

# From <sup>TM</sup> to © and back again

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Objektyp: **Article**

Zeitschrift: **Outlines**

Band (Jahr): **3 (2006)**

PDF erstellt am: **21.07.2024**

Persistenter Link: <https://doi.org/10.5169/seals-872178>

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**JUERG ALBRECHT**

## **From <sup>TM</sup> to © and back again**

*For I is another. If a piece of brass wakes up as a bugle, it is not to blame.*  
Arthur Rimbaud, 1871<sup>1</sup>

*Snowdrops whisper all kinds of things. They remind us of Snow White, who was kindly taken in by the dwarves in the mountains. They remind us of roses, because they are different. Everything always reminds us of its opposite.*  
Robert Walser, 1919<sup>2</sup>

When it comes to judging the suitability of applying a ‘modern’ business and marketing term to the world of art or traditional art research, the subject of brands and logos can initially be awkward for art historians trained in iconography, connoisseurship and the history of criticism. The aim cannot be to sell the history of styles under a new name – Seurat’s ‘Pointillism’ as a ‘brand’, for example – or to consider only those pop and contemporary artists who make the world of the modern consumer and brands the central theme of their work, be it by critically scrutinizing global consumerism or ironically appropriating popular icons. Simply applying the superficiality and the promises of salvation of brand names to art would not be going far enough.

Thorough examination of the subject, on the other hand, leads to all kinds of issues and ramifications that arouse our curiosity, promising as they do unusual perspectives on a phenomenon with which everyone meanwhile believes they are familiar. The core of this phenomenon’s ‘basic concept’ has proven to be the problem of defining the work and the original, including the numerous related implications: questions are raised as to the aura of the original, repetition and reproducibility, ‘genuine & fake’ in terms of philosophical, critical linguistic exploration and connoisseurship, the (provoked) loss of the original in the replica, the multiple and the ready-made, the relationship between idea and work, concept and product, head and hand, the role of the observer and the art system. In legal terms, this reveals manifold problems of product protection – in view of (well-known) artistic procedures such as assimilation, quotation, plagiarism, imitation, caricature or appropriation – as well as borderline cases of intellectual property and its material manifestations. And time and again, the authenticity of the fictitious and the ‘power of art’ suggest themselves as decisive factors.

Aspects thus come to the fore that are perhaps secondary as far as the examination of brands in terms of marketing techniques is concerned, but deserve attention

from an art-historical, philosophical and poetological perspective as well as in terms of the history of the way they have been critically received, even if that attention may turn out to be a little ‘distracted’.

### Originals & copies

*Woe betide you, sly thief of the work and ideas of others; beware of imprudently laying a finger on this, our work!*

Albrecht Dürer, 1511<sup>3</sup>

When Dürer published his three ‘Great Books’ in Nuremberg in 1511 – the one-sheet woodcuts of the *Life of the Virgin*, the *Great Passion* and the *Apocalypse* created between 1496 and 1511 – in the form of a book with Latin text, he included a drastically formulated copyright warning in the colophon: ‘Woe betide you, sly thief of the work and ideas of others; beware of imprudently laying a finger on this, our work! For you should know that the glorious Holy Roman Emperor, Maximilian, has granted us that nobody may dare to reprint these pictures with forged blocks or to sell prints of them within the borders of the Empire. If you act against this out of defiance or criminal avarice, you must certainly know that you can reckon with the confiscation of your goods and the greatest danger.’<sup>4</sup> Dürer was well aware that this imperial ‘privilegium’ would scarcely protect him from illegal copies of his work, as he had already had experiences of the kind with copies of his works on both sides of the Alps. On 7 February 1506 he wrote angrily from Venice to his friend Willibald Pirckheimer in Nuremberg: ‘I have many good friends among the Italians who warn me against eating and drinking with their painters. Many of them are ill-disposed towards me and copy my works of art in the churches, or wherever they can get hold of them elsewhere.’<sup>5</sup>

The first copies of Dürer’s work appear in Germany as of 1497 and in Italy from 1500. The slightly smaller, reverse copy of the copperplate engraving *The Four Witches: Discordia* by Nicoletto Rosex da Modena differs from the original in numerous small details and is proudly signed: ‘Opus Nicoleti Modenensis Rosex’.<sup>6</sup> While this engraving is presumably the work of a diligent but artistically immature student, the technically perfectly executed engravings by Marcantonio Raimondi are quite clearly pirate copies produced for the purpose of commercial gain: Raimondi produced about 75 engravings after Dürer, of which 65 were copied from woodcuts. As Dürer was scarcely able to sell his works in Italy after his return from Venice (1506) – despite dispatching costly dealers<sup>7</sup> – Raimondi had obviously found a profitable gap in the market: two editions of the *Life of the Virgin* were printed, even three of the *Great Passion*. Although the last page of the *Life of the Virgin* bears a colophon with



1 Albrecht Dürer, *The Apocalyptic Woman*, 1498, Woodcut, 392 x 279 mm, Germanisches Nationalmuseum, Nuremberg



2 Hieronymus Greff, *The Apocalyptic Woman*, 1502, Woodcut, 392 x 282 mm, Stadtgeschichtliche Museen, Nuremberg

Raimondi's monogram and the mark of the publishers Niccolò and Domenico Fratelli del Gesù, Dürer's famous monogram 'tablet' has been left on the individual pages. The fact that these 'trademarks' are lacking on the copied engravings of the *Great Passion* may – as Vasari reports – be due to a (reasonably successful) copyright lawsuit on Dürer's part<sup>8</sup>; this does not seem to have impeded the commercial success of the illegally copied prints, as collectors and connoisseurs were aware that the ideas behind the pictures and their compositions derived from 'Alberto Duro'.

As already emerges from Vasari's report, copyright protection applied to the technical product rather than the artistic idea; in other words, it was trademark protection rather than the protection of intellectual property rights. This is also apparent in a decree passed by Nuremberg's City Council on 3 January 1512 immediately after the publication of the 'Three Great Books', probably for a specific reason, but also with the aim of preventing forgeries of Dürer's engravings; the decree threatens a non-Nuremberg dealer with the confiscation of his goods if he does not remove Albrecht Dürer's signature.<sup>9</sup> Here too, the legal position is that merely the forgery of the 'trademark', but not the slavish imitation of an original artistic creation is liable

to prosecution. This made it possible for Hieronymus Greff of Frankfurt to make a complete copy of Dürer's *Apocalypse* of 1498 and to publish it in Strasbourg in 1502 in a German and Latin edition under his own name – the individual pages are marked with the artist's monogram IVF (Iheronimus von Frankfurt) instead of Dürer's signature – without running the risk of being prosecuted.<sup>10</sup> The true copies, which are the same size, are highly convincing and distinguishable from the originals only by the smallest details – like playing 'spot the difference' – such as in the number of a group of small stars on the engraving entitled *The Apocalyptic Woman* (fig. 1 and 2).<sup>11</sup> The numerous copies made by the three highly talented Wierix brothers from Antwerp, on the other hand, were not created with fraudulent intent, but may be assessed as the proud evidence of precocious virtuosity, as the boys also added the year the engraving was made and their age – e.g. 'AE 13' (aetatis suae 13: at the age of 13) – to Dürer's monogram. On his copy of the *Great Horse*, Johann Wierix has deliberately shifted Dürer's monogram from the shaded undulation in the ground in the original into the lighter centre of the picture, thus clearly referring to his achievement: a 15-year-old has already attained the technical proficiency of the great Dürer.<sup>12</sup> The fact that the engravings by the three boy wonders were also assiduously collected and reprinted has less to do with the critical reception of Dürer's work than with the urge of the *Kunst- und Wunderkammer* (cabinets of art and marvels) of the time to collect anything that was strange and extraordinary.<sup>13</sup>

### Excursus I: 'The laughing cow'

The trademark of 'La vache qui rit' processed cheese – packaged in a circular box featuring the famous red cow sporting earrings designed by Benjamin Rabier – was registered in 1921. A competitive product advertised its wares using the name 'La vache sérieuse' (The serious cow) and the picture of an 'ordinary' brown cow. Although the



3 'The Laughing Cow' / 'The Serious Cow', after 1924, cheese boxes

packaging differs clearly from the 'original' in terms of the image, colours and typography, there was a lengthy court case in 1954, at the end of which the court concluded that 'La vache sérieuse' was a trademark imitation and that the corpus delicti of unfair competition was given precisely because of the contrast with the high recognition level enjoyed by the laughing cow (fig. 3). The product had to be withdrawn from the market in 1966.<sup>14</sup> The company that distributes the 'La vache

qui rit' products now exports to ninety countries worldwide; two specialists are employed specially to prevent or punish product imitations and forgeries, with a fine of Euro 100,000 per case.

### **Authenticity and law: appropriation**

*If I make a reproduction of a Picasso, sign it and declare it as art, then it is art! Duchamp proved that in 1917.*

Mike Bidlo, 1988<sup>15</sup>

With its adjudication of 15 October 1992, Zurich's High Court forbade the gallery-owner Bruno Bischofberger from 'exhibiting, selling, keeping for sale, delivering to buyers or putting into circulation by any other means pictures by the artist Mike Bidlo designated as "Not Léger", and advertising the pictures with the "Not Léger" exhibition catalogue [...] or by any other means, with immediate effect. We reserve the right to confiscate these pictures and the advertising material.'<sup>16</sup> The paintings and drawings – the catalogue lists 19 numbers<sup>17</sup> – were without exception copies after colour reproductions of important original works by Fernand Léger, meticulously executed in technique and scale. The Swiss collecting society ProLitteris had sued on behalf of Léger's legal successors: according to the plaintiff, the exhibition violated the 'right to reproduction', the 'right to claim authorship'; where competition regulations were concerned, it infringed the 'provisions of the law on unfair competition'; in terms of civil law the 'protection of confidentiality'.<sup>18</sup> The Galerie Bischofberger's counterarguments, which were based on two reports by art critics Bice Curiger and Willy Rotzler, were rejected in a summary judgment;<sup>19</sup> the gallery-owner closed the exhibition and sent the pictures back to the American artist.<sup>20</sup>

Obviously the copyright protectors, who were accused of hearing 'only the jingling of the cash desks, but did not have a clue about the art scene'<sup>21</sup> felt slightly uncomfortable, as they organised a debate (albeit behind closed doors) on the 'Bidlo Case', which was published in detail in their in-house bulletin.<sup>22</sup> The obviously lively and at times entertaining debate among copyright specialists, artists and art critics makes it clear that this specific case is about a fundamental and probably irresolvable conflict between legal and artistic points of view: 'On the one hand there is the effective copyright law, which protects the author materially and immaterially against unauthorised use of his work – on the other hand, there is the claim made by artists like Bidlo and supported by many representatives of contemporary art theory and art criticism that art overall is a second-degree reality, with which the artist should be able to operate as freely as with "nature" or first-grade reality.'<sup>23</sup> While the two artists

are unable to see any original, artistic (technical) achievement in the ‘rather stupid reproductions of something that already exists’, the art critic identifies an ‘intellectual surplus’ that raises topical, post-modern issues and creates a tension ‘between original A and original B, between the collectively adopted and the artist’s own, between past and present, between the same and altered content – from a superficial point of view – between original and substitute, between abundance and emptiness, origin and echo’; according to the art critic, the context in which Bidlo presents his work and the intellectual circles in which it is discussed should also be taken into account.

