

Thresholds #47

## REPEAT

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## There There There: Antanaclasis vs. the Rubber Stamp

Copyright trolling is a practice in which allegations of infringement are made for the purpose of exacting settlements. It is pernicious and exploitative, using the legal system as a weapon to prey upon defendants who are frequently not guilty of any wrongdoing. The "rubber stamp" and the "cookie cutter" as technologies of copying have been used to metaphorize a lack of architectural originality in tract-home developments or planned communities. The simplicity of the "rubber stamp" notion resonates with the binary logic of legal thinking, and it is often deployed in infringement allegations, as though buildings could be swiftly stamped out in sequence. These metaphors, however, do not hold up: though uniformity might be the goal, the inking and pressure on a stamp, or the thickness of cookie dough and where it is placed in the oven affect the final product, much as client demands, siting, materiality, and a whole host of other factors affect an architectural work.

The allegations made by copyright trolls rely on the onerous cost of defending against them for their success rather than their airtight legal logic, and so the rhetoric employed is often extremely basic. Professional liability insurers frequently mandate settlements, seeking to minimize losses in the short term, and thus those basic explanations of sameness get cooked into practice. It is also commonplace for insurance companies to promote restrictive and

conservative interpretations of copyright for their clients in order to guard against future lawsuits. In the twenty-nine years since its enactment, the Architectural Works Copyright Protection Act (AWCPA) has given rise to new legal narratives of architectural originality and form, some of which are now being exploited by trolls and insurers.

As Caroline Levine details in her 2015 book Forms: Whole, Rhythm, Hierarchy, Network, the structure within which experience is organized can profoundly affect the nature of that experience: "form is disturbing," she notes, "because it imposes powerful controls and containments." More disturbing still is the effect of forms that go uninterrogated because they seem benign or unrelated to the content they regulate. Levine's study of form is an activist's call to arms. She writes, "I want to persuade those who are interested in politics to become formalists, so that we can begin to intervene in the conflicting formal logics that turn out to organize and disorganize our lives, constantly producing not only painful dispossessions but also surprising opportunities."2 Part of Levine's formalist activism involves identifying and promoting correctives: structures that might counteract oppression or limitation, and indeed might identify new potentials.

The legal narratives produced through architectural copyright trolling are one such venue that is ripe for intervention. They are necessarily one-sided—they enter into public record an allegation only, specious though it may be, that is in most cases settled rather than countered. Thus, the form that allegations take actively constructs an oppressive reality designed to serve the purposes of trolls and insurers rather than those of architects, builders, or culture at large. Allegations and their occasional defenses in architectural copyright

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M.Arch from MIT and an MA in Modern Culture and Media from Brown University.

- Caroline Levine, Forms: Whole, Rhythm, Hierarchy, Network (Princeton: Princeton University Press, 2015), 4.
- 2. Ibid., 23.
- Though we tend to think first of the financial hardship brought by fines levied in infringement lawsuits, most allegations never culminate in a verdict. Instead, they settle, and insurers generally decide when

cases are settled and when they are fought. As Jason Mazzone describes in his provocative 2011 book on copyfraud, there are precedents in the documentary film field for insurers to band together with intellectual property lawyers to certify works as defensible under fair use doctrine. See Jason Mazzone, Copyfraud and Other Abusco of Intellectual Property Law (Stanford: Stanford Law Books, 2011), 209. There is only now a growing bank of case law related to architectural copyright

cases are a key form through which overly simplistic notions of architectural copying infiltrate the field.3 These readings of uncomplicated sameness stand in direct opposition to the complexity of historical, regional, programmatic, and intentional narratives found even in introductory architectural history courses, but they persist because of their power to persuade insurers, who in turn are able to direct their clients' practice. Recognizing the advancing maturity of the AWCPA, this study aims to identify and promote certain practices that confound the simplifying forces of prevailing legal narratives by replacing simple "rubber stamp" models of copying with something more varied and nuanced-a set of measures that better recalls the rich history of precedent and influence in architecture.

Antanaclasis, the rhetorical figure in which a polysemous word's many meanings are deployed across sequential repetitions, presents such an alternate formal opportunity for narratives of architectural copying.4 A sentence like "Buffalo buffalo Buffalo buffalo buffalo buffalo Buffalo," is an extreme example of the form. The repetition is technically grammatical because "buffalo" can operate as enough different parts of speech-proper noun, plural noun, verb-that each instance, or grapheme, operates as a distinct lexeme. The expectation of the polysemy characteristic of antanaclasis is a better fit for the way architects deploy repetitions on different scales and registers.

