



Copyright Review Board  
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

October 17, 2022

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2800 Rockcreek Parkway  
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**Re: Second Request for Reconsideration for Refusal to Register C Design  
(SR # 1-7053886421; Correspondence ID: 1-3VN8JZW)**

Dear Mr. Williams:

The Review Board of the United States Copyright Office (“Board”) has considered Cerner Corporation’s (“Cerner”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “C Design” (“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 WORK**

The Work is a two-dimensional graphic logo design, consisting of a letter C with two streaks extending horizontally and parallel to each other from the middle of the letter C. The streaks start from two different midpoints on the letter C and fold over and extend slightly past the letter C itself. There is negative space between the two streaks up to and including the part of the letter C that falls between the streaks. The two streaks appear to fold over the letter C and resemble an italicized equal sign, with one streak slightly shorter than the other. The letter C is primarily one shade of blue except slightly above and below the portions of the C closest to the two streaks, where the C is a slightly darker shade of blue. The two streaks are primarily bright green, with the bright green blending into a yellow-green in the middle of each streak and then back to a bright green color. The Work is as follows:



## II. ADMINISTRATIVE RECORD

On March 27, 2019, Cerner filed an application to register a copyright claim in the Work. In a letter dated June 18, 2019, a Copyright Office registration specialist refused to register the claim, finding that the work lacked “the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Joshua Ryan at 1 (June 18, 2019). Cerner then requested that the Office reconsider its initial refusal to register the Work in a September 9, 2019 letter. Letter from Joshua B. Ryan to U.S. Copyright Office (Sept. 9, 2019) (“First Request”). Cerner argued that the Office’s refusal should be withdrawn because the Office failed to specify the reasons for its decision. *Id.* at 1. Additionally, Cerner argued that the C Design constitutes sufficient creative authorship to warrant registration because “the combination of the uncommon representation of the letter ‘C’ with various uncommon geometric shapes, featuring numerous colors and shading, exhibits sufficient creativity to be regist[rable].” *Id.* at 2. According to Cerner, the “C portion is not a ‘common’ geometric shape or letter because it is intersected by the ‘streaks,’” the portion of the C that is lower “appears smaller than the upper” portion, and the C “does not consist of a ‘typical’ or ‘complete’ letter.” *Id.* Cerner also argued that even if the letter C is considered a common letter and the streaks are common geometric shapes, the “design as a whole contains a sufficient amount of creative expression” because of the way the elements of the design interact with each other, the arrangement of the streaks, and the stylized shading. *Id.* at 2–3. Cerner further argued that the “shading along the curvature of the C and streaks also provides three-dimensionality; the streaks appear to bow outward with the portions along the curvature and ends seeming farther away than the middle of the streaks.” *Id.* at 3. Additionally, Cerner asserted that there are other logos with less creativity than the Work that the Office registered, pointing to a logo containing a letter D intersected with a streaking basketball. *Id.*

After reviewing the Work in light of the points raised in the First Request, the Office again concluded that the Work lacked a sufficient amount of creative authorship. Refusal of First Request for Reconsideration from U.S. Copyright Office to Joshua Ryan (Jan. 13, 2020) (“Second Refusal”). The Office explained that the “C Design does not contain a sufficient amount of creativity either elementally or as a whole to warrant registration” because “the circle and bands are common and familiar shapes” and the “mere coloration” is not copyrightable. *Id.* at 3. The Office also explained that the elements of the C Design as a whole were not sufficiently creative because it “merely brings together a few uncopyrightable elements in a basic arrangement which is wholly unoriginal and that does not rise to the level of creativity necessary for copyright registration.” *Id.* The Office also noted that “a decision to register a particular work has no precedential value and is not binding upon the Office when it examines any other application.” *Id.* at 4. In response to Cerner’s assertion that the Office’s refusal did not articulate the registration specialist’s “analysis of the claim or the standards applied in deciding to refuse registration,” the Office responded that registration specialists “are not required to describe in detail the analytical process used in determining not to register a work.” *Id.* at 1.

In a letter dated March 12, 2020, Cerner requested that the Office reconsider for a second time its refusal to register the Work. Letter from Joshua B. Ryan to U.S. Copyright Office at 1 (Mar. 12, 2020) (“Second Request”). Cerner again argued that the elements of the Work such as the C and the streaks were not common shapes and that the C Design contained stylized shading

warranting protection, the elements when arranged as a whole were sufficiently creative, and that the Office had previously registered less creative logos. Cerner also reiterated that the Office's initial refusal was incomplete because it failed to adequately articulate the reasons for its refusal to register the Work. *Id.* at 1–4.

### III. DISCUSSION

After carefully examining the Work and applying the legal standards discussed below, the Board finds that the Work does not contain the requisite originality necessary to sustain a claim to copyright.

As an initial matter, the Board finds that the Work's individual components are insufficiently creative to be eligible for copyright protection. 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., Inc.*, 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 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").<sup>1</sup>

Applying these legal standards to the Work's elements, the Board finds that the Work's individual components are not sufficiently creative to be eligible for copyright protection. Neither the stylized blue letter C, the two parallel green streaks cutting through the letter C, nor the negative space between the streaks are subject to copyright protection. While Cerner asserts that the "uncommon representation of the letter C with various uncommon geometric shapes, featuring numerous colors and shading, exhibits sufficient creativity to be registrable," these minor variations of the letter C where the "lower portion of the C appears smaller than the upper" do not make it an "uncommon" geometric shape or take it out of the realm of lettering.

