



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

April 26, 2024

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Norvell IP LLC
P.O. Box 2461
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**Re: Second Request for Reconsideration of Refusal to Register Globe Design
(SR # 1-11910944071; Correspondence ID: 1-5V9PEIY)**

Dear Ms. Sieve:

The Review Board of the United States Copyright Office (“Board”) has considered Chicago Mercantile Exchange, Inc.’s (“CME”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Globe 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

Globe Design was submitted as a claim for two-dimensional artwork. The Work is a graphic logo in shades of blue and white. The design consists of sixteen modified squares, rectangles, and polygons in shades of blue. The shapes are arranged in a 4x4 configuration to form a large octagon. The Work is reproduced below:



II. ADMINISTRATIVE RECORD

On November 13, 2022, CME filed an application to register a copyright claim in the Work. In a December 5, 2022 letter, a Copyright Office registration specialist refused to register the claim, determining that it “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Joseph Norvell (Dec. 5, 2022).

On March 6, 2023, CME requested that the Office reconsider its initial refusal to register the Work. Letter from Katherine Sieve to U.S. Copyright Office at 1 (Mar. 6, 2023) (“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 Katherine E. Sieve (July 14, 2023). The Office explained that “Globe Design does not contain a sufficient amount of creativity either elementally or as a whole to warrant registration,” being composed of familiar symbols and geometric shapes, and simple coloring. *Id.* at 3.

In a letter dated October 16, 2023, CME 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 Katherine Sieve to U.S. Copyright Office (Oct. 16, 2023) (“Second Request”). In that letter, CME asserted that the Work is sufficiently creative because it is a “reversible image” that depicts both an octagon and a globe. *Id.* at 1. Secondly, CME argued that rather than being comprised of “basic geometric shapes,” the Work’s arrangement of unique shapes, curved and straight lines, and shading meets the creativity threshold. *Id.* at 5. They submit that even if the shapes are unoriginal on their own, their compilation is enough for “thin” copyright. *Id.*

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds 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.

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 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; 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 addition, the Office’s *Compendium of U.S. Copyright Office Practices* provides guidance that copyright does not protect common geometric shapes. See also U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”). Although common geometric shapes may not individually qualify for copyright protection, in some cases the combination of the elements can be copyrightable. See, e.g., *Hoberman Designs, Inc. v. Gloworks Imports, Inc.*, No. 14-cv-6743, 2015 WL 10015261, at *4 (C.D. Ca. 2015) (holding that the use of common “geometric shapes like squares, triangles, and trapezoids . . . does not preclude copyright protection”). Yet not every compilation deserves such copyright protection. See *Satava*, 323 F.3d at 811. Indeed, the authorial selection, coordination, and/or arrangement of elements must be such as to render the whole sufficiently original; it cannot be a commonplace mixture of elements. See COMPENDIUM (THIRD) § 312.2.

Applying the above framework to the Work, the Board finds that the Work’s individual elements fall short of the creativity required for copyright protection. Here, the primary shape of the Work is a common geometric shape, an octagon. The octagon is further composed of sixteen stylized geometric shapes, arranged in a 4x4 grid, each being merely a minor variation of a unprotectable common shapes, such as trapezoids, with the edges being rounded. See *id.* § 906.1 (“The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form.”). The shapes are separated by four straight lines and two curved ones, providing white spacing between the elements. See *id.* (citing “straight and curved lines” as examples of unprotectable geometric shapes). While using color can add a degree of originality, “[m]ere coloration or mere variations in coloring alone are not eligible for copyright protection.” See *id.* § 906.3. Here, the Work uses only one color, blue, and the gradient shading is a mere variation. The individual elements are thus insufficiently creative to satisfy the originality standard, and thus not copyrightable.

The Work’s combination of elements also does not qualify for copyright protection. In this respect, CME argued that because the Work is a “reversible image,” that is, it can be viewed as either an octagon and/or a globe simultaneously, it is sufficiently creative. Second Request at 3. Here, the Work used perspective, gradient shading of a single color, and symmetrical white spacing, including latitude and longitude lines, to add a visual effect of a globe to the octagon. This is, nonetheless, a garden-variety arrangement as combining polygons to create the familiar

design of a globe is a common trope.¹ See 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] familiar symbols or designs”); COMPENDIUM (THIRD) § 312.2 (noting that “arranging geometric shapes in a standard or symmetrical manner” is an example of a compilation of elements that may not warrant copyright protection); COMPENDIUM (THIRD) § 906.2 (“Familiar symbols and designs are not protected”). This commonplace arrangement of simple shapes, depicted in a single color with limited gradient shading, does not achieve the requisite level of creative authorship.

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
Mark T. Gray, Assistant General Counsel

¹ See, e.g., *Earth Globe Icon (illustration)*, PIXABAY (Sept. 20, 2016), <https://pixabay.com/vectors/earth-globe-icon-planet-space-1681722/>; *Perspective Grid 3D (illustration)*, PIXABAY (Jan. 31, 2017), <https://pixabay.com/vectors/perspective-grid-3d-globe-sphere-2031250/>; *Earth Planet Icon (illustration)*, PIXABAY (Apr. 19, 2016), <https://pixabay.com/illustrations/earth-planet-icon-bullet-globe-1341377/>.