



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

August 17, 2022

Richard A. Graham, Jr., Esq.
Reed Smith LLP
Reed Smith Center
225 Fifth Avenue
Pittsburgh, PA 15222

**Re: Second Request for Reconsideration for Refusal to Bolt Green Helmet
(SR # 1-7829651933; Correspondence ID: 1-46J7C21)**

Dear Mr. Graham:

The Review Board of the United States Copyright Office (“Board”) has considered C-PREME Limited, LLC’s (“CPL”) second request for reconsideration of the Registration Program’s refusal to register a claim in the work titled “Bolt Green Helmet” (“Work”). After reviewing the application, deposit copies, 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 bicycle helmet, with three rows of protruding curved triangular fins running in straight lines down the center of the top of the helmet from the front to nearly the back. Each side of the helmet has a large green lightning bolt, placed symmetrically to line up with the protruding triangles. Images of the Work from different angles are reproduced below:



II. ADMINISTRATIVE RECORD

On June 27, 2019, CLP filed an application to register a copyright claim in the Work. On January 29, 2020, a Copyright Office registration specialist refused to register the claim finding

that the work was a “useful article, and determined that it [did] not contain any non-useful design element that could be copyrighted and registered.” Initial Letter Refusing Registration from U.S. Copyright Office to Kenneth Booth at 1 (Jan. 29, 2020).

In a letter dated April 29, 2020, CPL requested that the Office reconsider its initial refusal to register the Work. Letter from Richard Graham to U.S. Copyright Office (Apr. 29, 2020) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claim and concluded that although the Work contained separable elements, these separable features “do not satisfy the originality requirement, regardless of whether they are considered individually or as part of the overall design.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Kenneth Booth at 3 (Aug. 7, 2020) (“Second Refusal”). The Office further concluded that the triangular fins and lightning bolt were each a “trivial variation of familiar shapes and symbols” thereby lacking the requisite creativity to merit copyright registration. *Id.* at 5.

In a letter dated November 9, 2020, CPL 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 Richard Graham to U.S. Copyright Office (Nov. 9, 2020) (“Second Request”). CPL argued that the Work is not a merely trivial variation in familiar shapes and asserted that the selection of the shapes, material used, translucence of materials, arrangement of the shapes, overall resulting shape, varying sizes and relative angles, as well as the color demonstrate original expression. *Id.* at 6. Applicant further asserted that the sizing and lineal variation in the lightning bolt were beyond those of “garden-variety depictions of lightning bolts,” and that overall design was original. *Id.* at 6–7.

III. DISCUSSION

As CPL acknowledges, the Work is a “useful article” under the Copyright Act. *See* 17 U.S.C. § 101 (defining “useful article”); *see also* Second Request at 2 (arguing work has protectable features that can be perceived “separate from the useful article”). Copyright law does not protect useful articles as such, but may protect any artistic features applied on or incorporated into a useful article if the feature “(1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated.” *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017).

In its denial of CPL’s first reconsideration request, the Office agreed that the three-dimensional elements on top of the helmet¹ and the two-dimensional image on the sides of the helmet are separately identifiable.² To be protectable, separable features of a useful article must

¹ The arch of the three-dimensional element is attributable to the curvature of the helmet. As the overall shape of a useful article is not protectable, the arched aspect of the three-dimensional element is not separable or protectable. U.S. COPYRIGHT OFFICE, COMPENDIUM OF THE U.S. COPYRIGHT OFFICE PRACTICES § 924.3(F) (3d ed. 2021) (“COMPENDIUM (THIRD)”).

² Second Refusal at 2–3. In its application, CPL sought to register both the sculptural and two-dimensional visual elements in the Work. Though the Work also appears to include the image of a raccoon and text on its side, CPL

constitute “copyrightable subject matter.” *See id.* at 1008–09. The statute defines copyrightable subject matter as “original works of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). In this context, the term “original” has two components: independent creation and a sufficient amount of creativity. *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 345 (1991). The Office does not question that CPL independently created the separable features of Bolt Green Helmet, rather its analysis focuses on whether the features contain more than a *de minimis* amount of creative expression. *Id.* at 363.

Three-Dimensional Elements

The curved triangular elements (also called triangular fins herein) in the Work are not protectable individually because they are familiar geometric shapes. The courts and the Copyright Office have concluded that standard designs and shapes, “including, without limitation, straight or curved lines . . . triangles . . . [and] diamonds,” and familiar designs, such as fleur de lys, do not meet the low originality standard required for copyrightability. COMPENDIUM (THIRD) §§ 906.1(A), 906; *see also The Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q. 2d 1074 (D.D.C. 1991) (upholding refusal to register a chinaware “gothic” design pattern composed of simple variations and combinations of geometric shapes due to insufficient creative authorship to merit copyright protection). The triangular elements on the top of the Work represent common and familiar shapes and minor alterations to a standard figure or shape, which do not satisfy the creativity requirement. COMPENDIUM (THIRD) § 313.4(J).

