



November 17, 2023

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Re: Second Requests for Reconsideration for Refusal to Register Cannele – Single Sconce, Cannele – Outdoor Single Sconce, Cannele – Double Sconce, Cannele – Vanity Sconce, Cannele – Linear Chandelier 55, Cannele – Pendant, Cannele – Round Chandelier 36, Cannele – Round Chandelier 60, Cannele – Round Chandelier 72, Cannele – Task Table Lamp (SR # 1-10005774695, 1-10005774797, 1-10005774751, 1-10005774853, 1-10005774623, 1-10005774659, 1-10005774515, 1-10005774551, 1-10005774587, 1-10005774889; Correspondence ID: 1-50NO16R, 1-4Z9NFSD, 1-50LIG8H, 1-4Z0JZJM, 1-50LIGLR, 1-5QTY5JX, 1-50LIGFJ, 1-50LRJV3, 1-50LRJLT, 1-4Z9QFWK)

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) “Cannele – Single Sconce,” (2) “Cannele – Outdoor Single Sconce,” (3) “Cannele – Double Sconce,” (4) “Cannele – Vanity Sconce,” (5) “Cannele – Linear Chandelier 55,” (6) “Cannele – Pendant,” (7) “Cannele – Round Chandelier 36,” (8) “Cannele – Round Chandelier 60,” (9) “Cannele – Round Chandelier 72,” and (10) “Cannele – Task Table Lamp” (together, the “Works”). The Review Board has considered these ten 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. Cannele – Single Sconce

Cannele – Single Sconce is a wall-mounted light fixture. The fixture is mounted to the wall with a brass disc, to which a rectangular, L-shaped brass arm is attached. A fluted glass

cylinder surrounding the lighting element is attached to the top of the brass arm. The deposit copy image of the fixture is shown below:



ii. Cannele – Outdoor Single Sconce

Cannele – Outdoor Single Sconce is a wall-mounted light fixture. The fixture is mounted to the wall with a brass disc, to which a rectangular, L-shaped brass arm is attached. A fluted glass cylinder surrounding the lighting element is attached to the top of the arm. The deposit copy image of the fixture is shown below:



iii. Cannele – Double Sconce

Cannele – Double Sconce is a wall-mounted light fixture. The fixture is mounted to the wall with a brass disc, to which a rectangular, U-shaped brass arm is attached. A fluted glass

cylinder surrounding a lighting element is attached to the top of each end of the arm. The deposit copy image of the fixture is shown below:



iv. Cannele – Vanity Sconce

Cannele – Vanity Sconce is a wall-mounted light fixture. The fixture is mounted to the wall with a brass disc, to which a brass rectangular band is attached. A fluted glass cylinder surrounding a lighting element is attached to and extends horizontally out from each end of the band. The deposit copy image of the fixture is shown below:



v. Cannele – Linear Chandelier 55

Cannele – Linear Chandelier 55 is a ceiling-mounted light fixture. The fixture consists of a rectangular brass band suspended from two metal rods. Twelve brass settings protrude out from the band, one at each end, and five symmetrically positioned on each side of the band along

its length. Fluted glass cylinders surrounding the lighting elements are attached to each of the twelve brass settings.¹ The deposit copy image of the fixture is shown below:



vi. Cannele – Pendant

Cannele – Pendant is a ceiling-mounted light fixture. The fixture consists of a rectangular brass “X” shape, with four right-angle raised arms at the four end points of the “X,” which is suspended from a brass rod. A fluted glass cylinder surrounding a lighting element is attached to the top of each arm. The deposit copy image of the fixture is shown below:



¹ The deposit image submitted for the Cannele – Linear Chandelier 55 work (which appears above) does not fully depict the fluted glass cylinders and brass settings that extend from the reverse side of the work. In its first request for reconsideration, Browning Studios included additional images of the Cannele – Linear Chandelier 55 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.”). In addition, the deposit image does not depict the mount that attaches the fixture to the ceiling. The deposits submitted for Cannele – Pendant, Cannele – Round Chandelier 36, Cannele – Round Chandelier 60, and Cannele – Round Chandelier 72 likewise do not depict the mounts that attach the fixtures to the ceiling. Because the Board can only evaluate the authorship based on the deposit submitted with the application, the Board’s analysis does not consider the ceiling mounts for these works.

