



**United States Copyright Office**

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August 7, 2020

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**Re: Second Request for Reconsideration for Refusal to Register Equilibrium, SR 1-6309300555; Neura, SR 1-6309300719; Chronic, SR 1-6309300927; Dreams, SR 1-6309301004; Joy, SR 1-6309300786; Yoj, SR 1-6309301071; Temple, SR 1-6309300880; Atem, SR 1-6309300833; Ragus, SR 1-6309300652; Meta, SR 1-6309300392; Correspondence ID: 1-3IY2H70; Original Correspondence IDs: 1-35XDI15, 1-35XEFJA**

Dear Ms. Cynader:

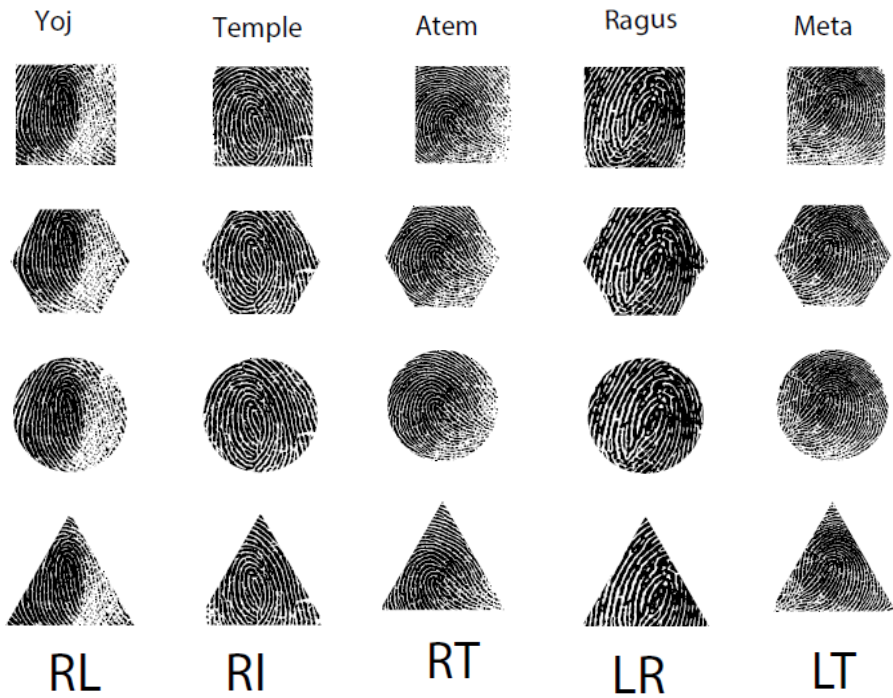
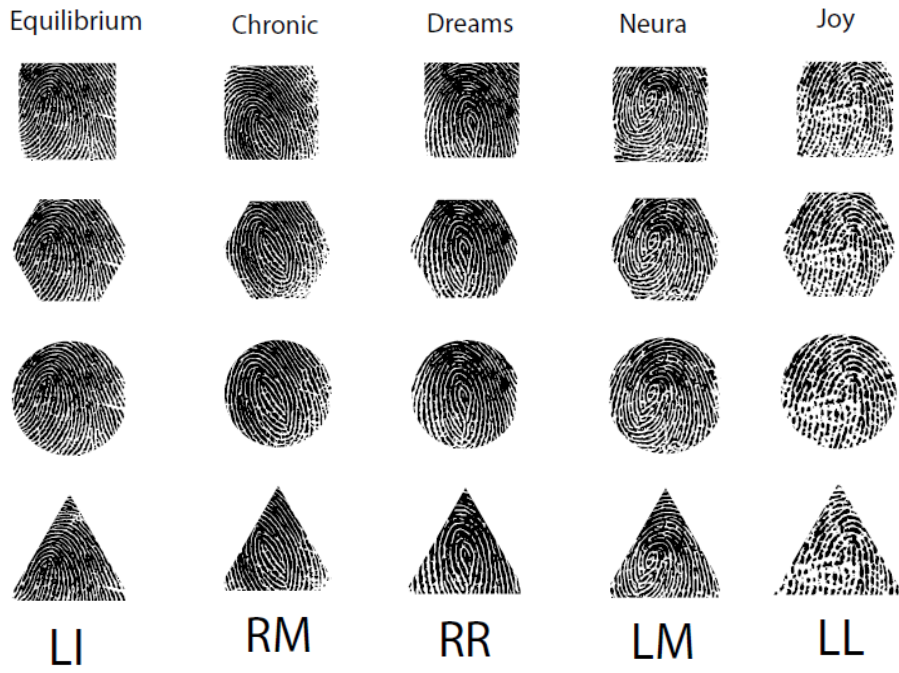
The Review Board of the United States Copyright Office (“Board”) has considered Manjit Dhaliwal’s (“Dhaliwal”) second request for reconsideration of the Registration Program’s refusal to register two-dimensional artwork claims the works titled “Equilibrium,” “Neura,” “Chronic,” “Dreams,” “Joy,” “Yoj,” “Temple,” “Atem,” “Ragus,” and “Meta” (collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s denials of registration.

