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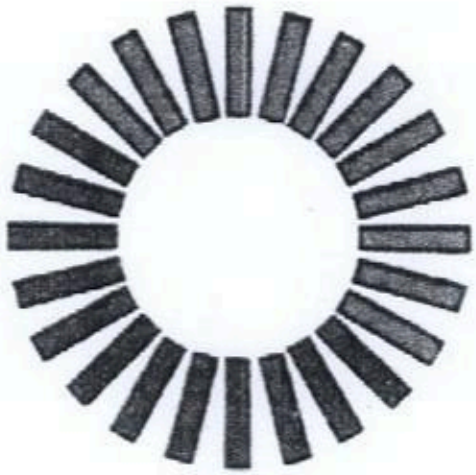
Re: AMERIGON (Logo)
Correspondence ID: 1-2GE4O7

Dear Mr. Van Hoosear:

I am writing on behalf of the Copyright Office Review Board ("Board") in response to your letter of October 6, 2009, in which you requested a second reconsideration of the Copyright Office's ("Office") refusal to register a design entitled AMERIGON (Logo). The Board has carefully examined the application, the deposit, and all correspondence concerning this submission, and affirms the denial of registration of this work.

I. DESCRIPTION OF THE WORK

AMERIGON (Logo) is composed of a series of 24 rectangles, 12 in red and 12 in blue, set up in a circular pattern against a yellow square background. An image of AMERIGON (Logo) is found below.



II. ADMINISTRATIVE RECORD

A. Initial submission

On September 24, 2008, the Office received an application to register the work AMERIGON (Logo). On January 6, 2009, the Registration Specialist ("Specialist") who examined the work refused to register the work because it lacked the authorship necessary to support a copyright claim. In determining that the design was not copyrightable, the Specialist cited the Supreme Court's discussion of the Copyright Act's originality requirement as that discussion is found in *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). The Registration Specialist stated that under Section 102(b) of Title 17, copyright does not extend to any idea, concept, system, or process which may be embodied in a work. The Specialist also cited the delineation of material not subject to copyright [*see* 37 C.F.R. § 202.1], which excludes familiar symbols or designs, typographical ornamentation, lettering, coloring and mere variations thereof. Based on an examination of the work, and the evidence in the record, the Specialist concluded that the Office could not issue the requested registration because the work does not meet the requisite originality threshhold. Letter from Registration Specialist to Jared Bunker of 1/6/2009, at 1.

B. First request for reconsideration

In your first request for reconsideration, you asserted that the work contains the minimum amount of original artistic material to be copyrightable. Letter from Jeffrey Van Hoosear to Copyright Office RAC Division, of 4/6/2009, at 2. You explained that the constituent elements, their arrangement, and their coloring, may evoke temperature, temperature control, and temperature control devices. You specified that red and blue traditionally signify hot and cold, respectively, and the colors carry that significance in the subject work. You further stated that the circular configuration of the colored elements brings to mind the indicators that might be used in a thermostat, or to mark a climate control device, and that the arrangement of rectangles might also be reminiscent of the arrangement of blades on a fan. *Id.* at 3-4. You concluded that the arrangement of the straight-edged elements along with the color choices constitute creative expression that "resembles the toothed gear of a machine and, in particular, a hypothetial component of a climate control apparatus. [T]his regularity suggests the precision and predictability associated with machinery and modern technology." *Id.* at 5. You conclude that the work at issue here should be registered, given the Applicant's expression of "dynamism and motion, of wheeled vehicles, of hot and cold, of precision devices, of fans and other means of controlling climate, and of the buttons and dials used to control such means." *Id.*

C. Examining Division's response to first request for reconsideration

In response to your first request for reconsideration, Attorney-Advisor Virginia Giroux-Rollow notified you that the Office was still unable to register a copyright claim in this work because it did not contain a sufficient amount of original and creative artistic or graphic authorship either in the treatment or arrangement of the elements upon which to support a copyright registration. Letter from Virginia Giroux-Rollow to Jeffrey Van Hoosear, of 7/7/2009, at 1 (hereinafter "Giroux-Rollow" letter).

