

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JAN 17 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

GEORGE S. CHEN CORP., a California  
corporation,

Plaintiff - Appellant,

v.

CADONA INTERNATIONAL, INC., a  
California corporation,

Defendant - Appellee.

No. 06-55536

D.C. No. CV-04-00365-JVS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
James V. Selna, District Judge, Presiding

Argued and Submitted November 7, 2007  
Pasadena, California

Before: B. FLETCHER, REINHARDT, and RYMER, Circuit Judges.

George S. Chen Corp. (GSC) appeals the summary judgment in favor of  
Cadona International, Inc., in an action for infringement of its copyrights on

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

dolphin, frog, and moon/star wind chime ornaments, and on a stand-alone frog ornament. We affirm.

As GSC concedes, its dolphin and frog ornaments are “approximately true to life.” It failed to identify any elements of the dolphin or frog that it selected that are not commonplace or dictated by the idea of a swimming dolphin or sitting frog sculpture. *See Satava v. Lowry*, 323 F.3d 805, 810 (9th Cir. 2003) (noting the aspects of a glass-in-glass jellyfish sculpture upon which the creator relied, but concluding they were unprotectable as they were commonplace and typical of jellyfish physiology); *see also Herbert Rosenthal Jewelry Corp. v. Kalpakian*, 446 F.2d 738, 740 (9th Cir. 1971) (noting that the plaintiff never identified the elements of the arrangement of jewels on top of a bee pin that were original). GSC’s concept was to make a “cute” dolphin – with an open mouth and an uplifted, twisted tail which made it appear to be swimming – but these features necessarily follow from the idea of a swimming dolphin. *See Aliotti v. R. Dakin & Co.*, 831 F.2d 898, 901 (9th Cir. 1987) (noting that a tyrannosaurus is commonly pictured with its mouth open, and that no reliance may be put upon similarity in expression resulting from the physiognomy of dinosaurs). There is no indication that the frog is anything but a stereotypical frog, sitting as a frog would sit in nature.

Although a combination of unprotectable elements may qualify, GSC points to no elements that, considered together, have a sufficient quantum of originality for copyright protection. *See Satava*, 323 F.3d at 811. Nor does GSC show any respect in which George Chen made choices that contributed a non-trivial, original feature. Accordingly, GSC has failed to show the quantum of originality that is required under *Satava* and *Aliotti* for even thin protection.

GSC contends that its moon/star ornament had “subtle differences” from the prior art of such ornaments, but nowhere said what those differences may be. It is thus impossible to tell whether the differences, if any, are “more than a ‘merely trivial’ variation, something recognizably ‘his own.’” *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 489 (9th Cir. 2000); *Kamar Intern., Inc. v. Russ Berrie and Co.*, 657 F.2d 1059, 1061 (9th Cir. 1981) (recognizing that the mere fact that a toy chimp is based on a live model does not deprive the author of the necessary amount of originality for copyright, “if he adds something original to its expression”); *cf. Pasillas v. McDonald’s Corp.*, 927 F.2d 440, 443 & n.2 (9th Cir. 1991) (noting that the crescent moon shape, depiction of a human face in the center, and white or off-white color are standard, stock elements in treatment of the idea of a man in the moon object).

AFFIRMED.