United States Copyright Office
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April 2, 2014

Maurice B. Pilosof
1925 Century Park East, Suite 2300
Los Angeles, CA 90067

RE: life is beautiful (LIB-sculpture AAC781)
Correspondence ID: 1-FFANSJ

Dear Mr. Pilosof:

The Review Board of the United States Copyright Office (the "Board" or "Review Board") has considered you second request for reconsideration of the Registration Program's refusal to register a copyright claim to the work entitled *life is beautiful* (the "Work"). The application for registration was submitted on behalf of Amusement Art LLC. The Review Board has carefully examined the application, the accompanying deposit material, and all of the briefing and correspondence in this case. After consideration of the arguments made, the Board affirms the denial of registration of this copyright claim because the Work does not contain sufficient amount of original and creative sculptural authorship to support a copyright registration. This decision constitutes final agency action in this matter. 37 C.F.R. § 202.5(g).

I. DESCRIPTION OF THE WORK

The Work is a three-dimensional depiction of the words "life is beautiful" and attached to a solid, rectangular base. The words are portrayed in script, with the letter "i" in each of the three words dotted by a heart shape, rather than a circle. The entire Work is arched, so that the "leg" of the letter "l" in the word ""beautiful" and that of the letter "b" in the word "beautiful" permit attachment of the Work to its base. The color of the words "life is beautiful" is a bright pink, in contrast to the solid black base. The three-dimensional effect of the words 'life is beautiful' creates the impression that they have been carved or otherwise fashioned from a solid material. An image of the Work, taken from the deposit material, is reproduced below:



II. ADMINISTRATIVE RECORD

On October 15, 2012, the Copyright Office issued a letter notifying Patrick Guetta of Amusement Art, LLC, that it had refused registration of the Work. *Letter from Registration Specialist, Adrienne Brown, to Patrick Guetta*, (October 15, 2014). In its letter, the Office stated that it could not register the Work because it lacked the authorship necessary to support a copyright claim. *Id.* at 1.

In a letter dated January 17, 2013, you requested that the Office reconsider its initial refusal to register the Work. *Letter from Maurice B. Pilosof to Copyright RAC Division* (January 7, 2014). Upon reviewing the Work in light of the points raised in your letter, the Office affirmed the initial refusal, concluding that "[b]ecause there are no elements or features embodied in this work, either alone or in combination, upon which a copyright registration is possible," the claim must be rejected. *Letter from Attorney-Advisor, Stephanie Mason, to Maurice B. Pilosof*, at 3 (May 9, 2013). You subsequently sought a second reconsideration of the registration refusal. *Letter from Maurice B. Pilosof to Registration and Recordation Program* (October 22, 2013).

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. *Feist Publications, Inc. v. Rural Telephone Service 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. Second, the work must possess sufficient creativity. While only a modicum of creativity is necessary to establish such creativity, the Supreme Court has ruled that some works (such as a telephone directory at issue in the case) fail to meet the standard. The Court observed that "[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimus* quantum of creativity." *Id.* at 363. 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; *see, also* 37 C.F.R. § 202.10(a) ("In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form.").

The Copyright Office's regulations implement the long-standing requirements of originality and creativity set forth in the law and, subsequently, the *Feist* decision. The regulations prevent 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" 37 C.F.R. 202.1(a). Of course, some combinations of common or standard design elements may contain sufficient creativity with respect to how they are combined or arranged to support a copyright. *See, Feist,* at 358 (the Copyright Act "implies that some 'ways' [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not." The determination of copyrightability rests on whether the selection, coordination, or arrangement was done in "such a way" as to result in copyrightable authorship). However, not every combination or arrangement will be sufficient to meet this grade. 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. *John Muller & Co v. New York Arrows Soccer Team*, 802 F.2d 989 (8th Cir. 1986). *See also, Satava v. Lowry*, 323 F.2d 805, 811 (9th Cir. 2003)("It is true, or course, that a *combination* of unprotectible elements may qualify for copyright protection. But it is not true that any combination of unprotectible elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that a combination of unprotectible 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.")(citations omitted)(emphasis in original). 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. *Atari Games Corp. v. Oman*, 888 F.2d 878 (D.C. Cir. 1989).

