



United States Copyright Office

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January 23, 2017

Richard D. Harris, Esq.
Greenberg Traurig LLP
77 West Wacker Drive
Suite 3100
Chicago, IL 60601

Re: Second Request for Reconsideration for Refusal to Register Aviator Tom Cat Chair, Blackhawk Chest, Blackhawk Coffee Table, Blackhawk Square Side Table, Odeon Chandelier Small, Odeon Chandelier Medium, Odeon Table Lamp, Stonyhurst Lamp Table and Ampleforth Chest; Correspondence ID: 1-10KL43H; SR Nos. 1-1610967096, 1-1610806531, 1-1610829475, 1-1610966605, 1-1610829201, 1-1610829540, 1-1610966671, 1-1610966801, and 1-1610966736

Dear Mr. Harris:

The Review Board of the United States Copyright Office (“Board”) has considered Halo Trademarks Limited’s (“Halo’s”) second request for reconsideration of the Registration Program’s refusal to register three-dimensional sculptural claims claim in the works titled Odeon Table Lamp, Odeon Chandelier Medium, Odeon Chandelier Small, Blackhawk Coffee Table, Blackhawk Chest, Blackhawk Square Side Table, Stonyhurst Lamp Table, Ampleforth Chest, Aviator Tom Cat Chair, and Gyro Crystal Chandelier (collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence in these cases, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s denials of registration.

I. DESCRIPTION OF THE WORKS

All nine of the Works are furniture pieces, including three “Odeon” lamps, three “Blackhawk” pieces, a lamp table, a chest, and a chair.

Odeon Table Lamp, Odeon Chandelier Medium, Odeon Chandelier Small (“Odeon lamps”)

“Odeon Table Lamp” is a lamp fixture. The main part of the lamp consists of a base, a rod, and a junction box that sits atop the rod and divides into three arms with downward-facing sockets for the bulbs. Also connected to the junction box is a lampshade. The lampshade consists of three evenly-spaced metal spokes connected to an outer metal ring, and from which hangs an inner metal ring. Both rings support a tier of triangular crystal prisms—30 prisms hang from the outer ring, and 15 from the inner ring. Yet another, outermost ring is fixed to the outer ring.

“Odeon Chandelier Medium” is a variation on “Odeon Table Lamp” with several differences. First, instead of sitting on a base, the lamp hangs from a rod connected to a chain. Second, the chandelier supports seventeen bulbs instead of only three. Five are downward-facing, and the other twelve are parallel to the ground. Third, the chandelier has eight instead of three spokes. Finally,

the chandelier has five rings supporting tiers of sixty-four, fifty-six, forty, thirty, and fifteen triangular crystal prisms.

“Odeon Chandelier Small” is highly similar to “Odeon Table Lamp” and “Odeon Chandelier Medium,” with the following differentiating characteristics. First, it supports eight bulbs, four parallel to the ground, and four perpendicular. Second, the small chandelier has eight spokes. Finally, the small chandelier has three rings supporting forty, thirty, and fifteen triangular prisms.

Blackhawk Coffee Table, Blackhawk Chest, and Blackhawk Square Side Table (“Blackhawk Works”)

“Blackhawk Coffee Table” is a rectangular cuboid with rounded edges and corners. It has one drawer with two drawer pulls. The outer surface is covered with metal sheets. The metal is pleated at the corners, and the surface “mimics an airplane’s multi-riveted construction of interlocking aluminum panels.” Letter from Richard D. Harris, Greenberg Traurig, to U.S. Copyright Office, at 6 (Jan. 28, 2015) (Petition for First Reconsideration of Copyright Application on Blackhawk Coffee Table).

“Blackhawk Chest” is similar to “Blackhawk Coffee Table” except that it has three drawers instead of only one, which affects its dimensions relative to “Blackhawk Coffee Table.”

“Blackhawk Square Side Table” also is similar to “Blackhawk Coffee Table” except that it has two drawers and is closer to an actual cuboid than the rectangular cuboid coffee table.

Other Works

“Stonyhurst Lamp Table” is a cubic set of three drawers. The piece is covered with brown leather with a “scaled” finish, designed to mimic reptile skin. Leather wraps are fixed at the edges and corners, held in place by rivets. Each drawer has a leather drawer handle, and two additional handles are fixed to either side of the piece. Finally, wood stripping is placed between the drawers, wrapped around the chest, and placed on two of the edges on the piece’s top face, held in place by tacks or rivets.

“Ampleforth Chest” is chest with three drawers and a top cavity. It is covered with a grey, canvas-like material. Leather corner and edge wraps are held in place by rivets and tacks. Each drawer has two leather handles, each made of a single long strip of leather held in place at either side by two inverted shorter strips of leather fixed with two tacks each at top and bottom. The top cavity is held closed with two standard metal draw latches, and a suitcase lock.

“Aviator Tom Cat Chair” is an armchair consisting of a leather seat and two metallic side section arms set in a wishbone pattern, but not connected behind the back of the chair. The metallic section is covered with stainless steel sheets that are riveted and countersunk together. The seat is upholstered in ribbed leather which runs parallel to the arms.

“Gyro Crystal Chandelier” is a lighting fixture. The main part of the fixture consists of a six “3”-shaped metal pieces. A drip pan is affixed to the base of each “3”-shaped piece, and an artificial candle protrudes upward from this. Crystal festoons or garlands are draped along the tops of the “3”-shaped pieces. A crystal ball hangs from the bottom of the main unit. A chain supports both the main unit and an outer cage. The cage is constructed of eight 180-degree hoops that meet at either

pole, fixed to "o"-ring. Another 360-degree hoop runs perpendicular to the eight 180-degree hoops, joined at the midpoint between the two "o"-rings.

The Works are depicted in Appendix A.

II. ADMINISTRATIVE RECORD

On July 23, 2014, Halo filed applications to register copyright claims in the Works. In an October 30, 2014 letter, a Copyright Office registration specialist refused to register the claims, finding that the Works "are 'useful articles' which do not contain any separable, sculptural authorship needed to sustain a claim to copyright." Letter from Ivan Proctor, Registration Specialist, to Richard Harris, Greenberg Traurig, LLP (Oct. 30, 2014).

In a letter dated December 17, 2014, Halo requested that the Copyright Office reconsider its initial refusal to register the Work titled "Odeon Table Lamp." Then, in a series of letters dated January 28, 2015, Halo requested that the Office reconsider its initial refusal to register the other eight Works.¹ After reviewing the Works in light of the points raised in the First Request, the Office re-evaluated the claims and in nine separate letters again concluded that each Work "does not contain any conceptually separable features under the Office's test." Letters from Stephanie Mason, Attorney-Advisor, to Richard Harris, Greenberg Traurig, LLP, at 4 (Mar. 12, 2015).

