



July 26, 2021

Katherine Keating, Esq.
Bryan Cave Leighton Paisner LLP
One Wells Fargo Center
301 S. College Street Suite 3900
Charlotte, NC 28202-0902

**Re: Second Request for Reconsideration for Refusal to Register Violet
(Correspondence ID: 1-480TQEL; SR 1-7948240619)**

Dear Ms. Keating:

The Review Board of the United States Copyright Office (“Board”) has considered Chuanheng Furniture Products Sdn. Bhd.’s (“Chuanheng Furniture’s”) second request for reconsideration of the Registration Program’s refusal to register a sculpture claim in the work “Violet” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Work exhibits copyrightable authorship.

The Work is a three-dimensional piece of furniture, namely a bed.¹ The bed consists of a headboard, two drawers at the footboard, and clear leg posts. The center panel of the headboard weaves twelve strips of fabric to create two large Xs. The center panel is positioned forward to appear as if it is floating; a lighting element assists to create the floating illusion. Beneath the center panel, vertical lines of three different widths intersect at 45 degree angles to create diamond and rectangular shapes. The headboard is framed by what appears to be a mirror and wooden border. The two drawers at the footboard repeat the diamond pattern on the second layer of the headboard. The handles are triangles with a V cut out and centered on each drawer to mimic the triangle shape on the drawer. The drawers are framed by a mirror and wooden border. The Work is as follows:

¹ Originally, Chuanheng Furniture sought to register a set of furniture but has since limited the request to the bed in the set to comply with regulations generally prohibiting more than one work to be registered with one application and filing fee. Email from Katherine Keating, Counsel, Bryan Cave Leighton Paisner LLP to Megan Efthimiadis, Assistant to the General Counsel, U.S. Copyright Office (Dec. 17, 2020) (requesting that the Office consider the bed, which “should include both the headboard elements and elements incorporated into the drawers at the foot of the bed”).



As an initial matter, the Board notes that the Work is a useful article. Useful articles are “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 (defining “useful article”). Additionally, “[a]n article that is normally a part of a useful article is [also] considered a ‘useful article.’” *Id.* Copyright law does not protect useful articles as such, but does protect any artistic features applied on or incorporated into a useful article if 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.” *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017).

Here, the Board finds that the Work displays sufficient separable and creative authorship. First, the drawer and headboard designs can be perceived as two- or three-dimensional works of art separate from the useful article. The designs themselves are not useful but instead serve as pure ornamentation. *See, e.g.*, U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 924.3(A) (3d ed. 2021) (“COMPENDIUM

(THIRD)”) (noting that “[a]n artistic pattern woven into a rug” and “[a]n artistic print on wrapping paper or a paper bag” are examples of features that are typically separable).

Second, the separable portions of the design display creative authorship. They involve, as a whole, a host of elements in the headboard and drawers created from several different materials that are “combined in a distinctive manner indicating some ingenuity.” *See Feist Publ’ns v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991) (finding that the Copyright Act “implies that some ‘ways’ [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not”); *Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989) (“[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.”); *Hoberman Designs, Inc. v. Gloworks Imports, Inc.*, 2015 WL 10015261 at *4 (C.D. Ca. 2015) (holding that the use of “geometric shapes like squares, triangles, and trapezoids . . . does not preclude copyright protection”). Overall, the Work contains a sufficient amount of creative authorship, albeit extremely thin.

The Board emphasizes that this determination is based on the low standard for copyrightability articulated in *Feist*. Works with a thin copyright “reflect only scant creativity.” 4 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT §13.03 (2021). As one court noted, “[s]cantiness may exist because the work is composed of elements in the public domain, and it is only the organization of those elements that is protectible [sic].” *Well-Made Toy Mfg. Corp. v. Goffa Int’l Corp.*, 210 F. Supp. 2d 147, 163 (E.D.N.Y. 2002). Thus, the Board’s decision relates only to the Work’s specific combination of elements, which include, among other things: the twelve strips of fabric woven together to create two large Xs on the center panel of the headboard; the “floating” positioning of the center panel, along with the lighting element; vertical lines of three different widths intersecting at 45 degree angles to create diamond and rectangular shapes; mirror and wooden borders; diamond pattern on the footboard’s two drawers; and V-shaped and centered drawer handles. All of those elements, together, combine to create a protectable design. The Board’s finding of copyrightability in the Work as a whole, however, does *not* extend individually to any of the standard and common elements contained in the Work such as diamond patterns and V shapes, or any variation thereof. It is the Board’s opinion that the Work thus possesses only a thin copyright that protects against only virtually identical copying. *See Satava v. Lowry*, 323 F.3d 805, 812 (9th Cir. 2003).

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Work to the extent the claim is narrowed as described above. The Board now refers this matter to the Registration Policy and Practice division for registration of the Work, provided that all other application requirements are satisfied.

No response to this letter is needed.



U.S. Copyright Office Review Board

Kevin R. Amer, Acting 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