Ms. Giroux-Rollow first stated that in no case does copyright protection extend to an idea, process, or technique regardless of the form in which it is described, illustrated, or embodied in a work. She explained that it is not the idea of creating a logo relating to a temperature control unit that can be the subject of copyright protection. Instead, it is the actual resulting expression that is examined for copyrightable authorship. *Id.*

Ms. Giroux-Rollow then stated that for a work to be regarded as copyrightable, it must not only be independently created by the author, but it must also "possess more than a de minimis quantum of creativity." *Id.* citing *Feist*. In the case of a work of this type, AMERIGON, a certain minimum amount of graphic or artistic expression must have originated with the author. Originality, as interpreted by the courts, means that the authorship must constitute more than a trivial variation or arrangement of public domain or noncopyrightable elements. *Id.*, citing *Alfred Bell v. Catalda Fine Arts, Inc.*, 191 F. 2d 99 (2d Cir. 1951). Ms. Giroux-Rollow further stated that, in applying this standard, the Office examines a work to determine if it contains elements, either alone or in combination, on which registration can be based. She stressed that aesthetic judgments, the attractiveness of a design, its uniqueness, its visual effect or appearance, its symbolic meaning or significance, the time, effort, and expense it took to create, or its commercial success in the marketplace are not factors taken into account during the examining process.

Ms. Giroux-Rollow explained that the AMERIGON (Logo) consists of a circle with 24 identical red and blue rectangular shapes radiating form the circumference of the circle. Giroux-Rollow Letter, at 2. She also noted that circles, rectangles, or any minor variation thereof, are common and familiar shapes, in the public domain, and are, therefore, not copyrightable. She found that the particular combination here of circle and 24 rectangles, coupled with their coloring, is not sufficiently creative to constitute a copyrightable "work of art." She concluded that the resulting design is *de minimis* – simply composed of two public domain shapes with just two colors and arranged into a rather simple configuration. *Id.*, at 2, citing *Compendium of Copyright Office Practices, Compendium II*, § 503.02(a).

Ms. Giroux-Rollow noted that the *Compendium* principle referred to above has been confirmed by several judicial decisions. She noted, for example, that in *John Muller & Co.*

v. New York Arrows Soccer Team, Inc., 802 F. 2d 989 (8th Cir. 1986), the Court upheld a refusal to register a logo design 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." She then cited other cases with similar holdings. *Id.* at 2, citing *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 Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q. 2d 1074 (D.D.C. 1991) (chinaware "gothic" design pattern composed of simple variations and combinations of geometric shapes not copyrightable) as well as *Jon Woods Fashions, Inc. v. Curran*, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988) (fabric design consisting of striped cloth with small grid squares superimposed on the stripes found not copyrightable by the Copyright Office). Giroux-Rollow Letter, at 2.

Ms. Giroux-Rollow recognized that even a slight amount of creativity will suffice to obtain copyright protection and that the vast majority of works make the grade easily if they possess some creative spark. She pointed out, however, that Nimmer in his treatise, *Nimmer On Copyright* in § 2.01(b) states that "there remains a narrow area where admittedly independent efforts are deemed too trivial and insignificant to support a copyright." She concluded that AMERIGON (Logo) falls within this narrow area. Giroux-Rollow Letter, at 2. She also noted that the Office agreed with your assertion that only a minimal amount of creativity is necessary to support a copyright registration and that *Feist* is controlling precedent in this area of the law. However, she still found that the AMERIGON (Logo) composed of a circle and 24 rectangles, coupled with their red and blue coloring, as well as their arrangement and configuration, fails to meet even the low threshold for copyrightable authorship. *Id.*

Ms. Giroux-Rollow further noted that although designs are not registrable as "compilations," the Office accepts the principle articulated in *Atari Games Corp. v. Oman*, 888 F. 2d 878 (D.C. Cir. 1989) that a work should be viewed in its entirety, with noncopyrightable elements judged not separately, but rather in their overall inter-relatedness within the work as a whole. However, she concluded that even under the *Atari* standard of review for copyrightability, the simple combination and arrangement of the circle and rectangles, coupled with their coloring, fails to rise to the level of copyrightability necessary to support a copyright registration. Giroux-Rollow Letter, at 3. Ms. Giroux-Rollow further pointed out that simply because the author was attempting to create the illusion of a climate control apparatus with red and blue coloring signifying hot and cold respectively does not, in itself, mean that the work is copyrightable. She emphasized that unless a work of this type contains a sufficient amount of original and creative artistic or graphic expression, no registration is possible. *Id.*

