



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

September 12, 2022

John M. Kraft, Esq.
Mockingbird Press LLC
5431 Copse Drive
Augusta, GA 30909

**Re: Second Request for Reconsideration for Refusal to Register The Three
Magical Books of Solomon
(SR # 1-8332107631; Correspondence ID: 1-49NBBBJ)**

Dear Mr. Kraft:

The Review Board of the United States Copyright Office (“Board”) has considered Mockingbird Press LLC’s (“Mockingbird Press”) second request for reconsideration of the Registration Program’s refusal to register a compilation claim in the work titled “The Three Magical Books of Solomon” (“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 one book containing three public domain writings attributed to King Solomon, a key historical figure in the religious texts of the Jewish, Christian, and Islamic traditions, who lived from 990 to 931 BCE. He is also associated with occult philosophy and ceremonial magic practices. The Work combines *The Lesser Key of Solomon the King* (published in 1904 by Samuel Liddell MacGregor Mathers and Aleister Crowley), *The Greater Key of Solomon the King* (published in 1888 by S. L. MacGregor Mathers), and *The Testament of Solomon* (published in 1898 by F. C. Conybeare).¹ The three writings are English translations that, due to their publication date, are in the public domain.

The application for the Work claims only “compilation” as the basis for authorship.

¹ As a deposit, Mockingbird Press provided a 181-page PDF. The first page lists the three books and provides their authors. The next page begins a table of contents, listing page numbers going up to page 273, with *The Testament of Solomon* starting on page 236. While this third writing does not appear to be contained in the deposit provided to the Office, the Board takes judicial notice of the fact that F. C. Conybeare published a translation of *The Testament of Solomon* in the October 1898 edition of the *Jewish Quarterly Review*. See F. C. Conybeare, *The Testament of Solomon*, 11 JEWISH QUARTERLY REV. 1 (1898), <https://www.jstor.org/stable/1450398>.

II. ADMINISTRATIVE RECORD

On December 8, 2019, Mockingbird Press filed an application to register a copyright claim in the Work. In a January 14, 2020 letter, a Copyright Office registration specialist refused to register the claim, finding that the Work does not contain the minimum amount of original authorship required for copyright protection. Initial Letter Refusing Registration from U.S. Copyright Office to John Kraft (Jan. 14, 2020).

In a letter dated April 13, 2020, Mockingbird Press requested that the Office reconsider its initial refusal to register the Work. Letter from John Kraft to U.S. Copyright Office (Apr. 13, 2020) (“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 “does not contain a sufficient amount of original and creative compilation authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to John Kraft at 1 (Sept. 17, 2020).

In a letter dated November 12, 2020, Mockingbird Press 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 John Kraft to U.S. Copyright Office (Nov. 12, 2020) (“Second Request”). In that letter, Mockingbird Press argued, “the [a]uthor used creative judgment in selecting from a ‘large diverse pool of material,’ and coordinated the material in an original way.” *Id.* at 2. Mockingbird Press further stated that “the [a]uthor utilized her own original standards in the placement of images and text within the original works to create a more useful presentation of the existing material and used her own subjective standards to determine what material was appropriate for inclusion.” *Id.*

Upon reviewing the Second Request, the Board determined that it was unable to determine whether the author contributed additional images and text to the public domain works and asked Mockingbird Press to identify the new material in more detail. Email from U.S. Copyright Office to John Kraft (Mar. 29, 2022). In response, Mockingbird Press explained that the author did not add new images or text to the public domain works, but instead the author changed “the layout of existing material, or images present in the underlying works [and] obtained [existing images] in a visually enhanced form.” Letter from John Kraft to U.S. Copyright Office (Apr. 29, 2022).

III. DISCUSSION

After carefully examining the Work, considering the arguments made in the First and Second Requests, and the communications with Mockingbird Press for clarification, the Board finds that the Work does not contain the requisite authorship 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 Publ’ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 345 (1991). First, the work must have

been independently created by the author, “as opposed to copied from other works.” *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has held that some works fail to meet even this low threshold. *Id.* The original authorship in a compilation may be found in selecting, coordinating, or arranging material in a sufficiently original way. *Id.* at 358; *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 312.2 (3d ed. 2021) (“COMPENDIUM (THIRD)”).

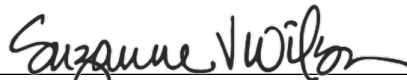
The Work consists of three public domain writings, all containing images and text originally present in the public domain works. Mockingbird Press alleges that the copyrightable authorship is demonstrated by selecting from a large, diverse pool of material and arranging the three works in an original way. The Board disagrees. Selecting, coordinating, and arranging three works does not demonstrate sufficient creativity to be copyrightable. “The Office generally will not register a compilation containing only two or three elements, because the selection is necessarily *de minimis*.” COMPENDIUM (THIRD) § 312.2; *see also* H.R. REP. NO. 94-1476, at 122 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5737 (stating that a work does not qualify as a collective work “where relatively few separate elements have been brought together,” as in the case of “a composition consisting of words and music, a work published with illustrations or front matter, or three one-act plays”).

Mockingbird Press has not demonstrated that an exception to this general rule should apply to the Work. It is not enough that the three writings were selected from a large pool. The coordination and arrangement is *de minimis* and the works are merely reproduced in a standard way, which redistributes the three public domain works together in one package.

Mockingbird Press further contends that the selection of higher quality versions of the original images supports the originality of the compilation. However, merely selecting a higher quality image is akin to recasting a work in a new medium or format, which does not contribute copyrightable authorship. COMPENDIUM (THIRD) § 311.2. Further, no creativity can be found in the coordination and arrangement, as the images appear to be assigned to the respective sections that they illustrate, which is to be expected.

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