FILE COPY

United States Copyright Office
Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

May 6, 2005

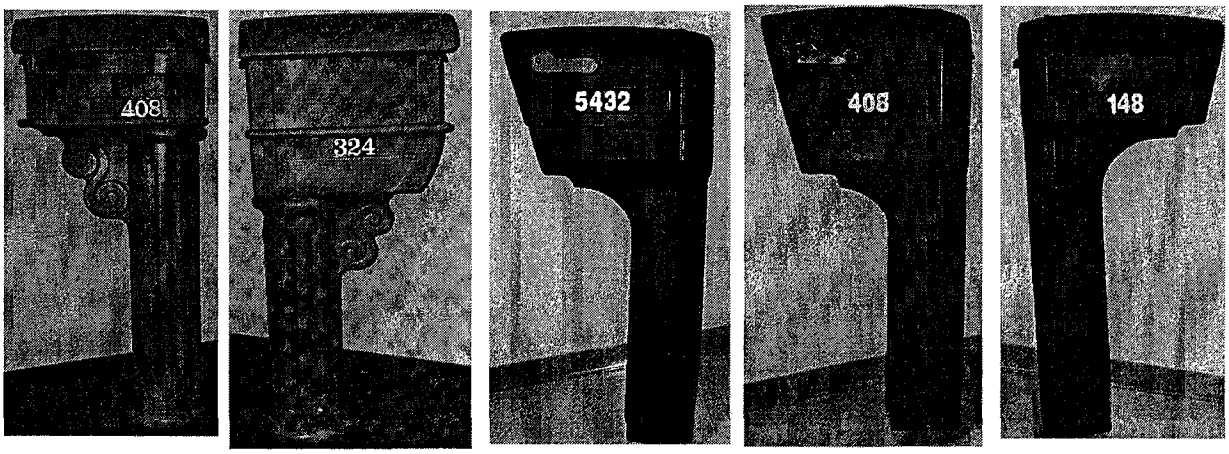
Heather M. Barnes, Esq.
Brouse McDowell
500 First National Tower
Akron, OH 44308-1471

Re: MAILMASTER STANDARD
MAILMASTER PLUS
MAILMASTER DELUXE
MAILMASTER CLASSIC
MAILMASTER CLASSIC PLUS
Control Number: 61-206-449.(E)

Dear Ms. Barnes:

The Copyright Office Board of Appeals (hereinafter, Review Board) has reviewed your second request to reconsider the Examining Division's denial of claims to register the five mailbox designs imaged below and referred to above on behalf of claimant, The Step2 Company. After reviewing all materials submitted in support of the claims and carefully considering your arguments, the Board has determined that the designs cannot be registered because they do not contain the requisite amount of original artistic or sculptural authorship.

I. ADMINISTRATIVE RECORD



A. Initial submissions

On January 25, 2002, the Copyright Office received from your client several applications for the registration of mailboxes. By letter dated June 7, 2002, Examiner Joanna Corwin advised Roger Emerson of Emerson & Skeriotis that the MAILMASTER DELUXE, THE MAILMASTER CLASSIC, and the MAILMASTER CLASSIC PLUS could not be registered because they lack separable features that also represent artistic or sculptural copyrightable authorship. (Letter from Corwin to Emerson of 6/7/2002.) Examiner Corwin also asked Mr. Emerson to submit one application for two other works that had been submitted, both the MAILMASTER VILLAGER and the MAILMASTER VILLAGER PLUS, because the copyrightable content in those two works was identical and only one registration could be made. Id. at 2. By letter dated July 15, 2002, Examiner Helen Livanios advised Roger Emerson that the MAILMASTER PLUS and the MAILMASTER STANDARD could not be registered because they were useful articles that did not contain any separable authorship on which to base a claim. (Letter from Livanios to Emerson of 7/15/2002.) On February 5, 2003, Examiner Corwin notified you by phone that the submissions for the versions of MAILMASTER VILLAGER and MAILMASTER VILLAGER PLUS, the two works reflecting shared, embodied authorship, had been merged and registered together on one application, with a formal rejection for a separate registration of MAILMASTER VILLAGER PLUS; all copyrightable authorship was embodied in the deposits made part of the one MAILMASTER VILLAGER registration.

