United States Copyright Office
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July 29, 2013

Jeffers Cowherd P.C.
Attn: Edmund Ferdinand, III
55 Walls Drive
Fairfield, CT 06824

Re: The Initials Collection
The Signature Collection
Correspondence ID: 1-9UWDE1

Dear Mr. Ferdinand:

The Review Board of the United States Copyright Office (the "Board") is in receipt of your second request for reconsideration of the Registration Program's refusal to register the works entitled: *The Initials Collection* and *The Signature Collection* (the "Works"). You submitted this request on behalf of your client, S.D.C. Designs, LLC., on March 30, 2012. I apologize for the delay in the issuance of this determination. After periods of inaction, staff departures, and budgetary restrictions, the Register of Copyrights has appointed a new Board and we are proceeding with second appeals of registration refusals as expeditiously as possible.

The Board has examined the application, the deposit copies, and all of the correspondence in this case. After careful consideration of the arguments in your second request for reconsideration, the Board affirms the Registration Program's denial of registration of these copyright claims. The Board's reasoning is set forth below. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action on this matter.

I. DESCRIPTION OF THE WORKS

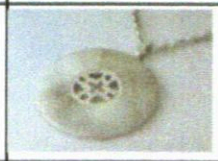
The Initials Collection consists of twenty-three pieces. Each piece is made up of a single letter of the alphabet replicated four times. The four letters are joined together in either a two-by-two configuration or a variation of a cross configuration.

The below image is a photographic reproduction of the designs included in *The Initials Collection* from the deposit materials:



The Signature Collection consists of four pieces. Each piece is made up of a slight variation of the letter "H," replicated four times, and joined together in a cross configuration. The cross configuration is located in the center of a flat, circular disc.

The below image is a photographic reproduction of the designs included in *The Signature Collection* from the deposit materials:

No	Picture
1	
2	
3	
4	

II. ADMINISTRATIVE RECORD

On April 14, 2011, the United States Copyright Office (the "Office") issued a letter notifying you that it had refused registration of the above mentioned Works. *Letter from Registration Specialist, Robin Jones, to Edmund Ferdinand* (April 14, 2011). In its letter, the Office indicated that it could not register the Works because they lack the authorship necessary to support a copyright claim. *Id.*

In a letter dated July 12, 2011, you requested that, pursuant to 37 C.F.R. § 202.5(b), the Office reconsider its initial refusal to register the Works. *Letter from*

Edmund Ferdinand to Copyright RAC Division (July 12, 2011) ("First Request"). Your letter set forth your reasons why the Office improperly refused registration. *Id.* Upon reviewing the Works in light of the points raised in your letter, the Office concluded that the Works "do not contain a sufficient amount of original and creative artistic or sculptural authorship in either the treatment or arrangement of their elements to support copyright registration" and again refused registration. *Letter from Stephanie Mason to Edmund Ferdinand* (January 5, 2012).

Finally, in a letter dated March 30, 2012, you requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Works. *Letter from Edmund Ferdinand to Copyright R&P Division* (March 30, 2012) ("Second Request"). In arguing that the Office improperly refused registration, you claim the Works include at least the minimum amount of creativity required to support registration under the standard for originality set forth in *Feist Publications v. Rural Telephone Service Co*, 499 U.S. 340 (1991). *First Request* at 1-3 (incorporated by reference into the *Second Request*). In support of this argument, you state: "[t]he Initials Collection represents a collection of both existing letters of the Roman alphabet, as well as new letters that were an original creation and are used for the first time in this jewelry collection" and "[The Signature Collection] design is comprised solely of a fanciful letter design that was an original creation and is used for the first time in a jewelry design." *Second Request* at 2 (incorporated by reference into the *Second Request*).

