COPYRIGHT
OFFICE

April 22, 2004

David C. Jenkins, Esq.
Eckert Seamans Cherin & Mellott, LLC
USX Tower
44th Floor
600 Grant St.
Pittsburgh, Pennsylvania 15219

RE: Control No. 50-900-1519(E)
Distressed Firepot

Dear Mr. Jenkins:

LIBRARY
OF
CONGRESS

I am writing on behalf of the Copyright Office Board of Appeals in response to your letter, dated March 16, 2001. You asked the Copyright Office to reconsider its two refusals to register a work entitled DISTRESSED FIREPOT as a three-dimensional sculpture. I take this opportunity to apologize for the long delay in getting this response to you. The Board of Appeals has reviewed all materials and arguments associated with this case and now affirms the Examining Division's refusal to register this work.

Administrative record

Washington
D.C.
20559-6000

On November 19, 1999, you submitted on behalf of your client, Diversified Overseas Marketing, Inc., an application to register DISTRESSED FIREPOT as a three-dimensional sculpture. In a letter dated April 14, 2000, William R. Briganti, Senior Examiner, Visual Arts Section of the Examining Division, refused to register this work because he determined it to be a useful article having no authorship separable from its utilitarian purpose. Letter from Briganti to Jenkins of 4/14/00 at 2. Mr. Briganti also pointed out the statutory provision that useful articles are protected only to the extent that their designs "incorporate pictorial, graphic or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." Id. at 1. In a second letter, Mr. Briganti further determined that, accepting your argument that certain sculptural features which you had identified as separable were, indeed, separable, he nevertheless concluded such features to be not copyrightable, either individually or in combination, because they do not satisfy the *de minimis* standard required for a work to be copyrightable. Mr. Briganti cited Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991). Letter from Briganti to Jenkins of 5/9/00 at 1-2.[1]

---

[1] Because of an administrative error, a third letter from the Copyright Office was sent to you, also refusing registration for DISTRESSED FIREPOT on the basis that the work contained no physically or conceptually separable features which could sustain a claim to copyright. Letter from Geoffrey Henderson, Senior Examiner, Visual Arts Section of the Examining Division, to Jenkins of 6/16/00. Because the Board of Appeals has based its decision on finding no

First request for reconsideration [first appeal]

In a letter dated June 26, 2000, you submitted a first request for reconsideration for refusal to register DISTRESSED FIREPOT. You stated that the statutory definitions of "pictorial, graphic and sculptural works" and "useful article," 17 U.S.C. 101, authorize copyright protection for a useful article when it has physically or conceptually separable features. Citing West Publishing Co. v. Mead Data Central, Inc., 799 F.2d 1219, 1223 (8th Cir. 1986) and Universal Athletic Sales Co. v. Salkeld, 511 F.2d 904, 908 (3d Cir. 1975), you asserted that the standard of originality required for a work to be copyrightable is slight and that a modicum of creativity will suffice.

You identified features of DISTRESSED FIREPOT that you argue are separable because their size, shape and placement are not dictated by function. These features include four components: decorative bands, a shaped chimney with a flared top, a shaped opening and shaped legs. You provided illustrations of other firepots to illustrate that point. Letter from Jenkins to Examining Division of 6/26/00 at 2 - 3. You further argued that the selection of the particular design of the elements is not dictated by function and represents creative effort and choices by the author. You contend that:

> ...even if one such element would not amount to a "modicum" of creativity, the combination of each of these elements certainly would. Here, the selection of various elements and shapes shows "ingenuity in selection or combination or expression" which results in a work subject to copyright protection. [Letter from Jenkins of 6/26/00 at 4.]

