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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Box RESPONSES NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on:

Date of Mailing: December 30, 2004

Printed Name of Depositor: KYLE ANNE CITRYNELL

Signature of Depositor: *[Handwritten Signature]*

Date of Signing: December 30, 2004

SERIAL NO.: 2830595

FILING DATE: 04/06/2004

MARK: JUNKYARD PETS

APPLICANT: The Bandana Co., Inc.

Box RESPONSES NO FEE
United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451



01-03-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

**Re: Cancellation No. 92043896
Linen 'N Things, Inc. vs. The Bandana Co., Inc.
Request for Suspension of Action in the Patent and Trademark Office**

Dear Commissioner:

Registrant, by its attorney, hereby requests that this proceeding be suspended pursuant to TBMP § 510, 37 C.F.R. § 2.117.

The grounds for this request are as follows: On April 7, 2003, a civil action was filed by Registrant, The Bandana Co., Inc., against Petitioner, Linens 'N Things, Inc., in the United States District Court for the Western District of Kentucky, Louisville Division, Civil Action No. 3:03CV-211-C. Copies of the Complaint and Amended Complaint filed in this case are submitted herewith as Exhibit A.

United States Patent and Trademark Office
Trademark Trial and Appeal Board
Mark: Junkyard Pets
Registration No.: 2830595
December 30, 2004
Page Two

Via Express Mail EF232221335US
Date of Deposit: December 30, 2004

In its Answer and Counterclaim to First Amended Complaint, a copy of which is submitted herewith as Exhibit B, Linens 'N Things asserted its defense that the above-mentioned trademark is generic and descriptive and counterclaimed for cancellation of this trademark. Accordingly, the determination of this pending action will affect Registrant's rights to the above-referenced trademark.

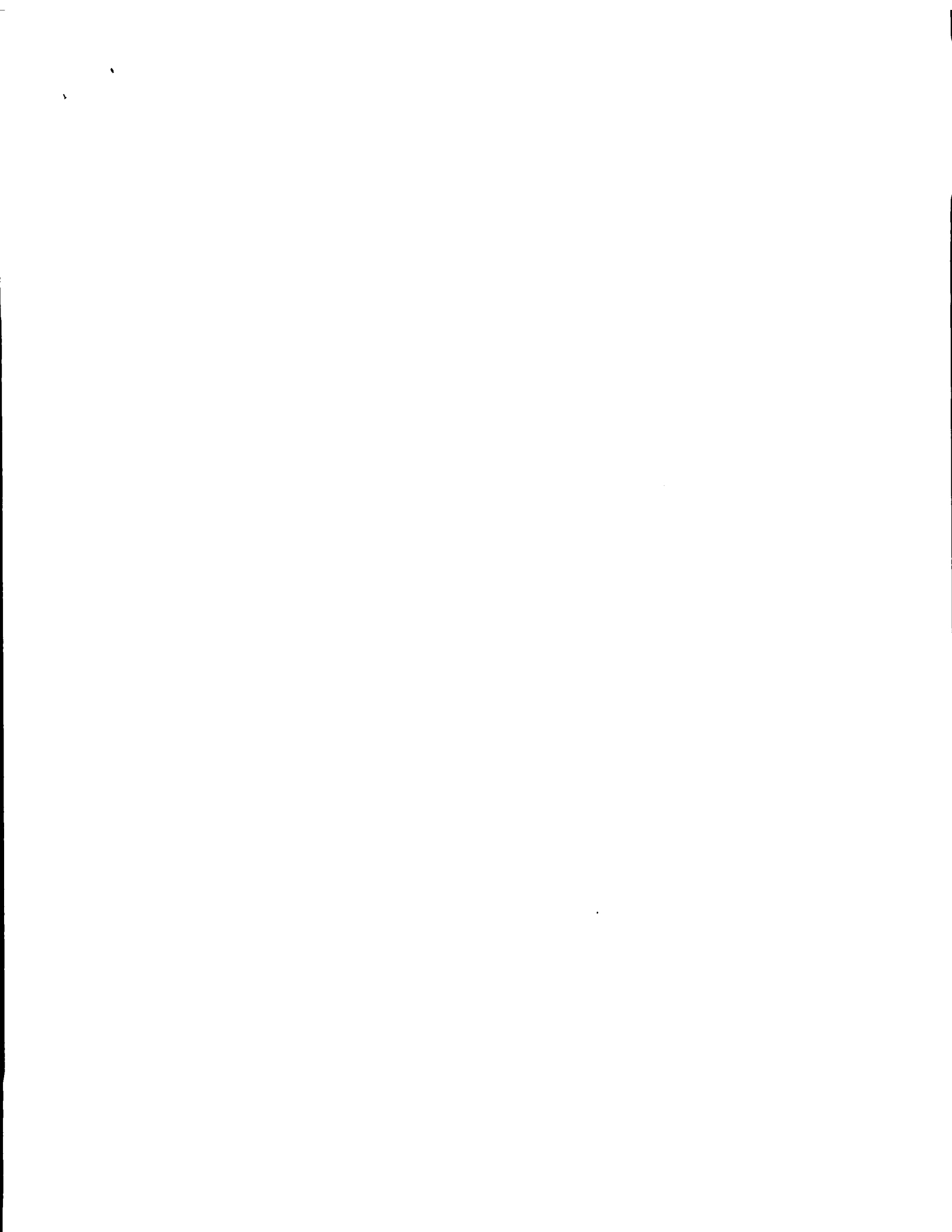
This request is made with the consent of Petitioner's counsel, Bruce Haraguchi, which consent was given by him via voice mail following a telephone conversation on December 29, 2004.

Registrant therefore requests that this proceeding be suspended, including the time in which Registrant must file an Answer, pending determination of the above-referenced civil action.

Respectfully submitted,

KYLE ANNE CITRYNELL
SEILLER & HANDMAKER, LLP
462 South Fourth Avenue, Suite 2200
Louisville, KY 40202
Telephone: (502) 584-7400
Facsimile: (502) 583-2100
Attorneys for Registrant, The Bandana Co., Inc.

Dated: December 30, 2004



COPY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

FILED 1/31
US DISTRICT COURT CLERK
WESTERN DISTRICT OF KY

02 APR -7 AM 11:05

THE BANDANA CO., INC.)
2921 South Second Street)
Louisville, KY 40208)

Plaintiff,)

v.)

LINENS N' THINGS, INC.)
6 BRIGHTON ROAD)
CLIFTON, NJ 07015)

SERVE: Secretary of State)
Room 86, State Capitol)
Frankfort, KY 40601)

and)

JOHN DOES Numbers 1 through 99,)
Defendants.)

CIVIL ACTION NO. _____

VERIFIED COMPLAINT

3:03 CV-211-C

Comes now Plaintiff, The Bandana Co., Inc. ("Bandana") by counsel, and for its cause of action against Defendants, Linens n' Things, Inc. ("Linens n' Things"), and John Does Nos. 1 through 99, states as follows:

INTRODUCTION

1. This is a Complaint for injunctive relief and for civil damages. Count I states a claim for Copyright Infringement pursuant to 17 U.S.C. §101 *et seq.* by and through Defendants' unlawful copying, reproduction, manufacture, importation, distribution, sale and use of Plaintiff's copyrighted works in Defendants' products which they market and sell to the public; Count II states a claim for Common Law Trademark Infringement by and through Defendants' use of Plaintiff's trademarks in which Plaintiff enjoys a superior common law right to that of Defendants; Count III states a claim

for Trade Dress infringement pursuant to the Lanham Act, 15 U.S.C. § 1125(a), by and through Defendants' copying of the design, configuration, metalwork, construction, and look of Plaintiff's Works and identifying features thereof; Count IV states a claim for False Advertising pursuant to the Lanham Act, 15 U.S.C. §1125(a), by and through Defendants' representations which lead and will in the future lead the public, through mistake or deception, to believe that Defendants' competing products are authorized or sponsored by or originate with or are otherwise associated with the Plaintiff; Count V states a claim for Unfair Trade Practices and Unfair Competition.

PARTIES

2. Plaintiff in this action is The Bandana Co., Inc., a Kentucky corporation with its principal place of business located in the Western District of Kentucky.

3. Defendant, Linens n' Things, Inc., is a Delaware corporation, not authorized to do business in Kentucky and, upon information and belief, doing business in Kentucky and having its principal place of business at 6 Brighton Road, Clifton, New Jersey 07015.

4. John Does Nos. 1 through 99 are fictitious names for Defendant persons or business entities which have reproduced, manufactured, copied, imported, distributed, displayed and sold the infringing works that comprise the subject of this Complaint, for or on behalf of the Defendant named at numerical paragraph 3 above, or in concert or privity with them, including said Defendant's manufacturers, importers, distributors, brokers, and vendors, and for Defendant persons, including corporate officers, directors, managers, operators, representatives, and agents, or business entities having the right to supervise the infringing activities, or having a financial interest therein. The true identities of these Defendants are yet unknown to Plaintiff.

5. At all times relevant herein, Defendants were variously engaged in the business of manufacturing, publishing, marketing, promoting, importing, distributing, displaying, and selling,

among other things, metal sculptures, goods, merchandise and materials embodying and otherwise incorporating the infringing works that comprise the subject of this lawsuit.

JURISDICTION AND VENUE

6. Jurisdiction is possessed by this Court pursuant to 28 U.S.C. §1331, and 28 U.S.C. §1338 as the Complaint alleges violations of federal Copyright Law and Trademark Law. This Court has jurisdiction over the Common Law Trademark and Unfair Competition claims herein pursuant to 28 U.S.C. §1338(b) and 1367 and under the doctrines of pendent and supplemental jurisdiction, since these claims are joined with substantial and related claims under the Copyright and Trademark Laws of the United States.

7. Venue in the Western District of Kentucky is proper under 28 U.S.C. §1391(b)(2) and (3), because a substantial part of the events giving rise to these claims arose within the Western District of Kentucky, which is sufficient for jurisdiction under Kentucky's Long-Arm Statute, KRS 454.210, and Defendants have transacted business and committed their infringing and tortious acts within Kentucky. In this regard, Defendant Linens n' Things is and at all relevant times has been advertising and selling goods, including the infringing works that are the subject of this lawsuit, directly to individuals and entities residing and transacting business in the Western District of Kentucky and indirectly over the Internet (*See* <http://www.lnt.com>) to residents of the Western District of Kentucky who would access said goods exclusively through that electronic medium.

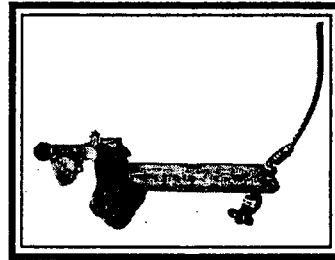
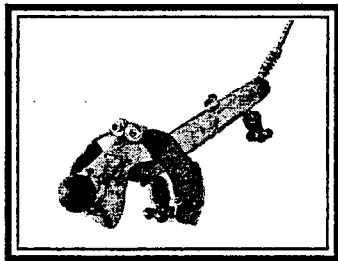
COUNT I

COPYRIGHT INFRINGEMENT

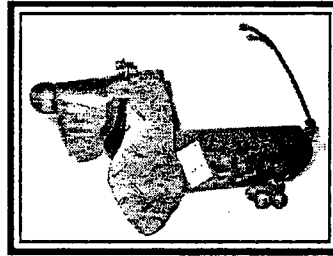
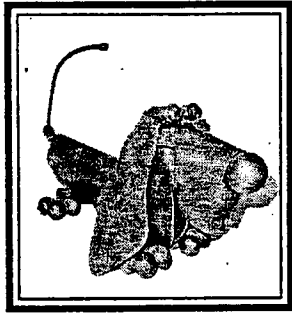
8. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 7 herein.

9. At all times relevant herein, Plaintiff was engaged in the business of manufacturing, marketing, distributing and selling decorative metal statues which depict various animals.

10. In or about January 2001, Plaintiff created its work known as "Hot Dog," which is a decorative animal sculpture made from metal, photographs of which are reproduced below and incorporated herein by reference as Exhibit A (This item, and the items displayed in Exhibits D, E, I and J below are herein collectively referred to as the "Works").



11. Thereafter, Plaintiff learned that Defendants have been manufacturing, importing, distributing, displaying, marketing and selling metal sculptures nearly identical to the protected Work of Plaintiff referenced above, photographs of which are reproduced below and incorporated herein by reference as Exhibit B (This item, and the items displayed in Exhibits F, K and L below are herein collectively referred to as the "Infringing Merchandise").



12. Plaintiff has been and is the sole proprietor of all right, title and interest, including copyright, in and to the "Hot Dog" Work.

13. Plaintiff has registered its copyright in and to "Hot Dog" with the United States Copyright Office and has received the Federal Copyright Certificate therefor (Registration Number VA 1-114-061, Effective Registration Date of March 29, 2002), a copy of which is attached hereto as Exhibit C and incorporated herein by reference.

14. In or about January 2001, Plaintiff created its works known as "Terrier" and "Scotty Schnauzer," which are decorative animal sculptures made from metal, photographs of which are reproduced below and incorporated herein by reference as Exhibits D and E respectively.



15. Thereafter, Plaintiff learned that Defendants have been manufacturing, importing, distributing, displaying, marketing and selling metal sculptures which are nearly identical combinations of those protected Works of Plaintiff referenced above, photographs of Defendants' infringing work are reproduced below and incorporated herein by reference as Exhibit F.

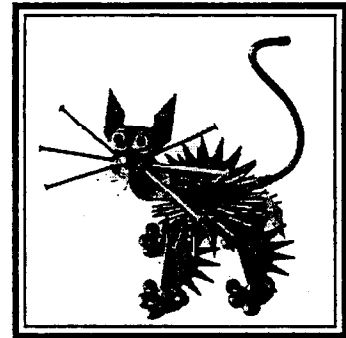
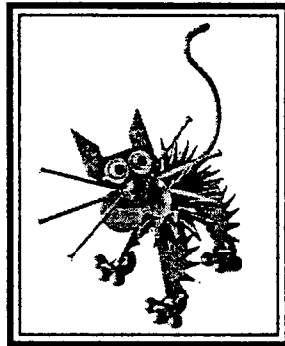
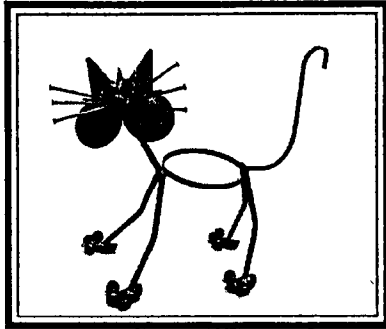


16. Plaintiff has been and is the sole proprietor of all right, title and interest, including copyright, in and to the "Terrier" and "Scotty Schnauzer" Works.

