



United States Copyright Office

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May 8, 2019

Joseph Petersen, Esq.
Kilpatrick Townsend & Stockton, LLP
1080 Marsh Rd.
Menlo Park, CA 94025

Re: Second Request for Reconsideration for Refusal to Register Yeezy Boost 350 Version 1, Yeezy Boost 350 Version 2; Correspondence ID: 1-390ELT5; SR #s 1-4601414311, 1-4600937107

Dear Mr. Petersen:

The Review Board of the United States Copyright Office (“Board”) has considered adidas AG’s (“adidas”) second request for reconsideration of the Registration Program’s refusal to register 2-D artwork and sculpture claims in the works titled “Yeezy Boost 350 Version 1” and “Yeezy Boost 350 Version 2” (“Works”). Yeezy Boost 350 Version 1’s design consists of irregular black lines of various lengths and shapes on a gray fabric with a black semi-circle in the arch and an orange dotted stripe on an off-white heel loop. Yeezy Boost 350 Version 2’s design includes several grey lines in a wave pattern with a thick orange stripe on the outsole that fades toward the heel of the sneaker. Underneath Yeezy Boost 350 Version 2’s outer cloth layer is an inner orange layer that adds intermittent orange coloring. Reproductions of the Works are attached as Appendix A.

After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Works exhibit copyrightable authorship and thus may be registered.

The Works had initially been denied registration because the Office’s Registration Policy and Practice division concluded the Works were useful articles that did not contain any copyrightable authorship needed to sustain a claim to copyright. *See* Letter from P. Gilaspie, Registration Specialist, to Joseph Petersen, Kilpatrick Townsend & Stockton LLP 1 (Feb. 14, 2018). In denying adidas’ first request for reconsideration, the Office noted that while these Works contained separable designs, those designs did not meet the originality requirement as they consisted of “simple shapes arranged into common, expected patterns in very simple color schemes.” Letter from Stephanie Mason, Attorney-Advisor, to Joseph Petersen, Kilpatrick Townsend & Stockton LLP 2–3 (Oct. 25, 2018).

As an initial matter, copyright does not protect useful articles as such. 17 U.S.C. § 101. Under the Copyright Act, a useful article is an “article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information” and “[a]n article that is normally a part of a useful article is [also] considered a ‘useful article.’” *Id.* Importantly, however, an artistic feature applied on or incorporated into a useful article may be eligible for copyright protection if it: “(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, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017); *see also Mazer v. Stein*, 347 U.S. 201 (1954) (holding ballet-dancer-shaped lamp base to be copyrightable). The Board agrees that the Works can be perceived as two- or three-dimensional works of art separate from the useful article, that is, the sneaker. Thus, the only remaining issue is whether the Works are protectable as original works of authorship if imagined separately from the sneaker.

The Board believes that the Works contain a sufficient amount of original and creative two- and three-dimensional authorship for registration. Our decision to register the Works is based on the low standard for copyrightability articulated in *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). But the Board’s decision relates only to the Works as a whole, and does not extend individually to any of the standard and common elements depicted in the Works such as lines, stripes, or swirl designs. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] . . . familiar symbols or designs”); *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.4(J) (3d ed.) (“COMPENDIUM (THIRD)”). When reviewed as a whole, the Works reflect that the common constituent shapes were “combined in a distinctive manner indicating some ingenuity.” *Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989). Thus, the Board believes that the Works contain a sufficient amount of original and creative authorship.

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For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Works. The Board now refers this matter to the Registration Policy and Practice division for registration of the Works, provided that all other application requirements are satisfied.

No response to this letter is needed.



U.S. Copyright Office Review Board

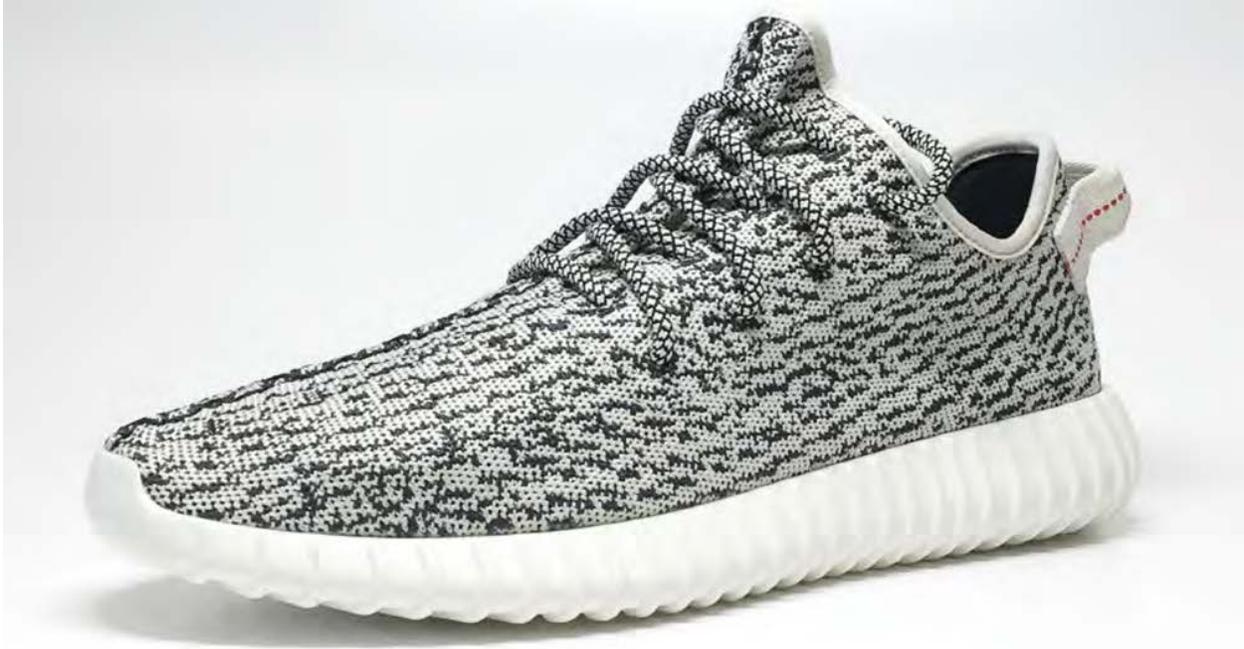
Karyn A. Temple, Register of Copyrights
and Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
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Appendix A

Yeezy Boost 350 Version 1







Yeezy Boost 350 Version 2

