



**United States Copyright Office**

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March 30, 2020

David Rabinowitz, Esq.  
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405 Lexington Avenue  
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**Re: Second Request for Reconsideration for Refusal to Register Colorado Rapids Crest; Correspondence ID: 1-3G6RHS8; SR 1-6073727041**

Dear Mr. Rabinowitz:

The Review Board of the United States Copyright Office (“Board”) has considered Major League Soccer, L.L.C.’s (“MLS’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Colorado Rapids Crest” (“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 black, gray, and white heater shield with gray and black exterior and interior borders. White “V” shapes accent the top and bottom of the interior border. The name “COLORADO RAPIDS” expands across the top of the shield; a graphic of a two-toned mountain with varying shading and three peaks is centered beneath the name. A soccer ball and the number “96” are featured inside the mountain. The soccer ball is shaded to appear three-dimensional. An image of the Work is below:



Although common shapes, typographical ornamentations, and familiar symbols and designs alone are not copyrightable, the Work is a creative rendering of a heater shield that

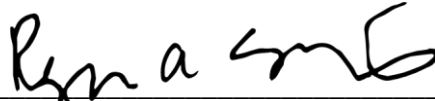
incorporates a number of elements, including an uncommon depiction of a soccer ball and stylized shading. As the Supreme Court has found, some combinations of common or standard design elements may contain sufficient creativity with respect to how they are juxtaposed or arranged to support a claim to 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.* 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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d. ed. 2014) (“COMPENDIUM (THIRD)”); *see also Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989) (“[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.”).

Applying this standard, the Board concludes that the Work combines shading and shapes in a creative manner. *See* COMPENDIUM (THIRD) § 906.1 (stating that a work is registrable where it “combines multiple types of geometric shapes in a variety of sizes and colors, culminating in a creative design that goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement”). Here, the soccer ball is placed on an angle, displaying only one black pentagon with shading at the bottom of the ball. The stylized shading in both the soccer ball and mountain (where the shading is at different angles, connoting movement of the soccer ball), in conjunction with the arrangement of shapes, letters, and numbers on the shield, also help demonstrate the modicum of creativity required for copyrightability. *See, e.g., Nicholls v. Tufenkian Imp./Exp. Ventures, Inc.*, 2004 WL 1399187, at \*1–2 (S.D.N.Y. June 23, 2004) (denying defendant’s motion to dismiss on grounds of lack of originality where the work contained circles arranged into a grid format with additional shading on each circle); *Prince Group, Inc. v. MTS Prods.*, 967 F. Supp. 121, 125 (S.D.N.Y. 1997) (holding that a shaded multicolor polka dot design was protectable). To be clear, however, 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 contained in the Work such as a shield shape, lettering, typographic ornamentation, or gray and black coloring alone. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] . . . familiar symbols or designs.”), (e) (“[W]orks not subject to copyright include . . . typeface as typeface.”); *see also* COMPENDIUM (THIRD) §§ 313.4(J), 906.4; *Eltra Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (finding the Copyright Office properly refused to register a typeface design and noting, “typeface has never been considered entitled to copyright”).

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.



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**U.S. Copyright Office Review Board**

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Associate Register of Copyrights

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