



- b) Another person provided Foss with the pre-existing photographs, illustrations, copy (*i.e.*, wording), testimonials, and general instructions for how to lay out the content of the brochure and provided Foss with a copy of Marvic’s pre-existing 2003 Brochure, but Foss herself ultimately made the specific decisions on the layout, design, selection of pre-existing photography, arrangement of pre-existing photography, and coloration of the new Brochure; [Dkt. No. 107 at 2-8].
- c) Foss’s two prior applications to register the same brochure were refused and, in connection with her third attempt at registering the applied-for work, Foss stated, “I am the exclusive author and claimant to this graphic work. All 20 pages of graphics were created only by me,” and requested that the Copyright Office remove “Marvic dba Brady-Built” as an author despite the fact that the applied-for work included preexisting material such as photographs, text, and 2D artwork that was proprietary to Marvic and not Foss; Marvic owned a copyright in the content of the brochure; and Foss placed a copyright notation for Marvic, Inc. on the 2006 brochure.<sup>2</sup>

The Register hereby submits her response. Based on the legal standards and examining practices set forth below, the U.S. Copyright Office (“Copyright Office” or “Office”) would not have registered Ms. Foss’s claim to the artwork contained in the submitted brochure if it had known that the brochure was based on a previously published work not owned by Ms. Foss, and that Ms. Foss was not the author or copyright claimant of the featured artwork, text, and photographs. Instead, the Office would have requested that Ms. Foss clarify her contributions to the derivative work. If Ms. Foss’s contribution included only the general layout or format of the work, the Office would have refused registration. Separately, had the Office known that a registration specialist refused Ms. Foss’s prior application to register the claim at issue for lack of originality, the Office would have refused Registration No. Vau 1-378-470 as a duplicate claim.

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<sup>2</sup> Request.

## BACKGROUND

### **I. Examination History**

A review of the records of the Office reveals that on December 3, 2018, the Office received an application to register a twenty-page brochure titled “Brady-Built Sunrooms Catalog © 2006 Catalog 20 Page Original Graphic Work by Hunter Foss Design” (“Work”).<sup>3</sup> The application identified Ms. Foss, “Cynthia Foss dba Hunter Foss Design, Inc.,” and “Marvin Inc. dba Brady-Built [sic] Sunrooms, Inc.,” as authors of the Work, with the former being listed as the copyright claimant and the latter two as the work made for hire authors.<sup>4</sup> It stated that the Work was completed in 2006. In the “Note to C.O.” field, a field in which the applicant can provide additional information to the Office, Ms. Foss stated that “I created all of the 2D art in this graphic work, except their Brady-Built logo and their photos, which were pre-existing.”<sup>5</sup> In the “Limitation of copyright claim” field, Ms. Foss listed “photograph, 2-D artwork” as material excluded from the claim and “2-D artwork” as new material included in the claim.<sup>6</sup> Upon review, the registration specialist contacted Ms. Foss and asked her to identify the page number within the Work that contained the “artwork” she sought to register.<sup>7</sup> The registration specialist

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<sup>3</sup> Ms. Foss previously attempted to register the Work with the Office on two separate occasions, and in both cases, her claims were refused. *See* Application for Service Request No. 1-6335069771 (Feb 28, 2018) (the “First Application”) (refused for ineligibility for registration using the Single Application option); Application for Service Request No. 1-6400839751 (Mar. 19, 2018) (the “Second Application”) (refused on the grounds that design and layout is not copyrightable).

<sup>4</sup> Application for Service Request No. 1-6294803781 (Dec. 3, 2018) (the “Third Application”). A “work made for hire” is a “a work prepared by an employee within the scope of his or her employment” or “a work specially ordered or commissioned for use as” a certain category of work that the parties expressly agree in a signed written instrument to treat as a work made for hire. 17 U.S.C. § 101 (defining “work made for hire”).

<sup>5</sup> Third Application.

<sup>6</sup> *Id.*

<sup>7</sup> Email from U.S. Copyright Office to Cynthia Foss (Nov. 26, 2019).

also asked Ms. Foss to clarify the name of one of the listed authors.<sup>8</sup> On December 5, 2019, in response to the first inquiry, Ms. Foss stated that she was “the exclusive author and claimant to this graphic work” and “[a]ll 20 pages of graphics were created only by” her.<sup>9</sup> Responding to the second inquiry, Ms. Foss explained that the Office could “remove the other 2 authors: Cynthia Foss dba Hunter Foss Designs, Inc. and Marvic dba Brady-Built,” noting that “Brady-Built [sic] supplied photos and copy and [she] had to recreate their logo and make new beautiful page designs that incorporated selecting the photos to use and their placement on the page layered with typography, textures, and colors.”<sup>10</sup> Ms. Foss further informed the Office that “Cynthia Foss” “should be given as (exclusive) author and claimant.”<sup>11</sup> Based on this correspondence, the Office accepted Ms. Foss’s representations as true and accurate. It registered the claim on December 13, 2019, with an effective date of registration (“EDR”)<sup>12</sup> of December 3, 2018, and assigned it registration number VAu001378470 (“Registration”).

## II. The Court’s Request

Ms. Foss commenced this action on May 22, 2020.<sup>13</sup> She alleges that Defendants Marvic, Inc. d/b/a Brady-Built Sunrooms, Brady-Built, Inc., and John Does (“collectively, Defendants”) infringed her copyright in the Work.<sup>14</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Email from Cynthia Foss to U.S. Copyright Office (Dec. 5, 2019).

<sup>10</sup> *Id.* Ms. Foss further expounded that “Marvic dba Brady-Built only supplied a bunch of raw photos to me that I had to crop and position on the pages and they supplied [sic] a copy of their logo (2D Art) that I had to recreate from a paper copy into a final digital form, and I transformed the pieces into a final expressed layout, using artistically creative graphic design.” *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The EDR is the date the Office received a completed application, the correct deposit copy, and the proper filing fee. 17 U.S.C. § 410(d).

<sup>13</sup> Compl. at 1 (May 22, 2020), ECF No. 1; Am. Compl. at 1 (Sept. 21, 2020), ECF No. 9.

<sup>14</sup> Am. Compl. at 1.