Indeed, originators and their imitators have clashed on both sides of the Atlantic since the days of Pop Art. (Swiss) copyright law says: ‘Intellectual creations with an individual character, which are created on the basis of existing works in such a way that the works used remain recognisable in their individual character, are second-hand works’<sup>24</sup>, but at the same time states expressly: ‘We reserve the right to protect the works used.’<sup>25</sup> Only when the processing of a third party’s work of art reaches a degree of autonomy behind which ‘the memory of the first work of art fades’ can reference be made to free inspiration that does not require the consent of the originator of the first work.<sup>26</sup> The Russian artist George Pusenkoff, for example, won against the photographer Helmut Newton (in the appeal court), who considered his copyright to a nude photograph to have been infringed because the painter had used the silhouette in alienated form in his painting *Power of Blue* (1994). In the court’s opinion, the work was ‘not an adaptation requiring consent (§ 23 copyright law), but the free use of an original (§ 24 copyright law)’.<sup>27</sup>

The fact that such a situation should offer a broad spectrum of interpretations and sophistries has not only been clear since the advent of Appropriation Art. Whether legal disputes arise at all depends on the obstinacy of the copyright holders and/or collecting societies as well as the artistic or commercial intentions of the ‘appropriating’ artist. As early as 1989, the Galerie Bischofberger staged a Bidlo exhibition under a title that is as significant as it is ironically cocky: ‘Masterpieces’,<sup>28</sup> featuring ‘Not...’ works after the most important artists of the twentieth century. Apparently, the exhibition did not attract any copyright holders (fig. 4). After a (lost) legal dispute with the widow of Joseph Beuys, Elaine Sturtevant, who has scrupulously appropriated the current works of her contemporaries since the mid-1960s – not like Bidlo with recourse to Classical Modernism – has now taken not only to requesting permission from the artists she appropriates, but also to asking them for advice on technical production methods.<sup>29</sup> This was also the (obvious) advice of the German copyright expert in the debate held in Zurich: ‘Incidentally, conflicts of this nature could be best solved, or even avoided, if artists like Bidlo and Sturtevant were to contact



4 Mike Bidlo, *Picasso's Atelier*, 1988, artist's collection, New York

the originators of the original works and give them the opportunity to agree – or not – to their concepts.<sup>30</sup> The crux of post-modern Appropriation Art<sup>31</sup> – at least in the legal conflicts provoked by it – lies in the fact that most representatives of this conceptual art form – albeit with slightly differing art-theoretical, gender-specific or market-critical intentions – are not concerned with an adaptation of the work, such as transferring it into another medium (which would nevertheless require the consent of the copyright holder of the original work), but a reproduction that is technically as close as possible to the original to create a ‘new’ original – despite the state-of-the-art reproduction techniques that are now available.

‘The world is filled to suffocating. Man has placed his token on every stone. Every word, every image, is leased and mortgaged. We know that a picture is but a space in which a variety of images, none of them original, blend and clash. A picture is a tissue of quotations drawn from the innumerable centers of culture. Similar to those eternal copyists Bouvard and Pécuchet, we indicate the profound ridiculousness that is precisely the truth of painting. We can only imitate a gesture that is always anterior, never original. Succeeding the painter, the plagiarist no longer bears within him passions, humours, feelings, impressions, but rather this immense encyclopedia from which he draws. The viewer is the tablet on which all the quotations that make up a painting are inscribed without any of them being lost. A painting’s meaning lies not in its origin, but in its destination. The birth of the viewer must be at the cost of the painter’ (Sherrie Levine 1982).<sup>32</sup>



However, the at times witty, at times even inscrutable game played with terms like ‘aura’ and ‘original’, ‘authenticity’ and ‘quotation’, and hence with the related aesthetic and commercial values in the art system, cannot belie the fact that these works of art are on the edge of legality. The legal hair-splitting about the ‘intellectual surplus’ may not be at all relevant in artistic and intellectual terms, but can certainly become significant from a purely economic perspective.<sup>33</sup> Warhol, for example, settled out of court with the photographer Patricia Caulfield, whose photograph he had used for several series of his *Flowers*, which were then marketed as prints, posters, calendar pictures and other commercial goods. In three similar cases in 1992, Jeff Koons was legally required to pay reproduction fees to the photographer Art Rogers, whose original he had used for a series of sculptures. The court denied Jeff Koons’s argument of ‘fair use’ and expressly stressed the considerable profit that the artist had made from the edition of four *String of Puppies* sculptures (1987).<sup>34</sup>

In the editorial concerning the Bidlo debate held in Zurich, Alexander J. Seiler ironically expressed the hope that ‘In view of the difficulty [of creating something authentic, J.A.], it would be desirable for Bidlo to copy Sturtevant and/or Sturtevant to copy Bidlo, so that – if nothing authentic – the by-product – a copy of a copy – would at least be what could be described as an *authentic copy*.’<sup>35</sup> As far as I know, Bidlo has not copied Sturtevant, but in 2001 the Californian artist Michael Mandiberg wittily and ironically put Sherrie Levine’s notorious appropriations of photographs by Walker Evans<sup>36</sup> on the internet under the title *After Sherrie Levine*. The high-resolution, digital images can be downloaded and printed in the original format. Cleverly, a certificate of authenticity is also provided, which the user can sign himself and thus authenticate: the consumer becomes the producer.<sup>37</sup>

### **Imitation & forgery**

*The established notion of ‘forgery’ assumes that there is an ‘authentic’ original with which the forgery should be compared. However, it has become clear that all the criteria with which one can ascertain whether something is the forgery of an original are the same as those that allow us to ascertain whether the original is authentic. Thus the original cannot be used as a parameter to detect forgeries, unless one blindly accepts that what is presented as an original is also undoubtedly the original (but that would contradict all philological principles).*

Umberto Eco, 1990<sup>38</sup>

The case of artists who copy or vary their own work is also of particular interest. This has been a well-known phenomenon throughout art history, ranging from the conditions and practices of the workshops of Rubens or Rembrandt, for example, to the

serial repetitions of motifs in the work of Monet or Cézanne. The categories and genres that lie between the poles represented by the original work and the forgery were and still are unlimited, and are at times scarcely distinguishable: master/pupil/workshop/circle/imitator/forgery; original/original copy/version/variant/pastiche; assimilation/quotation/plagiarism/imitation/distortion/caricature, etc. In legal (and sometimes also in art-historical) terms this only becomes a problem when the artist deliberately hoodwinks the public and his clients.

The probably most famous and most notorious case in this respect is Giorgio de Chirico. After turning away from *pittura metafisica* towards an eclectic classicism in about 1919, de Chirico (who only died in 1978!) provoked innumerable polemical discussions and became involved in grotesque legal disputes concerning his 'early work', which was indeed important and influential. He declared authentic pictures to be fakes, fakes to be authentic, and personally created numerous replicas of certain pictures, which he back-dated and of whose authenticity he assured his buyers.<sup>39</sup> There are about twenty versions of *Le muse inquietanti* (Disquieting Muses, 1917) – which he copied for Paul Eluard in 1924 and probably sparked the idea of the self-repetitions – painted between 1945 and 1962; about forty-five copies exist of *Piazza d'Italia* and approximately twenty-five copies of *Trovatore*. If one ignores those works that were obviously created with fraudulent intentions, the question indeed arises as to whether de Chirico's re-creations – regardless of their painterly and technical quality – are not in fact a cryptic commentary from a conservative viewpoint on the avant-garde's claims to novelty. While Duchamp's radical 'invention' of the ready-made focused on the conception of the work, the idea of authentic, technical transformation, de Chirico's quotations, plagiarism and imitations also negate Modernism's traditional claim to progress. Paradoxically, de Chirico's attitude is closer to the appreciation that copies enjoyed in earlier times, 'not so much out of admiration for the painterly design, which, even if of a different kind, was sometimes very close to that of the original, but rather out of admiration for the idea that it embodies.'<sup>40</sup>

In the catalogue of the great de Chirico exhibition held at the MoMA in 1982, William Rubin reproduced eighteen versions of the *Disquieting Muses* on a black-and-white double page originally published by *Critica d'Arte* magazine<sup>41</sup> – as evidence of de Chirico's artistic decline after 1919 and of his commercial wiliness, as it were. Yet Andy Warhol must have been highly fascinated by this serial presentation of an iconic 'original' of Classical Modernism, as he appropriated the *Disquieting Muses* (as well as other de Chiricos) that same year. He also transformed the work into a typical Warhol original – reproducing these original 'fakes' rather than the original itself – in a series of juxtapositions and superimpositions, 'shuffling in this Pirandellian way not



5 Joseph Kosuth, *One and Three Chairs*, 1965, mixed media, The Museum of Modern Art, New York

only artistic identities, but early and late dates, originals and reproductions', as Robert Rosenblum commented aptly.<sup>42</sup> On the occasion of the 'Warhol Versus de Chirico' exhibition held in 1985 at the Marisa de Re Gallery, New York – which presented Warhol's appropriations together with some late de Chirico 'originals' – the art critic Kim Levin wrote: 'This exhibition reverberates with issues that are at the heart of the current modern/postmodern wrestling match. Both artists trav-

esty those qualities that modernists held most dear: creativity, originality, authenticity, uniqueness. Both artists deliberately degenerate form and style. [...] This conjunction of Warhol and de Chirico somehow defines the inner and outer limits of appropriation. It brings up some fine points of the begging, borrowing, stealing sensibility of the '80s, and suggests that distinctions need to be made. [...] The spectrum that runs from paraphrase and parody to quotation, simulation, and plagiarism is riddled with hazy bands.'<sup>43</sup>

### Excursus II: An 'invented story'

'In 1921 Picasso claims to have painted a portrait of Honorio Bustos Domeq. Fernando Pessoa writes that he has seen the picture, and praises it as the greatest masterpiece of all the works Picasso has ever painted. Many critics search for the painting, but Picasso says it has been stolen.

In 1945 Salvador Dalí declares that he has rediscovered the picture in Perpignan. Picasso officially recognizes it as his original work. It is sold to the Museum of Modern Art as "Pablo Picasso, *Portrait of Bustos Domeq*, 1921".

In 1950 Jorge Luis Borges writes an essay ("El Omega de Pablo"), in which he asserts:

1. Picasso and Pessoa lied, because nobody painted a portrait of Domeq in 1921.
2. It was absolutely impossible to paint a portrait of Domeq in 1921, because this figure was invented by Borges and Bioy Casares in the 1940s.
3. Picasso painted the picture in 1945 and backdated it to 1921.

4. Dalí stole the picture and painted a (perfect) copy of it. Immediately afterwards he destroyed the original.
5. Obviously, Picasso imitated his early style perfectly in 1945, and Dalí's copy was indistinguishable from the original. Both Picasso and Dalí used paints and canvas dating from the year 1921.
6. Consequently the work exhibited in New York is the *deliberate forgery of a deliberate forgery by the author of a historical forgery*.

