



United States Copyright Office

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

January 8, 2019

Tomasz Barczyk, Esq.
Kronenberger Rosenfeld, LLP
150 Post Street, Suite 520
San Francisco, CA 94108

Re: Second Request for Reconsideration for Refusal to Register Online California DMV Vehicle Registration; Correspondence ID: 1-2UMP3D3; SR 1-5228607961

Dear Mr. Barczyk:

The Review Board of the United States Copyright Office (“Board”) has considered Cartagz, Inc.’s (“Cartagz”) second request for reconsideration of the Registration Program’s refusal to register a text claim in the work titled “Online California DMV Vehicle Registration” (the “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 an online advertisement formatted as a blank form within a rectangle. The top portion of the rectangle contains phrases including “RENEW YOUR CALIFORNIA VEHICLE REGISTRATION TODAY!” and “OVERNIGHT DELIVERY AVAILABLE.” The middle portion of the rectangle consists of another short phrase above three blank spaces/rectangles labeled “LICENSE PLATE #,” “LAST 5 DIGITS OF VIN,” and “ZIP CODE.” An orange button labeled “CALCULATE FEES” is featured beneath the blank spaces. Finally, the bottom portion of the rectangle contains the business name “CARTAGZ VEHICLE REGISTRATION.” The Work is depicted below.

Renew Your California Vehicle Registration Today!

Official California Vehicle Registration & Stickers Issued.
Overnight Delivery Available.

Free DMV Lookup & Instant Fee Calculation

License Plate #

Last 5 Digits of VIN

Zip Code

Calculate Fees ▶

CARTAGZ
VEHICLE REGISTRATION

II. ADMINISTRATIVE RECORD

On May 26, 2017, Cartagz filed an application to register a copyright claim in “text, arrangement and layout of text.” In an email to Cartagz, dated June 14, 2017, a Copyright Office registration specialist asked Cartagz to clarify its claim to copyright. Email from Heather Windsor, Registration Specialist, U.S. Copyright Office, to Ansel Halliburton, Kronenberger Rosenfeld, LLP (June 14, 2017). In an email to the Office, Cartagz limited the claim to “text.” Email from Ansel Halliburton, Kronenberger Rosenfeld, LLP, to Heather Windsor, Registration Specialist, U.S. Copyright Office (June 26, 2017). Finding that “blank forms and similar works, designed to record rather than to convey information, are not protected by copyright,” the specialist refused to register the claim in a letter dated July 6, 2017. Letter from Heather Windsor, Registration Specialist, U.S. Copyright Office, to Ansel Halliburton, Kronenberger Rosenfeld, LLP, at 1 (July 6, 2017).

In a letter dated August 11, 2017, Cartagz requested that the Office reconsider its initial refusal to register the Work, arguing that the work “is primarily an advertisement with ‘an appreciable amount of written . . . expression’ apart from the form.” Letter from Ansel Halliburton, Kronenberger Rosenfeld, LLP, to U.S. Copyright Office, at 3 (Aug. 11, 2017) (“First Request”) (citing COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.4(G) (3d ed. 2017) (“COMPENDIUM (THIRD)”). 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 “does not contain a sufficient amount of original and creative authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, U.S. Copyright Office, to Ansel Halliburton, Kronenberger Rosenfeld, LLP, at 1 (Jan. 16, 2018).

In a letter dated April 16, 2018, Cartagz 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 Tomasz

Barczyk, Kronenberger Rosenfeld, LLP, to U.S. Copyright Office (Apr. 16, 2018) (“Second Request”). In that letter, Cartagz claimed that the Copyright Office applied a higher creativity requirement than warranted by copyright law and that the Office was incorrect in asserting that the Work is arranged in an inevitable, expected fashion designed to elicit the necessary information for use of the Cartagz product. *See id.* at 5. Cartagz argued, “[w]here blank forms exhibit more than a *de minimis* amount of creativity, they have been registrable.” Second Request at 8 (citing *Harcourt, Brace & World, Inc. v. Graphic Controls Corp.*, 329 F. Supp. 517, 522-25 (S.D.N.Y. 1971)). Noting that it had “numerous choices available in the selection, coordination, and arrangement of elements that appear in the Advertisement,” Cartagz contended “to any extent that the Office’s Refusal was based on the characterization of the Advertisement as a ‘blank form,’ such basis was improper.” Second Request at 6, 9. As such, Cartagz asserted that the Work contains a sufficient amount of creativity to obtain, at the very least, thin copyright protection. Second Request at 1.

