



**United States Copyright Office**

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · [www.copyright.gov](http://www.copyright.gov)

February 23, 2017

Vic Lin, Esq.  
Innovation Capital Law Group, LLP  
19800 MacArthur Boulevard, Suite 270  
Irvine, CA 92612

**Re: Second Request for Reconsideration for Refusal to Register Money Mailer Envelope;  
Correspondence ID: 1-181217T; SR# 1-1021040651**

Dear Mr. Lin:

The Review Board of the United States Copyright Office (“Board”) has considered Money Mailer, LLC’s (“Money Mailer’s”) second request for reconsideration of the Registration Program’s refusal to register a claim in “text, 2-D artwork, graphic design, [and] scanable design” in the work titled “Money Mailer Envelope” (“Work”). 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 Work consists of text and two-dimensional artwork on the back of a mailing envelope. The Work includes the following elements: a standard postage paid notice in the envelope’s top-right corner; in the envelope’s top left corner, a stylized red “M” with an inset white circle and dollar sign on its left, and a stylized dark blue “M” with an inset white outline of a stamp and head in profile on its left; the words “MONEY MAILER®” and “Like Getting Money In Your Mailbox™” in the top-middle of the envelope; part of the top of a waving American flag, with a fold, across the bottom of the envelope; a square cellophane window with a blue border in the center left of the envelope that is inset against the partial American flag; a QR code and the words “More Local Coupons FREE @ moneymailer.com!” in yellow at the bottom of the envelope, and which are superimposed over part of the partial American flag design; in the middle-right of the envelope, a light blue rectangle with the lower-right corner flipped up as if it were a sticker and colored dark blue. On that corner are three unreadable words as well as the phrase “CHECK THE BACK!” in white. On top of the rectangle is a red badge (or ribbon) containing an off-white circle and the phrase “With MORE OFFERS than ever before!” in blue, except for the words “MORE OFFERS” in white. On the left of the rectangle are the phrases “New GLOSSY FORMAT” and “New DOUBLE-SIDED FULL-COLOR PRODUCT.” These words are in dark blue, except for the words “new,” which are red. There are six white, star designs on the blue rectangle design.

The Work is depicted below:



## II. ADMINISTRATIVE RECORD

On November 15, 2013, Money Mailer filed an application to register a copyright claim in the Work. In a February 18, 2015 letter, a Copyright Office registration specialist refused to register the claim, finding that it “lacks the authorship necessary to support a copyright claim.” Letter from Melissa Crawford, Registration Specialist, to Joseph G. Chu, Innovation Capital Law Group, LLP (Feb. 18, 2015).

In a letter dated May 13, 2015, Money Mailer requested that the Office reconsider its initial refusal to register the Work. Letter from Joseph G. Chu, Innovation Capital Law Group, LLP, to U.S. Copyright Office (May 13, 2015) (“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 “do[es] not contain a sufficient amount of original and creative authorship to support a copyright registration.” Letter from Stephanie Mason, Attorney-Advisor, to Joseph G. Chu, Innovation Capital Law Group, LLP (Sept. 9, 2015).

In a letter dated November 23, 2015, Money Mailer 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 Vic Lin, Innovation Capital Law Group, LLP, to U.S. Copyright Office (Nov. 23, 2015) (“Second Request”). In that letter, Money Mailer claims that the Work contains at least sixteen design elements as well as a unique arrangement of those elements, including “the flag, how much of the flag to display, where to show a fold in the flag; the unconventional choice of a square shape and unique position of the envelope window; the unconventional use of a colored border on the envelope window and which color to use; the careful selection of three different types of trademarks – a colored logo, a corporate name and a slogan – on the top flap, including which colors to use for which logos and where to position the various trademarks; the position, coloring and wording of additional text at the bottom of the envelope; the highly unique graphic image of a label that appears to be peeling off with text on the top surface of the label, and wording made to appear on the

underside of the label; and the unique arrangement of printing on the back side of the envelope, including printing on the flap itself.” *Id.* at 3-4

