



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

October 11, 2024

John O'Malley, Esq.
Volpe Koenig, PC
30 South 17th Street, Suite 1800
Philadelphia, PA 19103

Re: Second Request for Reconsideration for Refusal to Register Pascack Valley Line Cover (SR # 1-10904674701; Correspondence ID: 1-58VER90)

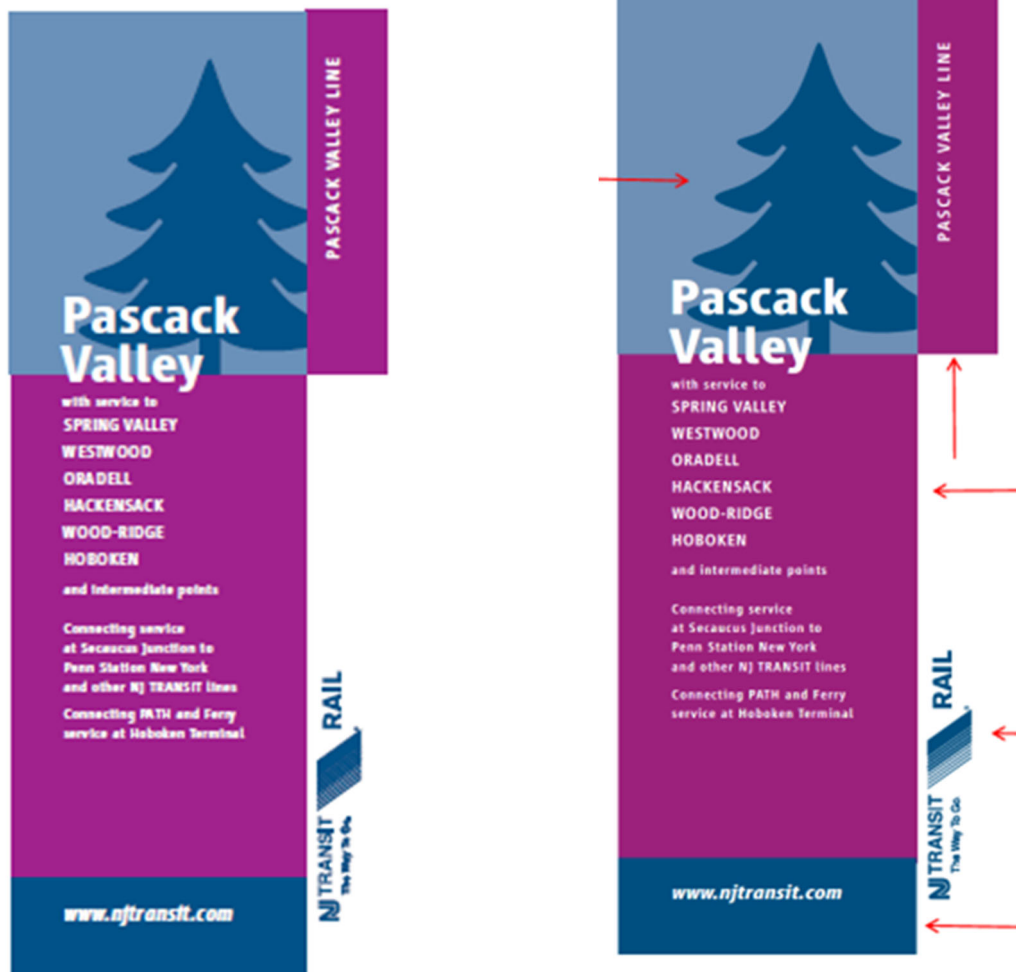
Dear Mr. O'Malley:

The Review Board of the United States Copyright Office ("Board") has considered New Jersey Transit Corporation's ("NJ Transit") second request for reconsideration of the Registration Program's refusal to register a two-dimensional artwork claim in the work titled "Pascack Valley Line Cover" ("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 the cover of a brochure for a route on a public transit line. The top third of the vertically oriented design consists of a light blue rectangle that features a darker blue silhouette of a pine tree. To the right and below this blue rectangle are two purple rectangles containing text. The phrase "Pascack Valley Line" in white coloring is positioned within the purple rectangle on the right side of the design. The phrase "Pascack Valley" in white coloring is positioned at the top of the lower rectangle, followed by the names of station stops and the connection service, all in white coloring. As part of the lower two-thirds of the brochure, there is a white rectangle with NJ Transit's logo in blue lettering. At the bottom of the Work, there is a dark blue rectangle with NJ Transit's website "www.njtransit.com" in white lettering.

With its application, NJ Transit provided two images: an image of the full cover design and a picture of the cover with arrows indicating certain graphic elements. A reproduction of the images of the Work are depicted on the next page:



II. ADMINISTRATIVE RECORD

On October 12, 2021, NJ Transit filed an application to register a copyright claim in the Work. In a November 16, 2021 letter, a Copyright Office registration specialist refused to register the claim, determining that the Work lacked the minimum amount of creativity required for copyright protection. Initial Letter Refusing Registration from U.S. Copyright Office to Laura Lipschutz (Nov. 16, 2021).

