



**United States Copyright Office**

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · [www.copyright.gov](http://www.copyright.gov)

December 27, 2019

Thomas D. Foster, Esq.  
TDFoster Intellectual Property Law  
11622 El Camino Real, Suite 100  
San Diego, CA 92130

**Re: Second Request for Reconsideration for Refusal to Register TFI SHIELD;  
Correspondence ID: 1-3EL8UFJ; SR 1-6689715601**

Dear Mr. Foster:

The Review Board of the United States Copyright Office (“Board”) has considered TuffStuff Fitness International Inc.’s (“TuffStuff’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “TFI SHIELD” (“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 consists of a triangular shaped shield outlined in varying shades of white and grey, with a blue center. Three stylized letters, “T,” “F,” and “I” appear in the center of the in different gradients of white and grey. The bottom of each letter is angled to follow the point at the bottom of the triangular shield. The ends of the horizontal top line of the “T” and “F” are drawn at contrasting angles. Each letter has beveled edges with different gradients of grey and white. An image of the work is below:




Although it is true that common shapes and typographic ornamentations alone are not copyrightable, the Work goes beyond those basic elements. As the Supreme Court has found, 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. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991); *see also Atari Games Corp. v. Oman*, 888

F.2d 878, 883 (D.C. Cir. 1989) (“[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.”); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3D ED. 2017) (“COMPENDIUM (THIRD)”) (copyrightability exists in a work that consists of geometric shapes when the “author’s use of those shapes results in a work that, as a whole, is sufficiently creative.”).

Applying this standard, the Board concludes that the Work combines colors, shading, and shapes in a creative manner. *See* COMPENDIUM (THIRD) § 906.1 (stating that a work is registrable where it “combines multiple types of geometric shapes in a variety of sizes and colors, culminating in a creative design that goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement”). In particular, the stylized shading in conjunction with the arrangement of letters on the shield, helps 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). To be clear, however, the Board’s decision relates only to the Work as a whole and does not extend individually to any of the standard and common elements contained in the Work such as a shield shape, lettering, typographic ornamentation, or coloring alone. *See* 37 C.F.R. § 202.1(a), (e) (“[W]orks not subject to copyright [include] . . . familiar symbols or designs”); *see also* COMPENDIUM (THIRD) §§ 313.4(J), 906.4; *Eltra Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (finding the Copyright Office properly refused to register a typeface design and noting, “typeface has never been considered entitled to copyright”).

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 Office of Registration Policy and Practice 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**

Karyn A. Temple, 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 Education