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 Work life is beautiful*

After carefully examining the Work and applying the legal standards discussed above, the Board determines that the Work fails to satisfy the requirement of sufficient creativity. We begin our analysis with an examination of the constituent elements that comprise the Work. As discussed above, copyright may not be obtained for words or short phrases, and the phrase "life is beautiful" certainly falls in that category. Likewise, there is no copyright protection in script or font of words or phrases, so that the script format for the words "life is beautiful" is not protectible. The Work also contains other elements that are not copyrightable. The black, rectangular base to which the lettering is attached is a basic geometric shape, and therefore not protectible. There is no protection in the heart shapes that dot the letter "I" in each of the works, because the heart shape is a commonplace, public domain shape, and there is no protection in the arch-shaped inclination of the words. The three dimensional aspects of the letters, which create the sculptural work, are dictated by the script that forms them. A rendering of typographic font in three dimensions, as opposed to the more typical two, does not vitiate the rule that lettering is not copyrightable, just as the colorization of the letters in bright pink does not make them copyrightable.

Although the elements that comprise the Work lack sufficient creativity to produce a copyrightable sculptural work, the Board readily acknowledges that a creative selection, arrangement or coordination of such elements can support a registration. *Feist*, 499 U.S. at 358. Contrary to the assertions made in your second request for reconsideration, we do not find creative selection and arrangement of the three dimensional script of the words "life is beautiful," the use of a common heart shape to dot the letter "I" in each of the three words, the stacking and connection of the words "life" and "is" to the underlying word "beautiful," and the curved shape of the word "beautiful." The selection, coordination and arrangement of these elements is basic and lacks the necessary "creative spark." *Situation Management Systems, Inc. v. ASP Consulting LLC*, 560 F.3d 50, 53 (1st Cir.

2009). Consequently, the Board has determined that the Work, as a whole, is lacking in sufficient creativity to warrant a copyright registration. *Atari Games Corp.*, 888 F. 2d at 883.

You have cited two cases in you second request for reconsideration, and provide graphic depictions of the works involved in those cases, that you assert support a registration of the Work. The first, *Gilbert v. Indiana*, No. 09 CV 6352(KBF), 2012 WL 688811, at *4 (S.D.N.Y. March 2, 2012), involved a contract action by plaintiff Gilbert against the creator of the well known "LOVE" sculpture, Robert Indiana.[1] The dispute related to creation of another work, referred to as "English Prem," which was a Hindi version of the "LOVE" sculpture. Although you assert that the Work in this case is copyrightable "[j]ust as Indiana's LOVE sculpture is copyrightable," the Court made no inquiry or finding as to whether the "LOVE" sculpture (or, for that matter, "English Prem") was copyrightable, as the action was solely one in contract. The Court did state, in conclusory fashion, that "Indiana obtained protection for his iconic 'LOVE' design based upon the design or expression of the word 'love' contained in that design," but did not provide any analysis or support for this observation. 2012 WL at 688815. Although similar in concept, the Board does not find anything about the depiction of the "LOVE" design that compels registration of the Work in this case.

The second case that you have emphasized, *Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199 (3d Cir. 2005), involved a particular "Garden Accent Rock," named " Sculpture No. 646, which was described as a decorative, cement-cast, outdoor sculpture representing a rock or stone, inscribed with a poem. The district court concluded that Sculpture No. 646 "lacked any protectible configuration or design," but the Third Circuit panel disagreed. 421 F.3d at 207. The Court did not specifically analyze the individual elements of the work or their selection, arrangement, or organization, but instead accepted "Kay Berry['s] claims that it selected an inspirational poem from the public domain, adapted that poem to make it visually and rhythmically appealing, and then cast it on its own sculptural work." *Id.* From this the Court determined that the work possessed the necessary "creative spark" required by the *Feist* decision.

While the Court's discussion is too sparse to influence the Board in its consideration of the Work presented in this case, we do note a significant difference between Sculpture No. 646 and the Work. It is evident, and the Court acknowledged, that the sculptural aspects of Sculpture No. 646 were not dictated by the words that were cast into it. Rather, they were selected and organized in a "visually and rhythmically appealing" fashion to appear on the work, as opposed to being dictated by the functionality of the work. Such is not the case here, where the sculptural aspects of the words "life is beautiful" are dictated by the uncopyrightable script lettering that is used to create the letters. This important distinction may have led the *Kay Berry* court to conclude that Sculpture No. 646 was copyrightable. In any event, the *Kay Berry* decision does not persuade the Board that registration of the Work is required.

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[1] The "LOVE" sculpture is similar to the Work in that it involves sculpted letters stacked upon once another and secured to a base. The "LOVE" sculpture involves block letters (with the letter "O" tilted to the right side).

IV. CONCLUSION

For the reasons stated above, the Review Board affirms the refusal to register the Work entitled *life is beautiful*. This decision constitutes final agency action in this matter. 37 C.F.R. § 202.5(g).

Maria A. Pallante
Register of Copyrights

BY: _____
William J. Roberts, Jr.
Member of the Review Board