United States Copyright Office
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Mark A. Watkins, Esq.
Vorys, Sater, Seymour and Pease LLP
106 South Main Street
Suite 1100
Akron, OH 44308
mawatkins@vorys.com

Re: Second Request for Reconsideration for Refusal to Register GNJ Group LLC Designs of 2016 (Bracelets) (SR 1-4271348260) and GNJ Group LLC Designs of 2016 (Rings) (SR 1-4271260541); Correspondence ID: 1-2XI661T

Dear Mr. Watkins:

The Review Board of the United States Copyright Office ("Board") has considered GNJ Group LLC's ("GNJ Group's") second request for reconsideration of the Registration Program's refusal to register a jewelry design claim in the works titled "GNJ Group LLC Designs of 2016 (Bracelets)" and "GNJ Group LLC Designs of 2016 (Rings)" ("Works"). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program's denial of registration.

I. DESCRIPTION OF THE WORKS

The Works are jewelry designs submitted for registration under the unpublished collection accommodation. Both are variations of a vine and thorn design. "GNJ Group LLC Designs (Bracelets)" is a collection of bracelets constructed from intertwined metal vines with thorns. The basic design is a small link of three metal vines that are braided together. Each link has thorns protruding from the outside ropes. The thorns are small, pointed curved lines. Some of the links are slightly longer than others depending on the bracelet. The links are pieced together to form bracelets. The bracelets vary by the color and type of metal, metal finishes and texture, use of colored ribbons woven in the braided metal, use of gemstones, length, and use of a decorative clasp. "GNJ Group LLC Designs (Rings)" is a collection of rings constructed from in the same basic braided vine and thorn design as the bracelets, but the individual links are smaller than the sections in the bracelets. The rings are in different metals and surface textures.

Reproductions of the Works are included as Appendix A.

II. ADMINISTRATIVE RECORD

On December 20, 2016, GNJ Group filed applications to register copyright claims in the Works. In a July 27, 2017, letter, a Copyright Office registration specialist refused to register the claims, finding that they "lack the authorship necessary to support copyright claims." Letter from Kristen Sosinski, Registration Specialist, to Mark A. Watkins (July 27, 2017).

In a letter dated October 26, 2017, GNJ Group requested that the Office reconsider its initial refusal to register the Works. Letter from Mark A. Watkins to U.S. Copyright Office (Oct. 26, 2017) ("First Request"). After reviewing the Works in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that none of the Works "contain[] a sufficient amount of original and creative authorship to support a copyright registration." Letter from Stephanie Mason, Attorney-Advisor, to Mark A. Watkins, at 1 (March 13, 2018) ("Second Refusal"). The Office noted that standard designs, figures, and geometric shapes, such as those found in the Works, lack the requisite amount of creativity to sustain a copyright claim. *Id*. at 2.

In a letter dated June 8, 2018, GNJ Group requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Works. Letter from Mark A. Watkins, to U.S. Copyright Office (June 8, 2018) ("Second Request"). In that letter, GNJ Group argued that the Works far exceed the minimum threshold for copyright eligibility, embodying "creative uses and combinations of surface textures, patterns, jewels/gemstones, and/or colors in the presentation of varying styles." *Id*. at 2. Further, they argue that the choice of materials, designs, surface finishes, and patterns "present a number of unique and creative designs" that are not "trivial variations of standard designs, figures, and geometric shapes, or mere combinations of non-protectable elements." *Id*. As such, GNJ Group asserts that the Works are original, creative, and ornamental designs eligible for copyright protection. *Id*. at 3.

III. DISCUSSION

A. The Legal Framework - 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 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).

Finally, 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 Works

After carefully examining the Works and applying the legal standards discussed above, the Board finds that the Works do not contain the requisite authorship necessary to sustain claims to copyright.

When evaluating a jewelry design's copyrightability, the Board considers the design as a whole and may take into account the shapes of various elements, decoration of the jewelry's surface (*e.g.*, engravings), as well as the selection and arrangement of the various elements. *See* COMPENDIUM (THIRD) § 908.3. However, "[j]ewelry designs that contain only a trivial amount of authorship" are *de minimis* and uncopyrightable. *Id.* § 313.4(B). Here, the Works are bracelets and rings that are all based on the common design of three braided metal vines with evenly spaced metal thorns resembling thorny branches, using a standard braiding technique. In all cases, the braided strands of metal result in a commonplace, simple, and expected arrangement of familiar shapes. *See* 37 C.F.R. § 202.1(a) ("works not subject to copyright . . . [include] familiar symbols or designs."); *see also* COMPENDIUM (THIRD) § 908.2 (noting that the Office will not register jewelry "made up of only commonplace design elements arranged in a common or obvious manner").

