



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

September 12, 2022

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**Re: Second Request for Reconsideration for Refusal to Register Untitled
(SR # 1-7780378501; Correspondence ID: 1-3YRXF7R)**

Dear Mr. Duncan:

The Review Board of the United States Copyright Office (“Board”) has considered Caroline Caldwell’s (“Caldwell”) second request for reconsideration of the Registration Program’s refusal to register a copyright claim in the work titled “Untitled” (“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 15-word epigram: “In a society that profits from your self doubt, liking yourself is a rebellious act.”

II. ADMINISTRATIVE RECORD

On June 11, 2019, Caroline Caldwell filed an application to register a copyright claim in the Work.¹ In an August 14, 2019 letter, a Copyright Office registration specialist refused to register the claim in the epigram, finding that the Work lacked the minimum literary authorship necessary to support a copyright registration. Initial Letter Refusing Registration from U.S. Copyright Office to David Duncan (Aug. 14, 2019).

¹ On the same day, Caldwell filed an application to register a photograph entitled “In a society that profits from your self doubt, liking yourself is a rebellious act.” The photograph was registered by the Office under VA0002159213. The epigram and the photograph appear to have been published on Caldwell’s Twitter account on May 13 and 15, 2015, respectively. See Caroline Caldwell (@DIRT_WORSHIP), TWITTER (May 13, 2015, 2:15 AM), https://twitter.com/DIRT_WORSHIP/status/598371043154198528 (tweet containing epigram text); Caroline Caldwell (@DIRT_WORSHIP), TWITTER (May 17, 2015, 4:00 PM), https://twitter.com/DIRT_WORSHIP/status/600028189113581569 (tweet with epigram text and attaching photograph). Screenshots of these tweets were attached to Caldwell’s Second Request for Reconsideration. Letter from David Duncan to U.S. Copyright Office, Ex. A & B (June 12, 2020) (“Second Request”).

In a November 22, 2019 letter, Caldwell requested that the Office reconsider its initial refusal to register the epigram. Letter from David Duncan to U.S. Copyright Office (Nov. 14, 2019) (“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 did not contain a sufficient amount of creativity to warrant registration. Refusal of First Request for Reconsideration from U.S. Copyright Office to David Duncan (Mar. 12, 2020) (“Second Refusal”). The Office emphasized in its refusal that the Office does not have a blanket prohibition against the registration of short works, but reiterated that works which constitute the building blocks of creativity, such as common and familiar shapes, colors, words, and short phrases, do not contain enough creative authorship to support registration. *Id.* at 2.

In a letter dated June 12, 2020, Caldwell requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Second Request. Caldwell made three arguments to support registration of the Work: (1) that as a full sentence, the Work is not subject to the short words and phrases doctrine; (2) that the Work meets the low threshold for creative expression; and (3) that the repeated commercial exploitation of the Work provides some evidence of creativity. *Id.* at 5, 6, 11.

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 sufficient literary authorship to sustain a copyright claim and affirms the Registration Program’s denial of the application.

To be registered, all works must qualify as “original works of authorship.” 17 U.S.C. § 102(a). As used with respect to copyright, the term “original” consists of two components: independent creation and a sufficient amount of creativity.² *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 345 (1991). Generally, short phrases alone are not sufficiently creative to sustain a copyright claim.³ See 37 C.F.R. § 202.1(a) (“Words and short phrases” are “not subject to copyright”). This is because 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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF THE U.S. COPYRIGHT OFFICE PRACTICES § 313.4(C) (3d ed. 2021) (“COMPENDIUM (THIRD)”).

The Work, comprising 15 words, is an unprotectable short phrase. While the names and short phrases doctrine contains no numerical threshold, the Work is similar to other short phrases that courts have found 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.”). It makes no difference to the Board’s analysis that the Work is a full sentence. Courts have found that there is no distinction between a single sentence and a phrase—what

² In the Second Refusal, the Office stated that it did not question the author’s independent creation of the Work. Second Refusal at 1.

³ Scholars note the Office’s practice of denying registration to words and short phrases dates back to 1899. 2 WILLIAM F. PATRY, PATRY ON COPYRIGHT § 4.2 (2022).

matters is the creativity of the work. *See Stern v. Does*, 978 F. Supp. 2d 1031, 1041 (C.D. Cal. 2011) (holding a single 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”); *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).

Standing alone, the grammatical structure of the epigram does not present an appreciable amount of creative authorship. Grammatically, the words of the epigram are arranged in an obvious and expected format. The sentence comprises two phrases separated by a comma, following the format of a general conditional sentence. In this type of conditional sentence, the first part of a phrase provides a general truth of an unspecified time, followed by a statement of generalized circumstances.⁴ This format is a common rhetorical arrangement used by authors and does not reflect creative or unusual structural choices.

Turning to the substance of the epigram, the Office is mindful of the fact that copyright is concerned with the originality of the expression, not the subject matter. *See Foxworthy v. Custom Tees*, 879 F. Supp. 1200, 1218 (N.D. Ga. 1995). The 15 word-epigram, standing alone, presents at most *de minimis* authorship, and does not present an appreciable amount of creativity beyond the 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 originality to be protectable); *Acuff-Rose Music, Inc. v. Jostens Inc.*, 988 F. Supp. 289, 294 (S.D.N.Y. 1997) (finding a lack of originality 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” (emphasis added)). As stated in the Second Refusal, the Office does not question the independent creation of the Work. While the text of the epigram may not be as pervasive as the maxims referenced in *Peters* and *Acuff-Rose Music*, the epigram nevertheless comprises words and phrases that are common with respect to public discourse on concepts of society and self, and are present to varying degrees in 20th and 21st century texts, including many that predate the Work.⁵

⁴ Sarah Kupperberg, *Conditional Sentences*, <https://www.sas.upenn.edu/~struck/classes/latin309/syntax/conditional.html> (last visited Aug. 25, 2022).