In a letter dated June 11, 2015, Halo requested that, pursuant to 37 C.F.R. § 202.5(c), the Copyright Office reconsider for a second time its refusal to register the Works. Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (June 11, 2015) ("Second Request"). In that letter, Halo argued that each of the applications "covers a designs with original, conceptually separable, creatively authored, ornamental features, which meets the qualifications for copyright protection under a proper reading of the relevant statutory language, as well as under an accurate, complete reading of the Copyright Office's own *Compendium (Third)* § 924.2(B)." *Id.* at 3. Specifically, Halo argues that the Office erred in its application of the Compendium rule for conceptual separability by analyzing "the 'features' (in the plural) of the Pending Applications as a whole, instead of on a feature-by-feature basis." *Id.* at 6-7. Halo further claims that the "Copyright Office's test for conceptual separability also contradicts the plain language of the copyright statute." *Id.* at 7. Specifically, Halo claims that the Office's standard for conceptual separability "is essentially an actual standard for *physical* separability." *Id.* at 8 (emphasis in original). Finally, Halo claims that each of the Works contains separable features and they all are copyrightable when analyzed with what Halo believes is the correct conceptual separability standard. *Id.* at 23-35.

¹ Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Blackhawk Square Side Table"); Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Aviator Tom Cat Chair"); Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Blackhawk Coffee Table"); Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Stonyhurst Lamp Table"); Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Blackhawk Chest"); Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Odeon Chandelier Medium"); Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Odeon Chandelier Small"); Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Ampleforth Chest"); Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office (Jan. 28, 2015) ("First Request—Gyro Crystal Chandelier").

In a letter dated June 23, 2015, a Copyright Office registration specialist informed Halo that “[t]he Office cannot consider [Halo’s second] request [for reconsideration] . . . because it is untimely.” Letter from U.S. Copyright Office to Richard Harris, Greenberg Traurig, LLP (June 23, 2015). In a letter dated July 14, 2015, Halo requested that, pursuant to 37 C.F.R. § 201.8, the Register should assign June 12, 2015 as the date of receipt of the June 11, 2015 letter (which was received on June 13, 2015), and alternatively, that pursuant to 37 C.F.R. § 202.5(e), the Register should waive or suspend the receipt deadline by one day so as to render timely the Second Request for Reconsideration. Letter from Richard D. Harris, Greenberg Traurig, LLP, to U.S. Copyright Office, at 3 (July 14, 2015).

III. DISCUSSION

A. The Legal Framework

1) Useful Articles and Separability

The copyright law does not protect useful articles, which are defined as “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. Works of artistic craftsmanship that have been incorporated into a useful article may be eligible for copyright protection if they constitute pictorial, graphic, or sculptural works pursuant to 17 U.S.C. § 102(a)(5). The protection for such works is limited, however, in that it extends only “insofar as [the works] form but not their mechanical or utilitarian aspects are concerned.” *Id.* at 101. In other words, a design incorporated into a useful article is only eligible for copyright protection to the extent that the design includes artistic “features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” *Id.*; see also *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”).

The Office employs two tests to assess separability: (1) a test for physical separability; and (2) a test for conceptual separability. See COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 924.2 (3d ed. 2014) (“COMPENDIUM (THIRD)”); see also *Inhale, Inc. v. Starbuzz Tobacco, Inc.*, 755 F.3d 1038, 1041 n.2 (9th Cir. 2014) (finding that the Office’s interpretation of conceptual separability is entitled to deference); *Custom Chrome, Inc. v. Ringer*, 35 U.S.P.Q.2d 1714 (D.D.C. 1995) (finding that the Office’s tests for physical and conceptual separability are “a reasonable construction of the copyright statute[]” consistent with the words of the statute,” existing law, and the legislature’s declared intent in enacting the statute).

To satisfy the test for physical separability, a useful article must contain pictorial, graphic, or sculptural features that can be physically separated from the article by ordinary means. See COMPENDIUM (THIRD) § 924.2(A). To satisfy the test for conceptual separability, a useful article must contain pictorial, graphic, or sculptural features that can be visualized—either on paper or as a freestanding sculpture—as a work of authorship that is

separate and independent from the utilitarian aspects of the article and the overall shape of the article. In other words,

the feature must be [able to be] imagined separately and independently from the useful article without destroying the basic shape of that article. A pictorial, graphic, or sculptural feature satisfies this requirement only if the artistic feature and the useful article could both exist side by side and be perceived as fully realized, separate works—one an artistic work and the other a useful article.

COMPENDIUM (THIRD) § 924.2(B); *cf.* H.R. REP. NO. 94-1476, at 55 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5668 (citing a carving on the back of a chair or a floral relief design on silver flatware as examples of conceptually separable design features).

If the useful article does not contain any features that can be physically or conceptually separated from its utilitarian function, the Office will refuse to register the claim because Congress has made it clear that copyright protection does not extend to any aspect of a useful article that cannot be separated from its utilitarian elements. If the Office determines that the work contains one or more features that can be separated from its functional elements, the Office will examine those features to determine if they contain a sufficient amount of original authorship to warrant registration.

2) *Originality*

A work may be registered if it qualifies as an “original work[] of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). In this context, the term “original” consists of two components: independent creation and sufficient creativity. *See 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. *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has ruled that some works (such as the alphabetized telephone directory at issue in *Feist*) fail to meet even this low threshold. *Id.* The Court observed that “[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity.” *Id.* at 363. It further found 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.

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act and described in the *Feist* decision. *See, e.g.*, 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”); *id.* § 202.10(a) (stating “to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form”). 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. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *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”). A determination of copyrightability in the combination of standard design elements depends on whether the selection, coordination, or arrangement is done in such a way as to result in copyrightable authorship. *Id.*; see also *Atari Games Corp. v. Oman*, 888 F.2d 878 (D.C. Cir. 1989).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. For example, the United States District Court for the Southern District of New York upheld the Copyright Office’s refusal to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements.” *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). Likewise, the Ninth Circuit has held that a glass sculpture of a jellyfish consisting of clear glass, an oblong shroud, bright colors, vertical orientation, and the stereotypical jellyfish form did not merit copyright protection. See *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The language in *Satava* is particularly instructive:

It is true, of 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.

Id. (internal citations omitted).

Similarly, while the Office may register a work that consists merely of geometric shapes, for such a work to be registrable, the “author’s use of those shapes [must] result[] in a work that, as a whole, is sufficiently creative.” COMPENDIUM (THIRD) § 906.1; see also *Atari Games Corp.*, 888 F.2d at 883 (“[S]imple shapes, when selected or combined in a distinctive manner indicating some ingenuity, have been accorded copyright protection both by the Register and in court.”). Thus, the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but would not register a picture consisting merely of a purple background and evenly-spaced white circles. COMPENDIUM (THIRD) § 906.1.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. See COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design’s visual effect or its symbolism, the time and effort it took to create, or the design’s commercial success in the marketplace are not factors in determining whether a design is copyrightable. See, e.g., *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

B. Analysis of the Works

As an initial matter, the Copyright Office grants Halo's July 14, 2015 request that its June 11, 2015 Second Request for Reconsideration be considered timely. After carefully examining the Works and applying the legal standards discussed above, the Board finds that the Works are useful articles that do not contain the requisite separable authorship necessary to sustain claims to copyright.

Odeon Table Lamp, Odeon Chandelier Small, and Odeon Chandelier Medium

The Odeon lamps are useful articles. See *Chosun Int'l, Inc. v. Chrisha Creations, Ltd.*, 413 F.3d 324, 328 (2d Cir. 2005) (stating that the features related a lamp's "utilitarian function as a device used to combat darkness" are not copyrightable). Thus, for there to be any consideration of the copyrightability of the Odeon lamps' design features, the features must be either physically or conceptually separable from their functions as lamps. See *Norris Indus., Inc. v. Int'l Tel. & Tel. Corp.*, 696 F.2d 918, 922 (11th Cir. 2011); see also *Esquire, Inc.*, 591 F.2d at 800.

