



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

June 2, 2023

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**Re: Second Request for Reconsideration for Refusal to Register Flex Acoustic Boundary and Decorative features of Flex Mobile Battery (SR # 1-8276721709, 1-8276721836; Correspondence ID: 1-4A7ZIA5, 1-4A7WZSV)**

Dear Ms. Altoff:

The Review Board of the United States Copyright Office (“Board”) has considered Steelcase Inc.’s (“Steelcase”) second requests for reconsideration of the Registration Program’s refusal to register two- and three- dimensional artwork claims in the works titled “Flex Acoustic Boundary” (“Acoustic Boundary”) and “Decorative features of Flex Mobile Battery” (“Mobile Battery”) (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 each of the Works.

## **I. DESCRIPTION OF THE WORKS**

The Acoustic Boundary is a six-sided structure. The top of the structure is a flat, hexagonal, light gray surface. The body of the structure is covered in dark gray acoustic fabric panels with a pattern of embossed lines running vertically down its rectangular length. It features one handle pull on each end of the structure, four mounting brackets, and sits on four wheels.

The Mobile Battery consists of a battery shell and charging platform base. The cylindrical shell features a tapering diamond pattern with gold handle accents on the top and raised vertical lines down the side. The rectangular base contains five domes accented in gold with a dotted symmetrical pattern on the sides.

The deposit photos for the Works are depicted below.



**Acoustic Boundary**  
*SR No. 1-8276721709*



**Mobile Battery**  
*SR No. 1-8276721836*

## II. ADMINISTRATIVE RECORD

On January 15, 2020, Steelcase filed two separate applications to register copyright claims in the Works. For the Acoustic Boundary, Steelcase claimed “2-D artwork, sculpture, work of artistic craftsmanship consisting of three dimensional shape embossed with creative pattern.” In the application, Steelcase specified that it sought protection of the “overall shape (a non-standard shape composed of six tapered rectangles of different sizes and angles) combined with the embossed non-symmetrical pattern of arcing vertical lines as a work of artistic craftsmanship.” For the Mobile Battery, Steelcase claimed “2-D artwork, sculpture, artistic features of battery case and charging platform.” In particular, Steelcase sought protection for the “design features adorning the charging platform” and the “separable features of the decorative case of the battery,” which Steelcase “acknowledge[d] . . . is . . . a highly-stylized decorative 3D case that can be removed from . . . the underlying battery, which is a useful article.”

In separate March 10, 2020 letters, a Copyright Office registration specialist refused to register the claims, determining that both Works are useful articles that do not “contain any non-useful design element that could be copyrighted and registered.” Initial Letter Refusing Registration of Acoustic Boundary from U.S. Copyright Office to Rachel Fertig at 1 (Mar. 10, 2020); Initial Letter Refusing Registration of Mobile Battery from U.S. Copyright Office to Rachel Fertig at 1 (Mar. 10, 2020).

On June 8, 2020, Steelcase requested that the Office reconsider its initial refusal to register the Works. Letter from Rachel Fertig to U.S. Copyright Office (June 8, 2020)

(“Acoustic Boundary First Request”); Letter from Rachel Fertig to U.S. Copyright Office (June 8, 2020) (“Mobile Battery First Request”). Steelcase asserted that, contrary to the Office’s classification of the work as a useful article, the Acoustic Boundary is a “work of artistic craftsmanship because its shape and embossed line pattern are not ‘intrinsic’ to its function,” “even though they are incidentally useful for blocking noise.” Acoustic Boundary First Request at 6. Regarding the Mobile Battery, while Steelcase conceded that the “internal technological components” of the Mobile Battery “constitute a useful article,” it argued that the “overall combination of two and three-dimensional artistic features” “more than satisf[y] the extremely low threshold of creativity sufficient to merit registration.” Mobile Battery First Request at 3–4. After reviewing the Works 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 of Acoustic Boundary from U.S. Copyright Office to Rachel Fertig (Sept. 22, 2020); Refusal of First Request for Reconsideration of Mobile Battery from U.S. Copyright Office to Rachel Fertig (Sept. 22, 2020). The Office determined that the Works are “useful article[s] that do[] not contain any separable, copyrightable features.” *Ibid.* at 1.

