



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

May 12, 2023

Bradley M. Stohry, Esq.
Reichel Stohry Dean LLP
212 West 10th Street, Suite A-285
Indianapolis, IN 46202

Re: Second Requests for Reconsideration for Refusal to Register Charlotte and Croissant (SR # 1-9469656011, 1-9469656061; Correspondence ID: 1-4RHHIXZ, 1-4RHHIO7)

Dear Mr. Stohry:

The Review Board of the United States Copyright Office (“Board”) has considered Mejuri Inc.’s (“Mejuri”) second requests for reconsideration of the Registration Program’s refusal to register jewelry design claims in the works titled “Charlotte” and “Croissant” (collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s denial of registration for the Works.

I. DESCRIPTION OF THE WORKS

The Works are two claims for jewelry design:

- “Charlotte” is a ring design consisting of a gold band with incised vertical lines that create the appearance of identically sized rounded blocks arranged continuously around the band.
- “Croissant” is a ring design consisting of a gold band with a domed segment that is incised with curved lines to give the appearance of tapered shapes nested by size.

As depicted in the deposits submitted with their respective registration application, the Works are as follows:



Charlotte
SR # 1-9469656011



Croissant
SR # 1-9469656061

II. ADMINISTRATIVE RECORD

On October 9, 2020, Mejuri filed separate applications to register copyright claims in the Works. In December 2020, a Copyright Office registration specialist refused to register the claims, determining that each Work lacked sufficient creativity. Initial Letter Refusing Registration of Charlotte from U.S. Copyright Office to Bradley M. Stohry at 1 (Dec. 17, 2020);

Initial Letter Refusing Registration of Croissant from U.S. Copyright Office to Bradley M. Stohry at 1 (Dec. 17, 2020).

On December 22, 2020, Mejuri requested that the Office reconsider its initial refusal to register the Works, arguing that the Works were sufficiently creative and were not merely basic shapes or familiar designs. Letter re: Charlotte from Bradley M. Stohry to U.S. Copyright Office at 2 (Dec. 22, 2020); Letter re: Croissant from Bradley M. Stohry to U.S. Copyright Office at 2 (Dec. 22, 2020) (collectively, the “First Requests”). After reviewing each Work in light of the points raised in the First Requests, the Office reevaluated the claims and again concluded that the Works could not be registered. Refusal of First Request for Reconsideration re: Charlotte from U.S. Copyright Office to Bradley M. Stohry (Apr. 15, 2021); Refusal of First Request for Reconsideration re: Croissant from U.S. Copyright Office to Bradley M. Stohry (Apr. 15, 2021). The Office explained that neither the individual elements of each Work nor the combination of the elements warranted copyright protection.

In letters dated June 15, 2021, Mejuri 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 Bradley M. Stohry re: Charlotte to U.S. Copyright Office (June 15, 2021) (“Charlotte Second Request”); Letter from Bradley M. Stohry re: Croissant to U.S. Copyright Office (June 15, 2021) (“Croissant Second Request”). Mejuri argued that the design choices Mejuri made to give the Works the appearance of pastries were creative enough to render them copyrightable. Charlotte Second Request at 1; Croissant Second Request at 1–2.

III. DISCUSSION

After carefully examining the Works and considering the arguments made in the First and Second Requests, the Board finds that the Works do not contain the requisite creativity necessary to sustain a claim to copyright.

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 designs before the Board, are works of artistic craftsmanship. 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.

Applying these legal standards, the Board finds that the Works do not contain the requisite creativity necessary to sustain a claim to copyright. First, the individual elements of each Work do not demonstrate enough creativity to support a copyright claim. The individual elements of “Charlotte” can be viewed as a gold band and incised vertical lines or, alternatively, a number of rounded blocks. Either way, these are common and familiar shapes that are not eligible for copyright protection. *Id.* § 908.2 (stating that the Office will not register jewelry designs consisting of “mere variations on a common or standardized design or familiar symbol, designs made up of only commonplace design elements arranged in a common or obvious manner, or any of the mechanical or utilitarian aspects of the jewelry”). Mejuri concedes that the color and circular band of “Charlotte” is not protectable. Charlotte Second Request at 1. The individual elements of “Croissant” consist of a circular band, a domed segment, and incised curved lines. These, too, are common and familiar shapes. Mejuri also concedes that the color and dome elements of “Croissant” are not protectable. Croissant Second Request at 1.

