



United States Copyright Office

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October 07, 2021

Forrest Firm, P.C.
Attn: William Gravatt
406 Blackwell St, Ste 420
Durham, NC 27701
United States

Correspondence ID: 1-506QPK7
Original Corresp. ID: 1-4STX7Q9
Re: Blue Acorn (1-10441533381)

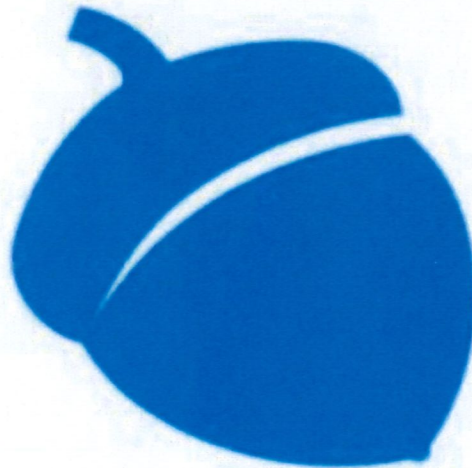
Dear Mr. Gravatt:

This correspondence is in response to your letter of June 10, 2021, requesting reconsideration of the U.S. Copyright Office's refusal to register a copyright claim in the work entitled *Blue Acorn*. You made this request on behalf of the copyright claimant, Beringer Commerce, Inc.

We have completed our review of *Blue Acorn* in light of the points raised in your letter. The Office is unable to register a copyright claim in this work, however, as it does not contain a sufficient amount of original and creative artistic or graphic authorship to support a copyright registration.

Description of the Work

Blue Acorn was submitted as a claim in "2-D artwork." The work is a graphic design consisting of a simple, stylized rendering of an acorn in blue coloring. An image of the design is below:



Discussion

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. *Feist Publications, Inc. v. Rural Telephone Service Company, Inc.*, 499 U.S. 340, 345 (1991).

First, the work must have been created independently by the author, *i.e.*, not copied from another work. The Office does not question that *Blue Acorn* was created independently and not copied from any existing work; consequently, this component is not at issue.

Second, the Office must determine whether the work contains a sufficient amount of creativity. For the reasons set forth herein, the Office determines that *Blue Acorn* does not contain a sufficient amount of creativity to warrant registration.

In determining whether a work has a sufficient amount of original authorship necessary to sustain a copyright claim, the Office follows the standard set by the Supreme Court in *Feist* that only a modicum of creativity is necessary to support a copyright registration. The Court also ruled, however, that some works (such as the phone book at issue in that case) fail to meet the low standard. The Court also observed that “as a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity,” 499 U.S. at 363, and 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. While “the standard of originality is low . . . it does exist.” *Id.* at 362.

The Office and the courts consistently have found that standard designs, figures, and geometric shapes as well as coloring are not sufficiently creative to sustain a copyright claim. 37 C.F.R. § 202.1(a) (“[F]amiliar symbols or designs” as well as “mere variations of typographic ornamentation, lettering or coloring” are “not subject to copyright and applications for registration of such works cannot be entertained.”); *U.S. Copyright Office, Compendium of U.S. Copyright Office Practices* §§ 313.3(D) (3d ed. 2021) (typeface and mere variations of typographic ornamentation not copyrightable); 313.4(K) (mere variations of coloring not copyrightable); 906.1 (common geometric shapes not copyrightable); 906.2 (familiar symbols and designs or mere variations thereof not copyrightable). *See also Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q.2d 1074 (D.C. Cir. 1991) (upholding refusal to register chinaware design pattern composed of simple variations of geometric designs due to insufficient creative authorship to support copyright registration); *Boisson v. Banian, Ltd.*, 273 F.3d 262, 271 (2d Cir. 2001) (indicating mere coloration cannot support a copyright claim). Moreover, simply making minor alterations to these otherwise standard shapes will not inject the requisite level of creativity. *See Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99, 102-03 (2d Cir. 1951) (What “is needed to satisfy the Constitution and the statute is that the ‘author’ contributed something more than a ‘merely trivial’ variation, something recognizably ‘his own.’”).

