



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

March 8, 2024

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Re: Second Requests for Reconsideration for Refusals to Register Possessiveness Graphic 2019 v 1, Guilting graphic 2019, Respect graphic 2019, and Honesty graphic 2019 (SR # 1-8166606255, 1-8188277940, 1-8188278120, 1-8188278048; Correspondence ID: 1-4QM5K2C, 1-4KNONXT, 1-4PNJB86, 1-4PNJBCE)

Dear Ms. Altoff:

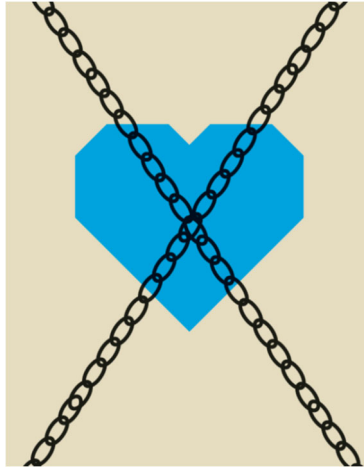
The Review Board of the United States Copyright Office (“Board”) has considered The One Love Foundation In Honor of Yeadley Love, Inc.’s (“One Love”) second requests for reconsideration of the Registration Program’s refusal to register two-dimensional graphic design claims in four works titled “Possessiveness Graphic 2019 v 1” (“Possessiveness”),¹ “Guilting graphic 2019” (“Guilting”), “Respect graphic 2019” (“Respect”), and “Honesty graphic 2019” (“Honesty”) (individually, a “Work,” and together, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board: (1) affirms the Registration Program’s denials of registration for Possessiveness, Guilting, and Respect; and (2) reverses the denial of registration for Honesty.

I. DESCRIPTION OF THE WORKS

A. Possessiveness

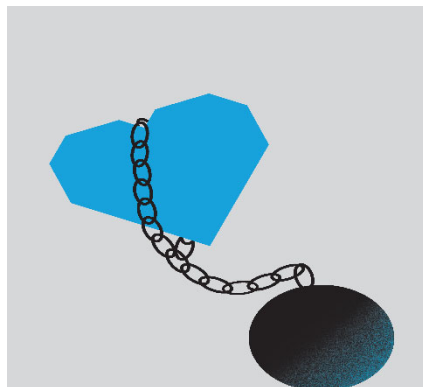
Possessiveness is a graphic design consisting of a blue heart centered within a tan rectangle. Two rows of black chain links are arranged in an “X” configuration, positioned from corner to corner of the rectangle. The links cross in the center of the heart. The deposit copy image of the Work is on the following page:

¹ The Board notes that in One Love’s prior request for reconsideration and the Office’s refusals of registration, the title of Possessiveness was incorrectly listed as “Possessiveness Graphic 2019 v 2.” Because the title of the work in the original application and deposit copy is “Possessiveness Graphic 2019 v 1,” the Board refers to it that way here.



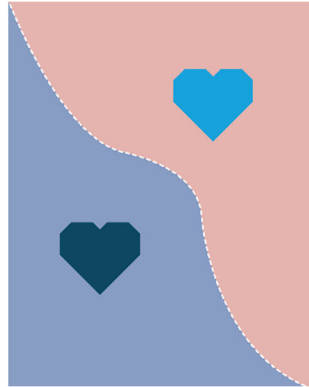
B. Guilting

Guilting is a graphic design consisting of a black ball and chain wrapped around a blue heart. These elements appear within a grey, rectangular background. The deposit copy image of the Work is below:



C. Respect

Respect is a graphic design consisting of a rectangle divided diagonally by a curved dotted white line. The bottom-left section of the rectangle is depicted in periwinkle, and the upper-right section is “dusty-pink.” A graphic of a heart has been centered within each half—one is dark blue and the other is light blue. The deposit copy image of the Work is on the following page:



D. Honesty

Honesty is a graphic design consisting of a lock and key within a grey, rectangular background. The lock and key are rendered in yellow, salmon, grey, black, and white. The deposit copy image of the Work is below:



II. ADMINISTRATIVE RECORD

Between October 18, 2019 and October 24, 2019, One Love filed four separate applications to register copyright claims in the Works described above. In three similarly reasoned letters, Copyright Office registration specialists refused to register the claims in the Works because the Works do not contain sufficient creative authorship.²

In four largely identical letters, One Love requested that the Office reconsider its initial refusals to register the Works, arguing that the Works were sufficiently creative to be registered by pointing to the use of modified hearts and other elements combined in non-obvious arrangements.³ After reviewing the Works in light of the points raised in the First Requests, the

² Initial Letter Refusing Registration of Honesty, Respect, and Comfortable Pace graphic 2019 from U.S. Copyright Office to Rachel Fertig at 1 (Dec. 20, 2019); Initial Letter Refusing Registration of Guiltling from U.S. Copyright Office to Rachel Fertig at 1 (Jan. 8, 2020); Initial Letter Refusing Registration of Betrayal Graphic 2019 and 1 Other Unpublished Work from U.S. Copyright Office to Rachel Fertig at 1 (Aug. 26, 2020) (refusing registration of Possessiveness).

³ Letter from Rachel Fertig re: Honesty to U.S. Copyright Office at 2 (Mar. 20, 2020); Letter from Rachel Fertig re: Respect to U.S. Copyright Office at 2 (Mar. 20, 2020); Letter from Rachel Fertig re: Guiltling to U.S. Copyright

Office reevaluated the claims and again concluded that the Works could not be registered.⁴ The Office found that the Works were comprised of unprotectable common and familiar shapes, or minor variations thereof, and that the combination and arrangement of the component elements are insufficiently creative to support a claim in copyright. *See, e.g.*, Respect Second Refusal at 3.

After receipt of the Office’s decisions, One Love requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusals to register the Works.⁵ For each of the Works, One Love argued that the combination of multiple shapes, color variations, and non-symmetrical arrangements in the Works demonstrate the necessary creative spark for copyrightable authorship. *See, e.g.*, Possessiveness Second Request at 6–8. In addition, One Love presented arguments specific to each Work about particular aspects that evidence protectable creative expression. *See* Possessiveness Second Request at 5–7 (“overall combination and irregular arrangement of more than 40 shapes in three colors”; “non-symmetrical overall arrangement”); Guilting Second Request at 6–7 (“intricate shading” giving a “three-dimensional effect” and a “non-obvious overall arrangement”); Honesty Second Request at 5 (“contrasting heart shapes (one angular and one rounded), which are modified with an intricate black and white stippling pattern to give a three-dimensional look to the edges of the lock and key”); Respect Second Request at 5 (“two non-standard triangular shapes, one in dusty-pink and one in periwinkle, which feature two angular edges and one wavy edge; and a wavy line made up of more than 70 white rectangles”; “non-symmetrical overall arrangement”).

III. DISCUSSION

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 fail to meet even this low threshold. *Id.* at 362–63. 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.

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. *See,*

Office at 2–3 (Apr. 7, 2020); Letter from Rachel Fertig re: Possessiveness to U.S. Copyright Office at 2–3 (Nov. 19, 2020) (together, the “First Requests”).

⁴ Refusal of First Request for Reconsideration of Guilting from U.S. Copyright Office to Rachel Fertig (Dec. 8, 2020); Refusal of First Request for Reconsideration of Honesty from U.S. Copyright Office to Rachel Fertig (Mar. 12, 2021); Refusal of First Request for Reconsideration of Respect from U.S. Copyright Office to Rachel Fertig (Mar. 12, 2021) (“Respect Second Refusal”); Refusal of First Request for Reconsideration of Possessiveness from U.S. Copyright Office to Rachel Fertig (Mar. 30, 2021).

