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September 19, 2012

Via US First Class Mail and Fax

Louis Ederer, Esq.
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399 Park Avenue
New York, NY 10022-4690

Re: "Albion Collection 2003"
"Black and White Albion 2003"
"Buckle Collection 2003"
"Cage Collection 2003"
"Carved Cable Collection 2003"
"Cigar Band Collection 2003"
"Men's Titanium Collection 2003"
"Wide Chain Collection 2003"
Control No. 61-307-8660(Y)

Dear Mr. Ederer:

I am writing on behalf of the Copyright Office ("Office") Review Board in response to your second request for reconsideration, dated April 8, 2005. We apologize for the lengthy delay in responding. After reviewing the application from Yurman Studios, Inc. and the arguments you presented on Yurman's behalf, the Board has decided to register three of the collections: Carved Cable Collection 2003, Men's Titanium Collection 2003, and Wide Chain Collection 2003. However, it affirms the Examining Division's refusal to register five of the jewelry collections: Albion Collection 2003, Black and White Albion 2003, Buckle Collection 2003, Cage Collection 2003, and Cigar Band Collection 2003. Each of these five collections lacks sufficient creativity to be copyrightable.

I. ADMINISTRATIVE RECORD

On November 6, 2003, the Copyright Office received individual applications from Yurman Studios, Inc. for each of the following eight jewelry collections:[1]

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[1] For clarification, a total of 25 jewelry collections were received on November 6, 2003. On February 20, 2004, all 25 were initially refused registration. You submitted a first request for reconsideration for 18 of those 25 collections. You also requested that certain individual pieces of jewelry be excluded from particular collections. In response to that request, eight of the collections were registered, leaving 10 that were again refused registration. Yurman Studios is now requesting a second reconsideration for eight of those. The jewelry collections that are not before the Board for this second reconsideration are not included in this review of the administrative record.

Also, there was a 26th application for "Cable Kids Collections 2003," also received November 6, 2003, for which the paperwork was processed separately from the others. A different examiner reviewed that application and registered it as VA 1-271-017. Yurman had included Cable Kids Collection 2003 as part of its first request for reconsideration, but withdrew it after being notified that it was registered.

Albion Collection 2003
Black and White Albion 2003
Buckle Collection 2003
Cage Collection 2003
Carved Cable Collection 2003
Cigar Band Collection 2003
Men's Titanium Collection 2003 and
Wide Chain Collection 2003.

In a letter dated February 20, 2004, Visual Arts Examiner, John M. Martin denied registration for these jewelry collections on the basis that they lack sufficient creative authorship to be copyrightable.

In a letter dated June 21, 2004, you requested that the Copyright Office reconsider its refusal to register Yurman's jewelry design collections. You requested that, for Albion Collection 2003, the piece of jewelry identified as "R06907C" be excluded from consideration. For Buckle Collection 2003, you asked to exclude two pieces, "R06823" and "R06823D." Letter from L. Ederer to J. Martin of 6/21/09 at 2.

In support of your argument that the collections have sufficient creative authorship to be copyrightable, you submitted a statement from Janet Hayward, formerly a corporate officer and currently a consultant for Yurman, who described the creative process and designs of the jewelry (the "Hayward 2004 Declaration"). You also submitted over seventy copyright registrations owned by Yurman Studios that you allege are thematically similar and have a comparable level of creativity to the jewelry in the collections that were refused registration on February 20, 2004.

Citing widely recognized court opinions in support of your arguments, you reviewed general principles for copyrightability that courts have applied to jewelry, noting that a very low level of creativity is required, that works should be considered in their entirety, that courts have applied these principles to jewelry designs upholding their copyrightability and that combinations of common elements in jewelry may be sufficiently creative to be copyrightable. You broadly stated that the Yurman jewelry collections satisfy those requirements. You stated that, "in each and every design, numerous artistic choices have been made, and the components have been designed, selected and arranged in a unique and original way." Letter from L. Ederer to J. Martin of 6/21/04 at 3 and 4. You reviewed the array of different kinds of design decisions and considerations that generally are part of Yurman's process. You argued that thematic similarities between Yurman's previous registrations and those currently pending favors registration for the pending works.

