



United States Copyright Office

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May 23, 2019

M. Christopher Bolen, Esq.
Womble Bond Dickinson (US) LLP
PO Box 13069
Research Triangle Park, NC 27709
christopher.bolen@wbd-us.com

**Re: Second Request for Reconsideration for Refusal to Register Band of the Red Hand;
Correspondence ID: 1-3055J63; SR 1-5863603121**

Dear Mr. Bolen:

The Review Board of the United States Copyright Office (“Board”) has considered The Bandersnatch Group, Inc.’s (“Bandersnatch’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional art claim in the work titled “Band of the Red Hand” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Work exhibits copyrightable authorship and thus may be registered.

The Work consists of a graphic design referencing the *Wheel of Time* book series, which is owned by the claimant. The design is a red hand, palm forward, against a grey background. Encircling the hand, in white coloring, are two phrases. “IT’S TIME TO TOSS THE DICE” is below the hand, and “DOVIE’ANDI SE TOVYA SAGAIN” is above the hand. The phrase above the hand is in a language that was created for the book series and is a translation of the English phrase. The two iterations of the phrase are separated by a pair of dice, one on each side of the hand. The dice are in black and white. The 1, 2, and 3 sides are showing on the left die, and the 1, 3, and 5 sides are showing on the right die. The dice are shaded differently to show their angles. The Work is as follows:



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 Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991). A determination of copyrightability in the combination of standard design elements depends 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.C. Cir. 1989). For example, the Office may register a work that consists merely of geometric shapes where the “author’s use of those shapes results in a work that, as a whole, is sufficiently creative.” COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (“COMPENDIUM (THIRD)”); *see also Atari Games Corp.*, 888 F.2d at 883 (“[S]imple shapes, when selected or combined in a distinctive manner indicating some ingenuity, have been accorded copyright protection both by the Register and in court.”). Thus, the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but would not register a picture consisting merely of a purple background and evenly-spaced white circles. COMPENDIUM (THIRD) § 906.1 (“The [Copyright Office] will register this claim because it . . . goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement.”).

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work satisfies the requirement of creative authorship necessary to sustain a claim to copyright. The Board believes that the Work contains a sufficient, although minimal, amount of original and creative two-dimensional authorship. Our decision to register the Work is based on the low standard for copyrightability articulated in *Feist*. The Board’s decision relates only to the Work as a whole, and does not extend individually to any of the standard and

common elements depicted in the Work such as the pair of dice, the forward facing hand, or the two short phrases—one in English and one a translation in a fictional language. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] [w]ords and short phrases [and] familiar symbols or designs”); *see also* COMPENDIUM (THIRD) §§ 313.3(E), 313.4(C), 313.4(J); *Narell v. Freeman*, 872 F.2d 907, 911 (9th Cir. 1989) (“[p]hrases and expressions conveying an idea typically expressed in a limited number of stereotyped fashions are not subject to copyright protection”). The Work’s depiction of these individual elements is basic and familiar, outside the scope of copyright protection. But when reviewed as a whole, the Work reflects that these common constituent shapes and phrases were “combined in a distinctive manner indicating some ingenuity,” and thus may be registered. *Atari Games Corp.*, 888 F.2d at 883.

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Work. The Board now refers this matter to the Registration Policy and Practice division for registration of the Work, provided that all other application requirements are satisfied.

No response to this letter is needed.



U.S. Copyright Office Review Board

Karyn A. Temple, Register of Copyrights and
Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
Education