## **I. DESCRIPTION OF THE WORK**

Each of the Works includes a different partial fingerprint cropped into four geometric shapes arranged vertically: a square, hexagon, circle, and triangle in that order. The fingerprints appear to be actual fingerprints that have been digitally scanned. The Works are in black and white, and the border of each geometric shape uses negative space to define the boundary. Each individual Work’s title is positioned at the top of the column, and two letters such as “LI” or “LR” are at the bottom of the column.<sup>1</sup> In some of the Works, the vertical line of geometric shapes is in a straight line, and in others, some of the shapes are slightly off-center to the left or the right. The Works are as follows:

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<sup>1</sup> The letters at the bottom appear to be abbreviations that correspond with a specific finger: LI = Left Index, RM = Right Middle, RR = Right Ring, LM = Left Middle, LL = Left Little, RL = Right Little, RI = Right Index, RT = Right Thumb, LR = Left Ring, and LT = Left Thumb.



## II. ADMINISTRATIVE RECORD

On August 23, 2018, Dhaliwal filed ten applications to register copyright claims in the Works. In two letters sent on August 23, 2018, a Copyright Office registration specialist refused to register the claims, finding that they “lack the authorship necessary to support copyright claims.” Initial Letters Refusing Registration from U.S. Copyright Office to Zarya Cynader (Aug. 23, 2018).

In two letters dated November 15, 2018, Dhaliwal requested that the Office reconsider its initial refusals to register the Works. Letters from Zarya Cynader to U.S. Copyright Office (Nov. 15, 2018) (“First Requests”). After reviewing the Works in light of the points raised in the First Requests, the Office re-evaluated the claims and again concluded that the Works “do not contain a sufficient amount of original and creative artistic or graphic authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Zarya Cynader, at 1 (May 8, 2019). The Office determined that: “[t]he geometric shapes are all common and familiar shapes”; that “[a] fingerprint, as a fingerprint, is also not protected by copyright, as it is not a work of human authorship”; and that, viewing each of the Works as a whole, the designs “merely bring together a few uncopyrightable elements in an expected, garden-variety configuration.” *Id.* at 3–4.

In a letter dated August 1, 2019, Dhaliwal requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Works. Letter from Zarya Cynader to U.S. Copyright Office (Aug. 1, 2019) (“Second Request”). In that letter, Dhaliwal argued that the each of the Works’ constituent elements, as well as the selection and arrangement of those elements, is copyrightable. *Id.* at 7–8. Dhaliwal noted that “[t]he Artist manually generated each of the patterns . . . [in the geometric fingerprint designs], by carefully adding and removing ridges, grooves and lines to design the ultimate pattern[s],” which are ultimately “original and copyrightable.” *Id.* at 5. Dhaliwal also contended that “the Artist’s creative design choices in selecting, arranging, and combining [the elements], and adding textual elements, . . . [as well as] a unique boundary of each” geometric shape is also copyrightable. *Id.* at 7.

