



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

March 3, 2023

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Re: Second Request for Reconsideration for Refusal to Register DT DEFINED TECHNOLOGIES (SR # 1-9695995471; Correspondence ID: 1-4T22AHR)

Dear Mr. Kercher:

The Review Board of the United States Copyright Office (“Board”) has considered Defined Technologies, LLC’s (“DT”) second request for reconsideration of the Registration Program’s refusal to register two-dimensional artwork claims in the work titled DT DEFINED TECHNOLOGIES (“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 consists of a square with rounded corners, outlined in yellow, containing the lowercase letters “dt” also largely in yellow, with a shaded grey background inside the square. Next to the square are the words “Defined Technologies” in block letters, with the word “Defined” on top in black and the word “Technologies” underneath in yellow. The lowercase letters in the square have a slight yellow gradient and, in greatly magnified format, appear to be outlined in a different shade of yellow. In addition, the letter “d” has two blocks of color that range (top to bottom) from a bright contrasting yellow to a lighter yellow, to white, with one block having a curved bottom edge. The letter “t” has a single block of color, in the same fashion as the “d,” and the block of color also has a curved bottom edge. The top edge of the “d” slopes upward and the top edge of the “t” slopes downward such that they form a point where the two letters are next to each other. Finally, the left portion of the horizontal line on the “t” is darkened and overlays a portion of the “d.” The Work is as follows:¹



¹ The Work includes the entire logo included in the deposit copy submitted by DT. The Board notes that the first and the second request for reconsideration argue only that the depiction of “dt” in a square supports copyrightability.

II. ADMINISTRATIVE RECORD

On November 2, 2020, DT filed an application to register a copyright claim in the Work. On January 12, 2021, a Copyright Office registration specialist refused registration, “because [the Work] lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Kevin Kercher at 1 (Jan. 12, 2021). On January 13, 2021, DT’s counsel requested that the Office reconsider its initial refusal to register the Work. Letter from Kevin M. Kercher to U.S. Copyright Office (Jan. 13, 2021) (“First Request”). The First Request focused on the “dt” in the square portion of the logo, specifically pointing to the vertical blocks of color gradient from yellow to white contained within each of the letters, the curved bottom edge of the color gradient block, and the upward sloping angle of the top of the “d” and the downward sloping top of the “t” which meet in a point. *Id.* at 1. 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 cannot be registered because “*DT DEFINED TECHNOLOGIES* does not contain a sufficient amount of creativity to warrant registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Kevin Kercher at 3 (May 14, 2021). Specifically, the Office determined that the elements of the Work—a square, two letters, and two words—were common elements, and that the colorization of the letters and square did “not exhibit a sufficient amount of original and creative authorship to support a copyright registration.” *Id.* Viewed as a whole, the Office found that the Work’s elements were combined in an ordinary fashion. Moreover, the Office noted that the asserted appearance of the graphic portion of the work as “sunlight reflecting off the design” did not make the Work registrable, as the intended meaning does not by itself create the basis for registration. *Id.*

On August 12, 2021, DT 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 Kevin M. Kercher to U.S. Copyright Office (Aug. 12, 2021) (“Second Request”). In its Second Request, DT argued that the gradations of color within different segments of the letters “d” and “t,” together with the darkening of the left side of the horizontal component of the “t,” where it intersects with the top portion of the “d,” are sufficiently creative to merit registration. Furthermore, DT asks the Board to consider three prior decisions of the Board reversing refusals to register, as well as prior decisions of the Office to register various logos. *Id.* at 2.

