



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

August 25, 2023

Frank J. Bonini, Jr.
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150 N. Radnor Chester Rd., Suite F200
Radnor, PA 19087

**Re: Second Request for Reconsideration for Refusal to Register Tru
(SR #1-10091706251; Correspondence ID: 1-59C3IGL)**

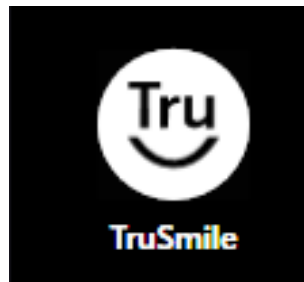
Dear Mr. Bonini:

The Review Board of the United States Copyright Office (“Board”) has considered exocad GmbH’s (“Exocad”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Tru” (“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 refusal of registration.

I. DESCRIPTION OF THE WORK

The Work is a two-dimensional artwork consisting of a black square with a white circle that is slightly off-center. In the center of the white circle are the letters “Tru” in black with a black curved line underneath. Beneath the white circle is the word “TruSmile” in white letters.

The Work is as follows:



II. ADMINISTRATIVE RECORD

On September 30, 2021, Exocad filed an application to register a copyright claim in the Work. In an October 19, 2021 letter, a Copyright Office registration specialist refused to register the claim, determining that it lacked the requisite creative authorship to support a copyright

claim. Initial Letter Refusing Registration from U.S. Copyright Office to Frank Bonini at 1 (Oct. 19, 2021).

On January 18, 2022, Exocad requested that the Office reconsider its initial refusal to register the Work, arguing that the “design is not familiar and displays a modicum of creativity in that, even if it is considered to incorporate elements of a smiley face[,] . . . [it] differs from a common design of a smiley face and incorporates elements uncommon to that kind of familiar symbol.” Letter from Frank Bonini to U.S. Copyright Office at 4 (Jan. 18, 2022) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that the Work could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Frank Bonini (June 16, 2022). The Office explained that the Work did not demonstrate “a sufficient amount of original and creative authorship to support a copyright registration.” *Id.* at 3.

In a letter dated September 15, 2022, Exocad 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 Frank Bonini to U.S. Copyright Office (Sept. 15, 2022) (“Second Request”). Exocad argued the Work “is more than the separate indication of parts. . . [and] provides an original creative work that is embodied in the medium and expressed in an original manner.” *Id.* at 9.

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 creativity necessary to sustain a claim to copyright.

A work may be registered for copyright if it is an “original work[] of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). In *Feist Publ’ns v. Rural Tel. Serv. Co.*, the Supreme Court explained that this requirement of originality contains two components: independent creation and sufficient creativity. 499 U.S. 340, 345 (1991). The necessary amount of creativity is “extremely low” and “even a slight amount will suffice.” *Id.* Though the requisite level of creativity is “not particularly stringent,” there nonetheless is “a narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 358–59. Works that do not meet this low threshold for creativity are not eligible for copyright. *Id.* at 359.

The Office’s regulations and practices implement the originality requirement set forth in the Copyright Act and described in the *Feist* decision. As set out in the Office’s regulations, copyright does not protect “[w]ords and short phrases such as names, titles, and slogans; 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 the statute. 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”).

Neither the Work’s individual elements nor the Work as a whole are sufficiently creative to be copyrightable. The individual elements, a black square box with a white circle in the center, the letters “Tru” with a curved line beneath it, and the word “TruSmile” beneath the white circle, are not copyrightable. First, individual words and numbers are not copyrightable. 37 C.F.R. § 202.1(a); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.4(C) (3d ed. 2021) (“COMPENDIUM (THIRD)”) (“Words . . . such as names, titles, and slogans, are not copyrightable because they contain a *de minimis* amount of authorship.”). Similarly, short phrases are not protectable by copyright. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(C) (the Office “cannot register individual words or brief combinations of words, even if the word or short phrase is novel or distinctive or lends itself to a play on words.”). As familiar symbols and shapes, the black box, white circle, and the curved line are also not copyrightable. 37 C.F.R. § 202.1(a) (identifying familiar symbols and designs as not subject to copyright); COMPENDIUM (THIRD) § 906.1 (“The Copyright Act does not protect common geometric shapes . . . including . . . straight or curved lines . . .”). Neither the size nor color of these elements are sufficiently creative to make the otherwise unprotectable elements protectable. COMPENDIUM (THIRD) § 906.2 (“[C]opyright law does not protect mere variations on a familiar symbol or design.”).

The Work as a whole is also not sufficiently creative to be protectable by copyright. Where a design combines uncopyrightable elements, it is protected only when the “elements 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; *see also* COMPENDIUM (THIRD) § 905 (“In all cases, a visual art work must contain a sufficient amount of creative expression. Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”). Here, Exocad placed the word “Tru” in the center of a white circle above a curved line that looks like a smiling mouth, and arranged the circle over the term “TruSmile.” Combining the term “Tru” and an image of a smile to signify the product name “TruSmile” is not creative. Furthermore, the use of black and white, a standard font, and placing the circle slightly off center in the black square does not add sufficient creativity. *See* COMPENDIUM (THIRD) § 905.

Finally, Exocad cites two prior Board decisions that it believes support registration of the Work arguing, “the Office cannot make entirely inconsistent decisions to the point of being arbitrary and capricious and/or make decisions that are not the product of reasoned decisionmaking.” Second Request at 8. The Office does not compare works; it makes determinations of copyrightability on a “case-by-case basis” and “[a] decision to register a particular work has no precedential value.” COMPENDIUM (THIRD) § 309.3. “Additionally, the Office examines each claim on its own merits by applying uniform standards of copyrightability, with the understanding that differences between any two works can lead to a different result, even with the application of the same legal standards.” Defs.’ Cross-Mot. for Summ. J. and Opp’n to Pl.’s Mot. for Summ. J. at 27, *Munro v. Copyright Office*, No. 6:21-cv-666 (W.D. Tex. June 7, 2023) (citing *Esquire*, 591 F.2d 796, 802 (D.C. Cir. 1978) (“The Register’s test requires the application of subjective judgement, and given the large volume of copyright applications that must be processed there may be some results that are difficult to square with the denial of registration here. But this does not mean that the Register has employed different standards in reaching these decisions.”)). The Board notes that the Work differs from those works that

Applicant cites in that those works contain significantly more creativity than the Work, including more graphical design elements and more original arrangements.¹

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
Suzanne V. Wilson, General Counsel and
Associate Register of Copyrights
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
Jordana Rubel, Assistant General Counsel

¹ U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Sandy Starfish* (Apr. 17, 2019), <https://www.copyright.gov/rulings-filings/review-board/docs/sandy-starfish.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Northwind Logos with Boat* (Oct. 9, 2020), <https://www.copyright.gov/rulings-filings/review-board/docs/northwind-logo.pdf>.