United States Copyright Office
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August 9, 2013

589 Jewelry Design Inc., dba CASSIS
Attn: Elizabeth Sabakyar
2 West 45th St., Suite #1108
New York, NY 10036

Re: CASSIS #N879; #N878; #N877; #FB772; #FB771; and #FB770; and CASSIS #E1103; #R1182; #N891; and #FB773
Correspondence ID: 1-60RS8S

Dear Ms. Sahakyan:

The Review Board of the United States Copyright Office (the "Board") received your second appeal of the decision of the Office to refuse registration of the works entitled "CASSIS #N879, #N878, #N877, #FB772, #FB771, and #FB770" and "CASSIS #E1103, #R1182, #N891, and #FB773" (the "Works"), submitted by you on August 23, 2010. The Board has carefully examined the application, the deposit, and all correspondence concerning this application and, for the reasons stated below, grants the registration of CASSIS #E1103, #R1182, #N891, and #FB773 and affirms the denial of registration of CASSIS #N879, #N878, #N877, #FB772, #FB771, and #FB770. This decision constitutes final agency action on this matter. 37 C.F.R. § 202.5(g).

I. DESCRIPTION OF THE WORK

The subject Works are two collections of jewelry designs. The first collection, #N879, #N878, #N877, #FB772, #FB771, and #FB770, contains three necklaces with three matching bracelets each consisting of identical square stone links wrapped with twisted yellow gold and connected by plain or twisted yellow gold circular elements. The second collection, #E1103, #R1182, #N891, and #FB773, consists of a matching set of earrings, ring, necklace, and bracelet with yellow gold and black pearl elements. #E1103 is a set of half circle shaped gold earrings with a flat back with a post and a black pearl in a setting trimmed with twisted gold at the top. The body of each earring has twisted gold trim with gold that has been dented into many small planes in the center. #R1182 is a ring with layers of gold twists trimming both the band and the setting for the black pearl in the middle. The face of the band consists of gold that has been dented into many small planes. #N891 is a necklace consisting of a string of small, spherical black pearls with a cylindrical yellow gold clasp. The clasp has two layers of twisted gold at each end with dented gold in the center portion. It is attached to the string of pearls on one end and has a small screw at the other end. #FB773 is a bracelet with alternating stacks of three small, round black pearls each and gold bands from left to right. The fronts of the gold portions have small twists of gold on both sides and a thin band of dented gold in the middle. The backs are dented gold with "CASSIS" carved in the middle.

Images of the works as submitted, with labels identifying each item, are attached as Exhibit A.

II. THE ADMINISTRATIVE RECORD

On March 26, 2010, you were notified that the United States Copyright Office ("Office") could not register the Works because they lack the authorship necessary to support a copyright claim. Letter from Elizabeth Stringer, Registration Specialist, to 589 Jewelry Design, Inc., dba CASSIS at 1 (Mar. 26, 2010). On April 15, 2010, you requested that the Office reconsider the refusal to register the Works. Letter from Elizabeth Sahakyan, Designer/VP, CASSIS, to Register of Copyrights, Visual Arts (Apr. 15, 2010). After reviewing your request for reconsideration, Attorney Advisor, Virginia Giroux-Rollow, responded in a letter dated July 15, 2010. She upheld the decision to refuse to register the work on the grounds that the jewelry did "not contain a sufficient amount of original and creative sculptural or artistic authorship in either the treatment or arrangement of their elements upon which to support a copyright registration." Letter from Virginia Giroux-Rollow, Attorney Advisor, to Elizabeth Sahakyan, Designer/ VP, CASSIS, at 1 (July 15, 2010). She noted that the material used to create or adorn a work is not what determines copyrightability. She also pointed out that "[c]ircles, squares, or any minor variation thereof, are common and familiar shapes, in the public domain, and are, therefore, not copyrightable." *Id.* at 1, 2. In a letter dated August 23, 2010, you requested that the Office reconsider for a second time its refusal to copyright the Works. Letter from Elizabeth Sahakyan, Designer/VP, CASSIS, to Register of Copyrights, Visual Arts (August 23, 2010).