In 1986 an unknown text by Raymond Queneau is found, which claims:

1. Bustos Domeq really existed, but his real name was Schmidt. Alice Toklas maliciously introduced him to Braque as Domeq in 1921, and Braque painted his portrait (in good faith) under that name, (fraudulently) imitating Picasso's style.
2. Domeq-Schmidt died during the bombardment of Dresden; all his personal papers were lost.
3. Dalí indeed discovered the portrait in 1945 and copied it. He later destroyed the original. A week later Picasso made a copy of Dalí's copy; Dalí's copy was later destroyed. The picture sold to the MoMA is a forgery painted by Picasso, imitating a forgery painted by Dalí, which in turn imitates a forgery painted by Braque.
4. He (Queneau) learnt all of this from the discoverer of Hitler's diaries.<sup>44</sup>

### **The authenticity of the fictitious**

*In truth, we are nothing more than pictures, similarity, reflection, distortion, illusion, copy, echo, invention, portrait, art, falsehood. What is a picture? What is similarity? [...] And take note once again: lie rather than deceive; do as if, do not counterfeit, camouflage (what else?), do not falsify, invent, plagiarize; pretend if you wish, but pretend only, do not swindle, fascinate, do not deceive, and if necessary, poke fun at yourselves.*

Jusep Torres Campalans, 1912<sup>45</sup>

In 1958 the substantial, illustrated biography of the Catalan Cubist Jusep Torres Campalans (Mollerusa 1886–ca. 1956 Mexico City), until that point completely unknown to the art world, was published in Mexico City, accompanied by a sensational exhibition. The extensive monograph, whose first Mexican edition is similar in presentation to the sumptuous 'Le goût de notre temps' series of art books produced by the Genevan publisher Albert Skira, was written by Max Aub. The book contains all the ingredients and 'padding'<sup>46</sup> appropriate to a meticulously edited artist's monograph: dedication to a famous contemporary (André Malraux), authoritative motto (in this case three: Gracian, Alvarado, Ortega y Gasset), personal preliminary note, acknowledgements to important figures of the time (including Kahnweiler, Cassou),

chronology, reproduction of various older articles about Campalans, detailed biography with historico-political and art-historical cross-references, the painter's notebook, including comments on his maxims and reflections, written records of conversations, as well as the catalogue of the artist's works with the usual information on technique, the year the picture was painted and provenance, sometimes with commentaries; and finally, numerous black-and-white reproductions, drawings and sketches, and documentary photographs distributed throughout the text, and colour reproductions of several major works at the back of the book.

Art critics praised the high quality of Campalans's small *oeuvre*; collectors wanted to buy pictures; contemporaries claimed to have known the painter; pictures by Campalans were traded on the market.<sup>47</sup> The important Spanish author,<sup>48</sup> who went almost unnoticed in German-speaking countries despite the outstanding publication by the Eichborn publishing house, only admitted much later that he had invented this artist's biography and painted and drawn the artworks himself. His virtuoso puzzle blurs the boundaries between reality and fiction to the extent that the question of plausibility vanishes into thin air in the face of the authenticity of the fictitious.

This is not the place for a (desirable) treatise on the topic of 'The Artist as a Work of Art',<sup>49</sup> but I would like to refer to the French Symbolist artist Pierre Menard, who resolved to write Cervantes's *Don Quixote*: 'He did not want to write another *Quixote* – which is easy –, but the *Quixote*. It is futile to add that he never considered a mechanical transcription of the original; he did not want to copy it. His admirable ambition was to produce a few pages, which – word for word and line by line – should match those of Miguel de Cervantes.'<sup>50</sup> Borges concludes his profoundly philosophical narrative about originals, copies and palimpsests as follows: 'This technique [of deliberate anachronisms and erroneous attributions] enlivens the most sedate books with adventures. If one were to attribute the *Imitatio Christi* [Thomas à Kempis, 1472, J.A.] to Louis Ferdinand Céline or James Joyce, would that not constitute a sufficient regeneration of these feeble spiritual instructions?'<sup>51</sup>

### **Art criticism as forgery and/or strategy**

*For by reproducing existing art forms the artist both receives the sanction of his predecessor and at the same time negates the attempt to observe any new formal development, thus shifting the entire phenomenon to a superior, that is, critical, level.*

Cheryl Bernstein, 1973<sup>52</sup>

In 1973 the essay 'The Fake as More' by the young New York critic Cheryl Bernstein was published in an anthology of art criticism. The text reports enthusiastically and

in a highly abstract manner on an exhibition of the painter Hank Herron, whose work consists in copying Frank Stella's entire *oeuvre*. The author verbosely claims that the young painter not only outdoes his role model in this 're-creative process' in terms of the structure of the painting's surface and expressive power, but also in the act of appropriation introduces 'a radically new and philosophical element' that is set to preoccupy art critics for some time, namely 'the denial of originality, both in its most blatant manifestation (the fake as such) and in its subtle, insouciant undertones of static objectivity'. In the early 1980s Herron and Bernstein were cited and discussed as early representatives of Appropriation Art, until it became known in 1986 that both the painter and his critic were fictitious figures 'invented' by the art historian Carol Duncan (together with her husband).<sup>53</sup>

At the time it was published, the text was intended as a satire on academe or a parody of the art world<sup>54</sup> (with the knowledge of the publisher). It was probably due to the convincing use of philosophical jargon, the authoritative quotations of Heidegger, Wittgenstein, Sartre and Kant and the apparently immunizing term 'fake' in the title that nobody cottoned on to the intellectual fraud. When the text was republished in 1993, the author herself noted in her introduction that the text was now imbued with a different significance. When the text was unmasked, Thomas Crow had said that the Simulationists had fallen for a hoax and their current theoretical positions would have been stronger if Herron and Bernstein had really existed. The author herself proposed a more differentiated interpretation (in terms of the history of its critical reception): 'But one can argue the opposite position with as much validity: the Simulationists' reading of the absent Herron's absent work as represented by the Bernstein text was precisely an act of deconstructive intersubjective and intertextual engagement which both destabilized and reconfiscated the linguistic strategy of the original (non)original.'<sup>55</sup> Stefan Römer has appraised the text and the context of the art system in which it was produced in detail, and comes to the conclusion that Duncan's fiction, ingeniously constructed against the background of conceptual artistic practices, could itself 'be understood as a conceptual artistic art critical of institutions'.<sup>56</sup>

### **Excursus III: Lies & construction**

'The photographer's apparatus can lie just as much as the typesetting machine', wrote Bertolt Brecht in 1931.<sup>57</sup> The remark was directed at the ex-Dadaist and political *photomonteur* John Heartfield, who – besides his numerous book covers – created almost 250 full-page photomontages and title pages for the great *Arbeiter-Illustrierte-Zeitung* (Workers' Illustrated Newspaper) up to 1938.<sup>58</sup> Brecht was convinced that merely reproducing reality did not make any statement about it: 'A photograph of the



ADOLF, DER ÜBERMENSCH: Schluckt Gold und redet Blech

6 John Heartfield, *Adolf, der Übermensch: Schluckt Gold und redet Blech*, in: *AIZ*, 17.7.1932, photomontage (machine photogravure), 38 x 27.7 cm, private collection, Zurich

Krupp works or AEG reveals practically nothing about these institutions. The true reality has descended into the functional. The alienation of human relationships – of the factory, for example – means that those relationships are no longer revealed. It is thus indeed necessary to “construct something”, something “artificial”, “posed”. Art is thus indeed equally necessary.<sup>59</sup>

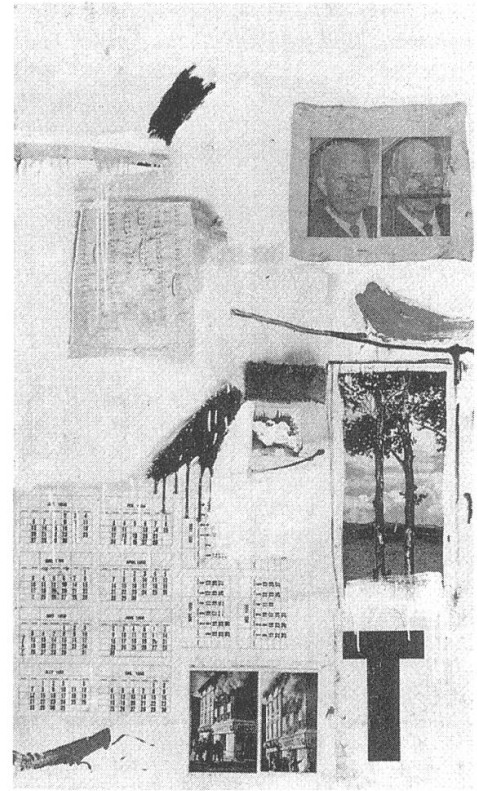
Heartfield put into practice the realisation that natural, naked existence never reveals itself – an idea also shared by Siegfried Kracauer<sup>60</sup> – with scissors, glue and paintbrush:<sup>61</sup> the complicated production process implies that there should not be an authentic original, as both the glued montage – which can consist of up to 20 fragments of pictures and texts – and the retouched original prints are only preliminary, transitional phases. Both are still incomplete and bear the highly visible traces of the handiwork, which is rendered in-

visible only by the high-quality machine photogravure. A printed photomontage is thus not the reproduction of an ‘authentic’ original, but a ‘technically generated’ original of which a theoretically infinite number of copies can be produced (fig. 6).

Heartfield usually adapted his work to an everyday perception by attempting to construct a standard pictorial space in which the posed presentation of content was intended to achieve a naturalistic effect. However, he also had the formal vocabulary of the caricaturist at his disposal: physiognomic exaggeration, animalistic disguise, distortion of perspective, surrealistic confrontation, the illustration of words, etc. In the context of the debates on Realism and Expressionism conducted during the 1930s, Ernst Bloch made differentiating use of the formal gimmicks employed in Cubist collages and Heartfield’s portentous photomontages in his arguments against the traditionalist representatives of Socialist Realism, who – like Georg Lukács – perceived montage merely as evidence of bourgeois decadence rather than an advanced technique appropriate to modern reality: ‘Picasso was the first to paint “glued junk”, to the horror even of the educated classes; or much lower down the scale: Heartfield’s satirical photomontages were so popular that many an educated person wants to know nothing about montage.’<sup>62</sup>

