



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

June 28, 2021

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Re: Second Request for Reconsideration for Refusal to Register Bangle Collection Bracelet (Correspondence ID: 1-3YQGXCU; SR # 1-7026393061)

Dear Mr. Cain:

The Review Board of the United States Copyright Office (“Board”) has considered SNC Ventures, LLC’s (“SNC’s”) second request for reconsideration of the Registration Program’s refusal to register a jewelry design claim in the work titled “Bangle Collection Bracelet” (“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 bracelet design. It is a metal band in a “C” shape with a small gold ball at each end of the band. Additionally, the center of the band widens into a hexagon-shaped setting filled with crystals. The Work is as follows:



II. ADMINISTRATIVE RECORD

On October 9, 2018, SNC filed an application to register a copyright claim in the Work. In an August 12, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it “does not contain any design element that is both sufficiently original and

creative.” Initial Letter Refusing Registration from U.S. Copyright Office to John Cain (Aug. 12, 2019).

In a letter dated November 4, 2019, SNC requested that the Office reconsider its initial refusal to register the Work. Letter from John Cain to U.S. Copyright Office (Nov. 4, 2019) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and concluded that:

Accenting a simple cuff bracelet with a crystal in the center is an obvious, expected jewelry design arrangement. Taken as a whole, this work merely brings together a few uncopyrightable elements, a circular band and crystal accent, in an expected, garden-variety configuration that does not rise to the level of creativity necessary for copyright registration.

Refusal of First Request for Reconsideration from U.S. Copyright Office to John Cain (March 11, 2020).

In a letter dated June 4, 2020, SNC 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 John Cain to U.S. Copyright Office (June 4, 2020) (“Second Request”). In that letter, SNC argued the Work’s overall combination of elements renders the Work sufficiently creative as it includes “the distinctive shape of the setting, the use of rough natural-shaped stone to fill the setting, [and] the open arms” of the cuff, and that a “minor variation of a garden variety element can also be sufficient to render a jewelry design creative.” *Id.* at 9, 11.

III. DISCUSSION

A. *The Legal Framework – 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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“COMPENDIUM (THIRD)”); *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.

B. Analysis of the Work

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

To surmount the low threshold of creativity established in *Feist* required for copyright protection, a jewelry design (like all designs) must demonstrate some spark of creativity. *See* COMPENDIUM (THIRD) § 908.2 (“The Office will not register [jewelry] pieces that, as a whole, do not satisfy [the creativity] requirement, such as mere variations on a common or standardized design or familiar symbol, designs made up of only commonplace design elements arranged in a common or obvious manner, or any of the mechanical or utilitarian aspects of the jewelry.”). While the use of unprotectable elements does not automatically render a design ineligible for copyright protection, it is “not true that *any* combination of unprotectable elements automatically qualifies for copyright protection.” *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003).

The jewelry design at issue includes only a couple of elements, each of which are merely minor variations on common shapes (here, spheres, hexagons, and a c-shaped cuff), arranged in a straightforward, unoriginal manner (the hexagon-shaped setting placed in the center of the open band, and the spheres placed on either end of the open band). Further, the design is composed of a combination of two commonplace tropes that constitute unprotectable *scenes a faire* in the jewelry industry: a c-shaped cuff with spheres on either end¹ and a hexagon-shaped setting featuring crystal drusy stones.² Combining these garden-variety elements into a single jewelry design does not rise to the level of sufficient creativity for copyright protection. *See, e.g.*, COMPENDIUM (THIRD) §908.2 (“Common *de minimis* designs include solitaire rings, simple diamond stud earrings, plain bangle bracelets, simple hoop earrings, among other commonly used designs, settings, and gemstone cuts.”); *DBC of New York, Inc. v. Merit Diamond Corp.*, 768 F. Supp. 414, 416 (S.D.N.Y. 1991) (holding the diamond rings at issue uncopyrightable because they are “on the whole, not exceptional, original, or unique”); *Vogue Ring Creations, Inc. v. Hardman*, 410 F. Supp. 609, 612 (D.R.I. 1976) (finding the ring design not protectable because it was “utterly devoid of any ‘original creativity.’”). Thus, because the bracelet design at issue merely combines common shapes (geometric spheres, a hexagon, and a semi-circle), as

¹ C-shaped cuffs with spheres on either end are commonplace designs for bracelets. *See, e.g.*, Possession Open Bangle Bracelet, <https://www.piaget.com/jewelry/possession/rose-gold-malachite-open-bangle-bracelet-g36pc600>; Pandora Moments Open Bangle, <https://us.pandora.net/en/charms-bracelets/charm-bracelets/silver-charm-bracelets/pandora-moments-open-bangle/596477-3.html>; Possession 18K White Gold Open Bangle Bracelet, https://www.saksfifthavenue.com/product/piaget-possession-18k-white-gold-open-bangle-bracelet-0400090741619.html?site_refer=CSE_GGLPLA:Womens_Jewelry:Piaget&country=US¤cy=USD&CSE_CI D=G_Saks_PLA_US_Women%27s+Accessories:Watches&gclid=EAIAIQobChMIvrH_KXK8AIVEIriCh2XYQn REAQYAyABEGIX_D_BwE.

² Placing crystal drusy stones within a hexagonal setting is likewise a commonplace design for jewelry popularized by the brand Kendra Scott. *See, e.g.*, “What is Drusy?,” KENDRASCOTT.COM, <https://www.kendrascott.com/what-is-drusy.html>; “Kendra Scott Look Alike Necklace,” TRAVEL BEAUTY BLOG (Apr. 18, 2021), <https://travelbeautyblog.com/kendra-scott-look-alike-necklace/>; Elisa Gold Pendant Necklace In Iridescent Drusy, <https://www.kendrascott.com/necklaces/elisa-gold-pendant-necklace-drusy/842177092088.html>; Silver Kendra Scott Elisa Multi Color Drusy Quartz Necklace, <https://www.tradesy.com/i/tory-burch-silver-kendra-scott-elisa-multi-color-drusy-quartz-necklace/27617901/>; Ashaya Hexagon Drusy Drop Earrings, <https://www.nordstrom.com/s/baublebar-ashaya-hexagon-drusy-drop-earrings/5295198>.

well as two common, unprotectable jewelry tropes (an open bangle with spheres at each end and a drusy crystal set in a hexagonal setting), the level of creativity is *de minimis* and insufficient to support copyright registration. *Cf.* COMPENDIUM (THIRD) § 313.4(J) (“a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations” is not copyrightable).

Additionally, the centerpiece quartz stone is an element found in nature, and copyright protection cannot be afforded to generic physical embodiments that follow from the features of such naturally occurring elements. *See Satava*, 323 F.3d at 811 (holding an artist’s sculpture of a naturally occurring jellyfish included several “unprotectable ideas” and public domain elements that were “common property of all” and could not be seized for exclusive use by copyright law). While SNC states that it “is not seeking a monopoly on the *idea* of a curved metal bracelet with natural quartz stone . . . [but is] only seeking copyright protection for its particular expression of the idea,” it is not the other possible choices that third-party designers can make that determine copyrightability, but rather the resulting expression of SNC’s jewelry design. *See* COMPENDIUM (THIRD) §310.8.

Looking at the Work in this context, the Board must reject SNC’s contention that the bracelet design is protectable because it includes “the distinctive shape of the setting, the use of rough natural-shaped stone to fill the setting, [and] the open arms” of the cuff. Second Request at 9, 11. To the contrary, the Work does not qualify for copyright protection under U.S. law.

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

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