



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

June 16, 2021

Gordon M. Wright, Esq.
Reinhart Boerner Van Deuren
2215 Perrygreen Way
Rockford, IL 61107

**Re: Second Request for Reconsideration for Refusal to Register MINN KOTA
“M” Logo (Correspondence ID: 1-40YSIBX; SR # 1-7915124451)**

Dear Mr. Wright:

The Review Board of the United States Copyright Office (“Board”) has considered Johnson Outdoors, Inc.’s (“Johnson Outdoors”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “MINN KOTA ‘M’ 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 is a two-dimensional graphic artwork in black. The Work consists of an “M” and two nested chevrons (which can also be viewed as a sideways “K”). The Work is as follows:



II. ADMINISTRATIVE RECORD

On July 16, 2019, Johnson Outdoors filed an application to register a copyright claim in the Work. In a September 14, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it did not “contain a minimum amount of creative pictorial, graphic, or sculptural authorship.” Initial Letter Refusing Registration from U.S. Copyright Office to Gordon Wright, Reinhart Boerner Van Deuren (Sept. 14, 2019).

Johnson Outdoors subsequently requested that the Office reconsider its initial refusal to register the Work. Letter from Gordon Wright to U.S. Copyright Office (Dec. 3, 2019) (“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 did not contain sufficient creativity, finding that “[t]he arrangement of the elements in *MINNKOTA ‘M’ Logo* is accomplished with minor spatial variations of shapes, colors, and letters.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Gordon Wright, at 2 (Apr. 23, 2020).

In response, Johnson Outdoors 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 Gordon Wright to U.S. Copyright Office (July 22, 2020) (“Second Request”). In that letter, Johnson Outdoors asserts that the work is sufficiently creative because “the arrangement of shapes creates an original representation of the letters ‘M’ and ‘K’ in an unusual juxtaposition, as the orientation of the letter ‘K’ is orthogonal and vertically-spaced from the letter ‘M.’” *Id.* at 2. Additionally, Johnson Outdoors claimed that the Work “gives the appearance of a top-down perspective view of two walls meeting at a 90-degree angle.” *Id.* at 3. Finally, Johnson Outdoors objects to the finding that the number of elements in the Work are too few.

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 and standard symbols, 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." U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) ("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 Work

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

Neither the work's individual elements nor the Work as a whole exhibit copyrightable authorship. Rather, the individual elements of the Work consist merely of the letter "M" and two chevrons that "create[] an original representation of the letters 'M' and 'K' in an unusual juxtaposition." Second Request at 2. The geometric shapes and letters alone do not comprise individually copyrightable subject matter. See 37 C.F.R. § 202.1(a) (articulating that "familiar symbols or designs" and "mere variation of typographic ornamentation, lettering or coloring" are

not registrable); COMPENDIUM (THIRD) § 906.1 (“There are numerous common geometric shapes, including without limitation, straight or curved lines, circles . . . rectangles, diamonds . . .”); U.S. COPYRIGHT OFFICE, CIRCULAR 33: WORKS NOT PROTECTED BY COPYRIGHT (Mar. 2021), <https://www.copyright.gov/circs/circ33.pdf> (listing “standard chevron” as an example of an unprotectable symbol and design). Similarly, a single color, with no shading, gradations, or other visual effects, is, by itself, not protectable. 37 C.F.R. § 202.1(a). All of the individual elements in the Work thus fall under the category of unprotectable lines, shapes, and letters.

Nor does the specific combination of the elements in the Work display copyrightable authorship. While it is true that combinations of unprotectable elements like those present in the Work can be, as a whole, protectable, such a combination must include “elements [that] are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *See Satava*, 323 F.3d at 811. At best, the Work here includes minor variations of unprotectable shapes and letters that do not rise to the level of sufficient creativity “regardless of how novel and creative” they are. COMPENDIUM (THIRD) § 906.4 (“The Office typically refuses claims based on individual alphabetic or numbering characters . . . calligraphy, or other forms of typeface.”). The “M” and “K” refer to the business name Minn Kota.¹ Moreover, simply placing two chevrons below the letter “M” so that “the letter ‘K’ is orthogonal and vertically-spaced from the letter M,” Second Request at 2, is *de minimis*.

Johnson Outdoors makes two main arguments in support of registrability of the Work, neither of which are availing. First, it attempts to favorably compare the Work to other works that are sufficiently creative. The Board arrives at its determinations by looking at the specifics of the case before it, and thus will not compare previously registered works when examining a work for sufficient creativity. *See* COMPENDIUM (THIRD) § 309.3; *see also Homer Laughlin China Co. v. Oman*, No. 90 Civ. 3160, 1991 WL 154540, at *2 (D.D.C. July 30, 1991) (stating that court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”). Even if the Board did make such comparisons, Johnson Outdoors’ examples are inapposite. Johnson Outdoors’ reference to creative drawings of animals positioned in the shape of letters is quite dissimilar. Unlike animals moved into letter positions, the Work incorporates only the minor spatial variation of placing the chevrons inside the contours of the letter “M.” *See, e.g., Coach*, 386 F. Supp. 2d at 496 (refusing to register a design that positioned letter C’s in a mirrored arrangement because it was not sufficiently creative); COMPENDIUM (THIRD) § 906.1 (slight linear and spatial variations among common shapes does not constitute creative expression). Here, there is no other embellishment, visual effect, or other design beyond mere letters. Additionally, Johnson Outdoors’ reference to the quilt design at issue in *Boisson v. Banian, Ltd.*, 273 F.3d 262 (2d Cir. 2001), is unhelpful because the quilt there contained far more creative expression than the Work, including varied coloring and the combination of letters and pictures of items, such as a cat, house, flag, and basket.

Second, Johnson Outdoors asserts that the Work’s unique elements create the appearance of “a top-down perspective view of two walls meeting at a 90-degree angle.” Second Request at

¹ “Homepage,” MINN KOTA, <https://www.minnkotamotors.com/> (last visited June 11, 2021).

3. Perceived appearances, however, are not factors the Board considers when evaluating a work for copyright protection. *See* COMPENDIUM (THIRD) § 310.2.

In light of this, the Board is compelled to find that the Work does not meet even the low threshold of creativity established by the Supreme Court in *Feist*.

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

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