7 Robert Rauschenberg, *Factum I*, 1957, combine-painting, 156.2 x 90.8 cm, The Museum of Contemporary Art, Los Angeles

8 Robert Rauschenberg, *Factum II*, 1957, combine-painting, 157.5 x 90.2 cm, The Museum of Modern Art, New York



### abstract – monochrome – serial

*But why should I be original? Why can't I be non-original?*

Andy Warhol, 1962/3<sup>63</sup>

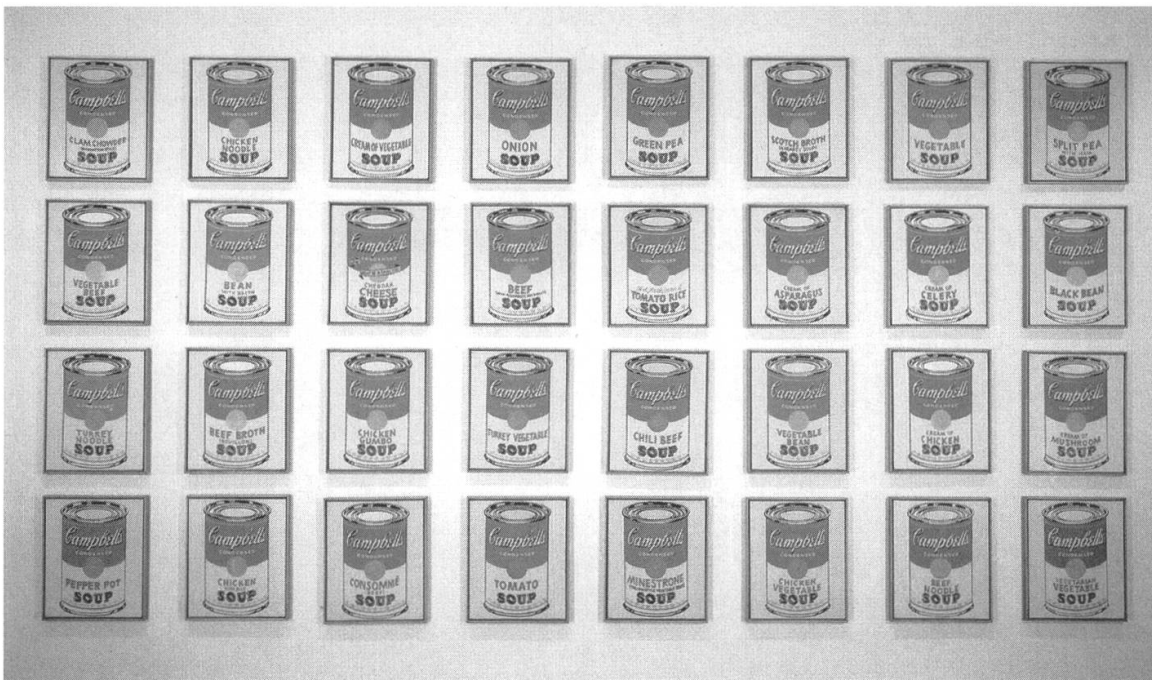
In 1958, Robert Rauschenberg exhibited – among others – the two combine-paintings entitled *Factum I* and *Factum II* (fig. 7 and 8) at the Leo Castelli gallery in New York. The two paintings, which are both the same size show – at least in reproduction – exactly the same image, from the very physical brushstrokes to the Dadaist collage elements: there is thus an ‘Original I’ and an ‘Original II’. This can be construed as a cryptic commentary on the aura of authenticity, the mystical stroke of genius propagated by Abstract Expressionism: ‘The two *Factum* paintings work, appropriately, as a double-edged sword. They debunk the notion of unique individuality in calligraphic action painting, by showing how the signs of chance and inspiration can be planned and fairly replicated. But they also make evident the leeway that exists, for variation and change, within the acceptance of strictly similar formats, and even within the intention to do the same thing twice.’<sup>64</sup> The fact that the two pictures are now displayed on the West and East Coasts of the United States in two different museums,<sup>65</sup>



each considered an early masterpiece in the 'combine-painting' series and a precursor of Pop Art, can be attributed to the power of assimilation exercised by the art market. It can also be perceived with a certain equanimity as an irony of (art) history, which has already survived the 'end of art' several times; reproductions and digital images have long since opened up boundless possibilities for argumentation.<sup>66</sup> And another verbal, Duchampian ready-made act: in 1961 Rauschenberg took part in a group exhibition at the Iris Clert gallery in Paris. As he had forgotten to deliver a portrait of the gallery-owner that he had promised, he sent a telegram that was displayed as part of the exhibition: 'This is a portrait of Iris Clert if I say so. – Robert Rauschenberg.'<sup>67</sup>

Almost at the same time (1957), Yves Klein exhibited an installation of eleven monochrome blue paintings in the same format (78 x 56 cm) at the Galleria Apollinaire in Milan. The artist – whose well-known 'trademark' was to become the intensely glowing ultramarine patented under the name 'IKB' (International Klein Blue, French patent no. 63471, 19.5.1960) – himself described the reception accorded this exhibition (initiated by Pierre Restany and repeated the following year at Iris Clert's Paris gallery), which established Klein's fame and his meteoric but brief career, as follows: 'All of these blue propositions, all alike in appearance, were recognized by the public as quite different from one another. The *amateur* passed from one to another as he liked and penetrated, in a state of instantaneous contemplation, into the worlds of the blue. [...] The most sensational observation was that of the "buyers". Each selected out of the pictures that one that was his, and each paid the asking price. The prices were all different of course.'<sup>68</sup> Buchloh has pointed out that Klein – despite provocatively negating the uniqueness of the traditional panel painting by abandoning motif and personal signature in his monochrome, uniform serial work – nonetheless counts on the beholder's individualizing involvement to influence the way his art is received. The beholder's personal immersion in the work causes the revival of something like an aura.

Andy Warhol first exhibited his *Campbell's Soup Cans* (fig. 9), which were subsequently to become so famous, at the Ferus Gallery in Los Angeles in 1962. When hanging the thirty-two paintings, which were all in the same format and framed identically – at the time these were hand-painted originals rather than silkscreen prints,<sup>69</sup> a technique developed only later – at the suggestion of gallery-owner Irving Blum the artist chose to present them in the same way that would have been familiar to everyday consumers at the supermarket. The pictures were lined up in rows on narrow shelves at regular intervals – displayed within reach rather than at eye level. Every work was listed at the same price of \$100.<sup>70</sup> Unlike Klein, who exhibited paintings of the same size and appearance at different prices, Warhol's paintings, all offered at the



9 Andy Warhol, *Campbell's Soup Cans*, 1962, synthetic polymer paint on canvas; 32 works, each 50.8 x 40.6 cm, The Museum of Modern Art, New York

same price and at first glance a series of seemingly identical works, were distinguished from one another in that – on closer inspection – each presented a different ‘content’. The restriction to thirty-two works was not primarily due to the gallery space available, but to the fact that Campbell’s offered thirty-two different types of soup at the time. The identical design of the labels only differs in the flavours shown in red capital letters in the white, lower half:<sup>71</sup> ‘Beef Noodle’, ‘Onion’, ‘Vegetable’, ‘Cream of Chicken’, ‘Pepper Pot’, etc., which – instead of an artist’s signature, as it were – render every serially produced Warhol painting (stencil or screen-print) ‘unique’: ‘His repetitions comment on the ubiquity of brands, and their ability to appeal to different consumer groups. [...] Mass-produced goods, then, appeal uniquely to individuals via the power of personalization.’<sup>72</sup> Not only the public – the exhibition was merely a *succès de scandale* – but also the critics, including progressive representatives like Barbara Rose, reacted uncomprehendingly to Warhol’s forthright adaptation of commercial aesthetics: ‘I find his images offensive; I am annoyed to have to see in a gallery what I’m forced to look at in the supermarket. I go to the gallery to get away from the supermarket, not to repeat the experience.’<sup>73</sup> Two years later, the Bianchini Gallery in New York showed the legendary ‘American Supermarket’ exhibition; in a supermarket setting, consumer goods were offered for sale as art (including ‘genuine’

soup cans for \$18 signed by Warhol) and works of art as consumer goods, thus making a strident, not entirely serious comment on both commercial aesthetics and Pop Art.<sup>74</sup>

**Art & business: 'I think everybody should be a machine'**

*Business art is the step that comes after Art. I started as a commercial artist, and I want to finish as a business artist. After I did the thing called 'art' or whatever it's called, I went into business art. I wanted to be an Art Businessman or a Business Artist. Being good in business is the most fascinating kind of art.*

Andy Warhol, 1975<sup>75</sup>

Andy Warhol is indisputably the artist who best knew how to merge the worlds of art and consumption into a single entity. This applies not only to the motifs of his immense *oeuvre*, but also to his 'semi-industrial' production methods using sophisticated reproduction techniques and employing numerous assistants and friends at the 'Factory'. 'I think somebody should be able to do all my paintings for me. I haven't been able to make every image clear and simple and the same as the first one. I think it would be so great if more people took up silk screens so that no one would know whether my picture was mine or somebody else's.'<sup>76</sup> Warhol retracted this early statement – made hypothetically and to be read in the context of the provocative denial of creative genius contained in the dictum expressed at the beginning of the interview ('I think everybody should be a machine'<sup>77</sup>) – twenty years later, protesting that he had painted all his pictures himself and that he would be able to unmask any possible forgery.<sup>78</sup>

Be that as it may, it is obvious that, as a former commercial artist, he had no reservations about the world of consumption and the media. His ludicrous autobiography is bursting with sparkling comments on everyday consumption, oscillating between naïveté and irony: 'What's great about this country is that America started the tradition where the richest consumers buy essentially the same things as the poorest. You can be watching TV and see Coca-Cola, and you can know that the President drinks Coke, Liz Taylor drinks Coke, and just think, you can drink Coke, too. A Coke is a Coke and no amount of money can get you a better Coke than the one the bum on the corner is drinking. All the Cokes are the same and all the Cokes are good. Liz Taylor knows it, the President knows it, the bum knows it, and you know it too.'<sup>79</sup> Warhol by all means also applied this 'democratic', anti-elitist statement to art – at least to his own: 'Pop art is for everyone. I don't think art should be only for the select few, I think it should be for the mass of American people and they usually accept art anyway.'<sup>80</sup>

As early as 1963 he accepted commissions for portraits, which were later followed by many others of which it is not known with any certainty whether they were paid commissions or ‘celebrities’ painted on the artist’s own initiative. In 1986 Daimler-Chrysler commissioned him to create a series of eighty pictures representing twenty models to celebrate the car manufacturer’s 100th anniversary – certainly a lucrative assignment. On his unexpected death in February 1987, thirty-five paintings (‘acrylic silk-screened and hand painted on canvas’) and twelve large-scale drawings of *Cars* had been completed.<sup>81</sup> Warhol also had nothing against offering his services in the name of a department store. As a special gift idea, the ‘1986 Christmas Book of the Neiman-Marcus Stores’ Christmas catalogue offered a portrait sitting with Warhol for the price of \$35,000: ‘Become a legend with Andy Warhol. [...] You’ll meet the Premier Pop artist in his studio for a private sitting. Mr. Warhol will create an acrylic on canvas portrait of you in the tradition of his museum quality pieces.’<sup>82</sup>

### **Business & art: ‘Some uniqueness’**

*At Media Arts Group, the seed has been planted, it has firmly taken root and an exciting and healthy company is growing. Our unique business model incorporates the Thomas Kinkadee lifestyle brand, branded products, controlled branded distribution and strategic partnerships with some of the most well known companies in the world. We have the people, knowledge, processes and strategies necessary to create the leading art-based lifestyle brand.*

Media Arts Group, Inc.<sup>83</sup>

Thomas Kinkade (\* 1958) – ‘The Painter of Light™’ – is the most collected artist in the United States. His ‘original’ reproductions of pseudo-romantic, Victorian paintings of particularly conflict-free/antiseptic landscapes distributed in various formats and qualities were so successful that he went public with his ‘Media Arts Group’ marketing and distribution company in 1994, achieving annual net sales of approximately 120 million dollars.