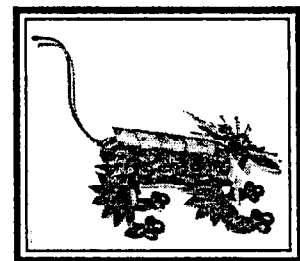
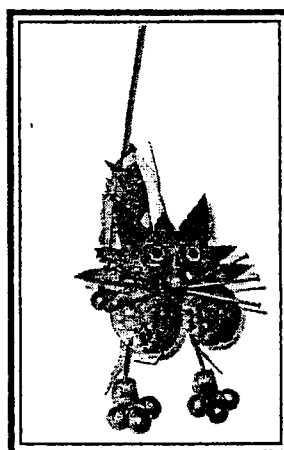
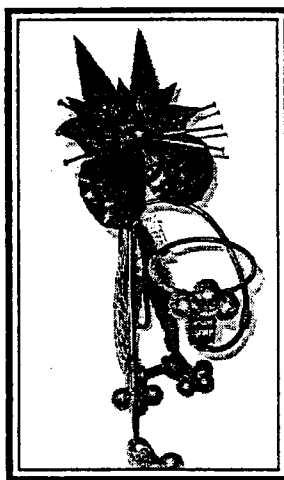
17. Plaintiff has registered its copyright in and to "Terrier" with the United States Copyright Office and has received the Federal Copyright Certificate therefor (Registration Number VA 1-156-023, Effective Registration Date of November 26, 2001), a copy of which is attached hereto as Exhibit G and incorporated herein by reference.

18. On or about June 6, 2002, Plaintiff applied to the United States Copyright Office to register its "Scotty Schnauzer" Work, a copy of which application is attached hereto as Exhibit H. Plaintiff has not yet received the Federal Copyright Certificate therefor.

19. In or about January 2001, Plaintiff created its works known as “Cat Potholder” and “Fluffy Kitty,” which are decorative animal sculptures made from metal, photographs of which are reproduced below and incorporated herein by reference as Exhibits I and J respectively.



20. Thereafter, Plaintiff learned that Defendants have been manufacturing, importing, distributing, displaying, marketing and selling metal sculptures nearly identical to, or nearly identical combinations of, the protected Works of Plaintiff referenced above. Photographs of Defendants' infringing work are reproduced below and incorporated herein by reference as Exhibits K and L.



21. Plaintiff has been and is the sole proprietor of all right, title and interest, including copyright, in and to the "Cat Potholder" and "Fluffy Kitty" Works.

22. Plaintiff has registered its copyright in and to "Cat Potholder" with the United States Copyright Office and has received the Federal Copyright Certificate therefor (Registration Number VA 1-156-037, Effective Registration Date of November 26, 2001), a copy of which is attached hereto as Exhibit M and incorporated herein by reference.

23. Plaintiff has registered its copyright in and to "Fluffy Kitty" with the United States Copyright Office and has received the Federal Copyright Certificate therefor (Registration Number VA 1-091-207, Effective Registration Date of August 29, 2001), a copy of which is attached hereto as Exhibit N and incorporated herein by reference.

24. Defendants individually, or by and through their agents, employees and representatives, with notice of Plaintiff's right, title and interest in and to said Works, and without Plaintiff's authorization, have used Plaintiff's Works to manufacture, reproduce, copy, publish, display, import, distribute, transmit, sell and otherwise market their Infringing Merchandise.

25. Upon information and belief, Defendants willfully and deliberately infringed said Plaintiff's copyrights by copying Plaintiff's Works, and manufacturing, reproducing, publishing, displaying, importing, distributing, transmitting, selling or otherwise placing on the market Defendants' Infringing Merchandise and, thus, using Plaintiff's copyrighted Works without authorization, all to Plaintiff's detriment.

26. Upon information and belief, Defendants have manufactured, reproduced, published, displayed, imported, distributed, transmitted, marketed, promoted and sold the Infringing Merchandise and will, unless restrained, continue to do so in the future.

27. Defendants' infringement of Plaintiff's copyrights has caused and will continue to cause immediate and irreparable harm to Plaintiff unless enjoined by this Court.

COUNT II

COMMON LAW TRADEMARK INFRINGEMENT

28. Plaintiff repeats and realleges the allegations contained in Paragraph 1 through 27 herein.

29. Since at least as early as 1999 Plaintiff has adopted and used and extensively advertised the trademarks JUNKYARD and JUNKYARD DOGS AND CATS (collectively, the "Mark") in connection with the marketing of certain animal sculptures, including Works, and has amassed valuable rights and good will associated therewith.

30. Upon information and belief, beginning in or about March, 2003 and continuing to the present, Defendants have, without authorization from Plaintiff, used the substantially identical and confusingly similar marks JUNKYARD DOG, JUNKYARD CAT and JUNKYARD ANIMAL (the "Infringing Marks") in connection with the marketing of Infringing Works and other animal sculptures, including cat and dog sculptures.

31. Plaintiff owns and enjoys common law rights throughout the United States in and to its Mark which rights are superior to any rights Defendant may claim in and to Infringing Mark.

32. Defendants' unauthorized and continuing use of the Infringing Mark was and is intended to and will likely confuse, deceive or cause mistake among purchasers of Infringing Works and Defendants' other metal animal sculptures as to the source, origin and sponsorship thereof and the association of Plaintiff therewith.

33. Defendants' infringement of Plaintiff's Mark has caused and will continue to cause immediate and irreparable harm to Plaintiff unless enjoined by this Court.

COUNT III

TRADE DRESS INFRINGEMENT

34. Plaintiff repeats and realleges the allegations contained in Paragraph 1 through 33 herein.

35. The design, configuration, metalwork, construction, and look of Plaintiff's Works (sometimes referred to herein as "trade dress"), which includes but is not limited to the design elements and product features described above, individually or in combination, is unique, arbitrary, non-functional, and inherently distinctive. The inherent distinctiveness of Bandana's animal sculptures is used and understood to identify the Bandana brand, to distinguish Bandana goods from those manufactured or sold by others, and to indicate the source and origin of these goods.

36. Bandana has extensively advertised and promoted its metal animal sculptures, including without limitation those specifically referenced above, throughout the United States and the world, and has expended great time, effort and money in connection therewith. Bandana promotes its animal sculptures by participating in over fifty art fairs and exhibitions annually, and through the dissemination of brochures and catalogs. These marketing devices depict a consistent overall design, configuration, metalwork, construction and overall aesthetic as a source-identifying symbol of artworks produced by and originating from Bandana. By offering a variety of fictitious animals, both at rest and involved in a variety of anthropomorphic activities (leaning out of cars, driving motorcycles, etc), Bandana makes it possible for devoted customers to acquire veritable zoological gardens of sculpture, thereby building brand recognition and loyalty.

37. In the alternative, as a result of Bandana's substantial, continuous, and extensive advertising, promotion, and sales, the trade dress of its animal sculpture line has acquired secondary meaning that it identifies Bandana's goods, and distinguishes them from goods manufactured by

others. This trade dress has acquired source-identifying meaning and valuable goodwill, all of which operates for the benefit of Bandana. The trade dress of Bandana's animal sculptures is widely and favorably accepted and recognized as identifying Bandana and its goods, or at least the goods of a single source, albeit an anonymous one.

38. Defendants' infringement of Plaintiff's trade dress has caused and will continue to cause immediate and irreparable harm to Plaintiff unless enjoined by this Court.

COUNT IV

FALSE ADVERTISING - LANHAM ACT

39. Plaintiff repeats and realleges the allegations contained in Paragraph 1 through 38 herein.

40. Defendants' use of Bandana's Mark, alone or in combination with Bandana's other intangible property and assets, constitutes false advertising that is likely to deceive, and that has in fact deceived, actual and potential customers, distributors, and vendors into believing that the Infringing Merchandise is made by Bandana, or is rendered by Defendants as authorized agents of, or in association with, or under the sponsorship of, Bandana. As a result of this false advertising, Bandana's base of customers, distributors, and vendors has been diverted away from Bandana's artworks.

41. Bandana has no control over the quality or craftsmanship of Defendants' Infringing Merchandise. The Defendants' failure to produce artwork evincing the quality of Bandana's artwork, as well as any other failure, neglect, or default by Defendant in conjunction with the manufacture or marketing of the Infringing Merchandise, will reflect adversely on Bandana as the perceived provider thereof, and will thus hamper Bandana's efforts to protect its outstanding reputation for high quality in design, metalwork, aesthetics, and the other components that comprise

the reputation and goodwill of Bandana's product line. This will result in lost business and damage to Bandana's reputation and goodwill.

42. Defendants' false advertising has caused and will continue to cause immediate and irreparable harm to Plaintiff unless enjoined by this Court.

COUNT V

UNFAIR COMPETITION

43. Plaintiff repeats and realleges the allegations contained in Paragraph 1 through 42 herein.

44. Defendants have, through the conduct described above, engaged in unfair trade practices and unfair competition.

45. Because this claim of unfair competition is joined with substantial and related claims under the trademark and copyright laws of the United States, this Court has jurisdiction over the unfair competition claims, pursuant to 28 U.S.C. § 1338(b).

46. Defendants have been reproducing, copying, distributing and otherwise placing on the market Infringing Merchandise since at least as early as March, 2003, and have willfully and deliberately sought to benefit from, and to trade upon, the good works, good name, and good reputation of Bandana, all to Bandana's financial damage and detriment.

47. Defendants' unfair competition will continue unless enjoined by this Court.

WHEREFORE, Plaintiff demands as follows:

1. That a temporary restraining order and permanent injunction restraining Defendants, their agents, servants, employees, successors, assigns and all others in concert or privity with them from engaging in the false advertising and unfair competition described above, and from infringing Plaintiff's Works, Plaintiff's Mark, and Plaintiff's trade dress;

2. That Defendants be required to account to Plaintiff for Defendants' profits and the actual damages suffered by Plaintiff as a result of Defendants' infringement;

3. That Defendants be ordered to surrender to Plaintiff all property, tangible and intangible including, but not limited to all goods, merchandise and materials which infringe upon Plaintiff's Mark, and all tooling, templates, patterns or other means and media used by Defendants to copy, manufacture, reproduce, publish, display, distribute, transmit, market, promote, license and sell Defendant's Infringing Merchandise;

4. That Defendants be required to pay treble damages for their violations of the Lanham Act, 15 U.S.C. § 1125.

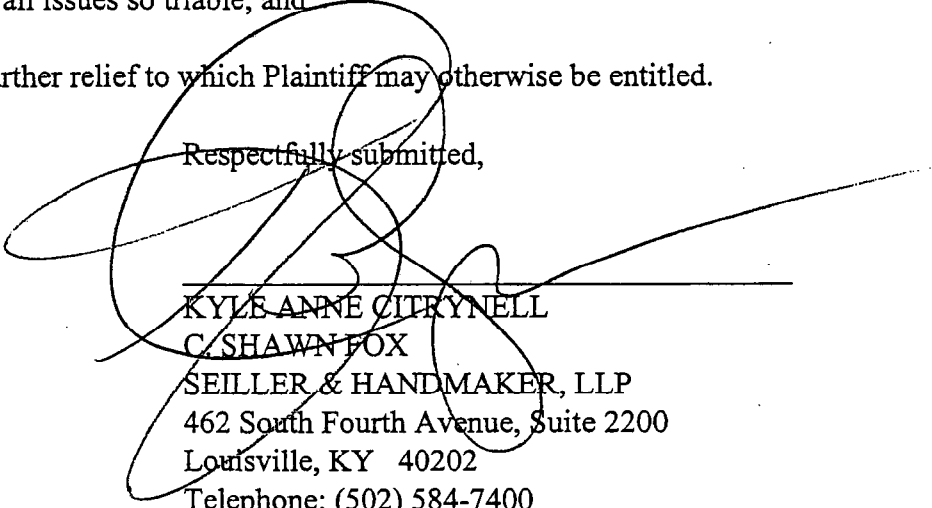
5. That Defendants be compelled to pay Plaintiff's costs and attorney fees incurred in connection with this action;

6. Leave to amend this Verified Complaint, including by adding parties and claims, by amending this prayer for damages, and otherwise, as the facts and circumstances may warrant from time to time;

7. Trial by jury of all issues so triable; and

8. All other and further relief to which Plaintiff may otherwise be entitled.

Respectfully submitted,



KYLE ANNE CITRYNELL
C. SHAWN FOX
SEILLER & HANDMAKER, LLP
462 South Fourth Avenue, Suite 2200
Louisville, KY 40202
Telephone: (502) 584-7400
Facsimile: (502) 583-2100
Email: citrynell@derbycitylaw.com

VERIFICATION

I hereby verify that the factual recitations asserted in the foregoing Verified Complaint are true and correct to the best of my knowledge, information and belief.

THE BANDANA CO., INC.

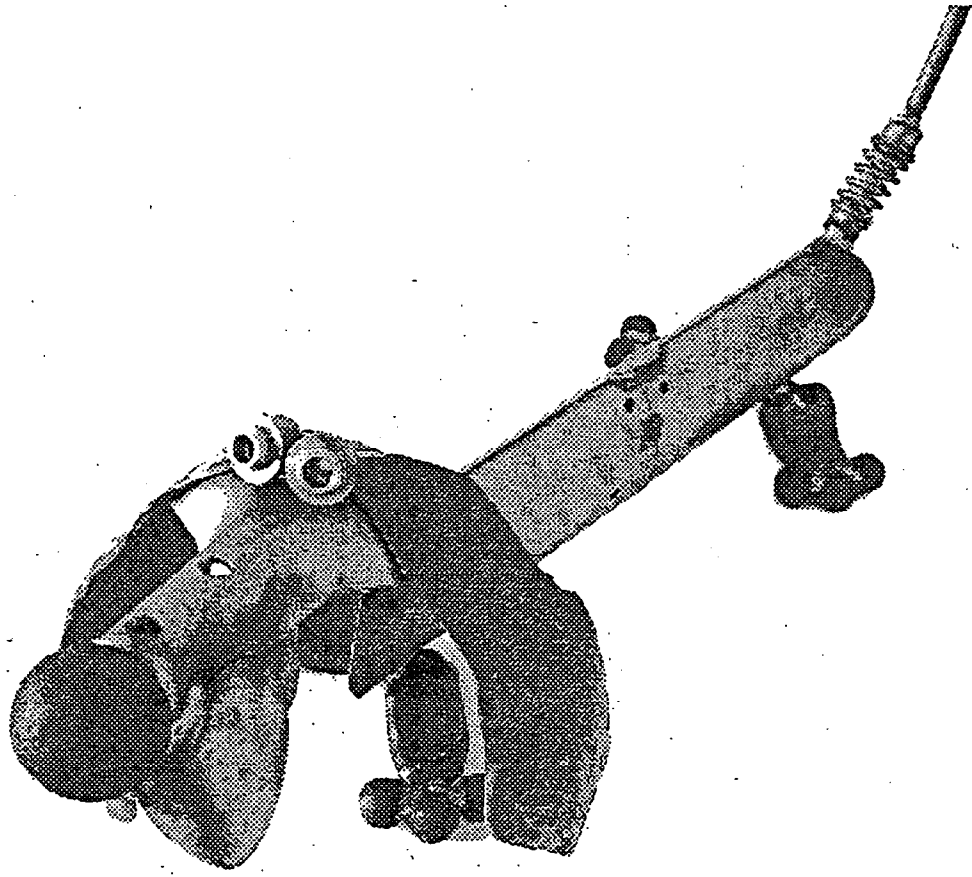
By: *Richard Kolb, President*
RICHARD KOLB, PRESIDENT

STATE OF KENTUCKY)
) SS
COUNTY OF JEFFERSON)

Subscribed and sworn to before me by RICHARD KOLB as President of THE BANDANA CO., INC., this 1st day of April, 2003.

