United States Copyright Office
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August 20, 2013

Christie, Parker, Hale, LLP
Attn: Howard A. Kroll
655 N. Central Ave., Suite 2300
Glendale, CA 91203-9001

Re: Love Necklace
Correspondence ID: 1-EJCWL9

Dear Mr. Kroll:

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 work entitled: *Love Necklace*. You submitted this request on behalf of your client, Sydney Evan, on April 17, 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 this copyright claim. 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 WORK

The *Love Necklace* (the "Work") consists of the word "love" printed in lower-case, cursive script, covered in round-cut diamonds, and attached to a standard necklace chain by two small, circular jewelry brackets. The below image is a photographic reproduction of the Work from the deposit materials:



II. ADMINISTRATIVE RECORD

On August 2, 2012, the United States Copyright Office (the "Office") issued a letter notifying Sydney Evan (the "Applicant") that it had refused registration of the above mentioned Work. *Letter from Registration Specialist, Allan Runge, to Howard Kroll* (August 2, 2012). In its letter, the Office stated that it could not register the Work because "[t]he word 'love' in script is not copyrightable, and the addition of the gem stones is not considered to be original authorship." *Id.*

In a letter dated September 13, 2012, you requested that, pursuant to 37 C.F.R. § 202.5(b), the Office reconsider its initial refusal to register the Work. *Letter from Howard Kroll to Copyright RAC Division* (September 13, 2012) ("First Request"). Your letter set forth your reasons as to why the Office improperly refused registration. *Id.* Upon reviewing the Work in light of the points raised in your letter, the Office concluded that the Work "does not contain a sufficient amount of original and creative artistic or sculptural authorship" and again refused registration. *Letter from Attorney-Advisor, Stephanie Mason, to Howard Kroll* (January 17, 2013).

Finally, in a letter dated April 17, 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 Work. *Letter from Howard Kroll to Copyright R&P Division* (April 17, 2013) ("Second Request"). In arguing that the Office improperly refused registration, you claim the Work includes at least the minimum amount of creativity required to support registration under the standard for originality set forth in *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). *Second Request* at 6-7. Specifically, you claim the Applicant's "unique stylized rendering of the word [love] is sufficient to establish the minimum quantum of creativity required for copyright protection." *Id.* at 3.

In addition to *Feist*, your argument references several cases in support of the principle that designs comprised primarily of script can possess sufficient creativity to warrant protection under the Copyright Act. *Id.* at 2-4 (referencing *Reece v. Marc Ecko Unltd.*, No. 10 Civ. 02901 (JSR) (DF) (S.D.N.Y. Aug. 19, 2011); *Boisson v. Banian, Ltd.*, 273 F.3d 262, 267 (2d Cir. 2001); and, *Sadhu Singh Hamdad Trust v. Ajit Newspaper Adv.*, 503 F. Supp. 2d 577 (E.D.N.Y. 2007), among other cases).

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 (2nd Cir. 2001). However, as noted, the mere simplistic arrangement of unprotectable 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. D.C. 1989).

To be clear, the mere simplistic arrangement of non-protectable 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., 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 inoriginal).

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*

After carefully examining the Work, and applying the legal standards discussed above, the Board finds that *Love Necklace* fails to satisfy the requirement of creative authorship.

First, the Board finds that none of the Work's 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: "familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring." *Id.* Here, the Applicant's Work is comprised of the following elements: (1) the word "love" depicted in a stylized, cursive font; (2) roughly seventy diamonds of similar shapes and sizes; (3) a basic necklace chain; and, (4) two small, circular jewelry brackets for attaching the necklace chain to the word "love."

Diamonds, basic necklace chains, and common circular jewelry brackets are familiar shapes, ineligible for copyright protection. *See* 37 C.F.R. § 202.1(a) (stating "familiar symbols or designs" are prohibited from registration under the Copyright Act). The word "love" and the stylized, cursive lettering the Applicant used to create the word are also ineligible for copyright protection. *Id.*; *see also Racenstein & Co., Inc. v. Wallace dba ABC Window Cleaning Supply*, 51 U.S.P.Q. 2d 1031 (S.D.N.Y. 1999) (indicating a word or short phrase, alone, generally cannot support a copyright claim); *and see Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498-99 (S.D.N.Y. 2005) (indicating mere variations in typographic ornamentation or lettering cannot support a copyright claim). Accordingly, none of the Work's constituent elements, alone, qualify for registration under the Copyright Act.

Second, the Board finds that the Work, considered as a whole, fails 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 designs 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 as a whole, the Work consists of the word "love" printed in simple, cursive typography, covered in diamonds, and hanging from an ordinary necklace chain. This basic arrangement of an unprotectable word, unprotectable gemstones, and an unprotectable lettering style is, at best, *de minimis*, and fails 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 Work, as a whole, lacks the requisite "creative spark" necessary for registration. *Feist,* 499 U.S at 359; *Satava*, 323 F.3d at 811.

Your assertion that the Applicant has designed an original, stylized version of the word "love" does not add to your claim of sufficient creativity. *Id.* at 3. As noted, trivial variations in lettering or typographic ornamentation are not sufficiently creative to warrant copyright protection. *See Coach, Inc.,* 386 F. Supp. 2d at 498-99 (denying protection to the stylized letter "C" as it appeared on the applicant's line of fashion accessories). Although we generally agree with your assertion that a rendering of a simple word can be sufficiently elaborate or stylized to warrant registration, we do not agree that the Work meets this grade. Thus, despite your claims that the Work is "analogous to the alphabet quilt in *Boisson*, the graffiti art in *Reece*, and the logo in *Sadhu*"

and that "the form of and arrangement of the lettering in the necklace design is central to the Applicant's artistic expression" (*see Second Request* at 3), the fact remains that the lettering the Applicant used to produce the word "love" is a *de minimis* variation of a common, unprotectable cursive script.

In sum, the Board finds that the Applicant's stylization of the word "love" lacks a sufficient level of creativity to make the Work registerable 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 work entitled: *Love Necklace*. This decision constitutes final agency action on this matter. 37 C.F.R. § 202.5(g).

Maria A. Pallante
Register of Copyrights

BY: [redacted]
William J. Roberts, Jr.
Copyright Office Review Board