**9.8: Copyright – Validity – Invalid Copyright Registration –**

**Fraud on the Copyright Office**

Ownership of a valid copyright and registration are prerequisites to claiming, copyright infringement. [Name of defendant] claims, as an affirmative defense to [name of plaintiff]’s infringement claim, that [name of plaintiff]’s copyright registration is invalid because [he/she/it] engaged in fraud on the Copyright Office.

An invalid copyright registration precludes [name of plaintiff]’s claim of infringement. To determine that [name of plaintiff]’s copyright registration is invalid because of a fraud on the Copyright Office, you must find that [he/she/it] knowingly failed to advise the Copyright Office of facts that would have led the Copyright Office to refuse the application. Unintentional omissions, misstatements, or irregularities generally aren’t enough for invalidation. Omissions, misstatements, or irregularities must have been made intentionally to mislead the Copyright Office.

If you find that [name of plaintiff]’s registration was invalid because of fraud on the Copyright Office, you must find for [name of defendant] on [name of plaintiff]’s copyright-infringement claim. While [name of plaintiff] must establish that [his/her/its] copyright is valid, [name of defendant] must establish by a preponderance of the evidence that the registration is invalid because of misconduct in the registration process.

**Special Interrogatories to the Jury**

 Do you find that [name of plaintiff] knowingly, and with the intent to mislead the Copyright Office, concealed, failed to disclose, or misstated information in the copyright registration application?

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

If your answer to this question is “No,” don’t continue with your analysis of [name of defendant]’s invalidity defense.

 Do you find that the information that [name of plaintiff] concealed, failed to disclose, or misstated would have led the Copyright Office to refuse [his/her/its] copyright application?

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

If your answers to both of these questions are “Yes,” don’t continue with your analysis of [name of plaintiff]’s infringement claim.