



United States Copyright Office

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May 16, 2019

Deborah Shapiro, Esq.
Moses & Singer LLP
The Chrysler Building
405 Lexington Avenue
New York, NY 10174-1299

**Re: Second Request for Reconsideration of Refusal to Register “Los Angeles Football Club LA and Shield Design” and “LA and Wing Design”;
Correspondence IDs: 1-2UDR428 and 1-2UF4TM3; SRs: 1-5049820731 and 1-5050305254**

Dear Ms. Shapiro:

The Review Board of the United States Copyright Office (“Board”) has considered Major League Soccer, LLC’s (“MLS’s”) second request for reconsideration of the Registration Program’s refusal to register two-dimensional artwork claims in the works titled “Los Angeles Football Club LA and Shield Design” and “LA and Wing Design” (collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s denials of registration.

I. DESCRIPTION OF THE WORK

The Works are two black and white graphic logo designs. The designs consist of the letters “L” and “A.” The horizontal stroke of the letter “A” is extended into a wedge to depict a wing, with the left side being wider than the right. Thin white lines divide the wedge into four thick lines of varying lengths. In the “shield” version of the design, “LOS ANGELES” and “FOOTBALL CLUB” are featured above and below “LA,” respectively. The entire graphic is centered within a heater shield, presented in outline form.

The Works are depicted as follows:

Los Angeles Football Club LA and Shield



LA and Wing Design



II. ADMINISTRATIVE RECORD

On May 4, 2017, MLS filed applications to register copyright claims in two-dimensional art for the Works. In two separate May 19, 2017, letters, two Copyright Office registration specialists refused to register the claims, finding that they lacked sufficient creative authorship to support a copyright claim because “[c]opyright does not protect familiar symbols or designs; basic geometric shapes; words and short phrases such as names titles, and slogans; or mere variations of typographic ornamentation, lettering or coloring.” Letter from C. Stoner, Registration Specialist, U.S. Copyright Office, to Meredith Schorr, Moses & Singer LLP (May 19, 2017) (citing 37 C.F.R. § 202.1) (denying registration of Los Angeles Football Club LA and Shield Design); Letter from Kristen Sosinski, Registration Specialist, U.S. Copyright Office, to Meredith Schorr, Moses & Singer LLP (May 19, 2017) (citing 37 C.F.R. § 202.1) (denying registration of LA and Wing Design).

In two substantively identical letters dated August 18, 2017, MLS requested that the Copyright Office reconsider its initial refusal to register the Works, arguing that the Works “exceed[] the ‘minimal’ amount of creativity required for a copyrightable work.” Letters from David Rabinowitz, Moses & Singer LLP, to U.S. Copyright Office at 1 (Aug. 18, 2017) (“First Request”). Describing “the meaning and the thoughts behind the symbolism and imagery in the Work[s],” MLS argued that the Works contain “wholly original elements in an original combination.” *Id.* at 2, 4. MLS further contended that the Office has registered works similar to the Works at issue. *Id.* at 5. 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 “do[] not contain a sufficient amount of original and creative artistic or graphic authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, U.S. Copyright Office, to Deborah Shapiro, Moses & Singer LLP (Jan. 11, 2018) (denying registration of Los Angeles Football Club LA and Shield Design) (“Jan. 11 Letter”); Letter from Stephanie Mason, Attorney-

Advisor, U.S. Copyright Office, to Deborah Shapiro, Moses & Singer LLP (Jan. 12, 2018) (denying registration of LA and Wing Design) (“Jan. 12 Letter”). For LA and Wing Design, the Office stated that “[t]his standard arrangement of two letters, combined with a slight modification of part of one of the letters into a graphic shape is a garden-variety logo configuration that simply does not exhibit the necessary creativity to support a claim of copyright.” Jan. 12 Letter at 3. Likewise, for Los Angeles Football Club LA and Shield Design, the Office stated, “[p]ositioning a logo and team name within a common shape is a simple arrangement that does not exhibit the necessary creativity to support a claim of copyright.” Jan. 11 Letter at 3.

In two substantively identical letters dated April 10, 2018, MLS requested that, pursuant to 37 C.F.R. § 202.5(c), the Copyright Office reconsider for a second time its refusal to register the Work. Letters from Deborah L. Shapiro, Moses & Singer LLP, to U.S. Copyright Office (Apr. 10, 2018) (“Second Request”). MLS argued that the Office “minimizes” the “inherent creativity” in the Works and “overlooks the apparent authorship which surely contains the modicum of creativity necessary to support a copyright registration.” *Id.* at 4. MLS also emphasized that “[t]he wing is more than mere ornamentation to lettering” and is “separable from the characters ‘LA,’ further demonstrating that the Work[s] [are] entitled to copyright protection.” *Id.* at 5.

