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February 1, 2005

Garvey, Smith, Nehrbass and Doody LLC
Attn: Seth M. Nehrbass
3838 N. Causeway Blvd., Suite 3290
Metairie, LA. 70002

Re: BASKETBALL BEADS COLLECTION
BASEBALL BEADS COLLECTION
SOCCER BALL BEADS COLLECTION
HOCKEY BEADS COLLECTION
HEART BLINKY BEAD
LUCKY SHAMROCK BLINKY BEAD COLLECTION
FOOTBALL BLINKY BEAD COLLECTION
Control Number 61-203-9084(B)

Dear Mr. Nehrbass:

The Copyright Office Board of Appeals has reviewed your request for reconsideration of the Office's refusal to register the seven jewelry designs listed above for your client, Beads by the Dozen, Inc. The Board has carefully examined the applications, the deposits and all correspondence in this request and affirms the denial of registration of these works.

I. DESCRIPTION OF WORKS

The works involved in this reconsideration are described as follows:

1. BASKETBALL BEADS COLLECTION



This work is a collection of necklaces in different colors consisting of beads resembling miniature representations of basketballs. The shape of the beads is spherical, and the surface area contains solid lines replicating the lines of a basketball.

2. BASEBALL BEADS COLLECTION



This work is a collection of necklaces in different colors, consisting of beads resembling miniature representations of baseballs. The shape of the beads is spherical, and the surface area contains curved lines in combination with simulated herringbone stitching replicating the lines and stitching of a baseball.

3. SOCCER BALL BEADS COLLECTION



This work is a collection of necklaces in different colors consisting of beads resembling miniature representations of soccer balls. The shape of the beads is spherical, and the surface area contains pentagon and hexagon shapes replicating the lines on a soccer ball.

4. HOCKEY BEADS COLLECTION



This work is a collection of necklaces in different colors consisting of beads resembling miniature representations of hockey pucks. The shape of the beads is cylindrical, and the surface area of every other bead contains a design resembling a miniature representation of two hockey sticks criss-crossing each other.

5. HEART BLINKY BEAD



This work is a necklace consisting of six red heart shaped beads, combined with other beads resembling pearls and spherical in shape.

6. LUCKY SHAMROCK BLINKY BEAD COLLECTION



This work is a necklace combining colored spherical shaped beads with six beads shaped like shamrocks which are attached to a circular shaped disk.

7. FOOTBALL BLINKY BEAD COLLECTION



This work is a collection of necklaces in different colors, consisting of three different kinds of beads. Four beads resemble miniature representations of footballs, four beads are large spherical shaped beads, and the remaining beads are small spherical shapes similar to pearls.

II. ADMINISTRATIVE RECORD

A. Initial Applications and Office's Refusal to Register

On December 13, 2001, the Copyright Office received applications, deposits and fees for seven jewelry designs. In a letter dated January 8, 2002, Copyright Examiner, Joy Mansfield, refused registration of the seven designs because she found that the works lacked the artistic or sculptural authorship necessary to support copyright claims. (Letter from Mansfield to Sebren of 1/8/02, at 1.) Ms. Mansfield stated that in order to be copyrightable, artwork or sculpture must contain at least a minimum amount of original artistic material. Moreover, she noted that copyright does not protect ideas, concepts, "familiar symbols and designs, minor variations of basic geometric shapes, lettering and typography, or mere variations in coloring." *Id.*

B. First Request for Reconsideration

In a letter dated May 3, 2002, you requested reconsideration of the Office's refusal to register the seven jewelry designs. You asserted that the claimant's works contain "a sufficient amount of original artistic material to be copyrightable, and that the works do not lack the artistic or sculptural authorship necessary to support copyright claims." (Letter from Nehrbass to Examining Division of 5/2/02, at 2.) You cited Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991) as evidence that the quantum of originality and creativity required to support copyright is extremely low. You noted that the Court further observed that the requirement of originality meant only that the work was independently created by the author and that it possessed at least a minimal degree of creativity. Moreover, you asserted the Court stated that as long as a work possesses a slight amount of creativity, no matter how crude, humble or obvious it might be, the work is copyrightable. (Letter from Nehrbass to Examining Division of 5/2/02, at 2).

