



United States Copyright Office

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

July 27, 2017

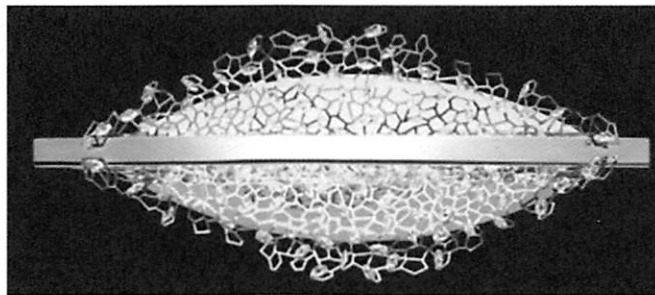
Shanna K. Sanders
Heslin Rothenberg Farley & Mesiti P.C.
5 Columbia Circle
Albany, NY 12203

**Re: Second Request for Reconsideration for Refusal to Register “Amaca”;
Service Request #: 1-2501243491; Correspondence ID: 1-1IUYNLN**

Dear Ms. Sanders:

The Review Board of the United States Copyright Office (“Board”) has considered Swarovski Lighting’s (“Swarovski”) second request for reconsideration of the Registration Program’s refusal to register a sculpture claim in the artistic features (“crystal mesh hammocks”) of the light fixture titled “Amaca” (“Work”). After reviewing the application, deposit materials, relevant correspondence, and the arguments in the second request for reconsideration in light of the Supreme Court’s recent decision in *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002 (2017), the Board reverses the Registration Program’s denial of registration.

Pictured below is one of the deposit images submitted by Swarovski of the Work.



There is no dispute that the Work is a useful article, *see* 17 U.S.C. § 101, specifically, a light fixture which consists of an illuminating rod, an electrical power cable, an elliptical-shaped wall mounting mechanism, and two shades (*i.e.*, the crystal mesh hammocks). *See* Letter from Shanna Sanders, Rothenberg Farley & Mesiti P.C. to U.S. Copyright Office at 2 (Jan. 15, 2016) (“First Request”); Letter from Shanna Sanders, Rothenberg Farley & Mesiti P.C. to U.S. Copyright Office at 3 (Nov. 9, 2016) (“Second Request”). In its correspondence with the Copyright Office, however, Swarovski only sought “to copyright . . . the artistic expression reflected in the separable, sculptural features of the work, namely the crystal mesh hammocks.” Second Request at 3.

Copyright does not protect useful articles as such, which are defined in the Copyright Act as “article[s] having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information;” further, “[a]n article that is normally a part of a useful

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*, 137 S. Ct. at 1007; *see also Mazer v. Stein*, 347 U.S. 201 (1954) (holding ballet-dancer-shaped lamp base to be copyrightable).

The Board finds that the Work’s crystal mesh hammocks meet this test and therefore constitute a separable artistic feature from the overall lighting fixture. *See Star Athletica, LLC*, 137 S. Ct. at 1011-14 (affirming separability of ballet-dancer-shaped lamp base because it could exist as a freestanding work of art despite the fact that “without the base, the ‘lamp’ would be just a shade, bulb, and wires”). Here, the Work’s three-dimensional design of metal mesh interspersed with crystals is an artistic feature that can be perceived as a freestanding work of art that does not recreate the lighting fixture when imaginatively removed from the useful article. Additionally, the Board finds that the Work’s intricate crystal and mesh design contains sufficient creative expression to be copyrightable under the threshold articulated in *Feist Publications, Inc. v. Rural Telephone Services Co.*, 499 U.S. 340, 363 (1991).

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

BY:



Regan A. Smith

Copyright Office Review Board