



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 Midjourney Boat
(SR # 1-13610212611; Correspondence ID: 1-6RFXKCC)**

Dear Mr. Lauter,

The Review Board of the United States Copyright Office (“Board”) has considered Midjourney, Inc.’s (“Midjourney”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Midjourney Boat” (“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 an abstract black-and-white sailboat on waves, comprised of two side-by-side curved isosceles triangles above an elongated semi-circle that is intersected by a symmetrical, wavy line.

The Work is as follows:



II. ADMINISTRATIVE RECORD

On March 18, 2024, Midjourney filed an application to register a copyright claim in the Work. According to the registration application, this Work was authored by Kodchakorn (Look)

Lorsakul, a citizen of Thailand, and was first published on December 31, 2017, in the United States. Midjourney is the copyright claimant by written agreement.

In a June 12, 2024 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 Judd Lauter (June 12, 2024).

On September 12, 2024, Midjourney requested that the Office reconsider its initial refusal to register the Work, arguing that the Work “meets and exceeds” the minimal threshold of creativity required for copyrightability because the Work was created by a professional artist who earns a living with designs like the Work and features “several important creative design decisions.” Letter from Judd Lauter to U.S. Copyright Office at 1 (Sep. 12, 2024) (“First Request”). Midjourney further argued that the Work is more complicated than basic design elements and that, at a minimum, it is copyrightable as a “creative compilation” of geometric shapes, similar to other “minimalistic designs” that the Board has found registrable. *Id.* at 2.

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 Judd Lauter (Jan. 31, 2025). The Office explained that the Work “does not contain a sufficient amount of creativity either elementally or as a whole to warrant registration.” *Id.* at 2. The Office also noted that it “focuses solely on the actual appearance of the work submitted for registration,” not the “author’s choices, inspiration or any intended meaning or significance that those features may be intended to evoke,” and that it does not compare works with prior registrations. *Id.* at 3–4.

In a letter dated April 30, 2025, Midjourney 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 Judd Lauter to U.S. Copyright Office (Apr. 30, 2025) (“Second Request”). Midjourney reiterated its arguments from the First Request and argued that the Work is no less original or creative than works found copyrightable by federal courts and the Review Board. *Id.* at 2–3.

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 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 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). 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 “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 § 313.4(J) (3d ed. 2021) (“COMPENDIUM (THIRD)”) (“[T]he Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations”); COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes are not protectable).

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 individual elements of the Work—two curved isosceles triangles, an elongated semicircle, and a wavy line—are common, unprotectable shapes. COMPENDIUM (THIRD) § 906.1 (“The Copyright Act does not protect common geometric shapes, . . . including, without limitation, . . . curved lines, circles, ovals, . . . [and] triangles.”). Although the triangles include slight curvatures and the elongated semicircle is asymmetrical, these minor variations of common geometric shapes are not copyrightable. *Id.*

Viewed as a whole, the selection and arrangement of the Work’s unprotectable elements are also insufficiently creative to warrant copyright protection. *See Satava*, 323 F.3d at 811–12; COMPENDIUM (THIRD) § 906.2. To be registrable, a work comprising geometric shapes should “culminat[e] in a creative design that goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement,” such as by “combin[ing] multiple types of geometric shapes in a variety of sizes and colors.” COMPENDIUM (THIRD) § 906.1. Here, the elements of the Work depict an abstract sailboat, and are arranged in an obvious and expected manner—utilizing two triangles to form the sail of the boat, a semicircle to depict the hull, and a wavy line with symmetrical curves to represent water is “entirely typical.” *Feist*, 499 U.S. at 362; COMPENDIUM (THIRD) §§ 308.2, 313.4(J), 906.2.

