



United States Copyright Office

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September 8, 2020

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Re: Second Request for Reconsideration for Refusal to Register C App Logo (SR 1-7245931779), Cute App Logo (SR 1-7245931743), G App Logo (SR 1-7245931549), Geek App Logo (SR 1-7245931492), H App Logo (SR 1-7222419371), Home App Logo (SR 1-7222032125), M App Logo (SR 1-7222031979), Mama App Logo (SR 1-7222031558), W App Logo (SR 1-7222031532), Wish App Logo (SR 1-7181088751); Corresp. ID 1-3MJI4FL

Dear Ms. Byczko and Ms. Harrell:

The Review Board of the United States Copyright Office (“Board”) has considered ContextLogic Inc.’s (“ContextLogic’s”) second request for reconsideration of the Registration Program’s refusal to register two-dimensional artwork claims in the works titled “C App Logo,” “Cute App Logo,” “G App Logo,” “Geek App Logo,” “H App Logo,” “Home App Logo,” “M App Logo,” “Mama App Logo,” “W App Logo,” and “Wish App Logo” (collectively, the “Works”). After reviewing the applications, deposit copies, 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 Works are two-dimensional graphic artworks associated with online apps available for download. Reproductions of the Works are included as Appendix A.

II. ADMINISTRATIVE RECORD

On December 21, 2018, ContextLogic filed separate applications to register copyright claims in the Works. Between January 29 and February 5, 2019, Copyright Office registration specialists refused to register the claims, finding that each work lacked the authorship necessary to support a copyright claim. *See*, Initial Letter Refusing Registration of C App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Feb. 5, 2019); Initial Letter Refusing Registration of Cute App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Feb. 4, 2019); Initial Letter

Refusing Registration of G App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Feb. 4, 2019); Initial Letter Refusing Registration of Geek App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Jan. 28, 2019); Initial Letter Refusing Registration of H App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Feb. 5, 2019); Initial Letter Refusing Registration of Home App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Feb. 1, 2019); Initial Letter Refusing Registration of M App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Feb. 1, 2019); Initial Letter Refusing Registration of Mama App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Feb. 1, 2019); Initial Letter Refusing Registration of W App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Feb. 4, 2019); Initial Letter Refusing Registration of Wish App Logo from U.S. Copyright Office, to Caitlin R. Byczko (Jan. 29, 2019).

ContextLogic subsequently requested that the Office reconsider its initial refusal to register the Works. Letter from Caitlin R. Byczko and Sarah P. Harrell to U.S. Copyright Office (Undated) (including requests for reconsideration of all Works) (“First Request”). After reviewing the Works in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Works “do not contain a sufficient amount of original and creative graphic or artistic authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office, to Caitlin R. Byczko and Sarah P. Harrell (Jul. 18, 2019).

In response, ContextLogic requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Works. Letter from Caitlin R. Byczko and Sarah P. Harrell, to U.S. Copyright Office (Oct. 16, 2019) (“Second Request”). In that letter, ContextLogic asserted that the Works contained sufficient variation to merit exceptions to the Office’s rule against registering type face. ContextLogic highlighted that Home App Logo and Mama App Logo contain sufficient “pictorial art . . . depicted in the shape of a particular letter” and that there was sufficiently creative “ornamentation, borders, flourishes, and artistic expression” separable from the typeface contained in the remaining Works. Second Request at 2. In addition, citing the Board’s recent decision to register the Detroit Pistons logo and Orlando Magic’s secondary logo, ContextLogic asserted that the parts of the work, including coloration, “have elements that are not common or dictated by expected or inevitable combinations.” *Id.* at 3.

III. DISCUSSION

A. The Legal Framework

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. 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.

B. Analysis of the Works

After careful examination and analysis, the Board finds that the Works do not contain the requisite authorship necessary to sustain a claim to copyright.

i. Works Consisting Entirely of Typeface

Four of the Works—W App Logo, G App Logo, Geek App Logo, and Wish App Logo—consist entirely of typeface set in basic color combinations. By longstanding regulation, “mere variations of typographic ornamentation, lettering, or coloring [and] typeface as typeface” are ineligible for copyright protection. 37 C.F.R. § 202.1(a),(e). Simply stylized letters are trivial variations on basic building blocks of expression and cannot be copyrighted “regardless of how novel and creative the shape and form of the typeface characters may be.” COMPENDIUM (THIRD) § 906.4; *see also Eltra Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (finding that the Copyright Office properly refused to register a typeface design and noting, “typeface has never been considered entitled to copyright”). Geek App Logo consists of the word “geek” in green square sans serif font, while G App Logo consists of a white square sans serif “g” on a green square background. Similarly, W App Logo and Wish App Logo include only two colors (blue and white) and a “W” or the word “wish.” While the “W” in the W App Logo and Wish App Logo have an extended front horizontal line, that minor stylization is *de minimis*.¹ These are clear examples of “mere variations” of standard typography explicitly excluded from copyright protection.

