



May 15, 2026

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Re: Second Request for Reconsideration of Refusal to Register Decorative, Ornamental Patterned Motif For Apparel, Footwear, Accessories And the Like (SR # 1-8964495451; Correspondence ID: 1-4Q1AW00)

Dear Mr. Thomas:

The Review Board of the United States Copyright Office (“Board”) has considered Psudo LLC’s second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Decorative, Ornamental Patterned Motif For Apparel, Footwear, Accessories And the Like” (“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 was submitted as a claim in “2-D artwork.” The applicant excluded “preexisting design” from the claim and asserted “color scheme” as the new material included for registration. Both the preexisting design and the Work are two-dimensional representations of the laces, tip, and vamp of a sneaker-style shoe displayed from a top-down, flattened vantage point. The color scheme on the identified preexisting design consists of denim and cream neutrals with a light pink color wash across the middle. The Work’s color scheme consists of bands of different colors sandwiched between navy blue blocks of color with white stitches as accents. The color bands are arranged in an evenly spaced, striped design in the standard rainbow order, except where a green color would typically be in a standard rainbow (red, orange, yellow, green, blue, indigo, violet (or “ROYGBIV”)), beige appears in its place. The preexisting design and the Work are as follows:

Preexisting Design <i>Registration # VA2-196-160 (2020)</i>	The Work <i>SR # 1-8964495451</i>
	

II. ADMINISTRATIVE RECORD

On June 25, 2020, Psudo filed an application to register a copyright claim in the Work. In its application, Psudo disclaimed a preexisting design and identified the claimed new material in the Work as the “color scheme.” In a July 29, 2020 letter, a Copyright Office registration specialist refused to register the claim, determining that the work was a useful article that did not “contain any separable design element that contains sufficient copyrightable authorship to support a registration.” Initial Letter Refusing Registration from U.S. Copyright Office to Michael Thomas (July 29, 2020).

On October 28, 2020, Psudo requested that the Office reconsider its initial refusal to register the Work, arguing that “[t]he Office erroneously concluded that the Work is a useful article,” and explained that “the Work is a pictorial, graphic or sculptural expression that resembles a shoe, but exists independently and can be identified separately from a shoe or any other useful article to which the Work is applied.” Letter from Michael Thomas to U.S. Copyright Office at 1 (Oct. 28, 2020) (“First Request”). 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 Michael Thomas (Mar. 19, 2020) (“Second Refusal”). The Office accepted Psudo’s assertion that the Work is not a useful article and examined the Work as a two-dimensional graphic work. Ultimately, the Office concluded that the Work “does not contain a sufficient amount of *new* copyrightable authorship” because “the individual color elements which make up this design lack the creativity necessary to support a claim in copyright” and “[t]he overall combination of these few elements into a garden-variety arrangement is obvious and expected.” *Id.* at 3–4.

In a letter dated June 21, 2020, Psudo 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 Michael Thomas to U.S. Copyright Office (June 21, 2020) (“Second Request”). On this appeal, Psudo reasserted its arguments that the work is not a useful article and that the color scheme is sufficiently creative to support copyright registration. Specifically, Psudo explained that the Work does not include the standard rainbow ROYGBIV color bands as “the yellow band is adjacent [sic] red and beige bands, not a green band.” *Id.* at 2. Psudo noted that “the Work also includes white faux shoe laces on a blue background above a white region bordered by white simulated stitching.” *Id.* at 2–3. In further support of its claim of creative authorship, Psudo argued that the colors do not fill in portions of the preexisting design, instead asserting that “the color bands span multiple segments of the design, with simulated white stitching appearing to extend through the color bands.” *Id.* at 3.

III. DISCUSSION

A. Legal Framework

1) 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.* at 362. 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.

Some combinations of common or standard design elements may contain sufficient creativity to support a copyright claim with respect to how they are juxtaposed or arranged. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See id.* 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.”).

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 “familiar symbols or designs” and “mere variations of . . . 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”). In its regulations and publications, the Office has explained that copyright does not protect familiar shapes or designs. *Id.* § 202.1(a); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (noting that common geometric shapes are not protectable). Likewise, copyright does not protect “mere variations in coloring” or “a system for matching pairs and sets of colors.” 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(K).

2) Derivative Works

A “derivative work” is a work that is based upon one or more preexisting works and that recasts, transforms, or adapts the preexisting work(s). 17 U.S.C. § 101; COMPENDIUM (THIRD) §§ 311.1, 507.1. The copyright in a derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work. *See* 17 U.S.C. § 103(b). Consequently, a registration for a derivative work only covers the new, sufficiently creative authorship contributed. *See* COMPENDIUM (THIRD) §§ 311.2, 507.2. A derivative work registration “does not cover any previously published material, previously registered material, or public domain material, or third party material that appears in the derivative work,” nor does it cover any material owned by a third party. *Id.* § 507.2; *see also* 17 U.S.C. § 103(b) (stating that copyright in a derivative work is “independent of, and does not

affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material”).

