



Copyright Review Board
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

June 16, 2021

Chuck H. Jew, Esq.
236 West Portal Ave., Suite 533
San Francisco, CA 94127

**Re: Second Request for Reconsideration for Refusal to Register Segnut Logo
(Correspondence ID 1-41NFYP8; SR # 1-7822660061)**

Dear Mr. Jew:

The Review Board of the United States Copyright Office (“Board”) has considered Segnut Pty. Ltd.’s (“Segnut’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Segnut logo” (“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.

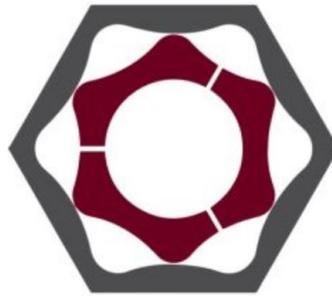
I. DESCRIPTION OF THE WORK

The Work is a two-dimensional design that includes the following elements:

- (1) A grey hexagon with curved inner sides. The curved inner sides make the impression of a hexalobular shape, which is a common, standardized feature for bolts and screws.¹
- (2) Rotated and centered within the grey hexagon is a maroon hexalobular shape trisected by three thin white lines. The center of the maroon shape is a circular cut out.

¹ See, e.g., *ISO 10664:2014 Hexalobular internal driving feature for bolts and screws*, INT’L ORG. FOR STANDARDIZATION (Oct. 2014), <https://www.iso.org/standard/63207.html> (specifying the shape and basic dimensions of the hexalobular internal driving feature for bolts and screws); Wikipedia, List of Screw Drives, at https://en.wikipedia.org/w/index.php?title=List_of_screw_drives&oldid=1023664011 (June 8, 2021). This shape is also depicted in a number of U.S. patent applications. See U.S. Patent No. 10,646,981 (filed May 12, 2020); U.S. Patent No. 10,935,067 (filed Mar. 11, 2019); U.S. Patent No. 9,790,978 (filed Nov. 12, 2015); U.S. Patent No. 9,638,226 (filed Aug. 12, 2015); U.S. Patent No. 10,065,293 (filed Apr. 7, 2014); U.S. Patent No. 9,695,860 (filed Oct. 9, 2013); U.S. Patent No. 3,584,667 (filed Mar. 21, 1967).

The Work is depicted as follows:



II. ADMINISTRATIVE RECORD

On June 25, 2019, Segnut filed an application to register a copyright claim in the Work. In a November 21, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Charles Jew, at 1 (Nov. 21, 2019).

In a letter dated February 11, 2020, Segnut requested that the Office reconsider its initial refusal to register the Work. Letter from Chuck H. Jew to U.S. Copyright Office (Feb. 11, 2020) (“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 artistic or graphic authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Charles Jew, at 1 (May 6, 2020).

In a letter dated August 6, 2020, Segnut 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 Chuck H. Jew to U.S. Copyright Office (Aug. 6, 2020) (“Second Request”). There, Segnut asserted that the Work “exhibits sufficient creative authorship for copyright protection,” pointing specifically to what it alleges are “numerous substantial creative features” like “gaps between the inner segments . . . various curves and fillets.” *Id.* at 2–3.

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. *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).

Similarly, while the Office may register a work that consists merely of geometric shapes, for such a work to be registrable, the “author’s use of those shapes [must] result[] in a work that, as a whole, is sufficiently creative.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“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.

B. Analysis of the Work

After careful examination and application of the legal standards discussed above, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

The Work, both through its individual elements and as a whole, fails to demonstrate copyrightable authorship. The Work consists of common shapes and designs (a hexagon, hexalobular shapes,² and lines) and two colors, none of which, by themselves, is protectable under U.S. copyright law. *See* 37 C.F.R. § 202.1(a) (identifying “familiar symbols or designs” and “mere variations of . . . coloring” as examples of works not subject to copyright); COMPENDIUM (THIRD) § 313.4(J) (noting that standard industry designs constitute familiar symbols and designs); *id.* § 906.1 (“[t]he Copyright Act does not protect common geometric shapes . . . including . . . straight or curved lines . . . hexagons . . .”); *id.* § 906.2 (“copyright law does not protect mere variations on a familiar symbol or design”); *LEGO A/S v. Best-Lock Constr. Toys, Inc.*, 404 F. Supp. 3d 583, 613 (D. Conn. 2019) (“a geometric shape alone is not eligible for copyright protection”). Simply put, the Work’s elements do not include any creativity sufficient to elevate them into the sphere of copyright protection.

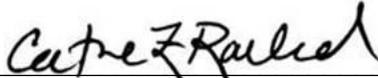
Additionally, the Work as a whole is not sufficiently creative. Copyright law protects combinations of uncopyrightable elements, but only if the elements are “numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava*, 323 F.3d at 811. Here, one shape is rotated, nested, and centered in the other. This positioning, however, does not establish sufficient creativity to meet the authorship requirement. *See* COMPENDIUM (THIRD) § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”); *John Muller & Co. Inc. v. N.Y. Arrows Soccer Team*, 802 F.2d 989 (8th Cir. 1986) (affirming that a logo consisting of four nested, angled lines and one word lacked the level of creativity needed for copyrightability). The inclusion of the trisecting white lines in the maroon shape also are *de minimis*, even when viewed in combination with the other elements.

In sum, the contributions are too few and their use too standard to constitute an original work of authorship. While “[t]he standard of originality is low, . . . it does exist,” and the Board concludes that this work lacks the modicum of creativity required for copyright protection. *Feist*, 499 U.S. at 362.

² Sometimes called a “star” head, the hexalobular shape is popular for its ability to provide more torque and less slippage than other screws. *See, e.g.*, Bossard, Hexalobular drive / Torx® Higher Torque Transfer, available at https://media.bossard.com/-/media/bossard-group/website/documents/brochures/brochures_products_english/hexalobular_drive_torx_en.pdf (last visited June 8, 2021); Ondrives.us, Star Socket Shoulder Screw, available at <https://www.ondrivesus.com/shoulder-screws/star-socket-head#1> (last visited June 8, 2021).

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
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