



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

January 27, 2023

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Norvell IP, LLC
1776 North Ash Street,
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**Re: Second Request for Reconsideration for Refusal to Register Crown Design
(SR # 1-10320239801; Correspondence ID: 1-50LFG3Z)**

Dear Ms. Yozze:

The Review Board of the United States Copyright Office (“Board”) has considered Crown Melbourne Limited’s (“Crown Melbourne”) second request for reconsideration of the Registration Program’s refusal to register a copyright claim in the work titled “Crown 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 graphic design of a five-point crown, created with symmetrically arranged curved rows of differently sized black circles.

The Work is as follows:



II. ADMINISTRATIVE RECORD

On April 1, 2021, Crown Melbourne filed an application to register a copyright claim in the Work. In an April 13, 2021 letter, a Copyright Office registration specialist notified Crown Melbourne that the Office refused to register the claim, determining that the Work “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Joseph Norvell at 1 (Apr. 13, 2021).

On June 3, 2021, Crown Melbourne requested that the Office reconsider its initial refusal to register the Work, arguing that “[t]he Work contains components and shapes arranged in a creative and original way such that it meets the requirement of having a minimal level of creativity.” Letter from Samantha J. Yozze to U.S. Copyright Office at 2 (June 3, 2021) (“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 Samantha Yozze (Oct. 19, 2021). The Office explained that “circles are common shapes, while a crown is a familiar design,” and that “[c]reating a familiar design using multiples of common shapes is an age-old, basic configuration that lacks the necessary creativity required to support a claim in copyright.” *Id.* at 3.

In a letter dated February 18, 2022, Crown Melbourne 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 Samantha J. Yozze to U.S. Copyright Office (Feb. 18, 2022) (“Second Request”). Crown Melbourne analogized its arrangement of circles to the protected arrangement of alphabet letters and a block design of the quilt at issue in *Boisson v. Banian, Ltd.*, 273 F.3d 262 (2d Cir. 2001). *Id.* at 4–5. Finally, Crown Melbourne claims that the Crown Design has achieved foreign copyright registrations in China and Portugal, implying the Office should reach the same conclusion on registrability as those countries. *Id.* at 6.

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work does not exhibit sufficient creative authorship for copyright registration.

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 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 and practices implement the requirement of originality set forth in the Copyright Act and described in the *Feist* decision. As set out in the Office’s regulations, copyright does not protect “familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering or coloring.” 37 C.F.R. § 202.1(a). Accordingly, when a work only consists of unprotectable elements, it must combine or arrange those elements in a sufficiently creative way to meet the requirements of originality. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (stating that the combination of unprotectable elements is protected “only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship”).

Here, the individual elements of the Work—common circles—do not exhibit sufficient creativity to be protectable. Crown Melbourne appears to recognize that the circles are not copyrightable, conceding, “the individual circles that comprise the Work may not be entitled to copyright protection on their own.” First Request at 4. As noted above, “familiar symbols,” such as common geometric shapes, are not protected by copyright. 37 C.F.R. § 202.1(a); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (noting that common geometric shapes, such as straight or curved lines, circles, ovals, spheres, triangles, squares, cubes, rectangles, pentagons, and hexagons are not protectable). The circles in the Work are a single color, black, with no graphic effects such as shading. They are circles in their most basic form.

Similarly, the selection and arrangement of the shapes in the Work does not evince sufficient creativity to support registration. 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. Some combinations of common geometric shapes may contain sufficient creativity with respect to how they are juxtaposed or arranged to support a copyright, but not every combination or arrangement will be sufficient to meet this test. *See Feist*, 499 U.S. at 358. Considerations may include whether those 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 consists of a single repeated element—solid circles—arranged in symmetrical rows. While the rows of circles are curved, this amounts to a mere “minor linear or spatial variation,” that is insufficiently creative for protection. COMPENDIUM (THIRD) § 905. Further, these curved lines are arranged to form a five-point crown. A five-point crown is a familiar symbol, which is not protectable. *Id.* § 313.4(J). For these reasons, the Board concludes that the selection and arrangement of the circles in the Work is insufficiently creative to receive copyright protection.

Crown Melbourne argues that the Work is similar to the registered quilt design at issue in *Boisson* in which “one unprotectable element—circles—are arranged in a way that is sufficiently unique and creative to warrant copyright protection.” Second Request at 5. However, the Work here is significantly simpler than the alphabet quilt in *Boisson* (pictured below). That quilt employed different coloring, fill, and background for each letter of the alphabet, and included several pictures to fill the remaining four blocks in the block grid. *Boisson*, 273 F.3d at 268–71.

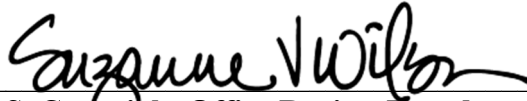
By comparison, the Work here consists of a single shape, circles, colored in solid black with no other variations or embellishments.



Crown Melbourne’s foreign registrations do not change the outcome here. While Crown Melbourne has allegedly obtained copyright registration for the Work in China and Portugal, among other countries, the Work must satisfy the eligibility requirements under U.S. law to be registered with the Office. COMPENDIUM (THIRD) § 303 (“To register a work with the U.S. Copyright Office, all applicants — both foreign and domestic — must satisfy the requirements of U.S. copyright law. In determining whether a work is copyrightable, the Office applies U.S. copyright law pursuant to title 17 of the U.S. code . . .”).

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
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Maria Strong, Associate Register of Copyrights and
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Jordana Rubel, Assistant General Counsel