United States Copyright Office
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August 10, 2006

Stinson Morrison Hecker LLP
Attention: Mark C. Young
1201 Walnut Street, Suite 2900
Kansas City, MO 64141-6251

RE: CCC LOGO
Control Number: 61-321-0950(S)

Dear Mr. Young:

On behalf of the Copyright Office Review Board, I am responding to your letter requesting a second reconsideration of the Office's refusal to register an unpublished logo entitled CCC LOGO. The letter requesting reconsideration was received in the Copyright Office on January 25, 2006, and was submitted on behalf of your client, Bruce Edward Somers. The Copyright Office Review Board affirms the Examining Division's refusal to register CCC LOGO on the grounds it is simply a variation of CAR CREDIT CITY LOGO, a work registered by the Examining Division following your first request for reconsideration, and the only copyrightable authorship which you contend can be found in CCC LOGO is also included in CAR CREDIT CITY LOGO. As a second ground for refusing registration, the Board agrees with the Examining Division that CCC LOGO does not meet the minimal requirement of creativity necessary to sustain a claim to copyright.

I. REPRESENTATION OF THE WORK AND REGISTERED CAR CREDIT CITY LOGO

The work, CCC LOGO, appears as follows:



The registered work, CAR CREDIT CITY LOGO appears as follows:



II. ADMINISTRATIVE RECORD

Initial submission:

On December 8, 2004, the Copyright Office received two applications to register two related unpublished logo designs. One of the applications concerned registration of a logo design entitled CCC LOGO. The second application covered a work entitled CAR CREDIT CITY LOGO. This latter work included the "CCC" logo design as one of its authorship elements. In a letter dated February 4, 2005, Examiner Ivan Proctor refused to register both logo designs on the ground that both logo designs lacked the authorship necessary to support a copyright claim. Letter from Proctor to Kang of 02/04/05, at 1.

First Request for Reconsideration:

In a letter dated June 3, 2005, a member of your firm, Judith Carlson, requested reconsideration of the Office's refusal to register both logo designs. Letter from Carlson to the Examining Division of 6/3/05, at 1. She stated that the examiner had based his refusal generally on Copyright Office regulation 37 C.F.R. § 202.1, providing that "[c]opyright does not protect familiar symbols or designs; basic geometric shapes; words and short phrases such as names, titles, and slogans; or mere variations of typographic ornamentation, lettering, or coloring." *Id.* at 2. Ms. Carlson contended that these categorical exclusions did not apply to the two logo designs.

With respect to "basic geometric shapes," Ms. Carlson stated that the works surpassed the threshold of minimal creativity required by Feist Publications, Inc. v. Rural Telephone Service Co., Inc., 499 U.S. 340 (1991). She also claimed that other decisions supported registration, such as Readers Digest Association v. Conservative Digest, Inc., 821 F.2d. 800 (D.C. Cir. 1987)(a compilation of basic shapes); Soptra Fabrics Corp. v. Stafford Knitting Mills, Inc., 490 F.2d 1092 (2d Cir. 1974)(a fabric design consisting of a strip of crescents with scalloping or ribbons and rows of semicircles); Tennessee Fabricating Co. v. Moultrie Mfg. Co., 421 F.2d 279 (5th Cir. 1970)(a pattern of intercepting straight and arc lines); Concord Fabrics, Inc. v. Marcus Brothers Textile Corp., 409 F.2d 1315 (2d Cir. 1969)(a fabric design consisting of a circle within a square within a circle); and Ets-Hokin v. Skyy Spirits, Inc., 225 F.3d 1068 (9th Cir. 2000)(a photograph of a blue vodka bottle). *Id.* at 2-3. With respect to CCC LOGO, she asserted that the work comprised a series of three non-identical, elongated, dark-colored crescent shapes, the design and arrangement of which surpassed the minimal creativity standard. *Id.* at 3

Ms. Carlson contended further that the works could not be considered "familiar symbol or designs" as specified in § 202.1, and that no copyright claim was being made in "words and short phrases, such as names titles, and slogans." *Id.* at 4. Moreover, she stated that the works were not "mere variations of typographic ornamentation, lettering or coloring" because that

reference was commonly restricted to typesets, fonts and lettering styles. She stated that Atari Games Corp. v. Oman, 888 F.2d 878 (D.C. Cir. 1989) required that copyright protection be considered for the entire work, rather than component parts.

