



Copyright Review Board
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

May 3, 2024

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Re: Second Requests for Reconsideration of Refusals to Register Jewelry Setting Cushion Diamond Engagement Ring, Jewelry Setting Cushion Engagement Ring with Pave Band, Jewelry Setting Cushion Ring, Jewelry Setting Floral Halo Ring with Diamond Shank, Jewelry Setting Floral Ring with Plain Shank, Jewelry Setting Oval Diamond Engagement Ring, Jewelry Setting Ring with Pave Shank, Jewelry Setting Round Diamond Engagement Ring, and Jewelry Setting Round Ring with Diamond Band (SR # 1-8911129817, 1-8911089176, 1-8911030574, 1-8911031258, 1-8911031011, 1-8911129670, 1-8911088495, 1-8911129443, 1-8911088612; Correspondence ID: 1-4PNQ7NE, 1-4Q848MD, 1-4Q84Y9M, 1-4Q84Y2L, 1-4Q84XY3, 1-4Q84Y40, 1-4Q85IR2, 1-4Q85IUZ, 1-4Q84YIV)

Dear Mr. McGinley:

The Review Board of the United States Copyright Office (“Board”) has considered Forevermark US, Inc.’s (“Forevermark”) second requests for reconsideration of the Registration Program’s refusal to register nine jewelry design claims in the works titled “Jewelry Setting Cushion Ring,” “Jewelry Setting Floral Ring With Plain Shank,” “Jewelry Setting Floral Halo Ring With Diamond Shank,” “Jewelry Setting Ring With Pave Shank,” “Jewelry Setting Round Ring With Diamond Band,” “Jewelry Setting Cushion Engagement Ring With Pave Band,” “Jewelry Setting Round Diamond Engagement Ring,” “Jewelry Setting Oval Diamond Engagement Ring,” and “Jewelry Setting Cushion Diamond Engagement Ring” (individually, a “Work,” and collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s denials of registration for the Works.

I. DESCRIPTION OF THE WORKS

The Works are nine claims for jewelry designs. Representative images of each design are provided below, with full deposit images attached in the Appendix.

- Jewelry Setting Cushion Engagement Ring with Pave Band is a ring design featuring a silver circular band, a cushion-cut diamond, a V-shaped silver prong setting on the front and back, and pavé detail along the side prongs and a portion of the band.



Jewelry Setting Cushion Engagement Ring with Pave Band
SR # 1-8911089176

- Jewelry Setting Cushion Diamond Engagement Ring is a ring design featuring a simple silver circular band, a cushion-cut diamond, a V-shaped silver prong setting on the front and back, and V-shaped side prongs interlocking with the front and back prongs.



Jewelry Setting Cushion Diamond Engagement Ring
SR # 1-8911129817

- Jewelry Setting Oval Diamond Engagement Ring is a ring design featuring a simple silver circular band, an oval-cut diamond, a V-shaped silver prong setting on the front and back, and V-shaped side prongs interlocking with the front and back prongs.



Jewelry Setting Oval Diamond Engagement Ring
SR # 1-8911129670

- Jewelry Setting Round Diamond Engagement Ring is a ring design featuring a simple silver circular band, a round-cut diamond, a V-shaped silver prong setting on the front and back, and V-shaped side prongs interlocking with the front and back prongs.



Jewelry Setting Round Diamond Engagement Ring
SR # 1-8911129443

- Jewelry Setting Cushion Ring is a ring design featuring a simple silver circular band, a cushion-cut diamond, a V-shaped silver prong setting on the front and back, V-shaped side prongs interlocking with the front and back prongs, and a collection of smaller diamonds placed beneath the center diamond.



Jewelry Setting Cushion Ring
SR # 1-8911030574

- Jewelry Setting Ring with Pave Shank is a ring design featuring a silver circular band, a square-cut diamond, a V-shaped silver prong setting on the front and back, V-shaped side prongs interlocking with the front and back prongs, and pavé detail along the prongs and a portion of the band.



Jewelry Setting Ring with Pave Shank
SR # 1-8911088495

- Jewelry Setting Round Ring with Diamond Band is a ring design featuring a silver circular band, a round-cut diamond, a V-shaped silver prong setting on the front and back, V-shaped side prongs interlocking with the front and back prongs, and pavé detail along the prongs and a portion of the band.



