

#### **United States Copyright Office**

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Amy B. Goldsmith, Partner Tarter Krinsky & Drogin LLP 1350 Broadway New York NY 10018 agoldsmith@tarterkrinsky.com

Re: Second Request for Reconsideration for Refusal to Register Endless Engagement Ring (ENRGY002), Reflections TU Engagement Ring (RERGY002), Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), Reflections Hero Necklace (RENGY003), Reflections Hero Earrings (REEGY004), and Reflections Hoop Earrings (REEGY001/002/003); Correspondence IDs: 1-20QG984, 1-20QDVFL, and 1-20QG984; SR Numbers 1-3401927454, 1-3402136367, 1-3402136282, 1-3401928073, 1-3402136217, 1-3401927207, and 1-3401927778.

Dear Ms. Amy B. Goldsmith:

The Review Board of the United States Copyright Office ("Board") has considered Michal Kadar LLC's ("Michal Kadar") second requests for reconsideration of the Registration Program's refusal to register claims in jewelry design for the works titled Endless Engagement Ring (ENRGY002), Reflections TU Engagement Ring (RERGY002), Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), Reflections Hero Necklace (RENGY003), Reflections Hero Earrings (REEGY004), and Reflections Hoop Earrings (REEGY001/002/003) ("Works").<sup>2</sup>

After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board reverses the decision of the Registration Program to deny registration of Reflections TU Engagement Ring (RERGY002), Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), Reflections Hero Earrings (REEGY004), and Reflections Hoop Earrings (REEGY001/002/003), because the Board finds that all of these works exhibit copyrightable authorship and thus may be

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<sup>&</sup>lt;sup>1</sup> The Office did not receive a second request for reconsideration of the Reflections Bracelet/Necklace (REBGY001)/Small Pendant (RENGY002)/Cocktail Ring (RERGY003) collection and therefore those works will not be considered in this decision.

<sup>&</sup>lt;sup>2</sup> Though three separate second requests for reconsideration were submitted for these Works, they have all been consolidated for administrative purposes.

registered. The Board, however, affirms the decision of the Registration Program to refuse registration for Endless Engagement Ring (ENRGY002) and Reflections Hero Necklace (RENGY003) because these works do not contain a sufficient amount of creative authorship to support copyright claims.

# I. DESCRIPTIONS OF THE WORKS

Endless Engagement Ring (ENRGY002): Endless Engagement Ring (ENRGY002) is a gold ring in the shape of a flower with a single round diamond in the center. The ring opens and closes.



Reflections TU Engagement Ring (RERGY002): Reflections TU Engagement Ring (RERGY002) is a gold ring in the shape of an eye, with a large stone forming the pupil and baguette stones circling the pupil. The ring opens and closes.



Reflections Cocktail Ring (RERGY001): Reflections Cocktail Ring (RERGY001) is a ring comprised of a gold band with an eye fixed to the center of the band. The outer shape of the eye is diamond encrusted. The pupil is a single round cut diamond and the iris is made of a gold disc with princess cut diamonds that form a circle around the pupil.



Reflections Hero Earrings (REEGY005): Reflections Hero Earrings (REEGY005) are earrings shaped like an eye. The top part of the shape of the eye is made of gold and the bottom part is made up of twelve gold strands with black and white diamond diamonds on each strand, all asymmetrically laid out to form the other half of the shape of an eye. The iris is a cut out gold circle with princess cut diamonds forming a circle around the pupil, which consists of a gold disc with a large round diamond in the center.



Reflections Hero Necklace (RENGY003): Reflections Hero Necklace (RENGY003) is a necklace in the shape of an eye. It is comprised of a center gold band with multiple strands of gold chain attached asymmetrically to form the shape of an eye. Each strand contains black round cut diamonds throughout, with a white pear shaped diamond at the end of each strand.



Reflections Hero Earrings (REEGY004): Reflections Hero Earrings (REEGY004) are gold earrings in the shape of an eye. The outer shape of the eye is encrusted in round cut diamonds. The pupil is one large round diamond and the iris is a gold disc cutout with eight princess cut diamonds forming a circle around the pupil. A single pear shaped diamond dangles from the end.



