



April 28, 2023

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**Re: Second Request for Reconsideration for Refusal to Register 2HC, 2HT-13, 6HC-6 (SR # 1-6650582421, 1-6271661616, 1-6650582538; Correspondence ID: 1-3LMN3M5, 1-3GURYQZ)**

Dear Mr. Oropallo:

The Review Board of the United States Copyright Office (“Board”) has considered Terry Michael LeRoy’s second requests for reconsideration of the Registration Program’s refusal to register jewelry design claims in works titled “2HC,” “2HT-13,” and “6HC-6” (each individually, a “Work,” and collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s denial of registration for the Works.

## **I. DESCRIPTION OF THE WORKS**

The Works are three jewelry designs.<sup>1</sup> The work titled “2HC” consists of three different sized brilliant-cut diamonds, each in a bezel setting. The stones are arranged into a vertical column, with the largest stone at the top and the smallest stone at the bottom. Small silver metal spheres are used to accent this design. Groups of three spheres are positioned at the top and bottom of the design. Four single spheres are positioned in the spaces between the diamonds.

The work titled “2HT-13” consists of three brilliant-cut diamonds, each in a bezel setting. One larger diamond is positioned in the center of the design, flanked on both sides by a single smaller diamond. The smaller stones are set slightly lower than the center stone creating a slightly curved configuration. Small silver metal spheres are used to accent this design. Groups of three spheres are positioned on both ends and on the top of the design. Four single spheres are positioned in the spaces between the diamonds.

The work titled “6HC-6” consists of five brilliant-cut diamonds in bezel settings. One stone is larger and forms the center of the design, with the four smaller stones arranged in a

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<sup>1</sup> While Mr. LeRoy’s First and Second Requests for Reconsideration and Supplemental Memoranda do not identify the types of “jewelry designs” at issue, the Board understands that the works are body jewelry.

semi-circle below it. Three small silver metal spheres are positioned in the spaces below the four small stones, and a group of three spheres is positioned atop the large center stone.

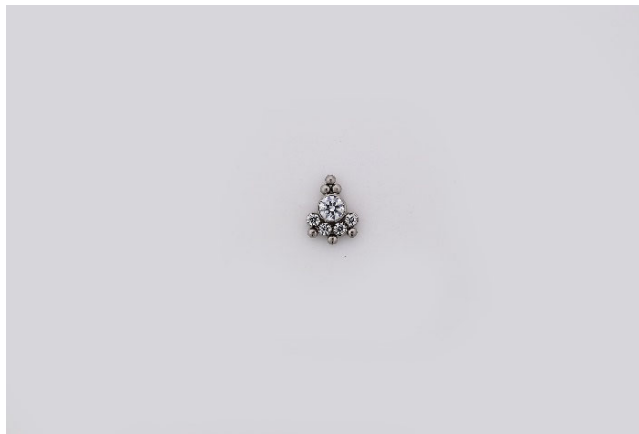
The Works are as follows:<sup>2</sup>



**2HC**



**2HT-13**



**6HC-6**

## **II. ADMINISTRATIVE RECORD**

Mr. LeRoy filed two separate applications to register 2HC and 6HC-6 on June 5, 2018, and filed an application to register 2HT-13 on February 6, 2018. In two separate letters, a Copyright Office registration specialist refused to register the claims, finding that each work did “not contain any design element that is both sufficiently original and creative.” Initial Letter

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<sup>2</sup> The Appendix displays additional views of the Works based on deposit materials provided by the applicant.

Refusing Registration of 2HC and 6HC-6 from U.S. Copyright Office to Brandon Holmes (Nov. 20, 2018); Initial Letter Refusing Registration of 2HT-13 from U.S. Copyright Office to Michael Oropallo (Aug. 30, 2018).

Subsequently, in letters with substantively identical contentions, Mr. LeRoy requested that the Office reconsider its initial refusals to register the Works. Letter from Michael A. Oropallo re: 2HT-13 to U.S. Copyright Office (Nov. 30, 2018) (“2HT-13 First Request”); Letter from Michael A. Oropallo re: 2HC and 6HC-6 to U.S. Copyright Office (Feb. 20, 2019) (“2HC and 6HC-6 First Request”). After reviewing the Works in light of the points raised in the First Requests, the Office reevaluated the claims and again concluded that the Works do “not contain a sufficient amount of creativity to warrant registration.” Refusal of First Request for Reconsideration of 2HC and 6HC-6 from U.S. Copyright Office to Michael Oropallo at 2 (July 1, 2019); Refusal of First Request for Reconsideration of 2HT-13 from U.S. Copyright Office to Michael Oropallo at 1 (Mar. 28, 2019).