III. DECISION

A. The Legal Framework

1. Originality

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. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). First, the work must have been independently created by the author, *i.e.,* not copied from another work. Second, the work must possess sufficient creativity. While only a modicum of creativity is necessary, the Supreme Court has ruled that some works (such as a telephone directory at issue in the case) 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 minimus* quantum of creativity." *Id.* at 363. 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; *see also* 37 C.F.R. § 202.10(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.").

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.l0(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. *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"). However, not every combination or arrangement will be sufficient to meet this grade. Ultimately, the determination of copyrightability in the combination of standard design elements rests on whether the selection, coordination, or arrangement was done in such a way as to result in copyrightable authorship. *See* 37 C.F.R. §§ 202.1(a), 202.l0(a).

A work that reflects a simple arrangement fails to meet the low standard of minimum creativity required for copyright. *Feist*, 499 U.S. at 362-63. For example, in *Todd v. Montana Silversmiths, Inc.*, the court determined that a barbed-wire style bracelet and earrings were not copyrightable because the arrangement of uncopyrightable elements in the jewelry too closely resembled the arrangement of public domain barbed-wire. 379 F. Supp. 2d 1110, 1111, 1113 (D. Colo. 2005); *see also Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) ("It is true, or 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.") (citations omitted) (emphasis in original).

Of course, some combinations of common or standard design elements may contain sufficient creativity with respect to how they are combined or arranged to support a copyright. *See Feist*, 499 U.S. at 358 (the Copyright Act "implies that some 'ways' [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not." The determination of copyrightability rests on whether the selection, coordination, or arrangement was done in "such a way" as to result in copyrightable authorship).

2. Separability

Copyright protection does not generally extend to useful articles, *i.e.*, "article[s] having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." 17 U.S.C. § 101. However, works of artistic craftsmanship, which may be useful articles themselves or incorporated into a useful article, can receive protection as pictorial, graphic, or sculptural works pursuant to 17 U.S.C. § 102(a)(5). This protection is limited, though, in that it extends only" insofar as [the designs'] form but not their mechanical or utilitarian aspects are concerned." *Id.* at § 101.

To be clear, a design incorporated into a useful article is only eligible for copyright protection to the extent that the design includes "pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, utilitarian aspects of the article." *Id.; see also Esquire, Inc. v. Ringer*, 591 F.2d 796, 800 (D.C. Cir. 1978), *cert. denied,* 440 U.S. 908 (1979) (holding copyright protection is not available for the "overall shape or configuration of a utilitarian article, no matter how aesthetically pleasing that shape may be"). The Board conducts two tests to assess separability: (1) a test for "physical separability"; and, (2) a test for "conceptual separability." *Id.; see also Custom Chrome, Inc. v. Ringer,* 35 U.S.P.Q. 2d 1714 (D. D.C. 1995) (finding that the Copyright Office's tests for physical and conceptual separability are "a reasonable

construction of the copyright statute" consistent with the words of the statute, present law, and the legislature's declared intent in enacting the statute).

To satisfy the test for "physical separability, "a work's pictorial, graphic, or sculptural features must be able to be physically separated from the work's utilitarian aspects, by ordinary means, without impairing the work's utility. *See, e.g., Mazer v. Stein*, 347 U.S. 201 (1954) (holding a sculptured lamp base depicting a Balinese dancer was physically separable from the article's utilitarian function); *and see, Ted Arnold, Ltd. v. Silvercraft Co.*, 259 F. Supp. 733 (S.D.N.Y. 1966) (holding a pencil sharpener shaped like a telephone was physically separable from the article's utilitarian function). To satisfy the test for "conceptual separability," a work's pictorial, graphic, or sculptural features must be able to be imagined separately and independently from the work's utilitarian aspects without destroying the work's basic shape. *See, e.g.,* H.R. Rep. No. 94-1476 (1976), U.S. Code Cong. & Admin. News 1976, p. 5668 (indicating a carving on the back of a chair or a floral relief design on silver flatware are examples of conceptually separable design features). A work containing design features that fail to qualify as either physically or conceptually separable from the work's intrinsic utilitarian functions are ineligible for registration under the Copyright Act.