B. First requests for reconsideration

The Examining Division received two letters from Mr. Emerson in which he requested reconsideration of its refusal to register the five works. (Letters from Emerson to the Examining Division of 10/4/2002 [hereinafter referred to as 10/4/2002 Emerson Letter A and 10/4/2002 Emerson Letter B.) In the letter addressing the works MAILMASTER STANDARD, MAILMASTER PLUS and MAILMASTER DELUXE [10/4/2002 Emerson Letter A], Mr. Emerson conceded that each of the works at issue were useful articles but that each contains conceptually separable design features that were overlooked by the Office. Id. at 4. Referring to the several tests for separability in useful articles, Mr. Emerson proposed that the appropriate test for application by the Copyright Office should be that adopted by the Second Circuit in Brandir International, Inc. v. Cascade Pacific Lumber Co., 834 F.2d 1142 (2d Cir. 1987), i.e., the Denicola test stating essentially that where design elements within a useful article can be identified as essentially reflecting the artist's choice and discretion, conceptual separability exists. 10/4/2002 Emerson Letter A at 6. After citing and analyzing other useful-article precedent and applying the Brandir test, Mr. Emerson concluded that the features of the mailboxes at issue are copyrightable because "they have aesthetic elements that play no role in the functionality of the structure as a mailbox" nor are the features "governed by the strictures of such functionality." 10/4/2002 Emerson Letter A at 8. Pointing out the features of the "soft, rounded corners, bead details, shadow lines, arches, radii, indentations and the effect these provide to the overall form," he concluded that such features are not essential to the functioning of a mailbox and, further, that

such features represent a "new, novel and original free-flow design" which should be registered. Id. at 11, 12.

In his second letter to the Examining Division concerning MAILMASTER CLASSIC and MAILMASTER CLASSIC PLUS, Mr. Emerson, agreeing with Examiner Corwin that these works contain separable features, argued that the features, taken together in each work, represent copyrightable authorship. 10/4/2002 Emerson Letter B at 4. Citing a number of cases in which courts held that the overall combination of elements -- elements which were unprotectible in themselves -- was nevertheless copyrightable as a whole, Mr. Emerson argued that the mailboxes at issue represent authorship which is a "conglomeration of different, unique, complex elements combined into single, unique sculptural form." Id. at 5 - 7.

C. Examining Division response

Attorney Virginia Giroux, by letter dated April 4, 2003, advised Mr. Emerson that the Examining Division could not register the copyright claims in any of the five mailbox works listed above. (Letter from Giroux to Emerson of 4/4/2003.) Ms. Giroux pointed out that Mr. Emerson did not dispute that these works are useful articles but that he maintained that the works "contain non-functional design elements based on the designer's artistic judgment rather than utilitarian concerns." Id. at 2. In her analysis of separability, Ms. Giroux noted that the Copyright Office uses the test set out in the Compendium of Copyright Office Practices, (Compendium II), and that the test follows the general separability principles of Esquire v. Ringer, 591 F.2d 796 (D.C. Cir. 1978). She confirmed that conceptual separability occurs when design features, although physically inseparable by ordinary means from the utilitarian item, are nevertheless clearly recognizable as a work of authorship, independent of the shape of the article, without destroying its basic shape. (Letter from Giroux of 4/4/2003 at 2.) Utilizing this test, Ms. Giroux concluded that the works MAILMASTER STANDARD, MAILMASTER PLUS, AND MAILMASTER DELUXE do not contain any separable elements. Id. at 3. She conceded that the fluted thick lines and the S-shaped motif on the MAILMASTER CLASSIC and the MAILMASTER CLASSIC PLUS works are conceptually separable from the utilitarian aspects of each work. Id. However, she also determined, citing precedent, that these elements are common and familiar shapes, arranged in a rather simple configuration. Id. at 4 - 5. Finally, she analyzed the remaining features of the works in question and concluded that the "curved, rounded, vertical and tapered surfaces as well as the depth or slope of such elements" were components of the overall shape and contour of the works and, thus, could not be conceived as conceptually separable from the rest of each work without destroying the basic shape of the works. Id. at 4, 6. Registration for all five works in question was again refused.

