



**United States Copyright Office**

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June 25, 2020

Christian Sanchelima, Esq.  
Sanchelima & Associates P.A.  
235 SW Le Jeune Rd.,  
Miami, FL 33134

**Re: Second Request for Reconsideration for Refusal to Register TRIO Wall Sconce; Correspondence ID: 1-3HMG4FJ; SR # 1-6278787931**

Dear Mr. Sanchelima:

The Review Board of the United States Copyright Office (“Board”) has considered Cinier Radiateurs SARL’s (“Radiateurs”) second request for reconsideration of the Registration Program’s refusal to register a three-dimensional sculpture claim in the work titled TRIO Wall Sconce (“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 wall sconce that consists of three rectangles where the bottom left corner of one vertical box overlaps the top right corner of a second vertical box, with a third horizontal box overlapping both vertical boxes at the point where they intersect. The Work is as follows:



## II. ADMINISTRATIVE RECORD

On February 8, 2018, Radiateurs filed an application to register a copyright claim in the Work. In a September 13, 2018, letter, a Copyright Office registration specialist refused to register the claim, finding that the Work was a useful article that does “not contain any non-useful design element that could be copyrighted and registered.” Initial Letter Refusing Registration from U.S. Copyright Office to Christian Sanchelima (Sept. 13, 2018).

In a letter dated December 11, 2018, Radiateurs requested that the Office reconsider its initial refusal to register the Work. Letter from Christian Sanchelima to U.S. Copyright Office (Dec. 11, 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 separable features of the Work[] consist of rectangular-shaped ‘boxes’” and that “[e]ach element is a common and familiar shape, and as such, 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 Christian Sanchelima at 4 (April 12, 2019) (“Refusal of First Request”).

In a letter dated July 12, 2019, Radiateurs 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 Christian Sanchelima to U.S. Copyright Office (July 12, 2019) (“Second Request”). In that letter, Radiateurs argued that “[t]he overall selection of the shapes along with the sizes of the shapes is variable and demonstrates the creativity and originality infused in the work.” Second Request at 2. Radiateurs argued that the unique and artistic configuration of the boxes is sufficient to overcome the originality requirement in copyright, quoting *Compaq Computer Corp. v. Ergonome, Inc.*, in which the court found that “a work comprising uncopyrightable elements may, through original organization and presentation, be protected by copyright law.” Second Request at 2 (quoting *Compaq Comput. Corp. v. Ergonome, Inc.*, 137 F. Supp. 2d 768, 774 (S.D. Tex. 2001)).

## 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* 137 S. Ct. at 1007 (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. 2017) (“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; *see also* 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.”); *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) Idea/Expression Dichotomy and Merger Doctrine***

Section 102(b) of the Copyright Act provides that copyright protection for expressive works does not extend to “any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). Section 102(b) codifies the longstanding principle, known as the idea-expression dichotomy, that copyright law protects the original expression of ideas, but not the underlying ideas themselves. The Supreme Court in 1879 held that the copyright in a book describing a bookkeeping system, with blank forms and ruled lines and headings, did not give the copyright owner the right to prevent others from using the bookkeeping system described therein nor “the exclusive right to make, sell, and use account-books prepared upon the plan set forth in such book.” *Baker v. Selden*, 101 U.S. 99, 102–04 (1879).

For this reason, “[m]athematical principles, formulas, algorithms, or equations” are ineligible for copyright protection under section 102(b). *See* COMPENDIUM (THIRD) § 313.3(A). Though the Office is permitted to register a sufficiently original artistic description, explanation, or illustration of an idea, procedure, process, system, method of operation, concept, principle, or discovery, *see* H.R. Rep. No. 94–1476, at 56–57 (1976), “the registration would be limited to the copyrightable literary, musical, graphic, or artistic aspects of the work . . .” COMPENDIUM (THIRD) § 313.3(A). This principle is manifested in the Office’s regulations, which bar copyright protection for “[i]deas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described in a writing.” 37 C.F.R. § 202.1(b). Originality springs from independent creation, not from discovering a yet-unknown mathematical principle. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 347 (1991)

(“[O]ne who discovers a fact is not its maker or originator. The discoverer merely finds and records.”).

Copyright’s merger doctrine, which states that idea and expression merge together when the expression cannot be separated from the idea, is a closely related principle that bars copyrightability of certain works. *See Baker*, 101 U.S. at 103 (explaining that if the “art” that a book “teaches cannot be used without employing the methods and diagrams used to illustrate the book, or such as are similar to them, such methods and diagrams are to be considered as necessary incidents to the art, and given therewith to the public”); *CCC Info. Servs., Inc. v. Maclean Hunter Market Reports, Inc.*, 44 F.3d 61, 68 (2d Cir. 1994) (“[W]hen the expression is essential to the statement of the idea, the expression also will be unprotected, so as to insure free public access to the discussion of the idea.”). Similarly, under the *scènes à faire* principle, expressive elements of a work are not entitled to protection if they are standard, stock, or common to a particular topic, if they necessarily follow from a common theme or setting, or if they are “dictated by external factors such as particular business practices.” *See, e.g., Computer Mgmt. Assistance Co. v. Robert F. DeCastro, Inc.*, 220 F.3d 396, 401 (5th Cir. 2000); 4 NIMMER ON COPYRIGHT §13.03[B][4] (2018); GOLDSTEIN ON COPYRIGHT § 2.3.2.2 (2015).

