



March 15, 2024

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Re: Second Requests for Reconsideration of Refusals to Register Spindrift Half Tea & Half Lemon Sparkling Water Can, Spindrift Lime Sparkling Water Can, Spindrift Orange Mango Sparkling Water Can, Spindrift Strawberry Sparkling Water Can, Spindrift Pineapple Sparkling Water Can (SR # 1-7780343859, 1-7780382197, 1-7780343732, 1-7780343995, 1-8718276642; Correspondence ID: 1-4J4EUS7, 1-4JBRG6P, 1-4TERY8P, 1-4J4EUTJ, 1-4QZVV0L)

Dear Ms. Wallach:

The Review Board of the United States Copyright Office (“Board”) has considered Spindrift Beverage Co., Inc.’s (“Spindrift”) second requests for reconsideration of the Registration Program’s refusals to register compilation claims in the following five works: (1) “Spindrift Half Tea & Half Lemon Sparkling Water Can” (“Half Tea & Half Lemon”), (2) “Spindrift Lime Sparkling Water Can” (“Lime”), (3) “Spindrift Orange Mango Sparkling Water Can” (“Orange Mango”), (4) “Spindrift Strawberry Sparkling Water Can” (“Strawberry”), and (5) “Spindrift Pineapple Sparkling Water Can” (“Pineapple”) (individually, a “Work,” and together, “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board reverses the Registration Program’s denials of registration.

I. DESCRIPTION OF THE WORKS

The Works are five label designs for cans of non-alcoholic sparkling water and each design is the same except for artwork, colors, and words, which differ depending on flavor. The design for the Works is also featured across an entire can and consists of the word “spindrift” above centrally positioned artwork depicting the flavor of sparkling water. Encircling the artwork are the phrases “SPARKLING WATER” and “& REAL SQUEEZED FRUIT” in contrasting white and colored font, corresponding to the color across the bottom half of the can. Underneath the artwork is the phrase “yup, that’s it” in yellow and italics. The flavor name appears across the rim of the can in colored and italicized font, in between asterisks and the repeating word “UNSWEETENED.” The design also contains a rectangle containing the words “REAL FRUIT” and “TASTES BETTER” separated by a colored line. The top half of the can is white while the bottom half of the can is a solid color intersected in the middle by the artwork.

An example of the deposit for Orange Mango is below:



Additional images for the Works are included in the more detailed discussion below.¹

II. ADMINISTRATIVE RECORD

On June 11, 2019, and April 28, 2020, Spindrifft filed five individual applications to register copyright claims for the Works. In five largely identical letters, Copyright Office registration specialists refused to register the claims for the Works, determining that they contained *de minimis* text and insufficiently creative compilation authorship.²

Spindrifft requested that the Office reconsider its initial refusals to register each of the Works.³ After reviewing four Works, namely Half Tea & Half Lemon, Lime, Orange Mango, and Strawberry, in light of the points raised in the First Requests, the Office reevaluated the claims and again concluded those four Works contained “no copyrightable text or compilation

¹ Spindrifft submitted a variety of deposit materials for the Works. Some deposits were physical cans, whereas the deposit for Half Tea & Half Lemon was a graphic portraying only the front side of the can. Given that some deposits were in the form of physical cans, the Board assumes, for purposes of this letter, that the design of the Works is similar aside from the text, artwork, and colors that vary for each flavor.

² Initial Letter Refusing Registration of Half Tea & Half Lemon from U.S. Copyright Office to Margarita Wallach (Feb. 19, 2020); Initial Letter Refusing Registration of Lime from U.S. Copyright Office to Margarita Wallach (Feb. 19, 2020); Initial Letter Refusing Registration of Strawberry from U.S. Copyright Office to Margarita Wallach (Apr. 13, 2020); Initial Letter Refusing Registration of Pineapple from U.S. Copyright Office to Margarita Wallach (July 30, 2020); Initial Letter Refusing Registration of Orange Mango from U.S. Copyright Office to Margarita Wallach (Dec. 1, 2020) (together, the “First Refusals”). The First Refusals also cited prior correspondence from the Office requesting Spindrifft’s authorization to remove claims in “text” and “compilation,” which Spindrifft declined to provide.