Examining Division response

In a letter dated November 20, 2000, Virginia Giroux, Attorney Advisor, Examining Division, again refused to register DISTRESSED FIREPOT on the grounds that work is a useful article with no physically or conceptually separable design elements. Letter from Giroux to Jenkins of 11/20/00 at 2. She explained that the fact that a design element embodied in a useful article is not dictated by utilitarian concerns is not a basis for copyrightability: "... where certain features are non-functional or could have been designed differently, if the features are an integral part of the overall shape or contour of the useful article, no registration is possible." Id. at 2. After reviewing the standards applied by the Copyright Office for physical and conceptual separability, Ms. Giroux stated that none of the elements you identified are separable from the useful article without destroying its basic

---

separability in DISTRESSED FIREPOT but also on, were separability to be conceded, finding insufficient copyrightable authorship in the features you have described as separable, the handling of the claim by two different examiners does not work to your client's detriment since the Board has considered both reasons for refusal put forth by the initial examiners.

shape. They are all part of the shape, contour and configuration of the article itself. Id. The fact that DISTRESSED FIREPOT has its particular or unique shape, contour or configuration, is not relevant to the analysis of whether separability exists. "[T]he fact that a design could have been designed differently is not a relevant consideration in determining copyrightability." Id. at 3. Ms. Giroux also recited portions of the legislative history accompanying the 1976 Act which highlight the congressional intentional not to offer copyright protection to industrial design and to isolate those features of such design which can be identified as existing independently as a work of art. Id., citing H.R. Rep. No. 1476, 94th Cong., 2d Sess. 55 (1976).

Second request for reconsideration [second appeal]

On March 16, 2001, you submitted a second request for reconsideration to the Copyright Office in which you reiterated the arguments and statements you made in your first request for reconsideration. You again pointed out the statutory definition of useful article and explained that once a feature is considered separable, the test for the necessary quantum of creativity is very slight. Letter from Jenkins to Board of Appeals of 3/16/01 at 1 - 2. As in your previous appeal, you identified the same four features of DISTRESSED FIREPOT which you assert are separable: the decorative bands, the shaped chimney with flared top, the shaped opening and the shaped legs of DISTRESSED FIREPOT. Again, you argue that other firepots are differently constructed and shaped and you have provided photos of such items for the Board of Appeals to consider. Your assertion, again, is that the features of DISTRESSED FIREPOT reflect the author's choice and that, if not individually, then taken together, such features, in the "selection and combination of expression" meet the modicum of creativity necessary for copyright protection. Letter from Jenkins of 3/16/01 at 3 - 4.

After reviewing the application, supporting materials, and arguments you have presented, the Copyright Office Board of Appeals affirms the Examining Division's refusal to register Diversified Overseas Marketing Corp.'s claim to copyright in the work DISTRESSED FIREPOT as a three-dimensional sculpture. Our reasoning follows.

Decision

I. Useful articles

The Board of Appeals has determined that DISTRESSED FIREPOT is a useful article. As the name indicates, the work is a firepot, or utensil, in which some sort of fuel [typically, firewood] is burnt. The Board recognizes the work to be a useful article under authority set out in Compendium II, Compendium of Copyright Office Practices (1984). Section 108.05[b] of Compendium II states that the Office may take administrative notice of matters of general knowledge and may use such knowledge as the basis for questioning

applications. The Board's classification of DISTRESSED FIREPOT as a useful article is strongly bolstered by the statutory definition of useful article as an article having "an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." 17 U.S.C. 101. Also, any article that is "normally a part of a useful article is considered a 'useful article.' " Id. Finally, you have framed your arguments for registration based on DISTRESSED FIREPOT's having separable authorship-- the statutory requirement for a useful article's enjoyment of any copyright protection. 17 U.S.C. 101 defines a pictorial, graphic and sculptural work; limits their protection to exclude any mechanical or utilitarian aspects of such works; and indicates the need for separable features in the design of a useful article. Thus, as a useful article, your client and the Board agree that DISTRESSED FIREPOT is subject to the separability analysis that copyright law requires for useful articles.

A. Separability

The purpose of the Office's separability analysis is to ensure that utilitarian aspects of useful articles are not registered since they are not copyrightable. Written guidelines for the separability analysis are found in section 505 of Compendium II. Section 505.02 states that:

> Registration of claims to copyright in three-dimensional useful articles can be considered only on the basis of separately identifiable pictorial, graphic, or sculptural features which are capable of independent existence apart from the shape of the useful article. Determination of separability may be made on either a conceptual or physical basis. (Emphasis added.)

In the case of physical separability, Compendium II, section 505.04, states:

> The physical separability test derives from the principle that a copyrightable work of sculpture which is later incorporated into a useful article retains its copyright protection. ... However, since the overall shape of a useful article is not copyrightable, the test of physical separability is not met by the mere fact that the housing of a useful article is detachable from the working parts of the article.

