



United States Copyright Office

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August 7, 2020

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Re: Second Request for Reconsideration for Refusal to Register Socorro Chandelier; Correspondence ID: 1-3S94EJ8; SR # 1-7777005741

Dear Ms. Hartzell:

The Review Board of the United States Copyright Office (“Board”) has considered Generation Brands LLC’s (“Generation Brands”) second request for reconsideration of the Registration Program’s refusal to register a sculpture claim in the work titled “Socorro Chandelier” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s registration refusal.

I. DESCRIPTION OF THE WORK

The Work is a light fixture containing two perpendicular barbed quatrefoils made of a wood-like material with a circle surrounding the center circumference. A four-arm candelabrum with a spherical base is positioned in the center of the design and connected by a thin line that runs from the top to the bottom of the design. The entire design is capped with cone-shaped finials. All other elements besides the quatrefoils are made of a dark grey metal material. An image of the work is below:



II. ADMINISTRATIVE RECORD

On June 14, 2019, Generation Brands filed an application to register a copyright claim in the Work. In a June 17, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it lacked the authorship necessary to support a claim and does not contain sufficiently creative, non-useful design elements. Initial Letter Refusing Registration from U.S. Copyright Office, to Michelle Bolos, Marshall, Gerstein & Borun LLP (June 17, 2019).

In a letter dated August 16, 2019, Generation Brands requested that the Office reconsider its initial refusal to register the Work. Letter from Julianne Hartzell, Marshall, Gerstein & Borun LLP to U.S. Copyright Office (Aug. 16, 2019) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and concluded that, while the Work contains separable elements, the separable elements are not sufficiently creative alone or in combination to support a claim for copyright. Refusal of First Request for Reconsideration from U.S. Copyright Office, to Julianne Hartzell, Marshall, Gerstein & Borun LLP (Nov. 8, 2019). Specifically, the Office explained that each component part is a common and familiar shape that is not protected by copyright, and the simple arrangements of these common shapes into obvious, expected configurations lacks the required creativity to support a copyright registration. *Id.*

In a letter dated February 7, 2020, Generation Brands 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 Julianne Hartzell, Marshall, Gerstein & Borun LLP, to U.S. Copyright Office (Feb. 7, 2020) (“Second Request”). Generation Brands asserts that the Office’s response to the first request for reconsideration only considered the individual elements without considering the sculptural work as a whole. Generation Brands further argues that the work as a whole is sufficiently creative due to the large number of elements contained in the work, comparing the Work to the sufficiently creative wrapping paper design in section 906.1 of the Compendium of U.S. Copyright Office Practices; the works at issue in *Star Athletica, LLC v. Varsity Brands*, 137 S. Ct. 1002 (2017) and *Titlecraft, Inc. v. NFL*, 2010 U.S. Dist. LEXIS 134367 (D. Minn. Dec. 20, 2010); and previously registered works consisting of a combination of geometric shapes. *Id.* at 3–6.

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, LLC 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* 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.” *Star Athletica*, 137 S. Ct. 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.”); *cf. Esquire, Inc. 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 claim for 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.” COMPENDIUM (THIRD) § 906.1; *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.

B. Analysis of the Work

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work is a useful article that does not contain the requisite separable creative authorship necessary to sustain a claim to copyright.

As an initial matter, there is no dispute that the Work is a useful article, which contains certain 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; *see also* First Request Refusal at 2–6; Second Request at 3. The separable features are quatrefoils, circles, and a candelabrum, none of which alone are copyrightable. *See* 37 C.F.R. 202.137 C.F.R. § 202.1(a) (prohibiting registration of familiar symbols or designs); *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”). The question, therefore, is whether the Work’s separable elements as a whole have creative authorship sufficient for copyright protection.

Reviewing the Work carefully reveals that the separable features as a whole do not qualify as a protectable pictorial, graphic, or sculptural work because they lack the requisite minimum degree of creativity required for copyright protection. The combination and arrangement consists only of symmetrically intersecting shapes surrounding a traditional Flemish or Dutch style candelabrum. The basic Flemish or Dutch style candelabrum shape is a longstanding and common element incorporated into hanging light fixtures for centuries and the one here lacks any creative additions that set it apart from unprotectable *scenes a faire*.¹ Furthermore, the design and arrangement of the elements is entirely typical and representative of an open globe or orb shaped chandelier or hanging light fixture in a “rustic” or “industrial” style.² As such, the Work does not possess a sufficient amount of creativity to support registration.