III. DISCUSSION

A. *The Legal Framework*

1) *Distinction Between Ideas and Expression*

Section 102(b) of the Copyright Act expressly excludes copyright protection for “any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). As such, section 102(b) codifies the longstanding principle, first originated by the Supreme Court in *Baker v. Selden*, 101 U.S. 99 (1879), that copyright law protects the original expression of ideas, but not the underlying ideas themselves. In *Baker*, the Court held that Selden’s copyright on a book describing a bookkeeping system that included blank forms with ruled lines and headings did not preclude another from publishing a book containing similar forms to achieve the same result. 101 U.S. at 102. The Court concluded that the copyright in Selden’s book covered the way that Selden “explained and described a peculiar system of book-keeping,” but did not, however, give Selden the right to prevent others from using the system described in this book; nor did it give Selden “the exclusive right to make, sell, and use account-books prepared upon the plan set forth in such book.” *Id.* at 104.

A closely related principle, also stemming from *Baker*, is what is now referred to as the merger doctrine. In describing the limits of Selden’s copyright, the Court explained that if the “art” that a book “teaches cannot be used without employing the methods and diagrams used to illustrate the book, or such as are similar to them, such methods and diagrams are to be considered as necessary incidents to the art, and given therewith to the public.” *Id.* at 103. That is, where there is only one way or only a limited number of ways to convey the idea that the author seeks to express, the author’s expression cannot be protected under copyright law, because that would give the author a monopoly over the idea itself and prevent others from using that same idea in other works. *See CCC Info. Servs., Inc. v. Maclean Hunter Market Reports, Inc.*, 44 F.3d 61, 68 (2d Cir. 1994) (“[W]hen the expression is essential to the statement of the idea, the expression also will be unprotected, so as to insure free public access to the discussion of the idea.”); 1-2 MELVILLE & DAVID NIMMER, NIMMER ON COPYRIGHT § 2.18[C][2] (2014). The fact, however, that one author has copyrighted one expression of an idea will not prevent

other authors from creating and copyrighting their own expressions of the same idea. *See* PAUL GOLDSTEIN, GOLDSTEIN ON COPYRIGHT § 2.3.2 (2015).

Applying these principles, the Copyright Office has a longstanding presumption against registering blank forms. The Office’s regulations expressly preclude registration of “methods [or] systems” and further specify that “[b]lank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey information” are not copyrightable. 37 C.F.R. § 202.1(c); *see* COMPENDIUM (THIRD) § 313.4(G) (“The Office cannot register the empty fields or lined spaces in a blank form.”); *Id.* at § 313.4(B) (explaining where there “may be only one way or only a limited number of ways to express a particular idea,” the Office may refuse to register a claim to that expression). The Office will, however, examine a work to determine whether it contains “an appreciable amount of written or artistic expression” that can be separated from the work’s underlying method of capturing information. *Id.* at § 313.4 (G).

2) Originality

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 and described in the *Feist* decision. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, and 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).

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. They are not influenced by the attractiveness of a design, the espoused intentions of the author, the design’s uniqueness, its visual effect or appearance, its symbolism, the time and effort it took to create, or its commercial success in the marketplace. *See* 17 U.S.C. § 102(b); *Bleistein v. Donaldson*, 188 U.S. 239 (1903). The fact that a work consists of a unique or distinctive shape or style for purposes of aesthetic appeal does not necessarily mean that the work, as a whole, constitutes a copyrightable work of art.

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.

