



**United States Copyright Office**

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September 27, 2016

James C. Evans  
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**Re: Second Request for Reconsideration for Refusal to Register Canetti Cursivus Guide for Cursive Writing and Calligraphy; Correspondence ID: 1-133W545 and 1-19MD63A**

Dear Ms. Evans:

The Review Board of the United States Copyright Office (“Board”) has considered Canetti Cursivus Guide LLC’s (“Canetti’s”) second request for reconsideration of the Registration Program’s refusal to register two-dimensional artwork and technical drawing claims in the work titled Canetti Cursivus Guide for Cursive Writing and Calligraphy (“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 blank form for practicing cursive writing and calligraphy, as noted by its title, “Canetti Cursivus Guide for Cursive Writing and Calligraphy.” It consists of repeating green rows of evenly-spaced slanted lines, arranged between two dotted horizontal lines and two vertical margin lines. Two solid horizontal lines run parallel to the dotted lines through the slanted lines; the area between the two solid lines is shaded light green. A reproduction of the Work is included as Appendix A.

**II. ADMINISTRATIVE RECORD**

On January 5, 2015, Canetti filed an application to register a copyright claim in the Work. In a May 6, 2015 letter, a Copyright Office registration specialist refused to register the claim, finding that “[b]lank forms and similar works designed to record rather than convey information are not protected by copyright.” Letter from Sandra Ware, Registration Specialist, to Adelina Ciuta (May 6, 2015).

In a letter dated July 13, 2015, Canetti requested that the Office reconsider its initial refusal to register the Work. Letter from Daniel A. Tysver to U.S. Copyright Office (July 13,



2015) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work was “a blank form created by a series of lines” that is “not copyrightable because [it does] not exhibit sufficient artistic expression beyond the basic format of the form itself.” Letter from Stephanie Mason, Attorney-Advisor, to Daniel A. Tysver (Oct. 2, 2015).

In a letter dated December 21, 2015, Canetti 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 James C. Evans to U.S. Copyright Office (Dec. 21, 2015) (“Second Request”). In that letter, Canetti agreed that the Work “serves as a form,” but asserted that it “merits copyright protection [because it] has an attractive arrangement of solid and dashed lines, and regions that are green color-filled and ones that are empty,” such that “[i]t would not be surprising to find a similar design hanging in an art gallery.” Second Request at 2-3. Canetti also argued that if the design of the Work was found on fabric or a floor tile, the Work would be copyrightable, though “these other qualifying media have functional application too.” *Id.* at 3.

### III. DISCUSSION

#### A. *The Legal Framework*

##### 1) *Distinction Between Ideas and Expression*

Section 102(b) of the Copyright Act expressly excludes copyright protection for “any idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). As such, section 102(b) codifies the longstanding principle, first originated by the Supreme Court in *Baker v. Selden*, 101 U.S. 99 (1879), that copyright law protects the original expression of ideas, but not the underlying ideas themselves. In *Baker*, the Court held that Selden’s copyright on a book describing a bookkeeping system that included blank forms with ruled lines and headings did not preclude another from publishing a book containing similar forms to achieve the same result. 101 U.S. at 102. The Court concluded that the copyright in Selden’s book covered the way that Selden “explained and described a peculiar system of book-keeping,” but did not, however, give Selden the right to prevent others from using the system described in this book; nor did it give Selden “the exclusive right to make, sell, and use account-books prepared upon the plan set forth in such book.” *Id.* at 104.

A closely related principle, also stemming from *Baker*, is what is now referred to as the merger doctrine. In describing the limits of Selden’s copyright, the Court explained that if the “art” that a book “teaches cannot be used without employing the methods and diagrams used to illustrate the book, or such as are similar to them, such methods and diagrams are to be considered as necessary incidents to the art, and given therewith to the public.” *Id.* at 103. That is, where there is only one way or only a limited number of ways to convey the idea that the author seeks to express, the author’s expression cannot be



protected under copyright law, because that would give the author a monopoly over the idea itself and prevent others from using that same idea in other works. *See* 1-2 MELVILLE & DAVID NIMMER, NIMMER ON COPYRIGHT § 2.18[C][2] (2014). On the other hand, the fact that one author has copyrighted one expression of an idea will not prevent other authors from creating and copyrighting their own expressions of the same idea. *See* PAUL GOLDSTEIN, GOLDSTEIN ON COPYRIGHT § 2.3.2 (2015).

