



**United States Copyright Office**

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**Re: Second Request for Reconsideration for Refusal to Register Colony Family Offices Logo (Correspondence ID: 1-3OGENWQ, SR # 1-7372696951)**

Dear Ms. Skains-Menchaca:

The Review Board of the United States Copyright Office (“Board”) has considered CFO IP, LLC’s (“CFO’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional art claim in the work titled “Colony Family Offices 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-tone, two-dimensional design featuring the letters “C,” “F,” and “O” in white text within a light blue circular shape. The letter “O” is depicted as a thin white border within the circular shape. The Work is as follows:



**II. ADMINISTRATIVE RECORD**

On January 30, 2019, CFO filed an application to register a copyright claim in the Work. In a March 20, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Samantha Skains-Menchaca, at 1 (Mar. 20, 2019).

CFO then requested that the Office reconsider its initial refusal to register the Work. Letter from Samantha Skains-Menchaca to U.S. Copyright Office (May 29, 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 is “an obvious, expected logo configuration that lacks the necessary creativity required to support a claim in copyright.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Samantha Skains-Menchaca, at 3 (Aug. 26, 2019).

CFO subsequently 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 Samantha Skains-Menchaca to U.S. Copyright Office (Nov. 25, 2019) (“Second Request”). CFO argues that the Work “includes the required level of creativity in and creative interpretation of the arrangement and overlapping nature of its individual elements relative to one another and the background of the Work, as well as the layout of these elements and the design and proportion of these elements.” *Id.* at 4. CFO also compares the Work to four works registered by the Office, asserting that the Work exhibits the same level of creativity. *Id.* at 2–4.

### III. DISCUSSION

#### A. *The Legal Framework - 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, 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, 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.” COMPENDIUM OF U. S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“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 careful examination and analysis, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

Both the Work’s individual elements and the Work as a whole fail to demonstrate copyrightable authorship. The Work consists of three letters within a blue circle. The three letters, which account for three of the four elements of the Work, are each stylized in a different font. The Copyright Act does not protect letters, typeface, or typographic ornamentation.

37 C.F.R. § 202.1(a), (e) (noting that copyright registration cannot be obtained for “mere variations of typographic ornamentation, lettering or coloring” or “Typeface as typeface”); *COMPENDIUM (THIRD)* § 906.4. Geometric shapes are also not copyrightable. *Lego A/S v. Best-Lock Const. Toys, Inc.*, 404 F. Supp. 3d 583, 613 (D. Conn. 2019) (“a geometric shape alone is not eligible for copyright protection”); *COMPENDIUM (THIRD)* § 906.1.

Additionally, as a whole, the Work does not combine or arrange the individual elements in a way that warrants copyright protection. Though unprotectable elements can be combined to create a copyrightable work, the combination must include “elements [that] are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava*, 323 F.3d at 811. Here, all three letters are positioned in an overlaid arrangement inside the circle with the letters “C” and “O” centered and the “F” offset. *See* Second Request at 4. Business initials positioned inside a common geometric shape, even with minor linear or spatial variations, is a basic, familiar configuration.<sup>1</sup> Merely combining a few independently unprotectable elements with minor linear or special variations does not establish sufficient creativity to meet the authorship requirement. *COMPENDIUM (THIRD)* §§ 905, 913.1.

CFO contends that, in addition to the overlaid arrangement, the use of stylized letters and contrasting colors creates a “unique two-dimensional image that is both artistic and informative.” Second Request at 4. Merely using stylized fonts and contrasting colors standing alone or in combination do not satisfy the requirements for copyright registration. *COMPENDIUM (THIRD)* § 913.1. Furthermore, uniqueness and novelty of a work are irrelevant to a determination of creativity. *See Feist*, 499 U.S. at 345; *COMPENDIUM (THIRD)* § 310.1.

CFO also invites the Board to compare the Work with prior registrations where the Board has found sufficient creativity. The Board, however, makes registration decisions “on a case-by-case basis” and “[t]he fact that the U.S. Copyright Office registered a particular work does not necessarily mean that the Office will register similar types of works or works that fall within the same category.” *COMPENDIUM (THIRD)* § 309.3; *see also Coach*, 386 F. Supp. 2d at 499 (indicating the Office “does not compare works that have gone through the registration process”); *Homer Laughlin China Co. v. Oman*, No. 90 Civ. 3160, 1991 WL 154540, at \*2 (D.D.C. July 30, 1991) (stating that the court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”). Furthermore, each of the works cited by CFO include a greater number and variety of expressive elements not present in the Work under review. For example, the Work lacks the shading and “axial color gradients” of the American Airlines logo, which the Board found key to “transform[ing]” otherwise unprotectable shapes. U.S. Copyright Office Review Board, *Re: Registration Decision Regarding American Airlines Flight Symbol; SR 1-3537494381* at 6 (Dec. 7, 2018).


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<sup>1</sup> *See, e.g.*, American Broadcasting Logo, available at [www.abc.com](http://www.abc.com); Bayerische Motoren Werke Logo, available at [www.bmwusa.com](http://www.bmwusa.com); General Electric Logo, available at [www.ge.com](http://www.ge.com); General Motors Logo, available at [www.gm.com](http://www.gm.com).

While the requisite level of creativity required to support a copyright registration is not high, not all works meet it. Instead, “there remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a copyright.” 1 Melville Nimmer & David Nimmer, NIMMER ON COPYRIGHT § 2.01 (2018). The Work falls into this narrow area. The Board finds that the level of creative authorship involved in this combination of a few unprotectable elements is, at best, *de minimis*, and too trivial to merit copyright registration.

#### 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**

Regan A. Smith, General Counsel and

Associate Register of Copyrights

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