



June 22, 2021

Ann K. Ford, Esq.
David M. Kramer, Esq.
DLA PIPER LLP (US)
500 8th Street NW
Washington, DC 20004

Re: Second Request for Reconsideration for Refusal to Register Ameritrade Sound Mnemonic C03; Correspondence ID: 1-41DWLFP; SR 1-7972762058

Dear Ann K. Ford, Esq., and David M. Kramer, Esq.:

The Review Board of the United States Copyright Office (“Board”) has considered TD Ameritrade IP Company Inc.’s (“TD Ameritrade”) second request for reconsideration of the Registration Program’s refusal to register a sound recording claim in the work titled “Ameritrade Sound Mnemonic C03” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Work exhibits copyrightable authorship and thus may be registered.

The Work consists of a four-second sound recording that contains five notes played on the marimba, with pizzicato strings joining the marimba in unison on the last note. The Work contains perceptible production authorship approximately two seconds in duration.

Sound recordings are subject to the same principles of originality and creativity as other forms of works, as set forth in *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). Applying *Feist*’s standard for sufficient creativity, the Office’s practice is that “a sound recording must contain a sufficient amount of creative, perceptible sound recording authorship . . . [and] [e]lements that determine the sufficiency and creativity of a sound recording include the simultaneous or sequential number of sounds, the length of the recording, and the creativity perceptively expressed in creating, fixing, and manipulating the sounds.” COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §803.5(B) (3d ed. 2021) (“COMPENDIUM (THIRD)”). While “[s]hort sound recordings may lack a sufficient amount of authorship to be copyrightable (just as words and short textual phrases are not copyrightable)” (*id.*), here, the Board finds that the Work contains a sufficient, although minimal, amount of original and creative production authorship to sustain a claim to copyright.

After carefully examining the Work and applying the legal standards discussed above, the Board agrees with TD Ameritrade that “[t]he sound recording contains a perceptible and sufficient amount of creative production authorship through its combination and blend of

Ann K. Ford, Esq.
David M. Kramer, Esq.

June 17, 2021

instrumental sounds,” including refinement and enhancement by sound design. Letter from Ann K. Ford & David M. Kramer to U.S. Copyright Office, at 2–3 (July 31, 2020). The Board finds that, in addition to the perceptible five notes, the echo and timbre after the final note indicate sufficiently minimum production authorship and engineering activity. *See Bridgeport Music, Inc. v. Dimension Films*, 230 F. Supp. 2d 830, 839 (M.D. Tenn. 2002), *rev’d on other grounds*, 401 F.3d 647 (6th Cir. 2005) (noting that the copyrightability of a sound recording turns on “the use of and aural effect produced by the way the notes in the chord are played”); H.R. REP. NO. 94-1476, at 54 (1976) (noting that copyrightable production authorship in a sound recording includes “capturing and electronically processing the sounds, [and] compiling and editing them”).

Our decision to register the Work is based on the low standard for copyrightability articulated in *Feist*. *See* 499 U.S. at 345. Further, the Board’s decision relates only to the Work as a whole and does not extend to the underlying musical work or individually to any of the standard and common elements depicted in the Work, including the five notes and their reproduction as played by the marimba and pizzicato strings. *See* 37 C.F.R. § 202.1(a) (“[W]orks not subject to copyright [include] [w]ords and short phrases [and] familiar symbols or designs”); *see also* COMPENDIUM (THIRD) §§ 313.3(E), 313.4(C), 313.4(J).

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Work. The Board now refers this matter to the Registration Policy and Practice division for registration of the Work, provided that all other application requirements are satisfied.

No response to this letter is needed.



U.S. Copyright Office Review Board
Regan A. Smith, General Counsel and
Associate Register of Copyrights
Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
Education
Kimberley Isbell, Deputy Director of Policy and
International Affairs

cc: TD Ameritrade Legal Department
Attn: Helen Odom
717 17th St Fls 18 24
Denver, CO 80202