

Subject Copyright to a candleholder

Applicant A

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In brief *The candleholder was not a work referred to in the Copyright Act.*

REQUEST

Designer A requests the Copyright Council's opinion on whether the "Knuckle" candleholder designed by the Dutch designer B and the "Socket" candleholder designed by A himself can be considered works in the meaning of the Copyright Act.

Account of the matter

According to the applicant, the Dutch designer B claims that the candleholder "Socket" designed by A is a copy of a candleholder designed by him and that the applicant is guilty of contravening the Copyright Act. B has informed the applicant by phone that he had designed "Knuckle" before the applicant designed "Socket". Then B requested by e-mail for the "Socket" mould and for an assurance of relinquishing the rights to "Socket".

The applicant did not consent to this because he has created "Socket" as a result of an independent design process without seeing the "Knuckle" candleholder and because the applicant thinks that the candleholders in question are not original works but utility articles, whose form is dictated by their use.

Afterwards the applicant has received several letters by post and by e-mail from B's lawyer, demanding, with threats of legal action, that the applicant admit being guilty of infringement of copyright and that he give a written assurance of relinquishing all rights to "Socket" and pay B compensatory damages.

As to the design of "Socket", the applicant relates the following. He started to design the "Socket" candleholder in February 2005, when a Finnish exhibitor was looking for and appraising new ideas and works by young designers for a forthcoming exhibition. The applicant's sketch of the candleholder was selected. In November 2005 Design Museum Helsinki exhibited a series of twenty "Sockets". Subsequently "Socket"

has been on show in foreign exhibitions, most recently last September in the Netherlands. All in all 50 pieces of the candleholder manufactured by the designer have been on sale.

According to the applicant, the idea underlying the "Socket" design was a piece composed of four cylinders of equal diameter whose imaginary axles meet at the same point, all at the same angle to one another. Any of these four cylinders may be the socket for the candle, while others function as feet. As the design advanced, the applicant decided to change the diameter of the sockets so that they are all of a different size. The largest socket is for a chandelier candle and the smallest for a taper.

The applicant thought it important that the design is economical and as easy to manufacture as possible. It is manufactured by pouring porcelain into a mould. The four cylinders are fused into one hollow piece. The ends of the cylinders are at the same angle to each other in order that a candle stands vertically in all the positions it is used. When finished, "Socket" has a white glazing and stands 6 or 8 centimetres high, depending in which way it is placed on a surface.

The applicant's information concerning the "Knuckle" candleholder is based on and limited to the web site www.maartenbaas.com. According to the applicant, "Knuckle", like "Socket", is composed of four candleholders of different sizes, which look as if they had been fused together. Unlike "Socket", "Knuckle" has a holder for a tealight candle. According to the web site, there are two versions of "Knuckle": one hollow version, apparently made of metal, and a white version, apparently made of ceramic, which is not hollow, the holders for candles being cavities with bases.

The casting of a piece like this requires more than two moulds, or the object has been modelled with some other technique, whereas the "Socket" mould only has two halves. Judging by the pictures, the applicant deems the surface of "Knuckle" not to be as smooth as that of "Socket".

Rejoinder

The Copyright Council has received a rejoinder from Studio Baas & den Herder, signed by rightholder B.

B requests the Copyright Council to note that "Knuckle" is an original design work and protected by copyright. B also requests A to sign the contract proposed by him in order to relinquish rights. B advises that he reserves all rights in regard of A, whom he also considers responsible for all costs incurring in the matter.

According to B, A has conceded that the candleholders were very much alike. Despite this, A is unwilling to agree on the matter. B sent A an e-mail offering a chance to resolve the matter without legal action. A did

not, however, take any action. Later B hired a lawyer to communicate with A, but to no avail.

B designed the "Knuckle" candleholder while he was studying at Eindhoven Design Academy. The work was publicised in 1999. B is ready to provide additional evidence to this effect. The rejoinder also contains an account of B's successful career as a designer.