Although conceding that copyright protection may not be available for familiar symbols, or basic geometric shapes, you contended that arrangements of familiar symbols or geometric shapes are entitled to copyright protection "if the arrangement had even a slight amount of creativity." *Id.* at 2. You cited a number of cases you believed supported this contention, including Reader's Digest Ass'n, Inc. v. Conservative Digest Ass'n, Inc., 821 F.2d 800, 806 (D.C. Cir. 1987) Amplex Manufacturing Company v. A.B.C. Plastic Fabricators. Inc., 184 F. Supp. 285, 288 (E.D. Pa. 1960); and Pantone Inc. v. A.I. Friedman, Inc., 294 F.Supp. 545, 548 (S.D.N.Y. 1968) (Letter from Nehrbass to Examining Division of 5/2/02, at 2-3).

You asserted that according to Nimmer, "Virtually any distinguishable variation created by an author in an otherwise unoriginal work of art will constitute sufficient originality to support a copyright." (1 Melville B. Nimmer & David Nimmer, Nimmer on Copyright, § 2.08.[B])(1998) [hereinafter Nimmer on Copyright] . You cited Atari Games Corporation v. Oman, 979 F.2d 242, 246 (D.C. Cir. 1992) for the principle that no "considerable uniqueness" is required for copyrightability, but merely "a distinguishable variation." (Letter from Nehrbass to Examining Division of 5/2/02, at 3).

You then described each of the seven jewelry designs and asserted the artistic expression involved was in choosing the form of the beads, the size of the beads, how many beads to put in each necklace, how to space the beads on the necklace, what colors to use for the beads, and how to place the beads on

the necklace when different colors of beads are used in a single necklace. *Id.* at 4-7. You concluded that each of the appealed works "involve the requisite level of creativity to support copyrightability.... Each... involves a distinguishable arrangement, combination, selection, and presentation of elements which reflect creative expression, no matter how crude, humble or obvious they might seem." *Id.* at 8.

In response to your request and in light of the points raised in your request of May 3, 2002, Examining Division Attorney Advisor Virginia Giroux reexamined the applications and determined that each of the seven jewelry designs lacked a sufficient amount of original artistic or sculptural authorship to support registration. (Letter from Giroux to Nehrbass of 3/25/03, at 1). She pointed out that it is not the material of which a work is made that determines copyrightability, and , therefore, the fact the works were made from colored beads does not contribute to the copyrightability of the works. *Id.* Color per se is not copyrightable. Additionally, she explained that copyright could not be extended to the idea or method used in combining and attaching the beads together because section 102(b) of the copyright law precludes extending copyright to an idea, process, method, concept, principle, or discovery, regardless of the form in which it was embodied in the work. *Id.*

Citing Feist Publications v. Rural Telephone Service Co., 499 U.S. 340 (1991), she stated that a work must not only be original, but must possess more than a *de minimis* quantum of creativity. (Letter from Giroux to Nehrbass of 3/25/03, at 1). She elaborated that originality, as interpreted by the courts, means that the authorship must constitute more than a trivial variation of public domain elements, citing Alfred Bell & Co. v. Catalda Fine Arts, Inc., 191 F.2d 99 (2d Cir. 1951) (Letter from Giroux to Nehrbass of 3/25/03, at 1-2). She stated that in applying that standard, "the Copyright Office does not make aesthetic judgments, the attractiveness of a design, its uniqueness, its visual effect or impression, its symbolism, the time and effort it took to create, or its commercial success in the marketplace are **not** factors in the examining process." *Id.* at 2.

Ms. Giroux then described each of the seven jewelry designs. She found that the: "[s]pheres, circles, cylinders, ovals, ellipses, pentagons, hexagons, hearts, curved or solid lines, and shamrocks, or any minor variation thereof, are common and familiar shapes or designs, in the pubic domain, and are, therefore, not copyrightable." *Id.* at 2. She further noted that the coloring, sequence, placement, and simulated stitching embodied in the shapes did not contain a sufficient amount of creative sculptural authorship to support a copyright registration. *Id.* Finally, she noted that even, taken as a whole, "the arrangement and combination of the beads in each work do not rise to the level of copyrightable authorship [necessary] to sustain a copyright registration. The resulting designs are *de minimis* involving public domain shapes combined in a rather simple configuration." *Id.* at 3. She cited Compendium of Copyright Office Practices II, Ch. 500 § 505.02(a)&(b)(1984) [hereinafter Compendium II].

