



United States Copyright Office

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July 17, 2017

Jayson M. Lorenzo, Esq.
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Carlsbad, CA 92009

Re: Second Request for Reconsideration for Refusal to Register A LITTLE BIT BAD, Blog Content, Brady Joke February 3, 2015; Correspondence ID: 1-25KMZ9Z; SR #: 1-2752094070

Dear Mr. Lorenzo:

The Review Board of the United States Copyright Office (“Board”) has considered Robert Alexander Kaseberg’s second request for reconsideration of the Registration Program’s refusal to register a text claim in the work titled “A LITTLE BIT BAD, Blog Content, Brady Joke February 3, 2015” (“Work”). The Work consists of the following two-sentence textual work, containing twenty seven words, posted on Mr. Kaseberg’s blog on February 3, 2015: “Tom Brady said he wants to give his MVP truck to the man who won the game for the Patriots. So enjoy that truck, Pete Carroll.” After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Work exhibits copyrightable authorship and thus may be registered.

The Board bases its finding on the “minimal degree of creativity” required by the U.S. Supreme Court in *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). As a textual work, the Work meets the threshold for copyright protection as articulated in *Feist*. Courts and the Copyright Office both have found copyright protection for jokes when the jokes are sufficiently creative. *See, e.g., Foxworthy v. Custom Tees, Inc.*, 879 F. Supp. 1200, 1219 (N.D. Ga. 1995) (finding that a series of “You might be a redneck if . . .” jokes “evidenced a ‘modicum of intellectual labor’”) (citation omitted). But the Board also cautions that, while it is copyrightable, the copyright in the Work is “thin.” Works with a thin copyright “reflect only scant creativity.” 4 Melville B. Nimmer & David Nimmer, *NIMMER ON COPYRIGHT* § 13.03 (2017). As one court noted, “[s]cantiness may exist because the work is composed of elements in the public domain, and it is only the organization of those elements that is protectable.” *Well-Made Toy Mfg. Corp. v. Goffa Int’l Corp.*, 210 F. Supp. 2d 147, 163 (E.D.N.Y. 2002). The Board notes its decision is consistent with a decision in the Southern District of California, finding that this Work merits thin copyright protection. Order Granting in Part and Denying in Part Defendant’s Motion for Summary Judgment, *Kaseberg v. Conaco, LLC*, No. 15-cv-1637 at 21 (C.D. Cal. May 9, 2017), ECF No. 70 (noting that “there is little doubt that the jokes at issue merit copyright protection” but “the jokes here are similarly constrained by their subject matter and the conventions of the two-line, setup-and-delivery paradigm”).

For the reasons stated herein, the Board reverses the refusal to register the copyright claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this letter constitutes final agency regarding the Work. The Office will register the Work and no response regarding this Work is necessary.

Finally, there is an additional administrative matter regarding a related application. In addition to the application to register the Work alone, the Work also was incorporated into another application, "A LITTLE BIT BAD. Blog Jokes posted on February 3, 2015" ("Three Jokes Work"), which the Office registered on June 6, 2017 (SR# 1-3896431421). Because previously registered material, including material that has been submitted for registration but has not been registered yet, is unclaimable in subsequent registrations, the registration for Three Jokes Work must be corrected to exclude the content covered in the registration for this Work. COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 503.5 (3d ed. 2014). An Attorney-Advisor with the Office informed your attorney of this issue and he agreed that, if the Board granted registration of this Work, the registration record for Three Jokes Work would need to be corrected to exclude the text comprising the single joke in the Work. Telephone call from John R. Riley, Attorney-Advisor, to Jayson M. Lorenzo (July 5, 2017). As the Board is ordering this Work to be registered, the Copyright Office's Office of Registration Policy and Practice will be in contact regarding the copyright claim in the Three Jokes Work.

BY:



Catherine Rowland

Copyright Office Review Board