



United States Copyright Office

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Re: Second Request for Reconsideration for Refusal to Register SAN FRANCISCO SHOCK logo 1 (SR # 1-6127548661), SAN FRANCISCO SHOCK logo 2 (SR # 1-6141518578), and SAN FRANCISCO SHOCK logo 3 (SR # 1-6141518664); Correspondence ID: 1-38NMC4F

Dear Mr. Danielson:

The Review Board of the United States Copyright Office (“Board”) has considered Three Kings Enterprises LLC’s (“Three Kings”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the works titled SAN FRANCISCO SHOCK logo 1 (“SF Shock 1”), SAN FRANCISCO SHOCK logo 2 (“SF Shock 2”), and SAN FRANCISCO SHOCK logo 3 (“SF Shock 3”) (collectively, the “Works”). After reviewing the applications, deposit copies, 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 WORKS

The Works are two-dimensional graphics associated with the San Francisco Shock team, a professional *Overwatch* esports team based in San Francisco, California. SF Shock 1 consists of the word “Shock” in orange sans-serif font, with “San Francisco” arranged above in gray sans-serif font, and a golden waveform image, which is depicted as follows:



SF Shock 2 consists of the phrase “SF Shock” in grey and orange sans-serif font, with a golden waveform image below, which is depicted as follows:



SF Shock 3 consists of a square orange field arranged with connected white capital “S” and “F” letters and white pointed vertical lines rising from the base, which is depicted as follows:



II. ADMINISTRATIVE RECORD

On January 3, 2018, Three Kings filed separate applications with the Copyright Office to register copyright claims in the Works. In a January 30, 2018, letter, a Copyright Office registration specialist refused to register the claims, finding that they “lack the authorship necessary to support a copyright claim.” Letter from Coakley, Registration Specialist, to Gregory William, Danielson Legal LLC (Jan. 30, 2018).

Three Kings subsequently requested that the Office reconsider its initial refusal to register the Works. Letter from Miguel Danielson to U.S. Copyright Office (Apr. 30, 2018) (“First Request”). After reviewing the Works in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Works lacked the authorship necessary to sustain a copyright claim because “the individual elements in each are not combined in any way that differentiates [the Works] from their basic shape and design components.” Letter from Stephanie Mason, Attorney-Advisor, to Miguel Danielson (Oct. 18, 2018).

Finally, in a letter dated January 18, 2019, Three Kings requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Works. Letter from Miguel S. Danielson to U.S. Copyright Office (Jan. 18, 2019) (“Second Request”). In that letter, Three Kings asserts that the combination of elements in the Works are sufficiently creative and further contends that the waveform design depicted in SF Shock 1 and SF Shock 2 is a creative representation of the Golden Gate Bridge. *Id.* at 4.

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 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, 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).

B. Analysis of the Works

After careful examination and application of the legal standards discussed above, the Board finds that the Works do not contain the requisite authorship necessary to sustain a claim to copyright.

The Works consist of standard elements that do not warrant copyright protection. The phrases “San Francisco Shock,” “SF Shock,” and “SF” are ineligible short phrases. 37 C.F.R.

§ 202.1(a), (e); *see CMM Cable Rep, Inc. v. Ocean Coast Props., Inc.*, 97 F.3d 1504, 1519 (1st Cir. 1996) (citing the Office’s regulation and noting, “[i]t is axiomatic that copyright law denies protection to ‘fragmentary words and phrases’”). The typeface of these phrases—the all caps, sans-serif lettering in orange, grey, or white—is similarly ineligible “typeface as typeface.” 37 C.F.R. § 202.1(e).

Additionally, as to the waveform in SF Shock 1 and SF Shock 2, the Review Board finds that it is a mere variation on a standard visualization of sound, seismic, or other energy waves. Three Kings concedes that the image of the waveform would be “immediately recognized” by a viewer, but also asserts that such images are not “so obvious, familiar, or commonplace to diminish their creative nature or registrability.” Second Request at 4. The Board agrees that there may be a sufficiently creative depiction of a waveform; however, the alterations made by Three Kings in producing this particular waveform (adjusting the lines to create three crests and accompanying valleys, ending each line in a point) are *de minimis* variations, and too trivial to support copyright registration.

Further, Three Kings’ argument that the waveform is a representation of the Golden Gate Bridge is unavailing. When examining a work for copyrightable authorship, the Copyright Office uses objective criteria to determine whether a work is sufficiently creative for copyright protection. The symbolic meaning or impression that a work conveys is irrelevant to whether a work contains a sufficient amount of creativity. COMPENDIUM (THIRD) § 310.3. Equally irrelevant is the intent of the author. *Id.* § 310.5. The waveform is certainly not a literal or expressive depiction of the Golden Gate Bridge, but an abstraction at most.¹ To extrapolate that the rising and falling of the waveform is intended to represent the Golden Gate Bridge requires a subjective interpretation of the Works that does not, and should not, play a role in evaluating whether the Works are protected by copyright. *See Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 251 (1903).

As Three Kings acknowledges, while some combinations of common or standard design elements may contain sufficient creativity to support a copyright, not every combination will meet this threshold. Second Request at 3 (citing *Feist*, 499 U.S. at 358 and 363). The combination of elements in each of the Works fail to meet the threshold for protection. SF Shock 1 contains an arrangement of the orange word “shock” horizontally with a grey “San Francisco” placed parallel above. The waveform is arranged below “shock,” and terminates at the end of the extended “k.” SF Shock 2 contains an arrangement of the grey and orange short phrase “SF Shock” horizontally, with the waveform placed below and right justified. SF Shock 3 places interconnected white “S” and “F” letters on an orange square background. The vertical lines—excerpts of the waveform in SF Shock 1 and 2—are anchored to the bottom of the orange square. These are predictable combinations of a few uncopyrightable elements and do not

¹ The Board notes that Three King’s waveform has three peaks while the Golden Gate Bridge consists of only two towers that support the cables and suspension ropes.

feature the necessary variety and composition of elements to qualify for registration. *See* COMPENDIUM (THIRD) § 309.3.

Three Kings also attempts to support its position by citing to a number of recent Review Board decisions involving logos. The Office does not compare works that have been previously registered or refused registration. *See* COMPENDIUM (THIRD) § 309.3. Instead, each claim is examined on its own merits, with the Office applying uniform standards of copyrightability at each stage of review. The Review Board notes, however, that each of the works cited by Three Kings—*American Airlines* and *Accugrid*—include expressive components not present in the Works under review. The Review Board noted in *American Airlines* that, among other elements, the image included a level of shading that “caused the bird-head element to appear to be above and separated from the aircraft tail.” Review Board, U.S. Copyright Office, to Eric F. Leon, Latham & Watkins, at 5 (Dec. 7, 2018). And, in *Accugrid*, the Review Board observed that the modicum of creativity consisted of “letters projected out from the bullseye of a two-ringed target, with lines trailing back to the bullseye from the corners of each letter.” Review Board, U.S. Copyright Office, to Mark Giarratana, McCarter & English, LLP at 2 (Sept. 18, 2018). Here, the Works combine two or three colors and arranged their few compositional elements in a standard linear fashion. As a result, the cited Review Board decisions are not useful comparisons for the Works and thus registration here is not mandated by the other registrations.

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 Works. 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, Register of Copyrights
and Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
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