



Copyright Review Board
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

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Re: Second Requests for Reconsideration for Refusal to Register Bracelet, Bracelet, Bracelet, Earring, Necklace, EASPFSCCLGF, NKSPCABFDBU, NKSPCUDRPSRI (SR # 1-7240328586, 1-7240328540, 1-7240328484, 1-7237998918, 1-7237998891, 1-7483384688, 1-7483426204, 1-7483384661; Correspondence IDs: 1-3VG5TAF, 1-3X4FBI1, 1-3X4L57J)

Dear Mr. Pecsénye:

The Review Board of the United States Copyright Office (“Board”) has considered Harry Winston SA’s (“Harry Winston”) second requests for reconsideration of the Registration Program’s refusal to register jewelry design claims in the works titled “Bracelet” (“Bracelet #1”), “Bracelet” (“Bracelet #2”), “Bracelet” (“Bracelet #3”), “Earring,” “Necklace,” “EASPFSCCLGF,” “NKSPCABFDBU,” and “NKSPCUDRPSRI” (each individually, a “Work,” and collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board: (1) reverses the Registration Program’s denials of registration of the claims for Earring, EASPFSCCLGF, and NKSPCABFDBU; and (2) affirms the Registration Program’s denials of registration for the other Works.

I. DESCRIPTION OF THE WORKS

The Works are eight jewelry designs.



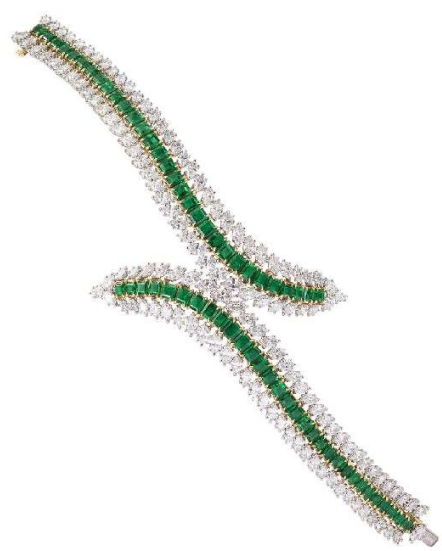

- Bracelet #1 is a chain bracelet consisting of repeating clusters of four diamonds separated by rectangular dark blue sapphires. Each diamond cluster has two round and two marquise diamonds.
- Bracelet #2 is a chain bracelet consisting of a repeating pattern of blocks of five small baguette and two round diamonds separated by rectangular dark blue sapphires.
- Bracelet #3 is a zipper-style bracelet consisting of a center row of rectangular emeralds surrounded on each side by rows of marquise diamonds, which are connected briefly at the center by three sets of marquise diamonds. The prongs

around the emeralds are gold in color and the prongs surrounding the diamonds are silver in color.

- Earring is an earring consisting of two curves linked by a center row of six rectangular emeralds surrounded on each side by rows of marquise diamonds. The prongs around the emeralds are gold in color and the prongs surrounding the diamonds are silver in color. It appears that the two shapes are attached by two marquise diamonds to form a single earring.
- Necklace consists of two strands, each with a center row of rectangular emeralds surrounded on each side by rows of marquise diamonds. The two strands connect at the bottom of the necklace, with one strand extending slightly lower to a point, and each strand appears to end with a cluster of marquise diamonds. The prongs around the emeralds are gold in color and the prongs surrounding the diamonds are silver in color.
- EASPFSCCLGF is an earring formed with a round center stone surrounded by six sapphires. Three of the sapphires are oval and three are pear-shaped, but the oval and pear-shaped sapphires are arranged in an asymmetrical pattern. A ring of eight single and double marquise diamonds surrounds the sapphires.
- NKSPCABFDBU is a necklace consisting of different shaped diamonds accented with a large sapphire at the base. Below the sapphire is a dyad of marquise diamonds, a triad of round diamonds, and then a single marquise diamond at the bottom. There is a cluster of diamonds at the clasp and the two necklace strands consist of alternating marquise and round diamonds.
- NKSPCUDRPSRI is a necklace consisting of round diamonds accented with a large sapphire pendant. The pendant features a large sapphire surrounded by rows of marquise and round diamonds. There is a cluster of diamonds on top of the clasp and each necklace strand consist of round diamonds.

The Works are depicted in the images below, which were submitted as deposits to the Office:¹

¹ As a general matter, the Board reminds Harry Winston and future applicants of the requirements for jewelry deposits. While applicants for jewelry claims are not required to submit the physical work to the Office; they are required to provide identifying materials. *See* 37 C.F.R. § 202.20(c)(2)(xi)(A)(2). Identifying material deposits are “two-dimensional reproductions or renderings of the work” that “show the entire copyrightable content” of the work or that at least provide “an adequate representation of such content.” *Id.* § 202.21(a), (b). The Office recommends that jewelry applicants provide deposits that “include all of the copyrightable elements that the applicant intends to register” and “depict the design from different angles.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 908.3 (3d ed. 2021) (“COMPENDIUM (THIRD)”).