As the Office understands the origins of this dispute, around 2006, Defendant Marvic, Inc. hired Ms. Foss to “update the pre-existing Marvic 2003 Brochure.”<sup>15</sup> Defendant Marvic paid Ms. Foss “for the design and creation of a 20-page brochure” and “provided the wording and the photographs . . . used in the brochure.”<sup>16</sup> Ms. Foss alleges that she “made many creative decisions” when designing the brochure that include “select[ing] and styliz[ing] the typefaces, colors, imagery, format, etc., for each page of the brochure, along with designing the brochure’s overall structure and order.”<sup>17</sup> According to Ms. Foss, her services did not include “copyright assignment or license to the [brochure] she produced,” and she understood that it would only be used internally at Defendant Marvic’s shops.<sup>18</sup> Defendant Marvic, however, began “to organize its broader marketing campaigns around” the brochure, including reproducing, publicly distributing, creating derivatives and modifications, and publicly displaying it without authorization from Ms. Foss.<sup>19</sup>

Defendants denied the infringement claim.<sup>20</sup> On May 12, 2025, in simultaneously filed motions, they challenged the validity of the Registration and ownership of the brochure.<sup>21</sup> Specifically, Defendants argued that Ms. Foss knowingly provided inaccurate information to the Office by identifying herself as the sole author and owner of the brochure, despite it being

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<sup>15</sup> Order at 2.

<sup>16</sup> Am. Compl. at 7.

<sup>17</sup> *Id.* at 7, 14; *see also id.* at 7 (explaining that “it was Ms. Foss who made the aesthetic and creative design choices pertaining to the visual image and appeal of the 20-page brochure”).

<sup>18</sup> *Id.* at 8–9.

<sup>19</sup> *Id.* at 9, 14–15.

<sup>20</sup> Def., Brady-Built, Inc.’s, Answer to Pl.’s First Am. Compl. with Affirmative Defenses and Jury Demand at 1, 10–11, 13–15 (Sept. 18, 2024), ECF No. 85; Def., Marvic, Inc. D/B/A Brady-Built Sunrooms’, Answer to Pl.’s First Am. Compl. with Affirmative Defenses and Jury Demand at 1, 10–11, 13–15 (Sept. 18, 2024), ECF No. 86.

<sup>21</sup> Defs., Brady-Built, Inc. and John Does’ Mot. for Summ. J. at 1 (May 12, 2025), ECF No. 96; Defs. Marvic, Inc. D/B/A/ Brady-Built Sunrooms (Misnomer) and John Does’ Mot. for Summ. J. at 1 (May 12, 2025), ECF No. 97.

“substantially derived from the graphics, text, and original 2003 Brochure” that Defendants provided to her.<sup>22</sup> Ms. Foss purportedly knew that: “(1) Marvic had supplied all of the text, photographs, and illustrations, (2) Marvic had created the content, (3) Marvic instructed Foss regarding the general layout of the content, (4) Marvic had a copyright in the content and the 2006 Brochure because Foss, by her own testimony, placed a copyright notation for Marvic, Inc. on the 2006 Brochure, and (5) the 2006 Brochure was entirely based upon the 2003 Brochure.”<sup>23</sup> Defendants asserted that Ms. Foss’s January 2025 deposition testimony and statements made to the Office during the registration application process support these allegations.<sup>24</sup> Thus, Defendants asked the Court to request that the Register advise it as to “whether registration would have been refused had the Copyright Office known that the applicant omitted the fact that the applied-for work was based on and derived from a third-party work that applicant did not create but which was given to the applicant in connection with a hired task, as explained in the attached motion paper [attaching this document].”<sup>25</sup>

On January 6, 2026, the Court granted Defendants’ motion, finding that “Defendants met their burden to satisfy the statutory criteria for a mandatory referral” to the Register.<sup>26</sup> In a subsequent email to the Office, the Court requested the advice of the Register on whether the alleged inaccuracies identified in the application would have caused her to refuse registration.<sup>27</sup>

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<sup>22</sup> Defs.’ Mem. in Supp. of Defs.’ Mot. for the Issuance of a Req. to the Register of Copyrights at 1, 3 (May 13, 2025) (“Defs.’ Mem. ISO Request”), ECF No. 107.

<sup>23</sup> *Id.* at 7–8.

<sup>24</sup> *Id.* at 1, 4, 13–14; *see also id.*, Ex. 2, ECF No. 107-2.

<sup>25</sup> Defs.’ Mot. for the Issuance of a Req. to the Register of Copyrights at 2 (May 12, 2025), ECF No. 102; Defs.’ Mem. ISO Request at 15.

<sup>26</sup> Order at 6–7; *see also id.* at 5 (“Defendants petitioned this Court without opposition to issue a request of the Copyright Office to inquire whether [Ms. Foss’s] copyright registration would have been refused had the Copyright Office known the context of her depositions taken on January 15 and 27, 2025.”).

<sup>27</sup> Request.

The Court listed the alleged inaccuracies as follows:

- a) Plaintiff Cynthia Foss failed to identify that copy (text), photos, illustrations, and overall layout, format, and design of the brochure were provided by a third-party and was derivative of existing work; [Dkt. No. 107 at 2-8].
- b) Another person provided Foss with the pre-existing photographs, illustrations, copy (i.e., wording), testimonials, and general instructions for how to lay out the content of the brochure and provided Foss with a copy of Marvic’s pre-existing 2003 Brochure, but Foss herself ultimately made the specific decisions on the layout, design, selection of pre-existing photography, arrangement of pre-existing photography, and coloration of the new Brochure; [Dkt. No. 107 at 2-8].
- c) Foss’s two prior applications to register the same brochure were refused and, in connection with her third attempt at registering the applied-for work, Foss stated, “I am the exclusive author and claimant to this graphic work. All 20 pages of graphics were created only by me,” and requested that the Copyright Office remove “Marvic dba Brady-Built” as an author despite the fact that the applied-for work included preexisting material such as photographs, text, and 2D artwork that was proprietary to Marvic and not Foss; Marvic owned a copyright in the content of the brochure; and Foss placed a copyright notation for Marvic, Inc. on the 2006 brochure.<sup>28</sup>

## ANALYSIS

### **I. Relevant Statutes, Regulations, and Agency Practice**

An application for copyright registration must comply with the requirements of the Copyright Act set forth in 17 U.S.C. §§ 408(a), 409, and 410. Regulations governing applications for registration are codified in title 37 of the Code of Federal Regulations at 37 C.F.R. §§ 202.1 to 202.24. Further, the principles that govern how the Office examines registration applications are set out in the *Compendium of U.S. Copyright Office Practices* (“*Compendium*”), an administrative manual that instructs agency staff regarding their statutory

