



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

March 10, 2021

Gordon M. Wright
Reinhart Boerner Van Deuren
2215 Perrygreen Way
Rockford, IL 61107

**Re: Second Request for Reconsideration for Refusal to Register JETBOIL Logo;
Correspondence ID: 1-40YN9E8; SR # 1-7832585331**

Dear Mr. Wright:

The Review Board of the United States Copyright Office (“Board”) has considered Johnson Outdoors Gear, Inc.’s (“Johnson Outdoors”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional art claim in the work titled “JETBOIL Logo” (“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 solid black tri-oval that contains three diagonal white stripes that curve and taper toward the bottom center.¹ The Work is as follows:



¹ A tri-oval is a shape that resembles both a triangle and an oval and has three rounded corners. Tri-ovals are used in automobile racetracks, motorcycle slip-on mufflers, and home furniture designs, among other things. See, e.g., *Get to know all 23 Monster Energy NASCAR Cup Series tracks*, NASCAR, <https://www.nascar.com/gallery/get-to-know-all-23-monster-energy-nascar-cup-series-tracks/#photo-1> (last visited Mar. 9, 2021); *Ranking All 23 NASCAR Cup Series Racetracks*, ATHLON SPORTS (Mar. 31, 2017, 8:07 PM), <https://athlonsports.com/nascar/ranking-nascar-sprint-cup-series-racetracks>; *MUFFLER STYLE GUIDE*, YOSHIMURA, <https://www.yoshimura-rd.com/pages/muffler-guide> (last visited Mar. 9, 2021); *Behind the Scenes: TRI-OVAL II*, COBRA, https://cobrausa.com/inside_cobra/behind_the_scenes/57/tri_oval_ii/ (last visited Mar. 9, 2021); *Lovegrove Tri-Oval Table* Ross Lovegrove, KNOLL, https://www.knoll.com/document/1352940814889/Knoll_TriOvalTables_Cutsheet.pdf (last visited Mar. 9, 2021).

II. ADMINISTRATIVE RECORD

On June 28, 2019, Johnson Outdoors filed an application to register a copyright claim in the Work. In a September 11, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office, to Gordon Wright (Sept. 11, 2019).

In a letter dated December 3, 2019, Johnson Outdoors requested that the Office reconsider its initial refusal to register the Work. Letter from Gordon M. Wright, to U.S. Copyright Office (Dec. 3, 2019) (“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 contains “no elements or features . . . either alone or in combination upon which a copyright registration is possible.” Refusal of First Request for Reconsideration from U.S. Copyright Office, to Gordon Wright, at 1 (Apr. 23, 2020).

In a letter dated July 22, 2020, Johnson Outdoors 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 Gordon M. Wright, to U.S. Copyright Office (July 22, 2020) (“Second Request”). In that letter, Johnson Outdoors argued that the Work contains the requisite level of creativity, as the Work “is not made up merely of common geometric shapes nor is it made from familiar symbols and designs.” *Id.* at 2. Specifically, Johnson Outdoors submitted that “‘oblong’ is not a shape, it is a descriptor,” and asserted that “[t]he fact that there is no specific name for the shape . . . indicates that it is not merely a basic shape.” *Id.* at 3–4. Discussing the curved and tapered stripes, Johnson Outdoors argued that they “are not a standard or basic shape,” but are “the result of creative decisions made by the author.” *Id.* at 4. Finally, Johnson Outdoors suggested that the Work “clearly qualifies” for copyright registration since “the placement of standard shapes of different sizes and colors shows the requisite creativity required for copyright registration.” *Id.* at 3.

III. DISCUSSION

A. *The Legal Framework - Originality*

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. It further found that there can be no copyright in a work in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 359.

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, slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering, or coloring”); *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”). 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. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See Feist*, 499 U.S. 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 (D.C. Cir. 1989).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. For example, the United States District Court for the Southern District of New York upheld the Copyright Office’s refusal to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements.” *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). Likewise, the Ninth Circuit has held that a glass sculpture of a jellyfish consisting of clear glass, an oblong shroud, bright colors, vertical orientation, and the stereotypical jellyfish form did not merit copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The language in *Satava* is particularly instructive:

It is true, of course, that a *combination* of unprotectable elements may qualify for copyright protection. But it is not true that *any* combination of unprotectable elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that 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.

