



**United States Copyright Office**

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June 18, 2009

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Dear Mr. Cislo:

I am writing on behalf of the Copyright Office Review Board in response to your second request for reconsideration, dated March 6, 2006. We apologize for the long delay in getting this decision to you. After reviewing the applications from Amini Innovation Corp. ("AICO") and the arguments that you and your colleague, Donald M. Cislo, presented on Applicant's behalf, the Board is upholding the Examining Division's decision to refuse registration for all seventeen [17] of Applicant's furniture works, titled as follows:

1. Boulevard Chair with Arms
  2. Boulevard Dresser
  3. Boulevard Dresser Mirror
  4. Milano China Cabinet/Buffer
  5. Milano Table
  6. Milano Dresser Mirror
  7. Milano Footboard
  8. Boulevard Footboard
  9. Boulevard Headboard
  10. Boulevard China Cabinet/Buffer
  11. Park Avenue China Cabinet/Buffer
  12. Park Avenue Table
  13. Park Avenue Chair with Arms
  14. Park Avenue Dresser Mirror
  15. Park Avenue Dresser
  16. Park Avenue Headboard
  17. Park Avenue Footboard
- Control No. 61-400-1617(C)

## **I. ADMINISTRATIVE RECORD**

### **A. Initial submission; Office refusal to register; first request for reconsideration**

On March 18, 2005, the Copyright Office received seventeen [17] individual applications from your law firm, Cislo & Thomas LLP, on behalf of its client, Amini Innovation Corporation [AICO], to register ornamental carvings associated with various pieces of furniture. The nature of the works submitted for registration was described on the applications as "ornamental carvings" and the authorship for each work was given as "3-dimensional sculpture." On June 7, 2005, Visual Arts Examiner Kathryn Sukites refused to register these works because they are useful articles that do not have any feature separable from their function that is also copyrightable. Ms. Sukites, after setting forth the principles followed by the Copyright Office in its examining activity, concluded that "many

of the sculptural elements of the works deposited are either related to the utilitarian aspects or function, or are subsumed within the overall shape, contour, or configuration of the articles.” Ms. Sukites further wrote that even though several of the works submitted for registration contain sculptural features which might be considered separable, they would not be copyrightable because the features of these works represent an insufficient amount of original authorship. Letter from Sukites to Donald Cislo of 6/7/2005, at 2.

In a letter dated June 20, 2005, Donald Cislo, submitted a first request for reconsideration on behalf of AICO for all 17 works in which he argued that the AICO furniture carvings are copyrightable. He argued that ornamentation that does not contribute to the utilitarian aspect of an article is conceptually separable and, therefore, copyrightable. According to Mr. Cislo, “AICO’s furniture pieces are sculptural works under 17 U.S.C. § 102, and the ornamentation on each of them is not necessary for the utilitarian aspects of the furniture.” Letter from Cislo to Examining Division of 6/20/2005, at 3. He also asserted that, given the record which has been produced for the registration of these works, “there are no facts demonstrating that AICO’s designs are ‘familiar.’” *Id.* at 4. Finally, pointing out that the Office has, in the past, registered a number of AICO’s furniture pieces, Mr. Cislo concluded that the Examiner should have registered the works at issue here because the works were independently created, were not copies from others works, and that the furniture designs were not commonplace. *Id.* at 5.

#### **B. Refusal to register on first request for reconsideration**

In a letter dated December 7, 2005, Attorney Advisor Virginia Giroux-Rollow responded to the first request for reconsideration by stating that six works would be registered, including (1) Boulevard Footboard, (2) Boulevard Headboard, (3) Boulevard China Cabinet/Buffet, (4) Park Avenue China Cabinet/Buffet, (5) Park Avenue Footboard and (6) Park Avenue Dresser. She refused registration for the eleven [11] remaining works on the basis that they do not contain any authorship that is both separable and copyrightable. Letter from Giroux-Rollow to Donald Cislo of 12/7/2005, at 1- 2. In her letter, Ms. Giroux-Rollow referred to the statutory definition of useful article and explained the Copyright Office’s test for conceptual separability as it is presented in *Compendium of Copyright Office Practices, Compendium II* (1984). Letter from Giroux-Rollow of 12/7/2005, at 2 - 3.