³ Letter from Margarita Wallach re: Half Tea & Half Lemon to U.S. Copyright Office (May 19, 2020); Letter from Margarita Wallach re: Lime to U.S. Copyright Office (May 19, 2020); Letter from Margarita Wallach re: Strawberry to U.S. Copyright Office (July 13, 2020); Letter from Margarita Wallach re: Pineapple to U.S. Copyright Office (Oct. 29, 2020); Letter from Margarita Wallach re: Orange Mango to U.S. Copyright Office (Jan. 15, 2021) (together, the “First Requests”).

authorship.”⁴ The Office confirmed the text was *de minimis*, rejecting Spindrift’s argument that the position, color, or stylized font of various words and short phrases on each can made the text copyrightable. Second Refusals at 1. The Office also stated that “[w]hile the can consists of copyrightable 2-D artwork, there simply is not enough selection and arrangement on the can itself to support a claim in compilation. The combination of the artwork along with the standard placement of *de minimis* text on the can amounts to no more than a commonplace selection and arrangement of the content.” *Id.* at 3.

After reviewing the fifth Work, Pineapple, the Office reevaluated the claim and concluded that Pineapple was a duplicate claim of a work that had been registered previously.⁵ It concluded that Spindrift’s prior registration VA002229203, for an 8-pack packaging design for pineapple-flavored sparkling water, included deposit material containing all of the artwork found on Pineapple. Pineapple Second Refusal at 1. Because the Office found that the most complete version of the work—the 8-pack design—was previously registered, the application to register the individual can was denied. *Id.* at 1–2 (citing 37 C.F.R. § 202.3(b)(11)).

In separate letters Spindrift requested that, pursuant to 37 C.F.R. 202.5(c), the Office reconsider for a second time its applications for each of the Works. Spindrift argued that for four of its Works, the text in its totality meets the low creativity threshold.⁶ Each letter also argued for a creative compilation, referring to the arrangement of text and artwork as “evok[ing] the impression of being immersed in a refreshing and effervescent body of water.” *See, e.g.*, Lime Second Request at 4. In the fifth letter, regarding Pineapple, Spindrift disagreed with the Office’s assertion that the previous registration for the 8-pack packaging design for pineapple-flavored sparkling water contained the complete artwork on an individual can, as embodied in Pineapple.⁷

III. DISCUSSION

A work may be registered for copyright if it is an “original work[] of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). In the copyright context, the term “original” consists of two components: independent creation and sufficient creativity. *See Feist Publ’ns 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.* at 358–59. The Court observed that “[a]s a

⁴ Refusal of First Request for Reconsideration of Lime from U.S. Copyright Office to Margarita Wallach at 1 (Oct. 16, 2020); Refusal of First Request for Reconsideration of Strawberry from U.S. Copyright Office to Margarita Wallach at 1 (Oct. 16, 2020); Refusal of First Request for Reconsideration of Half Tea & Half Lemon from U.S. Copyright Office to Margarita Wallach at 1 (Nov. 16, 2020); Refusal of First Request for Reconsideration of Orange Mango from U.S. Copyright Office to Margarita Wallach at 1 (May 21, 2021) (together, the “Second Refusals”).

⁵ Refusal of First Request for Reconsideration of Pineapple from U.S. Copyright Office to Margarita Wallach at 1 (Apr. 6, 2021) (“Pineapple Second Refusal”).

⁶ Letter from Margarita Wallach re: Half Tea & Half Lemon to U.S. Copyright Office (Feb. 16, 2021); Letter from Margarita Wallach re: Lime to U.S. Copyright Office (Feb. 16, 2021) (“Lime Second Request”); Letter from Margarita Wallach re: Strawberry to U.S. Copyright Office (Feb. 16, 2021); Letter from Margarita Wallach re: Orange Mango to U.S. Copyright Office (Aug. 20, 2021).

⁷ Letter from Margarita Wallach re: Pineapple to U.S. Copyright Office at 2 (July 6, 2021).

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 held 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 explained in *Feist*. *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; mere variations of typographic ornamentation, lettering or coloring; [and] mere listing of ingredients or contents”); *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 claim. 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, 883 (D.C. Cir. 1989); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498–99 (S.D.N.Y. 2005).

Finally, the Office’s general rule is to limit one registration application to one work. *See* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 511 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (“As a general rule, a registration covers one individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration.”). Even if there are multiple versions of a work, an individual registration “only covers the specific version of the work that is submitted” to the Office. *Id.* § 504.3.

A. Spindrift’s Previous Registrations

Applying these principles here, the Board notes that the existence of previous registrations covering elements appearing in the Works narrows the authorship in the Works that the Board can consider.⁸ As noted in the Administrative Record above, Spindrift previously applied for and obtained registrations for the corresponding 8-pack packaging designs for each of the Works. The Board’s review is limited to the Work’s copyrightable material that is not within the scope of the existing registrations.

