



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

April 26, 2024

Dunstan H. Barnes, Ph. D.
McAndrews, Held & Malloy Ltd.
500 W. Madison Street, Suite 3400
Chicago, IL 60661

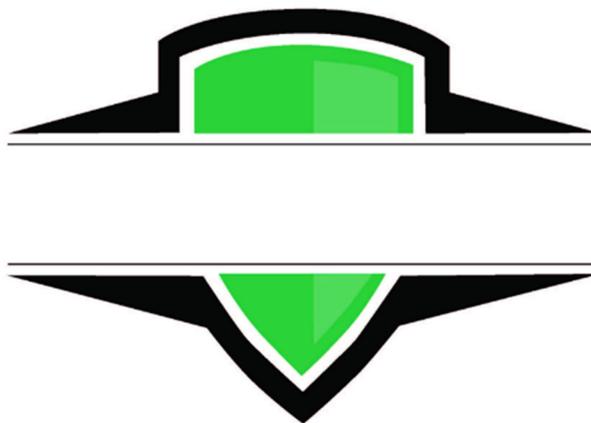
Re: Second Request for Reconsideration of Refusal to Register W.R. Meadows Logo (No Words) (SR # 1-11076083648; Correspondence ID: 1-5C8WOO4)

Dear Dr. Barnes:

The Review Board of the United States Copyright Office (“Board”) has considered W.R. Meadows, Inc.’s (“W.R. Meadows”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “W.R. Meadows Logo (No Words)” (“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 consisting of a two-toned green shield, surrounded by a white outline and a black outline outside the white outline, as well as by four triangular shapes, split on the top and bottom by a white band. This central white band contains two thin black lines on the top and bottom. The Work is as follows:



II. ADMINISTRATIVE RECORD

On December 30, 2021, W.R. Meadows filed an application to register a copyright claim in the Work. In a February 9, 2022 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 Troy Groetken at 1 (Feb. 9, 2022).

On May 3, 2022, W.R. Meadows requested that the Office reconsider its initial refusal to register the Work, arguing that the Work contains “more than a sufficient amount of original authorship, certainly more than the minimal amount” that is required to support registration, highlighting the Work’s “specific combination of text, shapes, and color” as deserving of “thin” copyright protection. Letter from Dunstan Barnes to U.S. Copyright Office at 1–2 (May 3, 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 Dunstan Barnes at 1, 3–4 (Aug. 19, 2022). The Office found that the individual elements contained within the Work do not exhibit a “sufficient amount of original and creative authorship to support a copyright registration.” *Id.* at 3. The Office determined that the shield, lines, and outline that comprise the Work are common shapes and familiar designs, and along with mere coloration, are not copyrightable. *Id.* Additionally, the Office found that the “combination and arrangement of the component elements,” comprising the logo of a shield surrounded by an outline, lack sufficient creativity to support copyright registration. *Id.*

In a letter dated November 14, 2022, W.R. Meadows 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 Dunstan Barnes to U.S. Copyright Office at 1, 3 (Nov. 14, 2022) (“Second Request”). The Second Request was largely identical to the First Request with a few additional paragraphs arguing that the Work contains more than a “sufficient amount of creativity” to merit copyright protection. *Id.* at 1–2. It further outlines components of the Work, the “design and arrangement of which involve[] creative design choices,” that, in combination, are sufficient to meet the creativity requirement. *Id.* at 2–3.

III. DISCUSSION

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,” and that “garden-variety” or “obvious” works lack the necessary “creative spark required by the Copyright Act.” *Id.* at 362–63.

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 “familiar symbols or designs; mere variations of . . . 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”). Through its regulations, the Office provides guidance that copyright does not protect familiar shapes or designs. 37 C.F.R. § 202.1(a); *see* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 313.4(J), 906.2 (3d ed. 2021) (“COMPENDIUM (THIRD)”); *see also* COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes are not protectable); *id.* § 906.3 (“[M]ere variations in coloring alone are not eligible for copyright protection.”).

After carefully examining the Work and considering the arguments made in the First and Second Requests in light of the legal standard described above, the Board finds that the Work does not contain the requisite creativity necessary to sustain a claim to copyright. Both the individual elements of the Work, and the Work as a whole fail to demonstrate sufficient creativity.

The constituent elements of the Work, namely the geometric shapes (*i.e.*, triangles), representational symbols (*i.e.*, shield), and colors (*i.e.*, white band, green shield, black borders and lines), are insufficiently creative to meet the statutory requirement. These elements are unprotectable variations in geometric shapes and colors arranged in a common design. *See Satava*, 323 F.3d at 811; *Yankee Candle v. Bridgewater Candle*, 259 F.3d 25, 35 (1st Cir. 2001) (collection of common shapes not sufficiently original); *see also* 37 C.F.R. § 202.1(a) (“familiar symbols or designs” and “mere variations of . . . coloring” not subject to copyright); COMPENDIUM (THIRD) §§ 906.1–.3 (common shapes and mere variations in designs and coloring not protected). Because the Work’s elements are mere variations on common building blocks for two-dimensional artwork, the individual elements are unprotectable. *See* COMPENDIUM (THIRD) § 313.4(K) (mere variations in coloring cannot be registered); *id.* §§ 906.1–.3. Accordingly, the individual elements of the Work are not sufficiently creative to support a copyright claim.

Viewing the Work as a whole, the Board also concludes that the selection, coordination and arrangement of the unprotectable elements is not sufficiently creative to support a copyright

claim. A design may be unprotectable where it is “mechanical, garden-variety, typical or obvious, or as projecting age-old practice[s], firmly rooted in tradition and so commonplace that [the combination of elements] has come to be expected as a matter of course, or as practically inevitable.” *Feist*, 499 U.S. at 363. W.R. Meadows argues for the Work’s copyrightability through impliedly comparing it to copyrightable arrangements in other cases. *See* First Request at 2 (citing *Prince Grp., Inc. v. MTS Prod.*, 967 F. Supp. 121, 125 (S.D.N.Y. 1997)); Second Request at 2 (same). In *Prince*, the court held that a fabric pattern of irregularly shaped, shaded, multicolored polka dots was creative, because those polka dots were arranged in “imperfect and conflicting diagonal lines at varying distances from each other giving the appearance of randomness, distinguish[ing] this arrangement from the regularity of the generic creativity for copyright validity.” 967 F. Supp. at 125. While the arrangement in *Prince* evinced more than *de minimis* creativity, the Board concludes that W.R. Meadows’s arrangement does not. *See Feist*, 499 U.S. at 363–64. Here, the Work arranges and combines unprotectable elements into a familiar and common shield design with minor variations, such that this combination is obvious and garden-variety. *See id.* at 358, 362. The outlines and borders around the shield are likewise commonplace. And the triangle-like shapes and borders are arranged in a standard symmetrical manner, which is insufficiently creative to warrant copyright protection. *See* COMPENDIUM (THIRD) § 312.2 (“arranging geometric shapes in a standard or symmetrical manner” does not merit protection). Therefore, as a whole, the combination of elements present in a common or garden-variety arrangement that comprises the Work lacks the necessary creativity required to support a claim in copyright.

Finally, in the First and Second Requests, W.R. Meadows cites a previous Board decision, asserting that the Work is at least as original as other works that the Office has previously registered and is thus entitled to the same, “thin” copyright protection. *See, e.g.*, First Request at 2; Second Request at 2. The Office does not, however, compare works; rather, 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. The Board’s prior decision that W.R. Meadows cites therefore has no bearing on the Board’s determinations as to copyrightability of the Work.

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

Mark T. Gray, Assistant General Counsel