In the case of conceptual separability, Compendium II, section 505.03, states:

> Conceptual separability means that the pictorial, graphic and sculptural features, while physically inseparable by ordinary means from the utilitarian item, are nevertheless clearly recognizable as pictorial, graphic or sculptural work which can be visualized on paper, for example, or as free-standing

> sculpture, as another example, independent of the shape of the useful article, i.e., the artistic features can be imagined separately and independently from the useful article without destroying the basic shape of the useful article. The artistic features and the useful article could both exist side by side and be perceived as fully realized, separate works– one an artistic work and the other a useful article. (Emphasis added.)

These guidelines are based on the legislative history of the Copyright Act of 1976, noted below, in which Congress clarified that utilitarian aspects of useful articles are not copyrightable. Only elements that are physically or conceptually separable features of a useful article may be copyrighted.

> [A]lthough the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it copyright protection under the bill. Unless the shape of an automobile, airplane, ladies' dress, food processor, television set, or any other industrial product contains some element that, physically or conceptually, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted under the bill. The test of separability and independence from "the utilitarian aspects of the article" does not depend upon the nature of the design — that is, even if the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable. And, even if the three-dimensional design contains some such element (for example, a carving on the back of a chair or a floral relief design on silver flatware), copyright protection would extend only to that element, and would not cover the over-all configuration of the utilitarian article as such. (Emphasis added.)

H.R. Rep. No. 94-1476, at 55 (1976).

Section 505 of Compendium II is a direct successor to the Copyright Office regulation that was affirmed in Esquire, Inc. v. Ringer, 591 F.2d. 796 (D.C. Cir. 1978). Esquire enunciated the rule that is the basis for the Office's analysis of whether a pictorial, graphic or sculptural work may be considered separable from the utilitarian object in which it is incorporated. Relying on explicit statements in legislative history, the Esquire Court found that the Office's regulation was an authoritative construction of the copyright law. Id. at 802-803. Esquire and later cases held that, despite an aesthetically pleasing, novel or

unique shape, the overall design or configuration of a utilitarian object may not be copyrighted if it is not "capable of existing as a work of art independent of the utilitarian article into which [it is] incorporated." Id. at 803-804. In Esquire, the Court held that the Copyright Office properly refused registration for a useful article, in that case a light fixture, notwithstanding how aesthetically pleasing the useful article's shape or configuration may have been. Id. at 800. As noted above, the legislative history states that:

> The test of separability and independence from "the utilitarian aspects of the article" does not depend upon the nature of the design--that is, even if the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable.

H.R. Rep. No. 94-1476, at 55 (1976).

When the Board determines that there is either a physically or conceptually separable aspect of a useful article, the next step in its review is to analyze the separable element to determine whether it satisfies the originality requirements that are necessary for copyrightability. The Board's analysis of those two factors, separability and originality, as applied to DISTRESSED FIREPOT, is set forth below.

B. Physical separability

You have not argued physical separability in regard to DISTRESSED FIREPOT. We do, however, take the liberty of commenting that the Board sees no features of DISTRESSED FIREPOT which we would consider *physically* separable, i.e., which may have existed independently as a work of art and which were later incorporated into the useful article in question here. Compendium II, section 505.04 [cited above]. Further, we do not regard the work in question here as merely housing for other, functional aspects of DISTRESSED FIREPOT. The FIREPOT *is* the work for which registration has been sought and the Board sees no features which can be physically separated by ordinary means and which could then be analyzed for their copyrightability. You have, rather, argued that four specific features– decorative bands, shaped chimney with flared top, shaped opening and shaped legs– represent conceptually separable features. Letter from Jenkins of 3/16/01 at 2-3.

