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

December 11, 2012

Brett A. Schatz, Esq.
Wood, Herron & Evans, L.L.P.
2700 Carew Tower
441 Vine St.
Cincinnati, Ohio 45202-2917

RE: FAIRFIELD CASKET
Control Number: 61-408-1886(W)

Dear Mr. Schatz:

I am writing on behalf of the Copyright Office Board of Review in response to your Second Request for Reconsideration for a casket design, entitled "Fairfield Casket." We apologize for the long delay in resolving this case and providing you with the determination of the Review Board. Nevertheless, after reviewing the application from your client, Batesville Services, Inc., the deposit, and the arguments that you presented on Applicant's behalf, the Board upholds the Examining Division's refusal to register Fairfield Casket.

I. ADMINISTRATIVE RECORD

A. Initial Application and the Office's Refusal to Register

On May 1, 2006, the Office received from your firm a Form VA application on behalf of Batesville Services, Inc. to register a work entitled "Fairfield Casket" as a three dimensional sculpture. In a letter dated May 5, 2006, Supervisory Visual Arts Examiner William R. Briganti refused registration for this work because he concluded it is a "useful article" that does not have any separable features that are copyrightable. He noted that a work "must be original, *i.e.*, find its origin or source with the author and contain a certain amount of creative authorship" in order to be regarded as copyrightable. (Letter from Briganti to Schatz of 5/5/06 at 2). He further noted that although the work contained elements that were separable, these features lacked sufficient original authorship to support a copyright registration.

B. First Request for Reconsideration

In a letter dated May 17, 2006, you requested reconsideration of the Office's refusal to register Fairfield Casket. (Letter from Schatz of 5/5/06 at 1). You noted that the requisite amount of creativity to support a copyright claim is "extremely low," and argued that the subject work meets this threshold. *Id.* You cited *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991) and *Balt. Orioles v. Major League Baseball Players Ass'n.*, 805 F.2d 663 (1986) to support your claim that a selection or arrangement of artwork may be copyrightable.

Your first request for reconsideration also claimed that the examiner failed to mention why any of the features were not sufficiently creative. Your letter in support of reconsideration identified nine elements that you maintain are entitled to copyright protection:

1. The vertical carvings in the corner elements that continue along the rounded curve at the top and the bottom;
2. The two differently sized curved circular disks that are incorporated into the corner elements;
3. The etched parabolic diamonds incorporated into the handle bar arms;
4. The inverted triangular face at the top end of each of the handle arms;
5. The scalloping of the exterior sides of the handle bar arms;
6. The design of the handle bar arm so that it is thinner at the top;
7. The design of escutcheon plates, including the scalloping on the lower edge;
8. The parallel etchings on the handle bar caps; and
9. The scrolling on the cap and shell.

Each of these elements are characterized as separate "ornate features" and as "uniquely creative" and, thus, entitled to copyright protection.

Your letter then states that, assuming *arguendo* that such elements preclude independent copyright protection, the selection made by the Applicant and the arrangement of the craftsmanship and design relative to each other merit copyright protection. The letter also highlights that other copyright registrations have been granted for other caskets and cremation urns manufactured by the same company.

In response to your first request for reconsideration, Attorney Advisor Virginia Giroux refused registration in a letter dated October 31, 2006. In reaching her determination, Ms. Giroux noted that your correspondence did not dispute the fact that the work, a casket, is a useful article. She indicated that certain elements, including the design on the surface of the cap and shell, the parabolic diamond on the handle bar arms, the parallel lines on the handle bar caps, and the vertical parallel lines on the surface of the

cylindrical corner elements, are conceptually separable whereas other features were not separable at all. She concluded that under the standard articulated in *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991), neither the conceptually separable elements nor the arrangement of these elements are sufficiently creative to support a copyright registration.

D. Second Request for Reconsideration

In a letter dated January 15, 2007, you requested the Office reconsider for a second time its refusal to register Applicant's copyright claim in Fairfield Casket. In support of this request, you attached a declaration from Ilija Rojdev, Engineering Director, New Business Development for Batesville Services, Inc. as Exhibit A.

