



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

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Re: Second Request for Reconsideration for Refusal to Register Golden Globe Statuette 2018 (Correspondence ID: 1-3ZD3A0A; SR # 1-7297718861)

Dear Mr. Grace:

The Review Board of the United States Copyright Office (“Board”) has considered Hollywood Foreign Press Association’s (“HFPA”) second request for reconsideration of the Registration Program’s refusal to register a sculpture claim in the work titled “Golden Globe Statuette 2018” (“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 sculpture that is cast in a matte gold material. The top of the Work is a globe wrapped by a cascading filmstrip. The globe and filmstrip are supported by an inverted cone-shaped base comprised of the letters HFPA. The base sits atop a trophy-style stand made of stacked circular and cylindrical shapes of varying sizes, including a gold cup or chalice-shaped base directly below the inverted base. The words “Hollywood Foreign Press Association” are etched into the bottom of the circular stand. The Work is as follows:





The Work is a derivative sculpture based on an earlier work¹ (the “Prior Statuette”), which is as follows:



¹ The Golden Globe Statuette has existed since at least 1952 and the Prior Statuette is a derivative of earlier versions. See Patrick Gomez, “The Golden Globe award got a makeover! A first look at the 2019 trophy,” ENTERTAINMENT WEEKLY (Nov. 29, 2018), <https://ew.com/golden-globes/2018/11/29/golden-globe-2019-new-trophy-first-look/>.

II. ADMINISTRATIVE RECORD

On January 8, 2019, HFPA filed an application to register a copyright claim in the Work. In an August 7, 2019, letter, a Copyright Office registration specialist refused to register the claim, finding that it lacked the authorship necessary to support a copyright claim. Initial Letter Refusing Registration from U.S. Copyright Office, to Keli Rogers-Lopez, Loeb and Loeb (Aug. 7, 2019).

In a letter dated November 5, 2019, HFPA requested that the Office reconsider its initial refusal to register the Work. Letter from Aleson R. Clarke, Loeb and Loeb, to U.S. Copyright Office (Nov. 5, 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 does not contain enough creativity either elementally or as a whole to warrant registration.” Refusal of First Request for Reconsideration from U.S. Copyright Office, to Aleson R. Clarke, Loeb and Loeb (Mar. 23, 2020). The Office explained that the Work is based on the Prior Statuette and that the differences between the two sculptures consist of only basic geometric shapes, common or familiar symbols or designs, and color variations, none of which are copyrightable. *Id.* at 2. The Office further reasoned that, as a whole, “the elements comprising the [W]ork . . . are combined in a manner that one would expect to see in [a] slightly updated version of the original statue[], and thus the [arrangement is] more mechanical and inevitable than creative and original.” *Id.* at 5 (citations omitted).

In a letter dated June 22, 2020, HFPA 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 David W. Grace, Loeb and Loeb, to U.S. Copyright Office (June 22, 2020) (“Second Request”). In that letter, HFPA highlighted the public awareness of the sculpture, its use in the Golden Globe Awards program, and that copies are being manufactured and sold without HFPA’s authorization. *Id.* at 1. HFPA argued that the Work differs from the Prior Statuette in non-trivial ways that distinguish the Work from its predecessor. *Id.* at 7.

III. DISCUSSION

A. *The Legal Framework*

1) *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. *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 stereotypical elements in a glass sculpture of a jellyfish including clear glass, an oblong shroud, bright colors, vertical orientation, and the 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. 2021) (“COMPENDIUM (THIRD)”); *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.

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. *See* COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design’s visual effect or its symbolism, the time and effort it took to create, or the design’s commercial success in the marketplace are not factors in determining whether a design is copyrightable. *See, e.g., Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

2) *Derivative Works*

The Copyright Office will register a claim in a derivative work where the deposit material contains new authorship with a sufficient amount of original expression. 17 U.S.C. § 103(b) (“The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material”); *see also* COMPENDIUM (THIRD) § 311.1 (stating that “the author of the derivative work must recast, transform, or adapt some of the copyrightable portions of a preexisting work” for the derivative work to be protectable) (citing H.R. REP. NO. 94-1476, at 57 (1976)). The registration for a derivative work, however, “does not cover any previously published material, previously registered material, or public domain material that appears in the derivative work. Nor does it cover any material that is not owned by the copyright claimant.” COMPENDIUM (THIRD) § 311.1; *see also* 17 U.S.C. § 103(b) (stating that copyright in a derivative work is “independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.”).

In the case of derivative works, the “new authorship that the author contributed to the derivative work may be registered, provided that it contains a sufficient amount of original expression, meaning that the derivative work must be independently created and it must possess more than a modicum of creativity.” COMPENDIUM (THIRD) § 311.2 (citing *Waldman Publ’g Corp. v. Landoll, Inc.*, 43 F.3d 775, 782 (2d Cir. 1994)). The amount of creativity required for extending copyright protection to a derivative work is the same as that required for a copyright in any other work: “[a]ll that is needed to satisfy both the Constitution and the statute is that the ‘author’ contributed something more than a ‘merely trivial’ variation, something recognizably ‘his own.’” *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102–03 (2d Cir. 1951) (citing *Chamberlin v. Uris Sales Corp.*, 150 F.2d 512, 513 (2d Cir. 1945)). Thus, “the key inquiry is whether there is sufficient nontrivial expressive variation in the derivative work to make it distinguishable from the [preexisting] work in some meaningful way.” *Schrock v. Learning Curve Int’l, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009).