B. Analysis of the works CASSIS #N879; #N878; #N877; #FB772; #FB771; and #FB770

After carefully examining the works in their individual elements and in their entirety, the Review Board determines that CASSIS #N879; #N878; #N877; #FB772; #FB771; and #FB770, fail to satisfy the requirement of creative authorship. The necklaces and bracelets in this collection are composed primarily of stones cut into rectangular shapes which are wrapped with twisted yellow gold and connected by plain or twisted yellow gold circular elements.

You argue that the precise hand twisted gold elements are original works, based on your own specifications. You also argue that the gemstones are cut to your specifications based on the original design work. However, it is the Board's view that these elements are common shapes and are neither "numerous enough [nor] their selection and arrangement original enough that their combination constitutes an original work of authorship." *Satava*, 323 F.3d at 811. These jewelry designs merely combine one or two familiar shapes with minor variations in a standard arrangement.

C. Analysis of the work CASSIS #N891

After carefully examining the work CASSIS #N891, the Board finds that the clasp is a useful article that does not contain the requisite separable authorship necessary to sustain a copyright registration. The other portion of the necklace, a string of small, spherical black pearls, does not meet the requirement of creative authorship.

The clasp is a useful article, and it is the Board's view that the design elements are not separable from the article's utility. As discussed above, the law requires that the designs of useful articles must be either physically or conceptually separable from the utilitarian aspects of the work. *See Esquire*, 591 F.2d at 800. Here, it is not apparent that the design is physically separable from the portion of the clasp that forms a screw by any ordinary means. If the design were separated from the small screw at the end, the screw would no longer be able to perform its function as a clasp. The Board then turns to the question of whether the design elements are conceptually separable from the utilitarian aspects, *i.e.* able to be imagined separately and independently from the work's utilitarian

aspects *without destroying the work's basic shape.* Imagining the design features on the cylinder separately from the screw portion would destroy the basic shape of the clasp. Furthermore, such a separation would render the small screw useless because there is no mechanism with which to turn it.

It is the Board's view that, similar to the works discussed above, the string of pearls is a series of common shapes with minor variations in a standard arrangement. Accordingly, as above, the common shapes are neither "numerous enough [nor] their selection and arrangement original enough that their combination constitutes an original work of authorship." *Satava*, 323 F.3d at 811.

D. Analysis of the works CASSIS #E1103; #R1182; and #FB773

After carefully examining the works CASSIS #E1103; #R1182; and #FB773, the Board determines that these works do meet the requirement of creative authorship and, therefore, will be registered. As described above, this jewelry design collection consists of a matching set of earrings, ring, and bracelet with yellow gold and black pearl elements. These designs combine standard shapes with twisted, individual patterns of denting, and, in one instance, carved gold.

It is the view of the Board that the combinations of authorship elements do meet the originality test under existing precedent. *See Satava v. Lowry*, 323 F.3d at 811 ("[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"); *Feist*, 499 U.S. at 358 (the Copyright Act "implies that some 'ways' [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not." The determination of copyrightability rests on whether the selection, coordination, or arrangement was done in "such a way" as to result in copyrightable authorship). Here, the combination and arrangement of unprotectable elements is "original" and warrants registration.

IV. CONCLUSION

For the reasons stated above, the Review Board of the United States Copyright Office will register the works CASSIS #E1103; #R1182; and #FB773 and affirms the refusal to register CASSIS #N879; #N878; #N877; #FB772; #FB771; #FB770; and #N891. This decision constitutes final agency action in this matter. 37 C.F.R. § 202.5(g).