C. Conceptual separability

All of the elements you have identified– the bands, the chimney, the opening and the legs– are essential to the function of the article itself *or* are part of the overall structure and shape of the article. The "decorative bands" are protrusions of the metal of which the article is made and these bands are found at areas on the surface of DISTRESSED FIREPOT where a joint, or division, between parts of the article would usually appear. Although the

decorative bands may not actually hold together the different parts or sections of the firepot [the two parts of the chimney pipe, the chimney to the stove where the fire is located, and a center band around the surface of the rounded stove], the bands are themselves part of the overall configuration of the article and, thus, under Compendium II's test, cannot be considered conceptually separable. Your argument that the shape of the chimney with the flared top is conceptually separable also fails: the chimney serves the function of directing the smoke or fumes produced in the stove portion of DISTRESSED FIREPOT upward, taking the smoke or fumes away from the immediate environs; the shaped opening of the stove portion of the work is, again, functionally essential in order to put wood [or other fuel-type materials] into the firepot; and, finally, the shaped legs perform the function of raising the heated stove off the floor or ground surfacing. To accept your argument that the elements you identified can be conceptually separated from the firepot, either individually or in combination, would essentially destroy the functioning of the firepot *and*, under Compendium II's test for conceptual separability would destroy the basic shape and contour of the useful article in terms of that test.

Your own explanation of the functional aspects of a firepot supports this conclusion. You have stated:

> A firepot includes three basic components; a base, a body and a chimney or upper vent. ... The body must be large enough to contain a fuel, typically firewood. The body must have an opening through which the fuel may be inserted into the body. To protect the substrate upon which the firepot rests, the base must elevate the body. Depending on the shape of the body, the upper surface must have either vent holes or a chimney which act as an exhaust.

[Letter from Jenkins of 3/16/01 at 2.]

Consistent with Esquire and the Copyright Office's Compendium II test, the Board of Appeals has found that DISTRESSED FIREPOT does not contain aspects or features that are conceptually separable from its utilitarian function. DISTRESSED FIREPOT may be said to be analogous to the work that was in question in Norris Industries, Inc. v. International Telephone & Telegraph Corp., 696 F.2d 918 (11th Cir. 1983). That case also involved a useful object, wire-spoke wheel covers that were intended to simulate the appearance of wire wheels. Norris contended that the wheel covers were only ornamental and their purpose was to adorn the wheels of automobiles. However, the court found that the design and function of the wheel covers were inseparable. The court did not find any superfluous sculptured design that served no function and that could be identified apart from the wheel cover itself. Similarly, DISTRESSED FIREPOT does not contain any features that can be said to be conceptually separable from the utilitarian aspects of the article *or* from the contour and shape of the article. The decorative details that you have identified either serve utilitarian functions– for example, the legs support the firepot and elevate the heat so that it does not come into contact with the ground– or the details you have

identified are part of the overall shape and configuration of the article itself. Both facts support the Board's determination that DISTRESSED FIREPOT contains no conceptually separable features capable of sustaining registration.[2]

Nor is it relevant that various aspects of DISTRESSED FIREPOT are unique or decorative. To quote the legislative history again, "The test of separability ... does not depend upon the nature of the design -- even if the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the [utilitarian aspects of the] useful article as such are copyrightable." H.R. Rep. No. 94-1476 at 55. The Board has not found any conceptually separable elements in DISTRESSED FIREPOT. The four elements you have identified cannot be imagined separately and independently from the firepot without destroying its overall basic shape. Further, at least three of the elements are essential to the utilitarian function of a firepot. As the legislative history cited above stated, it is not significant that there may have been aesthetic considerations behind the choice of design.

II. Originality: Feist's principle and Office practices

As explained above, after finding that an element of a useful article is separable, the Board then evaluates whether it has sufficient originality to be copyrightable. The Board has not found that there are any separable elements with respect to DISTRESSED FIREPOT. However, we take the liberty to consider, for the sake of argument, whether the design elements you have identified would be sufficiently original to be copyrightable, were separability the case.

Copyright protection is only available for "original works of authorship." 17 U.S.C. §102(a). The Supreme Court has stated that originality consists of two elements, "independent creation plus a modicum of creativity." Feist Publications, Inc. v. Rural Telephone Service Co., Inc., 499 U.S. 340, 346. *See also* Alfred Bell & Co. v. Catalda Fine Arts, 191 F.2d 99, 102 (2nd Cir. 1951) ("'Original' in reference to a copyrighted work means that the particular work 'owes its origin' to the 'author.' No large measure of novelty is

