

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DUCKY LTD.,)	CASE NO.: 24-CV-02268-PHK
)	
Plaintiff,)	MAGISTRATE JUDGE PETER H.
)	KANG
vs.)	
)	
IVILIIA MILLIONIC IT SP. Z O.O.,)	
)	
Defendant.)	

**RESPONSE OF THE U.S. COPYRIGHT OFFICE
TO REQUEST PURSUANT TO 17 U.S.C. § 411(b)(2)**

On June 4, 2025, pursuant to 17 U.S.C. § 411(b)(2), the Court requested advice from the Register of Copyrights (“Register”) on whether the Register would have refused to grant twenty-two (22) registrations for two-dimensional artwork featured in the mobile application game Melon Sandbox (the “Game”) to defendant Iviliia Millionic IT Sp. z o.o. (“Iviliia”) (the “Disputed Registrations”), if the U.S. Copyright Office (“Copyright Office” or “Office”) had known any or all of the information set forth by the Court in eight numbered paragraphs (the “Posited Information”).¹

The Posited Information appears to be focused on facts regarding the parties’ ownership interest in the works at issue and the legal relationship between the parties—that is, whether Defendant Iviliia was correctly identified as the claimant of the works.

¹ Order Granting Mot. Seeking Reference of Questions to the U.S. Copyright Office (17 U.S.C. § 411(b)(2)) at 7–8 (“Order”), ECF No. 46.

The Office submits the following response.² Based on the legal standards and examining practices set forth below, the key inquiry is whether Iviliia owned less than all of the exclusive rights in a work *as of the date that its respective application was received in the Office*.

Therefore, had the Office known that Iviliia did not own any rights or interests in the Game or in the artwork displayed in the Game as of the date a particular application for a Disputed Registration was received in the Office, Iviliia would not qualify as a claimant and the Office would have refused to register that work to Iviliia. The Office provides a work-by-work analysis of the relevant dates in Section II.

BACKGROUND

I. Examination History

A review of the Copyright Office's records reveals the following:

A. Disputed Registrations

The Office received the applications for the 22 Disputed Registrations between June 13, 2023 and July 25, 2023.

On June 13, 2023, the Office received four applications to register two-dimensional artworks titled "apple hero," "corn hero," "pumpkin hero," and "watermelon hero." The applications identified Serhii Osadchyi as the author and Iviliia as the claimant, and included the transfer statement "by written agreement." The applications' Special Handling Comments, however, referred to "the author's copyrights," suggesting that they may still belong to Osadchyi. To clarify, the Office inquired whether (i) Osadchyi created the work in the course of his duties at Iviliia (in which case the work would be a work-made-for-hire for copyright purposes and

² Requests under section 411(b) are directed to the Register of Copyrights as director of the Copyright Office. 17 U.S.C. 411(b); *see id.* § 701. The Copyright Office's Office of Registration Policy and Practice "administers the U.S. copyright registration system and advises the Register of Copyrights on questions of registration policy and related regulations and interpretations of copyright law." 37 C.F.R. § 203.3(e).

Iviliia would be the author and claimant), or if (ii) Osadchyi created the work as a freelance artist and Iviliia obtained the copyright by written transfer agreement.³ The applicant responded to confirm that “Serhii Osadchyi created the work as a freelance artist, and IVILIIA MILLIONIC IT Sp. Z o.o. acquired the copyright by written agreement.”⁴ Based on the information provided in the application and as subsequently clarified in correspondence, the Office registered the works as follows:

Title of Work	Effective Date of Registration⁵	Registration Number
apple hero	June 13, 2023	VA0002353215
corn hero	June 13, 2023	VA0002353217
pumpkin hero	June 13, 2023	VA0002353216
watermelon hero	June 13, 2023	VA0002353214

On July 20, 2023, the Office received ten applications to register two-dimensional artwork titled “ambush mutant,” “Blind figure hero,” “Humanoid monster hero,” “Jester mutant,” “Jumbo monster,” “Mechanoid hero,” “rush monster,” “Screech hero,” “Stinger monster,” and “Toilethead hero.” The applications identified Osadchyi as the author and Iviliia as the claimant, and included the transfer statement “by written agreement.” Based on the information provided in the application, the Office registered the works as follows:

³ Emails from Paul Covey, Registration Specialist, U.S. Copyright Office, to Mariya Ortynska (June 13, 2023).

⁴ Emails from Mariya Ortynska to Paul Covey, Registration Specialist, U.S. Copyright Office (July 4, 2023). In the subsequent applications received by the Office on July 20, 2023 and July 25, 2023, the applicant obviated the need for further inquiry by referring to the “owner’s copyrights” instead of the “author’s copyrights” in the Special Handling Comments.

