



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

May 12, 2023

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Re: Second Request for Reconsideration for Refusal to Register Sometimes you gotta stir up the water design (SR # 1-10937613961; Correspondence ID: 1-58E7YSK)

Dear Mr. Hess:

The Review Board of the United States Copyright Office (“Board”) has considered The Chosen, LLC’s (“The Chosen”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Sometimes you gotta stir up the water design” (“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 visual artwork that consists of the text “Sometimes you gotta stir up the water.” arranged into a spiral configuration. The Work is as follows:

A circular graphic where the text "Sometimes you gotta stir up the water." is arranged in a spiral pattern, starting from the top and curving downwards and inwards to form a circle.

II. ADMINISTRATIVE RECORD

On October 26, 2021, The Chosen filed an application to register a copyright claim in the Work. In November 2021, 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 Gregory Hess at 1 (Nov. 16, 2021).

On December 30, 2021, The Chosen requested that the Office reconsider its initial refusal to register the Work, arguing that the Work possesses sufficient creativity to support a copyright claim. Letter from Gregory M. Hess to U.S. Copyright Office at 2 (Dec. 30, 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 Gregory Hess (May 20, 2022). The Office explained that the Work “does not contain a sufficient amount of original graphic or textual authorship to support a copyright registration.” *Id.* at 1.

In June 2022, The Chosen 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 Gregory M. Hess to U.S. Copyright Office (June 15, 2022) (“Second Request”). The Chosen made two arguments to support registration of the Work: (1) the phrase itself is sufficiently creative to support a claim to copyright, and (2) the combination of the phrase and the “imaginative swirl pattern” satisfied the “low threshold” for copyright eligibility. *Id.* at 1.

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 qualifies as an “original work[] of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). In the copyright 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). The Supreme Court has explained that works need only “some minimal degree of creativity” to qualify for copyright protection. *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. *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; [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”).

The individual elements that make up the Work are not sufficiently creative to be protectable by copyright. The Work is composed of a seven-word sentence arranged in a spiral design. The Chosen’s argument that the spiral design constitutes neither a “basic geometric shape” nor a “familiar symbol or design” is unpersuasive. Second Request at 2. A spiral is both a shape and a common symbol. The spiral is a common geometric shape defined by a mathematical function—it is simply a curve formed by a point revolving around a fixed axis at an increasing or decreasing distance.¹ The spiral has been a common natural, religious, and calendrical symbol for thousands of years.² As a basic geometric shape and a familiar design, the spiral shape is not copyrightable on its own. U. S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 906.1, 906.2 (3d ed. 2021) (“COMPENDIUM (THIRD)”) (stating the Copyright Act “does not protect common geometric shapes” or “[f]amiliar symbols and designs”).

The seven-word sentence depicted in the Work is also not sufficiently creative to be protectable by copyright on its own. In its Second Request, The Chosen asserts that “[t]he Board failed to give due and adequate consideration to the fact that . . . short phrases sometimes are copyrightable.” Second Request at 2. As a general matter, Office regulations and practices expressly prohibit registration of short phrases. 37 C.F.R. § 202.1(a); COMPENDIUM (THIRD) § 313.4(C) (short phrases “contain a *de minimis* amount of authorship” and thus cannot be registered, “even if the . . . short phrase is novel or distinctive or lends itself to a play on words”). But the term “short phrase” does not have a precise numerical limit.

Turning to the Work here, the Office’s conclusion that the short sentence is uncopyrightable is supported by court decisions concluding that other similar short phrases and sentences were unprotectable. *See, e.g., Murray Hill Publ’ns, Inc. v. ABC Commc’ns, Inc.*, 264 F.3d 622, 627, 633 (6th Cir. 2001) (rejecting copyright protection for phrase comprised of three sentences and 15 words: “Good morning, Detroit. This is J.P. on JR in the A.M. Have a swell day.”); *Stern v. Does*, 978 F. Supp. 2d 1031, 1041 (C.D. Cal. 2011) (holding a 23-word sentence sent to an email listserv not protected by copyright because “the copyrightability of a very short textual work—be it word, phrase, sentence, or stanza—depends on the presence of creativity,” which was absent because the entire sentence was dictated by functional considerations); *cf.* COMPENDIUM (THIRD) § 313.4(C) (noting catchphrases, mottos, and slogans, types of writing which may present as full sentences, are not protected by copyright, thereby making no distinction between full sentences and fragments).

Additionally, the text in the Work is a reference to biblical text depicted in The Chosen’s television show, also entitled The Chosen,³ which states: “For an angel went down at a certain time into the pool and stirred up the water; then whoever stepped in first, after the stirring of the

¹ *Spiral*, AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2022), <https://ahdictionary.com/word/search.html?q=spiral>.

² *See, e.g.,* Archimedes, *On Spirals* (circa 225 B.C.); Theodore Andrea Cook, *The Curves of Life: Being an Account of Spiral Formations and Their Application to Growth in Nature, to Science, and to Art; With Special Reference to the Manuscripts of Leonardo da Vinci* (1914); Anna Sofaer et. al., *Solar Significance of a Double Spiral Petroglyph in Chaco Canyon, New Mexico*, 20 Bulletin of the Am. Astronomical Soc’y 991 (1988).