Reflections Hoop Earrings (REEGY001/002/003): Reflections Hoop Earrings (REEGY001/002/003) are gold earrings in the shape of an eye. The iris and pupil are comprised of a single gold sphere. The outline of the eye is diamond encrusted. A single pear shaped diamond dangles from the end.



#### II. ADMINISTRATIVE RECORD

Endless Engagement Ring (ENRGY002) and Reflections TU Engagement Ring (RERGY002): On May 11, 2016, Michal Kadar filed two applications to register copyright claims in jewelry design for Endless Engagement Ring (ENRGY002) and Reflections TU Engagement Ring (RERGY002). In a letter dated May 24, 2016, a Copyright Office registration specialist refused to register the claims, finding that they "lack[ed] the authorship necessary to support copyright claims." Letter from Beth Garner, Registration Specialist, to Amy Goldsmith, Partner, Tarter Krinsky & Drogin, LLP (May 24, 2016).

In a letter dated August 22, 2016, Michal Kadar requested that the Office reconsider its initial refusal to register Endless Engagement Ring and Reflections TU Engagement Ring. Letter from Amy B. Goldsmith, to U.S. Copyright Office (August 22, 2016) ("First Request"). After reviewing the two works in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that these works were simple arrangements of a few common and familiar shapes and that each work taken individually and as a whole does not contain a sufficient amount of original and creative authorship to support a copyright registration. *See* Letter from Stephanie Mason, Attorney-Advisor, to Amy B. Goldsmith (Feb. 1, 2017).

In a letter dated May 1, 2017, Michal Kadar requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register Endless Engagement Ring (ENRGY002) and Reflections TU Engagement Ring (RERGY002). Michal Kadar asked the Office to reconsider registration of Endless Engagement Ring because "the shape of the

petals and the way that they are attached to one another – and can dis-attach from one another – are not common and expected in jewelry designs." Letter from Amy B. Goldsmith to U.S. Copyright Office at 2 (May 1, 2017) ("Endless/Reflections Engagement Rings Second Request"). Michal Kadar also asked the Office to reconsider registration of the Reflections TU Engagement Ring because the way the "ring . . . opens and closes around the central band containing the diamond . . . is not common in jewelry designs" and "there is no inevitability in this original pattern of triangles, circles, and rectangles which also open and close." Endless/Reflections Engagement Rings Second Request at 3.

Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), Reflections Hero Necklace (RENGY003): On May 11, 2016, Michal Kadar filed three applications to register copyright claims in jewelry design for Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), and Reflections Hero Necklace (RENGY003). In a letter dated May 24, 2016, a Copyright Office registration specialist refused to register the claims, finding that they "lack[ed] the authorship necessary to support copyright claims." Letter from Beth Garner, Registration Specialist, to Amy Goldsmith, Partner, Tarter Krinsky & Drogin, LLP (May 24, 2016).

In a letter dated August 22, 2016, Michal Kadar requested that the Office reconsider its initial refusal to register Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), and Reflections Hero Necklace (RENGY003). Letter from Amy B. Goldsmith, to U.S. Copyright Office (August 22, 2016) ("First Request"). After reviewing them in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that these works were simple arrangements of a few common and familiar shapes and that each work taken individually and as a whole does not contain a sufficient amount of original and creative authorship to support a copyright registration. *See* Letter from Stephanie Mason, Attorney-Advisor, to Amy B. Goldsmith (Feb. 1, 2017).