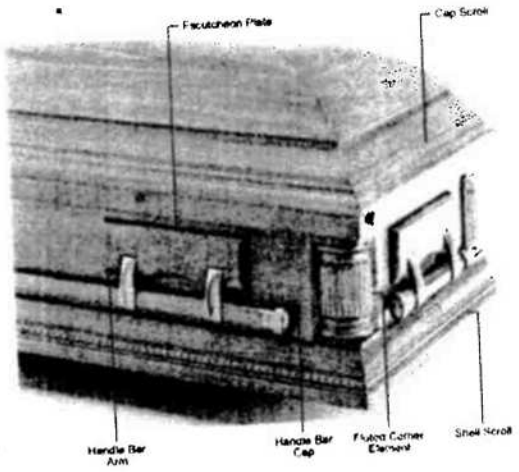
You maintain that the Copyright Office has made two errors in its refusal to register the work. First, you assert that certain exterior adornments, the escutcheon plates, handle bar caps, and handle bar arms, are in fact separable embellishments of the useful article, *i.e.*, the casket shell; rather than useful parts of the casket. You state that "a casket reflects the personality and taste of a loved one and is a final tribute to their life, and accordingly, requires optional exterior adornments, or embellishments, dictated solely by Applicant's customers' taste." (Letter from Schatz of 1/15/07 at 2). Specifically, you maintain that "these adornments . . . do not have anything to do with the structural integrity of the casket, or the casket's ability to function as a container of remains of a deceased." (Letter from Schatz of 1/15/07 at 5, citing Rojdev Declaration, ¶ 8). You also note that the test for conceptual separability has been defined as whether "the aesthetic designs are significantly influenced by functional considerations," *id.* at 9, citing *Brandir Int'l, Inc. v. Cascade Pacific Lumber Co.*, 834 F.2d 1142, 1145 (2d Cir. 1987), then observe that the handle bar caps and the escutcheon plates are adornments not influenced by functional considerations.

Second, you maintain that these same adornments do include the necessary authorship to support a copyright claim and meet the standard for creativity set by the Supreme Court in *Feist*. For example, you assert that the "the cap and shell of the casket are intricately etched with an ornate scrolling" and that "the repeated curved etchings provide a unique flowing-rope effect." You then note that "like ornate carvings on, for example, the back of a chair, Applicant's ornate etchings are copyrightable." (Letter from Schatz of 1/15/07 at 13).

II. DISCUSSION

The work at issue is the casket design, specifically, the exterior details which the Applicant describes as 3-dimensional sculptural elements consisting of the scroll work, the fluted corner elements, and design elements associated with the escutcheon plates, handle

bar caps and handle bar arms. These elements are identified below in the photograph of the work.



Fairfield Casket

A. Analysis and Decision

After reviewing the application and your arguments in favor of registering Applicant's work, the Copyright Office Board of Review upholds the Examining Division's decision to refuse registration for Fairfield Casket. The Board's analysis of Fairfield Casket and the legal basis for its conclusions are discussed below.

The analysis to determine whether a work is copyrightable consists of several steps. First, a threshold determination is made as to whether a work is a useful article or not. If it is not a useful article, the analysis proceeds immediately to the question of whether the work is sufficiently original to be copyrightable. However, if it is a useful article, the second step is to determine whether it has any elements that are separable from its utilitarian function because Congress has decreed that there is no copyright protection for any element that is not separable from the useful article.

In all such instances, the separability analysis is independent of and precedes the creativity analysis. If there are no separable elements that ends the examination; there is no further question of copyright protection. If there are separable elements, the Office examines them to determine whether they have sufficient originality (which requires both independent creation and sufficient creativity) to be copyrightable.

B. Fairfield Casket Is a Useful Article

The statute defines a useful article as having "an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." 17 U.S.C. § 101 (definition of "useful article"). The legislative history accompanying the 1976 Copyright Act clarified Congress's intent with respect to copyright protection for useful articles: "... to draw as clear a line as possible between copyrightable works of applied art and uncopyrighted works of industrial design." H.R. Rep. No. 94-1476, at 55 (1976). Based on that definition, the legislative history and evidence in the application, the Board concluded that the work, Fairfield Casket, as the name implies, is a useful article designed to serve as a casket. The Applicant does not dispute this characterization of the work. Because the work is a useful article, the Board next examined the work to determine whether it included any separable elements.