### 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).

### ***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.

First, Money Mailer's claim in text is insufficient. The text includes "MONEY MAILER®," "Like Getting Money In Your Mailbox™," "More *Local* Coupons FREE @ moneymailer.com!," "CHECK THE BACK!," "With MORE OFFERS than ever before!," "New GLOSSY FORMAT," and "New DOUBLE-SIDED FULL-COLOR PRODUCT." These merely are "[w]ords and short phrases such as names, titles, and slogans," and simply are not copyrightable. 37 C.F.R. § 202.1(a); *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.4(C) (3d ed. 2014) ("COMPENDIUM (THIRD)") (using examples of an business, product, or catchwords, catchphrases, mottoes, slogans, or other short expressions as not being copyrightable). Thus, the Office cannot register a claim in text for the Work.

Second, it cannot be disputed that the Work's constituent graphic elements<sup>1</sup>—a postage paid notice, short phrases, stylized "M" letters, a dollar sign, a stamp design, an American flag, a cellophane window, a QR code, rectangles and squares, a badge (or ribbon), stars, and coloring—are not individually subject to copyright protection. Copyright law does not protect basic or familiar shapes, symbols, and coloring. 37 C.F.R. § 202.1(a) (prohibiting registration of "familiar symbols or designs; . . . lettering or coloring"); *see also* COMPENDIUM (THIRD) §§ 313.4(J) ("[c]urrency symbols," "stars," and other familiar designs are not copyrightable), 906.1 ("squares" and "rectangles" are not copyrightable). Similarly, the stylized "M" letters, and any other typefont, are not eligible for protection, in part, "because the creative aspects of the character (if any) cannot be separated from the utilitarian nature of that character." COMPENDIUM (THIRD) § 906.4 (citing 37 C.F.R. § 202.1(a), (e)). Moreover, the portions of the Work comprised of the postage paid notice, QR code, and cellophane window are not copyrightable, because they are dictated by functional considerations and are not protected by copyright. *See* 17 U.S.C. § 102(b). The postage paid notice functions in lieu of a stamp, the QR code functions to store data, and the cellophane window allows the customer to see print within the envelope. Thus, none of the Work's elements are individually protected by copyright law.

Finally, the Work overall is not sufficiently creative to warrant copyright protection. As explained in the *Compendium*, "the Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations." COMPENDIUM (THIRD) § 313.4(J). Thus, a court found in a similar case that mass mailing advertising envelopes consisting of "'fragmentary words and phrases' and [] 'forms of expression dictated solely by functional considerations'" were not protected by copyright. *Magic Mktg. v. Mailing Servs.*, 634 F. Supp. 769, 771 (W.D. Pa. 1986). Recently, another court agreed with the Copyright Office that packaging consisting of "a yellow background . . . the words 'Cod Liver in Own Oil' in red text, along with a


---

<sup>1</sup> In its registration application, Money Mailer claimed copyright in 2-D artwork, graphic design, and scannable design. The Office considers these claims together as graphic works.

set of red, blue, and white stripes, with blue waves along the bottom of the tin, and with the words 'Produced from Fresh Icelandic Cod Liver' set in white text across the waves," along with nutritional and other, related information, did not qualify for copyright protection. *Threeline Imp., Inc. v. Vernikov*, No. 1:15-cv-02333, slip op. at 28, 30 (E.D.N.Y. Oct. 28, 2016). Here, the fragmentary words and phrases and functional elements, as well as the uncopyrightable familiar symbols or designs, similarly are not protected by copyright. While a combination of some types of uncopyrightable elements can be protected, here the use of the Work's nonfunctional elements such as—an American flag, slogans, and an internet address—are not the product of creative choices, but are typical of envelopes or advertising generally. While the Office understands that the Work includes only a portion of the American flag, with a fold, in the corner, that placement does not render the imagery creative. The Board finds that the other design element similarly lack sufficient creativity, from the use of specific envelope shapes to the color of the border to the use of certain trademarks to the "peeling" graphic image to the act of printing on the flap of the envelope. While these are indeed choices, they are not creative enough to bestow copyright protection on the Work.

#### 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  
Copyright Office Review Board