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<sup>28</sup> *Id.*

and regulatory duties and provides expert guidance to copyright applicants, practitioners, scholars, courts, and members of the general public regarding Office practices and related principles of law. The Office publishes periodic revisions to the *Compendium* to reflect changes in the law or Office practices and provide additional guidance where necessary; these revisions are made available for public comment prior to finalization. Because Ms. Foss filed the Third Application in 2018, the governing principles the Office would have applied to evaluate the applications are set forth in the third version of the *Compendium* (“2017 *Compendium (Third)*”) that was released in September 2017.<sup>29</sup>

**A. Identification and Exclusion of Unclaimable Material, Including Preexisting Material**

A registration does not cover any “unclaimable material” that may appear in the claimed work. As the 2017 *Compendium (Third)* explains, “unclaimable material” includes “[p]reviously published material,” “[p]reviously registered material,” “[m]aterial that is in the public domain,” and “[c]opyrightable material that is owned by a third party.”<sup>30</sup> If a work “contains an appreciable amount of unclaimable material, the applicant should identify the unclaimable material that appears in that work and should exclude that material from the claim [by providing] . . . a brief, accurate description of the unclaimable material in the appropriate field/space of the application.”<sup>31</sup> The applicant must also identify the new material she intends to register.<sup>32</sup>

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<sup>29</sup> U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES (3d ed. 2017) (“2017 COMPENDIUM (THIRD)”), <https://www.copyright.gov/comp3/2017version/docs/compendium.pdf>.

<sup>30</sup> *Id.* § 621.1.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

As relevant here, where an applicant registers a work with “an appreciable amount of material that was published at any time before the application is submitted,” including material owned by the applicant or a third party, “the applicant should exclude that previously published material from the claim.”<sup>33</sup> The statute defines publication as the “distribution of copies . . . of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.”<sup>34</sup> The applicant must determine whether the work contains previously published material on the date that the work is submitted to the Office.<sup>35</sup>

Likewise, if an applicant intends to register a work that contains an appreciable amount of copyrightable material that is not owned by the claimant named in the application, that material should also be excluded from the claim.<sup>36</sup> The applicant must make this determination on the date that the work is submitted for registration, so that the application is limited to material owned by the claimant.<sup>37</sup>

Finally, the Copyright Act provides specific requirements for the registration of a derivative work, which is defined as a “work based upon one or more preexisting works” or a “work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship.”<sup>38</sup> The statute dictates that an application to register a derivative work must include “an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material

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<sup>33</sup> *Id.* § 621.4.

<sup>34</sup> 17 U.S.C. § 101 (defining “publication”). “[O]ffering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, [also] constitutes publication.” *Id.*

<sup>35</sup> 2017 COMPENDIUM (THIRD) § 621.4.

<sup>36</sup> *Id.* § 621.7.

<sup>37</sup> *Id.*

<sup>38</sup> 17 U.S.C. § 101 (defining “derivative work”).

covered by the copyright claim being registered.”<sup>39</sup> In light of this directive, the 2017 *Compendium (Third)* requires applications for derivative works to identify both the preexisting and new or revised material in cases where a work incorporates an “appreciable amount” of unclaimable material.<sup>40</sup> Identifying the new or revised material that the author contributed to a work and any material that is unclaimable “is essential to defining the claim that is being registered” and “ensures that the public record will be accurate.”<sup>41</sup> If the work is registered, the registration will cover “the new material that the author contributed to that work,” but it will not cover any unclaimable material that may appear in the work.<sup>42</sup>

In all cases, the Office must determine whether the new material created by the author named in the application contains a sufficient amount of original expression to satisfy the requirements for copyrightability.<sup>43</sup> This is the same standard that is required for determining whether copyright exists in any work. The author must contribute something more than a “merely trivial” variation.<sup>44</sup> “[T]he key inquiry is whether there is sufficient nontrivial expressive variation in the derivative work to make it distinguishable from the [preexisting] work in some meaningful way.”<sup>45</sup> The 2017 *Compendium (Third)* explains that “[m]iniscule variations,” such as changing the size of a preexisting work, and recasting a work from one

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<sup>39</sup> *Id.* § 409(9).

<sup>40</sup> 2017 COMPENDIUM (THIRD) § 621.1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* § 507.2. This means that a derivative work registration will not cover any previously published, previously registered, public domain, or third-party material that appears in the work.

<sup>43</sup> *Id.* § 311.2 (“The new authorship that the author contributed to the derivative work may be registered, provided that it contains a sufficient amount of original expression, meaning that the derivative work must be independently created and it must possess more than a modicum of creativity.” (citing *Waldman Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 782 (2d Cir. 1994)).

<sup>44</sup> *Id.* (citing *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102–03 (2d Cir. 1951)).

<sup>45</sup> *Id.* (quoting *Schrock v. Learning Curve International, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009)).

medium to another do not satisfy the originality requirement.<sup>46</sup> Likewise, while copyright may be available for the selection, coordination, and/or arrangement of preexisting material, the Office will not accept claims for the general layout or format of a book, page, or the like; spatial formats and layout designs are not copyrightable because they are templates for expression that do not constitute original expression.<sup>47</sup>

There are several scenarios, however, where exclusions and disclaimers are not required. For example, “[i]f the applicant intends to register a work that contains a minimal amount of unclaimable material, the applicant need not identify or disclaim that material in the application.”<sup>48</sup> Likewise, “[i]f it is clear that the claimant is not asserting a claim to copyright in the unclaimable material that appears in the work,” “the registration specialist may register the claim without communicating with the applicant” notwithstanding a failure to identify the unclaimable material in the appropriate field/space of the application.<sup>49</sup> In these circumstances, the registration specialist may annotate the registration record to clarify the extent of the claim and to identify material that is excluded from the claim.<sup>50</sup>

If an applicant determines that a disclaimer is required, the 2017 *Compendium (Third)* provides guidance on how to disclaim the unclaimable material.<sup>51</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* §§ 313.3(E), 906.5.

<sup>48</sup> *Id.* § 621.2, 621.9(A)(1).

<sup>49</sup> *Id.* § 621.9(A)(2), 621.2.

<sup>50</sup> *Id.* § 621.9, 621.2.

<sup>51</sup> *Id.* § 621.8.

