



April 14, 2022

Peter R. Detorre, Esq.
Emerson, Thomson & Bennett, LLC
1914 Akron-Peninsula Road
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Re: Second Request for Reconsideration for Refusal to Register Hexagon Shaped Logo (Correspondence ID: 1-4MNB8KH; SR # 1-8882877581)

Dear Mr. Detorre:

The Review Board of the United States Copyright Office (“Board”) has considered Mazzella Lifting Technologies, Inc.’s (“Mazzella”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Hexagon Shaped 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 is a two-dimensional logo consisting of shades of gray and white. The design consists of a 3-D perspective of three sides of a cube, each rendered in a different shade of grey, surrounded by a thin, white hexagonal-shaped band, which is further surrounded by three symmetrically positioned chevrons, each likewise rendered in a different shade of grey. A small, white triangle has been notched out of the outer edges of the chevrons, creating an arrow shape between each chevron. The Work is as follows:



While not every combination or arrangement of common or standard design elements will be entitled to copyright registration, some such combinations will contain sufficient creativity with respect to how they are juxtaposed or arranged to meet the test for protectability. *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.*; *see also Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989). 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. 2021) (“COMPENDIUM (THIRD)”); *see also Atari*, 888 F.2d at 883 (“[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.”). So the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but it would not register a picture consisting merely of a purple background and evenly spaced white circles. COMPENDIUM (THIRD) § 906.1 (Office would register the wrapping paper because the design “goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement”).

After carefully examining the Work and applying the legal standard discussed above, the Board finds that the Work satisfies the requirement of creative authorship necessary to sustain a claim to copyright. While each of the Work’s individual elements—chevrons, arrows, a square, a hexagon, and coloring—are not copyrightable, *see* 37 C.F.R. § 202.1(a) (“familiar symbols and designs” not subject to copyright); COMPENDIUM (THIRD) §§ 313.4(J), 313.4(K), 906.1, the Work’s selection and combination of its individual elements displays sufficient creativity to meet the statutory requirements for copyright 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.”). Specifically, the overall combination of the stylized shading of the square and chevrons, combined with the white hexagonal-shaped band and arrow designs, contains the modicum of creativity required for copyrightability. *See, e.g., Hoberman Designs, Inc. v. Gloworks Imports, Inc.*, No. 14-cv-6743 DSF (SHX), 2015 WL 10015261, at *4 (C.D. Ca. 2015) (holding that the use of common “geometric shapes like squares, triangles, and trapezoids . . . does not preclude copyright protection”); *Nicholls v. Tufenkian Imp./Exp. Ventures, Inc.*, No. 04-CV-2110 WHP, 2004 WL 1399187, at *1–*2 (S.D.N.Y. June 23, 2004) (denying defendant’s motion to dismiss on grounds 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).

To be clear, however, the Board’s decision is based on the low standard for copyrightability articulated in *Feist*. The decision relates only to the Work as a whole (*i.e.*, the

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specific combination of colors and shapes) and does not extend individually to any of the standard and common elements depicted in the Work, such as chevrons, arrows, a square, a hexagon, and grey coloring. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] . . . [w]ords and short phrases [and] familiar symbols or designs”); *see also* COMPENDIUM (THIRD) §§ 313.4(J), 906.1; 4 NIMMER ON COPYRIGHT § 13.03[A][4] (2018) (discussing “thin” copyrights).

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.

No response to this letter is needed.



U.S. Copyright Office Review Board
Shira Perlmutter, Register of Copyrights and Director,
U.S. Copyright Office
Suzanne V. Wilson, Associate Register of Copyrights and
General Counsel
Kimberley Isbell, Deputy Director of Policy and
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