



United States Copyright Office

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September 23, 2016

Kyle Citrynell
Seiller Waterman LLC
462 S. 4th St., 22nd Floor
Louisville, KY 40202

Re: Second Request for Reconsideration for Refusal to Register Grandma Waverly Bracelet, Correspondence ID: 1-119ISG8

Dear Ms. Citrynell:

The Review Board of the United States Copyright Office (the “Board”) has considered Ronaldo Designer Jewelry, Inc.’s (“Ronaldo Jewelry”) second request for reconsideration of the Registration Program’s refusal to register a jewelry design claim in the work titled “Grandma Waverly Bracelet” (the “Work”). After reviewing the application, deposit copy, and relevant correspondence in the case, 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 whose body consists of seven stacked silver metal bands: a square band, a twisted square band, a square band, a cylindrical band, a square band, a twisted square band, and a square band. There are four sets of vertically wrapped gold wires that are positioned on the sides as well as the front of the bracelet. Two additional sets of vertically wrapped gold wires are positioned at the ends of the bracelet where it clasps. The gold wires that flank the clasp taper where they touch the clasp. The front of the bracelet contains three white pearls surrounded by three stacked silver metal bands—square, twisted square—that curl around the pearls.

A photographic reproduction of the Work is set forth below.



II. ADMINISTRATIVE RECORD

On March 27, 2014, Ronaldo Jewelry filed an application to register a copyright claim in the Work. In a June 11, 2014 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lack[s] the authorship necessary to support a copyright claim.” Letter from Annette Coakley, Registration Specialist, to Kyle Citrynell, Seiller Waterman LLC (June 11, 2014).

In a letter dated September 9, 2014, Ronaldo Jewelry requested that the Office reconsider its initial refusal to register the Work. Letter from Kyle Citrynell, Seiller Waterman LLC, to U.S. Copyright Office (Sept. 9, 2014) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work “does not contain a sufficient amount of original and creative authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, to Kyle Citrynell, Seiller Waterman LLC (Mar. 27, 2015).

In a letter dated June 23, 2015, Ronaldo Jewelry 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 Kyle Citrynell, Seiller Waterman LLC, to U.S. Copyright Office (June 23, 2015) (“Second Request”). In that letter, Ronaldo claimed that a sufficient degree of artistic and creative decision-making and expression is present and warrants copyright protection and registration. *Id.* at 1. Ronaldo Jewelry also noted that although the Work’s individual elements were shared and familiar shapes in the public domain, the selection, coordination, and arrangement of the elements, along with the author’s other artistic decisions, are sufficiently creative to support a claim to copyright. *Id.* at 2.

III. DECISION

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 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 Ninth Circuit rejected a claim of copyright in a piece of jewelry where the manner in which the parties selected and arranged the work’s component parts was more “inevitable” than creative and original. See *Herbert Rosenthal Jewelry Corp. v. Kalpakian*, 446 F.2d 738, 742 (9th Cir. 1971). 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.” COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2014) (“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.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. See COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design’s visual effect or appearance, its symbolism, the time and effort it took to create, or the design’s

commercial success in the marketplace are not factors in determining whether a design is copyrightable. *See, e.g., Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

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 creative authorship necessary to sustain a claim to copyright.

Here, it is undisputed that the ovals, vertical bands, or any minor variations thereof, are all common and familiar shapes, in the public domain, and therefore not individually subject to copyright protection. *See* 37 C.F.R. § 202.1; *see also* Second Request at 2. Furthermore, the Work's other elements are simple metal bands and wires. It is true that, although the individual components of a given work may not be copyrightable, the Copyright Office follows the principle that works should be judged in their entirety and not based solely on the protectability of individual elements within the work. *Atari Games Corp. v. Oman*, 979 F.2d 242, 244-245 (D.C. Cir. 1992). Works comprised of public domain elements may be copyrightable if their selection, arrangement, or modification reflects choice and authorial discretion that is not so obvious or so minor that the "creative spark is utterly lacking or trivial as to be nonexistent." *Feist*, 499 U.S. at 359.

The Board finds that, viewed as a whole, the selection, combination, and arrangement of stacked silver metal bands (both solid and twisted), vertical gold metal wires, and three pearls is not sufficient to render the Work original. The Work consists of little more than metal bands arranged in a common and obvious manner, with three framed pearls affixed in an expected configuration. Ronaldo Jewelry argues that the Work "is not a simple bangle bracelet" but instead is an artistic work that uses "different colors and textures to create a decorative bracelet." Second Request at 4. Decorative though it may be, the bracelet lacks sufficient copyrightable authorship. Although the Board may consider the shapes of various jewelry elements, the use of color, variations in texture, and the selection and arrangement of various elements, *see* COMPENDIUM (THIRD) § 908.3, in this case, the simple arrangement of stacked wires and three horizontal pearls does not transform the individual elements into a copyrightable work. The curved wires framing the three pearls function as a setting, and the Board does not consider the mechanical or utilitarian aspects of jewelry copyrightable. *See id.* § 908.2. Additionally, Ronaldo Jewelry's stylistic choices and design alternatives have no bearing on the Board's analysis. It is not the variety of choices available to the author that must be evaluated, but the actual work. *See id.* § 310.8. Viewed as a whole, the Work lacks the requisite creativity to warrant copyright protection. Thus, we find that the level of creative authorship involved in this configuration of unprotectable elements is, at best, *de minimis*, and too trivial to enable copyright registration. *See Id* § 313.4(B).

The Board further finds that Ronaldo Jewelry's request that the Work be registered under the "Rule of Doubt" provision to be misplaced. Under the Rule of Doubt, the Office may on occasion register a claim to copyright even though the Office has reasonable doubt as to whether the material submitted for registration constitutes copyrightable subject matter or whether the other legal and formal requirements of the statute have been met. *See* COMPENDIUM (THIRD) § 607. For example, the Office may register a claim under this provision if it is unable

to examine the deposit copy to determine whether the work has copyrightable authorship or, in exceptional cases, when the Office has not taken a position on a legal issue that is directly relevant to whether the work constitutes copyrightable subject matter. *Id.* Neither of these circumstances is present in this situation. Accordingly, the "Rule of Doubt" provision is not applicable with respect to the Work.

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.

BY:



Chris Weston
Copyright Office Review Board