

# ADVERTISING PROTECTION THROUGH COPYRIGHT †

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## I. HISTORY AND NATURE

In 1790, the first congress sitting after the adoption of the Constitution, influenced in large by arguments of Noah Webster<sup>1</sup> and other literary workers, enacted our first national copyright statute. That act gave to citizen or resident authors a copyright protection for books, maps, and charts for a term of fourteen years, with a right to renew for fourteen years more.<sup>2</sup>

The foundation upon which that and subsequent national copyright law rests is Article 1, Section 8, Clause 8 of the United States Constitution which provides: "The Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Necessarily, the concept of "useful arts" and "writings" as used in the Constitution has been broadened beyond the original "books, maps, and charts" by legislative enactment and by interpretation of the courts in keeping with the development of the times. Historical and other prints were added as subjects of copyright in 1802. Musical compositions were included in 1831. Photographs and negatives were provided for in 1865. In 1912 the motion picture classification was added. In 1939 the list was expanded to include prints and labels for articles of merchandise.<sup>3</sup>

The present copyright act is found in 17 U.S.C. 1-215 (1952). Now there are thirteen classifications of works for copyright registration specified in the statute.<sup>4</sup> Advertisements are not among those listed; however, the act clearly states that the named classifications shall not

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\* See Contributors' Section, p. 269, for biographical data.

<sup>1</sup> 6 Encyclopedia Britannica 418 (14th ed. 1936).

<sup>2</sup> 1 Stat. 124 (1790).

<sup>3</sup> 17 U.S.C.A. § 5 (1952) (historical note).

<sup>4</sup> 17 U.S.C. § 5 (1952): "The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopedic works, directories, gazeteers, and other compilations.

(b) Periodicals, including newspapers.

(c) Lectures, sermons, addresses (prepared for oral delivery).

be held to limit the subject matter of copyright protection,<sup>5</sup> and our courts for over 55 years have held that some advertisements are entitled to copyright protection.<sup>6</sup>

With the phenomenal amount of money being spent in advertising, and with new media of advertising developing, the problems and opportunities for protection of advertising have become more important as well as more complex. It is the purpose of this paper to assist those seeking more information in this timely problem. It has been said that the copyright statute is about as helpful to a lawyer confronted with the metes and bounds of copyright as a copy of *Quia Emptores* is to a modern conveyancer.<sup>7</sup> If the metes and bounds are ascertainable, they lie within the decisions of the courts. By tracing the development of the case law concerning advertisement protection, it is intended that there will be presented an insight as to the present status of the law and a glimpse as to what the future trends will be in this area.

## II. INFLUENCE OF ENGLISH DECISIONS

The English case of *Cobbett v. Woodward*<sup>8</sup> has had a more lasting effect upon the American decisions than those of the English. There the plaintiff, an upholsterer and house furnisher who carried on an extensive business in various parts of England, published in 1866 an *Illustrated Furnishing Guide*. This book contained many engravings and illustrations of the articles of furniture manufactured and sold by the firm. The work was registered as a new publication.

The defendant published a work entitled *New Furnishing Guide* which the court found adopted the same style as plaintiff's book. The court also found that as many as fifty-five of plaintiff's decorated furniture drawings had been copied. Nevertheless, the court held that plaintiff was not entitled to copyright protection and injunctive relief because

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- (d) Dramatic or dramatico-musical compositions.
  - (e) Musical compositions.
  - (f) Maps.
  - (g) Works of art; models or designs for works of art.
  - (h) Reproductions of a work of art.
  - (i) Drawings or plastic works of a scientific or technical character.
  - (j) Photographs.
  - (k) Prints and pictorial illustrations including prints or labels used for articles of merchandise.
  - (l) Motion-picture photoplays.
  - (m) Motion pictures other than photoplays.
- The above specifications shall not be held to limit the subject matter of copyright . . ."

<sup>5</sup> *Ibid.*

<sup>6</sup> *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903); *Schumacher v. Schwencke*, 25 Fed. 466 (C.C.S.D.N.Y. 1885); *Yuengling v. Schile*, 12 Fed. 97, 100 (C.S.D.N.Y. 1882) (dictum).