Generation Brands places a heavy emphasis on the “large number of elements” contained in the work to support its argument that the work is sufficiently creative. Second Request at 3–5. There is not a specific number of elements, however, that renders a work creative. Each work

¹ *See* Sue Matthews, *Flemish Chandeliers*, Bepokelights Blog (July 23, 2019), <https://www.bepokelights.co.uk/blog/2019/07/flemish-chandeliers/>;

Carl Mallory, *History of the Chandelier*, Italian Lighting Center (May 16, 2015) <https://italian-lighting-centre.co.uk/blogs/news/a-history-of-the-chandelier>.

² *See e.g.*, *Maxim Crest 22” Wide 4 Light Chandelier*, BUILD.COM, <https://www.build.com/maxim-20293/s1293189> (last visited June 5, 2020); *Rustic Quatrefoil Chandelier — 4 Light*, SHADES OF LIGHT, <https://www.shadesoflight.com/products/rustic-quatrefoil-chandelier-4-light> (last visited May 28, 2020); *21” Vintage Rustic Large Quatrefoil Chandelier Pendant Light French Country Wood Metal Wine Barrel Foyer (4 Light Heads) Rustic Iron Ceiling Light Fixture*, AMAZON, <https://www.amazon.com/Vintage-Quatrefoil-Chandelier-Pendant-Country/dp/B07HK1B8Y7> (last visited May 28, 2020); *Stately Quatrefoil Chandelier — 4 Light*, SHADES OF LIGHT, <https://www.shadesoflight.com/products/stately-quatrefoil-chandelier> (last visited May 28, 2020); *Round Chandelier with Center Band and Curved Quatrefoils 6 Bulb Orb Fixture*, THE KINGS BAY, <https://thekingsbay.com/product/round-chandelier-with-center-band-and-curved-quatrefoils-6-bulb-orb-fixture/> (last visited May 28, 2020); *Navejo 6-Light Weathered Gray Orb Chandelier*, THE HOME DEPOT, <https://www.homedepot.com/p/LNC-Navejo-6-Light-Weathered-Gray-Orb-Chandelier-A03538/311482831> (last visited May 28, 2020); *see also* *Sea Gull Lighting: Socorro Transitional Lighting Collection*, HOME DEPOT, <https://www.homedepot.com/collection/Lighting/Socorro-Transitional-Lighting-Collection/Family-313301563> (last visited June 5, 2020) (noting that the “transitional Socorro lighting collection by Sea Gull Lighting features a classic, barbed Quatrefoil profile—wholly updated by combining a distressed Cerused Oak finish on the decorative silhouette with the rich Stardust finish on the metal bobeches and decorative strapping to create undeniable rustic charm”) (emphasis added).

must demonstrate sufficient creativity regardless of the number of elements. *See Satava*, 323 F.3d at 811 (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) (emphasis added). Even if the Work here has a large number of elements, the combination and arrangement of those elements, as discussed above, does not reflect a sufficiently creative design.

Generation Brands mistakenly relies on *Star Athletica* and *Titlecraft* to support its assertion that combinations of geometric shapes can be sufficiently creative and that the Work is, therefore, sufficiently creative. Second Request at 4. The Office agrees that combinations of geometric shapes *can* be sufficiently creative to support a copyright registration, but not *all* combinations are protectable and not every combination will meet this threshold. *See Feist*, 499 U.S. at 358, 363.

Finally, Generation Brands argues that the Work contains at least the same amount of creativity as previously registered works—*Masonry Necklace*, *Gemini Link Bracelet*, *American Airlines*, and *Forget Me Not Bracelet*—consisting of copyrightable combinations of geometric shapes. Second Request at 5–6. The Office, however, does not compare works that have been previously registered or refused registration. *See* COMPENDIUM (THIRD) § 309.3. The Office examines each claim on its own merits, applying uniform standards of copyrightability at each stage of registration. Because copyrightability involves a mixed question of law and fact, differences between any two works can lead to different results. *See Homer Laughlin China Co. v. Oman*, 2 U.S.P.Q.2d (BNA) 1074, 1076 (D.D.C. 1991) (stating that it was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”); *accord Coach, Inc.*, 386 F. Supp. at 499 (indicating the Office “does not compare works that have gone through the registration process”). Nonetheless, even if a comparison were required, the Board determined that the works there contain creative elements not present in the design here. Here, the Work merely contains a typical arrangement of geometric shapes in an orb-like manner. The cited registrations, therefore, are not useful comparisons for the Work here.

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.



U.S. Copyright Office Review Board

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Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
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