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January 23, 2004

Robert J. Schneider, Esq.
Chapman & Cutler
111 W. Monroe Street, No. 1700
Chicago, IL 60603

Re: **MYSTIC LITE**
**Control Number: 61-204-2599(C)**

Dear Mr. Schneider:

The Copyright Office Board of Appeals has reviewed your request to reconsider the Examining Division's denial of a claim to register the sculptural work MYSTIC LITE on behalf of Rabbit Tanaka Corp., Ltd., author and claimant in the work. After reviewing the materials submitted in support of the claim, the Board has determined that the work cannot be registered because it does not contain the requisite amount of original sculptural or other pictorial or graphic authorship necessary to sustain a claim to copyright.

## I. Administrative Record

### A. Initial submission and examiner refusal to register

On March 7, 2002, the Copyright Office received your client's application for registration of the sculptural work MYSTIC LITE. By letter dated March 12, 2002, Senior Examiner William Briganti of the Visual Arts Section, Examining Division, advised you that the claim could not be registered because he considered the work to be a useful article, and as such, it did not contain the separable pictorial, graphic, or sculptural authorship necessary to support a copyright. Letter from Briganti to Schneider of 3/12/2002 at 1.

Mr. Briganti explained that a useful article is subject to copyright only to the extent that it incorporates pictorial, graphic or sculptural features which can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article, citing the copyright law at 17 U.S.C. § 101. He went on to relate that separability may be either physical or conceptual. H. R. Rep. No. 1476, 94th Cong., 2d Sess. at 55 (1976). Mr. Briganti further explained that physical separability means separability by ordinary physical means, giving examples of a statue of a Balinese dancer serving as a lamp base, and a pencil sharpener encased by a small antique car. Conceptual separability, he stated, involved authorship that was clearly recognizable as a pictorial, graphic or sculptural work which can be visualized as free-standing, independent of the shape of the article, without destroying the article's basic shape. Letter from Briganti of 3/12/2002 at 1. Mr. Briganti then concluded that all of the elements of the work at issue here are either related to the utilitarian aspects

or function, or are subsumed within the overall shape, contour, or configuration of the article, finding that there was no physically or conceptually "separable" authorship in this work. Id. at 2.

**B. First request for reconsideration**

On March 15, 2002, you requested reconsideration of the refusal to register MYSTIC LITE. Your request [first appeal] described the sculpture as a "glowing green glass ball set on a base of black lacquered word or plastic" but disputed that the work is a useful article. Letter from Schneider to Visual Arts Examining of 3/15/2002 at 1-2. Stating that the light bulb inside MYSTIC LITE is not useful for reading, but, rather only "highlights the two-part fluid as it swirls about," you further stated that "the work is 'unique and creative and not utilitarian–in fact it is a rather useless object, a novelty item....for diversion and amusement only, viewed for its artistry and not for any utilitarian purpose." Id. at 1-2. You compared MYSTIC LITE to jewelry which is purely ornamental, with its sole function being to portray its appearance. Id. at 2, citing Donald Bruce & Co. v. B. N. MultiCom Corp., 42 U.S.P.Q.2d 1939 (N.D. Ill. 1997). Pointing out the artistic qualities of the work and its effect on the viewer, you asserted that "the globe and base are representative of a crystal ball on a dark base, suitable for gazing into and contemplating whatever matter or issue suits the viewer." Letter from Schneider of 3/15/02 at 2. Additionally, you have stated that MYSTIC LITE "provide[s] transformative expression from and by the artist, and it provides interest and a focal point for a viewer–not utilitarian functions at all but artistic ones." Id.

**C. Examining Division response to first request for reconsideration**

Attorney Virginia Giroux, by letter dated April 18, 2002, advised you that the Office could not register the copyright claim in MYSTIC LITE because the work does not possess a sufficient amount of original and creative sculptural authorship. Letter from Giroux to Schneider of 4/18/02 at 1. After reviewing your first request for reconsideration, Ms. Giroux conceded that MYSTIC LITE was a novelty item rather than a useful article, and therefore examined it as a sculptural work. Ms. Giroux evaluated the work under the standard set forth in Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991) and explained that, in the case of sculptural work, the required originality must lie in the shape of the sculpture and the work must have originated with the author. Letter from Giroux of 4/18/02 at 1. Ms. Giroux cited Alfred Bell & Co. v. Catalda Fine Arts, Inc., 191 F.2d (2d Cir. 1951) for the proposition that originality as determined by the courts means that authorship must constitute more than a trivial variation of public domain elements. Further, citing Copyright Office regulations at 37 C.F.R. 202.1, she pointed out that common and familiar geometric shapes, such as circles, spheres, hexagons and minor variations thereof are in the public domain and are not copyrightable. Ms. Giroux described the work at issue here as a glass ball resting on a wooden or plastic base which is shaped like a hexagon. This work, according to Ms. Giroux's analysis, is "too simple and unadorned" to sustain registration; even the arrangement and combination of the sculptural components, coupled

