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

May 22, 2026

Richard A. Graham, Esq.
Reed Smith LLP
225 Fifth Ave. Ste 1200, Reed Smith Centre
Pittsburgh, PA 15222

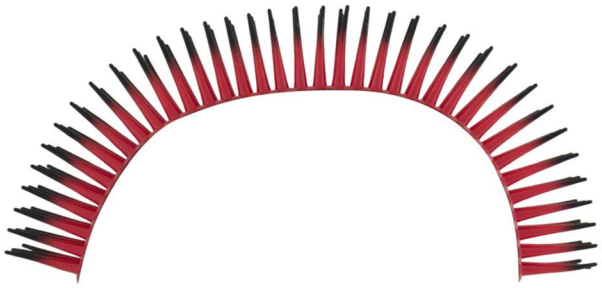
Re: Second Request for Reconsideration of Refusal to Register Three Rowed Mohawk Spikes (SR # 1-10253407871; Correspondence ID: 1-52K2LNN)

Dear Mr. Graham:

The Review Board of the United States Copyright Office ("Board") has considered C-PREME Limited LLC's ("C-PREME") second request for reconsideration of the Registration Program's refusal to register a sculptural claim in the work titled "Three Rowed Mohawk Spikes" ("Work"). After reviewing the application, deposit copies, 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 three symmetrical rows of red cones with black tips, affixed to a red rectangular band. The Work is as follows:



II. ADMINISTRATIVE RECORD

On March 11, 2021, C-PREME filed an application to register a copyright claim in the Work.[1] In an April 9, 2021 letter, a Copyright Office registration specialist refused to register

[1] In the "Material Excluded" section of the application, C-PREME identified the Work as a derivative work of *Four Rowed Mohawk Spikes*. C-PREME did not state whether *Four Rowed Mohawk Spikes* is registered with the

the claim, determining that the Work lacks the authorship necessary to support a copyright claim. Initial Letter Refusing Registration from U.S. Copyright Office to Richard Graham at 1 (Apr. 9, 2021).

On July 9, 2021, C-PREME requested that the Office reconsider its initial refusal to register the Work, arguing that the Work satisfies the test for originality under *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991). Letter from Richard Allen Graham to U.S. Copyright Office at 1 (July 9, 2021) ("First Request"). In support of its request, C-PREME cited twelve court cases, contending that the works in those cases had "arguably lower degrees of creativity" and yet were found to be copyrightable. *Id.* at 3–5.[2] Additionally, C-PREME claimed that their Work is original because an online search for "three-dimensional Mohawk sculpture" did not produce any examples of three-dimensional sculptures that resemble the Work. *Id.* at 5.

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 Richard Graham (Dec. 10, 2021). The Office explained that "there are no elements or features embodied in this design, either alone or in combination, upon which a copyright registration is possible" because the elements and features lack sufficient creativity. *Id.* at 8. The Office also noted that the application identified the Work as a derivative work of *Four Rowed Mohawk Spikes* but that the First Request made no mention of *Four Rowed Mohawk Spikes*, nor did it identify the differences in the works. *Id.* at 4. The Office concluded that, regardless of whether it is a derivative work, the Work lacks sufficient creativity. *Id.* at 4–5.

In a March 10, 2022 letter, C-PREME 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 Richard Allen Graham to U.S. Copyright Office (Mar. 10, 2022) ("Second Request"). C-PREME argued that the previous refusals by the Office did not consider all the Work's elements, individually or in combination, when considering originality. *Id.* at 2. Specifically, C-PREME asserted that creative expression exists in "(1) the selection of the shape of the components, (2) the material used, (3) the arrangement of the individual shapes into separate and distinct rows, (4) the overall shape of the resulting structure, giving the appearance of a Mohawk-like structure, and (5) the angles at which they are situated relative to each other." *Id.* at 6. Further, C-PREME reiterated that the Work is a derivative work of *Four Rowed Mohawk Spikes*, for which C-PREME holds a

---

Copyright Office but later explained that C-PREME owns a design patent for *Four-Rowed Mohawk Spikes*, which is "not in the public domain." Letter from Richard Allen Graham to U.S. Copyright Office at 2 n.2 (Mar. 10, 2022).

