



December 9, 2022

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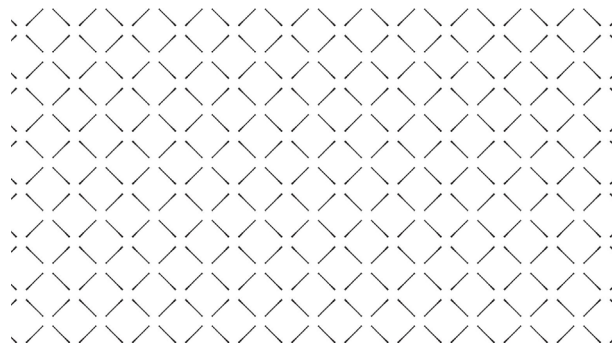
**Re: Second Request for Reconsideration for Refusal to Register Galderma Graphic Design (April 2021) (SR # 1-10388360541; Correspondence ID: 1-4YUY2A2)**

Dear Ms. Miller:

The Review Board of the United States Copyright Office (“Board”) has considered Galderma Holding SA’s (“Galderma”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional claim in the work titled “Galderma Graphic Design (April 2021)” (“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 a two-dimensional graphic design consisting of evenly spaced grey diagonal lines that create a diamond pattern, on a white background.<sup>1</sup> The lines vary slightly in width and have symmetrical spaces between them. The work is as follows:



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<sup>1</sup> Galderma submitted three deposit copies with its application; one with a white background and two with blue backgrounds but described the work only as a “white background with a repeating pattern of grey diagonal lines.” Letter from Camille M. Miller to U.S. Copyright Office at 4 (Nov. 10, 2021). While the correspondence referenced “color” in the Work, Galderma did not address the blue background in any of its correspondence. Thus, the Office reviewed the graphic with the white background as the Work. Reproductions of the deposit copies with the blue background are included as Appendix A.

## II. ADMINISTRATIVE RECORD

On April 21, 2021, Galderma filed an application to register a copyright claim in the Work. In a May 11, 2021 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Camille M. Miller at 1 (May 11, 2021).

In a letter dated May 19, 2021, Galderma requested that the Office reconsider its initial refusal to register the Work. Letter from Camille M. Miller to U.S. Copyright Office (May 19, 2021) (“First Request”). 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 creativity to warrant registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Camille M. Miller at 2 (Sept. 2, 2021).

In a letter dated November 10, 2021, Galderma 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 Camille M. Miller to U.S. Copyright Office (Nov. 10, 2021) (“Second Request”). In that letter, Galderma argued that the Work is sufficiently creative to warrant protection because “[t]he impressions of diamond shapes created by the intermittent spacing in the design is wholly unique and involves creativity.” *Id.* at 4. Galderma further argued that “the combination of the elements , [sic] colors and styles comprising the Work are in a distinctive manner indicating some ingenuity . . . and, thus . . . is sufficient to support a finding of creativity.” *Id.* (internal quotation marks omitted).

## 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 originality necessary to sustain a claim to copyright.

A work may be registered for copyright if it qualifies as an “original work[] of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). In the copyright 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). The Supreme Court has explained that works need only “some minimal degree of creativity” to qualify for copyright protection. *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 346, 359.

The Office’s regulations and practices implement the requirement of originality set forth in the Copyright Act and described in the *Feist* decision. As set out in the Office’s regulations, copyright does not protect “[w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering or coloring.” 37 C.F.R. § 202.1(a). Accordingly, when a work only consists of unprotectable elements, it must combine or arrange those elements in a sufficiently creative way to meet the requirements of the statute. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (stating that the combination of

unprotectable elements is protected “only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship”).

Neither the Work’s individual elements nor the Work as a whole are sufficiently creative to be copyrightable. First, the individual elements—short, grey lines and spaces—are familiar designs that are not protectable. 37 C.F.R. § 202.1(a) (identifying familiar symbols and designs as not subject to copyright); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (“The Copyright Act does not protect common geometric shapes . . . including . . . straight or curved lines . . .”). Even viewed as repeating diamonds, the individual elements are common geometric shapes that are not protectable. *See id.* (“The Copyright Act does not protect common geometric shapes . . . including . . . diamonds . . .”). Neither the slight variation in line width nor the small indents that make the lines appear almost porous when viewed up close are sufficiently creative variations to make the otherwise unprotectable lines protectable. *Id.* § 906.2 (“[T]he copyright law does not protect mere variations on a familiar symbol or design.”).

Second, the Work as a whole is not sufficiently creative to be protectable. While it is true that combinations of unprotectable elements such as lines or diamonds can be protectable in some situations, the protection hinges on whether those elements “are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava*, 323 F.3d at 811; *see also* COMPENDIUM (THIRD) § 906.1 (The Office generally “will not register a work that merely consists of common geometric shapes unless the author’s use of those shapes results in a work that, as a whole, is sufficiently creative.”). Here, the selection and arrangement of the individual elements do not meet that threshold. The lines are arranged symmetrically, each line following evenly-spaced diagonal slopes, which typically does not denote adequate creativity. *See* COMPENDIUM (THIRD) § 312.2 (noting that “arranging geometric shapes in a standard or symmetrical manner” is an example of a compilation of elements that may not warrant copyright protection). Similarly, the resulting pattern is a mere variation of a common lattice pattern that is insufficiently creative to warrant registration. *See id.* § 313.4(J) (“[T]he Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations . . . [including] . . . [c]ommon patterns, such as standard chevron, polka dot, checkerboard, or houndstooth designs.”). Overall, the Work lacks sufficient originality because it is a “display of a few geometric shapes in a preordained or obvious arrangement.” *Id.* § 906.1.

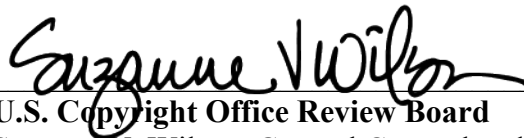
Galderma suggests that the Work should be registered because viewers may have different impressions of the Work and the Work may appear differently from close up and from afar. *See* Second Request at 4. The Office, however, does not consider the design’s visual effect or the impression the Work may have on others. COMPENDIUM (THIRD) § 310.3 (“The symbolic meaning or impression of a work is irrelevant to [the copyrightability] determination.”); *id.* § 310.5 (“[T]he fact that creative thought may take place in the mind of the person who created a work (or a person viewing or listening to the work) has no bearing on the issue of originality . . .”); *see also* *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

Lastly, Galderma suggests that the Work should be registered “[g]iven the importance of this work to the applicant” and its prominent role on the applicant’s websites and other

marketing and business materials and property. Second Request at 5. The Office, however, does not consider the Work's commercial value in determining whether it contains sufficient original authorship. COMPENDIUM (THIRD) § 310.10. While these factors may be relevant to other intellectual property protections, such as trademark, they are not relevant to the question of copyrightability.

#### 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.



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**U.S. Copyright Office Review Board**

Suzanne V. Wilson, General Counsel and

Associate Register of Copyrights

Maria Strong, Associate Register of

Copyrights and Director of Policy and International  
Affairs

Jordana Rubel, Assistant General Counsel

**APPENDIX A**

