



Copyright Review Board

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

July 26, 2021

Mr. Timothy Dell Nichols, Esq.
Workman Nydegger
60 East South Temple, Suite 1000
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**Re: Second Request for Reconsideration for Refusal to Register Walker Edison;
Correspondence ID: 1-3VNFHPU; SR # 1-7896666711**

Dear Mr. Nichols:

The Review Board of the United States Copyright Office (“Board”) has considered Walker Edison Furniture Company, LLC’s (“Walker Edison Furniture”) second request for reconsideration of the Registration Program’s refusal to register a three-dimensional claim in the work titled “Walker Edison” (“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 wooden television stand consisting of two wooden doors featuring two horizontal rectangular glass panes each, two doorknobs, four wooden legs/side panels, and a beveled wooden top. The Work is as follows:



II. ADMINISTRATIVE RECORD

On July 19, 2019, Walker Edison Furniture filed an application to register a copyright claim in the Work. In a July 22, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it “is a useful article” and “does not contain any non-useful design element that could be copyright and registered.” Initial Letter Refusing Registration from U.S. Copyright Office to Timothy Nichols (July 22, 2019).

In a letter dated August 26, 2019, Walker Edison Furniture requested that the Office reconsider its initial refusal to register the Work. Letter from Timothy Nichols to U.S. Copyright Office (Aug. 26, 2019) (“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, while “the round knobs, rectangular glass panes, and rectangular side panels” are separable features from the useful aspects of the stand, “none of them contain a sufficient amount of creative authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Timothy Nichols (Jan. 13, 2020) (“First Request Refusal”).

In a letter dated April 10, 2020, Walker Edison Furniture 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 Timothy Nichols to U.S. Copyright Office (April 10, 2020) (“Second Request”). In that letter, Walker Edison Furniture argued that the decorative top of the Work is a separable feature, stating that the top is “decoratively shaped to approximate an irregular hexagon” and pointing out “the horizontal molded projection [that] runs below the longest longitudinal edge and the first set of lateral edges between the wooden frame and wooden top.” Second Request at 2–3. Walker Edison Furniture further argues that the top, glass panes, side panels, and door knobs contain separable decorative features, stating that “[l]ike the arrangement and combinations of lines, colors, shapes, stripes, and chevrons in *Star Athletica*, the arrangement and combinations of the decorative features of the top and other separable features of the applied-for work are capable of existing apart from the utilitarian aspect of the stand, i.e. the wooden frame and structure of the top that cause the applied for work to provide a supporting surface for a television or other article to rest on.” *Id.* at 4. Walker Edison Furniture argues that these separable features are sufficiently original, stating that “[t]he author of the applied-for work did more than simply make a useful article with simple geometric shapes. Rather . . . the [Work] has various design elements selected, coordinated, and expressed in an original fashion.” *Id.* at 5.

III. DISCUSSION

A. *The Legal Framework*

1) *Useful Articles and Separability*

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.” 17 U.S.C. § 101. Importantly, however, artistic features applied on or incorporated into a useful article may be eligible for copyright protection if they constitute pictorial, graphic, or sculptural works under sections 101 and 102(a)(5) of the Copyright Act. This protection is limited to the “‘pictorial, graphic, or sculptural features’ [that] ‘can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.’” *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017) (quoting 17 U.S.C. § 101).

To assess whether an artistic feature incorporated into the design of a useful article is protected by copyright, the Office examines whether the 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.” *Id.* at 1007; *see also* COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 924 (3d ed. 2021) (“COMPENDIUM (THIRD)”). This analysis focuses on “the extracted feature and not on any aspects of the useful article that remain after the imaginary extraction [because the] statute does not require the decisionmaker to imagine a fully functioning useful article without the artistic feature.” *Star Athletica*, 137 S. Ct. at 1013. Put another way, while useful articles as such are not copyrightable, if an artistic feature “would have been copyrightable as a standalone pictorial, graphic, or sculptural work, it is copyrightable if created first as part of a useful article.” *Star Athletica*, 137 S. Ct. at 1011; 17 U.S.C. § 113(a) (“[T]he exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.”); *see also Esquire, Inc. v. Ringer*, 591 F.2d 796, 800 (D.C. Cir. 1978) (holding that copyright protection is not available for the “overall shape or configuration of a utilitarian article, no matter how aesthetically pleasing that shape . . . may be”).

