



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

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**Re: Second Request for Reconsideration for Refusal to Register Azuca Design
(SR # 1-8148604311; Correspondence ID: 1-4JKAEU8)**

Dear Ms. Peacock:

The Review Board of the United States Copyright Office (“Board”) has considered SRE Wellness, Inc.’s (“SRE”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Azuca 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

Azuca Design was submitted as a claim for two-dimensional artwork. The Work is a graphic design consisting of a parallelogram, a trapezoid, and a triangle, having a mix of curved edges and some straight line edges. The largest shape, a parallelogram with curved edges, appears in a vertical orientation in the center of the work. A small trapezoid-like shape with both straight and curve edges, is centered alongside, and connected to, the right side of the soft parallelogram. A second, slightly larger triangle-like shape with softened edges is positioned to the left of the band, but not connected to the larger parallelogram. All of the elements are monochromatically red in coloring. The Work is as follows:



II. ADMINISTRATIVE RECORD

On October 21, 2019, SRE filed an application to register a copyright claim in the Work. In a January 3, 2020 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support copyright claims.” Initial Letter Refusing Registration from U.S. Copyright Office to Deborah Peacock at 1 (Jan. 3, 2020).

In a letter dated April 1, 2020, SRE requested that the Office reconsider its initial refusal to register the Work. Letter from Deborah Peacock to U.S. Copyright Office (Apr. 1, 2020) (“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 was “insufficiently creative to support a claim in copyright,” as it merely brought together standard forms with minor linear or spatial variations that were too trivial or insignificant to support copyright. Refusal of First Request for Reconsideration from U.S. Copyright Office to Deborah Peacock at 3 (Nov. 17, 2020).

In a letter dated February 17, 2021, SRE 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 Deborah Peacock to U.S. Copyright Office (Feb. 17, 2021) (“Second Request”). In that letter, SRE asserted that the Work is sufficiently creative because “the stylization of the various elements,” specifically the varying size and curvatures of the shapes, made them abstractions beyond “ordinary” or “pure” shapes. *Id.* at 3–4. SRE describes the elements of the design as “modern, surreal and abstract,” due in part to their disjointed nature and the lines being so curved or so straight as not to be found in nature. *Id.* at 4.

III. DISCUSSION

After carefully examining the Work and applying the relevant legal standards, the Board finds that the Work does not contain the 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.* 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 THE U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (noting that common geometric shapes are not protectable).

We summarize the authorities above because they guide our conclusion that the Work falls short of the creativity required for copyright protection. The constituent elements of the Work, namely three geometric shapes, a parallelogram, a triangle, and a trapezoid, are insufficiently creative to meet the statutory requirement. The three geometric shapes in the Work each are presented in a single color and include curved lines. SRE asserts that these elements are “stylized” and “abstract” shapes as opposed to “pure shapes.” Second Request at 4. However, the expressions of common shapes via curved lines amount to minor linear or spatial variations on familiar shapes, which are *de minimis* and not protected by copyright. COMPENDIUM (THIRD) § 313.4(J). Further, the shapes in the Work present in a uniform color, with no shading or tonal variation that might provide the necessary creativity for protection. *See Prince Group, Inc. v. MTS Prod.*, 967 F. Supp. 121, 125 (S.D.N.Y. 1997) (finding polka dot fabric design sufficiently creative where dots were “irregularly shaped,” placed at varying distances and “‘shaded,’ that is, there [was] a crescent of white around half of the perimeter of each of the dots which [was] different from the standard” polka dot).

Similarly, the selection and arrangement of the shapes within the Work do not evince sufficient creativity to support registration. SRE asserts that the arrangement is meant to evoke a bird, and that, in their opinion, “[i]t is highly unlikely anyone will accidentally happen to create something identical to the Azuca Design because . . . not a single element of it is typical or standard [and] [t]he purposeful stylization . . . is unique and particular to the sleek appearance.” Second Request at 4. While the Office may register a work that consists 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.” COMPENDIUM (THIRD) § 906.1. Rather than considering whether the work is likely to be created by anyone else, the test is whether the combination of common shapes and elements “are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava*, 323 F.3d at 811. Here the Work contains three monochromatic shapes, an objectively small number,

with no shading or tonal deviation to vary or juxtapose the elements in relation to one another. Further, the selection and arrangement of the shapes present in a common and expected manner. The largest shape is in the center, and smaller shapes are present on either side, a common size-related arrangement.¹ Therefore, as a whole, the combination of elements present in a common or garden-variety arrangement and as such, the Work lacks the necessary creativity required to support a claim in copyright. *See* COMPENDIUM (THIRD) § 905 (“In all cases, a visual art work must contain a sufficient amount of creative expression. Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”).

Finally, SRE asserts that the Work is a stylized bird sleek in appearance and “fit for the modern palate.” Second Request at 4. The Board does not assess the espoused intentions of the design’s author, or a design’s visual impact in determining whether the design contains the requisite minimal amount of original authorship necessary for registration. *See Bleistein v. Donaldson Lithographic Co.*, 118 U.S. 239, 251 (1903); COMPENDIUM (THIRD) § 310.5. Accordingly, the fact that the Work may evoke an idea or depict a certain style is not relevant to our analysis.

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

¹ *See, e.g., PlayStation Studios*, PLAYSTATION, <https://www.playstation.com/en-us/corporate/playstation-studios/> (last visited Mar. 16, 2023); *Media Library*, T-MOBILE, <https://www.t-mobile.com/news/media-library> (last visited Mar. 16, 2023); *ALLIANZ*, <https://www.allianzlife.com/> (last visited Mar. 16, 2023).