D. Second request for reconsideration

On July 31, 2003, you appealed to this Board. (Letter from Barnes to Review Board of 7/31/2003.) In your letter, you argue first that the Copyright Office has admitted that the

elements in Villager, Classic and Classic Plus mailboxes are separable. Id. at 2. You contend that the Standard, Plus and Deluxe mailboxes must have separable features because of the way in which they are similarly structured to the Classic and Classic Plus mailboxes in which the Office has found separable features. The Office has also registered another work in the series entitled MAILMASTER VILLAGER. Id. at 2 - 3. You then argue that because the several elements that make up the Mailmaster mailboxes at issue here are different from the configuration of the generic mailbox that you offer in comparison with the Mailmaster boxes at issue here (shown in Examples 2 - 5, accompanying your July 31, 2003 second request for reconsideration), the remainder of Mailmaster mailbox elements are separable and potentially copyrightable. You state: "[I]f the Copyright Office can find the utilitarian aspects of the Classic and Villager mailboxes separable, it must follow [that] the utilitarian aspects of the Standard, Plus and Deluxe must also be separable." (Letter from Barnes of 7/31/2003 at 3.)

You next contend that the Copyright Office should accord deference to a U.S. Patent and Trademark Office finding of separable elements for the purpose of protection under the trademark laws. Id. at 3 - 4. You suggest that the Copyright Office "can look for direction from another administrative agency for the pure purpose of separability to determine if it is possible to separate utilitarian aspects from the MailMaster cases." Id. at 4. Finally, the great portion of your argument asserts that these mailboxes contain a sufficient amount of original copyrightable authorship, including compilation and arrangement authorship, and that these works are registrable under Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991), Alfred Bell & Co. v. Catalda Fine Arts, Inc., 191 F.2d 99, 102-03 (2d Cir. 1951) (author must contribute something more than a merely trivial variation) and Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 250 (1903) (distinguishable variation of a prior work required for originality and creativity). You conclude that the mailbox works in question here reflect a "new compilation and arrangement that makes them unique and original, and thus, copyrightable." (Letter from Barnes of 7/31/2003 at 6 - 7.)

II. DECISION

A. Design elements of the MAILMASTER STANDARD, MAILMASTER PLUS, and MAILMASTER DELUXE are not separable

You assert that each of the mailbox designs has separable elements because some of them do. (Letter from Barnes of 7/31/2003 at 2.) More specifically, you allege that the Copyright Office "has already admitted that the MailMaster mailboxes have separable elements," referring to the registration of the Villager mailboxes. Id. However, Examiner Corwin clearly stated that the copyrightable content in the MAILMASTER VILLAGER and the MAILMASTER VILLAGER PLUS was "the sculptural artwork depicting a house." (Letter from Corwin to Emerson of 6/7/2002 at 2.) The five designs at issue here contain no comparable, representative

sculptural artwork. The Board thus had to determine whether any of the five designs contain other separable authorship.

Although you are correct in asserting that the Office has admitted that the MAILMASTER CLASSIC and the MAILMASTER CLASSIC PLUS contains elements that are separable from the mailboxes' utilitarian elements, Attorney Giroux in her April 4, 2003 letter was clearly referring to "the fluted thick lines as well as the 'S' shape motif appearing on the surface of both MAILMASTER CLASSIC and MAILMASTER CLASSIC PLUS." (Letter from Giroux of 4/4/2003 at 3.) These specific elements are not a part of the MAILMASTER STANDARD, the MAILMASTER PLUS, or the MAILMASTER DELUXE. The design elements on those three mailboxes -- the overhanging profile of the front of the mailbox, the instep below the mailbox door, the contours, both rounded and edged, and the posts -- are all part of the overall configuration of the utilitarian objects and, thus, are not separable from the function of the mailboxes. We offer the Office's guidelines in determining separability.