Although the amount of originality required is low, courts have recognized that derivative works “[l]acking even a modest degree of originality . . . are not copyrightable.” *Durham Indus., Inc. v. Tomy Corp.*, 630 F.2d 905, 911 (2d Cir. 1980); *see also L. Batlin & Son, Inc. v. Snyder*, 536 F.2d 486, 490 (2d Cir. 1976) (*en banc*). Indeed, “[s]pecial caution is appropriate when analyzing originality in derivative works, ‘since too low a threshold will give the first derivative work creator a considerable power to interfere with the creation of subsequent derivative works

from the same underlying work.”” *We Shall Overcome Found. v. The Richmond Org., Inc.*, No. 16-cv-2725, 2017 WL 3981311, at *13 (S.D.N.Y. Sept. 8, 2017). Very minor variations do not satisfy this requirement, such as merely changing the size of the preexisting work or recasting a work from one medium to another. *See L. Batlin & Son*, 536 F.2d at 491. Further, a claim to register a derivative work that adds only non-copyrightable elements to a prior product is not entitled to copyright registration. *Boyd's Collection, Ltd. v. Bearington Collection, Inc.*, 360 F. Supp. 2d 655, 661 (M.D. Pa. 2005). Ultimately, whatever the addition is, it must be independently protectable for the derivative work to be registered.

B. Analysis of the Work

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

There is no question that the Work is a derivative version of the Prior Statuette. *See* Second Request at 7. The Board thus must focus on the new authorship to determine whether it is sufficiently creative to warrant copyright protection. *See* 17 U.S.C. § 103; COMPENDIUM (THIRD) § 311.2. Here, the sculptures are quite similar and share the same overall design, including the following design elements: (1) a gold globe design; (2) a gold filmstrip surrounding the globe; (3) a gold inverted cone-shaped base on which the globe sits; and (4) a gold cup or chalice-shaped base directly below the inverted base (the “cup shape”). The only differences between the Work and the Prior Statuette are: (1) that the Work’s gold is matte whereas the Prior Statuette’s is shiny; (2) the Work’s cone-shaped base is hollow, with the letters “HFPA” more apparent; (3) the base upon which the cup shape rests is gold and cylindrical in the Work but stone and rectangular cube-shaped in the Prior Statuette; and (4) the words “Hollywood Foreign Press Association” are etched into the bottom of the Work’s base.

Reviewing the new authorship, it is clear that the Work does not qualify for copyright protection. The circular and cylindrical shapes of the Work’s base are not copyrightable, nor is the color or material in which the work is cast or the letters and stylized font. 37 C.F.R. § 202.1 (prohibiting registration of “[w]ords and short phrases . . . familiar symbols or designs; [and] mere . . . coloring”); *Darden v. Peters*, 488 F.3d 277, 287 (4th Cir. 2007) (the addition of “color, shading, and labels using standard fonts and shapes [to a preexisting work] fall within the narrow category of works that lack even a minimum level of creativity” required for registration); *L. Batlin & Son*, 536 F.2d at 490 (noting that changes in medium alone do not constitute originality); COMPENDIUM (THIRD) §§ 310.9, 311.2, 906.2, 906.4. Indeed, the newly added cylindrical base is a common shape for standard trophy or statute bases.² The addition of the

² *See, e.g.* “Decorative Marble Pedestal Base For Sculpture,” ALIBABA.COM (available at https://www.alibaba.com/product-detail/Decorative-Marble-Pedestal-Base-For-Sculpture_60196024109.html); “Classic column pedestal,” ART DISPLAY ESSENTIALS (available at <https://www.artdisplay.com/custom-pedestal.htm>); “A Scagliola Cylindrical Pedestal,” CHRISTIE’S (available at <https://www.christies.com/en/lot/lot-4392244>); “CTACPB 006 – Metal Trophy Base,” CLAZZ TROPHY (available at <https://clazztrophy.com/product/ctacpb-006-plastic-trophy-base/>); “Marble and Onyx Pedestal for Trophy,” GANI STONE (available at <http://www.ganistone.com/product/Marble-and-Onyx-Pedestal-for-Trophy.html>).

words and lettering at the base of the Work is likewise not sufficiently creative, as it amounts to a minor variation of a common trophy design.

Taken as a whole, the new authorship simply does not distinguish the Work from the Prior Statuette. While the Office and an observer may be able to identify differences in the Work, these few differences are not sufficient to satisfy the creativity requirement. As discussed above, the new expression merely adds non-copyrightable elements to a prior work. Where a design combines uncopyrightable elements, it is protected by copyright only when the “elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.” *Satava*, 323 F.3d at 811. Here, the new contributions are too few and minor to make the Work distinguishable from the Prior Statuette in a meaningful way. A claim to register a derivative work that adds only non-copyrightable elements to a prior work is not entitled to copyright registration. *See Boyds Collection*, 360 F. Supp. at 661; *Waldman Publ’g Corp.*, 43 F.3d at 782 (requiring sufficient creativity in the new authorship contained in a derivative work).

HFPA focuses heavily on the aesthetic value and merit of the Work, asserting that it created a modern version of an award with a “classic and iconic look.” Second Request at 9. The Work, HFPA contends, is thus far from an “inexpensive youth soccer team award.” This argument, however, misses the mark. The Office must use only objective criteria to determine whether a work satisfies the originality requirement. *See* COMPENDIUM (THIRD) § 310. In doing so, the Office does not consider the aesthetic quality of the Work, look and feel of the Work, the author’s artistic judgment, or the commercial appeal or success of the Work. COMPENDIUM (THIRD) §§ 310.2, 310.4, 310.6, 310.10. As the Supreme Court has cautioned, it is imprudent to make such aesthetic and subjective judgments when evaluating the copyrightability of particular works. *See, e.g., Bleistein*, 188 U.S. at 251 (“It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of [a work’s] worth.”). Therefore, no matter how aesthetically pleasing a work may be, that aspect does not weigh in favor of copyrightability.

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

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