C. Separability Analysis

The Copyright Office's policies and procedures for the separability analysis are based on statutory and legislative considerations. Written guidelines for the separability analysis are found in *Compendium of Copyright Office Practices II*, Ch. 5, § 505.02 (1984) (hereinafter *Compendium II*), which states that:

> Registration of claims to copyright in three-dimensional useful articles can be considered only on the basis of separately identifiable pictorial, graphic, or sculptural features which are capable of independent existence apart from the shape of the useful article. Determination of separability may be made on either a conceptual or physical basis.

These guidelines are based on the legislative history of the Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 254, quoted below, in which Congress clarified that utilitarian aspects of useful articles are not copyrightable. Only elements that are physically or conceptually separable from the utilitarian purpose of a useful article may be copyrighted.

> [A]lthough 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 set, 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. The test of separability and independence from "the utilitarian aspects of the article" does not depend upon the nature of the design — that is, even if

> the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable. And, even if the three-dimensional design contains some such element (for example, a carving on the back of a chair or a floral relief design on silver flatware), copyright protection would extend only to that element, and would not cover the over-all configuration of the utilitarian article as such.

H.R. Rep. No. 94-1476, at 55 (1976).

In the case of physical separability, *Compendium II*, section 505.04, states:

> The physical separability test derives from the principle that a copyrightable work of sculpture which is later incorporated into a useful article retains its copyright protection . . . However, since the overall shape of a useful article is not copyrightable, the test of physical separability is not met by the mere fact that the housing of a useful article is detachable from the working parts of the article.

In the case of conceptual separability, *Compendium II*, § 505.03, states:

> Conceptual separability means that the pictorial, graphic, and sculptural features, while physically inseparable by ordinary means from the utilitarian item, are nevertheless clearly recognizable as pictorial, graphic, or sculptural work which can be visualized on paper, for example, or as free-standing sculpture, as another example, independent of the shape of the useful article, *i.e.*, the artistic features can be imagined separately and independently from the useful article without destroying the basic shape of the useful article. The artistic features and the useful article could both exist side by side and be perceived as fully realized, separate works–one an artistic work and the other a useful article.

In your legal analysis, you discussed the separability test that was applied in *Brandir Int'l, Inc. v. Cascade Pacific Lumber Co.*, 834 F.2d 1142 (2d Cir. 1987) and *Pivot Point Int'l v. Charlene Prods., Inc.*, 170 F. Supp. 2d 828 (N.D. Ill. 2001). You also discussed *Whimsicality, Inc. v. Rubie's Costumes Co., Inc.*, 721 F. Supp. 1566 (1989), noting that "unlike the adornments in *Whimsicality*, [the handle bar caps and escutcheon plates] do not affect in any manner the function of the utilitarian article." (Letter from Schatz of 1/15/07 at 9). The *Brandir* and *Pivot Point* cases rely on what is widely known as the Denicola test for

conceptual separability because it was first advocated by Professor Denicola.[1] Unfortunately, the Denicola test offers no objective standard that can be applied with consistency by the Office in its statutorily-required examination of claims to registration. The Denicola separability test essentially relies on the exercise of subjective judgment and such judgment would likely lead to arbitrary decision-making. Because of the possible problems which the Denicola test may engender, premised as it is, at least partly, on subjective perception and on the personal intention of the creator of the work in question, and because such a test might result in registration of works in conflict with the expressed Congressional intent to deny copyright protection to the design of useful articles which happen to be aesthetically pleasing, the Copyright Office has not adopted this particular alternative separability test.

