



United States Copyright Office

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May 7, 2020

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**Re: Second Request for Reconsideration for Refusal to Register Academy Logo;
Correspondence ID: 1-3G6R6IR; SR # 1-5443680911**

Dear Mr. Rabinowitz and Ms. Shapiro:

The Review Board of the United States Copyright Office (“Board”) has considered Academy of Motion Picture Arts and Sciences’ (“AMPAS”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled Academy Logo (“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 black and white two-dimensional graphic consisting of a silhouette of the Oscar statuette on a pedestal surrounded by a triangle. The Oscar statuette, or “Academy Award of Merit,” is the trophy distributed annually by AMPAS for recognition of achievement in motion pictures. The statuette was registered in 1941 (Reg. No. G. unp. No. 38512) and renewed by renewal registration R-443432. The Work is reproduced below.



II. ADMINISTRATIVE RECORD

On June 26, 2017, AMPAS filed an application to register a copyright claim in the Work. A registration specialist refused registration on June 6, 2018, stating that it “lacks the authorship necessary to support a copyright claim.” Letter Refusing Registration from U.S. Copyright Office to Meredith Schorr, Moses & Singer LLP (June 6, 2018).

In a letter dated September 6, 2018, AMPAS requested that the Office reconsider its initial refusal to register the Work. Letter from Deborah L. Shapiro, Moses & Singer LLP, to U.S. Copyright Office (Sept. 6, 2018) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again found the “combination of the [Work’s] component elements to be insufficiently creative to support a claim in copyright.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Deborah L. Shapiro, at 3 (Mar. 15, 2019).

In response, AMPAS 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 David Rabinowitz and Deborah L. Shapiro, to U.S. Copyright Office (June 5, 2019) (“Second Request”). In that letter, AMPAS argued that the work conveyed sufficient copyrightable authorship, asserting that the expertise involved in creating the work resulted in creative expression, namely “the overall shape of the Oscar silhouette base and the orientation of the sides of the base, made to align with the sides of the stylized overhead spotlight that forms the overall shape of the Work, the use, design, and orientation of the overhead spotlight and the sizing of each element for aesthetic proportionality.” Second Request at 4. AMPAS also pointed to other works registered by the Office or recognized by the courts as sufficiently creative. *Id.* at 6–8.

III. DISCUSSION

A. *The Legal Framework*

1) *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 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.” COMPENDIUM (THIRD) § 906.1; 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.

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).

2) Derivative Works

The Copyright Office will register a claim in a derivative work where the deposit material contains new authorship with a sufficient amount of original expression. 17 U.S.C. § 103(a) ("The subject matter of copyright . . . includes . . . derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully."); see also U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 311.1 (3d ed. 2017) ("COMPENDIUM (THIRD)") (citing H.R. REP. NO. 94-1476, at 57 (1976)). The registration for a derivative work, however, "does not cover any previously published material, previously registered material, or public domain material that appears in the derivative work. Nor does it cover any material that is not owned by the copyright claimant." *Id.*; see also 17 U.S.C. § 103(b) (Copyright in a derivative work is "independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.").

In the case of derivative works, the "new authorship that the author contributed to the derivative work may be registered, provided that it contains a sufficient amount of original expression, meaning that the derivative work must be independently created and it must possess more than a modicum of creativity." COMPENDIUM (THIRD) § 311.2 (citing *Waldman Publ'g Corp. v. Landoll, Inc.*, 43 F.3d 775, 782 (2d Cir. 1994)). The amount of creativity required for a derivative work is the same as that required for a copyright in any other work: "[a]ll that is needed to satisfy both the Constitution and the statute is that the 'author' contributed something more than a 'merely trivial' variation, something recognizably 'his own.'" *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102-03 (2d Cir. 1951) (citing *Chamberlin v. Uris Sales Corp.*, 150 F.2d 512, 513 (2d Cir. 1945)). Thus, "the key inquiry is whether there is sufficient nontrivial expressive variation in the derivative work to make it distinguishable from the [preexisting] work in some meaningful way." *Schrock v. Learning Curve Int'l, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009).

