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

June 9, 2023

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Re: Second Request for Reconsideration for Refusal to Register Pandora Monogram (SR # 1-8444326801; Correspondence ID: 1-4QEHEXY)

Dear Ms. Morales:

The Review Board of the United States Copyright Office ("Board") has considered the second request of Pandora A/S ("Pandora") for reconsideration of the Registration Program's refusal to register a two-dimensional artwork claim in the work titled "Pandora Monogram" ("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 graphic design in black coloring. The design consists of a circular band accented with small dots and triangles arranged into three pairs and positioned at the top of the circular band. As depicted in the deposit submitted with the registration application, the Work is as follows:

II. ADMINISTRATIVE RECORD

On January 13, 2020, Pandora filed an application to register a copyright claim in the Work. In an August 28, 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 Suzanna Morales at 1 (Aug. 28, 2020).

On November 6, 2020, Pandora requested that the Office reconsider its initial refusal to register the Work, arguing that "the work contains much more than the minimum requisite

amount of creativity." Letter from Suzanna M. M. Morales to U.S. Copyright Office at 1 (Nov. 6, 2020) ("First Request"). Noting that the designer considered over a hundred possible variations, Pandora emphasized that the elements in the design were carefully chosen "to suggest a contemporary feel" and "to evoke ambiguity between the image of a diamond ring and a crown." *Id.* at 1–2. Pandora also pointed to several examples of other logos that were registered by the Office. *Id.* at 3. 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 because the arrangement of "multiples of common shapes in different sizes is an age-old, obvious arrangement." Refusal of First Request for Reconsideration from U.S. Copyright Office to Suzanna Morales at 3 (Mar. 26, 2021). The Office pointed out that it is the resulting expression—not the possible design choices—that determines copyrightability, and it explained that it reviews works on a case-by-case basis and that prior determinations do not have precedential value. *Id.*

In a letter dated October 13, 2021, Pandora 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 Suzanna M. M. Morales to U.S. Copyright Office (Oct. 13, 2021) ("Second Request"). Pandora again asserts that "the work, when properly considered as a whole, contains much more than the minimum requisite amount of creativity" for registration. *Id.* at 1. It maintains "that the distinctive selection, arrangement, and combination of the design elements of the work" exceed the "extremely low" threshold of creativity, and it notes that "courts have considered the author's conceptual process" in determining copyrightability. *Id.* at 2–3. Citing an affidavit from the designer, Pandora maintains that the "subtle distinctions" in the Work create an effect of "optical trickery" demonstrating the requisite creativity. *Id.* at 4.

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.* at 362–63. 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, among other things, "[w]ords and short phrases such as names, titles, and slogans"); *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 symbols, shapes, or designs. *Id.* § 202.1(a); *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2021) ("COMPENDIUM (THIRD)") (noting that common geometric shapes are not protectable).

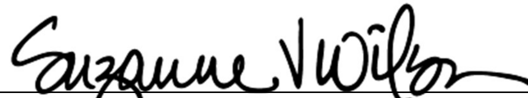
These authorities guide our conclusion that the Work falls short of the creativity required for copyright protection. Considered individually, the constituent circle, dots, and triangles that compose the Work are uncopyrightable variations of common geometric shapes. *See* COMPENDIUM (THIRD) § 906.1. In its First Request, Pandora asserted that the radiants contain squared rather than triangular tips and that the dots are "slightly 'squished' or oblong" in shape. First Request at 2. But these variations on familiar shapes are *de minimis* and not protected by copyright. *See* COMPENDIUM (THIRD) § 313.4(J) (explaining that "the Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations"). Further, the shapes in the Work appear in a uniform black color, with no shading or tonal variation that might supply the creativity necessary for protection. *See Prince Grp., Inc. v. MTS Prods.*, 967 F. Supp. 121, 125 (S.D.N.Y. 1997) (finding a polka dot fabric design sufficiently creative where dots of different colors were "irregularly shaped," placed at "varying distances," and "'shaded,' that is, there is a crescent of white around half of the perimeter of each of the dots which is different from the standard uniformly colored polka dot").

Pandora nevertheless argues that the combination of the Work's elements meets the necessary threshold for copyright protection. Specifically, it contends that the overall selection and arrangement of these elements evoke jewelry and a crown while suggesting "a more modern approach to luxury." Second Request at 3. Even considered in combination, however, 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. Instead, it consists of "only a few standard forms or shapes with minor linear or spatial variations." *See* COMPENDIUM (THIRD) § 905. Such a limited number of shapes, in a single black color, does not evince sufficient creativity to support copyright registration. The Office "typically refuses to register" logos that consist of only "[m]ere spatial placement or format of trademark, logo, or label elements." *Id.* § 914.1.

To be copyrightable, a work consisting of common geometric shapes needs to combine "multiple types of geometric shapes in a variety of sizes and colors, culminating in a creative design that goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement." *Id.* § 906.1. Pandora argues that the arrangement of the elements in a manner suggesting a crown or a ring setting meets this standard. Second Request at 3. But a crown and a ring are common symbols. *See* COMPENDIUM (THIRD) §§ 313.4(J), 906.2 (indicating that common symbols like a fleur de lys are not copyrightable). And the Board does not assess the espoused intentions of the design's author in determining whether the design contains the requisite minimal amount of original authorship necessary for registration. *See Bleistein v. Donaldson Lithographic Co.*, 188 U.S. 239, 251 (1903); COMPENDIUM (THIRD) § 310.5. Accordingly, the fact that the Work seeks to evoke an idea or depict a certain style is not relevant to our analysis.

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.



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