My commission expires: January 28, 2007

Susan Raley
NOTARY PUBLIC, STATE AT LARGE, KY.



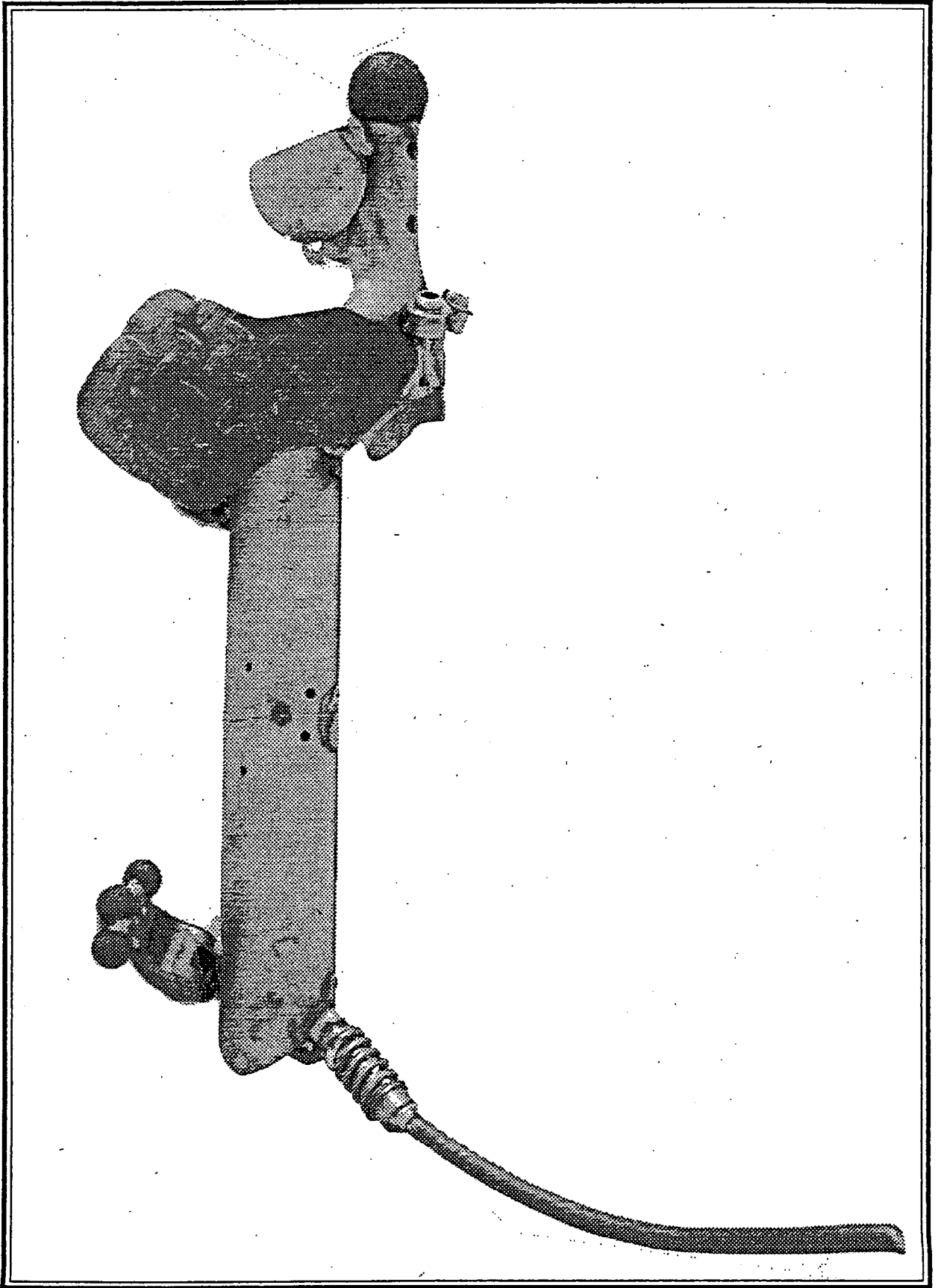
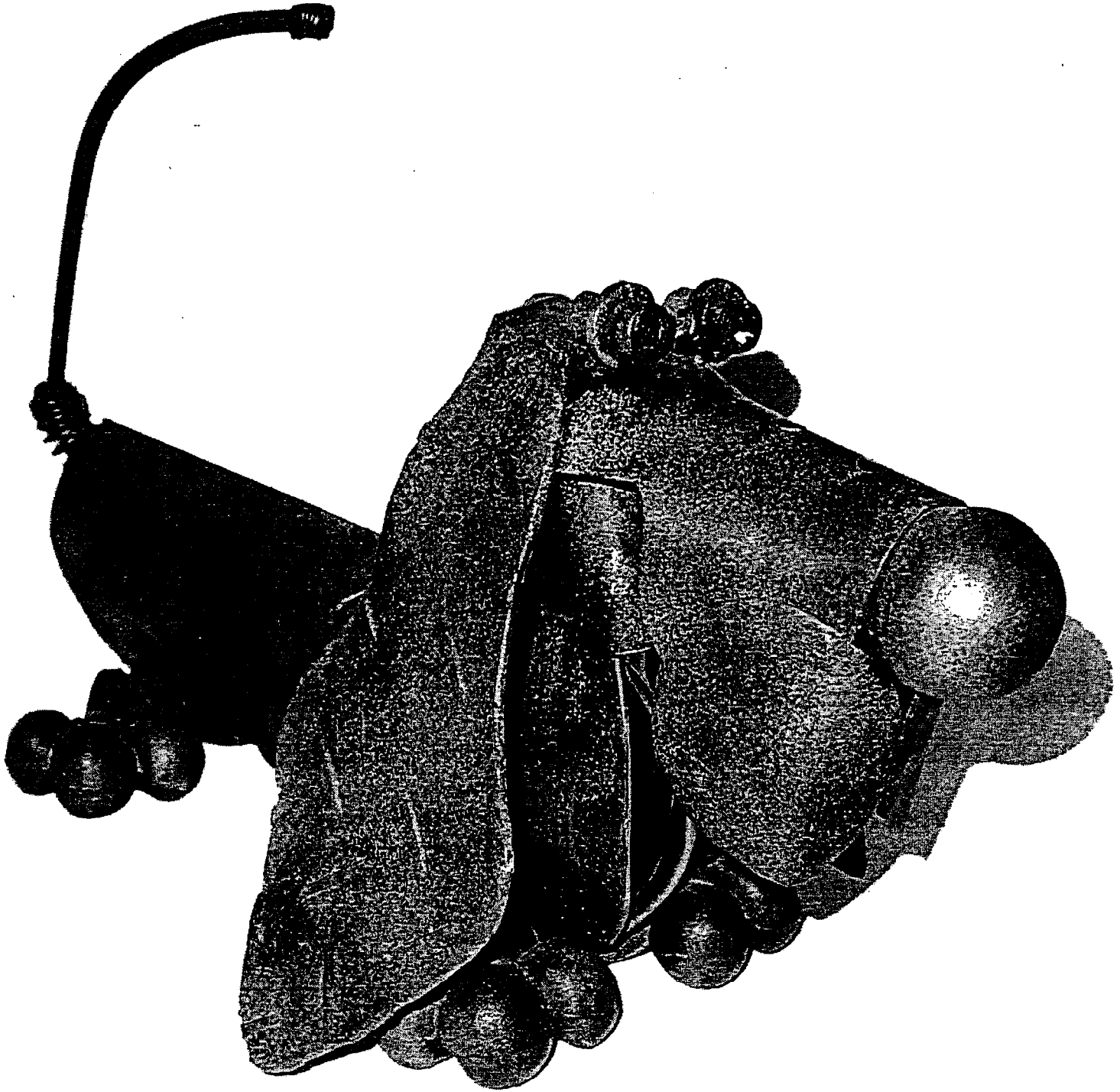
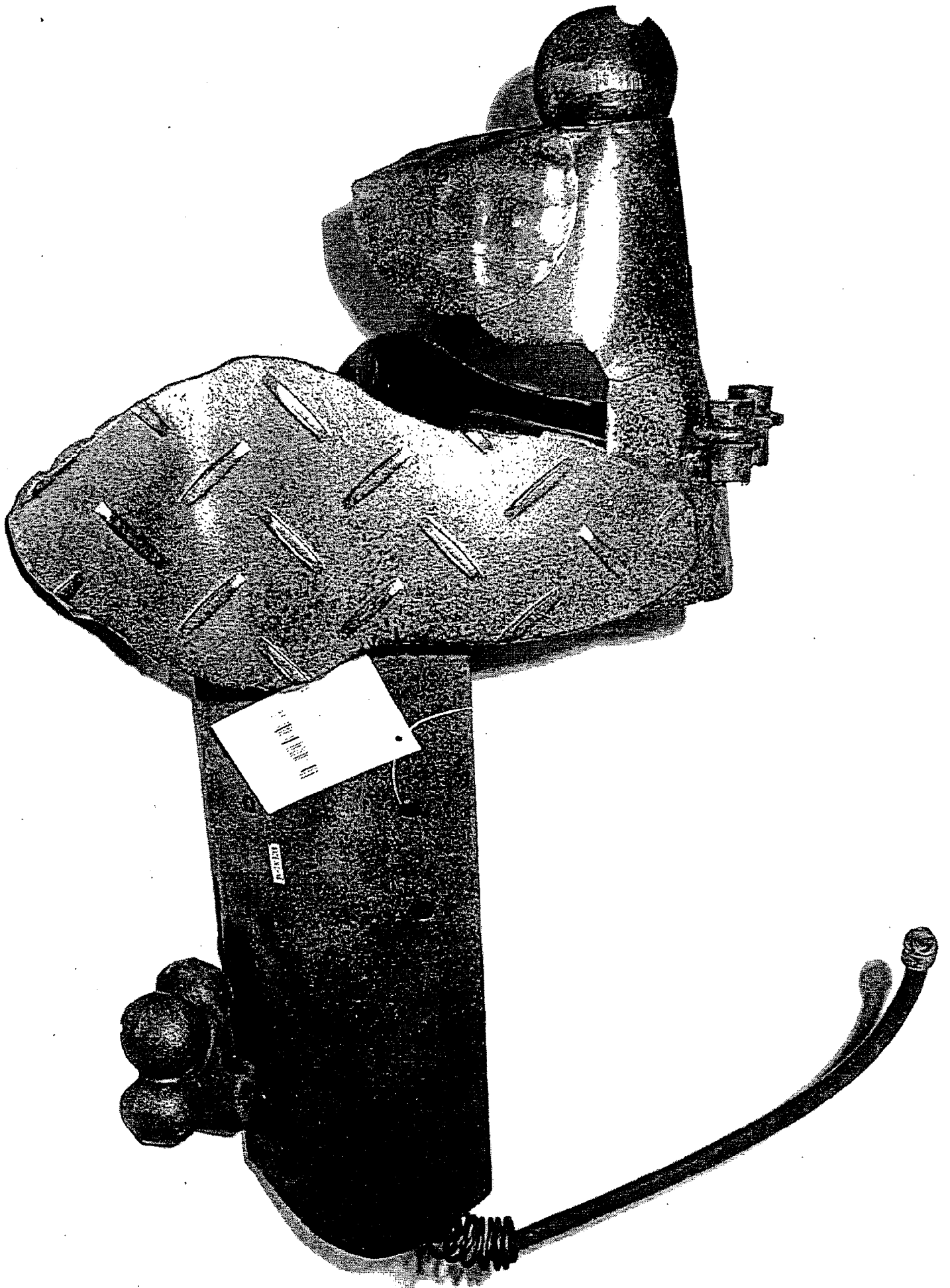


Exhibit B





CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

RE

VA 1-114-061

EFFECTIVE DATE OF REGISTRATION

March 29 2002

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼

HOT DOG

NATURE OF THIS WORK ▼ See instructions

METAL SCULPTURE

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼

THE BANDANA CO., INC.