Although the amount of originality required is low, courts have recognized that derivative works "[l]acking even a modest degree of originality . . . are not copyrightable." *L Batlin & Son, Inc. v. Snyder*, 536 F.2d 486, 490 (2d Cir. 1976); see also *Durham Indus., Inc. v. Tomy Corp.*, 630 F.2d 905, 911 (2d Cir. 1980). Indeed, "[s]pecial caution is appropriate when analyzing originality in derivative works, 'since too low a threshold will give the first derivative work creator a considerable power to interfere with the creation of subsequent derivative works from the same underlying work.'" *We Shall Overcome Found. v. The Richmond Org., Inc.*, No. 16-cv-2725, 2017 WL 3981311, at *13 (S.D.N.Y. Sept. 8, 2017). Very minor variations do not satisfy this requirement, such as merely changing the size of the preexisting work or recasting a work

from one medium to another. *See L. Batlin & Son*, 536 F.2d at 491. Further, a claim to register a derivative work that adds only non-copyrightable elements to a prior product is not entitled to copyright registration. *Boyd's Collection, Ltd. v. Bearington Collection, Inc.*, 360 F. Supp. 2d 655, 661 (M.D. Pa. 2005). Ultimately, whatever the addition is, it must be independently protectable for the derivative work to be registered.

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.

Specifically, the Board finds that the new expression contained in the Work consists of “merely trivial” combinations of standard shapes and colors and therefore does not possess the “modicum of creativity” required to merit registration as a derivative work. *Alfred Bell & Co.*, 191 F.2d at 102–03. The Board agrees with AMPAS that the Oscar statuette is a preexisting work protected by copyright. *See Second Request* at 6. In the Work, the new expression consists solely of a black isosceles triangle that surrounds the preexisting white Oscar silhouette and a white trapezoid that is placed below. These elements are shapes that the *Compendium* specifically states are unprotectable and common. COMPENDIUM (THIRD) §906.1.

Further, their combination and arrangement in the Work as a whole is insufficiently creative. The Oscar silhouette is oriented along the black triangle’s line of symmetry, and the trapezoid shape is placed where a statue base would be expected. These elements are displayed in a standard black and white color combination, which is a familiar pairing. *Id.* § 906.3. Where a design combines uncopyrightable elements, it is protected by copyright 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. Here, the new contributions are too few and their use too standard to make the work distinctive from the pre-existing Oscar silhouette in a meaningful way.

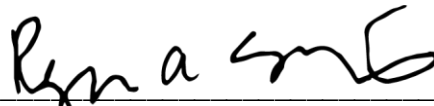
AMPAS’s related arguments about the expertise employed in making choices to achieve a certain effect are unavailing. AMPAS asserts that “many artistic choices . . . went into [the Work’s] creation, made by a highly trained and experienced Creative Director with the assistance of a professional design firm.” *Second Request* at 4. The result, AMPAS alleges, depicts the Oscar statuette “under a spotlight, emblematic of stage and screen.” *Id.* at 3. When evaluating a work, the Office relies on objective criteria contained in the Work itself. Accordingly, “the authors’ personal or professional history is irrelevant to the determination of copyrightability.” COMPENDIUM (THIRD) § 310.6 (citing *L. Batlin & Son*, 536 F.2d at 491). Similarly, the availability of other creative choices are not taken to account. *Id.* § 310.8. And, finally, the intended or subjective meaning and impression of a work is not “objective criteria” used by the Office in examining a work. *Id.* § 310.3.

AMPAS further invites the Board to compare the Work with prior registrations and cases where the Board has found sufficient creativity, but the Board notes that registration decisions

are made “on a case-by-case basis” and “[t]he fact that the U.S. Copyright Office registered a particular work does not necessarily mean that the Office will register similar types of works or works that fall within the same category.” *Id.* § 309.3; *see also Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q. 2d 1074, 1076 (D.C. Cir. 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”). The Board notes further that each of the works cited by AMPAS include a greater number and variety of expressive components not present in the Work under review. For example, the Work lacks the shading and “axial color gradients” of the American Airlines logo, which the Board found key to “transform[ing]” otherwise unprotectable standard shapes. U.S. Copyright Office Review Board, *Re: Registration Decision Regarding American Airlines Flight Symbol*; SR 1-3537494381 at 6 (Dec. 7, 2018).

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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