1. Office test for separability

A work is a "useful article" if it ha[s] an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article." 17 U.S.C. 101. The above-listed elements -- overhanging profile of the front of the mailbox, in step below the mailbox door, rounded and edged contours and posts -- are parts of, and represent the shapes and lines of, useful articles.

After finding that a work is a useful article, the Copyright Office must then determine whether the work has any pictorial, graphic or sculptural authorship that is either physically or conceptually separable from the utilitarian aspects of the article. 17 U.S.C., 101, definition of "pictorial, graphic and sculptual" works. Because we see no physically separable features of the mailboxes in question, we focus primarily on conceptual separability.

The Office has long used the tests for conceptual separability found in Compendium II (1984). Under that test, conceptual separability means that "the artistic features can be imagined separately and independently from the useful article without destroying the basic shape of the useful article." Id. at section 505.03. Applying this guideline to the MAILMASTER STANDARD, the MAILMASTER PLUS, and the MAILMASTER DELUXE, we conclude that the features cannot be perceived as separable from the mailboxes. The overhanging profile, rounded and edged contours, and posts are all part of the overall configuration or shape of the mailboxes and an attempt to mentally conceptualize those features as segregated out from the rest of the mailbox would, essentially, destroy the particular basic shapes of the mailboxes. These mailboxes fail the Compendium test for conceptually separable design features.

Further, we do not agree with your position regarding the separability of any artistic element incorporated into the mailboxes. You state that "if the Copyright Office can find the

utilitarian aspects of the Classic and the Villager mailboxes separable, it must follow the utilitarian aspects of the Standard, Plus and Deluxe must also be separable." (Letter from Barnes of 7/31/2003 at 3.) However, this conclusion ignores the obvious fact that the elements which the Office found separable in the Classic and the Villager lines are missing from the MAILMASTER STANDARD, the MAILMASTER PLUS, and the MAILMASTER DELUXE. The fact that the Office found separable artistic features in mailboxes with elements in the shape of a house, surface fluted lines or an S-shaped curve design does not mean that mailboxes lacking those identified features must also have separable artistic elements.

As we have explained above, the only possible basis for the registration of a useful article is the registration of that aspect of the article that can be viewed as separable and that is *also* copyrightable as a pictorial, graphic or sculptural work of authorship. In Esquire, 591 F.2d 796, the Court of Appeals upheld the Copyright Office's refusal to register an outdoor lighting fixture on the grounds that copyright protection was not possible based on the "overall shape or configuration of a utilitarian article, no matter how aesthetically pleasing that shape or configuration might be." Id. at 800. Esquire clarified its position with the following relevant rationale:

> The Register reasons that aesthetic considerations enter into the design of most useful objects. Thus, if overall shape or configuration can qualify as a "work of art," the whole realm of consumer products. . .and industrial products designed to have aesthetic appeal. . . must also qualify as works of art. . . .

Id. at 801.

Congress has repeatedly rejected proposed legislation that would make copyright protection available for consumer or industrial products and the rationale of Esquire also applies here to the MAILMASTER designs.

We also cite to you Norris Industries, Inc. v. International Telephone & Telegraph Corp., 696 F.2d 918 (11th Cir. 1983), cert. denied, 464 U.S. 818 (1983). Norris held that a wire-spoked wheel cover was not copyrightable because it was a useful article that did not contain any superfluous sculptured design that could be identified apart from the wheel cover itself. 696 F.2d at 924. The court stated:

> Even if the arrangement of spokes could be identified separately, however, they are incapable of existing independently. As the Register and the district court observed, the pattern resulting from the placement of spokes is an inseparable component of the wheel cover. The spokes are attached to the rim and to the hub, and once

> the spokes are removed from their position the pattern ceases to exist.

Id. at 923.

