



September 19, 2025

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**Re: Second Request for Reconsideration for Refusal to Register Alphapals
alphabet letters with smile design (SR # 1-10936699591; Correspondence
ID: 1-57PBRNR)**

Dear Ms. Moken:

The Review Board of the United States Copyright Office (“Board”) has considered Alphapals, Inc.’s (“Alphapals”) second request for reconsideration of the Registration Program’s refusal to register sculptural claims in a unit of publication¹ titled “Alphapals alphabet letters with smile 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 consists of twenty-six three-dimensional alphabet letter plush toys depicted in gray, white, and multicolored sets (“Plush Letters”). A two-dimensional “Smiling Face” design is embroidered on each Plush Letter. Each Smiling Face consists of a mouth made of three curved lines and two circular eyes with a circular pupil or “twinkle” inside.² Representative images of each design are included in the Appendix below.

¹ A “unit of publication” is defined as “a package of separately fixed component works that are physically bundled together for distribution to the public as a single, integrated unit, and all of the works are first published in that integrated unit.” See U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 1103.1 (3rd ed. 2021) (“COMPENDIUM (THIRD)”); 37 C.F.R. § 202.3(b)(4). With its application, Alphapals submitted deposit images depicting three different sets of plush letters—two monochrome sets in gray and white with multicolored stitching and one multicolored set with monochrome stitching. Based on the application and relevant correspondence, it appears that each set constitutes a separate unit of publication. Because the Board concludes that none of the sets of letters represented in the deposit images exhibit sufficient creativity to receive copyright protection and affirms refusal of registration on that basis, we do not consider whether the application complies with the requirements for registering multiple component works as a unit of publication. See *generally* COMPENDIUM (THIRD) § 1103.

² See Letter from Merri Moken to U.S. Copyright Office at 3 (July 29, 2022) (“Second Request”) (describing the eyes as appearing to have captured a “glint” or “twinkle”).

II. ADMINISTRATIVE RECORD

On November 2, 2021, Alphas filed an application to register a copyright claim in the Work. In a November 3, 2021 letter, a Copyright Office registration specialist refused to register the claim, determining that the Work “lack[ed] the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Merri Moken (Nov. 3, 2021).

On December 7, 2021, Alphas requested that the Office reconsider its initial refusal to register the Work, arguing that the “arrangement and interaction of the specific elements and the ultimate combination of these elements represents sufficient authorship under the Constitutional standards for copyright protection.” Letter from Merri Moken to U.S. Copyright Office at 3 (Dec. 7, 2021) (“First Request”). Further, the First Request states that “the individually-stylized shapes, sizes, weights, and colors of the instant twenty-six three-dimensional letters, the choice to embroider a specific, unique facial expression, and the choices involved with the shape, style, and placement of the smile, dimples, and twinkling eyes, are not dictated by the idea, or common physiology, of a stuffed letter toy.” *Id.* at 4.

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 could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Merri Moken (Apr. 29, 2022). The Office explained that the Work’s individual elements are “mere variations of uncopyrightable letters” and “consist of unprotectable geometric shapes,” concluding that the Work “merely brings together a few standard forms and shapes” in a manner that does not meet the threshold of creativity required for copyright registration. *Id.* at 3–4. The Office further emphasized that “the design choices the applicant made are irrelevant to the determination of copyrightability.” *Id.* at 4.

On July 29, 2022, Alphas requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Second Request. Alphas argued that four additional considerations, which evidence sufficient original authorship, warrant further attention by the Office. First, the Smiling Face on its own embodies sufficient creativity to warrant copyright registration. *Id.* at 3. Second, the placement of the Smiling Face on each Plush Letter reflects a sufficient modicum of creativity. *Id.* at 4. Third, because the Smiling Face is “inarguably a graphic element incorporated into the front of each individual Plush Letter” and is “as a whole no less distinctive a design element than ‘flourishes’ or ‘swirls’ appearing at the beginning or ends of letters,” it is comparable to other typefaces or letters that have received registration. *Id.* at 6. Fourth, “to the extent [the Plush Letters] may be considered a useful article . . . the graphic feature of the Smiling Face is protectable as a two-dimensional design feature that can be identified separately from, and which is capable of existing independently of, the other arguably utilitarian aspects of the Work.” *Id.* at 7.

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board concludes that the Work does not contain the requisite creativity 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.*, 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.

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), (e) (prohibiting registration of “familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring”; [and] “typeface as typeface”); *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”). In its regulations and *Compendium of U.S. Copyright Office Practices*, the Office has explained that copyright does not protect common geometric shapes or familiar designs. *See id.* § 202.1(a); COMPENDIUM (THIRD) § 906.1 (noting that common geometric shapes such as “straight or curved lines” and “circles” are not protectable); COMPENDIUM (THIRD) § 906.2 (“[C]opyright law does not protect mere variations on a familiar symbol or design, either in two- or three-dimensional form.”). Likewise, copyright does not protect “a system for matching pairs and sets of colors” or “mere variations in coloring.” *See* COMPENDIUM (THIRD) § 313.4(K); 37 C.F.R. § 202.1(a). Nor does copyright generally protect “lettering,” mere variations of lettering, or “typeface.” *See* 37 C.F.R. § 202.1(a), (e); COMPENDIUM (THIRD) § 906.4 (describing how the Office “typically refuses claims based on individual alphabetic or numbering characters,” “regardless of how novel and creative the shape and form of the typeface characters may be”).

