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As fashionistas already know, longtime Kilpatrick Townsend client adidas AG has an ongoing collaboration with American rapper Kanye West, which has produced a hugely successful line of sneakers under the Yeezy® brand. adidas sought to register the designs with the U.S. Copyright Office, in part to combat counterfeiting of the popular shoes.

Kilpatrick Townsend's Copyright Team, including [Joe Petersen](#) and [Sara Stadler](#), led the firm's effort to register adidas's copyright in two of its Yeezy® models (depicted below). The Copyright Office refused registration, writing that each shoe was a "useful article" that didn't contain any "separable" creative authorship.



This was a reference to the Copyright Act, which provides that "sculptural" works (including shoes) are copyrightable only if they incorporate "features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." In other words, shoe designers can't use copyright law to claim exclusive rights in the parts of

shoes that are useful for protecting one's feet (tongue, laces, contoured upper, outsole, etc.), but can only protect the "separable" artistic parts, if any.

The meaning of the word "separable" was a bit of a mystery until recently, when the Supreme Court decided that question in *Star Athletica*, holding that a design feature is eligible for copyright "if, when identified and imagined apart from the useful article," it would qualify as a creative work of authorship "either on its own or when fixed in some other tangible medium."

After the Copyright Office denied registration on separability grounds, the Copyright Team requested reconsideration of this decision. The Copyright Office denied registration again, this time conceding adidas's fabric designs could be imagined separately from the shoes, but concluding those designs did "not contain a sufficient amount of creative authorship" because they consisted merely of "simple shapes arranged into common, expected patterns in very simple color schemes."

The Copyright Team argued in a 14-page, single-spaced letter (with plenty of pictures) that shoe designs long have been a canvas for creative expression; that complex works aren't necessarily more creative than simple ones (e.g., the minimalist art movement); and that courts — and even the Copyright Office — have found ample creativity in relatively simple designs, as evidenced by the Office's own reported administrative decisions.

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