Jewelry Setting Round Ring with Diamond Band
SR # 1-8911088612

- Jewelry Setting Floral Ring with Plain Shank is a ring design featuring a simple silver circular band, two side prongs, and a large round-cut center diamond surrounded by smaller diamonds that create a scallop effect.



Jewelry Setting Floral Ring with Plain Shank
SR # 1-8911031011

- Jewelry Setting Floral Halo Ring with Diamond Shank is a ring design featuring a silver circular band, two side prongs, a large round-cut center diamond surrounded by smaller diamonds that create a scallop effect, and pavé detail along the prongs and a portion of the band.



Jewelry Setting Floral Halo Ring with Diamond Shank
SR # 1-8911031258

II. ADMINISTRATIVE RECORD

On June 8, 2020, Forevermark filed nine individual applications to register copyright claims in the Works. In separate letters, Copyright Office registration specialists refused to register the claims, determining that each Work was insufficiently creative to sustain a copyright.¹

Corresponding separately for each Work, Forevermark requested that the Office reconsider its initial refusal to register the Works, arguing that the combination of elements in each of the Works was sufficiently creative to meet the threshold for copyright protection.² After

¹ Initial Letter Refusing Registration re: Jewelry Setting Cushion Diamond Engagement Ring from U.S. Copyright Office to Brian McGinley at 2 (July 23, 2020); Initial Letter Refusing Registration re: Jewelry Setting Cushion Engagement Ring with Pave Band from U.S. Copyright Office to Brian McGinley at 2 (Aug. 17, 2020); Initial Letter Refusing Registration re: Jewelry Setting Cushion Ring from U.S. Copyright Office to Brian McGinley at 2 (Aug. 18, 2020); Initial Letter Refusing Registration re: Jewelry Setting Floral Halo Ring with Diamond Shank from U.S. Copyright Office to Brian McGinley at 2 (Aug. 18, 2020); Initial Letter Refusing Registration re: Jewelry Setting Floral Ring with Plain Shank from U.S. Copyright Office to Brian McGinley at 2 (Aug. 18, 2020); Initial Letter Refusing Registration re: Jewelry Setting Oval Diamond Engagement Ring from U.S. Copyright Office to Brian McGinley at 2 (Aug. 18, 2020); Initial Letter Refusing Registration re: Jewelry Setting Ring with Pave Shank from U.S. Copyright Office to Brian McGinley at 2 (Aug. 21, 2020); Initial Letter Refusing Registration re: Jewelry Setting Round Diamond Engagement Ring from U.S. Copyright Office to Brian McGinley at 2 (Aug. 21, 2020); Initial Letter Refusing Registration re: Jewelry Setting Round Ring with Diamond Band from U.S. Copyright Office to Brian McGinley at 2 (Aug. 21, 2020).

² Email re: Jewelry Setting Cushion Diamond Engagement Ring from Tiffany Schwartz to U.S. Copyright Office (Oct. 22, 2020); Email re: Jewelry Setting Cushion Engagement Ring with Pave Band from Tiffany Schwartz to U.S. Copyright Office (Nov. 17, 2020); Email re: Jewelry Setting Cushion Ring from Tiffany Schwartz to U.S. Copyright Office (Nov. 17, 2020); Email re: Jewelry Setting Floral Halo Ring with Diamond Shank from Tiffany Schwartz to U.S. Copyright Office (Nov. 17, 2020); Email re: Jewelry Setting Floral Ring with Plain Shank from Tiffany Schwartz to U.S. Copyright Office (Nov. 17, 2020); Email re: Jewelry Setting Oval Diamond Engagement Ring from Tiffany Schwartz to U.S. Copyright Office (Nov. 17, 2020); Email re: Jewelry Setting Ring with Pave Shank from Tiffany Schwartz to U.S. Copyright Office (Nov. 20, 2020); Email re: Jewelry Setting Round Diamond

reviewing the Works in light of the points raised in the First Requests, the Office reevaluated the claims and again concluded that the Works could not be registered because they lacked copyrightable authorship.³ The Office explained that each Work contained only unprotectable individual elements and that their selection and arrangement did not evince sufficient creativity to support a copyright registration. *See* Second Refusals at 3.