She also gave the Office’s understanding of *Esquire v. Ringer* (copyright cannot be based on the overall shape, styling, or configuration of a useful article, no matter how aesthetically pleasing that shape or configuration might be) and of *Norris Industries v. International Telephone and Telegraph Corp.* (a wire-spoked wheel cover is a useful article not protected by copyright because it does not contain any sculptural design that can be identified apart from the wheel cover itself.) Letter from Giroux-Rollow of 12/7/2005, at 3. Ms. Giroux-Rollow also explained that, given *Compendium II*’s test for conceptual separability, with the exception of concentric squares and the design of horizontal and vertical lines on Park Avenue Headboard and Park Avenue Chair with Arms, none of the design elements of the rest of the furniture pieces can be considered physically or conceptually separable from the furniture itself without destroying the basic shape of the furniture pieces. And, even if the concentric squares and vertical and horizontal line design were regarded as conceptually separable, these element, “individually or even if taken as a whole,” do not constitute a copyrightable work of art, even given the principle of a low level of creativity required by the 1991 Supreme Court decision in *Feist v. Rural Telephone*. *Id.* at 4.

### C. Second request for reconsideration

In a letter dated March 6, 2006, you submitted a second request for reconsideration on behalf of Applicant for seven [7] of the AICO furniture carvings that were refused registration; you again argue that these seven work of furniture design possess separable design elements that are copyrightable. These seven works are: (1) Boulevard Chair with Arms, (2) Boulevard Dresser, (3) Boulevard Dresser Mirror, (4) Milano China Cabinet/Buffet, (5) Milano Table, (6) Milano Dresser Mirror and (7) Milano Footboard.

In addition to restating the arguments from the first request for reconsideration, you argued that each of the AICO furniture carvings, individually, contain elements you allege to be separable and which represent “non-trivial ornamentation.” Letter from Daniel Cislo to Review Board of 3/6/2006, at 2. You objected to the Copyright Office’s reliance on *Esquire, Inc. v. Ringer*, 591 F.2d 796 (D.C. Cir. 1978), *cert denied*, 440 U.S. 908 (1979) and *Norris Industries, Inc. v. International Telephone & Telegraph Corp.*, 696 F.2d 918, 924 (11<sup>th</sup> Cir. 1983), *cert denied*, 464 U.S. 818 (1983), distinguishing AICO’s works on the basis that, unlike the works in those cases, AICO is not seeking to register the overall shape and design of the utilitarian article, only the separable elements, *i.e.*, the ornamental features of the furniture items. Letter from Daniel Cislo of 3/6/2006, at 2. Although you state this, you also comment that your client’s works should be analyzed in terms of “contours of the pieces, [and] the relative sizes of various portions of the piece” with the conclusion that the various “shapes, sizes, proportions, and configurations” of the furniture result in the “creative spark” necessary for copyright protection. *Id.* at 4 - 5.

Finally, you have analyzed conceptual separability and its meaning as focusing on whether the items would lose their functionaity if the ornamentation “were omitted for a more generic structure that would accomplish the function.” *Id.* at 5. In support of this understanding of conceptual separability, you cite *Collezione Europa U.S.A., Inc. v. Hillsdale House, Ltd.*, 243 F. Supp. 2d 444 (M.D.N.C. 2003), *Leicester v. Warner Bros.*, 232 F.3d 1212, 1219 (9<sup>th</sup> Cir. 2000), and *Severin Montres Ltd. v. Yidah Watch Co.*, 997 F. Supp. 1262, 1265 (C.D. Cal. 1997) (where design elements can be identified as reflecting the designer’s artistic judgment exercised independently of functional influences, conceptual separability exists). You then list the seven furniture items at issue here and, for each, you identify what, in your opinion, are the ornamental features that are “at least conceptually separable.” Letter from Daniel Cislo of 3/6/2006, at 6 - 7.

### D. Further correspondence

Upon commencing its review of Applicant’s second request for reconsideration, the Review Board became aware that the Examining Division had decided to register six [6] of Applicant’s works included in this submission upon the first request for reconsideration. In a letter dated July 3, 2006, the Board notified you that it was proposing the contrary– not to register these works on the basis that they do not have sufficient creativity to be copyrightable. Applicant was afforded additional time to present any arguments in support of registration for those works.

You responded in a letter dated July 26, 2006 that Applicant chose not to defend the registrations for Park Avenue China Cabinet/Buffet, Park Avenue Footboard and Park Avenue Dresser because it was discontinuing use of those three works. In support of registrations for the remaining three works, Boulevard Footboard, Boulevard Headboard, Boulevard China Cabinet/Buffet, you stated that the arguments set forth in the second request for reconsideration were incorporated by reference for each of those works. In addition, you discussed details of each furniture design that you allege support a determination that each work is copyrightable.

