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

July 28, 2023

D. James Nahikian, Esq.
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1636 North Wells Street Suite 415
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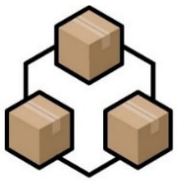
Re: Second Request for Reconsideration for Refusal to Register CPG.IO Logotype Trademark (SR # 1-10223622601; Correspondence ID: 1-52AMPCW)

Dear Mr. Nahikian:

The Review Board of the United States Copyright Office ("Board") has considered CPGIO LLC's ("CPGIO") second request for reconsideration of the Registration Program's refusal to register a two-dimensional artwork claim in the work titled "CPG.IO Logotype Trademark" ("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 graphic design consisting of three small cubes, outlined in black, connected with black lines. The small cubes are brown with a beige stripe on top, giving the appearance of a taped cardboard box. These three cubes are arranged in a triangular fashion. Connecting the squares are a series of black lines that meet at a 120-degree angle, giving the illusion of a three-dimensional cube in the center. The name "CPG.IO," in black coloring, is positioned at the bottom of the design. The Work is depicted below.



CPG.IO

II. ADMINISTRATIVE RECORD

On March 2, 2021, CPGIO filed an application to register a copyright claim in the Work. In an April 20, 2021 letter, a Copyright Office registration specialist refused to register the claim, determining that the work lacked "sufficient creative authorship." Initial Letter Refusing Registration from U.S. Copyright Office to D. Nahikian at 1 (Apr. 20, 2021).

In a letter dated July 12, 2021, CPGIO requested that the Office reconsider its initial refusal to register the Work. Letter from D. Nahikian to U.S. Copyright Office (July 12, 2021) ("First Request"). After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claim and again concluded that the Work "[did] not contain a sufficient amount of original and creative artistic or graphic authorship to support a copyright registration." Refusal of First Request for Reconsideration from U.S. Copyright Office to D. Nahikian at 1 (Dec. 3, 2021). Specifically, the Office concluded that neither the individual elements of the Work nor the combination and arrangement of the elements contained the requisite creativity. *Id*. at 3.

In a letter dated March 3, 2022, CPGIO 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 D. Nahikian to U.S. Copyright Office (Mar. 3, 2022) ("Second Request"). CPGIO argues that the Work is creative because it includes "zero directional symmetry." *Id.* at 10. CPGIO also argues that the three-dimensional appearance of the Work "moves the human eye around the work between the black hexagons created by the lines surrounding the smaller cuboids (with their three diamond shapes formed by creative use of color and hue) and the central white space," creating the impression that the smaller cubes "can be 'sent' in at least three directions pointed to by the unique tri-arrow design at center." *Id.* at 10–11.

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 meet the standards for creativity in order to qualify 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 this context, the term "original" consists of two components: independent creation and sufficient creativity. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). First, the work must have been independently created by the author, *i.e.*, not copied from another work. *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has ruled that some works (such as the alphabetized telephone directory at issue in *Feist*) fail to meet even this low threshold. *Id.* The Court observed that "[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity." *Id.* at 363.

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 claim. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See id.* at

358 (finding the Copyright Act "implies that some 'ways' [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not"). 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, 883 (D.C. Cir. 1989); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498–99 (S.D.N.Y. 2005). A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant 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").

The Office's regulations implement the longstanding requirement of originality set forth in the Copyright Act. *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"); *id.* § 202.10(a) (stating "to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form"). Through its regulations, the Office provides guidance that copyright does not protect familiar shapes or designs, or mere variations of those shapes and designs. *Id.* § 202.1(a); *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 313.4(J), 906.1–.2 (3d ed. 2021) ("COMPENDIUM (THIRD)") (noting that common shapes and familiar symbols and designs are not protectable).

Neither the Work's individual elements nor the Work as a whole are sufficiently creative to be copyrightable. Each of the individual elements lack the spark of creativity necessary for copyright. The letters "C," "P," "G," "I," "O" are not independently copyrightable. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(J). The three small cubes, angled black lines, three-dimensional effect, and illusory "arrows" individually are simple geometric shapes that are also not independently copyrightable. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 313.4(J), 906.1. Likewise, the outlines of the small cubes and the white space are also unprotected uses of frames or borders. COMPENDIUM (THIRD) §§ 906.3, 914.1.

