



United States Copyright Office

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June 27, 2017

Milord Keshishian
Milord & Associates, PC
2049 Century Park East, Ste. 3850
Los Angeles, CA 90067

**Re: Second Request for Reconsideration for Refusal to Register L.A. Rocks Footnotes;
Correspondence IDs: 1-1C3ME75, 1-1QR79X5, 1-1E8Z24T, 1-1RCJ51Q;
SR #: 1-2270636230, 1-2345733369, 1-2034893168, 1-2345733476**

Dear Mr. Keshishian:

The Review Board of the United States Copyright Office (“Board”) has considered L.A. Gem & Jewelry Design, Inc.’s (“L.A. Rocks”) second request for reconsideration of the Registration Program’s refusal to register jewelry design claims in the works titled “L.A. Rocks Footnotes” (“Works 431386, 431313, 433516, 433569”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s denials of registration.

I. DESCRIPTION OF THE WORKS

The Work 431386 is composed of two discs, a larger silver one and a smaller copper one, connected by a ring bail. The silver disc has engraved the outline of a heart and words in a handwriting-style script, namely: “at peace,” “kind,” “free,” “true,” “brave,” “strong,” “happy,” “thankful,” and “compassionate.” The copper disc has engraved the word “be” in similar handwriting-style script. The smaller copper disc lies on top of the larger silver disc so that the word “be” overlays the words engraved below. The back of both disks are smooth and without any print.

A reproduction of the Work 431386 is set forth below.



The Work 431313 is a pendant that consists of a silver band that has been arranged in a circular configuration with the top of the circle dipping inwards to form a heart. Engraved on the outer band is the quote: "Children and mothers never truly part – Bound in the beating of each other’s heart – Charlotte Gray."

A reproduction of the Work 431313 is set forth below.



The Work 433516 is a pendant that consists of a silver band that has been arranged in a circular configuration with the top of the circle dipping inwards to form a heart. Engraved on the outer band is the quote: "The invisible ties between sisters are the strongest bonds."

A reproduction of the Work 433516 is set forth below.



The Work 433569 is a pendant that consists of a silver band that has been arranged in a heart-shaped configuration with gaps in between the bands. Engraved on the band on both sides of the heart is the quote: "A mother holds her child's hand for a short while and their hearts forever."

A reproduction of the Work 433569 is set forth below.



II. ADMINISTRATIVE RECORD

Work 431386:

On April 2, 2015, L.A. Rocks filed an application to register a jewelry design copyright claim in the Work 431386. In a May 15, 2015 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Annette Coakley, Registration Specialist, to Milord Keshishian, Milord & Associates (May 15, 2015).

In a letter dated August 14, 2015, L.A. Rocks requested that the Office reconsider its initial refusal to register the Work 431386. Letter from Milord Keshishian, Milord & Associates to U.S. Copyright Office (August 14, 2015) (“First Request (431386)”). After reviewing the Work 431386 in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work 431386 did not contain any “elements or features embodied in the jewelry design, either alone or in combination, upon which copyright registration is possible.” Letter from Stephanie Mason, Attorney-Advisor, to Milord Keshishian, Milord & Associates (November 25, 2015).

In a letter dated February 23, 2016, L.A. Rocks requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work 431386. Letter from Milord Keshishian, Milord & Associates to U.S. Copyright Office (February 23, 2016) (“Second Request (431386)”). In that letter, L.A. Rocks argued that the design “contains elements of the designer’s personality and at least minimum level of creativity” and that while the Work 431386 is composed of common elements, “L.A. Rocks should be entitled to copyright registration for the combination of those elements in a unique and expressive manner.” Second Request (431386) at 4. L.A. Rocks also pointed to other instances in which the Office granted registrations to works “containing less creative arrangements of similar common elements than the [Work 431386].” Second Request (431386) at 5. Finally, L.A. Rocks argued that as its “independent efforts . . . have been brazenly copied . . . the work meets the standard of originality.” Second Request (431386) at 9.

