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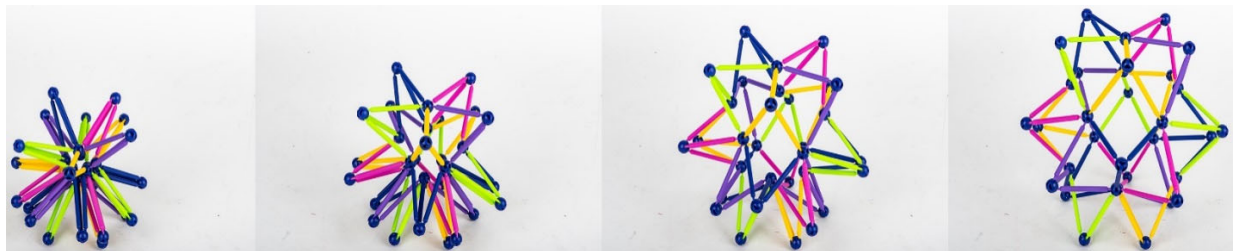
**Re: Second Request for Reconsideration for Refusal to Register Collapsible Ball
(SR # 1-7871992142; Correspondence ID: 1-4NYGHCM)**

Dear Mr. Brookman:

The Review Board of the United States Copyright Office (“Board”) has considered Rhode Island Novelty, Inc.’s (“RIN”) second request for reconsideration of the Registration Program’s refusal to register a claim in the work titled “Collapsible Ball” (“Work”). After reviewing the application, deposit copy, 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 WORK

The Work is a three-dimensional toy¹ that expands to a polyhedron shape and collapses to a spiked ball. The Work has spherical blue vertices connected to three or five colored trusses that are tapered at the ends and fit into slots in the vertices, allowing the toy to expand and contract. According to the applicant, the Work has 55 edges and 32 joints (the latter being the vertices to which the trusses connect).² When closed, the Work has a spiked appearance around a center core; when fully open, the Work is a polyhedron with numerous pyramid-shaped projections. The Work as depicted in deposit photos³ is as follows:



¹ Toys are frequently classified as sculptural works, and are generally not considered useful articles for registration purposes. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 910 (3d ed. 2021) (“COMPENDIUM (THIRD)”).

² Letter from Adam Brookman to U.S. Copyright Office at 1 (May 7, 2021).

³ The deposit shows the Work in two other partially open positions; the Board notes that there are an infinite number of intermediate positions that can be created by adjusting the trusses.

II. ADMINISTRATIVE RECORD

On July 11, 2019, RIN filed an application to register a copyright claim in the Work. In a January 10, 2020 letter, a Copyright Office registration specialist refused to register the claim, determining that the Work “will not support a claim to copyright.” Initial Letter Refusing Registration from U.S. Copyright Office to Adam Brookman at 1 (Jan. 10, 2020).

On April 8, 2020, RIN requested that the Office reconsider its initial refusal to register the Work, arguing that the design elements—the “individual joints and trusses that form the collective Work”—embodied copyrightable creativity, and that the work as a whole possessed sufficient creativity to be copyrightable. Letter from Adam Brookman to U.S. Copyright Office at 4, 6 (Apr. 8, 2020) (“First Request”).⁴ After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that the Work could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Adam Brookman (Feb. 9, 2021). The Office explained that the individual elements of the Work “are all common and familiar shapes,” and that the overall design of the work is a “simple arrangement of common shapes,” and “fails to rise to the level of copyrightable authorship.” *Id.* at 2–3.

In a letter dated May 7, 2021, RIN requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Letter from Adam Brookman to U.S. Copyright Office (May 7, 2021) (“Second Request”).

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work lacks sufficient creativity to be eligible for copyright registration. As set forth below, the Board has considered both the individual elements of the Work, as well as its overall design.

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 the copyright 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, “as opposed to copied from other works.” *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has held that some works fail to meet even this low threshold. *Id.* at 358–59.

