



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

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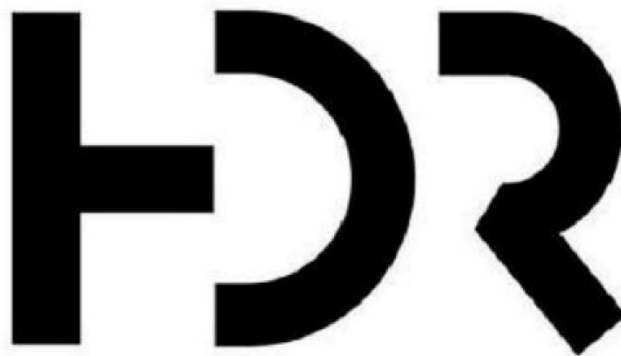
**Re: Second Request for Reconsideration for Refusal to Register Logo Design
(SR # 1-8228476671; Correspondence ID: 1-4PNBG5C)**

Dear Mr. Young:

The Review Board of the United States Copyright Office (“Board”) has considered HDR, Inc.’s (“HDR”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Logo Design” (“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 is a two-dimensional artwork consisting of portions of the letters “H,” “D,” and “R” in black coloring and arranged linearly. The Work is as follows:



II. ADMINISTRATIVE RECORD

On November 5, 2019, HDR filed an application to register a copyright claim in the Work. In a January 24, 2020, letter, 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 Mark Young at 1 (Jan. 24, 2020).

In a letter dated April 22, 2020, HDR requested that the Office reconsider its initial refusal to register the Work. Letter from Mark Young to U.S. Copyright Office (Apr. 22, 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 the Work “[did] not contain a sufficient amount of original and creative graphic or artistic authorship to support a copyright registration” and “that the arrangement of these three letters horizontally in no way exhibits the creativity required to support a claim in copyright.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Mark Young at 1, 3 (Mar. 12, 2021).

In a letter dated June 1, 2021, HDR 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 Mark Young to U.S. Copyright Office (June 1, 2021) (“Second Request”). In that letter, HDR asserted that the Work is “a grouping of design elements, not . . . individual letters or portions of letters,” and that the “design elements do not connote the . . . letters ‘H’, ‘D’, and ‘R’.” *Id.* at 2 (emphasis in original). HDR further asserted that even if the Work did comprise familiar symbols, “the particularly novel way in which the design is arranged is sufficient to satisfy the minimal originality required for copyright protection.” *Id.* at 3–4.

III. DISCUSSION

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

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., Inc.*, 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. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, and 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 claim. 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, 883 (D.C. Cir. 1989); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498–99 (S.D.N.Y. 2005).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[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.”); *see also* U. S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.3(D) (3d ed. 2021) (“COMPENDIUM (THIRD)”) (stating that lettering and “mere variations of typographic ornamentation” are not copyrightable).

Applying these legal standards, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright. Both the individual elements of the Work and the Work as whole fail to demonstrate copyrightable authorship.

The individual elements of the Work consist of portions of the letters “H,” “D,” and “R.” Typography, stylized letters, or mere variations of typographic ornamentation are not copyrightable. 37 C.F.R. § 202.1(a). Letters are the building blocks of expression and cannot be protected by copyright law “regardless of how novel and creative the shape and form of the typeface characters may be.” COMPENDIUM (THIRD) § 906.4; *see also id.* § 313.3(D) (“The copyright law does not protect typeface or mere variations of typographic ornamentation or lettering.”); *Eltra Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (noting Congress has consistently refused copyright protection to typeface). HDR argues that the design elements are not letters or merely portions of letters, but rather “three design elements.” Second Request at 2. Even viewed not as letters, the individual elements—straight and curved lines—are not copyrightable. COMPENDIUM (THIRD) § 906.1 (“There are numerous common geometric shapes, including, without limitation, straight or curved lines . . .”).

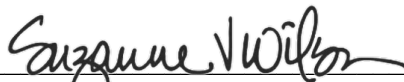
Nor does the combination of these unprotectable elements in the Work rise to the level of creativity necessary for copyright registration. Where a design combines uncopyrightable elements, it is protected only when the “elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.”

Satava, 323 F.3d at 811. Here, the Work consists of elements of the same thickness and same black hue arranged linearly. Even if viewed not as letters, the combination and placement of five small lines in the Work is a simplistic combination and arrangement that evidences *de minimis* creativity.

Lastly, HDR argues that only upon knowing the identity of the applicant would a viewer detect the letters “H,” “D,” and “R” in the Work. They rely on the public’s perception of the Work, claiming that in an “informal survey,” most viewers unfamiliar with the work and its source did not identify the work as connoting letters. Second Request at 2. The Office only considers the actual appearance of the work and not the symbolic meaning of the work or how others may also “see” or perceive the work. *See* 17 U.S.C. § 102(b); COMPENDIUM (THIRD) § 310.3 (“The symbolic meaning or impression of a work is irrelevant to [the creativity] determination. . . . [T]he Office will consider the expression that is fixed in the work itself . . . [and] . . . will focus only on the actual appearance . . . of the work that has been submitted for registration, but will not consider any meaning or significance that the work may evoke.”). The Office does not use public perception of a work as a standard for creativity; instead, the Office relies on objective standards. Objectively, the Work looks like a combination of portions of the letters “H,” “D,” and “R” and does not contain a sufficient amount of creativity to warrant copyright protection.

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