COPYRIGHT
OFFICE

September 25, 1998

Re: **YAHVEH YAHSHUA**
**Control No. 60-600-1429(L)**
**Applicant: Goldblum Seedman Corp.**

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Dear Mr. Payne:

I am writing on behalf of the Copyright Office Board of Appeals in response to your letter dated dated February 5, 1998, appealing a refusal to register a work entitled "YAHVEH YASHUA" on behalf of your client, Goldblum Seedman Corporation. The Copyright Office Board of Appeals affirms the Examining Division's refusal to register.

Washington
D.C.
20559

## Administrative Record

On July 26, 1996, the Copyright Office received a Form VA application from Applicant, Goldblum Seedman Corporation. The design consists of two words that have been combined and linked together in a jewelry design, "YAHVEH" and "YAHSHUA."

In a letter dated January 25, 1997 signed by Visual Arts Examiner Wayne E. Crist, the Examining Division refused to register Applicant's claim because it lacks sufficient artistic or sculptural authorship to support a claim of copyright. The letter of denial refused registration on the basis that the work consists only of lettering or typography which are not copyrightable.

In a letter dated April 3, 1997, on behalf of Applicant, you asked the Copyright Office to reconsider its refusal to register. You argued that this work is entitled to registration because it was independently created and it has the minimal amount of creativity necessary for copyright protection. As evidence, you pointed out that elements of the jewelry design, taken as a whole, satisfy the requirement of a minimal level of creativity: the lettering is stylized to evoke the image of Hebrew lettering, the letters are attached to each other, the common prefix is written once for both words, the prefix is twice as large as the suffixes and the one suffix rests on top of and is attached to the other with no spacing between them. You asserted that all

of these elements are not standard or typical arrangements in written communication, and that they reflect creative choices that are not dictated by merely writing the words. You argued that these elements satisfy the minimal level of creativity required by Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 345 (1991).

You also stated that even if each element of the design does not provide a creative element by itself, the combination of the lettering with other elements does. *See* Apple Barrel Prods., Inc. v. Beard, 730 F.2d 384, 388 (5th Cir. 1984) (component parts "neither original to the plaintiff nor copyrightable" may, in combination, create a "separate entity [that] is both original and copyrightable"); Roth Greeting Cards v. United Card Co., 429 F.2d 1106, 1109 (9th Cir. 1970) (although textual matter standing alone was not copyrightable in greeting card, "all elements of each card, including text, art work, and association between art work and text, [must] be considered as a whole"). Finally, you argued that the design is physically and conceptually separable from any utilitarian aspect of jewelry.

In a letter dated January 21, 1998 signed by Attorney Advisor Virginia Giroux of the Visual Arts Section of the Examining Division, the Copyright Office again denied registration for Applicant's jewelry design on the basis that it lacks copyrightable authorship. Ms. Giroux explained that words and short phrases, such as "YAHVEH" and "YAHSHUA," as well as syllables, are in the public domain and cannot be copyrighted. 37 C.F.R. 202.1(a). Neither the two individual words, nor their simple combination into three syllables, nor the arrangement of those syllables, contain sufficient original authorship to be copyrightable as text, or as lettering or as two dimensional art work.

Ms. Giroux's letter accepted the proposition that the lettering in the design is not a useful article such that the utilitarian function must be considered separately from any aspects of the work that might be copyrightable. Nevertheless, she concluded that the elements mentioned in the second request for reconsideration with respect to stylization, spacing, size and positioning of the letters are minor variations of lettering and are not copyrightable elements. Registration on this basis would be tantamount to ignoring the prohibition contained in 37 C.F.R. 202.1(a) against copyright protection for lettering or typography. Ms. Giroux observed that simple variations of standard designs do not furnish the basis upon which to support a copyright claim. *See* John Muller & Co., Inc., v. New York 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 USPQ2d 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" squares). She also concluded that the work fails to meet the requisite level of creativity required by Feist.

In a letter dated February 5, 1998, you submitted a second request for reconsideration in which you reiterated the arguments set forth above.