The Odeon lamps clearly do not have physically separable artistic features, and Halo does not dispute this point. Halo does, however, argue that the Odeon lamps "each contain conceptually separable features, and should be copyrightable." Second Request at 31. Halo asserts that hanging crystal prisms "evoke the concept of a cascading fluid" and viewed from above or below "evoke the concept of an Aztec sun design." Second Request at 30. Each individual crystal prism is not, as Halo argues, "a wholly decorative element" with no intrinsic usefulness. Second Request at 30. By their very nature, triangular prisms refract light. Thus, the hanging prisms cannot be imagined separately and independently from the useful article without destroying the basic shape of that article.² Without the triangular shape of the prisms, the refraction of light would not occur as intended by the designer. Furthermore, without the "cascading" effect caused by the increase in length toward the center, the prisms will not refract light over such a wide area, because the light exiting the inner prisms would re-enter the next outermost layer instead of travelling unimpeded into the room. See *Aqua Creations USA Inc. v. Hilton Hotels Corp.*, No. 10 Civ. 246(PGG), 2011 WL 1239793, at *5-6 (S.D.N.Y. Mar. 28, 2011) (finding that a lighting fixture shade "is an important functional element of a light fixture" for purposes of physical separability, and that the "shape of lighting fixture shades is clearly informed by utilitarian concerns, and the associated creative elements are not conceptually separable.").

Blackhawk Coffee Table, Blackhawk Chest, and Blackhawk Square Side Table

The three Blackhawk Works also are useful articles. See *Magnussen Furniture, Inc. v. Collezione Europa USA, Inc.*, No. 96-1917, 1997 WL 337465, at *2 (4th Cir. June 19, 1997) (observing that "most pieces of furniture are 'useful articles' rather than 'works of art.'"). Thus, as stated above, for there to be any consideration of the copyrightability of the design features of the Blackhawk Works, they must be either physically or conceptually separable. Halo contends that the "pattern of stainless steel plates, riveted, countersunk together, and overlaid, with a distressed shiny metallic finish" is conceptually separable. Second Request at 25-27. This may be a plausible

² As noted above, the Office's interpretation of conceptual separability is entitled to deference. See *Starbuzz Tobacco, Inc.*, 755 F.3d at 1041 n.2 (9th Cir. 2014); *Custom Chrome, Inc.*, 35 U.S.P.Q.2d 1714, at *5 (finding that the Office's tests for physical and conceptual separability are "a reasonable construction of the copyright statute[]" consistent with the words of the statute, existing law, and the legislature's declared intent in enacting the statute). Thus, the Office evaluates the conceptual separability of the creative features of articles under its own test, and not the test favored by Halo.

argument with respect to the stainless steel plates (although it is unclear whether the plates serve some functional purpose, such as reinforcing the chair)—but not with respect to the recessed handle assemblies, which are intrinsically tied to the function of opening the drawers. Even assuming the stainless steel plates are separable, however, the pattern does not possess sufficient originality to render it copyrightable. The use of curvature pleats riveted into the corners is a simple method of creating rounded corners using stainless steel plates, and is not entitled to copyright protection. The pattern of the stainless steel plates also is not sufficiently original to render it copyrightable. Although the plates do not intersect on a perfect grid, the deviations from a grid pattern are slight enough that the pattern overall does not possess sufficient originality to warrant copyright protection.

Stonyhurst Lamp Table

The Stonyhurst Lamp Table is another useful article. *See Magnussen Furniture, Inc.*, 1997 WL 337465, at *2 (observing that “most pieces of furniture are ‘useful articles’ rather than ‘works of art.’”). Thus, as stated above, for there to be any consideration of the copyrightability of the Stonyhurst Lamp Table’s design features, the features must be either physically or conceptually separable. Halo asserts that the scaled pattern leather finish, the wood stripping, and the leather corner and edge wraps are “capable of existing independently of the utilitarian aspects of the Stonyhurst Lamp Table.” Second Request at 32. Even accepting that point *arguendo*, however, these design elements are not sufficiently original to warrant copyright protection. Faux-alligator skin finishes regularly are used in leather products, and are not sufficiently original to warrant copyright protection. Nor is the wood stripping original: wood stripping is a feature of many steam trunks. The leather corners and edge wraps are also commonplace. The combination of these elements is also unoriginal: the orientation of the wood stripping is dictated by the position of the drawers, and the leather corners and edge wraps are necessarily placed in on the corners and edges. Finally, it is irrelevant that the scaled leather finish “is reminiscent and evokes the conceptually separable concept of reptile-skin, while the [wood stripping and leather corner and edge wraps] combine to evoke the concept of an old-fashioned travel trunk.” Second Request at 32. The “symbolic meaning or impression of a work is irrelevant” to the determination of whether a work is copyrightable. COMPENDIUM (THIRD) § 310.3.

Ampleforth Chest

Like the other Works, the Stonyhurst Lamp Table is a useful article and, for there to be any consideration of the copyrightability of the Ampleforth Chest’s design features, the features must be either physically or conceptually separable. Halo asserts that the leather stripping between the drawers, below the flip-top cover, and along the top and bottom of the Ampleforth Chest, as well as the leather corner and edge wraps, are “capable of existing independently of the utilitarian aspects of the Ampleforth Chest.” Second Request at 34. Again, accepting that assertion *arguendo*, these design elements are not sufficiently creative to render the work copyrightable. As noted above, stripping between drawers and along edges and corners is an extremely common design element of chests. Furthermore, in combination and separated from the Ampleforth Chest’s useful elements, the stripping would form a rectangular cuboid with several extra lines wrapped around. As a simple shape, a rectangular cuboid is not copyrightable. *See* COMPENDIUM (THIRD) § 906.1 (“The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form.”).

Aviator Tom Cat Chair

The Aviator Tom Cat Chair also is a useful article. *See Magnussen Furniture, Inc.*, 1997 WL 337465, at *2. The Copyright Office thus must assess whether there are any copyrightable design features that are either physically or conceptually separable. Halo agrees that the “seat and seatback portions, exclusive of the ornamentation, provide the utilitarian function of the chair as a place to sit.” Second Request at 23. However, Halo argues that the chair’s two arms, and their patterned stainless steel plating, “not only collectively evoke the concept of a metallic wishbone,” but are also “literally capable of ‘standing’ and existing independently of the utilitarian aspects of the chair.” Second Request at 23-24. The Office disagrees that the arms are conceptually separable from the rest of the chair. First, the arms act as surfaces on which the user may rest her arms. *See Heptagon Creations, Ltd. v. Core Grp. Mktg. LLC*, 507 F. App’x 74, 75-76 (2d Cir. 2013) (stating that with respect to a “Cocoon Chair,” the design of the arms “was also dictated by the function concern that a person sitting in the chair have a surface on which to rest his arms.”). Second, the arms support the weight of the seat. It is not possible to imagine the arms apart from the chair without destroying the basic shape of the Aviator Tom Cat Chair, in which the seat is elevated above the ground. The Office agrees that the steel plating may be separable, but, as explained above with respect to the Blackhawk pieces, the pattern of steel plates is not sufficiently original to warrant copyright protection. As to the leather pleats in the upholstery, to the extent that they serve to secure the leather to the sit or prevent the user from slipping on the chair, these are not separable. However, even if they were separable, they would not be sufficiently original to warrant copyright protection. The pleats in the center of the seat form a series of parallel lines, which constitute common geometrical shapes not protected by the Copyright Act. *See COMPENDIUM (THIRD) §906.1.*

