



June 17, 2022

Christopher M. Verdini
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222-2613

Re: Second Request for Reconsideration for Refusal to Register Historic Block Logo (Correspondence ID: 1-53D8ZCB; SR # 1-10540812655)

Dear Mr. Verdini:

The Review Board of the United States Copyright Office (“Board”) has considered World Wrestling Entertainment, Inc.’s (“WWE’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional claim in the work titled “Historic Block 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 denial of registration.

I. DESCRIPTION OF THE WORK

The Work consists of two stylized letter “W”s stacked on top of each other and separated by a thin white line, with the upper “W” nestled inside the contours of the lower “W,” and the top right side of each “W” protruding horizontally to the right to form the upper and lower strokes of an “F.”¹ The letters are in black coloring. The Work is as follows:



II. ADMINISTRATIVE RECORD

On June 7, 2021, WWE filed an application to register a copyright claim in the Work. On June 9, 2021, a Copyright Office registration specialist refused to register the claim, finding

¹ The Board notes that WWE changed its name from “World Wrestling Federation Entertainment, Inc.” in 2002, and that the letters “W,” “W,” and “F” referred to this prior name.

that it “lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Christopher Verdini at 1 (June 9, 2021).

In a letter dated September 9, 2021, WWE requested that the Office reconsider its initial refusal to register the Work. Letter from Christopher M. Verdini to U.S. Copyright Office (Sept. 9, 2020) (“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’s “individual elements contained within *Historic Block Logo* do not exhibit a sufficient amount of original and creative authorship to support a copyright registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office to Christopher Verdini (Jan. 5, 2022). The Office further concluded that the “overall design” of the Work “is a simple logo consisting of two stylized letters repeated with one ‘WF’ nestled atop the other,” amounting to a “garden-variety configuration.” *Id.* at 3.

In a letter dated April 4, 2022, WWE 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 Christopher M. Verdini to U.S. Copyright Office (Apr. 4, 2022) (“Second Request”). In that letter, WWE asserted that the Work’s “creation, selection, combination, and arrangement of the shapes, dimension, scale, and graphic design . . . are unique and artistic elements that demonstrate far more than a ‘slight amount’ of originality.” *Id.* at 3. Specifically, WWE noted the “particular arrangement of the graphic elements of the Logo ‘to create dimension and shading’ between the two ‘W’ letters to create a visual illusion that alludes to the letter ‘F.’” *Id.* at 3 (quoting U.S. Copyright Office Review Board, *Re: Registration Decision Regarding Dead Kennedys “DK” Logo*; SR 1-7294661771 at 2 (May 7, 2020)); *see also* Second Request at 3 (discussing an unreported case and Dead Kennedys logo decision in support of WWE’s assertion that the Work’s selection, combination, and arrangement of elements meet the requisite level of creativity). Additionally, WWE pointed to a previous registration of another WWE logo and argued that the Work should be registered “because it has the same elements of creativity that are present in the [previously registered work] that the Copyright Office has already deemed to demonstrate the modicum of originality and creativity necessary to merit registration.” *Id.* at 4. Lastly, WWE noted that the Work is “extremely well-known and popular.” *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 satisfy the statutory requirements for copyright protection.

Under the Copyright Act, a work can be registered if it is an “original work[] of authorship.” 17 U.S.C. § 102(a). As the Supreme Court has explained, the statute requires that works contain “some minimal degree of creativity” to qualify for copyright protection. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). Though only a “modicum” of creativity is necessary, copyright will not protect works in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 346, 359.

Some material is so common and uncreative that it cannot meet the statutory requirement for copyright. As set out in the Office’s regulations, copyright does not protect elements such as

“[w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering or coloring.” 37 C.F.R. § 202.1(a); *see also Kitchens of Sara Lee, Inc. v. Nifty Foods Corp.*, 266 F.2d 541, 544 (2d Cir. 1959) (describing these regulations as “a fair summary of the law”). When a work consists of only unprotectable elements, it must combine or arrange those elements in a sufficiently creative way to meet the requirements of the statute. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (combination of unprotectable elements is protected “only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship”).

Applying these legal standards, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright. Both the Work’s individual elements and the Work as a whole fail to demonstrate copyrightable authorship.