The MAILMASTER STANDARD, the MAILMASTER PLUS, and the MAILMASTER DELUXE have the same problem with respect to configuration. The mailboxes' overhangs, indents, contours and posts do not exist as independent works of art. As Norris notes, "[p]hysical separability would presumably mean that after removal of those features which are necessary for the utilitarian function of the article, the artistic features would nevertheless remain intact." Id. (quoting 1 Nimmer on Copyright 2.08 [B][3], at 2-96). We point out that, after removing the features you have identified as separable -- and we stress that the removal may be physical or conceptual -- that are necessary for a functional mailbox, the purportedly artistic elements would not remain intact.

Also, Norris holds that functional components of useful articles, no matter how artistically designed, are generally denied copyright protection unless they are physically separable from the useful article. Id. at 924. You assert that certain features of the mailboxes at issue here are nonfunctional. Again, whether functional or not, the features that make up part of a useful article, are themselves considered a useful article, absent physical or conceptual separability.17 U.S.C. 101. Moreover, the elements which you identified that are incorporated into the mailboxes serve some function. And, even apart from Norris' holding, whether the ground you choose is that the mailbox designs are physically or conceptually separable, the Board can find no separable authorship that is copyrightable. Again, the shape of a useful article is not copyrightable. Legislative history to the 1976 Act (H.R. Rep. No. 1476, 94th Cong., 2d Sess. 54 - 55 (1976)) makes clear that if one can establish an artistic work of authorship or sculptural work that is independent of, i.e., separable, either physically or conceptually, from the shape or design of a useful article, it may qualify for copyright. The House Report provides that:

> On the other hand, although 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, 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.

Id. at 55.

Thus, the Board stands by the determination that the identified design elements of the MAILMASTER STANDARD, the MAILMASTER PLUS, and the MAILMASTER DELUXE

are not conceptually (or physically) separable from the overall shape and configuration of the mailboxes themselves. Furthermore, even if the identified elements were separable, such elements -- commonplace vertical posts, rectangular box shapes, simple squared and simple curved corner lines -- lack sufficient creativity to constitute copyrightable works of authorship, as do the admittedly separable elements of the MAILMASTER CLASSIC and the MAILMASTER CLASSIC PLUS. We next consider the copyrightability of any of the separable elements which the Board recognizes as such.

B. Other administrative agencies' determinations are not binding on the Copyright Office

Congress has directed that a claim in material submitted for registration to the Copyright Office containing copyrightable subject matter and meeting other legal and formal requirements shall be registered. 17 U.S.C. 410(a). Congress has further instructed that if "the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter . . . the Register *shall refuse registration* and shall notify the applicant in writing of the reasons for such refusal." 17 U.S.C. 410(b)(emphasis added). Thus, even though the distinction between copyrightable material and uncopyrightable material may be "elusive," as acknowledged by the Supreme Court in Feist, 499 U.S. at 349, the Copyright Office, not another agency, still must make the distinction. Nothing in the copyright law requires, suggests, or even permits the Copyright Office to follow other federal agencies' determinations.

Although you acknowledge that we are not bound by the decisions of other governmental agencies, you indicate that the Office should give deference to the U.S. Patent and Trademark Office. (Letter from Barnes of 7/31/2003 at 4.) The only law you cite to support your position is American Hoist & Derrick Co. v. Sowa & Sons, Inc., 725 F.2d 1350, 1359 (Fed. Cir. 1984), which you contend supports the proposition that it is "common for judicial deference to be given to the U.S. Patent and Trademark Office as an administrative agency with respect to its decisions." (Letter from Barnes of 7/31/2003 at 4.) Yet American Hoist addresses the "deference that is due to a qualified government agency presumed to have properly done its job." Id. at 1359. American Hoist has no relevance here because we are not addressing whether the Patent and Trademark Office properly did *its* job. Even if the Copyright Office thought that some degree of acceptance of the Patent and Trademark Office's decisions were correct, a presumption that the Patent and Trademark Office has properly done its job by applying *its* standards correctly has no effect on whether a useful article contains separable features under copyright law -- the test by which the Copyright Office is statutorily bound in its determinations regarding works submitted for registration.

