



**United States Copyright Office**

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June 30, 2016

Mark A. Fowler  
Satterlee Stephens Burke & Burke LLP  
230 Park Avenue  
New York, NY 10169-0079

**Re: Second Request for Reconsideration for Refusal to Register Mice Mischief – Math Facts in Action; Correspondence ID: 1-WIXZ1H**

Dear Mr. Fowler:

The Review Board of the United States Copyright Office (the “Board”) has considered Caroline Stills’s second request for reconsideration of the Registration Program’s refusal to register a literary copyright claim in the work titled “Mice Mischief – Math Facts in Action” (the “Work”). The Work consists of the text (but not the illustrations) of a children’s book, reproduced in its entirety in Appendix A.

After reviewing the application, the deposit copy, and the relevant correspondence in the case, along with the arguments in the second request for reconsideration, the Board finds that the Work exhibits copyrightable authorship and thus may be registered.

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 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.

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work satisfies the requirement of creative authorship necessary to sustain a claim to copyright. Specifically, as Ms. Stills points out, the Work describes “activities no mouse actually performs,” (*e.g.*, somersaulting, scrubbing, dusting) and the textual phrases expressing these activities constitute “an imaginative leap.” Letter from Mark A. Fowler, Satterlee Stephens Burke & Burke LLP, to U.S. Copyright Office (Mar. 4, 2015). Furthermore, the Board notes that while the

number of mice performing each activity is dictated by a common mathematical equation (the number of mice always adds up to 10), the selection of activities and the order in which they are performed is sufficiently creative (e.g., "8 mice cook. 2 mice juggle.") to qualify the Work as an original work of authorship.

No response to this letter is necessary.

Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.

BY:



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Chris Weston  
Copyright Office Review Board

**APPENDIX A**

10 mice wake.

9 mice tidy.

1 mouse somersaults.

$$9+1=10$$

8 mice cook.

2 mice juggle.

$$8+2=10$$

7 mice wash.

3 mice spin.

$$7+3=10$$

6 mice hang.

4 mice balance.

$$6+4=10$$

5 mice fold.

5 mice clown.

$$5+5=10$$

4 mice scrub.

6 mice dive.

$$4+6=10$$

3 mice mop.

7 mice totter.

$$3+7=10$$

2 mice dust.

8 mice build.

$$2+8=10$$

1 mouse polishes.

9 mice swing.

$$1+9=10$$

10 mice play.