with their shape, do not rise to the level of copyrightable authorship. Letter from Giroux of 4/18/02 at 2.

Ms. Giroux further pointed out that the material of which a work is made does not determine copyrightability. "Therefore, the fact that this work is made of glass, lacquered wood or plastic, and contains a two-part green fluid inside of the ball does not contribute to the copyrightability of the work." Letter from Giroux to Schneider of 4/18/2002 at 1. Rather, the question is whether the work constitutes something more than a trivial variation of elements in the public domain. Acknowledging your assertion that the author was trying to create the impression of a crystal ball, she noted that this intent on the part of the author did not make the work copyrightable. She explained that "[t]he effect or impression of a work suggests some aspect of mental activity that goes to the mind of the viewer, rather than to the composition of the work itself." Letter from Giroux of 4/18/2002 at 3. She pointed out that while the artistic or sculptural elements of a work could be selected and arranged in a variety of ways, the range of design choices does not determine whether the work can be registered. Although a work may be aesthetically pleasing and the result of substantial effort, time and expense, these facts do not automatically render a work copyrightable.[1] Ms. Giroux concluded that "the sculptural aspects of this work are too simple and unadorned to be considered a copyrightable work of art." Id.

**D. Second request for reconsideration**

By letter dated August 8, 2002, you filed a second request for reconsideration with the Board of Appeals. Your request [second appeal] describes the work, MYSTIC LITE, as a "(glowing) green glass ball set on a base of black laquered wood or plastic. Among the various ornamental features are: 1. a transparent or translucent globe or sphere partially submerged within the top flat surface of the base; 2. the base having a flat octagonal top surface into which the sphere is partially submerged where one set of four opposite edges are equal in length but longer than the other four edges; 3. the base further comprising a first, upper, faceted eight-sided polygon, with eight panels depending downwardly and outwardly from the eight edges of the top surface with the panels meeting with the edges of the top surface at different angles; and, 4. the base further comprising a second, lower, faceted eight-sided polygon, with eight smaller panels depending downwardly and inwardly from the respective bottom edges of the upper eight panels and terminating in a flat base plate that is parallel to the top surface. Letter from Schneider to Board of Appeals of 8/8/02 at 2. Submitted as three dimensional sculpture, this work, you state, suggests "a fanciful crystal ball partially embedded in a base resembling a faceted gemstone or chiseled pedestal." You also list the "small, low-voltage light bulb" and the "swirling rheoscopic fluid visible through

[1] Ms. Giroux also noted that the work at issue in Severin Montres Ltd. v. Yidah Watch Co., 997 F. Supp. 1262 (C.D. Ca. 1997), a watch face design in the shape of the letter "G," was determined by the Copyright Office to have been erroneously registered and the registration was cancelled. The Copyright Office would not knowingly register a claim in the design of a letter of the alphabet.

the transparent or translucent globe," both of which you state give the effect of moving smoke or clouds within the bowl. Id.

As did Ms. Giroux, you discuss the copyrightability requirements of Feist, noting that the applicant in the work at issue here has satisfied the independent creation requirement of Feist [Letter of Schneider of 8/8/02 at 4-5], and you also argue that the composition of MYSTIC LITE satisfies Feist's requirement of a low level of creativity. Letter of Schneider of 8/8/02 at 3. You specifically maintain that MYSTIC LITE possesses more creativity than a "mere conglomeration" of geometric shapes. Id. at 4. You stress in your description of the work that: 1. the globe is partly submerged, or below the top surface of the base, and. 2. the base has a fanciful combination of faceted surfaces resembling a gemstone. Given your description of the work in question, you conclude that even though a work may be a compilation of common elements, it may be copyrightable. Again, in support of your position that MYSTIC LITE is copyrightable, in addition to Feist you cite several other cases for the proposition that combinations of elements which are each not protectible in themselves may nevertheless be combined into an overall structure or design which sustains copyright. And, more specifically, you have cited Runstadler Studios, Inc. v. MCM Ltd. Partnership, 768 F. Supp. 1292 (N.D. Ill. 1991), the latter case as an example of a court's finding protectible a glass spiral sculpture consisting of a combination of individually uncopyrightable standard shapes." Letter from Schneider 8/8/2002 at 3.