<sup>7</sup> *Umbreit, A Consideration of Copyright*, 87 U. Pa. L.R. 932, 951 (1939).

<sup>8</sup> L.R. 14 Eq. 407 (1872).

the illustrated catalog was not copyrightable material. Lord Romley, the Master of Rolls in 1872, stated:

If a man not being a vendor of any of the articles in question were to publish a work for the purpose of informing the public of what was . . . the most graceful species of decorations for articles of house furniture, what they ought to cost, and where they might be bought, and were to illustrate his work with designs and drawings of each article he described—such a work as this could not be pirated with impunity . . . yet, if it were done with no such object but solely for the purpose of advertising particular articles for sale and promoting private trade of the publisher by the sale of articles . . . and if in fact it contained little more than an illustrated inventory of the contents of a warehouse, I know of no law which . . . would prevent him from using the same advertisement, provided he did not in such advertisement, by any device, suggest that he was selling the works and designs of the first advertiser.<sup>9</sup>

Thus the court decided that if the sole purpose of the work is advertising, it can be copied and reproduced with impunity, unless to reproduce would result in the tort of unfair competition.<sup>10</sup>

Three years after *Cobbett v. Woodward*, another English case, *Grace v. Newman*<sup>11</sup> held that a catalog of a manufacturer of tombstones with sketches taken from different tombstones in cemeteries was the proper subject of copyright. This case referred to and questioned the correctness of *Cobbett v. Woodward*, although it did not by name overrule it.

In *Mapel & Co. v. Junior Army & Navy Stores*,<sup>12</sup> ten years after *Cobbett v. Woodward*, Sir George Jessell, Master of Rolls, criticized and overruled the *Cobbett* case in the following language:

The case which has done all the mischief is *Cobbett v. Woodward*. The late Master of the Rolls there says: "But at the last it always comes round to this, that in fact there is no copyright in an advertisement. If you copy the advertisement of another you do him no wrong, unless in doing so you lead the public to believe you sell the articles of the person whose advertisement you copy." I think that this is not the law. I am not aware that the use to which a proprietor puts his book makes any difference in his rights. His copyright gives him the exclusive right of multiplying copies

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<sup>9</sup> *Id.* at 413.

<sup>10</sup> The court did recognize the distinction between infringement of copyright and unfair competition, the latter being the practice of passing off or attempting to pass off to the public the goods or business of one person as the goods or business of another. For a comparison of copyright and unfair competition actions see Annot., 30 A.L.R. 615 (1924), and Leach & Feldman, *The Relationship Between Copyright and Unfair Competition Principles*, in 10 COPYRIGHT LAW SYMPOSIUM 266 (1959).

<sup>11</sup> L.R. 19 Eq. 623 (1875).

<sup>12</sup> 21 Ch. D. 369 (1882).

and he may use them as he pleases. I think, therefore, that *Cobbett v. Woodward* will not bear legal examination.<sup>13</sup>

Even though the correctness of *Cobbett v. Woodward* at the time was questioned in England, the Supreme Court unfortunately approved the *Cobbett* doctrine in *Baker v. Seldon*<sup>14</sup> in 1880, just two years before it was overruled in England by *Mapel & Co.* In *Baker*, the court quoted at length from the *Cobbett* case in holding that a catalog was not entitled to copyright protection.

For many years the American courts continued to cite *Cobbett v. Woodward* for authority that catalogs were not the proper subject of copyright protection. In the 1897 case of *J. L. Mott Iron Works v. Clow*,<sup>15</sup> the defendant published a catalog composed to a large extent of cuts and designs copied from those in plaintiff's copyrighted catalog. The illustrations involved were of a washbowl, a bath tub, a slop sink, a robe hook and other fixtures. After stating that "writings" referred to in the Constitution might be liberally construed to include designs for engravings or prints, and that prints upon a single sheet of paper might be considered "books" within the meaning of the copyright statute, still it was held that to be entitled to a copyright, the publication must have some value other than as a mere advertisement.