⁵ *See, e.g.,* ALBERT CAMUS, *THE REBEL: AN ESSAY OF MAN IN REVOLT* (Vintage Books, 1956) (The only way to deal with an unfree world is to become so absolutely free that your very existence is an act of rebellion.); Julian Hall, *Do you profit from your employees low self esteem?*, BUSINESSMATTERS (Sept. 24, 2013), <https://bmmagazine.co.uk/in-business/low-self-esteemers-high-achievers/>; ANTHONY ANAXAGOROU, *THE BLINK THAT KILLED THE EYE* (Jacaranda Books, 2014) (Rebellion is when you look society in the face and say I understand who you want me to be, but I’m going to show you who I actually am.); Rachel Wells, *Poet Melissa M. Tripp explains how poetry lets us communicate our anxiety and celebrate ourselves*, HELLO GIGGLES,

Furthermore, any attributable authorship beyond these common words and phrases is *de minimis* and further constrained by merger considerations. When there is only one way, or a limited number of ways, to convey the idea that the author seeks to express, the author's expression cannot be protected under copyright law because that would result in a monopoly over the idea itself and prevent others from using that same idea in other works. See 1 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 2.18(C)(2) (2014). The Second Request asserts that the epigram meets the low threshold of creativity as it is a "creative and artistic expression of Ms. Caldwell's thoughts about life in society"⁶ and that "there are many ways [this] concept could be expressed." Second Request at 8. A literature scan does indeed reveal discourse and musings on the ideas conveyed in the epigram, much of which predates the epigram. However, the discourse also demonstrates that there are a limited number of ways the idea may be expressed. Writings often uses similar sentence structure and words, including act, doubt, profit, self, society, and rebellious, as presented in the epigram.⁷ The Office cannot register a claim based on the standard expressions that naturally flow from the idea of a work of authorship. COMPENDIUM (THIRD) § 313.4(B); see also *Perma Greetings, Inc v. Russ Berrie & Co., Inc.*, 598 F. Supp. 445, 448 (E.D. Mo 1984) (stating that phrases and expressions conveying an idea that is typically expressed in a limited number of stereotypical fashions are not subject to copyright protection). Thus, merger considerations limit registration of the epigram.

The Second Request makes two additional arguments in favor of registration, neither of which alters the Board's conclusion. First, Caldwell cites three cases in which courts found short phrases protectable. In two of these cases, the short phrases discussed by the court were portions of a larger registered work, unlike the single sentence presented for registration here. See *Greene v. Ablon*, 794 F.3d 133, 160 (1st Cir. 2015) (The court noted that, in context, the five-word phrase "your explanation guides your intervention" is substantial and creative enough to warrant copyright protection as the phrase's creativity derives in part from its "succinct articulation of a complex concept," thereby connecting the creativity of the phrase to the expressions conveyed in the larger work.); *Applied Innovations, Inc. v. Regents of Univ. of Minn.*, 876 F.2d 626, 635 (8th Cir. 1989) (finding test statements such as "I am a good mixer" and "No one seems to understand me" to satisfy the minimal standard for original works of authorship, "at least *within the context* of the administration of the MMPI" exam (emphasis added)). Finding the copying of a sentence originating in a larger work actionable does not mean that the sentence itself is registerable. In both of these cases, the courts made no finding that the phrases in isolation—without context—would be deemed sufficiently creative to warrant registration. In the third case, a brief opinion comprising three pages, the three epigrams at issue had been issued registration certificates by the Copyright Office. *BRILLIANT v. W. B. Prods.*, No. 79-cv-1893, 1979 U.S. Dist. LEXIS 9092, at *1 (C.D. Cal. Oct. 17, 1979) (providing "Registration Certificate" numbers for each work). Decisions to register a work have no precedential value, and are non-binding upon the Office when examining other applications, and

<https://hellogiggles.com/reviews-coverage/books/poet-melissa-m-tripp-poetry-mental-health/> (discussing how the work "redefines what it means to love yourself and others in a world that profits from self-doubt") (last visited Aug. 25, 2022); CAMDEN SCHOLARS, NOT JUST A FEW (BEAT BY SABZI) (Amplified Wax Recording Studio 2019) (song lyrics stating "In a world that profits from self-doubt & disillusion truth-speak itself becomes an act of revolution.").

⁶ The Office does not consider the author's inspiration and intent, or the work's artistic merit when evaluating a work for original authorship. COMPENDIUM (THIRD) §§ 310.5, 310.2.

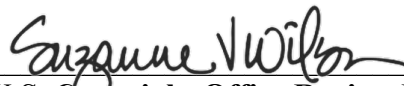
⁷ See *supra* note 9.

two registration decisions from 40 years ago are not persuasive on this point. COMPENDIUM (THIRD) § 309.3.

Second, Caldwell argues that “repeated commercial exploitation” of the epigram is evidence that the Work meets the statutory requirements for protection. *See* Second Request at 11–12. The Board disagrees. The Office does “not consider the marketability or commercial success” of works submitted for registration; commercial success is one of several “factors that have no bearing on whether the originality requirement has been met.” COMPENDIUM (THIRD) §§ 310, 310.10; *see also Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1015 (2017) (“Nothing in the statute suggests that copyrightability depends on market surveys.”).

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency decision on the matter.



U.S. Copyright Office Review Board

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