In a letter dated August 13, 2004, you notified the Office that one of the individual pieces of jewelry Albion Collection 2003, entitled "Small Earrings - 14 mm E06644," had been registered by itself, as VA 1-254-144.[2] You requested that it be withdrawn from consideration as

[2] Since the first date of publication for VA 1-254-144 is shown on its individual application as August 5, 2002, it should not have been included with the works in the application for Albion Collection 2003 which shows a

part of that collection. You also notified the Office of a second registration that had been issued for a work, entitled "Cabled Oval Locket - D06662." It is registered as VA 1-254-153. Contrasting those two registrations with the refusals at issue here, you argued that the Office applies its standards in an inconsistent manner. You pointed out that, whereas the small earrings application was approved as being sufficiently creative, as an individual work, the Albion Collection 2003 of which it was a part, was refused registration. You also identified other individual pieces of jewelry in the collections as being thematically similar to the two that were registered but which were refused registration.

In a letter dated October 5, 2004, you notified the Office that the application for a jewelry collection that was submitted at the same time as the, "Cable Kids Collection 2003," was separately registered after the initial examination, whereas all 25 of the other collections were refused registration.[3] Again, you argued that the Office is not consistent in its application of the standards for copyright protection because the other 25 collections are as worthy of registration as Cable Kids Collection 2003.

In response, Attorney Advisor, Virginia Giroux, in a letter dated December 9, 2004, again refused to register the eight jewelry collections under review here due to their lack of sufficient creativity to be copyrightable. She agreed with you that a very low level of creativity is required for copyrightability. However, she found the works in the compilation have only *de minimis* authorship. Accepting the principle in Atari Games Corp. v. Oman, 979 F.2d 242 (D.C. Cir. 1992), that a work should be viewed in its entirety, Ms. Giroux stated that the works were not copyrightable under that standard. She distinguished the works at issue here with those in the cases you cited, Weindling Int'l Corp. v. Kobi Katz, Inc., 56 U.S.P.Q.2d 1763 (S.D.N.Y. 2000) and Yurman Design, Inc. v. Paj, Inc., 262 F.3d 101 (2d Cir. 2001), finding Yurman's collections lacking in sufficient creativity.

Ms. Giroux stated that unique or distinct visual expressions are not relevant considerations for copyright protection. She also stated that, although Yurman's previously registered works had sufficient creativity to be copyrightable, none of the works being reviewed here have sufficient creativity.

Finally, in response to your letter dated August 13, 2004, Ms. Giroux notified you that the Office had determined that the two registrations that were the subject of that letter would be cancelled because they also do not have sufficient creativity to be copyrightable.[4]

You submitted a second request for reconsideration, dated April 8, 2005. You also submitted a second declaration from Janet Hayward (the "Hayward 2005 Declaration"). You

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first date of publication of June 2003. In order for individual works to be registered as a collection, they must all have the same first date of publication.

[3] See second paragraph of footnote 1, *supra*.

[4] Subsequently, you submitted a letter, dated January 10, 2005, challenging the decision to cancel those two registrations, Cabled Oval Locket-DO 6662, registered as VA 1-254-153, and Small Earrings-14mm EO 6644, registered as VA 1-254-144. In a letter dated January 18, 2005, the Copyright Office notified you of its decision not to cancel those registrations.

again identified a few individual pieces of jewelry that you asked to have excluded from the collections.[5] Letter from L. Ederer to Copyright Receiving & Processing Division of 4/8/05, at 2 n. 2.

