



United States Copyright Office

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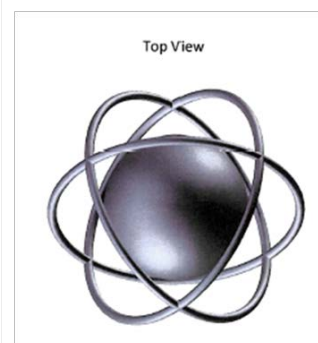
Re: Second Request for Reconsideration for Refusal to Register “ORBIE Trophy Design,” Correspondence ID 1-392DLV4; SR # 1-5613293881

Dear Mr. Springer:

The Review Board of the United States Copyright Office (“Board”) has considered Inspire Properties, LLC’s (“Inspire’s”) second request for reconsideration of the Registration Program’s refusal to register a three-dimensional visual art claim in the work titled “ORBIE Trophy Design” (“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 three-dimensional sculptural design. The design consists of a sphere connected to an elongated cylinder by a concave-sided conical frustum. Three rings surround the sphere, in a larger open spherical configuration. The cylinder, frustum, and orbit rings are silver, with a shiny surface. The Work is depicted as follows:



II. ADMINISTRATIVE RECORD

On July 10, 2017, Inspire filed an application to register a copyright claim in the Work. In a February 27, 2018 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from K.S., Copyright Examiner, to Randel Springer, Womble Carlyle Sandridge & Rice, LLP (Feb. 27, 2018).

Inspire then requested that the Office reconsider its initial refusal to register the Work. Letter from Randel Springer, Womble Carlyle Sandridge & Rice, LLP, to U.S. Copyright Office (May 25, 2018) (“First Request”). Inspire argued that “[w]hile [Inspire] does not concede that the Work merely ‘scrapes by’ with a minimal amount of creativity . . . the Work demonstrates the requisite creativity to be eligible for registration.” *Id.* at 2. In particular, Inspire argued that the Work’s “combination of elements including a sphere, a concave-sided conical frustum, a cylinder, and ‘orbit rings’ arranged in an original manner,” qualify the Work for registration. *Id.* at 1. Further, Inspire contended that “the Work’s . . . selection and combination of elements through original and creative effort that includes much more than a single simple geometric shape and more than familiar symbols and designs.” *Id.* at 2. 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 creativity either elementally or as a whole to warrant registration.” Letter from Stephanie Mason, Attorney-Advisor, to Randel Springer, Womble Carlyle Sandridge & Rice, LLP 2 (Oct. 26, 2018). The Copyright Office explained that the Work’s elements are unprotectable as common and familiar shapes and are not combined in a way that “rise[s] to the level of creativity necessary for copyright registration.” *Id.* at 3.

On January 23, 2019, Inspire 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 Randal Springer, to U.S. Copyright Office (Jan. 23, 2019) (“Second Request”). In that letter, Inspire again argued that the originality present in the work exceeds the low standards for copyrightability as set forth in *Feist Publications, Inc., v. Rural Telephone Service Co.*, 499 U.S. 340, 345 (1991), and that the selection, coordination, and arrangement of the Work’s elements qualify it for registration as a compilation. *Id.* at 2–3. Inspire highlighted that the “various elements, consisting of a sphere, a concave-sided conical frustum, a cylinder, and ‘orbit rings’ do not generally appear together in combination, moreover in the unique arrangement as found in the Work.” *Id.* at 3. Inspire also contended that the “author exercised creative expression by (i) selecting the elements, (ii) selecting the relative size of the elements, and (iii) arranging the elements.” *Id.* Finally, Inspire suggested that registration of the Work would be consistent with copyrightability determinations involving various other works, including a trophy, fabric designs, and an example from the Office’s *Compendium*. *Id.* at 3–4.

III. DISCUSSION

A. *The Legal Framework*

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*, 499 U.S. at 345. 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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“COMPENDIUM (THIRD)”); *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.

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 sufficient original authorship necessary to sustain a claim to copyright.

The Work is a combination of a sphere, a concave-sided conical frustum, a cylinder, and orbit rings. The Work’s constituent elements are standard geometric shapes that do not individually qualify for copyright protection. *See* 37 C.F.R. § 202.1(a) (stating that “familiar symbols or designs” are uncopyrightable); COMPENDIUM (THIRD) § 906.1 (noting that copyright “does not protect common geometric shapes, either in two-dimensional or three-dimensional form” and listing common geometric shapes as including, curved lines, spheres, and cones). The Board thus affirms that none of the individual elements that make up the Work exhibit a sufficient amount of original and creative authorship to support a copyright registration.

As Inspire correctly points out, this is not the end of the inquiry, as the Office must also evaluate the Work as a whole to determine whether it contains sufficient amount of creative authorship to support registration. *See* COMPENDIUM (THIRD) § 309. The Office must consider whether the combination of the Work’s elements, including their selection, coordination, or arrangement, is protectable under the legal standards described above. The Board recognizes that although the individual components of a given work may not be copyrightable, these components may be protectable if selected or combined “in a distinctive manner indicating some ingenuity.” *Atari Games Corp.*, 888 F.2d at 883. But examination of the Work as a whole still reveals a lack of sufficient original authorship. The Work’s sphere and orbit rings are a standard three-dimensional representation of a planetary or atomic orbit. This standard design is presented on a conical frustum and cylinder, otherwise described as a common cylindrical trophy stand. None of the elements are arranged in a manner that is unexpected or unfamiliar. *See* COMPENDIUM (THIRD) § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy [the originality] requirement.”). In sum, the Board finds that the selection, coordination, and arrangement of the Work’s elements are not sufficient to render the design original.

Inspire attempts to support its position by citing various copyright-protected works that consist of a combination of unprotectable elements. Second Request at 3–4. As the *Compendium* notes, copyrightability 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.” COMPENDIUM (THIRD) § 309.3. Each claim is examined on its merits, with the Office applying uniform standards of copyrightability at each stage of review. Thus, the fact that the Office registered a work of the same general type as the Work at issue does not require the Office to find that the contested Work itself is protected by copyright. *See Homer Laughlin China Co. v. Oman*, No. 90-3160, 1991 WL 154540, at *2 (D.D.C. 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”); *Coach*, 386 F. Supp. 2d at 499 (observing that the Office “does not compare works that have gone through the registration process”). Even considering the examples provided, the Work does not cross the required threshold of creativity. The Work is unlike those examples because it combines too few elements in a common and predictable manner meet the quantum of originality necessary for copyright protection.

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

Karyn A. Temple, Register of Copyrights
and Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
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