



**United States Copyright Office**

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August 13, 2020

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525 B Street, Suite 2200  
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**Re: Second Request for Reconsideration for Refusal to Register Iconic Drop;  
Correspondence ID: 1-3OG9UUC; SR # 1-6782538701**

Dear Mr. Reinbolt:

The Review Board of the United States Copyright Office (“Board”) has considered Jamul Indian Village Development Corporation’s (“Jamul’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional art claim in the work titled Iconic Drop (“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 black and white image of a black square that includes a centered white teardrop with a black hooked line positioned inside the teardrop. The Work is as follows:



**II. ADMINISTRATIVE RECORD**

On August 10, 2018, Jamul filed an application to register a copyright claim in the Work. In a March 27, 2019 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Jacob Reinbolt, at 1 (Mar. 27, 2019).

Jamul then requested that the Office reconsider its initial refusal to register the Work. Letter from Jacob C. Reinbolt to U.S. Copyright Office (May 17, 2019) (“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’s “combination and arrangement of the component

elements [are] insufficiently creative to support a claim in copyright.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Jacob Reinbolt, at 3 (Aug. 26, 2019).

Jamul subsequently 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 Jacob C. Reinbolt to U.S. Copyright Office (Nov. 15, 2019) (“Second Request”). Jamul contends that “the Work contains seven (7) different shapes selected and arranged in an extremely creative manner that generate at least nine (9) different possible image combinations viewers of the Work can actually ‘see.’” *Id.* at 3 (describing the “elements represented in the Work” as a drop, sweat, a tear, the letter J, a hook, a crowbar, and a square box). In support of this assertion, Jamul relies on the principle of quantum mechanics that certain “elements of matter are waves, with no fixed position in space, **until** they are ‘observed’ or ‘measured’ in some way.” *Id.* at 4 (emphasis in original). Jamul extrapolates that, because an image or shape is fixed in meaning only when it is observed, “how the observers literally ‘see’ (**not** ‘interpret’) the Work is a crucial component of the Work’s creativity” that should be considered as part of the Work’s creative authorship. *Id.* at 6 (emphasis in original).

### 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 OF U. S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“COMPENDIUM (THIRD)”); *see also Atari Games*, 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. COMPENDIUM (THIRD) § 906.1.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See* COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design’s visual effect or its symbolism, the time and effort it took to create, or the design’s commercial success in the marketplace are not factors in determining whether a design is copyrightable. *See, e.g., Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

### ***B. Analysis of the Work***

After careful examination and analysis, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

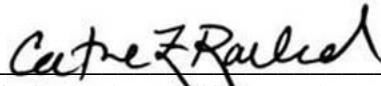
Neither the Work’s individual elements nor the Work as a whole demonstrate copyrightable authorship. The Work consists of three common elements: two geometric shapes—a square and hooked line—and a familiar teardrop symbol. *See* COMPENDIUM (THIRD) §§ 313.4(J) (“Familiar symbols [include c]ommon representational symbols, such as a spade, club, heart . . . or the like.”), 906.1 (“There are numerous common geometric shapes, including, without limitation, straight or curved lines, circles, ovals, spheres, triangles, cones, squares . . .”). But copyright law does not protect simple geometric shapes and familiar symbols. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 313.4(J), 906.1, 906.2; *see also Tompkins Graphics, Inc. v. Zipatone, Inc.*, No. 82-5438, 1983 U.S. Dist. LEXIS 14631, at \*4 (E.D. Pa. Aug. 15, 1983) (“[B]asic geometric shapes have long been in the public domain and therefore cannot be regulated by copyright.”). Additionally, to the extent that the hooked line is intended as a stylized letter “J,” single letters and simple font are not protected by copyright. COMPENDIUM (THIRD) § 313.3(D).

The combination of these unprotectable elements into the Work as a whole does not elevate its creativity beyond the threshold for copyright protection. While designs that combine uncopyrightable elements can be copyrightable if they are creatively combined, the Work does not have that spark of creativity. *See Satava*, 323 F.3d at 811 (noting that copyright protection is appropriate when the “elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.”). The Work consists of a simple combination of several elements, which are centered in an obvious arrangement with the only spatial variation being the off-center hooked line. Merely combining a few independently un-protectable elements with minor linear or special variations does not establish sufficient creativity to meet the authorship requirement. COMPENDIUM (THIRD) § 905. And while the applicant claims that the Office misstated how many elements are present in the work, narrowly focusing on the quantity of elements ignores the larger principle: that “[t]he Office will not register works that consist entirely of uncopyrightable elements . . . unless those elements have been selected, coordinated, and/or arranged in a sufficiently creative manner.” *Id.*; *see also Feist*, 499 U.S. at 362; *Satava*, 323 F.3d at 811; *John Muller & Co. Inc. v. N.Y. Arrows Soccer Team*, 802 F.2d 989 (8th Cir. 1986) (affirming a finding that the plaintiff’s work – a logo consisting of four angled lines which form an arrow and the word “Arrows” in cursive script below the arrow – lacked the level of creativity needed for copyrightability); *Coach*, 386 F. Supp. 2d 495 (upholding the refusal to register a fabric design “comprised of an arrangement of the letter C”); *John Woods Fashions, Inc. v. Curran*, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988) (upholding refusal to register a fabric design consisting of striped cloth with small grid squares superimposed on the stripes).

Jamul also claims that the Work is unique and, indeed, creative, because it involves physics. Jamul states that the wave-particle duality concept of quantum mechanics<sup>1</sup> underpins the Work, meaning that the Work is not fixed in meaning until it is observed. Second Request at 4–6. Thus, Jamul contends, “how the observers literally ‘see’ (**not** ‘interpret’) the Work” is a crucial component of the Work’s creativity. *Id.* at 6 (emphasis in original). This contention relies on a subjective view of the work, which is not the basis for assessing creativity. Instead, the Office will only consider the actual appearance of the Work and not the symbolic meaning of the work or how others may also “see” or perceive the work. *See* 17 U.S.C. § 102(b); COMPENDIUM (THIRD) § 310.3 (“The symbolic meaning or impression of a work is irrelevant to [the creativity] determination. . . . [T]he Office will consider the expression that is fixed in the work itself . . . [and] . . . will focus only on the actual appearance . . . of the work that has been submitted for registration, but will not consider any meaning or significant that the work may evoke.”). While the “drop image” may simultaneously represent water, perspiration, and tears, *see* Second Request at 6, such terms are intangible characteristics and symbolic attributes that describe a shape, which cannot be factored into the Office’s analysis. COMPENDIUM (THIRD) § 309. Viewed objectively, the elements of the Work and the Work as a whole do not contain a sufficient amount of creativity to warrant 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.



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**U.S. Copyright Office Review Board**

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

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

Kimberley Isbell, Deputy Director of Policy and  
International Affairs

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<sup>1</sup> “Wave-particle duality is the concept in quantum mechanics that every particle or quantum entity may be described as either a particle or a wave. It expresses the inability of the classical concepts ‘particle’ or ‘wave’ to fully describe the behavior of quantum-scale objects.” Second Request at 4 (citing [https://en.wikipedia.org/wiki/Wave%E2%80%93particle\\_duality](https://en.wikipedia.org/wiki/Wave%E2%80%93particle_duality)).