2) *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. *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 (3d ed. 2021); *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.

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 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 is a useful article that does not contain the requisite separable authorship necessary to sustain a claim to copyright.

First, it is undisputed that the Work, as a television stand, is a useful article as defined in the Copyright Act. *See* 17 U.S.C. § 101 (a "useful article" is "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey

information.”); *see also* First Request at 2; First Request Refusal at 2. As the Supreme Court observed in *Star Athletica*, the Copyright Act does not protect useful articles as such. 137 S. Ct. at 1008. In order for the design of a useful article to warrant copyright protection, the work must (1) incorporate features that are separable from the utilitarian aspect of the work and (2) the separable design must be sufficiently original to rise to the level of required creativity. *See id.* at 1008, 1012.

Under the first part of the *Star Athletica* test, the Board finds that there are separable three-dimensional design features—the glass panes, side panels, door knobs, and molding—that can be identified as “two- or three-dimensional element[s] that appear[] to have pictorial, graphic, or sculptural qualities.” *Star Athletica*, 137 S. Ct. at 1010. In contrast, the Board does not find that the beveled wooden top of the Work is separable. Walker Edison Furniture argues that the beveled wooden top is separable because it “is decoratively shaped to approximate an irregular hexagon with a longest longitudinal edge above the decorative glass panes, a shorter longitudinal edge opposite the decorative glass panes, a first set of lateral edges extending in a normal direction from the longest longitudinal edge, and a second set of lateral edges angling between the first set of lateral edges and shorter longitudinal edge.” Second Request at 3. The Board finds, however, that the top does not have “the capacity to exist apart from the utilitarian aspects” of the television stand “on its own,” *Star Athletica*, 137 S. Ct. at 1010, as the shape has its own utilitarian purpose, enabling the stand to be placed against two walls in the corner of a room.¹ Once a feature is imaginatively removed, “some aspects of the original useful article [must be] left behind” even if it is not a “fully functioning useful article.” *Id.* at 1013–14 (internal quotation marks omitted). Further, 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* COMPENDIUM (THIRD) §924.3(F) (citing *Star Athletica*, 137 S. Ct. at 1010). Nor will protection extend to features that are themselves utilitarian or dictated by functional requirements. *See* 17 U.S.C. § 101; *Entm’t Research Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1223 (9th Cir. 1997). The core utilitarian function of a television stand is to provide a surface on which a television or other item may rest. Here, the top’s utilitarian function is to provide said surface, and the beveled shape of the top is dictated by functional requirements to allow it to fit in the corner of a room. Thus, the beveled wooden top cannot be separated from the Work without eliminating the core utilitarian functions of the useful article itself (*i.e.*, television stand).²

Walker Edison Furniture further argues that “[t]he primary purpose of [] [the top’s] decorative features, alone and in combination, is artistic.” Second Request at 4. The creator’s

¹ In the furniture industry, a beveled wooden top is a common feature of television stands necessary to achieve its useful purpose. *See, e.g.*, Andrew Helling, “Corner TV Stand Ideas for Every Room in the House”; RETHORITY (April 28, 2020), <https://rethority.com/corner-tv-stand/>; “North Beach Black Top/Stainless Steel Frame TV Stand,” LOWES, <https://www.lowes.com/pd/Flash-Furniture-North-Beach-Black-Top-Stainless-Steel-Frame-TV-Stand/1001099656> (last visited July 26, 2021); “Hexagonal Wooden TV Stand with 4 Open Shelves,” OVERSTOCK, <https://www.overstock.com/Home-Garden/Media-Bookshelves/2031/subcat.html?featuredproduct=30088273> (last visited July 26, 2021).