Ms. Giroux further stated that: "[s]imple variations of standard designs and their simple arrangements may be aesthetically pleasing, but they do not furnish a basis upon which to support a copyright registration." As authority, she cited John Muller & Co., Inc. v. N.Y. Arrows Soccer Team, 802 F.2d 989 (8th Cir. 1986)(a logo consisting of four angled lines forming an arrow, with the word "arrows" in cursive script below); Jon Woods Fashions, Inc. v. Curran, 8 U.S.P.Q.2d 1870 (S.D.N.Y. 1988)(a design consisting of two inch stripes, with small grid squares superimposed upon the stripes); and DBC of New York, Inc. v. Merit Diamond Corp., 768 F.Supp.414 (S.D.N.Y. 1991)(a simple jewelry design). (Letter from Giroux to Nehrbass of 3/25/03, at 3).

She agreed that it is true that even a slight amount of creativity will suffice to obtain copyright protection, but noted that "there remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a copyright." 1 Nimmer on Copyright, § 2.01(b)(1998). Following her examination of each of these jewelry designs, she concluded that these simple designs did not meet the Feist requisite level of creativity. (Letter from Giroux to Nehrbass of 3/25/03, at 3). Moreover, she stated that Atari, did not support registration of these simple designs because that case concerned a work in which the non-copyrightable elements were viewed in an interactive audio-visual work.

Finally, she distinguished the cases cited in your first request for reconsideration as supporting registration. The work found copyrightable in Pantone Inc. v. A.I. Friedman, Inc., 294 F.Supp. 545, 548 (S.D.N.Y. 1968) was a 75 page color matching booklet consisting of an arrangement of over 500 colors where each page displayed an arrangement of selected colors and shades. In Reader's Digest Ass'n, Inc. v. Conservative Digest Ass'n, Inc., 821 F.2d 800, 806 (D.C. Cir. 1987) the issue was primarily trade dress, and the combination of elements was more complex than the jewelry designs in issue in the reconsideration. Amplex Manufacturing Company v. A.B.C. Plastic Fabricators, Inc., 184 F. Supp. 285, 288 (E.D. Pa. 1960) involved a copyrighted catalog of an arrangement of elements on a dark background which included drawings of several products. She concluded that the works litigated in those three cases were substantially different from the simple jewelry designs involved in this reconsideration. (Letter from Giroux to Nehrbass of 3/25/03, at 3-4).

In closing, Ms. Giroux observed that while there may be other ways in which the elements in these works could have been selected and arranged, it is not the possibility of choices that determines copyrightability, but rather whether the particular resulting expression or product contains copyrightable authorship. She determined that the design elements in these works, either individually, or in combination, did not contain a sufficient amount of original and creative authorship to support a copyright registration. *Id.* at 4.

C. Second Request for Reconsideration

In a letter dated July 21, 2003, you filed a second request for reconsideration for the seven jewelry designs. You urge that each of the works contains a sufficient amount of original artistic material to be copyrightable, and assert that the works do not lack the artistic or sculptural authorship necessary to support copyright claims. (Letter from Nehrbass to the Board of Appeals of 7/21/03, at 2). You again cite Feist as the proper standard and urge that it provides that as long as a work possesses a slight amount of creativity, no matter how crude, humble or obvious it might be, the work is copyrightable. You also assert that the cases cited by Ms. Giroux in support of the Office's refusal to register were decided before Feist, and are contrary to that holding. *Id.*

You concede that copyright protection may not be available for familiar symbols or basic geometric shapes but contend that there may be copyright in an arrangement of uncopyrightable subject matter if the arrangement has a slight amount of creativity citing the same cases noted in the first request for reconsideration. You again urge that Nimmer and Atari support your client's claim. *Id.* at 2-3.

You disagree that the cases cited by Ms. Giroux support the refusal to register the seven jewelry designs. You include a quotation from Alfred Bell & Co. v. Catalda Fine Arts, Inc., 191 F.2d 99, 102-03 ((2d Cir. 1951) providing among other statements "all that is needed .... is that the author contributed

something more that a merely trivial variation, something recognizably his own." (Letter from Nehrbass to the Board of Appeals of 7/21/03, at 4). You contend that the works involved in John Muller & Co. v. New York Arrows Soccer Team, Inc., 802 F.2d 989 (8th Cir. 1986) and Jon Woods Fashions, Inc. v. Curran, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988) lacked the multiple creative decisions that are present in your client's works. Finally, you suggest that the case of DBC of New York, Inc. v. Merit Diamond Corp., 768 F.Supp. 414 (S.D.N.Y. 1991) has been overruled by Feist. (Letter from Nehrbass to the Board of Appeals of 7/21/03, at 4).