	
<p>Bracelet #1</p>	<p>Bracelet #2</p>
	
<p>Bracelet #3</p>	<p>Earring</p>

	
<p>Necklace</p>	<p>EASPFSCCLGF</p>
	
<p>NKSPCABFDBU</p>	<p>NKSPCUDRPSRI</p>

II. ADMINISTRATIVE RECORD

Harry Winston submitted applications for Bracelet #1, Bracelet #2, Bracelet #3, Earring, and Necklace on December 19, 2018, and EASPFSCCLGF, NKSPCABFDBU, and NKSPCUDRPSRI on March 7, 2019. Copyright Office registration specialists refused registration of the claims, finding that none of the Works “contain any design element that is both sufficiently original and creative.” Initial Letter Refusing Registration of Necklace, Earring, Bracelet #1, Bracelet #2, and Bracelet #3 from U.S. Copyright Office to Timothy Pecsénye at 1 (June 6, 2019).²

Subsequently, in letters with substantively identical contentions, Harry Winston requested that the Office reconsider its initial refusals to register the Works. Letter re: Bracelet #1 from Timothy Pecsénye to U.S. Copyright Office (Sept. 6, 2019).³ After reviewing the Works in light of the points raised in the First Requests, the Office reevaluated the claims and again concluded that the Works “do not contain the requisite creativity necessary to obtain copyright registration because each is a garden-variety combination of unprotectable elements.” Refusal of First Request for Reconsideration of Bracelet #1, Bracelet #2, Bracelet #3, Earring, and Necklace from U.S. Copyright Office to Timothy Pecsénye at 3 (Jan. 9, 2020).⁴ The Office also noted that each Work “consists of a simple arrangement of geometric elements and colors which fail to exhibit sufficient creativity to warrant registration.” Refusal of First Request for Reconsideration of NKSPCUDRPSRI from U.S. Copyright Office to Timothy Pecsénye at 3 (Feb. 10, 2020).

In eight individual letters, all dated April 9, 2020, Harry Winston requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusals to register the Works. *See, e.g.*, Letter re: Bracelet #1 from Timothy D. Pecsénye to U.S. Copyright Office (Apr. 9, 2020) (“Bracelet #1 Second Request”).⁵ In those letters, Harry Winston asserted that each Work’s “elements form a unique and protectable design” that “at the very least, [contain] the minimum degree of creativity and authorship required to obtain registration.” *See, e.g., id.* at 6.

² Initial Letter Refusing Registration of NKSPCABFDBU and EASPFSCCLGF from U.S. Copyright Office to Timothy Pecsénye at 1 (June 26, 2019); Initial Letter Refusing Registration of NKSPCUDRPSRI from U.S. Copyright Office to Timothy Pecsénye at 1 (June 26, 2019).

³ Letter re: Bracelet #2 from Timothy Pecsénye to U.S. Copyright Office (Sept. 6, 2019); Letter re: Bracelet #3 from Timothy Pecsénye to U.S. Copyright Office (Sept. 6, 2019); Letter re: Earring from Timothy Pecsénye to U.S. Copyright Office (Sept. 6, 2019); Letter re: Necklace from Timothy Pecsénye to U.S. Copyright Office (Sept. 6, 2019); Letter re: EASPFSCCLGF from Timothy Pecsénye to U.S. Copyright Office (Sept. 26, 2019); Letter re: NKSPCABFDBU from Timothy Pecsénye to U.S. Copyright Office (Sept. 26, 2019); Letter re: NKSPCUDRPSRI from Timothy Pecsénye to U.S. Copyright Office (Sept. 26, 2019) (collectively, the “First Requests”).

⁴ Refusal of First Request for Reconsideration of EASPFSCCLGF and NKSPCABFDBU from U.S. Copyright Office to Timothy Pecsénye at 3 (Feb. 10, 2020); Refusal of First Request for Reconsideration of NKSPCUDRPSRI from U.S. Copyright Office to Timothy Pecsénye at 3 (Feb. 10, 2020).