Gyro Crystal Chandelier

The Gyro Crystal Chandelier is a useful article because it is a lighting fixture. *See Chosun Int’l, Inc.*, 413 F.3d at 328 (stating that the features related a lamp’s “utilitarian function as a device used to combat darkness” are not copyrightable). Thus, the Copyright Office will analyze whether there are any copyrightable design features that are either physically or conceptually separable from the Work’s function as a lighting fixture. *See Norris Indus., Inc.*, 696 F.2d at 922; *see also Esquire, Inc.*, 591 F.2d at 800. Halo claims that two components of the Gyro Crystal Chandelier are separable: the crystal festoons or garlands, and the outer metal cage.


The crystal festoons or garlands are not physically or conceptually separable. Halo contends that these constitute a “wholly decorative element” with no intrinsic usefulness. Second Request at 28. However, the crystals refract light and thus cannot be imagined separately and independently from the useful article without destroying the basic shape of that article, and they certainly cannot be physically separated by ordinary means. If the crystals were removed or shaped differently, the refraction of light would not occur as intended by the designer. *See Aqua Creations USA Inc.*, 2011 WL 1239793, at *5-6 (finding that a lighting fixture shade “is an important functional element of a light fixture” for purposes of physical separability, and that the “shape of lighting fixture shades is clearly informed by utilitarian concerns, and the associated creative elements are not conceptually separable.”).

The Copyright Office agrees that the outer metal cage of the Gyro Crystal Chandelier is physically separable because it can be physically separated from the rest of the article by ordinary means, and is not intrinsic to the work’s function as a lighting fixture. However, by itself, the cage is not sufficiently creative to warrant copyright protection. The cage forms a sphere – a basic

geometric shape. As stipulated in the *Compendium of U.S. Copyright Office Practices*, “[g]enerally, the U.S. Copyright Office will not register a work that merely consists of common geometric shapes unless the author’s use of those shapes results in a work that, as a whole is sufficiently creative.” COMPENDIUM (THIRD) § 906.1. The lines marked out by the metal arcs are just like those marked out by the cuts in paper printouts applied to standard globes depicting the world map: equally spaced, with an additional line running at the equator. As such, the metal cage component is not copyrightable. Halo’s additional claim that the cage is “evocative of an atom’s nucleus,” Second Request at 28, does not change this finding: the “symbolic meaning or impression of a work is irrelevant” to the determination of whether a work is copyrightable. COMPENDIUM (THIRD) § 310.3.

