



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

August 4, 2023

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**Re: Second Request for Reconsideration for Refusal to Register Likee (2)  
(SR # 1-9124713873; Correspondence ID: 1-4SIA07G)**

Dear Mr. Chen:

The Review Board of the United States Copyright Office (“Board”) has considered BIGO Technology Pte. Ltd.’s (“BIGO”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Likee (2)” (“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 logo with a graphic portion consisting of a heart with stripes in three different shades of purple in the top, left section and red, orange, and yellow slanted stripes from top to bottom in the right section. To the right of the heart is the word “Likee” in black, with the two instances of the letter “e” slightly tilted.

The Work is as follows:



## **II. ADMINISTRATIVE RECORD**

On August 15, 2020, BIGO filed an application to register a copyright claim in the Work. In an October 27, 2020 letter, a Copyright Office registration specialist refused to register the claim, determining that “it lacks the authorship necessary to support a copyright claim.” Initial Letter Refusing Registration from U.S. Copyright Office to Yong Chen at 1 (Oct. 27, 2020) (“First Refusal”).

On December 27, 2020, BIGO requested that the Office reconsider its initial refusal to register the Work, arguing that the Work is sufficiently creative based on the “distinctive design concepts and ideas the author used to arrive at the subject work.” Letter from Yong Chen to U.S. Copyright Office at 1 (Dec. 27, 2020) (“First Request”). BIGO also noted that it was careful in its selection of colors and arrangement in order to “convey[] an exuberant and youthful spirit.” *Id.* at 2. 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 could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Yong Chen (May 4, 2021) (“Second Refusal”). The Office explained that the heart and diagonal lines are common shapes or familiar designs, the remaining element was a one-word name, and the garden-variety configuration of the elements is not sufficiently creative—resulting in the Work not being registerable. *Id.* at 2–3.

In a letter dated August 3, 2021, BIGO 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 Yong Chen to U.S. Copyright Office (Aug. 3, 2021) (“Second Request”).

### 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 creativity necessary to sustain a claim to copyright.

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.

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 claim. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See id.* 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, 883 (D.C. Cir. 1989); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498–99 (S.D.N.Y. 2005). A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[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.”).

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs”); *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”). Through its regulations, the Office provides guidance that copyright does not protect familiar shapes or designs. *Id.* § 202.1(a); *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.2 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (noting that familiar symbols and designs are not protectable).

Applying these legal standards, the Board finds that the individual elements of the Work and the Work as a whole fail to demonstrate sufficient creativity. Here, the Work consists of a rainbow-colored heart with the word “Likee” to the right of it. Hearts are a common and familiar design, which are not protectable by copyright. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 906.2. Mere variations of coloring, including combinations of familiar sets or pairs of colors, such as rainbow colors, fail to make a work copyrightable. COMPENDIUM (THIRD) § 313.4(K). BIGO argues the heart is not common because it is “two circles juxtaposed and partially overlapping and the intersection of their outer tangential lines[] represents ‘customers’, ‘contents’ and ‘connecting the world’” and further argues that the division and coloring choices are sufficiently creative because they represent “multicultural contents and customers” and “diversity (purple), love (red), fun (orange) and value (yellow).” *See* Second Request at 2–3. However, the Office only considers the actual appearance of the work, whereas the symbolic meaning behind the Work is irrelevant in the determination of copyright registration. *See* COMPENDIUM (THIRD) § 310.3 (symbolic meaning or impression is irrelevant); *id.* § 310.5 (The Office “will not consider the author’s inspiration for the work, creative intent, or intended meaning.”).

Similarly, BIGO argues the textual portion of the Work is sufficiently creative because the word “like” with an extra “e” represents the concept of “more than like,” each individual letter has its own symbolic meaning, and the font is similarly symbolic. *See* Second Request at 3 (stating “the letter ‘i’ represents individual users” and “the letter ‘L’ having a rounded corner style [represents] a stable yet polished platform”). The Office does not consider the symbolic or intended meaning of a work’s elements in its determination. COMPENDIUM (THIRD) § 310.3. Further, font, including typographic ornamentations, is not protectable by copyright. *Id.* § 313.3(D). Beyond those qualities, the textual element of the logo is one word with insufficient creativity. 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs”); COMPENDIUM (THIRD) § 313.4(C).

Likewise, the combination of the Work’s unprotectable elements does not meet the necessary threshold for copyright protection. The Work does not contain numerous enough elements, nor original enough composition, to constitute an original work of authorship. *See Satava*, 323 F.3d at 811. BIGO argues the combination of elements is sufficiently creative because the “heart shape with the wording combination suggests something interesting, exciting, and to be loved.” Second Request at 2. As discussed above, the Office will not consider the symbolic or suggested meaning of the work. COMPENDIUM (THIRD) § 310.3. Furthermore, combining a business name with a rainbow-colored heart is an obvious, expected logo configuration. The word “like” positioned next to a heart is an especially expected logo combination for social media platforms that often use hearts to symbolize “liking” a post.

Therefore, the combination of elements within the Work is not sufficiently creative for copyright protection.

Finally, BIGO’s argument that its logo is as creative as other works that courts or the Review Board has determined to be copyrightable is unpersuasive. Second Request at 5–6. The Office does not compare works; it makes determinations of copyrightability on a “case-by-case basis.” COMPENDIUM (THIRD) § 309.3. “A decision to register a particular work has no precedential value.” *Id.* Additionally, the Board notes that the Work is distinguishable from the works that BIGO cites. As discussed in the Second Refusal, the Work is considerably less creative than the work at issue in *Prince Group, Inc. v. MTS Products*, which was composed of polka dots that were not a traditional circular shape arranged in a non-traditional manner. 967 F. Supp. 121, 125 (S.D.N.Y. 1997); *see* Second Refusal at 3. In contrast, the Work contains a common heart shape in a standard logo configuration with a graphic beside a business name. The Work is also not “far more creative” than the “Rack Stack” and “Baker’s Bay” logos registered after reconsideration by the Board in 2021 and 2019 respectively. *See* Second Request at 6. The “Rack Stack” logo consists of overlapping prisms in shaded blue and green colors, giving the logo a “3D stacked” appearance.<sup>1</sup> In contrast, the heart in the Work is a familiar design lacking copyrightable alterations, and the rainbow-colored stripes do not create a three-dimensional effect. Furthermore, the “Baker’s Bay” logo contained a star with “asymmetrical and irregular edges,” whereas the Work remains a traditional, familiar design.<sup>2</sup>

#### 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

<sup>1</sup> U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Rack Stack* (June 29, 2021), <https://www.copyright.gov/rulings-filings/review-board/docs/rack-stack.pdf>.

<sup>2</sup> U.S. Copyright Office Review Board, *Decision Reversing Refusal of Registration of Sandy Starfish* (Apr. 17, 2019), <https://www.copyright.gov/rulings-filings/review-board/docs/sandy-starfish.pdf>.