⁵ The effective date of registration is the date the Office received a completed application, the correct deposit copy, and the proper filing fee. 17 U.S.C. § 410(d).

Title of Work	Effective Date of Registration	Registration Number
ambush mutant	July 20, 2023	VA0002355331
Blind figure hero	July 20, 2023	VA0002355282
Humanoid monster hero	July 20, 2023	VA0002355283
Jester mutant	July 20, 2023	VA0002355339
Jumbo monster	July 20, 2023	VA0002355255
Mechanoid hero	July 20, 2023	VA0002355281
rush monster	July 20, 2023	VA0002355327
Screech hero	July 20, 2023	VA0002355284
Stinger monster	July 20, 2023	VA0002355340
Toilethead hero	July 20, 2023	VA0002355338

On July 25, 2023, the Office received eight applications to register two-dimensional artwork titled “Cyan mutant,” “Goopy Monster,” “Green Monster,” “Looky Monster,” “Melon sky background,” “Orange monster,” “Purple Monster,” and “Yellow monster.” The applications identified Osadchyi as the author and Iviliia as the claimant, and included the transfer statement “by written agreement.” Based on the information provided in the application and as subsequently clarified in correspondence,⁶ the Office registered the works as follows:

⁶ Regarding “Melon sky background,” the Office observed material that indicated the work was part of a larger audiovisual work, and thus, questioned whether it was first published as part of a videogame or larger work. Email from Elizabeth Stringer, Registration Specialist, U.S. Copyright Office, to Iryna Ortynska (July 25, 2023). The authorship in an audiovisual work generally is considered a single, integrated work and must be registered as a whole. The applicant responded that the work was first published separately from the game on the date provided in the application, and that it had not filed a registration for the game. Email from Iryna Ortynska to Elizabeth Stringer, Registration Specialist, U.S. Copyright Office (Sept. 18, 2023).

Title of Work	Effective Date of Registration	Registration Number
Cyan Mutant	July 25, 2023	VA0002355604
Gooley Monster	July 25, 2023	VA0002355557
Green Monster	July 25, 2023	VA0002355602
Looky Monster	July 25, 2023	VA0002355605
Melon sky background	July 25, 2023	VA0002363785
Orange Monster	July 25, 2023	VA0002355606
Purple Monster	July 25, 2023	VA0002355556
Yellow monster	July 25, 2023	VA0002355608

II. The Court’s Request

As the Office understands the dispute, Plaintiff Ducky Ltd. alleges it “owns all rights and interests in the mobile application game, Melon Sandbox (the “Game”), including all copyrights to the Game and all copyrights to the underlying artwork and other elements of the Game.”⁷ It further alleges that Iviliia (i) “has no rights or interest in the Game,” (ii) “knew that it did not have any rights or interest in the Game or the artwork displayed in the Game when it submitted the applications” for the Disputed Registrations, and (iii) used the Disputed Registrations “to extort settlement payments and licensing fees from third parties who had published derivative works based on the Game,” and “to request the removal of the Game from the Apple App Store and the Google Play Store.”⁸ Serhii Osadchyi is a principal of Iviliia.⁹ Ducky seeks, among other relief, a declaratory judgment to invalidate the Disputed Registrations.¹⁰

⁷ Compl. ¶ 1, ECF No. 1.

⁸ *Id.* ¶¶ 2, 4–5, 48.

⁹ Order at 8.

¹⁰ *Id.*, Prayer for Relief, ¶5.

Ducky filed a motion for an order referring the issue of copyright validity to the U.S. Copyright Office under 17 U.S.C. § 411(b),¹¹ which the Court granted.¹² The Court granted Ducky's motion requesting the Office's advice on whether any or all of the Posited Information as set forth in the following eight numbered paragraphs, if known, would have caused the Office to refuse to register the Disputed Registrations to Iviliia:

1. In its applications for each of the Disputed Registrations, Defendant Iviliia claimed that it obtained rights in the underlying works by written agreement, but has produced no such agreement.
2. Plaintiff Ducky is the sole owner of all rights and title in the Game, including all copyrights.
3. Defendant Iviliia was not involved in the creation, development, authorship, or publication of the Game or in the artwork displayed in the Game.
4. Defendant Iviliia does not own any rights or interests in the Game or in the artwork displayed in the Game.
5. Defendant Iviliia has no relationship with Plaintiff Ducky nor Plaintiff's predecessors-in-interest to Plaintiff's rights in the Game.
6. Defendant Iviliia told Plaintiff's counsel that Defendant Iviliia asserted the Disputed Registrations against third parties on behalf of Plaintiff Ducky.
7. Defendant Iviliia has entered into multiple licensing agreements with third parties under which the third parties are obligated to pay monetary licensing fees to the Disputed Registrations.
8. Defendant Iviliia's principal, Serhii Osadchyi, has engaged in similar actions with respect to other companies. See *Invisible Narratives LLC v. Next Level Apps Tech.*, Civil Action No. 5:25-cv-01644-NW (N.D. Cal.).¹³