In letters dated December 17, 2020, Steelcase requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusals to register the Works. Letter from Rachel Fertig to U.S. Copyright Office (Dec. 17, 2020) (“Acoustic Boundary Second Request”); Letter from Rachel Fertig to U.S. Copyright Office (Dec. 17, 2020) (“Mobile Battery Second Request”). Regarding the Acoustic Boundary, Steelcase argues that “the Work is sufficiently creative to merit registration whether it is evaluated as a work of artistic craftsmanship or as separable features of a useful article.” Acoustic Boundary Second Request at 3. Describing the Acoustic Boundary as a “sculpture on wheels,” Steelcase explains that the work’s artistic elements are separable from any mechanical components, and, combined, “demonstrate[] creative choice in the selection and arrangement of such elements.” *Id.* at 6, 15. Steelcase also argues that the artistic features in the Mobile Battery, which are “easily physically separated from the underlying Battery Components,” contain “many shapes and artistic contours” that “when combined . . . demonstrate sufficient creativity to merit registration.” Mobile Battery Second Request at 6, 12.

### III. DISCUSSION

After carefully examining the Works and considering the arguments made in the First and Second Requests, the Board finds that the Works are useful articles that do not contain the requisite separable creative authorship necessary to sustain claims to copyright.

Works of artistic craftsmanship and designs of useful articles are separate and distinct categories of authorship that can potentially be copyrightable. A work of artistic craftsmanship is “a decorative or ornamental object” that can be considered a “work of art,” even though it “might also serve a useful purpose.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 925.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (quoting *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 416 (2017)). A work of artistic craftsmanship is “intrinsically aesthetic in nature” and “primarily portrays its own appearance.” *Id.* The Copyright Act protects “works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned.” 17 U.S.C. § 101 (defining “pictorial, graphic, and sculptural works”). Thus, as with any other pictorial, graphic, or sculptural work, a work of

artistic craftsmanship may be registered if the “delineation or form” of the work is sufficiently creative. *See* 37 C.F.R. § 202.10(a). To determine whether the overall shape and configuration of a work warrants protection, the Board will segregate the mechanical and utilitarian aspects of the work to consider its form. COMPENDIUM (THIRD) § 925.1.

By contrast, copyright law does not protect useful articles, which are “article[s] having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.” 17 U.S.C. § 101 (defining “useful article”). Rather, the Copyright Act protects the design of a useful article “only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” *Id.* (defining “pictorial, graphic, and sculptural works”). To determine if a particular feature satisfies this requirement, the Board applies the test articulated by the Supreme Court in *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, which queries whether the artistic feature “(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.” 580 U.S. at 409. In this respect, the test for evaluating the design of a useful article is the mirror image of the test for evaluating a work of artistic craftsmanship. Instead of segregating the utilitarian aspects of the work to consider its overall form, the Board must separate the artistic features from the useful article to consider the features by themselves. And, in further contrast to works of artistic craftsmanship, copyright law does not protect the overall form, shape, or configuration of the useful article itself, no matter how pleasing or attractive it may be. *See id.* at 414, 421, 424.

To determine how to classify a work, the Board must decide if it is intrinsically useful, in which case it is a useful article, or if it is primarily artistic and merely incidentally useful, in which case it is a work of artistic craftsmanship. When making this determination, the Board considers the work as shown in the deposit, including “the overall appearance of the item, including the form, shape, and configuration of the object.” COMPENDIUM (THIRD) § 925.1. The Board does not consider the process used to create the work, the number of copies made, or the author’s state of mind when creating the work. *Id.* § 925.3. If there is any doubt as to whether an item has an intrinsic utilitarian function, or whether it is “intrinsically aesthetic and primarily portrays its own appearance,” the Board will “treat that item as a useful article” and apply the separability test set forth in *Star Athletica*. *Id.*

#### **A. Acoustic Boundary**

Steelcase argues that the Board must evaluate the Acoustic Boundary as a work of artistic craftsmanship, which segregates any useful aspects and assesses the creativity of the work as a whole. Comparing the Acoustic Boundary to works of artistic craftsmanship like stained glass and tapestries, Steelcase argues that “once its wheels, brackets, and internal sound dampening components are excluded,” the Acoustic Boundary’s “creative features should be protectable” as a sculpture because “the Work’s shape and embossed line pattern are not ‘intrinsic’ to its function but merely ‘incidental.’” Acoustic Boundary Second Request at 6–7 (quoting COMPENDIUM (THIRD) § 925.3; 17 U.S.C. § 101). The Board disagrees.

