



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

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Re: Second Request for Reconsideration for Refusal to Register Soft Light Floor Lamp SF110-109CD and Soft Light Floor Lamp SF210-107 (SR # 1-8534041242, 1-8534041141; Correspondence ID: 1-47RI0G3)

Dear Ms. Kappers:

The Review Board of the United States Copyright Office (“Board”) has considered Zhong Mai’s (“Mai”) second request for reconsideration of the Registration Program’s refusal to register sculptural claims in the works titled “Soft Light Floor Lamp SF110-109CD” and “Soft Light Floor Lamp SF210-107” (collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s denial of registration.

I. DESCRIPTION OF THE WORKS

The Works are floor lamps. Both lamps have similarly shaped lampshades made of different fabrics. The Works are as follows:



Soft Light Floor Lamp SF110-109CD
 (“Bamboo Lamp”)



Soft Light Floor Lamp SF210-107
 (“Marble Lamp”)¹

¹ In their correspondence with the Office, Mai describes the Works as “inspired by beauty: respectively, the erratic ebb and flow of natural marble and a canopy of fronds in a bamboo forest.” Letter from Emily T. Kappers to U.S.

II. ADMINISTRATIVE RECORD

On February 11, 2020, Mai filed two applications to register sculptural copyright claims in the Works. In a February 14, 2020 letter, a Copyright Office registration specialist refused to register the claims, finding that the Works “are useful articles that do not contain any copyrightable authorship.” Initial Letter Refusing Registration from U.S. Copyright Office to Fei Hu (Feb. 14, 2020).

In a letter dated May 14, 2020, Mai requested that the Office reconsider its initial refusal to register the Works. Letter from Fei Hu to U.S. Copyright Office (May 14, 2020) (“First Request”). In the First Request, Mai argued that the Works’ sculptural features and “ornamental elements” satisfied the separability test. *Id.* at 5, 7. Mai described the “ornamental elements” of the Works as “smooth, elegant, stylish, but simple lines.” *Id.* at 5. More specifically, Mai described the Marble Lamp as a “static sculpture . . . made of semi-transparent Tyvek shade painted with marble texture” and the Bamboo Lamp as a “static sculpture . . . made of transparent Tyvek shade painted with brown bamboo joints.” *Id.* at 4, 5. After reviewing the Works in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that the Works cannot be registered because they are “useful articles that do not contain any separable, copyrightable features.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Fei Hu at 1 (Aug. 28, 2020) (“Second Refusal”). The Office further concluded that “the painted surfaces[] . . . do not exhibit the creativity necessary to support a claim in copyright.” *Id.* at 5.

In a letter dated November 24, 2020, Mai requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Works. Letter from Emily T. Kappers to U.S. Copyright Office at 1–2 (Nov. 24, 2020) (“Second Request”). In that letter, Mai argued that “[w]hen removed from the useful aspects of the lamp, Applicant’s Works maintain their sculptural qualities - standing alone as a work of art.” *Id.* at 5. Mai also argued that the Works contain separable pictorial features that demonstrate more than a *de minimis* amount of creative expression, describing the pictorial features as “artistic abstractions on the sculptures.” *Id.* at 1. Mai again described the abstract interpretations of bamboo and marble as “paintings.” *Id.* at 8.

In response to questions from the Board, Mai clarified that “the Works feature abstract shading and patterning that are (1) engraved into the [Marble Lamp’s] cloth and (2) created with warp and weft knitting techniques on the [Bamboo Lamp].” Email from Emily Kappers to U.S. Copyright Office (May 18, 2021) (“Kappers May Email”). In a June 3, 2021 email, Mai further confirmed that “the [Bamboo Lamp] does not include any painted lines” and “the marble design is embedded in the material (i.e. engraved) via a ‘spunlaid/spunbound’ technique.” Email from Emily Kappers to U.S. Copyright Office (June 3, 2021) (“Kappers June Email”).

Copyright Office at 1–2 (Nov. 24, 2020). Thus, the Board uses the names “Bamboo Lamp” and “Marble Lamp” herein for ease of reference.

III. DISCUSSION

After carefully examining the Works and applying the relevant legal standards, the Board finds that the Works are useful articles that do not contain the requisite separable authorship necessary to sustain a claim to copyright.

As an initial matter, both Works, as well as the constituent lampshades, are useful articles. The Copyright Act defines useful articles as “article[s] having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.” 17 U.S.C. § 101 (definition of “useful article”). Features of a useful article that are “normally a part of a useful article” are also considered a useful article. *Id.* 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 therefore must apply the test articulated by the Supreme Court in *Star Athletica, L.L.C. v. Varsity Brands, Inc.* to determine whether sculptural features “(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. 1002, 1007 (2017).