In addition to making arguments similar to those that you made before, you stated that under the relatedness requirement of 17 U.S.C. § 408(c) the individual works in each collection are entitled to be registered as a collection. You objected to Ms. Giroux's statement that not one of the works in these eight collections is copyrightable. You distinguished the works in each of the cases Ms. Giroux cited in support of the Copyright Office's analysis for creativity from the works at issue here, stating that the design choices for the works in these collections combine non-copyrightable elements in a sufficiently creative manner to be copyrightable. You also identified copyrightable elements in individual pieces within the collections.

II. DECISION

After reviewing the applications and your arguments, the Copyright Office Review Board has concluded that the following collections will be registered: Carved Cable Collection 2003, Men's Titanium Collection 2003, and Wide Chain Collection 2003. However, the Board affirms the Examining Division's refusal to register Albion Collection 2003, Black and White Albion 2003, Buckle Collection 2003, Cage Collection 2003, and Cigar Band Collection 2003. These five collections have only *de minimis* authorship which is not a sufficient basis for copyright registration. In addition to the rationale offered by Ms. Giroux in her letter of refusal, the Board provides the following explanation of its considerations. The remainder of this decision addresses only the works which the Board agrees are ineligible for registration.

Copyright law provides that protection is only available for "original works of authorship." 17 U.S.C. §102. The Supreme Court has interpreted original as including two elements, "independent creation plus a modicum of creativity." Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 346 (1991). The Board accepts that Yurman's jewelry collections satisfy the first prong of the originality requirement for independent creation. It determined, however, that the collections lack sufficient creativity to satisfy the second prong. The individual works in the collections, considering the elements of each individually or as a whole, are simple, minor variations on common shapes or symbols. Each one consists of a few geometric shapes that are arranged in an obvious manner.

In making its determination, the Board adheres to the standard set forth in Feist, where the Supreme Court held that only a modicum of creativity is necessary to support a copyright. However, the Court also ruled that some works (such as the work at issue in Feist) fail to meet the standard. 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,"

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[5] You identified two pieces of jewelry that should be excluded from the collections because they are already covered by registrations. One of them is item number E06644 in the Albion Collection 2003. The registration number is VA-1-125-144. You had already made this registration known in an earlier letter, dated August 13, 2004. See discussion *supra*. The second piece of jewelry that should be excluded is item number B06755D in the Buckle Collection 2003. It is included under registration number VAu 405-161.

499 U.S. at 363, and that there can be no copyright in work in which "the creative spark is utterly lacking or so trivial as to be virtually nonexistent." Id. at 359.

The Compendium of Copyright Office Practices, Compendium II (1984)("Compendium II") has long recognized this principle, stating that "[w]orks that lack even a certain minimum amount of original authorship are not copyrightable. Such works are often described as '*de minimis*,' in reference to the principle embodied in the Latin maxim '*de minimis non curat lex*.'" Compendium II, § 202.02 (a)(1984). With respect to pictorial, graphic, and sculptural works, the class within which these jewelry collections belong, *see* 17 U.S.C. § 102(a)(5), Compendium II states that a "certain minimal amount of original creative authorship is essential for registration in Class VA or in any other class." Compendium II, § 503.02(a) (1984). The Compendium recognizes that it is not aesthetic merit, but the presence of creative expression that determines the copyrightability of a work, and that "registration cannot be based upon standard designs which lack originality, ...Similarly, it is not possible to copyright common geometric figures or shapes in three-dimensional form, such as the cone, cube or sphere . . . [t]he 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." Id. at § 503.02(b). *See also* Compendium II, § 503.02(a) (1984) and 37 C.F.R. § 202.1(a) ("familiar symbols or designs" are "not subject to copyright and applications for registration of such works cannot be entertained.").

The case law confirms these principles. *See* Forstmann Woolen Co. v. J.W. Mays, Inc., 89 F. Supp. 964 (E.D.N.Y. 1950)(reproduction of standard *fleur-de-lis* could not support a copyright claim without original authorship); Bailie v. Fisher, 258 F.2d 425 (D.C. Cir. 1958)(cardboard star with two folding flaps allowing star to stand for retail display not copyrightable work of art); Magic Marketing, Inc. v. Mailing Serv. of Pittsburgh, 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 protection); and 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 of geometric designs due to insufficient creative authorship to support copyright registration).