Second, the Works are not protectable when evaluated as a whole. Each Work consists of a few simple elements, which are not sufficiently numerous to render it protectable. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). Nor is the selection or arrangement of the elements sufficiently original in either Work. *Feist*, 499 U.S. at 358. The arrangement in “Charlotte” consists of placing the identically sized elements in a continuous pattern around the band. This particular arrangement has been a mainstay of eternity bands for centuries. For example, the Board identified the following jewelry pieces that utilize a similar arrangement:



*Diamond eternity band c. 1920s–1930s*¹

¹ *Antique 6 ½ US Art Deco French 18K .50 CTW Diamond Eternity Wedding Band or Stacking Band*, JEANJEANVINTAGE, <https://jeanjeanvintage.com/collections/eternity-bands/products/antique-6-1-2-us-art-deco-french-18k-50-ctw-diamond-eternity-wedding-band-or-stacking-band> (last visited May 9, 2023).



Gold eternity band c. 1900²



Coral eternity band c. early 1800s³



Garnet eternity band c. 1800⁴

Similarly, the arrangement of elements in “Croissant”—using curved lines on a domed segment to create the appearance of nested shapes arranged by size—is commonly found in jewelry designs. See *Feist*, 499 U.S. at 362. For example, the Board identified the following jewelry pieces that utilize a similar arrangement:



Shrimp ring⁵



Domed croissant ring⁶

² *Art Nouveau 18ct Leaf Eternity Band*, LILlicOCO, <https://www.lillicoco.com/products/art-nouveau-18ct-gold-leaf-eternity-band> (last visited May 9, 2023).

³ *Georgian Coral Eternity Band*, VELA NYC, <https://vela-nyc.com/collections/r-i-n-g-s/products/georgian-coral-eternity-band> (last visited May 9, 2023).

⁴ *Slim Georgian Garnet Eternity Ring*, ERICA WEINER, <https://ericaweiner.com/products/slim-georgian-garnet-eternity-ring> (last visited May 9, 2023).

⁵ *Vintage 14K Gold Croissant Shrimp Twist Band Ring*, ETSY, <https://www.etsy.com/listing/1287642743/vintage-14k-gold-croissant-shrimp-twist> (last visited May 9, 2023).

⁶ *Domed Croissant Ring, 10KT Yellow Gold, Ring*, 1ST DIBS, https://www.1stdibs.com/jewelry/rings/band-rings/domed-croissant-ring-10kt-yellow-gold-ring/id-j_17149632/ (last visited May 9, 2023).



*Croissant hoop earrings*⁷



*Shrimp ring*⁸

Mejuri argues that the choices it made in shaping the Works render them protectable, appealing to language in the Compendium that jewelry designs can be created through shaping the work and that a jewelry design may be registered if the shape of an element is sufficiently original. Charlotte Second Request at 1; Croissant Second Request at 1; *see also* COMPENDIUM (THIRD) §§ 908.2, 908.3. Specifically, Mejuri opines that the shaping choices in “Charlotte” “that give[] it the appearance of ladyfingers arranged in a cake” and the shaping choices in “Croissant” “that give[] it the appearance of a croissant that has been baked” are sufficiently creative to warrant protection. Charlotte Second Request at 1; Croissant Second Request at 1. Mejuri also contrasts “Croissant” with its own simple domed ring design that it describes as the “predecessor” to “Croissant,” which it concedes is not protectable. Croissant Second Request at 2–3. It argues that the “croissant-like shaping” of “Croissant” renders the ring design more creative than, and thus distinguishable from, the unprotectable domed design. *Id.* In essence, Mejuri argues that the resulting pastry-like appearance of each Work “is not a mere variation on a common or standardized design (like a solitaire ring) or familiar symbol (like a standard cross) or made up of only commonplace elements arranged in a common manner (like a row of gemstones).” *Id.* at 4; Charlotte Second Request at 4.

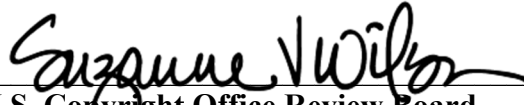
The Board disagrees. Mejuri’s intention that the Works should resemble baked goods is not relevant to the copyrightability inquiry. The Office focuses only on a work’s actual appearance and “will not consider any meaning or significance that the work may evoke.” COMPENDIUM (THIRD) § 310.3. Similarly, the Office “will not consider the author’s inspiration for the work, creative intent, or intended meaning.” *Id.* § 310.5. As discussed above, the shapes of the Works are common and familiar. That an even simpler design exists does not alter the conclusion that these Works do not meet the threshold for creativity. *Feist*, 499 U.S. at 359.

⁷ *Vintage Croissant Hoops*, GOLD DIGGER MCR, <https://www.golddiggermcr.com/product-page/vintage-croissant-hoops> (last visited May 9, 2023).

⁸ *Vintage Shrimp Ring, Solid Gold, 14 karat, size 7, Retro Style, Stackable Statement, Gift for He.*, ETSY, <https://www.etsy.com/listing/1415626229/vintage-shrimp-ring-solid-gold-14-karat> (last visited May 9, 2023).

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the copyright claims in the Works. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.



U.S. Copyright Office Review Board
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