Additionally, both Works lack pictorial features.² Mai asserts that the “Works contain additional copyrightable features in the artistic abstractions on the sculptures, themselves.” Second Request at 1. Neither Work, however, contains any separable features *on* the fabric; both fabric designs are a result of the technique used to create the fabric. The Bamboo Lamp’s horizontal and vertical lines were woven into the design with a warp and weft knitting technique and the Marble Lamp’s fabric design is a result of a non-woven, spunlaid/spunbound engraving technique. Kappers June Email. Thus, any separable features in the lampshade fabrics are sculptural, not pictorial, and are addressed below as such.³

Bamboo Lamp

The only separable sculptural features of the Bamboo Lamp are the woven horizontal and vertical lines of the lampshade fabric. Those separable sculptural features, however, are insufficiently creative to warrant registration. Woven or imprinted designs may be copyrightable but only if they are separable and sufficiently creative. *Galiano v. Harrah’s Open Co Inc.*, 416 F.3d. 411, 420 (5th Cir. 2005); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 924.3(A) (3d ed. 2021) (“COMPENDIUM (THIRD)”). Here, the Bamboo Lamp fabric design lacks sufficient creativity to receive copyright protection. The individual horizontal and vertical lines themselves are not copyrightable, 37 C.F.R. § 202.1(a);

² While the Office previously concluded that both Works “have some pictorial qualities,” Second Refusal at 3, this determination was based on Mai’s description of the Work as containing “painted elements.” *Id.* at 4. The Board’s determination relies on Mai’s clarifying description that the Bamboo Lamp “does not include any painted lines” and the Marble Lamp’s design is “embedded in the material” and “exists within the Work, itself.” See Kappers June Email at 1, 3; Kappers May Email at 4.

³ Mai also did not claim pictorial or two-dimensional authorship in either registration application. Both applications list only “sculpture” in the “Author Created” field.

COMPENDIUM (THIRD) § 906.1, and the selection, coordination, and arrangement of the lines are insufficient to render the Work eligible for copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The fabric design brings together only a few standard shapes with minor linear or spatial variations and does not contain a sufficient amount of creative expression to warrant registration. COMPENDIUM (THIRD) § 905.

The Bamboo Lamp lacks any other sculptural features that can exist apart from the utilitarian aspects of the lamp. The lamp consists of an inner light fixture, four small feet, and a lampshade. Mai does not contend that the inner light fixture or feet are separable or copyrightable, but suggests that the lampshade itself is a separable sculptural feature because it can be “removed from the useful aspects of the lamp.” Second Request at 5. Lampshades, however, are also useful articles because they are “normally a part of” a lamp.⁴ *See* 17 U.S.C. § 101 (definition of “useful article”). Thus, the Board will only consider the features of the lampshades that have “the capacity to exist apart from the utilitarian aspects” of the lampshades. *See Star Athletica*, 137 S. Ct. at 1010.

As addressed above, the fabric design is the only separable feature of the bamboo lampshade; the bamboo lampshade does not contain any other sculptural features that can be perceived apart from the utilitarian aspects of the lampshade. The primary utilitarian function of a lampshade is to cover a lamp’s lightbulb(s). This lampshade does just that. *See* App. A & B. The lampshade’s sculptural features are dictated by the functional requirements of the lamp and cannot be removed without eliminating the primary utilitarian function of the useful article itself (*i.e.*, the lampshade). *See* 17 U.S.C. § 101; *Entm’t Research Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1223 (9th Cir. 1997). Similarly, the overall shape of the lampshade cannot be protected because copyright law does not protect the “overall form, shape, or configuration of the useful article itself, no matter how pleasing or attractive it may be.” COMPENDIUM (THIRD) § 924.3(F) (citing *Star Athletica*, 137 S. Ct. at 1010); *see also Esquire, Inc. v. Ringer*, 591 F.2d 796, 800 (D.C. Cir. 1978) (holding that copyright protection is not available for the “overall shape or configuration of a utilitarian article, no matter how aesthetically pleasing that shape . . . may be”).

Marble Lamp

Similarly, the Marble Lamp lacks separable sculptural features that can exist apart from the utilitarian aspects of the lamp. The structure is nearly identical to the Bamboo Lamp, except for a slight vertical twist in the Marble Lamp’s frame. The twist is part of the overall shape of the lampshade that is not protected by copyright as such. And even if the twist were separable from the lampshade, the shape is a simple variation of a common geometric shape that is insufficiently creative to support a claim to copyright. *See* 37 C.F.R. § 202.1(a) (prohibiting registration of “familiar symbols or designs”); COMPENDIUM (THIRD) §§ 906.1, 906.2 (common geometric shapes such as “straight or curved lines . . . squares, cubes, [and] rectangles” are not protected by the Copyright Act; “[T]he copyright law does not protect mere variations on a familiar symbol or design, either in two- or three-dimensional form.”).

