United States Copyright Office
Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

August 12, 2013

Edwin Komen, Esq.
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1300 Eye Street, NW
11th Floor East
Washington, DC 20005-3314

Re: COEXIST
Copyright Correspondence ID: 1-A8VVWX

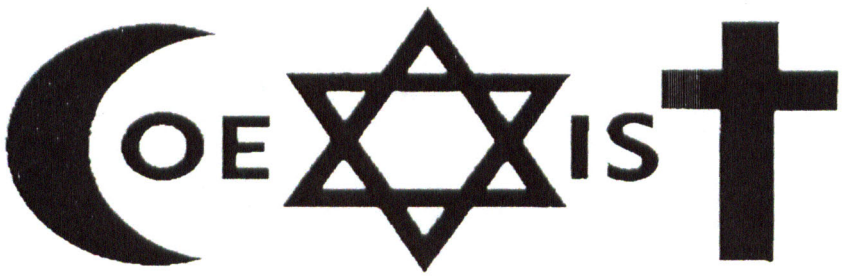
Dear Mr. Komen:

The Review Board of the United States Copyright Office (the "Board") is in receipt of your second request for reconsideration of the Registration Program's refusal to register the work entitled: *COEXIST* (the "Work"). You submitted this request on behalf of your client, Piotr Mlodozeniec, on April 19, 2011. I apologize for the delay in the issuance of this determination. After periods of inaction, staff departures, and budgetary restrictions, the Register of Copyrights has appointed a new Board and we are proceeding with second appeals of registration refusals as expeditiously as possible.

The Board has examined the application, the deposit copies, and all of the correspondence in this case. After careful consideration of the arguments in your second request for reconsideration, the Board affirms the Registration Program's denial of registration of this copyright claim. The Board's reasoning is set forth below. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action on this matter.

I. DESCRIPTION OF THE WORK

COEXIST, shown below, is a work of visual art composed of various symbols and letters that are black in color, arranged in a horizontal and linear fashion. The letters and symbols are ordered in such a manner so as to spell the English word "coexist," where the "c" has been removed and replaced with a crescent, the "x" has been removed and replaced with a six-pointed star, and the "t" has been removed and replaced with a cross.



II. ADMINISTRATIVE RECORD

On June8, 2011, the United States Copyright Office (the "Office") issued a letter notifying Michał Sałajczyk, who at the time was representing Piotr Mlodozeniec (the "Applicant"), that it had refused registration of the above mentioned Work. Letter from Kathryn Sukites, Registration Specialist, Registration and Recordation Program Office, U.S. Copyright Office, Library of Congress, to Michał Sałajczyk (June 8, 2011). In its letter, the Office indicated that it could not register the Work because it lacks the authorship necessary to support a copyright claim. *Id.*

In a letter dated August 30, 2011, Mr. Sałajczyk requested reconsideration of the decision to refuse registration of the Work. Letter from Michał Sałajczyk to Registration and Recordation Program Office, U.S. Copyright Office, Library of Congress (Aug. 30, 2011) ("First Request"). Upon reviewing the Work in light of the points raised in the letter, the Office concluded that the Work "does not contain a sufficient amount of original and creative artistic, graphic, or sculptural authorship" and again refused registration. Letter from Attorney-Advisor, Stephanie Mason, to Michał Sałajczyk (Jan. 20, 2012).

Finally, in a letter dated April 19, 2012, you 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 Edwin Komen to Copyright Office Board of Review, U.S. Copyright Office, Library of Congress (Apr. 19, 2012) ("Second Request"). You stated that Mr. Mlodozeniec was not attempting to extend copyright protection to any idea, but merely the artistic representation of that idea. *Second Request* at 1. You asserted that the Office should recognize that the Work is not a word or short phrase, but rather it is a work of art. You argued that the Work is no different than any other image which expresses a simple but powerful message through a visual medium. *Id.* You also noted that artistic merit is not the measure of copyright protection. *Id.* at 2, citing *Bleistein v. Donaldson*, 188 U.S. 239 (1903).