B sees that "Knuckle" is a work protected by copyright. B lists seven characteristics of "Knuckle", all of which A has copied in his "Socket" candleholder:

1. Produced in ceramic.
2. White glazed.
3. Based on the choice of making a product which is based on a form, in which four cylinders are joined together in such a manner, that one cylinder always forms a right angle with the surface that the other three cylinders form together.
4. Based on the choice of making a candleholder according to this principle.
5. Based on the choice of making this candleholder for candles of various thicknesses.
6. Styled in a manner through which the four cylinders form an even transition with each other. The inside corners are rounded off.
7. Not only is the inside diameter specially adapted, through which the "cylinders" would remain equally long, but the outside diameter is too, so that the length of the cylinders varies. If the diameter is larger, the length is smaller, so that the candleholder still remains standing up straight.

Especially the two last points B considers to be evidence of the independence and originality of the design. According to him, A has copied all the features listed above. Small differences have no bearing on the overall impression of sameness. As to A's own description of his creative process, B refers to the temporal priority of his own work and notes that it can be no coincidence that the differences between the two candleholders are so minimal.

OPINION OF THE COPYRIGHT COUNCIL

Under Section 55 of the Copyright Act, the Copyright Council can issue its opinion on the application of the Copyright Act. These opinions are not binding by nature. They are recommendations of the Council to the parties. The Copyright Council does not take a stance on other forms of legislative regulation, such as the protection of designs or agreements between the parties.

On copyright

Under Section 1(1) of the Finnish Copyright Act (404/1961), a person who has created a literary or artistic work has the sole right to the work. The provision lists examples of the types of work thus protected. Copyright subsists for instance in literary works, works of pictorial art and works of artistic handicraft and industrial art.

In the copyright meaning, a work means a product of intellectual creation. A literary or artistic work is protected by copyright if it can be considered an original outcome of the author's independent creative work. In this case it passes the work threshold, as it were; in other words, it reaches the level of a work. There are no other special requirements for the work to be protected. The usual criterion may be considered to be whether anyone embarking on the same work could end up with a similar outcome.

In legal praxis and judicial literature, the work threshold for so-called applied arts has been judged to be high. The reason for this is that the design of an object of applied arts is influenced not only by the author's creative input but also by factors stemming from the purpose of the product. A committee report (KM 1953:5, p. 45) noted the following concerning applied arts as part of the exemplifying list of work types in Section 1(1) of the Copyright Act:

"The list of examples under review still includes products of *industrial art* and *artistic handicraft*. This naturally does not mean that the Copyright Bill would concern every product which in everyday parlance could be called "artistic utility object", but that a product of artistic handicraft and industrial art would be entitled to protection under the Act only if, despite its practical purpose, it can be considered a work of art. Owing to the nature of the matter, the requirement of independence and originality would have to be set fairly high in this case."

The content of copyright comes under Sections 2 and 3 of the Copyright Act. The author's economic rights come under Section 2. Under Section 2(1) of the Copyright Act, copyright provides the exclusive right to control a work by reproducing it and by making it available to the public in the original form or in an altered form, in translation or in adaptation, in another literary or artistic form, or by any other technique.

The moral rights of the author come under Section 3 of the Act. Under Section 3(1), the name of the author must be stated in the manner required by practice when a copy of a work is made or when the work is made available to the public in whole or in part.

Under Section 43 of the Copyright Act, copyright subsists until seventy years have elapsed from the year of the author's death.

Supreme Court rulings

The Supreme Court has tried cases of copyright in applied arts on several occasions. For example, in its ruling KKO 1962 II 60 (bracelet), KKO 1971 II 4 (wall rug) and KKO 1980 II 3 (jewellery designs), the Supreme Court came to the conclusion that they were protected by copyright. On the other hand, in its rulings KKO 1932 II 267 and KKO 1975 II 25 (furniture) and KKO 1948 II 464 and 1976 II 48 (lamps), the conclusion was the opposite, in other words, they did not pass the work threshold.

Copyright Council opinions

The Copyright Council has issued its opinion on corresponding objects of applied arts in several previous statements, for instance TN 2007:7 (berry picker was not a work in the meaning of the Copyright Act), TN 2006:19 (shot glasses decorated by moose heads were works in the meaning of the Copyright (after a vote), TN 2005:1 (a decorative plate was not protected by copyright), TN 2004:9 (a piece of jewellery passed the work threshold but the manufacturing technique was not covered by copyright) and TN 2001:16 (reflectors were not covered by copyright). The opinions also include extensive references to preceding opinions.