⁴ *Lamps*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/lamp> (defining a lamp as “a decorative appliance housing a lamp that is usually covered by a shade”) (last updated May 11, 2023).

Unlike the Bamboo Lamp, the Marble Lamp fabric lacks separable sculptural features because the fabric design is dictated by the functional requirements of the spunlaid/spunbound engraving technique and cannot be separated from the fabric itself. *See* 17 U.S.C. § 101; *Entm't Research*, 122 F.3d at 1223.

Lastly, Mai makes a number of arguments in the Second Request that the Board finds unpersuasive. First, Mai argues that lampshades are separable because “[w]hen removed from the useful aspects of the lamp, Applicant’s Works maintain their sculptural qualities - standing alone as a work of art.” Second Request at 5. Under Mai’s analysis, every three-dimensional design would be perceived as separable and thus copyrightable if it were original. This position misapplies *Star Athletica* and is counter to Congress’ intent to provide copyright protection “for original works of art, but not for industrial design.” *Star Athletica*, 137 S. Ct. at 1007. Features of a useful article are not separable where imaginatively removing those features merely “replicate[s]” the useful article. *See id.* at 1012 (noting that the image on the cover of a guitar is protected even if it resembles the shape of the guitar because the imaginatively removed image “does not ‘replicate’ the guitar as a useful article”). Here, physically removing the lampshades to create “freestanding sculpture[s]” merely replicates the useful articles (*i.e.*, the lampshades).

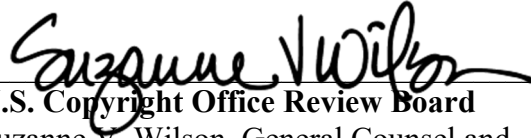
Second, Mai argues that the lampshades can stand alone as sculptural art because the “Applicant could have chosen to incorporate a standard drum, oval, empire or square lampshade at the top of its lamp.” Second Request at 6. The fact that the lampshade can be removed from the lit part of a lamp does not change the fact that a lampshade is itself a useful article. *See* 17 U.S.C. § 101. Moreover, the existence of design alternatives does not make a work copyrightable. COMPENDIUM (THIRD) § 310.8 (“It is not the variety of choices available to the author that must be evaluated, but the actual work that the author created.”).

Third, Mai argues that the lampshades are sufficiently creative because the artistic features are “intended to evoke the soft sweep of a gown.” Second Request at 3, 6, 8. The Office, however, uses objective criteria to determine whether a work constitutes copyrightable subject matter and does not consider the author’s inspiration for the work, creative intent, or intended meaning or any meaning or significance that the work may evoke. COMPENDIUM (THIRD) §§ 310.3, 310.5; *see Star Athletica*, 137 S. Ct. at 1015.

Fourth, Mai argues that the Works are registerable because the Office has registered works “that have significantly less creative expression than Applicant’s modernist interpretation of a sweeping gown.” Second Request at 8. The Office’s registration decisions have “no precedential value and [are] not binding upon the Office when it examines any other application.” COMPENDIUM (THIRD) § 309.3. Copyrightability decisions are “made on a case-by-case basis” and the Board does not engage in comparisons between the Works and other works the Office has registered. *Id.* The Board also notes that the Works at issue here differ from those works that Mai cites in that those works contain separable features with more design elements and more original arrangements than the Works in question. *See, e.g., Pivot Point Int’l, Inc. v. Charlene Prods., Inc.*, 372 F. 3d 913, 931 (7th Cir. 2004) (mannequin with separable design elements beyond the functional considerations of the facial features); *Universal Furniture Int’l Inc. v. Collezione Europa USA, Inc.*, 618 F.3d 417, 434 (4th Cir. 2010) (furniture adorned with separable three-dimensional carvings); *Act Young Imports, Inc. v. Band E Sales Co.*, 673 F. Supp. 672, 673 (S.D.N.Y. 1987) (children’s backpacks with separable animal images).

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal 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
Jordana Rubel, Assistant General Counsel

APPENDIX A



Image of the inside, mechanical components of the lamps. Kappers May Email.

APPENDIX B

Bamboo Lamp



Marble Lamp



Images of the lamps without the outer fabric layer. Kappers June Email.