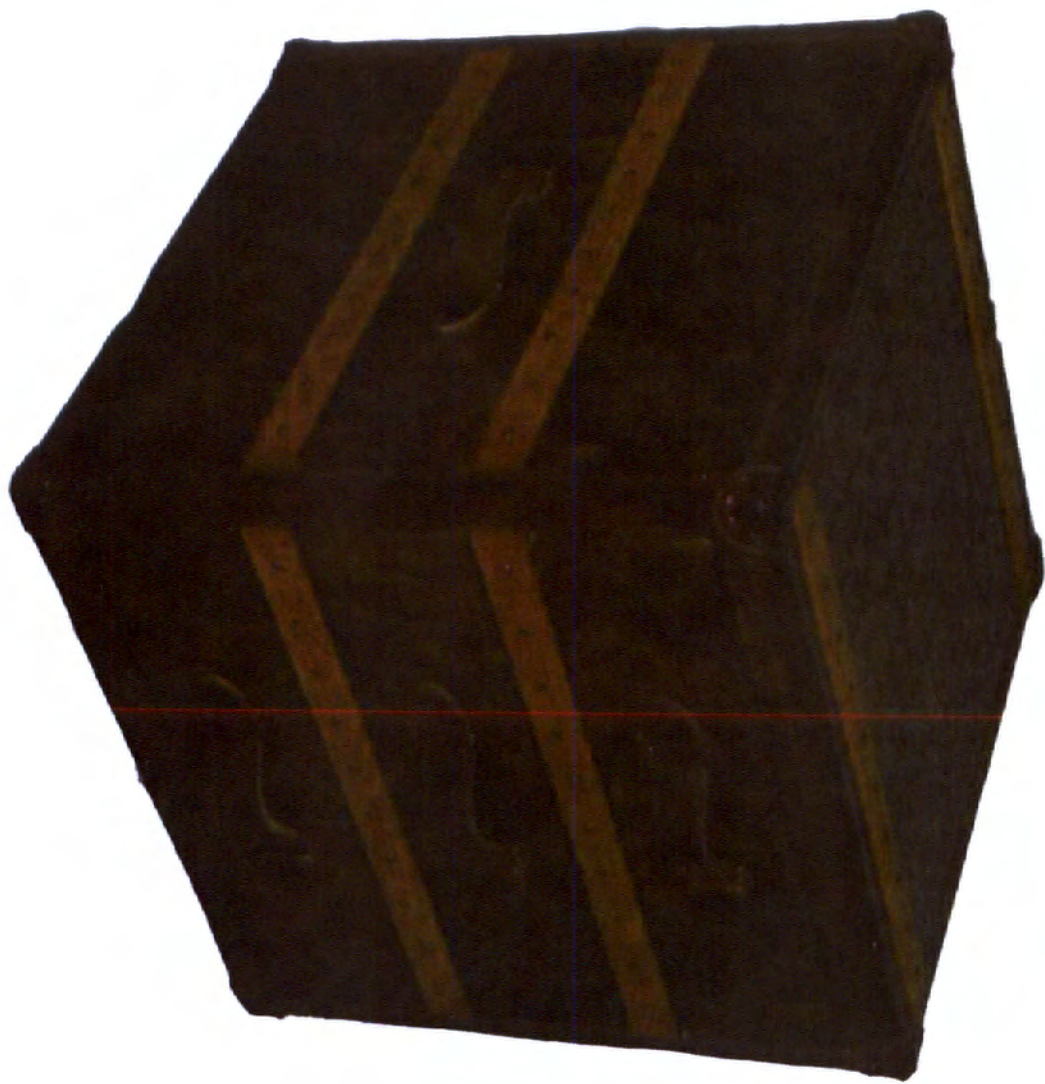
IV. CONCLUSION

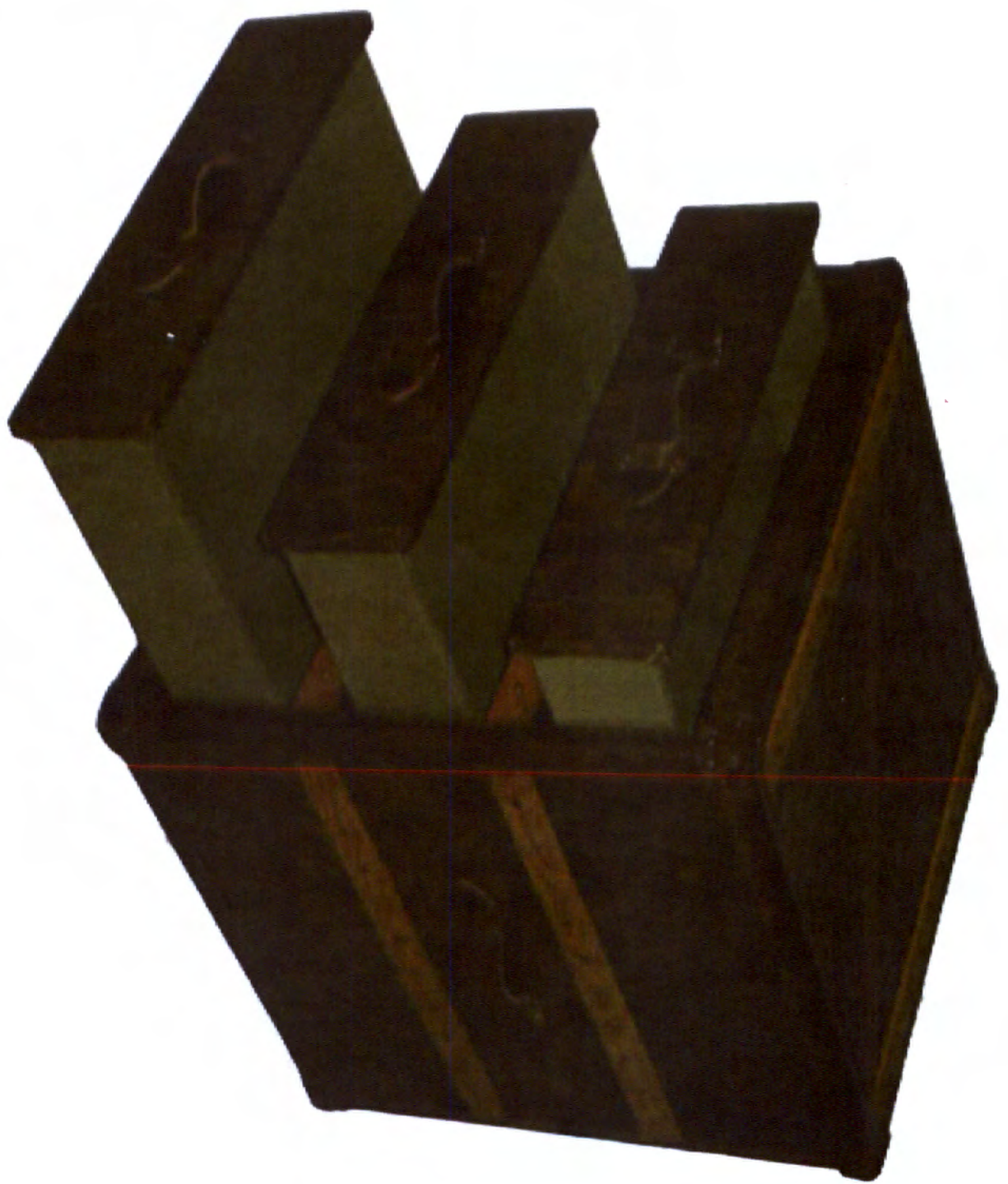
For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the copyright claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.