Work 431313:

On April 29, 2015, L.A. Rocks filed an application to register a jewelry design copyright claim in the Work 431313.¹ In a January 13, 2016 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a

¹ Regarding Works 431313, 433516, and 433569 the Board did not consider the sentences written on the Works in assessing copyrightability, because the claims were only in jewelry design, not in text. Neither did L.A. Rocks make a text claim for the words engraved on Work 431386; such a claim likely would have been barred in any event, under the “words and short phrases” doctrine. *See* 37 C.F.R. § 202.1(a).

copyright claim.” Letter from Sandra Ware, Registration Specialist, to Milord Keshishian, Milord & Associates (January 13, 2016).

In a letter dated April 12, 2016, L.A. Rocks requested that the Office reconsider its initial refusal to register the Work 431313. Letter from Milord Keshishian, Milord & Associates to U.S. Copyright Office (April 12, 2016) (“First Request (431313)”). After reviewing the Work 431313 in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work 431313 did not contain any “elements or features embodied in the jewelry design, either alone or in combination, upon which copyright registration is possible.” Letter from Stephanie Mason, Attorney-Advisor, to Milord Keshishian, Milord & Associates (July 20, 2016).²

In a letter dated October 18, 2016, L.A. Rocks requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work 431313. Letter from Milord Keshishian, Milord & Associates to U.S. Copyright Office (October 18, 2016) (“Second Request (431313)”). In that letter, L.A. Rocks argued that the design “is not a mere representation of geometric shapes, but a combination that easily meets the minimal level of creativity.” Second Request (431313) at 2. L.A. Rocks also pointed to other instances in which courts have found sufficient evidence of copyrightability for other works and Work 431313 “far surpasses [this] *de minimus* level of creativity.” Second Request (431313) at 5. Finally, L.A. Rocks argued that because its “independent efforts . . . have been brazenly copied . . . the work meets the standard of originality.” Second Request (431313) at 9.

Work 433516:

On January 5, 2015, L.A. Rocks filed an application to register a jewelry design copyright claim in the Work 433516. In a February 26, 2015 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Annette Coakley, Registration Specialist, to Milord Keshishian, Milord & Associates (February 26, 2015).

In a letter dated March 3, 2016, L.A. Rocks requested that the Office reconsider its initial refusal to register the Work 433516. Letter from Milord Keshishian, Milord & Associates to U.S. Copyright Office (March 3, 2016) (“First Request (433516)”). After reviewing the Work 433516 in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work 433516 did not contain any “elements or features embodied in the jewelry design, either alone or in combination, upon which copyright registration is possible.” Letter from Stephanie Mason, Attorney-Advisor, to Milord Keshishian, Milord & Associates (July 8, 2016).

² L.A. Rocks requested in its October 18, 2016 letter that the Copyright Office confirm that the letter from Stephanie Mason, Attorney-Advisor, to Milord Keshishian, Milord & Associates (July 20, 2016) is referring to Work 431313. The Office confirms that the July 20, 2016 letter addresses Work 431313.

In a letter dated October 7, 2016, L.A. Rocks requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work 433516. Letter from Milord Keshishian, Milord & Associates to U.S. Copyright Office (October 7, 2016) (“Second Request (433516)”). In that letter, L.A. Rocks argued that the design “is not a mere representation of geometric shapes, but a combination that easily meets the minimal level of creativity.” Second Request (433516) at 2. L.A. Rocks also pointed out that because of the creativity in the design, the Work 433516 “clearly possess more than a ‘faint trace’ of originality.” Second Request (433516) at 8. Finally, L.A. Rocks argued that as its “independent efforts . . . have been brazenly copied . . . the work meets the standard of originality.” Second Request (433516) at 11.

Work 433569:

On April 29, 2015, L.A. Rocks filed an application to register a jewelry design copyright claim in the Work 433569. In a January 13, 2016 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Sandra Ware, Registration Specialist, to Milord Keshishian, Milord & Associates (January 13, 2016).

