



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

March 7, 2025

Janet B. Linn, Esq.  
Tarter Krinsky & Drogin LLP  
1350 Broadway 11th Floor  
New York, NY 10018

**Re: Second Request for Reconsideration of Refusal to Register Telfar Round Sculpture Bag (SR # 1-10111404961; Correspondence ID: 1-4YM52QO)**

Dear Ms. Linn:

The Review Board of the United States Copyright Office (“Board”) has considered Telfar LLC’s (“Telfar”) second request for reconsideration of the Registration Program’s refusal to register the work titled “Telfar Round Sculpture Bag” (“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 round black bag with a three-dimensional embossed letter “T” centered within the letter “C.” A pattern of equidistant and identical ovals appears on the fabric on the face of the bag.

The Work is as follows:



## II. ADMINISTRATIVE RECORD

On January 27, 2021, Telfar filed an application to register a copyright claim in the Work. In a letter dated March 10, 2021, a Copyright Office registration specialist refused to register the claim, determining that the Work is a useful article that does not contain any separable, copyrightable authorship, which is needed to sustain a claim to copyright. Initial Letter Refusing Registration from U.S. Copyright Office to Philip Braginsky (Mar. 10, 2021).

On April 15, 2021, Telfar requested that the Office reconsider its initial refusal to register the Work, arguing that, though the Work is a useful article, it does contain a separable, three-dimensional sculptural feature in the form of a “semi-circular with cross radii,” which “justif[ies] copyright protection.” Letter from Philip Braginsky to U.S. Copyright Office (Apr. 15, 2021) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claim and again concluded that the Work could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Philip Braginsky (Aug. 27, 2021). While the Office acknowledged that the Work contains separable design features, it concluded that the features do not satisfy the originality requirement.

In a letter dated November 23, 2021, Telfar 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 Janet Linn to U.S. Copyright Office (Nov. 23, 2021) (“Second Request”). Telfar argued that the Office “pulled apart the Work to conclude it consisted of two standard shapes” and did not consider the design in its entirety. *Id.* at 2. Specifically, Telfar contended that the standard of creativity is minimal and that courts have found even minor variations from a standard shape or design to be sufficient for copyrightability. *Id.*

## III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board concludes that the Work, though a useful article with separable elements, does not contain the creativity necessary to sustain a claim to copyright.

Because the Work is a bag, it is a “useful article” under the Copyright Act and must be analyzed as such. *See* 17 U.S.C. § 101; U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 924.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (noting that useful articles have an inherent useful function that is “objectively observable or perceivable from the appearance of the item”). The Act defines useful articles as those “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. When determining whether the design of a useful article, such as a bag, is eligible for copyright protection, the Office examines the item for any separable features that would qualify as a protectable work “if it were imagined separately from the useful article into which it is incorporated.” COMPENDIUM (THIRD) § 924.3 (quoting *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 409 (2017)).

In defining “pictorial, graphic, and sculptural works,” the Act provides that “the design of a useful article . . . [can be] considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be

identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” 17 U.S.C. § 101. As the Supreme Court articulated in *Star Athletica*, a feature incorporated into the design of a useful article can be copyrightable only if that 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.” 580 U.S. at 405.

To warrant registration, the separable features must be “original works of authorship.” 17 U.S.C. § 102(a). The Supreme Court has explained that the test for originality requires that the works are independently created and contain “some minimal degree of creativity.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). Only a modicum of creativity is necessary, but some works fail to meet even this low threshold. *Id.* The Court has 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.

In the context of useful articles, the Office must consider whether any separable features satisfy the *Feist* standard for originality. 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 claim. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See id.* 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, 883 (D.C. Cir. 1989); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498–99 (S.D.N.Y. 2005). A simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[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.”).

Applying the above framework to the Work, the Board finds that the bag contains separable, non-utilitarian features, but that those features do not contain sufficient creativity to be protected under the Copyright Act. The separable features that can be perceived in the Work are the three-dimensional renderings of the letter “T” centered within the letter “C” and a pattern of “irregularly shaped ovals” across its face. Second Request at 2. These features are not protectable, however, because they lack, individually or in combination, the requisite minimum degree of creativity required for copyright protection.

