



**United States Copyright Office**

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June 30, 2016

Louis S. Ederer, Esq.  
Arnold & Porter LLP  
399 Park Ave.  
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**RE: Second Request for Reconsideration for Refusal to Register Double R Fleur Design;  
Correspondence ID: 1-ZMPSQI**

Dear Mr. Ederer:

The Review Board of the United States Copyright Office (the "Board") has examined RCRV, Inc.'s ("RCRV's") second request for reconsideration of the Registration Program's refusal to register a two-dimensional artwork copyright claim in the work titled "Double R Fleur Design" (the "Work"). After reviewing the applications, deposit copies, and relevant correspondence in the case, along with the arguments set forth 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, graphic logo design. The design consists of a mirror image of a stylized capital letter "R" in black with the negative space between the letters forming an inverted fleur de lys shape.

A photographic reproduction of the Work is set forth below:



## II. ADMINISTRATIVE RECORD

On January 20, 2014, RCRV filed an application to register a copyright claim in the Work. In a July 3, 2014 letter, a Copyright Office registration specialist refused to register the Work, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Annette Coakley, Registration Specialist, to Lilly Kim, RCRV, Inc. (July 3, 2014).

In an October 1, 2014 letter, RCRV requested that the Office reconsider its initial refusal to register the Work. Letter from Lilly Kim, RCRV, Inc., to U.S. Copyright Office (Oct. 1, 2014) (“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 lacked a sufficient amount of original and creative artistic authorship to support copyright registration. Letter from Stephanie Mason, Attorney-Advisor, to Lilly Kim, RCRV, Inc. (Feb. 19, 2015).

In a May 12, 2015 letter, RCRV requested that the Office reconsider for a second time its refusal to register the Work. Letter from Louis S. Ederer, Arnold & Porter, to U.S. Copyright Office (May 12, 2015) (“Second Request”). In that letter, RCRV disagreed with the Office’s conclusion that the Work, as a whole, did not include the minimum amount of creativity required to support registration under the Copyright Act. Specifically, RCRV claimed the Work “contains more than the minimum amount of creative ‘spark,’ or authorship, required under the Copyright Act to qualify for copyright protection.” *Id.* at 2. In support of its claim, RCRV argued that its claims to copyright are directed not to the lettering of its “highly-stylized capital letter ‘R,’” but to “the totality of the unique and innovative design that results by combining its highly stylized capital letter ‘R’ with its mirror image in order to, unexpectedly, form a highly stylized inverted fleur-de-lis design.” *Id.* RCRV further asserted that the Work was the result of “the series of artistic decisions undertaken by [its creator and designer] as he manipulated the characters and spatial dimensions to create a unique and meaningful graphic design in the open or negative space between the letters.” *Id.* at 4.

## III. DECISION

### A. *The Legal Framework – Originality*

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. 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).

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. See COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design’s visual effect or appearance, its symbolism, the time and effort it took to create, or the design’s commercial success in the marketplace are not factors in determining whether a design is copyrightable. See *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903). Thus, the fact that a work required effort to create, or has commercial or aesthetic appeal, does not necessarily mean that the work constitutes a copyrightable work of art.

#### **B. Analysis of the Work**

After careful examination, the Board finds that the Work fails to satisfy the requirement of creative authorship and thus is not copyrightable.

Here, it is undisputed that the Work’s constituent elements—a stylized “R,” a mirror image of the same stylized “R,” and an inverted fleur de lys—are not individually subject to copyright protection. See 37 C.F.R. § 202.1(a) (prohibiting registration of “familiar symbols or designs; mere variations of typographic ornamentation [or] lettering”); see also COMPENDIUM (THIRD)




§ 313.4(J).1 (familiar symbols include “[c]ommon representational symbols, such as a . . . fleur de lys, or the like”). The question then is whether the combination of elements is protectable under the legal standards described above.

The Board finds that, viewed as a whole, the selection, coordination, and arrangement of the two “R” letters and the negative space within those letters that comprise the Work is not sufficient to render the Work original. As explained in the *Compendium of U.S. Copyright Office Practices*, neither “mere scripting or lettering, either with or without uncopyrightable ornamentation,” nor “mere use of different fonts . . . standing alone or in combination,” satisfies the requirements for copyright registration. COMPENDIUM (THIRD) § 913.1; *see also Coach* at 386 F. Supp. 2d at 498 (stating that “letters of the alphabet cannot be copyrighted” and “the mere arrangement of symbols and letters is not copyrightable”). Here, the combination of variations in typographic expression and the fleur de lys symbol, considered as a whole, lacks the requisite amount of creativity in selection, coordination, and/or arrangement to warrant copyright protection. *See Feist*, 499 U.S. at 359; *see also* COMPENDIUM (THIRD) § 913.1 (explaining the types of logo designs that the Office typically refuses to register, including “a logo consisting of two letters linked together and facing each other in a mirror image”).

RCRV contends that the Work “was the result of numerous artistic decisions made during the design process.” Second Request at 4. But the intangible attributes that RCRV ascribes to the Work—including the professional skills of the Work’s designer—are not evident in the deposit itself and therefore cannot be examined in an objective manner. Even if these attributes were present in the deposit, the Board does not assess the espoused intentions of a design’s author, or a design’s visual impact, in determining whether a design contains the requisite minimal amount of original authorship necessary for registration. *See Bleistein*, 188 U.S. at 251. Accordingly, the fact that the Work was the fruit of a professional design process and can be described as “highly-stylized” would not qualify the Work for copyright protection.

#### IV. CONCLUSION

For the reasons stated herein, the Review Board of the U.S. Copyright Office affirms the refusal to register the copyright claims in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action on this matter.

BY:   
Catherine Rowland  
Copyright Office Review Board