## **B. Identifying the Author and Who May Submit an Application for Copyright Registration**

The Copyright Act provides that “the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim” if she submits an appropriate deposit, application, and fee to the Copyright Office.<sup>52</sup>

### *1) Identifying the Author*

An application for registration must include “the name . . . of the author or authors,” unless the work is anonymous or pseudonymous.<sup>53</sup> The Supreme Court has explained that as a general rule “the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection.”<sup>54</sup>

The 2017 *Compendium (Third)* explains that when completing the “author” field in a registration application, “the applicant should only provide the name(s) of the author(s) [or work made for hire author(s)] who created the copyrightable material that the applicant intends to register.”<sup>55</sup> “If the applicant intends to register a derivative work, the applicant should provide the name of the author or authors who created the new or revised material submitted for registration.”<sup>56</sup> Generally, “the applicant should not provide the name of the author(s) who created any preexisting material that appears in the derivative work.”<sup>57</sup> Likewise, the author field need not include the names of individuals whose contributions were “*de minimis* or uncopyrightable.”<sup>58</sup> Similarly, the applicant should not include “the name of any person(s) who

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<sup>52</sup> 17 U.S.C. § 408(a).

<sup>53</sup> *Id.* § 409(2).

<sup>54</sup> 2017 COMPENDIUM (THIRD) § 613.1 (discussing “who is the author?”); *see also Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989).

<sup>55</sup> 2017 COMPENDIUM (THIRD) § 613.3.

<sup>56</sup> *Id.* § 613.6.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* § 613.3.

created material that is not owned by the copyright claimant or material that will not be submitted for registration.”<sup>59</sup>

## 2) *Who May Submit an Application for Copyright Registration*

Applicable regulations explain that only certain parties may submit an application to the Office.<sup>60</sup> The 2017 *Compendium (Third)* explains that eligible parties include “[t]he author of the work[,] [t]he owner of all the exclusive rights in the work[,] [t]he owner of one or more—but less than all—of the exclusive rights in the work[,] or [a] duly authorized agent of any of the foregoing parties.”<sup>61</sup> No other parties are entitled to file an application for copyright registration.<sup>62</sup>

Additionally, before the Office issues a copyright registration, it will attempt to resolve several “essential issues,” including whether the correct author has been named and whether the claimant appears to have the right to claim copyright under the relevant requirements.<sup>63</sup> If the registration specialist examining the application determines that, for example, “[t]he applicant is not authorized to register a claim in the work” or that “[t]he claimant named in the application is not a proper copyright claimant,” the Office “will refuse to register” the claim.<sup>64</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> *See* 37 C.F.R. § 202.3(c)(1) (explaining that applications may be submitted by “any author or other copyright claimant of a work, the owner of any exclusive right in a work, or the duly authorized agent of any such author, other claimant, or owner”).

<sup>61</sup> 2017 COMPENDIUM (THIRD) § 402.

<sup>62</sup> *Id.* (citing 17 U.S.C. § 408(a) (stating that “the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim”)).

<sup>63</sup> *Id.* § 602.3 (discussing the “essential issues that should be resolved before the U.S. Copyright Office may complete a registration”); *see also id.* (“The Office will issue a registration if all of these questions are answered in the affirmative, if there are no other issues in the registration materials that might raise questions concerning the claim, and if all of the other legal and formal requirements have been met.”).

<sup>64</sup> *Id.* § 608.

### **C. Identifying the Copyright Claimant**

An application for registration must also include “the name and address of the copyright claimant.”<sup>65</sup> If the copyright claimant and the author of the Work listed on the application differ, the applicant must include “a brief statement of how the claimant obtained ownership of the copyright.”<sup>66</sup> Copyright Office regulations define a claimant as either the “author of a work” submitted for registration or “[a] person or organization that has obtained ownership of all rights under the copyright initially belonging to the author” of that work.<sup>67</sup>

### **D. Duplicate Claims and Post-Refusal Procedures**

As a general rule, “[i]f the Office discovers that an applicant submitted a claim that is an exact duplicate of another claim, the registration specialist may communicate with the applicant or may refuse to register the duplicate claim.”<sup>68</sup> The specialist “will not knowingly register a duplicate claim, regardless of whether the prior claim is pending or whether it has been registered or refused.”<sup>69</sup>

There is an exception to this rule for certain refusals based on procedural issues. The Office offers several types of applications to register works of authorship. If the Office determines that a particular work does not satisfy the requirements for the application submitted, it will refuse registration and instruct the applicant to resubmit the claim using the appropriate application.<sup>70</sup>

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<sup>65</sup> 17 U.S.C. § 409(1).

<sup>66</sup> *Id.* § 409(5).

<sup>67</sup> 37 C.F.R. § 202.3(a)(3); *see also* 2017 COMPENDIUM (THIRD) § 404 (discussing who may be a “copyright claimant”).

<sup>68</sup> 2017 COMPENDIUM (THIRD) § 602.4(E).

<sup>69</sup> *Id.*

<sup>70</sup> *See, e.g.*, U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 1405 (3d ed. 2021); Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 66627 (Dec. 27, 2018) (final rule); Streamlining the Single

In the event the Office refuses to register a work for substantive reasons and the applicant disagrees with the Office’s determination, the applicant may appeal the decision within the Office via an administrative procedure known as a first request for reconsideration.<sup>71</sup> If the Office upholds the registration specialist’s decision to refuse registration, the applicant may submit a second request for reconsideration. If the Office upholds the refusal to register following a second request for reconsideration, “an applicant may appeal that decision under the Administrative Procedure Act [] by instituting a judicial action against the Register of Copyrights in federal district court.”<sup>72</sup>

#### **E. Factual Assertions in Registration Applications**

Copyright Office regulations require applicants to make “[a] declaration [] that the information provided within the application is correct to the best of the [applicant’s] knowledge.”<sup>73</sup> Generally, the Office “accepts the facts stated in the registration materials, unless they are contradicted by information provided elsewhere in the registration materials or in the Office’s records.”<sup>74</sup>

There may be instances during the application process where further communication between the applicant and the Office may be necessary to clarify information in the application. It is not unusual for a registration specialist to correspond with an applicant about factual assertions if those assertions appear to conflict with other information in the application

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Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227 (Feb. 6, 2018) (notice of proposed rulemaking).

<sup>71</sup> 37 C.F.R. § 202.5(a); 2017 COMPENDIUM (THIRD) §§ 608, 1703.1.

<sup>72</sup> 2017 COMPENDIUM (THIRD) § 1706; *see* Administrative Procedure Act §§ 551–96.

