



United States Copyright Office

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Re: Second Request for Reconsideration for Refusal to Register S Logo (Correspondence ID: 1-3L2KEJ1, Original Correspondence ID: 1-3AQLHGN, SR 1-7012397067); SPEEDWAY MOTORS LOGO (Correspondence ID: 1-3L2KEII, Original Correspondence ID: 1-3AQLHDG; SR 1-7012396641); TEAM SPEEDWAY MOTORS Logo (Correspondence ID: 1-3L2KDXC, Original Correspondence ID: 1-3AQLHGS; SR 1-7012468241)

Dear Mr. Meyer:

The Review Board of the United States Copyright Office (“Board”) has considered Brand Innovation Group’s (“Brand Innovation”) second request for reconsideration of the Registration Program’s refusal to register two-dimensional artwork claims in the works titled “S Logo,” “Speedway Motors Logo,” and “Team Speedway Motors Logo” (“Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s denial of registration.

I. DESCRIPTION OF THE WORKS

The Works are 2-dimensional graphic images of logos. All of the Works have the common feature of a yellow circle accented with a stylized purple band. The purple band is thicker on the top, connected to a thinner part of the band that gradually becomes thicker. There is a small break in the band on the left.

“S Logo” has a purple “S” in the center of the circle. The “S” is slightly slanted to the right, and there is a point on the top left.

“SPEEDWAY MOTORS LOGO” has the purple text “SPEEDWAY MOTORS” positioned to the left and within the circle. “SPEEDWAY” is in all caps, and “motors” is below in lower case and in a smaller font. The text is slightly slanted to the right, and the “S,” “W,”

“Y,” and “m” have points on the top left. The “Y” in “SPEEDWAY” extends to midway through the word and connects with the purple band.

“TEAM SPEEDWAY MOTORS Logo” is the same as the “SPEEDWAY MOTORS LOGO” with the addition of the word “TEAM” at the top. “TEAM” is in all caps, is completely outside of the yellow circle, and is in a slightly smaller font than “SPEEDWAY.”

The Works are as follows:



S Logo



SPEEDWAY MOTORS LOGO



TEAM SPEEDWAY MOTORS Logo

II. ADMINISTRATIVE RECORD

On October 4, 2018, Brand Innovation filed three applications to register copyright claims in the Works. In three November 29, 2018 letters, a Copyright Office registration specialist refused to register the claims, finding that they “lack[] the authorship necessary to support a copyright claim.” Initial Letters Refusing Registration from U.S. Copyright Office to Charles Meyer (Nov. 29, 2018).

In three letters dated February 11, 2019, Brand Innovation requested that the Office reconsider its initial refusal to register the Works. Letters from Charles J. Meyer to U.S. Copyright Office (Feb. 11, 2019) (collectively “First Requests”). After reviewing the Works in light of the points raised in the First Requests, the Office re-evaluated the claims and again concluded that the Works do not contain sufficient original and creative authorship because the

individual elements—circles—are “common and familiar shape[s], while the remaining element” is either a business name or a single letter. Refusals of First Requests for Reconsideration from U.S. Copyright Office to Charles Meyer, at 3 (June 19 2019). The Office further stated that, viewing the Works as a whole, “the combination and arrangement of the component elements” is “insufficiently creative” because combining a business name with a geometric shape or centering a letter within a geometric shape “is an age-old, [obvious, and] common logo configuration.” *Id.*

In three letters dated September 18, 2019, Brand Innovation requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusals to register the Works. Letters from Charles J. Meyer to U.S. Copyright Office (Sept. 18, 2019) (collectively “Second Requests”).¹ In those letters, Brand Innovation argued that “shapes, colors and arrangement . . . are not common or intuitive,” and each logo is “a result of creative choice including its selection, combination and arrangement of slightly transformed shapes, colors and text.” *Id.* at 5. Brand Innovation emphasized that the Works’ “thoughtful and intentional design[s] . . . convey a specific appearance to the performance vehicle consumer,” for example “rolling motion and acceleration, symbolic of speed, racing and the performance car industry.” *Id.* at 6–7.

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

¹ Brand Innovation sent separate letters on September 18, 2019 regarding the three works. Because the letters were functionally identical, the Board will treat them as the same letter for citation purposes, using the pagination of the letter for “S Logo.”

