

MP-413

Book

MEMORANDUM

February 1, 1940

Remitter: Astrol Company (A-136075)

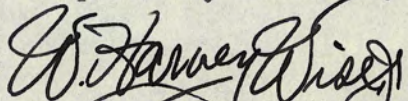
Title: "Your Psychic Powers and How to Develop Them."

Question: Division of opinion as to whether registration may be made on form A2, basing the new claim of copyright on pages of advertising.

The applicant has submitted for copyright registration an application on form A2, giving as the new material upon which the copyright claim is based the addition of advertising matter in the back of the book. An examination shows this to consist of some five printed pages.

In the opinion of Mr. Wise, Mr. Smith and Mr. Pierce this is sufficient to justify registration of a new claim of copyright and registration should be made accordingly. On the other hand, Mrs. Brady takes the position that "the advertising matter in the back of this book is made the basis of the claim for a book reissued with new matter. As such new matter would necessarily be an actual component part of the original title, which this advertising material is not, it does not seem to be subject matter for copyright as published. Had it carried a separate notice it would have been accepted on form A1 with explanation after title, 'published with, etc.' Furthermore, the assignment from Dodd, Mead, Inc., to the Astrol Company has not been recorded and therefore no registration is permissible."

Respectfully submitted,


Chairman, Revisory Board

Calls for a special letter (suggest A1)--order of Mr. Howell 2/15/40

MEMORANDUM

Re: Distinction between Registrable and Non-registrable Proof Material.

1. Registrable Proof Material

This serves the primary purpose of a catalogue. Includes books of illustrations, accompanied by more or less text, or none at all, distributed for use as regular catalogues are used, namely, to enable the customer to order from the producer such illustrations as he may wish to reproduce as advertisements in his local newspapers or otherwise (such as handbills or in the customer's own catalogue distributed to his own patrons). These are supplied in the form of cuts or mats, with the understanding that he may change the text at will to meet his own requirements.

The material thus distributed in the form of a catalogue does not therefore represent merely an intermediate process in the manufacture of the book, but is the final and only form in which the producer publishes his material. His clients are his public.

The supply of cuts or mats is governed by contract running for a certain period. Sometimes the separate cuts carry a separate copyright notice, but often they do not. The book of illustrations, however, always carries the regular notice on the title page, and sometimes individual pages of various cuts carry one general notice.

The producer makes no contact or contract with the newspapers. It is the customer who does that and supplies the newspaper with the mats. The newspapers could not independently procure copies of the books for the purpose of publication, for the obvious reason that they are not designed for advertising at large but only for a particular locality and for a particular customer.

This type of material while called proof, is not printed on proof paper but on a good quality of glazed paper.

Unless the producer secured copyright for his books of illustrations, he would be unable to carry out his contract to give the customer the exclusive right of user within the designated territory.

2. Non-registrable Proof Material.

Here a different story presents itself. It is in no sense a catalogue of illustrations. The producer deals directly with the newspapers, and his output is of a totally different character. It is either in literary form or in the form of cartoons, designed in both cases exclusively for newspaper publication in the first instance and in a certain sequence, and until so published has not served its primary purpose. The situation is analogous to that of an individual author who submits an article or

series of articles to a newspaper for acceptance or rejection. Unless accepted and published in the newspaper, there is no publication in the statutory sense.

Such material is clearly in an intermediate process between production and publication. As presented to the Copyright Office, the proof material consists of an aggregation of miscellaneous items, each bearing a separate notice of copyright and a "release" date; or a serialization in the form of the several chapters of a story, each chapter printed in columns bearing the same heading, with a resumé of what has gone before, with "to be continued" and a separate copyright notice at the end. As a matter of fact, the newspaper publication has already begun or even in some cases been completed, before the deposit of the so-called book has been received in the Copyright Office. The situation as disclosed by examination of the copies leads to the conclusion, apart from admission by the representatives of the producers in conference, that the primary purpose of presenting such material in aggregate proof form and calling it a book, is to save paying copyright fees which the law provides shall be paid. And not only that, but the law also specifies what shall be deposited in the case of material designed primarily for newspaper publication. It is the "best edition then published," and in the case of contributions the law itself defines the "best edition" as consisting of a complete copy of the newspaper containing the contribution. In the original Hearings, the purpose of this requirements was explained as intended to "obviate the deposit of proof sheets," which is the very thing the petitioners have done.