

MP - 557

GAME

MEMORANDUM

September 13, 1940

Remitter: Whitman Publishing Co. (55913)--Class ? "Backgammon"

Title: "Backgammon, Chess, Checkers (No. 3962) (Directions for Play)"

Question: May directions for playing such games as backgammon, chess, and checkers printed on a board be registered for copyright?

Application is filed on form A1 as a "book" for "Backgammon, Chess, Checkers (No. 3962) (Directions for Play)". The copies accompanying the application consist of a checker board, on the back of which is a backgammon board. Along the edge of the backgammon board are printed rules for playing backgammon, and rules for playing checkers and chess.

The problem for consideration is whether registration can be made for such directions printed on a gameboard. It has been well established that a gameboard is not copyrightable. It is also well known that no literary property susceptible of copyright exists in the conventional laws or rules of such well known games as backgammon, chess, and checkers. On the other hand, it is recognized that an original literary expression of such rules may be subject to copyright without preventing others from publishing the same rules expressed in their own words. See *Whist Club v. Foster et al*, 42 F. (2d) 782, (Bulletin 20, page 810).

In view of these circumstances the Revisory Board is of the opinion that registration can be made to cover the original text matter in this case, and that the application so filed for directions to play should be ~~so~~ accepted. Reference is also made to the case of *H. W. Bingham* (Rem. No. 36708) for the work entitled "Bingham's Position Checker Board" which now has the attention of the Register of Copyrights.

In view of the somewhat controversial problem involved the case is submitted to determine whether the Revisory Board is following the established policy.

Respectfully submitted,

H. A. Howell
Chairman, Revisory Board

Write first as to basis of claim in what appear to be standardized rules.--H.A.Howell.

MP-687

Copyrightable?

MEMORANDUM

September 13, 1940

Remitter: Brown and Bigelow (56851)--Class K?

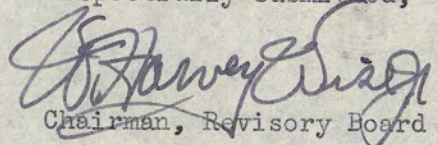
Title: "The American's Creed Fan"

Question: Division of opinion as to whether a print appearing upon a fan is registrable for copyright.

The copy filed is on cardboard in the conventional shape of a fan. On the face of the copy is a print from a picture of George Washington. Also there is printed the "American's Creed." Applicant has applied for registration under class K as a print or pictorial illustration, and the notice of copyright employed is adequate for a work coming within this category.

In the opinion of Mr. Wise and Mr. Pierce registration may be made to cover the pictorial element under class K upon the receipt of an application properly identifying the deposit without reference to its possible use as a fan. There is no reason whatsoever why the copy submitted should not be used as a wall picture. Mr. Smith, on the other hand, takes the position that protection should be sought by means of a design patent, since the work is in the nature of an article of utility, i.e., fan.

Respectfully submitted,


Chairman, Revisory Board

Suggest design patent--article of utility--a fan--H. A. Howell.

MP-557

BOOK

MEMORANDUM

September 13, 1940

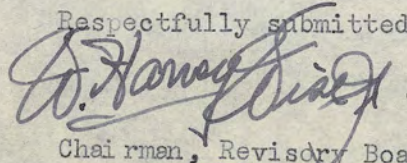
Remitter: Bowman Deute Cummings, Inc. (45692)--Class K?

Title: "Hula Dancer", "Lei Maker" and five others.

Question: Class A or K for menus consisting of large print on face with notice on page following opposite text of menu? Value of work lies in pictorial rather than text matter.

The correspondent has submitted in behalf of Hawaiian Hotels Limited menus for the Royal Hawaiian Hotel. These copies in each case consist of a very decorative print on the face of the copy, and on the inside a full page of text matter devoted to the menu. The print in each case varies but the text is the same on all copies. The notice of copyright reading as follows: Copyright 1940 Hawaiian Hotels, appears on the back of the print which is the back of the title-page and on the page opposite the text of the menu. Applicant has applied for registrations under class K as prints or pictorial illustrations, it being obvious that it is the pictorial matter for which he desires copyright protection. Under the established rules of the Office the notice of copyright is inadequate for a print in that it does not appear on the face of the print, and the examiner, accordingly, has rejected the claims. It is to be noted that the text matter is adequate to support a claim of copyright for registration as a book and under the established practice the Office would make registrations for these works under class A as books, although the text is the same in each instance, in view of the facts: (1) all are published on the same date, (2) the pictorial element varies, and (3) the titles vary. In the opinion of the Revisory Board this is a case where an exception should be made to the established rule of the Office with respect to the position of the copyright notice required for prints. In their opinion class K, print or pictorial illustration, is preferable; but under well established rules followed by the examiner the Revisory Board feels obliged to request a change of classification to A as books.

Respectfully submitted,



Chairman, Revisory Board

Register under Class A upon receipt of proper copies and applications--H.A. Howell

PRINT
(See "Book")

M E M O R A N D U M

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