



United States Copyright Office

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April 21, 2016

Ryan J. Aaron
Nationwide Mutual Insurance Company
One Nationwide Plaza, 1-35-204
Columbus, Ohio 43215

**Re: Second Request for Reconsideration for Refusal to Register Nationwide
Framework Logo
Correspondence ID: 1-TP5Y3S**

Dear Mr. Aaron:

The Review Board of the United States Copyright Office (the "Board") has examined Nationwide Mutual Insurance Company's ("Nationwide's") second request for reconsideration of the Registration Program's refusals to register a two-dimensional artwork copyright claim in the work titled "Nationwide Framework Logo." After reviewing the application, deposit copy, and relevant correspondence in the case, 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 "Nationwide Framework Logo" (the "Work") is a two-dimensional, graphic logo design. The design consists of a simple blue rectangle with a white square positioned within it. The word "Nationwide" appears in white lettering beneath the white square.

A photographic reproduction of the Work is set forth below:



II. ADMINISTRATIVE RECORD

On March 10, 2014, Nationwide filed an application to register a copyright claim in the Work. In a March 26, 2014 letter, a Copyright Office registration specialist refused to register the Work, finding that it “lacks the authorship necessary to support a copyright claim.” See Letter from Shawn Thompson, Registration Specialist, to Heather Yarbrough, Nationwide (Mar. 26, 2014).

In a June 26, 2014 letter, Nationwide requested that the Office reconsider its initial refusal to register the Work. See Letter from James R. Sims III and Dana R. Gross, Morgan, Lewis & Bockius LLP, to U.S. Copyright Office (June 26, 2014) (“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 does not contain a sufficient amount of original and creative artistic or graphic authorship to support a copyright registration. Letter from Stephanie Mason, Attorney-Advisor, to James R. Sims III, Morgan, Lewis & Bockius LLP (Oct. 3, 2014).

In a December 31, 2014 letter, Nationwide 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 Ryan J. Aaron, Nationwide, to U.S. Copyright Office (Dec. 31, 2014) (“Second Request”). In that letter, Nationwide disagreed with the Office’s conclusion that the Work, as a whole, does not include the minimum amount of creativity required to support registration under the Copyright Act. Specifically, Nationwide claimed that the selection and arrangement of the Work’s constituent elements possesses a sufficient amount of creative authorship to warrant copyright protection. In support of its claim, Nationwide argued that the Copyright Office ignored the creative choices it exercised in designing the Work and that such choices were “calculated to tell a story in graphic form,” namely, to “subtly convey that [Nationwide] – an insurance company – sees each of its customers as an individual member of the family, and ‘frames’ its services to meet each one’s individualized needs.” *Id.* at 3.

III. DECISION

A. *The Legal Framework – Originality*

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. 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 long-standing requirements of originality and creativity in the law, as affirmed by the *Feist* decision. See 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering, or coloring”); *id.* § 202.10(a) (“to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form”).

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. However, 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 *Atari Games Corp. v. Oman*, 888 F.2d 878 (D.C. Cir. 1989).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. For example, the United States District Court for the Southern District of New York upheld the Copyright Office's refusal to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements.” *Coach Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). Likewise, the Ninth Circuit has held that a glass sculpture of a jellyfish consisting of clear glass, an oblong shroud, bright colors, and the stereotypical jellyfish form did not merit copyright protection. See *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The language in *Satava* is particularly instructive:

It is true, of course, that a combination of unprotectable elements may qualify for copyright protection. But it is not true that *any* combination of unprotectable elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that 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.

Id. (internal citations omitted) (emphasis in original).

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. See U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 310.2 (3d ed. 2014) (“COMPENDIUM (THIRD)”). They are not influenced by the attractiveness of a design, the espoused intentions of the author, the design's visual effect or appearance, its symbolism, the time and effort it took to

create, or its commercial success in the marketplace. See 17 U.S.C. § 102(b); *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903). The fact that a work consists of a unique or distinctive shape or style for purposes of aesthetic appeal does not necessarily mean that the work, as a whole, constitutes a copyrightable work of art.

B. *Analysis of the Work*

After careful examination, the Board finds that the Work fails to satisfy the requirement of creative authorship and thus is not copyrightable.

Here, it is undisputed that the Work's constituent elements—a rectangle, a square, the color blue, and the word "Nationwide"—are not individually subject to copyright protection. The question then is whether the combination of those elements is protectable. In evaluating this question, the Copyright Office follows the principle that works should be judged in their entirety and not based solely on the protectability of individual elements within the work. See *Atari Games Corp. v. Oman*, 979 F.2d 242 (D.C. Cir. 1992). Works composed of public domain elements may be copyrightable, but only if the selection, coordination, and/or arrangement of those elements reflect authorial discretion that is not so obvious or minor that the "creative spark is utterly lacking or so trivial as to be virtually nonexistent." *Feist*, 499 U.S. at 359.

The Board finds that, viewed as a whole, the selection, coordination, and arrangement of the shapes, colors, letters, and symbol that comprise the Work are insufficient to render it original. The Work consists of little more than a white square, set within a blue rectangle, over the word "Nationwide." As explained in the *Compendium of U.S. Copyright Office Practices*, neither "mere scripting or lettering, either with or without uncopyrightable ornamentation," nor "mere use of different fonts or functional colors, frames, or borders, either standing alone or in combination," satisfy the requirements for copyright registration. COMPENDIUM (THIRD) § 913.1; see also *Coach*, 386 F. Supp. 2d at 498 (upholding the Office's determination that designs consisting of little more than "variations and arrangements of the letter 'C'" were not sufficient to warrant registration on grounds that "letters of the alphabet cannot be copyrighted" and "the mere arrangement of symbols and letters is not copyrightable").

Nationwide contends that the creative choices it exercised in designing the Work were "calculated to tell a story in graphic form." Second Request at 3. But this does not support its claim of sufficient creativity. Nor does Nationwide's assertion that it designed the Work to "subtly convey that [Nationwide] sees each of its customers as an individual member of the family" and that it "'frames' its services to meet each [customer's] individualized needs." *Id.* The intangible attributes that Nationwide ascribed to the Work are not evident in the deposit itself and therefore they cannot be examined in an objective manner. Even if these attributes were present in the deposit, the Board does not assess the espoused intentions of a design's author, or a design's visual effect or appearance in determining whether a design contains the requisite minimal amount of original authorship necessary for registration. See 17 U.S.C. § 102(b); see also *Bleistein*, 188 U.S. at 251. Thus, even if accurate, the mere facts that the Work was the fruit of involved deliberation and is symbolic in nature would not qualify the Work for copyright protection.

In sum, the ordinary typographic expression, simple color scheme, and two common geometric shapes, that make up the work, as a whole, lack the requisite amount of creativity in their selection, combination, and arrangement to warrant copyright protection. *See Feist*, 499 U.S. at 359; *see also* COMPENDIUM (THIRD) § 913.1 (explaining the types of logo designs that the Office typically refuses to register). Thus we find that the level of creative authorship involved in this configuration of unprotectable elements is, at best, *de minimis*, and too trivial to merit copyright registration.

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.

BY: Catherine Rowland
Catherine Rowland
Review Board Member