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

April 23, 2014

Weil, Gotshal & Manges LLP
Attn: Randi W. Singer
767 Fifth Avenue
New York, NY 10153

Re: 990820209 (Bridal Ring Design)
990823508 (Bridal Ring Design)
940227515 (Bridal Ring Design)
940227515_27 (Bridal Ring Design)
940225826 (Bridal Ring Design)
940226121(Bridal Ring Design)
940226210_22 (Bridal Ring Design)
Correspondence ID: 1-FOTBVL

Dear Ms. Singer:

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 seven works entitled: *990820209 (Bridal Ring Design)*; *990823508 (Bridal Ring Design)*; *940227515 (Bridal Ring Design)*; *940227515_27 (Bridal Ring Design) 940225826 (Bridal Ring Design)*; *940226121(Bridal Ring Design)*; and *940226210_22 (Bridal Ring Design)* (collectively "the Works"). You submitted this request on behalf of your client, Sterling Jewelers, Inc., on September 11, 2013.

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 decision to refuse 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

990820209 (Bridal Ring Design)

This work is an "engagement ring" design. The ring's band includes a single channel of princess-cut diamonds flanked on either side by a channel of round-cut diamonds. Each side of the band contains an additional channel of round-cut diamonds. Milgrain edging separates the channels of diamonds. The ring's focal point appears to be a large, cushion-cut diamond set

above the ring band. The ring band splits into a fork that forms the setting for the large gemstone. Below are photographic reproductions of the work from the deposit materials:



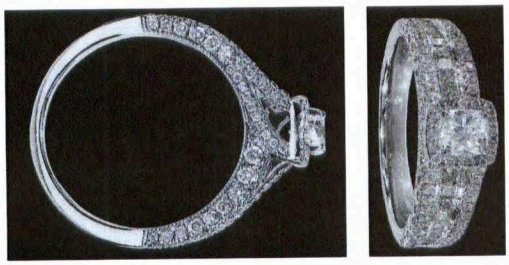
990823508 (Bridal Ring Design)

This work is an "engagement ring" design. It is virtually indistinguishable from *990820209 (Bridal Ring Design)* (described above). The only difference is that the large gemstone set above the surface of the band appears to be a radiant-cut diamond. Below are photographic reproductions of the work from the deposit materials:



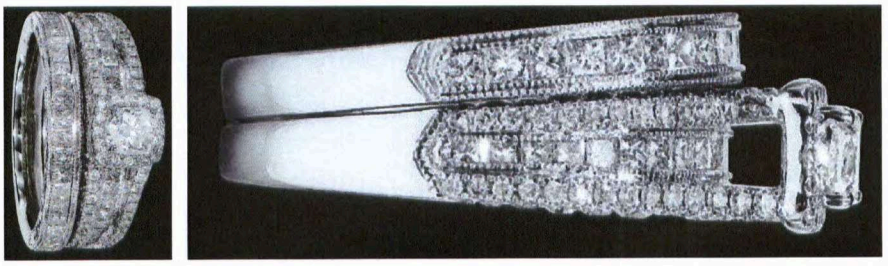
940227515 (Bridal Ring Design)

This work is an "engagement ring" design. It is virtually indistinguishable from *990820209 (Bridal Ring Design)* and *990823508 (Bridal Ring Design)* (described above). The only difference is that the large diamond set above the ring is bordered on all sides by a row of smaller, round-cut diamonds. Below are photographic reproductions of the work from the deposit materials:



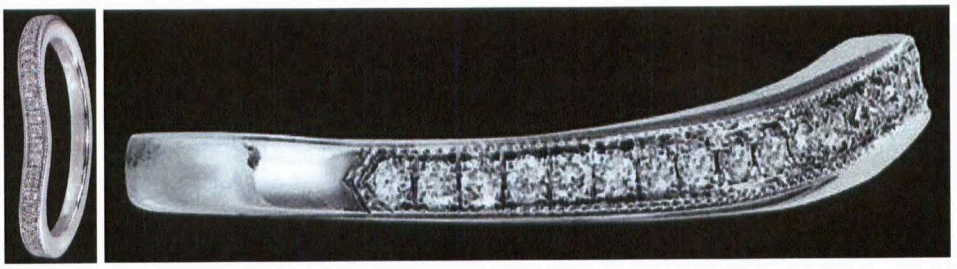
940227515_27 (Bridal Ring Design)