D. Second request for reconsideration

In your second request for reconsideration, you argue that the work is not a simple or obvious arrangement of just basic shapes and colors. You state that the deliberate and uncommon arrangement and styling of the elements in the design creates a complete work that is significantly more than the sum of its parts. You emphasize that it is a work that contains original artistic material that is copyrightable. Letter from Jeffrey Van Hoosear to Copyright RAC Division of 10/6/2009, at 2,7. (hereinafter "Van Hoosear Letter of 10/6/2009")

You first argue that case law recognizes that certain arrangements of basic design elements may constitute a level of creativity high enough to be registerable. You cite the Second Circuit's decisions in *Boisson v. Banian*, Ltd., 273 F.3d 262 (2d Cir. 2001)(holding that while the alphabet is in the public domain, the arrangement of 26 letters into a 5x6 grid was sufficiently creative) and *Yurman Design, Inc. V. Paj, Inc.*, 262 F.3d 101, 109-110 (2d Cir. 2001)("Copyright law may protect a combination of elements that are unoriginal in themselves.") as well as the Southern District of New York's decision in *Diamond Direct, LLC v. Star Diamond Group, Inc.*, 116 F.Supp.2d 525, 528 n. 21 (S.D.N.Y. 2000) ("[A] work that is entirely a collection of unoriginal material nevertheless may be copyrighted if the material is selected, coordinated, or arranged in an original fashion.") in support of your argument for registration. Van Hoosear Letter of 10/6/2009, at 3.

You then argue that the cases cited in the Examining Division's reply to your first request for reconsideration speak to the broad discretion the Office has to refuse registration on the basis of lack of creativity, not to setting the standard for creativity itself. You argue that cited cases, such as *Jon Woods Fashions* and *Muller*, do not hold that the Office was compelled to refuse to register the works in question; rather, they hold that it was not arbitrary, capricious, or an abuse of discretion to refuse to register the works. Van Hoosear Letter of 10/6/2009, at 5. You further assert that the AMERIGON (Logo) exhibits the requisite creativity and that the work at issue here is significantly more creative than the works cited in the cases addressed in the Giroux-Rollow letter of 7/7/2009. You note that although the work contains rectangles and gives the illusion of circles, it is neither a circle nor a rectangle; rather, you argue it is a cohesive work composed of colors and rectangles. You argue that the selection, coordination, and arrangement of the elements transforms the work into an original contribution worthy of copyright protection. *Id.*,at 6, citing *Knitwaves, Inc. v Lollytogs Ltd.*, 71 F.3d 996, 1004 (2d Cir. 1995) (noting the importance of selection, coordination, and arrangement of design elements which may not be protectible in themselves.) You add that although novelty is not a prerequisite to creativity, novelty can be indicative of creativity. You suggest that the novel arrangement of basic shapes and colors militates in favor of finding that the work is creative, and therefore, registrable. Van Hoosear Letter of 10/6/2009, at 6-7.

III. DECISION

A. Legal precedent

After reviewing the application and deposit submitted for registration and the arguments that you have presented, the Copyright Office Review Board affirms the Registration & Recordation Program's [RRP's, formerly Examining Division] refusal to register the design entitled AMERIGON (Logo). The Board concludes that the Office is not able to register a copyright claim in the work because AMERIGON does not contain any authorship that is copyrightable. While the Review Board does not dispute that the design at issue here was independently created by the author, the Supreme Court made clear in *Feist* that the concept of originality, as used in the copyright law context, means not only that the work must be independently created by the author (original to the author) but it must also possess at least some minimal degree of creativity. *Feist*, at 345. In determining whether a work embodies a sufficient amount of creativity to sustain a copyright claim, the Board adheres to the previously referenced standard set forth in *Feist,* which notes that the "requisite level of creativity is extremely low; even a slight amount will suffice." *Id.*

While you correctly point out the low requirement level for a work's creativity, the *Feist* Court clearly stated that some works (such as the work at issue in that case, the white-pages telephone book) fail to meet the standard. 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 346, and that there can be no copyright in a work in which "the creative spark is utterly lacking or so trivial as to be virtually nonexistent" *id.* at 359; *see also*, 37 CFR § 202.1(a). ("In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form."); *Nimmer* § 2.01(B) ("[T]here remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support copyright.").

Even prior to the *Feist* decision, the Office recognized the modest, but existent, requisite level of creativity necessary to sustain a copyright claim. For example, *Compendium of Copyright Office Practices, Compendium II* states, "[w]orks that lack even a certain minimum amount of original authorship are not copyrightable." *Compendium II*, § 202.02(a). (1984) With respect to pictorial, graphic and sculptural works, *Compendium II* also 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).