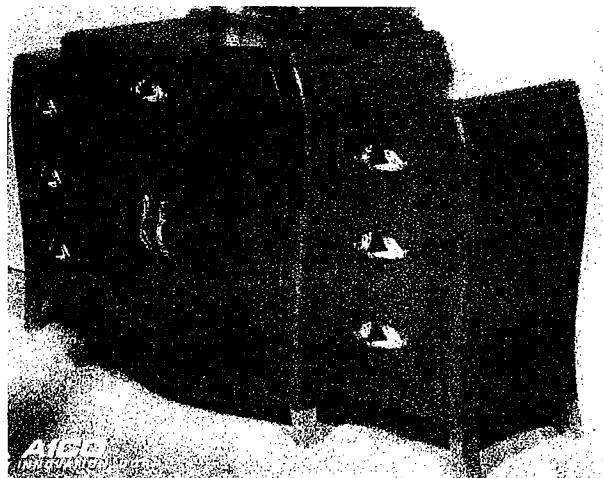
## II. ANALYSIS AND DECISION

We have reviewed the applications and your law firm's arguments in favor of registering the AICO furniture works, including the three [3] AICO furniture works for which the Office has stated its intention not to register after you were informed on first request for reconsideration that registration would take place. The Review Board is refusing registration for all seventeen [17] of these works [we realize you are not providing arguments for three of the Park Avenue works]. Following are depictions of the 17 works for which registration is refused. We will consider description and analysis of these works below.