BY: 
Catherine Rowland
Copyright Office Review Board

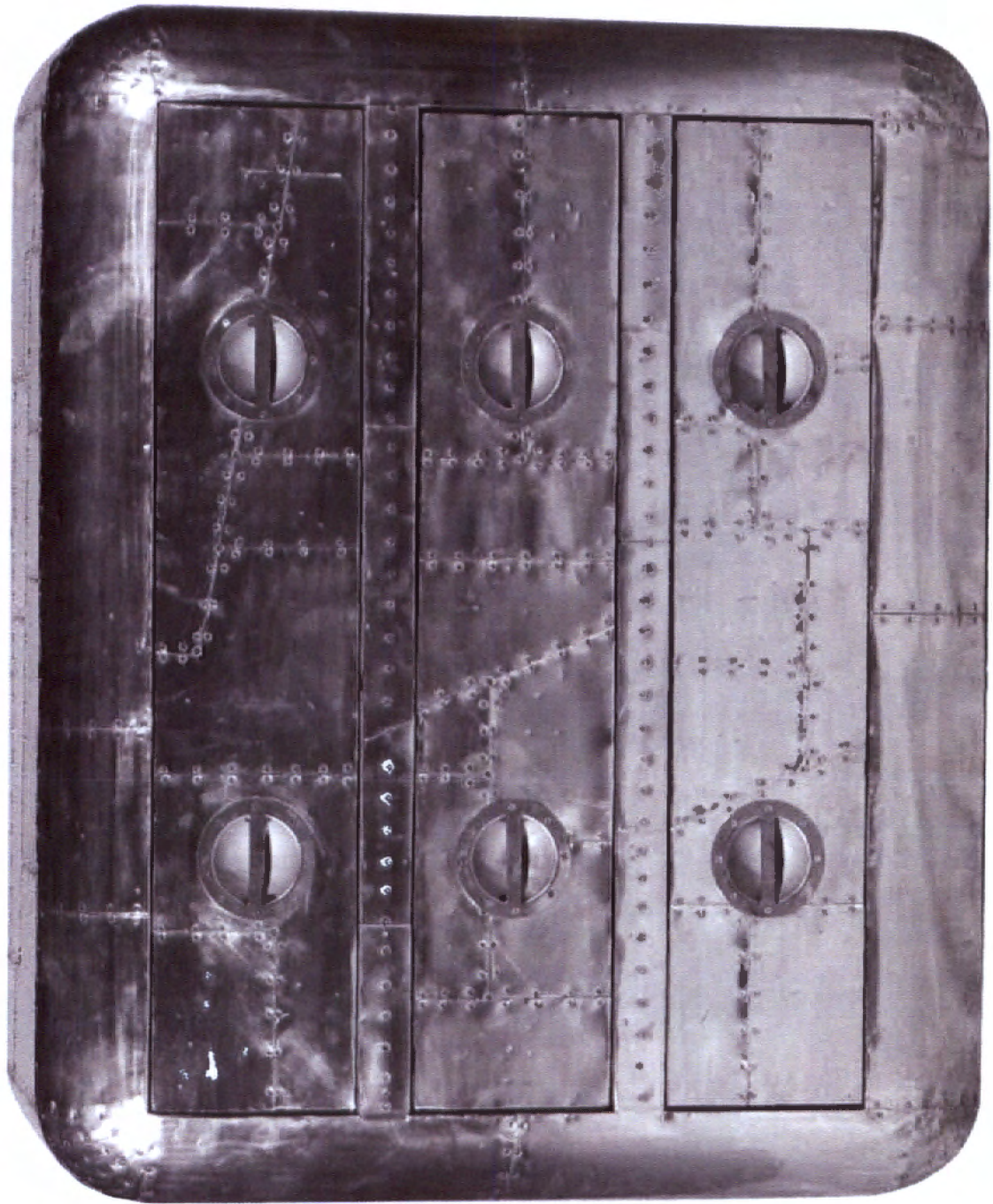
APPENDIX A

Storyhurst Lamp Table

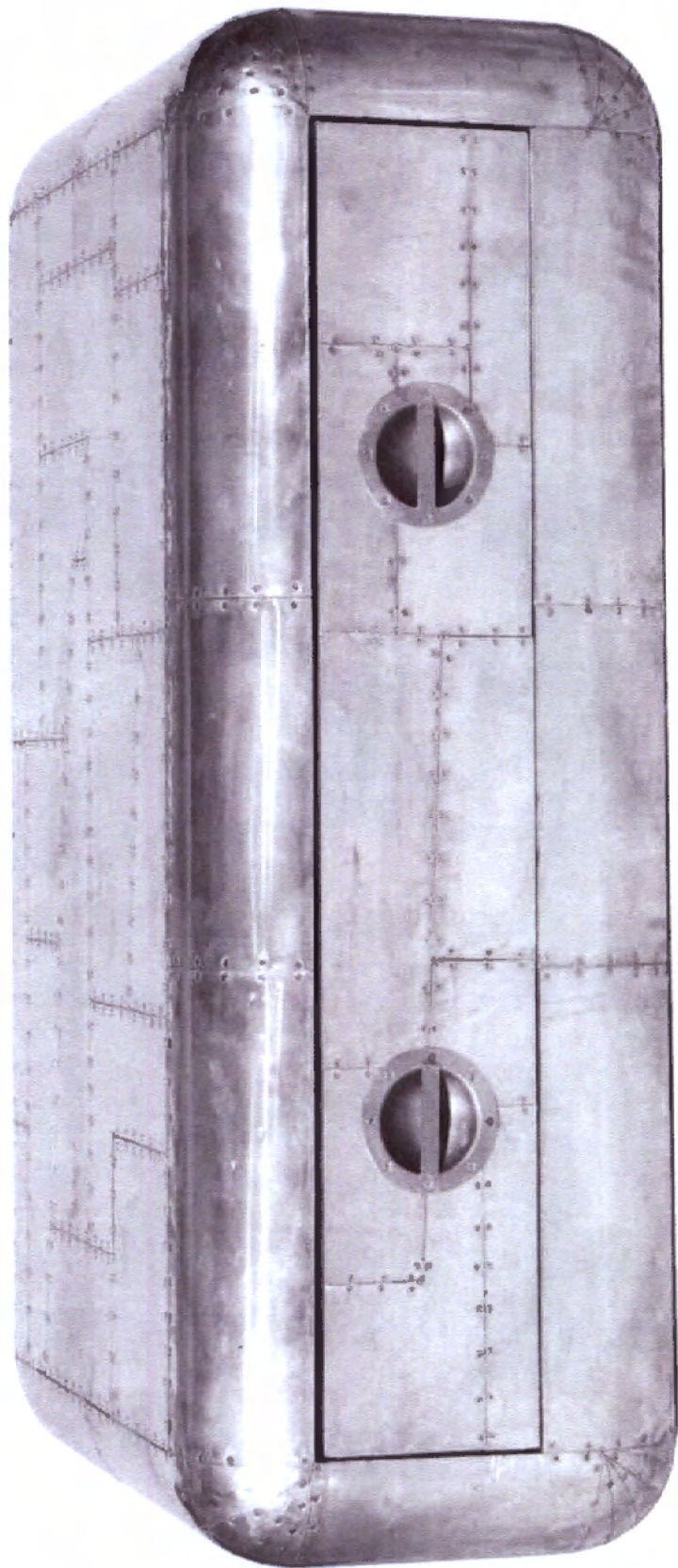




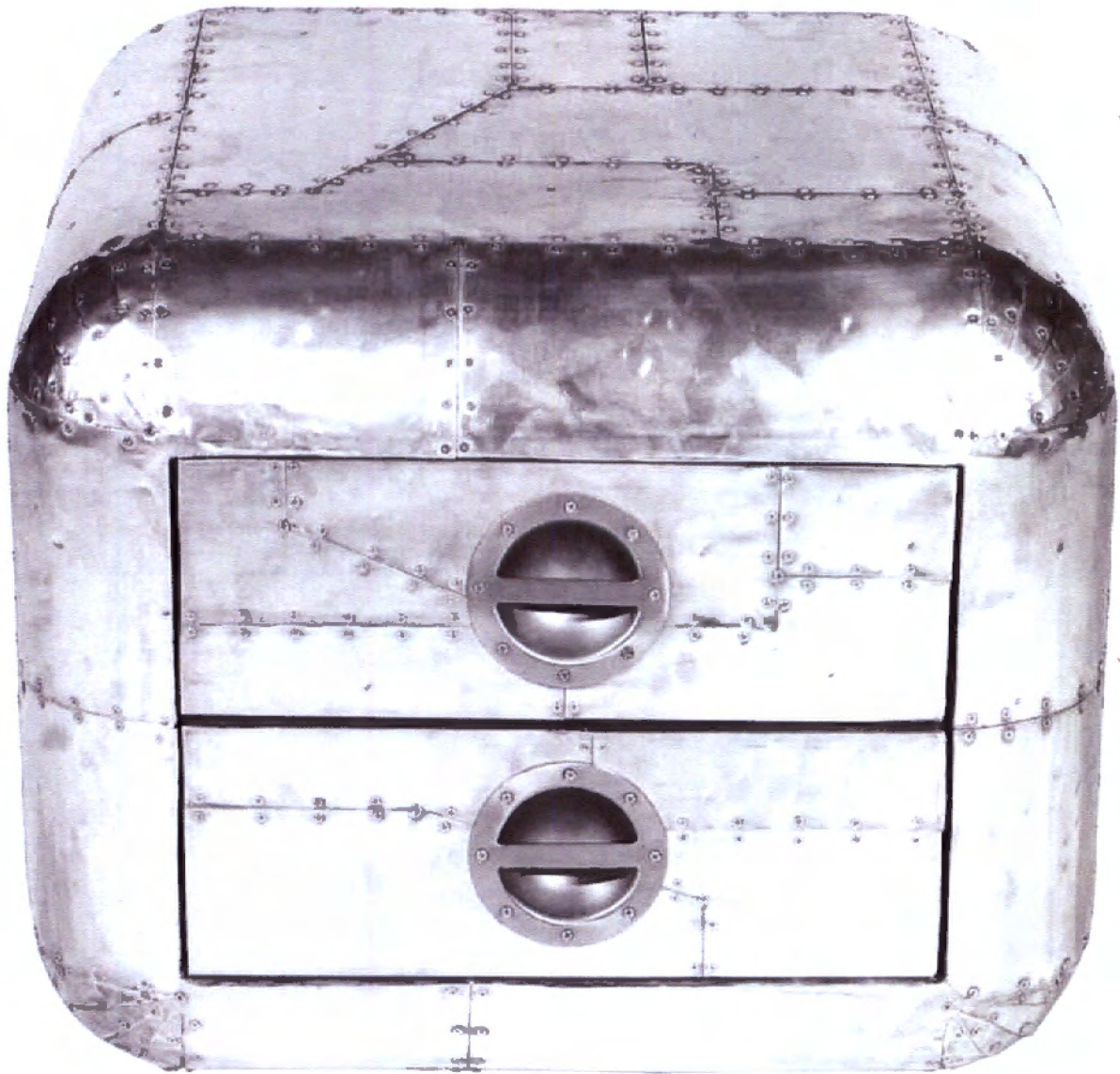