The individual elements of the Work are not copyrightable. The Second Request lists several elements, asserting that they are the result of “artistic” choices on the part of RIN. Specifically, RIN cites the spherical joints with recessed hinges, the cylindrical linear trusses with tapered ends, the hinges that dictate a particular expanded shape, and the number of joints and trusses. Second Request at 4–5. The spherical joints, or vertices, are simple spheres. A three-dimensional shape with rounded vertices is not an uncommon choice and the recessed hinges’ primary purpose is to allow the toy to function (*i.e.*, to open and close). Similarly, using

⁴ The First Request also referenced the Office’s registration of another collapsible toy, the Hoberman Mini Sphere. First Request at 5–8.

cylindrical trusses is a common vehicle for toys that have connecting rods. Finally, the tapered ends also serve a functional purpose—to allow the ends to fit in the hinges of the spherical vertices. *See Lamps Plus, Inc. v. Seattle Lighting Fixture Co.*, 345 F.3d 1140, 1146 (9th Cir. 2003) (“when determining whether a sculpture contains sufficient originality to qualify for copyright protection[,] ‘it makes no sense to include the utilitarian aspects’ of the object in the analysis.”). Labeling these elements “artistic choices” does not alter this analysis as the “Office will not consider the author’s inspiration for the work, creative intent, or intended meaning.” COMPENDIUM (THIRD) § 310.5; *see id.* § 310.6 (the Office will not consider the author’s artistic judgment). Finally, the coloring of the trusses is not sufficient to make the Work eligible for registration. 37 C.F.R. § 202.1(a) (coloring not subject to copyright); COMPENDIUM (THIRD) § 906.3.

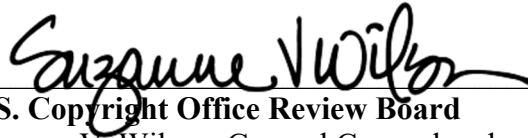
Considering the overall appearance of the Work, the Board concludes that the Work amounts to a variation of a geometric shape, namely, a stellated dodecahedron. Mere variations on a standard geometric shape or familiar symbol do not possess a sufficient amount of creativity to transform the uncopyrightable shape into a copyrightable work. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 906.1–906.2. Moreover, the intermediate positions of the toy shown in the deposit are ephemeral and cannot support copyright registration. *See* 17 U.S.C. § 101 (definition of “fixed”) (work must be capable of being “perceived, reproduced, or otherwise communicated for a period of more than transitory duration”). Therefore, no shape contained in the Work, alone, is sufficiently creative to support registration. Contrary to RIN’s contention, *Satava v. Lowry*, 323 F.3d 805 (9th Cir. 2003), does not lead to a different conclusion. As the *Satava* court stated, “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.* at 811. Applying the *Satava* standard here, the Board concludes that the features identified by RIN—the trusses, the spherical joints, the overall shape—do not reflect an original selection or arrangement sufficient to support a copyright claim. Moreover, as stated in *Satava*, “[b]ecause the quantum of originality [RIN] added in combining these standard and stereotyped elements must be considered ‘trivial’ ..., [RIN] cannot prevent other artists from combining them.” *Id.* at 812.

RIN suggests that the Work is at least as original as another work that the Office has previously registered, the Hoberman Mini Sphere. *See* Second Request at 7–9. The Office does not compare works; it makes determinations of copyrightability on a “case-by-case basis” and “[a] decision to register a particular work has no precedential value.” COMPENDIUM (THIRD) § 309.3. At the same time, the Board notes that the Work differs from the Hoberman Mini Sphere in that the Mini Sphere features more design elements, multiple shapes of different sizes, and an overall more original arrangement than the Work in question.⁵

⁵ The decision in *Hoberman Designs, Inc. v. Gloworks Imports, Inc.*, 2015 WL 10015261 (C.D. Cal. Nov. 3, 2015), does not alter the Board’s conclusion. RIN’s quotation from the case in its Second Request is taken out of context. Ultimately, the court simply *assumed*, for the purposes of a summary judgment motion, that certain design elements of the Mini Sphere were copyrightable. *Id.* at *7. This fact was omitted from RIN’s Second Request, although it was included in its First Request. *See* First Request at 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

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