In reasserting that your client's work possesses the requisite level of creativity enunciated in Feist and as applied in Runstadler and citing North Coast Industries, Inc., v. Jason Maxwell, Inc., 972 F.2d 1031 (9th Cir. 1992) that a work need not possess a "large measure of novelty" in order to meet the originality requirement under Feist, you conclude that although the individual features of this work may possess insufficient creativity if dissected, the work as a whole qualifies for registration because it demonstrates a selection and arrangement of common shapes that satisfies the low standard of Feist. Letter from Schneider of 8/8/02 at 4.

The Board of Appeals has considered all materials submitted, at both the first and second levels of reconsideration, in support of registration of MYSTIC LITE and has concluded that the work does not exhibit the necessary quantum of creativity to sustain registration. Our reasoning follows.

## II. Decision

### A. Description of work

Before proceeding with an explanation and discussion of our decision, we take this opportunity to describe the three-dimensional sculptural work MYSTIC LITE.

MYSTIC LITE is a sculpture consisting of a glass ball, green in color, which is set atop a base. The entire ball itself is not visible because the ball is partially, in your words, "submerged within the top flat surface" of the base. Letter from Schneider of 8/8/02 at 2. The base on which the ball rests is octagonally shaped with four panels, or sides, of the octagon being trapeziodally-shaped with the longest edge of the trapezoid on the bottom and four panels, or sides, of the octagon being trapezoidally-shaped with the longest edge of the trapezoid being on the top side of the panel where the panel meets the ball's surface. MYSTIC LITE also contains a light bulb inside the green ball as well as a swirling liquid which produces an effect of movement within the ball.

**B. The Feist standard / Office registration practices**

The fundamental basis of copyright protection is a work's originality. The Board agrees with you that originality has two components: independent creation and a certain minimum amount of creativity. Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340, 347 (1991). The Copyright Office uses this standard when it considers whether a work is copyrightable. In the work at issue here, we assume the independent creation of the work by the author and claimant, Rabbit Tanaka Corp., Ltd. Thus, it is the second component of the Feist standard which we address.

As both you and Ms. Giroux have already noted, the requisite quantum of creativity necessary for copyright is "very low." Letter from Schneider of 8/8/02 at 3, citing Feist, 499 U.S. at 345-346. The Supreme Court has stated, however, 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. 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. And, a work that reflects an obvious arrangement fails to meet the low standard of minimum creativity required for copyrightability. Id. at 362-363. Concerning works composed of common or standard elements, originality requires something more than a trivial variation of elements found in the public domain.

Even prior to Feist, Copyright Office registration practices following settled precedent recognized that some works of authorship contain only a *de minimis* amount of authorship and, thus, are not copyrightable. We acknowledge that pre-Feist case law recognized no demanding standard for copyrightability. *See, e.g.*, Alfred Bell & Co., Ltd. v. Catalda Fine Arts, Inc., 191 F.2d 99 (2d Cir. 1951) (" 'Original' in reference to a copyrighted work means that the particular work 'owes it origin' to the 'author.' No large measure of novelty is necessary.") 191 F.2d at 102. This does not mean, however, that no standard at all existed. Although Catalda itself stated that "no large measure of novelty is necessary" in a work of authorship in order to enjoy copyright protection, the same Second Circuit opinion also held that the distinguishable variation in a work of authorship for which copyright protection is sought, must be "more than a 'merely trivial' variation." 191 F.2d at 102-103. Forty years later, Feist again confirmed that the "standard of originality is low, but it does exist." 499 U.S. at 362.

The Office's registration practices reflect the principle that works that lack even a certain minimum amount of original authorship are not copyrightable. Compendium of Copyright Office Practices, Compendium II, section 202.02[a] (1984). With respect to pictorial, graphic and sculptural works, the class to which the work at issue here, MYSTIC LITE, belongs, Compendium II states that a "certain minimal amount of original creative authorship is essential for registration in Class VA or in any other class." Id. at 503.02[a]. Compendium II recognizes that it is not aesthetic merit, but the presence of creative expression that is determinative of copyrightability. Section 503.01 states:

> The registrability of a work does not depend upon artistic merit or aesthetic value. For example, a child's drawing may exhibit a very low level of artistic merit and yet be entitled to registration as a pictorial work.