In separate letters, Forevermark requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Works, arguing that the arrangement of elements in each of the Works was sufficiently creative to warrant copyright protection.⁴ In the Second Requests, Forevermark acknowledges that the Works contain “individual and separate design elements” that “may derive from centuries of jewelry design.” Second Requests pt. II.B. While Forevermark “does not seek ownership of those individual and separate design elements,” it argues that it has “recast and arranged” these elements through “numerous choices, including which metals and stones to use, the shape and size of diamonds to incorporate, whether to utilize negative space, the type of setting, and so forth” that make the Works protectable as a whole. *Id.* pts. II.B, III. The Second Requests for each of the Works are largely identical, ending with a final paragraph listing the particular elements of each Work and stating they were chosen “[f]rom many stone, metal, and design options available.” *Id.* pt. III.

Engagement Ring from Tiffany Schwartz to U.S. Copyright Office (Nov. 19, 2020); Email re: Jewelry Setting Round Ring with Diamond Band from Tiffany Schwartz to U.S. Copyright Office (Nov. 19, 2020) (collectively, the “First Requests”).

³ Refusal of First Request for Reconsideration re: Jewelry Setting Cushion Diamond Engagement Ring from U.S. Copyright Office to Brian McGinley (Mar. 12, 2021); Refusal of First Request for Reconsideration re: Jewelry Setting Cushion Engagement Ring with Pave Band from U.S. Copyright Office to Brian McGinley (Mar. 23, 2021); Refusal of First Request for Reconsideration re: Jewelry Setting Cushion Ring from U.S. Copyright Office to Brian McGinley (Mar. 23, 2021); Refusal of First Request for Reconsideration re: Jewelry Setting Floral Halo Ring with Diamond Shank from U.S. Copyright Office to Brian McGinley (Mar. 23, 2021); Refusal of First Request for Reconsideration re: Jewelry Setting Floral Ring with Plain Shank from U.S. Copyright Office to Brian McGinley (Mar. 23, 2021); Refusal of First Request for Reconsideration re: Jewelry Setting Oval Diamond Engagement Ring from U.S. Copyright Office to Brian McGinley (Mar. 23, 2021); Refusal of First Request for Reconsideration re: Jewelry Setting Ring with Pave Shank from U.S. Copyright Office to Brian McGinley (Mar. 23, 2021); Refusal of First Request for Reconsideration re: Jewelry Setting Round Diamond Engagement Ring from U.S. Copyright Office to Brian McGinley (Mar. 23, 2021) (collectively, the “Second Refusals”).

⁴ Letter re: Jewelry Setting Cushion Diamond Engagement Ring from Brian McGinley to U.S. Copyright Office pt. III (June 10, 2021); Letter re: Jewelry Setting Cushion Engagement Ring with Pave Band from Brian McGinley to U.S. Copyright Office pt. III (June 17, 2021); Letter re: Jewelry Setting Cushion Ring from Brian McGinley to U.S. Copyright Office pt. III (June 17, 2021); Letter re: Jewelry Setting Floral Halo Ring with Diamond Shank from Brian McGinley to U.S. Copyright Office pt. III (June 17, 2021); Letter re: Jewelry Setting Floral Ring with Plain Shank from Brian McGinley to U.S. Copyright Office pt. III (June 17, 2021); Letter re: Jewelry Setting Oval Diamond Engagement Ring from Brian McGinley to U.S. Copyright Office pt. III (June 17, 2021); Letter re: Jewelry Setting Ring with Pave Shank from Brian McGinley to U.S. Copyright Office pt. III (June 17, 2021); Letter re: Jewelry Setting Round Diamond Engagement Ring from Brian McGinley to U.S. Copyright Office pt. III (June 17, 2021); Letter re: Jewelry Setting Round Ring with Diamond Band from Brian McGinley to U.S. Copyright Office pt. III (June 17, 2021) (collectively, the “Second Requests”).

III. DISCUSSION

After carefully examining the Works and considering the arguments made in the First and Second Requests, the Board finds that the Works do not contain the requisite creativity necessary to sustain claims to copyright.

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 in *Feist* 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.

