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

October 30, 2026

Nicholas S. Lee, Esq.
Law Office of Nicholas S. Lee
332 South Michigan Avenue, Suite 900
Chicago, IL 60604

Re: Second Request for Reconsideration of Refusal to Register Design 6 Pink Color (SR # 1-11460372445; Correspondence ID: 1-5NWZREV)

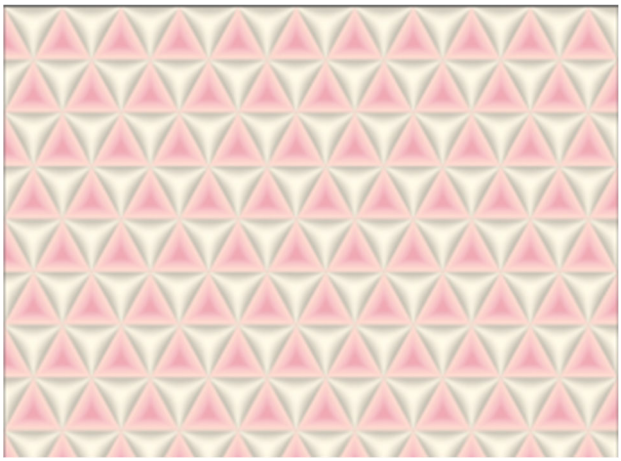
Dear Mr. Lee:

The Review Board of the United States Copyright Office ("Board") has considered Creatail HK Limited's ("Creatail") second request for reconsideration of the Registration Program's refusal to register a two-dimensional artwork claim in the work titled "Design 6 Pink Color" ("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 features a tessellation of identically sized equilateral triangles in two colors, one pink and one beige, with path gradient shading from light to dark and dark to light, respectively.

The Work is as follows:



II. ADMINISTRATIVE RECORD

On June 23, 2022, Creatail filed an application to register a copyright claim in the Work. In a July 20, 2022 letter, a Copyright Office registration specialist refused to register the claim, determining that "it lacks the authorship necessary to support a copyright claim." Initial Letter Refusing Registration from U.S. Copyright Office to Nicholas Lee at 1 (July 20, 2022).

On October 11, 2022, Creatail requested that the Office reconsider its initial refusal to register the Work, arguing that the Work's original compilation of geometric shapes, shading, and varying hues meets the minimal threshold of originality required for registration. Letter from Nicholas Lee to U.S. Copyright Office at 2 (Oct. 11, 2022) ("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 Nicholas Lee (Mar. 9, 2023). The Office explained that the Work "does not exhibit sufficient original and creative authorship" to support a copyright registration, as it consists of non-protectable common shapes, with minor variations in coloration, arranged into an expected or simple configuration. *Id.* at 3–4.

In a letter dated June 9, 2023, Creatail 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 Nicholas S. Lee to U.S. Copyright Office (June 9, 2023) ("Second Request"). Creatail argued that the Work consists of "more than a mere simplistic arrangement of non-protectable elements" and that "the combination is an original work of creative authorship entitled to registration." *Id.* at 2. Creatail highlighted that the triangles themselves contain creative elements, such as the use of differing shades of pink, beige, and gray to give the impression of depth. *Id.* at 3. Creatail explained that the combination of the alternating triangles and shading create "optical illusion[s]" and "giv[e] the impression" that the triangles bow inward and extend outward. *Id.* at 3. Finally, Creatail cited court decisions to argue that a "compilation" of simple geometric shapes can be protectable. Second Request at 4 (citing *MPD Accessories B.V. v. Urban Outfitters*, No. 12-cv-6501, 2014 U.S. Dist. LEXIS 74935 (S.D.N.Y. May 30, 2014); *Prince Group, Inc. v. MTS Prod.*, 967 F. Supp. 121 (S.D.N.Y. 1997)).

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 contain the creativity necessary to sustain a copyright claim.

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" and that "garden-variety," "obvious," or "practically inevitable" selection, coordination, and arrangement lack the necessary "creative spark required by the Copyright Act." *Id.* at 362–64.

At the same time, 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). As the Ninth Circuit has explained, "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." *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003).

The Office's regulations implement the longstanding requirement of originality set forth in the Copyright Act. *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"); *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"). In its regulations and publications, the Office explains that copyright does not protect common geometric shapes or familiar designs. *Id.* § 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 are not protectable). Copyright likewise does not protect "mere variations of . . . coloring." 37 C.F.R. § 202.1(a); *see also* COMPENDIUM (THIRD) § 313.4(K).

Applying these legal standards, the Board finds that the Work's individual elements and the Work as a whole fail to demonstrate sufficient creativity for copyright protection. Considering the individual elements, the pink and beige triangles, by themselves, are not protectable as common geometric shapes. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.1. The gradient shading does not add sufficient creativity and amounts to unprotectable coloration. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 313.4(K), 906.3.

Viewed as a whole, the selection and arrangement of the Work's unprotectable elements are also insufficiently creative to warrant copyright protection. The Work is a regular tessellation of equilateral triangles with two alternating color gradients. This pattern is a predictable arrangement that lacks the necessary modicum of creativity. *See* COMPENDIUM (THIRD) §§ 313.4(K), 906.1. While Creatail relies on a perceived optical illusion of depth created by the gradient shading to assert a copyright claim in the Work, the Office does not consider a design's visual effect or the impression the Work may have on other people. *Id.* § 310.3.

Creatail also cites to the designs in two previous cases where a district court concluded the works were eligible for copyright protection. *See* Second Request at 3–4 (citing *MPD*

Accessories, 2014 U.S. Dist. LEXIS 74935, at *16; *Prince Group*, 967 F. Supp. at 125). While the Office does not compare works and makes copyrightability determinations on a "case-by-case basis," *see* COMPENDIUM (THIRD) § 309.3, the Board notes that the works at issue in both cases appear to be distinguishable. The works in *MPD Accessories*, patterns on two scarves, consisted of a "Stripe Design" that included "stripes of different widths and lengths, in different directions, in different colors and with irregular spacing[,]" and a "Star Design" which included "different sized stars placed at irregular intervals" as well as "a repetitive stylized floral pattern" on the other side of the scarf. *See MPD Accessories*, 2014 U.S. Dist. LEXIS 74935, at *16. The combined variety of shapes, sizes, and colors in the irregular arrangements in the scarf patterns found to be copyrightable in *MPD Accessories* is easily more creative than the Work's regular tessellation of equilateral triangles in two colors. Similarly, the court in *Prince Group* focused on a work's irregularly shaped polka dots, which were placed in "imperfect and conflicting diagonal lines at varying distances from each other giving the appearance of randomness," in finding originality. *See Prince Group*, 967 F. Supp. at 125. The Work, however, evidences no comparable irregularities or variations that might satisfy the standard for originality.

IV. CONCLUSION

For the reasons stated herein, the Board 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.

Maria Strong

U.S. Copyright Office Review Board
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
Nicholas R. Bartelt, Assistant General Counsel
Michael J. Druckman, Assistant General Counsel