



September 29, 2023

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**Re: Second Requests for Reconsideration for Refusal to Register Boule de Cristal – Single Sconce, Boule de Cristal – Table Lamp, Boule de Cristal – Petite Flushmount, Boule de Cristal – Flushmount 24, Boule de Cristal – Grand Single Sconce, Boule de Cristal – Grand Double Sconce, Boule de Cristal – Linear Chandelier 48, Boule de Cristal – Double Linear Chandelier, Boule de Cristal – Cluster Chandelier 14, Boule de Cristal – Cluster Chandelier 24, Boule de Cristal – Round Chandelier 24 (SR # 1-10005737927, 1-10005738045, 1-10005737855, 1-10005737891, 1-10005738009, 1-10005737963, 1-10005737763, 1-10005737819, 1-10005738117, 1-10005738081, 1-10005738081; Correspondence ID: 1-4Y3VD0R; 1-4XGT0V6, 1-4XGUD0A, 1-4Y3VCTZ, 1-4XVY6AX, 1-4Y4NICZ, 1-4XWBP86, 1-4Y13WS4, 1-4XVU8RX, 1-4Y13WN9, 1-53D072V)**

Dear Mr. Johnson:

The Review Board of the United States Copyright Office (“Board”) has considered Jonathan Browning Studios, Inc.’s (“Browning Studios”) second requests for reconsideration of the Registration Program’s refusals to register the sculptural claims in the following works: (1) “Boule de Cristal – Single Sconce,” (2) “Boule de Cristal – Table Lamp,” (3) “Boule de Cristal – Petite Flushmount,” (4) “Boule de Cristal – Flushmount 24,” (5) “Boule de Cristal – Grand Single Sconce,” (6) “Boule de Cristal – Grand Double Sconce,” (7) “Boule de Cristal – Linear Chandelier 48,” (8) “Boule de Cristal – Double Linear Chandelier,” (9) “Boule de Cristal – Cluster Chandelier 14,” (10) “Boule de Cristal – Cluster Chandelier 24,” and (11) “Boule de Cristal – Round Chandelier 24” (together, the “Works”). The Review Board has considered these eleven works together because they are all useful articles and feature a common element. After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments raised in the second requests for reconsideration, the Board affirms the Registration Program’s refusals of registration for the Works.

## **I. DESCRIPTIONS OF THE WORKS**

### ***i. Boule de Cristal – Single Sconce***

Boule de Cristal – Single Sconce is a wall-mounted light fixture. The fixture is mounted to the wall with a brass disc, to which a short horizontal brass band is attached. A short vertical

brass rod extends through the band, located at the center of the disc. A crystal with hexagonal, pentagonal, and trapezoidal facets surrounding the lighting element for this fixture sits on top of the rod. The deposit copy image of the fixture is shown below:



***ii. Boule de Cristal – Table Lamp***

Boule de Cristal – Table Lamp is a lamp composed of a crystal orb with hexagonal, pentagonal, and trapezoidal facets above a round brass disk. A brass rod extends upwards from the crystal that leads to a translucent shade, which surrounds the lighting element. The deposit copy image of the fixture is shown below:



***iii. Boule de Cristal – Petite Flushmount***

Boule de Cristal – Petite Flushmount is a light fixture composed of a crystal orb with hexagonal, pentagonal, and trapezoidal facets surrounding the lighting element. The crystal is suspended below a round brass disk. The deposit copy image of the fixture is shown below:



*iv. Boule de Cristal – Flushmount 24*

Boule de Cristal – Flushmount 24 is a ceiling-mounted light fixture consisting of a metal sphere from which twenty-four metal rods protrude. At the end of each of the rods is a crystal orb with hexagonal, pentagonal, and trapezoidal facets, each of which surrounds a lighting element. The deposit copy image of the fixture is shown below:



*v. Boule de Cristal – Grand Single Sconce*

Boule de Cristal – Grand Single Sconce is a ceiling-mounted light fixture. The fixture is mounted to the wall with a brass disc, to which a short horizontal brass band is attached. A long vertical brass rod extends through the band, along the center of the disc. At the top of the rod, there is a crystal orb with hexagonal, pentagonal, and trapezoidal facets surrounding the lighting element for this fixture. The deposit copy image of the fixture is shown below:



*vi. Boule de Cristal – Grand Double Sconce*

Boule de Cristal – Grand Double Sconce is a wall-mounted light fixture. The fixture is mounted to the wall with a brass disc. A horizontal brass band is attached to the center point of the disc and extends beyond the edges of the disc on each side. Long vertical brass rods are attached to each end of the band in a parallel configuration. At the top of each rod, there is a crystal orb with hexagonal, pentagonal, and trapezoidal facets surrounding the lighting elements for this fixture. The deposit copy image of the fixture is shown below:



*vii. Boule de Cristal – Linear Chandelier 48*

Boule de Cristal – Linear Chandelier 48 is a ceiling mounted light fixture. It consists of a hanging band with rounded ends that is suspended from two metal rods.<sup>1</sup> Five short vertical rods are

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<sup>1</sup> The deposit image submitted for the Boule de Cristal – Linear Chandelier 48 work (which appears above) does not depict the mount that attaches the fixture to the ceiling. In its second request for reconsideration, Browning Studios

attached to the bottom band, each topped by a crystal orb with hexagonal, pentagonal, and trapezoidal facets surrounding a lighting element. The deposit copy image of the fixture is shown below:



***viii. Boule de Cristal – Double Linear Chandelier***

Boule de Cristal – Double Linear Chandelier is a ceiling mounted light fixture. It consists of a hanging band suspended by two vertical metal rods. Suspended from this band are twelve positioned thin rods, symmetrically positioned with six evenly spaced rods on each side of the band. Each rod is topped by a crystal orb with hexagonal, pentagonal, and trapezoidal facets surrounding a lighting element. The deposit copy image of the fixture is shown below:



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included additional images of the Boule de Cristal – Linear Chandelier 48 design. However, the Board can only evaluate the authorship based on the deposit submitted with the application. *See* 37 C.F.R. § 202.21(b) (identifying material must “show the entire copyrightable content” of the work); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 1509.3(C) (3d ed. 2021) (“COMPENDIUM (THIRD)”) (“The applicant should submit as many pieces of identifying material as necessary to show the entire copyrightable content of the work claimed in the application.”). The deposits submitted for Boule de Cristal – Linear Chandelier 48, Boule de Cristal – Double Linear Chandelier, Boule de Cristal – Cluster Chandelier 14, Boule de Cristal – Cluster Chandelier 24, and Boule de Cristal – Round Chandelier 14 likewise do not depict the mounts that attach the fixtures to the ceiling. Accordingly, the Board’s analysis does not consider the ceiling mounts for these works.

**ix. *Boule de Cristal – Cluster Chandelier 14***

Boule de Cristal – Cluster Chandelier 14 is a ceiling mounted light fixture. It consists of a number of hanging thin black rods, suspended from which are what appear to be ten crystal orbs with hexagonal, pentagonal, and trapezoidal facets surrounding a lighting element. The crystals are arranged in three layers, with six crystals forming a circular shape at the top, three crystals forming a circular shape in the middle, and one crystal at the bottom. The deposit copy image of the fixture is shown below:



**x. *Boule de Cristal – Cluster Chandelier 24***

Boule de Cristal – Cluster Chandelier 24 is a ceiling mounted light fixture. It consists of a number of hanging thin black rods, suspended from which are numerous crystal orbs with hexagonal, pentagonal, and trapezoidal facets surrounding a lighting element. The crystal orbs are arranged in three layers, with what appear to be twelve crystals forming a circular shape at the top, six crystals forming a circular shape in the middle, and three crystals forming a circular shape at the bottom. The deposit copy image of the fixture is shown below:



***xi. Boule de Cristal – Round Chandelier 24***

Boule de Cristal – Round Chandelier 24 is a ceiling mounted light fixture. It consists of a metal cylinder from which several bronze rods of differing lengths are protruding. At the end of each rod is a crystal with hexagonal, pentagonal, and trapezoidal facets surrounding lighting elements. One additional bronze rod extends from the top of the cylinder toward the ceiling. The mount is not visible from the deposit copy image. The deposit copy image of the fixture is shown below:



**II. ADMINISTRATIVE RECORD**

On January 18, 2021, Browning Studios filed eleven separate applications to register copyright claims in the Works described above. When determining whether the design of a useful article, such as a light fixture, is eligible for copyright protection, the Copyright Office examines the item for any separable features that would qualify as a protectable work “if it were imagined separately from the useful article into which it is incorporated.” COMPENDIUM (THIRD) § 924.3 (quoting *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017)). In separate letters, Copyright Office registration specialists refused to register the claims, concluding that the Works are useful articles that “do not contain any separable, copyrightable authorship needed to sustain a claim to copyright.”<sup>2</sup>

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<sup>2</sup> Initial Letter Refusing Registration of Boule de Cristal – Single Sconce, Aquitaine – Round Chandelier 30, Boule de Cristal – Double Linear Chandelier, Boule de Cristal – Flushmount 24, and Aquitaine – Pendant from U.S. Copyright Office to Michael J. McCue at 1 (Mar. 2, 2021); Initial Letter Refusing Registration of Boule de Cristal – Table Lamp from U.S. Copyright Office to Michael J. McCue (Mar. 9, 2021); Initial Letter Refusing Registration of Boule de Cristal – Grand Double Sconce and Boule de Cristal – Petite Flushmount from U.S. Copyright Office to Michael J. McCue (Mar. 10, 2021); Initial Letter Refusing Registration of Boule de Cristal – Grand Single Sconce from U.S. Copyright Office to Michael J. McCue (Feb. 24, 2021); Initial Letter Refusing Registration of Boule de Cristal – Linear Chandelier 48 from U.S. Copyright Office to Michael J. McCue (Mar. 1, 2021); Initial Letter Refusing Registration of Boule de Cristal – Cluster Chandelier 14 from U.S. Copyright Office to Michael J. McCue (Feb. 24, 2021); Initial Letter Refusing Registration of Boule de Cristal – Cluster Chandelier 24 from U.S. Copyright Office to Michael J. McCue (Feb. 24, 2021); Initial Letter Refusing Registration of Aquitaine – Round Chandelier 18, Boule de Cristal – Round Chandelier 60, Boule de Cristal – Round Chandelier 48, and Boule de Cristal – Round Chandelier 24 from U.S. Copyright Office to Michael J. McCue (June 7, 2021).