---

[2] Courts, under both the 1909 and the 1976 Acts, have considered the problems of classifying an object as a useful article as well as the subsequent analysis of the appropriate extent of protection for useful articles where an assertion is made that a utilitarian object incorporates a separable and copyrightable work of art. On useful articles and the separability issue, *see generally* Masquerade Novelty, Inc. v. Unique Industries, Inc., 912 F.2d 663 (3d Cir. 1990); Carol Barnhart, Inc. v. Economy Cover Corp., 773 F.2d 411 (2d Cir. 1985); Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989 (2d Cir. 1980); National Theme Productions, Inc. v. Jerry Beck, Inc., 696 F. Supp. 1348 (S.D. Cal. 1988); Vacheron and Constantin - Le Coultre Watches, Inc. v. Benrus Watch Company, Inc. 260 F.2d 637 (2d Cir. 1958); SCOA Industries, Inc. v. Famolare, Inc., 192 U.S.P.Q. 216 (S.D.N.Y. 1976); Ted Arnold, Ltd. v. Silvercraft Co., 259 F. Supp. 733 (S.D.N.Y 1966).

necessary."); Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53, 58 (1884) (The court defined "author" to mean the originator or original maker and described copyright as being limited to the creative or "intellectual conceptions of the author.")

Even prior to Feist, courts interpreted "original" as requiring a low level of creativity, which principle is supported by the cases you cited. Letter from Jenkins of 3/16/01 at 2. Any "distinguishable variation" of a work constituted sufficient originality as long as it was the product of an author's independent efforts, and was "more than a 'merely trivial' variation." Catalda, at 102-103. And, Catalda at 103, again: originality for copyright purposes amounts to "little more than a prohibition of actual copying"; Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 250 (1903): "... a very modest grade of art has in it something irreducible, which is one man's alone." As you have quoted, "even a modicum of creativity may suffice for a work to be protected." Letter from Jenkins of 3/16/01 at 2, citing Universal Athletic Sales Co. v. Salkeld at 908.

However, at the same time that the Supreme Court reaffirmed in Feist the established precedent that only a modicum of originality is required for a work to be copyrightable, it also emphasized that there are works in which the "creative spark is utterly lacking or so trivial as to be virtually nonexistent." Feist at 359. Such works are incapable of sustaining copyright protection. Id., citing Nimmer on Copyright, 2.01[B]. The Court observed that "[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity," Feist at 363, and that there can be no copyright in works in which "the creative spark is utterly lacking or so trivial as to be virtually nonexistent." Id. at 359. A work that reflects an obvious arrangement fails to meet the low standard of minimum creativity required for copyrightability. Id. at 362-363. An example would be alphabetical listings in white pages of telephone directories, the type of work at issue in Feist, which the Supreme Court characterized as "garden variety...devoid of even the slightest trace of creativity." Id. at 362.

Copyright Office registration practices, even prior to Feist, recognized that some works of authorship have a *de minimis* amount of authorship and, thus, are not copyrightable. *See* Compendium II, 202.02(a). With respect to pictorial, graphic and sculptural works, which are Class VA [visual arts] works, section 503.02(a) of Compendium II states that a "certain minimal amount of original creative authorship is essential for registration in Class VA or in any other class." Further, there is no protection for familiar symbols, designs or shapes such as standard geometric shapes. 37 C.F.R. 202.1. In addition to stating that prohibition, Compendium II, which provides detailed instructions for Copyright Office registration procedures, also reflects the principle that creative expression is the basis for determining whether a work is copyrightable, not an assessment of aesthetic merit. Section 503.02(a) of Compendium II states that:

> Copyrightability depends upon the presence of creative expression in a work, and not upon aesthetic merit,

> commercial appeal, or symbolic value. Thus, registration cannot be based upon the simplicity of standard ornamentation such as chevron stripes, the attractiveness of a conventional fleur-de-lys design, or the religious significance of a plain, ordinary cross. Similarly, it is not possible to copyright common geometric figures or shapes such as the hexagon or the ellipse, a standard symbol such as an arrow or a five-pointed star. Likewise, mere coloration cannot support a copyright even though it may enhance the aesthetic appeal or commercial value of a work. ... The same is true of a simple combination of a few standard symbols such as a circle, a star, and a triangle, with minor linear or spatial variations.