<sup>73</sup> 37 C.F.R. § 202.3(c)(3)(iii).

<sup>74</sup> 2017 COMPENDIUM (THIRD) § 602.4(C).

materials.<sup>75</sup> Only if the Office determines that all the “legal and formal requirements” of title 17 have been met, will it register a claim to copyright and issue a certificate of registration.<sup>76</sup>

## II. Register’s Responses to the Court’s Question

Based on the foregoing statutory and regulatory standards, and the Office’s examining practices, the Register responds to the Court’s question as follows:

- a) *Alleged Inaccuracy a.: Plaintiff Cynthia Foss failed to identify that copy (text), photos, illustrations, and overall layout, format, and design of the brochure were provided by a third-party and was derivative of existing work.*

Had the Office known that a third party provided Ms. Foss with preexisting text, photographs, illustrations, along with the overall layout, format, and design of the brochure based upon a previously published version, which Ms. Foss did not disclose, the Office would not have issued the Registration. Instead, the Office would have asked Ms. Foss to clarify whether she made any copyrightable contributions to the Work.

As discussed above, if a work contains an appreciable amount of unclaimable material, the applicant should identify and exclude that material from the claim.<sup>77</sup> In addition to identifying any appreciable preexisting material, an application for a derivative work must also identify the new or revised material that is being claimed in the application.<sup>78</sup> In all cases, to be registrable as a derivative work, the new or revised material must represent a sufficient amount of creative expression.<sup>79</sup>

Here, Defendants allege that the Work is derivative of a previously published brochure. They further allege that Ms. Foss “failed to identify that copy (text), photos, illustrations, and

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<sup>75</sup> *Id.* § 603.2(C).

<sup>76</sup> 17 U.S.C. § 410(a); 2017 COMPENDIUM (THIRD) § 602.

<sup>77</sup> 2017 COMPENDIUM (THIRD) § 621.

<sup>78</sup> 17 U.S.C. § 409(9); 2017 COMPENDIUM (THIRD) § 621.1.

<sup>79</sup> 2017 COMPENDIUM (THIRD) § 311.2.

overall layout, format, and design of the brochure were provided by a third-party.”<sup>80</sup> Had the Office been aware of these facts, the registration specialist would have asked Ms. Foss whether she made any copyrightable contributions to the Work. If the registration specialist determined that Ms. Foss did not make any copyrightable contributions, the Office would have refused registration of the Work.

*b) Alleged Inaccuracy b.: Another person provided Foss with the pre-existing photographs, illustrations, copy (i.e., wording), testimonials, and general instructions for how to lay out the content of the brochure and provided Foss with a copy of Marvic’s pre-existing 2003 Brochure, but Foss herself ultimately made the specific decisions on the layout, design, selection of pre-existing photography, arrangement of pre-existing photography, and coloration of the new Brochure.*

Had the Office been aware of the facts stated in Alleged Inaccuracy b., the registration specialist would have corresponded with Ms. Foss to confirm her copyrightable contributions, and asked her to amend her authorship claim. New authorship that an author contributes to a derivative work may be registered, provided that it contains a sufficient amount of original expression.<sup>81</sup> While contributions such as “layout”<sup>82</sup> and “coloration”<sup>83</sup> are not protectable, the alleged selection and arrangement of preexisting photography may constitute original compilation authorship if it is sufficiently creative.<sup>84</sup>

Based on the facts provided in Alleged Inaccuracy b., it is unclear whether Ms. Foss’s selection and arrangement of preexisting photography would constitute a copyrightable selection and arrangement of preexisting materials. If she contributed original compilation authorship, the

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<sup>80</sup> Request.

<sup>81</sup> 2017 COMPENDIUM (THIRD) § 311.2.

<sup>82</sup> *Id.* § 906.5.

<sup>83</sup> 37 C.F.R. § 202.1(a).

<sup>84</sup> 2017 COMPENDIUM (THIRD) § 906.5 (“Copyright protection may be available for the author’s original selection and/or arrangement of specific content if it is sufficiently creative, but the copyright does not extend to the organization without that particular content.”).

Office would have requested Ms. Foss to amend her authorship statement by removing the claim in “2-d artwork” and providing a more appropriate description of her copyrightable contribution, such as “selection and arrangement of pre-existing photographs.” At the same time, the Office would have asked Ms. Foss to identify and exclude the preexisting photographs to accurately narrow the scope of her claim to the new compilation authorship.<sup>85</sup> If Ms. Foss’s contribution was not sufficiently original, the Office would have refused registration.

c) *Alleged Inaccuracy c.*: Foss’s two prior applications to register the same brochure were refused and, in connection with her third attempt at registering the applied-for work, Foss stated, “I am the exclusive author and claimant to this graphic work. All 20 pages of graphics were created only by me,” and requested that the Copyright Office remove “Marvic dba Brady-Built” as an author despite the fact that the applied-for work included preexisting material such as photographs, text, and 2D artwork that was proprietary to Marvic and not Foss; Marvic owned a copyright in the content of the brochure; and Foss placed a copyright notation for Marvic, Inc. on the 2006 brochure.

Alleged Inaccuracy c. presents two issues for consideration: (1) the Office’s practices related to duplicate claims, and (2) Ms. Foss’s eligibility to name herself as the Work’s author and claimant. The Office responds to each issue separately.

Duplicate Claims. Had the Office known that Ms. Foss’s two prior applications to register the same brochure were refused, the Office would have investigated each refusal to determine whether the applications were refused for substantive reasons.

As explained above, “[t]he Office will not knowingly register a duplicate claim, regardless of whether the prior claim . . . has been registered or refused.”<sup>86</sup> Unless a claim is

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<sup>85</sup> As noted above, if it is clear that the claimant is not asserting a claim to copyright in the unclaimable material that appears in the work, and identifies her authorship as the creative selection and arrangement of preexisting materials, the Office may register the claim without requiring the applicant to exclude the unclaimable material. *Id.* § 621.9(A)(2).

<sup>86</sup> *Id.* § 602.4(E).

refused for certain procedural defects (*e.g.*, the applicant submitted the claim on the wrong application), the Office will instruct the applicant to appeal the Office’s determination instead of resubmitting the claim.