Classification of a work is based on whether the overall appearance of the item “is intrinsically aesthetic in nature and primarily portrays its own appearance.” COMPENDIUM (THIRD) § 925.1. The Acoustic Boundary contains multiple functional, mechanical elements, including mounting brackets, handle pulls, wheels, and acoustic fabric visible on the Acoustic Boundary, which cannot be excluded when classifying the work. These mechanical features, combined with minimal, single-toned artistic features, demonstrate that the work’s purpose is not primarily aesthetic. Unlike stained glass windows or tapestry wall hangings, whose primary purpose is to portray a decorative appearance and only incidentally provide useful functions, the Acoustic Boundary’s primary purpose is to control sound. The mounting elements on the Acoustic Boundary reinforce this conclusion because they suggest that materials will be placed on top of the work that will conceal the Acoustic Boundary’s appearance. Thus, the Board concludes that the Acoustic Boundary is a useful article, “having an intrinsic utilitarian function that is not merely to portray the appearance of the article.” 17 U.S.C. § 101 (defining “useful article”).<sup>1</sup>

Applying the *Star Athletica* test to the Acoustic Boundary, the Board finds that, under the first step, there are three-dimensional sculptural elements that can be perceived separately. However, under the second step, the elements that can be imagined separately do not contain sufficient creative authorship to be copyrightable.

Steelcase and the Board agree that the embossed line pattern and light gray hexagon elements can be perceived separately when viewing the Acoustic Boundary. Acoustic Boundary Second Request at 7–9. However, these constituent elements are not copyrightable. 37 C.F.R. § 202.1(a) (prohibiting registration of “familiar symbols or designs . . . or color[s]”); COMPENDIUM (THIRD) § 906.1 (“The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form. . . . including . . . straight or curved lines . . .”). Likewise, viewed as a whole, the selection, coordination, and arrangement of the separable elements are insufficient to render the Acoustic Boundary eligible for copyright protection. Works comprised of public domain elements may be copyrightable if the selection, arrangement, and modification of the elements reflects choice and authorial discretion that is not so obvious or minor that the “creative spark is utterly lacking or so trivial as to be virtually

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<sup>1</sup> Even if the Board were to consider the Acoustic Boundary a work of artistic craftsmanship, the work would not meet the threshold for copyright protection. The overall shape of the Acoustic Boundary—a hexagonal prism appearing rectangular front-on—is not copyrightable. 37 C.F.R. § 202.1(a) (prohibiting registration of “familiar symbols or designs”); COMPENDIUM (THIRD) § 906.1 (“The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form.”). Segregating the utilitarian features, the handle pulls, wheels, mounting brackets, and sound dampening components, from the work leaves the light gray hexagon at the top of the work and the embossed line pattern running down its length. These constituent elements are not individually copyrightable. COMPENDIUM (THIRD) § 906.1 (“The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form. . . . including . . . straight or curved lines [and] hexagons.”). While combinations of unprotectable elements may be eligible for copyright protection, such combinations must contain sufficiently creative selection, coordination, or arrangement of their elements. *See Atari Games Corp. v. Oman*, 979 F.2d 242, 244–45 (D.C. Cir. 1992); COMPENDIUM (THIRD) §§ 309, 313.4(J), 906.1. Viewed as a whole, the combination of the overall shape, light gray hexagon, and embossed line pattern does not contain a sufficient amount of creative expression to warrant registration. COMPENDIUM (THIRD) § 905 (“In all cases, a visual art work must contain a sufficient amount of creative expression. Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”).

nonexistent.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 359 (1991). In this case, the combination of the two elements—the line pattern on the sides and the hexagon on the top of the Acoustic Boundary—does not qualify as sufficient creative expression. COMPENDIUM (THIRD) § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”).

Steelcase urges the Board to compare the Works with previously issued registrations, which it believes evince similar amounts of creative authorship. Acoustic Boundary Second Request at 12–14. As the COMPENDIUM (THIRD) notes, however, the Copyright Office makes copyrightability decisions “on a case-by-case basis” and “[t]he fact that the U.S. Copyright Office registered a particular work does not necessarily mean that the Office will register similar types of works or works that fall within the same category.” U.S. Copyright Office, COMPENDIUM (THIRD) § 309.3; *see also Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q. 2d 1074, 1076 (D.C. Cir. 1991) (“[T]he Court [is not] aware of any authority which provides that the Register must compare works when determining whether a submission is copyrightable”).

Moreover, each of the examples Steelcase cites demonstrates far more creativity than the Acoustic Boundary, which combines two elements in a common and predictable manner. For example, *Tricon* combines twenty-four elements and features several types of geometric shapes.<sup>2</sup> *Cooperstown Vodka Artwork* and *Floor Liner* feature non-standard shapes in various sizes.<sup>3</sup> *Northwind Logos with Boat* and *Sandy Starfish* create asymmetry with irregularly curved shapes and include pictorial elements.<sup>4</sup> Finally, *American Airlines* features stylistic shading to create three-dimensionality in its pictorial presentation.<sup>5</sup> All of these works feature more design elements in more creative arrangements than the Acoustic Boundary.