The early failure of the courts to give copyright protection to advertising matter was not by any means limited to catalogs. In *Ehret v. Pierce*,<sup>16</sup> the action was brought to restrain defendant from publishing a certain form of advertising cards devised for the purpose of displaying paints. There the court said: "It is an advertisement, and nothing more. Aside from its function as an advertisement of the Morris paints, it has no value . . . it is neither a chart, engraving, nor book and could not be the subject of a copyright. . . ."<sup>17</sup>

Although the great majority of the courts prior to 1903 refused to give copyright protection to advertisements, there were a few forward thinking decisions that had reached an opposite result. In *Schumacker v. Schwencke*,<sup>18</sup> plaintiff sought an injunction to restrain defendant from infringing a copyright on a small painting, approximately seven by four inches. In disposing of the defense that the painting was to be used in advertising as a label on a cigar box, the court stated that a picture is none the less the subject of copyright because copies may be utilized

<sup>13</sup> *Id.* at 379.

<sup>14</sup> 101 U.S. 99 (1880).

<sup>15</sup> 82 Fed. 316 (7th Cir. 1897); *accord*, *Higgins v. Keuffel*, 140 U.S. 428, 431 (1891). "The article must have by itself some value as a composition, at least to the extent of serving some purpose other than as a mere advertisement . . ."

<sup>16</sup> 10 Fed. 553 (C.C.E.D.N.Y. 1880).

<sup>17</sup> *Id.* at 554.

<sup>18</sup> 25 Fed. 466 (C.C.S.D.N.Y. 1885).

for advertising purposes, and thus protected plaintiff in his advertising.<sup>19</sup>

Several years later, but still before the turn of the century, the same federal court in the case of *Yuengling v. Schile*<sup>20</sup> stated that a meritorious work of art may be copyrighted although it is used for advertising and for attracting business. In this case plaintiff's chromo depicted a glorification of lager beer drinking. In the center of the picture was King Gambrinus, who among the Germans and beer trade is known as the inventor of lager beer, holding a foaming glass of beer. Others representing various classes in life were depicted with the king's page distributing the drink to them. In speaking of plaintiff's chromo, the court said the group formed a striking picture quite appropriate for saloons and well calculated to direct attention to plaintiff's establishment, as plaintiff's name was printed in large type beneath the picture.

The defendant's chromo was formed in the same general design as the plaintiff's although there were some substitutes of characters. Defendant cited *Cobbett v. Woodward*<sup>21</sup> and urged that plaintiff's chromo was not subject to copyright as it was designed for advertising purposes and for the benefit of his private business rather than for improvement of the public.

This court pointed out that the *Cobbett* case had been overruled by *Grace v. Newman*<sup>22</sup> and stated that the chromo was a work of artistic qualities and a subject of copyright without regard to the use which plaintiff made of it. The court stated that it is not material whether the person claiming a copyright expects to obtain his reward directly through a sale of the picture or indirectly through an increase of profits in his business from using the picture in advertising. The strength of this case as precedent for advertising protection was substantially lost however, and the well-expressed statements reduced to dictum when the injunction was denied since the artist was neither a native nor a resident of the United States and hence his work was not eligible for copyright protection.

In *Collender v. Griffith*,<sup>23</sup> the court hinted that the engravings on a billiard table might be eligible for copyright protection although used

<sup>19</sup> *Id.* at 467. There the court said: "If the painting itself is to be considered a label because copies may be so used, no masterpiece would escape such desecration. It would hardly do to call the Sister Madonna, or the Aurora, labels, because by the sacrilege of modern enterprise copies . . . may be transferred to a blacking box or a perfumery bottle."

<sup>20</sup> 12 Fed. 97 (C.C.S.D.N.Y. 1882).

<sup>21</sup> *Supra* note 8.