³ *The Chosen: The Perfect Opportunity*, ANGEL STUDIOS (2022), <https://www.angel.com/watch/the-chosen/episode/82250814-1158-45b4-aae3-119aa16dcc3e/season-2/episode-4/the-perfect-opportunity> (depicting Jesus healing a paralyzed man at the pool of Bethesda).

water, was made well of whatever disease he had.” *John* 5:4 New King James Version. Copyright law protects “those components of a work that are original to the author.” *Feist* at 345. Four of the seven words in the epigram are copied directly from Biblical text. Originality does not require novelty, but similarity between works must be “fortuitous, not the result of copying.” *Id.* Given the context, the expression “stir up the water” is not original to The Chosen.

The seven-word Work also does not present an appreciable amount of creativity beyond common words and phrases already present in the public consciousness. Words and phrases that enjoy a robust existence in the public consciousness are not sufficiently creative to support copyright protection. *See, e.g., Peters v. West*, 692 F.3d 629, 635 (7th Cir. 2012) (noting that the maxim “what does not kill me, makes me stronger” lacks the requisite creativity to be protectable); *Acuff-Rose Music, Inc. v. Jostens Inc.*, 988 F. Supp. 289, 294–95 (S.D.N.Y. 1997) (finding a lack of creativity in the phrase “if you don’t stand for something, you’ll fall for anything”). A phrase need not be ubiquitous to be a part of common parlance. *See generally Winstead v. Jackson*, 509 F. App’x. 139, 144–45 (3d Cir. 2013) (considering numerous short words and phrases, including “the strong take from the weak but the smart take from everybody,” and finding that they are “common in general or common with respect to hip hop culture, and do not enjoy copyright protection”). Here, the text used in the Work comprises words and phrases that are commonly used in discussions and depictions of the miracles described in the Gospel of John and in discussions of Christian theology more generally.⁴

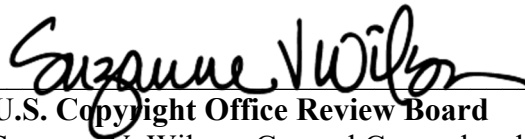
Finally, the Board concludes that the arrangement of the text in a spiral configuration in the Work is insufficiently creative to sustain copyright protection. Some combinations of common or standard design elements may contain sufficient creativity with respect to how they are juxtaposed or arranged to support a copyright claim. 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 Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (finding the “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”).

⁴ *See* Steven Shakespeare, *Stirring the waters of language: Kierkegaard on the dangers of doing theology*, 37 *The Heythrop J.* 421 (1996) (detailing Kierkegaard’s repeated visitations to the story of the pool of Bethesda, including repeated use of “stirring the water” language); Nat’l Park Radio, “Once Upon a Time” (2016) (song lyrics: “He forgave the sin / And the Pharisees were bitter / Is it easier to say your sins are gone? / Or pick up your matt and begin to walk? / Once upon a time / He stirred the water”). James C. Dodge, *Stirring the Waters: Old Testament Baptismal Types in the Easter Liturgy*, 28 *Liturgy* 23, 25 (2013) (“So for example, in the fourth century, Ambrose stirred the waters with his bishop’s crosier while calling upon God to pour out the Holy Spirit as the divine power of re-creating energy.”); Amy Bentley Lamborn, *Who will Stir the Water for Us? A Pastoral Retrospective*, 56 *Pastoral Psychol* 165, 173 (2007) (“Some versions of this text reflect the ancient belief that angels visited such pools as the one at Bethsaida, agitating the waters, stirring up their mysterious power to transform and heal.”).

Here the arrangement of the textual element of the Work in a spiral design is not sufficiently creative to be protectable by copyright. “As a general rule, the mere arrangement of type on a page or screen is not copyrightable.” COMPENDIUM (THIRD) § 313.3(D). The appearance of text in a spiral design is a common, expected design.⁵ The Chosen has argued that “the combination of the phase and the imaginative swirl pattern evok[es] the image of stirring water.” Second Request at 2. However, when making a determination whether or not the work satisfies the originality requirement the Office “will not consider any meaning or significance that the work may evoke.” COMPENDIUM (THIRD) § 310.3. Our inquiry is limited to how a work is perceived, not how or why it was designed. *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1015 (2017).

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

⁵ See, e.g., Phaistos Disc, Crete (circa 2700 B.C.) (ancient example of early printing, formatted in spiral shape); Paolo Buzzi, *Film + Parole in libertà. Edizioni futuriste di Poesia* 345 (1915) (one sentence poem about a spiraling bomb, formatted as a spiral). Numerous templates and tutorials are available to create a spiral text design. See, e.g., rhinoXnation, *How To Create Spiral Text in Adobe Illustrator*, YOUTUBE (Aug. 17, 2016), <https://www.youtube.com/watch?v=Vr44978zmH0>; (FREE) *Spiral Text Photoshop Template*, PSD DUDE, <http://www.psd-dude.com/tutorials/resources/spiral-text.aspx> (last visited May 10, 2023); *Spiral Text Generator*, FESTISITE, <https://www.festisite.com/text-layout/spiral/> (last visited May 10, 2023).