An antanaclastic reading of a text addresses a constellation of factors affecting meaning, such as part of speech and word order—not just surface characteristics like spelling.<sup>5</sup> One might argue that the analogous differentiating factors for architecture are program, scale, or context,

but these haven't yet been embraced as foundational legal differences, perhaps because they are more difficult to comprehensively dissect. Even when testimony is provided by credentialed experts in the field, it often relies on dimensioned plan comparisons rather than anything more abstract.

As a structure for a productive creative practice, antanaclasis mandates constant flexibility. Jeanne Fahnestock observes of antanaclasis that "because English lacks inflections to mark when words fulfill different functions or occupy different parts of speech, it is possible to have identical word forms in different parts of speech, as in Roosevelt's 'We have nothing to fear [verb] but fear [noun] itself.' When two words, identical in sight or sound or both, are present in their different senses, the effect is . . . a momentary confounding and then separation."6 Decisions in cases of architectural copyright have to be made on the basis of presented evidence, so narratives like those provided by expert witnesses for the defense aim to do the work of such separation. An antanaclastic approach is invested in the potential for polysemy in architecture and the belief that difference can be latent and lurking.

This is not to say that embracing antanaclasis serves only to promote complexity; useful though it may be, the definitiveness required for a legal interpretation of an architectural work is as artificial as the notion of a perfect rubber stamp imprint. Fahnestock's anatomy of antanaclasis continues: "The continual reappearance and reassertion of the same term or phrase has undoubted rhetorical force. [Antanaclasis is] a formal mechanism for fulfilling the general rhetorical goal of giving presence to certain notions... And even if such repetition is not intentional...

infringement claims, Because the nature of many of these claims is small and local, insurance companies have been reticent to argue cases. Were they to follow the lead outlined by Mazzone, complicating factors like a fair use defense might gain traction within the field. For further discussion of the possibilities that an affirmative defense of fair use doctrine might open up in architecture, see Sarah Hirschman, "In Defense of Architecture's Public Domain," Plat, no., 7, "Sharing" (Fall 2018).

- Chris Baldick, The Oxford Dictionary of Literary Terms, 4th ed. (New York: Oxford University Press, 2015).
- 5. The logic of antanaclasis differs somewhat from that of the seal described by Jacques Derrida. For him, a signature derives its authority from its simultaneous uniqueness and replicability, which ensures its legibility. An antanaclastic reading relies not on the authority of a single originary object, but on the possibility of many, equally valid, equally
- authoritative interpretations, Jacques Derrida, "Signature Event Context," trans. Jeffrey Mehlman and Samuel Weber, in *Limited*, *Inc.*, ed. Gerald Graff (Evanston, IL: Northwestern University Press, 2000), 20.
- Jeanne Fahnestock, Rhetorical Style: The Uses of Language in Persuasion (New York: Oxford University Press, 2011), 134.



## Design 29524 The Taylor

2 Story with 3 bedrooms & 3 total bathrooms

Main Level Sq. Ft.: 658 Upper Level Sq. Ft.: 639 Total Finished Sq. Ft.: 1,297

Style: Traditional Standard Foundation: Slab

Max Width: 42'-0" Wide Max Depth: 37'-4" Deep Main Level Ceiling Ht: 9'0" Upper Level Ceiling Ht: 8'0" Ridge Height: 27'11"

Front Garage Size: 2 stalls Garage Sq. Ft.: 504







fig. 1 Above, Document submitted by Design Basics LLC alleging that Lexington Homes had violated architectural copyright by providing house plans substantially similar to ones Design Basics had promoted online, filed April 11, 2016, case document 80-2, page 6, exhibit B in 1:14-ev-0.1102-WCG Design Basics LLC v. Lexington Homes Inc.Appeal from the United States District Court for the Eastern District of Wisconsin. Argued April 5, 2017, Decided June 6, 2017.

fig. 2 Below, "Lexington Homes Ashwood House Design," submitted by Design Basics on April 11, 2016, case document 80-4, page 8, exhibit D in 1:14-cv-01102-WCG Design Basics LLC v. Lexington Homes Inc. Simple house designs, such as the layouts of Design Basics' Aspen, Womack, Taylor and Kendrick, contain a predictable, conventional array of rooms and spaces both in their use and juxtaposition, resulting in traditional residential appearances.