Midjourney argues that the Work as a whole “easily clears the low threshold for copyright protection.” Second Request at 4. In support, Midjourney explains that the Work’s sails are “curved to indicate the direction of the boat, and to evoke speed and a sense of motion,” the “Work is slightly surreal, with bold, irregular lines that suggest motion, exploration, and creative spontaneity,” and the “stylized, impressionistic form of the illustration are a rejection realism.” *Id.* at 2. The Office, however, does not consider the author’s creative intent or intended meaning when evaluating a work for copyrightable authorship. COMPENDIUM (THIRD) § 310.5. Likewise, the symbolic meaning or impression of a work is irrelevant to this determination. *Id.* § 310.3.

Midjourney also asserts that the Work is sufficiently creative for copyright protection because it was created by a professional artist who earns a living with designs like the Work, “which have commercial value precisely because of their original creative expression.” Second Request at 1. The Office focuses solely on the Work’s appearance and not the author’s professional experience. COMPENDIUM (THIRD) § 310.6. Nor are the marketability or commercial success of the Work (or other works, for that matter) relevant to the originality analysis. *Id.* § 310.10.

Finally, Midjourney argues that the Work is “no less original or creative” than other works that the Office has previously registered and works at issue in three federal court cases. Second Request at 2–4 (citing *Milkcrate Athletics, Inc. v. Adidas Am., Inc.*, 619 F. Supp. 3d 1009, 1018 (C.D. Cal. 2022), *Bouchat v. Baltimore Ravens, Inc.*, 241 F.3d 350, 356 (4th Cir. 2001), and *Solovsky v. Delta Galil USA*, 135 F. Supp. 3d 196, 213–14 (S.D.N.Y. 2015)). As an initial matter, the Office does not compare works and makes determinations of copyrightability on a “case-by-case basis.” COMPENDIUM (THIRD) § 309.3. Nonetheless, the cited cases are distinguishable from the Work here. In *Milkcrate*, the court analyzed a design consisting of a vinyl record placed inside of a milk crate, noting that the arrangement of commonplace elements incorporated “design choices . . . that involve creative expression, such as the placement of the record and milk crate, its coloring, and its shading,” entitling the work to copyright protection. 619 F. Supp. at 1018. Here, Midjourney’s Work combines a few common geometric shapes with no variation in coloring or shading to depict a common sailboat design. Similarly, in *Bouchat*, the design featured a raven holding individually unprotectable elements (*i.e.*, the letter “B,” a shield, and a cross) that the court concluded were selected, coordinated, and arranged in an original way. 241 F.3d at 356–57. By contrast, the Work combines unprotectable geometric shapes to depict a sailboat on the water in a manner “so commonplace that it has come to be expected as a matter of course.” *Feist*, 499 U.S. at 362; COMPENDIUM § 308.2.

Midjourney’s reliance on *Solovsky* is also unpersuasive. *Solovsky* concerned a t-shirt design featuring a hand-drawn smiley face and the word “hi” on the front of a shirt, and a hand-drawn frowning face and the word “bye” on the back. 135 F. Supp. 3d 196. In that case, the court recognized that “originality of a copyrighted work is ordinarily a question of fact to be decided at trial,” *id.* at 214 (citing *Vargas v. Pfizer, Inc.*, 418 F.Supp.2d 369, 372 (S.D.N.Y. 2005)), but allowed the copyright claim to survive a motion to dismiss, because at that stage of the proceedings, the court “[could not] conclude that the selection and arrangement of plaintiff’s design lacks the ‘extremely low’ requisite level of creativity to be original.” *Id.* at 214. As that case ultimately settled, it is inconclusive whether the court in *Solovsky* would have ultimately

found the t-shirt design to be copyrightable.¹ The Board is therefore unpersuaded by this authority to alter our conclusion that the Work is insufficiently creative to warrant copyright registration.

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, Deputy General Counsel
Nicholas R. Bartelt, Assistant General Counsel

¹ The Office refused to register the work prior to the litigation and, following proper service, filed a statement with the court reiterating its position that the design lacks “even the low quantum of creativity necessary to merit copyright protection.” Statement of Interest on Behalf of the U.S. Copyright Office at 14, I.C. ex rel. Solovsky v. Delta Galil USA, No. 14-cv-07289 (S.D.N.Y. July 5, 2016), ECF No. 101.