Response to the questions put in the request for opinion

The Copyright Council sees that the work threshold in regard of applied arts should not be primarily assessed by criteria different from those applied to other works. The fact that an object has a utilitarian purpose does not say anything about its nature as a work. However, if it is mostly the purpose of the work rather than the creative input of the designer that dictates the end result, the work in question is not sufficiently independent and original in the copyright meaning.

The Copyright Council sees that one crucial factor in an assessment of the required independence and originality of a work is whether anybody could end up with the same kind of result from the same starting point. In regard of an ordinary candleholder this possibility exists.

Reference has been made to matters relating to the choice of material and to the overall impression created by the outward appearance as indications of the originality of a candleholder.

The Copyright Council first appraised the objects as works and then their similarity. This appraisal is circumscribed by the fact that the assessment of the nature of the objects as works is based on photographs. However, the Council considers these to be illustrative.

Assessment of work

Structure

The "Knuckle" candleholder has a structure of four cylinders, three of which form the foot bearing the object and the fourth is upright, forming a holder for the candle. The structure accommodates candles of different thickness. The four cylinders are at the same angle to each other and the inside corners are rounded off. The lengths of the feet are adjusted according to their thickness so that the candleholder is always in balance, that is, the fourth cylinder is always vertical. In other words, the thickest cylinder is the shortest and the most slender is the longest.

The object has a clear purpose of use and it is more varied than an ordinary candleholder in its basic structure. However, this structural solution is such that it cannot be excluded that two designers arrive at the same structure independently of each other. It is not possible to say that two designers embarking on a design would not arrive at the same kind of end result.

The possibility that this idea could be conceived by another designer is indicated by the photograph provided by A depicting the "Light My Fire" candleholder, which is designed by a third person. This candleholder, too, has the same basic idea of four cylinders which are at the same angle to each other. Based on the photograph, though, all the feet appear to be of equal thickness, and its applicability to candles of different thickness has been achieved by means of the holder openings of different sizes.¹

The Copyright Act does not recognise temporal priority as such if the parties have independently (without copying each other) created a similar work, but both can enjoy the protection of copyright. The Copyright Act does not protect ideas.

Choice of material

The choice of light or white ceramic is probably not exceptional for example in view of its heat resistance. Conclusions as to the work status of an object cannot be drawn based solely on such considerations as material or colour.

Overall impression

In appraising the nature of the "Knuckle" candleholder as a work, the Copyright Council assessed its independence and originality as a work, that is: does it manifest the designer's own independent and original creative input in addition to the structural idea stemming from its use?

¹ The candleholder "Light My Fire" can also be seen at <http://huebschergestaltet.ch/shop-lmf.html>

The Council sees that the purpose of the object has strongly influenced the end-result of the design. Although it is not absolutely necessary to design the candleholder in the manner under review, the Council has come to the conclusion that in this case it is the structural idea of the object that is dominant in its creation. Therefore the "Knuckle" candleholder is not an independent and original work protected by the Copyright Act. It is thus possible that more than one designer may arrive at the idea, and this is what appears to have taken place.

Assessment of similarity

The assessment of "Knuckle" as a work is also applicable to the "Socket" candleholder, mainly owing to the similarity of their structure.

A advises that the height of the "Socket" candleholder varies depending on the way it is placed on a base (6-8 cm). This would indicate a slight difference with regard to "Knuckle", in which the lengths of the cylinders have been adjusted to their thickness so that the height of the object is always the same. However, this has no major bearing on the impression of similarity seen in the pictures.

Just as in "Knuckle", the structural idea in "Socket" influences the overall impression given by the object. Hence, neither it is an independent and original work in the meaning of the Copyright Act. This is why the Copyright Council will not examine the similarity of the candleholders in more detail.

Chairperson

Niklas Bruun

Secretary

Mikko Huuskonen

The opinion was discussed at a plenum of the Copyright Council. The following have contributed to the resolution of the matter: Niklas Bruun (Chair), Arto Alaspää, Tuula Hämäläinen, Teemu Kalliala, Satu Kangas, Kirsi-Marja Okkonen, Tytti Peltonen, Pekka Pulkkinen, Katariina Sorvari, Markku Uotila and Martti Virtanen.