



United States Copyright Office

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September 9, 2019

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Chicago, IL 60603

**Re: Second Request for Reconsideration for Refusal to Register P-Tech USA
Original Logo, Correspondence IDs: 1-2XI91E9 and 1-3BDVSKI; SR #
1-6354549371**

Dear Ms. Simmons:

The Review Board of the United States Copyright Office (“Board”) has considered China Motors and Components, Inc.’s (“China Motors”)s second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “P-Tech USA Original Logo” (“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 two-dimensional artwork consisting of the text “P-TECH USA” and “PINPOINT TECHNOLOGIES GROUP, LLC” in blue and red, with the “USA” rotated 90 degrees clockwise and red concentric circles forming a bullseye shape centered around the hyphen in “P-Tech.”

The Work is as follows:



II. ADMINISTRATIVE RECORD

On March 6, 2018, China Motors filed an application to register a copyright claim in the Work. In a March 13, 2018, letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from R. Barker, Registration Specialist, to Ed Clair, Fitch, Even, Tabin & Flannery LLP (Mar. 13, 2018).

In a letter dated June 13, 2018, China Motors requested that the Office reconsider its initial refusal to register the Work. Letter from Alisa Simmons, Fitch, Even, Tabin & Flannery LLP, to U.S. Copyright Office (June 16, 2018) (“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 lacked sufficient creative authorship because it “consists of two business names arranged in a simple linear configuration” and noted that the addition of a “simple” color scheme and comment geometric shapes was an “obvious, garden-variety configuration.” Letter from Stephanie Mason, Attorney-Advisor, to Alisa Simmons, Fitch, Even, Tabin & Flannery LLP 4 (Dec. 12, 2018).

In a letter dated March 12, 2019, China Motors 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 Alisa C. Simmons, Fitch, Even, Tabin & Flannery LLP, to U.S. Copyright Office (Mar. 12, 2019) (“Second Request”). In that letter, China Motors emphasized that it had hired a graphic artist to create the Work, spending at least \$8,700 to create the work “from scratch.” *Id.* at 1. China Motors further contrasted the Work with prior cases where courts found insufficient creative authorship where a creator made small modifications to preexisting material. Second Request at 2 (citing *Sweet Gisele, Inc. v. True Rock CEO, LLC*, No. 17-CV-5170 (FB)(RML), 2018 WL 4863650, at *5 (E.D.N.Y. Sept. 4, 2018), *report and recommendation adopted*, 2018 WL 4863586 (E.D.N.Y. Sept. 28, 2018) (superimposed images of famous New York landmarks in a collage were uncopyrightable “digital manipulation”); *S.T.R. Industries, Inc. v. Palmer Industries, Inc.*, No. 96-cv-4251, 1999 WL 258455, at *3–4 (N.D. Ill. Apr. 9, 1999) (selection of preexisting artwork and changing of background color to place on pool cues insufficient for creative authorship)). In addressing the creative content of the Work, China Motors points how the selection of theme and colors “reflect characteristics of its brand,” such as the circles creating a target shape to emphasize the “pinpoint” in Pinpoint Tech and selection of red, white, and blue to compliment the “USA” in the text. Second Request at 1.

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 Publications, Inc. v. Rural Telephone Service 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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § § 906.1 (3D ED. 2014) (“COMPENDIUM (THIRD)”); *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. COMPENDIUM (THIRD) § 906.1.

Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See id.* § 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 carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work does not contain the requisite separable authorship necessary to sustain a claim to copyright.

None of the Work’s individual components are entitled to copyright protection. The two lines of text consisting of P-Tech’s business names are uncopyrightable. 37 C.F.R. § 202.1(a) (noting that “[w]ords and short phrases such as names [and] titles” are not subject to copyright); *see also PrimeSource, Inc. v. Personal Resource, Inc.*, No. 97-CV-0400, 1998 WL 543366, at *4 (W.D.N.Y. Aug. 21, 1998) (choice of letters in design not original because they “were taken from the name of the HRP division”). Use of red, white, and blue in a work referencing the United States is exceedingly common and uncreative. *See* COMPENDIUM (THIRD) § 906.1 (“Merely . . . combining expected or familiar pairs or sets of colors is not copyrightable”); *cf. O’Connor v. Cindy Gerke & Assocs., Inc.*, 300 F. Supp. 2d 759, 769 (W.D. Wis. 2002) (use of real estate company colors in television show about company’s properties not copyrightable because colors were not original to the author). Nor is use of concentric circles in a “target” shape copyrightable; the *Compendium* recognizes that “[t]he Copyright Act does not protect common geometric shapes” including rectangles and octagons, and “the U.S. Copyright Office will not register a work that merely consists of common geometric shapes unless the author’s use of those shapes results in a work that, as a whole, is sufficiently creative.” COMPENDIUM (THIRD) § 906; *see also OddzOn Prod., Inc. v. Oman*, 924 F.2d 346, 349 (D.C. Cir. 1991) (no abuse of discretion in refusal to register Koosh ball for lack of creativity because it formed “familiar shape” of a sphere).

The Board also finds that, viewed as a whole, the selection, coordination, and arrangement of the shapes, colors, and letters that comprise the Work are not sufficient to render

the Work original. The Work consists of little more than three concentric red circles behind two lines of text in red and blue, with the word “USA” rotated 90 degrees. As explained in the *Compendium*, the Office “typically refuses to register” logos that consist only of “wording,” “uncopyrightable ornamentation,” “spatial placement” of elements, and “mere use of different colors, frames, borders, or differently sized font.” COMPENDIUM (THIRD) § 913.1. Though the use of red circles creates the impression of a bullseye, repetition of simple shapes along with an entity’s name are insufficiently creative to constitute creative expression. See *John Muller & Co. v. New York Arrows Soccer Team, Inc.*, 802 F.2d 989, 990 (8th Cir. 1986) (Register did not abuse discretion in rejecting application for sports team logo consisting of four red angled lines forming an arrow and the word “Arrows” underneath in blue). The decision to place the “P-Tech” text in front of the concentric circles, as well as the rotation of “USA” are a “garden variety” combination of elements that does not rise to the level of authorial discretion beyond that which is “lacking or so trivial as to be virtually nonexistent.” *Feist*, 499 U.S. at 349.

China Motors contends that the Work constitutes original authorship because it is “original” to China Motors by reflecting a graphic designer’s “diligent effort” to express a “target theme” by creating the work “from scratch.” Second Request at 1. This argument misses the mark. Because copyright subsists only in “original works of authorship,” 17 U.S.C. § 102(a), the Work must be both original to (created by) China Motors as well as contain sufficient creative expression to constitute a work of “authorship.” Regardless of the time and cost expended by China Motors, the Board does not consider an applicant’s “sweat of the brow” when assessing if a work meets the statutory criteria for copyright eligibility. See *Feist*, 499 U.S. at 354–56 (“sweat of the brow” cannot support a copyright claim for unoriginal and uncreative material). Because the Work constitutes a garden-variety combination of unprotectable elements, it lacks sufficient creative expression to be copyrightable.

In sum, the ordinary textual expression, simple color scheme, and common geometric shapes that make up the work, as a whole, lack the requisite amount of creativity in their selection, combination, and arrangement to warrant copyright protection. See *Feist*, 499 U.S. at 359; see also COMPENDIUM (THIRD) § 913.1 (explaining the types of logo designs that the Office typically refuses to register). Thus we find that the level of creative authorship involved in this combination of unprotectable elements is, at best, *de minimis*, and too trivial to merit copyright registration.

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

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and Director, U.S. Copyright Office

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