On 29 January 2004 the painter bought back all public stock and since then has been the sole owner of the Thomas Kinkade Company: ‘The Thomas Kinkade Company publishes the work of Thomas Kinkade and distributes his art and related collectibles through independently owned galleries worldwide, an extensive network of branded and licensed dealers, and strategic marketing relationships with more than sixty licensees. The company’s primary products are canvas and paper reproductions that feature Mr. Kinkade’s artistically unique use of light and his peaceful and inspiring themes. Mr. Kinkade, known as the “Painter of Light™”, is the most collected living artist in the U.S. today.’<sup>84</sup>

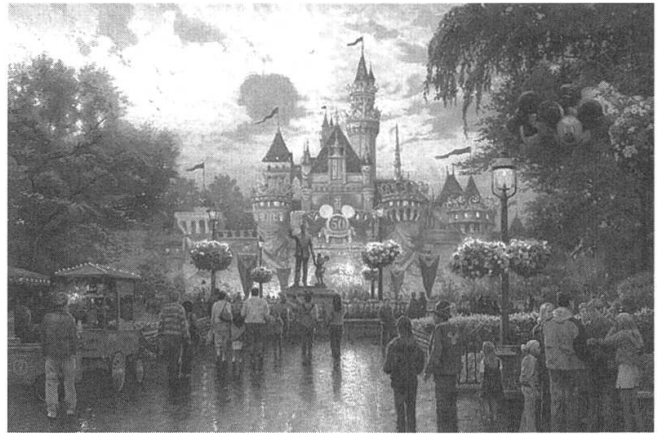
From a pool of approximately 170 motifs by the painter, who has had his self-styled sobriquet protected as a 'trademark' – for marketing reasons, the originals are never sold<sup>85</sup> – high-quality colour reproductions in various sizes are printed onto paper or canvas and offered for sale in differing types of editions (standard numbered, gallery numbered, artist proofs, master edition canvas lithographs) of varying but limited quantities and signed in different ways (stamp, gold seal, ink containing the artist's DNA) and including a certificate at prices ranging from \$230 to \$15,000. The paintings are sold via the Internet or via a network of especially licensed galleries. In these 'Thomas Kinkade Signature Galleries' the client can have his new acquisition improved with 'genuine' brushstrokes by a specially trained 'master highlighter'. A session lasts fifteen minutes: 'A Master Highlighter Event is an 8-hour personal stage appearance by a certified Thomas Kinkade Master Highlighter. At the event, a highlighter enhances images of the gallery's choice. Pieces explode with dimension and are brought to life with a stroke of the master highlighter's brush.'<sup>86</sup> Susan Orlean has described how such a 'highlight' session proceeds in a wonderful article in the *New Yorker*.<sup>87</sup> On the official Kinkade website, sixty-seven such events in thirty-five galleries were announced for October 2005 alone!

Innumerable merchandising products – ranging from posters, books, postcards and puzzles to bed linen, cups, wastepaper baskets and furniture, screensavers and 'Music of Light' CDs – and licence contracts with over sixty partners (including a general property contractor, who offers Kinkade Homes in a gated community from \$450,000) help to propagate Kinkade's name and contribute to the incredible financial profits, which allow the artist to support charity projects (some of which are his own) with \$1 million each year.

In a lengthy news release of 22 May 2005, HP, the major digital printer manufacturer, described its technically demanding cooperation with the Thomas Kinkade Company: 'The reproduction of Kinkade's popular images begins with a 100 megapixel digital capturing process that generates a high-definition file. From this file, a proof is printed by the HP Designjet 5500 on glossy photo-stock paper, using HP uv inks. Once color is approved, the image is sent back to the HP Designjet 5500 for printing on HP Premium Artist Canvas roll stock, then clear-coated and dried before being trimmed by hand, checked for quality and hand-stretched. Highlighting and texture is added next to accentuate the color and luminosity of the painting. Then the canvases are framed, boxed and shipped to Thomas Kinkade galleries across the United States.'<sup>88</sup> Andy Wood, director of the Thomas Kinkade Company's Manufacturing Engineering department, was impressed by the colour management software and time- and money-saving workflow of the newly launched high-tech appliance,

and said – probably without a trace of irony: ‘Every piece is hand-touched, so that does add some uniqueness to each canvas.’<sup>89</sup>

From time to time the master himself makes an appearance and talks about his art, as on 10 September 2005 in Disneyland, for whose 50th anniversary he had the honour of specially painting an official picture (fig. 10).<sup>90</sup> Undoubtedly, Thomas Kinkade still has a great deal to do: ‘We believe that the walls of the home are the new frontier for branding. Thom always says that there are forty walls in the average home. Our job is to fill them’, as his former CEO Craig Fleming commented laconically.<sup>91</sup>



10 Thomas Kinkade, *Disneyland 50<sup>th</sup> Anniversary*, 2005, reproduction on paper or canvas, three formats (18 x 27, 24 x 36, 28 x 42 in.), \$230 to \$1,160, depending on the edition

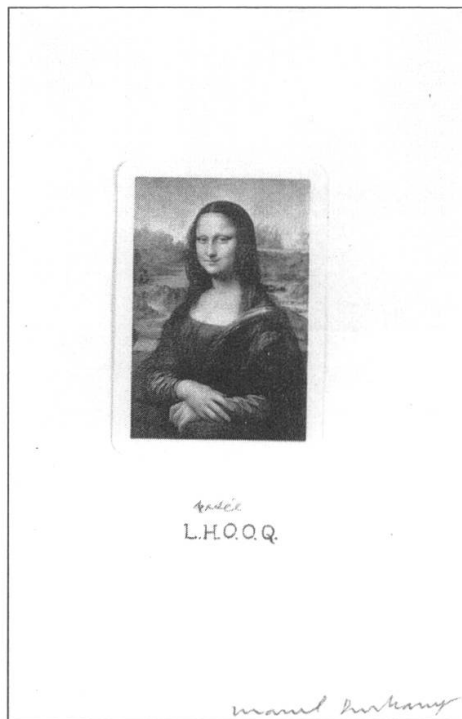
The fact that Kinkade is not even noticed, let alone discussed by ‘up-to-date’ art criticism or exhibited by the ‘contemporary’ art system, may – as is also true, in a Swiss context, of Rolf Knie, Rudolf Mirer or Rosina Wachtmeister – be something of a thorn in the side of the Californian public idol, who refers to Caravaggio and Rembrandt, comes out as an admirer of Norman Rockwell and considers himself Andy Warhol’s legitimate heir. It would be appropriate for post-modern, yet (self-) critical art criticism to devote some attention to a phenomenon that, as (conservative) ‘Post-Pop’,<sup>92</sup> claims to allay the fears of a broad section of the public using state-of-the-art production and distribution techniques.

### **L.H.O.O.Q. re-visited**

*The ready-mades were a way of getting out of the exchangeability, the monetarization of the work of art, which was just beginning about then. In art, and only in art, the original work is sold, and it acquires a sort of aura that way. But with my ready-mades a replica will do just as well.*

Marcel Duchamp, 1964<sup>93</sup>

For the preview of his exhibition at the Cordier & Ekstrom Gallery, New York in 1965 – the largest exhibition in his lifetime, featuring over ninety exhibits dating from 1904 to 1963 – Marcel Duchamp designed the personal invitation cards. He stuck a playing card featuring a reproduction of Leonardo’s *Mona Lisa* onto an invitation card and, by way of a caption, added by hand: ‘rasée/L.H.O.O.Q.’; the card is



11 Marcel Duchamp, *rasée / L.H.O.O.Q.*, 1965, ready-made: playing card with reproduction of the Mona Lisa (8.8 x 6.2 cm), mounted on invitation card, edition of approximately 100; this example dedicated to Mr. and Mrs. Alfred Barr, Jr., Ronny van de Velde Collection, Antwerp

signed in the lower right-hand corner (fig. 11). Without interfering in the colour reproduction of the Gioconda, Duchamp is of course alluding to an iconoclastic act he had committed half a century earlier: at the time he had added a pencil moustache and beard to the reproduction of the lady with the most famous smile in the world in the manner of a *graffito*.

Duchamp thus assumed that his audience was aware of his 'rectified ready-made' of 1919, which was in his possession and could be seen at the exhibition. Without knowledge of this now justifiably famous Dadaist act, Duchamp's cryptic allusion to the relationship between original and reproduction, admiration and kitsch would have gone unnoticed: 'The cheap reproduction of the Mona Lisa without facial hair was, by 1965, irrevocably altered by the knowledge of Duchamp's earlier intervention, for that first altered reproduction had already been reassimilated into the space of the museum. In 1965 Duchamp could play off that knowledge, obviously confident that the context he had helped to construct for the earlier appropriation would be inscribed as well in this latter reappropriation.'<sup>94</sup> The fact that Duchamp was aware of the paradox of making a signed multiple out of a ready-made is proven by his casual attitude towards copies and replicas as well as many of his at times contradictory statements. Dieter Daniels puts the (theoretical) conflict, which is not a conflict for the art system, but merely an insight for the art history books, in a nutshell:

‘Duchamp apparently claims victory for iconoclasm over tradition by degrading the original Mona Lisa to a shaven version of his bearded Mona Lisa of 1919. Yet he knows that, at the same time, iconoclasm has thus lost out. The beard has gone, and the ready-mades have definitely become art that can be exhibited and sold; they are displayed in a museum, just like the Mona Lisa.’<sup>95</sup>

Postscript: See also the article ‘Duchamp’s *Fountain*: Branding (as) art. The history of a ready-made and its artistic aftermath’ in this publication.

### Rondeau

*An elephant is an elephant, especially when somebody buys it.*

Bertolt Brecht, 1927<sup>96</sup>

*Ha! If only we painted immediately with our eyes! How much is lost on the long path from the eye through the arm into the brush! – [...] Or do you think, Prince, that Raphael would not have been the greatest genius of a painter if he had had the misfortune to have been born without hands? Do you think so, Prince?*

Gotthold Ephraim Lessing, 1772<sup>97</sup>

\* I would like to thank Tapan Bhattacharya and Rafaela Pichler for procuring hard-to-come-by literature, and Marcel Baumgartner, Kornelia Imesch, Regula Krähenbühl, Franz Müller and Julia Wirz for their critical comments on my manuscript.

1 ‘Car JE est un autre. Si le cuivre s’éveille clairon, il n’y a rien de sa faute.’ Arthur Rimbaud, letter to Paul Demeny, 15 May 1871, in Arthur Rimbaud, *Briefe. Dokumente* [French/German], ed. and tr. Curd Ochwaldt, Reinbek bei Hamburg, 1964; pp. 21–33, quoted from p. 22.

2 ‘Schneeglöckchen lispeln allerlei. Sie erinnern an Schneewittchen, das in den Bergen, bei den Zwergen, freundliche Aufnahme fand. Sie erinnern an Rosen, darum, weil sie anders sind. Alles erinnert stets an sein Gegenteil.’ Robert Walser, ‘Schneeglöckchen’, in *Das Gesamtwerk*, ed. Jochen Greven, vol. 9, *Verstreute Prosa 2 (1919–1925)*, Frankfurt am Main, 1978, p. 15.