Further, Section 503.02[b] states:

> The requisite minimal amount of original sculptural authorship necessary for registration in class VA does not depend upon the aesthetic merit, commercial appeal, or symbolic value of a work. ... the creative expression capable of supporting copyright must consist of something more than the mere bringing together of two or three standard forms or shapes with minor linear or spatial variations. In no event can registration rest solely upon the fact that an idea, method of operation, plan or system has been successfully communicated in three-dimensional form.

**C. Feist as applied to MYSTIC LITE**

Ms. Giroux, in her refusal to register on first reconsideration, described the work at issue here as being "shaped like a globe, consist[ing] of a glass ball resting on a wooden or plastic base which is shaped like a hexagon." Letter from Giroux of 4/18/2002 at 2. You have not challenged this description of the work. You have, however, described the shape of the base as octagonal and have provided a more extensive description. You claim that MYSTIC LITE has "various ornamental features" which we have recited above at 3 - 4. The constitutive features of the work at issue here are a globe, or sphere, a base with a flat top and a base body which is octagon-shaped. The base body consists of eight flat panels, four of which are trapezoids each with a longer bottom edge than top edge and four of which are trapezoids each with a longer top edge than bottom edge. Thus, as you have yourself pointed out, the "ornamental features" of MYSTIC LITE are "admittedly .... common individual features that, dissected from one another, might not possess sufficient creativity to satisfy the creativity requirement of Feist." Letter from Schneider of 8/8/02 at 3. We point out that the sphere, the octagonal base, and the two trapezoidal shapes which constitute the panels of the eight-sided base represent only a few common and geometric shapes which do not in themselves merit copyright protection. Nor does it matter that the sphere is "submerged,"

resulting in a "sculpture dissimilar from a mere presentation of a complete geometric orb shape." [Letter from Schneider of 8/8/02 at 4]. That element of the overall sculpture remains a common sphere with a slight variation of a flattened bottom where it attaches to the base: such a slight alteration in the overall contour of the sphere represents a merely trivial variation which, under Catalda [above at 5], cannot sustain protection in itself. *See also* L. Batlin & Sons, Inc. v. Snyder, 536 F.2d 486 (2d Cir. 1976).

Similarly, while you assert that "the base has a fanciful combination of faceted surfaces resembling a gemstone," and "could be rendered in a number of different shapes, geometric constructions, or surface textures"[Letter from Schneider of 8/8/02 at 4], the base is still a pyramid, albeit one with the corners clipped to form an eight-sided pyramid shape. Again, Compendium II, section 503.02[b] [above at 6], points out that minor linear or spatial variations in standard forms and shapes will not support a copyright. Note also that it is not the possibility of available choices in the creation of a work, but, rather, the particular resulting expression which determines whether a work is copyrightable. We further point out the materials of which a work may be made do not, in themselves, represent an authorial element which contributes to the copyrightability of a work. Copyrightability is based upon the creative expression of the author, that is, the manner or way in which the material is formed or fashioned. Compendium II, section 503.02[b]. The material itself– in the work at issue here, the glass, the wood, the plastic– and its properties are not the subject of copyright.

**1. Mystic LITE considered as a whole**

You have further argued that a "work may be copyrightable even though it is a compilation of common elements that would, if assessed on their own, be unprotectible" and you cite a number of cases, among them the appellate decision in Knitwaves, Inc. v. Lollytogs, Ltd., 71 F.3d 996 (2d Cir. 1996), for this proposition. Letter from Schneider of 8/8/02 at 4. We respond to the issue of whether the overall work, MYSTIC LITE, is copyrightable as a compilation or arrangement of elements, each in itself uncopyrightable, but which taken together would sustain a claim to copyright. The Office's examining practices incorporate the principle that the use of public domain elements, of commonly known and/or geometric shapes, and of familiar symbols may yet result in a copyrightable work as long as the overall resulting design, taken in its entirety, constitutes more than a trivial variation of the constitutive elements. In Knitwaves, Inc. v. Lollytogs, Ltd., 71 F.3d 996 (2d Cir. 1996), the court, although considering the appropriate infringement test for a design on clothing, articulated a copyrightability analysis in terms of the overall pattern that was infringed in that case, pointing out that "[W]hat is protectible then is 'the author's original contributions,' [citing Feist at 350]-- the original way in which the author has 'selected, coordinated and arranged' [citing Feist at 358] the elements of his or her work." 71 F.3d at 1004. *See also* Atari Games Corp. v. Oman, 979 F.2d 242 (D.C. Cir. 1992). We comment specifically regarding Atari that, although the Office had initially refused to register the work in question in Atari, the Office did, upon reconsideration, register the videogame work at issue in recognition of the overall audiovisual authorship, composed of several individual elements–