Similarly, the depiction of the small boxes does not reach the level of creativity necessary for copyright. "Familiar symbols and designs are not copyrightable" are not copyrightable. COMPENDIUM (THIRD) § 313.4(J); *see also Atari Games Corp. v. Oman*, 979 F.2d 242, 245–46 (DC Cir. 1992) (copyright protection is not available for works that are "garden-variety, typical or obvious"). The use of beige to represent cardboard, one side slightly shaded to give a three-dimensional impression, and a stripe to represent tape are common elements in cardboard box imagery. CPGIO did not add sufficient design elements to these common images for them to be protected by copyright. *See, e.g.*, *Design Ideas, Ltd. v. Yankee Candle Co.*, 889 F. Supp. 2d 1119, 1128 (C.D. Ill. 2012) ("the sailboat shapes are not sufficiently creative to be copyrightable… the sailboat shape is a familiar, well-known shape so that decisions regarding curve, size, color, and number included in a set do not make the product sufficiently original so that the work is copyrightable"); *Express, LLC v. Fetish Grp., Inc*., 424 F. Supp. 2d 1211, 1227 (C.D. Cal. 2006) ("standard elements in combination" were not copyrightable).

CPGIO's arguments about how viewers may interpret the Work do not impact the above analysis. *See* Second Request at 10 (arguing that the design of the arrows "suggests the smaller

'box-like' cuboids can be 'sent' in at least three directions pointed to by the unique tri-arrow design at center"); *id.* at 5 (arguing that a viewer could perceive the negative white space in two different ways). When examining a work for copyrightable authorship, the Copyright Office uses objective criteria to determine whether a work is sufficiently creative for copyright protection. A viewer's conception of a work is not considered, and "the fact that creative thought may take place in the mind of the person who encounters a work has no bearing on the issue of originality." COMPENDIUM (THIRD) § 310.3; *see also Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1015 (2017) ("[O]ur inquiry is limited to how the article and feature are perceived, not how or why they were designed.").

The Review Board has also considered the combination of the lettering and geometric shapes in the Work and concludes that the Work does not contain the creativity required for copyright protection. The small cubes, which each contain half the surface area of the largest cube, are placed on three equidistant points, creating vertical and rotational symmetry. This arrangement of common geometric shapes in a standard, symmetrical manner is not sufficiently creative to be protectable by copyright. *See, e.g.*, COMPENDIUM (THIRD) § 312.2 (creativity is reduced by "arranging geometric shapes in a standard or symmetrical manner"); *id.* § 906.1 (example work not registered because "the combination of the purple rectangle and the standard symmetrical arrangement of the white circles does not contain a sufficient amount of creative expression to warrant registration"). The placement of the company name in the bottom center of the logo is also a standard arrangement that is not protectable by copyright. *Id.* § 906.4. As a whole, the Work merely brings together standard shapes and figures with minor spatial variants in a predictable arrangement. *See id.* § 905.

CPGIO suggests that the Work is at least as original as other works that the Office has previously registered. *See* Second Request at 9–13. The Office does not compare works; it makes determinations of copyrightability on a "case-by-case basis" and "[a] decision to register a particular work has no precedential value." COMPENDIUM (THIRD) § 309.3. At the same time, the Board notes that the Work differs from those works that CPGIO cites in that those works feature more graphical design elements including unique shapes in different colors and sizes as well as utilizing more original asymmetric arrangements than the Work in question.[1] The Board's conclusion here is not affected by these prior decisions.

[1] U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Cooperstown Vodka Artwork Stitch Design* (Aug. 12, 2020), https://copyright.gov/rulings-filings/review-board/docs/cooperstown-vodka.pdf; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of 2010 Vancouver Whitecaps Primary Crest* (Apr. 23, 2020), https://copyright.gov/rulings-filings/review-board/docs/vancouver-whitecaps-primarycrest.pdf; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of American Airlines Flight Symbol* (Dec. 7, 2018), https://copyright.gov/rulings-filings/review-board/docs/american-airlines.pdf.

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
Suzanne V. Wilson, General Counsel and
Associate Register of Copyrights
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
Jordana Rubel, Assistant General Counsel