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes
 No

Author's Nationality or Domicile
Name of Country

OR { Citizen of ► USA
Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? Yes No
Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes
 No

Author's Nationality or Domicile
Name of Country

OR { Citizen of ►
Domiciled in ►

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Anonymous? Yes No
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If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

3

a Year in Which Creation of This Work Was Completed
1999

This information must be given in all cases.

b Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published. Month ► 11 Day ► 01 Year ► 1999

USA

Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

THE BANDANA CO., INC.
2921 SOUTH THIRD STREET
LOUISVILLE, KY 40208

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED
MAR 29 2002

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

MAR 29 2002

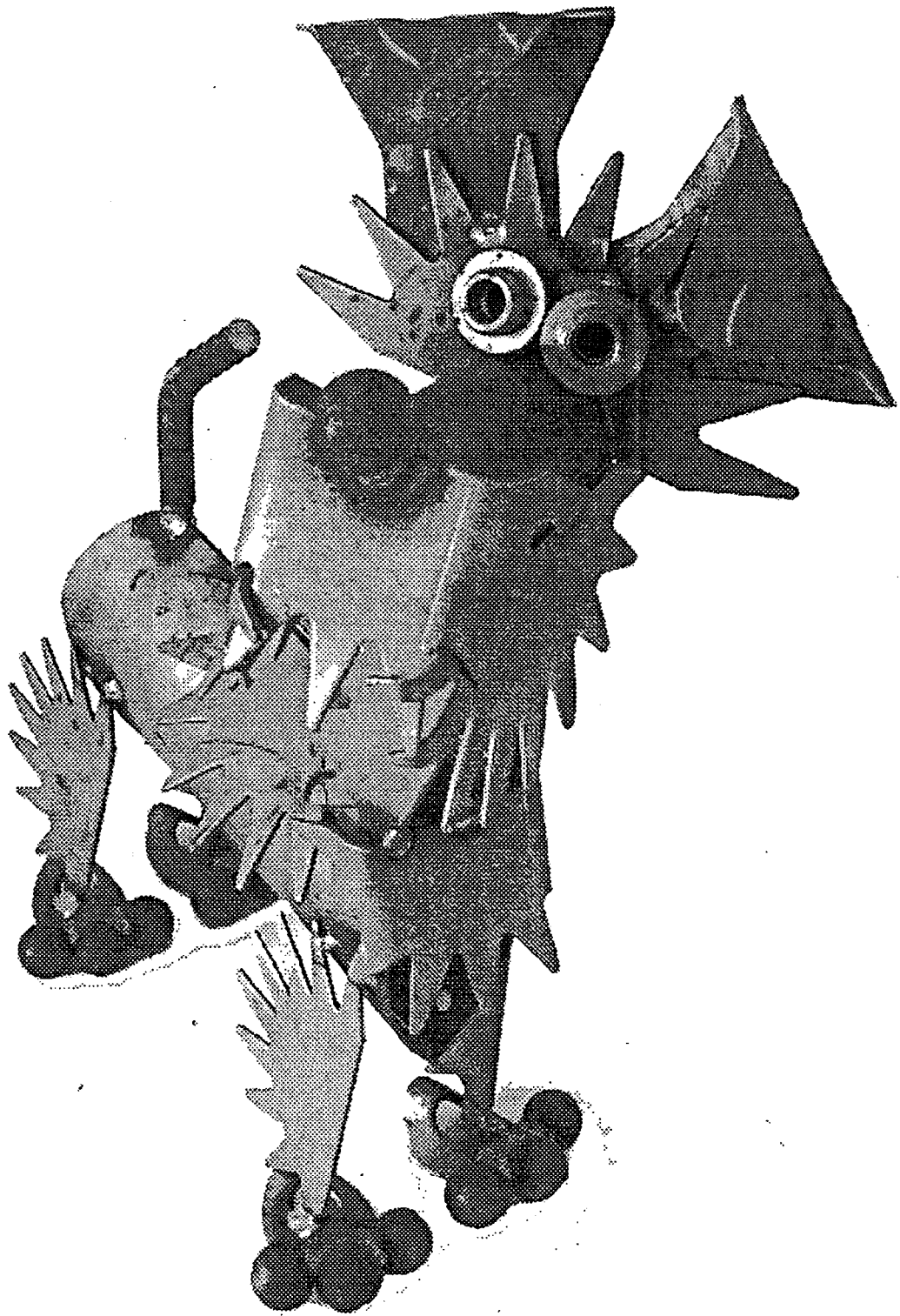
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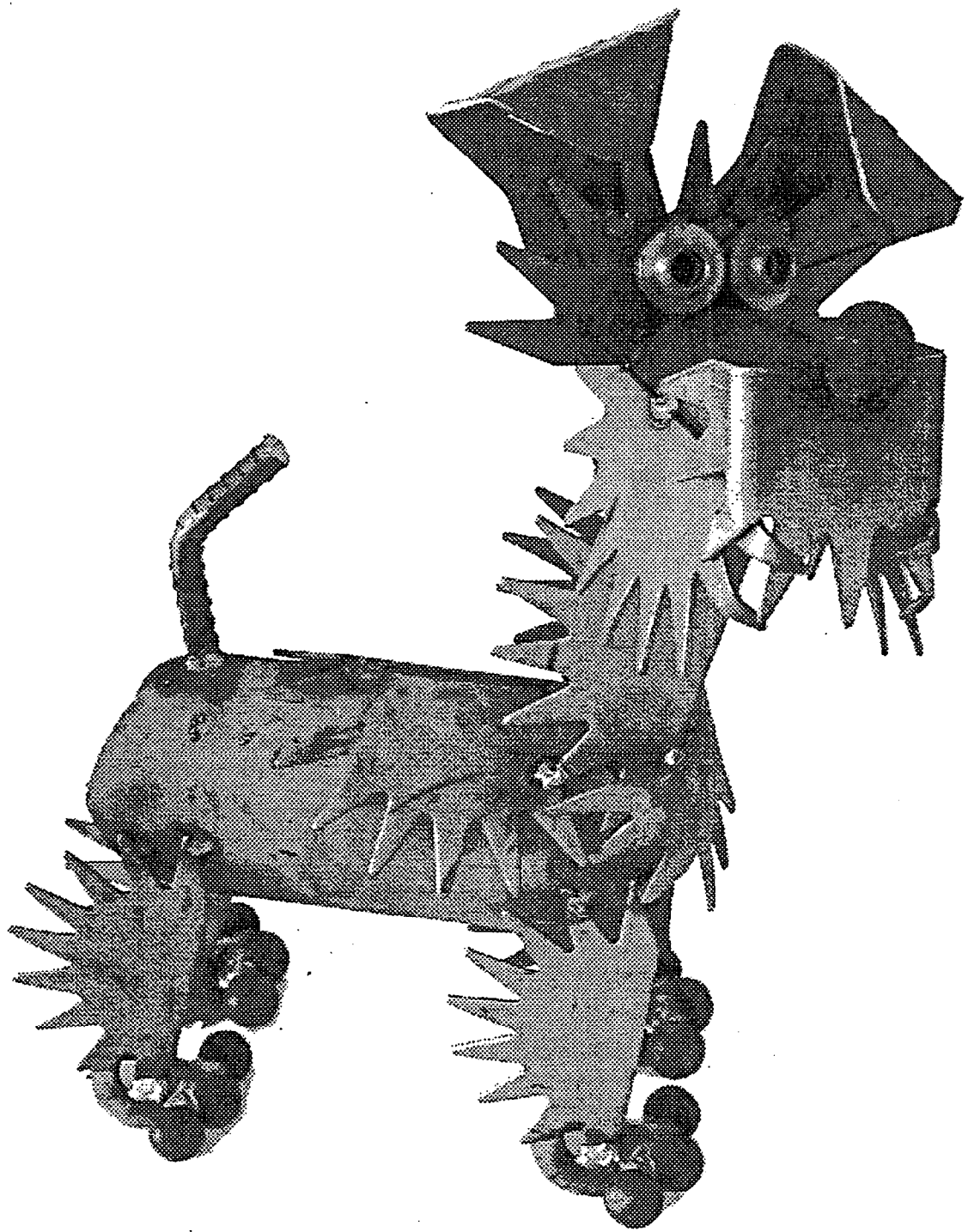
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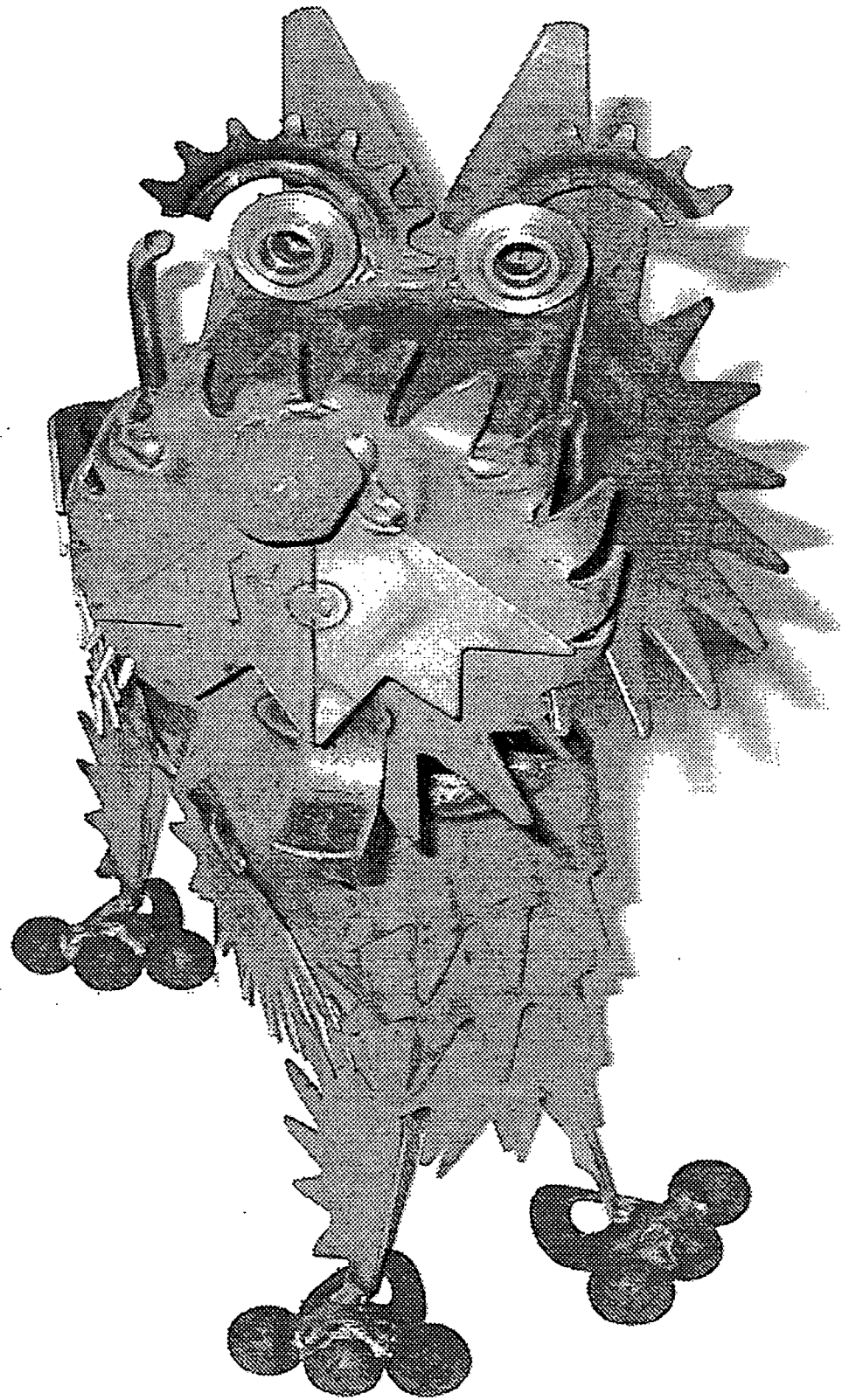
MORE ON BACK ► • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of 2 pages

11







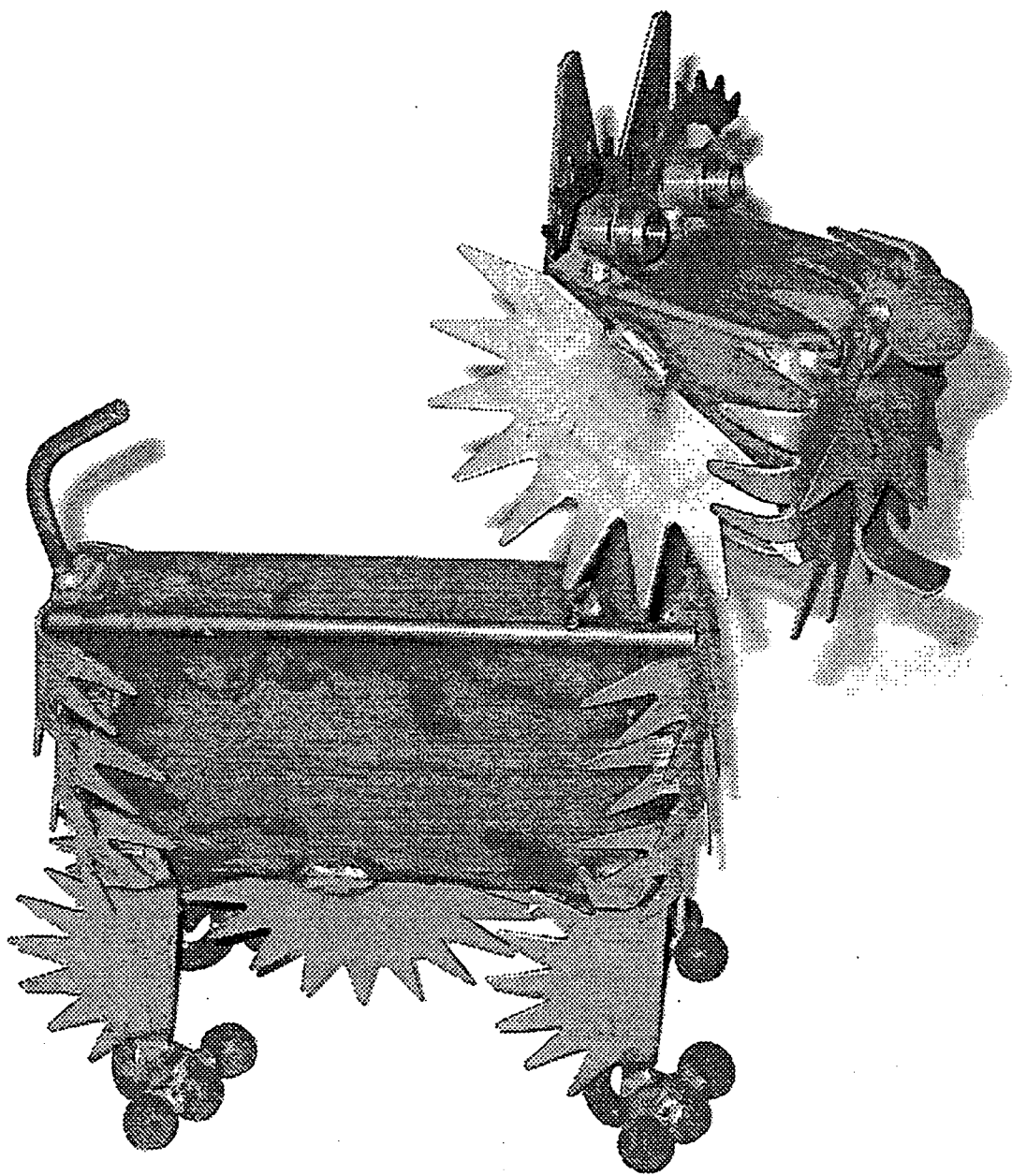






Exhibit G

CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
 REGISTER OF COPYRIGHTS
 United States of America

FORM VA
 For a Work of the Visual Arts
 UNITED STATES COPYRIGHT OFFICE

VA 1-156-023



EFFECTIVE DATE OF REGISTRATION

* *Nov. 26 2001*
 Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work ▼ **TERRIER** NATURE OF THIS WORK ▼ See instructions **METAL SCULPTURE**

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼ **a THE BANDANA CO., INC.** DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No
 Author's Nationality or Domicile Name of Country OR Citizen of USA Domiciled in _____
 Was This Author's Contribution to the Work Anonymous? Yes No Pseudonymous? Yes No

Nature of Authorship Check appropriate box(es). See instructions
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

Name of Author ▼ **b** Dates of Birth and Death
 Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No
 Author's Nationality or Domicile Name of Country OR Citizen of _____ Domiciled in _____
 Was This Author's Contribution to the Work Anonymous? Yes No Pseudonymous? Yes No

Nature of Authorship Check appropriate box(es). See instructions
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

3

Year in Which Creation of This Work Was Completed **a** 2000 This information must be given in all cases. Date and Nation of First Publication of This Particular Work **b** Month 08 Day 27 Year 2000 USA Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

THE BANDANA CO., INC.
 2921 SOUTH SECOND STREET
 LOUISVILLE, KY 40202

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY
 MAR 27 2001
 ONE DEPOSIT RECEIVED
 Nov 26 2001 *
 TWO DEPOSITS RECEIVED
 FUNDS RECEIVED

MORE ON BACK ▶ Complete all applicable spaces (numbers 5-9) on the reverse side of this page. See detailed instructions. Sign the form at line 8.

