**ANNOTATIONS AND COMMENTS**

“[N]o action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights.” 17 U.S.C. § 411; *see also Montgomery v. Noga*, 1168 F.3d 1281, 1288 (11th Cir. 1999) (for works created after 1977, copyright automatically inheres in original works of authorship, but “[i]n order to bring an action for copyright infringement… the author must first register the copyright.”) (citing *M.G.B. Homes, Inc. v. Ameron Homes, Inc.*, 903 F.2d 1486, 1488 & n.4 (11th Cir. 1990)); *see also Bateman v. Mnemonics, Inc.*, 79 F.3d 1532, 1541 (11th Cir. 1996).

“In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.” 17 U.S.C. § 410.

This Special Interrogatory includes a request that the jury identify the date of the registration. It may be used in conjunction with a Special Interrogatory requesting the jury to identify the date(s) of infringement. Such requests may not be required if the information is not required in the case to analyze the application of statutory remedies or other matters. *See* 17 U.S.C. § 412 (registration is a prerequisite to certain remedies for infringement).

If Defendant is challenging the validity of Plaintiff’s copyright registration on the basis that there has been a fraud on the Copyright Office, the jury should be instructed regarding that defense, and the Court may wish to add the following at the end of the instruction above: “In this case, Defendant has raised the affirmative defense of Fraud on the Copyright Office. I will separately instruct you on the law pertaining to that defense.”

If Defendant is challenging Plaintiff’s copyright on the ground that the claimed work is not original, this instruction should also include the following:

Defendant challenges the validity of Plaintiff’s copyright in the claimed work on the ground that the work is not original. If you find that Plaintiff has a valid copyright registration made before or within five years after first publication of the claimed work, you may only find that Plaintiff’s copyright is invalid if you find that Defendant has shown by a preponderance of the evidence that the work was not original to its author or that the work does not possess at least a minimum degree of creativity.

If the rebuttable presumption of validity applies and Defendant challenges Plaintiff’s copyright on the ground that the claimed work is not original, additional questions may be included in the Special Interrogatory above as follows:

[ Do you find that Defendant has shown by a preponderance of the evidence that the work was not original to its author?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 Do you find that Defendant has shown by a preponderance of the evidence that the claimed work does not possess at least a minimum degree of creativity?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If the answer to either of the foregoing questions is “Yes,” do not continue with your analysis of Plaintiff’s claim for infringement.]