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

October 30, 2026

Brad F. Barrios, Esq.
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100 N. Tampa Street, Suite 1900
Tampa, FL 33602

Re: Second Request for Reconsideration of Refusal to Register GOB Abstract (SR # 1-12090431061; Correspondence ID: 1-5V9PEM8)

Dear Mr. Barrios:

The Review Board of the United States Copyright Office ("Board") has considered Mary Elizabeth Mercer's ("Mercer") second request for reconsideration of the Registration Program's refusal to register a two-dimensional artwork claim in the work titled "GOB Abstract" ("Work"). After reviewing the application, deposit, 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 square canvas divided into three similarly sized shapes: a blue triangle, an orange quadrilateral, and a green quadrilateral. The shapes are separated by white bands.

The Work is as follows:



II. ADMINISTRATIVE RECORD

On January 9, 2023, Mercer filed an application to register a copyright claim in the Work. In a March 1, 2023 letter, a Copyright Office registration specialist refused to register the claim, determining that the Work "lacks the authorship necessary to support a copyright claim." Initial Letter Refusing Registration from U.S. Copyright Office to Brad Barrios at 1 (Mar. 1, 2023).

On March 24, 2023, Mercer requested that the Office reconsider its initial refusal to register the Work, arguing that the Work meets the minimum threshold for creativity because it "combines multiple types of geometric shapes in a variety of sizes and colors." Letter from Brad Barrios to U.S. Copyright Office at 4–5 (Mar. 24, 2023) ("First Request"). After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claim and again concluded that the Work could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Brad Barrios (July 14, 2023). The Office explained that the "components [of the Work] are minor variations of common shapes or coloring" and "the simple arrangement of [those] few elements remains devoid of creativity." *Id.* at 3–4.

In a letter dated October 13, 2023, Mercer 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 Brad Barrios to U.S. Copyright Office (Oct. 13, 2023) ("Second Request"). Mercer asserted that the Work should be registered because its "arrangement and coloring of unusual geometric designs and lines is protectable." *Id.* at 6.

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board concludes 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.

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

explained 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 typographic ornamentation, lettering or coloring." 37 C.F.R. § 202.1(a).

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).

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. The Work consists of three common geometric shapes (a triangle, two quadrilaterals, and two lines) and three colors (green, blue, and orange), none of which are individually copyrightable. *See* COMPENDIUM (THIRD) §§ 906.1 ("The Copyright Act does not protect common geometric shapes[.]"), 906.3 ("Mere coloration or mere variations in coloring alone are not eligible for copyright protection.").

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 square divided into three geometric shapes, each separated by a white line. While none of the shapes are identical, they are similarly sized variations of triangles, with one corner of the orange and green triangles cut off to create a quadrilateral. This simple variation of three geometric shapes spaced to collectively take up the canvas is insufficiently creative to satisfy the standard for copyright protection. *See* COMPENDIUM (THIRD) § 905 ("Merely bringing together only a few standard forms or shapes with minor linear or spatial variations" does not satisfy the requirement of sufficient creativity). Similarly, the white lines are straight and perpendicular, with only minimal variation in the slight offset of the line separating the green and orange shapes, which does not add sufficient creativity to an otherwise unoriginal work to warrant registration. *See id.* The fact that each shape is a different color does not push the Work over the threshold for creativity. *See Satava*, 323 F.3d at 811.

Mercer cites to previous Board decisions, asserting that the Work is at least as original as other works that the Office has previously registered. *See* Second Request at 3–5. The Office does not, however, compare works; rather, it makes determinations of copyrightability on a "case-by-case basis" and "[a] decision to register a particular work has no precedential value." COMPENDIUM (THIRD) § 309.3. The Board's prior decisions that Mercer cites therefore have no

bearing on our determination as to copyrightability of the Work; and in any event, the Board does not find Mercer's comparisons persuasive.

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
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