The Register of Copyrights is charged with the task of deciding whether a work meets the originality requirement. With that task comes the job of drawing the line between and among works that do not meet the requirement and those that do. The Register's articulated and reasoned decisions in these matters are normally entitled to judicial deference. *See, e.g.*, John Muller &

Co. v. N.Y. Arrows Soccer Team, Inc., 802 F.2d 989, 990 (8th Cir. 1986)("There is no simple way to draw the line between 'some creative authorship' and not enough creative authorship. . . .") Decisions which other government agencies may make based on the laws which govern their particular activity are not relevant to the Copyright Office's decisions concerning registrability of a given work.

C. The mailbox works at issue here lack sufficient creativity

There are two features which the Review Board finds separable: the fluted thick lines and the S-shaped motif on the MAILMASTER CLASSIC and the MAILMASTER CLASSIC PLUS. These features, considered both separately and in combination, lack the necessary creativity to qualify for copyright registration as original authorship.

1. The *Feist* standard

The fundamental basis of copyright protection is a work's originality. Originality has two components: independent creation and a certain minimum amount of creativity. Feist, 499 U.S. at 347. The Copyright Office uses this standard when it considers whether a work is copyrightable. In the instant case, we assume the independent creation of the mailbox works. Thus, we focus on the second prong of the Feist standard as it applies to the separable features of the MAILMASTER CLASSIC and the MAILMASTER CLASSIC PLUS.

As both you and Ms. Giroux have noted, the requisite quantum of creativity necessary for copyright is very low. (Letter from Barnes of 7/31/2003 at 6 - 7; Letter from Giroux of 4/4/2003 at 4.) The Supreme Court has stated, however, that there can be no copyright in works in which "the creative spark is utterly lacking or so trivial as to be virtually nonexistent." Feist, 499 U.S. at 359. And, a work that reflects an obvious or unoriginal use, or combining, of a few common elements fails to meet the low standard of minimum creativity required for copyrightability. Id. at 362 - 363. An example would be the alphabetical listing of the white pages of telephone books which the Supreme Court characterized as "garden variety . . . devoid of even the slightest trace of creativity." Id. at 362. Nothing in Bleistein, 188 U.S. at 250 (1903), or Catalda, 191 F.2d at 102-03 (1951), pre-Feist cases which you cited in support of your analysis of the amount of variation required in works which utilize pre-existing material, changed the current rule, as it is stated in Feist. However, although Catalda recognized that "no large measure of novelty is necessary" in a work, 191 F.2d at 102, the court further counseled that the distinguishable variation in a work of authorship for which copyright is sought must be "more than a 'merely trivial' variation." 191 F.2d at 102 - 103.

Even before Feist was decided, Copyright Office registration practices followed settled precedent and recognized that some works of authorship contain only a *de minimis* amount of authorship and, thus, are not copyrightable. Compendium II, section 202.02 (a). With respect to pictorial, graphic and sculptural works, the class to which the mailbox designs in this case

belong, 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.

Section 503.02(a) further states:

> [R]egistration 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 the copyright common geometric figures or shapes such as the hexagon or ellipse, a standard symbol such as an arrow or a five-pointed star. . . . 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.

If a work is too generic, too simple, too scant in its delineation of expression to support a copyright, registration must be denied. *See, e.g.,* John Muller, 802 F.2d 989; Jon Woods Fashions, Inc. v. Curran, 8 U.S.P.Q.2d 1870 (S.D.N.Y. 1988); OddzOn Products, Inc. v. Oman, 924 F.2d 346 (D.C.Cir. 1991).

