**17.21A Copyright—Useful Articles/Functional Elements**

 A “useful article” is something that has an intrinsic use beyond displaying the appearance of the item or conveying information. A useful article, in and of itself, does not enjoy copyright protection. However, the pictorial, graphic, or sculptural features of the design of a useful article are copyrightable if they can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. The “utilitarian aspects” of the article are those aspects that make it useful.

 For example, a generic lamp base consisting of a post and wires is not copyrightable because it is a useful article with no separable copyrightable features. But if the lamp base is in the shape of a cat, the cat design itself might be copyrightable, because the cat design of the base can be viewed separately from the lamp and is capable of existing independently of the lamp.

 The defendant claims that the plaintiff’s work is not copyrightable because it is a useful article. To prevail on this defense, the defendant must prove by a preponderance of the evidence that the challenged article has an intrinsic use beyond displaying the appearance of the item or conveying useful information.

 If the defendant proves this, you must find for the defendant unless the plaintiff proves that the work is copyrightable under the other instructions that I have given you, and proves that:

 First, the plaintiff’s work can be imagined as a freestanding two- or three-dimensional pictorial, graphic, or sculptural work separate from the utilitarian aspects of the useful article; and

 Second, the plaintiff’s work would be copyrightable under the other instructions I have given you if it were imagined separately from the useful article of which it is a part.

**Comment**

 The elements of this instruction are based on the Supreme Court’s holding in *Star Athletica, L.L.C. v. Varsity Brands, Inc*., 580 U.S. 405, 424 (2017). The example of the cat lamp is based on  *Mazer v. Stein*, 347 U.S. 201, 202, 214 (1954).

 Once the jury has mentally separated the copyrightable from the uncopyrightable aspects of the useful article, the useful article that remains need not continue to be useful for its intended purpose., *Star Athletica, L.L.C.*, 580 U.S. at 420 (stating that statute “does not require the imagined remainder to be a functioning useful article at all, much less an equally useful one”).

*Revised Dec. 2023*