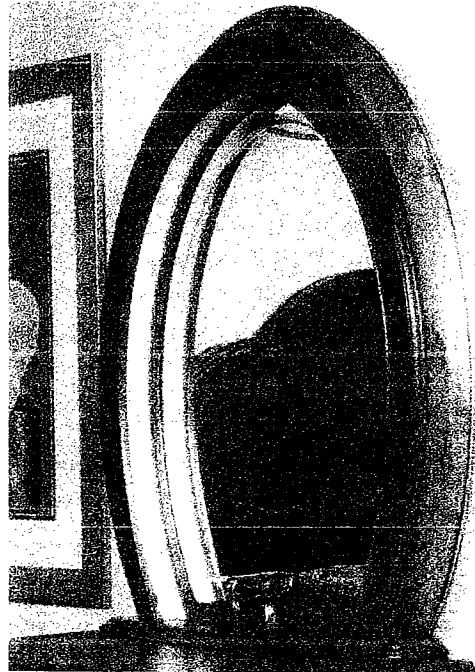
### BOULEVARD CHAIR WITH ARMS



### BOULEVARD DRESSER



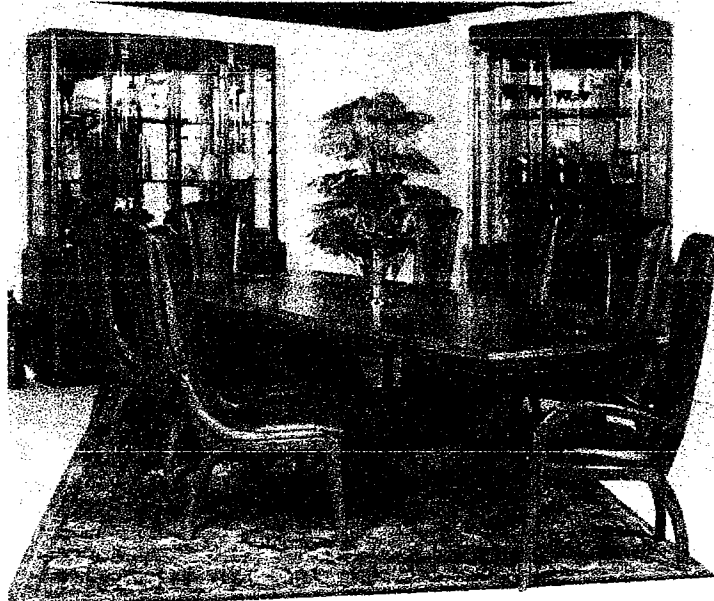
**BOULEVARD DRESSER MIRROR**



**MILANO CHINA CABINET/BUFFET**



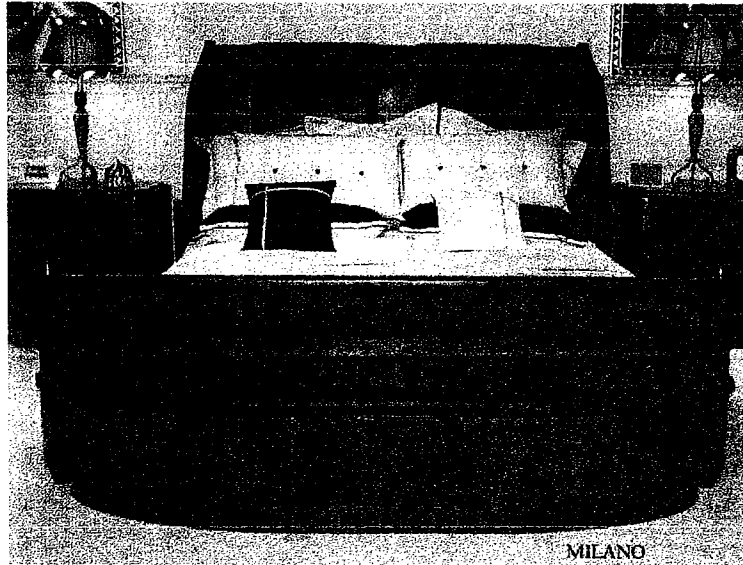
**MILANO TABLE**



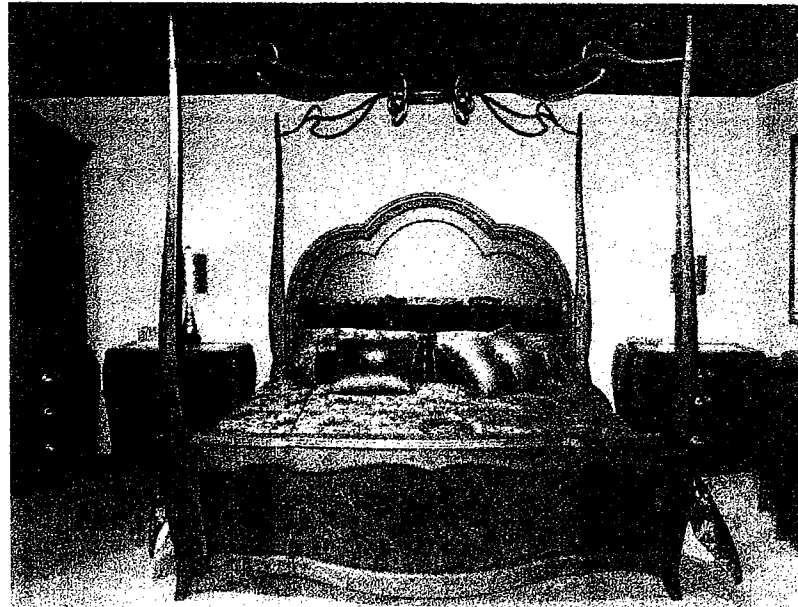
**MILANO DRESSER MIRROR**



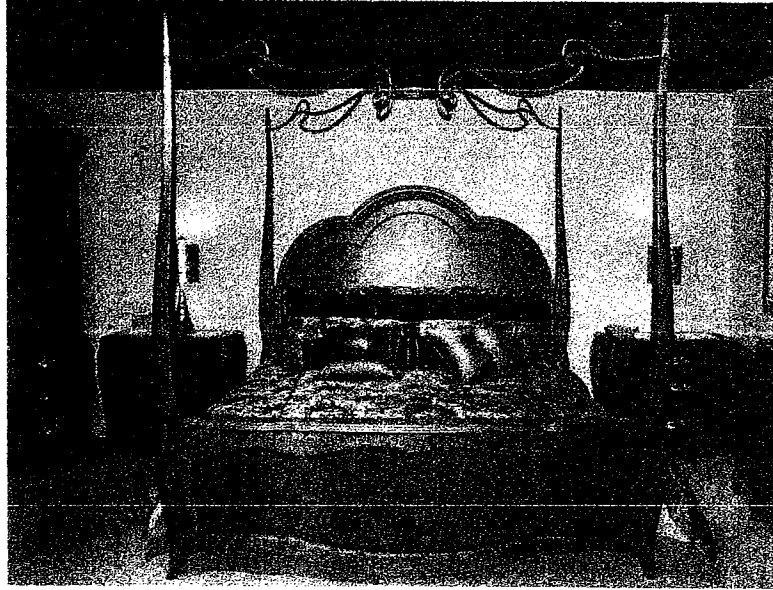