These principles regarding copyrightability are consistent with those you outlined in your requests for reconsideration. The Review Board agrees that public domain elements and/or commonly known shapes can be combined to create copyrightable works as long as such use constitutes more than a trivial variation of such elements. Alfred Bell & Co. v. Catalda Fine Arts,191 F.2d 99, 103 (2d Cir. 1951); *see* Compendium II, § 503.02(b). The Board accepts, as you argued, that Yurman's jewelry designs in each of the applications that was submitted for registration may be registered as collections if the designs meet the requirements for copyrightability. However, after examining each piece in each collection, The Review Board did not find sufficient creativity in five of the collections.

A. Albion Collection 2003

Albion Collection 2003 contains 32 pieces of jewelry including rings, pendants, earrings, cufflinks and bracelets. You requested that "E06644" and "R06907C" be excluded from the

collection. Each piece of jewelry prominently features at least one cushion-shaped stone framed by a thin metal border.

The rings have either a border of twisted cable around the bezel or a split shank that divides the cable design. For four of the rings, instead of having a framed cushion-shaped stone prominently featured, the oblong gemstones have metal on only the two long sides of the oblong shape. The gemstones, their borders and the twisted cable design are the only elements in each ring.

In addition to the framed, cushion-shaped stone, each pendant features a stationary bale for hanging on a chain. Each bale has either a ridged or cabled design element on it. A few of the pendants also have either a single spherical or a single triangular gemstone protruding from the bottom of the primary, framed cushion-shaped stone. Each pendant has one or two framed gemstones and a decorative bale.

The earrings are similar to the pendants, except that they do not have bales, so there is one less element. The cufflinks' elements are similar to the earrings, except they have a link to hold the two cushion-shaped stones with their borders together.

All the bracelets have one or two framed, cushion-shaped stones attached to two cabled bands that are bonded together. There are two styles of bracelet. One style is open with no clasp. The other kind has a clasp and two metal strips border on either side of the framed, cushion-shaped stone, attached to the double cabled bands.

Each piece of jewelry is made up of only a very few elements. While the result may or may not be novel or unique, each one is a combination of a few common shapes and symbols. Regardless of how much artistic consideration there may have been in determining whether to use a circular, oblong, square or triangular shape in each piece, the Copyright Office must evaluate the final work, not the possible choices and considerations. The elements in these works are minor variations on common shapes. The few elements present in each one have been arranged in a familiar way depending on the type of jewelry involved. The level of creativity is *de minimis* which is not sufficient to be copyrightable.

B. Black and White Albion Collection 2003

There are six pieces of jewelry in Black and White Albion Collection 2003, which includes pendants, rings and earrings. The pieces all consists of a framed, cushion-shaped central square made of pavé diamonds. The two pendants have bales with a simple ridged design on them. Again, the few elements of a framed central square, even with a bale attached, is a simple combination of familiar shapes. None of the works has sufficient creativity to be copyrightable.

C. Buckle Collection 2003

There are seven pieces of jewelry in Buckle Collection 2003, which consists of bracelets and necklaces. You requested that "B06755D," "R06823," and "R06823D" be excluded from this collection. Each of the remaining bracelets and necklaces is made up of either a string of pearls, a twisted cable design, or metal links. The only additional element in each is a decorative

clasp. For the necklaces made of metal links, the clasp is a repeating motif. Again, each piece of jewelry consists of only a few elements. Either a string of pearls and a clasp, a twisted cable design and a clasp, or the metal links and repeating clasp. For all the clasps, there is minor beveling where the clasp is attached to the necklace or bracelet. Each clasp is made up of a hook that encircles a horse shoe shape. There are only two elements for each bracelet or necklace: a strand of pearls, chain or twisted cable and a clasp. The clasp design is a commonly used buckle element. A few of the pieces have one or two more minor or trivial variations, such as little balls to create a hinged appearance on the buckle clasp. Merely repeating one or two elements in a design, without more -- as in this case -- is at most a minor variation. None of these works is sufficiently creative to be copyrightable.