¹¹ Plaintiff Ducky Ltd.'s Notice of Motion and Motion for Order Referring Issue of Copyright Validity to U.S. Copyright Office under 17 U.S.C. § 411(b); Memorandum of Points and Authorities ("Section 411(b) Motion"), ECF No. 37. Although permissible, a motion by a party is not required. *See* 17 U.S.C. § 411(b)(2) ("[T]he 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.").

¹² Order at 6–8.

¹³ *Id.*

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, Third Edition* (“*Compendium*”), an administrative manual that instructs agency staff regarding their statutory 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 of the *Compendium* to provide additional guidance where necessary and to reflect changes in the law or Office practices; these revisions are made available for public comment prior to finalization. Because Iviliia filed its registration applications in 2023, the governing principles the Office would have applied to evaluate the applications are set forth in the current edition of the *Compendium*.¹⁴

A. Requirements to be a Claimant

The Copyright Act requires that an application for copyright registration include “the name and address of the copyright claimant.”¹⁵ The claimant must be (i) “the author of a work” or (ii) “[a] person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.”¹⁶ Accordingly, the *Compendium* observes that a “person or

¹⁴ U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES (3d ed. 2021) (“2021 COMPENDIUM (THIRD)”), <https://copyright.gov/comp3/docs/compendium.pdf>.

¹⁵ 17 U.S.C. § 409(1).

¹⁶ 37 C.F.R. § 202.3(a)(3). *Accord* 2021 COMPENDIUM (THIRD) §§ 404, 619.1.

entity who owns one or more — but less than all — of the exclusive rights in a work is not eligible to be a claimant.”¹⁷

The *Compendium* also elaborates on the timing element for qualifying as a claimant. It provides that “[a]n individual or entity that owns all of the rights under copyright that initially belonged to the author may be named as the copyright claimant at any time during the life of the copyright, *provided that the party owns all of the rights, whether by transfer, bequeath, or operation of law, as of the date that the application is received in the Office.* . . .”¹⁸

The *Compendium* further provides that the Office will refuse to register a work if “[t]he claimant named in the application is not a proper copyright claimant.”¹⁹ It adds that “[t]he Office will not knowingly allow a party that owns less than all the exclusive rights in a work to register the copyright in his or her own name, because this would create a misleading and inaccurate public record and it would subvert the purpose of the registration system.”²⁰

II. The Office’s Response to the Court’s Request

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

A. Ownership and Claimant (Paragraphs 1-2, 4-5)

Paragraphs 1-2 and 4-5 appear directed at the parties’ legal relationship and their ownership interests in the works. The Court asks, among other things, whether the Office would have granted the Disputed Registrations had it been aware that “Defendant Ivillia does not own any rights or interests in the Game or in the artwork displayed in the Game” (Paragraph 4) and “Plaintiff Ducky is the sole owner of all rights and title in the Game,

¹⁷ 2021 COMPENDIUM (THIRD) § 404. *Accord id.* § 619.1.

¹⁸ *Id.* § 619.3 (emphasis added).

¹⁹ *Id.* § 608.

²⁰ *Id.* § 619.1.

including all copyrights” (Paragraph 2).²¹ These facts would be relevant to the Office’s analysis as to whether Iviliia was correctly identified as the claimant of the works. The analysis would turn, however, on Iviliia’s ownership rights and interests at the time of the registration claims for each Disputed Work was filed, not on its current ownership.²²

As explained above, the claimant must be (i) “the author of a work” or (ii) “[a] person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.”²³ If the claimant is the latter, such person or organization must “own[] all of the rights, whether by transfer, bequeath, or operation of law, as of the date that the application is received in the Office. . . .”²⁴ Because the applications for the Disputed Registrations did not identify Iviliia as the author, Iviliia would qualify as a claimant only if it owned all rights under the copyright initially belonging to the author for a work on the date that the application for such work was received in the Office.

