



Copyright Review Board

United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

June 29, 2021

Stephen D. Wilson
Beggs & Lane RLLP
501 Commendancia Street
Pensacola, FL 32502

**Re: Second Request for Reconsideration for Refusal to Register Rack Stack
(Correspondence ID: 1-40JUZY5; SR # 1-7905314536)**

Dear Mr. Wilson:

The Review Board of the United States Copyright Office (“Board”) has considered LPC Commercial Services, Inc.’s (“LPC”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Rack Stack” (“Work”). After reviewing the application, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board finds that the Work exhibits copyrightable authorship and thus may be registered.

The Work is a two-dimensional logo consisting of a symmetrical design employing shades of blue and green to give the appearance of 3D stacked rectangular prisms that are angled towards the viewer. The top and bottom two prisms are spaced closer together, with a wider space between prisms two and three. Additionally, a portion of prisms two and four have been removed from the image and replaced with white negative space. As a result of the angle of the prisms, a portion of each prism overlaps with portions of the prisms immediately below it. The areas of overlap are shaded darker and result in the creation of an X in the center of the design. The Work is as follows:



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, but not every combination or arrangement will be sufficient to meet this test. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991). 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). For example, the Office may register a work that consists merely of geometric shapes where the “author’s use of those shapes results 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 (“The [Copyright Office] will register this claim because it . . . goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement.”).

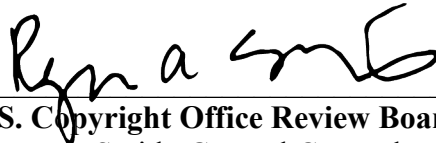
After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work satisfies the requirement of creative authorship necessary to sustain a claim to copyright.

Though the work employs common geometric shapes, viewed as a whole, the Work combines the constituent elements in a sufficiently creative way to meet the statutory requirements for copyright protection. The Work employs different colors, choosing shades of blue for the left half of the Work and shades of green on the right, with different shades chosen for different sections of the prisms. LPC varied the spacing between the second and third prisms, and also made creative choices in removing six sections of the rectangular prisms to create a unique visual effect. These choices are sufficient to provide the “modicum of creativity” required for copyright protection. *See Feist*, 499 U.S. at 346.

Note, however, the Board’s decision is based on the low standard for copyrightability and relates only to the specific combination of colors and shapes in the Work as a whole. The finding of copyrightability does not extend to any of the standard, common elements of the Work. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] . . . familiar symbols or designs.”); *see also* COMPENDIUM (THIRD) §§ 313.4(J), 906.4. Because the Work creatively arranges geometric shapes which are depicted using different colors and shades, the resulting Work is sufficient to sustain a claim, albeit thin, to copyright. *See Satava v. Lowry*, 323 F.3d 805, 812 (9th Cir. 2003) (protecting only the work’s original and creative elements “against only virtually identical copying”).

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 Registration Policy and Practice division 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

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
Education

Kimberley Isbell, Deputy Director of Policy and
International Affairs