



June 17, 2022

Todd Sharinn, Esq.
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31 Brookside Dr.
Greenwich, CT 06830

Re: Second Request for Reconsideration for Refusal to Register Chat Box with Gift Bow (Correspondence ID: 1-49NFHS5; SR # 1-8747102821)

Dear Mr. Sharinn:

The Review Board of the United States Copyright Office (“Board”) has considered Voice Express Co.’s second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Chat Box with Gift Bow” (“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 refusal of registration.

I. DESCRIPTION OF THE WORK

The Work is a two-dimensional graphic design that consists of a rectangular-shaped box with a curved bottom right corner and the bottom left corner coming down to a point. Above the regular-shaped box is a simple bow with two tear drop loops. The design also employs black coloring in its lining. The Work is as follows:



II. ADMINISTRATIVE RECORD

On April 17, 2020, Voice Express filed an application to register a copyright claim in the Work. On May 28, 2020, a Copyright Office registration specialist refused to register the claim, finding that it “lack[ed] the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Todd Sharinn at 1 (May 28, 2020).

In a letter dated June 3, 2020, Voice Express requested that the Office reconsider its initial refusal to register the Work. Letter from Todd Sharinn to U.S. Copyright Office (June 3, 2020) (“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 it “does not contain a sufficient amount of original and creative artistic or graphic authorship to support copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Todd Sharinn at 1 (Sept. 17, 2020). The Office concluded that the Work was a combination of unprotectable elements that consisted only of common geometric shapes, and as such “simply making minor alterations to these otherwise standard shapes will not inject the requisite level of creativity.” *Id.* at 3.

In a letter dated December 15, 2020, Voice Express requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Voice Express argued that the Work is a “combination of unique and original shapes that as a whole is sufficiently creative to warrant copyright registration.” Letter from Todd Sharinn to U.S. Copyright Office at 7 (Dec. 15, 2020) (“Second Request”). Alternatively, Voice Express also argued that “even if the work is entirely a collection of unoriginal material, it should be copyrighted because the material is selected, coordinated, and arranged in an original fashion.” Second Request at 6.

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 satisfy the statutory requirements for copyright protection.

Under the Copyright Act, a work can be registered if it is an “original work[] of authorship.” 17 U.S.C. § 102(a). As the Supreme Court has explained, the statute requires that works contain “some minimal degree of creativity” to qualify for copyright protection. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). Though only a “modicum” of creativity is necessary, copyright will not protect works in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 346, 359.

In its application of these principles, the Office implements longstanding practices and guidelines as established in case law and the Copyright Act regarding the assessment of creativity and originality – despite Voice Express’ assertions that the Office “impose[d] its own subjective determination of what is and is not original within the well-established definition of the same.” Second Request at 3. Those well-established guidelines steadily maintain that some material is so common and uncreative that it cannot meet the statutory requirement for copyright. As set out in the Office’s regulations, copyright does not protect elements such as “[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); *see also Kitchens of Sara Lee, Inc. v. Nifty Foods Corp.*, 266 F.2d 541, 544 (2d Cir. 1959) (describing these regulations as “a fair summary of the law”). When a work consists of only unprotectable elements, it must combine or arrange those elements in a sufficiently creative way to meet the requirements of the statute. *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, both the Work’s individual elements and their combination fail to exhibit copyrightable authorship. The Office has consistently found that familiar symbols and standard geometric shapes, reproduced in either two or three dimensions, are not protected by the Copyright Act. *See* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 906.1, 906.2 (3d ed. 2021) (“COMPENDIUM (THIRD)”). Contrary to Voice Express’ assertions, the Work is not a combination of unique and original shapes. *See* Second Request at 5. Instead, the Work comprises a rectangular-shaped box with two sides slightly modified (one elongated into a point, and one shaved into a curve) and a simple bow consisting of two loops, all of which are common shapes ineligible for copyright protection. COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes, such as straight or curved lines, circles, ovals, spheres, triangles, squares, cubes, rectangles, pentagons, and hexagons are not protectable). The only remaining element is the Work’s black lining, which is also ineligible for copyright protection because it fails to demonstrate creative and original authorship. *See* 37 C.F.R. § 202.1(a) (identifying “familiar symbols or designs” and “mere variations of . . . coloring” as examples of works not subject to copyright); COMPENDIUM (THIRD) § 906.3 (“Merely adding or changing one or relatively few colors in a work or combining expected or familiar pairs or sets of colors is not copyrightable. . .”).

Additionally, after considering the Work as a whole, the Board finds that the selection and coordination of the unprotectable elements that comprise the Work are insufficiently creative to sustain copyright protection. Though some combinations of non-protectable elements may contain sufficient creativity with respect to how they are arranged to support a copyright, not every combination will be numerous enough and their arrangement original enough to constitute an original work of authorship. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 905; *see also Atari Games Corp. v. Oman*, 888 F.2d 878 (D.C. Cir. 1989). Voice Express’ simplistic arrangement of a rectangular-shaped box with two tear drop loops positioned above it in black coloring does not establish sufficient creativity to meet the authorship requirement. *See* COMPENDIUM (THIRD) § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”); *John Muller & Co. Inc. v. N.Y. Arrows Soccer Team*, 802 F.2d 989 (8th Cir. 1986) (affirming that a logo consisting of four nested, angled lines and one word lacked the level of creativity needed for copyrightability).

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.

No response to this letter is needed.



U.S. Copyright Office Review Board

Suzanne V. Wilson, General Counsel and
Associate Register of Copyrights

Jordana Rubel, Assistant General Counsel

Kimberley Isbell, Deputy Director of Policy and
International Affairs