<sup>22</sup> *Supra* note 11. The American court in the Yuengling case, *supra* note 20, decided that the Cobbett case should not be followed in the same year that the English case of *Mapel & Co. v. Junior Army & Navy Stores*, *supra* note 12, emphatically overruled the Cobbett case. Neither of the cases decided that year cited the other as authority.

<sup>23</sup> 6 Fed. Cas. 104, 105 (No. 3000) (C.C.S.D.N.Y. 1873) (dictum).

for advertising purposes, but then denied such protection, stating the particular engravings were not of sufficient artistic quality. Although this case might be considered one of the few cases prior to 1903 in which the courts indicated that advertisements might be afforded copyright protection, the language is not certain and the case standing for that proposition is a weak one.

In spite of the statements in the *Schumacher*, *Yuengling*, and *Collender* cases just cited, the great majority of the courts prior to 1903 continued to hold that general advertising matter could not be given copyright protection. Judge Lurton, in delivering the opinion in *Courier Lithographing Co. v. Donaldson Lithographing Co.*<sup>24</sup> in 1900, correctly stated what was then generally thought to be the law with reference to advertising matter as the subject of copyright. He said:

What we hold is this: that if a chromo, lithograph, or other print, engraving, or picture has no other use than that of a mere advertisement, and no value aside from this function, it would not be promotive of the useful arts, within the meaning of the constitutional provision to protect the "author" in the exclusive use thereof, and the copyright statute should not be construed as including such a publication . . . it must follow that a pictorial illustration designed and useful only as an advertisement, and having no intrinsic value other than its function as an advertisement, must be . . . without the obvious meaning of the constitution.<sup>25</sup>

This case was reversed by the Supreme Court in *Bleistein v. Donaldson Lithographing Co.*<sup>26</sup> which is the leading case in the field of copyright protection for advertising. There the court established a new and liberal standard with respect to originality and artistic merit required to entitle an illustrated advertisement to copyright protection.

### III. BLEISTEIN AND SUBSEQUENT CASES

#### A. Degree of Artistic Merit Required

The opinion of Justice Holmes in *Bleistein v. Donaldson Lithographing Co.*<sup>27</sup> has undoubtedly influenced the thinking of our courts concerning copyright protection for advertising more than any other decision to date.

In that case the alleged infringement consisted of copying in reduced size three circus posters. One poster depicted ballet, another a performance on bicycles, and the third represented a group of men and women whitened as to represent statues. Plaintiff had complied with

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<sup>24</sup> 104 Fed. 993 (6th Cir. 1900).

<sup>25</sup> *Id.*, at 996.

<sup>26</sup> *Supra* note 6.

<sup>27</sup> *Supra* note 6.

the statutory provisions as to copyright. The defense contended that the posters lacked sufficient artistic talent, and that advertisements were not to be afforded copyright protection, citing *Cobbett v. Woodward*<sup>28</sup> and numerous federal cases indicating the judicial disfavor of copyright protection for advertising matter.

Mr. Justice Holmes in delivering the majority opinion firmly established a liberal standard with respect to the originality and artistic merit required to entitle illustrated advertising to copyright protection. To do so it was necessary to overrule the district and circuit courts. Two justices dissented. In disclaiming the right of the courts to act as art critics, Mr. Justice Holmes warned:

It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits. At one extreme, some works of genius would be sure to miss appreciation . . . . At the other end, copyright would be denied to pictures which appealed to a public less educated than the judge. Yet if they commanded the interest of any public, they have a commercial value . . . and the taste of any public is not to be treated with contempt.<sup>29</sup>

As to the right to protect a "mere advertisement" by compliance with copyright statutes, Mr. Justice Holmes stated that a picture is none the less a picture, and none the less subject to copyright because it is used as an advertisement.