**MILANO FOOTBOARD**



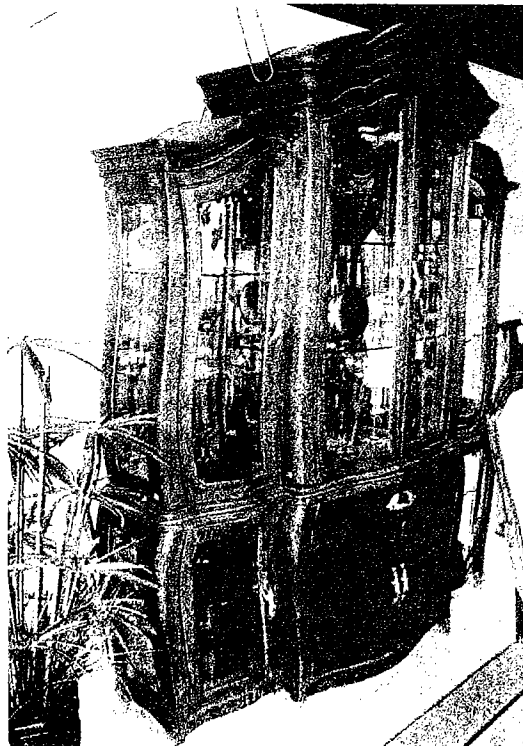
**BOULEVARD FOOTBOARD**



**BOULEVARD HEADBOARD**



**BOULEVARD CHINA CABINET/BUFFET**



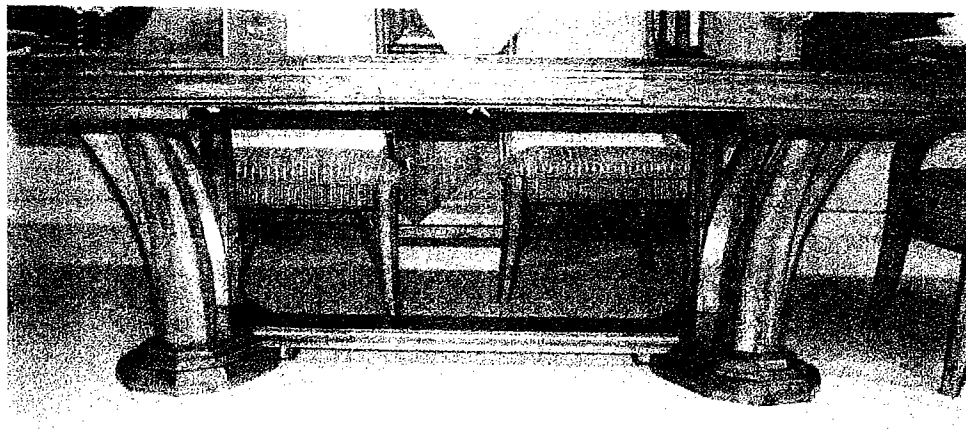


**PARK AVENUE CHINA CABINET/BUFFET**



PARK AVENUE

**PARK AVENUE TABLE**



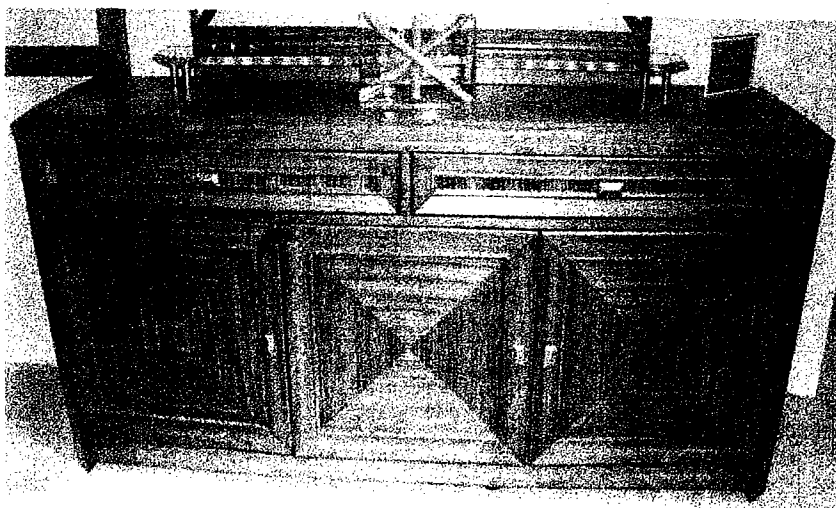
PARK AVENUE

**PARK AVENUE CHAIR WITH ARMS**



PARK AVENUE

**PARK AVENUE DRESSER**



PARK AVENUE