In largely identical letters dated March 25, 2021, Browning Studios requested that the Office reconsider its initial refusals to register the Works.<sup>3</sup> After reviewing the Works in light of the points raised in the First Requests, the Office reevaluated the claims and again found that, while each of the Works contains separable elements, the separable elements in the Works are not sufficiently original alone or in combination to support a claim for registration.<sup>4</sup> The Office concluded that the claimed design elements are common and familiar shapes that are not protected by copyright, and that the simple arrangements of these common shapes into obvious, expected configurations lack the creativity required to support copyright registration for the Works. Second Refusals.

After receipt of the Office's decisions, Browning Studios requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusals to register the Works.<sup>5</sup> It

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<sup>3</sup> Letter from Aaron Johnson re: Boule de Cristal – Single Sconce to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Table Lamp to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Petite Flushmount to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Flushmount 24 to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Grand Single Sconce to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Grand Double Sconce to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Linear Chandelier 48 to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Double Linear Chandelier to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Cluster Chandelier 14 to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Cluster Chandelier 24 to U.S. Copyright Office (Mar. 25, 2021); Letter from Aaron Johnson re: Boule de Cristal – Round Chandelier 24 to U.S. Copyright Office (Sept. 6, 2021) (together, the “First Requests”).

<sup>4</sup> Refusal of First Request for Reconsideration of Boule de Cristal – Single Sconce from U.S. Copyright Office to Aaron Johnson (Aug. 20, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Table Lamp from U.S. Copyright Office to Aaron Johnson (Aug. 5, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Petite Flushmount from U.S. Copyright Office to Aaron Johnson (Aug. 5, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Flushmount 24 from U.S. Copyright Office to Aaron Johnson (Aug. 20, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Grand Single Sconce from U.S. Copyright Office to Aaron Johnson (Aug. 18, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Grand Double Sconce from U.S. Copyright Office to Aaron Johnson (Aug. 20, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Linear Chandelier 48 from U.S. Copyright Office to Aaron Johnson (Aug. 18, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Double Linear Chandelier from U.S. Copyright Office to Aaron Johnson (Aug. 19, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Cluster Chandelier 14 from U.S. Copyright Office to Aaron Johnson (Aug. 18, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Cluster Chandelier 24 from U.S. Copyright Office to Aaron Johnson (Aug. 19, 2021); Refusal of First Request for Reconsideration of Boule de Cristal – Round Chandelier 24 from U.S. Copyright Office to Aaron Johnson (Jan. 5, 2022) (together, the “Second Refusals”).

<sup>5</sup> Browning Studios' second requests for reconsideration were made in eleven separate, but largely identical, letters. Letter from Aaron Johnson re: Boule de Cristal – Single Sconce to U.S. Copyright Office at 1 (Nov. 18, 2021) (“Single Sconce Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Table Lamp to U.S. Copyright Office at 1 (Nov. 5, 2021) (“Table Lamp Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Petite Flushmount to U.S. Copyright Office at 1 (Nov. 5, 2021) (“Petite Flushmount Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Flushmount 24 to U.S. Copyright Office at 1 (Nov. 18, 2021) (“Flushmount 24 Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Grand Single Sconce to U.S. Copyright Office at 1 (Nov. 18, 2021) (“Grand Single Sconce Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Grand Double Sconce to U.S. Copyright Office at 1 (Nov. 18, 2021) (“Grand Double Sconce Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Linear Chandelier 48 to U.S. Copyright Office at 1 (Nov. 18, 2021) (“Linear Chandelier 48 Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Double Linear Chandelier to U.S. Copyright Office at 1 (Nov. 18, 2021) (“Double Linear Chandelier Second Request”); Letter

argued that the Works “combine[] a number of creative decisions and individual shapes into a single beautiful and original design, and at the very least easily hurdles the low bar of ‘*de minimis*’ authorship’ required for registration.”<sup>6</sup> Browning Studios further argued that the registration specialist incorrectly evaluated the creativity of each individual element on its own, rather than considering the Works as a whole, and applied an “obviousness” standard rather than evaluating originality.<sup>7</sup> Browning Studios also contended that the Works contained at least as much creativity as several works that the courts or the Office have previously found were copyrightable.<sup>8</sup> The Board responds to each of these arguments below.