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. 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 Works

After carefully examining the Works and applying the legal standards discussed above, the Board finds that the Works do not contain the requisite authorship necessary to sustain claims to copyright.

The Works are comprised of three logos. Each of the logos has the common features of a yellow circle and a stylized purple band within the circle. Each logo has a different letter or phrase within the circle. “S Logo” has an “S” centered inside the circle; “SPEEDWAY MOTORS LOGO” has “Speedway Motors” placed over the circle; and “TEAM SPEEDWAY MOTORS Logo” has “Team Speedway Motors” placed over the circle. Brand Innovation argues that the individual elements are copyrightable. *See* Second Requests at 11. The Board finds that none of the Works’ individual components are sufficiently creative to be eligible for copyright protection. The constituent elements—circles, a single letter, and short phrases—are not individually subject to copyright protection. The Copyright Act does not protect common geometric shapes, such as circles; nor does it protect letters, words, or short phrases. *See* 37 C.F.R. § 202.1(a) (prohibiting registration of “words and short phrases such as names, titles, and slogans; familiar symbols or designs”); *see also* COMPENDIUM (THIRD) § 313.4(C), (J) (noting that words and short phrases such as a business name or name of a product or service are not copyrightable. Familiar symbols, such as a letter, are also not copyrightable); *id.* § 906.1 (common geometric shapes, including curved lines and circles, are not protectable).

Brand Innovation specifically asserts that the stylized purple band, “artistic elements of the text,” and the color selection are copyrightable individual elements. *See* Second Requests at 6–10. It notes that the “line weights, gap and notch” in the stylized purple band “provide a 3D impression with an appearance of a rolling motion and acceleration, symbolic of speed, racing and the performance car industry.” *Id.* at 7. It similarly argues that the font used in each of the logos is “not . . . a standard font” but one that is “artistically rendered” with “custom curves to imply speed” and an “extending ‘speed line’ [on several of the letters] conveying a blurred impression indicating speed.” *Id.* at 9. Brand Innovation also contends that it “deliberately selected stylized color shades,” specifically “a precise shade of yellow which conveys a warm feel, yet it is also nostalgic” as well as a “precise deep shade of purple” that is “contemporary, mature and sophisticated, yet also evokes feelings of nostalgia.” *Id.* at 9–10. The Board is unconvinced by these arguments.

First, the Board focuses on the actual appearance of the fixed work and not any meaning or significance that the work may evoke. The fact that creative thought may take place in the mind of the person who encounters a work does not bear on originality. *See* COMPENDIUM (THIRD) § 310.3. Similarly, the Office will not consider the author’s inspiration, creative intent, or intended meaning when examining a work. *Id.* § 310.5. Accordingly, the Board’s examination of the Works’ appearance does not take into account Brand Innovation’s intended “significance of the design elements to the performance vehicle consumer.” Second Requests at

2; *see also Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S.Ct. 1002, 1015 (2017) (“our inquiry is limited to how [the design is] perceived”). Evaluating the author’s inspiration and intent would require the Office “to consider evidence of the creator’s design methods, purposes, and reasons.” *Id.*

Second, as a general rule, typeface, typefont, lettering, calligraphy, and typographic ornamentation are not registrable. *See* 37 C.F.R. § 202.1(e) (prohibiting registration of “Typeface as typeface”); *see also* COMPENDIUM (THIRD) § 906.4. These elements are mere variations of uncopyrightable letters or words, and the Office typically refuses such claims regardless of how novel and creative the shape and form of the typeface characters may be. The fact that Brand Innovation’s font has been slanted and has “speed lines” on some letters “to contribute to the overall impression . . . [of] speed” does not add sufficient creativity to warrant registration. Second Requests at 9.

