



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

October 12, 2022

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Re: Second Request for Reconsideration for Refusal to Register Ariat Shield Logo (SR # 1-10499313421; Correspondence ID: 1-52XO1KW)

Dear Mr. D'Ascenzo,

The Review Board of the United States Copyright Office ("Board") has considered Ariat International Inc.'s ("Ariat") second request for reconsideration of the Registration Program's refusal to register a two-dimensional artwork claim in the work titled "Ariat Shield Logo" ("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 refusal of registration.

I. DESCRIPTION OF THE WORK

The Work is a two-dimensional artwork consisting of three black horseshoe shapes centered in a black shield shape. The three horseshoes are oriented 120 degrees respective to each other and overlap in the center of the shield.

The Work is as follows:



II. ADMINISTRATIVE RECORD

On May 25, 2021, Ariat filed an application to register a copyright claim in the Work. In a May 27, 2021 letter, a Copyright Office registration specialist refused to register the claim, determining that it lacked the requisite creative authorship to support a copyright claim. Initial Letter Refusing Registration from U.S. Copyright Office to Nima Astani at 1 (May 27, 2021).

On August 18, 2021, Ariat requested that the Office reconsider its initial refusal to register the Work, arguing that the arrangement of the elements in the Work was sufficiently creative to meet the standard set forth in *Feist Publ'ns v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340 (1991). Letter from David S. D'Ascenzo to U.S. Copyright Office at 2 (Aug. 18, 2021) ("First Request"). 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 David S. D'Ascenzo (Dec. 21, 2021). The Office explained that the Work did not demonstrate sufficient creativity in the combination and arrangement of its component elements. *Id.* at 3.

In a letter dated February 14, 2022, Ariat 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 David S. D'Ascenzo to U.S. Copyright Office (Feb. 14, 2022) ("Second Request"). Ariat argued that the Work is sufficiently creative to warrant registration based on prior decisions of the Board and several court cases that upheld registration for works that Ariat believes are analogous to the Work. *Id.*

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work does not contain the requisite originality necessary to sustain a claim to copyright.

A work may be registered for copyright if it is an "original work[] of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). In *Feist*, the Supreme Court explained that this requirement of originality contains two components: that it was independently created (rather than copied from another work) and sufficiently creative. 499 U.S. at 345. The necessary amount of creativity is "extremely low" and "even a slight amount will suffice." *Id.* Though the requisite level of creativity is "not particularly stringent," there nonetheless is "a narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually nonexistent." *Id.* at 358–59. Works that do not meet this low threshold for creativity are not eligible for copyright. *Id.* at 359.

The Office's regulations implement these well-established principles. For example, to sustain a copyright, a pictorial, graphic, or sculptural work "must embody some creative authorship in its delineation or form." 37 C.F.R. § 202.10(a). Additionally, common shapes, familiar symbols and designs do not qualify for copyright. *Id.* § 202.1(a); *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) ("COMPENDIUM (THIRD)") ("The Copyright Act does not protect common geometric shapes,

either in two-dimensional or three-dimensional form.”); COMPENDIUM (THIRD) § 906.2 (“Familiar symbols and designs are not protected by the Copyright Act.”).

A work comprised of unprotectable elements may be registrable if such elements are configured in a creative manner, though not every combination or arrangement of unprotectable elements will be creative enough to qualify for copyright. *See Feist*, 499 U.S. at 358 (stating that, in determining whether work comprised of unprotectable elements is sufficiently creative, “the principal focus should be on whether the selection, coordination, and arrangement are sufficiently original to merit protection” but “[n]ot every selection, coordination, or arrangement will pass muster”); COMPENDIUM (THIRD) § 906.1 (stating that a “work that merely consists of common geometric shapes” will not be registered “unless the author’s use of those shapes results in a work that, as a whole, is sufficiently creative”); COMPENDIUM (THIRD) § 906.2 (“A work that includes familiar symbols or designs may be registered if the registration specialist determines that the author used these elements in a creative manner and that the work as a whole is eligible for copyright protection.”). Indeed, “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 finds that the Work does not contain the requisite creativity necessary to sustain a claim to copyright. Both the individual elements of the Work and the Work as a whole fail to demonstrate sufficient creativity.