D. Cage Collection 2003

Cage Collection 2003 has five pieces of jewelry that are all necklaces or bracelets. There are three different designs. Two of the designs have identical matching necklaces and bracelets. All three designs are similarly constructed to create a lattice made out of twisted cable that is placed horizontally and vertically so that it is reminiscent of bars for a cage. At the intersections of the vertical and horizontal twisted cables, there is a decorative effect shaped like four leaf clover. In one of the designs, there is a repeating pattern that fills in some of the empty spaces between the twisted cable with pavé diamonds. Each piece has the same basic elements. Each consists of three rows of open squares created by the twisted cable with a decorative element repeated at each intersection. Each is a repetition of square shapes. For two of the designs, the squares element varies in size. For one, each row of squares is slightly smaller than the previous one. In another design, the outside squares are the same size with the inner row being smaller. Pavé diamonds are used to fill in some of the squares of that design. On one of the designs you can see a small circular shape that appears to be the clasp. Considering the pieces individually, each is a simple combination of a few common shapes with minor variations. This *de minimis* level of creativity is not copyrightable.

E. Cigar Band Collection 2003

Cigar Band Collection 2003 has four pieces of jewelry that are either bracelets or earrings. The three bracelets are made of broad metal bands. Each has a diagonal "S" shape that goes from one edge to the other and repeats as a solid pattern around the entire bracelet. Each bracelet also has a simple rim on both edges that finishes the work. For one piece, the rim is made of tiny diamonds. The design is similar to a cigar band. One of the bracelets has a large cushion-shaped gemstone placed on top of the repeating diagonal pattern. The earring design is a smaller and shortened version of the repeating diagonal pattern on a band of metal. Again, in each of these, only a few common shapes can be identified that are arranged in predictable manner for the kind of jewelry involved. To arrange a repeating pattern around a circular form with two thin lines on each edge to form a bracelet is a minor variation on common shapes. Adding a single element, such as a gemstone or placing gemstones around the edge, is a minor or trivial variation.

Thus, the jewelry designs consist of simple variations of standard designs that are obvious, symmetrical arrangements, which while they may be aesthetically pleasing and commercially successful, do not contain the minimal amount of creative authorship to support a copyright registration. As Ms. Giroux pointed out, the courts have consistently upheld the Office's refusal to register such works. John Muller & Co., Inc. v. N.Y. Arrows Soccer Team,

802 F.2d 989 (8th Cir. 1986)(logo consisting of four angled lines forming an arrow, with the word "Arrows" in cursive script below, found not copyrightable); Jon Woods Fashions, Inc. v. Curran, 8 U.S.P.Q.2d 1870 (S.D.N.Y. 1988)(upholding Copyright Office's refusal to register design consisting of striped cloth over which was superimposed a grid of 3/16 inch squares). The Review Board is not persuaded by your argument that those cases are distinguishable from the case at hand. You argue that unlike the familiar symbols and extremely simplistic fabric design in John Muller and Jon Woods, the jewelry designs here involve more creativity and artistic expression. However, each design here is comprised of familiar shapes with minor variations combined in routine and symmetrical ways. The Review Board concludes that use of such familiar shapes and routine combinations does not constitute sufficient original artistic authorship to support a copyright registration.