## **B. Mobile Battery**

Turning to the Mobile Battery, the Board applies the same test for copyrightability. As a useful article, the design of the Mobile Battery is protectable by copyright only if it satisfies *Star Athletica*’s test for determining if it “incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” *See* 17 U.S.C. § 101 (defining “pictorial, graphic, and sculptural works”). Applying the first part of the *Star Athletica* test, the Board finds that the work contains separable three-dimensional design features—(1) the symmetrical tapering diamond pattern on top of the battery shell and on the sides of the charging platform base, (2) the gold handle accents on the battery shell, (3) the gold circular accents on the base, and (4) the raised vertical lines on battery

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<sup>2</sup> U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Tricorn* (July 27, 2017), <https://copyright.gov/rulings-filings/review-board/docs/tricorn.pdf>.

<sup>3</sup> U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Cooperstown Vodka Artwork* (Aug. 12, 2020), <https://copyright.gov/rulings-filings/review-board/docs/cooperstown-vodka.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Floor Liner* (Apr. 19, 2018), <https://copyright.gov/rulings-filings/review-board/docs/floor-liner.pdf>.

<sup>4</sup> U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Northwind Logos with Boat* (Oct. 9, 2020), <https://copyright.gov/rulings-filings/review-board/docs/northwind-logo.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Sandy Starfish* (Apr. 17, 2019), <https://copyright.gov/rulings-filings/review-board/docs/sandy-starfish.pdf>.

<sup>5</sup> U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of American Airlines* (Dec. 7, 2018), <https://copyright.gov/rulings-filings/review-board/docs/american-airlines.pdf>.

shell—that can be identified as “two- or three-dimensional element[s] that appear[] to have pictorial, graphic, or sculptural qualities.” *Star Athletica*, 580 U.S. at 414. Conversely, the Board does not find that the five domed depressions are separable. Rather, these elements appear to be charging points to connect the battery to the base. The Board finds that these elements do not have “the capacity to exist apart from the utilitarian aspects” of the charging platform base “on its own,” *id.* at 414, as the dome shape has its own utilitarian purpose, enabling the battery to connect to the base.

Applying the second part of the *Star Athletica* test, the Board finds that the Mobile Battery’s individual separable design elements are insufficiently creative to be eligible for copyright protection. The separable features consist solely of common geometric shapes—diamonds, circles, and lines—which copyright law does not protect. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “familiar symbols or designs”); COMPENDIUM (THIRD) § 906.1 (including straight lines, diamonds, and circles in the list of non-protectable common geometric shapes). The fact that the design is three-dimensional does not alter the Office’s analysis. COMPENDIUM (THIRD) § 906.1 (“The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form.”).

Likewise, the combination of the separable design elements does not contain the requisite amount of creative expression to warrant protection. The elements are oriented onto the Mobile Battery in a symmetrical fashion, appearing evenly spaced and centered. And the gold accents merely mimic the functional elements of the battery handle and domed connection points to which they conform. Moreover, the Mobile Battery’s unprotectable elements are not numerous enough and their selection and arrangement are not original enough to be protectable by copyright. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (noting “it is not true that any combination of unprotectable elements automatically qualifies for copyright protection”); *see also* COMPENDIUM (THIRD) § 906.1 (protectable arrangement of uncopyrightable elements must combine them in a sufficiently creative way, such as one resulting in an “unusual pattern”).

Finally, Steelcase suggests that the Mobile Battery is at least as original as other works that the Office has previously registered. Mobile Battery Second Request at 12–14. While, as noted above, the Office does not compare works, COMPENDIUM (THIRD) § 309.3, the Board notes that the Mobile Battery differs from the works that Steelcase cites. *Tricorn*, *Floor Liner*, *Yeezy Boost 350 Version 1*, and *Trilliane Strand* each contain far more elements and varied shapes than the Mobile Battery.<sup>6</sup> And *Northwind* features non-standard shapes and pictorial elements not present in the Mobile Battery.

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<sup>6</sup> U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Tricorn* (July 27, 2017), <https://copyright.gov/rulings-filings/review-board/docs/tricorn.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Floor Liner* (Apr. 19, 2018), <https://copyright.gov/rulings-filings/review-board/docs/floor-liner.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Yeezy Boost 350 Version 1, Yeezy Boost 350 Version 2* (May 8, 2019), <https://copyright.gov/rulings-filings/review-board/docs/yeezy-boost.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Trilliane Strand* (July 27, 2017), <https://copyright.gov/rulings-filings/review-board/docs/trilliane-strand.pdf>.

#### IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusals 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.



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**U.S. Copyright Office Review Board**

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