

MAJORITY MEMORANDUM

November 28, 1941

Remitter: Jacobi & Jacobi. No. 75760. Class A.

Title: "Don't Just Ask For Orange Juice! Ask For Florange Juice!"

Question: Whether a single sheet advertising a particular brand of orange juice, although lacking pictorial content, may be registered as a commercial print.

The work in question is a white sheet of paper some eighteen inches wide and seven inches high, upon which the following text appears:

"Don't just ask for Orange Juice!
ask for
FLORANGE JUICE
Real Florida Orange Juice
Buy FLORANGES from your Grocer or Marketman--
Real Florida Oranges! Copyright 1941 Milton H. Siegel"

The first and fourth lines are in script, while the second, third and fifth lines are printed. The words "Florange Juice" composing line three are in heavy black letters two inches high. No pictorial matter appears in conjunction with this work. As the minority states, there is nothing particularly artistic about the writing.

It has been the practice of the Patent Office to reject commercial prints in the absence of any pictorial matter upon them. After a conference between the Register of Copyrights, Mr. Howell, Mr. DeWolf and Mr. Reed, held on September 16, 1940, a memorandum was prepared by Mr. DeWolf which was corrected by the Register of Copyrights. In this memorandum it is stated "several conclusions were reached as follows:

"A single sheet 'published in connection with the sale or advertising of articles of merchandise' and containing some artistic element in the shape of one or more pictures, or of display type artistically arranged, either on the front or on the reverse, is a 'commercial print' even though folded one or more times."

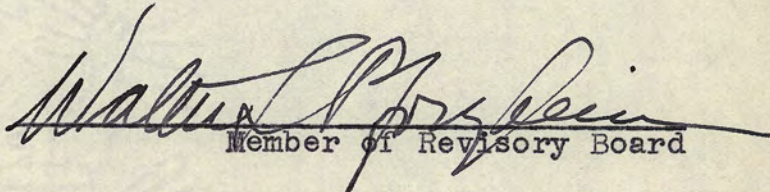
Circular 46 of this Office, furthermore, defines the term 'print' as "an artistic work with or without accompanying text matter..."

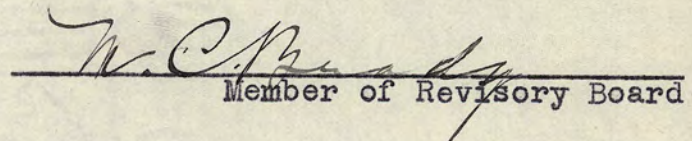
In view of the fact that the work in question contains no pictorial matter nor "display type artistically arranged" the application for registration must be rejected in the opinion of the undersigned.

As recently as October 10, 1941, Mr. MacCarteney joined with Mr. Pforzheimer and Mr. Smith in rejecting a similar application for a work entitled "Antiseption," for which application had been made by a Chicago attorney. The similarity between the work entitled "Antiseption" and the work presently in question is so striking that there appears to be no reason for the practice of the Office to be changed in the instant case. As stated above, the present Chairman of the Revisory Board concurred in the October 10, 1941, decision on the identical point. If this Office reverses its procedure, as well as the former practice of the Patent Office in regard to commercial prints, it will mean the ultimate registration in this Office as a commercial print of virtually every advertisement which consists of a slogan or a handful of phrases thrown upon a page.

This is more clearly illustrated in the case of "Vemp," upon which the Revisory Board divided upon the same grounds as the division in the case of "Florange Juice." There registration was sought for a series of little advertisements which included the word "Vemp" in large letters on a slant, and merely consisted of such phrases as "What is Vemp?" or "Add zest to your life...get more Vemp!"

In view of the practice of this Office, as well as the implications of accepting mere advertising texts without either pictorial matter or display type artistically arranged, the undersigned feel that the applications for registration in the present cases must be rejected, as the works involved do not constitute commercial prints.


Member of Revisory Board


Member of Revisory Board

Register as KK as applied for. WHW, 12-5-41