The test applied by the Office must be one consistent with the expressed intention of Congress as it was set forth in the substantial legislative history that accompanied the 1976 major revision of the copyright law. Thus, we return to the Office's separability tests. Section 505 of *Compendium II, supra* at 6, is a direct successor to the Copyright Office regulation that was affirmed in *Esquire, Inc. v. Ringer*, 591 F.2d. 796 (D.C. Cir. 1978).[2] *Esquire* enunciated the rule that is the basis for the Office's analysis of whether a pictorial, graphic, or sculptural work may be considered separable from the utilitarian object in which it is incorporated. Relying on explicit statements in legislative history, the *Esquire* court found that the Office's regulation was an authoritative construction of the copyright law. *Id.* at 802-803. *Esquire* and later cases held that, despite an aesthetically pleasing, novel or

---

[1] The Second Circuit in *Brandir Int'l, Inc. v. Cascade Pacific Lumber Co.*, 834 F. 2d 1142 (2d Cir. 1987), adopted Professor Denicola's test for determining conceptual separability. That test considers whether or not a given feature or aspect of a useful article "reflects a merger of aesthetic and functional considerations;" if so, the artistic features of the useful article cannot be said to be conceptually separable; if not, conceptual separability may exist. *Id.* at 1145. Professor Denicola's test encompasses a consideration of the design process involved in the useful article in question as well as the artistic choices of the creator of the article and whether the artistic aspects of the article were significantly influenced by the functionality requirements. 67 Minn. L. Rev. 707 (1983). Professor Denicola argued that "the statutory directive requires a distinction between works of industrial design and works whose origins lie outside the design process, despite the utilitarian environment in which they appear." *Id.* at 742. He advocates that copyrightability "ultimately should depend on the extent to which the work reflects artistic expression uninhibited by any functional considerations." *Id.*

[2] In footnote 1 of your letter dated January 15, 2007 seeking a second reconsideration, you suggested that *Esquire*, decided in 1978, is not relevant because an earlier statute that was applicable in that case was superseded by the 1976 revision of copyright law. However, the *Esquire* Court explicitly recognized that Congress codified, and thereby adopted, the Copyright Office's regulatory interpretation in 1976 by incorporating it into the 1976 revision. *Esquire*, at 803-804. You also argued that Fairfield Casket is not analogous to the lighting fixtures at issue in *Esquire*. The Board is relying on *Esquire* here solely for its commentary on separability, not because Fairfield Casket is analogous to the lighting fixtures. However, in both cases, the separability analysis is the same.

unique shape, the overall design or configuration of a utilitarian object may not be copyrighted if it is not "capable of existing as a work of art independent of the utilitarian article into which [it is] incorporated." *Id.* at 803-804. In *Esquire*, the court held that the Copyright Office properly refused registration for a useful article, in that case a light fixture, notwithstanding how aesthetically pleasing the useful article's shape or configuration may have been. *Id.* at 800. As noted above, the legislative history states that:

> The test of separability and independence from "the utilitarian aspects of the article" does not depend upon the nature of the design--that is, even if the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable.

H.R. Rep. No. 94-1476, at 55 (1976).

Based on the foregoing considerations, the Board has determined that there are no physically separable elements. However, the scroll patterns on the cap and shell, the parabolic diamond shapes on the handle bar arms, the parallel oval etchings on the handle bar caps, the carved pillar shapes in the corners, and the escutcheon plates are conceptually separable. These elements may be imagined separately from the functional object without destroying the overall shape.

The remaining elements identified in the first and second letters of reconsideration are not separable: the inverted triangular face at the top end of each of the handle arms; the scalloping of the exterior sides of the handle bar arms; and the design of the handle bar arm so that it is thinner at the top. Moreover, the Board has determined that the handle bar arms are useful articles. The handle bar arms are not merely decorative. They are essential items by which handles are added to the casket for the purpose of allowing easy carriage of the casket by the pallbearers. In each of these instances, the noted design elements are an integral part of the handle bar arm and cannot be separated from the functional element without adversely affecting its functionality. *See, e.g. Esquire, Inc. v. Ringer*, 591 F.2d 796, 804 (D.C. Cir. 1978). In *Esquire v. Ringer*, referring to the useful article passage from the 1976 House Report, *supra*, the United States Court of Appeals for the District of Columbia Circuit stated that the passage "indicate[s] unequivocally 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." Although *Esquire* was decided under the 1909 Act, the Court made clear that its references to the provisions of the 1976 Act were appropriate because "the new Act was designed in part to codify and clarify many of the [Copyright Office] regulations promulgated under the 1909 Act, including those governing 'works of art.'" *Id.* at 803.

