



United States Copyright Office

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Gabrielle Holley, Esq.
Holley & Menker, P.A.
P.O. Box 96
Solana Beach, CA 92075

Re: Second Request for Reconsideration for Refusal to Register “The UEFA Champions League Starball Device”; Correspondence ID 1-2WP8WG4; SR 1-4149565625

Dear Ms. Holley:

The Review Board of the United States Copyright Office (“Board”) has considered Union des associations européennes de Football’s (“UEFA”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional visual art claim in the work titled “The UEFA Champions League Starball Device” (“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 graphic consisting of black stars and white polygons. The stars are connected, with the polygons created in the spaces between the stars. The shapes are arranged into a circular space, with the outer stars curved to follow the circumference. A reproduction of the Work is set forth below.



II. ADMINISTRATIVE RECORD

On November 7, 2016, UEFA filed an application to register a copyright claim in the Work. In a July 11, 2017, letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Sandra Ware, Registration Specialist, to Gabrielle Holley (July 11, 2017).

UEFA then requested that the Office reconsider its initial refusal to register the Work. Letter from Gabrielle Holley to U.S. Copyright Office (Oct. 3, 2017) (“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 was a “simple combination of common elements that does not exhibit the creativity to support a registration.” Letter from Stephanie Mason, Attorney-Advisor, to Gabrielle Holley (Feb. 27, 2018). The Office also rejected the UEFA’s argument that registration was warranted because the stars and polygons are positioned to create the illusion of a three-dimensional sphere. *Id.*

UEFA next 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 Gabrielle Holley, to U.S. Copyright Office (Apr. 24, 2018) (“Second Request”). UEFA presented four main reasons for registration. First, UEFA stated that the work was sufficiently creative because “[w]ith a combination of at least 19 elements, the mark can hardly be said to consist of only a few standard forms or shapes.” *Id.* at 2. Second, UEFA contended that “the forms and shapes that make up the mark are not standard.” *Id.* Third, UEFA claimed that “the illusion given by the Work is keenly important in that it shows that the placement of the elements are not linear; and in order to create the illusion, the elements had to be placed with more than just minor spatial variation.” *Id.* Finally, UEFA urged that the Office’s standard is “not in harmony with *Feist*,” comparing the Work to other works involved in federal litigation. *Id.* at 3.

III. DISCUSSION

A. *The Legal Framework*

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).

Similarly, 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. 2017) (“Compendium (Third)”); *see also Atari Games Corp.*, 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.

B. Analysis of the Work

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

The Work is a combination of black stars that create the impression of white polygons in the negative space between the stars, arranged in a circular space, the result of which is an insufficiently creative design. The shapes in the Work are plainly stars—basic geometric shapes—as defined by dictionaries and as used in common language. *See, e.g.*, Merriam-Webster Dictionary, www.merriam-webster.com, “star” (a star is both “a conventional figure with five or more points” and “something resembling a star”); Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/star>, “star” (“a shape having four or more pointed parts coming out from a center at equal distances”). Thus, UEFA’s argument that the stars’ irregular and curved lines “remove[] any ‘familiarity’ they might otherwise have,” Second Request at 2, is not persuasive and belies the clear visual impression of the Work. Similarly, the polygons are insufficiently creative and reflect basic geometric shapes. *See, e.g.*, Merriam-Webster Dictionary, “pentagon” (a polygon of five angles and five sides), “hexagon” (a polygon of six angles and six sides). And the overall combination of these shapes is not creative enough to warrant copyright protection, instead providing a *de minimis* overall design. *See*, COMPENDIUM (THIRD) § 906.1 (stating that a combination of white circles on a purple background does not contain a sufficient amount of creative expression).

Nevertheless, UEFA claims that the Office’s use of the word “few” in the *Compendium* discussion of copyrightable authorship in visual art works supports registration. UEFA claims that, “[w]ith a combination of at least 19 elements, the mark can hardly be said to consist of only

a few standard forms or shapes.” Second Request at 2. Narrowly focusing on “few” ignores the larger principle: that “[t]he Office will not register works that consist entirely of uncopyrightable elements . . . unless those elements have been selected, coordinated, and/or arranged in a sufficiently creative manner.” COMPENDIUM (THIRD) § 905. The elements in a work must be original in their selection, coordination, and arrangement, regardless of their number. *See Satava*, 323 F.3d at 811. The Work as a whole simply does not rise to the level of creativity required by the Copyright Act; instead the individual elements are merely placed to conform to the circumference of a circle and the overall design is not protectable.

UEFA also attempts to support its position by citing to a number of inapposite cases. Though the Board fully agrees that courts have found works consisting entirely of unprotectable elements to be copyrightable (indeed, Section 906.1 of the *Compendium* itself offers one such example), the Work is not one of those protectable designs. Unlike the works in the cited cases, the Work does not include additional color variations or derivative authorship, and are dissimilar to sculptural or three-dimensional works. *Compare with Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199 (3d Cir. 2005) (“A *sculptural* work’s creativity derives from the combination of texture, color, size, and shape, as well as the particular verse inscribed and the way the verse is presented”) (emphasis added) *Hoberman Designs, Inc. v. Gloworks Imports, Inc.* 2015 WL 10015261, No. 14-CV-6743,*4 (C.D. Cal. Nov. 3, 2015) (after separating the mechanical aspects of the three-dimensional work, finding the joints, trusses, and cross pieces of the three-dimensional works copyrightable); *Games Workshop Ltd. v. Chapterhouse Studios, LLC*, 2012 WL 5949105, 10-C-8103, *11 (N.D. Ill. Nov. 27, 2012) (involving *both* geometric shapes *and* a “distinctive color scheme”); *Theotokatos v. Sara Lee Personal Prods.*, 971 F. Supp. 332, 338 (N.D. Ill. 1997) (derivative work with creative additions); *Runstadler Studios, Inc. v. MCM LP*, 768 F. Supp. 1292, 1295 (N.D. Ill 1991) (evaluating both the two-dimensional and three-dimensional aspects of a work).

Finally, UEFA’s claim that the three-dimensional illusion of the Work is “keenly important,” Second Request at 2, does not support registration. When examining a work for copyrightable authorship, the Copyright Office uses objective criteria to determine whether a work is sufficiently creative for copyright protection. As stated in the Office’s response to UEFA’s First Request, the symbolic meaning or impression that a work conveys is irrelevant to whether a Work contains a sufficient amount of creativity. COMPENDIUM (THIRD) § 310.3. Equally irrelevant is the intent of the author. *Id.* §310.5 (“The fact that a creative thought may take place in the mind of the person who created a work . . . has no bearing on the issue of originality unless the work objectively demonstrates original 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

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