Third, the addition of a purple and yellow color combination does not result in protectability for the Works. The use of the colors purple and yellow alone does not “possess more than a *de minimis* quantum of creativity” and is therefore not protectable.² *Feist*, 499 U.S. at 345; COMPENDIUM (THIRD) § 906.1 (“Merely . . . combining expected or familiar pairs or sets of colors is not copyrightable.”). Even the combination of these colors with the type stylization discussed above does not result a protectable level of creativity. *See Darden v. Peters*, 488 F.3d 277 (4th Cir. 2007) (affirming refusal to register a claim in a website design comprised of “the special combination of font and color selection; visual effects such as relief, shadowing, and shading; labeling; and call-outs”); *Purohit v. Legend Pictures, LLC*, No. CV 18-1907-RGA, 2020 WL 1441614, at *4 (D. Del. Mar. 24, 2020) (finding that a design composed of lettering “in a serif font with white text on a colored background and . . . a curly ‘S,’ and a descending stroke of the ‘R’” to be unprotectable) (internal quotation marks omitted).

The Board finds that, viewed as a whole, the selection, coordination, and arrangement of the shapes, colors, words, and letter(s) that comprise the Works are insufficient to render the Works sufficiently creative and original. The Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variation. *See* COMPENDIUM (THIRD) § 313.4(J). Looking at each Work as a whole, only two solid colors are used, and there is no shading or gradient use of the colors. Although the purple band within the yellow circle is stylized and has different widths, it is still essentially a circle band within a larger circle that follows the outline of the larger circle. Placing a business name on top of a geometric shape is a “garden-variety” logo configuration that is not entitled to copyright protection. *Feist*, 499 U.S. at 349. For these reasons, the Office refuses registration of logos that

² The Board further notes that the colors yellow and purple are frequently used together. *See Color Theory in Art, THE ARTY TEACHER*, <https://theartyteacher.com/color-theory-in-art/> (noting that purple and yellow are “complimentary colors” because they sit opposite each other on the color wheel); “Using Complementary (Opposite) Colors,” *The Know It All Guide To Color Psychology In Marketing + The Best Hex Chart*, COSCHEDULE: BLOG (Aug. 29, 2018), <https://coschedule.com/blog/color-psychology-marketing/#complementary> (use of complimentary colors “make[s] things stand out”); *see also Search for “Yellow and Purple Logos,”* GOOGLE, <https://www.google.com/search?q=yellow+and+purple+logos> (results include Thai Airways, the Los Angeles Lakers, the Minnesota Vikings, and Taco Bell).

consist only of “[w]ording,” “[m]ere scripting or lettering, either with or without uncopyrightable ornamentation,” “spatial placement” of elements, and the “[u]ncopyrightable [and mere] use of color, frames, borders or differently sized font.” COMPENDIUM (THIRD) § 913.1.

Finally, Brand Innovation cites two Review Board reversal letters to support the proposition that the “reversals were based on each logo’s original combination of features such as the interaction of various geometric shapes and colors, resulting in arrangements that are not common or intuitive” similar to the Works at issue. Second Requests at 5 (citing “American Airlines Flight Symbol”³ and “D with Ball Design (Detroit Pistons) and LAKELAND MAGIC Secondary Logo”).⁴ While the Office does not compare works, COMPENDIUM (THIRD) § 309.3, each of the works in the cited letters exhibits more creativity than the Works. The Board noted in the previous cases the creative use of white space, shading, and gradient colors in the American Airlines logo; the combination of various geometric shapes, numerous colors, and stylized shading as well as the interaction of elements illustrating movement in the Detroit Pistons logos; and the four colors and shading that adds three-dimensionality to the Lakeland Magic logo. These creative compilations are quite different from the Works, which use only two colors without shading or use of whitespace, two circular shapes, and either a single letter or two to three words. Brand Innovation’s assertion that the Works convey a 3D impression of speed is what it hopes to inspire in the viewer, but it is not visually perceptible in the Works.

IV. CONCLUSION

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



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

³ *Registration Decision Regarding American Airlines Flight Symbol; Correspondence ID I-28H4ZFK; SR I-3537494381* (Dec. 7, 2018), <https://www.copyright.gov/rulings-filings/review-board/docs/american-airlines.pdf>.

⁴ *Registration Decision Regarding D with Ball Design (Detroit Pistons) and LAKELAND MAGIC Secondary Logo; Correspondence IDs I-32FSIYR, I-32FSIZX; SRs I-4814315971, I-4632160517* (May 30, 2019), <https://www.copyright.gov/rulings-filings/review-board/docs/d-with-ball-design.pdf>.