



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

March 7, 2025

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Re: Second Request for Reconsideration of Refusal to Register Eco-classes for Personal Care Ingredients (SR # 1-10207688871; Correspondence ID: 1-4Z0JZEI)

Dear Ms. De Luca:

The Review Board of the United States Copyright Office (“Board”) has considered DSM Nutritional Products AG’s (“DSM”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Eco-classes for Personal Care Ingredients” (“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 graphic design consisting of seven arches arranged in a horizontal line. Seven four-sided equal-sized wedge-like shapes with two curved and two straight sides form each arch. A circle containing one letter, “A” through “G,” is centered below each arch. A black band forms an outline around the circle and includes a triangular shaped pointer. Within each arch, the seven four-sided shapes appear in shades ranging from green to red. The color of each circle reflects the color of the four-sided shape that its corresponding black arrow is pointing towards. Centered below each circle is the word “eco” in green font.

The Work is as follows:



II. ADMINISTRATIVE RECORD

On February 25, 2021, DSM filed an application to register a copyright claim in the Work. In a letter dated April 12, 2021, a Copyright Office registration specialist refused to register the claim, determining that the Work lacked the original authorship necessary to support

a copyright claim. Initial Letter Refusing Registration from U.S. Copyright Office to Sheryl De Luca at 1 (Apr. 12, 2021).

On May 21, 2021, DSM requested that the Office reconsider its initial refusal to register the Work, arguing that the selection and combination of elements demonstrated a sufficient level of originality to support copyright protection. Letter from Sheryl De Luca to U.S. Copyright Office at 2–3 (May 21, 2021) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claims again and concluded that the Work could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Sheryl De Luca (Sept. 7, 2021). The Office explained that neither the individual elements of the Work, which are common shapes and “mere letters or . . . word[s],” nor the “simple configuration” of the unoriginal component elements, embodied sufficient creativity to support a claim in copyright. *Id.* at 3.

In a letter dated November 8, 2021, DSM 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 Sheryl De Luca to U.S. Copyright Office (Nov. 8, 2021) (“Second Request”). DSM argued that the constituent elements of the Work are not “common shapes of a basic form,” but rather, are “complex,” emerging out of creative decision making. *Id.* at 2. DSM also argued that the Work’s selection, combination, and arrangement of shapes and symbols—from particular gradated color choices to the spacing of the elements—demonstrate a sufficient amount of original authorship to warrant copyright protection. *Id.* at 2–3. Specifically, DSM identified “at least 77 [geometric and alphabetic] elements in the work” in addition to “9 different colors.” *Id.* at 3. DSM explained that these elements were arranged to “give[] the impression of turning dials or gauges,” which they contended is indicative of unique authorial contributions “that make the [W]ork its own.” *Id.*

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 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) (prohibiting registration of “words 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”). In its regulations and publications, the Office has explained that copyright does not protect common geometric shapes or familiar designs. *See 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 such as lines, triangles, and trapezoids are not protectable). 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).

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).

Thus, 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 THIRD § 906.1; *cf. Hoberman Designs, Inc. v. Glo works Imports, Inc.*, No. 14-cv-6743, 2015 WL 10015261, at *4 (C.D. Cal. 2015) (holding that the work’s use of common “geometric shapes like squares, triangles, and trapezoids . . . [did] not preclude copyright protection”). However, to demonstrate the required modicum of creativity, a work consisting of common geometric shapes must combine “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.” COMPENDIUM (THIRD) § 906.1; *see id.* § 313.4(J) (stating that a work consisting of uncopyrightable elements can only be registered if it “as a whole contains a sufficient amount of creative expression”).

Applying these legal standards, the Board finds that the individual elements of the Work and the Work as a whole fail to demonstrate sufficient creativity. Here, the Work consists of variations of common shapes, which are not individually copyrightable. The circles and triangles are familiar symbols and common geometric shapes, which are not protected by copyright. *See* 37 C.F.R. § 202.1(a) (prohibiting registration of “familiar symbols or designs”); COMPENDIUM (THIRD) §§ 313.4(J), 906.1, 906.2. The identical wedge-like shapes are variations on a common trapezoid shape, and thus not copyrightable. *See* COMPENDIUM (THIRD) § 906.1 (noting “[t]here are numerous common geometric shapes, including, without limitation, straight or curved lines, circles, ovals, spheres, triangles, cones, squares, cubes, rectangles, diamonds, trapezoids, parallelograms, pentagons, hexagons, heptagons, octagons, and decagons”). The word “eco” and letters “A” through “G” are likewise not protectable. *See* 37 C.F.R. § 202.1(a) (prohibiting registration of “mere variations of typographic ornamentation, [and] lettering”);

COMPENDIUM (THIRD) § 313.4(J) (citing “[l]etters” as examples of familiar symbols or designs that are not copyrightable “either in two-dimensional or three-dimensional form”). Furthermore, the coloration of each shape is not sufficient to demonstrate creativity. Mere variations of coloring, including combinations of familiar sets of colors—in this case, a shade range from green to yellow to red—fail to make a work eligible for copyright protection. *See* COMPENDIUM (THIRD) §§ 313.4(K), 906.3.

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 Work combines three common shapes with a predictable range of colors arranged to resemble a gauge chart or speed meter. Each meter is equidistant from the next, the word “eco” centered beneath each, with the only variations being the direction of each triangular pointer as well as the letter and color within each circle. These minor variations are familiar and obvious—pointers moving left-to-right on the meter, alphabetically ordered letters, and colors that track the chromatic circle. *See* COMPENDIUM (THIRD) § 312.2 (citing alphabetical order as an example of an obvious arrangement); *id.* § 905 (“Merely . . . combining expected or familiar . . . sets of colors is not copyrightable.”). Overall, the Work’s side-by-side arrangement of similar meter designs in a common chromatic and alphabetical sequence is not creative enough to be eligible for copyright. *See Satava*, 323 F.3d at 811; *see also Feist*, 499 U.S. at 363; COMPENDIUM (THIRD) § 905 (“Merely bringing together only a few standard forms or shapes with minor linear or spatial variations” does not meet the statutory requirement.).

DSM argues that the Work is equally as, if not more, creative than an example of a registrable wrapping paper design provided in section 906.1 of the *Compendium*. *See* Second Request at 3. The Board notes that the Office generally does not compare works and makes determinations of copyrightability on a “case-by-case basis.” *See* COMPENDIUM (THIRD) § 309.3. Nonetheless, the Board finds that the Work differs from the wrapping paper example which features more design elements (such as stars, circles, and triangles in different colors and sizes) in a non-linear, asymmetrical arrangement.

Finally, although DSM makes several arguments regarding the artistic intent and symbolic effects of the Work, Second Request at 3, any novelty, symbolism, intent, or artistic judgment described by DSM in defense of the Work’s originality do not factor into the copyrightability analysis and are consequently unpersuasive. COMPENDIUM (THIRD) §§ 310.1, 310.3, 310.5, 310.6, 310.8. The Office focuses solely on the appearance of the work that has been submitted for registration to determine whether it satisfies the originality requirement. *See id.* §§ 310.1, 310.5, 310.6.

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
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