United States Copyright Office
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April 7, 2014

Buchalter Nemer
Attn: Philip Nulud
1000 Wilshire Blvd, Suite 1500
Los Angeles, CA 90017-2457

Re: Titan Bracelet
Titan Ring
Correspondence ID: 1-G8YJ72

Dear Mr. Nulud:

The Review Board of the United States Copyright Office (the "Board") is in receipt of your second request for reconsideration of the Registration Program's refusal to register the works entitled: *Titan Bracelet* and *Titan Ring*. You submitted this request on behalf of your client, MCO Global, LLC, on November 20, 2013.

The Board has examined the application, the deposit copies, and all of the correspondence in this case. After careful consideration of the arguments in your second request for reconsideration, the Board affirms the Registration Program's denial of registration of these copyright claims. The Board's reasoning is set forth below. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action on this matter.

I. DESCRIPTION OF THE WORKS

Titan Bracelet and *Titan Ring* ("Works") consist of the following jewelry designs:

(1) Titan Bracelet

Titan Bracelet is a bracelet design. The work is comprised of an incomplete metal bracelet band. Conical arrow-tip shapes appear at each end of the incomplete band. The work opens and closes via a hinge. The below image is a photographic reproduction of the Work from the deposit materials:



(2) Titan Ring

Titan Ring is a ring design. The work is a smaller version of the *Titan Bracelet* design that does not include a hinge. The below image is a photographic reproduction of the Work from the deposit materials:



II. ADMINISTRATIVE RECORD

On August 3, 2012, the United States Copyright Office (the "Office") issued a letter notifying MCO Global, LLC (the "Applicant") that it had refused registration of the above mentioned Works. *Letter from Rhoda Holliman, Registration Specialist, to Jessie Reider* (Aug. 3, 2012). In its letter, the Office stated that it could not register the Works because they "lack the authorship necessary to support a copyright claim." *Id.*

In a letter dated May 24, 2013, you requested that, pursuant to 37 C.F.R. § 202.5(b), the Office reconsider its initial refusal to register the Works. *Letter from Philip Nulud to Copyright RAC Division* (May 24, 2013) ("First Request"). Upon reviewing the Works in light of the points raised in your letter, the Office concluded that the Works "do not contain a sufficient amount of original and creative artistic or sculptural authorship" and again refused registration. *Letter from Stephanie Mason, Attorney-Advisor, to Philip Nulud* (Aug. 21, 2013).

Finally, in a letter dated November 20, 2013, you 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 Philip Nulud to Copyright R&P Division* (Nov. 20, 2013) ("Second Request"). In arguing that the Office improperly refused registration, you claim the Works include at least the minimum amount of creativity required to support registration under the standard for originality set forth in *Feist Publ'ns v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991). *Second Request* at 2. In support of this argument, you claim that the selection and arrangement of the Works' constituent elements possess a sufficient amount of creative authorship to warrant registration under the Copyright Act. In support of your argument, you assert that the Works have "garnered significant praise and recognition by the fashion community," have "been featured in famous magazines," and have been "seen on celebrities." *Id.* at 3.

III. DECISION

A. *The Legal Framework*

All copyrightable works must qualify as "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). As used with respect to copyright, the term "original"

consists of two components: independent creation and sufficient creativity. *See Feist*, 499 U.S. at 345. 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.* While only a modicum of creativity is necessary to establish the requisite level, the Supreme Court has ruled that some works (such as the telephone directory at issue in *Feist*) fail to meet this 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 nonexistent." *Id.* at 359.

The Office's regulations implement the long-standing requirements of originality and creativity set forth in the law and, subsequently, the *Feist* decision. *See* 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"); *see also* 37 C.F.R. § 202.10(a) (stating "[i]n order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form").

Case law recognizes instances in which jewelry has enjoyed copyright protection for "the artistic combination and integration" of constituent elements that, considered alone, are unoriginal. *See Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101 (2d Cir. 2001). However, as noted, the mere simplistic arrangement of non-protectable elements does not automatically establish the level of creativity necessary to warrant protection. *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"). Ultimately, the determination of copyrightability in the combination of standard design elements rests 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).