Michal Kadar asked the Office to reconsider registration of the Reflections Cocktail Ring, arguing, *inter alia*, that the "shape of the ring is not common or dictated by expected or inevitable combinations of geometric forms" and that, if the work were in two-dimensional form, it would satisfy the low threshold for copyrightability just as the wrapping paper illustration that appears in the *Compendium of U.S. Copyright Office Practices* does. Letter from Amy B. Goldsmith, to U.S. Copyright Office at 2, 3 (May 1, 2017) ("Reflections Cocktail Ring/Hero Earrings & Necklace Second Request") (citing Compendium of U.S. Copyright Office to reconsider registration of the Reflections Hero Earrings because the work is "not an obvious arrangement." Reflections Cocktail Ring/Hero Earrings & Necklace Second Request at 4. Michal Kadar also asked the Office to reconsider registration of the Reflections Hero Necklace because the work does not exhibit "standard, typical arrangements." Reflections Cocktail Ring/Hero Earrings & Necklace Second Request at 4.

Reflections Hero Earrings (REEGY004), and Reflections Hoop Earrings (REEGY001/002/003): On May 11, 2016, Michal Kadar filed two applications to register copyright claims in jewelry design for Reflections Hero Earrings (REEGY004) and Reflections

Hoop Earrings (REEGY001/002/003). In a letter dated May 24, 2016, a Copyright Office registration specialist refused to register the claims, finding that they "lack[ed] the authorship necessary to support copyright claims." Letter from Beth Garner, Registration Specialist, to Amy Goldsmith, Partner, Tarter Krinsky & Drogin, LLP (May 24, 2016).

In a letter dated April 22, 2016, Michal Kadar requested that the Office reconsider its initial refusal to register Reflections Hero Earrings (REEGY004), and Reflections Hoop Earrings (REEGY001/002/003). Letter from Amy B. Goldsmith, to U.S. Copyright Office (April 22, 2016) ("First Request"). After reviewing Reflections Hero Earrings (REEGY004) and Reflections Hoop Earrings (REEGY001/002/003) in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that Reflections Hero Earrings (REEGY004) and Reflections Hoop Earrings (REEGY001/002/003) were simple arrangements of a few common and familiar shapes and that each work taken individually and as a whole does not contain a sufficient amount of original and creative authorship to support a copyright registration. *See* Letter from Stephanie Mason, Attorney-Advisor, to Amy B. Goldsmith (Feb. 1, 2017).

On May 1, 2017, Michal Kadar asked the Office to reconsider for a second time its refusal to register Reflections Hero Earrings (REEGY004) and Reflections Hoop Earrings (REEGY001/002/003). Letter from Amy B. Goldsmith to U.S. Copyright Office (May 1, 2017) ("Reflections Hero/Hoop Earrings Second Request"). In that letter, Michal Kadar argued, *inter alia*, that Reflections Hero Earrings are copyrightable because the configuration of the individual common shapes is not "preordained" and the work is not the result of "an obvious arrangement." Reflections Hero/Hoop Earring Second Request at 3–4. Further, Michal Kadar argued that if Reflections Hoop Earrings were in two-dimensional form, they would satisfy the low threshold for copyrightability, just as the wrapping paper illustration that appears in the *Compendium* does. Reflections Hero/Hoop Earring Second Request at 2.

### III. DISCUSSION

### A. Legal Framework

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).

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, but not every combination or arrangement will be sufficient to meet this test. *See Feist*, 499 U.S. at 358. 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.*, 888 F.2d at 883. For example, the Office may register a work that consists merely of geometric shapes where the "author's use of those shapes results 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 ("The [Copyright Office] will register this claim because it . . . goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement.").

# **B.** Analysis of the Works

1. Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), Reflections Hero Earrings (REEEGY004), and Reflections Hoop Earrings (REEGY001/002/003)

After carefully examining the Works and applying the legal standards discussed above, the Board finds that Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), Reflections Hero Earrings (REEGY004), and Reflections Hoop Earrings (REEGY001/002/003) satisfy the requirement of creative authorship necessary to sustain claims to copyright. The Board finds that each of these pieces of jewelry contains a sufficient amount of original and creative two-dimensional artwork authorship. Our decision to register these pieces is based on the low standard for copyrightability articulated in *Feist*, 499 U.S. at 346. The pieces, though they may generally be in the shapes of eyes, are stylized versions each with numerous elements and details that are arranged in an uncommon and creative way:

- In the Reflections Cocktail Ring (RERGY001), in addition to the "pupil" diamond and "iris" formed by the gold disc with princess cut diamonds (that standing alone would not sustain a copyright claim), the outer shape of the eye is a three-dimensional convex shape, and has diamond encrusting the outer rim and interior; that convex shape and diamond encrusting, added with the other elements, are just sufficient to render the ring copyrightable.
- The Reflections Hero Earrings (REEGY005) combine more than a few elements in a creative way. While the overall impression is the shape of an eye, the top of the eye is made of solid gold while the bottom is made of twelve gold strands that are comprised of black and white diamonds, which are asymmetrically laid out, and a pear shaped jewel at the end of each strand. These additional elements, combined with the "pupil" formed by the round diamond and "iris" formed by the gold spokes with princess cut diamonds, are sufficient to render the ring copyrightable.
- The Reflections Hero Earrings (REEGY004), while somewhat closer to the line than the other works deemed copyrightable, similarly combine more than a few elements in a creative way. In particular, the shape of the eye is encrusted in round cut diamonds, and a single pearl shaped diamond hangs from the bottom. These additional elements, combined with the "pupil" diamond and "iris" formed by the gold spokes with princess cut diamonds, are just sufficient to render the ring copyrightable.

• The Reflections Hoop Earrings (REEGY001/002/003) are also close to the line, but combine more than a few elements in a creative way. Here, the center of the "eye" is a single gold sphere, and it is suspended in an outer oval shape that is diamond encrusted, and a single pear shaped diamond dangles from the end.

The Board's decision relates only to each of these pieces of jewelry as a whole, and does not extend individually to any of the standard and common elements depicted in the Works such as an eye or a teardrop. *See* 37 C.F.R. § 202.1(a) ("[W]orks not subject to copyright [include] familiar symbols or designs."); *see also* COMPENDIUM (THIRD) § 908.2 ("The U.S. Copyright Office may register jewelry designs if they are sufficiently creative or expressive. The Office will not register pieces that, as a whole, do not satisfy this requirement, such as mere variations on a common or standardized design or familiar symbol, designs made up of only commonplace design elements arranged in a common or obvious manner, or any of the mechanical or utilitarian aspects of the jewelry.").

2. Endless Engagement Ring (ENRGY002), Reflections TU Engagement Ring (RERGY002), and Reflections Hero Necklace (RENGY003)

After carefully examining the Works and applying the legal standards discussed above, the Board finds that Endless Engagement Ring (ENRGY002), Reflections TU Engagement Ring (RERGY002), and Reflections Hero Necklace (RENGY003) do not satisfy the requirement of creative authorship necessary to sustain claims to copyright.

The Endless Engagement Ring consists solely of a gold ring with a simple twelve petal gold flower attached. The center of the flower is comprised of a single round cut diamond. In its Endless/Reflections Engagement Rings Second Request, Michal Kadar stated that "the shape of the petals and that they are attached to one another – and can dis-attach from one another – are not common and expected in jewelry designs." Endless/Reflections Engagement Rings Second Request at 2. Additionally, Michal Kadar argued that the twelve petals are configured in such a way as to "create 6 hearts" and such a configuration is not "expected" or "inevitable." *Id.* Michal Kadar also pointed out that the ring opens and closes.

Twelve petals that form six heart shapes arranged in one circle is a commonplace and expected arrangement of familiar symbols. See 37 C.F.R. § 202.1(a) ("[W]orks not subject to copyright [include] familiar symbols or designs."); see also COMPENDIUM (THIRD) § 313.4(B) ("Works that contain no expression or only a de minimis amount of original expression are not copyrightable and cannot be registered with the U.S. Copyright Office."); id. § 313.4(J) (noting that "[c]ommon representational symbols, such as a . . . heart" are "not copyrightable"); id. § 908.2 ("The Office will not register pieces that, as a whole, do not satisfy this requirement, such as mere variations on a common or standardized design or familiar symbol [and] designs made up of only commonplace design elements arranged in a common or obvious manner."). Indeed, a round center with twelve evenly spaced unadorned petals is a basic illustration of a flower, whose elements have not been recast or arranged in any nonstandard way. See Cosmos Jewelry Ltd. v. Po Sun Hon, Co., 470 F. Supp. 2d 1072, 1082 (C.D. Cal. 2006) (deeming uncopyrightable