You provided copies of Yurman's jewelry designs that were previously registered for the Board to compare with the works at issue here, arguing that thematic similarities between them favored registration for the jewelry collections under review. You also submitted additional information regarding other works that have been registered that you argue demonstrates that the Copyright Office is inconsistent in its examining practices. As you acknowledged, the Office does not compare designs in the course of examining works for registration. Compendium II, § 108.03. The district court, in an action brought under the Administrative Procedure Act in Homer Laughlin China Co. v. Oman, 22 U.S.P.Q.2d 1074, 1076 (D.D.C. 1991), pointed to § 108.03 in Compendium II and further stated that the court was "not aware of any authority which provides that the Register must compare works when determining whether a submission is copyrightable." Each work submitted for registration is evaluated on its own merits, with the Office's applying the relevant statutory and regulatory guidelines as well as its examining practices set forth in Compendium II. The fact that an individual examiner might have – perhaps erroneously – accepted for registration a work that arguably is not more creative than one of the works at issue here does not require the registration of the latter work when the Board finds it has *de minimis* authorship. The judgment of an individual examiner with respect to a particular registration cannot be categorized as administrative *stare decisis* for purposes of the Review Board's consideration of subsequent works. Therefore, the previously registered designs are not relevant to the Board's determination on the copyrightability of Yurman's jewelry collections. Indeed, if the Board were to engage in a comparison of the previously registered works with the works before the Board, the result might well be a decision to cancel the registrations of the previously registered works.

You offered rebuttal to the cases cited by Ms. Giroux such as John Muller & Co., Inc. v. N.Y. Arrows Soccer Team, supra, Jon Woods Fashions, Inc. v. Curran, supra, Forstmann Woolen Co. v. J.W. Mays Inc., *supra*, and Homer Laughlin China Co. v. Oman, supra, arguing that they are not relevant or that Yurman's works have a greater level of creativity. Each of these cases is relevant because they represent judicial approval of the Office's examination practices that were applied in those cases as well as here. Each involves a combination and arrangement of elements found by the court to be simple variations of standard designs and simple arrangements which did not contain sufficient creative and original authorship to be copyrightable.

You also argued that Ms. Giroux's citation to DBC of New York, Inc. v. Merit Diamond Corp., 768 F.2d 414 (S.D.N.Y. 1991), is inapposite to the case at hand. In DBC, the court held

that evidence put forward by plaintiff DBC was insufficient to overcome the determination of non-copyrightability by the Copyright Office for the two Marquise-Trillion rings in question in that case. The DBC court examined in detail the individual elements of the rings which made up their designs and found that the "two rings, on the whole, [are] not exceptional, *original*, or unique." Id. at 416 (emphasis added). In so holding, the court recognized that familiar and common shapes and symbols are not copyrightable in themselves, citing 37 C.F.R. § 202.1; the court further refused to recognize protection for the rings each in its entirety ("[F]urthermore, DBC's gestalt theory that the whole is greater than the sum of its parts is rejected..."). Id.

Although the DBC court arrived at the same conclusion of non-copyrightability concerning the two rings as had the Office in its registration consideration, the court's reasoning also included references to the rings as utilitarian articles. The concept of useful articles and the need for the presence of separable authorship in order to assert copyright in such useful articles (17 U.S.C. § 101, definition of "pictorial, graphic and sculptural works") was not part of the Office's determination in its refusal to register the DBC rings. However, the difference in analysis does not vitiate the fact that both the DBC court and the Office concluded that the rings were not copyrightable because the composition of the jewelry pieces consisted of familiar or commonplace shapes and designs which alone and in combination lacked the necessary amount of original authorship and, thus, did not support a copyright -- this being the sole reasoning of the Office in its refusals to register and being, at least, a key part of the reasoning of the DBC court in refusing protection to the rings. Since the issue in this case now before the Review Board is whether the jewelry designs contain sufficient originality, which the Board has determined they do not, we agree with Ms. Giroux's reasoning. DBC is a relevant case because of the detailed description of the composition of the jewelry in that case and the court's conclusion that the jewelry design lacked sufficient originality.