In a letter dated April 12, 2016, L.A. Rocks requested that the Office reconsider its initial refusal to register the Work 433569. Letter from Milord Keshishian, Milord & Associates to U.S. Copyright Office (April 12, 2016) (“First Request (433569)”). After reviewing the Work 433569 in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work 433569 did not contain any “elements or features embodied in the jewelry design, either alone or in combination, upon which copyright registration is possible.” Letter from Stephanie Mason, Attorney-Advisor, to Milord Keshishian, Milord & Associates (July 20, 2016).³

In a letter dated October 18, 2016, L.A. Rocks requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work 433569. Letter from Milord Keshishian, Milord & Associates to U.S. Copyright Office (October 18, 2016) (“Second Request (433569)”). In that letter, L.A. Rocks argued that the design “is not a mere representation of geometric shapes, but a combination that easily meets the minimal level of creativity.” Second Request (433569) at 2. L.A. Rocks also pointed to other instances in which courts have found sufficient evidence of copyrightability for other works and Work 433569 “far surpasses [this] *de minimus* level of creativity.” Second Request (433569) at 5. Finally, L.A. Rocks argued that as its “independent efforts . . . have been brazenly copied . . . the work meets the standard of originality.” Second Request (433569) at 9.

³ L.A. Rocks requested in its October 18, 2016 letter that the Copyright Office confirm that the letter from Stephanie Mason, Attorney-Advisor, to Milord Keshishian, Milord & Associates (July 20, 2016) is referring to Work 433659. The Office confirms that the July 20, 2016 letter addresses Work 433659.

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 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).

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. 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 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 Works

After carefully examining the Works and applying the legal standards discussed above, the Board finds that the Works fail to satisfy the requirement of creative authorship and thus are not copyrightable.

First, the Board finds that the Works’ individual design elements are not sufficient to render the Works original. When evaluating a jewelry design’s copyrightability, the Board may take into account the shapes of various elements, decoration on the jewelry’s surface (*i.e.*, engravings), as well as the selection and arrangement of the various elements. *See* COMPENDIUM (THIRD) § 908.3. Here, the fundamental designs of the Works are little more than basic shapes and simple words or phrases. For example, Work 431386 is two discs on which words are engraved. Additionally, Works 431313 and 433516 consist of a circular shape and a heart shape with engraved words. Similarly, Work 433569 is a basic heart shape with engraved words. The

Copyright Act does not protect common geometric shapes or familiar symbols. COMPENDIUM (THIRD) §§ 906.1, 906.2. While it is undisputed that the words themselves also do not warrant copyright protection, L.A. Rocks argues that the handwritten-style of the font on Work 431386 displays a “minimum level of creativity.” Second Request (431386) at 2, 4. Typeface, calligraphy, and typographic ornamentation, however, are not copyrightable “regardless of how novel and creative the shape and form of the typeface characters may be.” COMPENDIUM (THIRD) § 906.4; *see also Zhang v. Heineken N.V.*, No. CV 08-6506, 2010 WL 4457460, * 5 (C.D. Cal. May 12, 2010) (finding that variations in lettering, such as Chinese calligraphy, are not eligible for copyright protection).

Second, the Board recognizes that although the individual components of a given work may not be copyrightable, the “*combination* of unprotectable elements may qualify for copyright protection,” but “only if those elements are numerous enough and their selection and arrangement original enough.” *Satava*, 323 F.3d at 811; *see also Diamond Direct, LLC v. Star Diamond Group, Inc.*, 116 F.Supp.2d 525, 528 (S.D.N.Y. 2000) (“copyright may protect the particular way in which the underlying elements are combined—if the particular method of combination is itself original.”). The Office “generally will not register a compilation containing only two or three elements, because the selection is necessary *de minimis*.” COMPENDIUM (THIRD) § 312.2 (citing H.R. Rep. No. 94-1476, at 122 (1976)). Here, the Board finds that the selection, combination, and arrangement of the Works’ basic jewelry elements do not sufficiently render the Works original. More specifically:

- Work 431386’s arrangement of two disks with brief lines of text on the larger silver disk arranged in a mostly horizontal fashion is not sufficiently creative. Moreover, these few and unprotectable elements are combined in an entirely standard and commonplace manner. Additionally, the simplistic relation of the two discs to one another in the Work does not transform this arrangement into something copyrightable. *See* COMPENDIUM (THIRD) § 908.3 (stating that a piece of jewelry containing multiple elements arranged in a commonplace design may not be copyrightable). Instead, the Board finds that the linking by a simple ring bail of the two discs engraved with short phrases is an extremely basic configuration which lacks the requisite amount of creativity to warrant copyright protection.
- Regarding Works 431313 and 433516, the arrangement of a heart within a circular shape with text engraved on the outside circle is not sufficiently creative. Moreover, these few and unprotectable elements are combined in an entirely standard and commonplace manner. The simplistic relation of these two basic shapes to one another in the Works, or the choice of the particular quote, does not transform this arrangement into something copyrightable. *See* COMPENDIUM (THIRD) § 908.3. Instead, the Board finds that the heart within a circular shape engraved with short quote is an extremely basic configuration which lacks the requisite amount of creativity to warrant copyright protection.

- Work 433569's arrangement of heart with "negative space" and an engraved quote on the positive space is not sufficiently creative. Moreover, these few and unprotectable elements are combined in an entirely standard and commonplace manner. See COMPENDIUM (THIRD) § 908.3. Instead, the Board finds that the standard heart shape combined with a quote is an extremely basic configuration which lacks the requisite amount of creativity to warrant copyright protection. See *Feist*, 499 U.S. at 359; *Todd v. Montana Silversmiths, Inc.*, 379 F.Supp.2d 1110, 1113 (D. Colo. 2005) ("when dealing with items derived from the public domain, a work is copyrightable only if the creator has added 'some substantial, not merely trivial, originality'") (internal citations omitted).

Overall, the Board finds that the level of creative authorship involved in these configurations of elements is, at best, *de minimis*, and too trivial to enable copyright registration for each of the Works. See COMPENDIUM (THIRD) § 313.4 (B).

Third, L.A. Rocks' stylistic choices 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 COMPENDIUM (THIRD) § 310.8. L.A. Rocks argued that its "creative decisions" regarding the choice of shapes, types of metals, and placement of words supports the finding of originality. Second Request (431386) at 4; Second Request (433569) at 4-5. However, the Board does not evaluate the different possibilities that the author could have created, but the work itself that the author did create and has submitted for registration. COMPENDIUM (THIRD) § 310.8.

Fourth, regarding the arguments that the Office has registered works that display less creativity than the Works at issue here or that courts have found originality in "less creative" works, the Office's practice is to not compare works that have been previously registered or refused registration. COMPENDIUM (THIRD) § 602.4(C) ("When examining a claim to copyright, the U.S. Copyright Office generally does not compare deposit[s] to determine whether the work for which registration is sought is substantially similar to another work"); see also *Homer Laughlin China Co. v. Oman*, No. 90-3160, 1991 WL 154540, at *2 (D.D.C. July 30, 1991) ("[c]ourt [is not] aware of any authority which provides that the Register must compare works when determining whether a submission is copyrightable."); accord *Coach*, 386 F.Supp.2d at 499 (indicating the Office "does not compare works that have gone through the registration process").

Finally, the Board finds that L.A. Rocks' claims that others have copied the Works have no bearing on the Works' copyrightability. In applying the originality standard, the Office does not consider a design's success in the marketplace when determining whether a work contains the requisite minimal amount of original authorship necessary for registration. See COMPENDIUM (THIRD) § 310.10. Thus, even if accurate, the fact that the Works have been copied by competitors only indicates that others believe it to be a profitable design, not that the Works possess copyrightable authorship. See *Paul Morelli Design, Inc. v. Tiffany & Co.*, 200 F. Supp. 2d 482, 488-89 (E.D. Pa. 2002).

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 Works. 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