At the same time, 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. *See Feist*, 499 U.S. at 358 (noting that 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). As the Ninth Circuit has explained, “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).

Applying these legal standards, the Board finds that neither the Work’s individual elements, nor the Work as a whole demonstrate sufficient creativity for the Office to register the Work. The sculptural alphabetic letter designs are mere variations on uncopyrightable letters and the set of letters, like typeface, is not registrable. *See* 37 C.F.R. § 202.1(a), (e); COMPENDIUM (THIRD) §§ 313.3(D), 906.4. The Smiling Face is unprotectable as a mere variation on a familiar symbol or design. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(J) (listing examples

of familiar symbols and designs including a “smiley face”). The remaining stylistic changes to the Smiling Face that Alphapals asserts, such as the author’s choice in the style and placement of the eyes relative to other features are “minor lineal or spatial variations” of common geometric shapes that contain a *de minimis* amount of expression. COMPENDIUM (THIRD) §§ 313.4(J), 906.2.

Viewed as a whole, the selection and arrangement of the Work’s unprotectable elements are also insufficiently creative to warrant copyright protection. Although some combinations of non-protectable elements may contain sufficient creativity with respect to how they are arranged, not every combination will be numerous enough and their arrangement original enough to constitute an original work of authorship. *See Satava*, 323 F.3d at 811; COMPENDIUM (THIRD) § 905. Here, the selection, coordination, and arrangement of the alphabet shapes and the Smiling Face affixed to the sculptural design bring together a familiar symbol and a series of standard shapes—a combination that does not rise to the level of creativity necessary for copyright registration. *See* COMPENDIUM (THIRD) § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.”). Alphapals asserts that because each Plush Letter “offered numerous size and placement options for the Smiling Face,” its selection and arrangement of where to place the Smiling Faces evidences creative choices that are sufficient to warrant copyright protection. Second Request at 4. Indeed, there may be other ways in which the elements could have been selected or arranged. Nevertheless, it is not the possibility of choices that determines copyrightability, but rather whether the particular resulting expression contains creative authorship. *See* COMPENDIUM (THIRD) § 310.8 (“[T]he Office will not consider potential variations in the use of the work, such as the fact that a work could be presented in a different color, in a different size, or with a different orientation.”).

Alphapals also asserts that the selection and arrangement embodied in the Work is analogous to that of the alphabet quilt found to be copyrightable in *Boisson v. Banian, Ltd.*, 273 F.3d 262, 271–73 (2d Cir. 2001). Second Request at 5. While the Office does not compare works, the Board notes significant differences between the Work and the *Boisson* quilt. The *Boisson* work consisted of one quilt that employed a variety of colors to fill and shade the background for each alphabetic letter and quilt block, and also included several pictorial icons such as a cat, house, and basket. In contrast, Alphapals’ Work consists of twenty-six sculptural letters, A through Z, with the same Smiling Face on each letter. This is a predictable selection and arrangement of uncopyrightable elements, particularly as toys that introduce children to the alphabet. *See* COMPENDIUM (THIRD) § 906.2. Also in contrast to *Boisson*, Alphapals’ selection and arrangement of colors in its different sets of letters—using seven different colors of plush fabric for the multicolored set and embroidering the Smiling Faces on the gray and white sets in seven different colors—is insufficiently creative. The color schemes for the plush and embroidery are commonplace and expected as they align with the colors in a naturally occurring rainbow. *See* COMPENDIUM (THIRD) § 313.4(K) (“If the author . . . merely added, changed, or combined expected or familiar sets . . . of colors, the Office . . . may refuse to register the claim.”); *id.* § 906.3 (“Merely . . . combining expected or familiar pairs or sets of colors is not copyrightable.”).


Alphapals’ argument that the Work is registrable under the narrow exceptions allowing “typefaces that incorporate graphic elements and/or contain typeface ornamentation” also fails.

Second Request at 6. As explained above, the Smiling Face design is not copyrightable. Adding an uncopyrightable element to typeface does not exhibit the modicum of creativity that is necessary to support a copyright registration. *See* COMPENDIUM (THIRD) § 906.4 (noting that examples of copyrightable typeface “include *original* pictorial art that forms the entire body or shape of the typeface characters, such as a representation of an oak tree, a rose, or a giraffe that is depicted in the shape of a particular letter” (emphasis added)).

Even assuming that the plush letters are useful articles, Alphapals’ final argument that the Smiling Face is eligible for copyright protection as a separable artistic feature is unavailing. Useful articles may receive copyright protection “only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” 17 U.S.C. § 101. As the Supreme Court has articulated, a feature incorporated into the design of a useful article can be copyrightable only if that feature “(1) can be perceived as a two- or three-dimensional work of art separate from the useful article, and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated.” *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 405 (2017). To warrant registration, the separable features must still be “original works of authorship.” 17 U.S.C. § 102(a). Under the first step of the *Star Athletica* test, the Smiling Face is a two-dimensional design element that can be perceived separately when viewing the Work. But under the second step, the Smiling Face, for the reasons explained above, does not contain sufficient creativity to be copyrightable.

IV. CONCLUSION

For the reasons stated herein, the Board affirms the refusal to register the copyright claims 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
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
John R. Riley, Acting Deputy General Counsel
Nicholas R. Bartelt, Assistant General Counsel

APPENDIX: DEPOSIT IMAGES