Jewelry are works of artistic craftsmanship. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 925.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (listing examples of works of artistic craftsmanship, including “ornamental jewelry”). The Copyright Act provides that sculptural works “include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned.” 17 U.S.C. § 101 (definition of “pictorial, graphic, and sculptural works”). Though the term “works of artistic craftsmanship,” is not defined in the Act, the Supreme Court has described these works as “works of art that might also serve a useful purpose.” *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1011 (2017) (discussing Copyright Office regulations as considered in *Mazer v. Stein*, 347 U.S. 201 (1954)). When considering the copyrightability of jewelry, the Office applies the “mirror image” of the *Star Athletica* test for useful articles: the Office segregates the “mechanical or utilitarian aspects” of the work, while considering the remainder for registration. COMPENDIUM (THIRD) § 925.2. In evaluating these elements, the Office “will consider both the component elements of the design and the design as a whole,” which may include decoration on the surface of the jewelry, such as engraving, as well as the selection and arrangement of various elements such as shape and color. *Id.* § 908.3.

Applying these principles here, the Board provides its analysis of each of the Works below. For ease of discussion, the Board has separated the Works into three categories based on common elements and the arrangement thereof: the V Design, Interlocking V Designs, and Floral Designs.

A. *V Design*

Only one of the Works, Jewelry Setting Cushion Engagement Ring with Pave Band, falls into the “V Design” category.



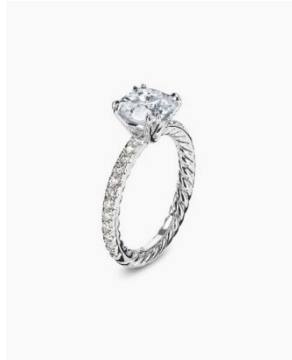
Jewelry Setting Cushion Engagement Ring with Pavé Band

This Work features a silver circular band, a cushion-cut diamond, V-shaped silver prong settings, and smaller diamonds in a pavé setting.⁵ Each of these elements—a diamond with a standard cut, pavé-set diamonds, a simple band, and simple prongs—are mainstays in engagement ring design. Such common and familiar shapes are not eligible for copyright protection. *See* COMPENDIUM (THIRD) § 908.2 (stating that the Office will not register jewelry designs consisting of “mere variations on a common or standardized design or familiar symbol, designs made up only of commonplace design elements arranged in a common or obvious manner, or any of the mechanical or utilitarian aspects of the jewelry”); *id.* § 906.1 (“The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form.”); *see also* 37 C.F.R. § 202.1(a). As Forevermark recognizes, it cannot seek copyright protection for individual elements that have long been extensively used. *See* Second Requests pt. II.b.

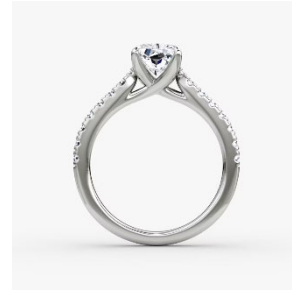
Nor is this Work as a whole protectable, as it consists of a few simple elements, which are not sufficiently numerous and are not sufficiently original in their selection and arrangement so as to render it protectable. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The selection and arrangement of the elements in Jewelry Setting Cushion Engagement Ring with Pavé Band consist of placing a cushion-cut diamond on top of a V-shaped prong setting connected to a silver band with pavé detail along the prongs and a portion of the band. This particular arrangement of a center diamond on top of a V-shaped prong setting with pavé detail is common among engagement rings. For example, the Board identified the following jewelry pieces that utilize a similar arrangement, depicted on the next page:

⁵ Pavé detail is a common jewelry design feature in which small diamonds are set along the band of the ring. *See, e.g.,* Nicole Kliet, *Pavé-Set Engagement Rings: The Complete Guide*, BRIDES.COM (July 8, 2021), <https://www.brides.com/pave-setting-5069960> (“The French word [pavé] translates to ‘paved,’ and this jewelry technique was named as such because it resembles a paved or cobblestone road.”). Diamonds in a pavé setting are therefore a “familiar symbol or design” that cannot be the basis for copyright protection. 37 C.F.R. § 202.1(a); *see also* *Cosmos Jewelry Ltd. v. Po Sun Hon Co.*, 470 F. Supp. 2d 1072, 1082 (C.D. Cal. 2006) (use of particular finish on gold jewelry was “standard, stock, or common to the medium of gold jewelry making” and thus unprotectable under *scènes à faire*) (internal citations omitted).

