



United States Copyright Office

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**Re: Second Request for Reconsideration for Refusal to Register Vodafone Speechmark;
Correspondence ID: 1-2XI3EUG; SR 1-4277307121**

Dear Mr. Tidman:

The Review Board of the United States Copyright Office (“Board”) has considered Vodafone Group PLC’s (“Vodafone’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Vodafone Speechmark” (“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 artwork consisting of a red quotation mark with light shading, placed within a circle in various shades of grey and white, which is then centered within a red square. A reproduction of the Work is set forth below.



II. ADMINISTRATIVE RECORD

On December 22, 2016, Vodafone filed an application to register a copyright claim in the Work. In a July 24, 2017 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lack[ed] the authorship necessary to support a copyright claim.” Letter from Kathryn S., Copyright Examiner, to Mark Tidman (July 24, 2017).

In a letter dated October 24, 2017, Vodafone requested that the Office reconsider its initial refusal to register the Work. Letter from Mark Tidman to U.S. Copyright Office (Oct. 24, 2017) (“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 “d[id] not contain a sufficient amount of original and creative graphic or artistic authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, to Mark Tidman, at 1 (Mar. 13, 2018). The Office reasoned that the “circle and apostrophe [that] make up this design are both common and familiar shapes” and that the “mere coloration is also not copyrightable.” *Id.* at 2.

In a letter dated June 11, 2018, Vodafone 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 Mark Tidman to U.S. Copyright Office (June 11, 2018) (“Second Request”). In that letter, Vodafone argued that the Work contains the requisite amount of creativity. *Id.* at 1. First, Vodafone contended that the symbol within the circle is not an apostrophe but a “ballooned droplet,” and “is readily distinguishable from an apostrophe, both in the stylization of its curvature and its orientation” *Id.* at 2. Even if the symbol were a variation on an apostrophe, Vodafone claimed, the Work would still be registrable, because symbols and typographic elements may be protectable where a work in combination contains expressive elements, as is the case here. *Id.* at 2–3. Finally, Vodafone stated that the use of coloration contributes to the Work’s registrability, because “Vodafone’s use of a vibrant red, together with a white and gray shading background, when taken together and when the work is considered as a whole, create an expressive work worthy of copyright protection.” *Id.* at 4.

III. DISCUSSION

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 longstanding requirement of originality set forth in the Copyright Act and described in the *Feist* decision. *See, e.g.*, 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) (stating “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. Nevertheless, 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, vertical orientation, 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).

Similarly, while the Office may register a work that consists merely of geometric shapes, for such a work to be registrable, the “author’s use of those shapes [must] result[] in a work that, as a whole, is sufficiently creative.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 906.1 (3d ed. 2017); *see also Atari Games Corp.*, 888 F.2d at 883 (“[S]imple shapes, when selected or combined in a distinctive manner indicating some ingenuity, have been accorded copyright protection both by the Register and in court.”). Thus, the Office would register, for example, a wrapping paper design that consists of circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color, but would not register a picture consisting merely of a purple background and evenly-spaced white circles. COMPENDIUM (THIRD) § 906.1.

B. Analysis of the Work

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work is a useful article that does not contain the requisite authorship necessary to sustain a claim to copyright. The Work fails the creativity test whether one considers the elements of the Work individually or as a whole.

The individual elements of the Work are not copyrightable because they run afoul of the Copyright Office’s regulations regarding familiar symbols and designs, and common geometric shapes. First, the Work essentially depicts a single quotation mark (referred to in prior correspondence as an apostrophe) within a circle. Vodafone attempts to distinguish the symbol inside the circle from an apostrophe by remarking on the differences between it and an apostrophe, which faces the other direction and appears as ¶. In doing so, however, Vodafone ignores that, while an apostrophe has only one orientation, quotation marks have multiple orientations. Indeed, an opening single quote typically appears at the beginning of text as ¶ . This variation is strikingly similar to the Work’s so-called “ballooned droplet” within the circle. The figure in the Work is slightly more bulbous, but it is instantly recognizable as a quotation mark. An opening single quote is a familiar symbol and is not registrable. 37 C.F.R. § 202.1(a) (stating that “familiar symbols or designs” are not registrable); COMPENDIUM (THIRD) § 313.4(J) (citing “punctuation” and “[s]ymbols typically found on a keyboard, such as asterisks, ampersands, and the like” as familiar symbols and designs).

Similarly, the circle within which the quotation mark is located and the square within which both are centered are not registrable, because they are common geometric shapes. COMPENDIUM (THIRD) § 906.1 (including circles and squares in the list of non-protectable common geometric shapes); *see generally* 37 C.F.R. § 202.1(a).

Lastly, the coloring and shading does not qualify the Work as copyrightable. Although “an original combination or arrangement of colors” can result in a registerable work, mere coloring or variations thereof are not sufficient for copyright protection. COMPENDIUM (THIRD) § 313.4(K); *see also id.* § 906.4. Here, the Work considered absent its color is not copyrightable, and utilizing two main colors—white and red—to distinguish the three distinct shapes is a trivial use of color. Moreover, the minor shading and highlighting does not meaningfully add to the creative authorship of the Work.

Considering the Work as whole, it is still not registrable, because the combination of the symbol and shapes of which the Work consists does not exhibit sufficient creativity, and mere variations of coloration do not rescue the Work from *de minimis* creativity. The quotation mark appears in the center of the circle and is not placed in an unusual or unexpected manner. Similarly, the circle is centered within the square. Thus, the shapes are not “incorporate[d] . . . into a larger design . . . [that] as a whole contains a sufficient amount of creative expression.” *Id.* § 313.4(J); *see also id.* § 906.1 (explaining that registration would be denied to “a picture with a purple background and evenly spaced white circles” given, in part, the “standard symmetrical arrangement of the white circles”).

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

Karyn A. Temple, Acting Register of Copyrights
and Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
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Catherine Zaller Rowland, Associate Register of
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