DO NOT WRITE HERE
 Page 1 of 2 pages

FEE CHANGES

Fees are effective through June 30, 2002. After that date, check the Copyright Office Website at www.loc.gov/copyright or call (202) 707-3000 for current fee information.



VA VAU
EFFECTIVE DATE OF REGISTRATION
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼
SCOTTY SCHNAUZER

NATURE OF THIS WORK ▼ See instructions.
METAL SCULPTURE

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

a **NAME OF AUTHOR** ▼
THE BANDANA CO, INC.

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ► USA
Domiciled in ►

Was This Author's Contribution to the Work Anonymous? Yes No
Pseudonymous? Yes No

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions.

3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

b **NAME OF AUTHOR** ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ►
Domiciled in ►

Was This Author's Contribution to the Work Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions.

3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

3

a Year in Which Creation of This Work Was Completed
1999

b Date and Nation of First Publication of This Particular Work
Month ► 7 Day ► 29 Year ► 1999
USA

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
THE BANDANA CO., INC.
2921 South 2nd Street
Louisville, KY 40208

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

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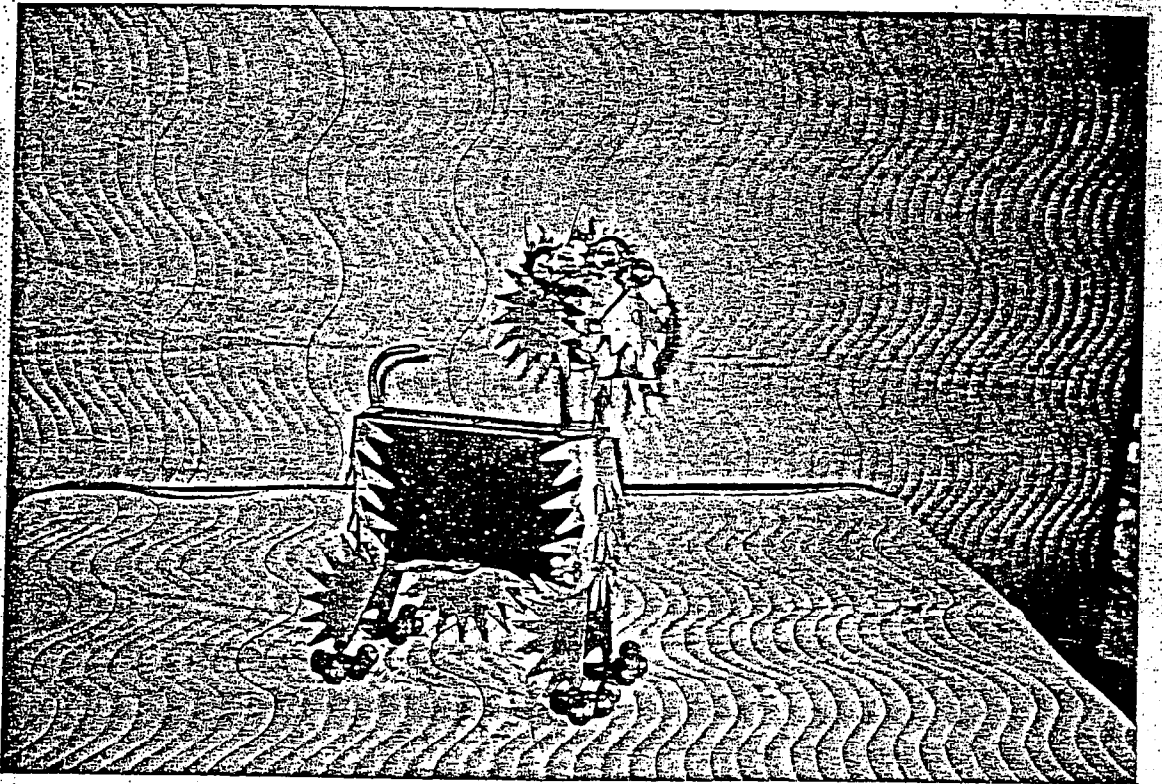
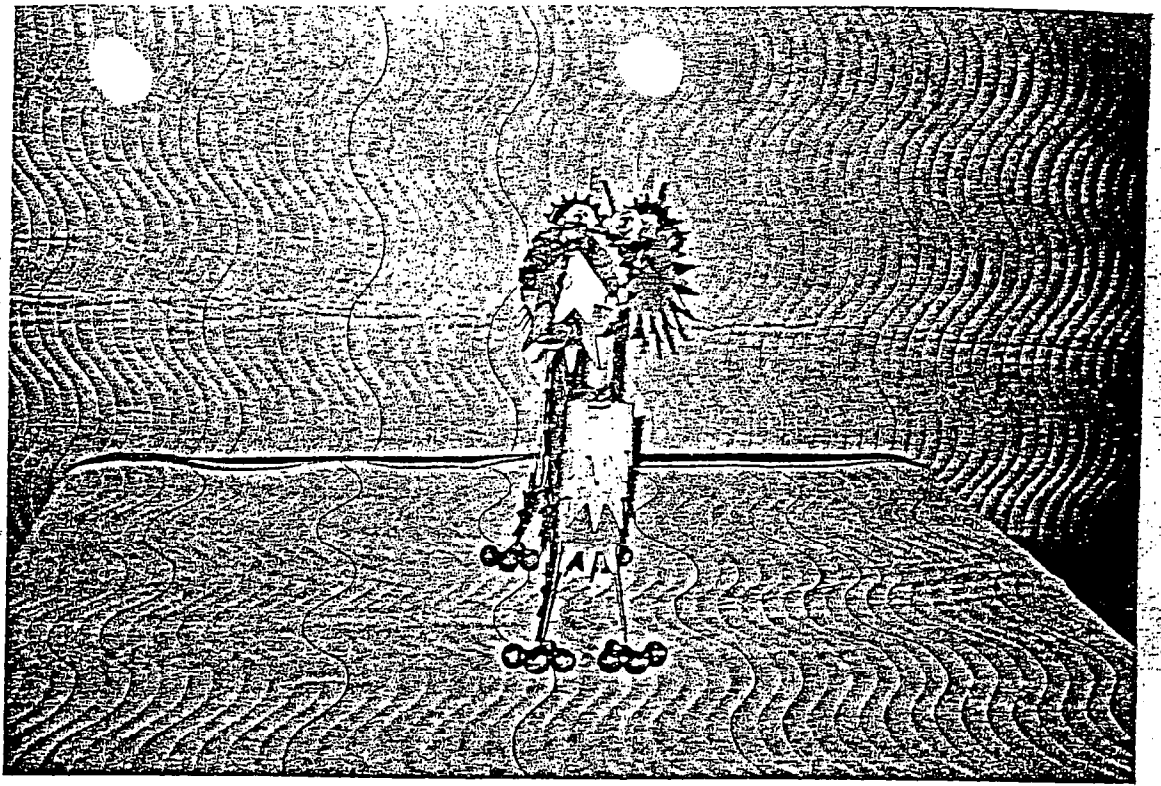
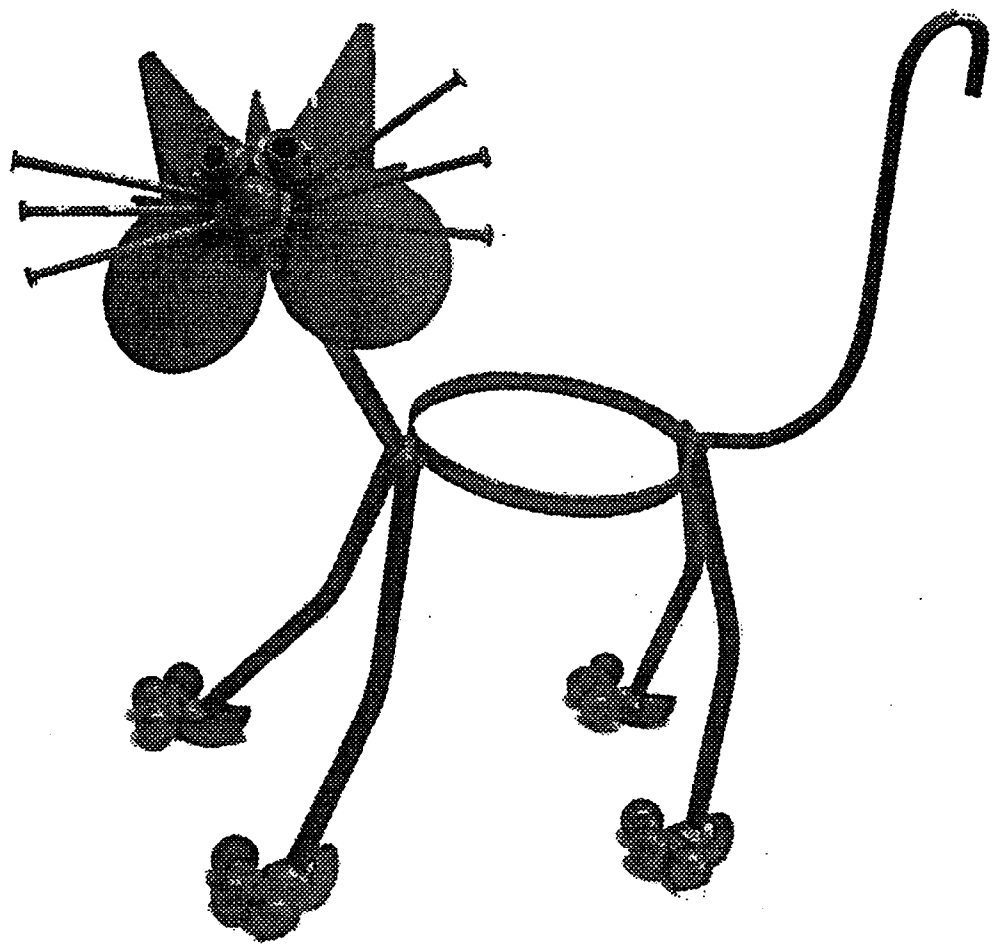
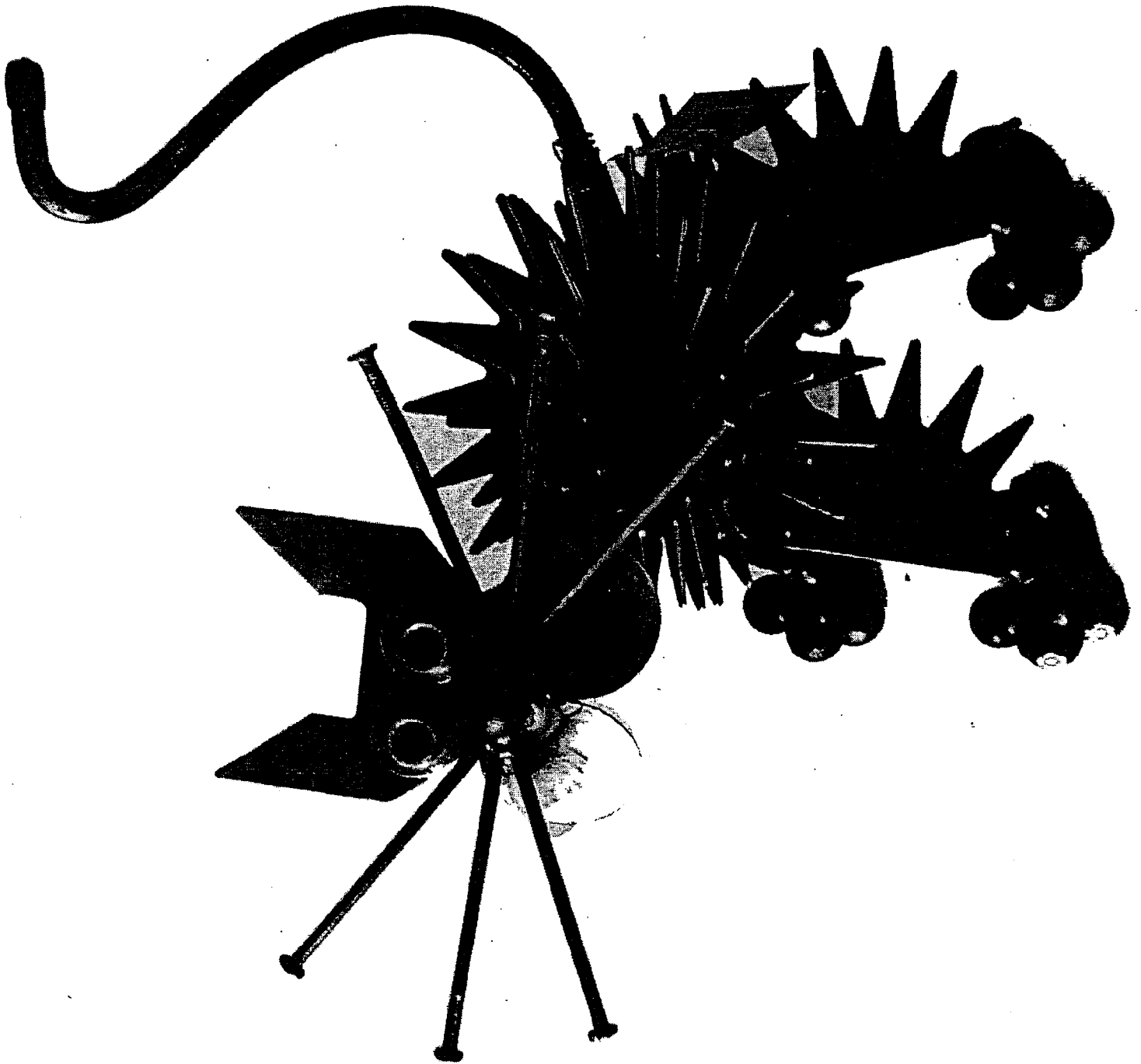