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, but not every combination or arrangement will be sufficient to meet this test. *See Feist*, 499 U.S. at 358. Considerations may include whether those elements “are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). Here, while the triangular fins are numerous, their selection and arrangement are not original. The triangular fins present in an obvious and standard arrangement from every angle. First, they are arranged in a largely symmetrical way. This arrangement typically does not denote adequate creativity. *See* COMPENDIUM (THIRD) § 312.2 (noting that “arranging geometric shapes in a standard or symmetrical manner” is an example of a compilation of elements that may not warrant copyright protection). Second, while there are three sizes of triangular fins, the triangular fins are arranged in a common configuration of the tallest item in the center, with two equal height items on the sides. The smallest triangle is notched from the center of the largest triangular and presents a *de minimis* variation between the smaller and larger fins, and is uniformly replicated in all the large center fins. When viewed from the side, all of the triangular fins are evenly spaced and in straight lines. The rows of triangles do not demonstrate variation in their placement, spacing, or relationship to one another, aside from middle row being taller. While a sufficiently creative arrangement of shapes in an unusual pattern may provide a basis for copyrightability, a repeating series of evenly spaced shapes in a straight line amounts to a garden-variety pattern that falls

does not argue that these elements were the basis for registration in either the First Request or Second Request. Because CPL does not argue for consideration of the raccoon image or associated text, the Board will not consider them in its analysis.

short of the Copyright Act's requirements for protection. *See Satava*, 323 F.3d at 811; *see also* COMPENDIUM (THIRD) § 906.1.

In its Second Request, CPL points to “original expression to arrange the center row shapes in a side by side arrangement with the smaller shapes set off at an angle away from the center row.” Second Request at 4. The side-by-side arrangement referenced is a standard arrangement, and the slight outward tilt on the triangles flanking the center, as well as the small triangular cutouts in the center fins, amounts to *de minimis* variation to a common design. Minor linear or spatial variations on a familiar design do not demonstrate sufficient originality to qualify for copyright protection. COMPENDIUM (THIRD) § 313.4(J).

CPL further asserts that its expression manifested through the material used and its intent for the overall shape of the resulting structure to resemble a mohawk. Second Request at 5–6. These factors are not considered in the evaluation of originality for the purposes of copyright. *See* COMPENDIUM (THIRD) § 310.9 (“As a general rule, the materials used to create a work have no bearing on the originality analysis.”); *see also id.* § 310.6 (When examining a work for original authorship, the U.S. Copyright Office will not consider the author’s inspiration for the work, creative intent, or intended meaning).³

Two-Dimensional Elements

The two-dimensional lightning bolt included on both sides of the Work is a familiar symbol that is not protectable by copyright. As discussed above, the Copyright Act does not protect familiar symbols and designs. COMPENDIUM (THIRD) § 906.2. A lightning bolt is a common representational symbol akin to a spade or diamond. *Id.* § 313(J). CPL asserts that the narrowness and elongation of the lightning bolt and its black and green outlines are evidence of originality. Second Request at 6–7. However, mere variations of familiar shapes and designs are not protected by copyright. COMPENDIUM (THIRD) § 906.2. Similarly, minor linear or spatial variations on a familiar design do not demonstrate sufficient originality to qualify for copyright protection. *Id.* § 313.4(J). Together, the outlining and elongation of a lightning bolt symbol as shown in the Work present a familiar, garden-variety shape with minor linear and spatial variations, and therefore does not exhibit the requisite originality necessary for copyright registration.

Viewed as a whole, the combination of the three-dimensional triangular fins and the two-dimensional lightning bolt designs does not contain the creativity required for copyright protection. While the two-dimensional and three-dimensional elements are different shapes, their presence together and relationship to one another does not display originality or creativity. Visually, the interplay of these elements is in a common arrangement. In relation to one another,

³ Applicant asserts a level of creativity exists in the Work by referencing works held in a well-known museum, insinuating a relationship between artistic merit and creativity for the purposes of copyright. Second Request at 4. The Board does not consider the aesthetic value, artistic merit, or intrinsic quality of a work when evaluating originality for the purposes of copyright. H.R. REP. NO. 94-1476, at 51 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5664; *see also* COMPENDIUM (THIRD) § 310.2. The Board also does not compare works when making registration decisions. *Homer Laughlin China*, 22 U.S.P.Q. 2d at *2 (stating that the court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”).

these elements are presented in a standard symmetrical manner, with the lightning bolt elements flanking either side of the center element. The overall size of each element shows little variance, with each element stretching almost the entire length of the helmet. While the colors of the respective elements are not identical, they are both shades of green showing little variety. As a whole, the Work merely brings together standard shapes and figures with minor spatial variants in predictable arrangements. *See id.* § 905 (“In 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.”); *see also Homer Laughlin China*, 22 U.S.P.Q. 2d; *Jon Woods Fashions, Inc. v. Curran*, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988) (upholding refusal to register a fabric design consisting of striped cloth with small grid squares superimposed on the stripes).

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