



November 4, 2022

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**Re: Second Request for Reconsideration for Refusal to Register Perfect Bar
(SR # 1-6994330701; Correspondence ID: 1-3MJHQS3)**

Dear Ms. Wallach:

The Review Board of the United States Copyright Office (“Board”) has considered Perfect Bar, LLC’s (“Perfect Bar”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork, text, and compilation¹ claim in the work titled “Perfect Bar Logo (red)” (“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 two-dimensional, two-colored graphic design. The design consists of the word “PERFECT” in red coloring bordered above and below by thin red rectangles. Perpendicular and to the right of the word “PERFECT” is a small red rectangle with the word “Bar” in cursive lettering and white coloring. Small white lines appear throughout the design. The entire design is slightly rotated. The Work is as follows:

¹ While the application referenced compilation authorship, the deposit did not display, and the correspondence did not identify, any such authorship. *See* 17 U.S.C. § 101. Perfect Bar suggests that it is “entitled to receive copyright protection for the full scope of its original authorship, which includes 2-D artwork, text; as well as the compilation of 2-D artwork and text.” *See* Letter from Margarita Wallach to U.S. Copyright Office at 6 (June 8, 2021). Perfect Bar conflates the statutory definition of “compilation” authorship with the judicially-created proposition, applied by the Office during examination, that some combinations of unprotectable elements may exhibit sufficient creativity with respect to how the elements are combined or arranged to support a claim to copyright. The statutory definition of “‘compilation’ is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. § 101. Examples of compilation authorship include literary anthologies, serials, charts, or graphs—works made from preexisting materials (poems, stories, essays by others) or data (to populate a chart or graph). The individual elements of this Work are not preexisting materials or data as contemplated by the “compilation” definition. Accordingly, the Board has analyzed the graphic and textual elements of the Work. As discussed below, part of this analysis includes consideration of whether the combination of elements in the work is sufficiently creative to support a copyright claim.



II. ADMINISTRATIVE RECORD

On September 28, 2018, Perfect Bar filed an application to register a copyright claim in the Work. On January 18, 2019, a Copyright Office registration specialist refused to register the claim, finding that the Work “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Margarita Wallach at 1 (Jan. 18, 2019).

In a letter dated April 17, 2019, Perfect Bar requested that the Office reconsider its initial refusal to register the Work. Letter from Margarita Wallach to U.S. Copyright Office (Apr. 17, 2019) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work “does not contain a sufficient amount of original and creative graphic or artistic authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Margarita Wallach at 1 (July 18, 2019).

In a letter dated June 8, 2021, Perfect Bar 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 Margarita Wallach to U.S. Copyright Office (June 8, 2021) (“Second Request”). In that letter, Perfect Bar argued that the requisite originality is met by the “creative written expressions” found in the work—specifically, the textual components, the “different colors, font sizes, typefaces, angles, and background,” and the slight tilt of the Work. *Id.* at 3. Perfect Bar also argued that the combination of the elements is sufficiently creative because the “snack bar and stamp of approval-like imagery” created by the placement of simple shapes “in tandem with the stylized text” goes beyond minor alterations to simple shapes. *Id.* at 5.

III. DISCUSSION

After carefully examining the Work and applying the relevant legal standards, the Board finds that the Work does not contain the requisite originality 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.* at 358–9. 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. It further found that there can be no copyright in a work in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 359.

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 “[w]ords 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”). 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 Feist*, 499 U.S. 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).

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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) (“COMPENDIUM (THIRD)”); *see also Atari*, 888 F.2d at 883 (“[S]imple shapes, when selected or combined in a distinctive manner indicating some ingenuity, have been accorded copyright protection both by the Register and in court.”). Thus, the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but would not register a picture consisting merely of a purple background and evenly spaced white circles. COMPENDIUM (THIRD) § 906.1; *see Coach*, 386 F. Supp. 2d at 496 (refusing to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements”).

Applying these legal standards, the Board finds that the Work does not contain the requisite originality necessary to sustain a claim to copyright. Both the individual elements of the Work and the Work as whole fail to demonstrate sufficient creativity.

The individual elements of the Work—words, typefaces, colors, font sizes, and geometric shapes—are insufficiently creative to warrant protection. The words, “Perfect” and “Bar,” and typefaces are not subject to copyright protection. 37 C.F.R. § 202.1(a), (e). The color, fonts, and sizes of the text are “mere variations of typographic ornamentation [and] lettering” that are not protected by copyright law. COMPENDIUM (THIRD) § 313.3(D). The small white lines that give the Work a stamp-like or distressed look create a mere variation of coloring that does not

materially add to the Work's creativity. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(K).

Likewise, the combination of these unprotectable elements is insufficiently creative to support a copyright claim. Where a design combines uncopyrightable elements, it is protected only when the “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). Here, the Work does not contain a sufficiently original composition to constitute an original work of authorship. *See id.* Combining a business name with geometric shapes and inverted coloring (red text over white and white text over red) is an obvious, expected logo configuration. Simply using border lines, rotating the word “Bar” and using a different font does not make the Work sufficiently creative. *See* COMPENDIUM (THIRD) § 914.1 (The Office “typically refuses to register . . . logos” that consist of only “mere use of different fonts or colors, frames, or borders, either standing alone or in combination.”). Nor does adding a square background to the word “Bar” and tilting the overall Work make the Work copyrightable. *See id.* (The Office “typically refuses to register . . . logos” that consist of only “mere scripting or lettering, either with or without uncopyrightable ornamentation.”); *see also John Muller & Co, Inc. v. NY Arrows Soccer Team*, 802 F.2d 989, 990 (8th Cir. 1986) (affirming the refusal to register a logo consisting of four irregularly spaced angled lines with the word “Arrow” in cursive script below because it was insufficiently creative).

Finally, Perfect Bar contends the Work is sufficiently creative because it “evokes an impression of a snack bar” in foil packaging, and “in another perspective” looks like “a stamp of approval.” Second Request at 4. However, the Office only considers the actual appearance of the work and not the symbolic meaning of the work or how others may also “see” or perceive the work. *See* 17 U.S.C. § 102(b); COMPENDIUM (THIRD) § 310.3. Further, the Office “will not consider the author’s inspiration for the work, creative intent, or intended meaning.” COMPENDIUM (THIRD) § 310.5.

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

Jordana Rubel, Assistant General Counsel