



June 9, 2023

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**Re: Second Requests for Reconsideration for Refusal to Register Aquitaine – Sconce, Aquitaine – Pendant, Aquitaine – Linear Chandelier 48, Aquitaine – Linear Chandelier 60, Aquitaine – Linear Chandelier 72, Aquitaine – Round Chandelier 30 (SR # 1-10005738399, 1-10005738363, 1-10005738245, 1-10005738291, 1-10005738327, 1-10005738189; Correspondence ID: 1-50LCLVL; 1-50LEWU0, 1-50LCLYM, 1-50LEWQU, 1-50LCLWA, 1-50LCM6I)**

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) “Aquitaine – Sconce,” (2) “Aquitaine – Pendant,” (3) “Aquitaine – Linear Chandelier 48,” (4) “Aquitaine – Linear Chandelier 60,” (5) “Aquitaine – Linear Chandelier 72,” and (6) “Aquitaine – Round Chandelier 30” (together, the “Works”). The Review Board has considered these six works together because they are all useful articles and all 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 these Works.

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

### ***i. Aquitaine – Sconce***

Aquitaine – Sconce is a wall-mounted light fixture. The fixture is mounted to the wall with a brass disc, to which a short horizontal brass arm is attached. A teardrop-shaped pendant made of brass with a circular faceted crystal attached to the bottom is suspended from the brass arm by a black cord. The crystal surrounds the lighting element for this fixture. The deposit copy image of the fixture is shown below:



*ii. Aquitaine – Pendant*

Aquitaine – Pendant is a light fixture hanging by an unadorned black cord that consists of a teardrop-shaped pendant made of brass with a circular faceted crystal attached to the bottom.<sup>1</sup> The crystal surrounds the lighting element for this fixture. The deposit copy image of the fixture is shown below:



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<sup>1</sup> The lone deposit image submitted for the Aquitaine – Pendant work (which appears above) shows only the suspended pendant and lighting element and does not depict the mount that attaches the fixture to the ceiling. In its second request for reconsideration, Browning Studios included additional images of the Aquitaine – Pendant’s 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 1) Aquitaine – Pendant, 2) Aquitaine – Linear Chandelier 48, 3) Aquitaine – Linear Chandelier 60, 4) Aquitaine – Linear Chandelier 72, and 5) Aquitaine – Round Chandelier 30 likewise do not depict the mount that attaches the fixture to the ceiling. Accordingly, the Board’s analysis does not consider the ceiling mounts for these works.

**iii. *Aquitaine – Linear Chandelier 48***

Aquitaine – Linear Chandelier 48 is a hanging light fixture consisting of ten Aquitaine – Pendant designs arranged in a line, each of which surrounds a lighting element. Each pendant hangs by an unadorned black cord. The deposit copy image of the fixture is shown below:



**iv. *Aquitaine – Linear Chandelier 60***

Aquitaine – Linear Chandelier 60 is a hanging light fixture consisting of twelve Aquitaine – Pendant designs arranged in a line, each of which surrounds a lighting element. Each pendant hangs by an unadorned black cord. The deposit copy image of the fixture is shown below:



**v. *Aquitaine – Linear Chandelier 72***

Aquitaine – Linear Chandelier 72 is a hanging light fixture consisting of fourteen Aquitaine – Pendant designs arranged in a line, each of which surrounds a lighting element.

Each pendant hangs by an unadorned black cord. The deposit copy image of the fixture is shown below:



*vi. Aquitaine – Round Chandelier 30*

Aquitaine – Round Chandelier 30 is a hanging light fixture consisting of eighteen Aquitaine – Pendant designs arranged in a circular, funnel shape, in three layers, with the number of pendants decreasing as the shape of the chandelier narrows towards the bottom. Each pendant surrounds a lighting element and hangs by an unadorned black cord. The deposit copy image of the fixture is shown below:



**II. ADMINISTRATIVE RECORD**

On January 18, 2021, Browning Studios filed six 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 six letters, dated March 2 and 4, 2021, 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>

In six largely identical letters dated May 27, 2021 and June 4, 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. *Id.*

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 argued that the Works “combine[] a number of creative decisions and individual shapes into a

