



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

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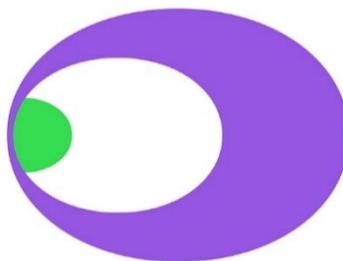
**Re: Second Request for Reconsideration of Refusal to Register Eyeball Graphic Art Design (Color) (SR# 1-12267305051; Correspondence ID: 1-62NVWZR)**

Dear Mr. Finn:

The Review Board of the United States Copyright Office (“Board”) has considered Eyeball Corp.’s second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Eyeball Graphic Art Design (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 is a two-dimensional artwork comprised of three concentric shapes: an irregular, green semi-oval, a white oval, and a purple oval. The inner, green semi-oval is located on the left side of the interior of the white oval, and the white oval appears on the left side of the interior of the outer, purple oval. The Work is as follows:



## **II. ADMINISTRATIVE RECORD**

On February 23, 2023, Eyeball Corp. filed an application to register a copyright claim in the Work. In an April 27, 2023 letter, a Copyright Office registration specialist refused to register the claim, determining that the Work lacks the creative authorship necessary to support a copyright claim. Initial Letter Refusing Registration from U.S. Copyright Office to Jeffrey Finn at 1 (Apr. 27, 2023).

On July 26, 2023, Eyeball Corp. requested that the Office reconsider its initial refusal to register the Work, arguing that the Work is sufficiently original because “many artistic choices went into the design, namely the selection, assembly and manipulation of preexisting elements, some common and some not, that were arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” Letter from Jeffrey Finn to U.S. Copyright Office at 2 (July 26, 2023) (“First Request”). Eyeball Corp. asserted that the Work “began with a basic symmetrical, elongated, almond-like shape that mimics the appearance of a human eye in an eye socket with a simple round circle in the middle,” and then its elements were altered and arranged in an original way, making it protectable. *Id.* After reviewing the First Request, the Office again concluded that the Work could not be registered because “nothing in the positioning of the basic geometric shapes in the [W]ork establishes sufficient creativity to meet the authorship requirement” and “the color scheme of the [W]ork does not imbue it with sufficient creative authorship to compel registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Jeffrey Finn at 3–4 (Nov. 20, 2023)

In a letter dated February 20, 2024, Eyeball Corp. requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. *See* Letter from Jeffrey Finn to U.S. Copyright Office (Feb. 20, 2024) (“Second Request”). In the Second Request, Eyeball Corp. reiterated earlier arguments and additionally asserted that the Work is not comprised of all geometric elements; the light green element in the work is an irregular shape and not a semi-circle. *Id.* at 1–3.

### 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 claim to copyright.

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” works lack the necessary “creative spark required by the Copyright Act.” *Id.* at 362–63.

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 id.* 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). A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. See *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[A] combination of unprotectable elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement are original enough that their combination constitutes an original work of authorship.”).

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 “familiar symbols or designs; mere variations of . . . 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”). Through its regulations, the Office provides guidance that copyright does not protect familiar shapes or designs. *Id.* § 202.1(a); see also 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).

Applying the above framework to the Work, the Board finds that the Work’s individual elements fall short of the creativity required for copyright protection. Although the central, green shape is an irregular, semi-oval shape rather than a semi-circle, the shape itself is a mere variation on a common oval, almond, or semi-circle shape, and thus not copyrightable. See COMPENDIUM (THIRD) § 906.1 (noting “[t]here are numerous common geometric shapes, including, without limitation, straight or curved lines, circles, ovals, spheres, triangles, cones, squares, cubes, rectangles, diamonds, trapezoids, parallelograms, pentagons, hexagons, heptagons, octagons, and decagons.”).

Even considering these unprotectable shapes in combination, the Work does not contain enough elements, nor an original enough composition, to constitute an original work of authorship. See *Satava*, 323 F.3d at 811. Indeed, to be copyrightable, a work consisting of common geometric shapes needs to combine “multiple types of geometric shapes in a variety of sizes and colors, culminating in a creative design that goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement.” COMPENDIUM (THIRD) § 906.1. Here, the Work consists of only three shapes of two types (oval and irregular semi-oval) placed concentrically within one another. This is a limited number of uncopyrightable elements, and their concentric arrangement is a common and unoriginal configuration, particularly given that it is an obvious and preordained arrangement for depicting an eyeball. *Id.* § 906.2 (“[C]opyright law does not protect mere variations on a familiar symbol or design, either in two- or three-dimensional form.”); *id.* § 313.4(J) (stating that familiar symbols or designs include “[c]ommon representational symbols, such as a spade, club, heart, diamond, star, yin yang, fleur de lys, or the like.”). Moreover, the Work’s limited variation in color is not sufficient to imbue the Work with the necessary modicum of creativity. *Id.* § 313.4(K) (stating that mere variations of coloring are not copyrightable).

Eyeball Corp. argues that the Work is equally as, if not more, creative than an example of a registrable wrapping paper design provided in section 906.1 of the *Compendium*. See Second Request at 3; First Request at 3–4. The Board reiterates that the Office generally does not compare works and makes determinations of copyrightability on a “case-by-case basis.” See

COMPENDIUM (THIRD) § 309.3. Nonetheless, the Board finds that the Work differs from the wrapping paper example which features more design elements (such as stars, circles, and triangles in different colors and sizes) in a more original arrangement than the Work.

Finally, although Eyeball Corp. makes several arguments regarding the artistic intent and symbolic effects of the Work, any novelty, symbolism, intent, or artistic judgment described by Eyeball Corp. in defense of the Work's originality do not factor into the copyrightability analysis and are consequently unpersuasive. *Id.* §§ 310.1, 310.3, 310.5, 310.6, 310.8. The Office focuses solely on the appearance of the work that has been submitted for registration to determine whether it satisfies the originality requirement. *See id.* §§ 310.1, 310.5, 310.6.

#### 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.



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**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

Nicholas R. Bartelt, Assistant General Counsel