3 See note 4.

4 ‘Heus, tu insidiator ac alieni laboris et ingenij surreptor, ne manus temerarias his nostris

operibus incias, cave! Scias enim a gloriosissimo Romanorum imperatore Maximiliano nobis concessum esse, ne quis suppositicijs formis has imagines imprimere, seu impressas per imperij limites vendere audeat; quod si per contemptum seu auaricie crimen secus feceris, post bonorum confiscationem tibi maximum periculum subeundum esse certissime scias.’ Hans Rupprich, *Dürer. Schriftlicher Nachlass*, vol. 1, Berlin, 1956, doc. no. 23, p. 76. German translation by Horst Appuhn, ed., *Albrecht Dürer. Die drei grossen Bücher*, Dortmund, 1979, pp. 140–1. The *Small Passion* published the same year (in octave format) also features the same warning in the colophon and the note ‘Cum privilegio’ on the title page (in the same font size as the title). See Horst Appuhn, ed., *Die Kleine Passion von Albrecht Dürer*, Dortmund, 1985, pp. 9, 83, 137. As even the most recent work catalogue (Rainer Schoch et al., eds., *Albrecht Dürer. Das druckgraphische Werk*, vol. 2, *Holzschnitte und Holzschnittfolgen*, Munich [...], 2002) does not reproduce the



- entire original Latin text in facsimile or as a quotation, please refer to the two above-mentioned scaled down paperback facsimile editions by Appuhn, which not only reproduce the texts, but also succeed in giving an impression of Dürer's consummate skill as a book designer (despite the considerable scaling down of the folio sheets to paperback format).
- 5 'Jch hab vill guter frewnd vnder den Wahlen, dy mich warnen, daz jch mit jren moleren nit es vnd trinck. Awch sind mir jr vill feind vnd machen mein ding in kirchen ab vnd wo sy es mügen bekumen.' Cited after: Rupprich 1956 (see note 4), doc. no. 2, pp. 43–4; see also Peter Strieder, ed., *Vorbild Dürer. Kupferstiche und Holzschnitte Albrecht Dürers im Spiegel der europäischen Druckgraphik des 16. Jahrhunderts*, exh. cat., Germanisches Nationalmuseum, Nuremberg, Munich, 1978, p. 8. Dürer was obviously afraid of being poisoned.
  - 6 Strieder 1978 (see note 5), cat. no. 35.
  - 7 On distribution, see Wolfgang Schmid, *Dürer als Unternehmer. Kunst, Humanismus und Ökonomie in Nürnberg um 1500* (Beiträge zur Landes- und Kulturgeschichte, ed. Franz Ir-sigler, vol. 1), Trier, 2003, pp. 122–7. See also the service contract between Dürer and the rumour-monger Contz Sweytzer in the official register of the City of Nuremberg of 8 July 1497: 'Nemlich: er woll jme die abtruck von kupffer vnd holtzwerck ye von einem lannd zu dem andern vnd von einer stat zu der andern tragen, veil haben vnd nach allem seinem vermügen, vnd yeden truck in dem werd vnd vmb das gelt, jn mass er jme an einer zetteln verze-ichent hat, verkauffen.' Cited after: *Albrecht Dürer 1471/1971*, exh. cat., Germanisches Nationalmuseum, Nuremberg, 21.5.–1.8.1971, München, 1971, cat. no. 55, p. 43. The complete service contract in: Hans Rupprich, *Dürer. Schriftlicher Nachlass*, vol. 3, Berlin, 1969, p. 448.
  - 8 Giorgio Vasari, *Le vite de' più eccellenti Pittori, Scultori ed Architettori* (1550/68), in id., *Le Opere*, ed. Gaetano Milanesi, Florence 1878–85, vol. 5, p. 406: '[...] e ricorso alla Signoria, si querelò di Marcantonio; ma però non ottenne altro, se non che Marcantonio non facesse più il nome e nè il segno sopradetto d'Alberto nelle sue opere.' Indeed, Dürer's monogram is missing on Marcantonio's copies of the *Small Woodcut Passion* created after Dürer's second sojourn in Venice, while the copies of the earlier *Life of the Virgin* bear Dürer's signature; see Rupprich 1956 (see note 4), doc. 5, pp. 48–50, note 12. Concerning the credibility of Vasari's report, see Strieder 1978 (see note 5), p. 9; regarding the question of copyright, see also Schmid 2003 (see note 7), pp. 394–7.
  - 9 'Dem frembden, so vnder dem rathaws kunst-brief fayl hat vnd vnnder denselben etlich, so Albrecht Durers hanndzaichen haben, so im betrieglich nachgemacht sind, soll man in pflicht nemen, dieselben zaichen alle abzethun vnd der kaine hie fail ze haben oder, wo er sich des widere, soll man im dieselben brief alle als ain falsch auffheben vnd zu ains rats hannden nemen.' Cited after: *Dürer* 1971 (see note 7), cat. no. 47, p. 42; Rupprich 1956 (see note 4), p. 241, doc. no. 4.
  - 10 See Strieder 1978 (see note 5), p. 10 and cat. nos. 59, 61, 64, 68.
  - 11 Ibid., cat. nos. 63, 64.
  - 12 Ibid., cat. no. 120.
  - 13 Ibid., p. 11.
  - 14 Information from: *Echt Falsch*, exh. cat., Villa Stuck, Munich, 1991, p. 37. In Switzerland the supermarket chain Migros can expect liberal legal practice in similar cases thanks to the principle of 'freedom to imitate', as it is not a case of piracy (product forgery). Migros distributes its own products, such as the decaffeinated 'Zaun' coffee (original: 'Haag' – the German word 'Zaun' [fence] is a pun on the word 'Hag', which also means 'fence' or 'hedge'); the sweet beverage 'Mivella' (original: 'Rivella'), the watch 'M-Watch' (original: 'Swatch') and many more. Migros was most recently sued by the British Unilever group in October 2004 because of its 'Flair' skincare line; Unilever sees the 'Flair' products, which are packaged very similarly to the long established 'Dove' line, as an imitation that is detrimental to the market. See Marcel Odermatt, 'Unilever gegen Migros', *Tagesanzeiger*, 11.10.2004.
  - 15 'Vom Plagiat als eine der schönen Künste. Gespräch mit Mike Bidlo', in *Echt Falsch* 1991 (see note 14), p. 146. The exhibition was organized in 1988 by the Fondation Cartier pour

- l'art contemporain (at that time still domiciled in Jouy-en-Josas).
- 16 Alexander J. Seiler, "Not Léger": Kunst als legerer Umgang mit dem Urheberrecht anderer?", *ProLitteris Gazzetta*, no. 12, 1992, p. 57.
- 17 Mike Bidlo – 'Not Léger', exh. cat., Galerie Bruno Bischofberger, Zurich, 1992: all the works are reproduced in the catalogue, which features texts by Francis M. Naumann, Joseph Masheck and Thomas McEcilley.
- 18 Seiler 1992 (see note 16).
- 19 Alexander J. Seiler (moderator), 'Kunst oder "Banknotenfälschung"? "Trauerarbeit" oder Anmassung? Ein Streitgespräch über "Aneignungskunst" und Urheberpersönlichkeitsrecht', *ProLitteris Gazzetta*, no. 13, 1993, pp. 26–32, 49–55.
- 20 Bruno Glaus and Peter Studer, *Kunstrecht. Ein Ratgeber* [...], Zurich, 2003, p. 34.
- 21 Peter Killer in the newspaper *Tagesanzeiger*, cited after: Seiler 1993 (see note 19), p. 27.
- 22 See note 19. The participants in the debate moderated by Alexander J. Seiler on 1 March 1993 were: the artists Max Bill and Ursus Winiger, the art critic Bice Curiger, Gerhard Pfennig, member of the board of the Deutsche Verwertungsgesellschaft (VG) Bildkunst (German collecting society for pictorial art), and Ernst Hefti and Renata Münzel of Pro Litteris.
- 23 Ibid., p. 26. Also the following quotations ibid.
- 24 URG, Art. 3, para. 1.
- 25 URG, Art. 3, para. 4.
- 26 Glaus/Studer 2003 (see note 20), p. 33.
- 27 Christoph Zuschlag, *George Pusenkoff: Mit Pinsel und Pixel – Malerei im Computerzeitalter*, 2002 <<http://www.pusenkoff.de>> accessed 7.9.2005.
- 28 Mike Bidlo. *Masterpieces*, with a text by Robert Rosenblum, exh. cat., Galerie Bruno Bischofberger, Zurich, 1989.
- 29 The comprehensive exhibition (25.9.2004–30.1.2005) at the MMK/Museum für Moderne Kunst, Frankfurt am Main, 2004 was accompanied by a catalogue designed by the artist: Sturtevant. *The Brutal Truth* (I) and the work catalogue *Sturtevant. Catalogue raisonné 1964–2004. Painting Sculpture Film and Video* (II), ed. Lena Maculan, 2 vols., Ostfildern-Ruit, 2004. 'When [Anselm] Kiefer saw the photos of Sturtevant's plane, he said (and I paraphrase here) that if he didn't know for sure that he hadn't made it, he would naturally claim that he had made it – not because it was physically so close to his own work, but because it captured the spirit of his work. In other words, the concern is not with making an outwardly precise copy, but with grasping art intellectually, and with the resulting formal realization of this insight in the sense of an original creation.' (Gerd de Vries in Sturtevant 2004 [II], p. 37).
- 30 Gerhard Pfennig in Seiler 1993 (see note 19), p. 27.
- 31 For more information on the term and its history, see: Stefan Römer, 'Appropriation Art', in Hubertus Butin, ed., *DuMonts Begriffslexikon zur zeitgenössischen Kunst*, Cologne, 2002, pp. 15–18; id., 'Wem gehört die Appropriation Art', *Texte zur Kunst* 7, no. 26, 1997, pp. 129–37; *Texte zur Kunst* 12, no. 46 ('Appropriation Now!'), 2002; Romana Rebbelmund, *Appropriation Art, die Kopie als Kunstform im 20. Jahrhundert*, PhD thesis, University of Cologne, 1998 (Europäische Hochschulschriften, vol. 347), Frankfurt am Main [...], 1999; *Originale. echt falsch – Nachahmung, Kopie, Zitat, Aneignung, Fälschung in der Gegenwartskunst*, exh. cat., Neues Museum Weserburg, Bremen, 1999; *Just do it! Die Subversion der Zeichen von Marcel Duchamp bis Prada Meinhof*, exh. cat., Lentos Museum of Modern Art, Linz, 2005.
- 32 Sherrie Levine, 'Statement', *Style*, March 1982, repr. in Charles Harrison and Paul Wood, eds., *Art in Theory 1900–2000. An Anthology of Changing Ideas*, Oxford, 2003, p. 1039. The last sentence is a paraphrase of the last sentence of a famous essay by Barthes: 'The birth of the reader is paid for with the death of the author.' Roland Barthes, 'The Death of the Author' [English edn, 1967, French edn, 1968], in Fotis Jannidis et al., eds., *Texte zur Theorie der Autorschaft*, Stuttgart, 2000, pp. 185–93, quoted from p. 193.
- 33 William M. Landes, 'Copyright, Borrowed Images and Appropriation Art: An Economic Approach', [University of Chicago Law School] *John M. Olin Law & Economics Working Paper*, no. 113.
- 34 Ibid., pp. 14–15. Three sculptures were sold for a total of \$367,000; the fourth is in the artist's own collection. See the court minutes of the