B. Analysis of work

The work at issue here, AMERIGON, consists of multiple [12] blue and [12] red rectangles arranged in a circular pattern so that each small rectangle stands vertically on end,

with the end, flat line placed very close to the end, flat line of the next rectangle, the flat ends positioned in and forming a circle. Even if the design were "novel," and intended to be symbolic, that is not determinative of copyright protection. What is of import is whether the resulting, overall expression contains copyrightable authorship. The Board finds that this particular arrangement of an admittedly common and familiar shape in two colors does not constitute original selection and arrangement necessary to sustain copyright protection under the standard set forth in *Feist*.

Additional case law which you cited confirms the principles underlying this analysis. For example, you argue that *Diamond Direct* and *Yurman Design* follow *Feist*'s rule and may allow the copyright on compilations and other arrangements of elements uncopyrightable in themselves: "[W]hile component parts are not entitled to copyright protection simply by virtue of their combination into a larger whole, copyright may protect the particular way in which the underlying elements are combined—if the particular method of combination is itself original." *Diamond Direct, 116 F. Supp. 2d at* 528. However, *Diamond Direct* did not definitively address the copyrightability of the jewelry at issue in the case as it was decided on other grounds. *Diamond Direct* at 529. The *Diamond Direct* Court did explain however, in its discusssion of the jewelry at issue there, that "[w]hile no precise verbal formulation can capture it, there is some irreducible minimum beneath which a work is insufficiently original to find protection." *Diamond Direct* at 528. *Yurman Design,* which you also cite in your second request for reconsideration, applies *Feist*'s minimal creativity requirement to jewelry. *Yurman Design, 262 F.3d at* 109-110. The *Yurman* Court described how the jewelry designs at issue in that case rose above the copyright originality threshold: "the originality in Yurman's four designs inheres in the ways Yurman has recast and arranged [common] constituent elements." *Id.* at 110. In the work before the Board, your client arranged the thin, vertically-placed rectangles into a commonly-shaped arrangement, *i.e.*, a common, geometric shape, in which the rectangular ending sides are positioned to form a circle. A color scheme of two primary colors for the rectangles, red and blue, does not add sufficient authorship to the work as whole to sustain copyright.[1]

You also cite *Boisson* for two propositions: (1) while alphabet shapes are, indeed, in the public, domain, the arrangement of 26 alphabet letter shapes into a 5 x 6 grid may be sufficiently creative, *Boisson, 273 F.3d at 269;* and (2) that while one cannot copyright a color per se, one can use color in a particular way within a design to demonstrate creativity and thus meet the *Feist* threshold for copyrightability. *Boisson, 273 F.3d at 271.* The work at issue here, AMERIGON, incorporates a public domain shape– a rectangle– without altering the basic rectangle shape. This shape is repeated 24 times in a manner that forms an

[1] It is worth noting that in both the *Diamond Direct* and *Yurman Design* cases, the Copyright Office had registered the works at issue.

inner circle at the points where the flat bases of the vertical rectangles meet. The vertically-positioned rectangles are presented in two basic colors– red and blue. There is little comparison between AMERIGON and the alphabet quilt at issue in Boisson. The placement of the identical rectangle shapes, reproduced in two solid colors, cannot fairly be said to be comparable to the placement of the alphabet letter shapes with the incorporation of different colors in the *Boisson* quilt. Although the *Boisson* Court found the letter shapes themselves lay in the public domain, the use of the letter shapes in the particular layout of the quilt combined with "the author's choice in incorporating color with other elements may be copyrighted. This lesson is in accord with the holding of Feist Publications. *See* 499 U.S. at 348." *Boisson* at 271. The overall design met the *Feist* standard. This is not the case in the AMERIGON (Logo).

C. Understanding the creativity required by Feist

You have also argued that cases cited by Ms. Giroux-Rollow in her response to your first request for reconsideration speak to the broad discretion the Office has to refuse registration, not to the standard for creativity itself. You state, for example, that in the *Forstmann* case, "the court considered whether fleurs de lis had any original artistic or creative content that would have made the Office's refusal [to register] arbitrary." Van Hoosear Letter of 10/6/2009, at 4. However, the Office did issue registrations for the labels at issue in that case. The *Forstmann* court held that the labels were not copyrightable, and invalidated the registrations, because a label showing three *fleurs de lis* did not display the requisite originality. *Forstmann, 89 F. Supp.* at 971. The Court did not comment on the Copyright Office's discretion, only that the label, incorporating familiar designs in a simplistic pattern, did not meet the constitutional requirement that a work be creative to be copyrightable. *Id.* The AMERIGON (Logo) similarly incorporates the familiar designs of rectangles and circles into a simple overall design lacking sufficient creativity to support a copyright.