a series of related images with sound– which, taken together, were sufficient. The 1992 Atari decision, which remanded the case to the district court with instructions to return the registration application to the Copyright Office for reconsideration, referred to the need for finding a "'distinguishable variation in the arrangement and manner of presentation' of public domain elements." 979 F.2d at 246, citing Reader's Digest Ass'n v. Conservative Digest, Inc., 821 F.2d 800, 806 (D.C. Cir. 1987).

With respect to MYSTIC LITE, the Board of Appeals does not find a "distinguishable variation" in the arrangement or manner of the few public domain elements of which MYSTIC LITE is composed. The work consists of a globe, or sphere, sitting atop a base. The base is flat where it meets the globe and the body of the base is eight-sided with four sides being a larger trapezoid, with the bottom edge longer than the top edge of the trapezoid and the other four sides of the octagonal base being a trapezoid [slightly smaller in surface area] with the bottom edge shorter than the top edge of that trapezoid. The overall configuration of the work at issue here is one which incorporates very few common geometric shapes in a commonplace sculptural structure of a ball sitting atop a base. Again, the Board has determined that none of the various "ornamental features" of MYSTIC LITE, either individually *or* as they have been selected and arranged to constitute the overall sculpture demonstrates copyrightable authorship. Although you have described the work at issue here in some detail in your requests for reconsideration, the work essentially consists of a globe resting on a flat-topped square-cornered pyramid. This simple sculptural structure, considered in its entirety, i.e., viewed as a whole, cannot sustain a claim to copyright.

We have considered the case on which you heavily rely, Runstadler Studios, Inc. v. MCM Ltd. Partnership, 768 F. Supp. 1292 (N.D. Ill. 1991), but find it distinguishable. In that case, the plaintiff was seeking injunctive relief for copyright infringement. The first issue was whether the copyright was valid. The work was a glass sculpture made of glass rectangles arranged so they overlapped and formed a spiral. Id. at 1294. The defendants produced a similar sculpture but registration was denied: the Copyright Office had decided that the defendants' sculpture was a "noncopyrightable aggregation of generic shapes." Id. The defendants tried to rebut the *prima facie* presumption that the plaintiff's registration was valid by arguing, among other things, that the plaintiff's sculpture was just "a combination of uncopyrightable standard shapes." Id. at 1295. The court disagreed. It concluded that the plaintiff's sculpture was original, noting that in some cases, combinations of standard shapes may be sufficiently creative to be copyrighted. Id. at 1295. "The choice of location, orientation and dimensions of the glass panes, and the degree of arc of the spiral, show far more than a trivial amount of intellectual labor and artistic expression on plaintiff's part." Id. at 1295-96. The fact that the defendants' similar sculpture was denied copyright did not prove that the plaintiff's copyright should not have been granted. Id. at 1295, n.5. Rather, it shows that combinations of standard shapes are not *per se* copyrightable.

As further support for the proposition that combinations of unprotectible features may be protected by copyright, you cite, without discussion, two cases involving jewelry, Aaron Basha Corp. v. Felix B. Vollman, Inc., 88 F.Supp. 2d 226 (S.D.N.Y. 2000), and Weindling

