



United States Copyright Office

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January 31, 2018

Buchanan Ingersoll & Rooney PC
Attn: Bryce J. Maynard
P.O. Box 1404
Alexandria, VA 22313-1404

Re: Second Request for Reconsideration of Refusal to Register “LIV Logo”; Service Request #: 1-3769977371; Correspondence ID: 1-2AJUP7K

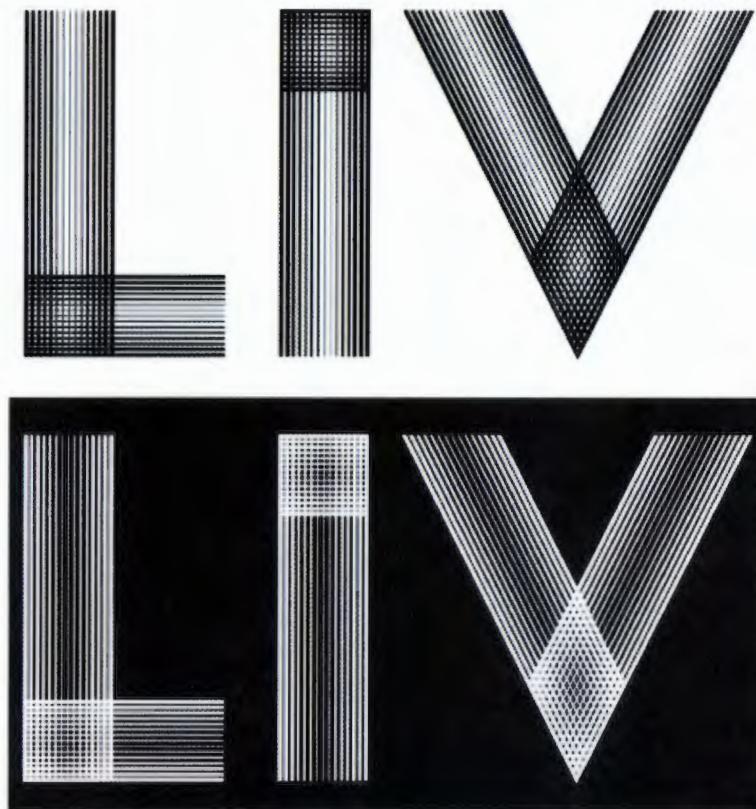
Dear Mr. Maynard:

The Review Board of the United States Copyright Office (“Board”) has considered JS IP LLC’s (“JS IP”) second request for reconsideration of the Registration Program’s refusal to register a 2-D artwork claim in the work titled “LIV Logo” (“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 graphic logo composed of two stacked iterations of the letters “LIV.” Each letter is comprised of a series of black and white lines of various widths and shading, which intersect at one point on each letter to form a crosshatch pattern. On the top half of the logo, “LIV” appears against a white background, while on the bottom half of the logo “LIV” appears against a black background.

The Work is depicted as follows:



II. ADMINISTRATIVE RECORD

On June 29, 2016, JS IP filed an application to register a copyright claim in two-dimensional art for the Work. In a November 8, 2016 letter, a Copyright Office registration specialist refused to register the claim, finding that it lacked sufficient creative authorship to support a copyright claim, and noting that “[c]opyright protection does not extend to names, titles or short phrases, nor to fonts or lettering” or to “minor alterations to familiar symbols.” Letter from Larisa Pastuchiv, Registration Specialist, to Natalie Ward (Nov. 8, 2016).

In a letter dated February 8, 2017, JS IP requested that the Office reconsider its initial refusal to register the Work. Letter from Bryce J. Maynard, to U.S. Copyright Office (Feb. 8, 2017) (“First Request”). JS IP stated that “its work contains significantly more than the minimal level of ‘creative spark’ necessary to qualify for copyright protection.” *Id.* at 2. JS IP further claimed that while the term LIV itself would not qualify for protection, the Work at issue consists of a “unique and original combination of black and white lines which are arranged into the shapes of the letters L, I, and V.” *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 artistic or graphic authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, to Bryce J. Maynard (Apr. 27, 2017). The Office stated that “the elements [of the work] are not combined in any way that differentiates them from their basic shape and design components,” and that “[t]he simple arrangement of these three letters in a common color scheme does not demonstrate sufficient creativity to support a claim of copyright. *Id.* at 3.

In a letter dated July 27, 2017, JS IP 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 Bryce J. Maynard, to U.S. Copyright Office (July 27, 2017) (“Second Request”). JS IP reiterated its argument that the Office was “applying far too high a bar for the level of creativity required to register a work.” *Id.* at 1. JS IP also noted that the arrangement of lines which comprise the letters “are combined [in] a way that clearly differentiates them from their basic shape and design components.” *Id.* at 2. Finally, JS IP argued that “[t]he mere fact that the white lines and shading making up the LIV Logo are in the shape of the letters L, I, and V does not mean that they are mere typography.” *Id.*

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).

Similarly, while the Office may register a work that consists of geometric shapes, for such a work to be registrable, the “author’s use of those shapes [must] result[] 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. 2017) (“COMPENDIUM (THIRD)”; *see also Atari Games Corp.*, 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.”). Thus, 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 would not register a picture consisting merely of a purple background and evenly-spaced white circles. COMPENDIUM (THIRD) § 906.1.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. They are not influenced by the attractiveness of a design, the espoused intentions of the author, the design’s uniqueness, its visual effect or appearance, its symbolism, the time and effort it took to create, or its commercial success in the marketplace. *See* 17 U.S.C. § 102(b); *Bleistein v. Donaldson*, 188 U.S. 239 (1903). The fact that a work consists of a unique or distinctive shape or style for purposes of aesthetic appeal does not necessarily mean that the work, as a whole, constitutes a copyrightable work of art.