[2] C-PREME cited the following cases: *Allegrini v. De Angelis*, 59 F. Supp. 248 (E.D. Pa. 1944); *E.I. Horsman & Aetna Doll Co. v. Kaufman*, 286 F. 372 (2d Cir. 1922); *Boyds Collection, Ltd. v. Bearington Collection, Inc*., 360 F. Supp. 2d 655 (M.D. Pa. 2005); *Am. Greetings Corp. v. Easter Unlimited, Inc*., 579 F. Supp. 607 (S.D.N.Y. 1983); *Coquico, Inc. v. Rodriguez-Miranda*, 562 F.3d 62 (1st Cir. 2009); *Kevin Barry Fine Art Assocs. v. Ken Gangbar Studio, Inc*., 391 F. Supp. 3d 959 (N.D. Cal. 2019); *Davidson v. U.S.*, 138 Fed. Cl. 159 (2018); *Runstadler Studios, Inc. v MCM Ltd. Partnership*, 768 F Supp 1292 (N.D. Ill. 1991); *Shine v. Childs*, 382 F. Supp. 2d 602 (S.D.N.Y. 2005); *Kay Berry, Inc. v. Taylor Gifts, Inc*., 421 F.3d 199 (3d Cir. 2005); *Prestige Floral, Societe Anonyme v. California Artificial Flower Co*., 201 F Supp 287 (S.D.N.Y. 1962); *Van Cleef & Arpels Logistics, S.A. v. Jewelry,* 547 F. Supp. 2d 356 (S.D.N.Y. 2008).

design patent and argued that "[a]s such, the *Three Rowed Mohawk Spikes* is a copyrightable derivative work." *Id.* at 2, 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 creativity necessary to sustain a copyright claim.

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*, 499 U.S. at 345. 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" and that "garden-variety," "obvious," or "practically inevitable" selection, coordination, and arrangement lack the necessary "creative spark required by the Copyright Act." *Id.* at 362–64.

The Office's regulations and publications reflect the Copyright Act's longstanding originality requirement. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of "words and short phrases such as names, titles, and slogans [and] familiar symbols or designs"); *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"); 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).

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 concludes that neither the Work's individual elements, nor the Work considered as a whole demonstrate sufficient creativity for copyright protection. The Work's elements consist of multiple black-tipped red cones affixed to a red rectangular band. Cones and a band are both uncopyrightable common geometric shapes and neither the simple two-color scheme nor the type of material make them protectable.

COMPENDIUM (THIRD) §§ 310.9 ("As a general rule, the materials used to create a work have no bearing on the originality analysis."), 906.1 (listing examples of common geometric shapes not protected by copyright including cones and rectangles), 906.3 ("coloration or mere variations in coloring alone are not eligible for copyright protection."). Further, the tapering of the individual cones are mere variations of common geometric shapes that do not add sufficient creativity to the individual elements to make shapes copyrightable. *See id.* § 906.2 ("[C]opyright law does not protect mere variations on a familiar symbol or design.").

Viewed as a whole, the selection and arrangement of the Work's unprotectable elements are also insufficiently creative to warrant copyright protection. The Work consists of three symmetrical rows black-tipped red cones on a rectangular band. Repeating the same shape in a straight row is an unoriginal arrangement and placing three of those rows next to each other does not add sufficient creativity to warrant registration. *See Satava*, 323 F.3d at 811; *see, e.g.*, COMPENDIUM (THIRD) § 906.1 ("[T]he combination of [a] purple rectangle and [a] standard symmetrical arrangement of . . . white circles does not contain a sufficient amount of creative expression to warrant registration."). While C-PREME asserted that the angles of the cones relative to each other is a "manifest[ation]" of "original expression," Second Request at 6, repeating the same shape at a slightly different angle adds only a minor linear variation to an otherwise unprotectable arrangement and does not add sufficient creativity to make the Work registerable. *See* COMPENDIUM (THIRD) § 313.4(J) ("[T]he Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations, either in two-dimensional or three-dimensional form."). The fact that the Work resembles a Mohawk hairstyle has no bearing on the copyrightability of the Work. *Id.* § 310.3 ("[T]he Office 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.").

Lastly, C-PREME argued that the Work is copyrightable because it is a derivative work that is distinguishable from *Four Rowed Mohawk Spikes*, for which they own a design patent. Second Request at 7–8. The fact that a work, or a derivative thereof, is protected by a design patent is irrelevant to whether a work meets the requirements of the Copyright Act. COMPENDIUM (THIRD)§ 310.11. Moreover, a "derivative work" is a work which is based upon one or more preexisting works that recast, transforms, or adapts the preexisting work. 17 U.S.C. § 101. While C-PREME supplied the design patent for *Four Rowed Mohawk Spikes*, that fact is irrelevant in considering whether either *Four Rowed Mohawk Spikes* or the Work at issue in this appeal is copyrightable. Regardless, the amount of creativity required for a derivative work is the same as that required for a copyright in any other work. In the case of a derivative work, "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." COMPENDIUM (THIRD) § 311.2 (citing *Schrock v. Learning Curve Int'l, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009)). Here, any changes that would distinguish the Work from the putative preexisting work—*i.e.*, removing one row of cones and changing the cones' spacing and proportionality, Second Request at 7–8—are not "sufficient nontrivial expressive variations" on the preexisting work that would support a copyright claim.

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
Director of Policy and International Affairs
John R. Riley, Acting Deputy General Counsel
Nicholas R. Bartelt, Assistant General Counsel