This work consists of an "engagement ring" and "wedding band." The engagement ring appears to be indistinguishable from *940227515 (Bridal Ring Design)* (described above), although it is unclear whether the band splits into a fork given that the deposit material shows only one side of the ring. The wedding band is comprised of a band with a single channel of princess-cut diamonds with a double border of milgrain edging. The wedding band is off-set so that it abuts the engagement ring if worn at the same time on the same finger. Below are photographic reproductions of the work from the deposit materials:



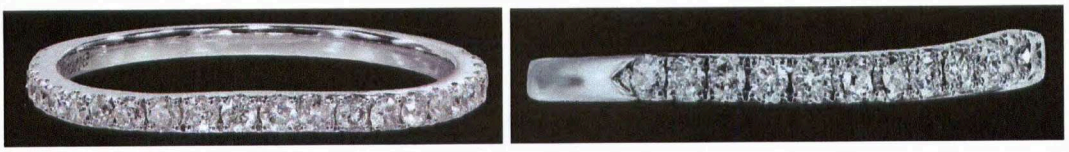
940225826 (Bridal Ring Design)

This work is a "wedding band" design. It is comprised of a band with a single channel of round-cut diamonds. The channel of diamonds is bordered with milgrain edging. Below are photographic reproductions of the work from the deposit materials:



940226121(Bridal Ring Design)

This work is a "wedding band" design. It is virtually indistinguishable from *940225826 (Bridal Ring Design)* (described above). The only difference is that the work does not contain milgrain edging. Below are photographic reproductions of the work from the deposit materials:



940226210_22 (Bridal Ring Design)

This work consists of an "engagement ring" and "wedding band." The engagement ring contains a band covered by diamonds of various sizes with milgrain edging along the rim. The ring's focal point is a large, round-cut diamond that protrudes from the band. The large diamond is surrounded by smaller, round-cut diamonds. The wedding band is indistinguishable from *940225826 (Bridal Ring Design)* (described above). Below are photographic reproductions of the work from the deposit materials:



II. ADMINISTRATIVE RECORD

On December 11, 2012, the United States Copyright Office (the "Office") issued a letter notifying Sterling Jewelers, Inc. (the "Applicant") that it had refused to register the Works. *Letter from Wilbur King, Registration Specialist, to Randi Singer* (Dec. 11, 2012). In its letter, the Office stated that it could not register these Works because they lack the authorship necessary to support a copyright claim. *Id.*

In a letter dated March 1, 2013, you requested that the Office reconsider its refusal to register the Works pursuant to 37 C.F.R. § 202.5(b). *Letter from Randi Singer to Copyright RAC Division* (Mar. 1, 2013) ("First Request"). After reviewing the Works in light of the points raised in your letter, the Office concluded that they "do not contain a sufficient amount of original and creative artistic or sculptural authorship in either the treatment or arrangement of their elements." *Letter from Stephanie Mason, Attorney-Advisor, to Randi Singer* (June 12, 2013).

In a letter dated September 11, 2013, you requested that the Office reconsider for a second time its refusal to register the Works pursuant to 37 C.F.R. § 202.5(c). *Letter from Randi Singer to Copyright R&P Division* (Sept. 11, 2013) ("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 set forth in *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). *Second Request passim.* In support of this argument, you claim that the author's careful selection and arrangement of the Works' constituent elements possess a sufficient amount of creative authorship to warrant registration under the Copyright Act. *Id.*