In *Stecher Lithographic Co. v. Dunston Lithograph Co.*<sup>30</sup> the court stated that it made no difference that the pictures were used in advertising, or that they possessed little artistic merit. The court also pointed out that the defendant had equal right with the plaintiff to make chromos or lithographs depicting the same vegetables that appeared on plaintiff's seed packets, and use them for advertising, but that to avoid infringement, the defendant must form his own conception of the appearance and coloring of the vegetables. A person is free to copy the same object, but not free to copy another's depiction thereof as it is the expression of an idea or the treatment of the subject matter that is copy-rightable as a work of art, not the subject matter itself.<sup>31</sup>

Under our present statute works classified as "labels" may be afforded copyright protection.<sup>32</sup> Here, too, the courts are concerned with artistic merit as not every commercial label is entitled to this protec-

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<sup>28</sup> *Supra* note 8.

<sup>29</sup> *Bleistein v. Donaldson Lithographing Co.*, *supra* note 6, at 251-252.

<sup>30</sup> 233 Fed. 601 (W.D.N.Y. 1916).

<sup>31</sup> *F. W. Woolworth Co. v. Contemporary Arts, Inc.*, 193 F.2d 162 (1st Cir. 1951); *Stephens v. Howells Sales Co., Inc.*, 16 F.2d 805, 808 (S.D.N.Y. 1926).

<sup>32</sup> *Supra* note 4.

tion.<sup>33</sup> To qualify for protection the label must contain an appreciable amount of original text or pictorial material.<sup>34</sup> It has been held that when a label possesses "some substantial, not merely trivial originality,"<sup>35</sup> it is proper for copyright, although somewhat less than substantial originality might also be sufficient.<sup>36</sup> In a recent case dealing with labels the court said: "The pictures of the cakes used by plaintiff on its labels although possibly not achieving the quality of a Leonardo 'Still Life' nevertheless have sufficient commercial artistry to entitle them to protection against obvious copying."<sup>37</sup>

The great variety in advertising matter put before the courts makes the formulation of a single well-defined standard of artistic merit, or a mathematical equation for "useful arts", not readily ascertainable. For example, a truly unique work came before the courts in *Stuff v. La Budde Feed & Grain Co.*<sup>38</sup> There plaintiff attached to his complaint a photostat copy of the alleged infringement wherein appeared "a boy, with a broad, vacant smile revealing a missing front tooth, and with large, outstanding ears and uncombed hair, which made him appear half-witted . . ." Across the boy's chest were the words "Me—Worry?" and on the wall behind him was a framed slogan, "What is a home without a Mother" and also a calendar bearing the name "La Budde Feed and Grain, Milwaukee." Defendant grain company argued that the pictorial illustration, "The Original Optimist," could not be considered the fruits of intellectual labor within the meaning of the copyright acts, and that the picture was not sufficiently connected with the fine arts to be entitled to copyright protection.

In disposing of the case the court admitted that this was not a work of art in the sense in which the term is usually used, but pointed out that one who sees the picture is not likely to forget it and since it had brought enjoyment and pleasure to many thousands of people, in that sense it was a form of art. Its value for amusement rather than instruction did not prevent its copyrightability.

It appears that the effectiveness of an advertisement in attracting attention is one of the standards used for measuring the degree of artistic merit that is required for copyright protection of advertisements. It is said that a fanciful, imaginary or unique representation that might well serve its desired purpose to attract the American appetite seems

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<sup>33</sup> *Higgins v. Keuffel*, 140 U.S. 428 (1891); *M. B. Fahey Tobacco Co. v. Senior*, 247 Fed. 809 (E.D. Pa. 1917). Neither is the mere listing of ingredients or contents on a label a work subject to copyright. 37 C.F.R. § 202.1 (Supp. 1959).

<sup>34</sup> *Kitchens of Sara Lee, Inc. v. Nifty Foods Corp.*, 266 F.2d 541 (2d Cir. 1959).

<sup>35</sup> *Chamberlin v. Uris Sales Corp.*, 150 F.2d 512, 513 (2d Cir. 1945).

<sup>36</sup> *Bleistein v. Donaldson Lithographing Co.*, *supra* note 6.

<sup>37</sup> *Kitchens of Sara Lee, Inc. v. Nifty Foods Corp.*, *supra* note 34, at 545.

