



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

March 17, 2023

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**Re: Second Request for Reconsideration for Refusal to Register Longer Lasting
(SR # 1-11262606223; Correspondence ID: 1-5EQOH07)**

Dear Ms. Mangione:

The Review Board of the United States Copyright Office (“Board”) has considered Slice, Inc.’s (“Slice”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Longer Lasting” (“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 an orange-and-white colored graphic. The design consists of four lines of text and numbers in white coloring centered within a large orange circle. The Work is as follows:



II. ADMINISTRATIVE RECORD

On March 21, 2022, Slice filed an application to register a copyright claim in the Work. In a May 16, 2022 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 Honeah Mangione (May 16, 2022).

On May 25, 2022, Slice requested reconsideration of the Office’s initial refusal. Letter from Slice to U.S. Copyright Office (May 25, 2022) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that the Work “does not contain a sufficient amount of original and creative authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Honeah Mangione at 1 (Sept. 30, 2022). It further concluded that the Work “is a simple logo containing a company slogan or tag line combined with a graphic shape. Centering a slogan within a common shape is an expected, age-old logo arrangement.” *Id.* at 3.

On October 5, 2022, Slice 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 Slice to U.S. Copyright Office (Oct. 5, 2022) (“Second Request”). In that letter, Slice argued that originality can be gleaned from the combination of colors and the arrangement of the text, specifically, the white text being “visually arranged in two columns” and centered “in an orange circle.” *Id.* at 3.

III. DISCUSSION

After carefully examining the Work and applying the relevant legal standards, the Board finds that the Work does not contain the requisite creativity necessary to sustain a claim to copyright.

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.

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act and described in the *Feist* decision. As set out in the Office’s regulations, copyright does not protect “[w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering or coloring.” 37 C.F.R. § 202.1(a). Accordingly, when a work only consists of unprotected elements, it must combine those elements in a sufficiently creative way to meet the requirements of originality. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (stating that the combination of unprotectable elements is protected “only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship”).

Here, the individual elements of the Work—mere coloration, geometric shapes, and simple words and phrases displayed in standard typeface—are insufficiently creative to warrant copyright protection. The singular circle is a common shape that is not eligible for copyright

protection. *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; [as well as] mere variations of typographic ornamentation, lettering or coloring”). The words, “up to 11x longer lasting vs. steel,” and the typeface are not subject to copyright protection. *Id.* § 202.1(a), (e). The color, fonts, and sizes of the text are “mere variations of typographic ornamentation [and] lettering” that are not protected by copyright law. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 313.3(D), 313.4(C) (3d ed. 2021) (“COMPENDIUM (THIRD)”) (“The U.S. Copyright Office cannot register individual words or brief combinations of words, even if the word or short phrase is novel or distinctive or lends itself to a play on words.”). The white text inside the orange circle creates a mere variation of coloring that does not materially add to the Work’s creativity. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(K) (stating that the Office may refuse to register a claim if the author “merely added, changed, or combined expected or familiar sets or pairs of colors”).

Likewise, the combination of these unprotectable elements is insufficiently creative to support a copyright claim. Where a design combines uncopyrightable elements, it is protected only when the “elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava*, 323 F.3d at 811. Here, the Work does not contain a sufficiently original composition to constitute an original work of authorship. *See id.* Slice argues that the visual arrangement of the work is sufficiently creative because:

[T]he text is visually arranged in two columns (i.e. there are two elements per line) but misaligned by the enlarged “11X.” And all of the foregoing text in white color font is arranged in an orange circle.

Second Request at 3. However, centering a simple slogan within a singular circle is an obvious, expected logo configuration. *See* COMPENDIUM (THIRD) § 914.1 (The Office “typically refuses to register . . . logos” that consist of only “mere scripting or lettering, either with or without uncopyrightable ornamentation.”); *see also John Muller & Co. v. NY Arrows Soccer Team, Inc.*, 802 F.2d 989, 990 (8th Cir. 1986) (affirming the refusal to register a logo consisting of four irregularly spaced angled lines with the word “Arrow” in cursive script below because it was insufficiently creative). Simply making the font size larger and using two different colors for the text and background does not make the Work sufficiently creative. *See* COMPENDIUM (THIRD) § 914.1 (The Office “typically refuses to register . . . logos” that consist of only “mere use of different fonts or colors . . . either standing alone or in combination.”).

Slice’s argument that the text “attempts to humor with its pithy statement,” even if true, also would not demonstrate the requisite creativity. The author’s intentions underlying the creation of a work are irrelevant to the determination of its copyrightability. *See id.* § 310.5 (stating that the U.S. Copyright Office “will not consider the author’s inspiration for the work, creative intent, or intended meaning”). The Office only considers the actual appearance of the work and not the symbolic meaning of the work or how others may perceive the work. *See* 17 U.S.C. § 102(b); COMPENDIUM (THIRD) § 310.3.

Finally, Slice argues that the author’s “numerous decisions” made in creating the Work supports the modicum of creativity required. Second Request at 3. The Office, however, does

not consider the time and effort that went into creating a work or the artistic merit of the work. COMPENDIUM (THIRD) §§ 310.2, 310.7. The Office concluded, and the Board agrees, that Slice's choices and arrangement do not meet the requirements for copyright protection.

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
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