Exhibit I





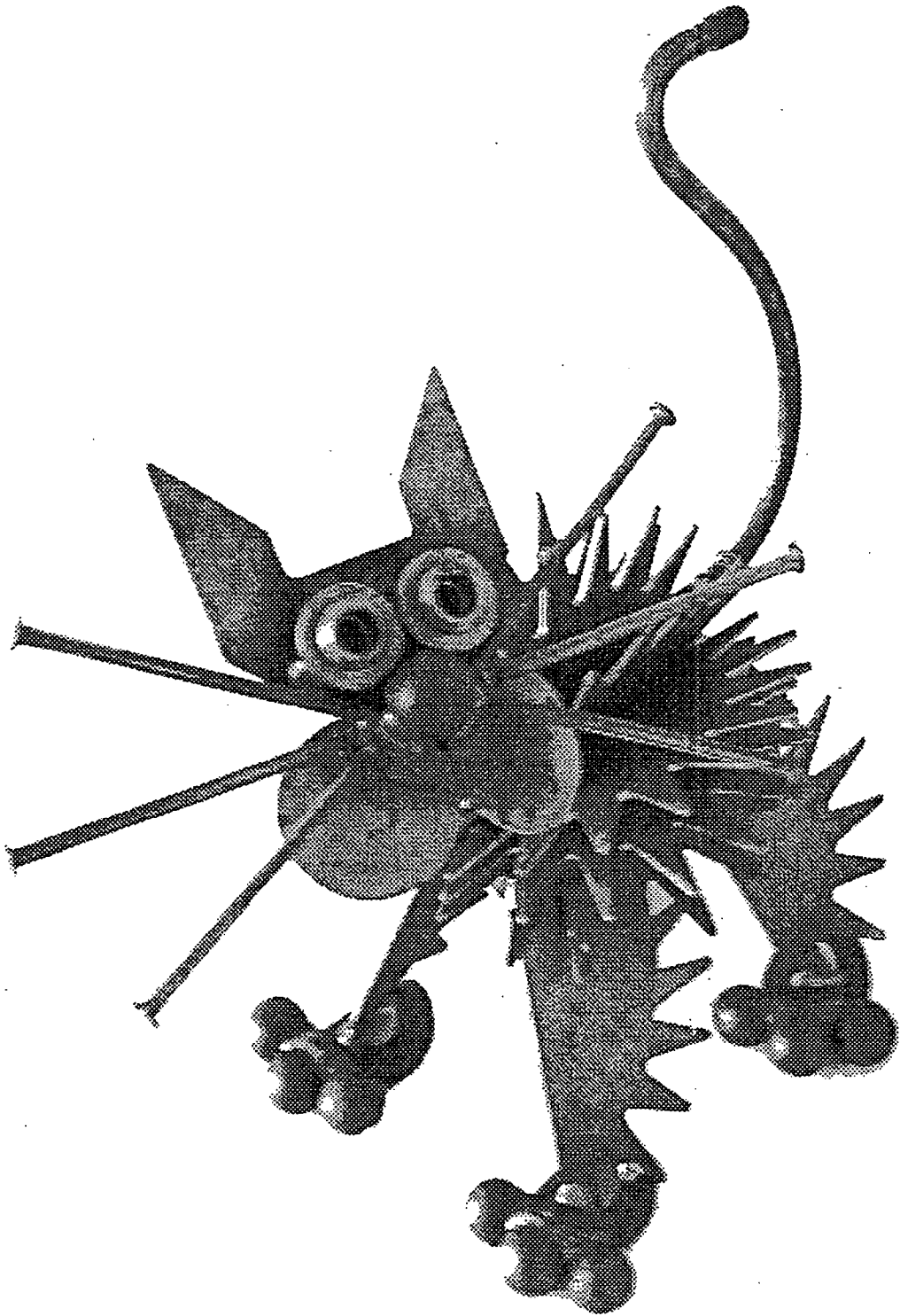
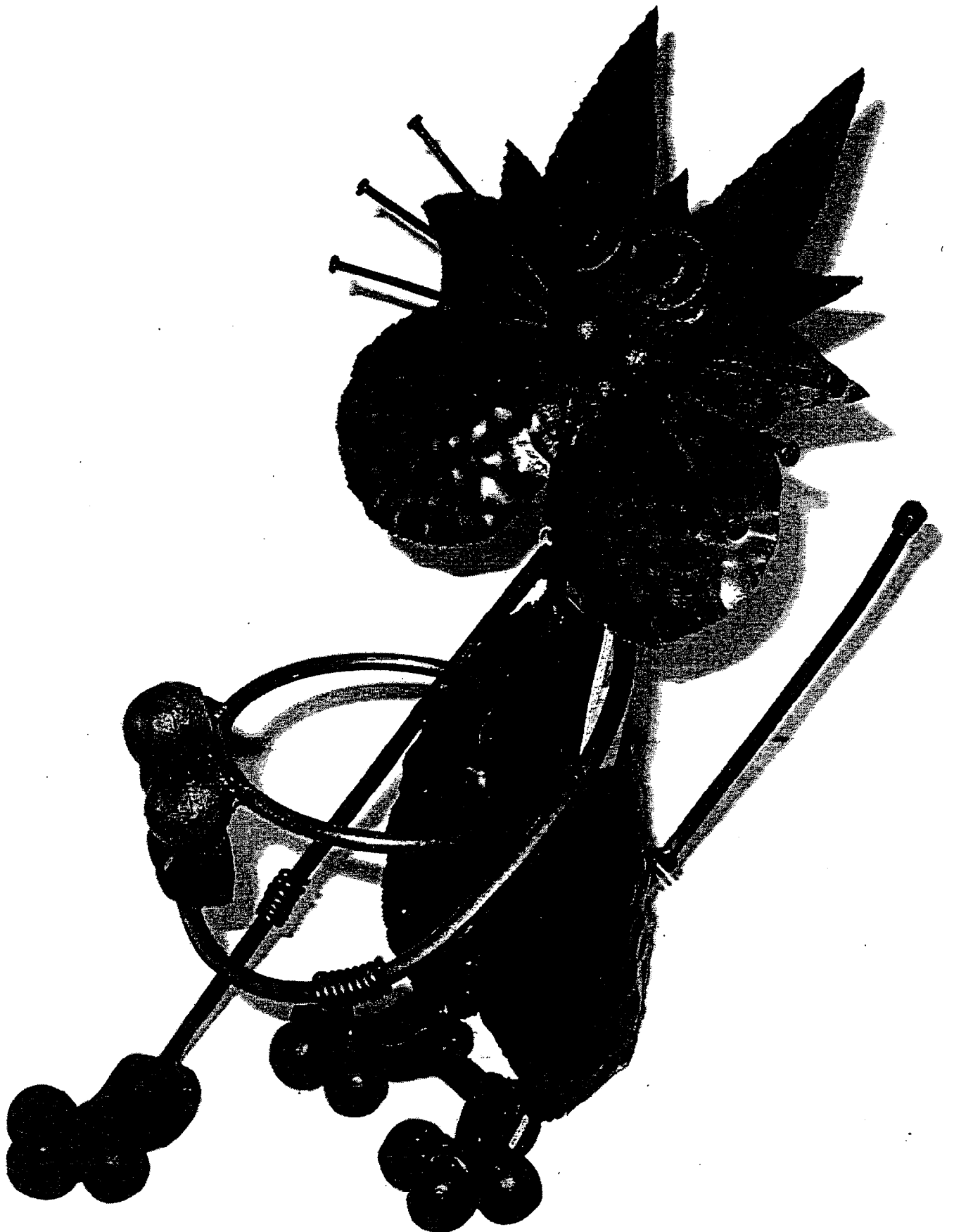
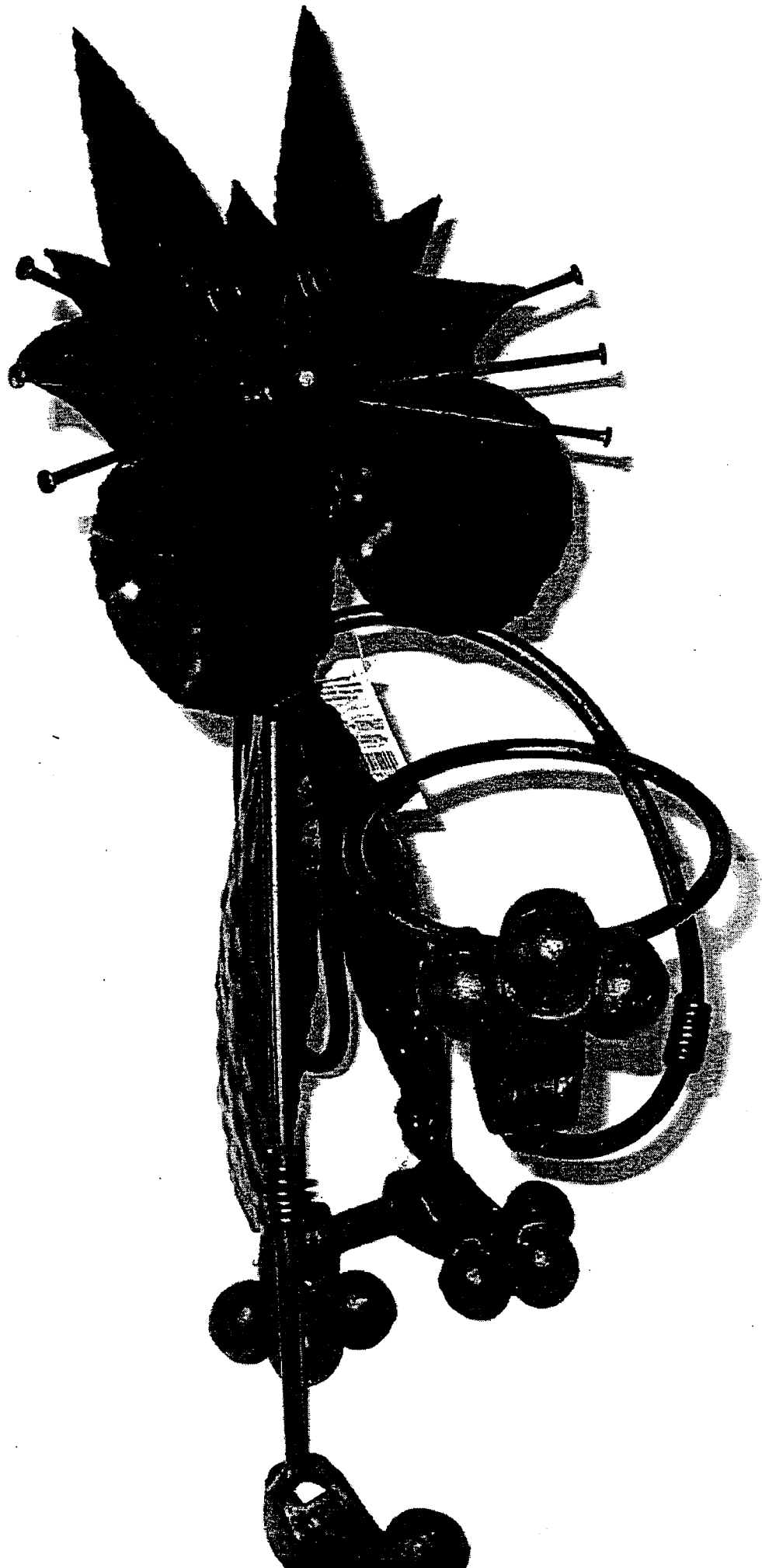
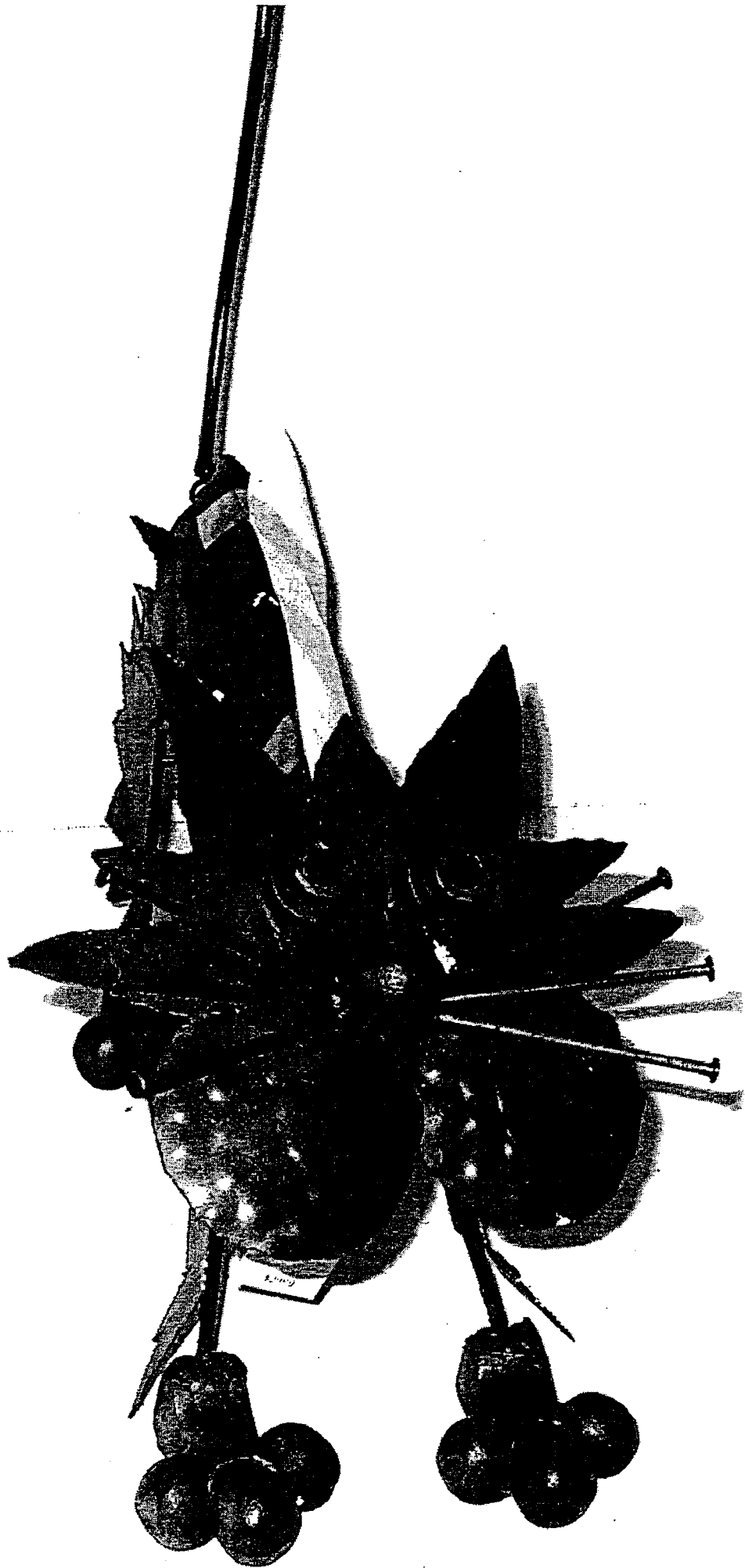
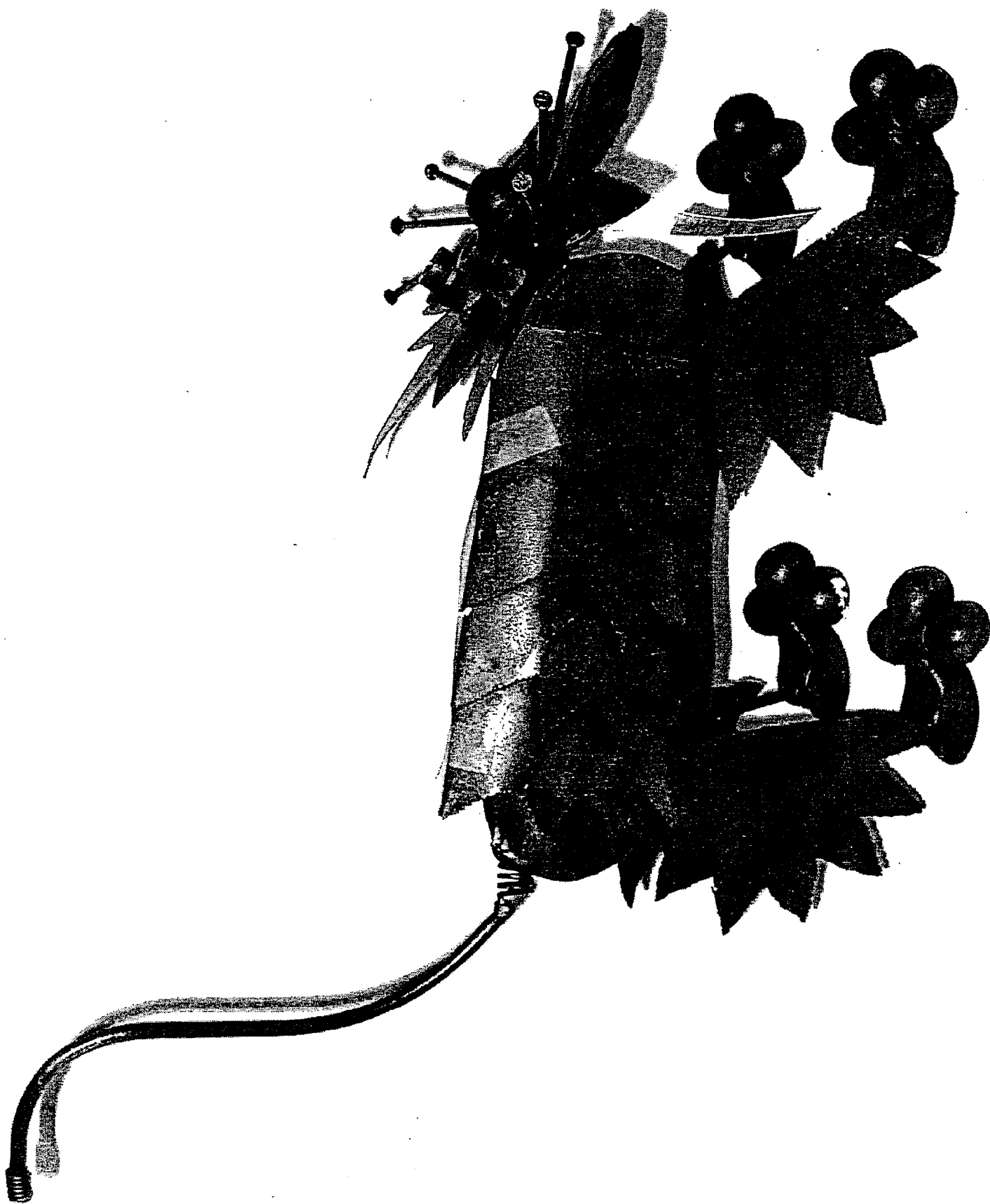