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 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.

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.

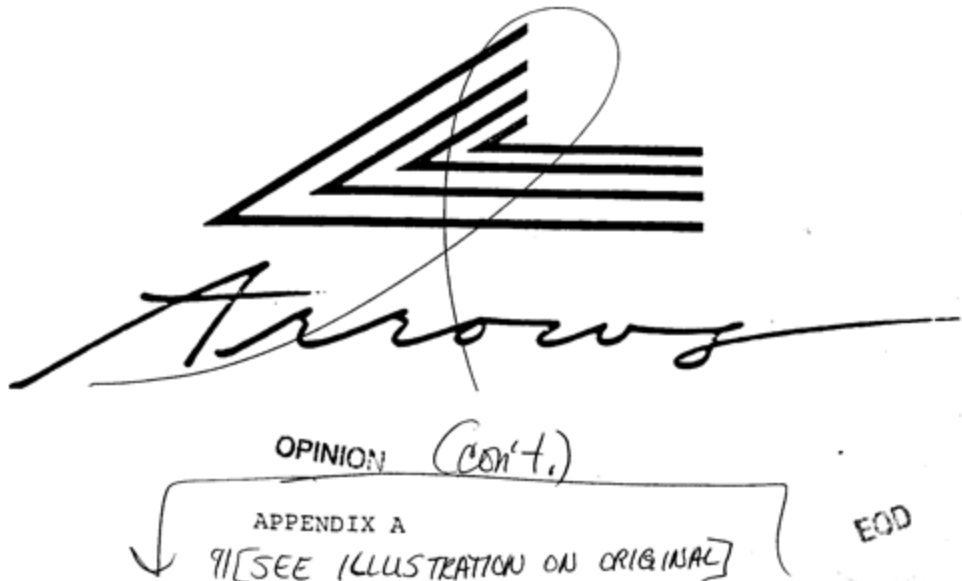
B. Analysis of the Work

After careful examination, the Board finds that the Works fail to satisfy the requirement of creative authorship and thus are not copyrightable.

It is undisputed that most of the Works' constituent elements—the heater shield, organization name, letters “L” and “A,” and typeface—are not individually subject to copyright protection. *See* Second Request at 3; *see also* 37 C.F.R. § 202.1(a) (listing “examples of works not subject to copyright” as including “[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.* at 202.1(e) (prohibiting registration of “familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring” and “[t]ypeface as typeface”). Nevertheless, MLS contends that the designs are sufficiently creative, pointing to the wing design appearing in the Works and arguing that the design itself constitutes separable “pictorial authorship, which is entitled to registration.” Second Request at 5 (citing COMPENDIUM (THIRD) § 906.4 (“To the extent that [typeface ornamentation that is separable from the typeface characters] represent works of pictorial authorship . . . they may be protected by copyright.”). In support of the wing design’s separability, MLS contends, “federal trademark applications for several iterations of the wing design . . . were approved by the United States Patent and Trademark Office.” *Id.*

The Board must disagree. The wing design is not individually subject to copyright protection. First, the stylized “A” appearing in the Works, which includes the wing design, is a trivial variation on a standard letter “A” that cannot be copyrighted “regardless of how novel and creative the shape and form of the typeface characters may be.” COMPENDIUM (THIRD) § 906.4; *see 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”). In the letter “A” appearing in the Works at issue, the standard horizontal bar is replaced by a slanted geometric shape that splits into four thick lines. Though meant to evoke a wing, the resulting design is a mere variation of typographic ornamentation and, does not constitute separable pictorial authorship.

Moreover, even if the four thick lines creating the wing shape were separable from the typeface character “A,” the shape itself is not sufficiently creative to warrant copyright protection. Similar to *John Muller & Co., Inc. v. N.Y. Arrows Soccer Team, Inc.*, the current case concerns an arrangement of basic geometric shapes. 802 F.2d 989, 990 (8th Cir. 1986). That case involved a logo that consisted of “four angled lines which form an arrow and the word ‘Arrows’ in cursive script.” *Id.* The four lines varied in size and were stacked from largest to smallest. A reproduction of that logo is depicted below.