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<sup>1</sup> *See* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.4(J) (3d ed. 2021) ("COMPENDIUM (THIRD)") ("[T]he Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations, either in two-dimensional or three-dimensional form. Examples of familiar symbols and designs include, without limitation ... [s]ymbols typically found on a keyboard[,] ... common representational symbols[,] ... common patterns[,] ... [and] well-known and commonly used symbols that contain a *de minimis* amount of expression...."); *id.* § 906.1 ("The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form. There are numerous common geometric shapes, including, without limitation, *straight or curved lines*....") (emphasis added).

Second Request at 2; *see also Tufenkian Imp./Exp. Ventures, Inc. v. Einstein Moomjy, Inc.*, 338 F.3d 127, 132 (2d Cir. 2003) (“[T]he public domain includes, for example, both the generic shape of the letter ‘L’ and all of the elaborately more specific ‘L’s from the hundreds of years of font designs that have fallen into the public domain.”). Moreover, the set of two streaks intersecting the letter C are too simplistic and lack sufficient creativity to warrant copyright protection. The streaks can also be seen as “curved lines” intersecting through the letter C, which are not protected under copyright law. *See* COMPENDIUM (THIRD) § 906.1.

Additionally, the coloring of the C, which comprises very slight variations of blue, and the coloring of the streaks, which comprise very slight variations of bright green, do not “possess more than a *de minimis* quantum of creativity” and are also, therefore, not protectable. *Feist*, 499 U.S. at 363; *see also Boisson v. Banian, Ltd.*, 273 F.3d 262, 271 (2d Cir. 2001) (indicating mere coloration cannot support a copyright claim); COMPENDIUM (THIRD) § 313.4(K) (“The Office cannot register a claim to copyright in color in and of itself or a system for matching pairs and sets of colors.”); COMPENDIUM (THIRD) § 906.3 (“Merely ... combining expected or familiar pairs or sets of colors is not copyrightable.”).<sup>2</sup> Similarly, Cerner refers to how the work is intended to be perceived by viewers, suggesting the design can be perceived as containing “three-dimensionality” due to the use of curvature and the “streaks appearing to bow outward.” First Request at 3. But the intended impression on a viewer is not relevant to whether a work can be registered; the Office considers the “expression that is fixed in the work itself,” and does “not consider any meaning or significance that the work may evoke.” COMPENDIUM (THIRD) § 310.3.

The Board also concludes that the combination of the elements in the Work fails to meet the requirements for copyrightability. The Board acknowledges that 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 claim. 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).

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<sup>2</sup> Cerner cites two main cases for the proposition that the Work’s shading constitutes sufficient creativity. *See* Second Request at 2. However, neither of these cases support Cerner’s proposition. In *Nicholls v. Tufenkian Import/Export Ventures, Inc.*, while the Court does describe the shading in the works at issue, the colors and shading are *not* specifically cited as elements of the work that contain sufficient creativity. No. 04-cv-2110, 2004 U.S. Dist. LEXIS 11403, at \*1 (S.D.N.Y. June 23, 2004). In the other case Cerner cites, the design is much more intricate and includes many more colors than Cerner’s work. Second Request at 2; *see also Prince Grp., Inc. v. MTS Prod.*, 967 F. Supp. 121, 125 (S.D.N.Y. 1997) (“The polka dots in this case are more than average circles. First, they are irregularly shaped, and not the perfect circles of a standard polka dot. They are ‘shaded,’ that is, there is a crescent of white around half of the perimeter of each of the dots which is different from the standard uniformly colored polka dot, and they consist of several different colors. Thus, the shape and the shading of the dots are sufficiently original to meet the threshold of creativity.”).

Not every arrangement of non-protectable elements demonstrates 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) (emphasis in original).

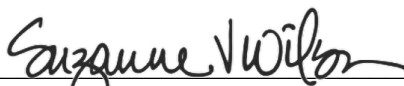
Here, the Board finds that, viewed as a whole, the selection, coordination, and arrangement of the letter C, the two streaks, and the negative space in between the two streaks are not sufficiently creative to render the Work copyrightable. “The Office typically refuses to register trademarks, logos, or labels that consist of only ... mere scripting or lettering, either with or without uncopyrightable ornamentation[,] ... mere spatial placement or format of trademark, logo, or label elements” or “mere use of different fonts or colors, frames, or borders, either standing alone or in combination.” COMPENDIUM (THIRD) § 914.1; *see also Coach*, 386 F. Supp. 2d at 499 (stating that “the mere arrangement of symbols and letters is not copyrightable”). Here, the slight variation of the ordinary letter C, with two parallel, simple streaks intersecting the letter C, and the simple color scheme, considered as a whole, lacks the requisite amount of creativity to warrant copyright protection. *See Feist*, 499 U.S. at 359.

Cerner makes additional arguments for why the Work should be registered, including pointing to the Office’s prior registration of an arguably similar design, which Cerner asserts was similar to the Work, but contained “less creativity.” Second Request at 2–3. The Board arrives at its determinations by looking at the specifics of the case before it, and will not compare previously registered works when examining a work for sufficient creativity. *See* COMPENDIUM (THIRD) § 309.3 (“A decision to register a particular work has no precedential value and is not binding upon the Office when it examines any other application.”); *see also Homer Laughlin China Co. v. Oman*, No. 90-cv-3160, 1991 U.S. Dist. LEXIS 10680, at \*6 (D.D.C. July 30, 1991) (stating that court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”). Finally, in response to Cerner’s assertion that the Office’s initial refusal did not specify its reasons for refusal, the Board concludes that the refusal was sufficient because registration specialists “are not required to describe in detail the analytical process used in determining not to register a work.” *See*

Second Refusal at 1, COMPENDIUM (THIRD) § 608. The registration specialist in this instance provided the fundamental reason for the initial refusal to register. On reconsideration, the Office offered a more extensive explanation of its reasoning, which it does as a matter of practice. *See* Second Refusal.

#### 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**

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