### 3) 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* 499 U.S. at 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 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, as a wall sconce (*i.e.*, light fixture), the Work is a “useful article” as defined in the Copyright Act. *See* 17 U.S.C. §101 (defining “useful article” as “an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey

information”). As the Supreme Court declared in *Star Athletica*, the Copyright Act does not protect useful articles as such. 137 S. Ct. 1002, 1008 (2017). 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.

Both the Copyright Office and Radiateurs agree that the Work is a useful article and that the configuration of the three rectangles is a separable design element applied to the surface of the Work, satisfying the separability portion of the *Star Athletica* test for copyrightability. Refusal of First Request at 3; Second Request at 1. Thus, the Office’s analysis focuses on the critical question of whether the separable design contains sufficient creativity to be copyrightable. The elements of the separable design consist of three rectangles, which are not in and of themselves copyrightable as they are common geometric shapes. *See* 37 C.F.R. § 202.1(a) (prohibiting registration of “familiar symbols or designs . . . or colors); COMPENDIUM (THIRD) § 906.1 (“the Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form . . . including . . . squares, cubes, rectangles . . . parallelograms”).

The next question the Office must ask is whether the separable design, as a whole, is sufficiently creative to support a claim to copyright. COMPENDIUM (THIRD) § 906.1. The separable design of the Work consists of three similarly-shaped rectangles: three rectangles where the bottom left corner of one vertical box overlaps the top right corner of a second vertical box, with a third horizontal box overlapping both vertical boxes at the point where they intersect. Three rectangles in an overlapping pattern is an obvious, basic configuration that is insufficiently creative to warrant copyright protection. *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 register a fabric design consisting of striped cloth with small grid squares superimposed on the stripes).

Overlapping rectangular shapes are a common, stock feature of contemporary and industrial style lighting. *See* App’x (examples of wall sconces consisting of overlapping rectangular shapes). Without more, the employment of overlapping rectangular shapes constitute *scènes à faire* in the lighting industry and is unprotectable under copyright. *See, e.g., Zaleski v. Cicero Builder Dev., Inc.*, 754 F.3d 95, 106 (2d Cir. 2014) (denying copyright protection for elements that are “features of all colonial homes, or houses generally”); *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 606 (1st Cir. 1988) (noting that “as idea and expression merge, fewer and fewer aspects of a work embody a unique and creative expression of the idea; a copyright holder must then prove substantial similarity to those few

aspects of the work that are expression not *required* by the idea”). Because the separable design consists of common geometric shapes arranged in an obvious configuration that constitute *scènes à faire* within the wall sconce industry,<sup>1</sup> the Work does not contain more than a *de minimis* amount of creative expression. *Feist*, 499 U.S. at 363.

#### 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.

  
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**U.S. Copyright Office Review Board**  
Regan A. Smith, General Counsel and  
Associate Register of Copyrights  
Catherine Zaller Rowland, Associate Register of  
Copyrights and Director, Public Information and  
Education  
Kimberley Isbell, Deputy Director of Policy and  
International Affairs

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<sup>1</sup> See e.g., <https://www.homelava.com/en-modern-led-wall-lamp-creative-wall-sconce-triple-layers-overlap-light-bedside-hallway-lighting-lby18-p39732.htm>; <https://infolighting.com/collections/modern-forms/products/escher-led-wall-sconce>; <https://www.bellacor.com/productdetail/progress-lighting-94710057031-adagio-black-two-light-wall-sconce-2151927.htm>; [https://www.lampsplus.com/sfp/R8144/?cm\\_mmc=GOO-SH--NA--NA--R8144&sourceid=DFGPDR8144&gclid=EAiaIQobChMIh\\_be\\_veD6gIVD4-GCh11-AuwEAQYAiABEgKWefD\\_BwE](https://www.lampsplus.com/sfp/R8144/?cm_mmc=GOO-SH--NA--NA--R8144&sourceid=DFGPDR8144&gclid=EAiaIQobChMIh_be_veD6gIVD4-GCh11-AuwEAQYAiABEgKWefD_BwE); [https://www.build.com/minka-lavery-4873-283/s984631?uid=2431788&source=gg-gba-pla\\_2431788!c1710656096!a65810353174!dc!ng&gclid=EAiaIQobChMIYnF6Yud6QIVkgilCR0npg\\_aEAQYBSABEgJRYPD\\_BwE&gclsrc=aw.ds](https://www.build.com/minka-lavery-4873-283/s984631?uid=2431788&source=gg-gba-pla_2431788!c1710656096!a65810353174!dc!ng&gclid=EAiaIQobChMIYnF6Yud6QIVkgilCR0npg_aEAQYBSABEgJRYPD_BwE&gclsrc=aw.ds); <https://www.2modern.com/products/inside-out-offset-panels-led-sconce>.