⁵ Letter re: Bracelet #2 from Timothy D. Pecsénye to U.S. Copyright Office (Apr. 9, 2020) (“Bracelet #2 Second Request”); Letter re: Bracelet #3 from Timothy D. Pecsénye to U.S. Copyright Office (Apr. 9, 2020) (“Bracelet #3 Second Request”); Letter re: Earring from Timothy D. Pecsénye to U.S. Copyright Office (Apr. 9, 2020) (“Earring Second Request”); Letter re: Necklace from Timothy D. Pecsénye to U.S. Copyright Office (Apr. 9, 2020) (“Necklace Second Request”); Letter re: EASPFSCCLGF from Timothy D. Pecsénye to U.S. Copyright Office (Apr. 9, 2020) (“EASPFSCCLGF Second Request”); Letter re: NKSPCABFDBU from Timothy D. Pecsénye to U.S. Copyright Office (Apr. 9, 2020) (“NKSPCABFDBU Second Request”); Letter re: NKSPCUDRPSRI from Timothy D. Pecsénye to U.S. Copyright Office (Apr. 9, 2020) (“NKSPCUDRPSRI Second Request”).

Harry Winston asserted that the Works are “complex” and contain arrangements that symbolize, evoke, or portray certain subjects through diamonds and gemstones. *See, e.g., id.* at 5; *see also* EASPFSCCLGF Second Request at 5 (contending that the Work is a “complex and thoughtful arrangement” that “portrays a blossoming flower”). The Board responds to each of these arguments below.

III. DISCUSSION

After carefully examining each of the Works and applying the relevant legal standards, the Board finds that three of the Works, Earring, EASPFSCCLGF, and NKSPCABFDBU, contain the requisite creativity necessary to sustain claims to copyright. Accordingly, the refusals of these Works are reversed. The remaining five Works, however, do not contain the requisite creativity and therefore, are not eligible for copyright protection.

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 the copyright 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, “as opposed to copied from other works.” *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has held that some works fail to meet even this low threshold. *Id.* at 358–59.

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 claim. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See id.* 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, 883 (D.C. Cir. 1989); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498–99 (S.D.N.Y. 2005). A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[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.”).

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act. *See, e.g.*, 37 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”). Through its regulations, the Office provides guidance that copyright does not protect familiar shapes or designs. *Id.* § 202.1(a); *see also* COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes are not protectable).

Jewelry, such as the designs before the Board, are works of artistic craftsmanship. COMPENDIUM (THIRD) § 925.1 (listing examples of works of artistic craftsmanship, including

“ornamental jewelry”). The Copyright Act provides that sculptural works “include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned.” 17 U.S.C. § 101 (definition of “pictorial, graphic, and sculptural works”). Though the term “works of artistic craftsmanship,” is not defined in the Act, the Supreme Court has described these works as “works of art that might also serve a useful purpose.” *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1011 (2017) (discussing Copyright Office regulations as considered in *Mazer v. Stein*, 347 U.S. 201 (1954)). When considering the copyrightability of jewelry, the Office applies the “mirror image” of the *Star Athletica* test for useful articles: the Office segregates the “mechanical or utilitarian aspects” of the work, while considering the remainder for registration. COMPENDIUM (THIRD) § 925.2. In evaluating these elements, the Office “will consider both the component elements of the design and the design as a whole,” which may include decoration on the surface of the jewelry, such as engraving, as well as the selection and arrangement of various elements such as shape and color. *Id.* § 908.3.

The Board provides its analysis of each of the Works below, beginning with the three that it concludes can sustain a claim for copyright.

A. Earring



Earring is a jewelry design that includes several elements, all of which are common geometric shapes or minor variations thereof. *See* 37 C.F.R. § 202.1(a) (“works not subject to copyright . . . [include] familiar symbols or designs.”). The Work consists of rectangles and elongated ellipses, which are not copyrightable elements. *See* COMPENDIUM (THIRD) §§ 906.1, 906.2 (noting that copyright “does not protect common geometric shapes”); *see also* *DBC of NY, Inc. v. Merit Diamond Corp.*, 768 F. Supp. 414, 416 (S.D.N.Y. 1991) (discussing rectangles and ellipses, along with other shapes, as in the public domain and unprotectable, and describing marquise stones as “well-known in the jewelry trade”).

The Work as a whole, however, contains a sufficient amount of original and creative authorship. “A work containing only a few elements may be copyrightable if the decoration, arrangement, use of color, shapes, or textures are sufficient to support a claim.” COMPENDIUM (THIRD) § 908.3; *see also* *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.”). This Work is arranged in a way that the two portions of the earring connect and overlap using several marquise diamonds and have a curvature in both an upward and downward direction. Additionally, both portions of the earring appear arched in mirroring positions creating a three-dimensional effect. For these reasons, the Board finds that the Work is arranged in an original manner that contains more than *de minimis* authorship. See *Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101, 110 (2d Cir. 2001) (originality in jewelry design inhered in the ways plaintiff “recast and arranged” standard elements); *Wolstenholme v. Hirst*, 271 F.Supp.3d 625, 636 (S.D.N.Y. 2017) (holding, on a motion to dismiss, that the “selection, arrangement and combination” of pharmaceutical charms on a bracelet and necklace were sufficiently original to be protectable by copyright).