While some creative decision-making was exercised in the selection of the shapes, as they were not symmetrical—each line had a longer horizontal edge and a shorter diagonal edge—the Eighth Circuit upheld the Copyright Office’s refusal to register the work and affirmed the district court’s opinion that the “logo lacked the level of creativity needed for copyrightability.” *Id.* Here, the wing ornamentation is just as simplistic. Both the “Arrow” logo and the wing shape at issue use four parallel lines to evoke common shapes or familiar designs. Therefore, *John Muller & Co.* supports the Board’s finding that the wing shape is *de minimis*, and does not merit copyright protection. COMPENDIUM (THIRD) § 313.4(B) (“Works that contain no expression or only a *de minimis* amount of original expression are not copyrightable and cannot be registered with the U.S. Copyright Office.”).

The Board also concludes that, neither of the Works when viewed as a wholes possesses sufficient creativity in their constituent elements to warrant copyright protection. *See* Second Request at 6. As explained above, 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 Los Angeles Football Club LA and Shield Design consists of little more than a combination of the words “LOS ANGELES” and “FOOTBALL CLUB” above and beneath an “L” and a stylized “A,” respectively. All of these elements are centered within a basic heater shield design, typical of such logos. As noted above, a mere simplistic arrangement of non-protectable elements, such as “C” shapes “in a mirrored relationship,” *Coach*, 386 F. Supp. 2d at 496–99, or evenly spaced white circles on a purple rectangle, does not demonstrate the level of creativity necessary to warrant copyright protection. COMPENDIUM (THIRD) § 906.1; *see id.* § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy [the minimum creativity] requirement.”); *see also Satava*, 323 F.3d at 811–12 (explaining that the combination of unprotectable elements must still be “numerous enough and their selection and arrangements original enough that their combination constitutes an original work of authorship”).

At bottom, the Board concludes that the basic combinations of a common and familiar shield design, an organization name, and letters with unprotectable ornamentation lack the requisite amount of creativity to warrant copyright protection. *See, e.g., Homer Laughlin China Co. v. Oman*, No. 90 Civ. 3160, 1991 WL 154540 (D.D.C. 1991) (upholding refusal to register chinaware design pattern composed of simple variations of geometric designs due to insufficient creative authorship to support copyright registration); *John Muller & Co., Inc. v. N.Y. Arrows Soccer Team, Inc.*, 802 F.2d 989 (8th Cir. 1986).


MLS argues that there were “many aesthetic choices made resulting in the Work[s],” and describes the “meaning and thoughts behind the symbolism and imagery of the Work[s]” as illustrative. Second Request at 2. 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 fact that a creative thought may take place in the mind of the person who created a work . . . has no bearing on the issue of originality unless the work objectively demonstrates original authorship.”). Thus, the Board does not consider as part of its copyrightability determination the meaning or symbolism ascribed to the wing shape or choice of font; rather, the Board evaluates only the appearance of the Work. Here, the appearance of the Work does not contain the necessary creativity for copyright protection.

The Board also finds MLS’s argument that the Office has allegedly registered works similar to ones in contention unpersuasive. *See* Second Request at 6–8. In its examination process, the Office does not compare works that have been previously registered or refused registration. *See* COMPENDIUM (THIRD) § 602.4(C) (“When examining a claim to copyright, the U.S. Copyright Office generally does not compare deposit[s] to determine whether the work for which registration is sought is substantially similar to another work.”). The Office reviews each claim of copyright on its own merits. Thus, a prior registration does not require the Board to reverse the denial of a work that it finds lacks sufficient creative authorship. *See Homer Laughlin China Co. v. Oman*, No. 90 Civ. 3160, 1991 WL 154540, at *2 (D.D.C. July 30, 1991) (stating that court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”); *accord Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 499 (indicating the Office “does not compare works that have gone through the registration process”). Even so, the actual works associated with the registrations that MLS references exhibit far more pictorial authorship than the Works at issue.

Finally, the fact that the U.S. Patent and Trademark Office has registered the wing design as a federal trademark has no bearing on whether it constitutes copyrightable authorship. The standard for trademark registration is whether a mark distinguishes goods or services, which is different from copyright’s originality standard. *See* 15 U.S.C. § 1052; *Feist*, 499 U.S. at 345 (“The *sine qua non* of copyright is originality.”); 37 C.F.R. § 202.10(a) (“In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form.”).

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

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