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<sup>2</sup> Initial Letter Refusing Registration of Aquitaine – Scone from U.S. Copyright Office to Michael J. McCue (Mar. 4, 2021); Initial Letter Refusing Registration of Aquitaine – Pendant and Aquitaine – Round Chandelier 30 from U.S. Copyright Office to Michael J. McCue (Mar. 2, 2021); Initial Letter Refusing Registration of Aquitaine – Linear Chandelier 48 from U.S. Copyright Office to Michael J. McCue (Mar. 4, 2021); Initial Letter Refusing Registration of Aquitaine – Linear Chandelier 60 from U.S. Copyright Office to Michael J. McCue (Mar. 4, 2021); Initial Letter Refusing Registration of Aquitaine – Linear Chandelier 72 from U.S. Copyright Office to Michael J. McCue (Mar. 4, 2021).

<sup>3</sup> Letter from Aaron D. Johnson re: Aquitaine – Linear Chandelier 48 to U.S. Copyright Office (June 4, 2021); Letter from Aaron D. Johnson re: Aquitaine – Pendant to U.S. Copyright Office (May 27, 2021); Letter from Aaron D. Johnson re: Aquitaine – Linear Chandelier 60 to U.S. Copyright Office (June 4, 2021); Letter from Aaron D. Johnson re: Aquitaine – Linear Chandelier 72 to U.S. Copyright Office (June 4, 2021); Letter from Aaron D. Johnson re: Aquitaine – Sconce to U.S. Copyright Office (June 4, 2021); Letter from Aaron D. Johnson re: Aquitaine – Round Chandelier 30 to U.S. Copyright Office (May 27, 2021) (together, the “First Requests”).

<sup>4</sup> Refusal of First Request for Reconsideration of Aquitaine – Sconce from U.S. Copyright Office to Aaron Johnson[n] (Oct. 19, 2021); Refusal of First Request for Reconsideration of Aquitaine – Pendant from U.S. Copyright Office to Aaron D. Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Aquitaine – Linear Chandelier 48 from U.S. Copyright Office to Aaron D. Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Aquitaine – Linear Chandelier 60 from U.S. Copyright Office to Aaron D. Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Aquitaine – Linear Chandelier 72 from U.S. Copyright Office to Aaron D. Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Aquitaine – Round Chandelier 30 from U.S. Copyright Office to Aaron D. Johnson (Oct. 19, 2021).

<sup>5</sup> Browning Studios’ second requests for reconsideration were made in six separate, but largely identical, letters. Letter from Aaron D. Johnson re: Aquitaine – Sconce to U.S. Copyright Office at 1 (Jan. 19, 2022) (“Sconce Second Request”); Letter from Aaron D. Johnson re: Aquitaine – Pendant to U.S. Copyright Office at 1 (Jan. 19, 2022) (“Pendant Second Request”); Letter from Aaron D. Johnson re: Aquitaine – Linear Chandelier 48 to U.S. Copyright Office at 1 (Jan. 19, 2022) (“Linear Chandelier 48 Second Request”); Letter from Aaron D. Johnson re: Aquitaine – Linear Chandelier 60 to U.S. Copyright Office at 1 (Jan. 19, 2022) (“Linear Chandelier 60 Second Request”); Letter from Aaron D. Johnson re: Aquitaine – Linear Chandelier 72 to U.S. Copyright Office at 1 (Jan. 19, 2022) (“Linear Chandelier 72 Second Request”); Letter from Aaron D. Johnson re: Aquitaine – Round Chandelier 30 to U.S. Copyright Office at 1 (Jan. 19, 2022) (“Round Chandelier 30 Second Request”) (collectively, the “Second Requests”).

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>

### 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.

The Copyright 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>7</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 apply the test articulated by the Supreme Court in *Star Athletica* 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. at 1007.