In response, Mr. LeRoy requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusals to register the Works. Letter re: 2HC and 6HC-6 from Michael A. Oropallo to U.S. Copyright Office (Oct. 1, 2019) (“2HC and 6HC-6 Second Request”); Letter re: 2HT-13 from Michael A. Oropallo to U.S. Copyright Office (June 27, 2019) (“2HT-13 Second Request”). In those letters, he stated that 2HC and 6HC-6 “do not present a design where a work consists only of a basic geometric shape[,] [but] . . . the varied components of the Works *include* the creativity in using circles for stones.” 2HC and 6HC-6 Second Request at 10. Additionally, Mr. LeRoy argued that the selection, coordination, and arrangement of the “multiple sizes and shapes . . . of the stones and metal spheres,” including the colors used in the Works, “demonstrates creativity.” *Id.* Further, he stated that the spheres surrounding the diamonds “do not serve a function,” but “add further decorative elements such as the variation of texture.” *Id.* at 11.

Regarding 2HT-13, Mr. LeRoy contended that the “Work does not present a design where a basic geometric shape is the *only* basis for the Work,” but includes “the use of multiple circles for stones.” 2HT-13 Second Request at 10. He noted that the selection and arrangement of the Work’s shapes, including the “decorative placement of spheres that add visual and tactile texture to the design,” provide evidence of originality. *Id.* Additionally, he again argued that the spheres surrounding the diamonds “do not serve a function,” but “add further decorative elements such as the variation of texture” or “add to the symmetry of the Work.” *Id.*

On April 20, 2021, Mr. LeRoy submitted two letters in further support of his Requests for Reconsideration, in which he contended that new case law from *Cooley v. Target Corp.*, No. 21-CV-2152, 2021 U.S. Dist. LEXIS 59525 (D. Minn. Mar. 29, 2021), an unreported case, “further illustrates that the features of the Works contain sufficient creativity and are entitled to registration.” Letter re: 2HC and 6HC-6 from Michael A. Oropallo to U.S. Copyright Office at 3 (Apr. 20, 2021) (“2HC and 6HC-6 Supplemental Memoranda”); Letter re: 2HT-13 from Michael A. Oropallo to U.S. Copyright Office at 3 (Apr. 20, 2021) (“2HT-13 Supplemental Memoranda”).

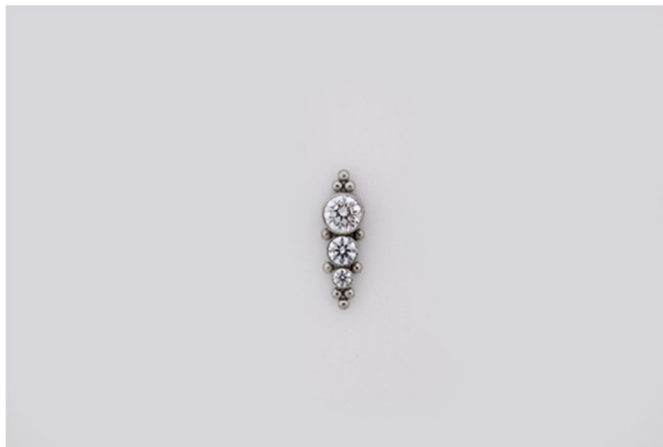
### III. DISCUSSION

After carefully examining each of the Works and applying the relevant legal standards, the Board finds that none of the claimed designs are eligible for copyright registration.

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 the copyright context, the term “original” consists of two components: independent creation and sufficient creativity. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). First, the work must have been independently created by the author, “as opposed to copied from other works.” *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has held that some works fail to meet even this low threshold. *Id.* at 358–59.

Jewelry, such as the designs before the Board, are works of artistic craftsmanship. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 925.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (listing examples of works of artistic craftsmanship, including “ornamental jewelry”). The Copyright Act provides that sculptural works “include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned.” 17 U.S.C. § 101 (definition of “pictorial, graphic, and sculptural works”). Though the term “works of artistic craftsmanship,” is not defined in the Act, the Supreme Court has described these works as “works of art that might also serve a useful purpose.” *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1011 (2017) (discussing Copyright Office regulations as considered in *Mazer v. Stein*, 347 U.S. 201 (1954)). When considering the copyrightability of jewelry, the Office applies the “mirror image” of the *Star Athletica* test for useful articles: the Office segregates the “mechanical or utilitarian aspects” of the work, while considering the remainder for registration. COMPENDIUM (THIRD) § 925.2. In evaluating these elements, the Office “will consider both the component elements of the design and the design as a whole,” which may include decoration on the surface of the jewelry, such as engraving, as well as the selection and arrangement of various elements such as shape and color. *Id.* § 908.3.

