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Copyright

FEDERAL JURY PRACTICE AND INSTRUCTIONS

CIVIL

FIFTH EDITION

By

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Volume 3B

Chapters 160 to 168

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§ 160.22 INSTRUCTIONS FOR FEDERAL CIVIL CASES

find for the plaintiff in this action. The disputed elements will be explained to you in these instructions.

NOTES*In General*

See 17 U.S.C.A. § 201(a) ("Copyright in work produced under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work").

See 17 U.S.C.A. § 410(c) for use in judicial proceedings of the certificate of registration issued by the copyright office.

This instruction is adapted from the district court's instructions in *Aldon Accessories Ltd. v. Spiegel, Inc.*, 738 F.2d 548 (2d Cir.), cert. denied, 469 U.S. 982, 105 S.Ct. 387, 83 L.Ed.2d 321 (1984), overruled on other grounds, *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 736 n. 2, 109 S.Ct. 2166, 2171 n. 2, 104 L.Ed.2d 811 (1989).

§ 160.23 Originality

Under the copyright law, originality means that the work was independently created by the author and not copied from other works. Plaintiff _____'s work might resemble other works, but if plaintiff _____ independently conceived plaintiff's work, or at least significant parts of it, then plaintiff's work is original.

The work need not be completely, entirely original. It may include or incorporate elements taken from prior works, from works used with their owner's permission or from works in the public domain. If you find that plaintiff's work involves variations on pre-existing works, then it is only to the elements of the plaintiff's work that originated from plaintiff _____ that copyright protection extends.

Where plaintiff's work was taken from previous work, there is no precise rule as to how much must have originated from the plaintiff _____ in order for plaintiff _____ to claim copyright protection. Trivial originality is not enough.

Plaintiff _____ must show that he has made a substantial original contribution or a substantial original variation distinguishable from prior works. Moreover, the originality must not be merely of a technical or mechanical nature.