



**United States Copyright Office**

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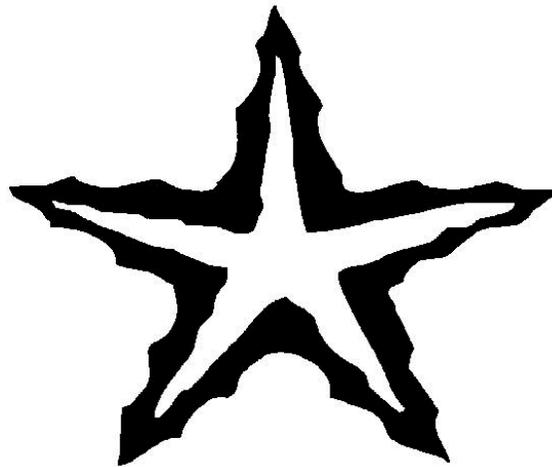
April 17, 2019

Brian J. Pangrle, Esq.  
Pangrle Patent, Brand + Design Law, P.C.  
3500 West Olive Avenue  
3rd Floor  
Burbank, CA 91505

**Re: Second Request for Reconsideration for Refusal to Register Sandy Starfish;  
Correspondence ID: 1-33721WK; SR 1-6236326931**

Dear Mr. Pangrle:

The Review Board of the United States Copyright Office (“Board”) has considered Passerine at Abaco Holdings, Ltd. and Discovery Land Company, LLC’s (“Claimants”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Sandy Starfish” (“Work”). The Work consists of a black star overlaid by a white star above the words “Baker’s Bay,” in black, in a variation of an Old English font. Both the black and white stars have asymmetrical and irregular edges. The Work is depicted below.



**Baker’s Bay**

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 thin copyrightable authorship and thus may be registered.

Copyright generally does not protect basic geometric shapes such as stars, words and short phrases, or typeface. 37 C.F.R. § 202.1(a), (e) (“[W]orks not subject to copyright [include] . . . [w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; [and] . . . [t]ypeface as typeface”); *see also* COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 313.3(E), 313.4(C), 313.4(J) (3d ed.). But 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 claim, though not every combination or arrangement will be sufficient to meet this test. *See Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 358 (1991). 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 (THIRD) § 906.1; *see also 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 *Prince Group, Inc. v. MTS Products*, a design described as “nothing more than stars and clouds” was still found to be copyrightable, as the court noted that “although a star or cloud alone may not on their own be copyrightable, the design as it is composed is sufficiently original.” 967 F. Supp. 121, 125 (S.D.N.Y. 1997). 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. 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.”).

The Board finds that the combination of elements in the Work constitutes a sufficient, although minimal, amount of original and creative authorship. Our decision to register the Work is based on the low standard for copyrightability articulated in *Feist*. But the Board agrees with the Claimants that, while the Work is copyrightable, the copyright in the Work is “thin.” Letter from Brian J. Pangrle to U.S. Copyright Office 2 (Sept. 28, 2018). Works with a thin copyright “reflect only scant creativity.” 4 Melville B. Nimmer & David Nimmer, NIMMER ON COPYRIGHT § 13.03 (2017). As one court noted, “[s]cantiness may exist because the work is composed of elements in the public domain, and it is only the organization of those elements that is protectable.” *Well-Made Toy Manufacturing Corp. v. Goffa International Corp.*, 210 F. Supp. 2d 147, 163 (E.D.N.Y. 2002). Thus, the Board’s decision relates only to the Work’s specific design, *i.e.*, this specific graphical depiction of a starfish plus the stylized wording, and does not extend to the Work’s individual elements or to any variations thereof.

Claimants possess only a “thin” copyright that protects against only virtually identical copying. *See Satava v. Lowry*, 323 F.3d 805, 812 (9th Cir. 2003).

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.



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**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  
Education