<sup>38</sup> 42 F. Supp. 493, 494-95 (E.D. Wis. 1941).

to constitute sufficient artistry to entitle a work to protection against obvious copying.<sup>39</sup> In *Deward & Rich v. Bristol Savings & Loan Corp.*<sup>40</sup> what the court called "simple" and "rather brief" advertisements were said to be sufficiently artistic to be entitled to copyright protection since "the wording is attractive, the text and its arrangement are admirably designed to arrest attention, and the illustrations do possess power to catch and hold a reader's roving eye."

It is not necessary that the work consist of original material, if the plan, method and arrangements be original.<sup>41</sup> In *Ansehl v. Puritan Pharmaceutical Co.*<sup>42</sup> the advertisement was composed of a symmetrical arrangement of cosmetic and toilet articles. It was held that such arrangement constituted sufficient artistic merit for allowance of copyright protection. However, brand names, trade names, slogans, and other short phrases cannot be copyrighted even if they are distinctively arranged.<sup>43</sup>

### B. Degree of Literary Merit Required

An original dot counting advertisement was held copyrightable in *Gordon v. Weir*.<sup>44</sup> It portrayed merchandise given away as prizes in a picture made up of a large number of dots which contestants were asked to count. The writing on the advertisement consisted of a headline invitation to participate and of instructions and exclamations along the border and sides. Defendant copied all the important features of plaintiff's copyrighted advertisement with only superficial changes. Defendant then sold the advertisements to other merchants.

In the action for copyright infringement, defendant contended that even if plaintiff's copyright were valid, plaintiff could not claim exclusive right to use any of the phraseology in the advertisement and that the copyright would apply only to the drawing. In finding such phraseology entitled to copyright protection the court said the recent trend is to be more liberal in allowing copyright protection even when there is a question of literary quality.

*Cash Dividend Check Corp. v. Davis*<sup>45</sup> also stressed that courts have been liberal in allowing copyright protection to advertisements even when there is a question of literary skill. There a work consisting of directions and comments upon a trade stamp plan whereby customers

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<sup>39</sup> *Kitchens of Sara Lee, Inc. v. Nifty Foods Corp.*, *supra* note 34, at 545.

<sup>40</sup> 29 F. Supp. 777 (W.D. Vir. 1939).

<sup>41</sup> *Emerson v. Davies*, 8 Fed. Cas. 615 (No. 4436) (C.C.D. Mass 1845).

<sup>42</sup> 61 F.2d 131 (8th Cir. 1932).

<sup>43</sup> 37 C.F.R. § 202.1 (Supp. 1959).

<sup>44</sup> 111 F. Supp. 117 (E.D. Mich. 1953), *aff'd*, *Weir v. Gordon*, 216 F.2d 508 (6th Cir. 1954).

<sup>45</sup> 247 F.2d 458 (9th Cir. 1957). *But cf.* *Mutual Advertising Co. v. Refo*, 76 Fed. 961 (C.C.D.S.C. 1896), also dealing with printed information explaining trade stamp plan.

could convert the stamps to cash was held to be of sufficient merit to qualify for the copyright.

### C. *Catalogs and Other Composite Works*

Although for many years the courts gave no protection to those who produced original catalogs, there was a change in the result after the *Bleistein* case. In *National Cloak & Suit Co. v. Kaufman*,<sup>46</sup> plaintiff had secured a copyright on a catalog of fashions. From this catalog defendant copied pictorial illustrations of ladies attired in the latest styles along with supplemental information and prices. Defendant answered the infringement charge in the manner that had worked so well through the years, by stating that catalogs were not the subject of copyright protection. The court found for plaintiff although the pictures were said not to be essentially works of art and although they were used exclusively for catalog advertising. Numerous cases followed in accord.<sup>47</sup>

In *Markham v. A. E. Bordon Co.*<sup>48</sup> findings showed that nine parts of plaintiff's catalog had been copied in 1948 and nine more in 1950. Defendant contended that this was such a small percentage of the total parts of the catalog that the copying did not satisfy the "material and substantial test" which applies to infringement cases generally. The court in finding for the plaintiff pointed out that this test may be proper in protecting literary and scientific endeavors, but that it was not the proper test when dealing with catalogs, as a catalog is a "composite work" under the statutes and copyright upon composite works gives to the proprietor thereof all rights in respect thereto which he would have if each part were individually copyrighted.<sup>49</sup> Selective pirating was not allowed.

