



**United States Copyright Office**

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**Re: Second Request for Reconsideration for Refusal to Register The Explorer and Forget Me Not; Correspondence IDs: 1-2UQNX9Q, 1-2V2KYPR; SR 1-4000614358, SR 1-4440340247**

Dear Ms. Citrynell:

The Review Board of the United States Copyright Office (“Board”) has considered Ronaldo Designer Jewelry, Inc.’s (“Ronaldo’s”) second request for reconsideration of the Registration Program’s refusals to register jewelry design claims in two bracelets titled The Explorer and Forget Me Not (together, 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 Explorer and reverses the Registration Program’s denial of registration for Forget Me Not.

**I. DESCRIPTION OF THE WORKS**

The Works are three-dimensional bracelets.

The Explorer is an ornamental bracelet. It features numerous gold wires banded together both vertically and horizontally. The two horizontal bands of wires are undulating and connect in four places, where the sets of wires are connected by vertical bands of wires. In one negative space between the horizontal bands of wires, there is an east-west oval purple stone. The Work is pictured as follows:



Forget Me Not is also an ornamental bracelet. The band portion includes three twisted wires framed by two plain wires. The decorative portion includes two twisted wires and two wires with gold beads and pearls that intersect in a weaving manner. The Work is pictured as follows:



## II. ADMINISTRATIVE RECORD

On September 16, 2016, Ronaldo filed an application to register a copyright claim in The Explorer. In a January 18, 2018, letter, a Copyright Office registration specialist refused to register the claim, finding that the bracelet lacked originality. Letter from David M. Hubbard Sr., Problem Resolution Specialist, to Kyle Anne Citrynell, at 1 (Jan. 18, 2018). In a letter dated March 19, 2018, Ronaldo requested that the Office reconsider its initial refusal to register The Explorer. Ronaldo argued that the bracelet meets the originality threshold, stating that that The Explorer “is highly ornate and combines a large precious stone with an intricate pattern of wires and beads . . . . This highly embellished bracelet work combines decorative, creative elements [that] are separable and would qualify for copyright protection as sculptural works had they originally been fixed in some tangible medium other than the bracelet under consideration . . . .” Letter from Kyle Anne Citrynell to U.S. Copyright Office, at 4 (Mar. 19, 2018) (“Explorer First Request”). After reviewing the bracelet in light of the points raised in the Explorer First Request, the Office re-evaluated the claims and denied Ronaldo’s first request for reconsideration of The Explorer along with two other jewelry items that were not appealed. The Office concluded that The Explorer “design as a whole consist[s] of simple combinations of . . . gold wires in a stacked, circular configuration, accented with vertical bands of gold along with . . . a single colored gemstone. The simple configurations of these few elements do not demonstrate sufficient creativity to support a claim in copyright.” Letter from Stephanie Mason, Attorney-Advisor, to Kyle Anne Citrynell, at 4 (Aug. 24, 2018).

On February 16, 2017, Ronaldo filed an application to register a copyright claim in Forget Me Not. In a January 25, 2018 letter, a Copyright Office registration specialist refused to register the claim, finding that the bracelet lacked originality. Letter from David M. Hubbard Sr., Problem Resolution Specialist, to Kyle Anne Citrynell, at 1 (Jan. 25, 2018). In a letter dated April 25, 2018, Ronaldo requested that the Office reconsider its initial refusal to register Forget Me Not. Ronaldo argued that the bracelet meets the originality threshold, stating that that the “individual features of [Forget Me Not] . . . are decorative, creative elements, [and] are separable and would qualify for copyright protection as sculptural works had they originally been fixed in some tangible medium other than a useful article . . . .” Letter from Kyle Anne Citrynell to U.S. Copyright Office, at 6 (Apr. 25, 2018) (“Forget Me Not First Request”). After reviewing the bracelet in light of the points raised in the Forget Me Not First Request, the Office re-evaluated the claims and denied Ronaldo’s first request for reconsideration of Forget Me Not along with seven other jewelry items that were not appealed. The Office concluded that copyright “protection is not afforded to common and familiar shapes[, and] . . . . the bracelet’s features are not combined in any way that differentiates them from their basic shapes and design components, and so they cannot rise to the level of creativity necessary for copyright

registration.” Letter from Stephanie Mason, Attorney-Advisor, to Kyle Anne Citrynell, at 5 (Aug. 24, 2018).

In two letters dated November 26, 2018, Ronaldo 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 Kyle Anne Citrynell to U.S. Copyright Office, at 1 (Nov. 26, 2018) (“Explorer Second Request”); Letter from Kyle Anne Citrynell to U.S. Copyright Office, at 1 (Nov. 26, 2018) (“Forget Me Not Second Request”). Ronaldo seeks registration on the basis of the “layering, texturing, and visual combination of shapes and materials . . . and the overall appearance of the expression resulting from Ronaldo’s selection and arrangement of elements.” Explorer Second Request at 2; Forget Me Not Second Request at 2. Ronaldo continues that the bracelets feature “neither a mechanical nor a routine arrangement such as a symmetrical arrangement of stones on jewelry, nor are the selection, coordination or arrangement commonplace or to be expected as a matter of course.” Explorer Second Request at 6; Forget Me Not Second Request at 6.