In addition to *Feist*, you cite several cases in support of the general principle that, to be sufficiently creative to warrant copyright protection, a work need only possess a "modicum of creativity." *Id.* You also cite several cases demonstrating that jewelry designs comprised of otherwise unprotectable elements are acceptable for copyright protection if the selection and arrangement of their elements satisfies the requisite level of creative authorship. *Id.*

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, meaning that it must not be copied from another work. *Id.* Second, the work must possess a sufficient amount of creative expression. *Id.* While only a modicum of creativity is necessary, the Supreme Court ruled that some works (such as the telephone directory at issue in *Feist*) fail to meet the creativity requirement. *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 Copyright Act and in the *Feist* decision. *See* 37 C.F.R. § 202.1(a) (prohibiting registration of "familiar symbols or designs"); *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").

Case law recognizes that a work of jewelry may be entitled to copyright protection for "the artistic combination and integration" of constituent elements that, considered alone, are unoriginal. *See Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101 (2d Cir. 2001). However, a simplistic arrangement of non-protectable elements does not automatically demonstrate the level of creativity necessary to warrant protection. *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 copyrightability of a combination of standard design elements depends on whether the selection, coordination, or arrangement is done in such a way that the design as a whole constitutes a work of original authorship. *See Atari Games Corp. v. Oman*, 888 F.2d 878 (D.C. Cir. 1989).

To be clear, common and simplistic arrangements of unprotectable elements do not satisfy this requirement. For example, in *DBC of New York v. Merit Diamond Corp.*, 768 F. Supp. 414 (S.D.N.Y. 1991) the Office refused to register a ring consisting of three elements, namely, a set of gemstones flanked by two triangular-cut gemstones with triangular indentations in the band on opposite sides of the stone setting. In a subsequent infringement action, the

plaintiff contended that the ring contained sufficient originality to support a finding of copyrightability. The court explained that familiar symbols or designs are not entitled to copyright protection (citing 37 C.F.R. § 202.1) and that no copyright may be claimed in squares, rectangles, or other shapes. *See* 768 F. Supp. 2d at 416. The court also rejected the plaintiff's "gestalt theory that the whole is greater than the sum of its parts," because "on the whole," the plaintiff's rings were "not exceptional, original, or unique." *Id.*

Finally, Copyright Office Registration Specialists and the Board 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."

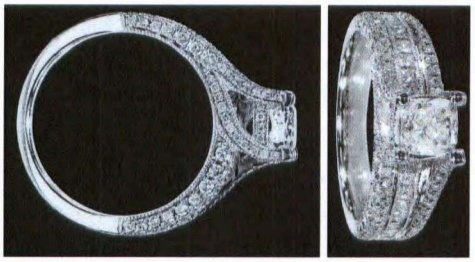
B. *Analysis of the Works*

After carefully examining the Works and applying the legal standards discussed above, the Board finds that they do not contain a sufficient amount of creative expression to warrant registration.

The constituent elements of these works, considered individually, are not protectable. Each work consists of one or more rings comprised of an ordinary band with common settings, diamonds of various shapes, sizes, and cuts, and in some cases standard milgrain edging. Ordinary ring bands, gemstones, and standard settings, cuts, and milgrain techniques are public domain symbols, shapes or designs that are ineligible for copyright protection. *See* 37 C.F.R. § 202.1(a) (prohibiting the registration of "familiar symbols or designs"). Accordingly, the constituent elements of these works do not qualify for registration under the Copyright Act.

The Board accepts the principle that jewelry designs comprised of combinations of unprotectable elements may be eligible for copyright registration. But in order to be registered, such combinations must contain some distinguishable variation in the selection, coordination, or arrangement of their elements that is not so minor or obvious that the "creative spark is utterly lacking or so trivial as to be nonexistent." *Feist*, 499 U.S. at 359; *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). For the reasons discussed below, the Board finds that these works, considered as a whole, fail to meet the creativity threshold set forth in *Feist*.

