



United States Copyright Office

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November 28, 2017

Fox Rothschild LLP
Attn: David Greenbaum
Esperante Building, 222 Lakeview Ave. Suite 700
West Palm Beach, FL 33401

Re: Second Request for Reconsideration for Refusal to Register Three Works Titled Graphic Design; Correspondence IDs: 1-22K35LY; 1-22K35BW; 1-22K35KT; SRs: 1-2927615081; 1-2927615196; 1-2927615251

Dear Mr. Greenbaum:

The Review Board of the United States Copyright Office (“Board”) has considered Victorinox AG’s (“Victorinox”) second requests for reconsideration of the Registration Program’s refusal to register two-dimensional visual work of art claims in the three works titled “Graphic Design” (“Works”). One of the Works is a two-dimensional black dodecagon in the shape of a cross with rounded corners. The center consists of a large white circle with several small lines with bulbous heads, evoking a circuit board; the large white circle is surrounded by 12 small white circles. The two other Graphic Designs combine similar shapes in different patterns. Reproductions of the Works are attached as Appendix A.

After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board finds that the Works exhibit copyrightable authorship and thus may be registered.

The Works had been denied registration because the Office’s Registration Policy and Practice division concluded that they lacked sufficient authorship. *See* Letter from Shawn Thompson, Supervisory Copyright Examiner, to David Greenbaum, Fox Rothschild LLP (Correspondence IDs: 1-1PES71T; 1-1PES6WT; 1-1PES6WY) (June 21, 2016). In denying Victorinox’s first request for reconsideration, the Office noted that the Works consist of common and familiar shapes and found “that the elements are not combined in any way that differentiates them from their basic shape and design components” and thus are not copyrightable. Letters from Stephanie Mason, Attorney-Advisor, to David Greenbaum, Fox Rothschild LLP (Correspondence ID: 1-22K35LY) at 2, 3 (Mar. 2, 2017) (citing COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES (“COMPENDIUM (THIRD)”) § 905).

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, but not every combination or arrangement will be sufficient to meet this test. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991). 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). For example, 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.*, 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 (“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’s decision to reverse the earlier denial of registration for the Works is based on the low standard for copyrightability articulated in *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). The Board’s decision relates only to the Works as a whole, and does not extend individually to any of the standard and common elements depicted in the Works such as the cross or circles. *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 OF U.S. COPYRIGHT OFFICE PRACTICES §§ 313.3(E), 313.4(C), 313.4(J) (3d ed.). Though the Works consist of common shapes, such as crosses, circles, and lines, in each of the Works the “author’s use of those shapes results in a work that, as a whole, is sufficiently creative.” COMPENDIUM (THIRD) § 906.1. When reviewed as a whole, the Works reflect that the common constituent shapes were “combined in a distinctive manner indicating some ingenuity.” *Atari Games Corp.*, 888 F.2d at 883. Thus, the Board believes that the Works contain a sufficient, although minimal, amount of original and creative two-dimensional authorship.

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claims in the Works. The Board now refers this matter to the Registration Policy and Practice division for registration of the Works, provided that all other application requirements are satisfied.

No response to this letter is needed.

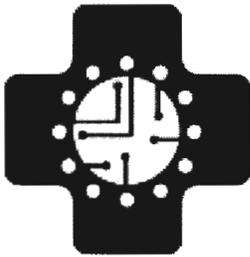
BY: 
Chris Weston
Copyright Office Review Board

Appendix A

SR: 1-2927615081



SR: 1-2927615196



SR: 1-2927615251

