



United States Copyright Office

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**Re: Second Request for Reconsideration for Refusal to Register Iridium Sheath,
Correspondence ID: 1-3DO9Q3X; SR 1-5851246061**

Dear Ms. Lindquist:

The Review Board of the United States Copyright Office (“Board”) has considered Treasury Wine Estates Americas’ (“Treasury’s”) second request for reconsideration of the Registration Program’s refusal to register a three-dimensional artwork claim in the work titled *Iridium Sheath* (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds the Work is entitled to thin copyright protection and accordingly reverses the Registration Program’s denial of registration.

I. DESCRIPTION OF THE WORK

The Work is a three-dimensional sculpture consisting of silver metal shaped in a cylinder that flares outward at the bottom in a partial sphere. The Work includes engraved text reading “Iridium” and “Sterling Vineyards 2015” at the flared bottom, as well as small engravings on the narrow top of the sculpture. Images of the Work are attached in the Appendix.

II. ADMINISTRATIVE RECORD

On September 25, 2017, Treasury filed an application to register a copyright claim in the Work. In letters on April 19 and April 30, 2018, a Copyright Office registration specialist refused to register the claim, finding that the Work “is a useful article that does not contain any copyrightable, sculptural authorship needed to sustain a claim to copyright.” Letter from Examiner Proctor, Registration Specialist, to Leigh Ann Lindquist, Sughrue Mion, PLLC (Apr. 19, 2018).

In a letter dated July 17, 2018, Treasury requested that the Office reconsider its initial refusal to register the Work. Letter from Leigh Ann Lindquist, Sughrue Mion PLLC, to U.S. Copyright Office (July 17, 2018) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work lacked sufficient creative authorship because it “consists of a cylinder that flares into a partial sphere—an expected and inevitable configuration given that the work is designed to fit

the neck of a wine bottle” which was so “obvious [and] inevitable” a design that it lacked copyrightable authorship to support a copyright registration. Letter from Stephanie Mason, Attorney-Advisor, to Leigh Ann Lindquist, Sughrue Mion, PLLC (Jan. 25, 2019).

In a letter dated April 25, 2019, Treasury requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Letter from Leigh Ann Lindquist, Sughrue Mion, PLLC, to U.S. Copyright Office (Apr. 25, 2019) (“Second Request”). In that letter, Treasury pointed to Compendium statements that “familiar” or “common” shapes are not protectable but stating that the cylinder and partial sphere in the work are “altered” in such a way to deserve protection. Second Request at 2–3 (citing U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3D ED. 2014) (“COMPENDIUM (THIRD)”). Treasury also pointed to six graphical images on the “neck,” which from bottle to top are: “a circle with a silhouette of a man; a shield-type design with a lion, a diamond with a design; two interlocking diamonds with the letters S and V; and a combined cylinder and partial sphere shape with a bell-type design.” Treasury argued that engravings are non-standard shapes, and that they combine with the “overall unique and creative shape of the sheath” to make the entire work a copyrightable work of authorship.

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 Publications, Inc. v. Rural Telephone Service 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 United States District Court for the Southern District of New York upheld the Copyright Office’s refusal to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements.” *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). 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.

Id. (internal citations omitted).

Similarly, while the Office may register a work that consists merely of geometric shapes, for such a work to be registrable, the “author’s use of those shapes [must] result[] in a work that, as a whole, is sufficiently creative.” COMPENDIUM (THIRD) § 906.1; *see also Atari Games Corp.*, 888 F.2d at 883 (“[S]imple shapes, when selected or combined in a distinctive manner indicating some ingenuity, have been accorded copyright protection both by the Register and in court.”). Thus, the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but would not register a picture consisting merely of a purple background and evenly-spaced white circles. COMPENDIUM (THIRD) § 906.1.

Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See id.* § 310.2. The attractiveness of a design, the espoused intentions of the author, the design’s visual effect or 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, viewed as a whole, contains sufficient creative authorship to support a copyright registration.

