



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

January 5, 2024

Mary S. Mathew, Esq.
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020

**Re: Second Request for Reconsideration for Refusal to Register St. Tropez Soleil
(SR # 1-9507441019; Correspondence ID: 1-4Y3VCM4)**

Dear Ms. Mathew:

The Review Board of the United States Copyright Office (“Board”) has considered Assouline Publishing, Inc.’s second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “St. Tropez Soleil” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Work exhibits copyrightable authorship and may be registered.

The Work is reproduced below:



Although not every combination or arrangement of common or standard design elements will be entitled to copyright registration, some such combinations will contain sufficient creativity with respect to how they are juxtaposed or arranged to meet the test for protectability. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991). A determination of copyrightability in a 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.*

For example, the Office may register a work that consists merely of geometric shapes where the “author’s use of those shapes results 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. 2021) (“COMPENDIUM (THIRD)”); *see also Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989) (“[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.”).

The Board finds that the Work satisfies the requirement of creative authorship necessary to sustain a claim of copyright. Although the Work’s individual elements, including its irregularly shaped concentric ovals and text, are not copyrightable, *see* COMPENDIUM (THIRD) §§ 906.1, 906.3, the Work as a whole employs a selection, arrangement, and combination of individual elements that displays sufficient creativity to meet the requirements for copyright 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.”). Specifically, the selection, coordination and arrangement of the three irregularly shaped ovals (each of a different size, shape, and color), the shape and color of the text “St. Tropez Soleil” and “Assouline,”¹ and their placement in combination, contain the modicum of creativity required for copyrightability. The Board’s decision relates only to the Work’s specific design—*i.e.*, the specific depiction of irregular, asymmetric ovals; stylized wording; and the use of blue, yellow, and orange hues—and does not extend to any of the Work’s individual elements or to any variations thereof.

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Work. The Board now refers this matter to the Registration Policy and Practice division for registration of the Work, provided that all other application requirements are satisfied.



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

¹ To be clear, the words and typeface used in the Work are not copyrightable. *See* 37 C.F.R. § 202.1(a) (citing “[w]ords and short phrases such as names, titles, and slogans” and “mere variations of typographic ornamentation, lettering or coloring” as examples of works not subject to copyright).