



**United States Copyright Office**

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September 23, 2016

Adam Eckstein  
Martin, Tate, Morrow & Marston, P.C.  
International Place, Tower II  
Suite 1000  
6410 Poplar Avenue  
Memphis, Tennessee 38119-4839

**Re: Second Request for Reconsideration for Refusal to Register Grace Bracelet;  
Correspondence ID: 1V3XJDJ**

Dear Mr. Eckstein:

The Review Board of the United States Copyright Office (“Board”) has examined William Allen Stanford’s (“Mr. Stanford”) second request for reconsideration of the Registration Program’s refusal to register a jewelry design claim in the three-dimensional work titled “Grace 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 denial of registration.

**I. DESCRIPTION OF THE WORK**

The Work is a bracelet whose body consists of three gold metal bands arranged in a circular configuration. A hammered silver cross, comprising approximately one third of the bracelet, is attached to the body of the bracelet by textured gold metal wires that wrap around the cross and body. The longer portion of the cross is parallel to the body of the bracelet. The center of the cross is accented with textured gold metal wires wrapped in an “x” configuration where the two pieces of the cross join. Textured wire is again wrapped around the body of the bracelet to accent the ends of the bracelet where both parts of the clasp meet. The clasp is a hook clasp.

A reproduction of the Work is set forth below:





## II. ADMINISTRATIVE RECORD

On December 6, 2012, Mr. Stanford filed an application to register a copyright claim in the Work. In an April 18, 2014 letter, a Copyright Office registration specialist refused to register the claim, finding that it lacked “sufficient creative authorship to support a copyright claim.” Letter from Ivan Proctor, Registration Specialist, to William Stanford (April 18, 2014).

In a letter dated July 15, 2014, Mr. Stanford requested that the Office reconsider its initial refusal to register the Work. Letter from Adam Eckstein, Martin, Tate, Morrow & Marston, P.C., to U.S. Copyright Office (July 17, 2014) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claim and again concluded that the Work “does not contain a sufficient amount of original and creative artistic or graphic authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, to Adam Eckstein, Martin, Tate, Morrow & Marston, P.C. (Nov. 6, 2014).

In a letter dated January 29, 2015, Mr. Stanford requested that, pursuant to 37 C.F.R. § 202.5(c), the Office again reconsider its refusal to register the Work. Letter from Adam Eckstein, Martin, Tate, Morrow & Marston, P.C., to U.S. Copyright Office (Jan. 29, 2015) (“Second Request”). In that letter, Mr. Stanford claimed that the Work contains original and creative authorship in each of the bracelet’s components as well as in the combination of the components. *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 Ninth Circuit rejected a claim of copyright in a piece of jewelry where the manner in which the parties selected and arranged the work's component parts was more "inevitable" than creative and original. See *Herbert Rosenthal Jewelry Corp. v. Kalpakian*, 446 F.2d 738, 742 (9th Cir. 1971). 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.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. See COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design's visual effect or appearance, 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 Work**

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work fails to satisfy the requirement of creative authorship and thus is not copyrightable.

First, no individual element of the Work is copyrightable. Mr. Stanford identifies six separate components of the Work—the modified cross, the use of gold wire, the folding together of two wires, the texture of the wire wrapping, the affixing of the cross to the frame with wire, and the use of wire wrapping to affix the clasp—each of which are claimed to be of sufficient originality. Second Request at 3. The Board finds, however, that none of these elements are individually copyrightable. The cross, of course, is a familiar symbol, the mere variation of which cannot be copyrighted. See C.F.R. § 201.1. The other elements are similarly unprotectable because the choice of a particular material or texture by itself does not qualify as a creative expression that can be protected by copyright. It is not the variety of choices available to the author that must be evaluated, but the actual work. See COMPENDIUM (THIRD) § 310.8. Furthermore, although Mr. Stanford "roll[ed] the wiring through a mill in a proprietary method" to create its texture, Second Request at 2, the Board will not consider the amount of time, effort, or expense required to create the work. See *id.* § 310.7.



The Board recognizes that although the individual components of a given work may not be copyrightable, these components may be protectable if selected or combined “in a distinctive manner indicating some ingenuity.” *Atari Games Corp.*, 888 F.2d at 883. Here, though, the Board finds that the selection, combination, and arrangement of the Work’s basic jewelry elements—metal bands, a cross, and metal wires—is not sufficient to render the Work original. These few and unprotectable elements are combined in an entirely standard and commonplace manner. See COMPENDIUM (THIRD) § 908.3. Overall, the Board finds that the level of creative authorship involved in this configuration of elements is, at best, *de minimis*, and too trivial to enable copyright registration. See COMPENDIUM (THIRD) § 313.4(B).

Regarding Mr. Stanford’s argument that the Office has registered works to others that Mr. Stanford contends are similar to the Work, the Office has a policy of not comparing works that have been previously registered or refused registration. *Id.* § 602.4(C) (“When examining a claim to copyright, the U.S. Copyright Office generally does not compare deposit[s] to determine whether the work for which registration is sought is substantially similar to another work.”); *see also, Homer Laughlin China Co. v. Oman*, No. 90-3160, 1991 WL 154540, at \*2 (D.D.C. July 30, 1991) (court not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable.”); *accord, Coach, Inc. v. Peters*, 386 F. Supp.2d 495, 499 (S.D.N.Y. 2005) (indicating the Office “does not compare works that have gone through the registration process”).

#### 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.

BY:



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Chris Weston  
Copyright Office Review Board