Int'l Corp. v. Kobi Katz, Inc., 56 U.S.P.Q.2d 1763 (S.D.N.Y. 2000), and a furniture display design case, Baldine v. Furniture Comfort Corp., 956 F.Supp. 580 (M.D.N.C. 1996). We find none of these cases persuasive with respect to the work at issue here considering that the works at issue in these cases were judged copyrightable upon an analysis of their particular composition. We cannot compare, with any conclusion, the works involved in the cases cited with the sculptural work at issue here. And, although we, of course, recognize the general principle of the low threshold of creativity needed under Feist, such principle must be applied individually to each work for which registration is sought; no bright-line guideposts are available for the application of Feist to concrete examples of works of authorship, each of which may differ in compositional aspects which may result in a judgment of copyrightable or not copyrightable under the Feist principle.[2] We particularly point out the opinion in the Baldine case: the district court there, in concluding that the plaintiff's copyright registration on her designs was valid, noted that the plaintiff was not claiming copyright in the individual elements of the design at issue but, rather in the particular arrangement of those elements. The court cited the Fourth Circuit's understanding that "it is also important that, in reviewing a derivative work for originality, it is not sufficient to consider the matter by looking at the component parts: the work must be reviewed as a whole, not just reviewed or analyzed part by part." 956 F. Supp. at 585, citing M. Kramer Mfg. Co., Inc. v. Andrews, 783 F.2d 421, 439 (4th Cir. 1986). The Board has examined MYSTIC LITE not as a work dissected into its component parts, but, rather, as an entirety with emphasis on the overall shape and configuration of the sculptural work and has found it insufficient even under Feist.

We also note your reference to North Coast Industries v. Jason Maxwell, Inc., 972 F.2d 1031, 1033 (9th Cir. 1992), pointing out that the court there emphasized that a work need not be the subject of a "large measure of novelty" in order to meet the originality requirement. North Coast Industries, in making that statement, was, as you know, citing Catalda, 191 F.2d 102 [see above at 5], in explaining the low threshold of creativity. We do not consider North Coast Industries to be helpful to the issue before us. The Ninth Circuit reversed the ruling of the district court which had granted summary judgment based on the opinion that the plaintiff's copyright in a design consisting of color blocks in a geometric arrangement with

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[2] We point out here that registrations which may have been made for other similar works do not demand the registration of MYSTIC LITE. Each work submitted for registration is examined and considered on its own merits, i.e., on the specific authorship of the work as a whole, and registration depends on that specific authorship's meeting the Feist standard. Again, a judgment of similarity of two works is a general conclusion only and each of two works must be determined to meet Feist's standard with respect to its own composition and overall expression. Finally, the Copyright Office does not generally make comparisons of copyright deposits to determine whether or not particular material has already been registered. Compendium II, sec. 108.03. The previous registration of a work whose authorship may be described as similar to that of one currently being proffered for registration does not guarantee registration– again, each work is examined according to the Office's registration practices and works which may be said to be *similar in composition* may not enjoy the same registration outcome.

the color blocks bordered, or banded, by heavy lines was invalid. The district court had found that the plaintiff's work evidenced only trivial differences from similar preexisting works of the artist Mondrian and St. Laurent clothing designs based on the Mondrian style. In remanding the issue of the validity of the copyright, the Ninth Circuit opined that the placement of geometric shapes in competing designs, although similar, may each still be sufficiently original to sustain protection and that use of color blocks with defining borders around the blocks does not *per se* mean that sufficient originality is lacking. Again, accepting the general principle that an arrangement of common or geometric shapes may be copyrightable, we nevertheless conclude that the very few sculptural elements constituting MYSTIC LITE do not, when viewed in their totality, constitute copyrightable authorship.

Finally, you have stated that the sculpture "suggests a fanciful 'crystal ball,' partially embedded in a base resembling a faceted gemstone or chiseled pedestal." Letter from Schneider of 8/8/02 at 2. You point out that a low-wattage lightbulb illuminates the sphere which itself contains a swirling rheoscopic fluid, giving the effect of moving smoke or clouds. Id. "These features make the sculpture suitable for gazing into and contemplating whatever matter or issue suits the viewer, such as trying to predict the future by 'reading' the 'crystal ball.'" Id. Aside from the fact that nothing other than the globe and the base are shown in the identifying material, copyright registration does not depend on symbolic value-- how the work is perceived by the viewer; rather, protection depends on the manner or way in which an author's idea is expressed. 17 U.S.C. § 102(b): copyright does not extend to ideas or concepts. Thus, the fact that viewers might pretend the work is a crystal ball, or might interpret the work to be used for personal contemplation purposes, does not contribute to the resolution of the question of whether the work contains original authorship. While the Board agrees with your statement that simplicity of a work is not, in itself, a bar to copyrightability [Letter from Schneider of 3/15/02], this work, which as a whole combines few common or geometric shapes with minor spatial variations, falls in the narrow group of works that do not meet the threshold quantum of authorship.

**Conclusion**

The Board of Appeals has concluded, for the reasons stated above, that because this work does not meet the Feist standard of creativity, registration was properly denied. This decision constitutes final agency action in this matter.

Sincerely,

N Petruzzelli

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