



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

November 17, 2023

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Phoenix, AZ 85004

**Re: Second Request for Reconsideration for Refusal to Register TRINITY
CROSS (SR # 1-11264387649; Correspondence ID: 1-5GALPZ9)**

Dear Mr. Hartman:

The Review Board of the United States Copyright Office (“Board”) has considered Daniel John Van Such’s (“Applicant”) second request for reconsideration of the Registration Program’s refusal to register a sculpture claim in the work titled “TRINITY CROSS” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Work exhibits copyrightable authorship and may be registered.

The Work is a three-dimensional sculpture consisting of eight rectangular steel plates, welded together to form a cross-like shape with a parabolic center, surrounded by three spheres, on top of a circular base plate, all in the same blue color. Deposit images for the Work are included in the Appendix.

Although not every combination or arrangement of common or standard design elements will be entitled to copyright registration, some such combinations will contain sufficient creativity with respect to how they are juxtaposed or arranged to meet the test for protectability. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991). A determination of copyrightability in a 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.* 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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”); *see also Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989) (“[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.”).

After carefully examining the Work and applying the legal standard discussed above, the Board finds that the Work satisfies the requirement of creative authorship necessary to sustain a claim of copyright. While the Work’s individual elements, such as the rectangular steel plates and spheres on a circular base, are not copyrightable, *see* 37 C.F.R. § 202.1(a) (“familiar symbols [and] designs” are not subject to copyright); COMPENDIUM (THIRD) §§ 313.4(J), 906.1,

906.2, the Work as a whole employs a selection, arrangement, and combination of individual elements that displays sufficient creativity to meet the requirements for copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[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.”). Specifically, the eight rectangular steel plates of different sizes, arranged and welded together at different angles to create a three-dimensional cross-like element that allows light to enter through the parabolic center opening and cast shadows on the sculpture and surrounding ground, and three spheres on top of a circular base, in combination, contain the modicum of creativity required for copyrightability. The Board’s decision relates only to the Work’s specific combination and arrangement of elements as a whole and does not extend individually to any of the standard and common elements depicted in the Work.

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.



U.S. Copyright Office Review Board

Suzanne V. Wilson, General Counsel and

Associate Register of Copyrights

Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs

Mark T. Gray, Assistant General Counsel

APPENDIX



Title of Work: Trinity Cross
Dimensions: Height 60 inches; Width 45 inches; Depth 10 inches.









