



United States Copyright Office

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September 18, 2018

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**Re: Second Request for Reconsideration for Refusal to Register
“The UEFA EURO Trophy”; Correspondence ID 1-2YI6L24; SR 1-4159164226**

Dear Ms. Holley:

The Review Board of the United States Copyright Office (“Board”) has considered Union des associations européennes de Football’s (“UEFA’s”) second request for reconsideration of the Registration Program’s refusal to register a three-dimensional visual art claim in the work titled “The UEFA EURO Trophy” (“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 silver two-handled vase, with a tiered pedestal foot, bulb-shaped body, long neck, and three-tiered lip. The handles are shaped in braids and there is curvilinear engraving on the pedestal, body, and lip. The Work is as follows:



II. ADMINISTRATIVE RECORD

On November 15, 2016, UEFA filed an application to register a copyright claim in the Work. In an October 11, 2017, letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Sandra Ware, Registration Specialist, to Gabrielle Holley (Oct.11, 2017).

UEFA then requested that the Office reconsider its initial refusal to register the Work. Letter from Gabrielle Holley to U.S. Copyright Office (Nov. 27, 2017) (“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 “as a whole consists of a standard trophy vase accented with a few bands and twisted handles” and “[t]he very simple combination of elements into an expected configuration given the underlying nature of the work does not exhibit the creativity to support a registration.” Letter from Stephanie Mason, Attorney-Advisor, to Gabrielle Holley (Mar. 29, 2018).

UEFA next 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 Gabrielle Holley, to U.S. Copyright Office (June 18, 2018) (“Second Request”). UEFA disputed the Office’s conclusion that the Work was a standard trophy vase, and claimed that the Work is creative, in particular the shape of the body, the wide tray opening, the decorative engravings, and the twisted handles. *Id.* at 2 and 4. UEFA also asserted that registration would be consistent with *Titlecraft, Inc. v. Nat’l Football League*, No. 10 CV 758, 2010 WL 5209293, 97 U.S.P.Q. 1315 (D. Minn. Dec. 20, 2010), and other Office-issued registrations for trophies, including the FIFA Men’s and Women’s World Cup trophies. *Id.* at 3-5.

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 and described in the *Feist* decision. *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).

B. Analysis of the Work

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

The Work is a silver-pedestaled vase with handles, long neck, and lip. Though UEFA claims that the Work is not a standard trophy vase, the Board disagrees. Regardless of the specific history of trophy vases, the overall shape of the Work shares common design features with amphora, a standard shape in Greek and Etruscan pottery. *See, e.g.*, Andokides (potter), *Terracotta Amphora*, ca.530 B.C., terracotta, Metropolitan Museum of Art, New York, NY (<https://www.metmuseum.org/art/collection/search/255154>); Praxias Group, *Amphora*, ca. 480-460 B.C., terracotta, Musee du Louvre, Paris, France (<https://www.louvre.fr/en/oeuvre-notices/amphora-praxias-group>). UEFA cites the twisted handles as sufficiently creative; however, twisted handles are also a familiar feature in Greek pottery. *See* Euphronios (attrib.), *Athenian Amphora*, ca. 550-500 B.C., terracotta, Musee du Louvre, Paris, France (<http://www.beazley.ox.ac.uk/record/FC08B14D-75B5-4FEE-8B3C-E89F13625793>). The remaining contributions modifying this standard shape—the curve of the body, the thickness of the foot, the allegedly “unusual upper wide tray type opening”—are *de minimis*. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.2 (3d ed. 2017) (“COMPENDIUM (THIRD)”) (“[C]opyright law does not protect mere variations on a familiar symbol or design, either in two or three-dimensional form.”). Further, the etching on the foot, body, and neck are simple curvilinear lines that are not eligible for protection. 37 C.F.R. § 202.1(a). When the etchings are combined with the overall shape, these elements do not impart the required creativity for copyright protection. The Work as a whole thus does not rise to the level of creativity required by the Copyright Act.

UEFA also attempts to support its position by citing to a number of Office-issued trophy registrations. The Office does not compare works that have been previously registered or refused registration. *See* COMPENDIUM (THIRD) § 309.3. Instead, each claim is examined on its own merits, with the Office applying uniform standards of copyrightability at each stage of review. Because copyrightability involves a mixed question of law and fact, differences between any two works can lead to different results. Thus, the fact that the Office registered a work of the same general type as the Work (here, a trophy) at issue does not require the Office to find that the contested Work itself is protected by copyright. *See Homer Laughlin China Co. v. Oman*, 2 U.S.P.Q.2d (BNA) 1074, 1076 (D.D.C. 1991) (stating that it was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”); *accord, Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 499 (S.D.N.Y.

2005) (indicating the Office “does not compare works that have gone through the registration process.”). Furthermore, even if a comparison were required, the Work is not the same as the cited registrations and thus registration of the Work is not mandated by the other registrations.

Finally, UEFA asserts that the Office must register the Work in light of the opinion in *Titlecraft, Inc. v. Nat’l Football League*. No. 10 CV 758, 2010 WL 5209293, 97 U.S.P.Q. 1315 (D. Minn. Dec. 20, 2010). There, the court addressed an entirely different trophy—the Vince Lombardi Trophy, which is unrelated to the Work at hand—and rejected the attempts to reduce that unrelated trophy to isolated elements. *Titlecraft* emphasized that the “combination of uncopyrightable elements in an original way renders the trophy appropriate for copyright protection.” *Titlecraft*, 2010 WL at *4. The Board agrees that copyright protection is afforded to a sufficiently original combination of unprotected elements. That is not the case here. The Work does not satisfy the Copyright Act’s requirements; it is not sufficiently creative and, at most, it is a *de minimis* standard design based on classical and common works of art.

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

Karyn A. Temple, Acting 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
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