Concerning the individual letters depicted in the Work, copyright law does not protect typeface or mere variations of typographic ornamentation or lettering. 37 C.F.R. § 202.1(a) (prohibiting registration of “familiar symbols or designs; mere variations of typographic ornamentation, [and] lettering”); *see Feist*, 499 U.S. at 363; *Boisson v. Banian, Ltd.*, 273 F.3d 262, 269 (2d Cir. 2001) (stating that “the alphabet is in the public domain”); COMPENDIUM (THIRD) § 913.1 (stating that “[m]ere scripting or lettering, either with or without uncopyrightable ornamentation” does not satisfy the requirements for copyright registration);

COMPENDIUM (THIRD) § 313.4(J) (citing “[l]etters” as examples of familiar symbols or designs that are not copyrightable “either in two-dimensional or three-dimensional form”). Although Telfar argues that the design is more accurately described as “semi-circular with cross radii,” First Request at 2, the design appears to mimic the Telfar logo, which is a stylized version of its founder’s initials, “T.C.”<sup>1</sup> Even if the design is viewed as depicting a semi-circle and cross radii, such elements are mere variations of common geometric shapes that are not protectable. 37 C.F.R. § 202.1(a) (identifying “familiar symbols or designs” as examples of works not subject to copyright); *see also* COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes, such as circles, ovals, and spheres are not protectable); COMPENDIUM (THIRD) § 906.2 (“[T]he copyright law does not protect mere variations on a familiar symbol or design, either in two- or three-dimensional form.”). As for the “irregularly shaped ovals,” they are likewise simple variations on a common geometric shape. *See* COMPENDIUM (THIRD) § 906.1.

As Telfar correctly points out, this is not the end of the inquiry. The Office must also evaluate the separable features of the Work as a whole to determine whether they contain a sufficient amount of creative authorship to support registration. *See id.* § 309. The Board recognizes that although the individual components of a given work may not be copyrightable, these components may be protectable if selected or combined “in a distinctive manner indicating some ingenuity.” *Atari Games Corp.*, 888 F.2d at 883. Viewed as a whole, however, the Board finds that the combination of the individual separable features, including their selection, arrangement, and coordination, is insufficiently creative to sustain copyright protection. Placing the letter “T” (or a cross radii) within the letter “C” (or a semi-circle) and using a pattern of ovals combines too few elements in a simplistic manner such that it does not meet the quantum of originality necessary for copyright protection. *See Coach*, 386 F. Supp. 2d at 496–48 (upholding Office’s refusal to register a design consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes); COMPENDIUM (THIRD) § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy [the creativity] requirement.”); *cf.* COMPENDIUM (THIRD) § 313.4(J) (citing “[c]ommon patterns, such as standard chevron, polka dot, checkerboard, or houndstooth designs” as examples of noncopyrightable familiar designs). This simple arrangement of a few uncopyrightable features falls short of the Copyright Act’s requirements for protection. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) §§ 312.2, 905.

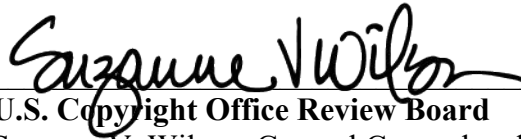
With respect to both the individual separable elements, as well as their selection and arrangement, as a whole, the Board finds that the Work does not satisfy the *de minimis* amount of original expression necessary to satisfy the low threshold for copyrightability. COMPENDIUM (THIRD) § 313.4(B).

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<sup>1</sup> *See* Alison S. Cohn, *Telfar Clemens is Rewriting the Rules of Luxury Retail*, HARPER’S BAZAAR (Dec. 15, 2020), <https://www.harpersbazaar.com/fashion/designers/a34965322/telfar-clemens/> (noting that the logo “is styled the way one of [Founder Telfar] Clemens’s teachers . . . drew his initials on the chalkboard”).

#### 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.

A handwritten signature in black ink that reads "Suzanne V. Wilson". The signature is written in a cursive style and is positioned above a horizontal line.

**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

Nicholas R. Bartelt, Assistant General Counsel