



Copyright Review Board

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

June 4, 2021

Michael D. Pegues
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**Re: Second Request for Reconsideration for Refusal to Register
Sync LED Collection and Townhouse LED Outdoor (Correspondence IDs:
1-48VNF83, 1-48VNF3Z; SR #s 1-8611628247, 1-8611628092)**

Dear Mr. Pegues:

The Review Board of the United States Copyright Office (“Board”) has considered Maxim Lighting International, Inc.’s (“Maxim’s”) second requests for reconsideration of the Registration Program’s refusal to register sculptural claims in the works titled “Sync LED Collection” and “Townhouse LED Outdoor” (“Works”). 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 Works are both lighting fixtures. Sync LED Collection is a lighting fixture consisting of four glass rods accented with bubbles of random sizes and encased within clear glass cylinders, mounted against a rectangular metal base. Townhouse LED Outdoor is a lighting fixture, more specifically a wall sconce, consisting of (1) a lighting element encased within a rectangular mesh shade, which is itself inside of a rectangular metal housing unit, (2) a black mounting base attached to the side of the housing unit, and (3) a solid, black square top.

The Works are as follows:



II. ADMINISTRATIVE RECORD

On March 27, 2020, Maxim filed two applications to register copyright claims in the Works. In a single April 8, 2020, letter, a Copyright Office registration specialist refused to register the two claims, finding that the Works were “useful articles that do not contain any copyrightable authorship needed to sustain a claim to copyright.” Initial Letter Refusing Registration from U.S. Copyright Office, to Michael Pegues (Apr. 8, 2020).

In two separate letters received by the Office on July 1, 2020, Maxim requested that the Office reconsider its initial refusal to register the Works. Letters from Michael D. Pegues, to U.S. Copyright Office (undated) (including requests for reconsideration of both Works) (“First Requests”). After reviewing the Works in light of the points raised in the First Requests, the Office re-evaluated the claims and again concluded that the Works are “useful article[s] that do[] not contain any separable, copyrightable features.” Refusal of First Request for Reconsideration of Sync LED Collection from U.S. Copyright Office, to Michael Pegues, at 1 (Sept. 10, 2020); Refusal of First Request for Reconsideration of Townhouse LED Outdoor from U.S. Copyright Office, to Michael Pegues, at 1 (Sept. 10, 2020).

In two separate letters received by the Office on October 1, 2020, Maxim requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusals to register the Works. Letter from Michael D. Pegues, to U.S. Copyright Office (undated) (“Sync LED Collection Second Request”); Letter from Michael D. Pegues, to U.S. Copyright Office (undated) (“Townhouse LED Outdoor Second Request”). In the Second Request for Reconsideration of Sync LED Collection, Maxim “claim[ed] copyright protection over the bubbled glass rod,” and asserted that the Work’s combination of the bubbled glass rods encased within glass cylinders and set against a reflective metal chrome base “creates a unique and decorative piece that has the ‘capacity to exist apart from the utilitarian aspects’” of the light fixture. Sync LED Collection Second Request at 2 (quoting *Star Athletica, LLC v. Varsity Brands*, 137 S. Ct. 1002, 1010 (2017)). Regarding originality, Maxim stated that “[w]hile

bubbles, generally speaking, may be of a common and familiar spherical shapes, the selection of their size, shape, arrangement, and density within the glass rods are not lacking of creative forethought.” *Id.* at 3.

In the Second Request for Reconsideration of Townhouse LED Outdoor, Maxim “claim[ed] copyright protection over the separable feature of the metallic beehive styled-mesh structure,” and asserted that the Work’s combination of “the mesh structure set within an outer open metal frame creates a unique and decorative piece that has the ‘capacity to exist apart from the utilitarian aspects’” of the light fixture. Townhouse LED Outdoor Second Request at 2–3 (quoting *Star Athletica*, 137 S. Ct. at 1010). Regarding originality, Maxim stated that the mesh box “reflects creative expression and choice,” as “the arrangement of the circular cutouts are neither arbitrary nor devoid of creative expressive choice.” *Id.* at 3–4. Maxim contended that the Work portrays a beehive “in an esthetically pleasing but using a non-predictable pattern set in polished metal having a depth and reflective effect that in combination creates the illusion of extending downwardly from the top and down to the opposite side of the frame.” *Id.* at 4. Further, Maxim noted that the “specific dimensions of the Work (as shown in the Description of the Work), the decision as to the size of the circular cuts, the number to include on each metal side, and how they are distributed or spaced apart from the next exhibit the requisite creativity for copyright protection.” *Id.*

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*, 137 S. Ct. at 1007 (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. 2021) (“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.”); *see also 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. *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.” 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.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See id.* at § 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 are useful articles that do not contain the requisite separable authorship necessary to sustain a claim to copyright.