Blackhawk Chest



Blackhawk Coffee Table



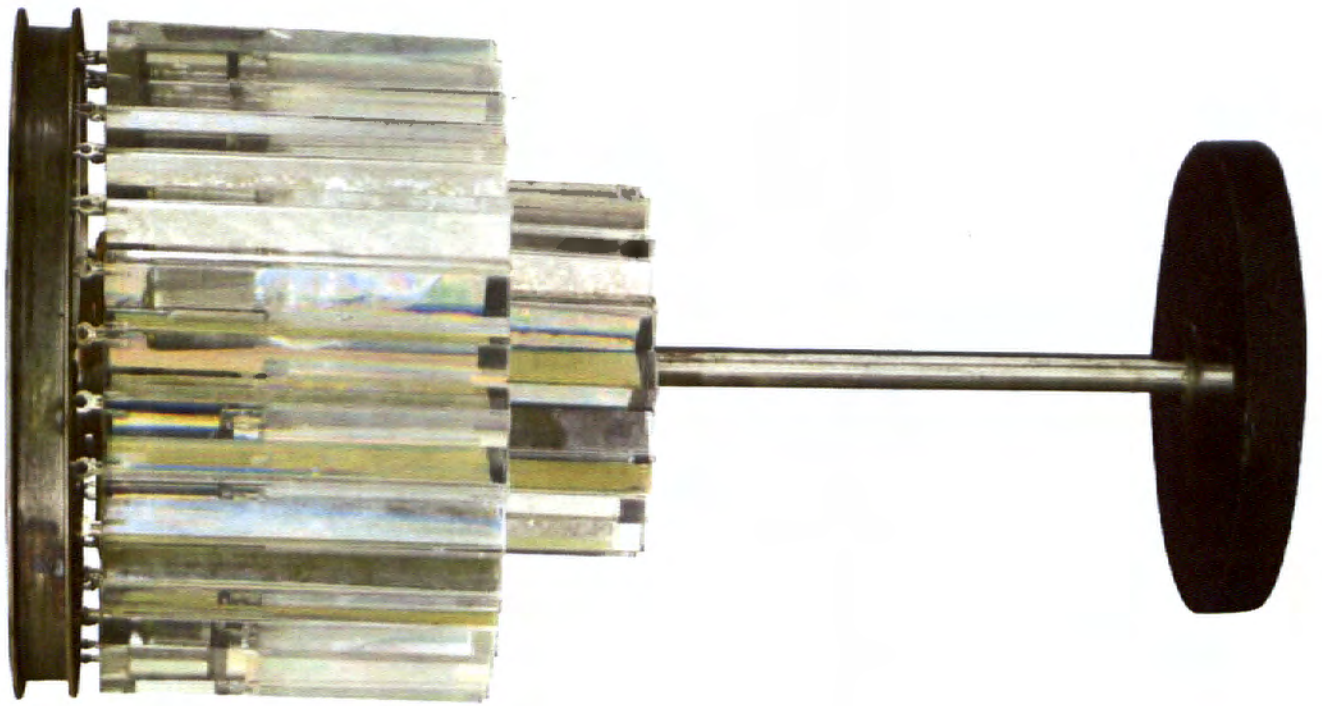
Blackhawk Square Side Table



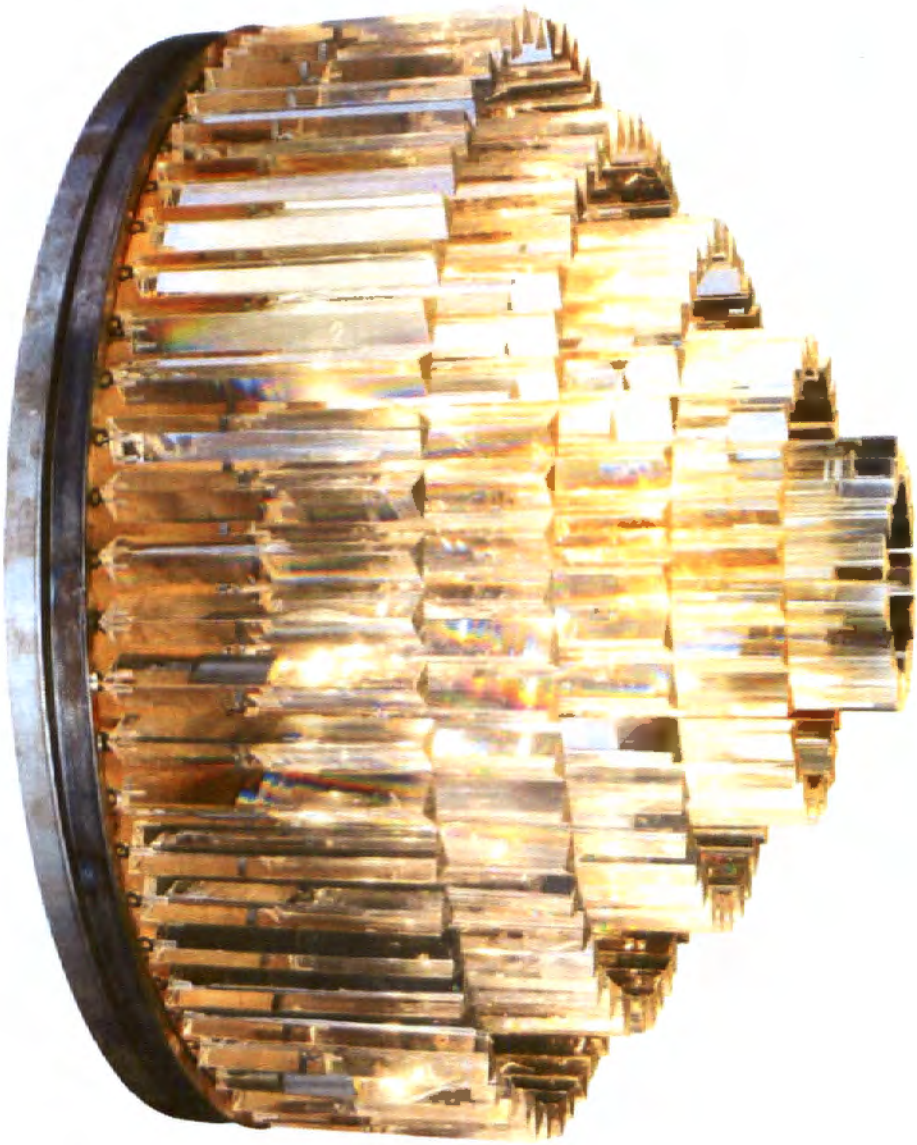
Odeon Chandelier Small