Exhibit K









CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
 REGISTER OF COPYRIGHTS
 United States of America

FORM VA
 For a Work of the Visual Arts
 UNITED STATES COPYRIGHT OFFICE

RI VA 1-156-037

EFFECTIVE DATE OF REGISTRATION
 Nov. 26 2001
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work **▼** NATURE OF THIS WORK **▼** See instructions
 CAT POTHOLDER METAL SCULPTURE

Previous or Alternative Titles **▼**

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work **▼**

If published in a periodical or serial give: Volume **▼** Number **▼** Issue Date **▼** On Pages **▼**

2

a NAME OF AUTHOR **▼** DATES OF BIRTH AND DEATH
 THE BANDANA CO., INC. Year Born **▼** Year Died **▼**

Was this contribution to the work a "work made for hire"? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Author's Nationality or Domicile Name of Country OR { Citizen of <u>USA</u> Domiciled in _____	Was This Author's Contribution to the Work Anonymous? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Pseudonymous? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small>If the answer to either of these questions is "Yes," see detailed instructions.</small>
---	---	---

Nature of Authorship Check appropriate box(es). See instructions

<input checked="" type="checkbox"/> 3-Dimensional sculpture	<input type="checkbox"/> Map	<input type="checkbox"/> Technical drawing
<input type="checkbox"/> 2-Dimensional artwork	<input type="checkbox"/> Photograph	<input type="checkbox"/> Text
<input type="checkbox"/> Reproduction of work of art	<input type="checkbox"/> Jewelry design	<input type="checkbox"/> Architectural work

b Name of Author **▼** Dates of Birth and Death
Year Born **▼** Year Died **▼**

Was this contribution to the work a "work made for hire"? <input type="checkbox"/> Yes <input type="checkbox"/> No	Author's Nationality or Domicile Name of Country OR { Citizen of _____ Domiciled in _____	Was This Author's Contribution to the Work Anonymous? <input type="checkbox"/> Yes <input type="checkbox"/> No Pseudonymous? <input type="checkbox"/> Yes <input type="checkbox"/> No <small>If the answer to either of these questions is "Yes," see detailed instructions.</small>
--	--	---

Nature of Authorship Check appropriate box(es). See instructions

<input type="checkbox"/> 3-Dimensional sculpture	<input type="checkbox"/> Map	<input type="checkbox"/> Technical drawing
<input type="checkbox"/> 2-Dimensional artwork	<input type="checkbox"/> Photograph	<input type="checkbox"/> Text
<input type="checkbox"/> Reproduction of work of art	<input type="checkbox"/> Jewelry design	<input type="checkbox"/> Architectural work

3

a Year in Which Creation of This Work Was Completed 2001 **b** Date and Nation of First Publication of This Particular Work
This information must be given Year in all cases. Complete this information Month 01 Day 01 Year 2001
ONLY if this work has been published. USA Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. **▼**
 THE BANDANA CO., INC.
 2921 SOUTH SECOND STREET
 LOUISVILLE, KY 40202

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. **▼**

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 MAR 27 2002 Nov. 26, 2001
 ONE DEPOSIT RECEIVED
 Nov. 26, 2001
 TWO DEPOSITS RECEIVED
 FUNDS RECEIVED

Exhibit N

CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

FORM VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REG

VA 1-091-207



11/09/01 09:12:07

EFFECTIVE DATE OF REGISTRATION

August 29 2001

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼
FLUFFY KITTY

NATURE OF THIS WORK ▼ See instructions

METAL SCULPTURE

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼
BANDANA COMPANY, INC.

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
* Yes
 No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ► USA
Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

- 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared), as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ►
Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

- 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

3

Year in Which Creation of This Work Was Completed
2000

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published. Month ► 01 Day ► 02 Year ► 2001
USA

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Bandana Company, Inc.
2921 South Second Street
Louisville, KY 40208

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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AUG 29 2001

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TWO DEPOSITS RECEIVED

AUG 29 2001

FUNDS RECEIVED

MORE ON BACK ► • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of 2 pages

FILED
U.S. DISTRICT COURT CLERK
WESTERN DISTRICT OF KY

04 NOV 10 PM 2:13

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

THE BANDANA CO., INC.)
2921 South Second Street)
Louisville, Kentucky 40208)

Plaintiff,)

v.)

CIVIL ACTION NO. 3L93CV-211-C

LINENS N' THINGS, INC.)
6 Brighton Road)
Clifton, New Jersey 07015)

SERVE: Secretary of State)
Room 86, State Capitol)
Frankfort, KY 40601)

and)

JOHN DOES Numbers 1 through 99,)

Defendants.)

FIRST AMENDED COMPLAINT

Comes Plaintiff, The Bandana Co., Inc. ("Bandana"), and for its First Amended Complaint against Defendants Linens n' Things, Inc. and John Does Numbers 1 through 99, herein repeats in their entireties paragraphs 1-17, 19-28 and 30-47 of its Verified Complaint, a copy of which is incorporated herein by reference and attached hereto as Exhibit "1," and update and revise paragraphs 18 and 29 of the Complaint so as to make the following allegations:

18. Plaintiff has registered its copyright in and to "Scotty Schnauzer" with the United States Copyright Office and has received the Federal Copyright Certificate therefor (Registration

Number VA 1-256-008, Effective Registration Date of June 14, 2002), a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference.

29. Since at least as early as 1999 Plaintiff has adopted and used and extensively advertised the trademarks JUNKYARD and JUNKYARD DOGS AND CATS (collectively, the "Mark") in connection with the marketing of certain animal sculptures, including Works, and has amassed valuable rights and good will associated therewith. Plaintiff owns all rights and interest to the trademark JUNKYARD PETS in connection with statues of non-precious metal as evidenced by the assignment, a copy of which is incorporated herein by reference and attached hereto as Exhibit "2." (The JUNKYARD, JUNKYARD DOGS AND CATS, and JUNKYARD PETS trademarks are hereinafter collectively referred to as the "Mark").

WHEREFORE, Plaintiff respectfully requests the following relief:

1. A temporary restraining order and permanent injunction restraining Defendants, their agents, servants, employees, successors, assigns and all others in concert or privity with them from infringing Plaintiff's Works, and from manufacturing, reproducing, importing, publishing, displaying, distributing, transmitting, selling or otherwise placing on the market Defendants' Infringing Merchandise and, thus, using Plaintiff's copyrighted Works without authorization;
2. That Defendants be required to account to Plaintiff for Defendants' profits and the actual damages suffered by Plaintiff as a result of Defendants' infringement;
3. That Defendants be ordered to surrender to Plaintiff all property, tangible and intangible including, but not limited to all goods, merchandise and materials which infringe upon Plaintiff's copyrighted Works and all tooling, templates, patterns or other means and media used by

Defendants to copy, manufacture, reproduce, publish, display, distribute, transmit, market, promote, license and sell Defendants' Infringing Merchandise;

4. That Plaintiff be awarded actual damages and profits or statutory damages against Defendants, in an amount to be determined, subject to Plaintiff's election with respect thereto;

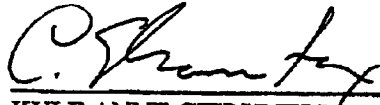
5. That Defendants be compelled to pay Plaintiff's attorney fees and costs in connection with this action;

6. For leave to amend this First Amended Complaint, including by adding parties and claims and by amending this prayer for damages, and otherwise, as the facts and circumstances may warrant from time to time;

7. For trial by jury of all issues so triable; and

8. For all other and further relief to which Plaintiff may otherwise be entitled.

Respectfully submitted,



KYLE ANNE CITRYNELL
C. SHAWN FOX
PAUL J. HERSHBURG
SELLER & HANDMAKER, LLP
Meidinger Tower
462 South Fourth Street, Suite 220
Louisville, Kentucky 40202
Telephone: (502) 584-7400
Facsimile: (502) 583-2100
E-mail: citrynell@derbycitylaw.com
Attorneys for Plaintiff

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 1-256-008

Marybeth Peters

Register of Copyrights, United States of America

JUN. 14, 2002

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK **NATURE OF THIS WORK** See instructions.
SCOTTY SCHNAUZER METAL SCULPTURE

PREVIOUS OR ALTERNATIVE TITLES

Publication as a Contribution: If this work was published in a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

Published in a periodical or serial give: Volume Number Issue Date On Page

2

NAME OF AUTHOR **DATES OF BIRTH AND DEATH**
THE BANDANA CO., INC. Year Born Year Died

Was this contribution to the work a "work made for hire"? Yes No
Author's Nationality or domicile, Name of Country OR Citizenship of USA Domiciled in

Was This Author's Contribution to the Work Assumed? Yes No If the answer is either of these questions is "Yes," see instruction 8.
Financement? Yes No

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions.
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

NAME OF AUTHOR **DATES OF BIRTH AND DEATH**
Year Born Year Died

Was this contribution to the work a "work made for hire"? Yes No
Author's Nationality or domicile, Name of Country OR Citizenship of Domiciled in

Was This Author's Contribution to the Work Assumed? Yes No If the answer is either of these questions is "Yes," see instruction 8.
Financement? Yes No

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions.
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

3

Year in Which Creation of This Work Was Completed 1999 **Date and Month of First Publication of This Particular Work** Month 7 Day 29 Year 1999
This information must be given in all cases. ONLY if this work has been published. USA

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.
THE BANDANA CO., INC.
292 1/2 South 2nd Street
Louisville, KY 40208
Transfer: If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED
6/14/02
ONE DEPOSIT RECEIVED
6/14/02
TWO DEPOSITS RECEIVED
FUNDS RECEIVED

EXAMINED BY [Signature] FORM VA
 CHECKED BY _____
 CORRESPONDENCE
 Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)
- a. This is the first published edition of a work previously registered in unpublished form.
 b. This is the first published edition of a work previously registered in unpublished form.
 c. This is a different version of the work as defined by space 5 on this application.

