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

March 13, 2026

Thomas E. Zutic, Esq.
DLA Piper LLP (US)
500 Eighth Street NW
Washington, DC 20004

Re: Second Request for Reconsideration of Refusal to Register KEY Artwork (SR # 1-12158087622; Correspondence ID: 1-61HIUUX)

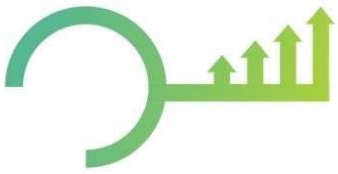
Dear Mr. Zutic:

The Review Board of the United States Copyright Office ("Board") has considered the Boston Consulting Group, Inc.'s ("BCG") second request for reconsideration of the Registration Program's refusal to register a two-dimensional artwork claim in the work titled "KEY Artwork" ("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 three-quarter circular loop attached to a horizontal rectangle that ends with four upward-pointing arrows arranged in order of increasing height, depicting the shape of a warded key. The Work is colored in a green-yellow gradient.

The Work is as follows:



II. ADMINISTRATIVE RECORD

On January 23, 2023, BCG filed an application to register a copyright claim in the Work. In a letter dated March 22, 2023, 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 Gregory Esau at 1 (Mar. 22, 2023).

On June 22, 2023, BCG requested that the Office reconsider its initial refusal to register the Work, arguing that the Work "contain[s] protectable authorship and should be afforded

copyright protection." Letter from Thomas Zutic to U.S. Copyright Office at 1 (June 22, 2023) ("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 Thomas Zutic at 1, 6 (Oct. 31, 2023). The Office explained that the Work's individual elements are "minor variations of coloring and familiar symbols," and the combination and arrangement of the Work's few components to render a "stylized key" to be unoriginal and simplistic. *Id.* at 3.

In a letter dated January 31, 2024, BCG 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 Thomas Zutic to U.S. Copyright Office (Jan. 31, 2024) ("Second Request"). BCG argued that "the various shapes, relative size, thickness, position, space between each element, and the subtly shifting green/yellow hues, as well as their spatial relationship, position, and orientation of these elements, all combine to form an objectively more complex design than a standard black and white key symbol." *Id.* at 2.

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that Work does not contain the requisite 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 (*i.e.*, not copied from another work) and sufficient creativity. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). 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.

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"). Through its regulations and in the *Compendium of U.S. Copyright Office Practices*, the Office provides guidance that copyright does not protect common geometric shapes or familiar designs. 37 C.F.R. § 202.1(a); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 906.1, 906.2 (3d ed. 2021) ("COMPENDIUM (THIRD)"). Nor does copyright protect "mere variations of . . . coloring." 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(K).

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 (nothing 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 the above framework, the Board finds that the Work's individual elements and the Work as a whole fail to demonstrate sufficient creativity for copyright protection. Here, the Work consists of a combination of common shapes and familiar designs, which are not individually copyrightable. The open circular loop, horizontal rectangle segment, and four upward-pointing arrows are geometric shapes or familiar symbols, which are not protected by copyright. *See* COMPENDIUM (THIRD) §§ 313.4(J), 906.1, 906.2. Additionally, the Work's gradient green-yellow color scheme is insufficient to meet the creativity threshold because, "mere variations of coloring, including color combinations" are not copyrightable. *Id.* § 313.4(K).

Viewed as a whole, the selection and arrangement of the Work's unprotectable elements are also insufficiently creative to warrant copyright protection. Though some combinations of unprotectable elements may contain sufficient creativity with respect to how they are arranged, not every combination will be numerous enough and their arrangement original enough to constitute an original work of authorship. Here, the Work combines the unprotectable partial loop, rectangle, and arrows, arranging them in an obvious manner to depict a two-dimensional outline of a warded key. A key is a familiar symbol (or design) and thus not copyrightable. *See id.* § 313.4(J) (listing examples of familiar symbols and designs not protected by copyright law including "common representational symbols"); *see also* Second Request at 2 (acknowledging that a key is a type of symbol). Moreover, the specific key shape depicted in the Work consists of a few components that are arranged with only slight variations in size and color (*i.e.*, from left to the right, four equidistant arrows increase in height and the Work's color gradually transitions from green to yellow). These elements, taken together, are insufficiently creative to satisfy the originality standard for copyright protection. *See* 37 C.F.R. § 202.1(a); 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.").

In the Second Request, BCG cites 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 3–4. 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 BCG cites therefore have no bearing on the Board's determinations as to copyrightability of the Work. Accordingly, these decisions do not change the Board's conclusion that the Work is insufficiently creative.

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.

U.S. Copyright Office Review Board
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
John R. Riley, Acting Deputy General Counsel
Nicholas R. Bartelt, Assistant General Counsel