## III. DISCUSSION

### A. *The Legal Framework—Originality*

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. It further found that there can be no copyright in a

work in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 359.

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act and described in the *Feist* decision. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering, or coloring”); *id.* § 202.10(a) (stating “to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form”). 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. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See Feist*, 499 U.S. at 358 (finding the Copyright Act “implies that some ‘ways’ [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not”). 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).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. For example, the United States District Court for the Southern District of New York upheld the Copyright Office’s refusal to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements.” *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). Likewise, the Ninth Circuit has held that a glass sculpture of a jellyfish consisting of clear glass, an oblong shroud, bright colors, vertical orientation, and the stereotypical jellyfish form did not merit copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The language in *Satava* is particularly instructive:

It is true, of course, that a *combination* of unprotectable elements may qualify for copyright protection. But it is not true that *any* combination of unprotectable elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that 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.

*Id.* (internal citations omitted).

Similarly, while the Office may register a work that consists merely of geometric shapes, for such a work to be registrable, the “author’s use of those shapes [must] result[] in a work that, as a whole, is sufficiently creative.” COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017) (“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.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See* COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design's visual effect or its symbolism, the time and effort it took to create, or the design's commercial success in the marketplace are not factors in determining whether a design is copyrightable. *See, e.g., Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

### ***B. Analysis of the Work***

After carefully examining the Works and applying the legal standards discussed above, the Board finds that the Works do not contain the requisite authorship necessary to sustain claims to copyright.

For a work to be eligible for copyright protection, it must “possess more than a *de minimis* quantum of creativity.” *Feist*, 499 U.S. 340, 363. Neither the Works' separable elements nor the compilation of those elements meet this low threshold. The Board finds that none of the Works' individual elements—the individual geometric shapes (squares, hexagons, circles, and triangles), the fingerprint design itself, the layout of the shapes in a vertical line, single words, and two letter abbreviations—are sufficiently creative to be eligible for copyright protection. The Copyright Act does not protect common geometric shapes, nor does it protect individual letters or words, such as those in the Works. *See* 37 C.F.R. § 202.1(a) (prohibiting registration of “words and short phrases such as names, titles, and slogans; familiar symbols or designs”); *see also* COMPENDIUM (THIRD) § 313.4(C), (J) (noting that individual words, short phrases such as names and titles, and familiar symbols such as a letter, are not copyrightable); *id.* § 906.1 (common geometric shapes, including squares, hexagons, circles, and triangles, are not protectable).

Nevertheless, Dhaliwal argues that that the Works' individual elements—specifically the fingerprint patterns themselves and the “unique boundary” of the individual geometric shapes—are copyrightable. Second Request at 5. Specifically, Dhaliwal states that the patterns were “manually generated . . . by carefully adding and removing ridges, grooves and lines,” and the boundaries of each geometric shape were created by “allowing the grooves of [the] pattern [and negative space] to dictate the boundaries.” *Id.* at 4–5. The Board is unconvinced by these arguments and does not find either of these elements to be copyrightable.

Copyright does not protect the design found on a human fingerprint. The Copyright Office will only register an original work of authorship created by a human being and not works produced by nature. COMPENDIUM (THIRD) §§ 306, 313.2. A human fingerprint is a part of the human body formed by natural processes outside of human control. *Compare id.* § 313.2 (noting that a claim based on the appearance of actual animal skin will not be registered). Making *de minimis* alterations to an uncopyrightable design does not render it sufficiently original; the basis of the design is still a fingerprint, and none of the changes resulted in the addition of new, copyrightable expression. Instead, they rather appear to be mere refinements of what was already produced by nature and are thus uncopyrightable. *See, e.g., Beaudin v. Ben & Jerry's*