However, not all of the prior registrations cover the same material. The existing registrations for Half Tea & Half Lemon, Lime, Orange Mango, and Strawberry 8-pack packaging extended only to the flavor-specific artwork prominently displayed on each can. Because the registrations do not cover text or compilation authorship, the Board will consider

⁸ Determinations of copyrightability are made on a “case-by-case basis” and “[a] decision to register a particular work has no precedential value.” COMPENDIUM (THIRD) § 309.3. The Office’s decision to register Spindrift’s prior packaging designs is not determinative here.

those claims now in the context of the relevant Works. The packaging designs for these Works are depicted below, alongside the deposits received for the Works now before the Board:

Previously Registered Works	Works Before the Board
<p data-bbox="203 380 878 447">Spindrifit Half Tea & Half Lemon Sparkling Water 8 Pack</p> <p data-bbox="435 464 643 495">VA0002325515</p> 	<p data-bbox="1003 394 1317 426">Half Tea & Half Lemon</p> 
<p data-bbox="289 999 794 1031">Spindrifit Lime Sparkling Water 8 Pack</p> <p data-bbox="435 1050 643 1081">VA0002325512</p> 	<p data-bbox="1122 1014 1198 1045">Lime</p> 

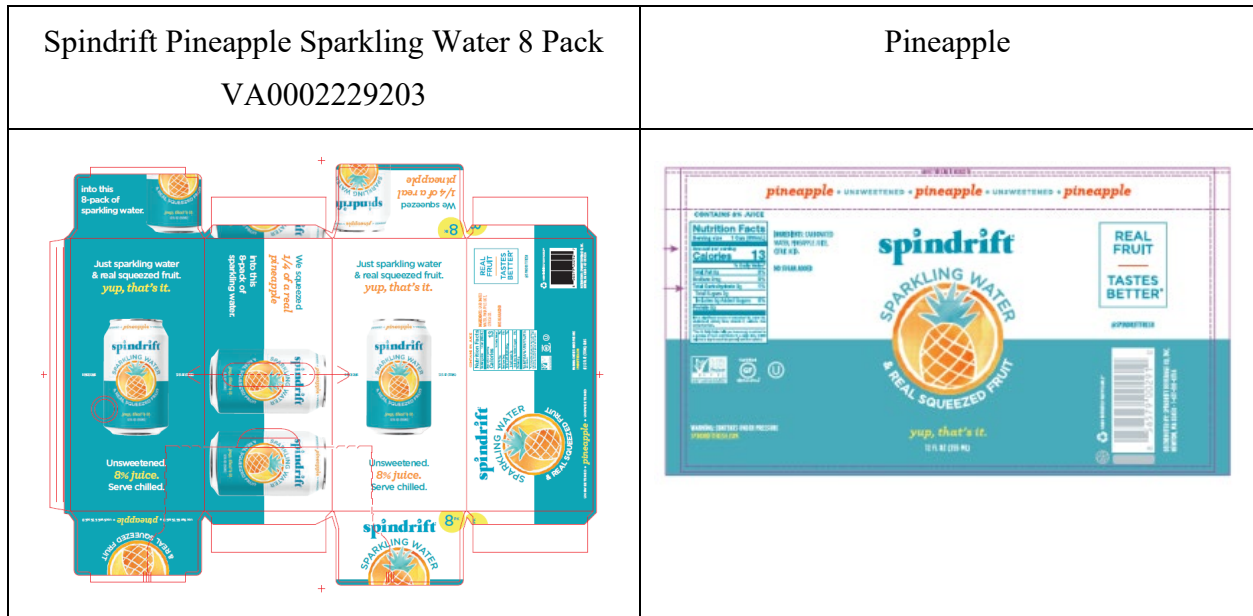
<p style="text-align: center;">Spindrifft Orange Mango Sparkling Water 8 Pack VA0002325517</p>	<p style="text-align: center;">Orange Mango</p>
<p style="text-align: center;">Spindrifft Strawberry Sparkling Water 8 Pack VA0002325507</p>	<p style="text-align: center;">Strawberry</p>

