



**United States Copyright Office**

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**Re: Second Request for Reconsideration for Refusal to Register  
“Celine Jewelry Armoire” (SR 1-4060952433), “Cabby Jewelry Armoire” (SR 1-4060952366), “Landry Jewelry Armoire” (SR 1-4060952319), and “Hillary Jewelry Armoire” (SR 1-4060952272); Correspondence ID 1-2VUCORF.**

Dear Ms. Bates:

The Review Board of the United States Copyright Office (“Board”) has considered Hives and Honey Inc.’s (“Hives and Honey’s”) second request for reconsideration of the Registration Program’s refusal to register three-dimensional visual art claims in the works titled “Celine Jewelry Armoire” (“Celine”), “Cabby Jewelry Armoire” (“Cabby”), “Landry Jewelry Armoire,” (“Landry”), and “Hillary Jewelry Armoire” (“Hillary”) (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 denial of registration.

**I. DESCRIPTION OF THE WORKS**

The Works are pieces of furniture intended for the storage of jewelry, with decorative molding, trim, and other accessories. All four works are tall, rectangular pieces. Celine is a dark brown cabinet, modified with decorative molding and cut outs that accent the body and doors of the piece, ornamental decoration on the doors consisting of framed areas with contrasting background overlaid by an x-shaped feature with an etched central circular piece, two door handles with etched concentric circles, two rectangular legs in the back, and two rounded legs in the front. Cabby is a distressed blue cabinet, modified with decorative molding and trim pieces that accent the body, doors, and legs of the armoire, an oblong octagon on the doors of the armoire, round door pulls, and tapered rectangular legs. Landry is a brown bureau, modified with decorative molding that frames each drawer, decorative trim pieces accenting body, top, and base, and concentric circular patterns and beading etched into the handles. Hillary is a brown bureau, modified with decorative molding that frames each drawer, decorative trim pieces

accenting body, top, and base, semicircular handles, and tapered rectangular legs. The Works are as follows:



Celine



Cabby



Landry



Hillary

## II. ADMINISTRATIVE RECORD

On October 7, 2016, Hives and Honey filed separate applications to register copyright claims in the Works. In a June 8, 2017, letter a Copyright Office registration specialist issued one combined refusal to register the claims, finding that the Works were “useful article[s] that do[] not contain any copyrightable authorship needed to sustain a claim to copyright.” Letter from Kristen Sosinski, Registration Specialist, to Shannon Bates (June 8, 2017).

Hives and Honey then requested that the Office reconsider its initial refusal to register the Works. Letter from Shannon Bates to U.S. Copyright Office (Sept. 8, 2017) (“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 “useful article[s] that do[] not contain any separable, copyrightable features.” Letter from Stephanie Mason, Attorney-Advisor, to Gabrielle Holley (Feb. 8, 2018).

Hives and Honey next 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 Shannon Bates to U.S. Copyright Office (May 8, 2018) (“Second Request”). Hives and Honey disputed the Office’s conclusion that the Works did not contain separable, copyrightable features and claimed that “each work contains a unique arrangement of separable decorative, sculptural design elements . . . [that is] eligible for copyright protection.” *Id.* at 2. Hives and Honey also asserted that the refusal of the First Request improperly focused on the individual design features rather than the arrangement of the design features as a whole. *Id.* at 4.

### 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 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* COPYRIGHT OFFICE, 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.” *Id.* 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 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 and described in the *Feist* decision. *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).

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

After careful examination and review of applicable legal standards, the Board finds that the Works do not contain the requisite separable authorship necessary to sustain a claim to copyright.

The Board agrees with Hives and Honey that each work contains elements that “can be perceived as a two- or three-dimensional work of art separate from the useful article.” *Star Athletica* 137 S. Ct. at 1007. Indeed, the molding, trim, overlay, legs, and etchings applied in different ways to Celine, Cabby, Landry, and Hillary “can be identified separately from, and capable of existing independently of,” *id.*, the utilitarian function of the furniture, which is to store jewelry. The separable features, however, do not qualify as a protectable pictorial, graphic, or sculptural work because they lack, individually or in combination, the requisite minimum degree of creativity required for copyright protection.