B. EASPFSCCLGF



EASPFSCCLGF is a jewelry design that includes several elements, all of which are common geometric shapes or minor variations thereof. See 37 C.F.R. § 202.1(a). The Work’s deposit copy includes photos of both the front and the back of the jewelry. The front consists of circles, cones, ovals, and elongated ellipses, which are not copyrightable elements. See COMPENDIUM (THIRD) §§ 906.1, 906.2; see also *DBC of NY, Inc.*, 768 F. Supp. at 416. The back of the Work appears to mirror the jewelry design itself as the shape of a flower, outlining what appears to be each diamond or gemstone. For this reason, the Board views the underside of the earring as containing non-functional elements that employ additional creative choices. Cf. COMPENDIUM (THIRD) § 908.3 (noting that “[p]urely functional elements, such as a plain clasp or fastener” are not considered in analyzing copyrightability of jewelry designs).

The Work as a whole, however, contains a sufficiently creative selection or arrangement that is protectable by copyright. Specifically, the Work is not presented in a uniform or repeating pattern, but instead depicts an arrangement that goes beyond a “[c]ommon or symmetrical arrangement[.]” and contains varying, asymmetrical shapes in both the sapphires and the

marquise diamonds. COMPENDIUM (THIRD) § 908.3; *see also Satava*, 323 F.3d at 811. The sapphires are various shapes consisting of three oval and three pear-shaped diamonds, arranged in a non-repetitive pattern, and the marquise diamonds are grouped irregularly, consisting of either one or two stones. *See* COMPENDIUM (THIRD) § 908.3 (“A work containing only a few elements may be copyrightable if the decoration, arrangement, use of color, shapes, or textures are sufficient to support a claim.”); *Cosmos Jewelry Ltd. v. Po Sun Hon, Co.*, 470 F. Supp. 2d 1072, 1082 (C.D. Cal. 2006) (finding copyrightable “the minute characteristics of the blossom petals, the arrangement of blossoms and other flourishes in different variations on the ‘multi-blossom’ pendants, rings, earrings, etc., and the particular ‘mixture’ of sand used in producing the sand-blast finish”); *Yurman Design, Inc.*, 262 F.3d at 110; *Wolstenholme*, 271 F.Supp.3d at 636. Overall, the distinctive manner in which the elements are arranged meets the creativity threshold required for copyright protection.

C. NKSPCABFDBU



NKSPCABFDBU is a jewelry design that includes several elements, all of which are common geometric shapes or minor variations thereof. *See* 37 C.F.R. § 202.1(a). These spheres, ovals, and elongated ellipses are not individually copyrightable elements. *See* COMPENDIUM (THIRD) §§ 906.1, 906.2; *see also DBC of NY, Inc.*, 768 F. Supp. at 416.

The Work as whole, however, contains several creative design choices that imbue the Work with a sufficient amount of original and creative authorship. Specifically, the Work consists of a necklace chain with two alternating patterns that change halfway up the chain. *See* COMPENDIUM (THIRD) § 908.3. The top half of the chain consists of graduated alternating marquise and round diamonds, while the bottom half consists of graduated alternating marquise and clusters of round diamonds. The Work’s clasp is adorned with two marquise diamonds surrounding a round diamond, all of which sit atop a single round diamond. The bottom of the pendant consists of an asymmetrical arrangement featuring two marquise diamonds stacked on top of three round diamonds, followed by a single, large marquise diamond. *See Satava*, 323 F.3d at 811. The Work’s combination and arrangement of all these unprotectable elements

satisfies the requirement of creative authorship necessary to sustain a claim to copyright. *See Yurman Design, Inc.*, 262 F.3d at 110; *Wolstenholme*, 271 F.Supp.3d at 636.

To be clear, the Board’s decisions regarding Earring, EASPFSCCLGF, and NKSPCABFDBU relate only to the Works as a whole—the specific arrangements of various shapes—and do not extend individually to any of the standard or common elements depicted in the Works, such as rectangles, circles, cones, ovals, spheres, and elongated ellipses or the faceting of the individual stones. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] . . . familiar symbols or designs”); *see also* COMPENDIUM (THIRD) §§ 908.2, 908.3.

