



United States Copyright Office

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December 4, 2018

Gavin J. Milczarek-Desai, Esq.
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One South Church Avenue, Suite 1700
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United States

Re: Second Request for Reconsideration for Refusal to Register Motion Induced Tetrahedral Derivative; Correspondence ID: 1-2YIB3WA; SR 1-3872480071

Dear Gavin Milczarek-Desai:

The Review Board of the United States Copyright Office (“Board”) has considered Gerald McCarty’s second request for reconsideration of the Registration Program’s refusal to register a sculpture claim in the work titled “Motion Induced Tetrahedral Derivative” (“Work”). The Work consists of two circular wooden platforms, an arch of tetrahedrons, and two trapezoidal boxes. The outer platform has semi-circle holes around the inner ring of the platform, and the inner platform has circular holes evenly distributed over the entire surface. The tetrahedral arch is attached to two boxes that flank opposite sides of the wooden bases. The Work is depicted below.



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.

Generally speaking, copyright law does not protect basic geometric shapes. *See* 37 C.F.R. § 202.1(a); COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“COMPENDIUM (THIRD)”). Still, works that combine geometric shapes and/or other nonprotectable elements into a larger design may be registered if the overall design is sufficiently creative. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991) (finding the Copyright Act “implies that some ‘ways’ [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not”); *Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989) (“[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.”). For example, in *Runstadler Studios, Inc. v. MCM Ltd. Partnership*, the court held that that the “Spiral Motion” sculpture, comprised of 39 identical, clear-glass rectangles forming a 405° arc, “possesse[d] the required creativity to qualify as an original work of authorship.” 768 F. Supp. 1292, 1294-96 (N.D. Ill. 1991) (finding also that the “choice of location, orientation, and dimensions of the glass panes, and the degree of arc of the spiral, show[ed] far more than a trivial amount of intellectual labor and artistic expression”). Similarly, the *Compendium* explains that the Copyright Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars of various colors arranged in an asymmetrical design, but would not register a picture consisting merely of a purple background and symmetrically placed white circles that included no other elements (e.g., additional three-dimensional shapes). COMPENDIUM (THIRD) § 906.1.

Like the protectable examples above, the Work combines multiple geometric shapes—triangles, tetrahedrons, trapezoids, circles, and semi-circles—into a design that illustrates creative choice in the positioning of shapes in the overall Work. Under *Feist*, copyright protection is available so long as there is at least “some creative spark, ‘no matter how crude, humble or obvious’ it might be.” *Feist*, 499 U.S. at 345 (“[T]he requisite level of creativity is extremely low; even a slight amount will suffice.”) (internal citations omitted). Considered as a whole, the Work meets the low threshold required for copyright protection. That said, the overall design of the Work is still quite simple, predominated by its standard arrangement of the tetrahedron arch, trapezoidal boxes, and round platforms with the minimal addition of evenly spaced, equally sized circles and semi-circles. Accordingly, the resulting protection is thin. *See Beaudin v. Ben and Jerry’s Homemade, Inc.*, 95 F.3d 1, 2 (2d Cir. 1996) (noting the “thin” copyright protection afforded to a design where the “quantum of originality is slight”); *see also Ets-Hokin v. Skyy Spirits, Inc.*, 323 F.3d 763, 766 (9th Cir. 2003) (concluding that “thin” copyright “protects against only virtually identical copying”) (citations omitted).

Finally, copyright cannot extend to “any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described,

explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). To the extent Mr. McCarty seeks to register the underlying optical, motional, or physical principles of the Work—such as the idea of a “motion induced” sculpture—these principles are not protectable as part of the registration for the Work.

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

Karyn A. Temple, Acting Register of Copyrights
and Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
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