Applying this test to the Works, the Board concludes that, under the first step of the *Star Athletica* test, the brass and faceted crystal teardrop-shaped pendants in each of the Works is a three-dimensional sculptural element that can be perceived separately from the lighting fixture (the useful article). By comparison, the wall mount in the Aquitaine – Sconce and the black cords in each of the Works are not copyrightable because they have intrinsic utilitarian purposes, which are to attach lighting fixtures to the ceiling or wall.<sup>8</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 pendants, the wall mount and cords cannot be perceived separately from their utilitarian function. The Office, therefore, focuses its analysis on the copyrightability of the brass and faceted crystal teardrop-shaped pendants 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

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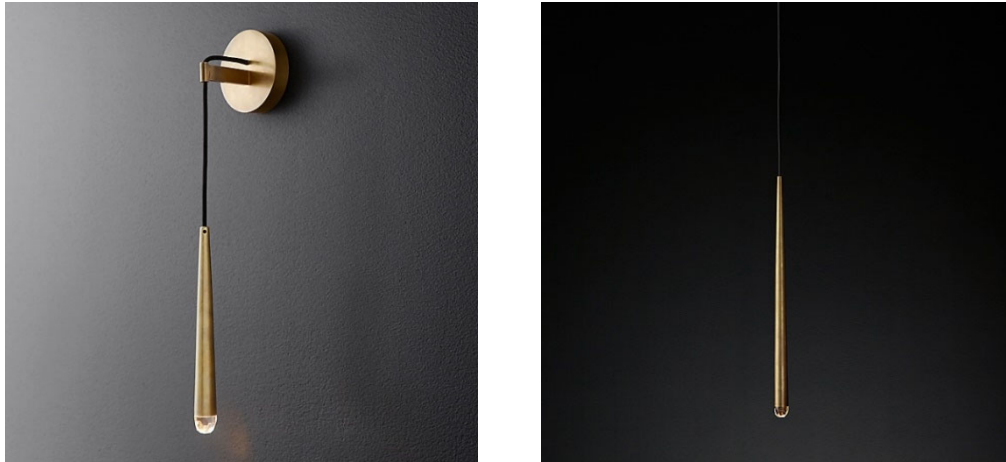
<sup>6</sup> See Second Requests at 1.

<sup>7</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).

<sup>8</sup> As explained above, the Office did not consider the ceiling mount for the Works in its analysis because it was not depicted in any of the identifying materials in Browning Studio’s registration applications. Even if the ceiling mounts were properly illustrated, they would not be protectable because they serve the intrinsic utilitarian function of attaching the lighting fixture to the ceiling.

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. Aquitaine – Sconce and Aquitaine – Pendant*



The Office concludes the pendants in Aquitaine – Sconce and Aquitaine – Pendant do not contain the amount of creativity required for copyrightability. When the utilitarian wall mount from Aquitaine – Sconce is removed from the analysis of the work, the work becomes almost identical to Aquitaine – Pendant, with the possible exception of the size of the pendant. The basic pendant design in each of these works employs a brass-colored metal, a teardrop-shaped pendant, and a faceted crystal sphere. These individual elements are all ineligible for copyright protection. The Office has consistently implemented the requirement of originality set forth in the Copyright Act and described in the *Feist* decision. 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 . . . 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).

The combination of the individual elements which form the Works as a whole, including the selection and coordination of the geometric shapes, colored metal, and faceted crystal that comprise the Works, are 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 basic geometric shapes, colored metal, and faceted crystals is a garden-variety arrangement within the light fixture industry that fails to exhibit a sufficient amount of creativity.<sup>9</sup> *See Zalewski v. Cicero Builder Dev., Inc.*, 754 F.3d 95, 106 (2d

<sup>9</sup> *See, e.g., Modern Forms Cascade 19" Tall LED Suspended Mini Pendant with K-2 Hand Cut Clear Crystal Shade*, BUILD WITH FERGUSON, <https://www.build.com/product/summary/1292749> (last visited June 9, 2023); *James Allan Ellington 5" Wide Pendant*, BUILD WITH FERGUSON, <https://www.build.com/product/summary/1769558> (last visited



Cir. 2014) (holding elements that are “features of all colonial homes, or houses generally” are not protectable by copyright); *compare 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).

**ii. Aquitaine – Linear Chandeliers 48, 60, and 72**



As explained above, a single Aquitaine pendant does not contain sufficient creativity to be protectable by copyright. The only variations present in the works titled Aquitaine – Linear Chandeliers 48, 60, and 72 are the number of pendants displayed in each work and the varying length of the brass elements of those pendants.

Organized in a line of ten separate pendants, 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. As discussed above, courts have long recognized 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 Work’s design is commonplace because it merely displays the same shape repeating in an evenly spaced line – an arrangement that typically does not denote adequate creativity. 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). This arrangement is common within lighting fixtures.<sup>10</sup> Thus, Linear Chandelier 48’s combination and arrangement of ten pendants are insufficient to render the work adequately creative for copyright protection.

