



United States Copyright Office

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July 27, 2017

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

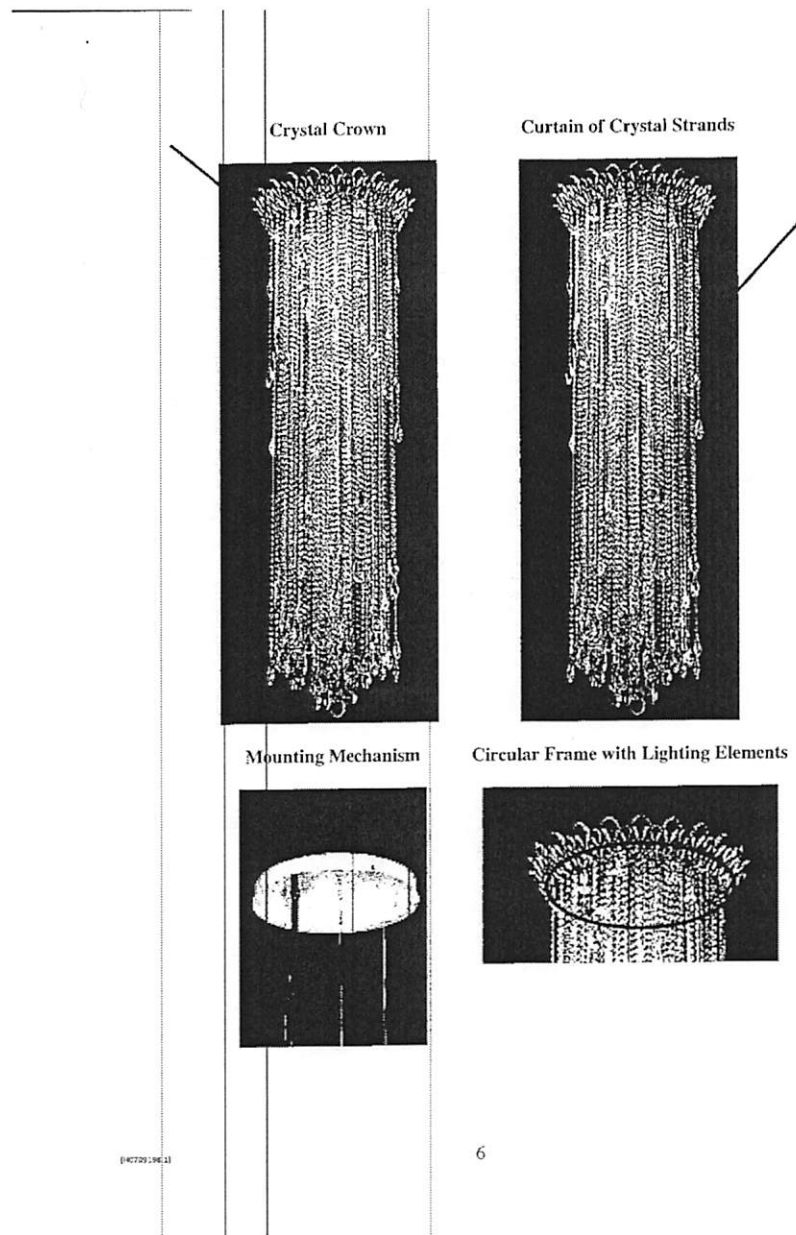
**Re: Second Request for Reconsideration for Refusal to Register “Trilliane Strand”;
Service Request #: 1-1348678711; Correspondence ID: 1-1QQ24EF**

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 crown” combined with the “curtain of crystal strands”) of the light fixture titled “Trilliane Strand” (“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 a selection of images submitted by Swarovski of the Work.¹ In particular, the top two images identify a “crystal crown” and “curtain of crystal strands;” the bottom two images identify the “mounting mechanism” and “circular frame with lighting elements.” Letter from Shanna Sanders, Rothenberg Farley & Mesiti P.C. to U.S. Copyright Office at 6 (Mar. 9, 2016) (“First Request”) (capitalization altered); Letter from Shanna Sanders, Rothenberg Farley & Mesiti P.C. to U.S. Copyright Office at 6 (Oct. 6, 2016) (“Second Request”).

¹ Although a number of variations of the Trilliane Strand design (*i.e.*, images of different light fixtures) were submitted in the deposit material with the application, Swarovski’s requests for reconsideration are limited to images corresponding to Trilliane Strand design number TR2413, and the filing fees submitted with the first and second requests for reconsideration covered consideration of only a single work. *See* 37 C.F.R. § 201.3(d)(4)(i)-(ii) (providing fee “per claim”). Accordingly, the Work, for purposes of the Board’s review and copyright registration, is limited to Trilliane Strand design number TR2413. *See also* COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 511 (3d ed. 2017) (“COMPENDIUM THIRD 2017”) (“As a general rule, a registration covers one individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration.”).



Because it is a light fixture, Swarovski acknowledges that the Work is a useful article that cannot be protected by copyright as such. See 17 U.S.C. § 101; First Request at 2; Second Request at 3. In its correspondence with the Copyright Office, however, Swarovski states that it “does not claim copyright in the overall shape or industrial design of the Trilliane Strand . . . light fixture . . . , but rather the *artistic expression* reflected in the sculptural features of the work.” First Request at 2; Second Request at 3 (excluding, in particular, the “internal wiring, ceiling mounting mechanism, [and] lighting component or light bulbs”) (emphasis in original). The sculptural features Swarovski seeks to register are limited to the “crystal crown” and “curtain of crystal strands” specifically identified in its requests for reconsideration. First Request at 5-7; Second Request at 5-7, 8 (also describing these features as “the crystal collar and curtain of crystal strands,” which are “sculptural adornments that embellish the underlying shape of” the light fixture).

As noted, copyright does not protect useful articles as such. 17 U.S.C. § 101. Under the Copyright Act, 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” and “[a]n article that is normally a part of a useful article is [also] considered a ‘useful article.’” *Id.* Importantly, however, an artistic 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—limited to the exact combination of artistic features in the crystal crown and curtain of crystal strands in Trilliane Strand design number TR2413—meets this test and therefore constitutes a separable artistic feature from the overall light 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”). In particular, the Work’s three-dimensional design of numerous crystals of various shapes and sizes in an original arrangement is an artistic feature that can be perceived as a freestanding work of art that does not recreate the light fixture when imaginatively removed from the useful article. Additionally, the Board finds that the Work’s combination of different sized octagons and pendalques in the crystal crown and curtain strand—as a whole—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