The individual elements of the Work are three horseshoe shapes and a shield shape, all rendered in black without shading or gradation in color. Neither common shapes nor familiar symbols or designs are copyrightable. *See* 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 906.1, 906.2; *see also John Muller & Co. v. N.Y. Arrows Soccer Team, Inc.*, 802 F.2d 989, 889–990 (8th Cir. 1986) (upholding refusal to register “logo consist[ing] of four angled lines which form an arrow and the word ‘Arrows’ in cursive script below the arrow”); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 499 (S.D.N.Y. 2005) (upholding refusal to register pattern consisting of arrangements of letter “C”). Accordingly, the individual elements of the Work are not sufficiently creative to support a copyright claim.

Similarly, the combination of these unprotectable elements in the Work does not demonstrate sufficient creativity. The individual elements of the Work are arranged in a simple, obvious fashion: the horseshoes are centered in the shield, rotated at equal intervals relative to each other, and are overlapping. Since the elements are not sufficiently numerous and their arrangement is typical and garden-variety, the Work as a whole is not creative enough to be copyrightable. *See Satava*, 323 F.3d at 811; *see also Feist*, 499 U.S. at 362. That the Work may be “reminiscent of Celtic symbols or knots” or “suggestive of Ariat’s equestrian roots” is not relevant to the question of whether the Work is sufficiently creative. Second Request at 2; COMPENDIUM (THIRD) § 310.3 (stating that “[t]he symbolic meaning or impression of a work is irrelevant” to determination of whether work is sufficiently creative). “[T]he Office will focus only on the actual appearance or sound of the work that has been submitted for registration, but

will not consider any meaning or significance that the work may evoke.” COMPENDIUM (THIRD) § 310.3.

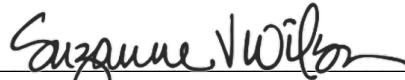
In its Second Request, Ariat points to several court cases in support of its position that the Work is sufficiently creative, Second Request at 3–4, yet these cases do not support registration of the Work. As a preliminary matter, these cases involve three-dimensional sculptures, not two-dimensional artwork. In the first case cited by Ariat, the district court upheld the Copyright Office’s determination that a brass sculpture was copyrightable, though it noted that the Copyright Office correctly refused registration for the plaintiff’s earlier sketch of his idea because it consisted merely of “bare outlines” of the elements of the sculpture and “contain[ed] no more than the bare idea or concept” of the sculpture. *Arthur v. Am. Broad. Cos., Inc.*, 633 F. Supp. 146, 148 (S.D.N.Y. 1985). Here, the Work is more analogous to the unregistrable sketch than to the registrable brass sculpture. In the other two cases cited by Ariat, the district courts found the works in question sufficiently creative due to choices that are not present in the Work. *See Kellman v. Coca-Cola Co.*, 280 F. Supp. 2d 670, 676–77 (E.D. Mich. 2003) (finding novelty foam hat sufficiently creative due to its “size, shape and proportions,” among other things); *Runstadler Studios, Inc. v. MCM Ltd. P’ship*, 768 F. Supp. 1292, 1295–96 (N.D. 1991) (finding glass sculpture sufficiently creative due to “[t]he choice of location, orientation and dimensions of the glass panes, and the degree of arc of the spiral”). Because all three cases involve works with more creative elements than the Work, the cases cited in the Second Request are inapposite and do not support registration of the Work.

Finally, Ariat cites six prior Board decisions that it believes support registration of the Work. Second Request at 2–3. As Ariat acknowledges, *id.* at 2, the Copyright Office’s registration decisions have “no precedential value and [are] not binding upon the Office when it examines any other application.” COMPENDIUM (THIRD) § 309.3. Copyrightability decisions are “made on a case-by-case basis” and the Board does not engage in comparisons between the Work and other works the Board has considered.¹ *Id.*

¹ The Board disagrees with Ariat’s assertion that the Board “*must* look to how prior Board decisions and courts have applied facts to the law” because doing otherwise would render the Board’s decisions “purely subjective and arbitrary.” Second Request at 2 (emphasis in original). All registration decisions made by the Office, including the Board’s, are based on governing law that is outlined in publicly available objective criteria. *See, e.g.*, COMPENDIUM (THIRD) ch. 300 (providing overview of Copyright Office’s practices and procedures for evaluating copyrightable authorship); *id.* at ch. 900 (providing overview of Copyright Office’s practices and procedures for evaluating visual art works).

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