Examples of Similar Arrangements



David Yurman⁶



VRAI⁷

Accordingly, the Board concludes that this Work lacks the requisite creativity to be copyrightable.

B. Interlocking V Designs

Six of the Works fall into the “Interlocking V Design” category. Three Works—Jewelry Setting Cushion Diamond Engagement Ring, Jewelry Setting Oval Diamond Engagement Ring, and Jewelry Setting Round Diamond Engagement Ring—feature a simple silver circular band, a diamond, V-shaped silver prongs, and V-shaped side prongs.



Jewelry Setting Cushion Diamond Engagement Ring



Jewelry Setting Oval Diamond Engagement Ring



Jewelry Setting Round Diamond Engagement Ring

The only difference between these three Works is the cut of the diamond: a cushion-cut diamond, an oval-cut diamond, and a round-cut diamond, respectively. As an initial matter, the cuts of diamonds generally are not copyrightable and thus are not considered when evaluating copyrightability. *See* COMPENDIUM (THIRD) § 908.3 (stating that “[f]aceting of individual stones (*i.e.*, gem-cutting)” generally “are not considered in analyzing copyrightability” because they are not copyrightable). The remaining elements of the Works are similarly not subject to copyright protection, either individually or considered together.

⁶ *DY Eden Pavé Engagement Ring*, DAVID YURMAN, <https://www.davidyurman.com/wedding/engagement-rings/dy-eden-pave-engagement-ring-in-platinum-cushion-WR1100CPL.html> (last visited May 2, 2024). Though Forevermark cited a few cases involving David Yurman jewelry designs in its Second Requests, *see, e.g.*, Second Requests pt. II.B, those cases addressed works that are different from the work provided as an example here.

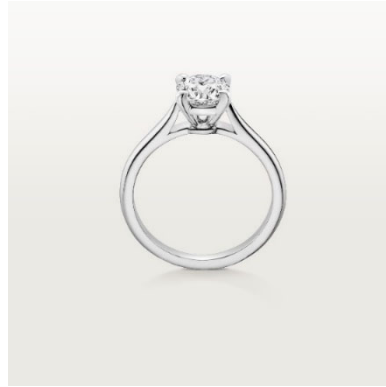
⁷ *The Trellis Cathedral Radiant Engagement Ring*, VRAI, <https://www.vrai.com/engagement-ring/trellis-cathedral-ring/radiant-white-gold-41094280609885> (last visited May 2, 2024).

Like the “V Design” Work described above, each of the “Interlocking V Design” Works consist of common and familiar shapes, which individually are ineligible for protection. *See* COMPENDIUM (THIRD) §§ 908.2, 908.3. The selection and arrangement of these individual elements also fail to satisfy the requirements for copyright protection. The arrangement of these elements is identical to the “V Design” category described above, with the exception of the omission of the pavé detail and the addition of the V-shaped side prong settings that interlock with the front and back prongs. The addition of this single element is not sufficient to render the Works creative as a whole. This arrangement is common among engagement rings, such as the following pieces:

Examples of Similar Arrangements



Gabriel & Co.⁸



Cartier⁹

The same is true for the remaining three Works in this category: Jewelry Setting Cushion Ring, Jewelry Setting Ring with Pave Shank, and Jewelry Setting Round Ring with Diamond Band. Each of these Works includes all of the same individual elements discussed above, plus one additional element each.



Jewelry Setting Cushion Ring



Jewelry Setting Ring with Pave Shank



Jewelry Setting Round Ring with Diamond Band

Specifically, Jewelry Setting Cushion Ring includes multiple small diamonds beneath the larger central diamond (sometimes referred to as a “hidden halo”). *See* Sarah Hanlon, *This Engagement Ring Trend Is About to Be All over Instagram*, THE KNOT (Mar. 20, 2020), <https://www.theknot.com/content/hidden-halo-engagement-rings> (“[A] hidden halo engagement ring features a halo of pavé diamonds below the centerstone on the ring’s setting.”). Jewelry

⁸ *Bambi – 14K White Gold Round Engagement Ring*, GABRIEL & CO., <https://www.gabrielny.com/14k-white-gold-round-engagement-ring-er16132r8w4jjj> (last visited May 2, 2024).

