

PUBLISHED
(SEE "BOOK")

M E M O R A N D U M

December 20, 1940

Remitter: Wilkinson & Mawhinney (81069)--Class A.

Title: "Description for the Commercial Advertising of the
'Cut and Paste' Game"

Question: Whether published as deposited.

Write first and ascertain whether this is the actual form the
material is made available to the public use. 12-27-40

MP-638

Book.

MINORITY MEMORANDUM

December 29, 1940

Remitter: Wilkinson & Mawhinney (Cash No. 81069) - Class A.

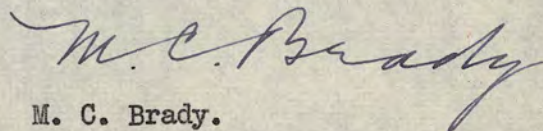
Title: Description for the Commercial Advertising of the
'Cut & Paste' Game.

Question: Whether published as deposited.

The undersigned sustains the Examiner in the rejection of these deposits as "not published" for the following reasons:

(1) The format of the deposit precludes any possibility of it being a published book in the meaning and intent of the copyright law. The deposit consists of five photostated sheets, wirestitched together, each bearing a typewritten notice of copyright. The sheets are composed of words, phrases and pictorial illustrations cut from actual published advertisements and pasted on blank sheets of paper in such sequence as to present complete sentences. The sheets are then photostated, wired together, and presented for copyright as a published book. Whether such compilation of excerpts from published and copyrighted articles would constitute infringements is not for me to say, but I should think that actual publication of such "copy" as this, without the permission of the various owners of the copyrights would be very hazardous.

(2) The sheet of letter paper wirestitched as a title-page to the five photostated sheets as described above, gives the title of the so-called book as "Description for the Commercial Advertising of the 'Cut & Paste' Game," and the text which follows reads: "The idea of this contest consists of cutting out words, sentences, pictures, trade brands, etc." There is of course no copyright in a game, a contest, or an idea, and there are so many non-copyrightable factors in this deposit, that even a valid publication would be of little value. The fact that a Washington firm of patent attorneys has sent a letter with the deposits, which attests to the publication by "placing some on sale on newsstands, etc.," is not sufficient evidence to controvert the unpublished format and the subject matter. The deposits were sought to be applied for by the claimant in person, and rejected by Mr. Smith who explained publication to him, whereupon he, the claimant, paid a firm of attorneys to substantiate his statement that the copies were published. That such copies were placed on a newsstand might be true, but that they were or could be the subject of sale, is not possible.



M. C. Brady.

MP-638

MEMORANDUM

NOTICE

December 20, 1940

Remitter: John W. W. Cumming (70731)--Class E.

Title: "My America"

Question: Division of opinion as to adequacy of copyright notice.

The copies filed when unfolded constitute one single page, the title "My America" appearing on the lefthand side. There are three columns with music and text. At the end of the music in the third column appears the following statement: "Copyrighted, 1940, by J.W.W.C." Following this there is a penned note signed by John W. W. Cumming.

The Office conducted correspondence to determine whether publication has taken place in this case, and the applicant was advised as to the form of the notice to use in the event that the work had not yet been published. The applicant now informs the Office that publication in the form of the copies deposited has taken place.

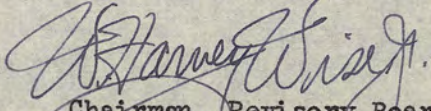
In the opinion of Mrs. Brady and Mr. Smith the notice of copyright is fatally defective in that it does not contain the full name of the copyright owner and does not appear on the title-page or the first page of music, and furthermore, the notice is in pen and ink. Mr. Wise, on the other hand, takes the position that registration should be made as applied for for the following reasons:

(1) The copy when unfolded presents one continuous page and the notice of copyright appears thereon. An analogy is found in the case of printed folders with text and pictorial illustrations. These are accepted if they bear the copyright notice on either side, provided that the copy when unfolded presents one single sheet. In the opinion of Mr. Wise the same reasoning should apply in the case of a musical composition.

(2) It is true that only the initials J.W.W.C. appear in the copyright line, but immediately beneath this is a signed statement by John W.W. Cumming. The notice though not meeting the exact letter of the law seems to meet the spirit.

(3) There is some doubt whether the notice has been applied by ink to these copies. It seems quite possible that the notice was applied to the manuscript which served as a basis of these reproductions.

Respectfully submitted,


Chairman, Revisory Board

Reject and explain that he failed to comply with requirements of the law as set forth in our letter of November 13.--H.A. Howell 12/27/40.