D. Bracelet #1



Bracelet #1 is a jewelry design that includes only a few elements, all of which are common geometric shapes or minor variations thereof. *See* 37 C.F.R. § 202.1(a). The Work consists of rectangles, spheres, and elongated ellipses, which are not copyrightable elements. COMPENDIUM (THIRD) § 906.1; *see also DBC of NY, Inc.*, 768 F. Supp. at 416. While Harry Winston discusses the “brilliant white diamonds and vivid dark blue sapphires,” Bracelet #1 Second Request at 5, color alone is not protectable. *See* 37 C.F.R. § 202.1(a) (stating that coloring is not subject to copyright); COMPENDIUM (THIRD) § 906.3 (“mere coloration or mere variations in coloring alone are not eligible for copyright protection”). Thus, the individual elements that make up the Work are not copyrightable.

The jewelry design as a whole also does not contain a sufficiently original selection or arrangement to be protected by copyright. The Office will not register jewelry “made up of only commonplace design elements arranged in a common or obvious manner.” COMPENDIUM (THIRD) § 908.2; *see also id.* § 313.4(J) (“[A] work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations” is not copyrightable.); *DBC of New York, Inc.*, 768 F. Supp. at 416 (holding the diamond rings at issue uncopyrightable because they are “on the whole, not exceptional, original, or unique”). Here, the Work is

arranged by repeating the non-protectable elements (*i.e.*, diamonds and sapphires) throughout the bracelet in a symmetrical manner, which is not a creative arrangement. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 908.3 (noting that “a work containing multiple elements may be uncopyrightable if the elements are repeated in a standard geometric arrangement or a commonplace design” and “symmetrical arrangements” are generally not copyrightable).

Furthermore, the Work’s theme—“X” and “O” bracelets—is commonplace within the jewelry industry.⁶ While Harry Winston argues that the Work “form[s] a unique and protectable design,” Bracelet #1 Second Request at 6, arranging these elements in this way does not rise above *de minimis* creativity. Therefore, the Work as a whole is insufficient to support copyright registration. *See Diamond Direct, LLC v. Star Diamond Group, Inc.*, 116 F.Supp.2d 525, 528 (S.D.N.Y. 2000) (“[C]opyright may protect the particular way in which the underlying elements are combined—if the particular method of combination is itself original.”).

Additionally, Harry Winston states that the Work’s arrangement “evokes the imagery of a strand of the symbolic letters ‘X-O-X-O,’” with the marquise and round diamonds representing the letter “X” and the sapphires representing the letter “O, which together “symbolizes the common phrase representing ‘hugs and kisses.’” Bracelet #1 Second Request at 5.⁷ Harry Winston further contends that by wearing the Work, “the recipient’s wrist is literally and figuratively wrapped in symbolic love.” *Id.* When deciding whether a work is copyrightable, however, the Office “will not consider any meaning or significance that the work may evoke” and “will not consider the author’s inspiration for the work, creative intent, or intended meaning.” COMPENDIUM (THIRD) §§ 310.3, 310.5.

⁶ *See, e.g., C. 1980 Vintage 14kt Yellow Gold XO Bracelet. 7”*, ROSS-SIMONS, <https://www.ross-simons.com/c.-1980-vintage-14kt-yellow-gold-xo-bracelet.-7-quot--JEBX+906260+070+4Y.html> (last visited July 31, 2023); *Amethyst XO Line Bracelet 11.52 Carat tw 14K Gold*, ARNOLD JEWELERS, <https://arnoldjewelers.com/shop/jewelry/bracelets/fashion-statement-bracelets/amethyst-xo-line-bracelet-11-52-carat-tw-14k-gold/> (last visited July 31, 2023).

⁷ Even if the Board accepted Harry Winston’s argument that the diamonds and gemstones represent the letters “X” and “O,” it would reach the same conclusion. As explained above, a repeating pattern of shapes—or letters—is not a creative arrangement meriting copyright protection.

E. Bracelet #2



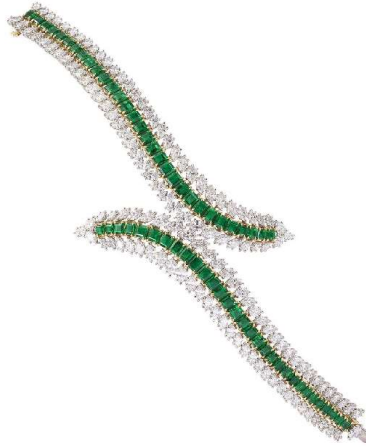
Bracelet #2 is a jewelry design that includes only a few elements, all of which are common geometric shapes or minor variations thereof. *See* 37 C.F.R. § 202.1(a). The Work consists of circles and rectangles, which are not copyrightable elements. COMPENDIUM (THIRD) § 906.1; *see also DBC of NY, Inc.*, 768 F. Supp. at 416. While Harry Winston discusses the “brilliant white diamonds and vivid dark blue sapphires,” Bracelet #2 Second Request at 4, as noted above, color alone is not protectable. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.3. Thus, the individual elements that make up the Work are not copyrightable.