All four house designs conform to readily identifiable patterns in both plan and elevation which can be simply described in conceptual images, or 'bubble diagrams'. All of these are very common in the housing market:

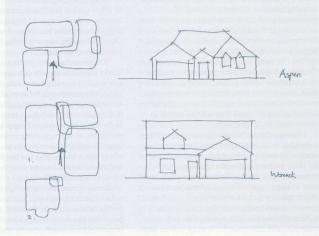


fig. 3 Excerpt from comparative report prepared by expert witness Robert Greenstreet, Dean of the School of Architecture and Urban Planning at the University of Wisconsin-Milwaukee.

Greenstreet advanced the notion that plaintiff Design Basics was attempting to assert copyright over traditional housing designs. Report submitted July 3, 2015, case document 59-8, page 9, exhibit H in 1:14-cv-01102-WCG Design Basics LLC v. Lexington Homes Inc.

it can still be taken as an index of what has salience for the writer/speaker."7 Seen in this way, the repeated terms of antanaclasis are not incidental, but rather powerful in their proliferation—a show of rhetorical force. As antanaclasis operates within language, so can it in architecture. The "confounding and then separation" is valuable thought work, neither obvious nor easy.8 Where "rubber stamp" thinking assumes at least the intent of sameness even if small variations may be present, antanaclastic thinking expects first to find difference, no matter how similar the material. It may be simpler to claim that, because it is spelled the same, each "buffalo" definitively is the same, than it is to parse a sentence for how each utterance differs. It is, however, necessary work, now that we have developed case law that covers the basics, and essential to the discipline insofar as it is directed through the ability to obtain affordable insurance.

Importantly, architectural copyright differs somewhat from copyright for other artistic or creative media, which retain many more rights for their authors and cast a broader net of protection. Few fair use defenses for architecture have been successfully argued, both because of the relative lack of accumulated case law precedent and because architectural works necessarily include both protectable and unprotectable elements. Following a great deal of discussion in Congress during the 1989 Hearing on Architectural Design Protection, architectural works were classified as a new category rather than added as a subset of an existing category, "pictorial, graphic, and sculptural works." This arrangement allowed

unique limitations on architectural copyright—regarding, for example, photography of buildings (it's allowed) and alterations made by owners of copyrighted buildings (they're allowed too). As a separate category with a narrow definition ("the work includes the overall form as well as the arrangement and composition of spaces and elements in the design"), arguments supporting fair use or other claims familiar from art litigation have been slow to appear. Instead, architectural copyright defense has focused largely on showing insufficient originality in the allegedly infringed-upon work.<sup>10</sup>

The law acknowledges that architectural works are made up of a combination of protectable and unprotectable elements. When an architectural work is copyrighted, protection extends only to certain original elements within it. Because courts still have little experience in deciding architectural copyright cases, the subtleties of distinguishing protectable from unprotectable elements falls to the testimony of experts, who become the last line of defense and the arbiters of a very specific variety of architectural truth (fig. 1).

of architectural ruth (Ig.).

In the recent case of Design Basics, LLC
v. Lexington Homes (decided on appeal in June
2017 in Wisconsin), the plaintiff, Design Basics,
provided the vague and misleading testimony
of one of their employees in its allegation.
Carl Cuozzo, a draftsman at the house plan
company, which is involved in prolific
trolling of the small-scale home building
industry, claimed that four Lexington Homes
house plans were "substantially similar"
to the four Design Basics plans in too many

Other excerpts include: "SEC. 704. SCOPE OF EXCLUSIVE RIGHTS IN ARCHITECTURAL WORKS. (a) IN GENERAL. - Chapter 1 of title 17, United States Code, is amended by adding at the end the following: §120. Scope of exclusive rights in architectural works (a) PICTORIAL REPRESENTATIONS PERMITTED. - The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place. (b) ALTERATIONS TO AND DESTRUCTION OF

<sup>7.</sup> Ibid., 135.

<sup>8.</sup> Ibid., 134.

<sup>9.</sup> The Architectural Works Copyright Protection Act (AWCPA, HR 3990) was enacted as part of the Judicial Improvements Act of 1990, Pub. L. No. 101-650 (HR 5316), December 1, 1990. It amended title 17, US Code to include, after the definition for "anonymous works," the following: "An 'architectural work' is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features."

BUILDINGS. – Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destroy of such building, and for such building."

