



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

December 9, 2022

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**Re: Second Request for Reconsideration for Refusal to Register X Studio Design
(SR # 1-8936513478; Correspondence ID: 1-4PNUKAW)**

Dear Ms. Anderson:

The Review Board of the United States Copyright Office (“Board”) has considered Explora Science Center & Children’s Museum of Albuquerque’s (“Explora”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional claim in the work titled “X Studio 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 THE WORK

The Work is a two-dimensional design comprised of two polygons, crossing each other in the shape of an “X.” The polygons are thinner towards the top and wider towards the bottom. The longer polygon is red and yellow, and the shorter one is green and blue, and the area where the two intersect is purple.¹ The Work is as follows:



¹ In its correspondence with the Office, Explora used multiple colors to describe the same elements in the Work. Explora described the top of the longer polygon as red, rusty red, and orange. Letter for Justin R. Jackson to U.S. Copyright Office at 2 (Oct. 14, 2020) (“First Request”); Letter for Svtilana V. Anderson to U.S. Copyright Office at 2 (June 12, 2021) (“Second Request”). The area where the two polygons intersect was described as both “black or dark” and purple. First Request at 2; Second Request at 2.

II. ADMINISTRATIVE RECORD

On June 16, 2020, Explora filed an application to register a copyright claim in the Work. In a July 22, 2020 letter, a Copyright Office registration specialist refused to register the claim, finding that it did not have “sufficient creative authorship within the meaning of the copyright statute and settled case law.” Initial Letter Refusing Registration from U.S. Copyright Office to Svitlana Anderson at 1 (July 22, 2020).

In a letter dated October 14, 2020, Explora requested that the Office reconsider its initial refusal to register the Work. Letter from Justin R. Jackson to U.S. Copyright Office (Oct. 14, 2022) (“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 “falls into the ‘narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a copyright.’” Refusal of First Request for Reconsideration from U.S. Copyright Office to Justin Jackson at 4 (Mar. 12, 2021) (quoting 1 M. Nimmer & D. Nimmer, *Nimmer On Copyright* § 2.01(b) (2018)).

In a letter dated June 12, 2021, Explora 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 Svitlana V. Anderson to U.S. Copyright Office (June 12, 2021) (“Second Request”). In that letter, Explora argued that “the Work is an independent creation with the substantial amount of creativity, which exceeds the minimal amount of creative authorship standard, as established by *Feist*.” *Id.* at 2 (citing *Feist Publ’ns v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991)). Explora reasoned that “[w]hile there are many choices in illustration of primary and secondary colors, these two unusually shaped rectangles were created with the extensive creative input, i.e., of size, rotation, layout appearance, and color representation.” *Id.*

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work does not contain the requisite originality necessary to sustain a claim to copyright.

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*, 499 U.S. at 345. The Supreme Court has explained that works need only contain “some minimal degree of creativity” to qualify for copyright protection. *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 346, 359.

The Office’s regulations and practices implement the requirement of originality set forth in the Copyright Act and described in the *Feist* decision. As set out in the Office’s regulations, copyright does not protect “familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering or coloring.” 37 C.F.R. § 202.1(a). Accordingly, when a work only

consists of unprotectable elements, it must combine or arrange those elements in a sufficiently creative way to meet the requirements of originality. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (stating that the combination of unprotectable elements is protected “only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship”).

Here, the Work does not exhibit the level of creativity necessary for copyright protection. The individual elements of the Work are not copyrightable. For example, polygons are common geometric shapes not entitled to protection. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”). Similarly, the letter “X,” viewed as either a symbol or a letter, is not protected. 37 C.F.R. § 202.1 (examples of works not subject to copyright include “mere variations of typographic ornamentation, lettering or coloring”); COMPENDIUM (THIRD) § 313.4(J) (“Examples of familiar symbols . . . [that are not protected] include . . . Letters.”). The only remaining element is the Work’s colors, which are also ineligible for copyright protection. 37 C.F.R. § 202.1(a) (“mere variations of . . . coloring” are not subject to copyright).

The selection and coordination of the unprotectable elements are also insufficiently creative to warrant copyright protection. Though some combinations of non-protectable elements may contain sufficient creativity with respect to how they are arranged, not every combination will be numerous enough and their arrangement original enough to constitute an original work of authorship. *Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 905; *see also Atari Games Corp. v. Oman*, 888 F.2d 878, 883–84 (D.C. Cir. 1989). Explora’s simplistic arrangement of two multicolored, polygons in the shape of an “X” does not demonstrate sufficient creativity to warrant copyright protection. *See* COMPENDIUM (THIRD) § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”). A lopsided “X” with multiple colors is a mere variation of a familiar symbol. *Id.* § 313.4(J) (“Examples of familiar symbols . . . include . . . Letters.”). Adding primary and secondary colors is a common and expected color combination and does not make the work registerable. *See id.* § 313.4(K) (“If the author merely . . . combined expected or familiar sets or pairs of colors, the Office . . . may refuse to register the claim.”); *id.* § 906.3 (“Merely . . . combining expected or familiar pairs or sets of colors is not copyrightable . . .”).

Explora asserts that the Work is sufficiently creative because it was “well thought out, [and] carefully arranged to create association in children and wake up their desire to learn.” Second Request at 5. The Office, however, does not consider the time and effort that went into creating a work or the impression it may have on those who encounter it. COMPENDIUM (THIRD) §§ 310.3, 310.7. Explora also asserts that the Office made its previous determinations based on the “artistic merit or beauty of the Work.” Second Request at 4. The Office does not assess artistic merit. COMPENDIUM (THIRD) § 310.2. The Office concluded, and the Board agrees, that Explora’s choices and arrangement do not meet the requirements for 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.



U.S. Copyright Office Review Board
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