



January 26, 2021

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**Re: Second Request for Reconsideration for Refusal to Register Zoe Ambigram
(Correspondence ID: 1-40YS0GV, SR # 1-7721685991)**

Dear Mr. Harper:

The Review Board of the United States Copyright Office (“Board”) has considered Adam Zaner’s (“Zaner’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional art claim in the work titled “Zoe Ambigram” (“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 purple, two-dimensional design. It has three intersecting letters, “z,” “o,” and “e,” that spell “ZOE.” The Work is as follows:



II. ADMINISTRATIVE RECORD

On July 31, 2019, Zaner filed an application to register a copyright claim in the Work. In an August 26, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it “does not contain the minimum amount of original authorship required for copyright protection.” Initial Letter Refusing Registration from U.S. Copyright Office to Scott Harper (Aug. 26, 2019).

Zaner then requested that the Office reconsider its initial refusal to register the Work. Letter from Scott L. Harper to U.S. Copyright Office (Nov. 25, 2019) (“First Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and concluded that the Work is a typographic rendering of the word “ZOE” that contains “no elements or features . . . either alone or in combination upon which a copyright registration is possible.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Scott Harper at 1 (Apr. 23, 2020). The Office also noted that even if the Work contained copyrightable subject matter, “the elements or features either alone or in combination do not satisfy the requisite level of creativity.” *Id.* at 3.

Zaner subsequently 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 Scott L. Harper, to U.S. Copyright Office (July 22, 2020) (“Second Request”). In that letter, Zaner contended that the Work is copyrightable because it is not a typographic rendering based on typeset or printed letters, and it required creativity to design. Second Request at 3. Zaner also asserts that, even if the Work contains uncopyrightable “typeset matter,” the Work is copyrightable because the arrangement of letters “produces an abstract image or symbol.” *Id.*

III. DISCUSSION

A. *The Legal Framework - Originality*

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. 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 and described in the *Feist* decision. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, 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. 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 (D.C. Cir. 1989).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. For example, the United States District Court for the Southern District of New York upheld the Copyright Office’s refusal 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.” *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). Likewise, the Ninth Circuit has held that a glass sculpture of a jellyfish consisting of clear glass, an oblong shroud, bright colors, vertical orientation, and the stereotypical jellyfish form did not merit copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The language in *Satava* is particularly instructive:

It is true, of course, that a *combination* of unprotectable elements may qualify for copyright protection. But it is not true that *any* combination of unprotectable elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that 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.

Id. (internal citations omitted).

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See* COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 310.2 (3d ed. 2017) (“COMPENDIUM (THIRD)”). The attractiveness of a design, the espoused intentions of the author, the design’s visual effect or its symbolism, the time and effort it took to create, or the design’s commercial success in the marketplace are not factors in determining whether a design is copyrightable. *See, e.g., Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

B. Analysis of the Work

After careful examination and analysis, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

The Work consists entirely of purple lettering. The three letters, “Z,” “O,” and “E,” spell the name of the applicant’s daughter, Zoe. First Request at 4. Individually, letters, words such as names, and typeface are ineligible for copyright protection. 37 C.F.R. § 202.1(a), (e). Zaner submits that the Work warrants copyright protection because “the Applicant was able to make two separate and distinct letters . . . resemble one another.” Second Request at 4. Stylizing two letters to resemble one another, however, simply creates variations of those letters. Mere variations of lettering is not protected by copyright “regardless of how novel and creative the shape and form of the typeface characters may be.” COMPENDIUM (THIRD) § 906.4; *see*

Tufenkain Imp./Exp. Ventures, Inc. v. Einstein Moomjy, Inc., 338 F.3d 127, 132 (2d Cir. 2003) (“both the generic shape of the letter ‘L’ and “all of the elaborately more specific ‘L’s’ from the hundreds of years of font designs that have fallen into the public domain” are not copyrightable).

While Zaner contends that the Work is an ambigram¹ that should be copyrightable as an “artform” “created by artists and designers,” the Board is unconvinced that the design elements and placement take the Work outside the realm of typeface ineligible for copyright protection. Second Request at 3. It is well established that letters and words do not receive copyright protection simply because they are created freehand or with artistic attention to detail. *Yu Zhang v. Heineken N.V.*, 2010 U.S. Dist. LEXIS 153423, at 2 (C.D. Cal., May 12, 2010) (“copyright regulations preclude registration of words or phrases, even if they are created with artistic detail or decoration”). Similarly, Zaner suggests that the work is sufficiently creative because “it takes an observer of the Work time and concentration to discern that the pictorial expression even contains letters.” Second Request at 3. The Board focuses on the actual appearance of the fixed Work, and does not focus on the creative thought that may take place in the person who encounters the Work. COMPENDIUM (THIRD) § 310.3.

In any event, even if the Work was not unprotectable as typeface, the Board finds it insufficiently creative to register as a claim to copyright. Viewed as a whole, the selection, coordination, and arrangement of the letters are insufficient to render the Work eligible for copyright protection. For a combination of uncopyrightable elements to be protectable, the “elements [must be] numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava*, 323 F.3d at 811. Here, the Work is a purple word comprising three overlapping letters aligned to create rotational symmetry. Merely overlapping a few common elements (here, block lettering in a single color) to create a perfectly symmetrical effect does not establish sufficient creativity to meet the authorship requirement. *See, e.g., Coach*, 386 F. Supp. 2d at 496 (affirming the refusal to register a design consisting of linked and unlinked letter “C” shapes positioned “in a mirrored relationship”); *see also Homer Laughlin China Co. v. Oman*, No. CIV. A. 90-3160, 1991 WL 154540, at *1 (D.D.C. July 30, 1991) (affirming decision to refuse registration of repeating pattern of geometrical shapes).

Zaner suggests that creative decisions and artistic effort qualify the work for copyright protection. Zaner notes that the Work was created freehand with twenty hours of time and attention to detail. Second Request at 3. The Office, however, will not consider the amount of time or effort required to create the work. *Feist*, 499 U.S. at 352-354, 364 (rejecting the so-called “sweat of the brow” doctrine); COMPENDIUM (THIRD) § 310.7.

In sum, the Work does not exhibit the creativity required for copyrightable authorship.

¹ An ambigram is a “typographical design consisting of text modified in such a way that it can be read in multiple orientations, as in mirror image, inverted, or when rotated.” *Ambigram*, Oxford English Dictionary (3d ed. 2013).

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

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
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