<sup>10.</sup> For a representative example of combating claims of architectural copyright infringement, see "Decision and Order Granting Defendants' Motion for Summary Judgment," Design Basics LLCv. Lexington Homes Inc., Case No. 14-CV-102, US District Court, Eastern District of Wisconsin, filed September 30, 2016, document 100, p. 7.

ways to have been the product of independent creation'" (fig. 2). The onus to identify significant differences was on Lexington Homes' expert witness Robert Greenstreet, an architect and Dean of the University of Wisconsin-Milwaukee's School of Architecture and Urban Planning. The detailed narrative he prepared explained where similarities indicate a common architectural lineage, style, or technology, rather than actual infringement (fig. 3).<sup>12</sup>

It is in the copyright troll's best interest to rely on broad-strokes comparisons and to promote simple readings of buildings. Because the penalty for bringing fraudulent copyright allegations is so minimal and infrequently incurred, and because trolls only stand to gain by exacting settlements from their targets, their blunt portrayals of copying predominate in legal architectural writing, forming what Levine would term a "containment."

While it is predominant, the rigidity of the rubber stamp narrative can also be turned around to uncover new opportunities. Un/Fair Use, an exhibition first mounted at the Center for Architecture in New York, proactively deployed a kind of "zeitgeist defense" for copyright (fig. 4). If The show declared the entry of a series of formal tropes into the public domain by providing three recent examples of the use of each trope—enough defense for an accused copier to say that the idea was in the ether (fig. 5). Un/Fair Use critically deployed the legal drive to identify similarity

in appearance as sameness by making the absurdity of such reductive formalism the focus of the exhibition. Every building that looks even slightly like a pyramid or a blob or a sphere is reduced to just that for the purpose of defending against legal action-an endless march of repeated tropes holding the door open for more to come. Refuting the simplification of the trolling narrative by employing it, Un/Fair Use recaptured the broad-strokes generalization as a productive tool to create legal wiggle room for architects. The show's "moves" offered opportunities for working with the law's architectural simplifications, rather than against them. This is a strategy of resistance from within a controlling framework -not the optimistic realignment of that framework with architectural practice that an antanaclastic reshuffling of values proposes.

If Un/Fair Use revels in the absurdity of reductive formalism, certainly more earnest approaches exist. The work of Los Angelesbased WELCOMEPROJECTS, a firm headed by Laurel Broughton, looks to flattened tropes as fertile beginnings. Where Un/Fair Use brokers the tongue-in-cheek elision of Louis Kahn's Exeter Library, Aldo Rossi's San Cataldo Cemetery, SANAA's Zollverein School of Management, and Alejandro Aravena's Centro de Innovación by reducing them to their shared cuboid form, WELCOMEPROJECTS turns such similarities into fodder for differentiation. The practice is preoccupied with the subtle differences wrought by a change in perspective, scale, or use, further

Quoted in Judge David Hamilton's final opinion, Design Basics LLCov. Lexington Homes Inc., Appellate Case No. 16-3817, US Court of Appeals, Seventh Circuit, filed June 6, 2017, p. 5.

Report submitted by Robert Greenstreet, August 2015, Design Basics LLC v. Lexington Homes Inc., Case No. 14-CV-II02, document 59–8.

JA. AM Mazzone writes in his compelling call to examine the effects of copyfraud perpetrated by those claiming rights to intellectual properties in the public domain, neither the fines for fraudulent uses of copyright notices nor those for false claims in copyright registration exceed \$2.500 (see Copyright Act, 17 US Code § 506(c) and § 506(c)). "In requiring knowledge and intent, the provisions impose a higher level of proof than is needed to show copyright infringement in firingement in

a civil action. In addition, false assertions of copyright carry much smaller penalties than those for copyright infringement. Most seriously—and in contrast to the general pattern of copyright law—the provisions do not create a private cause of action; that is, they do not allow for individuals to bring a claim in court to enforce the law? Mazzone, Copyfraud and Other Abuses of Intellectual Property Law, 8. See also Levine, Forms, 4.

<sup>14.</sup> Un/Pair Use, produced by Sarah Hirschman and Ana Miljački, was shown at the Center for Architecture in New York, September 2015—January 2016, and at University of California, Berkeley's Wurster Gallery, August—October 2016.

<sup>15.</sup> Of course, as Lewis Hyde points out, it is no easy task to actually enter something into the public domain—there simply isn't a procedure. "Default copyright has

changed the very ground from which all discussion and policy must proceed. Until 1976, the point of departure was the assumed common nature of creative work; everything belonged to the commons and the exception, 'intellectual property,' was a small set of things removed from the commons by consent, by an overt and public action, for a short term, and for a good reason. Now the point of departure is the assumption of exclusive ownership and those who think they have a right to common are greeted by FBI warnings at the start of every movie." Lewis Hyde, Common as Air: Revolution, Art, and Ownership (New York: Farrar, Straus and Giroux, 2010), 58.

