



**United States Copyright Office**

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · [www.copyright.gov](http://www.copyright.gov)

October 20, 2020

Ray K. Harris, Esq.  
Fennemore Craig  
2394 E. Camelback Road, Suite 600  
Phoenix, AZ 85016

**Re: Second Request for Reconsideration for Refusal to Register D SERIES, SR # 1-7651878481; D SERIES FLUSH MOUNT, SR # 1-7651972429; Correspondence ID: 1-3RESXKF**

Dear Mr. Harris:

The Review Board of the United States Copyright Office (“Board”) has considered JST Performance, LLC’s (“JST’s”) second request for reconsideration of the Registration Program’s refusal to register sculptural claims in the works titled “D SERIES” and “D SERIES FLUSH MOUNT” (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 denials of registration.

**I. DESCRIPTION OF THE WORKS**

The Works are both automotive lamps. D SERIES is a cube-shaped lamp with a body that is slightly tapered from the front to the back. There are ridges, or fins, running from front to back along the body’s sides, and from top to bottom on the back side. When viewed from above, the ridges are open, and when viewed from the side, they are solid. D-SERIES’ face is square with four bulbs arranged in a square, a black border around the bulbs, and the words “RIGID” and “INDUSTRIES” imprinted at the top and bottom. There are seven screws—three screws each on the left and right sides, arranged on the top, middle, and bottom, and an additional screw in the middle. D SERIES FLUSH MOUNT has the same configuration as D SERIES, except the front is octagonal and includes an additional four mounting holes, two on each side.<sup>1</sup>

The Works are as follows:

---

<sup>1</sup> Neither the text imprinted on the top and bottom of the Works nor the additional four mounting holes on D SERIES FLUSH MOUNT are included in JST’s claim to copyright.

<b>D SERIES</b>	<b>D SERIES FLUSH MOUNT</b>
 <p>Right Side</p> <p>Left Side</p> <p>Bottom</p> <p>Top</p>  <p>Front</p> <p>Back</p> <p>Bottom</p>  <p>Back</p>  <p>Right Side</p> <p>Left Side</p> <p>Front</p>	<p>Top</p>  <p>Right Side</p> <p>Left Side</p> <p>Bottom</p> <p>Top</p>  <p>Left Side</p> <p>Right Side</p> <p>Bottom</p> 

## II. ADMINISTRATIVE RECORD

On May 9, 2019, JST filed two applications to register copyright claims in the Works. In a single May 14, 2019, letter, a Copyright Office registration specialist refused to register the two claims, finding that the Works were “useful articles that do not contain any copyrightable authorship needed to sustain a claim to copyright.” Initial Letter Refusing Registration from U.S. Copyright Office to Ray Harris (May 14, 2019).

In a single letter dated July 8, 2019, JST requested that the Office reconsider its initial refusal to register the Works. Letter from Ray K. Harris to U.S. Copyright Office (July 8, 2019) (“First Request”). After reviewing the Works in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Works “are both useful articles that do not contain any separable features.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Ray Harris (Oct. 23, 2019).

In a single letter dated November 21, 2019, JST 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 Ray K. Harris to U.S. Copyright Office (Nov. 21, 2019) (“Second Request”). In that letter, JST asserted that several of the Works’ features were separable, including elements on the lamps’ faces, bodies, and fins. *Id.* at 6–9. It noted that these “three-dimensional sculptural features [are] conceptually separable from the useful article [and] have no intrinsic utilitarian function.” *Id.* at 11. Further, JST contended that the features “are not normally part of a lighting system and can be imagined separately from the utilitarian lamps,” also pointing out that the “resulting design is both creative and aesthetically pleasing.” *Id.* at 12–13.

## III. DISCUSSION

### A. *The Legal Framework*

#### 1) *Useful Articles and Separability*

Copyright does not protect useful articles as such, which are defined in the Copyright Act 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. Importantly, however, artistic features applied on or incorporated into a useful article may be eligible for copyright protection if they constitute pictorial, graphic, or sculptural works under sections 101 and 102(a)(5) of the Copyright Act. This protection is limited to the “pictorial, graphic, or sculptural features’ [that] ‘can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.’” *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017) (quoting 17 U.S.C. § 101).

To assess whether an artistic feature incorporated into the design of a useful article is protected by copyright, the Office examines whether the feature “(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.” *Id.* at 1007; *see also* COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 924 (3d ed. 2017) (“COMPENDIUM (THIRD)”). This analysis focuses on “the extracted feature and not on any aspects of the useful article that remain after the imaginary extraction [because the] statute does not require the decisionmaker to imagine a fully functioning useful article without the artistic feature.” *Star Athletica*, 137 S. Ct. at 1013. Put another way, while useful articles as such are not copyrightable, if an artistic feature “would have been copyrightable as a standalone pictorial, graphic, or sculptural work, it is copyrightable if created first as part of a useful article.” *Star Athletica*, 137 S. Ct. at 1011; 17 U.S.C. § 113(a) (“[T]he exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.”); *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”).

## 2) Originality

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. *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).

Similarly, while the Office may register a work that consists merely of geometric shapes, for such a work to be registrable, the "author's use of those shapes [must] result[] 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.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See* COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design's visual effect or its symbolism, the time and effort it took to create, or the design's commercial success in the marketplace are not factors in determining whether a design is copyrightable. *See, e.g., Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

### ***B. Analysis of the Works***

After carefully examining the Works and applying the legal standards discussed above, the Board finds that the Works are likely useful articles and do not contain the requisite separable authorship necessary to sustain claims to copyright.