If your answer is "Yes," give Previous Registration Number Y Year of Registration Y

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.
 a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.

D/E

6
See instructions before completing this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

D/A

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name Y Account Number Y

7
a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP

Kyle Anne Citrynell
 462 South Fourth Avenue #2200
 Louisville, KY 40202

Area code and daytime telephone number ▶ (502) 584-7400

Fax number ▶ (502) 583-2100

Email ▶ citrynell@derbycitylw.com

b

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one ▶

- author
 other copyright claimant
 owner of exclusive rights

If authorized agent of: THE BANDANA CO., INC.

Name of author or other copyright claimant, or owner of exclusive rights

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date Y If this application gives a date of publication in space 1, do not sign and submit it before that date.

KYLE ANNE CITRYNELL

Date ▶ 6/7/06

Handwritten Signature [Signature]

Certificate will be mailed in window envelopes this address:

Name Y
Kyle Anne Citrynell
 Number/Street/Apt Y
462 South Fourth Avenue #2200
 City/State/ZIP Y
Louisville, KY 40202

YOU MUST
 • Complete all necessary forms
 • Sign your application in space 8
 • Pay the registration fee in full
 • Deposit material
 • Retain a copy of the application and material deposited

RECORDS
 Library of Congress
 Copyright Office
 101 Independence Avenue, S.E.
 Washington, D.C. 20540-8000

9

U.S. GOVERNMENT PRINTING OFFICE: 1988-451-878/1



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231



JUNE 21, 2004

PTAS

000009138A

KYLE ANNE CITRYNELL
462 SOUTH FOURTH STREET
SUITE 2200
LOUISVILLE, KY 40202

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 06/15/2004

REEL/FRAME: 002874/0751
NUMBER OF PAGES: 3

BRIEF: ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

ASSIGNOR:

DON WASSERMAN INTERNATIONAL, INC.

DOC DATE: 05/26/2004
CITIZENSHIP: PENNSYLVANIA
ENTITY: CORPORATION

ASSIGNEE:

THE BANDANA CO., INC.
2921 SOUTH SECOND STREET
LOUISVILLE, KENTUCKY 40208

CITIZENSHIP: KENTUCKY
ENTITY: CORPORATION

APPLICATION NUMBER: 76419927
REGISTRATION NUMBER: 2830595

FILING DATE: 06/13/2002
ISSUE DATE: 04/06/2004

MARK: JUNKYARD PETS

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

BANDANA 1543

002874/0751 PAGE 2

MARGARET LASALLE, PARALEGAL
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

BANDANA 1544

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

06/15/2004
900009138

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Don Wasserman International, Inc.		05/26/2004	CORPORATION: PENNSYLVANIA

RECEIVING PARTY DATA

Name:	The Bandana Co., Inc.
Street Address:	2921 South Second Street
City:	Louisville
State/Country:	KENTUCKY
Postal Code:	40208
Entity Type:	CORPORATION: KENTUCKY

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	2830595	JUNKYARD PETS

CORRESPONDENCE DATA

Fax Number: (502)583-2100
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: (502) 584-7400
 Email: citynell@derbycitylaw.com
 Correspondent Name: Kyle Anne Citynell
 Address Line 1: 462 South Fourth Street
 Address Line 2: Suite 2200
 Address Line 4: Louisville, KENTUCKY 40202

NAME OF SUBMITTER: Kyle Anne Citynell

Total Attachments: 2
 source=SCN_20040615121815_001#page1.tif
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CH 540.00 2830595

BANDANA 1545

TRADemark ASSIGNMENT

This Agreement is made effective on the ____ day of ____ 2004, between Don Wasserman International, Inc., a Pennsylvania corporation, with an address of 4530 Tacony Street, Philadelphia, PA, 19124, ("ASSIGNOR"), and The Bandana Co., Inc., a Kentucky corporation, with an address of 2921 South Second Street, Louisville, KY 40208 ("ASSIGNEE").

WHEREAS, ASSIGNOR has adopted the JUNKYARD PETS trademark, as represented in U.S. Reg. No. 2,830,595, for which it owns the federal registration in the United States Patent and Trademark Office;

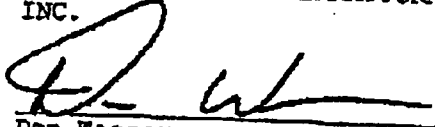
WHEREAS, ASSIGNEE is desirous of acquiring said trademark;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, ASSIGNOR does hereby assign, sell and transfer to ASSIGNEE, all of its right, title, and interest in and to said trademark, together with the goodwill of the business symbolized by and associated with said trademark and the registration thereof.

IN TESTIMONY WHEREOF, ASSIGNOR has executed this Assignment by a duly authorized officer.

DON WASSERMAN INTERNATIONAL,
INC.

Dated: 526.04

By: 
Don Wasserman
President

103028 00101/11700700-1

BANDANA 1546

Commonwealth of Pennsylvania)
County of Philadelphia) SS:

On this 26th day of MAY, 2004, before me appeared Don Wasserman, the person who signed this instrument, who acknowledged that he signed it as a free act on behalf of Don Wasserman International, Inc.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Regina B. Van Kirk, Notary Public
City Of Philadelphia, Philadelphia County
My Commission Expires May 3, 2008
Member, Pennsylvania Association Of Notaries

Regina B. Van Kirk
Notary Public

My Commission Expires: 5-3-08

Karen K. McWhorter

From: kywd-ecf-notice@kywd.uscourts.gov
Sent: Thursday, November 11, 2004 9:36 AM
To: kywd-ecf-notice@kywd.uscourts.gov
Subject: Activity in Case 3:03-cv-00211-JBC-ERG Bandana Co v. Linens n Things Inc, et al "Amended Complaint"

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U.S. District Court

Western District of Kentucky

Notice of Electronic Filing

The following transaction was received from Paul Joseph Hershberg entered on 11/11/2004 at 9:35 AM EST and filed on 11/10/2004

Case Name: Bandana Co v. Linens n Things Inc, et al
Case Number: 3:03-cv-211
Filer: Bandana Co., Inc.
Document Number: 52

Docket Text:

FIRST AMENDED COMPLAINT against John Does 1-99, Linens N' Things, Inc. , filed by Bandana Co., Inc. Related document: [1] Complaint. (Attachments: # (1) Exhibit 1; # (2) Exhibit 2)(SDB)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1036078947 [Date=11/11/2004] [FileNumber=227072-0] [850ca085e3c414add181d771803d09bcf39067d15b4ad27fe3742f2a3e76c699e3c502d12be90f7049e4d5138253fb252bd4d5292c5d25741c1832a064090000]]

Document description: Exhibit 1

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1036078947 [Date=11/11/2004] [FileNumber=227072-1] [132570385ebb7ac13146e36288873d742d316da4161bd837c9ef4fc1e5561e9cca802b8de93ada769118308026ee52ee0bbdf0bd51f27e15e73f82b6c1c6da24]]

Document description: Exhibit 2

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1036078947 [Date=11/11/2004] [FileNumber=227072-2] [3604ef7c6bd9eb3f0562a0241673cddff52b0e93c30b45734836851fdb1491bf8ce6d63b58ba4b5f8f73f8ea30fc4ebe83fa42ffc0368f5e2c186351ffbf459f]]

3:03-cv-211 Notice will be electronically mailed to:

Paul Joseph Hershberg hershberg@derbycitylaw.com, mcwhorter@derbycitylaw.com

11/11/2004

William H. Hollander whollander@wyattfirm.com,

3:03-cv-211 Notice will not be electronically mailed to:

Kyle Anne Citrynell
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Seyfarth Shaw LLP
55 E . Monroe Street
Suite 4200
Chicago, IL 60603-5803

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

FILED
JEFFREY A. APPERSON, CLERK
NOV 22 2004

THE BANDANA CO., INC.

Plaintiff,

v.

LINENS 'N THINGS, INC.

Defendant.

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

Civil Action No. 03-CV-211-C

**ANSWER AND COUNTERCLAIM OF
DEFENDANT LINENS 'N THINGS, INC.
TO FIRST AMENDED COMPLAINT**

Defendant Linens 'N Things, Inc. ("Defendant"), through its attorneys, submits its Answer and Counterclaim to the First Amended Complaint filed by plaintiff The Bandana Co., Inc. ("Plaintiff"). Defendant incorporates its answers to paragraphs 1-17, 19-28, and 30-47 of Plaintiff's Verified Complaint, and answers the newly amended paragraphs 18 and 29 as follows:

18. Regarding the allegations in numerical Paragraph 18 of the Complaint, Defendant admits that a copy of what purports to be a copyright registration is attached as Exhibit 1, but denies the remaining allegations.

29 Defendant denies the allegations in the first sentence of numerical Paragraph 29 of the Complaint. Regarding the allegations in the second sentence of numerical Paragraph 29 of the Complaint, Defendant admits that a copy of what purports to be a trademark assignment is attached as Exhibit 2, but denies the remaining allegations.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim against Defendant upon which relief may be granted.
2. The Complaint is barred in whole or in part under the doctrine of trademark Fair Use.
3. The Complaint is barred in whole or in part by laches.
4. The Complaint is barred in whole or in part under the doctrines of waiver, estoppel and/or acquiescence.
5. The Complaint is barred in whole or in part by Plaintiff's unclean hands and/or misuse of trademarks. Specifically, Plaintiff has unlawfully attempted to expand the scope of its alleged rights in and to the subject trademarks.
6. Defendant acted in good faith at all times.
7. Plaintiff's alleged trademarks, "junkyard," "junkyard dogs and cats," and "junkyard pets" are generic or merely descriptive and have not acquired secondary meaning.
8. Plaintiff's alleged trade dress is generic, merely descriptive or merely functional and has not acquired secondary meaning.
9. Defendant's conduct is privileged and justified as legitimate, lawful competition.
10. Defendant's conduct was not the cause in fact or the proximate cause of damages alleged by Plaintiff.
11. Defendant reserves the right to assert additional affirmative defenses as they become known.

COUNTERCLAIM

1. The term "Junkyard Pets" is the common descriptive name used for statues, sculptures, and pieces of art in the shape of animals that are made from discarded materials. Plaintiff's alleged "Junkyard Pets" mark, therefore, does not function to identify Plaintiff's goods and distinguish them from goods offered by others and is generic.

2. Alternatively, the term "Junkyard Pets" is descriptive of statues, sculptures and pieces of art in the shape of animals that are made from discarded materials and has not acquired secondary meaning in the minds of the relevant consuming public.

3. Plaintiff's registration for the term "Junkyard Pets" should be canceled because the term is generic or descriptive. On November 19, 2004, Defendant filed a Petition for Cancellation of Registration No. 2,830,595 in the United States Patent and Trademark Office, before the Trademark Trial and Appeal Board (Cancellation No. 92043896).

WHEREFORE, Defendant Linens 'N Things, Inc. prays:

- A. that Plaintiff's complaint be dismissed with prejudice;
- B. that Plaintiff take and recover nothing from Defendant;
- C. that this Court enter judgment in Defendant's favor and against Plaintiff;
- D. that this Court enter a judgment canceling federal trademark Registration No. 2,830,595;
- D. that Defendant recovers its expenses incurred in this action, including reasonable costs and attorneys' fees; and
- E. that this Court award such other and further relief to Defendant as it may deem just and proper.



William H. Hollander
WYATT, TARRANT & COMBS, LLP
500 West Jefferson Street, Suite 2600
Louisville, Kentucky 40202
Telephone: 502.589-5235
Facsimile: 502.589-0309

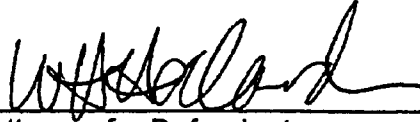
Bart A. Lazar
Mark L. Johnson
SEYFARTH SHAW
55 East Monroe Street
Suite 4200
Chicago, IL 60603
Telephone: 312-346-8000
Facsimile: 312-269-8869

Counsel for Linens 'N Things, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Answer and Counterclaim of Defendant Linens 'N Things, Inc. to First Amended Complaint** was served on November 22, 2004, via first-class U.S. Mail, postage pre-paid, to the following counsel for Plaintiff:

Kyle Ann Citrynell
C. Shawn Fox
Seiller & Handmaker, LLP
462 South Fourth Avenue, Suite 2200
Louisville, Kentucky 40202
Telephone: 502.584.7400
Facsimile: 502.583.2100



Attorney for Defendant
Linens 'N Things, Inc.

***Karen K. McWhorter**

From: kywd-ecf-notice@kywd.uscourts.gov
Sent: Wednesday, November 24, 2004 10:59 AM
To: kywd-ecf-notice@kywd.uscourts.gov
Subject: Activity in Case 3:03-cv-00211-JBC-ERG Bandana Co v. Linens n Things Inc, et al "Answer to Amended Complaint"

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U.S. District Court

Western District of Kentucky

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The following transaction was received from Bart A. Lazar entered on 11/24/2004 at 10:59 AM EST and filed on 11/22/2004

Case Name: Bandana Co v. Linens n Things Inc, et al
Case Number: 3:03-cv-211
Filer: Linens N' Things, Inc.
Document Number: 53

Docket Text:

ANSWER to First Amended Complaint, COUNTERCLAIM against Bandana Co., Inc. by Linens N' Things, Inc. (SDB)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1036078947 [Date=11/24/2004] [FileNumber=233779-0] [3cd31dea71acc064f3ab6ddb60a5f4b22a834043e6c6e7d2ef273f57a9334e90a4b1d67dd8f0e9c157f784855ba9c25b67c2f0662f8981b49b8396caafd82e04]]

3:03-cv-211 Notice will be electronically mailed to:

Paul Joseph Hershberg hershberg@derbycitylaw.com, mcwhorter@derbycitylaw.com

William H. Hollander whollander@wyattfirm.com,

3:03-cv-211 Notice will not be electronically mailed to:

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11/24/2004

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