### III. DISCUSSION

#### A. The Board’s Analysis of the Works

After carefully examining the Works and considering the arguments made in the First and Second Requests, the Board concludes that the Works are useful articles and that, although they contain separable elements, these elements do not contain the requisite creativity necessary for copyright registration.

Because each of the Works is a light fixture, they are “useful articles” under the Copyright Act and must be analyzed as such. *See* COMPENDIUM (THIRD) § 924.1 (noting that “lamps are inherently useful because they provide illumination”). The Act defines useful articles as those “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 (definition of “useful article”).<sup>9</sup> Useful articles may receive copyright protection “only if, and only to the extent that,” they incorporate pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. *Id.* (definition of “pictorial, graphic, and sculptural works”). The Board must therefore apply the test articulated by the Supreme Court in *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, to determine whether the work includes features that “(1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated.” 137 S. Ct. 1002, 1007 (2017).

Before turning to the individual Works, the Board first explains which elements of the Works satisfy the Court’s test. Under the first step of *Star Athletica*, the Board concludes that the crystal is a three-dimensional sculptural element that can be perceived separately from the

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from Aaron Johnson re: Boule de Cristal – Cluster Chandelier 14 to U.S. Copyright Office at 1 (Nov. 18, 2021) (“Cluster Chandelier 14 Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Cluster Chandelier 24 to U.S. Copyright Office at 1 (Nov. 18, 2021) (“Cluster Chandelier 24 Second Request”); Letter from Aaron Johnson re: Boule de Cristal – Round Chandelier 24 to U.S. Copyright Office at 1 (Aug. 2, 2023) (“Round Chandelier 24 Second Request”) (collectively, the “Second Requests”).

<sup>6</sup> *See* Second Requests at 1.

<sup>7</sup> *See, e.g.*, Single Sconce Second Request at 5, 10.

<sup>8</sup> *See, e.g., id.* at 6–10.

<sup>9</sup> COMPENDIUM (THIRD) § 924.1 (providing common examples of useful articles, including: lamps and lighting fixtures, household fixtures, such as bathtubs and sinks, and household appliances, such as refrigerators, stoves, and clocks).

lighting fixture (the useful article). Additionally, the discs, bands, and rods in the Works are also separately perceptible sculptural elements that could be considered three-dimensional sculptural works within the meaning of the Copyright Act. By comparison, the mounts in the Works are not copyrightable because they have an intrinsic utilitarian purpose, which is to attach lighting fixtures to the ceiling or wall.<sup>10</sup> See *Esquire, Inc. v. Ringer*, 591 F.2d 796, 800 (D.C. Cir. 1978) (holding that copyright protection is not available for the “overall shape or configuration of a utilitarian article, no matter how aesthetically pleasing that shape . . . may be”). Unlike the other elements, the mounts cannot be perceived separately from their utilitarian function. The Office, therefore, focuses its analysis below on the copyrightability of the crystals, rods, and bands and the manner in which they are arranged in each of the Works.

The Copyright Act provides that a work can be registered if it is an “original work[] of authorship.” 17 U.S.C. § 102(a). As the Supreme Court has explained, the statute requires that works contain “some minimal degree of creativity” to qualify for copyright protection. See *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). Though only a “modicum” of creativity is necessary, copyright will not protect works in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 346, 359. The Board concludes that the separable components of each of the Works are insufficiently creative for the reasons explained below.

*i. Sconces*



*Boule de Cristal – Single Sconce*



*Boule de Cristal – Grand Single Sconce*



*Boule de Cristal – Grand Double Sconce*

These Works do not contain the amount of creativity required for copyrightability. The separable elements in each of these Works are a band, one or more rods, and a crystal orb design consisting of geometric facets. These elements are not eligible for copyright protection individually. As set out in the Office’s regulations and practices, copyright does not protect standard designs and common geometric shapes, reproduced in either two or three dimensions. 37 C.F.R. § 202.1(a) (identifying “familiar symbols or designs” and “mere variations of . . .

<sup>10</sup> As explained above, the Office did not consider the mount for the several of the Works in its analysis because they were not depicted in the deposits included with Browning Studio’s registration applications. Even if the ceiling mounts had been included in the deposits, they would not be protectable because they serve the intrinsic utilitarian function of attaching the lighting fixture to the ceiling.

coloring” as examples of works not subject to copyright); COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes, such as straight or curved lines, circles, ovals, spheres, and triangles are not protectable).

