United States Copyright Office
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May 2, 2007

Daryl G. Raney, Esq.
3480 West Buckeye Street
Fayettesville, AR 72704

RE: SMALL CLASSIC (CRV5250)
Control Number: 61-321-5921(R)

Dear Mr. Raney:

I am writing on behalf of the Copyright Office Review Board in response to your second request for reconsideration, dated May 22, 2006. After reviewing the application from White River Hardwoods-Woodworks, Inc. ("White River"), the arguments you presented on the company's behalf, and all associated materials, the Board has decided to return the case to the Copyright Office's Examining Division consistent with the instructions provided below.

To provide context to the case, we note the following actions. On August 19, 2004, White River filed a registration application for the work entitled "Small Classic" ("Small Classic" or "Refused Work") and a related work known as "Large Classic" ("Large Classic" or "Related Work"). The works at issue are corbels--types of brackets projecting from the face of a wall, mounted near to the ceiling, and generally used to support a cornice or arch.

On November 15, 2004, Copyright Office Examiner Joy Fisher Burns notified White River that the Office would register either Small Classic or Large Classic, but not both. As justification, Ms. Burns stated "You have completed separate applications for registration of these works. The copyrightable content in the works is identical. (Copyright does not protect mere changes in size). When two or more works containing the same copyrighted material are submitted for registration, we will register only one of the works, whichever the applicant prefers. That registration covers the copyrightable content of the work as it appears in any concurrent or subsequent versions or editions."

Beginning July 5, 2005, you exchanged letters with the Copyright Office disputing Ms. Burns' findings and urging the Copyright Office to register both of the works at issue because their proportions were different and thus each was copyrightable in its own right. On December 2, 2005, you sent a Reply/First Appeal (Supplement) to Virginia Giroux-Rollow, Attorney-Advisor in the Copyright Office's Examining Division, and also included in your package actual 3-dimensional samples of Small Classic and Large Classic. You also elected to have the Copyright Office register Large Classic (registered with an effective date of August 24, 2004, under VAu635-424).

On February 24, 2006, Ms. Giroux-Rollow responded and wrote,"We have carefully reviewed this work in light of the points raised in your letter as well as the actual 3-dimensional samples of the works you submitted. Upon further review, we still find that we are unable to make separate registration for this work, because it is a derivative work whose differences you outlined in your letter will not support a separate registration." She also noted that, "[O]nly one single registration can be made for works containing the same or similar copyrightable content unless the differences are substantial and creative enough to support a separate copyright registration. *See* Cir. 14. This work, in our view, does not contain such copyrightable differences." Ms. Giroux-Rollow then explained that the registration for Large Classic will also protect the same copyrightable content found in the Small Classic but Small Classic cannot be registered separately.

Upon a careful review of the case, and the materials filed therein, the Review Board has found that White River has submitted other substantially similar works for registration at the same time it filed for registration of Small Classic. *See* Letter from Laura Auffet, Marketing Director, White River Hardwoods to the Copyright Office, dated August 24, 2004 (and attachment containing copyright registration package checklist). For example, in addition to Small Classic and Large Classic, White River also separately submitted "Medium Classic" and "Petite Classic" for registration. These works are virtually identical. Moreover, according to White River's checklist, there were other groupings of nearly identical works, including "Tuscan" (large, small, medium, petite), "Fluted" (large, small, medium, petite), and "Acanthus" (large, small, medium, petite). Because each of these works were sent to the Copyright Office under separate cover, they were examined on an independent basis by different examiners and then registered; had they been received and examined at the same time by the same Examiner, the Office would not have issued multiple, individual registrations for them all.

The Review Board agrees with the Examining Division's initial determinations that when two or more works containing the same protectible material are submitted for registration, the Copyright Office shall register only one of the works unless the works evidence sufficiently different authorship to sustain separate registrations: a mere proportionate change in size between works or in the material of which works are made does not, in itself, constitute the necessary basis for two distinct registrations. *See generally* Feist Publications, Inc. v. Rural Telephone Service Co., Inc., 499 U.S. 340, 362 (1991) ("standard of originality is low, but it does exist."); Alfred Bell & Co., Ltd. v. Catalda Fine Arts, Inc., 191 F.2d 99, 102 - 103 (2d Cir. 1951) ("All that is needed... is that the 'author' contributed something more than a 'merely trivial' variation..."); Dam Things from Denmark v. Russ Berrie & Co., 290 F.3d 548, 564 (3d Cir. 2002), discussing the difference between the standard for copyrightability and for infringement ("When considering originality, therefore, the court must determine whether the author's creativity is enough to overcome a charge of triviality.")

As such, we have asked the Examining Division to cancel the registrations for the "Classic" series of works now on file (petite, medium, and large). White River may submit a new VA form for processing, but must include all four similar works from the series in one registration. White River should provide a group title at space 1 of the application and then give the specific titles for the alternate sizes in the "previous or alternative titles" application space. The registration records of the Copyright Office will then show that only one (1) design for the series is registered and that White River makes available that one design in various size editions.

Sincerely yours,

/s/

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