Odeon Table Lamp



Odeon Chandelier Medium

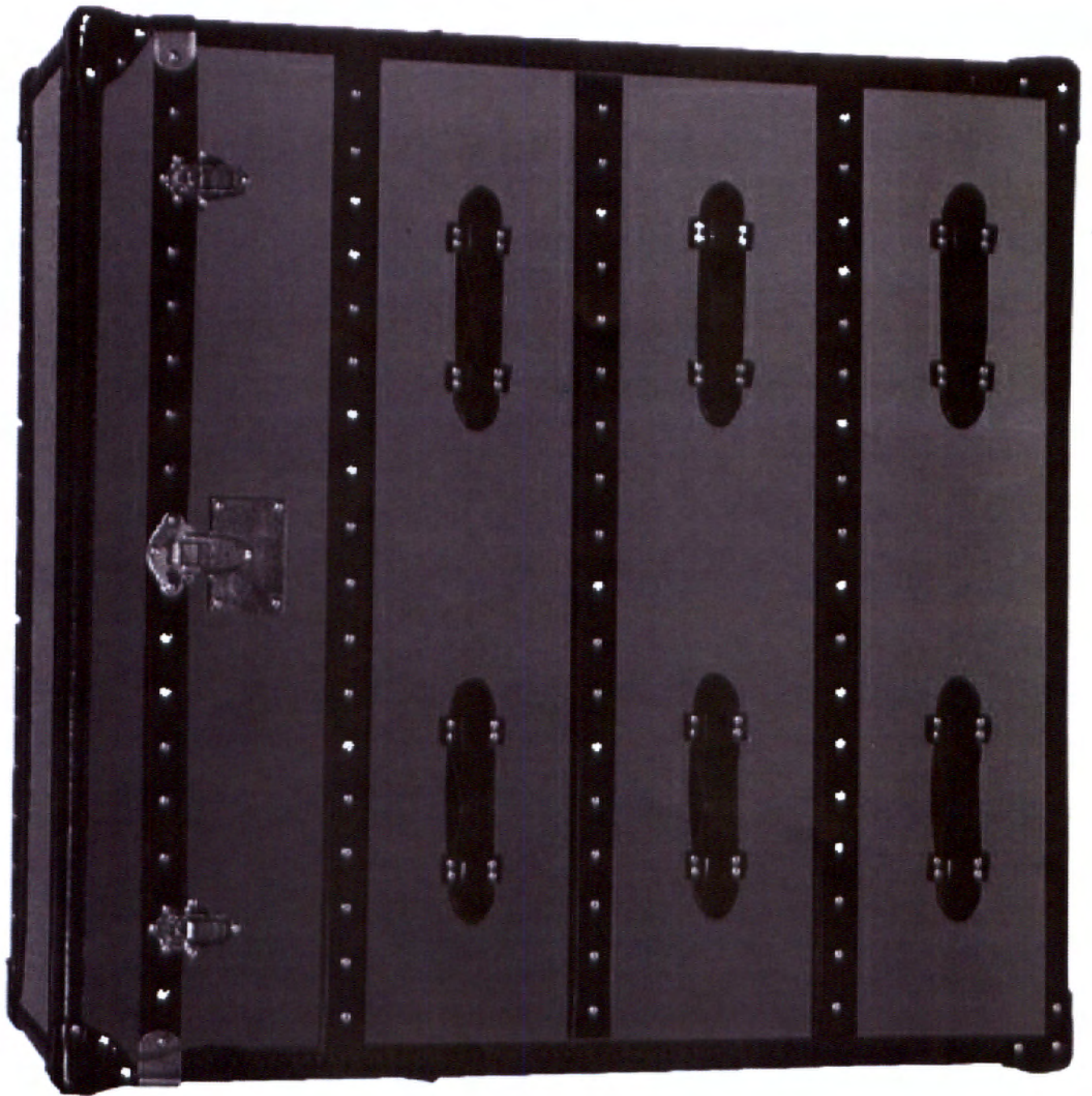


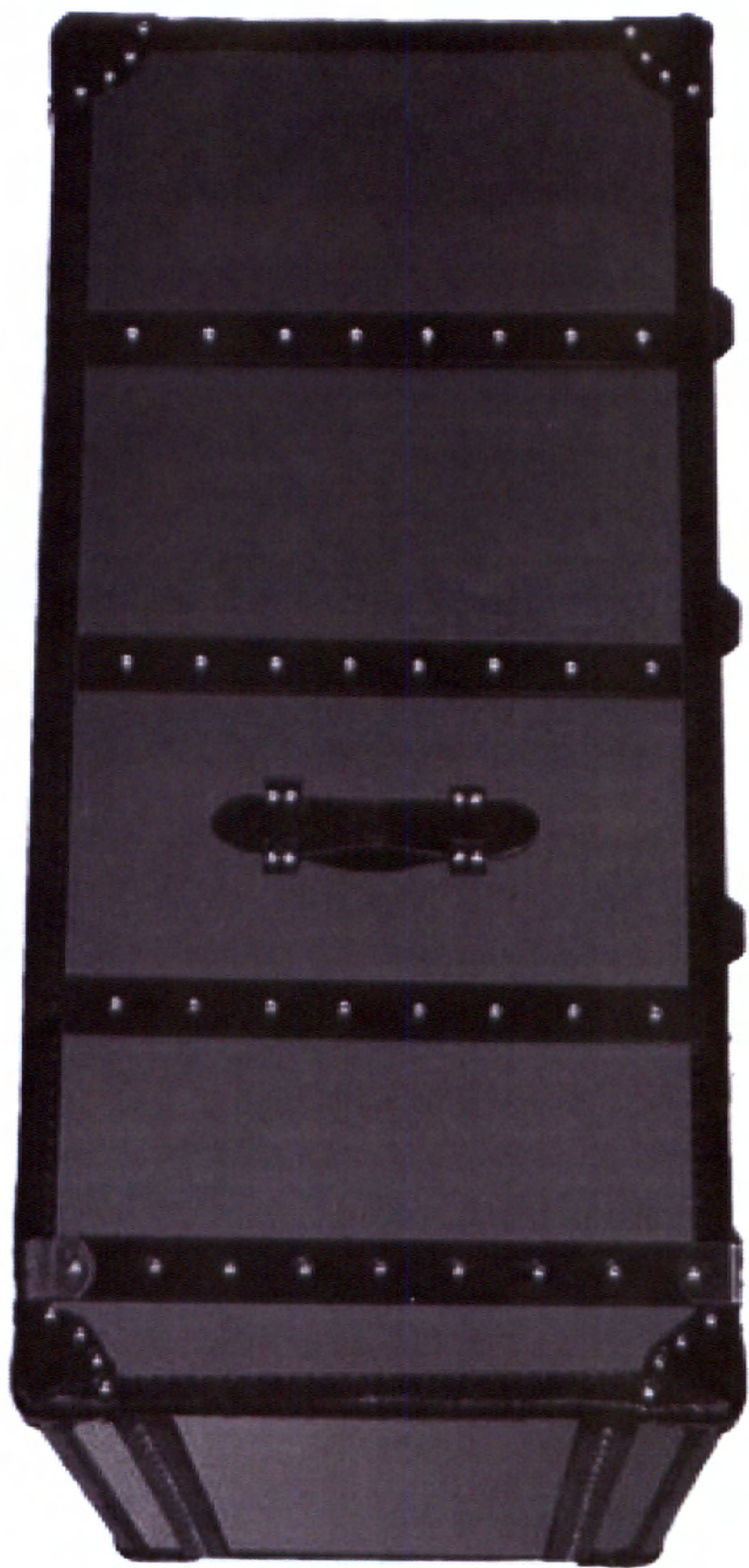
Aviator Tom Cat Chair





Ampleforth Chest





Gyro Crystal Chandelier

