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**United States Copyright Office**
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October 5, 2005

Frederick D. Page, Esq.
Holland & Knight, LLP
50 North Laura Street, Suite 3900
Jacksonville, FL 32202

**RE: I LOVE MY SAILOR (VA 1-264-760)**
**I LOVE MY MARINE (VA 1-264-761)**
**Copyright Office Control Number: 61-317-7527(S)**

Dear Mr. Page:

I write on behalf of the Copyright Office Review Board ("Board") in response to your letter to Senior Examiner Wayne E. Crist dated May 19, 2005 requesting the Copyright Office ("Office") not to cancel the above-referenced registrations, or in the alternative, to cancel eight registrations issued to Mitchell-Proffitt Company. The Board has considered your response and has carefully again examined the applications, the deposits and all correspondence concerning your client's, Eagle Crest, Inc.'s, two registrations, and concludes that the registrations for "I Love My Sailor" (VA 1-264-760) and "I Love My Marine" (VA 1-264-761) were made in error: the authorship in each work is *de minimis,* lacking the requisite quantum of creativity to sustain copyright registration. *See* Feist Publications, Inc. v. Rural Telephone Service Co., Inc., 499 U.S. 340, 346 (1991) (copyright protection is premised upon "independent creation plus a modicum of creativity.")

The Board agrees with and incorporates by reference the analysis and conclusion set forth in Mr. Crist's letter of April 20, 2005 to Attorney Bruce Stutsman. A copy of that letter is enclosed for your convenience. Pursuant to 37 C.F.R. 201.7(c)(1), the Office will take the necessary administrative step to cancel these registrations because these works lack even the low level of creative authorship required by Feist. We point out that there is also substantial support in case law for the Board's conclusion as to cancellation because of the non-copyrightability of the two works in question: in Coach, Inc. v. Peters, 2005 U.S. Dist. Lexis 19501 (S.D.N.Y. 2005) (in upholding the Office's refusal to register what it considered an insufficiently original design appearing on handbags which consisted of a pattern comprising two linked C's facing each other in a mirrored relationship and two unlinked C's in a mirrored relationship and placed perpendicular to the linked elements); 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).

With respect to your request to cancel various registrations issued to Mitchell-Proffitt Company, the Office cannot entertain your request. The Office does not compare designs in the course of examining works for registration; does not it compare designs when it, in its administrative reviews, considers possible cancellation for a given work. Homer Laughlin China Co. v. Oman, 22 U.S.P.Q. 1074 (D.D.C. 1991), citing *Compendium II: Compendium of Copyright Office Practices,* 108.03 (1984) ("The Copyright Office does not generally make comparisons of copyright deposits to determine whether or not particular material has already been registered.").

The Office evaluates each work on its own merits. The fact that an individual examiner might have - even if erroneously - accepted for registration a work that arguably may not be more creative than the two works which are the subject of this cancellation does not require the reexamination of any or all works that the Office has already registered. Further, the Office does not, as a matter of course, intervene in private-party disputes. We cannot cancel claims in the name of Mitchell-Proffitt Co. since such an administrative step would require the Office to assume the role of a court, or, to establish an adversary procedure which would require both parties to produce documentation in the manner of evidence to argue for or against registration of the Mitchell-Proffitt Co. claims. Again, quoting *Compendium II,* 108.06: "The Copyright Office does not conduct 'opposition' or 'interference' proceedings such as those provided by the federal trademark and patent laws."

Having determined the lack of sufficient copyrightable authorship in the two works at question here, the Board will cancel the two registrations. This cancellation decision constitutes final agency action in this matter.

Sincerely,

**/s/**

Nanette Petruzzelli
Special Legal Advisor for Reengineering
for the Review Board
United States Copyright Office

Encl. April 20, 2005 Wayne E. Crist Letter

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WEC/rc-d

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April 20, 2005

BRUCE E STUTSMAN
121 W. FORSYTH STREET STE 600
JACKSONVILLE FL 32202

Control Number: 61-317-7527(S)
Re: **I LOVE MY SAILOR (VA 1-264-760); I LOVE MY MARINE (VA 1-264-761)** (for Eagle Crest, Inc.)

Dear Mr. Stutsman:

LIBRARY OF CONGRESS

Washington D.C. 20559-6000

We registered a copyright claim in each of these works and sent the certificates to you. We have now discovered that we should not have registered the works because each lacks the authorship necessary to support a copyright claim. In other words, each work contains design elements, plus an overall design, that is too simple to warrant copyright protection, which means that we had no authority under law to issue the registrations to you.

Copyright protects original works of authorship that are fixed in some physical form. See 17 U.S.C. §102(a). As used in the copyright context, the term "original" means that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least a minimal degree of creativity. See *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

To satisfy these requirements, a work of the visual arts must contain a minimum amount of pictorial, graphic or sculptural authorship. Copyright does not protect familiar symbols or designs; basic geometric shapes; words and short phrases such as names, titles, and slogans; or mere variations of typographic ornamentation, lettering or coloring. See 37 C.F.R. §202.1. Further, copyright does not extend to any idea, concept, system, or process which may be embodied in a work. 17 U.S.C. §102(b).

Neither the aesthetic appeal or commercial value of a work, nor the amount of time and effort expended to create a work are factors that are considered under the copyright law. See *Bleistein v. Donaldson*, 188 U.S. 239 (1903); *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). The question is whether there is sufficient creative authorship within the meaning of the copyright statute and settled case law.

Each of these two works consists of a simple combination and minor variation of standard elements. The individual elements of each work simply cannot be protected by copyright law, namely the alphabetic figure "I", the familiar heart shape with dotted stars and stripes, and the wording and lettering of "My Sailor" or "My Marine," each a short phrase. In addition, the arrangement of the "I", the heart, and the phrase into a unified design is too simple and standard to be protected by copyright law. After careful

BRUCE E STUTSMAN
JACKSONVILLE FL 32202

Control No. 61-317-7527(S)
April 20, 2005

consideration, we have determined that these works are *de minimis* and should not have been registered. As authorized by 37 C.F.R. §201.7(c)(1), we now intend to cancel both registrations. Under that regulation, you have thirty (30) days from the mailing date of this letter to show cause in writing why we should not cancel them. If you do not respond within that time, or if after considering your response we determine that the registrations are without basis, we will cancel them. The filing fees are nonrefundable.

When you reply, please return the enclosed Reply Sheet referring to our Control Number.

**Note:** The Copyright Office is experiencing some delays in receiving and processing mail, due to increased security measures. All mail, including U.S. Postal Service mail and shipments by private carriers such as Fedex, UPS, DHL, and Airborne Express, is screened before it is delivered to the Copyright Office.

Sincerely,
Wayne E. Crist, Senior Examiner
Visual Arts Section
By:

Enclosure:
Photocopied applications
Circulars 31, 96 Sec. 201.7, 96 Sec. 202.1
Reply Sheet

**Please do *not* send another fee unless this letter specifically requested that you do so.**