

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

PATRICIA CHAMBERS, on her own
behalf and as next friend on behalf of
minor child, S.W.,

Plaintiff,

v.

STEPHANIE GREEN-STUBBS; and
STEPHANY'S VOCAL &
PERFORMANCE TRAINING STUDIOS,
LLC,

Defendants.

Civil Action No. 1:19-CV-093-GHD-DAS

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

On September 17, 2020, pursuant to 17 U.S.C. § 411(b)(2), the Court requested advice from the Register of Copyrights (the "Register") on the following question:

[W]hether the inaccuracies alleged in this case—namely that Defendant Green-Stubbs listed herself as the sole creator behind the song 'Shake Rag' in her application for copyright registration, despite knowing that the original creators of the lyrics and melody for the song are the Plaintiff and her granddaughter S.W.—would have caused the Register of Copyrights to refuse registration, if the inaccuracies had been known.¹

The Register hereby submits her response.

BACKGROUND

A review of the records of the U.S. Copyright Office (the "Office") shows that the Office received an application to register a musical work titled "ShakeRag...Not Forgotten!" (the

¹ Request at 5.

“Musical Work”) on April 19, 2017.² The application identified Stephanie Denise Stubbs (“Green-Stubbs”) as the author of and copyright claimant for the Musical Work. The application stated that the Musical Work was created in 2017 and indicated that Green-Stubbs had authored the “music, lyrics, [and] musical arrangement.” The Office registered the Musical Work with an effective date of registration of April 19, 2017, and assigned registration number SRu 1-299-941.³ Based on the information provided in the application, the Office had no reason to question the representations in the application and accepted them as true and accurate.⁴

In its request, the Court informed the Register that it granted a default judgment in Plaintiff’s favor and therefore accepted as true all allegations listed in the Complaint, including “that Defendant Green-Stubbs ‘falsely, willfully, and deliberately claimed that Green-Stubbs was [the] sole owner and the composer of the entirety of the music, lyrics, [and] musical arrangement’” in the Musical Work.⁵ The Court deemed Green-Stubbs to have admitted that Plaintiff and her granddaughter “are, and at all relevant times have been, copyright owners” of the Musical Work.⁶ The Court requested that the Register consider whether if the Office had known that Green-Stubbs was not the sole author of the Musical Work, it would have refused to register the claim.⁷

² The application also included a claim for, and the resulting registration also covered, the sound recording of “ShakeRag...Not Forgotten!” As the Court’s request relates only to the authorship and ownership of the musical work, this response focuses on the Musical Work. The sound recording is discussed in footnotes to the extent that the Court may find the issue relevant.

³ The effective date of registration is the date that the Office received a completed application, the correct deposit copy, and the proper filing fee. 17 U.S.C. § 410(d).

⁴ The Office generally “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.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 602.4(C) (3d ed. 2017) (“COMPENDIUM (THIRD)”). Additionally, “the Office does not conduct investigations or make findings of fact to confirm the truth of any statement made in an application.” *Id.*

⁵ Request at 5.

⁶ Compl. ¶ 19.

⁷ The Request makes clear that “the original creators of the lyrics and melody for the song are Plaintiff and her granddaughter S.W.” Request at 5. Thus, Green-Stubbs is not only not the sole author of

ANALYSIS

I. Relevant Statute, Regulation 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 at 37 C.F.R. §§ 202.1 to 202.24. Further principles that govern how the Office examines registration applications are found in the *Compendium of U.S. Copyright Office Practices*, which is 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 regular revisions of the *Compendium of U.S. Copyright Office Practices* to reflect changes in the law and/or Office practices, which are provided for public comment prior to finalization. Here, Green-Stubbs applied to register the Musical Work on April 19, 2017, and the claim was approved on February 26, 2018. The governing principles the Office would have applied at that time are set forth in the version of the *Compendium of U.S. Copyright Office Practices, Third Edition* (“COMPENDIUM (THIRD)”) that was released in September 2017.

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 it provides the requisite deposit, application and fee.⁸ An application for registration must include “the name and address of the

the Musical Work, she is also not a co-author of the Musical Work. In contrast, based on the allegations in the Complaint, Green-Stubbs may have a claim of co-authorship in the sound recording of “ShakeRag...Not Forgotten!” Compl. ¶ 10.