You have also asserted that Weindling Int'l Corp. v. Kobi Katz, Inc., *supra*, in which the court upheld the Office's registration of a diamond bridge ring, is a more relevant case for the Board to consider. In upholding the Office's decision, the court looked at several factors including the design options available to the designer; whether the designer's choices were dictated by function alone or also by design considerations; and whether the overall combination of components had an "overall distinctive 'feel'" and concluded that the diamond bridge ring contained a sufficient amount of originality in the "unique combination and arrangement of otherwise uncopyrightable elements." Id. at 1764-1766.

You argue that application of these factors to the designs at hand would result in a finding, that like the ring in Weindling, the jewelry collections here meet the minimum threshold of creativity and deserve copyright protection. While Weindling certainly found the element of choice to be relevant to the issue of copyrightability, it did not simply hold that when an author has a number of choices, the author's selection of one of those choices *ipso facto* meets the copyright law's requirement of creativity. In fact, the court found that the choices made by the defendant Kobi Katz resulted in a jewelry design that, in a number of enumerated respects, was creative.

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 Board finds that the jewelry designs here, upon examination of their elements individually and as a whole, do not contain a sufficient amount of original and creative authorship to sustain a copyright claim. The fact that an author had many choices available does not necessarily mean that the one the author selected meets even the modest creativity requirement of the copyright law.

We agree that an original combination of elements, each of which individually is unoriginal, may be copyrightable if that combination meets the minimal standards of creativity. However, we do not find any creativity in the particular combinations of elements presented here. Cf. Compendium II, § 503.02(a) ("simple combination of a few standard symbols such as a circle, a star, and a triangle, with minor linear or spatial variations" not copyrightable); § 503.02(b)("mere bringing together of two or three standard forms or shapes with minor linear or spatial variations" not copyrightable).

Moreover, while we recognize that some courts speak of copyrightability in terms such as the "look and feel" of a work, we can ascertain no standard by which the Office can be expected to judge originality and creativity based upon a work's "feel." *See* 4 M. & D. Nimmer, Nimmer on Copyright §13.03[A][1][c] (criticizing the use of "feel" as an "amorphous referent" that "invites an abdication of judicial analysis"). Invoking a work's "feel" is no substitute for articulating an objective analysis of the work's original and creative elements. Indeed, Weindling did not simply accept the proposition that the work in question was copyrightable on that basis. The court referred to the "overall distinctive feel" in its characterization of the defendant's argument in support of copyrightability. 56 U.S.P.Q.2d at 1765. However, ultimately the court, like the Review Board here, considered the individual elements of the jewelry design as part of its analysis of copyrightability. Id. at 1765-77.

Finally, it seems that by arguing that the jewelry designs at issue have a distinctive look that is unique to Yurman, you are asserting that Yurman's designs share a unique, distinctive look that distinguishes them from the designs of other jewelry. If that is your argument, it is self-defeating. While it may be that the first time Yurman incorporated this unique or distinctive look into a jewelry design, it demonstrated copyrightable authorship (assuming that one could describe just what that consists of and ascertain whether it is, in fact, original), its subsequent use in other jewelry designs would be incontestably *unoriginal*. The Office's examining practices with respect to different versions of a work specifically state that registration for different versions of a work, *i.e.*, for multiple works which contain a core of identical authorship but which also contain some variation or additional authorship element[s], each version must reflect "copyrightable differences distinguishable under the copyright law." Compendium II, § 610. *See also* Compendium II, § 610.04 ("Registering different versions of a published work: versions containing uncopyrightable differences").

For the reasons stated in this letter, the Copyright Office Review Board affirms the Examining Division's refusal to register five of Yurman's jewelry collections: Albion Collection 2003, Black and White Albion 2003, Buckle Collection 2003, Cage Collection 2003, and Cigar

Band Collection 2003. The remaining three collections will be registered subject to approval of the application forms accompanying them. This includes Carved Cable Collection 2003, Men's Titanium Collection 2003, and Wide Chain Collection. This decision constitutes final agency action on this matter.

Sincerely,

David O. Carson
General Counsel, for the
Copyright Office Review Board