#### A. 2HC



2HC is a jewelry design that includes only a few elements, all of which are common geometric shapes or minor variations thereof. *See* 37 C.F.R. § 202.1(a) (“works not subject to

copyright . . . [include] familiar symbols or designs.”). The Work consists of “circles for stones,” “spherical beads,” “round silver raised collars,” and round “bezel settings,” which are not copyrightable elements. 2HC and 6HC-6 First Request at 4–5; *see* COMPENDIUM (THIRD) § 906.1 (listing “circles” and “spheres” as common geometric shapes that are “not protect[ed]”). While Mr. LeRoy points to the presence of “a bright turquoise color” as evidence of 2HC’s creativity, 2HC and 6HC-6 Second Request at 10, the Office notes that the deposit images Mr. LeRoy submitted depict the Work in silver coloring. Mr. LeRoy first submitted images of the Work showing a turquoise color in the Supplemental Memoranda. *See* 2HC and 6HC-6 Supplemental Memoranda at 1. The deposit submitted with a copyright application must identify “the entire copyrightable content of the work claimed in the application.” COMPENDIUM (THIRD) § 1509.3(C) (citing 37 C.F.R. § 202.21(b)) (“[A] registration only covers the copyrightable authorship that is clearly shown in the identifying material.”); *see also id.* § 908.3 (“[T]he applicant should include all of the copyrightable elements that the applicant intends to register. . . . [T]he registration specialist can examine only the designs that are actually depicted in the identifying material.”). Because the deposit images submitted to the Office depicted the Work in silver coloring, and not in turquoise coloring, the Board will only consider the coloring depicted in the deposit materials.<sup>3</sup> Thus, the individual elements that make up the Work are not copyrightable.

The jewelry design as a whole also does not contain a sufficiently original selection or arrangement to be protectable by copyright. “A work containing only a few elements may be copyrightable if the decoration, arrangement, use of color, shapes, or textures are sufficient to support a claim.” *Id.* § 908.3; *see Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[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.”). The Office will not register jewelry “made up of only commonplace design elements arranged in a common or obvious manner.” COMPENDIUM (THIRD) § 908.2; *see also id.* § 313.4(J) (“[A] work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations” is not copyrightable.); *DBC of New York, Inc. v. Merit Diamond Corp.*, 768 F. Supp. 414, 416 (S.D.N.Y. 1991) (holding the diamond rings at issue uncopyrightable because they are “on the whole, not exceptional, original, or unique”); *Vogue Ring Creations, Inc. v. Hardman*, 410 F. Supp. 609, 612 (D.R.I. 1976) (finding the ring design not protectable because it was “utterly devoid of any ‘original creativity.’”).

The combination and arrangement of the non-protectable elements in this jewelry design are arranged in order of the stones’ sizes, with the stones each enveloped in round bezel settings, with sphere-like shapes surrounding each stone. This arrangement is commonplace for jewelry designs, and contains only *de minimis* creativity.<sup>4</sup> While Mr. LeRoy contends that the circles and

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<sup>3</sup> Even if the Board considered the turquoise coloring, it would reach the same conclusion. When analyzing the coloring of the Work, “mere coloration or mere variations in coloring alone are not eligible for copyright protection.” COMPENDIUM (THIRD) § 906.3; *see also* 37 C.F.R. § 202.1(a) (stating that coloring is not subject to copyright).

<sup>4</sup> *See, e.g., Three-Stone Diamond Necklace 1/2 ct tw Round-cut 10K White Gold*, KAY JEWELERS, <https://www.kay.com/threestone-diamond-necklace-12-ct-tw-roundcut-10k-white-gold/p/V-173856802> (last visited Apr. 26, 2023); *Three-Stone Drop Diamond Pendant*, BLUE NILE, [https://www.bluenile.com/diamond-pendant-drop\\_5758](https://www.bluenile.com/diamond-pendant-drop_5758) (last visited Apr. 26, 2023); *1 CT. T.W. Diamond Linear Three Stone Drop Pendant in 14K White Gold*,

spheres are “featured individually and collectively in and around the diamonds in an intentional and strategic way that contributes to the creativity and aesthetic desirability of overall designs of the Work[ ],” 2HC and 6HC-6 Second Request at 10–11, the Office “does not consider the aesthetic value, artistic merit, or intrinsic quality of a work” when determining whether a work contains sufficient originality. COMPENDIUM (THIRD) § 310.2.