The work is a blank form that permits the user to record information, *i.e.*, a prospective customer’s “LICENSE PLATE #,” “LAST 5 DIGITS OF VIN,” and “ZIP CODE.” Applying the legal standards set forth in section 102(b) and the merger doctrine, as described above, blank forms are typically not subject to copyright protection. *See* 37 CFR § 202.1(c) (citing as “examples of works not subject to copyright . . . [b]lank forms, such as . . . graph paper . . . which are designed for recording information and do not in themselves convey information.”); COMPENDIUM (THIRD) § 313.4(G) (the Office “cannot register the empty fields or lined spaces in a blank form.”).

The Board does, however, consider whether the Work contains “an appreciable amount of written or artistic expression” that is distinct from the underlying method for recording information reflected on the form. COMPENDIUM (THIRD) § 313.4(G). It is undisputed that the

Work’s constituent elements—the words, short phrases, and business name—are not individually subject to copyright protection. *See* Second Request at 4. The text appearing in the Work, including the phrases “OFFICIAL CALIFORNIA VEHICLE REGISTRATION & STICKERS ISSUED,” and “FREE DMV LOOKUP & INSTANT FEE CALCULATION,” are merely “[w]ords and short phrases, and, as such, are not copyrightable. 37 C.F.R. § 202.1(a); *see also* COMPENDIUM (THIRD) § 313.4(C) (noting that business and product names, catchwords, catchphrases, mottoes, slogans, and other short phrases are not copyrightable).

Regarding the Work as a whole, the Board finds that it is not sufficiently creative to support registration. In this respect, the Copyright Office follows the principle that works should be judged in their entirety and not based solely on the protectability of individual elements within the work. *See Atari Games Corp. v. Oman*, 979 F.2d 242, 244-45 (D.C. Cir. 1992). Works comprised of public domain elements may be copyrightable but only if the selection, arrangement, and modification of the elements reflects choice and authorial discretion that is not so obvious or minor that the “creative spark is utterly lacking or so trivial as to be nonexistent.” *Feist*, 499 U.S. at 359. Here, however, the Work consists of very few elements—a heading, a business name, three blank spaces, and short phrases (*e.g.*, “LICENSE PLATE #,” “LAST 5 DIGITS OF VIN,” and “ZIP CODE”), most of which are necessary incidents and not protectable under the merger doctrine. *See Baker*, 101 U.S. at 103; *CCC Info. Servs., Inc.*, 44 F.3d at 68. Thus, even the Work’s aggregation of words and phrases lack sufficient creativity to warrant registration.

Although Cartagz limited its copyright claim to “text,” it asserts that it intended to “maintain a claim in the selection, coordination, and arrangement of the specific textual and graphical content of the Advertisement as a compilation, which it believed would still be covered by its claim in ‘text.’” Second Request at 4-5. Thus, to the extent Cartagz is arguing that the Work qualifies as a compilation, the Board notes that Cartagz did not seek to register a claim in compilation in its initial application. *See* COMPENDIUM (THIRD) § 618.6 (“To register a claim to copyright in a compilation the applicant should identify the new material that the author contributed to the work and should specify the preexisting material or data that was selected, coordinated, and/or arranged (*e.g.*, ‘compilation of data’ or ‘compilation of sound recordings’). . . . When completing an online application, the applicant should provide this information on the Authors screen in the field marked Other.”). Moreover, even if the compilation rubric applied,¹ the Board would not have been able to find sufficient creative compilation authorship to support registration. The selection, coordination, and arrangement of the Work’s constituent elements do not possess a sufficient amount of creative authorship to warrant copyright protection. The Work encompasses, at most, a non-protectable combination of standard font, spacing, and short phrases.

In the matter before the Board, the Work—a minimal combination of words and short phrases—lacks the modicum of creativity required by *Feist*.

¹ The Board seriously doubts that a compilation claim can ever successfully be made in circumstances like this one. *See* Dennis S. Karjala, COPYRIGHT AND CREATIVITY, 15 UCLA ENT. L. REV. 169, 194-95 (2008) (noting that, if taken too far, “there is likely no work of authorship that is not a compilation under the statutory definition,” since “[a] novel, for example, is a selection and arrangement of words (or letters), a musical work is a selection and arrangement of notes, and a painting is a selection and arrangement of forms and colors”).

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

Karyn A. Temple, Acting 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