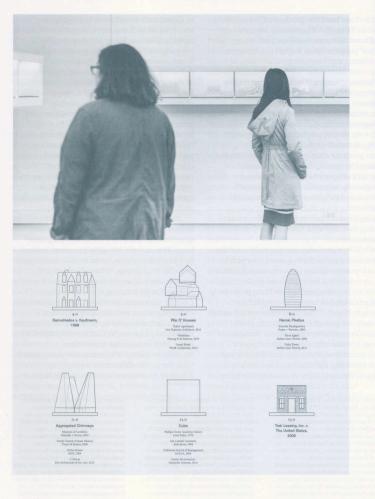
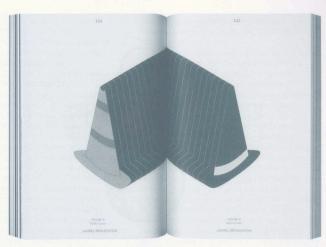


fig. 4 Above, Visitors at Un/Fair Use, produced by Sarah M. Hirschman and Ana Miljacki, at University of California, Berkeley's Wurster Gallery, August—October 2016. Photograph by George X. Lin.

fig. 5 Below, Drawings of common and uncopyrightable architectural tropes presented in a companion broadsheet for Un/Fair Use, Center for Architecture, New York, 2015. Courtesy of the author.



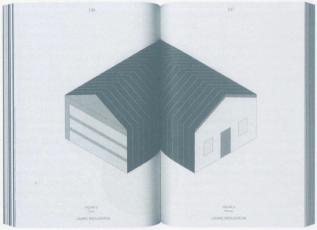
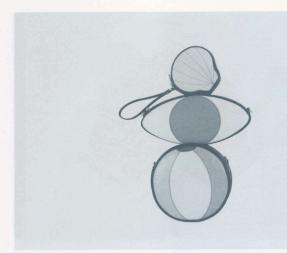


fig. 6 WELCOMEPROJECTS, Two-Face. First published in Pidgin magazine as a series of image-based experiments, the project quickly found outlets in other media as well. Courtesy of WELCOMEPROJECTS.



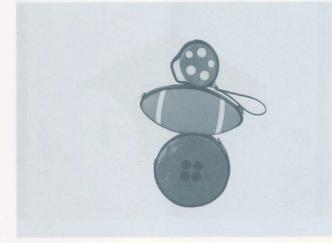


fig. 7 The WELCOMECOMPANIONS line of accessories provides another experimental mode for the ideas and musings of WELCOMEPROJECTS. Courtesy of WELCOMEPROJECTS.

aided in this endeavor by its sister brand WELCOMECOMPANIONS: "a design project that reinterprets everyday sartorial accessories and objects through a formal and surrealist lens." This work is antanaclastic by design. It capitalizes on shapes shifting their reading in the (never so) simple act of repetition, and consciously dispenses with disciplinary boundaries to explore potentials across scales, temporalities, and audiences.

In the Two-Face project, an oblong form appears first as an eye, and then as a football, suggesting that a few more distinguishing marks could render the shape something else entirely (fig. 6). Per WELCOMEPROJECTS's explanation, Two-Face "looks at double readings of form. In Wittgenstein's classic example of the duck or the rabbit, [WELCOMEPROJECTS] asked the question: What other familiar objects could have these same relationships? These drawings became a collection of handbags, an animation, and are research for a series of speculative buildings."17 The variety of outlets that Two-Face has enjoyed—a disciplinary journal and a range of accessories, in addition to architectureallows WELCOMEPROJECTS to operate antanaclastically and across platforms (fig. 7). In its explicit engagement with a project of reference, the practice joins a lineage of referential sculptors and architects like Claes Oldenburg, Robert Venturi, Denise Scott Brown, and Charles Moore that is larger than the postmodern umbrella under which they are often assembled.18 There is no threat of reading these projects as rubber stamp copies because each instance of what might constitute a "stamping" is treated as a unique and rich jumping-off point, which is then further complicated. The effectiveness of this method illustrates how incompatible the abstraction of a copy/

paste model is with the way in which both creative practices operate, and buildings and objects enter the world.