Browning Studios argues unpersuasively that the crystal orb is creative because it includes “dozens of hexagonal, pentagonal, and trapezoidal facets, two hexagonal divots symmetrically cut into opposite sides of the sphere, and a cylindrical hole through the middle.” *See, e.g.*, Single Sconce Second Request at 6. The cuts in the sphere that allow the rod to connect with the sphere and create space for the lighting elements are functional and therefore not protectable by copyright. Additionally, combining geometric shapes into a crystal sphere is a common design.<sup>11</sup> To the extent Browning Studios used slightly irregular shapes to create the spherical shape, these minor variations are not copyrightable. COMPENDIUM (THIRD) § 905 (“[m]erely bringing together only a few standard forms or shapes with minor linear or spatial variations” does not provide sufficient amount of creative expression to warrant registration); *cf. id.* § 908.2 (in applications for jewelry, common gemstone cuts contain only *de minimis* creativity and are not a basis for registration).

The combination of the individual elements, including the selection and coordination of the faceted crystals, rods, and bands in the Works is also insufficiently creative to sustain copyright protection. While a combination of unprotectable elements may qualify for copyright protection, not every such combination automatically qualifies for copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The combination of faceted crystals, rods, and bands is a common arrangement within the light fixture industry that fails to exhibit a sufficient amount of creativity.<sup>12</sup> *See Zalewski v. Cicero Builder Dev., Inc.*, 754 F.3d 95, 106 (2d Cir. 2014) (holding elements that are “features of all colonial homes, or houses generally” are not protectable by copyright); *cf. Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989) (detailing that “simple shapes, when selected or combined in a *distinctive* manner indicating some ingenuity” can be accorded copyright protection) (emphasis added).

Browning Studios is incorrect that the Office was mistaken to describe as “obvious” the combination of elements in these Works. *See, e.g.*, Single Sconce Second Request at 10 (criticizing Office refusal of reconsideration because “it is the realm of patent law that requires nonobviousness”). In describing the combination of elements as “obvious” the Office was following the Supreme Court’s decision in *Feist*, which held that the “obvious” and “entirely typical” selection and arrangement of information in a phone directory rendered the directory as a whole uncopyrightable. *See* 499 U.S. at 362. The obviousness and typicality of combining a faceted crystal with rods and bands is relevant to the whether that arrangement is sufficiently creative to receive copyright protection. Likewise, the fact that Browning Studios made many design decisions when creating these Works does not affect their copyrightability. *See* Single

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<sup>11</sup> *See, e.g.*, *Crystal Dodecahedron*, FRONTGATE, <https://www.frontgate.com/crystal-dodecahedron/1380735> (last visited Sept. 25, 2023); *Faceted Crystal Ball, 6”*, HOZZ, <https://www.houzz.com/products/faceted-crystal-ball-6-prvw-vr~86224704> (last visited Sept. 25, 2023).

<sup>12</sup> *See, e.g.*, *Celeste 15” High Clear Faceted Crystal Accent Table Lamp*, LAMPS PLUS, <https://www.lampsplus.com/sfp/326H2> (last visited Sept. 25, 2023); *Angelia Faceted Crystal Prisms Wall Sconce*, THE BELACAN, <https://www.thebelacan.com/products/angelia-faceted-crystal-prisms-wall-sconce-rod> (last visited Sept. 25, 2023); *Rameau Modern Faceted Crystal Wall Sconce*, VALLEY LAMPS, <https://valleylamps.com/products/rameau-modern-faceted-crystal-wall-sconce> (last visited Sept. 25, 2023).

Sconce Second Request at 8. The Office does not consider the time and effort that went into creating a work or the existence of design alternatives. COMPENDIUM (THIRD) §§ 310.7, 310.8.

*ii. Flushmounts*



*Boule de Cristal – Petite Flushmount*



*Boule de Cristal – Flushmount 24*

These Works also do not contain the amount of creativity required for copyrightability. The separable elements in the Boule de Cristal – Petite Flushmount are a faceted sphere and a circular disc. The separable elements in the Boule de Cristal – Flushmount 24 are twenty-four separate faceted spheres, twenty-four gold rods, and a hemispherical mount. These elements are not eligible for copyright protection individually. As discussed above, copyright does not protect standard designs and common geometric shapes, reproduced in either two or three dimensions. 37 C.F.R. § 202.1(a) (identifying “familiar symbols or designs” and “mere variations of . . . coloring” as examples of works not subject to copyright); COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes, such as straight or curved lines, circles, ovals, spheres, and triangles are not protectable). As explained above, the crystal sphere is not sufficiently creative because it is a combination of common geometric shapes. The circular disc and hemispherical mounts, as well as the rods are also common geometric shapes that are not protectable by copyright.

The combination of the individual elements in the Works is also insufficiently creative to sustain copyright protection. While a combination of unprotectable elements may qualify for copyright protection, not every such combination automatically qualifies for copyright protection. *See Satava*, 323 F.3d at 811. The combination of faceted crystals, rods, and circular mounts is a common arrangement within the light fixture industry that fails to exhibit a sufficient amount of creativity.<sup>13</sup> *See Zaleski*, 754 F.3d at 106 (holding elements that are “features of all colonial homes, or houses generally” are not protectable by copyright). The twenty-four rods protruding from the base in the Boule de Cristal – Flushmount 24 are arranged in a cluster in the center of the hemispherical mount, resulting in the crystal spheres hanging in a non-creative, slightly convex circular arrangement. These designs are therefore not sufficiently creative to be copyrightable.

