



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

April 26, 2024

Woo Sin Sean Park, Esq.
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Re: Second Request for Reconsideration of Refusal to Register DOTS Double Stud Bracelet (SR # 1-10507912982; Correspondence ID: 1-55FE54Q)

Dear Mr. Park:

The Review Board of the United States Copyright Office (“Board”) has considered LEGO A/S’s (“LEGO”) second request for reconsideration of the Registration Program’s refusal to register the sculptural claim in the work titled “DOTS Double Stud Bracelet” (“Work”). After reviewing the application, 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 WORK

The Work is a magenta, rectangular bracelet with rounded ends. One end of the Work contains an indented star and semi-circle cut-out, followed by two symmetrical rows of evenly spaced studs. The other end of the Work contains a single row of five holes. The underside of the Work has one stud near the semi-circular cut-out. The Work is as follows:



LEGO also submitted a second deposit image showing the underside of the Work, as well as how it appears when tiles are attached to the front studs of the bracelet:¹

¹ In correspondence, LEGO clarified that they are only “seeking registration of the creative expression of the bracelet shown in the deposit photograph without any tiles.” E-mail from Woo Sin Sean Park to U.S. Copyright Office (July 14, 2021).



II. ADMINISTRATIVE RECORD

On May 28, 2021, LEGO filed an application to register a copyright claim in the Work. In a July 15, 2021 letter, a Copyright Office registration specialist refused to register the claim, determining that the Work “do[es] not contain any design element that is both sufficiently original and creative.” Initial Letter Refusing Registration from U.S. Copyright Office to Woo Sin Park at 1 (July 15, 2021).

On October 14, 2021, LEGO requested that the Office reconsider its initial refusal to register the Work, arguing that the Work contains elements that are original and creative in their design and placement. Letter from Woo Sin Sean Park to U.S. Copyright Office at 1 (Oct. 14, 2021) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that the Work could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Woo Sin Park (February 28, 2022). The Office explained that “[t]he Work merely brings together a few standard forms and shapes that are not combined in any way that rises to the level of creativity necessary for copyright registration.” *Id.* at 3.

In a letter submitted May 30, 2022, LEGO 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 Woo Sin Sean Park to U.S. Copyright Office (May 30, 2021²) (“Second Request”). It argued that the indented star, semi-circular opening, circular studs and holes are combined and arranged in “a unique, particular manner.” *Id.* at 2. LEGO contends that, unlike other unprotectable basic jewelry designs such as solitaire rings and diamond stud earrings, the Work as a whole is a “creation comprised of symmetrical and asymmetrical patterns” and, thus, contains a sufficient

² The Second Request for Reconsideration appears to be misdated. It was received May 30, 2022 but is dated May 30, 2021.

level of creativity to warrant registration. *Id.* LEGO also argues that the design choices in the Work are sufficiently creative to receive copyright protection because the bracelet “combines multiple types of shapes of different sizes in a unique and creative manner.” *Id.* at 2–3.

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work does not contain the requisite creativity necessary for copyright registration.

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.

Jewelry, such as the design before the Board, are works of artistic craftsmanship.³ U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 925.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (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.

Here, the Work’s individual elements are not protectable because they either are determined by their utilitarian function or they are insufficiently creative. The Work as a whole is likewise not eligible for copyright protection because it consists of a simple arrangement of uncopyrightable shapes.

Design elements that are inseparable from their utilitarian function are not protected by copyright. *See* 17 U.S.C. § 101; *Star Athletica*, 137 S. Ct. at 1007. The holes and studs are

³ The Work is, by its name, a piece of jewelry. Moreover, while LEGO identified the Work in its registration application as a “sculpture,” it later described the Work as a bracelet. *See* First Request at 1; Second Request at 2.

functional features that cannot exist independently of the utilitarian aspects of the work. *See* COMPENDIUM (THIRD) § 908.1 (noting that a copyright registration for a piece of jewelry “would not extend to its functional elements, such as a plain hook or clasp”). The open circles are half of the functional clasping feature; the other half, a raised stud, is visible in the second deposit image supplied for the Work. The parallel rows of circular studs are functional because they allow for decorative tiles to adhere to the Work. *See LEGO A/S v. Best-Lock Construction Toys, Inc.*, 874 F. Supp. 2d 75, 98–99 (2012) (finding that a “the ‘functional’ aspects of [LEGO toys] are those that enable the attachment of one piece to another”). Moreover, the number and pattern of the circular studs are dictated by the functional consideration of providing space for the tiles to be attached along the length of the band.

To the extent that the Work contains elements that can be identified separately from and exist independently of its utilitarian function as a bracelet, those elements are not protectable. The shapes comprising the Work, including the circular studs, the star, and the semi-circular opening are unprotectable geometric shapes and familiar symbols. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 313.4(J), 906.1, 906.2. The Work as a whole is also insufficiently creative to warrant registration because it consists of a few simple shapes, which are mostly aligned in a predictable and symmetrical pattern, on a rectangular band. Centering a star above a symmetrical semi-circular opening at the end of the band likewise does not contain a sufficient amount of creative expression to support copyright registration. *See Feist*, 499 U.S. at 358; *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003).

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

Suzanne V. Wilson, General Counsel and

Associate Register of Copyrights

Maria Strong, Associate Register of Copyrights and

Director of Policy and International Affairs

Mark T. Gray, Assistant General Counsel