vii. *Cannele – Round Chandelier 36*

Cannele – Round Chandelier 36 is a ceiling-mounted light fixture. The fixture consists of a circular brass band, to which eight L-shaped brass settings are symmetrically arranged and attached around the perimeter. A fluted glass cylinder surrounding a lighting element is attached to each of the eight settings. The circular brass band is intersected by two rectangular bands that divide the circle into quadrants. At the center, where the rectangular bands intersect, four rods are attached. The four rods terminate in a brass disc, which is suspended from the ceiling by a brass rod. The deposit copy image of the fixture is shown below:



viii. *Cannele – Round Chandelier 60*

Cannele – Round Chandelier 60 is a ceiling-mounted light fixture. The fixture consists of a circular brass band, to which twelve L-shaped brass settings are symmetrically arranged and attached around the perimeter. A fluted glass cylinder surrounding a lighting element is attached to each of the twelve settings. The circular brass band is intersected by two rectangular bands that divide the circle into quadrants. Four rods suspending the fixture from a ceiling plate are attached at the intersection of the rectangular bands. The deposit copy image of the fixture is shown below:



ix. *Cannele – Round Chandelier 72*

Cannele – Round Chandelier 72 is a ceiling-mounted light fixture. The fixture consists of a circular brass band, to which sixteen L-shaped brass settings are symmetrically arranged and attached around the perimeter. A fluted glass cylinder surrounding a lighting element is attached to each of the sixteen settings. The circular brass band is intersected by two rectangular bands that divide the circle into quadrants. Four rods suspending the fixture from a ceiling plate are attached at the intersection of the rectangular bands. The deposit copy image of the fixture is shown below:



x. *Cannele – Task Table Lamp*

Cannele – Task Table Lamp is a lamp that consists of a brass rectangular base supporting an upside-down L-shaped brass arm. The upside-down L-shaped arm has three components: (1) a vertical rectangular bar attached to the base; (2) an L-shaped brass arm attached to the top of the vertical bar; and (3) a rectangular brass arm with a protruding light switch and housing a lighting element, which is attached to and extends horizontally from the other end of the L-shaped brass arm.² The deposit copy image of the lamp is shown on the following page:

² The deposit image submitted for the Cannele – Task Table lamp work (which appears above) does not depict the rectangular and L-shaped arms moved into different positions or show the rectangular shape of the lighting element. In its first and second requests for reconsideration, Browning Studios included additional images of the Cannele – Task Table Lamp 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); COMPENDIUM (THIRD) § 1509.3(C). Accordingly, the Board’s analysis does not consider these configurations of the fixture or the shape of the lighting element in its analysis.



II. ADMINISTRATIVE RECORD

On January 18, 2021, Browning Studios filed ten 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.”³

In largely identical letters, Browning Studios requested that the Office reconsider its initial refusals to register the Works.⁴ 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

³ Initial Letter Refusing Registration of Cannele – Double Sconce, Boule de Cristal – Grand Double Sconce, and Boule de Cristal – Petite Flushmount from U.S. Copyright Office to Michael McCue at 1 (Mar. 10, 2021); Initial Letter Refusing Registration of Cannele – Linear Chandelier 55 from U.S. Copyright Office to Michael McCue (Mar. 10, 2021); Initial Letter Refusing Registration of Cannele – Vanity Sconce, Cannele – Task Table Lamp, and Cannele – Outdoor Single Sconce from U.S. Copyright Office to Michael McCue (Feb. 23, 2021); Initial Letter Refusing Registration of Cannele – Pendant from U.S. Copyright Office to Michael McCue (Mar. 10, 2021); Initial Letter Refusing Registration of Cannele – Round Chandelier 72, Cannele – Round Chandelier 60, and Cannele – Round Chandelier 36 from U.S. Copyright Office to Michael McCue (Mar. 10, 2021); Initial Letter Refusing Registration of Cannele – Single Sconce from U.S. Copyright Office to Michael McCue (Mar. 10, 2021).