Applying these principles, the Copyright Office has a longstanding presumption against registering blank forms. The Office's regulations expressly preclude registration of "methods [or] systems" and further specify that "[b]lank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey information" are not copyrightable. 37 C.F.R. § 202.1(c); *see* COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.4(G) (3d ed. 2014) ("COMPENDIUM (THIRD)") ("The Office cannot register the empty fields or lined spaces in a blank form."); *Id.* at § 313.4(B) (explaining where there "may be only one way or only a limited number of ways to express a particular idea," the Office may refuse to register a claim to that expression). The Office will, however, examine a work to determine whether it contains "an appreciable amount of written or artistic expression" that can be separated from the work's underlying method of capturing information. *Id.* at 313.4 (G).

## 2) *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).

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

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work lacks the copyrightable subject matter necessary to sustain a claim to copyright.

It is undisputed that the Work is a blank form meant to record information, *i.e.*, the letters written down by a student of cursive writing and/or calligraphy. See Second Request, at 1,3. Applying the legal standards set forth in section 102(b) and the merger doctrine, as described above, blank forms are typically not subject to copyright protection. See 37 CFR § 202.1(c) (citing as "examples of works not subject to copyright . . . [b]lank forms, such as . . . graph paper . . . which are designed for recording information and do not in themselves convey information."); COMPENDIUM (THIRD) § 924.3(B) ("The U.S. Copyright Office will not register blank forms that are designed for recording information and do not in themselves convey information, regardless of how they are described in an application."); *id.* § 313.4(G) (the Office "cannot register the empty fields or lined spaces in a blank form.").



The Board does, however, consider whether the Work contains “an appreciable amount of written or artistic expression” that is distinct from the underlying method for recording information reflected on the form. COMPENDIUM (THIRD) § 313.4(G). Canetti argues that the “details of this particular pattern are ornamental” and therefore copyrightable because its “approach to teaching creative writing is not a ‘necessary incident[] of the art’” and “[o]ther patterns will serve the functional goals just as well.” Second Request at 2-3. Here, the Work’s specific arrangement of lines and bars appear to be dictated by Canetti’s system for teaching students how to write in cursive and calligraphy. *See* 17 U.S.C. § 102(b); *Baker*, 101 U.S. at 102-04. Put another way, because the Work’s overall pattern functions as a system for teaching cursive, this pattern cannot be considered in the same way as the Office might evaluate the examples Canetti provides of “a similar design hanging in an art gallery,” or on fabric, floor tile, or similar decorative goods. Second Request, at 2-3. *See id.*

Assuming *arguendo* that the Work could be considered an expressive work, such as a design hanging in an art gallery, the Board finds that the Work would still lack sufficient creative authorship to enable copyright registration. *See* Second Request, at 2-3. The arrangement of green slanted lines across green horizontal lines is a trivial variation on a basic grid that does not render the design original. *See* COMPENDIUM (THIRD) § 901.1, 2. Moreover, it is well-established that typeface and mere variations of typographic ornamentation—*i.e.*, whether a line is dashed or solid, and its thickness—are not copyrightable. *See* 37 C.F.R. § 202.1(a),(e); COMPENDIUM (THIRD) § 313.3(D). Nor are mere variations of color. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(K). The Work thus falls in the “narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *See Feist*, 499 U.S. at 359; *see also* COMPENDIUM (THIRD) § 313.4(B) (“Works that contain no expression or only a *de minimis* amount of original expression are not copyrightable and cannot be registered with the U.S. Copyright Office.”).

#### 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.

BY:

  
Regan A. Smith  
Copyright Office Review Board

# **APPENDIX A**