### **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 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 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.

**B. Analysis of the Works**

After carefully examining the Works and applying the legal standards discussed above, the Board finds that The Explorer does not contain the requisite authorship necessary to sustain a claim to copyright and that Forget Me Not does contain the requisite authorship necessary to sustain a claim to copyright.

The Explorer most notably features strands of gold stacked on top of one another, which are not copyrightable. *See Jane Envy, LLC v. Infinite Classic Inc.*, 2016 U.S. Dist. LEXIS 23621, at \*22, \*24 (W.D. Tex. Feb. 26, 2016) (stating that chains and “textured gold links” are not copyrightable); COMPENDIUM (THIRD) § 908.2 (citing bangle bracelets as insufficiently original in part because they are “mere variations on a common or standardized design or familiar symbol . . . [and] designs made up of only commonplace design elements arranged in a common or obvious manner”). The fact that the gold strands separate and connect in a symmetrical pattern does not imbue The Explorer with sufficient creativity to merit copyright protection. COMPENDIUM (THIRD) § 908.3 (citing “[c]ommon or symmetrical arrangements” as not copyrightable). In addition, the Office must exclude the manner in which the gemstone is framed from its analysis. The angular and curved gold strands surrounding the gemstone act as a setting, since those elements secure the gemstone. This setting, as a functional element of the bracelet similar to a clasp or fastener, cannot be considered in the Office’s analysis. *Id.* § 908.1 (excluding “mechanical or utilitarian” elements from the registrability analysis); *id.* § 908.3 (stating that “[p]urely functional elements, such as a clasp or fastener” are “not considered in analyzing copyrightability”).

The selection, combination, and arrangement of the bracelet’s elements—plain gold strands and one purple gem—is insufficient to render the bracelet original. The bracelet design at issue here includes very few elements, and those elements are arranged in a standard manner. *Cf. Cosmos Jewelry Ltd., v. Po Sun Hon, Co.*, 470 F.Supp.2d 1072, 1082 (C.D. Cal. 2006) (discussing registered jewelry line consisting of variations on the plumeria flower, including “sand-blasted” and “high-polish” finishes that were found to be “standard, stock, or common”).

Additionally, the Board further finds that Ronaldo’s request that The Explorer be registered under the “Rule of Doubt” provision is misplaced. *See Explorer Second Request at 7.* Under the Rule of Doubt, the Office may on occasion register a claim to copyright even though the Office has reasonable doubt as to whether the material submitted for registration constitutes copyrightable subject matter or whether the other legal and formal requirements of the statute have been met. *See* COMPENDIUM (THIRD) § 607. Generally, the Office applies the Rule of Doubt in certain very limited situations. The Office may register a claim under this provision if it is unable to examine the deposit copy to determine whether the work has copyrightable

authorship or, in exceptional cases, when the Office has not taken a position on a legal issue that is directly relevant to whether the work constitutes copyrightable subject matter. *Id.* Neither of these circumstances is present in this situation. Accordingly, the Rule of Doubt provision is not applicable with respect to The Explorer.

In contrast to The Explorer, Forget Me Not is registrable. The bracelet features numerous elements, including plain and textured gold strands, gold beads, pearls, and several strands woven together in a distinct manner. *See* COMPENDIUM (THIRD) § 908.3 (“When evaluating the copyrightability of a jewelry design, the specialist may consider the number of elements in the design. More elements may weigh in favor of copyrightability . . .”). The decorative portion of the bracelet is comprised of intertwining strands that do not appear to follow a standard braiding pattern. Moreover, the inclusion of different colored beads to two of the strands on the decorative portion adds to the creativity of the design. *See Wolstenholme v. Hirst*, 271 F.Supp.3d 625, 636 (S.D.N.Y. 2017) (holding, on a motion to dismiss, that the “selection, arrangement and combination” of pharmaceutical charms on a bracelet and necklace was sufficiently original). Similarly, the band and decorative portions of the bracelet incorporate textured gold strands that interact with the smooth and beaded strands, respectively. Overall, the number of individual elements and the distinctive manner in which they interact are sufficient to render Forget Me Not original.

Thus, after analyzing both the individual elements of the Works and the combinations of those elements, the Office concludes that Forget Me Not meets the standard for originality under *Feist*, while the Explorer does not.

#### 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 Forget Me Not. The Board now refers this work to the Registration Policy and Practice division for registration of the work, provided that all other application requirements are satisfied.

The Board affirms the refusal to register the copyright claim in the Explorer. 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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Catherine Zaller Rowland, Associate Register of  
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