Although there are a limited number of ways that vines and thorns can be expressed in jewelry, it is conceivable that some works of jewelry based on intertwining vines with thorns may exist with enough originality to warrant copyright protection. The Works involved here, however, do not rise to this level. The general shape of a vine as well as triangular thorns are elements found in nature, and copyright protection cannot be afforded to generic physical depictions of such naturally-occurring features that follow from the idea of such features. *See Satava*, 323 F.3d at 811 (holding an artist's sculpture of a naturally-occurring organism included several "unprotectable ideas" and public domain elements that were "common property of all" and could not be seized for exclusive use by copyright law). It is difficult to imagine a more basic depiction of a vine with thorns than the Works' design elements—three strands, perfectly braided, with evenly spaced protruding thorns. In fact, in 2017 the Board upheld the Office's

rejection of several bracelets and rings with a design very similar to the Works.[1] There, the Board found, as it does with these Works, that granting copyright registrations in the Works "would effectively accord protection to the idea" of a vine and thorn jewelry. *Id.*; COMPENDIUM (THIRD) § 313.3(B); 17 U.S.C. 102(b) ("In no case does copyright protection for an original work of authorship extend to any ideas."); *see also Herbert Rosenthal Jewelry Corp. v. Kalpakian*, 446 F.2d 738, 742 (9th Cir. 1971) (holding that a "jeweled bee pin" was an idea that defendants were free to copy). As such, the Board finds that the Works' basic design is uncopyrightable.

Similarly, the Board is unconvinced by GNJ Group's argument that although vines and thorns are elements found in a nature, their depiction in the Works is "a unique artistic interpretation eligible for copyright protection." Second Request at 3. The Office previously determined that the thorns on the Works are simple and familiar because "they are depicted as they commonly appear in nature." Second Refusal at 2. While the Board does not find that *any* interpretation of an item existing in nature is uncopyrightable, the interpretation found in *this* case is uncopyrightable. Courts have found that copyright protection does not extend to expression that "inevitably follow[s] from the idea of natural phenomena," and that "there must be some 'distinctive' design elements not derived" from literal interpretation of elements found in nature. *Cosmos Jewelry Ltd. v. Po Sun Hon Co.*, 470 F. Supp. 2d 1072, 1082 (C.D. Cal. 2007) (reviewing jewelry based on plumeria flowers and finding that the elements of five slightly overlapping petals, slightly longer than they are wide, and with slightly pointed tips were uncopyrightable features that "occur frequently in natural plumeria flowers," but finding that the minute characteristics of the blossom petals and the variation in blossom arrangement in multi-blossom jewelry did merit copyright protection). As discussed above, the depiction of three braided vines with protruding thorns is extremely basic and commonly found in nature. The Works at issue do not exhibit "'distinctive' design elements not derived" from features inherent in plants. *Id.*

Further, the slight variations among the Works do not render the Works sufficiently original to warrant copyright protection. The bracelets and rings that comprise the Works' collections are all derived from the vine and thorn design described above, with slight variations between the different rings and bracelets. GNJ Group argues that its "artistry and creativity" regarding the choice of materials, combination of materials and colors, placement of gemstones, and selection of material finishes display more than the "modicum" of creativity required by *Feist*. Second Request at 2. These design variations do not render the Works copyrightable. First, the use of different metals does not transform the basic design into a copyrightable work. The Board will not consider the fact that a jewelry design was constructed with precious metals

[1] *See* Letter from Regan A. Smith, Copyright Office Review Board, to Roberta Jacobs-Meadway (Jan. 18, 2017), https://www.copyright.gov/rulings-filings/review-board/docs/plain-thorn-bracelet.pdf.

or gemstones. *See* COMPENDIUM (THIRD) § 310.9 (materials used to create a work have no bearing on the originality analysis). Second, merely adding or changing one or relatively few colors in a work does not necessarily make that work copyrightable. *See* 37 C.F.R. § 202.1(a) (mere coloration or variations in coloring are not eligible for copyright protection); *see also Spilman v. Mosby-Yearbook, Inc.*, 115 F. Supp. 2d 148, 154 (D. Mass. 2000) (finding that merely changing the color of text "cannot support a copyright even though it may enhance the aesthetic appeal or commercial value of a work"); COMPENDIUM (THIRD) § 906.3. Third, the simple addition of gemstones on the vines, the use of different surface finishes, and the use of an interwoven ribbon does not alter the Board's analysis. All three present *de minimis* alterations to the uncopyrightable basic design: the gemstones are placed in a predictable and evenly spaced line along the vine; the surface finishes add mere texture changes without altering the fundamental design; and the incorporation of ribbon merely adds another strand to the standard braid design. GNJ Group also notes that the use of an "aesthetically pleasing clasp" contributes to the creativity of the Works. Second Request at 2. When examining jewelry, purely functional elements, such as a clasp or fastener, are generally not copyrightable and are not considered in analyzing copyrighability. *See* COMPENDIUM (THIRD) § 908.3; *see also Jane Envy, LLC v. Infinite Classics Inc.*, No. SA:14-CV-065-DAE, 2016 U.S. Dist. LEXIS 23621, at *24 (W.D. Tex. Feb. 26, 2016) (noting that the gold links attached to an earring hook "themselves are not copyrightable").

Accordingly, the Board upholds, in light of the appropriate legal standards, the initial decision to refuse registration of the Works.

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
Karyn A. Temple, Register of Copyrights and Director, U.S. Copyright Office
Regan A. Smith, General Counsel and Associate Register of Copyrights
Catherine Zaller Rowland, Associate Register of Copyrights and Director, Public Information and Education