The Office does not evaluate the aesthetic qualities of works. A work may be highly valued for its aesthetic appeal and, yet, not be copyrightable. Rather, copyright law requires evidence of more than a *de minimis* quantum of authorship and such authorship may consist of a selection, coordination and arrangement of preexisting elements or features. Works based on public domain elements may be copyrightable if there is some distinguishable element in their selection, arrangement or modification that reflects choice and authorial discretion and that is not so obvious or so minor that the "creative spark is utterly lacking or so trivial as to be nonexistent." Feist at 359. *See also* 17 U.S.C. 101– definitions of "compilation" and "derivative work."

Although the individual components of a given work may not copyrightable, the Copyright Office follows the principle that works should be judged in their entirety and not judged in terms of the protectibility of individual elements within the work. Atari Games Corp. v. Oman, 979 F.2d 242, 244-245 (D.C. Cir. 1992). After carefully considering your descriptions and discussion of DISTRESSED FIREPOT, the Board, in its assumption *arguendo* that the design features you identified are separable, has determined that the elements are not copyrightable, either individually or taken as a whole.

The analysis followed in the Office's examining procedure for determining whether there is sufficient creativity for copyright protection does not involve comparing works. Compendium II, section 108.03. Rather, registrability is determined on the merits of each work without comparison to prior art or to other existing / registered works. It may be that DISTRESSED FIREPOT does, indeed, vary significantly in its overall design from other firepots. While those variations may be significant in the analysis required for a design patent, they do not necessarily meet the standard of creativity required for copyright protection– a different standard that is based on relevant statutory and settled case law. We point out that the designs of the chimney top– a simple curve upward with a slight flaring out, the opening of the stove portion– a circle with a slightly straightened bottom portion of the stove opening, the legs– a slight or half-S curve, and, the decorative bands– circles around various portions of the firepot article– are all merely simple variations on common

shapes. Their level of creativity is *de minimis*, considered either as separately or as jointly together as a whole.

There is substantial support in case law for the Board's conclusion as to the non-copyrightability of DISTRESSED FIREPOT [assuming separability]: in Homer Laughlin China Co. v. Oman, 22 USPQ2d 1074 (D. D.C. 1991) (upholding refusal to register chinaware design pattern composed of simple variations or combinations of geometric designs due to insufficient creative authorship to merit copyright protection); in Jon Woods Fashions, Inc. v. Curran, 8 USPQ2d 1870 (S.D. N.Y. 1988) (upholding refusal to register fabric design consisting of striped cloth with small grid squares superimposed on the stripes where Register concluded design did not meet minimal level of creative authorship necessary for copyright); in John Muller & Co., Inc. v. N.Y. Arrows Soccer Team, 802 F.2d 989 (8th Cir. 1986) (upholding a refusal to register a logo consisting of four angled lines forming an arrow, with the word "arrows" in cursive script below, noting that the design lacked the minimal creativity necessary to support a copyright and that a "work of art" or a "pictorial, graphic or sculptural work ... must embody some creative authorship in its delineation of form.") *See also* Magic Marketing, Inc. v. Mailing Services of Pittsburgh, Inc., 634 F.Supp. 769 (W.D. Pa. 1986) (envelopes with black lines and words "gift check" or "priority message" did not contain minimal degree of creativity necessary for copyright protection); Bailie v. Fisher, 258 F.2d 425 (D.C. Cir. 1958) (cardboard star with two folding flaps allowing star to stand for retail display not copyrightable work of art); and Forstmann Woolen Co. v. J.W. Mays, Inc., 89 F.Supp. 964 (E.D. N.Y. 1950) (label with words "Forstmann 100% Virgin Wool" interwoven with three *fleur-de-lis* held not copyrightable).

Assuming arguendo the presence of separable authorship in DISTRESSED FIREPOT, the Board is unable to discern any authorship elements, considered individually or as a whole, that are more than merely trivial. Each element you identified as separable reflects a minor variation on a familiar shape or design. The four elements do not have the necessary quantum of authorship, required by Feist, either individually or taken as a whole, to sustain registration.

For the reasons stated in this letter, the Board of Appeals affirms the Examining Division's refusal to register DISTRESSED FIREPOT. This decision constitutes final agency action in this matter. Again, we regret the long delay in getting this decision to you.

Sincerely yours,
/s/

Nanette Petruzzelli
Chief, Examining Division
for the Board of Appeals
United States Copyright Office