¹ ContextLogic contends that copyright protects some typeface, typefont, lettering, or calligraphy when there is separable ornamentation, and that, for example the “flourish” on the W App Logo is somewhat like a shopping cart handle. While there are some limited cases where protection is warranted, such authorship must be sufficiently creative and not “mere typographic ornamentation.” 37 C.F.R. § 202.1(a); *Aldar Tobacco Group, LLC v. American Cigarette Co. Inc.*, 08-62018-CIV-JORDAN, 2010 WL 11549585, *3 (S.D. Fla. 2010) (rejecting argument that “V” in “victory” could be isolated as sufficiently creative when “V” was a mere variations). Here, the “flourish” in Wish App Logo and W App Logo is a simple elongated horizontal line at the beginning of the “W” that is nothing more than a simple polygon not protected by copyright. 37 C.F.R. § 202.1(a). Its addition to standard geometric sans serif typography in blue, or in a simple blue and white color combination, is *de minimis*.

ii. Works Consisting of Typeface and Common Symbols

The other six Works before the Board—C App Logo, Cute App Logo, H App Logo, Home App Logo, M App Logo, and Mama App Logo—consist of a combination of typeface and rudimentary symbols in common color combinations. For the reasons described above, the typographic elements in each of these works are not protected by copyright. Additionally, these Works’ familiar symbols and designs, such as a smiley face and a basic representation of pink lips, are unprotectable. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(J) (including “simple emoticons such as the typical smiley face” as examples of familiar symbols the Office will not register). The remaining element—present in H App Logo and Home App Logo—is a peaked roof line, a chimney, and an oversized door that is partially open, all of which combine to evoke the letter “H.” Indeed, the house graphic is placed in front of “o-m-e” in Home App Logo. The result is a representation of a house with variations that are, at best, *de minimis*.

Additionally, as a whole, none of these Works clear the threshold for creativity. Combinations of graphic, typographic, and color elements can be sufficiently creative, but not here. *C App Logo* and *Cute App Logo* pair a set of pink lips with either the letter “C” or the word “Cute.” As mentioned above, typeface and font are not generally protectable, and neither are familiar designs such as rudimentary representations of lips. When combined, these particular Works are not sufficiently creative; instead, they are a simplistic rendering that is *de minimis*. See *John Muller & Co. Inc. v. N.Y. Arrows Soccer Team*, 802 F.2d 989, 990 (8th Cir. 1986) (affirming the Office’s refusal to register a combination of a word and simple graphic). These simplistic relations of elements to one another in the Works do not transform these arrangements into something copyrightable. See *Feist*, 499 U.S. at 359; see also COMPENDIUM (THIRD) § 913.1 (explaining that the Office will not register “[m]ere spatial placement or format of trademark, logo, or label elements”).

Similarly, M App Logo and Mama App Logo contain an “M” with an upward-facing arc and an “M” with a centered basic smiley face, neither of which combination demonstrates creative authorship. The placement of the arc and the smiley face are simple and routine, and the two elements combined in the respective Works does not provide an adequate level of creativity. The placement is instead “simplistic, obvious and expected.” COMPENDIUM (THIRD) § 905.

Finally, *H App Logo* and *Home App Logo* include the letter “H” or the word “home,” both using the same representation of a house in the “H.” This minor variation of the letter “H” to evoke a basic house shape, in connection with the word “home” or alone is too simplistic to warrant copyright protection.

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
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

Appendix A



W App Logo (1-7222031532)



Wish App Logo (1-7181088751)



G App Logo (1-7245931549)



Geek App Logo (1-7245931492)



M App Logo (1-7222031979)



Mama App Logo (1-7222031558)



H App Logo (1-7222419371)



Home App Logo (1-7222032125)



C App Logo (1-7245931779)



CUTE

Cute App Logo (1-7245931743)