Ms. Foss initially attempted to register her claim using the Single Application, which may only be used to register a claim in one work that is solely owned by the same author. The Office refused the First Application because it determined that the Work was not eligible for registration using the Single Application. During the pendency of the First Application, Ms. Foss submitted the Second Application to register the Work on the Standard Application. After examination, the registration specialist issued a letter refusing to register the claim for lack of copyrightability with instructions on how to request reconsideration. During the pendency of Ms. Foss’s Second Application, Ms. Foss submitted the Third Application, which resulted in the Registration at issue.

If the Office had been aware that Ms. Foss’s Second Application was refused on substantive grounds prior to issuing the Registration, the Office would have refused the Third Application as a duplicate claim. Depending on the date of this refusal, the Office would have informed Ms. Foss of her option to appeal the Office’s refusal of the Second Application according to the instructions provided in the Office’s letter.<sup>87</sup>

*Identifying the Author and Claimant.* Had the Office known that (1) the applied-for Work “included preexisting material such as photographs, text, and 2D artwork that was proprietary to Marvic and not Foss,” (2) “Marvic owned a copyright in the content of the brochure,” and (3) “Foss placed a copyright notation for Marvic, Inc. on the 2006 brochure,”<sup>88</sup>

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<sup>87</sup> Written requests for reconsideration must be received by the Office no later than three months from the date that appears in the Office’s refusal letter. 37 C.F.R. § 202.5(b)(3).

<sup>88</sup> Request.

the Office would not have issued the Registration. Instead, the Office would have asked Ms. Foss to clarify the authorship and ownership of the derivative work submitted for registration.

As noted above, to register a claim in a derivative work, the applicant should name the author, the party who created the new or revised material submitted for registration, and the claimant, who may be the author of the derivative work.<sup>89</sup>

Here, if Ms. Foss created the new or revised material in the derivative work, such as a revised compilation, then she could be named as the author and claimant of that material.<sup>90</sup> If Ms. Foss authored a sufficiently original revised compilation, the Office would have asked Ms. Foss to amend her authorship statement to describe her new authorship as “additional (or revised) selection and arrangement of preexisting photographs.” If Ms. Foss’s contribution merely amounted to that of a claim in the general layout or format of the Work, the Office would have refused registration.<sup>91</sup>

### **CONCLUSION**

After review of the available facts in this action and application of the relevant law, regulations, and Office practices, the Register hereby advises the Court that had the Office been aware, prior to registration, that the Work was based on a previously published brochure not

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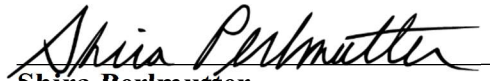
<sup>89</sup> 37 C.F.R. § 202.3(a)(3); *see also* 2017 COMPENDIUM (THIRD) §§ 404 (discussing who may be a “copyright claimant”), 613.6 (discussing how to identify the “author” of a derivative work). As a general rule, the applicant should not provide the name of the author of the preexisting material that appears in the work. 2017 COMPENDIUM (THIRD) § 613.6.

<sup>90</sup> Based on the record, it is unclear whether Defendants allege Ms. Foss transferred her rights to the Work. Even if she had, however, the author of a work may always be named as the claimant because the author always retains a legal or equitable interest in the copyright. 2017 COMPENDIUM (THIRD) § 619.7; *see* Registration of Copyright: Definition of Claimant, 77 Fed. Reg. 29257, 29258 (May 17, 2012); Applications for Registration of Claim to Copyright Under Revised Copyright Act, 42 Fed. Reg. 48944, 48945 (Sept. 26, 1977). Defendants also do not appear to allege the Work was a work made for hire.

<sup>91</sup> The record appears to suggest that Ms. Foss attempted to assert a claim in the Work’s layout and format. *See* Defs.’ Mem. ISO Request, Ex. 2 at 140:11–146:24, 147:24–151:07.

owned by Ms. Foss, and that Ms. Foss was not the author or copyright claimant of the artwork, text, and photographs, it would not have issued the Registration. Instead, the Office would have requested that Ms. Foss clarify her contributions to the derivative work. If Ms. Foss's contribution merely amounted to that of a claim in the general layout or format of the Work, the Office would have refused registration. Separately, had the Office known that Ms. Foss's Second Application was refused on substantive grounds prior to issuing the Registration, the Office would have refused the Third Application as a duplicate claim.

Dated: March 23, 2026

  
**Shira Perlmutter**  
Register of Copyrights and Director  
of the U.S. Copyright Office

## **APPENDIX A**

**Email from the Office of Hon. Margaret R. Guzman,  
U.S. District Judge, to U.S. Copyright Office (Jan. 8, 2026)**

**From:** [Jennifer Morris](#)  
**To:** [411filings](#)  
**Subject:** Subject: Request for Advice Under 17 U.S.C. 411(b)(2)  
**Date:** Thursday, January 8, 2026 8:50:01 AM  
**Attachments:** [420-cv-40057-MRG Foss Order for Issuance of Letter to Copyright Office FINAL.pdf](#)  
[Foss Copyright Registration.pdf](#)

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**CAUTION:** This email message has been received from an external source. Please use caution when opening attachments, or clicking on links.

ATTN: General Counsel, U.S. Copyright Office ([411filings@copyright.gov](mailto:411filings@copyright.gov))  
Subject: Request for Advice Under 17 U.S.C. 411(b)(2)

Dear General Counsel,

I am writing on behalf of the Hon. Judge Margaret R. Guzman from the United States District Court for the District of Massachusetts, regarding the case of Foss v. Marvic, Inc et al., No. 4:20-cv-40057-MRG (D. Mass.), currently pending before this Court. Pursuant to 17 U.S.C. § 411(b)(2), the Court requests the advice of the Register of Copyrights regarding the materiality of certain inaccuracies alleged in the copyright registration at issue in this case.

Specifically, the Court seeks the Register's opinion on whether the alleged inaccuracies in the copyright registration, Registration No. Vau 1-378-470, if known at the time of application, would have caused the Register of Copyrights to refuse registration. The Court has determined that the inaccuracies were knowingly included in the application, as required under 17 U.S.C. § 411(b)(1)(A).