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.

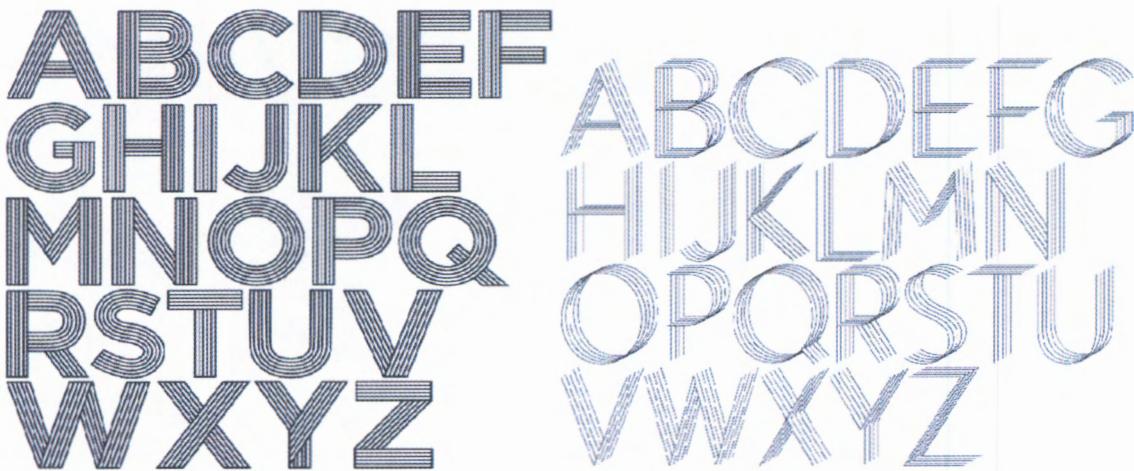
Here, it is undisputed that “the term ‘LIV’ itself would not qualify for protection.” First Request at 2. Indeed, the Work’s text consists of the same three-letter word repeated twice. *See Coach*, 386 F. Supp. 2d at 496 (holding that a design consisting of an arrangement of the company’s initial was not copyrightable). “Words 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); *see CMM Cable Rep., Inc. v. Ocean Coast Properties, Inc.*, 97 F.3d 1504,

1519 (1st Cir. 1996) (citing the Office’s regulation and noting, “[i]t is axiomatic that copyright law denies protection to ‘fragmentary words and phrases’”).

JS IP instead asserts that “the work at issue is not merely the word LIV, but a unique and original combination of black and white lines which are arranged into the shapes of the letters L, I, and V.” First Request at 2. While copyright law mandates review of the Work as a whole, and JS IP is correct that the combination of unprotectable elements, if sufficiently creative, can render a work copyrightable, *see Satava*, 323 F.3d at 811, the Work here simply does not rise to the level of creativity required by the Copyright Act.

The stylized letters L, I, and V, made up of intersecting black and white lines, are trivial variations on a basic building block of expression that cannot be copyrighted “regardless of how novel and creative the shape and form of the typeface characters may be.” COMPENDIUM (THIRD) § 906.4; *see 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”). While JS IP is correct that an “original and distinctive” “arrangement of elements” used to represent an entire letter may be registrable, Second Request at 2, this particular arrangement of elements representing the individual letters lacks “more than a de minimis quantum of creativity.” *Feist*, 499 U.S. at 363. *See also John Muller & Co, Inc. v. N.Y. Arrows Soccer Team*, 802 F.2d 989 (8th Cir. 1986) (affirming a refusal to register a logo consisting of four angled lines which formed an arrow with the word “Arrow” written in cursive script below it as insufficiently creative); COMPENDIUM (THIRD) § 906.4 (noting that original pictorial art that forms the body of an entire letter may be registrable, but listing typical examples of this as more elaborate and distinctive works of art such as “the representation of an oak tree, a rose, or a giraffe that is depicted in the shape of a particular letter.”).

Specifically, the Board notes that the arrangement of intersecting lines to create individual letters appears to be common, as several publicly available typefaces utilize this style, and finds it does not materially add to the Work’s creativity.¹



¹The following sample typefaces are reproduced from these respective fonts found online: “Kent Swecker Radial 2012”; “Joerg Schmitt Fansy 2013”; and “Max Little Olio Inline 2012”. TYPE DESIGN INFORMATION PAGE, <http://luc.devroye.org/fonts.html> (last visited Jan. 16, 2018).



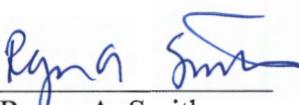
Thus, the artistry involved in the lettering of the Work is not sufficiently creative to secure copyright protection. *See L. Batlin & Sons Inc., v. Synder*, 536 F.2d 486, 492 (2d Cir.1976) (“[t]o extend copyrightability to minuscule variations [of familiar symbols] would simply put a weapon for harassment in the hands of mischievous copiers intent on appropriating and monopolizing public domain work.”).

The only additional element of the Work is the variation in the coloring of the background. This combination of black and white backgrounds is similarly not enough to demonstrate sufficient creativity, as “[t]he standard of originality is low, but it does exist.” *Feist*, 499 U.S. at 362. In a prior case involving adding visual effects such as “relief, shadowing, and shading, labeling, and call-outs” 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 arrangement of elements that make up the text as well as the coloration, the Board finds that it does not meet the threshold for copyright protection.

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: 
Regan A. Smith
Copyright Office Review Board