III. DISCUSSION

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

As an initial matter, the Board finds that the Work’s individual components are insufficiently creative to be eligible for copyright protection. 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 the copyright 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, “as opposed to copied from other works.” *Id.* Second, the work must possess sufficient

creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has held that some works fail to meet even this low threshold. *Id.*

Here, the Work’s individual elements consist of the words “Defined Technologies,” placed one above the other, and a rounded square containing the letters “dt” in lowercase. These elements are not protected by copyright. As the Office’s regulations explain, “familiar symbols or designs” and “mere variations of typographic ornamentation” are material “not subject to copyright.” 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”). Because copyright “does not protect mere variations on a familiar symbol or design,” nor “mere variations of uncopyrightable letters,” these elements cannot be the basis of registration. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 906.2, 906.4 (3d ed. 2021) (“COMPENDIUM (THIRD)”); *see id.* § 313.4(J) (“[f]amiliar symbols and designs are not copyrightable”). The Second Request does not argue that the two words are a basis for copyrightability; the Board would not consider them in any event because they are unprotectable words or a short phrase. *See* 37 C.F.R. 202.1(a).

The Second Request focuses on the alleged creativity of the graphical portion of the logo (i.e., the square with the letters “dt”). In particular, DT argues that the three rectangular color gradients within the letters, ranging from a bright shade of yellow to white (and two having a curved edge at the bottom) constitute sufficient creativity to warrant registration. Second Request at 2. DT also states that the sloped top edges of the letters, which come to a point in the middle, is further evidence of a creative work. *Id.* at 3. However, even where the letters are shaded and slightly altered, the Office will refuse claims that are “based on individual alphabetic or numbering characters” or “fanciful lettering.” COMPENDIUM (THIRD) § 906.4; *see also ELTRA Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (“typeface has never been considered entitled to copyright”). Although shading can be considered as a possible element in the determination of creativity, it does not, *per se*, render a simplistic element creative enough to be copyrightable.

The Board concludes that these elements in combination are likewise insufficient to support a claim to copyright. “[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.” *Satava v. Lowry*, 323 F. 3d 805, 811 (9th Cir. 2003). Here, the graphical portion of the Work consists of two letters in a square, where the letters contain rectangular gradients of a different shade of yellow (plus white) than the rest of the letters. The addition of a small color gradient does not materially enhance a work’s creativity. *See Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005) (affirming Office refusal to register a “pattern consisting of two linked ‘C’s’ facing each other alternating with two unlinked C’s’ facing in the same direction”); *John Muller & Co. v. N.Y. Arrows Soccer Team, Inc.*, 802 F.2d 989, 990 (8th Cir. 1986) (affirming refusal to register logo consisting of “four angled lines which form an arrow and the word ‘Arrows’ in cursive script below the arrow”); COMPENDIUM (THIRD) § 914.1 (“[t]he Office typically refuses

to register trademarks, logos, or labels that consist of only . . . [m]ere scripting or lettering, either with or without uncopyrightable ornamentation”).²

DT suggests that the Work is at least as original as other works that the Office has previously registered. *See* Second Request at 1–5. The Office does not compare works; it makes determinations of copyrightability on a “case-by-case basis” and “[a] decision to register a particular work has no precedential value.” COMPENDIUM (THIRD) § 309.3. At the same time, the Board notes that the Work differs from those works that DT cites in that those works feature more graphical design elements, multiple shapes in different colors and sizes, and more original arrangements than the Work in question. *See, e.g.*, U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Vancouver Whitecaps Primary Crest* (Apr. 23, 2020), <https://copyright.gov/rulings-filings/review-board/docs/vancouver-whitecaps-primary-crest.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Colorado Rapids Crest* at 2 (Mar. 30, 2020), <https://copyright.gov/rulings-filings/review-board/docs/colorado-rapids-crest.pdf>; U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of American Airlines Flight Symbol* at 5–6 (Dec. 7, 2018), <https://copyright.gov/rulings-filings/review-board/docs/american-airlines.pdf>. The Board’s conclusion here is not affected by these prior decisions.

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

² DT misstates the standard set forth in section 914.1 of the Compendium. It claims that “[t]he only refusal of logos are those that only have the following content: [listing elements from the Compendium].” Second Request at 3. The Compendium actually states that the Office “typically refuses to register trademarks, logos, or labels that consist of only the following content: [listing several elements].” COMPENDIUM (THIRD) § 914.1. It also says that logos consisting of only the listed elements usually will not be registered. This does not mean that those are the only elements that will preclude registration.