To be clear, the mere simplistic arrangement of unprotectable elements does not automatically establish the level of creativity necessary to warrant protection. For example, the Eighth Circuit upheld the Copyright Office's refusal to register a simple logo consisting of four angled lines which formed an arrow and the word "Arrows" in a cursive script below the arrow. *See John Muller & Co., Inc. v. NY Arrows Soccer Team, Inc.*, 802 F.2d 989 (8th Cir. 1986). Likewise, the Ninth Circuit held that a glass sculpture of a jellyfish that consisted of elements including clear glass, an oblong shroud, bright colors, proportion, 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 court's language in *Satava* is particularly instructional:

> [i]t 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) (emphasis in original).

Finally, Copyright Office Registration Specialists (and the Board, as well) do not make aesthetic judgments in evaluating the copyrightability of particular works. They are not influenced by the attractiveness of a design, the espoused intentions of the author, the design's uniqueness, its visual effect or appearance, its symbolism, the time and effort it took to create, or its commercial success in the marketplace. *See* 17 U.S.C. § 102(b); *see also Bleistein v. Donaldson*, 188 U.S. 239 (1903). The fact that a work consists of a unique or distinctive shape or style for purposes of aesthetic appeal does not automatically mean that the work, as a whole, constitutes a copyrightable "work of art."

B. *Analysis of the Works*

After carefully examining *Titan Bracelet* and *Titan Ring* and applying the legal standards discussed above, the Board finds that the Works fail to satisfy the requirement of creative authorship.

First, the Board finds that none of the Works' constituent elements, considered individually, are sufficiently creative to warrant protection. As noted, 37 C.F.R. § 202.1(a), identifies certain elements that are not copyrightable. These elements include, *inter alia*, "familiar symbols or designs." *Id.* Here, the Works are comprised of the following elements: a metal band (one designed to fit on a wrist; one designed to fit on a finger); conical arrow-tip shapes; and, in the case of the *Titan Bracelet*, a standard hinge. Consistent with the above regulations, these ordinary elements (jewelry bands, shapes, and a simple hinge) are ineligible for copyright protection. *See id.* (prohibiting the registration of basic or familiar symbols or designs). Thus, we conclude that the Work's constituent elements, individually, do not qualify for registration under the Copyright Act.

Second, the Board finds that the Works, considered as wholes, fail to meet the creativity threshold set forth in *Feist*. 499 U.S. at 359. As explained, the Board accepts the principle that jewelry designs comprised of combinations of unprotectable elements may be eligible for copyright registration. However, in order to be accepted, such combinations must contain some distinguishable variation in the selection, coordination, or arrangement of their elements that is not so obvious or minor that the "creative spark is utterly lacking or so trivial as to be nonexistent." *Id.*; *see also Atari Games,* 888 F.2d at 883 (finding a work should be viewed in its entirety, with individual noncopyrightable elements judged not separately, but in their overall interrelatedness within the work as a whole). Viewed in their entirety, the Works consist of the simple arrangement of ordinary, open-ended bracelet and ring bands with conical arrow-tip shapes at each end. These basic combinations of unprotectable jewelry bands with familiar shapes are, at best, *de minimis*, and fail to meet the threshold for copyrightable authorship. *Feist,* 499 U.S. at 359; *see also Atari Games,* 888 F.2d at 883. Accordingly, we conclude that the Works lack the requisite "creative spark" necessary for registration. *Feist,* 499 U.S. at 359; *Satava*, 323 F.3d at 811.

Finally, your assertion that the selections and arrangements of the Works' elements are unique does not add to your claims of sufficient creativity. *Id.* at 3. Nor does your assertion that the Works have "garnered significant praise and recognition by the fashion community," have "been featured in famous magazines," and have been "seen on celebrities." *Id.* As discussed above, the Board does not assess a design's uniqueness or its commercial success in the marketplace in determining whether a work contains the requisite minimal amount of original authorship necessary

for registration. *See* 17 U.S.C. § 102(b); *see also Bleistein*, 188 U.S. 239. Thus, even if accurate, the mere fact that the Works consists of novel, aesthetically appealing, commercially popular arrangements of familiar shapes would not qualify them as copyrightable.

In sum, the Board finds that both the individual elements that comprise the Works, as well as the selection, organization, and arrangement of those elements lack the sufficient level of creativity to make them eligible for registration under the Copyright Act.

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the works entitled: *Titan Bracelet* and *Titan Ring*. This decision constitutes final agency action on this matter. 37 C.F.R. § 202.5(g).

Maria A. Pallante
Register of Copyrights

BY: _____
Stephen Ruwe
Copyright Office Review Board