



Copyright Review Board

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

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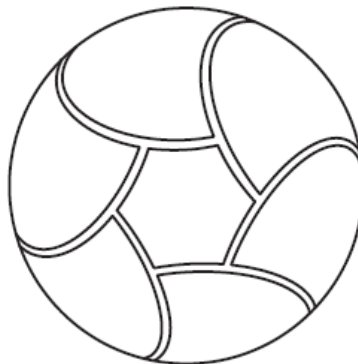
Re: Second Request for Reconsideration for Refusal to Register Hexagonal Seam Design for a Medicine Ball (Correspondence ID: 1-3L2OBC2; SR # 1-73116398861)

Dear Mr. Aldort:

The Review Board of the United States Copyright Office (“Board”) has considered Power Systems (PS), LLC’s (“PS’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Hexagonal Seam Design for a Medicine Ball” (“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 design comprised of six seams applied to a spherical medicine ball. The design consists of a centered hexagon created by six overlapping semicircle seams arranged in a circular configuration around the outer edge of a spherical ball. The Work is as follows:



II. ADMINISTRATIVE RECORD

On January 14, 2019, PS filed an application to register a copyright claim in the Work. In a June 19, 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 Joshua A. Aldort (June 19, 2019).

In a letter dated September 19, 2019, PS requested that the Office reconsider its initial refusal to register the Work. Letter from Joshua A. Aldort to U.S. Copyright Office (Sept. 19, 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 consists of “circles and hexagons” that are “common and familiar” and that “the overall combination and arrangement of these shapes does not contain a sufficient amount of creativity to support a copyright claim” as “[u]sing a pattern of geometric shapes to cover the entirety of a larger geometrically-shaped object is an obvious, garden-variety configuration of elements that lacks the creativity required to compel registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Joshua A. Aldort (Feb. 11, 2020).

In a letter dated June 5, 2020, PS 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 Joshua A. Aldort to U.S. Copyright Office (June 5, 2020) (“Second Request”). In that letter, PS argues that the Work “is a unique and creative pattern” that contains “shapes that are arranged in a creative manner” and a sleek appearance that transcends the notion that it merely consists of common geometrical shapes.” *Id.* at 5–6.

III. DISCUSSION

A. The Legal Framework

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. *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 stereotypical elements in a glass sculpture of a jellyfish including clear glass, an oblong shroud, bright colors, vertical orientation, and the 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. 2021) (“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 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 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.

The Work, both in its individual elements and as a whole, fails to demonstrate copyrightable authorship. The Work consists of basic geometric shapes (semicircles and a hexagon), none of which, individually, is copyrightable. *See* 37 C.F.R. §§ 202.1(a) (identifying “familiar symbols or designs” as examples of works not subject to copyright protection), 906.1 (“[t]he Copyright Act does not protect common geometric shapes . . . including . . . curved lines, circles . . . [and] hexagons.”).


The Work as a whole is likewise insufficiently creative to support a claim to copyright, as the specific combination of these unprotectable elements does not display copyrightable authorship. Combinations of unprotectable elements are only protectable when they contain “elements [that] are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava*, 323 F.3d at 811. The Work consists of only six overlapping semicircles arranged in a circular configuration around the outside of a sphere that also create a centered hexagon. At best, this arrangement consists of minor variations of unprotectable shapes that do not rise to the level of sufficient creativity for copyright protection. *See* COMPENDIUM (THIRD) §906.1 (slight linear and spatial variations among common shapes do not constitute creative expression). As a result, the selection and arrangement of elements in the Work are not sufficiently creative to warrant copyright protection.

Lastly, PS attempts to favorably compare the Work to other works that have been found sufficiently creative to warrant copyright protection. The Board arrives at its determinations by looking at the specifics of the case before it and thus will not compare previously registered works when examining a work for sufficient creativity. *See* COMPENDIUM (THIRD) §309.3; *see also Homer Laughlin China Co. v. Oman*, No. 90 Civ. 3160, 1991 WL 154540, at *2 (D.D.C. July 30, 1991) (stating that the court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”). Even if the Board did make such comparisons, PS’s examples are inapposite. While the cited works consist of geometric shapes, the elements are numerous enough and their selection and arrangement are original enough that their combination rises to the level of sufficient creativity. In contrast, the Work consists of only two geometric shapes arranged in a basic, predictable circular configuration and thus is insufficiently creative to warrant copyright protection.

In light of this, the Board is compelled to find that the Work does not meet even the low threshold of creativity established by the Supreme Court in *Feist*.

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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