The alleged inaccuracies are as follows:

- Plaintiff Cynthia Foss failed to identify that copy (text), photos, illustrations, and overall layout, format, and design of the brochure were provided by a third-party and was derivative of existing work; [Dkt. No. 107 at 2-8].
- Another person provided Foss with the pre-existing photographs, illustrations, copy (i.e., wording), testimonials, and general instructions for how to lay out the content of the brochure and provided Foss with a copy of Marvic's pre-existing 2003 Brochure, but Foss herself ultimately made the specific decisions on the layout, design, selection of pre-existing photography, arrangement of pre-existing photography, and coloration of the new Brochure; [Dkt. No. 107 at 2-8].
- Foss's two prior applications to register the same brochure were refused and, in connection with her third attempt at registering the applied-for work, Foss stated, "I am the exclusive author and claimant to this graphic work. All 20 pages of graphics were created only by me," and requested that the Copyright Office remove "Marvic dba Brady-Built" as an author despite the fact that the applied-for work included preexisting material such as photographs, text, and 2D artwork

that was proprietary to Marvic and not Foss; Marvic owned a copyright in the content of the brochure; and Foss placed a copyright notation for Marvic, Inc. on the 2006 brochure.

For your review, I have attached the following documents:

- A copy of the copyright registration at issue.
- The court's order referring this matter to the Register of Copyrights.

The relevant pleadings and evidence submitted by the parties can be found on the Court's docket associated with Foss v. Marvic, Inc et al., No. 4:20-cv-40057-MRG (D. Mass.), Dkt. No. 107.

Should you require any additional information or documentation, please do not hesitate to contact me directly at [Jennifer\\_Morris@mad.uscourts.gov](mailto:Jennifer_Morris@mad.uscourts.gov).

Thank you for your attention to this matter. The Court respectfully requests the Register's advice within thirty (30) business days.

Sincerely,

Jennifer Morris, MPH, Esq.  
Term Law Clerk to the Hon. Margaret R. Guzman  
United States District Court for the District of Massachusetts  
595 Main Street,  
Worcester, MA 01608  
[Jennifer\\_Morris@mad.uscourts.gov](mailto:Jennifer_Morris@mad.uscourts.gov)



This case has a lengthy procedural history, which has been properly outlined by previous court decisions, including Foss v. Marvic et al., 103 F. 4th 887 (1st Cir. 2024). [ECF No. 76 at 2-9]. This Court will not repeat the eight-year history once more. In short, the case involving Marvic’s 2006 Brochure was initiated in January 2018, where summary judgment was later granted for the Defendants. See Foss v. Marvic, 365 F. Supp. 3d 164 (D. Mass. 2019) (“Action I”). The present action was filed on May 22, 2020 (“Action II”). [ECF No. 1]. Ms. Foss has brought two appeals before the First Circuit regarding the brochure at issue here. See Foss v. Marvic Inc., 994 F. 3d 57 (1st Cir. 2021) (“Appeal I”); Foss v. Marvic et al., 103 F. 4th 887 (1st Cir. 2024) (“Appeal II”). At the conclusion of the second appeal, one claim remains in the case for the District Court’s consideration at summary judgment, Ms. Foss’s copyright infringement claim against Marvic and Brady-Built.

**b. The Brochure**

Around 2006, Marvic hired Cynthia Foss to update the pre-existing Marvic 2003 Brochure. [ECF No. 107 at 3]. Marvic, prior to its contract with Ms. Foss, had been using brochures to market its products and services for approximately a decade. [Id. at 3; ECF No. 99 ¶ 5]. The 2003 Brochure was twenty pages long consisting of paragraphs of texts, images, customer testimonials, and photographs. [ECF No. 107 at 3]. “On page 2 of the 2003 Brochure, the bottom left-hand corner bears the notation ‘© Marvic, Inc. 2003’”. [Id.]. Ms. Foss was given the 2003 Brochure as a reference for her work. [Id.] The 2006 Brochure created by Foss was twenty pages long, and included many of the same paragraphs of texts, images, customer testimonials, and photographs provided by Marvic and the notation “© 2006 Marvic, Inc.” [Id.] In Ms. Foss’s deposition testimony she states that she “obviously worked a lot out of [Marvic’s] old brochure” when creating the 2006 Brochure. [Id. (citing Ex. 2, 149:6-12)].

### **c. Foss's Application to the US Copyright Office**

In 2018, during the pendency of her first litigation, Foss applied to the U.S. Copyright Office (“Copyright Office”) for her work on the 2006 Brochure. [ECF No. 99 ¶ 60]. Over a ten-month period, Foss applied for a copyright registration on at least three occasions, and her application for registration was denied twice. [ECF No. 107 at 5-8].

Foss first applied for copyright registration (No. 1-6335069771) on February 28, 2018, as “One Work by One Author,” titling the work “Brady Built Sunrooms Catalog Design © 2006 Hunter Foss Design” and listing “Cynthia Alyson Foss” as the sole author. [ECF No. 107 at 5 (citing Ex. 7 at 23)]. Defendants argue that for these applications, “Foss knew that (1) Marvic provided the text, photographs, and illustrations . . . contained therein, (2) the 2006 Brochure was based on the 2003 Brochure, and (3) Foss herself added ‘© 2006 Marvic, Inc.’ to page 2 of the 2006 Brochure.” [ECF No. 107 at 5 (citing Ex. 7 at 23)].

Approximately, ten months later, on December 4, 2018, an agent from the Copyright Office informed Foss that it would not “‘register a claim in artwork that is based only on the format, layout or the arrangement of material on the printed page or a webpage’ because ‘copyright cannot protect the layout, format, or overall graphic design of a page’” and requested Foss identify what she sought to register. [ECF No. 107 at 6 (citing Ex. 7 at 23)]. Foss relayed to the Copyright Office that she “created the whole 20 pages of graphic works into 1 whole full catalog of design.” [Id.] In response, on December 12, 2018, the Copyright Office subsequently denied Foss’s Application (No. 1-6335069771) because Foss was not the author of the photographs or text. [Id.].

On March 19, 2018, while her first application was still pending, Foss filed a second application for registration (No. 1-6400839751) wherein she titled the work “Brady-Built Sunrooms 20 pg. Brochure Design © Hunter Foss Design 2006” and listed the author as “Cynthia

Alyson Foss.” [Id. at 5]. The second application (No. 1-6400839751) was denied in November 2018, because Foss’s application “was filed to cover the design and layout of the catalog” and “[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 7]

Finally, Ms. Foss on December 3, 2018, applied for registration for the third time (No. 1-6294803781) [Id.]. On this application, Ms. Foss adjusted her application, listing the authors as “Cynthia Alyson Foss,” “Cynthia Foss dba Hunter Foss Design, Inc.,” and “Marvic Inc. dba Brady-Built [sic] Sunrooms, Inc.” [Id.]. Two days later, an agent from the Copyright Office asked Foss to specify the “artwork” she was seeking to register. [Id.]. Foss informed the agent that she was “‘the exclusive author and claimant to [the 2006 Brochure]’ and that ‘[a]ll 20 pages of graphics were created only by [Foss],’ and further requested that the Copyright Office remove ‘Marvic dba Brady-Built’ as an author.” [Id.]