Id. (internal citations omitted).

Similarly, while the Office may register a work that consists merely of geometric shapes, for such a work to be registrable, the “author’s use of those shapes [must] result[] 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.*, 888 F.2d at 883 (“[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.”). Thus, the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but would not register a picture consisting merely of a purple background and evenly spaced white circles. COMPENDIUM (THIRD) § 906.1.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See* COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design’s visual effect or its symbolism, the time and effort it took to create, or the design’s commercial success in the marketplace are not factors in determining whether a design is copyrightable. *See, e.g., Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

B. Analysis of the Work

After carefully examining the Work and applying the legal standard discussed above, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

The Board finds that none of the Work’s individual elements are sufficiently creative to be eligible for copyright protection. The Work consists of a tri-oval with three interior curved stripes that taper towards the bottom center of the tri-oval. Indeed, Johnson Outdoors described the Work in this manner to the U.S. Patent and Trademark Office in connection with its application for trademark protection, specifically: “a triangular shape with 3 curved lines in the central portion of the triangular shape.”² These elements are each common geometric shapes. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.1 (“There are numerous common geometric shapes, including, without limitation, straight or curved lines, circles, ovals, spheres, triangles, cones . . .”). Common geometric shapes are not protected by copyright. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.1; *see also* *LEGO A/S v. Best-Lock Constr. Toys, Inc.*, 404 F. Supp. 3d 583, 613 (D. Conn. 2019) (“a geometric shape alone is not eligible for copyright protection”).

Viewed as a whole, the Work’s combination of its unprotectable elements—basic tri-oval and three parallel, curved stripes—lack the requisite amount of creativity needed for copyright protection. While Johnson Outdoors is correct that “original authorship may be present in the selection, coordination, and/or arrangement of images, words, or other elements, provided that there is a sufficient amount of creative expression in the work as a whole,” Second Request at 2, here, the Work does not possess such creative expression. *See* *Satava*, 323 F.3d at 811 (concluding that there are times when a work’s unprotectable elements are not numerous enough and their selection and arrangement are not original enough to warrant copyright protection). The Work consists of a simple combination of a few elements, with three tapered stripes predictably centered in parallel inside the tri-oval. The Work is, thus, an example of “[m]erely bringing together only a few standard forms or shapes with minor linear or spatial variations” that does not qualify for copyright protection. COMPENDIUM (THIRD) § 905; *see also* *Feist*, 499 U.S. at 362 (noting that the “selection and arrangement . . . cannot be so mechanical or routine as to require no creativity whatsoever”); *John Muller & Co. Inc. v. N.Y. Arrows Soccer Team*, 802

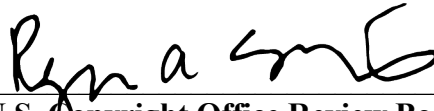
² JETBOIL JOULE GROUP COOKING SYSTEM, Registration No. 4,585,722 (“The mark consists of . . . a triangular shape with 3 curved lines in the central portion of the triangular shape.”). While the fact that a work is registered with the U.S. Patent and Trademark Office (“USPTO”) does not bear upon an application for copyright registration, since the Copyright Office will evaluate an application independently for purposes of copyrightability, *see* COMPENDIUM (THIRD) § 914.1, the Office does note the factual representations made in connection with the Work’s application for trademark registration.

F.2d 989 (8th Cir. 1986) (affirming that a work consisting of four angled lines and one word lacked the level of creativity needed for copyrightability).

Johnson Outdoors also asserts that the Work is creative because the stripes were “set within the oblong shape to create the impression of flames, such as those in a camp fire.” Second Request at 4. When examining whether a work satisfies the originality requirement, however, the Office will “focus solely on the appearance . . . of the work,” and will not consider the “author’s inspiration for the work, creative intent, or intended meaning.” COMPENDIUM (THIRD) § 310.5. The Office will also not consider a work’s “symbolic meaning or impression” when determining originality. *Id.* at § 310.3.

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

Regan A. Smith, General Counsel and

Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of

Copyrights and Director, Public Information and
Education

Kimberley Isbell, Deputy Director of Policy and
International Affairs