



United States Copyright Office

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September 20, 2017

Richard E. Anderson, Esq.
2901 Ridgelake Dr.
Suite 105
Metairie, LA 70002

Re: Second Request for Reconsideration for Refusal to Register Dieudonne Enterprises Inc.; Correspondence ID: 1-21JEF4T; SR#: 1-3240906361

Dear Mr. Anderson:

The Review Board of the United States Copyright Office (“Board”) has considered Dieudonne Enterprises Inc.’s (“Dieudonne’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled Dieudonne Enterprises Inc. (“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 stylized letters “D,” in black and reversed, and “E,” in red and missing part of the vertical line that would comprise an “E” above the words “DIEUDONNE” in red and “ENTERPRISES” in black. There is a slight reflective shadow below the D and E.

The Work is depicted as follows:



DIEUDONNE ENTERPRISES

II. ADMINISTRATIVE RECORD

On March 24, 2016, Dieudonne filed an application to register a copyright claim in two-dimensional art for the Work. In a June 16, 2016 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Annette Coakley, Registration Specialist, to Richard E. Anderson 1 (June 16, 2016).

In a letter dated September 13, 2016, Dieudonne requested that the Office reconsider its initial refusal to register the Work. Letter from Richard E. Anderson, to U.S. Copyright Office (Sept. 13, 2016) (“First Request”). Dieudonne stated:

[W]hile none of the individual elements of the [Work]—basic geometric shapes, words such as the names, or mere variations of typographic ornamentation, lettering, or coloring may qualify for copyright protection, the distinctive arrangement and layout of those elements in the [Work], when taken as a ‘whole’ can entitle the [Work] to protection under the Copyright Act as a graphic work.

Id. at 2. After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work “does not contain a sufficient amount of original and creative authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, to Richard E. Anderson 1 (Feb. 17, 2017).

In a letter dated May 15, 2017, Dieudonne 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 Richard E. Anderson, to U.S. Copyright Office (Sept. 15, 2017) (“Second Request”). Dieudonne reiterated its argument in the First Request and offered another, unrelated registration for “Car Credit City logo” (VAu000635117) as an example of a work that “contain[ed] a sufficient amount of creative expression to sustain a claim in copyright” and asserted that the Office should register the Work because it allegedly exhibits at least as much creative expression. *Id.* at 1-2.

III. DISCUSSION

A. *The Legal Framework – Originality*

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. It further found that there can be no copyright in a

work in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 359.

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act and described in the *Feist* decision. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering, or 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”). 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. 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 (D.C. Cir. 1989).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. For example, the United States District Court for the Southern District of New York upheld the Copyright Office’s refusal to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements.” *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). Likewise, the Ninth Circuit has held that a glass sculpture of a jellyfish consisting of clear glass, an oblong shroud, bright colors, vertical orientation, and the stereotypical jellyfish form did not merit copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The language in *Satava* is particularly instructive:

It is true, of course, that a combination of unprotectable elements may qualify for copyright protection. But it is not true that any combination of unprotectable elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that 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.

Id. (internal citations omitted).

B. Analysis of the Work

After careful examination, the Board finds that the Work fails to satisfy the requirement of creative authorship and thus is not copyrightable.

Here, Dieudonne admits that “none of the individual elements of the work . . . qualify for copyright protection.” Second Request at 1. The Board agrees, as “[w]ords and short phrases . . .

[and] mere variations of typographic ornamentation, lettering or coloring” are all ineligible for copyright protection. 37 C.F.R. § 202.1(a), (e). Instead, Dieudonne offers that the “distinctive arrangement and layout of those elements in the work, when taken as a ‘whole’ can entitle the work to [copyright] protection” Second Request at 1. While the Board concurs with Dieudonne that copyright law mandates a review of the Work as a whole, and that the combination of unprotectable elements most certainly can render a work copyrightable, the Work at issue here simply does not rise to the level of creativity required by the Copyright Act. Text alone can be used in a creative way to create a graphic work, but this text consists merely of two alphabet letters and a corporate name. *See Coach*, 386 F. Supp. 2d at 496 (holding that a design consisting of an arrangement of the company’s initial was not copyrightable). The two colors—black and red—do not materially add to the Work’s creativity. The only element of the Work that does not involve text or typography is the slight reflective shadow under the stylized “D” and “E.” This barely perceptible element does not “possess more than a *de minimis* quantum of creativity.” *Feist*, 499 U.S. at 345. In a prior case involving adding visual effects such as “relief, shadowing, and shading, labeling, and callouts” to an existing work, the Fourth Circuit agreed with the Copyright Office that such additions did not give rise to a copyrightable work and that such elements “fall within the narrow category of works that lack even a minimum level of creativity.” *Darden v. Peters*, 488 F.3d 277, 282, 287 (4th Cir. 2007). Overall, reviewing the Work in its entirety, including the text, coloration, and reflection, the Board finds that it does not meet the threshold for copyright protection.

Dieudonne also asserts that, because the Office registered a different work, “Car Credit City logo,” the Office also should register the Work at issue here. This argument is unpersuasive. Each claim to copyright is examined on its own merits, with the Office applying uniform standards of copyrightability throughout the examination process. Because copyrightability involves a mixed question of law and fact, differences between any two works can lead to different results. Thus, the fact that an individual registration specialist might have previously registered an allegedly comparable work does not require the Board to reverse the denial of a work that it finds lacks sufficient creative authorship. *See* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 309.3 (3d ed. 2014) (“A decision to register a particular work has no precedential value and is not binding upon the Office when it examines any other application.”); *see also Homer Laughlin China Co. v. Oman*, No. 90-3160, 1991 WL 154540, at *2 (D.D.C. July 30, 1991) (noting that the court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”); *accord Coach*, 386 F. Supp.2d at 499 (indicating the Office “does not compare works that have gone through the registration process”).¹

¹ Additionally, in light of Dieudonne’s claim, the Board is referring the “Car Credit City logo” registration to the Copyright Office’s Registration Program for reexamination.

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.

BY: 
Catherine Rowland
Copyright Office Review Board