## II. LEGAL STANDARD

To succeed on a claim of copyright infringement under 17 U.S.C. §§ 106 (1)-(3), (5), Ms. Foss must “establish 1) ownership of a valid copyright, and 2) copying of constituent elements of the work that are original.” Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991); Strike 3 Holdings, LLC v. Doe, 757 F.Supp.3d 99, 103, 103 (D. Mass. 2024). An essential element of a copyright infringement claim is to possess a valid copyright registration. 17 U.S.C. § 411(a).

Before a Court may nullify a copyright registration, the Court must obtain an opinion from the Copyright Office confirming that the Register would have denied the application if it were presented with the relevant facts of the litigation. 17 U.S.C. § 411(b)(2) (“In any case in which inaccurate information . . . is alleged, the court *shall* request the Register of Copyrights to advise

the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.") (emphasis added); see Palmer/Kane LLC v. Rosen Book Works LLC, 188 F. Supp.3d 347, 348 (S.D.N.Y. 2016) (citing cases); see generally, Lopez v. Davis, 531 U.S. 230, 241 (2001) (noting Congress's use of the word "shall" to impose discretionless obligations). A court must request advice from the Copyright Office when there are allegations that the inaccurate information "was included on the application for copyright registration with knowledge that it was inaccurate," and not a mere good-faith mistake. 17 U.S.C. § 411(b)(1)(A); Unicolors, Inc. v. H&M Hennes & Mauritz, L.P., 595 U.S. 178, 187 (2022) (holding that "it would make no sense if §411(b) left copyright registrations exposed to invalidation based on applicants' good-faith misunderstandings of the details of copyright law.")

### **III. DISCUSSION**

Plaintiff's only remaining claim in this case is one for copyright infringement. [See ECF No. 75, Appeal II, Decision]. Plaintiff in her Amended Complaint asserts that Marvic, Brady Built, and its John Doe employees directly and/or indirectly infringed Ms. Foss' copyright in the brochure through reproduction, derivation, distribution, and display. [Am. Compl., ECF No. 9 ¶¶ 68-72].

Defendants argue that Plaintiff Foss knowingly misrepresented her work to the Copyright Office to obtain a Copyright in work product that was not copyrightable, and therefore she is not the rightful owner of the copyright associated with the 2006 Brochure. [See generally, ECF Nos. 96, 97, 107]. In response to Ms. Foss's deposition testimony, Defendants petitioned this Court without opposition to issue a request of the Copyright Office to inquire whether her copyright registration would have been refused had the Copyright Office known the context of her depositions taken on January 15 and 27, 2025. [ECF No. 107].

The Defendants, in their motion for issuance, argue that Foss, on her third attempt to receive a copyright registration, intentionally misrepresented her contributions to the 2006 Brochure, adjusting her application after two denials to state that she was the sole author and owner of the 2006 brochure. [ECF No. 107 at 5 (citing Ex. 7 at 23)]. The Defendants in their motion, outline how Ms. Foss adjusted her registration application after communications with the Copyright Office, eventually claiming to the Register that she was “the exclusive author and claimant to this graphic work. All 20 pages of graphics were created only by me,” intentionally misrepresenting the fact that the photos, illustrations, and the text were pulled from the 2003 Brochure. [Id. at 5-8]. Defendants assert that the misrepresentations made by Ms. Foss in her applications were material and require the invalidation of her copyright registration. Id.; § 411(b)(1)(B). Plaintiff has not filed any opposition or presented any argument against the issuance of the letter to the Copyright Office.

After careful review of the Defendants’ pending motions, the Court determined that Defendants met their burden to satisfy the statutory criteria for a mandatory referral, and the Court is obligated to send a letter to the Copyright Office in this action pursuant to 17 U.S.C. § 411(b)(2). On August 4, 2025, during a virtual status conference, the Court requested that the parties confer regarding the language of their proposed questions with the objective of reaching agreement on appropriate phrasing and file a joint draft letter to issue to the Copyright Office. [ECF No. 122]. The parties were unable to reach an agreement on proposed language, therefore, the Court will draft the letter with consideration to the parties’ separate filings. [ECF Nos. 123, 124]. The letter will be promptly issued to the Copyright Office to determine the copyright registrations’ validity.

#### **IV. CONCLUSION**

For the reasons stated above, the Motion for the Issuance of a Request to the Register of Copyrights is **GRANTED**. [ECF No. 102].

**SO ORDERED.**

Dated: January 6, 2026

/s/ Margaret R. Guzman  
Margaret R. Guzman  
United States District Judge

# Exhibit C

Ms. Foss' Certificate of  
Copyright Registration

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

United States Register of Copyrights and Director

Registration Number

**VAu 1-378-470**

Effective Date of Registration:

December 03, 2018

Registration Decision Date:

December 13, 2019

## Title

**Title of Work:** Brady-Built Sunrooms Catalog © 2006 Catalog 20 Page Original Graphic Work by Hunter Foss Design

## Completion/Publication

**Year of Completion:** 2006

## Author

- Author:** Cynthia Alyson Foss
- Pseudonym:** Hunter Foss Design
- Author Created:** 2D artwork/graphic design
- Work made for hire:** No
- Citizen of:** United States
- Domiciled in:** United States
- Year Born:** 1973
- Pseudonymous:** Yes

## Copyright Claimant

**Copyright Claimant:** Cynthia Alyson Foss  
9 Ansonia Rd, B, Worcester, MA, 01605, United States

## Limitation of copyright claim

**Material excluded from this claim:** photograph, 2-D artwork

**New material included in claim:** 2D artwork/graphic design

## Rights and Permissions

**Organization Name:** Hunter Foss Design  
**Name:** Cynthia Alyson Foss  
**Email:** cfoss@hunterfoss.com

Telephone: (401)924-4482  
Alt. Telephone: (508)757-9024  
Address: 9 Ansonia Rd  
B  
Worcester, MA 01605 United States

## Certification

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Name: Cynthia Alyson Foss  
Date: December 03, 2018

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Correspondence: Yes