- 'Rogers v. Koons' case in: NCAC (National Coalition Against Censorship) <<http://www.ncac.org/artlaw/op-rog.html>> accessed 12.10.2005.
- 35 Alexander J. Seiler, 'Die authentische Kopie', *ProLitteris Gazzetta*, no. 13, 1993, p. 2.
- 36 For more information on Levine's concept of picture appropriation, see: Stefan Römer, *Künstlerische Strategien des Fake. Kritik von Original und Fälschung*, Cologne, 2001, pp. 86–118.
- 37 <<http://www.aftersherrievine.com>> accessed 8.9.2005). To my knowledge, Levine has not sued Mandiberg.
- 38 Umberto Eco, *Die Grenzen der Interpretation* [1990], tr. Günter Memmert (from Italian into German), Munich, 1995, p. 252.
- 39 William Rubin, 'De Chirico and Modernism', in *De Chirico*, exh. cat., Museum of Modern Art, New York, 1982, pp. 55–79, especially p. 73 with note 47; Maurizio Fagiolo dell'Arco, *L'opera completa di De Chirico 1908–1924* (Classici dell'arte, vol. 110), Milan, 1984, especially pp. 6, 78–9.
- 40 Pierre Rosenberg, 'Die Furcht vor dem Werk', in *Echt Falsch* 1991 (see note 14), p. 135.
- 41 Rubin 1982 (see note 39), pp. 74–5; Carlo Raghianti, 'Il caso de Chirico', *Critica d'Arte* 44, no. 163–5, January–June 1979, pp. 11–13.
- 42 Robert Rosenblum, 'Warhol as art history', in *Andy Warhol. A retrospective*, ed. Kynaston McShine, exh. cat., Museum of Modern Art, New York, 1989, p. 33.
- 43 Kim Levin, 'The Counterfeiters: De Chirico Versus Warhol' [1985], repr. in Levin, *Beyond Modernism. Essays on Art from the '70s and '80s*, New York, 1988, pp. 251–5.
- 44 Eco 1995 (see note 38), p. 251. Eco's profound 'invented story' is part of the summary of the chapter entitled 'Nachahmungen und Fälschungen' (Imitations and Forgeries) of his clever book, which explores the tense relationship between the author's intention, a given text and freedom of interpretation against the background of logical intellectual constraints, social and economic agreements and the acceptance of narrative worlds.
- 45 Jusep Torres Campalans, 'Das grüne Heft', memorandum, c.1912 (probably a transcript), in Max Aub, *Jusep Torres Campalans* [1958], tr. Eugen Helmlé and Albrecht Buschman (from Spanish into German), Munich and Zurich, 1999, pp. 310–11 and note 23.
- 46 Gérard Genette, *Paratexte. Das Buch vom Beiwerk des Buches*, preface by Harald Weinrich, tr. Dieter Honig (from French into German), Frankfurt am Main, 1989.
- 47 For the aftermath of this hoax, see the epilogue by Mercedes Figueras, in Aub 1999 (see note 45), pp. 419–40.
- 48 Max Aub (Paris 1903–72 Mexico City) emigrated to Valencia in 1917, and maintained friendships with Buñuel, Hemingway, Malraux and Picasso, from whom, as cultural attaché in Paris, he commissioned *Guernica* in 1937. Aub fought on the republican side in the Spanish Civil War, was detained in concentration camps between 1940 and 1942, and emigrated to Mexico in 1945. His monumental, six-volume novel series on the Spanish Civil War, *The Magical Labyrinth*, is considered a work of world literature.
- 49 The following works offer a delightful collection of fictitious artists' biographies: Koen Brams, *Erfundene Kunst. Eine Enzyklopädie fiktiver Künstler von 1605 bis heute*, tr. Christiane Kuby and Herbert Post (from Dutch into German), Frankfurt am Main, 2003; here also Campalans, pp. 56–8. See also: Werner Hofmann, 'Der Künstler als Kunstwerk. Anmerkungen zum Künstlerroman', *Die Zeit*, 28.5.1982, in a slightly different form also in id., *Anhaltspunkte. Studien zur Kunst und Kunsttheorie*, Frankfurt am Main, 1989, pp. 91–106.
- 50 José Luis Borges, 'Pierre Menard, Autor des Quijote' [1939/1941], in id., *Fiktionen*, ed. Gisbert Haefs and Fritz Arnold, tr. Karl August Horst, Wolfgang Luchting and Gisbert Haefs (from Spanish into German), Frankfurt am Main, 1994, pp. 35–45, quotation on p. 39.
- 51 Ibid., p. 45. For the various forms of literary 'imitation', see: Gérard Genette, *Palimpseste. Die Literatur auf zweiter Stufe* [1982], tr. Wolfram Bayer and Dieter Hornig (from French into German), Frankfurt am Main, 1993.
- 52 Cheryl Bernstein, 'The Fake as More', in *Idea Art*, ed. Gregory Battcock, New York, 1973, pp. 41–5.
- 53 Carol Duncan, 'The Life and Works of Cheryl Bernstein', in id., *The Aesthetics of Power. Essays*

- in *Critical Art History*, Cambridge, Mass., 1993, pp. 209–25, especially the ‘Introduction’, pp. 211–15, ‘The Fake as More’, pp. 216–18. The author published another hoax as Bernstein in 1977, but then relinquished the pseudonym ‘because her contributions were no longer needed – so many other writers equaled or surpassed her in what she did. Or, to put it another way, when parody and art criticism become indistinguishable, it is time to quit’, p. 214.
- 54 See also the widely (and controversially) discussed satire (1996 in *Social Text*) by the American physicist Alan Sokal of the post-modern discourse in the humanities as well as his book, written in collaboration with the Belgian physicist Jean Bricmont, entitled *Eleganter Unsinn. Wie die Denker der Postmoderne die Wissenschaften missbrauchen* (French edn, 1997), Munich, 1999. See critical reactions to this: Claudia Schmölens, ‘Ein intellektueller Betrug. Über Alan Sokals und Jean Bricmonts Angriffe auf die Postmoderne’, *literaturkritik.de* (no. 12, Dec 1999) <[http://www.literaturkritik.de/public/rezension.php?rez\\_id=625&ausgabe=199912](http://www.literaturkritik.de/public/rezension.php?rez_id=625&ausgabe=199912)> accessed 9.10.2005.
- 55 Duncan 1993 (see note 53), pp. 214–15.
- 56 Römer 2001 (see note 36), pp. 19–30, quoted from p. 27.
- 57 ‘Der Photographenapparat kann ebenso lügen wie die Setzmaschine’. Bertolt Brecht on the tenth anniversary of the *Arbeiter-Illustrierte-Zeitung*, no. 41, 1931, p. 810.
- 58 For Heartfield and the AIZ, see in detail (with bibliography): Juerg Albrecht, “‘Benütze Foto als Waffe!’ John Heartfields Fotomontagen”, *Kunstnachrichten* 18, no. 3, May 1982, pp. 59–71; see also: Peter Pachnicke/Klaus Honnef, eds., *John Heartfield*, exh. cat., Berlin Academy of Art [...], 1991–2, Cologne, 1991.
- 59 ‘Eine Photographie der Kruppwerke oder der AEG ergibt beinahe nichts über diese Institute. Die eigentliche Realität ist in die Funktionale gerutscht. Die Verdinglichung der menschlichen Beziehungen, also etwa der Fabrik, gibt die letzteren nicht mehr heraus. Es ist also tatsächlich “etwas aufzubauen”, etwas “Künstliches”, “Gestelltes”. Es ist also ebenso tatsächlich Kunst nötig.’ Bertolt Brecht, ‘Der Dreigroschenprozess. Ein soziologisches Experiment’ [1931], in id., *Gesammelte Werke*, vol. 18, Frankfurt am Main, 1967, pp. 161–2.
- 60 ‘A hundred reports from a factory cannot be added to the reality of the factory, but remain a hundred views of the factory for all eternity. Reality is a construction. [... It is] to be found solely in the mosaic that is assembled from the individual observations on the basis of the insight into its content. Reportage photographs life; such a mosaic would be its picture.’ (‘Hundert Berichte aus einer Fabrik lassen sich nicht zur Wirklichkeit der Fabrik addieren, sondern bleiben bis in alle Ewigkeit hundert Fabrikansichten. Die Wirklichkeit ist eine Konstruktion. [... Sie steckt] einzig und allein in dem Mosaik, das aus den einzelnen Beobachtungen auf Grund der Erkenntnis ihres Gehalts zusammengestiftet wird. Die Reportage photographiert das Leben; ein solches Mosaik wäre sein Bild.’) Siegfried Kracauer, *Die Angestellten. Aus dem neuesten Deutschland* [1929], Frankfurt am Main, 2nd edn, 1974, p. 16.
- 61 ‘What you will not see is the enormous amount of work that goes into every picture. The technical incorporation of the most detailed photographic notes into the overall idea of the picture.’ (‘Was Sie nicht sehen werden, ist die grosse Arbeit, die in jedem Bild steckt. Die technische, bis ins kleinste gehende sorgfältige Eingliederung der fotografischen Notizen in die Gesamtidee des Bildes.’) Interview with John Heartfield, *Unsere Zeit*, no. 4/5, 1935, p. 83. For the individual production steps, see: Albrecht 1982 (see note 58), pp. 65–7.
- 62 ‘Picasso malte als erster “geleimtes Gerümpel”, zum Entsetzen sogar des gebildeten Volkes; oder sehr viel weiter herab: Heartfields satirische Photoklebebilder waren so volksnah, dass mancher Gebildete nichts von Montage wissen will.’ Ernst Bloch, ‘Diskussionen über Expressionismus’ [1938], in id., *Gesammelte Werke*, vol. 4, Frankfurt am Main, 1977, p. 275.
- 63 ‘Warhol Interviews Bourdon’, unpublished conversation with David Bourdon (Andy Warhol Archives, Pittsburgh), in *I’ll be your Mirror. The Selected Andy Warhol Interviews*, ed. Kenneth Goldsmith, New York, 2004, pp. 6–14, quoted from p. 7.
- 64 Kirk Varnedoe, ‘Advertising’, in Kirk Varnedoe and Adam Gopnik, eds., *High & Low. Modern*