**B. 2HT-13**



2HT-13 is also a jewelry design consisting of only common geometric shapes or minor variations thereof. The Work consists of “circles for stones,” “spherical ‘metal pieces,’” and “round silver raised collars.” 2HT-13 First Request at 4; *see* COMPENDIUM (THIRD) § 906.1 (listing “circles” and “spheres” as common geometric shapes that are “not protect[ed]”). As discussed above, common geometric shapes or minor variations thereof are not protectable under copyright law. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.1. Therefore, the Work’s individual elements are not copyrightable.

Viewing the Work as a whole, it does not contain sufficient originality in its arrangement or combination to qualify for copyright protection. As discussed above, “a work containing only a few elements may be copyrightable if the decoration, arrangement, use of color, shapes, or textures are sufficient to support a claim.” COMPENDIUM (THIRD) § 908.3; *see Satava*, 323 F.3d at 811. This Work, however, does not support such a claim. The Work is a symmetrical arrangement containing one large stone flanked on each side by a smaller stone, with all stones enclosed within round bezel settings and surrounded by spherical beads. COMPENDIUM (THIRD) § 908.3 (“symmetrical arrangements” are generally not copyrightable). While Mr. LeRoy asserts that the “selection and arrangement of shapes (including the decorative placement of spheres that add visual and tactile texture to the design) . . . demonstrates original[ity],” he admits that the arrangement of the individual spheres helps “add to the symmetry of the Work.” 2HT-13 Second Request at 10. As discussed above, combining a small number of elements together in a symmetrical arrangement does not demonstrate sufficient originality for copyright protection.

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ZALES, <https://www.zales.com/1-ct-tw-diamond-linear-three-stone-drop-pendant-14k-white-gold/p/V-19958585> (last visited Apr. 26, 2023); *Pompeii3 1/2ct Bezel 3 Stone Diamond Pendant 14K White Gold*, SEARS, <https://www.sears.com/pompeii3-55ct-bezel-3-stone-diamond-pendant-14k/p-SPM6567382601> (last visited Apr. 26, 2023).

See COMPENDIUM (THIRD) §§ 313.4(J), 908.2; *DBC of New York, Inc.*, 768 F. Supp. at 416; *Vogue Ring Creations, Inc.*, 410 F. Supp. at 612.

**C. 6HC-6**



6HC-6 is also a jewelry design that includes only a few elements, all of which are common geometric shapes or minor variations thereof. The Work consists of “circles for stones,” “spherical beads,” “round silver raised collars,” and round “bezel settings.” 6HC-6 First Request at 4–5. As discussed above, these common geometric shapes are not protectable under copyright law. See 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.1 (listing “circles” and “spheres” as common geometric shapes that are “not protect[ed]”). Mr. LeRoy also argues that the presence of a “contrasting sterling silver” color further exhibits 2HC’s creativity. 2HC and 6HC-6 Second Request at 10. However, “mere coloration or mere variations in coloring alone are not eligible for copyright protection.” COMPENDIUM (THIRD) § 906.3; see 37 C.F.R. § 202.1(a) (stating that coloring is not subject to copyright). Thus, the individual elements of the Work are not copyrightable.

The Work as a whole also does not contain sufficient creative authorship to be protected by copyright. As explained above, although the Office may register a work “containing only a few elements . . . if the decoration, arrangement, use of color, shapes, or textures are sufficient to support a claim,” COMPENDIUM (THIRD) § 908.3, this Work does not contain sufficient originality to support a claim in copyright. Specifically, the Work is arranged with one large stone surrounded at both the top and the bottom with either equally-sized smaller stones or spherical beads. Surrounding a larger stone with smaller stones or beads is a “design[] made up of only commonplace design elements arranged in a common or obvious manner,” which does not contain sufficient creative authorship.<sup>5</sup> *Id.* § 908.2; see *DBC of New York, Inc.*, 768 F. Supp. at 416; *Vogue Ring Creations, Inc.*, 410 F. Supp. at 612. Similar to the argument Mr. LeRoy made for 2HC, he again contends that the circles and spheres are “featured individually and

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<sup>5</sup> See, e.g., *Juno Necklace*, LOVER’S TEMPO, <https://loverstempo.com/products/juno-necklace?variant=31516637069358> (last visited Apr. 26, 2023); *DIAMOND ENGAGEMENT RING, BRIDAL DIAMOND RING*, CAPUCINNE, <https://www.capucinne.com/products/diamond-engagement-ring-bridal-diamond-ring-3794> (last visited Apr. 26, 2023); *Round Diamond Ring with Half Halo Diamonds, 18k Yellow Gold Diamond Engagement Ring*, ETSY, <https://www.etsy.com/listing/537685745/round-diamond-ring-with-half-halo> (last visited Apr. 26, 2023).

