



Copyright Review Board
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

January 27, 2023

Elizabeth T. Russell, Esq.
Law Office of Elizabeth T. Russell, LLC
2711 Allen Blvd., Suite 300 #410
Middleton, WI 53562

**Re: Second Request for Reconsideration for Refusal to Register 2016 Bolt Logo
(SR # 1-9646578541; Correspondence ID: 1-4X2CT33)**

Dear Ms. Russell:

The Review Board of the United States Copyright Office (“Board”) has considered High Voltage, Inc.’s (“HVI”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled 2016 Bolt Logo (“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 consists of the letters “HVI” in block format with beveled edges. The letter “V” includes a yellow lightning bolt in the center of the letter. The letters are gray and have a slight lighter gradient moving up the letters, with the beveled edges being a shade lighter than the front surfaces of the letters. The beveled edges and the shading simulate three-dimensionality in the letters. The Work is as follows:



II. ADMINISTRATIVE RECORD

On October 28, 2020, HVI filed an application to register a copyright claim in the Work. On December 14, 2020, a Copyright Office registration specialist refused to register the claim, finding that the Work “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Elizabeth Russell at 1 (Dec. 14, 2020) (“First Refusal”). The First Refusal explained that “[c]opyright does not protect familiar symbols or designs; basic geometric shapes; words and short phrases such as names, titles, and slogans; or mere variations of typographic ornamentation, lettering or coloring.” *Id.* On December 14, 2020, HVI’s counsel sent an email to the Office requesting “the specific analysis and reasoning for refusal.” Email from Elizabeth T. Russell to U.S. Copyright Office (Dec. 14, 2020). The Office responded noting that the request for registration had been rejected and stating that “[n]o further action will be taken unless the Office receives a request for reconsideration.”¹ Email from U.S. Copyright Office to Elizabeth T. Russell (Dec. 15, 2020).

On March 8, 2021, HVI requested that the Office reconsider its initial refusal to register the Work. Letter from Elizabeth T. Russell to U.S. Copyright Office (Mar. 8, 2021) (“First Request”). The First Request raised procedural objections to the examiner’s First Refusal and also requested that the Office review the Work based on the intended sense of depth of the letters, the shading of the letters, and its assertion that the “carve-out in the letter ‘V’ is neither preordained nor obvious.” *Id.* at 7.² After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that the Work cannot be registered because “*2016 bolt logo* does not contain a sufficient amount of creativity either elementally or as a whole to warrant registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Elizabeth Russell at 4 (July 29, 2021). Specifically, the Office found that the elements of the Work, particularly the lettering, with standard beveled type effects and coloring, were not creative elements on their own, and that, *as a whole*, the Work lacked sufficient creativity, being comprised of an unoriginal combination of three letters and a familiar shape in the center of one of the letters. *Id.*

On October 6, 2021, HVI 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 Elizabeth T. Russell to U.S. Copyright Office (Oct. 6, 2021) (“Second Request”). In the Second Request, HVI reiterated its “procedural objections” to the examiner’s initial refusal, asserting that “the Initial Refusal recited general principles of law but never applied them to the Work.” *Id.* at 1–6. In addition, HVI argued that the refusal “ignores the creativity that renders the Work eligible for registration.” *Id.* at 8. Specifically, it argued that the letters are not typeface, the lightning bolt

¹ HVI’s counsel’s email request was refused because, once an initial refusal is made, any further consideration requires the applicant to file a request for reconsideration.

² Before submitting its First Request, HVI submitted a document on January 26, 2021 titled “First (Procedural) Reconsideration.” Letter from Elizabeth T. Russell to U.S. Copyright Office (Jan. 26, 2021). In the document, HVI made no substantive arguments but criticized the Office’s initial refusal for not describing the Work with specificity and for not specifically applying the law to individual components. *Id.* at 1 (stating “[i]t is impossible to discern from the text of the Refusal whether the Examiner has ever even seen the Work”). The Office properly rejected this filing because it did not “include the reasons the applicant believes registration was improperly refused, including any legal arguments in support of those reasons and any supplementary information,” as required by the Office’s regulations. 37 C.F.R. § 202.5(b)(1). Because HVI raises those objections again in its Second Request for Reconsideration, they are discussed further below.