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<sup>13</sup> *See, e.g., Modern Forms Cascade 6” Wide Brass and Crystal LED Flush Mount Light*, LAMPS PLUS, <https://www.lampsplus.com/sfp/128N3> (last visited Sept. 25, 2023); *Corona 4 Light Chrome Flush Mount Clear Royal Cut Crystal*, ELEGANT LIGHTING, <https://www.elegantlightma.com/brand-elegant/corona-4-light-chrome-flush-mount-clear-royal-cut-crystal/sku-V758-v9800f10c-rc> (last visited Sept. 25, 2023).

**iii. Table Lamp**



Boule de Cristal – Table Lamp is also not sufficiently creative to be eligible for copyright protection. The separable elements in the Boule de Cristal – Table Lamp are a faceted sphere, a circular disc, and a gold rod.<sup>14</sup> As detailed in our discussion of the Sconces, these elements are not eligible for copyright protection individually.

The combination of the individual elements in this Work is also insufficiently creative to sustain copyright protection. While a combination of unprotectable elements may qualify for copyright protection, not every such combination automatically qualifies for copyright protection. *See Satava*, 323 F.3d at 811. The arrangement of a faceted crystal atop a circular base is common and expected for lamps and fails to exhibit a sufficient amount of creativity.<sup>15</sup> *See Zalewski*, 754 F.3d at 106 (holding elements that are “features of all colonial homes, or houses generally” are not protectable by copyright). This design is therefore not sufficiently creative to be copyrightable.

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<sup>14</sup> In its Second Request, Browning Studios suggests that the “shade attached to th[e] rod” is one of Work’s creative elements. *See* Table Lamp Second Request at 6. But lampshades, like light fixtures, have an “intrinsic utilitarian function,” 17 U.S.C. § 101 (definition of “useful article”)—they diffuse and redirect the light emitting from the bulb, which may otherwise be too bright for the human eye. This means that the lampshade is itself a useful article, and “copyright law does not protect the overall form, shape, or configuration of [a] useful article itself.” COMPENDIUM (THIRD) § 924.3(B); *see also Star Athletica*, 137 S. Ct. at 1010 (“to qualify as a pictorial, graphic, or sculptural work on its own, the feature cannot itself be a useful article or ‘[a]n article that is normally a part of a useful article’ (which is itself considered a useful article)” (quoting 17 U.S.C. § 101)). The shape of shade is therefore not a separable element that can be the basis for registration.

<sup>15</sup> *See, e.g., Halcyon Table Lamp by Kelly Wearstler*, PERIGOLD, <https://www.perigold.com/Visual-Comfort-Signature--Halcyon-Accent-Table-Lamp-by-Kelly-Wearstler-KW-3012-L6449-K~P001249055.html> (last visited Sept. 25, 2023); *Faceted Princess Crystal Prism Table Lamp*, DECOR PAD, <https://www.decorpad.com/bookmark.htm?bookmarkId=57975> (last visited Sept. 25, 2023).

iv. *Linear Chandeliers*



*Boule de Cristal – Linear Chandelier 48*

*Boule de Cristal – Double Linear Chandelier*

These Works also do not contain the amount of creativity required for copyrightability. The separable elements in these Works are faceted crystals, rods, and bands. As discussed in our discussion of the Sconces, these elements are not eligible for copyright protection individually.

The combination of the individual elements in the Works is also insufficiently creative to sustain copyright protection. While a combination of unprotectable elements may qualify for copyright protection, not every such combination automatically qualifies for copyright protection. *See Satava*, 323 F.3d at 811. As discussed above, courts recognize that an element of a work may be unprotectable where the design is “mechanical, garden-variety, typical or obvious, or as projecting age-old practice[s], firmly rooted in tradition and so commonplace that [the combination of elements] has come to be expected as a matter of course, or as practically inevitable.” *Atari Games Corp. v. Oman*, 979 F.2d 242, 245–46 (D.C. Cir. 1992) (quotation marks omitted). Here, the linear chandelier designs are commonplace because they merely display the same shape repeating in an evenly spaced line—an arrangement that typically does not denote adequate creativity. *See COMPENDIUM (THIRD) §§ 312.2, 905* (noting that “arranging geometric shapes in a standard or symmetrical manner” is an example of a compilation of elements that may not warrant copyright protection). Organized in a line of five separate crystals, *Boule de Cristal – Linear Chandelier 48* fails to exhibit anything more than a display of multiple geometric shapes in a basic design, an expected design in linear chandeliers.<sup>16</sup> Similarly, *Boule de Cristal – Double Linear Chandelier* features two rows of six evenly-spaced crystals hanging from rods, which is a common, expected design.<sup>17</sup> These designs therefore lack the requisite creativity for copyright protection.

