



United States Copyright Office

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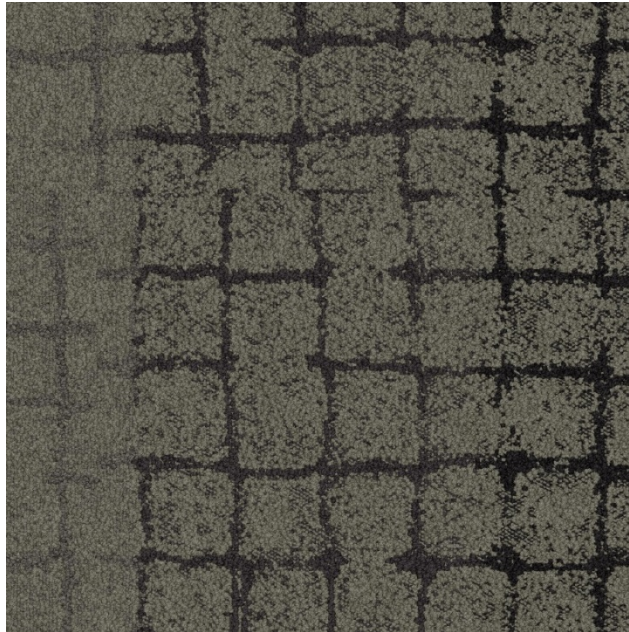
James A. Trigg, Esq.
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street NE, Suite 2800
Atlanta, GA 30309-4528

Re: Second Request for Reconsideration for Refusal to Register “SETT IN STONE,” Correspondence ID: 1-35Z2DFY; SR # 1-5872743967

Dear Mr. Trigg:

The Review Board of the United States Copyright Office (“Board”) has considered Interface, Inc.’s (“Interface”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “SETT IN STONE” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for consideration, the Board finds that the Work exhibits copyrightable authorship and thus may be registered.

The Work consists of pixilated, grey-colored square shapes placed upon a grid in a misaligned fashion to evoke the appearance of cobblestone. Rough edges and curvatures create the appearance of irregularly spaced, weathered stones by the use of various shades of brown and grey against a taupe highlight, with black spacing between each shape. The left side of the Work has a faded appearance compared to the rest of the Work. The Work is as follows:



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, but not every combination or arrangement will be sufficient to meet this test. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991). 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). For example, the Copyright Office may register a work that consists merely of geometric shapes where the “author’s use of those shapes results in a work that, as a whole, is sufficiently creative.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“COMPENDIUM (THIRD)”); *see also Atari Games Corp.*, 888 F.2d at 883 (“[S]imple shapes, when selected or combined in a distinctive manner indicating some ingenuity, have been accorded copyright protection both by the Register and in court.”). Thus, the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but would not register a picture consisting merely of a purple background and evenly-spaced white circles. COMPENDIUM (THIRD) § 906.1 (“The [Copyright Office] will register this claim because it . . . goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement.”).

The Board finds that the Work contains a sufficient, although minimal, amount of original and creative two-dimensional authorship. Our decision to register the Work is based on the low standard for copyrightability articulated in *Feist*. The Work’s original compilation of

elements, including shading, colors, irregular spacing between the shapes and curvatures of the shapes, meet the minimal threshold of originality required to satisfy the *Feist* standard.

The Work combines elements of colors, shading, line-width, depth, irregular spacing, and shape decisions in an original way that demonstrates the minimum creativity necessary for copyright protection. The common shapes present in the Work have been sufficiently transformed by variations in shading and the irregularity of the shapes. Importantly, the left side of the Work depicts apparent fading of the colors, shading, and shapes. The fading creates the illusion of a different texture, which contributes to the originality of the Work. The unique location of the pocks and rough edges on the square shapes creates the appearance of weathered cobblestone, and the cobblestone-like shapes are staggered and feature various shades and forms. Furthermore, the grid upon which the cobblestone-like shapes are placed is more than a standard grid; instead, the grid is misaligned and the Work's shapes do not follow the spacing and placement of a perfect grid. To be clear, however, the Board's decision relates only to the Work as a whole, and does not extend individually to any of the standard and common elements depicted in the Work, such as the square shapes themselves. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] [w]ords and short phrases [and] familiar symbols or designs”); *see also* COMPENDIUM (THIRD) §§ 313.3(E), 313.4(C), 313.4(J).

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Work. The Board now refers this matter to the Registration Policy and Practice division for registration of the Work, provided that all other application requirements are satisfied.

No response to this letter is needed.



U.S. Copyright Office Review Board

Karyn A. Temple, Register of Copyrights and
Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
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