the basic features of the flower-shaped jewelry at issue as "standard, stock, or common" to gold jewelry). And the fact that the ring opens and closes is not relevant to copyrightability; the mere mechanical operation of jewelry is not subject to copyright and is not a factor in determining whether the work has enough creative authorship sufficient to satisfy the test for copyrightability. See COMPENDIUM (THIRD) § 908.2 ("The Office will not register . . . any of the mechanical or utilitarian aspects of the jewelry."); 17 U.S.C. § 101 (extending copyright protection to "works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned."). Reflections TU Engagement Ring consists of a round diamond, surrounded by a gold band with evenly-spaced baguette diamonds on it. Attached to that band are two triangles extending in opposite directions, such that the ring as a whole forms the shape of an eye, with the center diamond as the pupil and the band with the baguette diamonds appearing to be the iris. Michael Kadar stated that "[t]hese designs incorporate geometry but there is no inevitability in this original pattern of triangles, circles, and rectangles which also open and close." Endless/Reflections Engagement Rings Second Request at 3. But the pattern of the two triangles, iris, and center stone pupil is not original. Thus the combination of the elements in the Reflections TU Engagement Ring is not protectable by copyright; it is a *de minimis* arrangement of common and familiar shapes. See DBC of New York, Inc. v. Merit Diamond Corp., 768 F. Supp. 414 (S.D.N.Y. 1991) (rejecting the "gestalt theory that the whole [of a diamond ring] is greater than the sum of its parts" because the design was "not exceptional, original, or unique"). And, as discussed above, any mechanical components of the ring are statutorily excluded from copyright protection.

Reflections Hero Necklace is a "chandelier" design common to many earrings and necklaces. It consists of a center gold chain band with multiple strands of jeweled gold chain attached at varied lengths so that the necklace, when laid flat, overall forms the shape of an eye. Each strand is made of a varying number of black round cut diamonds linked together, with a white pear shaped diamond at the end of each strand. Strands that dangle from a necklace chain are commonplace features of jewelry, as are decorative gems at the ends of such strands. *See Jane Envy, LLC v. Infinite Classic Inc.*, 2016 WL 797612 (W.D. Tex. Feb. 26, 2016) (noting that a strand of pearlized beads is not copyrightable, and the addition of two beads which hang from the top of a cross represents only a "trivial amount of authorship"). Thus, Michal Kadar did not arrange standard elements of jewelry in any creative way that rises to the level necessary to warrant protection by copyright.

### IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusals to register copyright claims in Reflections Cocktail Ring (RERGY001), Reflections Hero Earrings (REEGY005), Reflections Hero Earrings (REEGY004), and Reflections Hoop Earrings (REEGY001/002/003). The Board now refers those works to the Registration Policy and Practice division for registration of these works, provided that all other application requirements are satisfied.

The Board affirms the refusal to register copyright claims in Endless Engagement Ring (ENRGY002), Reflections TU Engagement Ring (RERGY002),<sup>3</sup> and Reflections Hero Necklace (RENGY003). Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.

U.S. Copyright Office Review Board

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Karyn A. Temple, Acting Register of Copyrights and Director, U.S. Copyright Office Sarang Vijay Damle, General Counsel and Associate Register of Copyrights Catherine Zaller Rowland, Associate Register of Copyrights and Director of Public Information and Education

<sup>&</sup>lt;sup>3</sup> The original decision issued May 21, 2018, included Reflections TU Engagement Ring (RERGY002), twice in the conclusion, once stating the refusal was reversed and once affirmed. The January 24, 2019, reissue makes a technical correction to clarify that Review Board affirmed the refusal to register Reflections TU Engagement Ring (RERGY002).