⁴ Letter from Aaron Johnson re: Cannele – Double Sconce to U.S. Copyright Office (June 4, 2021); Letter from Aaron Johnson re: Cannele – Linear Chandelier 55 to U.S. Copyright Office (June 4, 2021); Letter from Aaron Johnson re: Cannele – Outdoor Single Sconce to U.S. Copyright Office (May 20, 2021); Letter from Aaron Johnson re: Cannele – Pendant to U.S. Copyright Office (June 4, 2021); Letter from Aaron Johnson re: Cannele – Round Chandelier 36 to U.S. Copyright Office (June 4, 2021); Letter from Aaron Johnson re: Cannele – Round Chandelier 60 to U.S. Copyright Office (June 4, 2021); Letter from Aaron Johnson re: Cannele – Round Chandelier 72 to U.S. Copyright Office (June 4, 2021); Letter from Aaron Johnson re: Cannele – Single Sconce to U.S. Copyright Office (June 4, 2021); Letter from Aaron Johnson re: Cannele – Task Table Lamp to U.S. Copyright Office (May 20, 2021); Letter from Aaron Johnson re: Cannele – Vanity Sconce to U.S. Copyright Office (May 20, 2021) (together, the “First Requests”).

original alone or in combination to support a claim for registration.⁵ 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.

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.⁶ It 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.”⁷ 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.⁸ 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.⁹ 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

⁵ Refusal of First Request for Reconsideration of Cannele – Double Sconce from U.S. Copyright Office to Aaron Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Cannele – Linear Chandelier 55 from U.S. Copyright Office to Aaron Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Cannele – Outdoor Single Sconce from U.S. Copyright Office to Aaron Johnson (Sept. 14, 2021); Refusal of First Request for Reconsideration of Cannele – Pendant from U.S. Copyright Office to Aaron Johnson (Apr. 28, 2023); Refusal of First Request for Reconsideration of Cannele – Round Chandelier 36 from U.S. Copyright Office to Aaron Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Cannele – Round Chandelier 60 from U.S. Copyright Office to Aaron Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Cannele – Round Chandelier 72 from U.S. Copyright Office to Aaron Johnson (Oct. 19, 2021); Refusal of First Request for Reconsideration of Cannele – Single Sconce from U.S. Copyright Office to Aaron Johnson (Oct. 20, 2021); Refusal of First Request for Reconsideration of Cannele – Task Table Lamp from U.S. Copyright Office to Aaron Johnson (Sept. 14, 2021); Refusal of First Request for Reconsideration of Cannele – Vanity Sconce from U.S. Copyright Office to Aaron Johnson (Sept. 7, 2021).

⁶ Browning Studios’ second requests for reconsideration were made in ten separate, but largely identical, letters. Letter from Aaron Johnson re: Cannele – Double Sconce to U.S. Copyright Office at 1 (Jan. 19, 2022) (“Double Sconce Second Request”); Letter from Aaron Johnson re: Cannele – Linear Chandelier 55 to U.S. Copyright Office at 1 (Jan. 19, 2022); Letter from Aaron Johnson re: Cannele – Outdoor Single Sconce to U.S. Copyright Office at 1 (Dec. 14, 2021); Letter from Aaron Johnson re: Cannele – Pendant to U.S. Copyright Office at 1 (July 27, 2023); Letter from Aaron Johnson re: Cannele – Round Chandelier 36 to U.S. Copyright Office at 1 (Jan. 19, 2022); Letter from Aaron Johnson re: Cannele – Round Chandelier 60 to U.S. Copyright Office at 1 (Jan. 19, 2022); Letter from Aaron Johnson re: Cannele – Round Chandelier 72 to U.S. Copyright Office at 1 (Jan. 19, 2022); Letter from Aaron Johnson re: Cannele – Single Sconce to U.S. Copyright Office at 1 (Jan. 19, 2022) (“Single Sconce Second Request”); Letter from Aaron Johnson re: Cannele – Task Table Lamp to U.S. Copyright Office at 1 (Dec. 14, 2021); Letter from Aaron Johnson re: Cannele – Vanity Sconce to U.S. Copyright Office at 1 (Dec. 7, 2021) (collectively, the “Second Requests”).

⁷ See Second Requests at 1.

⁸ See, e.g., Cannele – Single Sconce Second Request at 5, 10.

⁹ See, e.g., *id.* at 6–10.

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”).¹⁰ 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*, 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 the discs, bands, fluted cylinders, and rods in the Works are 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.¹¹ *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”). Similarly, the rectangular base of Cannele – Task Table Lamp serves the utilitarian function of supporting and counterbalancing the other lamp elements. Unlike the other elements in the Works, the mounts and base cannot be perceived separately from their utilitarian function. The Office, therefore, focuses its analysis below on the copyrightability of the discs, fluted cylinders, 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

¹⁰ 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).