⁸ 17 U.S.C. § 408(a).

copyright claimant,”⁹ “the name . . . of the author or authors,”¹⁰ and “if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright.”¹¹

Copyright Office regulations define a claimant as either the “author of a work” or “[a] person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.”¹²

Based on these statutory and regulatory requirements, COMPENDIUM (THIRD) explains that only certain parties, including “[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,” may submit an application to the Office.¹³

When completing the “author” field of the application, the application should “only provide the name(s) of the author(s) who created the copyrightable material that the applicant intends to register. Likewise, the applicant should only identify the author(s) who created the copyrightable material that is owned by the individual or entity who is named in the application as the copyright claimant.”¹⁴ An applicant should not include “the name of any person(s) who created material that is not owned by the copyright claimant.”¹⁵

⁹ 17 U.S.C. § 409(1). *See* 37 C.F.R. § 202.3(c)(1) (noting that applications may be submitted by “any author or other copyright claimant of a work”); COMPENDIUM (THIRD) § 404 (“The only parties who are eligible to be the copyright claimant are (i) the author of the work, or (ii) a copyright owner who owns all of the exclusive rights in the work.”); *see also id.* § 619.1 (discussing who qualifies as a proper copyright claimant).

¹⁰ 17 U.S.C. § 409(2). *See* 37 C.F.R. § 202.3(c)(1) (noting that applications may be submitted by “any author or other copyright claimant of a work”).

¹¹ 17 U.S.C. § 409(5).

¹² 37 C.F.R. § 202.3(a)(3). *See also* COMPENDIUM (THIRD) § 404 (discussing eligible copyright claimants).

¹³ COMPENDIUM (THIRD) § 402 (“No other parties are entitled to file an application for copyright registration.”).

¹⁴ *Id.* § 613.3.

¹⁵ *Id.*; *see also id.* § 613.10(C) (same).

Before the Office issues a copyright registration, it resolves 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.¹⁶ If the registration specialist examining the application determines that “[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.¹⁷

II. Register’s Response to the Court

Based on the foregoing statutory and regulatory standards, and its examining practices, had the Office been aware that Green-Stubbs was neither the author of the Musical Work nor the owner of any exclusive rights in the Musical Work, the Office would have refused to register the Musical Work, as the application would have failed to identify the correct author and Green-Stubbs would not be a proper claimant.¹⁸

As discussed above, an applicant must identify the author(s) and copyright claimant(s) in the registration application.¹⁹ When submitting registration applications, only certain parties are entitled to submit the application, including the author of the work, the owner of any of the exclusive rights in the work, or a duly authorized agent of the previously mentioned parties.²⁰

¹⁶ *Id.* § 602.3.

¹⁷ *Id.* § 608.

¹⁸ Based on the allegations in the Complaint, the Office now understands that Green-Stubbs and S.W. both contributed to the sound recording authorship, while Plaintiff and S.W. were the sole co-authors of the Musical Work. An applicant can only apply to register the sound recording and the musical work using the same application if the applicant is a proper claimant for both the sound recording and the musical work. *See* 37 C.F.R. § 202.3(b)(1)(iv). If the copyright in the sound recording and the underlying content are owned by different parties, a separate application and filing fee must be submitted for each work. COMPENDIUM (THIRD) § 803.8(A).

¹⁹ 17 U.S.C. § 409(1)-(2).

²⁰ COMPENDIUM (THIRD) § 402.

Here, Green-Stubbs' registration application falsely identified Green-Stubbs as both the author and copyright claimant of the Musical Work. The Court has now informed the Office that instead of Green-Stubbs, Plaintiff and her granddaughter are the co-authors and co-owners of the Musical Work.²¹ Had the Office been aware at the time the application was filed that Green-Stubbs was neither the author nor the owner of any exclusive rights in the Musical Work, it would not have issued her a registration for the Musical Work.

Dated: December 16, 2020

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

²¹ The Office would not have rejected Green-Stubbs' application based exclusively on her representation of "sole" authorship and ownership in the Musical Work if Green-Stubbs had any co-authorship and/or co-ownership rights in the Musical Work. Green-Stubbs, however, does not have any claims of authorship or ownership in the Musical Work. If Green-Stubbs filed a registration application covering only the sound recording of "ShakeRag...Not Forgotten!" and listed herself as the "sole" author and owner, the Office would not have rejected the application if Green-Stubbs had a claim of co-authorship in the sound recording. If the Office knew that Green-Stubbs was not the sole author, but instead a co-author of the sound recording, the Office would have asked Green-Stubbs to name S.W. and any other co-authors as co-authors on the application to register the sound recording. COMPENDIUM (THIRD) § 803.8(B); *see also id.* § 605.3(B) (discussing when the Office will communicate with an applicant).