



United States Copyright Office

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**Re: Second Request for Reconsideration for Refusal to Register Outline Map;
Correspondence ID: 1-3CZU68W; SR # 1-5808100951**

Dear Ms. Wilson:

The Review Board of the United States Copyright Office (“Board”) has considered Great Lakes Proud, LLC’s (“Great Lakes Proud’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork and map claims in the work titled “Outline Map” (“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 WORKS

The Work is a two-dimensional graphic map of the Great Lakes—Lake Superior, Lake Michigan, Lake Huron, Lake Erie, and Lake Ontario. The lakes are dark blue against a white background. The white background contains a clear representation of most of the state of Michigan, along with portions of Wisconsin and the Canadian province of Ontario. The Work is as follows:



II. ADMINISTRATIVE RECORD

On September 13, 2017, Great Lakes Proud filed an application to register a copyright claim in the Work. In a March 16, 2018, letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Examiner Stoner, Registration Specialist, to Rebecca L. Wilson, The Dobrusin Law Firm, PC, at 1 (March 16, 2018).

In a letter dated June 15, 2018, Great Lakes Proud requested that the Office reconsider its initial refusal to register the Work, arguing that it was sufficiently creative because it was “drawn by hand without tracing or views of existing materials.” Letter from Rebecca L. Wilson, The Dobrusin Law Firm, PC, to U.S. Copyright Office (June 15, 2018) (“First Request”). 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 authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, to Rebecca Wilson, The Dobrusin Law Firm, PC, at 1 (January 11, 2019). The Office noted that the Work’s individual elements—“[t]he Great Lakes as well as the States and Province”—are all common and familiar shapes that are uncopyrightable. *Id.* at 3. When viewing the Work as a whole, the Office found the “selection, coordination, and arrangement of the component elements to be insufficiently creative,” consisting of an obvious and inevitable “factual depiction of cartographic features.” *Id.*

In a letter dated April 11, 2019, Great Lakes Proud 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 Rebecca L. Wilson, The Dobrusin Law Firm, PC, to U.S. Copyright Office (April 11, 2019) (“Second Request”). Great Lakes Proud argued that there was “nothing mechanical or routine” about the Work and there “exist differentiations, and obvious details of creativity and innovative thought involved.” *Id.* at 2. For example, Great Lakes Proud again noted that the Work was drawn by hand, and the author’s “unique personality [is expressed] in the direction of lines, the high and lows of the bumps and strokes in the drawing, [and] the lines and the way the points are met.” *Id.* at 3-4.

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).

B. Analysis of the Work

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

While it is true that maps displaying the requisite amount of creativity may be afforded copyright protection, *see* 17 U.S.C. §§ 101, 102, the Work does not rise to that level. For a work to be eligible for copyright protection, it must “possess more than a *de minimis* quantum of creativity.” *Feist*, 499 U.S. at 363. Neither the Work’s individual elements nor the compilation of those elements meet this low threshold. The Board finds that none of the Work’s constituent elements—blue outline maps of the five Great Lakes and a white background that shows clear portions of Michigan, Wisconsin, and Ontario—are all common and familiar uncopyrightable geographic shapes. The elements are accurate and recognizable depictions of the Great Lakes along with the adjacent U.S. states and Canadian province. As such, common and familiar shapes, or minor variations thereof, are not copyrightable. 37 C.F.R. § 202.1(a).

The Board recognizes that combinations of individually unprotectable components may be copyrightable, but only if those components are selected or combined in a “distinctive manner indicating some ingenuity.” *Atari Games Corp.*, 888 F.2d at 68. The Office will register the original selection, coordination, and/or arrangement of cartographic features in a map, such as roads, lakes, rivers, cities, or political or geographic boundaries. *See* COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 918.1 (3d ed. 2017) (“COMPENDIUM (THIRD)”). Here, though, the compilation of the Work’s elements is not sufficient to render the Work original. Instead, it is simply an outline map that consists of an accurate geographic depiction of the five Great Lakes and the surrounding land masses. There are no additional elements or features in the maps other than the outline of the lakes. Courts have found that “fundamental map outlines” such as “the general outline of the United States and state boundary lines” are in the public domain and not subject to copyright. *Christianson v. W. Publ’g Co.*, 53 F. Supp. 454, 455 (N.D. Cal. 1944), *aff’d*, 149 F.2d 202 (9th Cir. 1945); *see also Carter v. Haw. Transp. Co.*, 201 F. Supp. 301, 303 (D. Haw. 1961) (noting that the outline of the island of Hawaii is in the public domain and is not copyrightable); *Sawyer v. Crowell Publ’g Co.*, 46 F. Supp. 471, 474 (S.D.N.Y. 1942) (stating that continental outlines and latitudes and longitudes are in the public domain because “the sources from which they were taken are available to anyone”).

Great Lakes Proud urges that the Work is copyrightable, in part, because it is hand-drawn and independently created. This, however, conflates independent creation with creativity. Specifically, Great Lakes Proud asserts that, because the Work was “drawn by hand without tracing or views of existing materials,” First Request at 2, this “independent creation . . . express[es] . . . unique personality,” satisfying the creativity requirement. Second Request at 3. Great Lakes Proud states that the variations in “edges, lines, depictions, or strokes” due to “free form” independent drawing warrant copyright protection. *Id.* at 3. Independent creation and creativity are two separate prongs of the test for originality, *Feist* 499 U.S. at 345, and support for one element does not establish the other. Further, the fact that a work may be novel, distinctive, innovative, or even unique is irrelevant to the Board’s originality analysis. *See* COMPENDIUM (THIRD) § 310.1. The Board is unconvinced by Great Lakes Proud’s assertion that the Work’s “randomly drawn depiction, with all of the deviations, and interpretations” of the author’s hand is creative because “no two persons can draw it the same way,” Second Request at 4, or because “this particular depiction had never been done before.” First Request at 3. Instead, these characteristics are attributable to the Work being hand-drawn rather than to artistic choice.

Accordingly, the Board upholds, in light of the appropriate legal standards, the initial decision to refuse registration of the Work.

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.



U.S. Copyright Office Review Board

Karyn A. Temple, 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
Copyrights and Director, Public Information and
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