



United States Copyright Office

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April 19, 2018

Caesar Rivise, PC
Attn: Lawrence Ashery
1635 Market Street 12th Floor
Philadelphia, PA 19103

**Re: Second Request for Reconsideration for Refusal to Register Floor Liner;
Correspondence ID: 1-1YD39TP; SR # 1-2923870241**

Dear Mr. Ashery:

The Review Board of the United States Copyright Office (“Board”) has considered Quadratec, Inc.’s (“Quadratec”) second request for reconsideration of the Registration Program’s refusal to register a sculpture claim in the work titled “Floor Liner” (“Work”). The Work, a black floor liner, is a quadrilateral with raised edges and slight indentations, shaped to fit on the floor of a vehicle. The top surface of the Work is embossed with a pattern of various raised, non-standard geometric shapes. The Work is depicted below.



After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration in light of the Supreme Court's recent decision in *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002 (2017), the Board reverses the Registration Program's denial of registration.

Quadravec does not seek copyright protection for the overall floor liner, which it concedes is a useful article that cannot be protected under the Copyright Act. Letter from Lawrence Ashery to U.S. Copyright Office (June 28, 2016) ("First Request"); *see* 17 U.S.C. § 101. Rather, Quadravec seeks copyright registration for the "decorative raised pattern comprising various shapes and orientations" that "appears on the floor liner." First Request at 2. Quadravec also acknowledges that grooves and lines on the surface of a floor liner, in general, do serve the useful function of trapping dirt and water, however, Quadravec asserts that the specific decorative pattern in and of itself "serves no useful function" and "its role is not related to the use of the item." Letter from Lawrence Ashery to U.S. Copyright Office (March 2, 2017) ("Second Request") at 3. In its second request for reconsideration, Quadravec emphasizes that "[t]he shapes of the projections have absolutely nothing to do with the functionality of the [Work]" and "are solely for cosmetic purposes." Second Request at 1.¹

¹ The Board accepts as true Quadravec's statement that this specific decorative pattern serves no utilitarian purpose, noting that an applicant must certify, subject to criminal offense under 17 U.S.C. §506(e), that the application for copyright registration and any written statement filed in connection with the application contain no false representations of material fact.

As noted, copyright law does not protect useful articles as such. 17 U.S.C. § 101. Under the Copyright Act, a useful article is an “article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information” and “[a]n article that is normally a part of a useful article is [also] considered a ‘useful article.’” *Id.* Importantly, however, an artistic feature applied on or incorporated into a useful article may be eligible for copyright protection if it: “(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*, 137 S. Ct. at 1007, 1016 (holding that two-dimensional graphic designs on the surface of cheerleading uniforms satisfied this test and were, therefore, separable features).

Here, the Board finds that the Work contains separable artistic features from the overall useful article. Specifically, the Work’s raised, decorative pattern of various shapes can be identified as a two-dimensional work of art separate from the floor liner. Such features would qualify as a protectable pictorial, graphic, or sculptural work if imagined separately from the useful article; moreover, they do not replicate the floor liner itself or “an article that is normally a part of” a floor liner when so imaginatively removed. *Star Athletica*, 137 S.Ct. at 1012-14. On the basis of Quadratic’s representation that this pattern serves a purely aesthetic purpose, the Board concludes that the decorative pattern is a separable, non-useful work. *See Star Athletica*, 137 S. Ct. at 1014. Additionally, the Board finds that the Work’s embossed design contains sufficient creative expression to be copyrightable under the threshold articulated in *Feist Publications, Inc. v. Rural Telephone Services Co.*, 499 U.S. 340, 363 (1991).

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. 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.



U.S. Copyright Office Review Board

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and Director, U.S. Copyright Office

Sarang Vijay Damle, General Counsel and
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Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
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