



**United States Copyright Office**

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October 6, 2020

John C. Cain, Esq.  
Fleckman & McGlynn, PLLC  
8945 Long Point Road, Suite 120  
Houston, TX 77055

**Re: Second Request for Reconsideration for Refusal to Register Laurel Leaf Bracelet (Correspondence ID: 1-3GFXFNF, SR # 1-6843666234)**

Dear Mr. Cain:

The Review Board of the United States Copyright Office (“Board”) has considered SNC Ventures, LLC’s (“SNC’s”) second request for reconsideration of the Registration Program’s refusal to register an artwork claim in the work titled “Laurel Leaf Bracelet” (“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 single band gold bracelet with a spiral design that twists around the center-back, an inverted laurel leaf closure, and a circular charm engraved with the SNC’s brand name, “Kinsley Armelle.” The Work is as follows:



## II. ADMINISTRATIVE RECORD

On August 8, 2018, SNC filed an application to register a copyright claim in the Work. In a March 20, 2019 letter, a Copyright Office registration specialist refused to register the claim, finding that it “does not contain any design element that is both sufficiently original and creative.” Initial Letter Refusing Registration from U.S. Copyright Office to John Cain, Fleckman & McGlynn (Mar. 20, 2019).

In a letter dated June 20, 2019, SNC requested that the Office reconsider its initial refusal to register the Work. Letter from John C. Cain, Fleckman & McGlynn PLLC, to U.S. Copyright Office (June 20, 2019) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work “does not contain a sufficient amount of original and creative authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office, to John C. Cain, Fleckman & McGlynn PLLC (October 29, 2019).

In a letter dated January 28, 2020, SNC 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 John C. Cain, Fleckman & McGlynn PLLC, to U.S. Copyright Office (Jan. 28, 2020) (“Second Request”). In that letter, SNC claimed that the Work does not lack sufficient creativity and encouraged the Office to give more weight to cases cited by SNC in which jewelry designs were found to be copyrightable based on a sufficiently creative combination and arrangement of otherwise uncopyrightable elements. *Id.* at 1; 3-4.

## III. DISCUSSION

### A. *The Legal Framework*

#### 1) *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 and familiar symbols, 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 OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“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.

### ***B. Analysis of the Work***

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

SNC and the Board agree that none of the Work’s constituent elements—laurel leaves, a circle pendant, and gold rings—alone are copyrightable. *See* Second Request at 5. The question, therefore, is whether the Work possesses a sufficient amount of creativity in the selection, coordination, and arrangement of the elements as a whole.

After carefully reviewing the Work overall, the Board finds that it is not sufficiently creative to support registration. The Work merely consists of a standard cuff style bracelet design with a single symmetrical laurel leaf at the opening, a typical symmetrical spiral ring on the back of the bracelet, and a simple circular charm. The combination of these elements in this jewelry design is commonplace and expected in jewelry designs,<sup>1</sup> and, therefore, does not rise to the level of sufficient creativity for copyright protection. At best, the Work here amounts to a minor variation of a standard bracelet, but such a trivial variation does not inject a sufficient amount of creativity into the uncopyrightable design, nor does not differ from unprotectable *scenes a faire*.

SNC urges the Board to “[give more weight] to cases applying the ‘combination of elements’ rule specifically to jewelry designs.” Request at 1; 3-4 (citing *Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 1010 (2d Cir. 2001); *Wolstenholme v. Hirst*, 271 F. Supp. 3d 625 (S.D.N.Y. 2017); *Van Cleef & Arpels Logistics, S.A. v. Landau Jewelry*, 547 F. Supp. 2d 356 (S.D.N.Y. 2008); and *Cosmos Jewelry Ltd. v. Po Sun Hon, Co.*, No. CV 03-753 DT, 2004 WL 1515943 (C.F. Cal. Apr. 5, 2004)). The Board acknowledges that there are many protectable jewelry designs that include combinations of common shapes and other public domain elements. But not all jewelry designs, including the Work, can surmount the low threshold of creativity established in *Feist* to warrant copyright protection. *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 (“The U.S. Copyright Office may register jewelry designs if they are sufficiently creative or expressive. The Office will not register pieces that, as a whole, do not satisfy this requirement, such as mere variations on a common or standardized design or familiar symbol, designs made up of only

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<sup>1</sup> *See, e.g., SENFAI Simple Olive Leaf Bracelet Bangles*, AMAZON, <https://www.amazon.com/SENFAL-Simple-Olive-Bracelet-Bangles/dp/B0838YQYJR> (Last visited Oct. 6, 2020); *Double Leaf Cuff Bracelet with Gold Toned*, UNCLAIMED BAGGAGE, <https://www.unclaimedbaggage.com/products/double-leaf-cuff-bracelet-with-gold-coloring> (Last visited Oct. 6, 2020); *Designer Laurel Leaf Bracelet*, PAPERDOLL, <https://paperdollwholesale.com/designer-laurel-leaf-bracelet-p-543487.html?Tori=83283ac62bc7fd5b22adb9365c8e9e26> (Last visited Oct. 6, 2020).

commonplace design elements arranged in a common or obvious manner, or any of the mechanical or utilitarian aspects of the jewelry.”).

Furthermore, to the extent that SNC encourages the Board to compare the Work to the registered works at issue in the above cited cases, the Board declines. The Office 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 the court 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”). 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.



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**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  
Education

Kimberley Isbell, Deputy Director of Policy and  
International Affairs