The Works’ constituent elements—squares, rectangles, circles, and triangles—are standard geometric shapes that do not individually qualify for copyright protection. COMPENDIUM (THIRD) § 906.1 (listing common geometric shapes not eligible for copyright protection). Similarly, the weathered blue of Cabby is a mere variation of a standard color. *Id.* § 906.3. Accordingly, the Board affirms that none of the individual elements that make up the Works exhibit a sufficient amount of original and creative authorship to support a copyright registration.

When viewed as a whole, the Board finds that the combinations of these elements in each of the Works constitute *de minimis* creativity.

1. Celine combines a regular repeating pattern of cross sectioned squares set against a rectangular bureau with common feet. This arrangement merely brings together standard shapes with minor spatial variations, which does not constitute a sufficient amount of creative expression. *See* COMPENDIUM (THIRD) § 905. Further, Celine’s particular combination of shapes are standard, and can commonly be found in contemporary furniture.<sup>1</sup>
2. Cabby combines even fewer elements than Celine, with only an octagon, circular handles, and standard furniture feet. These arrangements do not contain a sufficient

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<sup>1</sup> *See, e.g.*, “The Regency Armoire,” French Country Furniture USA (<https://www.frenchcountryfurnitureusa.com/the-regency-armoire/>).

amount of creative expression, *see Id.* § 905, and also reflect common design choices in cabinetry.<sup>2</sup>

3. Landry combines circular drawer handles with rectangular frames and the cabinet is topped and anchored with molding. The molding itself is a long-standing design feature of furniture,<sup>3</sup> as is framing stacked doors with centered handles in rectangular trim work.<sup>4</sup> When taken as a whole, this combination fails to demonstrate creativity beyond standard furniture construction.
4. Hillary combines framed drawers with semicircular handles and curvilinear legs. As mentioned above, the composition of the framed doors is standard, as is anchoring a piece of furniture on curvilinear decorative legs.<sup>5</sup> Again, Hives and Honey has made standard design choices from a well-established set of furniture elements.

Considered in turn, each Work is clearly a standard combination of long standing design features in furniture and cabinetry and demonstrate no creative authorship sufficient for copyright protection.

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<sup>2</sup> *See, e.g.*, “Beverly Armoire,” Sprout Children LLC (<https://www.sproutsanfrancisco.com/beverly-armoire>).

<sup>3</sup> *See, e.g.*, *Chest of Drawers (High Chest)*, c. 1725-1750, gum, red, tulip poplar, brass, Winterthur Museum, Winterthur, DE (<http://museumcollection.winterthur.org/single-record.php?recid=1953.0105>); “Mikalene Dresser,” Ashley Homestores Ltd. (<https://www.ashleyfurniture.com/p/mikalene-dresser/B737-31>) (examples demonstrating standard molding features).

<sup>4</sup> *See, e.g.*, *Chest of Drawers*, c. 1810-20, pine, chestnut, white pine, Metropolitan Museum of Art, New York, NY (<https://www.metmuseum.org/art/collection/search/2015>); “Brownyn 7 Drawer Jewelry Armoire,” Home Depot (<https://www.homedepot.com/p/Brownyn-7-Drawer-Jewelry-Armoire-8188700810/301831834>) (examples demonstrating standard stacked drawers).

<sup>5</sup> *See, e.g.*, George Stedman, *Chest of Drawers*, c. 1816-1822, cherry, mahogany veneer, cherry veneer, white pine, Winterthur Museum, Winterthur, DE (<http://museumcollection.winterthur.org/single-record.php?recid=1951.0025>).

#### IV. CONCLUSION

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



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

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