“is not a familiar symbol,” and the letters contain sufficient creativity to warrant registration. *Id.* at 6–12. In the Second Request, HVI argued that the refusal to register the Work was inconsistent with two prior decisions of the Board, namely, the Dead Kennedys “DK” logo, and the “2010 Whitecaps Primary Crest.” *Id.* at 11.

III. DISCUSSION

After carefully examining the Work and applying the legal standards discussed within, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

As an initial matter, the Board finds that the Work’s individual components are insufficiently creative to be eligible for copyright protection. 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 the copyright 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, “as opposed to copied from other works.” *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has held that some works fail to meet even this low threshold. *Id.*

We address each of HVI’s arguments in turn. The Second Request begins its substantive discussion by evaluating each element, the letters “H,” “V,” and “I” placed side by side, with the addition of a yellow lightning bolt in the center of the “V,” as being potentially sufficiently creative in their own right. Second Request at 6–11. However, none of these individual elements is protected by copyright. As the Office’s regulations explain, “familiar symbols or designs” and “mere variations of typographic ornamentation” are materials “not subject to copyright.” 37 C.F.R. § 202.1(a); *see also Kitchens of Sara Lee, Inc. v. Nifty Foods Corp.*, 266 F.2d 541, 544 (2d Cir. 1959) (describing these regulations as “a fair summary of the law”). Because copyright “does not protect mere variations on a familiar symbol or design,” nor “mere variations of uncopyrightable letters,” these elements cannot be the basis of registration. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 906.1, 906.4 (3d ed. 2021) (“COMPENDIUM (THIRD)”); *see also id.* § 313.4(J) (“[f]amiliar symbols and designs are not copyrightable”). Contrary to HVI’s assertion, a lightning bolt is a familiar symbol, particularly in the context of a brand logo, and the particular bolt used in the Work is a simple shape, with a single zig-zag indicating a lightning bolt.

HVI also claims the Work is entitled to registration because the letters in the Work contain both “gray shading” and “beveled edges.” Second Request at 8; *see also id.* at 8–11 (giving details of the shading of the letters and beveled edges). The Office has consistently held that fanciful lettering or typeface will not suffice for copyrightability. *See COMPENDIUM (THIRD)* § 906.4 (letters are “the building blocks of expression,” and the Office will refuse claims that are “based on individual alphabetic or numbering characters” or “fanciful lettering”); *see also ELTRA Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (“typeface has never been considered

entitled to copyright”).³ Although shading can be considered as a possible element in the determination of creativity, it does not, *per se*, render a simplistic element creative enough to be copyrightable. Beveled edges are common type effects added to the lettering. In conclusion, the Board finds the individual elements of the Work are not copyrightable.

HVI further argues that, “[e]ven if the individual elements of the Work were unprotectible [sic], their selection, coordination and arrangement is original enough” to warrant registration. Second Request at 12. “[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.” *Satava v. Lowry*, 323 F. 3d 805, 811 (9th Cir. 2003). Here, the Work consists of three beveled letters (H, V, and I) side by side, with a lightning bolt placed in the space between the two sides of the “V,” a common arrangement. As noted above, the letters appear to be stock typefaces, with commonplace type effects (beveled edges). The addition of an ordinary representation of a lightning bolt to one letter does not materially enhance its creativity. *See John Muller & Co. v. N.Y. Arrows Soccer Team, Inc.*, 802 F.2d 989, 990 (8th Cir. 1986) (affirming refusal to register logo consisting of “four angled lines which form an arrow and the word ‘Arrows’ in cursive script below the arrow”); COMPENDIUM (THIRD) § 914.1 (“[t]he Office typically refuses to register trademarks, logos, or labels that consist of only . . . [m]ere scripting or lettering, either with or without uncopyrightable ornamentation”). Applying these principles, the Board finds this arrangement too simplistic to meet the legal requirements.

