



March 28, 2022

Steven B. Winters, Esq.
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**Re: Second Request for Reconsideration for Refusal to Register COINME
(Correspondence ID: 1-4CH6Y1Q; SR # 1-8743789898)**

Dear Mr. Winters,

The Review Board of the United States Copyright Office (“Board”) has considered Sands Costner Inc.’s second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “COINME” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s refusal of registration.

I. DESCRIPTION OF THE WORK

The Work is a two-dimensional logo consisting of the words “coin” and “me” put together to form one word. The design employs green and blue coloring. Above the “i” is stylized to include a curved arch with a dot positioned on the right end of the arch, next to the “m.” The Work is as follows:



II. ADMINISTRATIVE RECORD

On April 16, 2020, Sands Costner filed an application to register a copyright claim in the Work. On the same day, a Copyright Office registration specialist refused to register the claim, finding that it “lack[ed] the authorship necessary to support a copyright claim.” Initial Letter

Refusing Registration from U.S. Copyright Office to Suzanne Lukas-Werner at 1 (Apr. 16, 2020).

In an April 28, 2020 letter, Sands Costner requested that the Office reconsider its initial refusal to register the Work. Letter from Steven B. Winters, Lane Powell PC, to U.S. Copyright Office (Apr. 28, 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 it “does not contain a sufficient amount of original and creative authorship to support copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Steven B. Winters at 2 (Oct. 8, 2020). The Office concluded that the Work was a combination of unprotectable elements that consisted only of common geometric shapes, words and short phrases, and mere variations in coloring combined in an uncreative and expected way. *Id.* at 2–3.

In a letter dated January 8, 2021, Sands Costner requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Sands Costner argued that the Office applied “an erroneously high standard of creativity” rather than the “creative spark” standard set forth in *Feist Publications, Inc., v. Rural Telephone Service Co.* Letter from Steven B. Winters, Lane Powell PC, to U.S. Copyright Office at 5 (Jan. 8, 2021) (“Second Request”); *see Feist*, 499 U.S. 340, 345 (1991). Further, Sands Costner argued that “the Work contain[ed] creativity as to color choice and color arrangement, creativity as to shape of letters and the graphical elements of the arc and coin, and the interplay of the graphical elements with one another.” Second Request at 3. Lastly, Sands Costner argued that the Office failed to apply the same standard of creativity compared to other works the Office has previously registered. *Id.* at 3–4.

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work’s individual elements fail to exhibit copyrightable authorship. The Office has consistently found that words and short phrases, mere variations of typography or coloration, and standard geometric shapes all fail to contain the sufficient amount of original creative expression. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs; [as well as] mere variations of typographic ornamentation, lettering[,] or coloring”). The dot connected to the “m” and the curved arch depicted over the “i” are both common shapes ineligible of copyright protection. *See* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (“The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form.”). The remaining elements consists of green and blue coloring and a business name, slightly stylized in font and arranged without spacing to combine two words: “coin” and “me.” Again, these individual elements are ineligible for copyright protection because they fail to demonstrate creative and original authorship. *See* COMPENDIUM (THIRD) §§ 906.4 (“[T]ypeface, typefont, lettering, calligraphy, and typographic ornamentation are not registrable. These elements are mere variations of uncopyrightable letters or words...”), 313.4(C) (“The U.S. Copyright Office cannot register individual words or brief combinations of words, even if the word or short phrase is novel or distinctive or lends itself to a play on words.”), 313.4(K) (stating

that the Office may refuse to register a claim if the author “merely added, changed, or combined expected or familiar sets or pairs of colors”).

Additionally, after considering the work as a whole, the Board finds that the selection and coordination of the unprotectable elements that comprise the Work are insufficiently creative to sustain copyright protection. Though some combinations of non-protectable elements may contain sufficient creativity with respect to how they are arranged to support a copyright registration, not every combination will be numerous enough and their arrangement original enough to constitute an original work of authorship. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003); COMPENDIUM (THIRD) § 905. While “the standard of originality is low . . . it does exist.” *Feist*, 499 U.S. at 363. Here, Sands Costner’s simplistic arrangement of a dot, an arch, and a business name in green and blue coloring does not demonstrate the requisite level of creativity needed to warrant protection. *See, e.g., John Muller & Co. v. N.Y. Arrows Soccer Team, Inc.*, 802 F.2d 989, 990 (8th Cir. 1986) (upholding the Copyright Office’s refusal to register a simple logo consisting of four angled lines which formed an arrow and the word “Arrows” in a cursive script beneath the arrow).


Sands Costner argues that the Work contains creativity due to “[t]he shape and positioning of the green arc and circle, which doubles conceptually as both the dot of the I and as a ‘coin’—soars or jumps over from the word ‘coin’ to the word ‘me,’ creating an artistic representation of the message.” Second Request at 3. However, the author’s intentions, ideas, and concepts underlying the creation of a work are irrelevant to the determination of its copyrightability. *See* COMPENDIUM (THIRD) § 310.5 (stating that the U.S. Copyright Office “will not consider the author’s inspiration for the work, creative intent, or intended meaning.”).

Finally, the applicant points to other works registered by the Office, arguing that the Office failed to apply the same standard of creativity here. First Request at 4–6; Second Request at 3–5. The Office does not compare works that have been previously issued or refused registration. COMPENDIUM (THIRD) § 309.3 (“The 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.”). Because determinations of copyrightability are made on a case-by-case basis, the Board declines to engage in a side-by-side comparison with other works.

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.

No response to this letter is needed.



U.S. Copyright Office Review Board
Shira Perlmutter, Register of Copyrights
Suzanne Wilson, General Counsel and
Associate Register of Copyrights
Kimberley Isbell, Deputy Director of Policy and
International Affairs