As JST acknowledges, the Works, automotive lamps, are useful articles. *See* Second Request at 1. Thus, to be copyrightable, each Work must be able to “be perceived as a two- or three-dimensional work of art separate from the useful article” that “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.” *Star Athletica*, 137 S. Ct. at 1007. JST asserts that the following elements are separable and protectable: (1) the overall shape of the lamp faces, specifically the “square with rounded corners” on the D SERIES and the “rectangle with truncated corners and rounded angles” on the D SERIES FLUSH MOUNT; (2) the part of the face in which the body “wraps around the recessed lens”; (3) the “3 screws spaced vertically left and right of the lens”; (4) the overall shape of the body of the light, which is “six sided, [t]apered front to back, [r]ounded edges, [and] [f]ins on all sides except the front”; and (5) the fins, which “run front to back” but “do not reach the front – leaving a flat border near the front.” First Request at 2. JST is not claiming copyright protection in the LED bulbs, mirror, lens, bracket used for mounting, use of black plastic, configuration of the mirror and bulbs, or the interior body which houses the mirror, bulbs, and wiring. *See* Second Request at 10–11.

Under *Star Athletica*’s first prong, the Board is skeptical that the Works contain separable elements. Many of the elements JST claims are separable are themselves useful articles or articles that are “normally part of a useful article.” *Star Athletica*, 137 S. Ct. at 1010. JST asserts that the overall shape of the Works’ faces and bodies “have no intrinsic utilitarian function” (First Request at 1) and are separable, but, to be separable, a feature “cannot itself be a useful article.” In this case, the shape of the lights’ outer casing is useful in that it protects the mirror, bulbs, and wiring. Similarly, the six screws, which “attach the faceplate to the body of the lamp,” (Second Request at 6) serve the useful function of attaching the face to the body and holding the lights together. The Works’ fins also appear to serve the useful purpose of allowing heat to escape from the body to cool the bulbs. Because of the elements’ clear utilitarian functions, the Board is doubtful that they have “the capacity to exist apart from the utilitarian aspects” of the light and stand “on [their] own.” *Star Athletica*, 137 S. Ct. at 1010. Unlike the Supreme Court’s example of a separable “fresco painted on a wall” that “correlates to the contours of the article on which it is applied,” removing the elements specified by JST from the lights “and applying them in another medium” would “replicate” many of the Works’ useful features. *Id.* at 1013, 1009. JST also claims that the features “suggest fast forward motion.” First Request at 3. The creator’s “design methods, purposes, and reasons,” however, are irrelevant to the separability analysis. *Star Athletica*, 137 S. Ct. at 1015. The Board’s inquiry “is limited to how the article and feature are perceived, not how or why they were designed.” *Id.*

Even if the two- and three- dimensional features of the Works are separable from the utilitarian aspects of the lights, they lack sufficient creativity for protection as pictorial, graphic, or sculptural works. For a work to be eligible for copyright protection, it must “possess more than a *de minimis* quantum of creativity.” *Feist*, 499 U.S. at 363. The Works’ constituent elements—square and octagonal faces, two vertical lines of three screws, a body the shape of a cube, and thin fins that run from the front to the back—are not sufficiently creative to meet this threshold. The Copyright Act does not protect common geometric shapes, such as straight or

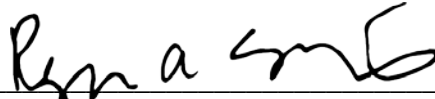
curved lines, squares, rectangles, and cubes. *See* 37 C.F.R. 202.1(a) (prohibiting registration of “familiar symbols or designs”); COMPENDIUM (THIRD) § 906.1.

Additionally, viewed as a whole, the Board finds that the selection, coordination, and arrangement of the elements comprising the Works are insufficient to render the Works sufficiently creative and original. The Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations. *See* COMPENDIUM (THIRD) § 313.4(J). Here, the arrangement of each light’s face, body, and fins is evenly spaced and symmetrical. The face of each Work has “symmetry of features to the left and right, as well as above and below, and diagonally across.” *See* Second Request at 6. The six screws on the face are also “evenly spaced” in two vertical lines “rising symmetrically” to the left and right of the lens. *Id.* The body of each Work, along with the fins, has “(mirror image) symmetry.” *Id.* at 8. Copyright law does not protect such a basic design that lacks creative variation in the spacing, design, and symmetry. *See* COMPENDIUM (THIRD) § 313.4(J); *see also Past Pluto Prods. Corp. v. Dana*, 627 F. Supp. 1435, 1441 (S.D.N.Y. 1986) (reviewing a novelty crown design with spikes that were “uniform in shape and size” and declining to find “artistic originality in a design feature composed of elemental symmetry”). While JST argues that the Works’ overall cube shape, mass, and space “combine to produce the overall visual effect,” (Second Request at 8) the Board concludes that the combination of elements is simple and lacks sufficiently original creative variation.

Finally, JST argues that several creative decisions qualify the Works for copyright protection. It notes the fins emphasize “the swept back look,” and their “slightly rounded edges . . . provide a surface texture that is pleasing to the eye and the hand,” all of which allegedly “suggest fast forward motion” and contribute to the Works’ “aesthetic value” as well as “unique overall impression[.]” Second Request at 8–9, 13; First Request at 3. The Board, however, focuses on the actual appearance of the fixed Works and does not consider any meaning or significance that the Works may evoke. The fact that creative thought may take place in the mind of the person who encounters a work has no bearing on originality. *See* COMPENDIUM (THIRD) § 310.3. Similarly, the Office will not consider the author’s inspiration, creative intent, or intended meaning nor the aesthetic value when examining a work. *Id.* § 310.2, 310.5.

#### IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the copyright claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.



---

**U.S. Copyright Office Review Board**

Regan A. Smith, General Counsel and  
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of  
Copyrights and Director, Public Information and  
Education

Kimberley Isbell, Deputy Director of Policy and  
International Affairs