The jewelry design as a whole also does not contain a sufficiently creative selection or arrangement to be protected by copyright. As discussed above, the Office will not register jewelry “made up of only commonplace design elements arranged in a common or obvious manner.” COMPENDIUM (THIRD) § 908.2; *see also id.* § 313.4(J); *DBC of New York, Inc.*, 768 F. Supp. at 416. Here, the Work is arranged by repeating the non-protectable elements (*i.e.*, uniformed-sized diamonds and sapphires) throughout the bracelet in a symmetrical manner, which is not a creative arrangement. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 908.3. Further, the Work is a type of link bracelet whose configuration is unoriginal within the jewelry industry.⁸ Despite Harry Winston’s statement that the Work is a “highly complex and colorful arrangement” that is meant to “accentuate the regal beauty and radiance of the blue sapphires,” Bracelet #2 Second Request at 4, the arrangement is commonly used throughout the jewelry industry and does not possess more than *de minimis* creativity. Additionally, for the reasons discussed in Bracelet #1, Harry Winston’s arguments regarding the Work’s meaning or

⁸ *See, e.g., ART DECO EMERALD AND DIAMOND LINK BRACELET*, LANG ANTIQUES, <https://www.langantiques.com/art-deco-emerald-and-diamond-link-bracelet.html> (last visited July 31, 2023); *Antique Art Deco 9.36cts Asscher-cut Diamond Platinum Square Link Bracelet*, 1STDIBS, https://www.1stdibs.com/jewelry/bracelets/link-bracelets/antique-art-deco-936cts-asscher-cut-diamond-platinum-square-link-bracelet/id-j_16537282/ (last visited July 31, 2023); *Vintage 1940 Deco Revival Flexible Link Bracelet*, VINTAGE JEWELRY COLLECT, <https://www.vintagejewelrycollect.com/product/vintage-1940-deco-revival-flexible-link-bracelet/> (last visited July 31, 2023).

significance are unpersuasive. *See* COMPENDIUM (THIRD) §§ 310.3, 310.5; Bracelet #2 Second Request at 4–5. Thus, the Work as a whole does not possess the required creativity for copyright registration. *See Diamond Direct, LLC*, 116 F.Supp.2d at 528.

F. Bracelet #3



Bracelet #3 is a jewelry design that includes only a few elements, all of which are common geometric shapes or minor variations thereof. *See* 37 C.F.R. § 202.1(a). The Work consists of rectangles and elongated ellipses, which are not copyrightable elements. COMPENDIUM (THIRD) §§ 906.1, 906.2; *see also DBC of NY, Inc.*, 768 F. Supp. at 416. While Harry Winston discusses the “brilliant white diamonds and vivid dark green emeralds,” Bracelet #3 Second Request at 5, as discussed above, color alone is not protectable. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.3. Thus, the individual elements that make up the Work are not copyrightable.

The jewelry design as a whole also does not contain a sufficiently creative selection or arrangement to be protected by copyright. As discussed above, the Office will not register jewelry “made up of only commonplace design elements arranged in a common or obvious manner.” COMPENDIUM (THIRD) § 908.2; *see also id.* § 313.4(J); *DBC of New York, Inc.*, 768 F. Supp. at 416. Here, the Work’s arrangement consists of two sets of three strands of diamonds and emeralds, which are all uniform in size, shape, and color. The sets are arranged in a symmetrical manner, absent one marquise diamond at the bottom of the Work; the entirety of which is not a creative arrangement, but is standard and commonplace within the jewelry industry.⁹ *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 908.3. Both bracelet strands

⁹ *See, e.g., Diamond and Emerald Art Deco Revival Gold Bracelet Estate Fine Jewelry*, 1STDIBS, https://www.1stdibs.com/jewelry/bracelets/tennis-bracelets/diamond-emerald-art-deco-revival-gold-bracelet-estate-fine-jewelry/id-j_15631442/ (last visited July 31, 2023); *OSCAR HEYMAN ART DECO DIAMOND AND SAPPHIRE TRIPLE LINE BRACELET*, LANG ANTIQUES, <https://www.langantiques.com/oscar-heyman-art-deco-diamond-and-sapphire-triple-line-bracelet.html> (last visited July 31, 2023); *Vintage Corletto Italian Diamond Ruby 18K Yellow Gold Bead Link Bracelet*, DOVER JEWELRY AND DIAMONDS, <https://www.doverjewelry.com/corletto-italian-diamond-ruby-18k-yellow-gold-bead-link-bracelet.html> (last visited July 31, 2023).

