



United States Copyright Office

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October 9, 2020

Stephen Jensen, Esq.
Northwind IP Law, S.C.
100 W. Lawrence Street, Suite 320
Appleton, WI 54911

Re: Second Request for Reconsideration for Refusal to Register “Northwind logos with boat”; Correspondence ID: 1-3MIT68F; SR 1-6278787931

Dear Mr. Jensen:

The Review Board of the United States Copyright Office (“Board”) has considered Northwind IP Law, S.C.’s (“Northwind’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Northwind logos with boat” (“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 consists of two red curved triangles placed above a blue curved polygon with a curved, white eight-point star positioned within the right curved triangle. The Work is as follows:



The Board finds that the Work contains a sufficient, although minimal, amount of original and creative two-dimensional authorship. Our decision to register the Work is based on the low standard for copyrightability articulated in *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340 (1991).

While common shapes alone are not copyrightable, 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. 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.* at 358; *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.” 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 (“The [Copyright Office] will register this claim because it . . . goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement.”).

Applying the above standards, the Board finds that the Work’s selection and combination of colors and shapes creates a sufficient, although minimal, amount of original and creative two-dimensional authorship to support copyright protection. Specifically, the Work includes two curved triangle shapes side-by-side, placed above a curved polygon shape to create the overall shape of a sailboat, with an eight-point star placed in the middle of the right sail that curves to match the outside curved angle of the sail it is placed within. The overall combination of these elements demonstrates the modicum of creativity required for copyrightability. *See Prince Grp., Inc. v. MTS Products*, 967 F. Supp. 121, 125 (S.D.N.Y. 1997) (holding a star and cloud design sufficiently creative stating, “although a star or cloud alone may not on their own be copyrightable, the design as it is composed is sufficiently creative.”). It is important to note that the Board’s decision is based on the low standard for copyrightability and relates only to the specific combination of the Work as a whole, which consists of: the sails, hull, and decorative sail, made up of specific shapes and angles; the specific curved eight-point star; the modified spacing between the three shapes; and the specific colors. All of those elements combine to create a protectable graphic display of a sail boat. The finding of copyrightability does *not*, however, extend individually to any of the standard and common elements contained in the Work, such as polygon shapes, triangle shapes, star shapes, sailboat images, or any variations thereof. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] . . . familiar symbols or designs.”); *see also* COMPENDIUM (THIRD) §§ 313.4(J), 906.4.

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

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

Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
Education

Kimberley Isbell, Deputy Director of Policy and
International Affairs