



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

April 11, 2022

John L. Ambrogi, Esq.
Latimer LeVay Fyock LLC
55 West Monroe Street, Ste 1100
Chicago, IL 60601

**Re: Second Request for Reconsideration for Refusal to Register Love Mural
(Correspondence ID: 1-400LBNX; SR # 1-9012945671)**

Dear Mr. Ambrogi:

The Review Board of the United States Copyright Office (“Board”) has considered At World Properties, LLC’s (“AWP”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Love Mural” (the “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 mural painting of the word “love” in white cursive font. The background is painted black. The deposit of the Work is as follows:



II. ADMINISTRATIVE RECORD

In July 2020, AWP filed two applications to register two-dimensional copyright claims. On July 9, 2020, AWP filed an application to register a two-dimensional work titled “LOVE.” The deposit for this application was as follows:



A few days later, on July 14, AWP filed an application to register the Work.

Copyright Office registration specialists refused to register both claims in July 2020, finding that the works lacked the creative authorship necessary to support a copyright claim. Initial Letter Refusing Registration from U.S. Copyright Office to John Ambrogi (July 9, 2020) (refusing registration of “LOVE”); Initial Letter Refusing Registration from U.S. Copyright Office to John Ambrogi (July 16, 2020) (refusing registration of the Work).

After receiving the initial refusal letters, AWP requested that the Office reconsider the two-dimensional copyright claims in both the Work and “LOVE.” Letter from John L. Ambrogi to U.S. Copyright Office at 1 (July 10, 2020) (requesting reconsideration of decision regarding “LOVE” and attaching photos of design on murals because “it may be that the deposit material did not properly represent the actual work in this case”); Letter from John L. Ambrogi to U.S. Copyright Office (Sept. 15, 2020) (requesting reconsideration of decision regarding the Work). After reviewing both works in light of the points raised in the first requests for reconsideration, the Office re-evaluated the claims and again concluded that the works lacked a sufficient amount of creative authorship. The Office concluded that the works do “not contain a sufficient amount of creativity to warrant registration” because they “consist[] of a single word,” which is not copyrightable. Refusal of First Request for Reconsideration from U.S. Copyright Office to John Ambrogi at 2 (Dec. 3, 2020) (addressing application for “LOVE”); Refusal of First Request for Reconsideration from U.S. Copyright Office to John Ambrogi at 2 (Feb. 10, 2021) (addressing application for the Work). With respect to the mural design depicted in the Work, the Office noted, “the fact the work takes the form of an outdoor mural, with the word in white against a black background” does not “transform the letters into a copyrightable work of art – they remain

non-copyrightable letters forming a non-copyrightable word.” Refusal of First Request for Reconsideration from U.S. Copyright Office to John Ambrogi at 2 (Feb. 10, 2021).

In a letter dated April 30, 2021, AWP requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work.¹ AWP argued that the mural contains sufficient creativity to qualify for copyright protection because of the “litany of creative-driven decisions made to create the Work,” which include the “distressed and weathered brick” and “location” of the mural. Letter from John L. Ambrogi to U.S. Copyright Office at 21–22 (Apr. 30, 2021) (“Second Request”). AWP argued that the Office “unduly placed emphasis on a single—and small—creative choice” and “failed to look beyond the single element” to consider the author’s creative decision making. Second Request at 22–28.

III. DISCUSSION

After carefully examining the Work and applying the relevant legal standards, the Board finds that the Work fails to demonstrate copyrightable authorship, both in consideration of the individual elements and the Work as a whole.

The Work consists of the word “love” in white cursive font painted atop a black background. These elements are not copyrightable individually. *See* 37 C.F.R. § 202.1(a) (“words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation; [and] lettering or coloring” are ineligible for copyright protection); *see also CMM Cable Rep, Inc. v. Ocean Coast Props., Inc.*, 97 F.3d 1504, 1519–20 (1st Cir. 1996) (citing the Office’s regulation and noting, “[i]t is axiomatic that copyright law denies protection to ‘fragmentary words and phrases’”).

The Work as a whole is likewise insufficiently creative. It consists of only a few unprotectable elements in a standard linear arrangement. *See* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 905 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (“[i]n all cases, a visual art work must contain a sufficient amount of creative expression. Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”).

AWP points to a variety of the mural’s non-authorship aspects as potential bases for protection. It identifies the selection of the “distressed brick wall” with its “weather-related decay” as an “independent creative choice” and the “basis for other creative choices.” Second Request at 28. AWP also describes the Work’s location in an alley, “a location long associated with darkness, dankness, filth, and fear” as “an additional element of the artist’s creative decision making.” Second Request at 51–52. The Board appreciates that the author’s chosen medium and location may be formative to the development and overall symbolic impact of the mural. Those elements, however, are not considerations under the Copyright Act. With regards to “medium,” “materials used to create a work have no bearing on the originality analysis.”

¹ AWP initially submitted a second request for reconsideration dated February 23, 2021 and identifying the service request number for “LOVE.” In a subsequent email to the Office, AWP clarified that it sought review only of the application to register “Love Mural,” identified under service request number 1-9012945671, and submitted an amended letter correcting the error. Email from John L. Ambrogi to Megan Efthimiadis, U.S. Copyright Office (Apr. 30, 2021).

COMPENDIUM (THIRD) § 310.9. For example, the Office will not register claims “based on cut marks, defects, and other qualities found” in naturally occurring elements like natural stone. COMPENDIUM (THIRD) § 313.2. Further, copyright law only protects “the fruits of intellectual labor” that “are founded in the creative powers of the mind.” *Trade-Mark Cases*, 100 U.S. 82, 94 (1879). Elements “owing their form to the forces of nature cannot be copyrighted.” *Kelly v. Chicago Park District*, 635 F.3d 290, 304 (7th Cir. 2011). AWP concedes that the “rough brick wall” was not “changed in any manner prior to the creation of the work,” and classifies any distress or decay observed in the wall as “weather-related.” Second Request at 28. Thus, the perceived textual irregularities in the Work are merely consequences of nature and do not constitute original human authorship. Concerning “location,” the Office will consider only the expression that is fixed in the work itself and is perceptible in the deposit copy. *See Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S.Ct. 1002, 1015 (“[O]ur inquiry is limited to how [the design is] perceived”); COMPENDIUM (THIRD) § 310.3. Any meaning or significance that the Work may evoke due to its location, which is not perceptible, is irrelevant.

In reaching this decision, the Board does not evaluate or dismiss the value of the Work. In fact, in considering whether the Work meets the minimum degree of creativity for copyright protection, the Board must explicitly avoid weighing the artistic merit of a particular work. H.R. REP. NO. 94-1476, at 51 (1976) (“The phrase ‘original works of authorship’ . . . does not include requirements of . . . esthetic merit, and there is no intention to enlarge the standard of copyright protection to require them.”). As the Supreme Court explained, “[i]t would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits.” *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 251 (1903).

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms 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
Shira Perlmutter, Register of Copyrights
Suzanne Wilson, General Counsel and Associate Register
of Copyrights
Kimberley Isbell, Deputy Director of Policy and
International Affairs