III. DECISION

A. *The Legal Framework*

All copyrightable works must qualify as "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). As used with respect to copyright, the term "original" consists of two components: independent creation and sufficient creativity. *See Feist*, 499 U.S. at 345. 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.* While only a modicum of creativity is necessary to establish the requisite level, the Supreme Court has ruled that some works (such as the telephone directory at issue in *Feist*) fail to meet this 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 nonexistent." *Id.* at 359.

The Office's regulations implement the long-standing requirements of originality and creativity set forth in the law and, subsequently, the *Feist* decision. *See* 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"); *see*

also 37 C.F.R. § 202.10(a) (stating "[i]n order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form").

Case law recognizes instances in which works have enjoyed copyright protection for "the artistic combination and integration" of constituent elements that, considered alone, are unoriginal. *See Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101 (2d Cir. 2001). However, as noted, the mere simplistic arrangement of non-protectable elements does not automatically establish the level of creativity necessary to warrant protection. *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"). Ultimately, the determination of copyrightability in the combination of standard design elements rests 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. D.C. 1989).

To be clear, the mere simplistic arrangement of non-protectable elements does not automatically establish the level of creativity necessary to warrant protection. For example, the Eighth Circuit upheld 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 below the arrow. *See John Muller & Co.*, 802 F.2d 989 (8th Cir. 1986). Likewise, the Ninth Circuit held that a glass sculpture of a jellyfish that consisted of elements including clear glass, an oblong shroud, bright colors, proportion, 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 court's language in *Satava* is particularly instructional:

> [i]t 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) (emphasis in original).

Finally, Copyright Office Registration Specialists (and the Board, as well) do not make aesthetic judgments in evaluating the copyrightability of particular works. They are not influenced by the attractiveness of a design, the espoused intentions of the author, the design's uniqueness, its visual effect or appearance, its symbolism, the time and effort it took to create, or its commercial success in the marketplace. *See* 17 U.S.C. § 102(b); *see also Bleistein*, 188 U.S. 239.

B. *Analysis of the Work*

After carefully examining the Work, and applying the legal standards discussed above, the Board finds that *COEXIST* fails to satisfy the requirement of creative authorship.

The Work can be said to consist of essentially four elements. The first element is the word "coexist," or specifically several of its constituent letters "o," "e," "s," and "t," which are used to

compose the alphabetic elements of the work. The second, third, and fourth elements are the religious symbols of a crescent moon, a six-pointed star, and a cross replacing the letters "c," "x," and "t" respectively. All of these elements are common letters or symbols, taken together to form a word that is also common. As such, all constituent elements are in the public domain and uncopyrightable on their own. As previously discussed, the requirements of 37 C.F.R. §§ 202.1, 503.02(a) of *Compendium II* bar copyright protection for elements that are common and familiar shapes. All of the elements are presented in black coloring, and are arranged in a horizontal linear fashion. It appears that nothing has been done to them to raise their stand-alone creativity beyond a *de minimis* level in any way.

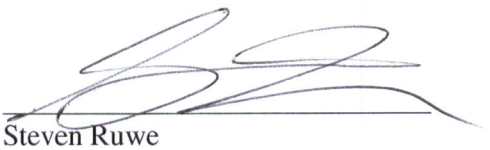
Your claims regarding the artistic effect and visual impact of the Work go to judgments of aesthetic appeal. As previously noted, the Office does not make such judgments when considering whether a work is deserving of copyright protection. *Bleistein*, 188 U.S. 239. The judgment that the Office makes is not a judgment of the aesthetics of the work's appearance or visual impact, but rather a judgment of the work's creativity of construction. *Id.* In conducting such a judgment, the Board finds that arrangement of the constituent elements is not creative enough to merit copyright protection. There is little authorship evident in the arrangement and selection of the constituent elements, and what is present is a trivial variation of a common shape or configuration. It is trivial in relation to the Work as a whole, and does not add enough so that the Work rises above having *de minimis* authorship. As such, *COEXIST* does not represent copyrightable authorship.

In sum, the Board finds that the Applicant's selection and arrangement of the elements that comprise the Work lack a sufficient level of creativity to make the Work registerable under the Copyright Act.

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the work entitled: *COEXIST*. This decision constitutes final agency action on this matter. 37 C.F.R. § 202.5(g).

Maria A. Pallante
Register of Copyrights

BY: 
Steven Ruwe
Copyright Office Review Board