⁵ One Love’s second requests for reconsideration were made in four separate, but largely identical, letters. Letter from Rachel Fertig re: Guilting to U.S. Copyright Office (Mar. 7, 2021) (“Guilting Second Request”); Letter from Rachel Fertig re: Honesty to U.S. Copyright Office (June 11, 2021) (“Honesty Second Request”); Letter from Rachel Fertig re: Possessiveness to U.S. Copyright Office (June 11, 2021) (“Possessiveness Second Request”); Letter from Rachel Fertig re: Respect to U.S. Copyright Office (June 11, 2021) (“Respect Second Request”) (together, the “Second Requests”).

e.g., Runstadler Studios, Inc. v. MCM Ltd., 768 F. Supp. 1292, 1295 (N.D. Ill. 1991) (stating that “combinations of standard shapes may possess the requisite creativity necessary for copyright protection”). 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). 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 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”). In addition, the Office’s *Compendium of U.S. Copyright Office Practices* provides guidance that copyright does not protect familiar shapes or designs. *See* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 313.4(J), 906.2 (3d ed. 2021) (“COMPENDIUM (THIRD)”); *see also id.* § 906.1 (noting that common geometric shapes are not protectable); *id.* § 906.3 (“[M]ere variations in coloring alone are not eligible for copyright protection.”). Addressing the originality requirement for compilations, the *Compendium* explains that “the more creative the selection, coordination, and/or arrangement, the more likely it is that the author’s compilation will be registered.” *Id.* § 312.2. On this point, the *Compendium* adds that “[a] standard or common selection, coordination, and/or arrangement of specific content or simple variations thereof will not support a claim of compilation authorship and cannot be registered with the Office.” *Id.* § 313.3(E).

After carefully examining the Works and considering the arguments made in the First and Second Requests in light of the legal standard described above, the Board finds that Possessiveness, Guiltiness, and Respect do not contain the requisite creativity and therefore are not eligible for copyright protection. The Board finds that Honesty, however, contains the requisite creativity necessary to sustain a claim in copyright. The Board’s analysis of each of the Works is set forth below.

A. Possessiveness, Guiltiness, and Respect

Considering Possessiveness, Guiltiness, and Respect in turn, none of the three Works contain the requisite creativity necessary to satisfy the legal standard for original authorship. Beginning with Possessiveness, the black ovals that form the chains and tan rectangular background are unprotectable common geometric shapes. *See* COMPENDIUM (THIRD) § 906.1. The angular nature of the blue heart and the slight variations in the ovals amount to minor linear or spatial variations on a familiar symbol, which are likewise unprotectable. *See id.* § 313.4(J). While familiar symbols and designs may be registered if they are arranged in a sufficiently

creative manner, *see id.* § 906, the Work’s combination of unprotectable elements is not “complex,” but rather simple and garden-variety. The heart is centered directly in the middle of the image. The “X”-shaped chain, itself arranged in the form of an unprotectable letter, is similarly centered almost symmetrically over the heart. Further, this configuration of an “X” over another symbol is a common arrangement for expressing messages in a negative or prohibitive context. *See id.* § 312.2 (noting that some methods of selection and arrangement which will not trigger copyright include “[a] selection, coordination, and/or arrangement that is commonplace such that it has come to be expected as a matter of course”).

Turning to Guilting, the individual elements include the same angular heart shape as in Possessiveness, a similar chain element comprised of black ovals, and a circle with gradient shading from blue to black to give a three-dimensional effect. As with Possessiveness, each of the shapes are unprotectable common geometric shapes. *See id.* § 906.1. The minor linear variations in the angular heart are unprotectable, as are the minor spatial variations evident in the turning of the geometric shapes in a manner akin to what can be achieved with a standard shape rotation function found in most document and image editing software.⁶ The shading of the circle similarly appears to be a standard gradient effect used to make a two-dimensional circle appear to be a three-dimensional sphere.⁷ The cumulative arrangement of these elements, with one end of the chain wrapped around the heart and the other end connected to the ball, is a garden-variety combination and arrangement, that can be found in a plethora of simple graphic images featuring the trope.⁸ *See id.* § 312.2.