The Office examines every work submitted for registration in its entirety, assessing its individual elements as well as the work as a whole, to determine whether it contains a sufficient amount of creative authorship to support registration. *See Compendium (Third)* § 309. Having done so during the initial examination and again during this review, the Office concludes that *Blue Acorn* does not contain a sufficient amount of creativity to warrant registration.

An acorn is a familiar design. As we stated in our initial correspondence, common shapes and familiar designs, or any minor variation thereof, are not copyrightable. 37 C.F.R. § 202.1(a). The same is true of mere coloration. *Id.* For this reason, the Office finds that the work does not exhibit a sufficient amount of original and creative authorship to support a copyright registration.

The crux of your argument in favor of registration is that copyrightable authorship is to be found in the choices that were made in creating a stylized acorn, *i.e.*, the size, position, proportions of the acorn, and the coloring of the acorn. *Letter* at 2-4. All designs involve choices “involving the size, coloring, orientation, proportion, configuration, perspective, or other constituent elements of the work.” *See Compendium (Third)* § 310.8. It is not the possibility of choices that determines copyrightability but rather whether the particular resulting expression contains copyrightable authorship. *Id.* The Office focuses solely on the actual appearance of the work submitted for registration. It does not consider the author’s choices, inspiration or any intended meaning or significance that those features may be intended to evoke. *See Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S.Ct. 1002, 1015 (2017) (“our inquiry is limited to how [the design is] perceived”). Evaluating the author’s inspiration or intent would require the Office “to consider evidence of the creator’s design methods, purposes, and reasons.” *See id.* The Supreme Court has made it clear that copyrightability is based on how a work is perceived, not how or why it was designed. *See id.* Having examined the instant work, the Office finds that *Blue Acorn* is a simple stylized monochromatic rendering of a familiar design that lacks the creativity required to support a claim in copyright.

Conclusion

The Office’s standard of originality is in harmony with *Feist*, *i.e.*, the requisite level of creativity is low; even a slight amount of original authorship will suffice. While the requisite level of creativity required to support a copyright registration is not high, this does not mean that every work is entitled to copyright protection. This work falls into the “narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a copyright.” 1 M. Nimmer & D. Nimmer, *Nimmer On Copyright* § 2.01(b) (2018).

Because this work does not exhibit sufficient original and creative authorship upon which a copyright registration is possible, we again must refuse copyright registration for *Blue Acorn*.

Sincerely,



Stephanie Mason, Attorney-Advisor
Office of Registration Policy and Practice
U.S. Copyright Office

Enclosures:

Reply Sheet



United States Copyright Office

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Use this sheet if you request reconsideration

How to request reconsideration:

- Send your written explanation of why the claim should be registered or why it was improperly refused.
- Be sure to include the Correspondence ID Number (listed under the bar code above) on the first page of your Request.
- Indicate whether you are requesting a “First Reconsideration” or “Second Reconsideration.”
- **Submit your request ONLINE:** We strongly recommend sending all requests for reconsideration via email following these steps:

EMAIL YOUR REQUEST (BUT NOT THE REQUIRED FEE) to:

copreviewboard@loc.gov.

- The subject line should say “First Reconsideration” or “Second Reconsideration”
- Once your email request is received, you will be contacted with instructions on how to submit the required fee.

IMPORTANT NOTE: Your request and the required fee must be received no later than three months after a refusal is issued.

- **Alternatively, you may submit your request VIA MAIL, but the Copyright Office’s response will be delayed due to the COVID-19 pandemic:**
 - **IMPORTANT NOTE:** Your request must be postmarked (via the U.S. Postal Service) or dispatched (via commercial carrier, courier, or messenger) no later than three months after a refusal is issued.
 - Enclose the required fee.
 - Address your request to:

RECONSIDERATION
Copyright RAC Division
P.O. Box 71380
Washington, DC 20024-1380

First Request for Reconsideration: The Registration Program Office considers the first request. If it upholds the refusal, you may submit a second request.

Second Request for Reconsideration: The Copyright Office Board of Review considers the second request. The Board consists of the Register of Copyrights and the General Counsel (or their respective designees), and a third member appointed by the Register. The Board's decision constitutes final agency action.

Notification of decision: While working remotely due to COVID-19, the Copyright Office will send all notifications of its decisions by email.

FEES:

First Request \$350 per application

Second Request \$700 per application