¹¹ 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.

the separable components of each of the Works, individually and in combination, are insufficiently creative for the reasons explained below.

i. Sconces



*Cannele – Single
Sconce*

*Cannele – Outdoor
Single Sconce*

*Cannele – Double
Sconce*

*Cannele – Vanity
Sconce*

The Sconce Works do not contain the amount of creativity required for copyrightability. The separable elements in each of these Works are rectangular bands and fluted cylinders. 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 . . . coloring” as examples of works not subject to copyright); COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes, such as straight or curved lines, squares, cubes, and rectangles are not protectable).

Browning Studios argues unpersuasively that the sconces are creative because they combine “carefully crafted glass cylinders, precisely set into an imposing angular metal block, which is then affixed into a custom-designed base plate, with a number of additional flourishes and details that bring out the beauty of the work.” *See, e.g.,* Double Sconce Second Request at 6. The hollow glass cylinders create space for the lighting elements and serve a functional purpose and therefore not protectable by copyright. Additional flourishes and details, such as the fluting on the cylinders, are minor variations that 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 fluted glass cylinders and brass bars 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 fluted glass cylinders and colored metal bands is a common arrangement within the light fixture industry that fails to

exhibit a sufficient amount of creativity.¹² *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 objects to the Office’s conclusion that the combination of elements in these Works is “obvious.” *See, e.g.*, Double Sconce Second Request at 10 (criticizing Office refusal of reconsideration because “it is the realm of patent law that requires nonobviousness”). But this conclusion is one of copyright law; 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 fluted glass cylinders with rectangular bands is relevant to 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* Double 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. *Linear Chandelier*



Cannele – Linear Chandelier 55 does not contain the amount of creativity required for copyrightability. The separable elements in Cannele – Linear Chandelier 55 are fluted glass cylinders, rods, and bands. As detailed in the discussion of the Sconces, the glass cylinders and bands are not eligible for copyright protection individually. The rods are likewise not protected because they are common three-dimensional geometric shapes. *See* 37 C.F.R. §

¹² *See, e.g., Modern Minimalist 1-Light Cylinder Clear Ribbed Glass Shade*, HOMARY, <https://us.homary.com/lditem/modern-minimalist-1-light-cylinder-clear-ribbed-glass-shade-wall-sconces-in-goldblack-11729.html> (last visited Nov. 16, 2023); *Fluted Cylinder Glass Sconce*, SHADES OF LIGHT, <https://www.shadesoflight.com/products/fluted-cylinder-glass-wall-light> (last visited Nov. 16, 2023); *WOLFOS LG112 Ribbed Glass Wall Sconces*, NORTHERN CULT, <https://northerncult.com/product/lg112-ribbed-glass-wall-sconces/> (last visited Nov. 16, 2023).

202.1(a); COMPENDIUM (THIRD) § 906.1. Moreover, the rods serve a functional purpose of suspending the light fixture from the ceiling mounts.

The combination of the individual elements in *Cannele – Linear Chandelier 55* 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. 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 design is commonplace because it merely displays the same geometric shapes evenly repeating around a rectangular bar—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). Consisting primarily of two parallel rows of fluted cylinders attached to L-shaped bars, with a cylinder at each end of the bar, *Cannele – Linear Chandelier 55* fails to exhibit anything more than a display of multiple geometric shapes in a basic, expected design for linear chandeliers.¹³ This design therefore lacks the requisite creativity for copyright protection.

iii. Pendant



The Board also upholds the refusal to register *Cannele – Pendant*. As discussed above, the individual elements here 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 fluted glass cylinders on brass bars crossed in an

¹³ See, e.g., *Hartwell Antique Bronze Farmhouse Island Linear Chandelier*, HOME DEPOT, <https://www.homedepot.com/p/Progress-Lighting-Hartwell-34-in-6-Light-Antique-Bronze-Farmhouse-Island-Linear-Chandelier-with-Clear-Seeded-Glass-and-Brass-Accents-P400127-020/303755623> (last visited Nov. 16, 2023); *Wineyard Wheel Barrel Rectangular Linear Chandelier*, ITALIAN CONCEPT, <https://italianconceptusa.com/products/wineyard-gilded-iron-linear-chandelier> (last visited Nov. 16, 2023).

