



United States Copyright Office

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August 29, 2018

Sneed PLLC
Attn: Charles Landrum
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**Re: Second Request for Reconsideration for Refusal to Register “Hansel”;
Correspondence ID: 1-2DM75GM; SR 1-3300727131**

Dear Mr. Landrum:

The Review Board of the United States Copyright Office (“Board”) has considered Antti Porkka’s (“Porkka”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Hansel” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s denial of registration.

I. DESCRIPTION OF THE WORK

The Work is a graphic design comprising calligraphic curved lines, *i.e.*, drawn in a stylized or artistic manner with varying degrees of thickness, that have been filled in with solid color to create two crescent-like shapes, one teal and one blue. A reproduction of the Work is set forth below:



II. ADMINISTRATIVE RECORD

On April 19, 2016, Porkka filed an application to register a copyright claim in the “Work”. In a May 19, 2017, letter, a Copyright Office registration specialist refused to register the claim, finding that “[t]he material submitted with your application is a drawing of two minor variations of the shape of a crescent slightly tilted to one side. . . . Neither the individual elements nor the combination of them is adequate to justify registration.” Letter from G. Messier, Registration Specialist, to Nathan Sycks (May 19, 2017).

In a letter dated August 18, 2017, Porkka requested that the Office reconsider its initial refusal to register the Work. Letter from Charles Landrum to U.S. Copyright Office (Aug. 18, 2017) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work “does not contain a sufficient amount of creativity to warrant registration.” Letter from Stephanie Mason, Attorney-Advisor, to Charles Landrum (Jan. 9, 2018). Individually, the “two shapes, made of modified curved and semi-circular shaped lines[,] are common and familiar shapes,” which are not copyrightable. *Id.* at 2. In combination, “the work as a whole consists of two curved shapes arranged into an ‘H’ configuration. Arranging common shapes into a letter is a commonly used logo configuration that demonstrates insufficient creativity to support a claim of copyright.” *Id.* at 3.

In a letter dated April 5, 2018, Porkka 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 Charles Landrum, to U.S. Copyright Office (Apr. 5, 2018) (“Second Request”). In that letter, Porkka argues that the elements of the logo are not “common geometric shapes,” and the Work is not a stylized “H.” *Id.* at 2.

III. DISCUSSION

A. *The Legal Framework: Originality*

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 this 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, *i.e.*, not copied from another work. *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has ruled that some works (such as the alphabetized telephone directory at issue in *Feist*) fail to meet even this low 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 virtually nonexistent.” *Id.* at 359.

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act and described in the *Feist* decision. *See, e.g.*, 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”); *id.* § 202.10(a) (stating “to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form”). Some combinations of common or standard design elements may contain sufficient creativity with respect to how they are juxtaposed or arranged to support a copyright. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *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”). A determination of copyrightability in the combination of standard design elements depends 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).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. For example, the United States District Court for the Southern District of New York upheld the Copyright Office’s refusal to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements.” *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). Likewise, the Ninth Circuit has held that a glass sculpture of a jellyfish consisting of clear glass, an oblong shroud, bright colors, 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 language in *Satava* is particularly instructive:

It 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).

Similarly, while the Office may register a work that consists merely of geometric shapes, for such a work to be registrable, the “author’s use of those shapes [must] result[] in a work that,

as a whole, is sufficiently creative.” COMPENDIUM (THIRD) § 906.1; *see also Atari Games Corp.*, 888 F.2d at 883 (“[S]imple shapes, when selected or combined in a distinctive manner indicating some ingenuity, have been accorded copyright protection both by the Register and in court.”). Thus, the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but would not register a picture consisting merely of a purple background and evenly-spaced white circles. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“COMPENDIUM (THIRD)”).

B. Analysis of the Work

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright. Much of the prior correspondence focused on the Work as a depiction of a stylized “H.” For purposes of this letter, the Board accepts claimant’s contention that the Work is not a stylized “H.”

The elements of the Work—two solid calligraphic lines creating crescent-like shapes—are not copyrightable because they are merely variations of geometric shapes. Copyright law does not protect geometric shapes, “including, without limitation, straight or curved lines, circles, ovals, spheres” COMPENDIUM (THIRD) § 906.1; *see* 37 C.F.R. § 202.1(a). The shapes that constitute the Work are calligraphic lines of varying degrees of thickness that have been filled in with color. As such, they are variations on crescents, which are not registrable as geometric shapes. Therefore, the elements of the Work are not copyrightable.

Examining the work as a whole, the arrangement of the two unprotectable shapes does not appear to create copyrightable authorship. *See Feist*, 499 U.S. at 358 (stating that unprotected elements must be “selected, coordinated, or arranged in such a way as to render the work as a whole original”) (internal citations omitted). Similar to *Coach*, the current case involves the arrangement of multiple uncopyrightable elements. That case involved four “C” shapes, two mirroring each other in a linked arrangement and two perpendicular to the linked pair. *Coach*, 386 F. Supp. 2d at 496. The Court held that the type of “simple arrangement” of unprotectable elements present in that design was not registrable. *Id.* at 498. Here, the Work is even more simplistic, with the two unprotectable shapes simply placed next to each other. Therefore, *Coach* supports the Board’s finding that the Work does not merit copyright protection. In addition, the Eighth Circuit upheld the Copyright Office’s refusal to register a logo that consisted of “four angled lines which form an arrow and the word ‘Arrows’ in cursive script,” which suggests that the current Work, which consists of two calligraphic lines filled in with color, would likewise be uncopyrightable. *John Muller & Co., Inc. v. N.Y. Arrows Soccer Team, Inc.*, 802 F.2d 989, 990 (8th Cir. 1986). Ultimately, placing the Work’s two unprotectable shapes

next to one another does not “result[] in a work that, as a whole, is sufficiently creative.”
COMPENDIUM (THIRD) § 906.1.

Overall, reviewing the Work in its entirety, the Board finds that it does not meet the threshold for copyright protection.

IV. CONCLUSION

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



U.S. Copyright Office Review Board

Karyn A. Temple, Acting Register of Copyrights
and Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
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