In addition to *Feist*, your argument references several cases supporting the general principle that, to be sufficiently creative to warrant copyright protection, a work need only possess a "modicum of creativity." *First Request* at 1-3

III. DECISION

A. *The Legal Framework*

All copyrightable works must qualify as "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). 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. *Id.* Second, the work must possess sufficient creativity. *Id.* While only a modicum of creativity is necessary to establish the requisite level, the Supreme Court has ruled that some works (such as the telephone directory at issue in *Feist*) fail to meet this threshold. *Id.* 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." *Id.* at 363. It further found that there can be no copyright in a work in which "the creative spark is utterly lacking or so trivial as to be nonexistent." *Id.* at 359.

The Office's regulations implement the long-standing requirements of originality and creativity set forth in the law and, subsequently, the *Feist* decision. *See* 37 C.F.R. § 202.1(a) (prohibiting registration of "[w]ords and short phrases such as names, titles, slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering, or coloring"); *see also* 37 C.F.R. § 202.10(a) (stating "[i]n order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form").

Of course, some combinations of common or standard design elements may contain sufficient creativity, with respect to how they are juxtaposed or arranged, to support a copyright. Nevertheless, not every combination or arrangement will be sufficient to meet this grade. *See Feist,* 499 U.S. at 358 (finding the Copyright Act "implies that some ways [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not"). Ultimately, the determination of copyrightability in the combination of standard design elements rests on whether the selection, coordination, or arrangement is done in such a way as to result in copyrightable authorship. *Id.*; *see also Atari Games Corp. v. Oman*, 888 F.2d 878 (D. D.C. 1989).

Case law recognizes instances in which jewelry has enjoyed copyright protection for "the artistic combination and integration" of constituent elements that, considered alone, are unoriginal. *See Yurman Design*, 262 F.3d at 109. However, the mere simplistic arrangement of non-protectable elements does not automatically establish the level of creativity necessary to warrant protection. For example, the Eighth Circuit upheld the Copyright Office's refusal to register a simple logo consisting of four angled lines which formed an arrow and the word "Arrows" in a cursive script below the arrow. *See John Muller & Co*, 802 F.2d 989 (8th Cir. 1986). Likewise, the Ninth Circuit held that a glass sculpture of a jellyfish that consisted of elements including clear glass, an oblong shroud, bright colors, proportion, vertical orientation, and the stereotypical jellyfish form did not merit copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The court's language in *Satava* is particularly instructional:

> [i]t is true, of course, that a combination of unprotectable elements may qualify for copyright protection. But it 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. (internal citations omitted) (emphasis original).

Finally, Copyright Office Registration Specialists (and the Board, as well) do not make aesthetic judgments in evaluating the copyrightability of particular works. They are not influenced by the attractiveness of a design, the espoused intentions of the author, the design's uniqueness, its visual effect or appearance, its symbolism, the time and effort it took to create, or its commercial success in the marketplace. *See* 17 U.S.C. § 102(b); *see also Bleistein v. Donaldson*, 188 U.S. 239 (1903). The fact that a work consists of a unique or distinctive shape or style for purposes of aesthetic appeal does not automatically mean that the work, as a whole, constitutes a copyrightable "work of art."

B. *Analysis of the Works*

After carefully examining the Works, and applying the legal standards discussed above, the Board finds that both *The Initials Collection* and *The Signature Collection* fail to satisfy the requirement of creative authorship.

First, the Board finds that none of the twenty-three pieces in *The Initials Collection* and none of the four pieces in *The Signature Collection* contain elements that, when considered individually, are sufficiently creative to warrant protection.

Regarding *The Initials Collection*, each piece in the collection is comprised of a single letter, replicated four times[1], in an ordinary typesetting. According to 37 C.F.R § 202.1(a), neither the letters, nor the ordinary typographic style the Applicant used to depict the letters is eligible for registration. *See also Coach, Inc. v. Peters*, 386 F. Supp 2d 495, 498-99 (2005) (indicating mere variations in typographic ornamentation or lettering cannot support a copyright claim). Thus, none of the jewelry designs in *The Initials Collection*, considered individually, warrant protection under the Copyright Act.