Finally, Respect is comprised of two angular hearts (one dark blue, the other light blue) on a split, two-color (“periwinkle” and “dusty-pink”) background. As with Possessiveness and Guilting, the angular hearts in Respect are unprotectable common shapes with minor linear variations. *See id.* § 313.4(J). The color combinations are garden-variety, with pink and blue being a stereotypical color combination, and the blue shades are *de minimis* variations of one another. *Cf. id.* § 906.1 (comparing an unregistrable work featuring eight symmetrical and evenly spaced white circles on a purple background with a wrapping paper design with several asymmetrically placed shapes of varying sizes and colors). The identically shaped and sized hearts are placed in opposite halves, both approximately evenly spaced from the sides of the Work—an arrangement that exhibits simple translational symmetry.⁹ The dotted wavy line that demarcates the two background colors is a *de minimis* variation on an unprotectable straight line. *See id.* § 905. The line’s position within the Work, running from the upper left-hand corner to the lower right-hand corner, is a common placement for a diagonal dividing line. In sum, the Work combines unprotectable individual elements that are represented in a garden-variety color

⁶ *See, e.g., How to Rotate Images in Microsoft word*, WIKIHOW (last updated Mar. 4, 2024), <https://www.wikihow.com/Rotate-Images-in-Microsoft-Word> (section four detailing X-Rotation, Y-Rotation and Z-Rotation).

⁷ *See, e.g., About gradients*, ADOBE (last updated May 24, 2023), <https://helpx.adobe.com/indesign/using/gradients.html> (“A gradient is a graduated blend between two or more colors or between two tints of the same color.”).

⁸ *See, e.g., heart in durance vile*, SHUTTERSTOCK (Jan. 17, 2010), <https://www.shutterstock.com/image-illustration/heart-durance-vile-44657548>; *heart in chains and shackles. isolated white background*, SHUTTERSTOCK (Dec. 26, 2013), <https://www.shutterstock.com/image-illustration/heart-chains-shackles-isolated-white-background-168728576>; *red heart shaped balloon that is chained*, SHUTTERSTOCK (Feb. 17, 2014), <https://www.shutterstock.com/image-vector/red-heart-shaped-balloon-that-chained-177254216>.

⁹ *See Orana Velarde, What is Asymmetrical Balance and How to Use It (+ Examples)*, VISMÉ (Mar. 25, 2022), <https://visme.co/blog/asymmetrical-balance/>.

combination and arranged to exhibit simple translational symmetry and asymmetric balance. *Id.* § 312.2. Taken together, these choices do not exhibit sufficient creativity to support a claim of copyrightable authorship.

In the Second Requests, One Love cites previous Board decisions, asserting that the Works are at least as original as other works that the Office has previously registered. *See, e.g.*, Respect 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 One Love cites therefore have no bearing on the Board’s determinations as to copyrightability of the Works.

B. Honesty

The Board reaches a different conclusion after examining Honesty and applying the legal standard discussed above. It finds that the Work as a whole exhibits creative authorship and is registrable. In the Board’s view, there is sufficient originality in the combination of an irregularly shaped element, selection of and shading of colors, and the arrangement of the elements to sustain a claim of copyright. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 312.2. Specifically, the key—an otherwise common shape or symbol—is depicted with a combination of irregular features that go beyond minor variations, including a bow that is heart-shaped with a cut-out of an angular heart, a shoulder that extends halfway down the shank, and a blade with several irregular cutaways. In addition, the lock and key elements both incorporate several colors and employ shading to create a three-dimensional effect. These elements, as they are combined and arranged together in the Work, contain the modicum of creativity required for copyrightability.

The Board’s decision is based on the low standard for originality articulated in *Feist*. The Honesty design satisfies this standard only with respect to the authorship reflected in the Work as a whole (*i.e.*, the specific combination and arrangement of elements) and does not extend individually to any of the standard and common elements depicted in the Work.

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusals to register copyright claims in Possessiveness, Guilting, and Respect. The Board reverses the refusal to register the copyright claim in the Honesty design. The Board now refers Honesty to the Registration Policy and Practice division for registration, provided that all other application requirements are satisfied. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.



U.S. Copyright Office Review Board

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Associate Register of Copyrights

Maria Strong, Associate Register of Copyrights and
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