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September 30, 1999

Ms. Deborah A. Peacock
Peacock, Myers & Adams, P.C.
Intellectual Property Law Services
201 Third Street, N.W.
Suite 1340
Albuquerque, New Mexico 87102

RE: AZTEC BELT BUCKLE
CCN: 60-513-8439(H)

Dear Ms. Peacock:

The Copyright Office Board of Appeals has reviewed your request to reconsider the decision of the Examining Division to refuse registration of a belt buckle, entitled AZTEC, submitted by your client, Ms. Giselle Marta Hensel, and received in the Copyright Office on August 15, 1996. The Board of Appeals has examined the representation of the belt buckle deposited and has considered carefully all the correspondence from your client and your firm concerning this claim. After reviewing the materials submitted in support of this claim, the Board has determined that the work cannot be registered because it does not contain the required amount of original artistic authorship.

Administrative Record

After examining the application to register the belt buckle AZTEC, Visual Arts Examiner Joy Mansfield refused registration in a letter dated January 18, 1997, stating that "at least a minimum amount of original artistic material" is required, and that copyright does not protect familiar shapes and designs, minor variations of basic geometric shapes, or mere variations in size. In essence, she concluded, the design was too minor a variation of a familiar design to constitute the required amount of original authorship to be copyrightable.

On May 6, 1997, you wrote to Ms. Mansfield requesting recosideration. You asserted that the Office had failed to consider the entire work in light of the low level of creativity required for copyrightability, and you submitted a number of belt buckles your firm had registered with the Office that you claimed were similar to AZTEC. You also noted that the Office did not appreciate that this aesthetically pleasing artwork was conceptually separable from the utilitarian function of the work.

After full reconsideration on behalf of the Examining Division, Visual Arts Section Attorney Virginia Giroux affirmed the first refusal to register on March 16, 1998. Ms Giroux could find no original authorship sufficient to satisfy the minimal standard of copyrightability beyond the familiar shapes and familiar designs of the subject belt buckles.

By letter dated April 2, 1998, you appealed to the Copyright Board of Appeals from the Examining Division decision to refuse registration for this work.

Separability

You cite Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989, 994 (2d Cir. 1980) in asserting that the belt buckle is conceptually separable from the utilitarian aspects of a common trouser cinch. The Board does not dispute that under Kieselstein-Cord, the artistic elements of this belt buckle are separable. However, conceptual separability does not excuse a work from the requirements of creativity.

Kieselstein generally held that despite its ultimate intended purpose, a work of art might be copyrightable. The Kieselstein court found that the utilitarian aspects of the belt buckle at issue were separable from their artistic features. and then went on to hold the sculptural and artistic content sufficiently creative to support a copyright, but only on a razor's edge of copyright law. Like the court, the Copyright Office. having registered claims in the two belt buckles, also believed they contained the minimal amount of creative authorship necessary.

Requisite Quantum of Creative Artistic Material

Not every design warrants copyright protection. DBC of New York, Inc. v. Merit Diamond Corp., 768 F.Supp. 414, 417 (S.D.N.Y. 1991). The design of a conceptually separable aspect of a useful article must meet the same requirements of originality and creativity that apply to all copyrightable authorship. In Feist Publications, Inc. v. Rural Telephone Service Co., Inc., 499 U.S. 340, 345 (1991), the Court stated that the *sine qua non* of copyright is originality. In addition to requiring independent creation by the author, originality requires "some minimal degree of creativity." Although the requisite level of creativity is low, and a slight amount will

suffice, there remains a narrow category of works in which the creative spark is insufficient to support a copyright. *Id.* at 359, citing Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 251 (1903).

Registration of the subject belt buckle was sought as a jewelry design, a form of pictorial, graphic or sculptural work. Such a work must embody some creative authorship in its delineation or form. 37 C.F.R. §202.10(a)(1997). Familiar shapes and symbols are not copyrightable. 37 C.F.R. §202.1(a)(1997). Just as it is not possible to copyright common geometric figures or shapes, it is not possible to obtain copyright protection for a simple combination of a few standard symbols such as a circle, a star, and a triangle, with minor linear or spatial variations. Compendium of Copyright Office Practices, Compendium II, §503.02(a) (1984). This design, made up of three elements from the public domain -- a circle, a V and a straight line -- consists of an underlined row of continuous connected V's with dots at the center of each arch. The design at the buckle portion has a straight line border. As outlined in the Compendium, this simple combination of standard symbols is not sufficient to meet the minimum amount necessary for copyright registration. See Homer Laughlin China v. Oman, 22 U.S.P.Q. 2d 1074 (D.D.C. 1991); John Muller v. N.Y. Arrows Soccer Team, 802 F.2d 98 (8th Cir. 1986) (involving four angled lines forming an arrow); Jon Woods Fashion Inc. v. Curran, 8 U.S.P.Q.2d 1879 (S.D.N.Y. 1988), (involving 2 inch stripes superimposed with small grid squares); DBC of New York (jewelry design consisting of shapes in the public domain in an unoriginal setting).

You assert that you are not seeking registration of a copyright in a "familiar shape," but in "an entire work of jewelry." However, as noted above, the "entire work" for which copyright protection is claimed consists of a combination of a few familiar symbols. See Homer Laughlin, 22 U.S.P.Q.2d at 1076; Florabelle Flowers, Inc.v. Joseph Markovits, Inc., 296 F.Supp. 304 (S.D.N.Y. 1968) (an "aggregation of well known components [that] comprise an unoriginal whole" cannot support a claim to copyright). The overall authorship in this work, the zigzag line (or series of linked "V's"), the dots, and the straight line border at the buckle do not constitute an original work of authorship for which registration can be made.

You state that the design, while not overly complex, is distinctive and artistically unique. However, attractiveness or novelty of design are not factors in the examining process. See DBC of New York, Inc. 768 F. Supp., at 417; Homer Laughlin China, 22 U.S.P.Q.2d at 1074 (citing Feist). The pertinent standards are those discussed above, originality and creativity, within the meaning of the copyright law, as explicated by the courts and in Copyright Office regulations and practices. Therefore, even if your observation that some pieces in the National Gallery of Art might not be considered copyrightable according to the Copyright Office were accurate, it would be irrelevant. The Copyright Office makes no judgments on the artistic merit of a work; our judgment is based solely on the well-settled principles stated above.

You have submitted photocopies of a number of other belt buckles, inviting the Office to compare allegedly similar belt buckles that have been registered here. However, the Office does not compare designs in the course of examining works for registration. Homer Laughlin China, citing Compendium II, §108.03. Each work submitted for registration is evaluated on its own merits, applying the principles stated above. The fact that an individual examiner might have — perhaps erroneously — accepted for registration a work that arguably is no more creative than the subject work does not require the registration of the latter work when the Board finds it wanting.

Conclusion

Because this work does not possess the required minimal degree of creativity necessary to support a copyright registration, we must affirm the Examining Division's decision to refuse registration. This letter constitutes final agency action.

Sincerely,

David O. Carson

David O. Carson
General Counsel
for the Appeals Board
U.S. Copyright Office

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