2. Copyrightability of separable features

You assert that Esquire is distinguishable with respect to the mailboxes at issue here, but you fail to state a specific manner in which the mailboxes here differ from the light fixture in Esquire. You state that the designs of the mailbox are not mandated by its function, alluding to the Esquire court's statement regarding economic considerations which may go into the decisions concerning the creation of useful objects and that "consumer preference sometimes demands uniformity of shape or [sic] certain utilitarian articles." (Letter from Barnes of 7/31/2003 at 5.) Yet, any statements concerning consumer preference as well as the fact that you take the position that the mailboxes at issue here are designed purely from an artistic standpoint does not alter the holding of Esquire which relied on the 1976 House Report, that the "overall design or configuration of a utilitarian object, even if it is determined by aesthetic as well as functional considerations, is not eligible for copyright." 591 F.2d at 804. Furthermore, your attempt to distinguish the fluted column and S-shaped curve features on the mailboxes from the shape of the light fixture in Esquire is not convincing. The shapes of the S-type scroll and the vertically straight column with linear indentations along the length of the column which appear in the CLASSIC mailboxes are minor variations on common shapes. None of the aspects of useful

article analysis found in Esquire assists in the distinguishing of that case from the mailbox designs at issue here. Again, we note that the commercial value of a useful article is irrelevant to an analysis of its possible copyrightability. Compendium II states:

> 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. . . .

Section 503.02(a).

3. Standard shapes and symbols

The fluted lines of the column serving as the post and the S-shaped curve motif appearing on the surfaces of the CLASSIC mailboxes are common and familiar shapes or designs in the public domain. As we have noted above, Compendium II, section 503.02(a), speaks of the need for more than a simple combination of a few standard symbols with minor linear or spatial variations. Familiar symbols or designs are not entitled to copyright protection. 37 C.F.R. 202.1(a). And, concerning sculptural authorship, Compendium II, section 503.02(b), states in similar vein that:

> Copyrightability is based upon the creative expression of the author, that is the manner or way in which the material is formed or fashioned. Thus registration cannot be based upon standard designs which lack originality, such as common architecture moldings, or the volute used to decorate the capitals of Ionic and Corinthian columns. Similarly, it is not possible to copyright common geometric figures or shapes in three-dimensional form such as the cone, cube, or sphere. The mere fact that a work of sculpture embodies uncopyrightable elements, such as standard forms of ornamentation or embellishment, will not prevent registration. *However, 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.* (Emphasis added.)

Simple variations of standard designs and their simple arrangements, even if they are aesthetically pleasing, do not supply a basis upon which to support a copyright claim. *See, e.g.,* John Muller, 802 F.2d at 990 (Eighth Circuit upheld Register's refusal to register a simple logo consisting of four angled lines which formed an arrow and the word "Arrows" in cursive script below the arrow). Further, merely combining nonprotectible elements does not automatically establish creativity where the combination or arrangement itself is simplistic, generic or scant in its overall

configuration. Homer Laughlin China Co. v. Oman, 22 U.S.P.Q.2d 1074 (D.D.C. 1991) (upholding refusal to register chinaware pattern of simple variations, combinations of geometric designs, and responding to the plaintiff's contention that the Office failed to view the pattern in its entirety"); Gardenia Flowers, Inc. v. Joseph Markovits, Inc. 280 F.Supp. 776 (S.D.N.Y. 1986) (aggregation of well-known components [that] comprise an unoriginal whole cannot support a claim to copyright). Thus, focusing on the separable elements in MAILMASTER CLASSIC and MAILMASTER CLASSIC PLUS, the designs formed by those separable elements do not contain sufficient creativity to be registered for copyright.

Again, concerning MAILMASTER STANDARD, MAILMASTER PLUS, AND MAILMASTER DELUXE, those works, essentially mailboxes consisting of a vertical post attached to varying sizes of boxes which hold the mail and a long, retangular portion on the surface of the box to hold address numbers, lack any separable designs or features which, individually or in combination, could justify a claim to copyright; therefore, by definition, those designs for useful articles do not constitute pictorial, graphic or sculptural works.

III. CONCLUSION

For the reasons stated above, the Copyright Office Review Board concludes that the five MAILMASTER mailboxes at issue here cannot be registered for copyright. This decision constitutes final agency action.

Sincerely,

/S/

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