You describe the seven jewelry designs and identify as artistic expression the form of the beads, choosing the size of the beads, choosing how many beads to put in each necklace, choosing how to space the beads on the necklace, choosing what colors to use, and choosing how to place the beads on the necklace when different colors of beads are used in a single necklace. You assert that your client's selection, presentation, and arrangement of shapes, sizes, surfaces and methods of attachment involve creativity. *Id.* at 4-8.

You conclude by claiming that each of your client's works involves the requisite level of creativity to support copyrightability. You urge that each contains the distinguishable arrangement, combination, selection and presentation of elements which reflect creative expression, no matter how crude, humble or obvious that work might seem. *Id.* at 9.

III. DECISION

A. The Legal Framework

1. Copyrightable Subject Matter

The Board recognizes that jewelry designs can be copyrighted as "pictorial, graphic, and sculptural works." 17 U.S.C. § 102(2)(5)(2003); Compendium II, Ch. 500, § 502 (1984). However, the fact that some jewelry designs qualify for copyright protection does not mean that all jewelry designs will.

All copyrightable works must also qualify as "original works of authorship." 17 U.S. C. §102(a) (2003). As used with respect to copyright, the term "original" consists of two components: independent creation and sufficient creativity, *see* Feist, 499 U.S. at 345. First the work must have been independently created by the author, i.e., not copied from another work. No one in the Copyright Office has ever questioned the assertion on the applications that these designs were created by Beads by the Dozen. Consequently, the first component of the term "original" is not at issue. Second, the work must possess sufficient creativity. For the reasons set forth below, the Board has determined that the subject jewelry designs fail to possess the requisite amount of creativity.

2. The Creativity Standard

In determining whether a work embodies a sufficient amount of creativity to sustain a copyright claim, the Office is guided by the standard set forth in Feist. The Board agrees with you that under Feist only a modicum of creativity is necessary to support a copyright. You quote the Court's statement that "the requisite level of creativity is extremely low; even a slight amount will suffice." (Letter from Nehrbass to the Board of Appeals of 7/21/03, at 3.) (quoting Feist, 499 U.S. at 345). However, the Feist

Court ruled that some works (such as the work at issue in Feist) fail to meet that standard. 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," 499 U.S. at 363, and that there can be no copyright in a work in which "the creative spark is utterly lacking or so trivial as to be virtually nonexistent." *Id.* at 359; *see also* 37 C.F.R. § 202.10(a)(2004) ("In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form."); 1Nimmer on Copyright § 201(b) (2002) ("[T]here remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a copyright.").

Even prior to the Supreme Court's ruling in Feist, the Copyright Office recognized the modest, but existent, requisite level of creativity necessary to sustain a copyright claim. Compendium II states, "Works that lack even a certain minimum amount of original authorship are not copyrightable." Compendium II, § 202.02(a)(1984). With respect to pictorial, graphic and sculptural works, the class within which jewelry designs fall, a "certain minimal amount of original creative authorship is essential for registration in Class VA or in any other class." Compendium II, Ch. 500, § 503.02(a) (1984).

In implementing this creativity standard, the Office and courts have consistently found that standard designs, figures and geometric shapes are not sufficiently creative to sustain a copyright claim. Compendium II, Ch. 500, § 503,02(a) (1984) ("[R]egistration cannot be based upon the simplicity of standard ornamentation....Similarly it is not possible to copyright common geometric figures or shapes...."); *Id.* §202.02(j) ("Familiar symbols or designs, and mere variations of typographic ornamentation, lettering, or coloring, are not copyrightable."). *Id.* § 503.03(b) ("No registration is possible where the work consists solely of elements which are incapable of supporting a copyright claim. Uncopyrightable elements include common geometric figures or symbols, such as a hexagon, an arrow, or a five-pointed star...."). *See also*, 37 C.F.R. § 202.1(a)(2004) ("[F]amiliar symbols or designs" are "not subject to copyright and applications for registration of such works cannot be entertained.").

Moreover, simply making minor alterations to these otherwise standard shapes will not inject the requisite level of creativity. Catalda Fine Arts, 191 F.2d at 102-03 (What "is needed to satisfy both the Constitution and the statute is that the 'author' contributed something more than a 'merely trivial' variation, something recognizably 'his own.'") Compendium II, Ch. 500, § 503.02(a) (1984) ("[Registration cannot be based upon] a simple combination of a few standard symbols such as circle, a star, and a triangle, with minor linear or spatial variations."