The originality standard for extending copyright protection to a derivative work is the same as that required for a copyright in any other work. To be registrable, the new authorship in the derivative work must “contain[] a sufficient amount of original expression, meaning that the derivative work must be independently created and it must possess more than a modicum of creativity.” COMPENDIUM (THIRD) § 311.2 (citing *Waldman Publ’g Corp. v. Landoll, Inc.*, 43 F.3d 775, 782 (2d Cir. 1994)). “All that is needed to satisfy both the Constitution and the statute is that the ‘author’ contributed something more than a ‘merely trivial’ variation, something recognizably ‘his own.’” *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102–03 (2d Cir. 1951) (citing *Chamberlin v. Uris Sales Corp.*, 150 F.2d 512, 513 (2d Cir. 1945)). Thus, “the key inquiry is whether there is sufficient nontrivial expressive variation in the derivative work to make it distinguishable from the [preexisting] work in some meaningful way.” *Schrock v. Learning Curve Int’l, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009).

Although the amount of originality required is low, courts have recognized that derivative works “[l]acking even a modest degree of originality . . . are not copyrightable.” *Durham Indus., Inc. v. Tomy Corp.*, 630 F.2d 905, 911 (2d Cir. 1980); *see also L. Batlin & Son, Inc. v. Snyder*, 536 F.2d 486, 490 (2d Cir. 1976) (*en banc*) (stating that the “quantum of originality” is “modest”). Indeed, courts have “advised special caution in analyzing originality in derivative works, since too low a threshold will ‘give the first [derivative work] creator a considerable power to interfere with the creation of subsequent derivative works from the same underlying work.’” *Woods v. Bourne*, 60 F.3d 978, 990 (2d Cir. 1995) (quoting *Grace v. Bradford Exchange*, 698 F.2d 300, 305 (7th Cir. 1983)). Minor variations, such as merely changing the size of the preexisting work, or simply recasting a work from one medium to another do not satisfy the originality requirement. *See Batlin*, 536 F.2d at 491. Further, a claim to register a derivative work that adds only non-copyrightable elements to a prior product is not entitled to copyright registration. *See Boyds Collection, Ltd. v. Bearington Collection, Inc.*, 360 F. Supp. 2d 655, 661 (M.D. Pa. 2005) (citing *Dam Things from Denmark v. Russ Berrie & Co.*, 290 F.3d 548, 563 (3d Cir. 2002)). Ultimately, whatever the addition is, it must be independently protectable for the derivative work to be registered.

B. Analysis of the Work

As a threshold matter, and consistent with the Office’s approach in the Second Refusal, the Board accepts Psudo’s assertion that the Work is a two-dimensional graphic work, not a useful article, for the purpose of the Board performing a copyrightability analysis. *See* Second Refusal at 1; Second Request at 2. Accordingly, the Board forgoes consideration of the Work as a useful article and proceeds directly to evaluating whether it satisfies the legal standard for originality set forth above. After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board concludes that the new material in the Work does not exhibit the requisite creativity necessary to sustain a claim to copyright.

The Work is based on a preexisting work and therefore is a derivative work. *See* 17 U.S.C. § 101; COMPENDIUM (THIRD) § 507.1. Psudo does not dispute this. As explained above, registration of a derivative work only covers the new, sufficiently creative authorship that the

author contributed to that work. COMPENDIUM (THIRD) §§ 621.3, 311.2 (explaining that “the claim to copyright [in a derivative work] is defined by the information provided in the New Material Included field.”). Here, the claimed new material is the Work’s “color scheme.”


The Work’s color selection and arrangement share a few similarities with the preexisting design. Both designs incorporate a blue denim color near the toe, laces, and heel. In addition, the white simulated stitching in the Work, which Psudo claims is creative because it “extend[s] through the color bands,” *see* Second Request at 3, appears to mirror similar stitching found in the preexisting design. These elements of the Work’s color scheme constitute minor variations of the preexisting design that are insufficiently creative to warrant protection. *See Batlin*, 536 F.2d at 491.

The Board recognizes that the Work’s color scheme has some coloring differences, compared to the preexisting design. For example, the Work’s previously mentioned blue denim elements use different shades of blue than the preexisting design. The Work’s colors are also more saturated than the preexisting design’s palette of tinted denim, cream, and light pink. Further, in place of the pink and cream sections, the Work incorporates a striped rainbow pattern, with the exception of beige in place of green.

Any differences in these two color schemes, however, are mere variations of coloring, which are not copyrightable. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 313.4(J), 313.4(K), 906.3. Further, the most notable difference between the Work and the preexisting design is that the Work contains the aforementioned rainbow pattern. A rainbow, however, is a familiar, and naturally occurring, color scheme that is commonly displayed in a striped pattern. Replacing one of the seven colors in the standard ROYGBIV rainbow is too minor a variation to be protectable. COMPENDIUM (THIRD) §§ 313.4(J) (stating that mere variations of familiar symbols and designs, no matter their form, are not protectable), 313.4(K) (explaining that merely changing “expected or familiar sets or pairs of colors” is not copyrightable). The claimed new material in the Work does not possess sufficient creativity to meet the low bar for originality in a derivative work and thus the Work is not copyrightable.

IV. CONCLUSION

For the reasons stated herein, the Board 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
Maria Strong, Associate Register of Copyrights and
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