**De Minimis Authorship**

The Board of Appeals has determined that the design elements in YAHVEH YAHSHUA do not exhibit copyrightable authorship. As you state, originality for copyright purposes requires only a minimum level of creativity. Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991) (only a modicum of creativity is necessary for copyrightable expression). However, the Board cannot agree that YAHVEH YAHSHUA meets even that minimum requirement. The 1991 Supreme Court ruling in Feist Publications v. Rural Telephone Service Co., 499 U.S. 340 (1991), confirmed that although there is a low standard for determining the copyrightability of a work, some works fail to meet that standard. The Court held that the originality required for copyright protection consists of "independent creation plus a modicum of creativity." Id. at 346. 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, 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. The Court also recognized that some works, such as a "garden-variety white pages directory devoid of even the slightest trace of creativity," are not copyrightable. *Id.* at 362.

Section 202.1(a) of the Copyright Office regulations, 37 C.F.R. §202.1(a), codifies a longstanding application of these principles. Section 202.1 provides:

> The following are examples of works not subject to copyright and applications for registration of such works cannot be entertained:
>
> (a) Words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents;...

Most of the design elements in YAHVEH YAHSHUA are not copyrightable under this standard. The words "YAHVEH YAHSHUA" themselves are not subject to copyright because they are simply two Hebrew names or words and, at most, a short phrase. Any authorship in that phrase is clearly *de minimis*. The lettering, in a style designed to, in your words, "evoke the image of Hebrew lettering," is a mere variation of typographic ornamentation or lettering. Therefore, the Board cannot accept your argument that elements nos. 1 and 2 in the list of elements on pages 1 and 2 of your February 5, 1998 letter satisfy the requisite level of creativity. The decision to use the common first syllable, "YAH," to serve as the first syllable of both words — *i.e.*,

YAHVEH SHUA — is an uncopyrightable idea, see 17 U.S.C. §102(b), and is not original expression. Therefore, the Board cannot accept your argument that elements nos. 4 and 5 in the list of elements in your letter satisfy the requisite level of creativity.

The decision to attach each letter to the succeeding letter, and the related decision to attach the "VEH" in "YAHVEH" to the "SHUA" in "YAHSHUA," appear to be dictated by functional considerations. From the photographs supplied, it appears that the letters in this item of jewelry are held together only by joining them in this fashion. If the letters were separated, and apparently with nothing else to join them, there would be not one item of jewelry but 10 separate items (i.e., the individual, unjoined letters). In any event, the Board cannot discern any protectible expression in the decision to attach the letters and words in this way. Therefore, the Board cannot accept your argument that elements nos. 3 and 6 in the list of elements in your letter satisfy the requisite level of creativity.

In short, the elements mentioned in your second request for reconsideration with respect to stylization, spacing, size and positioning of the letters are minor variations of lettering and are not copyrightable elements. Simple variations of standard designs do not furnish a basis upon which to support a copyright claim. *See* Jon Woods Fashions, Inc., *supra;* John Muller & Co., *supra;* 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); Magic Market, Inc. v. Mailing Services of Pittsburgh, Inc., 634 F. Supp. 769 (W.D.Pa. 1986) (envelopes printed with solid black stripes and a few words such as 'priority message' or 'gift check' did not exhibit minimal level of creativity necessary for copyright registration).

The Board recognizes that, as stated in Roth Greeting Cards, *supra,* all elements of a work, including elements such as "text, art work, and association between art work and text, [must] be considered as a whole" when determining whether copyrightable authorship is present. The Board acknowledges your creativity and ingenuity in arguing that there is combination of six creative elements in YAHVEH YAHSHUA and that the combination of these elements meets the threshold for copyrightability. However, the Board ultimately must judge the work itself, and neither the individual elements nor the combination thereof exhibit sufficient original authorship to justify registration.

In conclusion, registration is denied because the authorship in YAHVEH YAHSHUA is *de minimis* at best. The work consists merely of two words linked together in a simple arrangement that does not have the modicum of creativity required by Feist.

For the reasons stated in this letter, the Copyright Office Board of Appeals affirms the refusal to register the submitted claims and is closing the file in this case. This decision constitutes final agency action on this matter.

Sincerely

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for the Appeals Board
U.S. Copyright Office

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