As evidenced by both Ms. Giroux and your descriptions of the subject works, these jewelry designs are comprised of shapes that are in the public domain. You argue, however, that these shapes are stylized or distinguishable from what is in the public domain. The Board does not agree. It has closely examined the deposits and finds them variations of public domain figures, akin to the works that the Feist Court recognized as "garden-variety... devoid of even the slightest trace of creativity." 499 U.S. at 362. It is the finding of the Board of Appeals that variations in the color, size, number, of beads, combined with familiar objects, such as miniature baseballs, footballs, and shamrocks are too simple to support a copyright, and thus fall within the narrow area unprotectible in Feist.

You appear to be arguing that the Office is relying on cases that have been overruled by Feist, but the simple fact is that the Office and courts were applying the same standard before that ruling. To be

copyrightable, there has to be a distinguishable variation. Despite your claims we find no distinguishable variations in these works which are simply familiar shapes and symbols.

In DBC of New York, Inc. v. Merit Diamond Corp., 768 F.Supp. 414 (S.D.N.Y. 1991), a jewelry manufacturer developed diamond ring designs called "marquise trillions" that contained two graduated marquise stones flanked by two triangular-cut stones ('trillons"), featured triangular indentations in the band portion, and knife-edged bands with two inclined surfaces on the outer sides meeting in a sharp edge. The court agreed with the Register's denial based on the rule that familiar symbols or designs are not entitled to copyright protection. The court also relied on Nimmer's analysis that "insofar as a shape is in the public domain (circles, squares, triangles, and ellipses) no copyright may be claimed whether or not it is integrated into a utilitarian article." Nimmer on Copyright, § 2.08[B] at n.115.2 (1998). The court used the above principles to conclude: "the individual elements of DBC's designs, such as the marquise stones, the trillions and the knife-edged shank, were each separately well-known in the jewelry trade before DBC's creation of the rings at bar." *Id.* at 416. Additionally, the court stated that even the combination of these elements does not change the fact that the rings are not exceptional, original or unique." *Id.*

As Ms. Giroux noted numerous other cases support a refusal to register works consisting of standard designs and simple arrangements. In Jon Woods Fashions, Inc. v. Curran, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988), the work at issue was a fabric design called "Awning Grids" that superimposed a grid of squares over cloth with two inch stripes. The plaintiff claimed that the combination of the stripes and grids created a design that was "enough" of the author's to be both original and creative. The court responded to this argument by restating the Register's position that works lacking the minimal amount of creative authorship include those which consist of "familiar designs or symbols" or a "simple combination of two or three standard symbols such as a circle, a star, or a triangle with minor linear variations. *Id.* at 1872. Therefore, the design elements at issue were not proper subjects for copyright protection even when they are "distinctively arranged or printed." *See also* John Muller & Co. v. New York Arrows Soccer Team, Inc., 802 F.2d 989 (8th Cir. 1986) a logo for a soccer team consisting of four angled lines which formed an arrow, and the work "Arrows" written below in cursive script, was denied copyrightability because it lacked the minimal amount of creativity for copyright protection; Magic Market, Inc. v. Mailing Services of Pittsburgh, Inc., 634 F.Supp. 769 (W. D. Pa. 1986)(envelopes printed with solid black stripes and a few words such as "priority message" or "gift check"); Forstmann Woolen Co. v. J. W. Mays, Inc., 89 F.Supp. 964 (E.D.N.Y. 1950)(reproduction of standard fleur-de-lis); and Past Pluto Productions Corp. v. Dana, 627 F.Supp. 1435 (S.D.N.Y. 1986)(hat entitled "Crown of Liberty" consisting of seven identical, evenly spaced foam spikes that radiate from the hat's arcuate perimeter).

Applying these principles in Homer Laughlin China v. Oman, 22 U.S.P.Q.2d 1074 (D. D.C. 1991), the court affirmed the Copyright Office's refusal to register a commercially successful chinaware design with pleasing geometric shapes. The Copyright Office had concluded that the work was not copyrightable because "familiar shapes and symbols are not copyrightable nor are simple variations or combinations of basic geometric designs capable of supporting a copyright registration." *Id.* at 1075 [brackets omitted].

The Board finds no distinguishable variations in these jewelry designs made of familiar shapes and symbols.