⁹ *Solitaire 1985*, CARTIER, <https://www.cartier.com/en-us/jewelry/engagement-rings/solitaire-1895/solitaire-1895-CRN4162900.html> (last visited May 2, 2024).

Setting Ring with Pave Shank and Jewelry Setting Round Ring with Diamond Band each include pavé detail, *see supra* Part III.A, along the prongs and part of the band. The only difference between the latter two rings is the cut of the diamond: Jewelry Setting Ring with Pave Shank features a cushion-cut diamond and Jewelry Setting Round Ring with Diamond Band features a round-cut diamond. The combination of either the hidden halo or the pavé detail—which are common design features—with the diamond, band, and prongs is insufficient to render any of these Works protectable as a whole.

The Board thus concludes that the six Works in the “Interlocking V Design” category lack the creativity necessary to sustain a copyright.

C. Floral Designs

The final category consists of two Works: Jewelry Setting Floral Ring with Plain Shank and Jewelry Setting Floral Halo Ring with Diamond Shank. Jewelry Setting Floral Ring with Plain Shank features a simple silver circular band, two side prongs, a large round-cut center diamond, and a collection of small diamonds.



Jewelry Setting Floral Ring with Plain Shank

Individually, these elements are common and familiar shapes that cannot sustain a copyright. *See* COMPENDIUM (THIRD) §§ 908.2, 908.3. And these elements are not sufficiently numerous, nor is their combination and selection original enough, for the Work as a whole to be protectable. *See Satava*, 323 F.3d at 811. The large diamond is placed at the center on top of prongs projecting from a circular band and is surrounded by smaller diamonds, which create a scalloped effect. This is a commonplace arrangement of elements that has been in use for centuries. Two examples of such a design are depicted on the next page:

Examples of Similar Arrangement



Victorian Cluster Ring, c. 1890s¹⁰



Diamond Cluster Ring, c. 1900¹¹

Jewelry Setting Floral Halo Ring with Diamond Shank is identical to Jewelry Setting Floral Ring with Plain Shank with the exception of one additional element: pavé detail along the side prongs and a portion of the band.



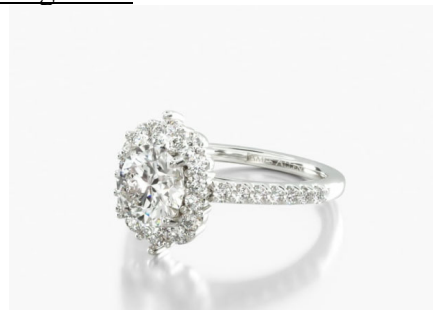
Jewelry Setting Floral Halo Ring with Diamond Shank

As discussed above, the additional selection and combination of pavé detail on the side prongs and band is not sufficient to render this Work copyrightable. This is a common arrangement in jewelry of this type, such as the pieces below:

Examples of Similar Arrangement



Neil Lane Couture¹²



James Allen¹³

¹⁰ *1890s Victorian Cluster Ring*, ERIE BASIN, https://eriebasin.com/products/1890s-victorian-diamond-cluster-ring?_pos=17&_sid=a62fa46bf&_ss=r&variant=29271048880237 (last visited May 2, 2024).

¹¹ *Diamond Cluster Ring*, GRAY & DAVIS, <https://www.grayanddavis.com/new-products/diamond-cluster-ring> (last visited May 2, 2024).

¹² *Neil Lane Couture Design Round-Cut Diamond, Platinum Engagement Ring*, NEIL LANE COUTURE, <https://www.neillanecouture.com/collections/engagement-rings/products/round-diamond-sunflower-engagement-ring> (last visited May 2, 2024).

¹³ *14K White Gold Graduated Halo Diamond Engagement Ring*, JAMES ALLEN, <https://www.jamesallen.com/engagement-rings/halo/14k-white-gold-graduated-halo-diamond-engagement-ring-item-66328> (last visited May 2, 2024).

As such, the Board concludes that neither Work in the “Floral Design” category meets the threshold for creativity. These Works are thus ineligible for copyright protection.