990820209 (Bridal Ring Design)



990823508 (Bridal Ring Design)

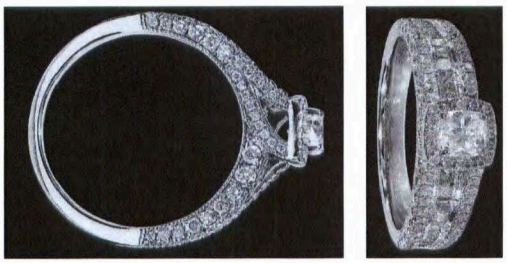


These works are virtually indistinguishable from each other. As discussed above, the only difference is that one of them appears to contain a large cushion-cut diamond, while the other appears to contain a large radiant-cut diamond.

In each case, the work consists of a simple combination of a large diamond arranged atop an ordinary band. The band splits into a fork that supports the standard setting for the large diamond. The band is covered on its face with two rows of round-cut diamonds and a single row of princess-cut diamonds, while the sides are covered with a single channel of round-cut diamonds. All of the gemstones are arranged in standard settings with a uniform milgrain rim along the edge.

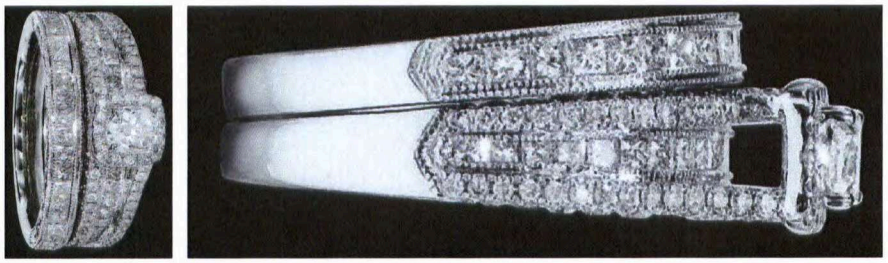
Each of these elements is used in a predictable and customary way exhibiting, at best, a *de minimis* amount of creativity. The fact that some of the diamonds are larger than others is a minor spatial or linear variation that does not provide the requisite amount of creativity to support a registration. Placing rows of uniformly-shaped diamonds on the surface and sides of a ring is a standard design arrangement, and the Board sees no creativity in the use of uniform edging along the rims. The overall shape of the bands and the settings are merely standard configurations that lack any distinguishing sculptural variation. Regardless of the amount of skill involved in selecting, sorting, and placing these unprotectable elements the resulting designs are simply trivial deviations from an ordinary engagement ring. Accordingly, we conclude that these works, as a whole, lack the requisite "creative spark" necessary for registration.

940227515 (Bridal Ring Design)



This ring is virtually indistinguishable from *990820209 (Bridal Ring Design)* and *990823508 (Bridal Ring Design)*. The only difference is that the large diamond set above the surface of the band is surrounded on all sides by a single row of smaller, round-cut diamonds. This work is *de minimis* for the same reasons stated in the Board's analysis of *990820209 (Bridal Ring Design)* and *990823508 (Bridal Ring Design)*. The mere addition of small diamonds surrounding the central gemstone is not sufficiently creative to satisfy the threshold for copyrightable authorship. *See Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102-03 (2d Cir. 1951) ("the only aspects of [a derivative work] that are entitled to copyright protection are the non-trivial, original features, if any, contributed by the author or creator"). Accordingly, we conclude that the work as a whole does not contain a sufficient amount of creativity necessary for protection under the Copyright Act.

940227515_27 (Bridal Ring Design)



This work combines a wedding band with an engagement ring that appears to be indistinguishable from *940227515 (Bridal Ring Design)*.[1]