3. Combination of public domain elements too simple to support a copyright claim

In your letter for second reconsideration, you identify as artistic expression the choice of the form of the beads, the size and number of the beads, the spacing and coloring of the beads and the selection of different colors. (Letter from Nehrbass to the Board of Appeals of 7/21/03, at 4-5.) The Board notes that in theory an author creating any work has an unlimited choice of alternatives. However, it is not the possibility of choices that determines copyrightability, but whether the resulting expression contains copyrightable authorship. *See* Florabelle Flowers, Inc. v. Joseph Markovits, Inc., 296 F. Supp. 304, 307 (S.D.N.Y. 1968) (an "aggregation of well known components [that] comprise an unoriginal whole" cannot support a claim to copyright). The fact that an author had many choices does not necessarily mean that the choice the author made meets even the modest creativity requirement of the copyright law.

You assert that "an arrangement of familiar symbols or geometric shapes is entitled to copyright protection if the arrangement has even a slight amount of creativity." The Office agrees that an arrangement of public domain materials may be copyrightable if it has sufficient creativity, but not every arrangement has sufficient creativity. It finds that the simple combination of the public domain shapes and symbols in these jewelry designs does not support a copyright claim.

Recently, the Ninth Circuit Court of Appeals decided two cases which support the Board's determination that the combination of elements in the seven watch design are too simple to support a copyright claim. In Satava v. Lowry, 323 F.3d 805 (9th Cir. 2003), an artist brought a copyright infringement action against a competitor over the artist's life-like glass-in-glass sculptures of jellyfish. In this case, the court agreed a combination of unprotectable elements may qualify for copyright protection but stated in unequivocal terms:

> [I]t is not true that *any* combination of unprotectable elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that a combination of unprotectable elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.

Id. at 811. The court went on to find that:

> [t]he combination of unprotectable elements in Satava's sculpture falls short of this standard. The selection of the clear glass, oblong shroud, bright colors, proportion, vertical orientation, and stereotyped jellyfish form, considered together, lacks the quantum of originality needed to merit copyright protection.

Id. The Satava court noted that "to recognize copyright protection in the combination [of such commonplace elements] effectively would give Satava a monopoly ...[in these life-like sculptures]." In Lamp Plus, Inc. v. Dolan, 345 F.3d 1140 (9th Cir. 2003), the Ninth Circuit held that the mechanical

combination of four preexisting ceiling lamp elements with a preexisting lamp base did not constitute original authorship.[1]

If one were to recognize a copyright claim in decisions such as the size, color, and number of beads, virtually nothing would fall outside of copyright protection. Nor do the case on selection and arrangement you have cited as support for registration persuade the Board that these simple combinations of public domain shapes and symbols should be protected. In the cases you cite the courts found that there was sufficient creative authorship in the combination of elements, but each case involves a work which is distinguishable from your client's jewelry designs. Reader's Digest v. Conservative Digest, Inc., 821 F.2d 800 (D.C. Cir. 1989) primarily involved trade dress involving a work of multiple elements, shapes, and colors combined with textual elements juxtaposed in an overall design that, according to the court, resulted in a distinct arrangement and layout; Pantone, Inc. v. A.I. Friedman, 294 F.Supp. 545 (S.D.N.Y. 1968) concerned a 75 page color matching booklet consisting of an arrangement of over 500 colors where each page displayed an arrangement of selected colors and shades; Atari Games Corp. v. Oman, 979 F.2d 242 (D.C. Cir 1992) involved an audio-visual work in which the movement of individual elements comprised a substantial portion of the copyrightable expression; and Amplex Mfg. Co. v. A.B.C. Plastic Fabricators, Inc., 684 F.Supp. 285 (E.D. Pa. 1960) involved a copyrighted catalog which included drawings of several products. *See* Letter from Giroux to Nehrbass of 3/25/03, at 4.

IV. CONCLUSION

The Board finds that none of these jewelry designs, upon examination of the work's elements individually and as a whole, contains a sufficient amount of original and creative authorship to sustain a copyright claim. For the reasons stated above, the Copyright Office Board of Appeals concludes that the seven jewelry designs cannot be registered for copyright protection. This decision constitutes final agency action.

Sincerely,

/s/

Marilyn J. Kretsinger
Associate General Counsel
for the Appeals Board
United States Copyright Office

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[1] The Board notes that both of these cases were decided after the Supreme Court decision in Feist, which disputes your contention that Feist substantially lowered the standards of copyrightability.