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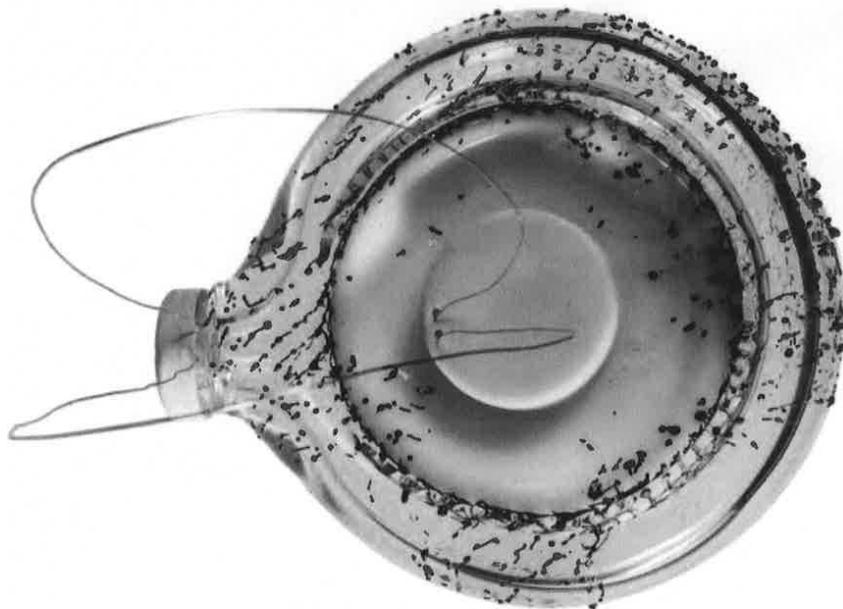
April 4, 2018

Todd Hathaway
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119 N. Commercial St., suite 620
Bellingham, WA 98225-4447

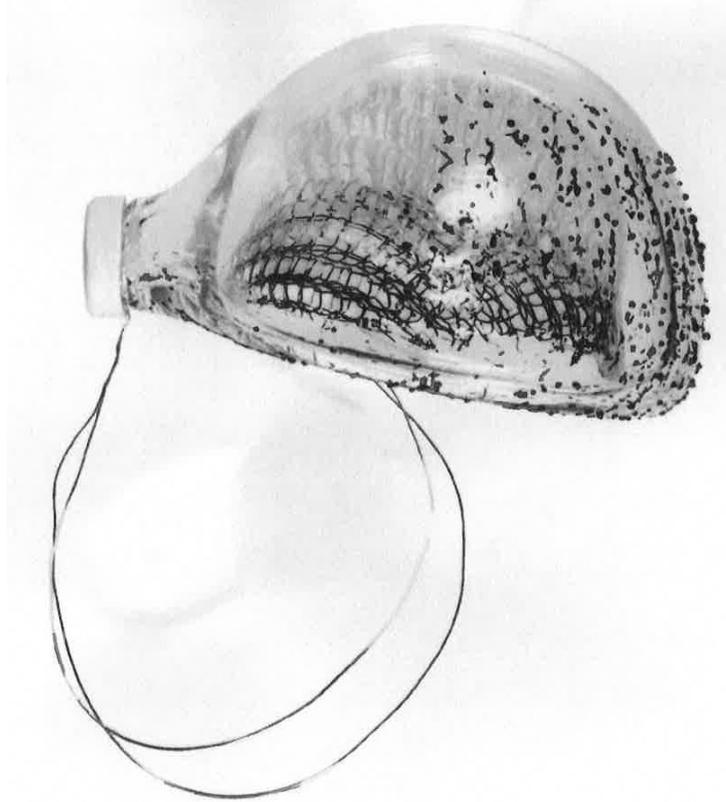
**Re: Second Request for Reconsideration for Refusal to Register Pendant Lamp – 76;
Correspondence ID: 1-1QCBU38; SR 1-2926726521**

Dear Mr. Hathaway:

The Review Board of the United States Copyright Office (“Board”) has considered Bocci Design and Manufacturing Inc.’s (“Bocci Design”) second request for reconsideration of the Registration Program’s refusal to register a three-dimension sculpture claim in the work titled Pendant Lamp – 76 (“Work”).¹ The Work is a glass sculpture in a shape resembling the face of a bisected globe, with a pattern of filaments imbedded in the glass; an internally-mounted LED is included to illuminate the globe and filaments. The Work is depicted below.



¹ In the first request for reconsideration, Bocci Designs asked to amend the title of the Work to “Illuminated Pendant 76.” First Request at 4.



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

The Work had been denied registration because the Office’s Registration Policy and Practice division concluded that “it is a ‘useful article’ which does not contain any separable authorship needed.” Letter from Robin Jones, Registration Specialist, to Todd Hathaway at (Correspondence ID: 1-1QCBU38) at 1 (June 29, 2016). In denying Bocci Design’s first request for reconsideration, the Office relied on the pre-*Star Athletica* test for assessing whether copyrightable authorship is separable from the utilitarian aspects of a useful article. Letter from Stephanie Mason, Attorney-Advisor, to Todd Hathaway (Correspondence ID: 1-22CR8GE) at 2 (Mar. 1, 2017) (citing COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES (“COMPENDIUM (THIRD)”) § 924.2(B)). The second rejection letter pre-dated the Supreme Court’s *Star Athletica* decision by three weeks.

The *Star Athletica* decision did not change the fact that 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.* Further, as the *Star Athletica* decision clarifies, the test for whether an artistic feature applied on or incorporated into a useful article may be eligible for

copyright protection is 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, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017); *see also Mazer v. Stein*, 347 U.S. 201 (1954) (holding that a ballet-dancer-shaped lamp base is copyrightable).

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work’s glass sculpture and imbedded filaments meet the test set forth in *Star Athletica* and therefore constitute artistic expression that is separable from the Work’s utilitarian function of illumination. *See Star Athletica, LLC*, 137 S. Ct. at 1110–14 (affirming separability of the ballet-dancer-shaped lamp base because it could exist as a standalone work, even though “without the base, the ‘lamp’ would be just a shade, bulb, and wires”). Here the Work’s three-dimensional design of glass formed into a half globe and imbedded with filament wires can be perceived as a standalone work of art without the internally mounted LED that makes the Work a useful article. Additionally, and significantly, the Board finds that these separable elements contain sufficient creative expression to be copyrightable. *See Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340, 363 (1991). The Board’s decision relates only to the separable part of the Work, and does not extend individually to any of the utilitarian aspects of the Work such as the LED.

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 as to the elements that are separable from Work’s utilitarian aspects. 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, and for amending the title of the Work to “Illuminated Pendant 76,” as requested by the applicant.

No response to this letter is needed.



U.S. Copyright Office Review Board

Karyn A. Temple, Acting Register of Copyrights
and Director, U.S. Copyright Office
Sarang Vijay Damle, General Counsel and
Associate Register of Copyrights
Catherine Zaller Rowland, Senior Advisor to the
Register of Copyrights