“X” shape—an arrangement that is commonly found in pendant light fixture designs.¹⁴ 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) §§ 312.2, 905. The Board concludes that this pendant light fixture as a whole lacks sufficient creative authorship to be protectable by copyright.

iv. Round Chandeliers



Cannele – Round Chandelier 36



Cannele – Round Chandelier 60



Cannele – Round Chandelier 72

The Board also upholds the refusal to register the Round Chandelier Works. As discussed above, the bars, rods, and cylinders are not eligible for copyright protection. For the same reason, the circular band and the disc elements are not protectable because they are common geometric shapes. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.1. In addition, the intersecting bars and rods in these Works serve the functional purposes of supporting the circular band and lighting elements and suspending the fixtures from ceiling mounts.

The combination of these individual elements in the Works is also not sufficiently creative to receive copyright protection. The Works organize fluted glass cylinders in standard circular arrangements that are commonly found in chandelier designs.¹⁵ 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) §§ 312.2, 905. The Board concludes that because the bars, rods, cylinders, bands, and

¹⁴ *See, e.g., Millennium Lighting Nellis 4 Light 30” Pendant Fixture*, LAMPS PLUS, <https://www.lampsplus.com/sfp/973H9> (last visited Nov. 16, 2023).

¹⁵ *See, e.g., Corsica Round Chandelier 60” Vintage Barn Metal Chandelier Chandeliers Industrial Loft Rustic Lighting*, GALLERY CHANDELIERS, <https://www.galleryhomecenter.com/products/cannele-round-chandelier-60-vintage-barn-metal-chandelier-chandeliers-industrial-loft-rustic-lighting-great-for-the-living-room-dining-room-foyer-and-entryway-family-room-and-more-g7-cg-4462-12> (last visited Nov. 16, 2023); *Stiffel Aron 36” Wide Chandelier*, LAMPS PLUS, <https://www.lampsplus.com/sfp/88H33> (last visited Nov. 16, 2023).

disc are arranged in standard, symmetrical configurations for a round chandelier, the Works as a whole lack sufficient creative authorship for copyrightability.

v. *Table Lamp*



Finally, the Board upholds the refusal to register *Cannele – Task Table Lamp* as the Work is also not sufficiently creative to be eligible for copyright protection. The separable elements in the Work are the components of the upside-down-L-shaped brass arm: a vertical rectangular bar, an L-shaped arm joint, and a horizontal rectangular bar containing the switch and lighting element.¹⁶ As discussed above, the straight and L-shaped rectangular bars are not eligible for copyright protection individually. The switch is likewise not protectable because it consists of common geometric shapes.

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 table lamp with an upside-down-L-shaped arm attached to a base is common and expected for lamps and fails to exhibit a sufficient amount of creativity.¹⁷ *See Zalewski*, 754 F.3d at 106. This design is therefore not sufficiently creative to be copyrightable.

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

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.¹⁸ 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

¹⁷ *See, e.g., Dott Arts LED Desk Lamp*, AMAZON, <https://www.amazon.com/Control-Brightness-Dimmable-Adjustable-Foldable/dp/B08923SXXP> (last visited Nov. 16, 2023); *Bolton Integrated LED Light Desk Lamp*, BURKE DECOR, <https://www.burkedecor.com/products/bolton-integrated-led-light-desk-lamp-by-elk-h0019-10347> (last visited Nov. 16, 2023).

¹⁸ *See, e.g., Cannele – Double Sconce Second Request* at 3–10.

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:

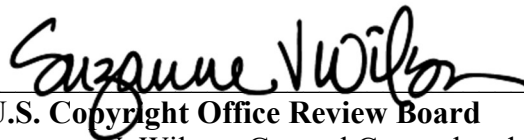
- The Bocci Design and Manufacturing Inc.’s pendant light fixture, “Pendant Lamp – 76,” which contained three-dimensional glass material in the shape of a bisected sphere, embedded with intricate patterns of intersecting filament wires, is a far more creative design than any of the Works. See U.S. Copyright 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-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, 4,000 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).¹⁹ 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 364.²⁰

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.



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

Mark T. Gray, Assistant General Counsel

¹⁹ 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.

²⁰ 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.