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OFFICE

May 13, 1997

RE: THE 500 YARD DRIVE
Control No. 60-409-8485(B)

LIBRARY
OF
CONGRESS

Washington
D.C.
20559

Dear Mr. Collen:

This is in response to your letter dated October 17, 1996, addressed to David Levy, Visual Arts Section Attorney-Advisor, and forwarded to the Copyright Office Board of Appeals on behalf of your client, Alarming Sounds, Inc., appealing the Office's refusal to register the 500 Yard Drive, originally submitted for registration on April 10, 1995.

The Copyright Office's Board of Appeals has examined the claim and considered all correspondence from your firm regarding this claim. Because the work merely combines familiar symbols and designs which are not copyrightable, in an arrangement that does not rise beyond the level of de minimis authorship, the Board of Appeals must affirm the Examining Division's decision to refuse to register this claim.

Administrative Record

The Copyright Office received the application for registration of this work, described as "3-Dimensional Statuette," on April 10, 1995. The work consists of a golf tee holding a bullet, a golf ball, and a rectangular section of putting green. In a letter dated June 27, 1995, Visual Arts Examiner James L. Shapleigh notified you that the Copyright Office could not register the work because it lacks the artistic or sculptural authorship to support a copyright claim. The letter noted that ideas and concepts, familiar symbols and designs, and minor variations of basic geometric shapes are not copyrightable.

On October 25, 1995, you appealed the Office's refusal to register "The 500 Yard Drive." You asserted that your client was attempting to register, not an idea or concept, but a sculptural work. You said the work is not a familiar design, because nothing about the work is familiar. You also said that the fact that there may be a commercial motivation rather than an aesthetic one is not grounds for refusing registration.

On June 19, 1996, Visual Arts Section Attorney-Advisor David Levy issued the Office's second refusal to register "The 500 Yard Drive." The refusal, after reexamination of the work, was based on Copyright Office regulation section 202.1, which states that familiar symbols and designs are not copyrightable. Mr. Levy wrote that, even if the bullet, golf ball and tee were deemed non-familiar, the arrangement of those few elements here does not rise beyond the level of de minimis authorship. He agreed with you that a work's copyrightability has "nothing to do with its aesthetic or commercial value."

You wrote to Mr. Levy with your second request for reconsideration on October 17, 1996, asserting that The 500 Yard Drive is not a familiar design. "This is not a simple geometric, in which an author has put together a isosceles triangle with a rectangle and called it authorship," you wrote, asking, "In what way is there a lack of creativity in combining these articles?" Your letter distinguished your client's work from merely a "putting surface, a ball and a putter." Rather, you said, the work here is "a bullet, a golf ball and a base." You noted that the combination of these particular elements is unfamiliar, and required creative authorship and expression.

Familiar Designs and Symbols

This work consists of a golf tee holding a bullet, golf ball and rectangular section of putting green. These are all familiar symbols and designs, which are not copyrightable under section 202.1 of Copyright Office regulations. 37 C.F.R. §202.1 (1996). The presence, noted in your letter, of a bullet rather than a putter, does not cause the arrangement of these familiar elements to rise beyond the level of de minimis authorship for a sculptural work.

As cited to you in our earlier correspondence, substantial case law supports the principle that simple variations of standard designs and their simple arrangement does not furnish a basis on which to support a copyright claim. See John Muller & Co. v. New York Arrows Soccer Team, 802 F.2d 989 (8th Cir. 1986) (upholding Register's refusal to register logo of four angled lines forming an arrow with the word "Arrows"); Bailie v. Fisher, 258 F.2d 425 (1958) (cardboard star with two folding flaps allowing star to stand for display not copyrightable 'work of art'); Magic Marketing, Inc. v. Mailing Services of Pittsburgh, Inc., 634 F.Supp. 769 (W.D.Pa 1986) (envelopes with black lines and words "gift check" or "priority message" did not contain minimal degree of creativity necessary for copyright protection); Forstmann Woolen Co. v. J.W. Mays, Inc., 89 F. Supp. 964 (E.D.N.Y. 1950) (label with words "Forstmann 100 % Virgin Wool" interwoven with three fleurs de lis held not copyrightable).

The Board of Appeals concludes that this work merely combines familiar symbols and designs which are not copyrightable, in an arrangement that does not rise beyond the level of de minimis authorship. The Board therefore affirms the Examining Division's decision to refuse to register this claim.

This letter constitutes final agency action.

Sincerely,

Nanette Petruzzelli

Nanette Petruzzelli
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for the Appeals Board
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