On February 16, 2022, NJ Transit requested that the Office reconsider its initial refusal to register the Work, arguing that the arrangement of individual elements to create the design as a whole is sufficiently creative to warrant copyright protection. Letter from John O'Malley to U.S. Copyright Office (Feb. 16, 2022) ("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 John O'Malley (June 3, 2022). The Office explained that the individual elements of the Work are common shapes or familiar designs that are not protectable. The Office also explained

that, as a whole, the Work's combination of individual elements is not numerous enough, and their arrangement not creative enough, to constitute an original work of authorship. *Id.*

In a letter dated September 6, 2022, NJ Transit 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 John O'Malley to U.S. Copyright Office (Sept. 6, 2022) ("Second Request"). NJ Transit argued that the pine tree is creatively rendered, and that the layout of the Work is sufficiently distinctive to warrant designation as an original work of authorship. *Id.*

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 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 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." *Id.* at 363.

Common shapes or familiar designs are "entirely typical" and "devoid of even the slightest traces of creativity." U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 308.2 (3d ed. 2021) ("COMPENDIUM (THIRD)"). Elements such as rectangles and short phrases with "mere variations of typographic ornamentation, lettering [and] coloring" are not protected by copyright. 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"); COMPENDIUM (THIRD) §§ 313.3(C), (D), (J), (K). Shapes similar to those in the public domain are considered "garden-variety" and are not creative enough to differentiate from unprotected designs. *See Feist*, 499 U.S. at 362.

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 (concluding that 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.”).

Here, the Work consists of common shapes that are “garden-variety.” The pine tree is perfectly symmetrical and appears in one uniform color with no shading. This type of rendering is common and expected in graphic depictions of pine tree silhouettes.¹ *See Design Ideas, Ltd. v. Yankee Candle, Co.*, 889 F. Supp. 2d 1119, 1128 (D.C. Ill. 2012) (“[T]he sailboat shapes are not sufficiently creative to be copyrightable . . . [T]he sailboat shape is a familiar, well-known shape so that decisions regarding curve, size color, and number included in a set do not make the product sufficiently original so that the work is copyrightable.”). Further, the rectangles and text are not protected under copyright as they are common shapes and lettering. 37 C.F.R. § 202.1(a).

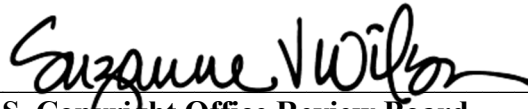
NJ Transit contends that the pine tree is creative as it reflects the landscape of the region that the Work represents. The Board does not assess the intentions of the author or a design’s symbolic impact in determining whether a design contains the requisite minimal amount of original authorship necessary for registration. *See Bleistein v. Donaldson Lithographic Co.*, 118 U.S. 239, 251 (1903); COMPENDIUM (THIRD) § 310.5. Accordingly, the fact that the Work may evoke an idea or depict a certain style is not relevant to the Board’s analysis.

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. NJ Transit’s Work arranges short phrases and two types of shapes (five rectangles and one pine tree) in a standard and inevitable manner typical of flyer designs. Bringing together only a few standard forms or shapes with minor linear or spatial variations, as this Work does, is insufficient to render a Work sufficiently creative. COMPENDIUM (THIRD) § 313.3(E). The rectangles’ position within the Work exhibits simple translational symmetry as the arrangement is divided into vertical halves and horizontal thirds. Copyright protection is not extended to a work’s general layout design. *Id.* § 906.5 (“The general layout or format of a book, a page, a website, a poster, a form, etc., is not copyrightable, because it is merely a template for expression and does not constitute original expression in and of itself.”). Due to the arrangement’s standard and utilitarian arrangement, the Work lacks sufficient originality necessary for copyright protection.

¹ *See, e.g., Simple Pine Trees Silhouette royalty-free images*, SHUTTERSTOCK.COM, <https://www.shutterstock.com/search/simple-pine-trees-silhouette> (last visited Oct. 3, 2024); *Silhouette pine tree christmas isolated icon vector image*, VECTORSTOCK.COM, <https://www.vectorstock.com/royalty-free-vector/silhouette-pine-tree-christmas-isolated-icon-vector-27808967> (last visited Oct. 3, 2024); *Black and white fir tree silhouette vector image*, VECTORSTOCK.COM, <https://www.vectorstock.com/royalty-free-vector/black-and-white-fir-tree-silhouette-vector-21287390> (last visited Oct. 3, 2024); *Pine Tree Vector stock illustrations*, ISTOCKPHOTO.COM, <https://www.istockphoto.com/illustrations/pine-tree-vector> (last visited Oct. 3, 2024).

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.



U.S. Copyright Office Review Board
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