As Maxim acknowledges, the Works—lighting fixtures—are useful articles. *See* First Requests at 3. The Copyright Act does not protect useful articles, but does protect a feature incorporated into the design of a useful article if that 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.” *Star Athletica*, 137 S. Ct. at 1004–05; *see* 17 U.S.C. § 101 (defining “useful article”).

1) Sync LED Collection

Examining the Sync LED Collection, the Board concludes that the four glass rods accented with bubbles, as well as the clear glass cylinders that house those rods, may be separated from the utilitarian aspects of the lighting fixture. *See Star Athletica*, 137 S. Ct. at

1007; Refusal of First Request for Reconsideration of Sync LED Collection at 3 (concluding glass rods were separable); Sync LED Collection Second Request at 2 (noting rods were separable). Both the rods and the cylinders have sculptural qualities that exist independently from the utilitarian functions of the lighting fixture. Thus, the Office focuses its analysis on whether the separable designs contain sufficient creativity for copyright protection.

The Board finds that these separable design elements (relatively generic cylinders and bubbles), however, are common geometric shapes or minor variations thereof, and are not copyrightable. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 906.1, 924.4. While Maxim asserts that “the selection of the[] [bubbles]’ size, shape, arrangement, and density within the glass rods are not lacking of creative forethought,” Sync LED Collection Second Request at 2, encasing bubbles within glass rods is a stock feature of lighting fixtures.¹ Additionally, placing bubbled glass within clear cylinders is not original in the lighting industry.² Incorporation of this common motif, by itself, is insufficiently original to demonstrate copyrightable material. *See, e.g., Zaleski v. Cicero Builder Dev., Inc.*, 754 F.3d 95, 106 (2d Cir. 2014) (denying copyright protection for elements that are “features of all colonial homes, or houses generally”); *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 606 (1st Cir. 1988) (noting that “as idea and expression merge, fewer and fewer aspects of a work embody a unique and creative expression of the idea; a copyright holder must then prove substantial similarity to those few aspects of the work that are expression not required by the idea”).

Moreover, taken together, the placement of the glass rod with bubbles into a symmetrical glass cylinder does not demonstrate more than *de minimis* creativity. *See* COMPENDIUM (THIRD) § 905 (noting that “[m]erely bringing together only a few standard forms or shapes with minor linear or spatial variations” does not satisfy the originality requirement); *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”). Because the Work’s separable elements consist of common geometric shapes, or minor variations thereof, arranged in an obvious configuration that is especially predictable within the lighting fixture industry, the Board concludes that the Work as a whole lacks sufficient creative expression. *See Feist*, 499 U.S. at 363.

Finally, Maxim asserts that the “creative choices in the selection, positioning, and arrangement of the bubbles embedded in the glass rods against the reflective base which not only

¹ *See, e.g., Polished Bubble Glass Light Sconce Fixture*, HAMILTON HILLS, <https://www.hamiltonhills.com/products/polished-bubble-glass-light-sconce-fixture> (last visited June 4, 2021); *Ratio 27 in. Chrome LED Vanity Light Bar*, HOME DEPOT, <https://www.homedepot.com/p/ARTIKA-Ratio-27-in-Chrome-LED-Vanity-Light-Bar-VAN4RA-RN/310187623?MERCH=REC- -pipinstock- -313342633- -310187623- -N> (last visited June 4, 2021); *Aurora 2-Light Chrome LED Integrated Vanity Light with Acrylic Bubble Glass*, HOME DEPOT, <https://www.homedepot.com/p/Globe-Electric-Aurora-2-Light-Chrome-LED-Integrated-Vanity-Light-with-Acrylic-Bubble-Glass-51521/312357458> (last visited June 4, 2021); *4 – Light Kitchen Island Cylinder LED Pendant*, WAYFAIR, <https://www.wayfair.com/lighting/pdp/orren-ellis-4-light-kitchen-island-cylinder-led-pendant-orel6933.html?piid=> (last visited June 4, 2021); *Polished Bubble Glass Hanging Pendant Light Fixture*, HAMILTON HILLS, <https://www.hamiltonhills.com/products/polished-bubble-glass-hanging-pendant-light-fixture> (last visited June 4, 2021).

² *See, e.g., id.*

brings the bubbles to life but also creates a magical and ethereal effect as though the light – whether from natural light or with added illumination – is encased in water.” Sync LED Collection Second Request at 4–5. The Board, however, must focus on the actual appearance of the fixed Work and does not consider any meaning or significance that the Work may evoke. COMPENDIUM (THIRD) § 310.3 (“[T]he Office will focus only on the actual appearance or sound of the work that has been submitted for registration, but will not consider any meaning or significance that the work may evoke.”).

