



**Copyright Review Board**

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

June 28, 2022

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**Re: Second Request for Reconsideration for Refusal to Register Success Journey Wheel (Correspondence ID: 1-4N0CMBX; SR # 1-8187964951)**

Dear Ms. McDaniel:

The Review Board of the United States Copyright Office (“Board”) has considered Joseph E. Whitaker’s (“Whitaker’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Success Journey Wheel” (“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 design consisting of a circle that is divided into three equal sections rendered in yellow, blue, and green coloring, with each color containing a word or short phrase (“EFFORT,” “MEANINGFUL LEARNING,” and “SMALL CORRECT CHOICES”). The larger circle is positioned around a smaller red circle centered in the middle of the design, with the words “MINDSET/BELIEF.” Surrounding the larger circle are three thin grey arrows, each containing the phrase “CONSISTENCY OVER TIME.” At the top of the Work, the words “SUCCESS JOURNEY WHEEL” are displayed in an orientation mimicking the curve of the circles. All words or short phrases within the Work are in white coloring, except for the short phrase “SUCCESS JOURNEY WHEEL,” which is depicted in a grey that is slightly darker than the grey used for the arrows. The Work is as follows:



## II. ADMINISTRATIVE RECORD

On November 19, 2019, Whitaker filed an application to register a copyright claim in the Work. In letter dated May 22, 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 Katherine McDaniel at 1 (May 22, 2020).

In a letter dated August 20, 2020, Whitaker requested that the Office reconsider its initial refusal to register the Work. Letter from Katherine L. McDaniel, to U.S. Copyright Office (Aug. 20, 2020) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claim and again concluded that the Work’s “individual elements . . . do not exhibit a sufficient amount of original and creative authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office, to Katherine McDaniel at 3 (Jan. 22, 2021). The Office further concluded that “[d]ividing a common shape into smaller common shapes, and accenting a common shape with other common shapes are both obvious, garden-variety configurations,” and that using such elements “to highlight a concept or idea with words or short phrases is also an obvious configuration.” *Id.*

In a letter dated April 9, 2021, Whitaker 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 Katherine L.

McDaniel, to U.S. Copyright Office (Apr. 9, 2021) (“Second Request”).<sup>1</sup> In that letter, Whitaker argued that the Work “contains shapes that are unusual [(central core, three adjoining elements, and three arrows)] and arranged in non-traditional patterns along with 8 text entries in the form of labels that demonstrate the interaction of the various elements.” *Id.* at 2. Additionally, Whitaker asserted that the “elements are numerous enough and their selection and arrangement original enough that their combination constitutes an ‘original work of authorship.’” *Id.* at 3 (quoting *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003)). Finally, Whitaker asserted that he was “not trying to copyright an idea, concept, system, or process, but only this particular visual work he created in order to help people visualize it.” *Id.*

### III. DISCUSSION

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); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005).

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<sup>1</sup> In his Second Request, Whitaker disputes a statement in the Office’s refusal of the First Request that he applied to register the Work as “drawing.” He argues instead that he “submitted an application to register the Success Journey Wheel . . . as a ‘Work of Visual Arts.’” Second Request at 1. This distinction is important because Whitaker seeks clarify that “the Work sought to be registered is the entire deposit copy, including both the design and the text.” *Id.* at 2. After reviewing the previous decision, the Review Board determines that the refusal of the First Request properly analyzed both the design and the text. The Board does the same here.

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. *See Satava*, 323 F.3d at 811 (“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”); *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (stating that, for a work to be registrable, the author’s selection and combination of simple geometric shapes must “result[] in a work that, as a whole, is sufficiently creative”).

After carefully examining the Work and applying the relevant legal standards, 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 whole demonstrate sufficient creativity to be protectable under the Copyright Act.

The individual elements of the Work consist of mere coloration, geometric shapes (circles and wedges), a familiar symbol and design (arrows), and simple words and phrases displayed in standard typeface, none of which are protected by copyright. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 313.3(D), 313.4(C), 313.4(J) 313.4(K), 906.1–906.4; *see also Tompkins Graphics, Inc. v. Zipatone, Inc.*, No. 82-5438, 1983 U.S. Dist. LEXIS 14631, at \*4 (E.D. Pa. Aug. 15, 1983) (“[B]asic geometric shapes have long been in the public domain and therefore cannot be regulated by copyright.”); *CMM Cable Rep, Inc. v. Ocean Coast Properties, Inc.*, 97 F.3d 1504, 1519 (1st Cir. 1996) (citing the Office’s regulations and noting, “[i]t is axiomatic that copyright law denies protection to ‘fragmentary words and phrases’”).

Viewing the Work as a whole, the combination and arrangement of these unprotectable elements do not rise to the level of creativity necessary for copyright registration. Here, the Work’s elements are combined and arranged in a commonly-used manner—combining common geometric shapes and familiar symbols and designs, along with overlapping text, and arranging them into a circular shape to depict a wheel. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 905. The combination and arrangement of elements in the Work is too standard to constitute an original work of authorship—wheel diagrams are a basic graphic layout for displaying information; the overall design choices simply relate to creating this general and utilitarian format.<sup>2</sup> *See* 17 U.S.C. § 102(b); *see also* Second Request at 3 (noting that Whitaker “is not trying to copyright an idea, concept, system, or process, but only this particular visual work he created in order to help people visualize it”). The Office cannot grant copyright protection for the Work, as it would be similar to granting copyright for a work’s spatial format and layout design. COMPENDIUM (THIRD) § 906.5 (“The general layout or format of a book, a page, a website, a webpage, a poster, a form, etc., is not copyrightable, because it is merely a template for expression and does not constitute original expression in and of itself.”).

While Whitaker has argued that the Work’s selection and arrangement contains “a high number of creative choices,” First Request at 2; *see also* Second Request at 3–4, the Office does “not consider possible design alternatives that the author may have considered when he or she

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<sup>2</sup> A website offering standard PowerPoint slide templates returns almost 25,000 results for a search of “Wheel Diagram.” *Wheel Diagram*, SLIDEGEEKS, <https://search.slidegeeks.com/powerpoint/Wheel-Diagram> (last visited June 13, 2022).

created the work. . . . The creative process often requires many choices involving the size, coloring, orientation, proportion, configuration, perspective, or other constituent elements of the work.” COMPENDIUM (THIRD) § 310.8. While “[t]he standard of originality is low, . . . it does exist,” *Feist*, 499 U.S. at 362, and the Board concludes that the Work lacks the modicum of creativity required for copyright protection.

#### 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.



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**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