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<sup>16</sup> *See, e.g., Boswell Quarter 5 Light*, HOME DEPOT, <https://www.homedepot.com/p/Hampton-Bay-Boswell-Quarter-5-Light-Brushed-Nickel-With-Weathered-Wood-Accents-Coastal-Linear-Island-Chandelier-Bulbs-Included-7965HDCDI/304094508> (last visited Sept. 25, 2023); *Temescal 5 – Light Black/Light Brown Kitchen Island Linear Pendant*, WAYFAIR, <https://www.wayfair.com/lighting/pdp/beachrest-home-temescal-5-light-kitchen-island-linear-pendant-with-wood-accents-w007991885.html> (last visited Sept. 25, 2023).

<sup>17</sup> *See, e.g., Hinkley Reeve 46”W Heritage Brass 12-Light Island Chandelier*, LAMPS PLUS, <https://www.lampsplus.com/sfp/86H93/> (last visited Sept. 25, 2023); *Visual Comfort Studio Marston 12-Light Linear Chandelier*, LIGHTS ONLINE, <https://www.lightsonline.com/marston-12-light-linear-chandelier-in-burnished-brass-by-chapman-myers-cc14612bbs-295g?page=1> (last visited Sept. 25, 2023).

v. *Cluster Chandeliers*



*Boule de Cristal – Cluster Chandelier 14*

*Boule de Cristal – Cluster Chandelier 24*

The Board also upholds the refusal to register *Boule de Cristal – Cluster Chandelier 14* and *Boule de Cristal – Cluster Chandelier 24*. These Works arrange faceted crystals in standard circular funnel-shaped arrangements that are commonly found in chandelier designs.<sup>18</sup> While a sufficiently creative arrangement of shapes in an unusual pattern may provide a basis for copyrightability, a repeating series of evenly spaced shapes amounts to a repetitive pattern that falls short of the Copyright Act’s requirements for protection. *See Satava*, 323 F.3d at 805, 811; COMPENDIUM (THIRD) § 905 (“[A] visual art work must contain a sufficient amount of creative expression. Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”). The Board concludes that because their separable elements consist of uncopyrightable crystals arranged in a typical configuration, these cluster chandeliers as a whole lack sufficient creative authorship for copyrightability.

vi. *Round Chandelier*



<sup>18</sup> See, e.g., *Filmore Ave. Collection – 28*, BED BATH & BEYOND, <https://www.bedbathandbeyond.com/c/ceiling-lighting/chandeliers?t=31344&featuredproduct=32208270> (last visited Sept. 25, 2023); *The Bar 14 Light Glass Crystal LED Chandelier, Brass*, OVERSTOCK.COM, <https://www.overstock.com/Lighting-Ceiling-Fans/The-Bar-14-Light-Glass-Crystal-LED-Chandelier-Brass/35381010/product.html?option=67868888> (last visited Sept. 25, 2023).

Finally, the Board upholds the refusal to register Boule de Cristal – Round Chandelier 24. As discussed above, the individual elements here are the same ones depicted in the previously considered works and are not protectable by copyright. The selection, arrangement, and coordination of the elements in the Work as a whole is also not sufficiently creative to be protectable by copyright. This Work arranges faceted crystals on protruding rods in a circular arrangement that is commonly found in chandelier designs.<sup>19</sup> While a sufficiently creative arrangement of shapes in an unusual pattern may provide a basis for copyrightability, this common arrangement of uncopyrightable elements falls short of the Copyright Act’s requirements for protection. *See Satava*, 323 F.3d at 805, 811; COMPENDIUM (THIRD) § 905 (“[A] visual art work must contain a sufficient amount of creative expression. Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”). The Board concludes that this chandelier as a whole lacks sufficient creative authorship to be protectable by copyright.

**B. The Registered Works Cited by Browning Studios Are Significantly More Creative Than the Works**

In support of its position that the Works are entitled to copyright protection, Browning Studios cites several examples of works it believes are similar to the Works and that courts or the Office have found to be copyrightable.<sup>20</sup> As an initial matter, the Office makes determinations of copyrightability on a case-by-case basis and does not compare the subject of an application to works for which it has previously granted or refused registration. COMPENDIUM (THIRD) § 309.3 (“The fact that the U.S. Copyright Office registered a particular work does not necessarily mean that the Office will register similar types of works or works that fall within the same category.”). Regardless, the Works differ significantly from the cited works in the following manner:

- The Bocci Design and Manufacturing Inc.’s pendant light fixture, “Pendant Lamp – 76,” which contained three-dimensional glass material in the shape of a bisected sphere, embedded with intricate patterns of intersecting filament wires, is a far more creative design than any of the Works. *See* U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Pendant Lamp – 76* (Apr. 4, 2018), <https://www.copyright.gov/rulings-filings/review-board/docs/pendant-lamp.pdf>.
- In finding that the banana costume in *Silvertop Assocs. v. Kangaroo Mfg.* was copyrightable, the court emphasized the work’s specific “combination of colors, lines, shape, and length.” 931 F.3d 215, 220–21 (3d Cir. 2019). Browning Studio has not pointed to an analogous combination of elements in the Works.
- The court in *Jetmax Ltd. v. Big Lots, Inc.* only held that the teardrop light set in that case had elements that could be perceptibly be perceived under *Star Athletica*; it did not hold the work was sufficiently creative to be protectable by copyright. 15-cv-

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<sup>19</sup> *See, e.g.,* *Elizabelle 18 – Light Dimmable Sputnik Modern Linear Chandelier*, WAYFAIR, <https://www.wayfair.com/lighting/pdp/rosdorf-park-elizabelle-crystal-chandelier-w005382947.html> (last visited Sept. 25, 2023); *Magic Home 15 Light Gold Crystal Sputnik Chandelier*, HOME DEPOT, <https://www.homedepot.com/p/Magic-Home-15-Light-Gold-Crystal-Sputnik-Chandelier-Modern-Ceiling-Pendant-Lighting-Fixture-with-Brass-Brushed-Body-for-Living-Room-MH-Y-020240/319795477> (last visited Sept. 25, 2023).

<sup>20</sup> *See, e.g.,* Single Sconce Second Request at 3–10.

9597, 2017 WL 3726756, at \*6 (S.D.N.Y. Aug. 28, 2017) (denying cross motions for summary judgment and finding that there were genuine disputes of material fact concerning whether the light set was sufficiently creative). The Works also significantly differ from the *Jetmax* light fixture, which creatively combined numerous multicolored, grooved, teardrop-shaped design elements.

- The four lighting fixtures in *Halo Creative & Design Ltd. v. Comptoir Des Indes Inc.*, featured significantly more design elements—such as texture, color, and the inclusion of multiple shapes in a variety of material and sizes—than the Works, and the court in that case described copyrightability as “exceedingly close.” Mem. Op. and Order at 23–29, No. 14-cv-8196 (N.D. Ill. Jan. 17, 2018), ECF No. 187. Specifically, those four lighting fixtures included: 1) an arrangement of cascading crystal circles composed of distinctively shaped prisms; 2) a circular metallic cage containing a diamond latticework with suspended crystals; 3) a ringed-orb and distinctively arranged crystal configuration; and 4) a smaller frame with a rusted nature, a large number of crystals, and a crystal ball. *Id.* at 23–24.
- The number, placement, and arrangement of polygons the court found to be copyrightable in *Glass Egg Digital Media v. Gameloft, Inc.* consisted of up to 26,000 triangles, 13,000 triangles, 4000 triangles, and 200 triangles within the depiction of the shape and appearance of a car, which is a far more intricate design than that of the Works. No. 17-cv-04165, 2018 WL 3659259, at \*5 (N.D. Cal. Aug. 2, 2018).
- Browning Studios cites several court opinions that predate *Feist* in which courts held that a design was sufficiently creative to be protectable by copyright. In *Prestige Floral, S.A. v. California Artificial Flower Co.*, the court held that a molded polyethylene flower resembling a lilac was copyrightable based on the decisions made by the creator with respect to the “proportion, form, contour, configuration, and conformation” of the work. 201 F. Supp. 287, 291 (S.D.N.Y. 1962). In *Arthur v. American Broadcasting Cos.*, the court stated that the Office’s registration of a sculpture consisting of the letters ABC superimposed over the three upper circles of the Olympic symbol was proper. 633 F. Supp. 146, 148 (S.D.N.Y. 1985).<sup>21</sup> It is unclear whether courts would have made the same determination regarding these simplistic designs under the *Feist* standard. *See Feist*, 499 U.S. at 364.<sup>22</sup>

As such, the cases and works previously registered by the Office cited in the Second Requests are inapposite and do not support registration of the Works.

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<sup>21</sup> The court noted, however, that the plaintiff had “attempted to register sketches of his idea with the copyright office, which, however, rejected them as uncopyrightable.” *Arthur*, 633 F. Supp. at 147.

<sup>22</sup> Browning Studios also cites *Elekes v. Bradford Novelty Co.*, 183 F. Supp. 730 (D. Mass. 1960), another pre-*Feist* case relating to a simplistic design that the Office registered. In that case, the court did not address the question of whether the plaintiff’s copyright in a decorative foil star was valid; it held only that defendant’s foil star did not infringe plaintiff’s copyright because there was no evidence that the defendant had copied the plaintiff’s star. *Id.* at 733.

#### IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusals to register the copyright claims in the Works. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.



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**U.S. Copyright Office Review Board**

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Maria Strong, Associate Register of Copyrights and  
Director of Policy and International Affairs

Mark T. Gray, Assistant General Counsel