*Homemade, Inc.*, 95 F.3d 1, 2 (2d Cir. 1996) (discussing a Holstein cow pattern found on a hat and noting that “[i]ndeed, it is doubtful whether taking a pattern that appears in nature and rendering it in a variety of minute variations that inevitably result from hand-painting satisfies even the minimal originality requirement of copyright”), *compare Sparaco v. Lawler, Matusky & Skelly Eng’rs LLP*, 303 F.3d 460, 467 (2d Cir. 2002) (finding that a site plan drawing based on facts of the location was not copyrightable “[t]o the extent that [it] sets forth the existing physical characteristics of the site, including its shape and dimensions, the grade contours, and the location of existing elements, [as] it sets forth facts; copyright does not bar the copying of such facts”). Here, Dhaliwal appears to have scanned actual fingerprints and then made some digital modifications to them by “adding and removing ridges, grooves and lines.” Second Request at 4–5. Dhaliwal does not assert that these changes were either significant or numerous, and there is no perceptible addition of human-created authorship to the designs. Further, Dhaliwal concedes that the Works’ geometric shapes are not copyrightable. First Request at 2. The fact the geometric shapes’ borders utilize white space (created by the unprotectable ridges and grooves of the fingerprint), rather than a visible border line, does not change the fact that they are standard uncopyrightable shapes.

Additionally, viewed as a whole, the Board finds that the selection, coordination, and arrangement of the shapes, words, and letters comprising the Works are insufficient to render the Works sufficiently creative and original. The Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations. *See* COMPENDIUM (THIRD) § 313.4(J). Here, each Work simply uses four standard geometric shapes and minimal text, arranged in a vertical row.<sup>2</sup> The evenly-spaced shapes are generally the same size and rendered in black and white with no shading and minimal value change. Each shape also uses the same fingerprint pattern, and the textual elements consist of a single word and two letters that are predictably placed at the top and bottom of each vertical line. The combination of these elements does not meet the threshold for creativity.

Lastly, Dhaliwal argues that several creative decisions in the design process qualify the Works for copyright protection. Dhaliwal notes that each fingerprint pattern was altered “to achieve her desired aesthetic effect,” cropped into geometric shapes “deliberately deviates from such precise boundaries in order to emphasize the unique pattern in each Work,” and some of the shapes in the vertical columns are offset to “complement one another.” Second Request at 3, 8. The Board does not focus on the ideas behind a work; copyrightability is determined only based on the appearance of the fixed works, without consideration of the author’s inspiration, creative intent, or intended meaning. *See* COMPENDIUM (THIRD) § 310.5. Finally, Dhaliwal argues that “[w]hile not determinative, a large number of other designs were considered and discarded before the specific patterns with different boundaries were chosen.” Second Request at 7. The Board’s analysis focuses on the Works’ appearance, however; the amount of time, effort,

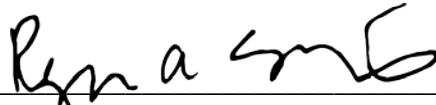
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<sup>2</sup> Dhaliwal points out that the arrangement is not a perfect vertical line for all of the Works – “most of the Works do not feature elements in a straight, centered, vertical line (and where they do, this alignment is coincidental). Instead, the shapes are offset to the left or right so that the swirls of the manually generated pattern align with and complement one another.” Second Request at 8. This imperfect vertical alignment is a minor linear variation that does not render the elements copyrightable, however. *See* COMPENDIUM (THIRD) § 905. Dhaliwal’s intent to position the shapes in complementary positions, rather being in a straight line or slightly misaligned, is irrelevant to the Board’s analysis. *Id.* § 310.5.

expense, or design alternatives required to create the work is irrelevant to the copyrightability analysis. *See* COMPENDIUM (THIRD) § 310.7-310.8.

#### IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the copyright claims in the Works. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.



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

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