Forevermark makes several arguments common to all of the Works. First, Forevermark cites a number of cases addressing the copyrightability of jewelry designs, including some where designs consisting of common elements were found protectable. *See* Second Requests pt. II.C. While jewelry designs are of course copyrightable if the combination of their elements is sufficiently original, the Board has concluded here that the Works do not contain sufficient creativity in their selection and arrangement of unprotectable elements.

Second, the decisions cited by Forevermark are distinguishable. In some instances, the cases involve works that contained more creative choices than are present here.¹⁴ Other cases either did not directly address the copyrightability of the work at issue¹⁵ or found many of the works at issue to be insufficiently creative, underscoring that not every combination of common elements in jewelry design will be copyrightable.¹⁶ None of the cases support a different conclusion regarding the Works.

Forevermark’s remaining arguments pertain to factors that are irrelevant to the determination of whether a work is sufficiently creative. It argues that the Works involved “an arduous and focused design process.” Second Requests pt. II.A. But the copyrightability inquiry does not consider the amount of effort that went into making a work. *See* COMPENDIUM (THIRD) § 310.7 (stating that the Office “will not consider the amount of time, effort, or expense required to create the work” because these “have no bearing on whether a work possesses the minimum creative spark required by the Copyright Act and the Constitution”); *see also Feist*, 499 U.S. at 352–54, 364. Forevermark also emphasizes the purported distinctiveness and uniqueness of the Works, Second Requests pts. II.A, III, but these factors are likewise irrelevant to the determination of whether a work is sufficiently creative. *See* COMPENDIUM (THIRD) § 310.1 (“The U.S. Copyright Office will examine each work in isolation to determine whether it satisfies the originality requirement. The fact that a work may be novel, distinctive, innovative, or even unique is irrelevant to this analysis.”). Finally, the applicant argues that it chose the elements of each Work from countless options, Second Requests pts. II.C, III, but, “[a]s a

¹⁴ *See Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101, 109 (2d Cir. 2001) (upholding copyright registration in bracelets and earrings that featured a creative combination of “silver, gold, cable twist, and cabochon cut colored stones” (internal quotation omitted)); *Wolstenholme v. Hirst*, 271 F. Supp. 3d 625, 635–36 (S.D.N.Y. 2017) (finding bracelet design featuring creative combination of pharmaceutical pill charms, such as intermixing charms account for shape, size, and symmetry and grouping pills that are often prescribed together, to be copyrightable); *Weindling Int’l, Corp. v. Kobi Katz, Inc.*, No. 00-cv-2022, 2000 WL 1458788, at *3–4 (S.D.N.Y. Sept. 29, 2000) (upholding copyright registration in ring design that featured “flaring supports, channel setting, triangle cut-outs, sharp-edged apexes, and much else all combined to create a more stylistic and flowing look than any prior bridge ring” but emphasizing narrow degree of protection).

¹⁵ *See Sophia & Chloe, Inc. v. Brighton Collectibles, LLC*, 708 F. App’x 460, 461 (9th Cir. 2018) (addressing jury instructions in copyright infringement action).

¹⁶ *See Jane Envy, LLC v. Infinite Classic Inc.*, No. 14-cv-065, 2016 WL 797612, at *7–12 (W.D. Tex. Feb. 26, 2016) (finding some jewelry designs eligible for copyright protection and others not eligible).

general rule, the Office will not consider possible design alternatives that the author may have considered when he or she created the work.” COMPENDIUM (THIRD) § 310.8.

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

APPENDIX: DEPOSIT IMAGES

Jewelry Setting Cushion Engagement Ring with Pave Band
SR # 1-8911089176





Jewelry Setting Cushion Diamond Engagement Ring
SR # 1-8911129817





Jewelry Setting Oval Diamond Engagement Ring
SR # 1-8911129670





Jewelry Setting Round Diamond Engagement Ring
SR # 1-8911129443





Jewelry Setting Cushion Ring
SR # 1-8911089176





Jewelry Setting Ring with Pave Shank
SR # 1-8911088495





Jewelry Setting Round Ring with Diamond Band
SR # 1-8911088612





Jewelry Setting Floral Ring with Plain Shank
SR # 1-8911031011





Jewelry Setting Floral Halo Ring with Diamond Shank
SR # 1-8911031258