D. Originality Analysis

Having identified separable elements, the Board next did an analysis to determine whether the identified elements are sufficiently creative to be copyrightable. The statute mandates that copyright protection is only available for "original works of authorship." 17 U.S.C. § 102(a). The Supreme Court has ruled that originality consists of two elements, "independent creation plus a modicum of creativity." *Feist Publ'n, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 346 (1991). *See also Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102 (2d Cir. 1951) ("'Original' in reference to a copyrighted work means that the particular work 'owes its origin' to the 'author.' No large measure of novelty is necessary."); *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884) (court defined "author" to mean the originator or original maker and described copyright as being limited to the creative or "intellectual conceptions of the author").

The Review Board accepts that Fairfield Casket satisfies the independent creation prong of originality. However, although the level of creativity required by law is very modest, as discussed below, the level of creativity in the separable elements of the casket design is not sufficient to satisfy the second prong.

As you stated, a low level of creativity is required, and there is no dispute over this assertion. In *Feist*, the Supreme Court's holding that a very minimal level is necessary to satisfy the creativity aspect of "original" was consistent with previous jurisprudence. Any "distinguishable variation" of a work constitutes sufficient originality as long as it is the product of an author's independent efforts, and is "more than a 'merely trivial' variation." *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 250 (1903) ("... a very modest grade of art has in it something irreducible, which is one man's alone.").

At the same time that the Supreme Court reaffirmed in *Feist* the precedent that only a modicum of originality is required for a work to be copyrightable, it also emphasized that there are works in which the "creative spark is utterly lacking or so trivial as to be virtually nonexistent." *Feist* at 359. Such works are incapable of sustaining copyright protection. *Id.*, citing 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, § 2.01[B] (2002). The Court observed that "[as 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, and that 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. A work that reflects an obvious arrangement fails to meet the low standard of minimum creativity required for copyrightability. *Id.* at 362-363. An example would be alphabetical listings in white pages of telephone directories, the type of work at issue in *Feist*, which the Supreme Court characterized as "garden variety . . . devoid of even the slightest trace of creativity." *Id.* at 362.

1. Office registration practices

Copyright Office registration practices have long recognized that some works of authorship exhibit only a *de minimis* amount of authorship and, thus, are not copyrightable. *See Compendium II,* § 202.02(a) (1984). With respect to pictorial, graphic, and sculptural works, which are Class VA [visual arts] works, § 503.02(a) of *Compendium II* states that a "certain minimal amount of original creative authorship is essential for registration in Class VA or in any other class." Further, there is no protection for familiar symbols, designs, or shapes such as standard geometric shapes. 37 C.F.R. § 202.1 (2006). *Compendium II* essentially provides detailed instructions for Copyright Office registration procedures and reflects the principle that creative expression is the basis for determining whether a work is copyrightable, not an assessment of aesthetic merit. Section 503.02(a) of *Compendium II* states that:

> 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 such as chevron stripes, the attractiveness of a conventional fleur-de-lis design, or the religious significance of a plain, ordinary cross. Similarly, it is not possible to copyright common geometric figures or shapes such as the hexagon or the ellipse, a standard symbol such as an arrow or a five-pointed star. Likewise, mere coloration cannot support a copyright even though it may enhance the aesthetic appeal or commercial value of a work. . . 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.

Section 503.02(a) reflects one of the most fundamental principles of copyright law: common ordinary shapes and designs, and minor variations of those, may not be copyrighted because that could limit their availability to the general populace. Basic, common and ordinary shapes, designs, and symbols are in the public domain for use by all since they form the building blocks for creative works.

