



United States Copyright Office

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May 7, 2020

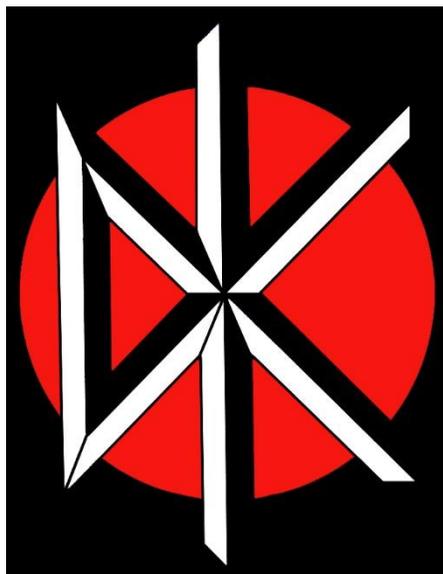
David M. Given, Esq.
Phillips, Erlewine, Given & Carlin
LLP 39 Mesa Street, Suite 201
San Francisco, California 20024-1380

**Re: Second Request for Reconsideration for Refusal to Register Dead Kennedys
“DK” Logo; Correspondence ID: 1-3M8QY9R; SR 1-7294661771**

Dear Mr. Given:

The Review Board of the United States Copyright Office (“Board”) has considered Decay Music’s second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Dead Kennedys ‘DK’ Logo” (“Work”). 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 Work consists of a red circle centered within a large black rectangle. Layered on top of the black rectangle and red circle is an asymmetric abstract design of differently-sized shapes. Six bars of varying lengths extend from the center of the design. The trapezoids that form the bars appear in black and white to give the design a three-dimensional effect. A seventh bar of trapezoids creates three triangles on the left side of the design—one red interior triangle, and two black and white exterior triangles. An image of the Work is below:



Although typographical ornamentation, familiar symbols and designs, and lettering alone are not copyrightable, the Work is a combination of several white, black, and red shapes of varying sizes that, together, render the work creative. As the Supreme Court has found, some combinations of common or standard design elements may contain sufficient creativity with respect to how they are juxtaposed or arranged to support a claim to copyright, but not every combination or arrangement will be sufficient to meet this test. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991). 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.* For example, the Office may register a work that consists merely of geometric shapes where the “author’s use of those shapes results in a work that, as a whole, is sufficiently creative.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d. ed. 2014) (“COMPENDIUM (THIRD)”); *see also Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989) (“[S]imple shapes, when selected or combined in a distinctive manner indicating some ingenuity, have been accorded copyright protection both by the Register and in court.”).

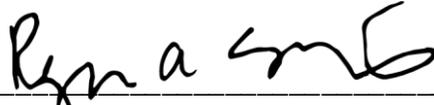
Applying this standard, the Board concludes that the Work combines colors and shapes in a creative manner. *See* COMPENDIUM (THIRD) § 906.1 (stating that a work is registrable where it “combines multiple types of geometric shapes in a variety of sizes and colors, culminating in a creative design that goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement”). Here, the Work is a creative rendering of shapes in a variety of sizes. The asymmetric star-like shape in the center of the design, colored in black and white to create dimension and shading, combined with the red and black background help demonstrate the modicum of creativity required for copyrightability. *See, e.g., Nicholls v. Tufenkian Imp./Exp. Ventures, Inc.*, No. 04 Civ.2110, 2004 WL 1399187, at *1–2 (S.D.N.Y. June 23, 2004) (denying defendant’s motion to dismiss on grounds of lack of originality where the work contained circles arranged into a grid format with additional shading on each circle); *Prince Group, Inc. v. MTS Prods.*, 967 F. Supp. 121, 125 (S.D.N.Y. 1997) (holding that a shaded multicolor polka dot design was protectable). While the design alludes to the letters “D” and “K,” it does so through an illusion using a creative combination of graphic elements. *See* COMPENDIUM (THIRD) § 906.4 (“[G]raphic elements that are incorporated into uncopyrightable characters or used to represent an entire letter or number may be registrable.”).

To be clear, however, the Board’s decision relates only to the Work as a whole and does not extend individually to any of the standard and common elements contained in the Work, such as the rectangle or circle shape, lettering, or white and black coloring of the star-like design alone. *See* 37 C.F.R. §§ 202.1(a) (“[W]orks not subject to copyright [include] . . . familiar symbols or designs.”), (e) (“[W]orks not subject to copyright include . . . typeface as typeface.”); *see also* COMPENDIUM (THIRD) §§ 313.4(J), 906.4; *Eltra Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (finding the Copyright Office properly refused to register a typeface design and noting, “typeface has never been considered entitled to copyright”).

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For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Work. The Board now refers this matter to the Registration Policy and Practice division for registration of the Work, provided that all other application requirements are satisfied.¹

No response to this letter is needed.



U.S. Copyright Office Review Board

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
Education

Kimberley A. Isbell, Deputy Director of Policy and
International Affairs

¹ The Office previously identified two substantive formal and legal issues which could prevent registration. Refusal of First Request for Reconsideration from U.S. Copyright Office to David M. Given, Phillips, Erlewine, Given & Carlin LLP at 3 (July 12, 2019). The first issue related to the ownership of the Work. Decay Music resolved this issue in its second request for reconsideration, which confirmed that the contribution of Winston Smith, who was originally named as an author of the Work, was prepared as a work made for hire for Decay Music. Letter from David M. Given to U.S. Copyright Office at 2 (Oct. 11, 2019). Therefore, the application should be amended to replace Smith's name with "Decay Music" in the Author field, and the work made for hire box should be checked "yes." See COMPENDIUM (THIRD) § 614.1(B) ("When completing an application the employer or the party that ordered or commissioned the work should be named as the author (rather than the individual who actually created the work)."). The second issue concerns copyright notice. In the application, Decay Music states that the Work was created and published in 1980. For works first published on or before March 1, 1989, the effective date of the Berne Convention Implementation Act of 1988, a valid copyright notice must be placed on publicly distributed copies. See 17 U.S.C. §§ 401, 405(a). The Board's decision is made assuming this issue can be resolved.