



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

May 3, 2024

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Re: Second Request for Reconsideration of Refusal to Register Firstup Platform Logo (SR # 1-10860009091; Correspondence ID: 1-58NDPZR)

Dear Ms. Curcio:

The Review Board of the United States Copyright Office (“Board”) has considered Firstup, Inc.’s (“Firstup”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Firstup Platform 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 two-dimensional artwork comprised of a purple circle, a pink diamond with concave sides, and an asymmetrical, three-color curved band.¹ The band consists of two sections rendered in the same pink and purple as the other shapes, with a third section between them in maroon. The Work is as follows:



¹ Firstup noted in its second request for reconsideration that the Copyright Office referred to the third shape as a “curved shape” in its initial refusal to register the Work and as a “curved band that tapers at one end” in its second refusal. Letter from Tanya Curcio to U.S. Copyright Office at 5–6 (Aug. 25, 2022) (“Second Request”). The Board views these characterizations of the Work as consistent with each other as both accurately describe the appearance of the shape, which the Board refers to here as a “curved band.”

II. ADMINISTRATIVE RECORD

On September 24, 2021, Firstup filed an application to register a copyright claim in the Work. In a November 2, 2021 letter, a Copyright Office registration specialist refused to register the claim, determining that the Work lacks the creative authorship necessary to support a copyright claim. Initial Letter Refusing Registration from U.S. Copyright Office to Tanya Curcio at 1 (Nov. 2, 2021).

On February 1, 2022, Firstup requested that the Office reconsider its initial refusal to register the Work, arguing that the “overall arrangement and combination of shapes, colors, and spacing to form a graphic display easily creates an original design combination.” Letter from Tanya Curcio to U.S. Copyright Office at 2 (Feb. 1, 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 Tanya Curcio at 1 (May 27, 2022). The Office explained that the Work “lacks the necessary creativity required to support a claim in copyright.” *Id.* at 3.

In a letter dated August 25, 2022, Firstup requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. *See* Second Request. Firstup argued that the distinctive combination of elements indicate ingenuity and meet the requisite level of creativity, *id.* at 2, and that the Office oversimplified the Work as a garden-variety combination of common shapes. *Id.* at 5–6.

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 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.* The Office does not question that the Work was created independently and not copied from any existing work; consequently, this component is not at issue. 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.

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 claim. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See id.* 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, 883 (D.C. Cir. 1989); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498–99 (S.D.N.Y. 2005). A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[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.”).

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs”); *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”). Through its regulations, the Office provides guidance that copyright does not protect familiar shapes or designs. 37 C.F.R. § 202.1(a); *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (noting that common geometric shapes are not protectable).

Applying these legal standards, the Board finds that the individual elements of the Work and the Work as a whole fail to demonstrate sufficient creativity. Here, the Work consists of three common shapes which are not individually copyrightable. The single-color diamond and circle are familiar symbols and common geometric shapes, which are not protected by copyright. *See* COMPENDIUM (THIRD) §§ 313.4(J), 906.1, 906.2. The three-color curved band is a variation on a common right-angled shape, similar to a boomerang, and thus not copyrightable. *See id.* § 906.1 (noting “[t]here are numerous common geometric shapes, including, without limitation, straight or curved lines, circles, ovals, spheres, triangles, cones, squares, cubes, rectangles, diamonds, trapezoids, parallelograms, pentagons, hexagons, heptagons, octagons, and decagons.”). Furthermore, the coloration of the curved band is not sufficient to demonstrate creativity. Mere variations of coloring, including combinations of familiar sets or pairs of colors—in this case, a tri-color combination of hues—fail to make a work eligible for copyright protection. *See id.* §§ 313.4(K), 906.3.

The selection and arrangement of the Work’s 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. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 905. Here, the Work combines three common shapes and three colors in a simple, centralized arrangement. The Work does not contain numerous enough elements, nor are those elements arranged in a sufficiently creative composition, to make the Work eligible for copyright protection.

Firstup further argues that this combination of shapes can reasonably be perceived as an “abstract figure lifting up or pointing to a diamond with its arm.” Second Request at 2. The Office, however, only considers the actual appearance of the Work: the symbolic meaning behind the Work is irrelevant in the determination of copyright registration. *See* COMPENDIUM

(THIRD) § 310.5 (The Office “will not consider the author’s inspiration for the work, creative intent, or intended meaning.”). Again, for the reasons explained above, the simple arrangement of three common shapes is insufficiently creative to satisfy the test for original authorship.

Finally, although Firstup acknowledges that copyrightability is determined on a case-by-case basis, it nevertheless contends that the Work demonstrates sufficient creativity because it contains as much, if not more, creativity than other works it cites to as examples. *See* Second Request at 2–7 (citing cases and Copyright Review Board decision letters). The Office generally does not compare works that have been previously issued or refused registration. *See* COMPENDIUM (THIRD) § 309.3 (“The 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.”). Nonetheless, the Board has considered the authorities cited by Firstup, including the cases in which courts found works combining unprotectable elements to be copyrightable, and our conclusion that the Work is insufficiently creative remains unchanged.

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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Associate Register of Copyrights

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