2) *Townhouse LED Outdoor*

The Board concludes that the metallic mesh structure, as well as the rectangular metal housing unit, may be separated from the utilitarian aspects of the lighting fixture. *See Star Athletica*, 137 S. Ct. at 1007; Refusal of First Request for Reconsideration of Townhouse LED Outdoor at 3 (concluding that the mesh box was separable); Townhouse LED Outdoor Second Request at 2 (same). The black mounting base attached to the housing unit and the solid, black square top, however, do not exist independently of the utilitarian function of the lighting fixture, which is to hold the lightbulb and to attach the lighting fixture to the wall. Thus, the Office focuses its analysis on whether the separable design contains sufficient creativity for copyright protection.

Each of the Work’s separable design elements—the rectangular mesh shade that contains circles arranged evenly into rows, and the rectangular metal housing unit—consists of common geometric shapes (*i.e.*, circles and rectangles) that are not copyrightable. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 906.1, 924.4. Nor is the Work as a whole protectable. While Maxim contends that “the decision as to the size of the circular cuts, the number to include on each metal side, and how they are distributed or spaced apart from the next exhibit[s] the requisite creativity for copyright protection,” Townhouse LED Outdoor Second Request at 4, the Board concludes that the Work’s combination and arrangement of these elements are insufficient to render the work sufficiently creative and original. *See Feist*, 499 U.S. at 363–64 (“As a statutory matter, 17 U.S.C. § 101 does not afford protection from copying to a collection of facts that are selected, coordinated, and arranged in a way that utterly lacks originality.”). Here, the combination of a row of circles is placed into a basic rectangular housing unit; even assuming charitably that this combination is not influenced by the functional economy of this design, this arrangement falls short of the mark.³ *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”). The arrangement is both basic and obvious, bringing together “only a few standard forms or shapes with minor linear or spatial variations.” COMPENDIUM (THIRD) § 905; *see id.* § 906.1 (providing example of a solid color rectangle with evenly spaced symmetrical circles as a combination of common shapes that lacks sufficient creative

³ *See e.g.*, *METEOR INTEGRATED LED OUTDOOR WALL LIGHT*, ARTIKA, <https://www.artika.com/en/products/wall-lights/outdoor-wall-lights/meteor-integrated-led-outdoor-wall-light> (last visited June 4, 2021); *Feiss - OL12001 - Bluffton - 7.25 One Light Outdoor Wall Sconce*, FEISS LIGHTING EXPERTS, https://www.murrayfeisslight.com/lighting/4-9-676-0-423365/Murray-Feiss-Lighting_Bluffton---7.25-One-Light-Outdoor-Wall-Sconce-OL12001.htm (last visited June 4, 2021).

expression). The Work therefore does not “possess more than a *de minimis* quantum of creativity.” *Feist*, 499 U.S. at 363.

Finally, Maxim asserts that the Work’s “overall visual creative design embraces an industrial interpretation or depiction of a beehive dangling from a perch. In nature, a beehive has the hexagonal pattern of the honeycomb. The Work, on the other hand, portrays the beehive in an esthetically pleasing but using a non-predictable pattern” Townhouse LED Outdoor Second Request at 4. As noted previously, however, the Board focuses on the actual appearance of the fixed Work and “will not consider the author’s inspiration for the work, creative intent, or intended meaning.” COMPENDIUM (THIRD) § 310.5; *see also id.* § 310.1 (“The fact that a work may be novel, distinctive, innovative, or even unique is irrelevant to this analysis.”). In any event, to the extent the circular rows do resemble a honeycomb shape, this arrangement, too, remains in the public domain and is commonplace for lighting fixtures.⁴

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

Regan A. Smith, General Counsel and

Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of

Copyrights and Director, Public Information and
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Kimberley Isbell, Deputy Director of Policy and
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⁴ *See, e.g., Capiz Honeycomb Chandelier*, SERENA & LILY, https://www.serenaandlily.com/variationproduct?pid=m11195&dwvar_m11195_size=22.5%22D&pdp=true&source=detail&utm_source=adlucent&utm_medium=cpc&utm_campaign=adlucent&gclid=EA1aIQobChMI2N_G17jI8AlVw9rIChlMOA5IEAQYASABEgJofD_BwE#fo_c=745&fo_k=aa80fb1b8328f016fb43a480ca97d6c7&fo_s=adlucent;%20https://www.lampsplus.com/products/rondo-16-inch-wide-bronze-and-brass-laser-cut-drum-ceiling-light_88d44.html (last visited June 4, 2021); *Honeycomb*, KUPO, https://stage.com.tw/index.php?option=com_content&view=article&id=1037&catid=195&Itemid=101 (last visited June 4, 2021); Marissa Brassfield, *Honeycomb-Inspired Lighting: The Beehouse Lamp*, TRENDHUNTER (Oct. 1, 2008), <https://www.trendhunter.com/trends/beehouse-lamp>.