2. Separable elements of Fairfield Casket have *de minimis* creativity.

However, the Review Board finds that the level of creativity in the separable elements of Fairfield Casket is *de minimis*. Considering each ornamental feature individually, the Board finds that the appearance of the elements is ordinary and customary. Each element consists of a pattern, shape, or arrangement that is in the public domain. Each is used in a predictable and customary way exhibiting at best *de minimis* creativity. Each is a garden variety use of a common, ordinary shape or pattern. For example, the carved pillars

in the corners of the casket exhibit symmetrical vertical etchings with two rounded elements at the top and bottom of the pillar, not unlike architectural columns. Moreover, all surfaces of these elements are smooth and unadorned. Similarly, the scroll patterns on the cap and shell consist of a string of repetitive, identical, rounded generic bead-like shapes, that are bordered above and below by a line design. Likewise, the parallel oval etchings on the handle bar caps merely echo the shape of the cap which itself is defined by the handle. Finally, the Board sees no creativity in the etched parabolic, symmetric diamond shapes on the handle bar arms or in the rectangular escutcheon plates even with the small, centered oval cutout in the bottom side. The slight variations noted in these elements fail to exhibit that spark of creativity needed to support a copyright claim. Even considering the elements in combination, there is not sufficient authorship that is more than *de minimis* because the selection, coordination or arrangement is obvious and typical. There is substantial support in case law for the Board's conclusion that a few basic shapes or a simple arrangement of a few basic shapes are not copyrightable.

In support of your assertions that Fairfield Casket has sufficient creativity to be copyrightable, you cite *Soptra Fabrics Corp. v. Stafford Knitting Mills, Inc.*, 490 F.2d 1092, 1094 (2d Cir. 1974), *Tenn. Fabricating Co. v. Moultrie Mfg. Co.*, 421 F.2d 279, 282 (5th Cir. 1970), *cert. denied*, 398 U.S. 928 (1970), *Concord Fabrics, Inc. v. Marcus Bros. Textile Corp.*, 409 F.2d 1315, 1316 (2d Cir. 1969) and *In Design v. Lynch Knitting Mills, Inc.*, 689 F. Supp. 176- 178-79 (S.D.N.Y. 1988), *aff'd*, 863 F.2d 45 (2d Cir. 1988). As Ms. Giroux stated in her letter dated October 31, 2006, at 4, the works at issue in those cases involved more than a trivial variation of common shapes or objects.

The Board finds that the level of creativity in Fairfield Casket is analogous to the low level of creativity in the works at issue in *Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q.2d 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 U.S.P.Q.2d 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); and in *John Muller & Co. v. N.Y Arrows Soccer Team, Inc.*, 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 Mktg., Inc. v. Mailing Servs. 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*, 103 U.S. App. D.C. 331, 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.

The conceptually separable elements are too simple and their arrangement too predictable to rise to the level of copyrightable authorship. Like the alphabetical arrangement in *Feist,* the arrangement of the design elements in simple and obvious manners falls within the category of simple, minimal authorship which *Feist* referred to as "entirely typical"or "garden variety" authorship. The Board is unable to recognize in any contribution that is "more than merely trivial."

E. Comparison to Registered Works and Aesthetic Value

You sought to demonstrate that Fairfield Casket should be registered by comparing it to other works, including comparing it to another work that the Office previously registered. In its analysis to determine whether there is sufficient creativity for copyright protection, the Copyright Office does not compare works as part of its copyrightability analysis. *See*, § 108.03, *Compendium II*. Rather, the analysis for copyright protection involves considering the merits of each work, by itself, without comparison to other works.

The Office does not evaluate the aesthetic qualities of a work. An applicant's work may be highly valued for its aesthetic appeal and, yet, not be copyrightable. Rather, as has been already emphasized, copyright law requires evidence of more than a *de minimis* quantum of authorship. Such authorship may consist of a selection, coordination, and arrangement of preexisting elements or features that are in the public domain.

IV. CONCLUSION

For the reasons stated herein, the Copyright Office Review Board affirms the refusal to register the work entitled "Fairfield Casket." This decision constitutes final agency action on this matter.

Sincerely,

Tanya Sandros,
Deputy General Counsel
for the Review Board
United States Copyright Office