None of the Work’s individual components are entitled to copyright protection. The shape of the sheath lacks creativity as it consists of the simple shape of a cylinder that stretches into a partial sphere, matching the shape of a wine bottle. Because the sheath fits on top of a specific wine bottle sold by Sterling Vineyards,¹ its form is largely dictated by the shape of the wine bottle rather than reflecting creative choices by an author.



Though the work’s intended use in placement on a wine bottle does not prohibit otherwise creative expression from registration, *see Mazer v. Stein*, 347 U.S. 201, 218 (1954) (finding “nothing in the copyright statute to support the argument that the intended use or use in industry of an article eligible for copyright bars or invalidates its registration”), the Board may

¹ 2015 Sterling Vineyards Iridium Cabernet Sauvignon, STERLING VINEYARDS, <https://www.sterlingvineyards.com/en-us/wines/iridium/iridium-cabernet-sauvignon/2015>.

consider whether the work's shape sufficiently differs from an underlying wine bottle to constitute creative authorship. Because the Sheath employs familiar geometric shapes dictated by the specific wine bottle it covers, the shape of the Work alone lacks sufficient authorship to support a copyright registration. See Second Request at 2 ("the sheath fits over a specific wine bottle, not just any wine bottle" because it is "custom" to that bottle).

The other individual elements of the Work are likewise unprotectable. The spot of short text on the Work: "Iridium – Sterling Vineyards 2015" is unprotectable as a short phrase that names the wine the Sheath accompanies. The remaining elements are the six designs on the neck of the Sheath, which Treasury describes as "a circle with a silhouette of a man; a shield-type design with a lion, a diamond with a design; two interlocking diamonds with the letters S and V; and a combined cylinder and partial sphere shape with a bell-type design."



These elements are also not individually copyrightable: the simple silhouette lacks hair or other creative choices to set it apart from common examples of silhouettes. The image of a lion standing on its back legs is commonly depicted in coats of arms, and lacks additional details to set it apart from unprotectable *scenes a faire* depictions.² Next is the "diamond with a design," which is more accurately described as a common diamond with sides of equal lengths surrounded the numbers 1961, broken into two lines. This is an unprotectable combination of a common shape and numbers. The next design are two diamonds, each containing either the letter "S" or "V" touching in the middle. Mere combination of two letters inside a common geometric shape is not protectable. Lastly, the bell design inside a door-shape suffers from the same *scenes a faire* issues as the silhouette: the container is a simple shape and the bell is expressed in a similar way to other treatments of simple bell shapes, sinking argument for copyrightability of the element.

² See, e.g., *The State Symbols of the Czech Republic*, EMBASSY OF THE CZECH REPUBLIC IN THE HAGUE, https://www.mzv.cz/hague/en/general_information_on_the_czech/the_state_symbols_of_the_czech_republic/index.html (small state emblem); Arther Charles Fox-Davies, *A Complete Guide to Heraldry* at 172–90 (1909), available at <https://archive.org/stream/completeguidetoh00foxdrich> (depicting numerous coats of arms using profile of an upright lion and noting that when lions were used on coats of arms, "they very naturally" were drawn "in an upright position, this being the one most convenient and adaptable for the purpose").

Viewing the work as a whole, however, the Board finds that the selection, coordination, and arrangement of the shapes, text, and graphical elements on the neck render the Work original when viewed together. Because the Work combines a number of unprotectable elements in a minimally creative way, it contains sufficient creative authorship to support a copyright registration. See COMPENDIUM (THIRD) § 906.1 (stating that a work that “includes circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color” will be registered). Therefore, the Board reverses the refusal to register the copyright claim in the Iridium Sheath, but it cautions that because the Work’s creative authorship comes from its particular arrangement of unprotectable elements, the resulting protection is thin. See *Satava v. Lowry*, 323 F.3d 805, 812 (9th Cir. 2003) (protecting only the Work’s original and creative elements “against only virtually identical copying”).

IV. CONCLUSION

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.

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
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Catherine Zaller Rowland, Associate Register of
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Appendix: Deposit Images