Had the Office known that Plaintiff Ducky is the sole owner and Defendant Iviliia lacks ownership, it would have inquired as to whether this was the case during the relevant time period for each work.²⁵ Had the Office then learned that Iviliia did not own any rights or interests in the Game or in the artwork displayed in the Game as of the date a particular application for a

²¹ Order at 7–8.

²² Without opining on the veracity of the allegations, the Office notes that Plaintiff appears to allege that Iviliia has not ever owned the Disputed Works. *See* Compl. § 48 (alleging that Iviliia “did not have any rights or interest in the Game or the artwork displayed in the Game when it submitted the applications”); Section 411(b) Motion at 1 (Iviliia “has not obtained any rights to the Game or the artwork in the Game”).

²³ 37 C.F.R. § 202.3(a)(3). *Accord* 2021 COMPENDIUM (THIRD) §§ 404, 619.1.

²⁴ 2021 COMPENDIUM (THIRD) § 619.3.

²⁵ Paragraphs 1 and 5 enumerate specific circumstances that could support a claim in ownership rights or interests. *See* Order at 6–8, ¶ 1 (written agreement); ¶ 3 (involvement in creation, development, authorship, or publication); ¶ 5 (predecessor-in-interest). Had the Office known one or more of these facts at the time the application was filed, it would have corresponded with the applicant to determine whether the applicant (1) identified the proper claimant, and (2) was authorized to submit the application. 37 C.F.R. § 202.3(c)(1) (“As a general rule, an application for copyright registration 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.”).

Disputed Registration was received in the Office, Iviliia would not qualify as a claimant and the Office would have refused to register that work with Iviliia named as the copyright claimant.

The Office would have made its determinations as follows:

(1) If the Office had known that Iviliia did not own any rights or interests in the Game or in the artwork displayed in the Game as of June 13, 2023 (or if the Office had known that Iviliia owned fewer than all the exclusive rights as of that date), it would have refused the registrations for:

- a. “apple hero” (registration number VA0002353215),
- b. “corn hero” (registration number VA0002353217),
- c. “pumpkin hero” (registration number VA0002353216), and
- d. “watermelon hero” (registration number VA0002353214).

(2) If the Office had known that Iviliia did not own any rights or interests in the Game or in the artwork displayed in the Game as of July 20, 2023 (or if the Office had known that Iviliia owned fewer than all the exclusive rights as of that date), it would have refused the registrations for

- a. “ambush mutant” (registration number VA0002355331),
- b. “Blind figure hero” (registration number VA0002355282),
- c. “Humanoid monster hero” (registration number VA0002355283),
- d. “Jester mutant” (registration number VA0002355339),
- e. “Jumbo monster” (registration number VA0002355255),
- f. “Mechanoid hero” (registration number VA0002355281),
- g. “rush monster” (registration number VA0002355327),
- h. “Screech hero” (registration number VA0002355284),

- i. “Stinger monster” (registration number VA0002355340), and
- j. “Toilethead hero” (registration number VA0002355338).

(3) If the Office had known that Iviliia did not own any rights or interests in the Game or in the artwork displayed in the Game as of July 25, 2023 (or if the Office had known that Iviliia owned fewer than all the exclusive rights as of that date), it would have refused the registrations for:

- a. “Cyan Mutant” (registration number VA000235604),
- b. “Gooley Monster” (registration number VA0002355557),
- c. “Green Monster” (registration number VA0002355602),
- d. “Looky Monster” (registration number VA0002355605),
- e. “Melon sky background” (registration number VA0002363785),
- f. “Orange Monster” (registration number VA0002355606),
- g. “Purple Monster” (registration number VA0002355556), and
- h. “Yellow monster” (registration number VA0002355608).

B. Other Paragraphs (Paragraphs 3, 6-8)

The Posited Information in the remaining paragraphs would not have altered the Office’s registration decisions.

Paragraph 3, which provides that Iviliia “was not involved in the creation, development, authorship, or publication of the Game or in the artwork displayed in the Game,” is consistent with the information provided in the applications. None of the Disputed Registrations claimed that Iviliia was an “author” of the works.

Paragraphs 6 through 8 posit facts that are extraneous to the Office’s examination of the application materials.

CONCLUSION

Based on a review of the relevant law, regulations, and the Copyright Office's practices, the Office hereby advises the Court that had it known that Iviliia did not own any rights or interests in the Game or in the artwork displayed in the Game as of the date a particular application for a Disputed Registration was received in the Office (or if the Office had known that Iviliia owned any fewer than all the exclusive rights as of that date), Iviliia would not qualify as a claimant and the Office would have refused to register that work with Iviliia named as the copyright claimant.

Dated: September 2, 2025