In their proposal for a pavilion in Chicago's Millennium Park, WELCOMEPROJECTS revels in the city's architecture culture of allusion: "Chicago is full of buildings that speak. The city has a unique vernacular architecture parlant of half-truths where the buildings' shapes suggest their use or in other cases their nicknames because the buildings' shapes suggest something else. Take Stanley Tigerman's parking garage in the shape of a Rolls Royce grill in comparison to the Marina City Apartments, often referred to as corncobs."19 By establishing the suggestiveness of architectural form as not only desirable, but already commonplace, WELCOMEPROJECTS situates its own referential formalism in the present. Its toothbrush-shaped, toothbrush-dispensing pavilion is thus proposed as a contextual marker of its contents and as an unapologetically recognizable form anticipating its own nicknaming.

The Chicago Toothbrush proposal makes more legible the drive to find familiarity everywhere and to accept architecture as one among many arenas where form can be expressed (fig. 8). Reaching across scales and outlets, the project is a means to telegraph beyond the discipline. Per the project description, "architecture over the last few decades has become increasingly isolationist and in that isolation a serious curmudgeon. The Chicago Toothbrush seeks to playfully engage the public through architecture, asking them to resee the objects, the buildings, and the world around them in new ways and inviting them to participate in it joyfully."20 The aim of legibility is not a joke, but instead a legitimate communicative volley, an offer of engagement to the public, and a confident expression of

<sup>16. &</sup>quot;WELCOMECOMPANIONS,"
WELCOMEPROJECTS,
http://www.welcomeprojects.com/
welcome-companions.

 <sup>&</sup>quot;Two-Face," WELCOMEPROJECTS, http://www.welcomeprojects.com/ two-face-2.

It is worth noting here that Michael Graves, not not a postmodernist himself,

provided key testimony before the House Subcommittee charged with developing the architectural copyright law's language about the nature of architectural creativity. See Sarah Hirschman, "Sufficient Originality; The Legal Contours of Creativity in Architecture," in Terms of Appropriation; Modern Architecture and Global Exchange, ed. Amanda Reeser

Lawrence and Ana Miljački (New York: Routledge, 2018), 160-85. 19. "The Chicago Toothbrush,"

WELCOMEPROJECTS, http://www.welcomeprojects.com/ chicago-toothbrush.

<sup>20.</sup> Ibid.

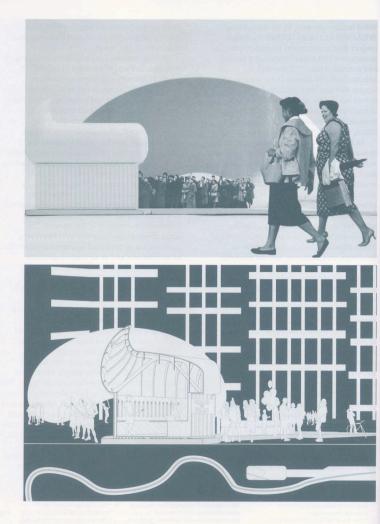


fig. 8 Above, WELCOMEPROJECTS, The Chicago
Toothbrush, photocollage. Courtesy of
WELCOMEPROJECTS.

 $\begin{array}{ccc} {\it fig.\,9} & {\it Below}, {\it The\,Chicago\,Toothbrush}, {\it section}. \\ & {\it Courtesy\,of\,WELCOMEPROJECTS}. \end{array}$ 

antanaclastic multivalence (fig. 9). The slippage across and through representational tactics that WELCOMECOMPANIONS engenders by producing consumer goods at the accessories scale affords both practices access to a body of research and experimentation that is not usually available to architects.

Many of those who might have legitimate claims to fair use or who are working with architectural elements squarely in the public domain are small-scale home builders or contractors who have much more to lose from a copyright lawsuit than gain. Levine's push for a renewed focus on form in ordering structures has provided an alibi to examine how preoccupations in narrative forms can bleed from one area of a discipline into another, but it also comes with a responsibility to act. The infiltration of simplified legal narratives of copying in architecture has detrimental potential; it threatens to distill the nuances of precedent and influence down to the bluntest, most easily litigated parts. It is also not a stretch to imagine a future where legal counsel to WELCOMEPROJECTS would advise against baiting Big Dental. Promoting the model of antanaclasis is not to call for the acceptance of wholesale copying, but to reflect on the possibility of differences that might not be immediately apparent. The polyvalent words of antanaclasis suggest a spectrum of ways in which originality can and does operate in architecture.