



United States Copyright Office

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June 8, 2020

Lindsay Capps, Esq.
Abercrombie & Fitch Trading Co.
6301 Fitch Path
New Albany, OH 43054

Re: Second Request for Reconsideration for Refusal to Register “Store Front Sculpture”; Correspondence ID: 1-3ELEATT; SR # 1-5117454240

Dear Ms. Capps:

The Review Board of the United States Copyright Office (“Board”) has considered Abercrombie & Fitch Trading Co.’s (“Abercrombie & Fitch’s”) second request for reconsideration of the Registration Program’s refusal to register a three-dimensional artwork claim in the work titled “Store Front Sculpture” (“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 is a three-dimensional sculpture consisting of the letters A and F, the ampersand symbol, and the abbreviation “Co.” encased in a backlit glass circle. The circle is offset and surrounded by a dark metal square. The work is as follows:





Generally speaking, copyright law does not protect basic geometric shapes or stylized letters. See 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] [w]ords and short phrases [and] familiar symbols or designs”); see also U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 313.3(E), 313.4(C), 313.4(J) (3d ed. 2017) (“COMPENDIUM (THIRD)”). Still, works that combine geometric shapes, letters, and 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 that 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 found that the choice of location, orientation, and dimensions of glass panes in the work showed “far more than a trivial amount of intellectual labor and artistic expression.” 768 F. Supp. 1292, 1294–96 (N.D. Ill. 1991). Similarly, in *Hoberman Designs, Inc. v. Gloworks Imports, Inc.*, the court held that the use of “geometric shapes like squares, triangles, and

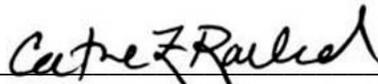
trapezoids . . . does not preclude copyright protection.” 2015 WL 10015261 at *4 (C.D. Ca. 2015).

Like the examples above, the Work combines multiple geometric shapes—a circle and a square—with letters, symbols, and lighting elements created from several different materials into a sculpture that exhibits creative choices in the selection, positioning, and arrangement of elements in the overall Work. As the Supreme Court has stated, 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 (internal citations omitted). Considered as a whole, the Work meets the low threshold required for copyright protection.

The Board’s decision, however, relates *only* to the Work as a whole, and does not extend individually to any of the standard and common elements depicted in the Work such as a circle, rectangle, “A,” “F,” “&,” or “Co.,” the choice of materials, or the lighting elements. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] [w]ords and short phrases [and] familiar symbols or designs”); *see also* COMPENDIUM (THIRD) §§ 313.3(E), 313.4(C), 313.4(J). Instead, the Board finds that only the overall combination of the elements into the specific Work is protectable.

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