HVI suggests that the Work is at least as original as other works that the Office has previously registered. *See* Second Request at 11. The Office does not compare works; it makes determinations of copyrightability on a “case-by-case basis” and “[a] decision to register a particular work has no precedential value.” COMPENDIUM (THIRD) § 309.3. At the same time, the Board notes that the Work differs from those works that HVI cites in that those works feature more design elements—such as stylized shading and letters, graphic elements, and multiple shapes in different colors and sizes—and more original arrangements than the Work in question. *See* U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Vancouver Whitecaps Primary Crest* (Apr. 23, 2020), <https://copyright.gov/rulings-filings/review-board/docs/vancouver-whitecaps-primary-crest.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Dead Kennedys “DK” Logo* (May 7, 2020), <https://copyright.gov/rulings-filings/review-board/docs/dead-kennedys-dk-logo.pdf>. The Board’s conclusion here is not affected by these prior decisions.

Finally, the Board rejects HVI’s request to withdraw the refusal of registration “on procedural grounds.” Second Request at 6. HVI argues that the Office’s initial refusal violated the Copyright Act and administrative law because it consisted of recitations of law “without any reference to the Work” and a general conclusion that “this particular work will not support a claim to copyright under the standards described above.” *Id.* at 2. In HVI’s view, the refusal therefore failed to sufficiently provide “the reasons for [the Office’s] refusal” as required by

³ The Board notes HVI’s assertion that its lettering is “not typeface.” Second Request at 6. This misconstrues the limitation, which does not simply extend to a typeface as such, but to lettering that is presented in a common typeface. *Compare* 37 C.F.R. § 202.1(a) (“mere variations of typographic ornamentation” not registrable) *with id.* § 202.1(e) (“Typeface as typeface” not registrable).

17 U.S.C. § 410(b) and constitutes an abuse of discretion under the Administrative Procedure Act. *Id.* at 3–4. HVI is incorrect.

The Office’s practice is to issue short explanations in initial refusals of registration, which contain a brief statement of the legal basis and a short factual basis for the refusal. This allows the Office to make timely registration decisions while providing sufficient information for an applicant to determine whether reconsideration may be appropriate. Because the Office receives over 400,000 registration applications each year, providing lengthy explanations to each applicant whose registration is refused would considerably slow the registration process. Instead, issuing short statements upon initial refusal allows the Office to process applications for registration in a timely manner that benefits both successful applicants—whose registrations are processed quickly—and unsuccessful applicants, such as HVI, whose ability to seek reconsideration is effectuated more quickly. The Office’s approach to initial refusal decisions provides sufficient reasoning to comply with the law. “Every time the Register denies registration for too little creativity it cannot be expected to issue an opinion that compares with the learned offerings of [a judicial opinion].” *Atari Games Corp. v. Oman*, 888 F.2d 878, 887 (D.C. Cir. 1989) (Silberman, J., concurring); *see also Mathews v. Eldridge*, 424 U.S. 319, 347 (1976) (when evaluating procedures needed to satisfy due process, courts must consider “the administrative burden and other societal costs that would be associated with” the additional procedures requested).

As noted above, the First Refusal identified specific legal grounds for refusing registration, namely, that copyright does not protect “familiar symbols or designs; basic geometric shapes; . . . or mere variations of typographic ornamentation, lettering or coloring.” First Refusal at 1. The First Request makes clear that HVI understood that the Office had determined the work lacked sufficient creative authorship, and its First Request explicitly drew attention to creative elements HVI believed met the statutory requirements. *See* First Request at 5–6 (arguing that the Work employed “intentionally drawn” “shading and beveled edges” and citing other registration decisions for comparison). Likewise, HVI’s Second Request was able to set forth numerous substantive arguments in favor of registration for the Work. The Board’s decision here responds to those arguments at length. Clearly, HVI has not been deprived of its opportunity to state its objections to the examiner’s refusal. No more is required. *See Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q.2d 1074, 1075 (D.D.C. 1991) (“Since the applicant can gain full judicial review of copyrightability in an infringement action, the costs of forcing too fine an analysis and too extensive an explanation of a denial of registration are not worth the benefits”).

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
Suzanne V. Wilson, General Counsel and
Associate Register of Copyrights
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
Jordana Rubel, Assistant General Counsel