*Inter-City Press, Inc. v. Siegfried*<sup>50</sup> also dealt with protection of component parts of "composite works," this time as applied to a copyrighted edition of a newspaper. Here the items alleged to have been copied were a cartoon, a news article, and ten separate advertisements.

The court held that the article involved literary quality and style sufficient for protection and that the cartoon was sufficiently artistic to be entitled to the same protection. The court in denying protection to

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<sup>46</sup> 189 Fed. 215 (C.C.M.D. Penn. 1911).

<sup>47</sup> In *Campbell v. Wireback*, 269 Fed. 372 (4th Cir. 1920), defendant went into business with two theories in mind. First, he thought that World War I would create a demand for artificial limbs and second, that he could use cuts from defendant's catalog of artificial limbs in his own catalog with impunity. The second theory was refuted by abundant authority cited on page 374 of the case.

<sup>48</sup> 206 F.2d 199 (1st Cir. 1953).

<sup>49</sup> See 17 U.S.C. § 3 (1952). In accord with *Markham* is *Unistrut Corp. v. Power*, 175 F.Supp. 294 (D. Mass. 1951) which stated that since a trade catalog is a composite work, copying a single illustration constituted a copyright infringement.

<sup>50</sup> 172 F. Supp. 37 (W.D. Mo. 1958).

the advertisements indicated that although some advertisements might be given the protection as component parts, there was nothing distinctive or unusual about the composition or wording of the particular advertisements and hence no copyright interest had been obtained by publishing them in the copyrighted edition of the newspaper.

#### D. *Strict Compliance With Notice Requirement*

Each reproduction of a copyrighted item must bear the statutory notice.<sup>51</sup> Although the cases have indicated that some portions of the statute may be liberally construed, the detailed requirements as to notice of copyright set out in the statutes must be strictly followed.<sup>52</sup> The publication of copyrightable material without the statutory notice of copyright may render the publication public property.<sup>53</sup> Neither is actual notice a substitute for compliance with statutory notice.<sup>54</sup> In *Wildman v. New York Times Co.*,<sup>55</sup> although notice of copyright was complete in all respects except the date, copyright protection was lost because the date was omitted. In *Booth v. Haggard*<sup>56</sup> copyright protection was denied since the notice was printed on the third page rather than the title page. The right being purely statutory, the public may justly demand that the person claiming a monopoly of publication shall follow the statutory method of securing it.<sup>57</sup>

#### E. *Advertisements of Deceptive Character*

In *Stone & McCarrick v. Dugan Piano Co.*,<sup>58</sup> plaintiff had printed a collection of forms for advertisements to be used by dealers of pianos in sales promotion programs. The court said that the advertisements by extravagant puffing and misrepresentation of sales deceived and misled the public. The court denied injunctive relief and cautioned that to insure protection of the law, the advertisement should reflect the truth and avoid representations that mislead and deceive the public.

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<sup>51</sup> 17 U.S.C. § 10 (1952).

<sup>52</sup> 17 U.S.C. § 19 (1952).

<sup>53</sup> *Metro Associated Services, Inc. v. Webster City Graphic Inc.*, 117 F. Supp. 224 (N.D. Iowa 1953).

<sup>54</sup> *Ibid.*

<sup>55</sup> 42 F. Supp. 412 (S.D.N.Y. 1941).

<sup>56</sup> 184 F.2d 470 (8th Cir. 1950).

<sup>57</sup> *Mifflin v. R. H. White Co.*, 190 U.S. 260 (1903).

<sup>58</sup> 220 Fed. 837 (5th Cir. 1915). See *Manhattan Medicine Co. v. Wood*, 108 U.S. 218, 224 (1883).