² Even if the Board found that the beveled shape of the top were separable, as explained below, the shape is a mere common geometric shape that, alone or in combination with the other separable elements of the Work, is insufficiently creative to support a claim to copyright.

“design methods, purposes, and reasons,” however, are irrelevant to the separability analysis. *Star Athletica*, 137 S. Ct. at 1015. The Board’s inquiry “is limited to how the article and features are perceived, not how or why they were designed.” *Id.*

Next, for a work to be eligible for copyright protection, it must be sufficiently creative. *See Feist*, 499 U.S. at 363 (declaring a work must “possess more than a *de minimis* quantum of creativity.”); COMPENDIUM (THIRD) §906.1. The separable features consist of common geometric shapes—rectangular glass panes arranged horizontally, rectangular side panels, rectangular molding, and circular doorknobs—which are not in and of themselves copyrightable. *See* 37 C.F.R. §202.1(a) (prohibiting registration of “familiar symbols or designs . . . or colors). Further, the separable features, overall, are insufficiently creative to support a copyright claim. Walker Edison Furniture argues that the Work’s “combination and placement of the decorative details of the knobs, the glass panes, and the side panels” are “creative and protectable.” Second Request at 6–7. The arrangement of the four identical rectangular glass panes is entirely commonplace and predictable—two placed horizontally on each door in a manner that is evenly spaced and symmetrical—as is the arrangement of the two side panels, which consist of two identical rectangular wooden planks that are evenly spaced on both sides. The arrangement of the circular doorknobs is also symmetrical and commonplace. Such familiar designs and common patterns are uncopyrightable, and the Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variation. *See* COMPENDIUM (THIRD) §313.4(J); *see also Morrissey v. Procter & Gamble Co.*, 379 F.2d 675, 678–79 (1st Cir. 1967) (copyright protection should not be extended when “by copyrighting a mere handful of forms, [a party] could exhaust all possibilities of future use of the substance [of the idea]”). Further, while the horizontal molding may be separable, it is a standard long-standing design feature of furniture, including television stands.³ *See* COMPENDIUM (THIRD) §313.4(J) (“common architecture molding” is not copyrightable).

Viewed as a whole, the combination of these separable features do not clear the hurdle of more than *de minimis* creativity required for copyright protection, as the Work merely brings together standard shapes with minor spatial variants in a predictable arrangement for a television stand. *See* 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.”); *see also The Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q. 2d 1074 (D.D.C. 1991) (upholding refusal to register a chinaware “gothic” design pattern composed of simple variations and combinations of geometric shapes due to insufficient creative authorship to merit copyright protection); *John Woods Fashions, Inc. v. Curran*, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988) (upholding refusal to

³ *See, e.g.*, “Mainor TV Stand for TVs up to 70”, WAYFAIR <https://www.wayfair.com/furniture/pdp/rosecliff-heights-mainor-tv-stand-for-tvs-up-to-70-rc1f2722.html> (last visited July 26, 2021); “Grooved Door Corner TV Stand for TVs up to 50”, TARGET <https://www.target.com/p/grooved-door-corner-tv-stand-for-tvs-up-to-50-saracina-home/-/A-78434399?preselect=78301146#lnk=sametab> (last visited July 26, 2021); “Hamilton 59 in. Polar White Wood TV Stand with 3 Drawer Fits TVs Up to 50 in. with Storage Doors,” HOME DEPOT <https://www.homedepot.com/p/Home-Decorators-Collection-Hamilton-59-in-Polar-White-Wood-TV-Stand-with-3-Drawer-Fits-TVs-Up-to-50-in-with-Storage-Doors-9787800410/303566238> (last visited July 26, 2021).

register a fabric design consisting of striped cloth with small grid squares superimposed on the stripes).

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.



U.S. Copyright Office Review Board

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