- Art and Popular Culture*, exh. cat., The Museum of Modern Art, New York; The Art Institute of Chicago; Museum of Contemporary Art, Los Angeles, 1990–1, pp. 231–368, especially 328–31; see also: Benjamin H. D. Buchloh, ‘Andy Warhol’s one-dimensional art: 1956–1966’, in *Andy Warhol 1989* (see note 42), pp. 39–61, especially 48–52; Dan Cameron, ‘Die Kunst und ihre Wiederholung’, in Volker Bohn, ed., *Bildlichkeit. Internationale Beiträge zur Poetik*, Frankfurt am Main, 1990, pp. 269–322, especially 274–7.
- 65 *Factum I*: Museum of Contemporary Art, Los Angeles, The Panza Collection; *Factum II*: Museum of Modern Art, New York. In an interview, the painting’s first owner, Count Panza di Biumo, who acquired *Factum I* in 1960, said: ‘Because I don’t understand the relationship between the two paintings, I choose *Factum First*, because it looks to me more beautiful than *Factum Second*. [...] And this introduced the problem of duplication: What is the original, why the copy cannot be like the original? How is important the hand of the artist? The artist have to do himself the work, or could be made by somebody else which follow closely his own mind. But it is more important the work of the hand or the mind of the man which make the hand working? The problem is this one. And for this reason, it would be very important to keep the two paintings together. But at this time, I had not yet enough understood Duchamp and Leonardo.’ Unedited transcript of an interview with Count Giuseppe Panza di Biumo, conducted by Christopher Knight, Los Angeles, 2 April 1985, for the Archives of American Art, Smithsonian Institution, <<http://www.aaa.si.edu/oralhist/panza85.htm>> accessed 25.9.2005.
- 66 The two paintings will be reunited in the *Robert Rauschenberg: Combines* exhibition, Metropolitan Museum of Art, New York, 20.12.2005–2.4.2006 (afterwards also in Los Angeles, Paris and Stockholm): ‘This pair of paintings reflects the artist’s wry attempt to make two identical pictures, in order to test the boundaries of painting and to call into question the spontaneity that had characterized Abstract Expressionism. Although comprised of the same collage elements and similar stroke of paint, they are nonetheless subtly distinct from one another and announce the deliberate choices involved in the artist’s creative process. Press release of 21 June 2005 <[http://www.metmuseum.org/Press\\_Room/full\\_release.asp?prid={F57C7E24EDF9-485F-AEF7-9567C4A3FCB2}](http://www.metmuseum.org/Press_Room/full_release.asp?prid={F57C7E24EDF9-485F-AEF7-9567C4A3FCB2})> accessed 25.9.2005.
- 67 *Robert Rauschenberg. Werke 1950–1980*, exh. cat., Staatliche Kunsthalle, Berlin, 1980 [...], p. 27.
- 68 Cited after: Buchloh 1989 (see note 64), p. 55.
- 69 Marco Livingstone, ‘Do it yourself: Notes on Warhol’s techniques’, in *Andy Warhol 1989* (see note 42), pp. 63–78, especially 67–8.
- 70 The gallery-owner Irving Blum sold five works, but later bought them all back in order to keep the ‘historic’ series together. He presented them – ‘conceptually’, as it were – as an ensemble in four rows of eight displayed one above the other in his private collection in Los Angeles and New York; today they are in the Museum of Modern Art, New York. The series is also described as a single work in the work catalogue: Georg Frei and Neil Printz, *The Andy Warhol Catalogue Raisonné*, vol. 01: *Paintings and Sculpture 1961–1963*, London, 2002, pp. 70–7, cat. no. 051; a view of the installation at the Ferus Gallery exhibition, *ibid.* p. 76. For the exhibition, history and technique of the series, see: Kirk Varnedoe, ‘Campbell’s Soup Cans, 1962’, in: Heiner Bastian, ed., *Andy Warhol. Retrospective*, Neue Nationalgalerie, Berlin; Tate Modern, London; The Museum of Contemporary Art, Los Angeles, 2001–2, pp. 40–5.
- 71 ‘In 1994 Campbell’s celebrates its 125th anniversary and introduces a new red & white soup label design featuring pictures of the product.’ See: <[http://www.campbellsoupcompany.com/history\\_1990.asp](http://www.campbellsoupcompany.com/history_1990.asp)> accessed 25.9.2005. In April 2004 the company, which once wrote to Warhol demanding that he refrain from his artistic games with their products and trademark, brought out a limited edition of four soup cans with labels inspired by Warhol’s later ‘Colored Campbell’s Soup Cans’ (Georg Frei and Neil Printz, *The Andy Warhol Catalogue Raisonné*, vol. 02B: *Paintings and Sculptures 1964–1969*, London, 2004, pp. 185–205, cat. nos. 1849–67) for the price of \$2. In fact, these labels, onto which the artist’s signature is

- printed, never existed in this form. The director of the Warhol Museum in Pittsburgh, Tom Sokolowski, commented drily: 'The collision and mixture of art and commerce has come full circle.' <<http://www.post-gazette.com/pg/04108/302033.stm>> accessed 25.9.2005.
- 72 Jonathan E. Schroeder, 'The Artist and the Brand', *European Journal of Marketing*, 2005, p. 8.
- 73 Cited after Buchloh 1989 (see note 64), p. 51.
- 74 See: Christoph Grunenberg, 'The American Supermarket', in Max Hollein and Christoph Grunenberg, eds., *Shopping. 100 Jahre Kunst und Konsum*, exh. cat., Schirn Kunsthalle, Frankfurt am Main, 2002, pp. 171–7. Claes Oldenburg had already turned the worlds of art and consumption upside down in 1961 with his gaudily painted objects – fruit, articles of clothing, cakes, meat products, etc., all made of muslin covered with plaster – in terms of both production techniques and reception theory. See also: Michael Lüthy, 'Das Konsumgut in der Kunstwelt – Zur Para-Ökonomie der amerikanischen Pop Art', *ibid.*, pp. 148–69.
- 75 Andy Warhol, *The Philosophy of Andy Warhol (From A to B and Back Again)*, New York and London, 1975, p. 92.
- 76 'What Is Pop Art? Answers from 8 Painters, Part I', interview with Geene R. Swenson, *ARTnews*, November 1963, repr. in Goldsmith 2004 (see note 63), pp. 15–20, quoted from p. 17.
- 77 *Ibid.*, p. 16.
- 78 'Modern Myths: Andy Warhol', interview with Barry Blinderman, *Arts*, October 1981, repr. in Goldsmith 2004 (see note 63), pp. 290–300, especially 297–8.
- 79 Warhol 1975 (see note 66), pp. 100–1.
- 80 'Andy Warhol: My True Story', interview with Gretchen Berg, *The East Village Other*, November 1, 1966, repr. in Goldsmith 2004 (see note 63), pp. 85–96, quoted from p. 90.
- 81 Tilmann Osterwold, 'Andy Warhol – Commissioned Art. Cars – Stars – Disasters', in Renate Wiehager, ed., *Andy Warhol. Cars and business art*, Stuttgart, 2002, pp. 15–26.
- 82 Cited after: Buchloh 1989 (see note 64), p. 40.
- 83 Cited after: Clay Risen, 'Thomas Kinkade', *flak-magazine* [1.2.2000], <<http://flakmag.com/misc/kinkade.html>> accessed 9.8.2005.
- 84 The official website: <<http://www.thomaskinkade.com/magi/servlet/com.asucon.biz.home.web.tk.HomeServlet>>; see also the Thomas Kinkade Company website: <<http://www.thomaskinkadecompany.com/default.asp?s=n>>.
- 85 Kinkade paints about 12 new works each year. His rare, early, 'authentic' originals are believed to be sold for six-figure sums.
- 86 On the official website (see note 84).
- 87 Susan Orlean, 'Art for Everybody', *The New Yorker*, 15.10.2001, also: <[http://www.susanorlean.com/articles/art\\_for\\_everybody.html](http://www.susanorlean.com/articles/art_for_everybody.html)> accessed 9.8.2005.
- 88 <<http://www.hp.com/hpinfo/newsroom/press/2005/050222b.html>> accessed: 15.8.2005.
- 89 *Ibid.*
- 90 See press release of 1.9.2005 on the Kinkade Company website (see note 84).
- 91 Cited after Orlean 2001 (see note 87).
- 92 See the special issue entitled 'This Is Today. Pop After Pop' of *Artforum International* magazine, October 2004, especially the detailed round-table discussion with Jack Bankowsky, Thomas Crow, Diedrich Diederichsen, Alison M. Gingeras, Tim Griffin, Rhonda Lieberman, Stephen Prina, and Jeff Wall, pp. 166–296.
- 93 Marcel Duchamp in conversation with Calvin Tomkins, 1964, cited after Francis M. Naumann, *Marcel Duchamp: the art of making art in the age of mechanical reproduction*, New York, 1999, p. 293. Duchamp's willingness to ennoble 'copies' and 'discoveries' of his lost ready-mades as 'originals' with courtesy signatures is well known. However, in 1964, after he had authorized the Milanese gallery-owner Arturo Schwarz to produce an edition of eight copies of 14 of his most important ready-mades, he refused to sign the 'bottle dryer' that an art lover had found somewhere or other. His sibylline reply: 'But signature or no signature, your find has the same "metaphysical" value as any other ready-made, [it] even has the advantage to have no commercial value.' Letter to Douglas Gorsline of 28.7.1964, cited after Naumann 1999, p. 245. The fact that a *Bottle dryer* from the Schwarz edition should be offered for \$800,000–1,200,000 at auction in 2002 (Phillips, de Pury & Luxembourg, New York, 13.5.2002, lot 4), would perhaps have made

- him smile.
- 94 Martha Buskirk, 'Thoroughly Modern Marcel', *October*, no. 70, autumn 1994, pp. 113–25, quoted from p. 125.
- 95 Dieter Daniels, *Duchamp und die anderen. Der Modellfall einer künstlerischen Wirkungsgeschichte in der Moderne*, PhD thesis, University of Aachen, Cologne 1992, p. 230.
- 96 'Elefant ist Elefant, besonders wenn er gekauft wird.' Words of the packer Galy Gay in Bertolt Brecht, 'Mann ist Mann', in id., *Gesammelte Werke*, vol. 1, Frankfurt am Main, 1967, p. 343.
- 97 'Ha! dass wir nicht unmittelbar mit den Augen malen! Auf dem langen Wege, aus dem Auge durch den Arm in den Pinsel, wieviel geht da verloren! – [...] Oder meinen Sie, Prinz, dass Raffael nicht das grösste malerische Genie gewesen wäre, wenn er unglücklicherweise ohne Hände wäre geboren worden? Meinen Sie, Prinz?' Words of the painter Conti in Gotthold Ephraim Lessing, 'Emilia Galotti' [Act 1, scene 4], in id., *Gesammelte Werke*, ed. Wolfgang Stammler, vol. 1, Munich, 1959, pp. 557–8.

### Summary

When it comes to judging the suitability of applying a 'modern' business and marketing term to the world of art or traditional art research, the subject of brands and logos can initially be awkward for art historians trained in iconography, connoisseurship and the history of criticism. Simply transplanting the superficiality and promises of salvation of brand names onto art would not be going far enough.

Thorough examination of the subject leads to all kinds of issues that arouse our curiosity, promising unusual perspectives on a phenomenon with which everyone believes they are familiar. The core of this phenomenon's 'basic concept' is the problem of defining the work and the original, including the related implications: questions are raised as to the aura of the original, repetition and reproducibility, 'genuine & fake' in terms of philosophical, critical linguistic exploration and connoisseurship, the loss of the original in the replica, the multiple and the ready-made, the relationship between idea and work, concept and product, head and hand, the role of the observer and the art system. This reveals manifold legal problems of product protection – due to artistic procedures such as assimilation, quotation, plagiarism, imitation, caricature or appropriation – as well as borderline cases of intellectual property and its material manifestations. Time and again, the authenticity of the fictitious and the 'power of art' are decisive factors.

Aspects thus come to the fore that are perhaps secondary as far as the examination of brands in terms of marketing techniques is concerned, but deserve attention from an art-historical, philosophical and poetological perspective as well as in terms of the history of critical reception.