



United States Copyright Office

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

April 23, 2020

David Rabinowitz, Esq.
Deborah Shapiro, Esq.
Moses & Singer LLP
405 Lexington Avenue
New York, NY 10174-1299
dshapiro@mosessinger.com

Re: Second Request for Reconsideration for Refusal to Register “2010 Vancouver Whitecaps Primary Crest”; Correspondence ID: 1-3FQTX8P; SR # 1-6079580741

Dear Mr. Rabinowitz and Ms. Shapiro:

The Review Board of the United States Copyright Office (“Board”) has considered Major League Soccer, LLC’s (“MLS’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “2010 Vancouver Whitecaps Primary Crest” (“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 design that consists of three overlapping rhombus shapes in shades of grey, black, and white¹ bisected horizontally by the text “Vancouver Whitecaps FC” in white coloring. An image of the Work is below:



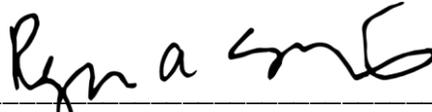
¹ Note: in the first letter of reconsideration, applicant included an image of the logo in shades of blue and white.

While common shapes and typographic ornamentations alone are not copyrightable, some combinations of common or standard design elements may contain sufficient creativity with respect to how they are juxtaposed or arranged to support a claim to copyright. *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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d. ed. 2014) (“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.

Applying the above standards, the Board finds that the Work’s selection and combination of colors, shapes, and shading creates a sufficient, although minimal, amount of original and creative two-dimensional authorship to support copyright protection. Specifically, the Work includes three overlapping rhombus shapes that are bisected horizontally by text, allowing the shapes to be seen as either overlapping diamonds or triangles. Additionally, the work uses three colors that contribute to the effect of a horizontal reflection of the top three overlapping triangles. This stylization, in conjunction with the arrangement of shapes and letters on the logo, demonstrate the modicum of creativity required for copyrightability. *See, e.g., Nicholls v. Tufenkian Imp./Exp. Ventures, Inc.*, 2004 WL 1399187, at *1–2 (S.D.N.Y. June 23, 2004) (denying defendant’s motion to dismiss on grounds of originality where the work contained circles arranged into a grid format with additional shading on each circle); *Prince Group, Inc. v. MTS Prods.*, 967 F. Supp. 121, 125 (S.D.N.Y. 1997) (holding that a shaded multicolor polka dot design was protectable). Note, the Board’s decision is based on the low standard for copyrightability and relates only to the specific combination of colors, shapes, and lettering in the Work as a whole, and does not extend individually to any of the standard and common elements contained in the Work, such as diamond, rhomboid, or triangle shapes; lettering; typographic ornamentation; or shading alone. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] . . . familiar symbols or designs.”); *see also* COMPENDIUM (THIRD) §§ 313.4(J), 906.4.

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 A. Isbell, Deputy Director of Policy
and International Affairs