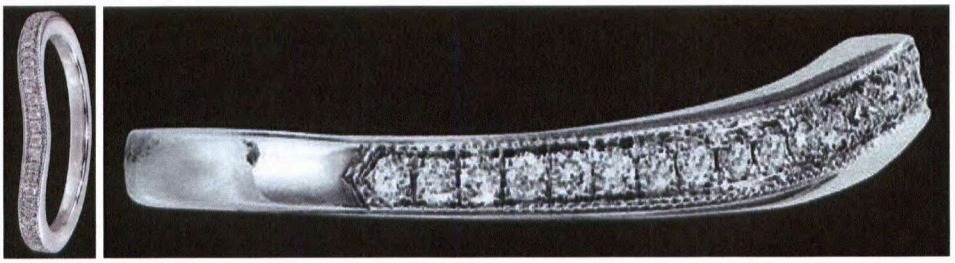
The wedding band is nothing more than a standard band encrusted with a single channel of diamonds. The Board sees no creativity in covering nearly the entire surface of the band with uniformly shaped gemstones. Similarly, there is no creativity in the use of a repetitive milgrain design along the edge of the band.

[1] As discussed above, the band in *940227515 (Bridal Ring Design)* splits into a fork that supports the setting for the large gemstone. It is unclear whether this element appears in *940227515_27 (Bridal Ring Design)* because the deposit material shows only one side of the work.

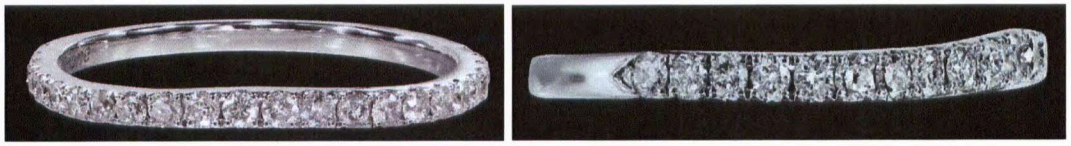
The engagement ring is uncopyrightable for the reasons stated in the Board's analysis of *940227515 (Bridal Ring Design)*. Likewise, there is an insufficient amount of authorship in the combination of this standard engagement ring with a *de minimis* wedding band design.

Simply put, the overall combination of elements results in a garden variety set of rings that are not sufficiently creative to support a copyright registration.

940225826 (Bridal Ring Design)



940226121(Bridal Ring Design)



These works are virtually indistinguishable from each other. As discussed above, the only difference is that one contains milgrain edging while the other does not.

Each ring consists of an ordinary band containing a single channel of uniformly shaped diamonds. This standard configuration is *de minimis* and does not contain a sufficient amount of creative expression for copyrightable authorship. Likewise, the presence or absence of milgrain edging along the rim of the ring is merely a trivial variation on a common ring design. *See Alfred Bell & Co.*, 191 F.2d at 102-03. Accordingly, the Board concludes that these works, as a whole, are not eligible for registration under the standard set forth in the *Feist* decision.

940226210_22 (Bridal Ring Design)



This work combines a simple engagement ring with a wedding band that is indistinguishable from *940225826 (Bridal Ring Design)*.

The overall shape of the engagement ring is nothing more than a standard band and the settings for the gemstones are routine and familiar. The use of large diamond surrounded by smaller diamonds that are uniformly sized and shaped is entirely typical. The Board sees no creativity in covering nearly the entire surface of the band with diamonds. Similarly, the use of repetitive milgrain edging and the arrangement of this element along the edges merely echoes the circular shape of the gemstones and the band.

The wedding band is uncopyrightable for the reasons stated in the Board's analysis of *940225826 (Bridal Ring Design)*. Likewise, there is an insufficient amount of authorship in the combination of this standard wedding band with a *de minimis* engagement ring design.

For these reasons, this work fails to demonstrate the spark of creativity needed to support a copyright claim.

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusals to register the works entitled: *990820209 (Bridal Ring Design)*; *990823508 (Bridal Ring Design)*; *940227515 (Bridal Ring Design)*; *940227515_27 (Bridal Ring Design)*; *940225826 (Bridal Ring Design)*; *940226121(Bridal Ring Design)*; and *940226210_22 (Bridal Ring Design)*. This decision constitutes final agency action on this matter. 37 C.F.R. § 202.5(g).

Maria A. Pallante
Register of Copyrights

BY: _____
Erik Bertin
Copyright Office Review Board