Regarding *The Signature Collection*, each piece in the collection is comprised of a round, flat disc and four "H" shaped letters. In one of the four pieces, the "H" letters are covered in diamonds. According to 37 C.F.R § 202.1(a), the letter "H", the ordinary typographic style the Applicant used to depict the four "H" letters, and the diamonds are all, individually, ineligible for registration. *See also Coach, Inc. v. Peters*, 386 F. Supp 2d at 498-99. Thus, none of the jewelry designs in *The Signature Collection*, considered individually, warrant protection under the Copyright Act.

Second, the Board finds that each piece in *The Initials Collection* and each piece in *Signature Collection*, considered as a whole, fails to meet the creativity threshold set forth in *Feist*. 499 U.S at 359. As explained, the Board accepts the principle that combinations of unprotectable elements may be eligible for copyright registration. However, such combinations must contain some distinguishable variation in the

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[1] One of the twenty-three pieces is actually comprised of the letter "i", replicated *six* times. The below analysis is applicable to this piece, despite it containing two additional, identical elements.

selection, coordination, or arrangement of their elements that is not so obvious or minor that the "creative spark is utterly lacking or so trivial as to be nonexistent." *Id.*; *see also Atari Games,* 888 F.2d at 883 (finding a work should be viewed in its entirety, with individual noncopyrightable elements judged not separately, but in their overall interrelatedness within the work as a whole).

Regarding *The Initials Collection*, each piece in the collection consists of a simple combination of four letters[2] in either a two-by-two block configuration or a variation of a cross configuration. These basic arrangements of four unprotectable letters are, at best, *de minimis*, and fail to meet the threshold for copyrightable authorship. *See Feist,* 499 U.S at 359; *see also Atari Games,* 888 F.2d at 883. Accordingly, we conclude that each of the twenty-three works in *The Initials Collection*, as a whole, lacks the requisite "creative spark" necessary for registration. *Feist,* 499 U.S at 359.

Regarding *The Signature Collection*, each piece in the collection consists of a simple combination of four letters arranged in a cross-shaped configuration and placed at the center of a flat, circular disc. Like *The Initials Collection*, these basic arrangements of four unprotectable letters and a flat, circular disc are, at best, *de minimis*, and fail to meet the threshold for copyrightable authorship. *See Feist,* 499 U.S at 359; *see also Atari Games,* 888 F.2d at 883. Accordingly, we conclude that each of the four works in *The Signature Collection*, as a whole, lacks the requisite "creative spark" necessary for registration. *Feist,* 499 U.S at 359.

Finally, your argument that the Works should be subject to copyright protection because they contain "fanciful" letters that are "original creations … used for the first time in a jewelry design" is unpersuasive. As noted, mere variations in typographical ornamentation or lettering are not eligible for registration. *See* 37 C.F.R § 202.1(a); *see also Coach, Inc. v. Peters*, 386 F. Supp 2d at 498-99. Moreover, the Board does not assess "novelty" or "uniqueness" in determining whether works contain the requisite minimal amount of original authorship. *See* 17 U.S.C. § 102(b); *see also Bleistein*, 188 U.S. 239. Thus, even if true, the fact that the Applicant has created original lettering designs incorporated for the first time into jewelry would not make the Works sufficiently creative to warrant copyright protection.

In sum, the Board finds that both the individual elements that comprise the *The Initials Collection* and *The Signature Collection*, as well as the Applicant's selection, organization, and arrangement of those elements lack the sufficient level of creativity to make them registerable under the Copyright Act.

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[2] *See* note 2, *supra.*

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the works entitled: *The Initials Collection* and *The Signature Collection.* This decision constitutes final agency action on this matter. 37 C.F.R. § 202.5(g).

Maria A. Pallante
Register of Copyrights

BY: [redacted]
William J. Roberts, Jr.
Copyright Office Review Board