As we have stated above, *Feist* represents the teaching regarding the acceptable level of creativity to sustain copyright protection. You have cited back to the Copyright Office some pre-Feist precedent concerning the level of ceativity required for registration of a work of authorship. You are correct in stating that the *Jon Woods* Court held that the Register's review and rejection of registration of the plaintiff's designs was not "arbitrary, capricious, or an abuse of discretion." *Jon Woods,* 1988 U.S. Dist. Lexis 3319, at *4 (S.D.N.Y 1988). However, the *Jon Woods* Court, like the *Forstmann* Court, pointed out "familiar symbols or designs" and those of "a simple combination of two or three standard symbols such as a circle, a star, and a triangle with minor linear variations," citing *Compendium I,* § 2.8.3.I.a at 2-288, 289 (1973). *Id.*, at *7. This reference is to the particular registration practices of the Copyright Office in place prior to the practices under the 1976 Act but nevertheless identical in guidance and substance regarding familiar symbols and designs. The Register

had twice explained that there is no copyright protection either for familiar symbols and shapes or overall for their simple combination or arrangement. Further, while the *Muller* Court which you have cited used an abuse of discretion standard of review when considering the Copyright Office's decision to reject the logo at issue, it also noted that "the issue here is creativity, not originality." *Muller, 802 F.2d* at 990. The Court held that in order to register a work, it "must embody some creative authorship in its delineation or form." *Id,* citing 37 C.F.R. § 202.10(a) (1985); *Gardenia Flowers, Inc. v. Joseph Markovits, Inc.,* 280 F.Supp. 776, 781 (S.D.N.Y.1968). The *Muller* Court also compared the similarity of the logo at issue there to that of an "envelope printed with solid black stripes and a few words" held "not [to] exhibit the minimal level of creativity necessary for copyright registration" in a case just prior to the *Muller* decision. *Muller* at 990 n.3, citing *Magic Marketing, Inc. v. Mailing Services of Pittsburgh, Inc.*, 634 F. Supp. 769 (W.D. Pa. 1986). Again, simple, small rectangles of two solid colors, sequenced in a circular pattern, as reflected in the case at issue here, AMERIGON (Logo), is a *de minimis* design lacking the necessary creative spark required for registration.

You have asserted that AMERIGON (Logo) is "significantly more creative" than some of the works in cases cited by Ms. Giroux-Rollow.[2] Van Hoosear Letter of 10/6/2009, at 5. While it is not Office practice to compare different works in order to make a registration determination, the Board nevertheless finds that the amount of creativity in the work at issue here, AMERIGON (Logo), is analogous to the *de minimis* creativity in those cases. Indeed, you argue the Work here is more complex than the *Muller* design, which incorporated checkmarks of varying size into a larger checkmark design and the word "Arrows" written in cursive. Likewise, in *Fortsmann*, common elements, the fleurs de lis, were interwoven with text. The Courts considered the arrangement of the common elements and the addition of text in both cases a *de minimis* variation on standard, public domain, shapes. *See immediately above.* Yet, AMERIGON (Logo) incorporates identical rectangles– a common shape– into a circle, another common shape, and trivially colors half the rectangles a solid red and the other half a solid blue shade. The Review Board fails to see how the Work at issue here is more creative than the works litigated in the cases cited above where common, standard shapes, combined in a simple arrangement which itself utilized public domain shapes, were found unregistrable.