collectively in and around the diamonds in an intentional and strategic way that contributes to the creativity and aesthetic desirability of overall designs of the Work[.]” 2HC and 6HC-6 Second Request at 10–11. As explained above, the Office, “does not consider the aesthetic value, artistic merit, or intrinsic quality of a work” when determining whether a work contains sufficient originality. COMPENDIUM (THIRD) § 310.2. Furthermore, the addition of sterling silver coloring, a common color used in jewelry design, along with the other elements in this design does not imbue 6HC-6 with sufficient creativity to warrant copyright protection.

***D. Previously Registered Works & Supplementary Memorandum***

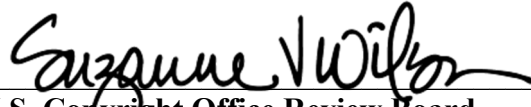
The Board declines LeRoy’s suggestion that it should compare the Works to previously registered jewelry designs. See 2HC and 6HC-6 Second Request at 5–7; 2HT-13 Second Request at 5–7. The Office does not compare works that have been previously registered or refused registration and a “decision to register a particular work has no precedential value and is not binding upon the Office when it examines any other application.” COMPENDIUM (THIRD) § 309.3. Instead, “determination[s] of copyrightability will be made on a case-by-case basis” and each claim is examined on its own merits. *Id.*; see *Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q.2d 1074, 1076 (D.D.C. 1991) (stating that the court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”); *accord Coach, Inc. v. Peters*, 386 F. Supp. 495, 499 (S.D.N.Y. 2005) (indicating the Office “does not compare works that have gone through the registration process”).

Mr. LeRoy also cites two cases in support of his argument that the Works demonstrate creativity and are entitled to copyright protection. First, Mr. LeRoy cites *Merit Diamond Corp. v. Frederick Goldman, Inc.*, 376 F. Supp. 2d 517 (S.D.N.Y. 2005), a copyright infringement case involving a three-stone pendant design that was registered by the Office. The pendant design in that case, however, included three diamonds nested within an elaborate, asymmetrical mirrored helix design. The individual elements and the selection, coordination, and arrangement of such elements in that pendant design differ markedly from the Works at issue, which are neither symmetrical arrangements nor designs arranged in a common or obvious matter. See COMPENDIUM (THIRD) §§ 908.2, 908.3. Mr. LeRoy’s Supplemental Memorandas also cite *Cooley v. Target Corp.*, an unreported case, where the court found that “irregularly shaped, imperfect circles, shaded in different colors and aligned imperfectly at varying distances from each other” warranted copyright protection. No. 20-CV-2152, 2021 U.S. Dist. LEXIS 59525, at \*12–13 (D. Minn. Mar. 29, 2021). The description of the work in *Cooley* makes it clear that, unlike the Works here, the elements of that work were not common geometric shapes and the imperfect alignment and varying arrangement of the individual elements are not common arrangements. See COMPENDIUM (THIRD) § 906.1 (providing an example of a wrapping paper design consisting of “circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color” as a creative design). Thus, neither of these cases mandates a conclusion that the Works here are copyrightable.



#### IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the copyright claims in the Works. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.

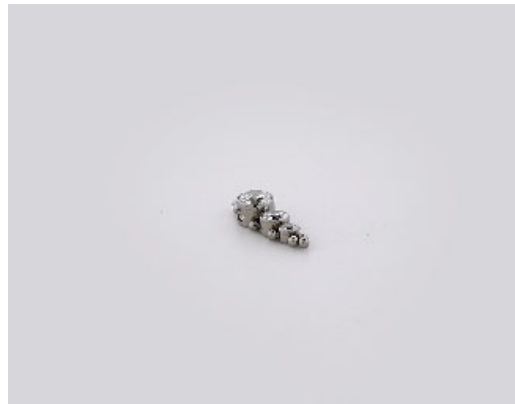


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**U.S. Copyright Office Review Board**  
Suzanne V. Wilson, General Counsel and  
Associate Register of Copyrights  
Maria Strong, Associate Register of Copyrights and  
Director, Policy and International Affairs  
Jordana Rubel, Assistant General Counsel

**APPENDIX: DEPOSIT IMAGES**

**2HC (9 images)**





**2HT-13 (9 images)**





**6HC-6 (9 images)**