After reviewing your first request for reconsideration, Examining Division Attorney Advisor Virginia Giroux responded in a letter dated October 24, 2005. Ms. Giroux concluded that, in light of the arguments raised in the letter seeking reconsideration, and the low standard for copyrightability articulated in Feist Publications v. Rural Telephone Service Co., 499 U.S. 340 (1991), the work entitled CAR CREDIT CITY LOGO should be registered. Accordingly, a certificate of registration covering the work was issued. Letter from Giroux to Carlson of 10/24/05, at 1.

With respect to the work CCC LOGO, Ms. Giroux concluded that the work did not contain a sufficient amount of original and creative artistic or graphic authorship upon which to support a copyright registration. She described the work as three crescent shapes in black coloring positioned horizontally and diminishing in size from left to right, each shape representing the letter "C." *Id.* at 1. She also stated that the letter "C", or any minor variation thereof, is a common and familiar shape, which was in the public domain. Moreover, Ms. Giroux asserted that the fact that the shape may be stylized in length, size, thickness, and orientation does not, in itself, mean that it is copyrightable.

Ms. Giroux stated that case law confirmed these principles, citing John Muller & Co., Inc. v. N.Y. Arrows Soccer Team, 802 F.2d 989 (8th Cir. 1986); Forstmann Woolen Co. v. J.W. Mays, Inc., 89 F. Supp. 964 (E.D.N.Y. 1950); Homer Laughlin China Co. v. Oman, 22 U.S.P.Q.2d 1074 (D.D.C. 1991); and Jon Woods Fashions, Inc. v. Curran, 8 U.S.P.Q.2d 1870 (S.D.N.Y. 1988). *Id.* at 2. Moreover, she asserted that even the low requisite level of creativity set forth in Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991) was not met by the crescent or "C" shapes of CCC LOGO. She also stated that even viewing the work in its entirety under the premise set forth in Atari Games Corp. v. Oman, 888 F.2d 878 (D.C. Cir. 1989), the arrangement of the elements did not rise to the level of creativity needed to sustain a copyright registration. Finally, she concluded that the cases cited in the letter for first reconsideration concerned works which were not similar to CCC LOGO. *Id.* at 2-3.

Second Request for Reconsideration:

A second request for reconsideration of the refusal to register CCC LOGO was received in this Office on January 25, 2006. You assert that viewing the work in issue as simply comprising three stylized letter C's is misdirected and inappropriate. You claim that the work comprises a series of three non-identical crescent shapes of diminishing size, and does not include any text or typeset characters. Letter from Young to the Review Board of 1/25/06, at 2. You argue that, viewing the work as a whole, it is apparent that the work is not simply comprised of stylized letters, but instead consists of three non-identical crescent-like shapes of

diminishing size. You state that the overall impression created by the arrangement of this pattern is that of a unitary image, not of individual constituent pieces. *Id.* at 3.

Your letter for second reconsideration cites the same cases for supporting registration as were cited in the first letter. These cases include Readers Digest Association v. Conservative Digest, Inc., 821 F.2d. 800 (D.C. Cir. 1987)(a compilation of basic shapes); Soptra Fabrics Corp. v. Stafford Knitting Mills, Inc., 490 F.2d 1092 (2d Cir. 1974)(a fabric design consisting of a strip of crescents with scalloping or ribbons and rows of semicircles); Tennessee Fabricating Co. v. Moultrie Mfg. Co., 421 F.2d 279 (5th Cir. 1970)(a pattern of intercepting straight and arc lines); Concord Fabrics, Inc. v. Marcus Brothers Textile Corp., 409 F.2d 1315 (2d Cir. 1969)(a fabric design consisting of a circle within a square within a circle); and Ets-Hokin v. Skyy Spirits, Inc., 225 F.3d 1068 (9th Cir. 2000) (a photograph of a blue vodka bottle).