You also have cited *Knitwaves, Inc. v. Lollytogs, Ltd., 71 F.3d 996, 1004 (2d Cir. 1995)* for the principle that one's "compilation of unprotectable elements" may be copyrightable "even though it is entirely a compilation of unprotectable elements. What is protectable then is the author's original contributions, the original way in which the author has selected, coordinated, and arranged the elements of his or her work." Van Hoosear Letter of 10/6/2009, at 6. The work at issue in *Knitwaves* is distinguishable from

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[2] These cases include *Feist, Muller, and Fortsmann.*

AMERIGON (Logo) because it is more complex: the sweaters in *Knitwaves* had "dominant design elements" in the shape of leaves and squirrels (and thus, *other*, non-dominant design elements), a "'fall' palette of colors with a 'shadow-striped' (for the Leaf Sweater) or a four-paneled (for the Squirrel Cardigan) background" with which design elements are coordinated. *Knitwaves, 71 F.3d* at 1004. The Work at issue here has but two colors– hardly a "palette"– and one type of design element, the rectangles. Also, it is worth noting that you cite a part of the opinion where the Court discussed its use of a design's "total concept and feel" for its comparison in order to determine infringement, not whether the design is creative enough to justify copyright protection, *id.*, which is the question before the Review Board concerning AMERIGON.

Finally, you argue that familiar shapes can be registered if sufficiently creative and have cited *Oddzon Products, Inc. v. Oman*, 1989 U.S. Dist.Lexis 17077 (D.D.C.), *aff'd*, 924 F.2d 346 (D.C. Cir. 1991), a case about the copyrightability of the KOOSH ball toy, for the proposition that the familiar shape of an object is not fully determinative of copyright protection. The *Oddzon* Courts, both the district and the circuit court, recognized that the work at issue there was not only a simple round ball made up of hundreds of floppy, elastic filaments radiating from a central core and used in the training of children needing hand-to-eye coordination. Rather, the ball was– if one were to accept the argument– a sculptural work consisting of one element, tied together and repeated in order to form a simple, rounded circular 3-dimensional useful object.[3] The District Court held that the work, KOOSH ball, approximates a sphere; this work did not exhibit enough additional creativity beyond the object's basic shape to warrant a copyright. *Oddzon, at* *5. The *Oddzon* District Court reiterated, "the test is whether a work contains certain 'minimal levels of creativity and originality.'" *Id.* at *2. (citing *Muller*, 802 F.2d 989, 990).

Although the KOOSH ball was a 3-dimensional work and the work before the Review Board, AMERIGON, is a 2-dimensional design, the same standard for copyrightability applies: is the *Feist* necessity for the minimal degree of creativity present in the authorship making up the work? *Feist* made it clear that where a work is composed of multiple elements that have been selected, coordinated and arranged, it is the way in which they are arranged that "renders the work as a whole original." *Feist* was concerned with discrete facts in the telephone book white pages situation before the Court, facts that were the subject of the selection, coordination, or arrangement – the compilation. *Feist*, at 358-359. You have argued that the AMERIGON design is a "deliberate and uncommon arrangement" and that the "styling of the elements [to] create[s] a complete work that is significantly more than the sum of its parts..." Van Hoosear Letter of 10/6/2009, at 7. The

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[3] As a useful object, the appellate court also analyzed the work at issue under the statutory provisions concerning useful articles and the required separability test. *OddzOn, 924 F.2d* at 347-348.

Board cannot agree with your conclusion. The Board considers the design at issue here a simple design made up of repeating simple designs which are presented in two solid colors.

We approach the analysis of any given work of authorship by judging it in its entirety, with analysis of the combination of the constituent elements of a work of authorship as well as the relationship of such elements to each other. The selection and arrangement of individual design elements that are *de minimis* in themselves, *i.e.*, they carry no copyright protection as such, within an overall design, be it 2-, or 3-dimensional, may be protected, depending on the use of such elements and whether the chosen elements are sufficient in quantity within the design as a whole. The Ninth Circuit said it well: "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." *Satava v. Lowry,* 323 F.3d 805, 811 (9th Cir. 2003). The Ninth Circuit quoted *Feist* to bolster its explanation: "[T]he principal focus should be on whether the selection, coordination, and arrangement are sufficiently original to merit protection." 323 F.3d at 811, citing *Feist* at 358. The focus, therefore, must be on the overall design that fairly may be said to be synonymous with the selection, coordination, or arrangement of individual (possibly) trivial elements, brought together to form a more-than-trivial, copyrightable overall design.

Using the guidance given by *Feist* and the case law that has come after it, the Review Board concludes that the AMERIGON logo does not exhibit the "minimal levels of creativity" necessary for registration. For the reasons stated above, the Copyright Office Review Board affirms that AMERIGON cannot be registered because of its insufficient creativity. This decision constitutes final agency action.

Sincerely,

/s/

Nanette Petruzzelli
Associate Register,
Registration & Recordation Program
for the Review Board
United States Copyright Office