also begin with a triad of marquise diamonds. While Harry Winston argues that the Work is a “complex arrangement,” Bracelet #3 Second Request at 5, the Work is more akin to the example in the *Compendium* that evidences *de minimis* authorship. See COMPENDIUM (THIRD) § 908.2 (refusing registration to a brooch consisting of “three parallel rows of sapphires” because the design was “common” and contained “only a *de minimis* amount of authorship in the arrangement of stones”). The Work’s arrangement of what appears to be three sets of marquise diamonds affixed together, providing the Work with a slight coil-like design, does not alter the Board’s analysis, as this is also common in the jewelry industry.¹⁰ The Work also, unlike Earring that is subject to copyright protection, does not appear arched or create a three-dimensional effect. Additionally, for the reasons discussed in Bracelet #1, Harry Winston’s arguments regarding the Work’s meaning or significance fail. See COMPENDIUM (THIRD) §§ 310.3, 310.5; Bracelet #3 Second Request at 5–6. Thus, the Work as a whole is insufficient to support copyright registration. See *Diamond Direct, LLC*, 116 F.Supp.2d at 528; *Vogue Ring Creations, Inc. v. Hardman*, 410 F. Supp. 609, 612 (D.R.I. 1976) (finding the ring design not protectable because it was “utterly devoid of any ‘original creativity’”).

G. Necklace



Necklace is a jewelry design that includes only a few elements, all of which are common geometric shapes or minor variations thereof. See 37 C.F.R. § 202.1(a). The Work consists of rectangles and elongated ellipses, which are not copyrightable elements. COMPENDIUM (THIRD) §§ 906.1, 906.2; see also *DBC of NY, Inc.*, 768 F. Supp. at 416. While Harry Winston discusses

¹⁰ See, e.g., *ANCIENT SENSUALITY - VICTORIAN ETRUSCAN REVIVAL 10K ROSE GOLD GARNET SNAKE BRACELETS (VICB004)*, RARITIES ANTIQUE JEWELRY, <https://raritiesantiquejewelry.com/products/nc-pair-of-victorian-etruscan-revival-10k-rose-gold-genuine-garnet-bracelets> (last visited July 31, 2023); *Etruscan Revival Bracelet*, ALICE KARLE APPRAISAL, <https://www.alicekarleappraiserfineart.com/etruscan-revival-bracelet/> (last visited July 31, 2023); *VICTORIAN 3.90 CTW OLD MINE & EUROPEAN CUT DIAMOND PLATINUM 18 KARAT YELLOW GOLD ANTIQUE SNAKE BANGLE BRACELET*, WILSON’S ESTATE JEWELRY, <https://www.wilsonsestatejewelry.com/products/victorian-3-90-ctw-old-mine-european-cut-diamond-platinum-18-karat-yellow-gold-antique-snake-bangle-bracelet> (last visited July 31, 2023).

the “brilliant white diamonds and vivid dark green emeralds,” Necklace Second Request at 5, as discussed above, color alone is not protectable. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.3. Therefore, the individual elements that make up the Work are not copyrightable.

The jewelry design as a whole also does not contain a sufficiently creative selection or arrangement to be protected by copyright. As discussed above, the Office will not register jewelry “made up of only commonplace design elements arranged in a common or obvious manner.” COMPENDIUM (THIRD) § 908.2; *see also id.* § 313.4(J); *DBC of New York, Inc.*, 768 F. Supp. at 416. The Work’s unprotectable elements are arranged in a standard and commonplace manner within the jewelry industry.¹¹ *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 908.3. The Work is a similar arrangement to Bracelet #3, consisting of a symmetrical arrangement, absent the one marquise diamond near the clasp of the Work, that repeats throughout the necklace and consists of three strands of diamonds and gemstones, which are all uniform in size, shape, and color. COMPENDIUM (THIRD) § 908.3. Both necklace strands also end with a triad of marquise diamonds. Contrary to Harry Winston’s assertion, the Work is not a “complex and colorful arrangement.” Necklace Second Request at 5. Rather it is more akin to the example in the *Compendium* that evidences *de minimis* authorship. *See* COMPENDIUM (THIRD) § 908.2. Similar to Bracelet #3, the Work’s arrangement of affixing the two necklace strands together through marquise diamonds does not alter the Board’s analysis.¹² Additionally, the fact that one necklace strand extends slightly lower than the other does not alter the Board’s decision that the Work cannot be protected by copyright. Further, for the reasons discussed in connection with the above analysis of Bracelet #1, Harry Winston’s arguments regarding the Work’s meaning or significance fail. *See* COMPENDIUM (THIRD) §§ 310.3, 310.5; Necklace Second Request at 5–6. Therefore, the Work as a whole is insufficient to support copyright registration. *See Diamond Direct, LLC*, 116 F.Supp.2d at 528; *Vogue Ring Creations, Inc.*, 410 F. Supp. at 612.

