

PRINT OR LABEL
(See "BOOK")

M E M O R A N D U M

January 2, 1941

Remitter: Borg-Warner Corp. (79005)--Class KK?

Title: "Borg and Beck Clutch Specifications, Type 11A6 and Type 13Q"

Question: Division of opinion as to whether registration should be made as a commercial print or as a book.

Register as A1--H.A.H. 1/3/41. "I should not regard this as an advertising print. It is not for the public but for service men installing clutches. Mr. Macracken of the old P & L staff says they would not regard this type of material as commercial prints.

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The copies filed consist of single sheets at the top of which appear several illustrations. Following this are a number of lines of text matter giving specifications of the article, i.e., clutch, illustrated. The examiner was of the opinion that these works should be regarded as commercial prints used in connection with the sale and advertising of an article of merchandise and accordingly recommended registration under class KK. The applicant objects to this classification, pointing out that registration under class A as a book is in order. He points out that the works are not "artistic or intellectual productions and are not used for advertising purposes, but are merely specification pages giving engineering dimensions of clutch material."

Mr. Wise and Mr. Smith are of the opinion that registration should be made under class KK as commercial prints and this seems to be in accord with some registrations made. In their opinion the works submitted clearly is an intellectual production. It illustrates an article of merchandise and is clearly used in connection with the distribution of Borg and Beck Clutches. Special attention is drawn to a notice appearing on the copies: "IMPORTANT: Before making definite selection we suggest consulting our Engineering Dept. for our recommendation." From this statement it appears that the sale of "clutches" is under consideration and the ultimate object of the work. Mr. MacCarteney, on the other hand, feels that the absence of artistic element and the applicant's statement with respect to the use justify registration under class AA as a "book".

Mr. MacCarteney's view is certainly supported by the decision of the Assistant Register in the case of RCA Manufacturing Co., Inc. (60202) ("RCA Victor-Supplementary Information-No. 2-1940-No. 39."). In that case the single sheet which constituted the work not only illustrates the articles of merchandise but gives the price of replacement parts with their descriptions. Following this decision it seems clear that registration should be made for the works under consideration as books. In view of this decision the Revisory Board apparently has been acting upon an erroneous premise and will accordingly make proper adjustments in the event that this decision is affirmed.

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Respectfully submitted,

W. Harvey Wise
Chairman, Revisory Board