The Work consists of stylized, or mere typographic ornamentations of, two letter “W”s and one letter “F,” all in black coloring. The letters are not copyrightable, as they are mere variations of typographic ornamentation or lettering. 37 C.F.R. § 202.1(a); COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.4(J) (3d ed. 2021) (“COMPENDIUM (THIRD)”) (explicitly listing “letters” as familiar symbols and designs that “cannot be registered”). The stylized portions of the “W”s that combine to form the “F” do not alter the fact that letters are not copyrightable. Letters are the building blocks of expression and cannot be protected by copyright law “regardless of how novel and creative the shape and form of the typeface characters may be.” COMPENDIUM (THIRD) § 906.4; *see also* COMPENDIUM (THIRD) § 313.3(D) (“The copyright law does not protect typeface or mere variations of typographic ornamentation or lettering.”); *Eltra Corp. v. Ringer*, 579 F.2d 294, 298 (4th Cir. 1978) (noting Congress has consistently refused copyright protection to typeface). While in “some very limited cases” graphical works largely comprising lettering may be copyrightable, such as when they form “original pictorial art that forms the entire body or shape of the typeface characters” including “add-on[s] to the beginning and/or ending of the characters,” the Work does not meet this test. COMPENDIUM (THIRD) § 906.4. The additional element of black coloring is mere coloration, which is also not protected by copyright. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) §§ 313.4(K), 906.3 (“Mere coloration or mere variations in coloring alone are not eligible for copyright protection.”). Therefore, none of the Work’s individual elements are protectable by copyright.

Viewing the Work as a whole, the selection, coordination, and arrangement of these unprotectable elements do not rise to the level of creativity necessary for copyright registration. While a work consisting entirely of unprotectable elements may be registered if “those elements have been selected, coordinated, and/or arranged in a sufficiently creative manner,” the Work does not exhibit such creativity. COMPENDIUM (THIRD) § 905; *see also Satava*, 323 F.3d at 811. The Work is simply two black letter “W”s nestled atop each other with protrusions on the top right side of each “W” to form the appearance of the letter “F.” Nestling two letter “W”s atop the other is a “mere simplistic arrangement” that evidences *de minimis* creativity and does not meet the requirements for copyright registration. *Satava*, 323 F.3d at 811; *see Feist*, 499 U.S. at 346. The Work is a “simple combination of a few typefonts, letterforms, or typeface designs with minor linear or spatial variations” that the Office “cannot register.” COMPENDIUM (THIRD) § 313.3(D); *see also Coach, Inc. v. Peters*, 386 F. Supp.2d 495 (S.D.N.Y. 2005), (holding that

two unlinked letters facing each other in a mirror image did not contain the requisite level of creativity); *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). The Office has also stated that it “typically refuses” to register logos “that consist of only . . . [m]ere scripting or lettering, either with or without uncopyrightable ornamentation,” as these works do not qualify for copyright protection. COMPENDIUM (THIRD) § 914.1. Nor does the thin white line that is the byproduct of the negative space between the two “W”s transform the Work into something more creative. For these reasons, the Work’s selection, coordination, and arrangement do not satisfy the sufficient level of creativity required for copyright.

WWE makes several additional arguments for why the Work should be registered, including that “[a] series of creative choices were made in creating the Logo,” providing a list of the “unique combination of choices made.” First Request at 3. The Office, however, “will not consider possible design alternatives that the author may have considered when he or she created the work. . . . The creative process often requires many choices involving the size, coloring, orientation, proportion, configuration, perspective, or other constituent elements of the work.” COMPENDIUM (THIRD) § 310.8; *see also id.* § 310.2 (“[T]he U.S. Copyright Office does not consider the aesthetic value, artistic merit, or intrinsic quality of a work.”). WWE also encourages the Board to consider the analysis of a prior registration “of [a]nother [s]tylized [f]orm of WWE’s WWF Logo” shown below. Second Request at 4.

Historic Scratch Logo, VA 2-258-636

The Board arrives at its determinations by looking at the specifics of the case before it, and will not compare previously registered works when examining a work for sufficient creativity. *See* COMPENDIUM (THIRD) § 309.3; *see also Homer Laughlin China Co. v. Oman*, No. 90 Civ. 3160, 1991 WL 154540, at *2 (D.D.C. July 30, 1991) (stating that court was not aware of “any authority which provides that the Register must compare works when determining whether a submission is copyrightable”). “A decision to register a particular work has no precedential

value and is not binding upon the Office when it examines any other application.” COMPENDIUM (THIRD) § 309.3. Furthermore, WWE contends that the Work is “extremely well-known and popular,” Second Request at 4, but again, the “Office will not consider the marketability or commercial success of the work. . . . ‘Works may experience commercial success even without originality.’” COMPENDIUM (THIRD) § 310.10 (quoting *Paul Morelli Design, Inc. v. Tiffany & Co.*, 200 F. Supp. 2d 482, 488 (E.D. Pa. 2002)).

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
Kimberley Isbell, Deputy Director of Policy and
International Affairs
Jordana Rubel, Assistant General Counsel