Maria A. Pallante
Register of Copyrights

By: _____
Stephen Ruwe
Member of the Review Board

Exhibit A


CASSIS®
STYLE
#N879


CASSIS®
STYLE
#N879


CASSIS®
STYLE
N 878


CASSIS®
STYLE
N 878


CASSIS®
Style
#N877


CASSIS®
Style
#N877


CASSIS®
STYLE
#FB772


CASSIS®
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#FB772


CASSIS®
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#FB771


CASSIS®
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#FB771


CASSIS®
STYLE
FB770

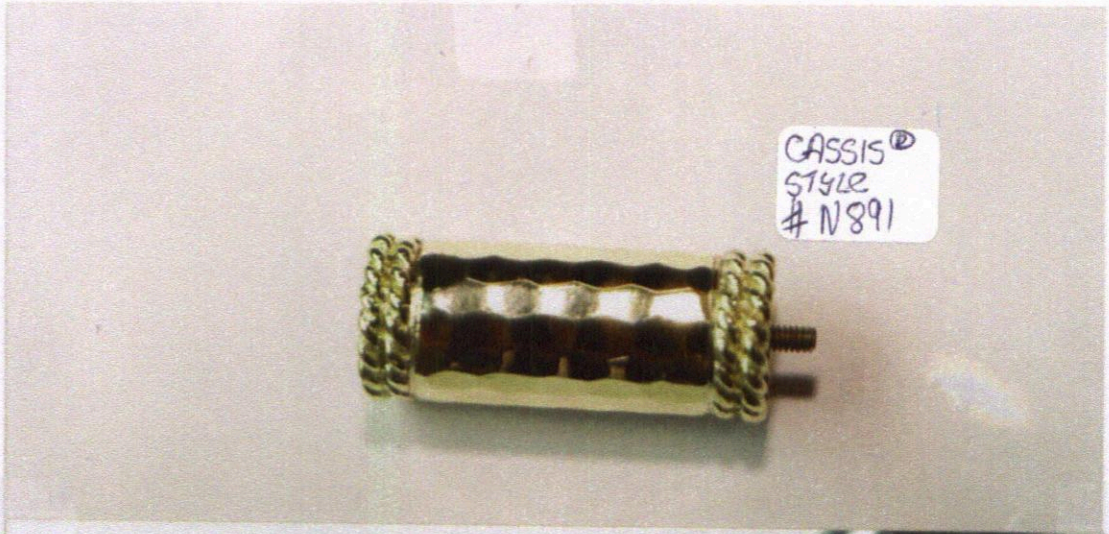

CASSIS®
STYLE
FB770

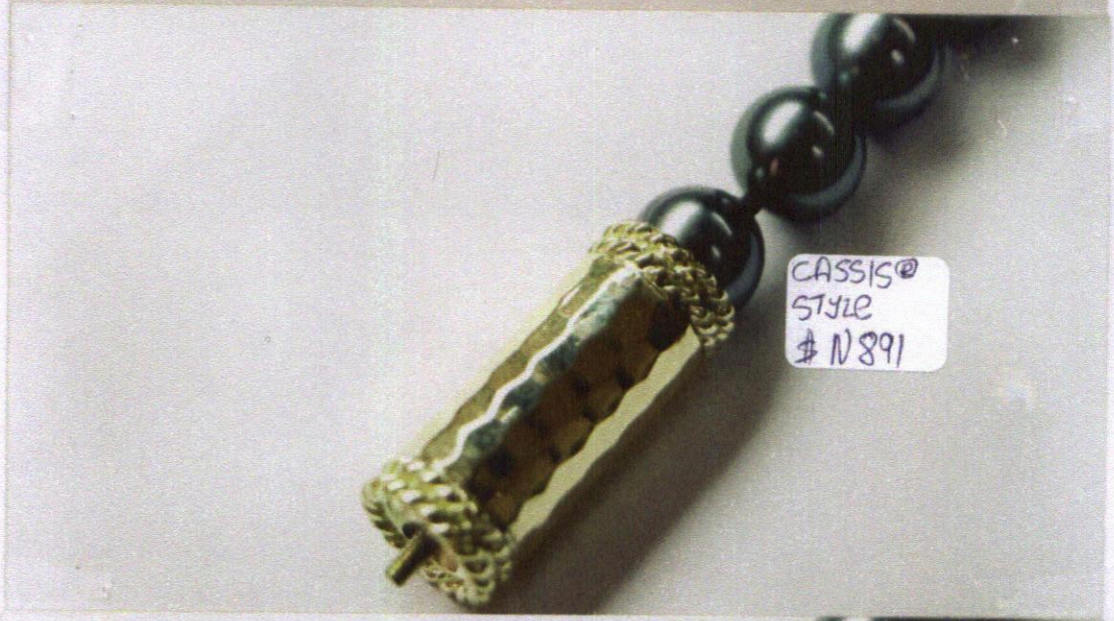

CASSIS
STYLE
#E1103


CASSIS®
STYLE
R1182

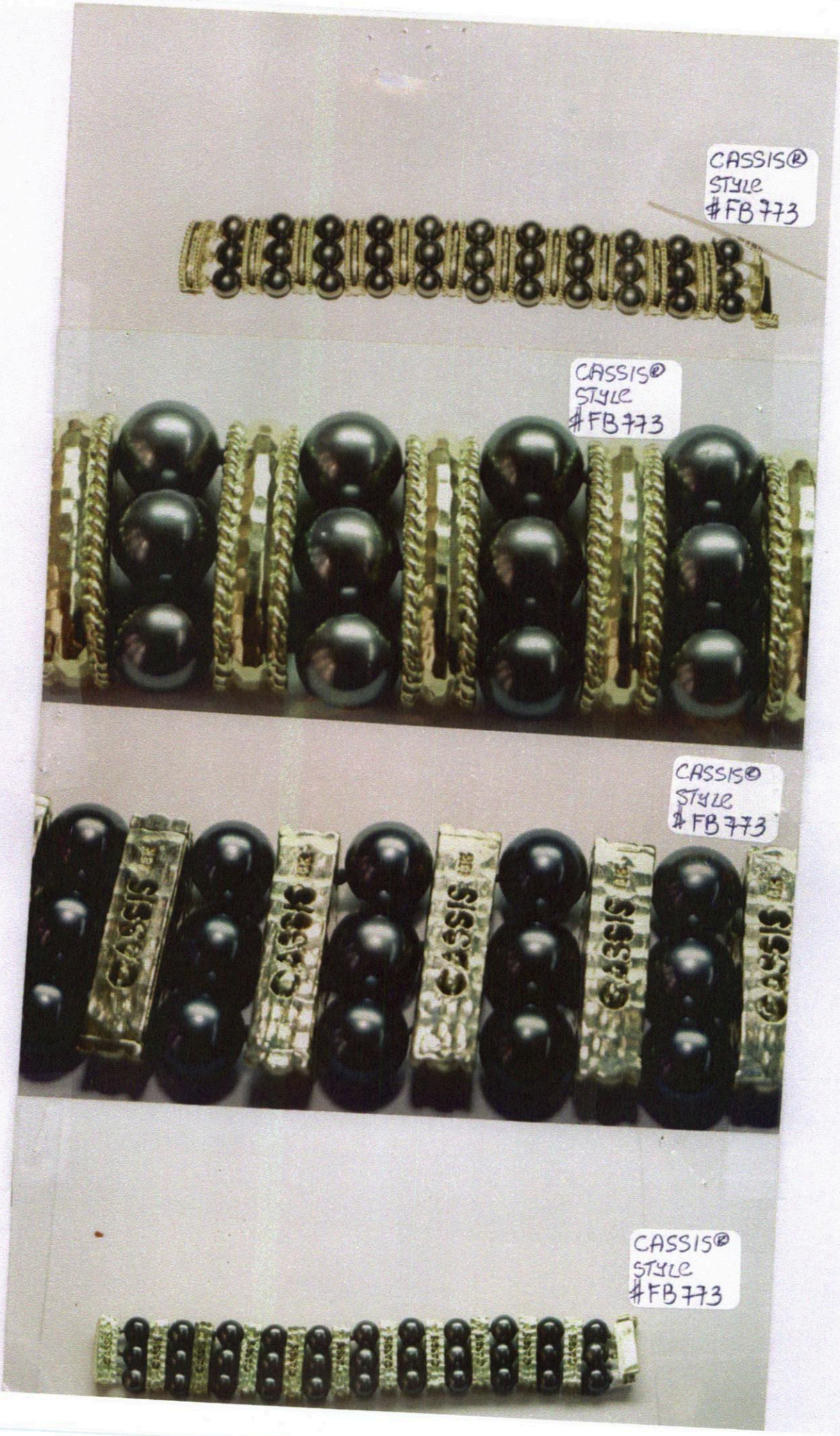

CASSIS®
STYLE
R1182


CASSIS®
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CASSIS®
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N891


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