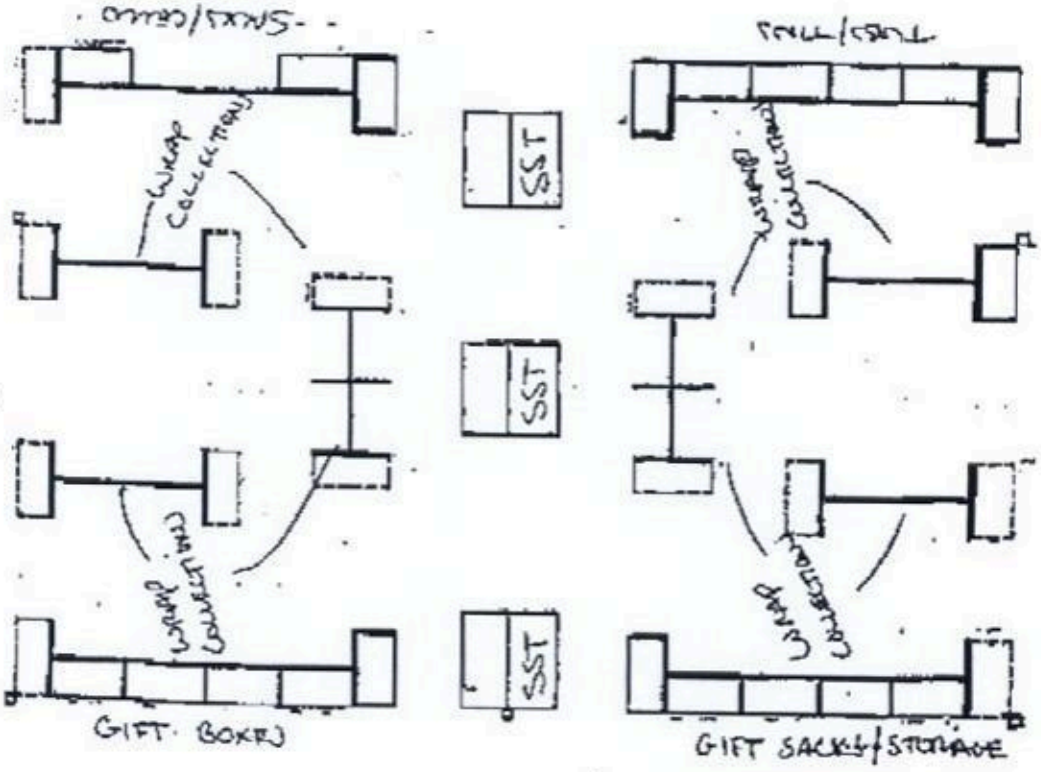


EXHIBIT C

2001
Giftwrap Wonderland
CHP

Drawing Date: 09.14.01
Scale: 1/8" = 1'
84 Bays

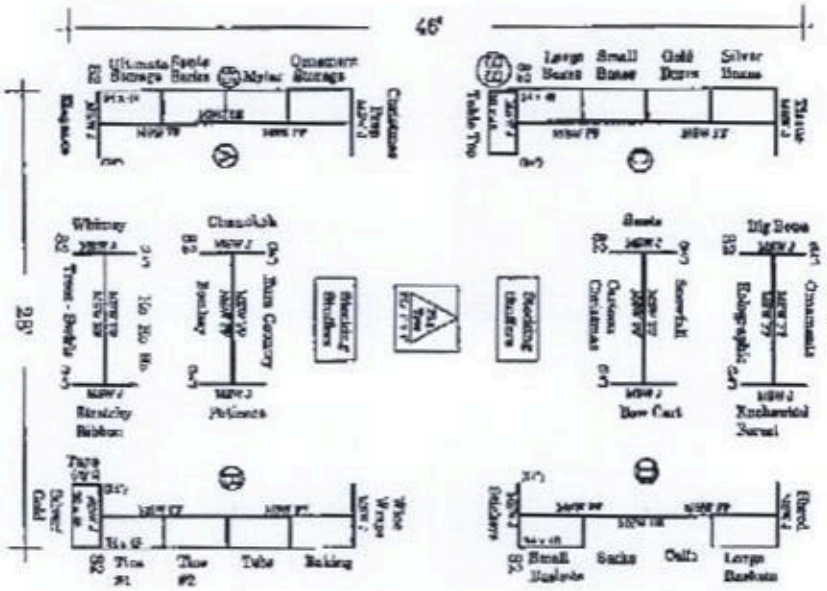


EXHIBIT D

2001
Giftwrap Wonderland
FTW & CCK

Drawing Date: 09.14.01
Scale: 1/8" = 1'
84 Bays