In comparison, Spindrifft’s 8-pack packaging design for pineapple-flavored sparkling water obtained a registration that covered different elements of the design. The pineapple packaging registration covers authorship in the artwork, text, and compilation of artwork and text. This means that the previous registration extends to the pineapple artwork, all of the text,⁹ and the compilation of the artwork and text in this specific 8-pack design. The text claim encompasses all of the phrases found throughout the entire packaging design, *in combination*. Similarly, the compilation claim encompasses the packaging design as a whole, not just one section of the deposit such as the compilation of elements in the images of individual cans represented on the packaging. Because the text and compilation claims in the existing 8-pack design registration cover combinations of creative elements that are specific to the 8-pack design, the Board is not precluded from evaluating the distinct text and compilation authorship claims specific to an individual can, as embodied in Pineapple. The Board cannot, however, consider

⁹ The text found on the 8-pack design approved as registration number VA0002229203 includes the phrases: “We squeezed 1/4 of a real pineapple into this 8-pack of sparkling water,” “Just sparkling water & real squeezed fruit. yup that’s it.”, and “Unsweetened. 8% juice. Serve Chilled.”

the pineapple artwork that appears in Pineapple because it is identical to the artwork found on the 8-pack design, which is covered by the artwork claim in the existing registration for the 8-pack design.

An image of the 8-pack design is below, alongside a deposit received for Pineapple:



B. Analysis of the Works

After carefully examining the Works and applying the legal standards discussed above, the Board finds that each of the Works contains the requisite compilation authorship for copyright protection. For each Work, Spindrifft selected previously registered artwork depicting the flavor; coordinated colors; and arranged shapes, text (in different fonts), and artwork together to make a sufficiently creative new compilation.

After reviewing the manner in which the individual elements are combined in each of the Works as a whole, the Board concludes that the compilation in the Works is sufficiently original to warrant copyright protection. The combined elements in Half Tea & Half Lemon, Lime, Orange Mango, and Strawberry demonstrate creative authorship distinct from the existing registrations, which cover only the flavor-depicting artwork that is common to both to the individual cans and the 8-pack designs for the same flavors. With regard to Pineapple, as explained above, the previous registration for the 8-pack design covers a compilation of elements that is similar to, but distinct from, the compilation of elements in Pineapple. Because the specific compilation in Pineapple is sufficiently creative, and has not been previously registered, the Board concludes that it is likewise eligible for registration.


The Board notes that the compilation embodied in each Work is still relatively simple. Therefore, it cautions that the resulting protection applies only to each Work as a whole and does not extend to the color combinations, typeface, text, or to previously registered artwork, nor to

the symbolic meaning or impression of the Works.¹⁰ *See Satava v. Lowry*, 323 F.3d 805, 812 (9th Cir. 2003) (protecting only the work’s original and creative elements “against only virtually identical copying”).

The Board reaches a different conclusion regarding Spindrift’s text and artwork claims in the Works. These claims cannot be registered because the text fails to demonstrate sufficient creativity and the artwork was previously registered; however, we find that the arrangement of these elements in each Work as a whole is sufficiently creative. Spindrift contends that each of the Works contains creative text that, when considered in totality, meets the low threshold of creativity required for copyright protection. *See, e.g.*, Lime Second Request at 3. Specifically, it argues that choices it made about how to display the text, including surrounding text with asterisks, utilizing stylized and colored fonts, and using the text to frame the centrally positioned artwork on each can support a copyright claim. *Id.* at 2–3. However, the arrangement and appearance of text are not considered when analyzing the creativity of the text itself. *See* COMPENDIUM (THIRD) § 706 (explaining that works with literary expression are evaluated for a “sufficient amount of original authorship ‘expressed in words, numbers, or other verbal or numerical symbols or indicia.’”). Here, the text consists only of single words and short phrases, such as flavor descriptions, “unsweetened,” “real fruit,” and “tastes better,” that are not protected by copyright. *See* 37 C.F.R. § 202.1; COMPENDIUM (THIRD) § 313.4(C).

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusals to register the copyright claims in the Works. The Board now refers these works to the Registration Policy and Practice division for registration of the compilation of each work, provided that all other application requirements are satisfied.¹¹ The Board affirms the refusals to register the copyright claims in “text” and “artwork” for the Works. 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
Mark T. Gray, Assistant General Counsel

¹⁰ *See* COMPENDIUM (THIRD) § 310.3 (“[T]he Office will focus only on the actual appearance . . . of the work that has been submitted for registration, but will not consider any meaning or significance that the work may evoke.”).

¹¹ The Board notes that the application for Half Tea & Half Lemon, SR 1-7780343859, provides a publication date of May 1, 2018. If this is factually correct, then the individual can Half Tea & Half Lemon was published before its associated 8-pack design, Spindrift Half Tea & Half Lemon Sparkling Water 8 Pack (VA0002325515), which was approved with a publication date of May 22, 2018.