



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

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**Re: Second Request for Reconsideration for Refusal to Register Team Solomid
TSM Original Design (Correspondence ID 1-4P6TC9E; SR # 1-9245157361)**

Dear Mr. Dietrich:

The Review Board of the United States Copyright Office (“Board”) has considered Swift Media Entertainment, Inc.’s (“Swift Media’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Team Solomid TSM Original Design” (“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-dimensional artwork shaped like a circle. A line runs through the middle of the circular shape, which is broken at the bottom. The left half of the shape contains a stylized letter “S,” and the right side contains a stylized “M.” The Work is reproduced below:



II. ADMINISTRATIVE RECORD

On September 10, 2020, Swift Media filed an application to register a copyright claim in the Work. In a September 14, 2020, letter, a Copyright Office registration specialist refused to register the claim, noting that copyright does not protect basic geometric shapes or “mere variations of typographic ornamentation.” Initial Letter Refusing Registration from U.S. Copyright Office to Thomas Dietrich at 1 (Sept. 14, 2020).

On September 29, 2020, Swift Media requested that the Office reconsider its initial refusal to register the Work, arguing that the Work “incorporates meaningful creative elements in addition to the lettering.” Letter from Thomas E. Dietrich to U.S. Copyright Office at 2 (Sept. 29, 2020) (“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 could not be registered because it “consists of just three letters” organized in an uncreative way.¹ Refusal of First Request for Reconsideration from U.S. Copyright Office to Thomas E. Dietrich at 3–4 (Mar. 4, 2021). The Office found that stylizing the letters and positioning them out of order was not a sufficiently creative selection and arrangement because “the arrangement of these three letters into a circle, a familiar shape, in no way exhibits the creativity required to support a claim in copyright.” *Id.*

In a letter dated March 19, 2021, Swift Media 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 Thomas E. Dietrich to U.S. Copyright Office (Mar. 19, 2021) (“Second Request”). The Second Request argues that that the Work contains “additional meanings built into the design” referencing video games. Second Request at 2. As examples, Swift Media points to the Work’s “overall design” using “white neutral space” and “chunky black linear elements” as elements “designed to create the appearance of a maze,” and it notes that mazes “play an important part of several of the games for which Applicant fields teams.” *Id.* at 2–3. Swift Media also points to the “two white lines and one black line running from the bottom . . . through the middle and curving around in branches from the top” as elements referencing the map in *League of Legends*, the first game Team SoloMid formed a team to play. *Id.* at 3.

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work does not satisfy the statutory requirements for a claim to copyright.

As an initial matter, the Board finds that the Work’s individual components are insufficiently creative to be eligible for copyright protection. 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 the copyright context, the term “original” consists of two components: independent creation and sufficient creativity. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*,

¹ The bisected circle could also be viewed as the letter “T,” which is why Swift Media stated in its second request for reconsideration that the Work “can be viewed as containing heavily stylized letters, ‘S,’ ‘T,’ and ‘M.’” Second Request at 5; *see also id.* at 2 (“the Work can be viewed as containing the letters TSM”). Whether the bisected circle is viewed as a shape or a letter, the Board’s analysis would be the same.

499 U.S. 340, 345 (1991). First, the work must have been independently created by the author, “as opposed to copied from other works.” *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has held that some works fail to meet even this low threshold. *Id.*

Here, the Work’s individual elements consist of the letters “S” and “M” placed inside two halves of a bisected circle—which could be viewed as a stylized letter “T.” None of these elements are protected by copyright. As the Office’s regulations explain, “familiar symbols or designs” and “mere variations of typographic ornamentation” are material “not subject to copyright.” 37 C.F.R. § 202.1(a); *see also Kitchens of Sara Lee, Inc. v. Nifty Foods Corp.*, 266 F.2d 541, 544 (2d Cir. 1959) (describing these regulations as “a fair summary of the law”). Swift Media concedes that the Work consists of two “half-circle[s]” separated by a “vertical line element,” with the left half circle containing “an ‘S’ shape” and the right half containing “an ‘M’ shape.” Second Request at 2. Because copyright “does not protect common geometric shapes” nor “mere variations of uncopyrightable letters,” these elements cannot be the basis of registration. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 906.1, 906.4 (3d ed. 2021) (“COMPENDIUM (THIRD)”). This is true even when, as Swift Media argues, the letters are “heavily stylized.” Second Request at 5; *contra* COMPENDIUM (THIRD) § 906.4 (letters are “the building blocks of expression,” and the Office will refuse claims that are “based on individual alphabetic or numbering characters” or “fanciful lettering”); *see also ELTRA Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (“typeface has never been considered entitled to copyright”).

Because the Work is composed solely of unprotectable elements, Swift Media focuses its arguments on the “creative arrangement in the placement” of these elements. Second Request at 5. The Board concludes that these elements are likewise insufficient to support a claim to copyright. “[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.” *Satava v. Lowry*, 323 F. 3d 805, 811 (9th Cir. 2003). Here, the Work consists of two letters inside a bisected circle that could be viewed as a third letter, with the other two letters arranged symmetrically in each circle half. The Board finds this arrangement too simplistic to meet the legal requirements. *See Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005) (affirming Office refusal to register a “pattern consisting of two linked C’s facing each other alternating with two unlinked C’s facing in the same direction”); *John Muller & Co. v. N.Y. Arrows Soccer Team, Inc.*, 802 F.2d 989, 990 (8th Cir. 1986) (affirming refusal to register logo consisting of “four angled lines which form an arrow and the word ‘Arrows’ in cursive script below the arrow”).

Swift Media’s arguments in the Second Request do not alter the Board’s conclusion here. In support of registration, Swift Media argues that the Work “contains additional meanings built into the design” that reference video games, including “specific references to the popular videogame *League of Legends*,” the “first game in which Applicant fielded a competitive e-sports team.” Second Request at 2–3. But the intent behind and subjective meaning of a work carry no weight in registration determinations; the Office’s review is “based on how a work is perceived, not how or why it was designed.” COMPENDIUM (THIRD) § 310.5; *see also Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1015 (2017) (“The statute’s text makes clear, however, that our inquiry is limited to how the article and feature are perceived, not how or

why they were designed.”). While Swift Media may have intended the design to reference aspects of the game *League of Legends*, the Board only takes “objective criteria” into account when evaluating the Work. COMPENDIUM (THIRD) § 309. Those aspects of the Work’s design do not meet the requirements of the statute.

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

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Associate Register of Copyrights

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