III. DECISION

The Review Board agrees with Ms. Giroux's conclusion that the work CCC LOGO is not copyrightable in itself for the reasons that she stated in her letter. However, for the purpose of this second reconsideration, the Review Board is basing its denial primarily on the fact that the entirety of CCC LOGO is a prominent authorship element of CAR CREDIT CITY LOGO, for which a registration has issued. A separate, additional registration for CC LOGO could be considered only upon a finding of copyrightable and sufficiently different authorship in the logo depicted in the deposit now before the Board and apart from that revealed as an element in CAR CREDIT CITY. Clearly, other than a possible – and minor – difference in size, there is no difference between the logo depicted in the deposit copy now before the Board and that same authorship revealed as a constituent element of CAR CREDIT CITY LOGO. Under these circumstances, there is no basis for considering a second registration.

The Office's regulations at 37 C.F.R. 202.3[b][10] state that, as a general rule, only one registration may be made for the same version of a particular work. Although the two works at issue here, CAR CREDIT CITY LOGO and CCC LOGO differ in content, the difference is not such that would support a second, separate claim. CAR CREDIT CITY LOGO consists of authorship which is essentially a combining of two elements – a banner with the name and the exact, or near exact, CCC LOGO authorship now before the Board. Thus, registering CCC LOGO would be the equivalent of registering that particular authorship twice; the Office limits registration for what is essentially the same authorship to a one-time administrative action.

1. Copyright Office Compendium

Compendium of Copyright Office Practices, Compendium II, section 610 (1984) provides guidelines explaining the approach of the Copyright Office with respect to examining different versions of a work: "When registration is sought for different versions and separate applications are submitted to the Copyright Office at the same time, the manner of registering

sculptural work, the work must embody some creative authorship in its delineation or form."); 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* 2.01(b) (2002) ("[T]here remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a copyright.").

In its longstanding registration practices – in place prior to *Feist* – the Office has consistently recognized and applied the modest but nevertheless extant requisite level of creativity necessary to sustain a claim to copyright. Compendium II states that "works that lack even a certain minimum amount of original authorship are not copyrightable." *Id.* at section 202.02[a]. The Board notes that CCC LOGO does not, in itself, represent a sufficient quantum of original authorship to sustain a claim. As Ms. Giroux explained, CCC LOGO consists essentially of three crescent shapes in black coloring positioned horizontally and diminishing in size from left to right, each shape reasonably said to represent the letter "C." Letter from Giroux of 10/24/05, at 1. The totality of this authorship does not rise to the level of copyrightability and, thus, cannot be the subject of a registration on its own merits. *See, e.g., Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) ("It is true, of course, that a *combination* of unprotectible elements may qualify for copyright protection. [Citations omitted.] But it is not true that *any* combination of unprotectible elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that a combination of unprotectible 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.") (emphasis in the original). CCC LOGO reflects neither a sufficiently numerous quantity of elements within it nor an arrangement, *in toto*, which is more than a commonplace, parallel juxtaposition of merely three simple "C"- like (or crescent) shapes, with the shapes diminishing in size. CCC LOGO does not meet *Feist's* standard for copyrightability.

3. Registration practices defeat the claim in CCC LOGO

Even if we were to concede the copyrightability of CCC LOGO [which we do not], CCC LOGO is a component part of the registered work CAR CREDIT CITY. Therefore, even if your arguments that the CCC LOGO work of authorship meets the low creativity threshold held by *Feist* are correct, as we have explained, under established Copyright Office practices, you are not entitled to a second, separate registration because that logo element of authorship is already a part of a work registered in your client's name and the Office does not knowingly put more than one claim on the public registration record for the same authorship. Compendium II, section 610.

The Board does not see substantial variation in the CCC LOGO, sufficiently different from the authorship elements in CAR CREDIT CITY LOGO, to sustain a second, separate registration for CCC LOGO. For the reasons stated in this letter, the Board affirms the refusal to register CCC LOGO. This decision constitute final agency action in this matter.

Sincerely,

/s/

David O. Carson
General Counsel
for the Review Board
United States Copyright Office