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June 9, 2023); *Ultra-modern Simplicity Teardrops Hanging Ceiling Light Crystal Suspension Pendant Light for Restaurant - 110V-120V Gold Warm Light Short Arm*, LITFAD, <https://www.litfad.com/ultra-modern-simplicity-teardrops-hanging-ceiling-light-crystal-suspension-pendant-light-for-restaurant-s-724064.html> (last visited June 9, 2023).

<sup>10</sup> See, e.g., *Sculptural Glass 7-Light Faceted Chandelier*, WEST ELM, <https://www.westelm.com/products/sculptural-glass-7-light-faceted-chandelier-clear-w3733/> (last visited June 9, 2023); *Temescal 5 – Light Black/Light Brown Kitchen Island Linear Pendant*, WAYFAIR, <https://www.wayfair.com/lighting/pdp/beachcrest-home-temescal-5-light-kitchen-island-linear-pendant-with-wood-accent-w007991885.html> (last visited June 9, 2023).



Similarly, the inclusion of twelve and fourteen pendants, respectively in Linear Chandeliers 60 and 72—as opposed to the ten pendants displayed in Linear Chandelier 48—does not push these works past the threshold of creativity necessary to render protectable copyright. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 906.1 (noting that for works consisting merely of geometric shapes to be registrable, the “author’s use of those shapes [must] result[] in a work that, as a whole, is sufficiently creative.”).

**iii. Aquitaine – Round Chandelier 30**



Finally, the Board upholds the refusal to register Aquitaine – Round Chandelier 30. This Work arranges eighteen pendants in a standard circular funnel-shaped arrangement that is commonly found in chandelier designs.<sup>11</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 its separable elements consist of common geometric shapes arranged in a typical configuration, the Round Chandelier 30 work as a whole lacks sufficient creative authorship for copyrightability.

**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>12</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

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<sup>11</sup> *See, e.g., Filmore Ave. Collection – 28*, OVERSTOCK.COM, <https://www.overstock.com/Lighting-Ceiling-Fans/Filmore-Ave.-Collection-28/32208270/product.html> (last visited June 9, 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 June 9, 2023).

<sup>12</sup> *See* Sconce Second Request at 6–10; Pendant Second Request at 5–10; Linear Chandelier 48 Second Request at 7–13; Linear Chandelier 60 Second Request at 7–13; Linear Chandelier 72 Second Request at 7–13; Round Chandelier Second Request at 7–14.

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.”). Additionally, 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>.
- The court’s decision that the rock sculpture at issue in *Kay Berry, Inc. v. Taylor Gifts, Inc.*, was copyrightable was based on the combination of the sculpture’s texture, color, size, rectangular ridged shape, and the selection of the particular verse inscribed as well as the presentation of the verse, many of which are absent from the Works. 421 F.3d 199, 207 (3d Cir. 2005).
- In finding that the banana costume in *Silvertop Assocs. v. Kangaroo Mfg.* was copyrightable, the court emphasized the combined use of color, a banana shape, texture, lines, and length. 931 F.3d 215, 220 (3d Cir. 2019). Browning Studio cannot point to an analogous combination of elements in the Works.
- As conceded in Browning Studios’ Second Requests, the court in *Jetmax Ltd. v. Big Lots, Inc.*, did not make a determination that the tear drop light set was sufficiently creative to be protectable by copyright.<sup>13</sup> 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. Mem. Op. & Order at 23–29.<sup>14</sup> Specifically, the 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.

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<sup>13</sup> Round Chandelier 30 Second Request at 8–9; Linear Chandelier 72 Second Request at 8–9; Linear Chandelier 60 Second Request at 8–9; Linear Chandelier 48 Second Request at 8–9.

<sup>14</sup> A Memorandum Opinion and Order from *Halo Creative & Design Ltd. v. Comptoir Des Indes Inc.* was cited in and attached as Exhibit A to the Linear Chandelier 48, 60, and 72 and Round Chandelier 30 Second Requests.

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.

#### 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**

Suzanne V. Wilson, General Counsel and

Associate Register of Copyrights

Maria Strong, Associate Register of Copyrights and

Director of Policy and International Affairs

Jordana Rubel, Assistant General Counsel