¹¹ *Supra* note 9.

¹² *Supra* note 10.

H. NKSPCUDRPSRI



NKSPCUDRPSRI is a jewelry design that includes only a few elements, all of which are common geometric shapes or minor variations thereof. *See* 37 C.F.R. § 202.1(a). The Work’s deposit copy includes photos of both the front and the back of the jewelry. The front consists of circles, elongated ellipses, a cone, and a rectangle, which are not copyrightable elements. COMPENDIUM (THIRD) §§ 906.1, 906.2; *see also DBC of NY, Inc.*, 768 F. Supp. at 416. The back of the Work appears to mirror the jewelry design itself, outlining each diamond or gemstone, and what appears to be a clasp-like feature that runs diagonally from the top corner of the pendant to the bottom corner. The clasp-like feature that is part of the pendant and the settings surrounding each diamond or gemstone are not protectable by copyright. *See* COMPENDIUM (THIRD) § 908.3 (noting that generally “[p]urely functional elements” are not copyrightable or considered when analyzing copyrightability). While Harry Winston discusses the “brilliant white diamonds” and “vivid blue sapphire,” NKSPCUDRPSRI Second Request at 5–6, color alone is not protectable. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.3. Thus, the individual elements that make up the Work are not copyrightable.

The jewelry design as a whole also does not contain a sufficiently original selection or arrangement to be protectable by copyright. As previously discussed, the Office will not register jewelry “made up of only commonplace design elements arranged in a common or obvious manner.” COMPENDIUM (THIRD) § 908.2; *see also id.* § 313.4(J); *DBC of New York, Inc.*, 768 F. Supp. at 416. Here, the unprotectable elements of the Work are arranged in a standard manner that is commonplace in the jewelry industry—surrounding a larger gemstone with smaller diamonds or other gemstones.¹³ *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 908.3. The Work consists of two symmetrical necklace strands, each with round diamonds that are

¹³ *See, e.g., 70.14CT CEYLON SAPPHIRE & 44.50CT DIAMOND NECKLACE & EARRINGS SUITE*, NALLY JEWELS, <https://nallyjewels.com/products/510-000-703> (last visited July 31, 2023); *White Gold, 6.65ct Ceylon Sapphire and Diamond Necklace*, SOTHEBY’S, https://www.sothebys.com/en/buy/_white-gold-1546ct-ceylon-sapphire-and-diamond-necklace-5cc4 (last visited July 31, 2023).

uniform in shape and color and shrink in size towards the bottom of each strand. *See* COMPENDIUM (THIRD) § 908.3. These symmetrical strands come together to display a sapphire pendant that is surrounded by smaller marquise and round diamonds. The round diamonds are uniform in shape and color and are symmetrically arranged around the sapphire. *See id.* The marquise diamonds surrounding the round diamonds also appear arranged in a symmetrical pattern. *See id.* While Harry Winston asserts that the Work is a “complex and thoughtful arrangement,” well-known jewelry designs that consist of a combination of common elements are not “exceptional, original, or unique” enough to render a piece of jewelry sufficiently creative. *DBC of NY, Inc.*, 768 F. Supp. at 416; *see also* COMPENDIUM (THIRD) § 908.3. The arrangement of marquise diamonds on the top clasp and the pear-shaped diamond where the necklace strands meet, taken together with the Work’s other elements, also do not imbue the Work with a sufficient amount of creativity to render the Work copyrightable. The Work, unlike NKSPCABFDBU that is subject to copyright protection, does not contain several creative design choices, such as necklace chains with two alternating patterns that change halfway up the chain or asymmetrical arrangements. Additionally, for the reasons discussed in connection with the analysis of Bracelet #1, Harry Winston’s arguments regarding the Work’s meaning or significance are unpersuasive. *See* COMPENDIUM (THIRD) § 310.3; 310.5; NKSPCUDRPSRI Second Request at 5–6. Thus, the Work’s arrangement is insufficient to support copyright registration. *See Diamond Direct, LLC*, 116 F.Supp.2d at 528.

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusals to register the copyright claims in Earring, EASPFSCCLGF, and NKSPCABFDBU. The Board now refers these works to the Registration Policy and Practice division for registration of these three Works, provided that all other application requirements are satisfied. The Board affirms the refusals to register the copyright claims in the other Works: Bracelet #1, Bracelet #2, Bracelet #3, Necklace, and NKSPCUDRPSRI. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action with respect to the affirmed refusal decisions in this matter.



U.S. Copyright Office Review Board

Suzanne V. Wilson, General Counsel and
Associate Register of Copyrights

Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs

Jordana Rubel, Assistant General Counsel