

UNICOLORS, INC. v. H&M HENNES & MAURITZ, L.P.

United States Court of Appeals for the Ninth Circuit, 2022
52 F.4th 1054

BEA, Circuit Judge:

This case returns to us on remand from the Supreme Court's decision in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, --- U.S. ----, 142 S. Ct. 941 (2022). There, the Court held that lack of either factual *or legal knowledge* on the part of a copyright holder can excuse an inaccuracy in a copyright registration under the Copyright Act's safe-harbor provision. *Id.* at 945; 17 U.S.C. § 411(b)(1). Accordingly, we review anew the threshold issue whether Appellee Unicolors holds a valid copyright in registration No. VA 1-770-400 (the '400 Registration) and conclude that under the correct standard, the '400 Registration is valid because the factual inaccuracies in the application are excused by the cited safe-harbor provision. This determination allows this panel to resolve the outstanding issues in this case. And for the reasons explained below, we agree with Appellee that none of these issues requires disturbing the district court's judgment below. Therefore, we affirm its judgment in general, save that we vacate and remand with instructions to grant H&M's request for a new trial if Unicolors rejects the remittitur amount of \$116,975.23, which is an amount lower than the jury verdict and also lower than the amount the district court initially calculated in its judgment. If Unicolors rejects the new remittitur amount, the district court is instructed to grant H&M's request for a new trial, but limited only to the issues of damages.

I. BACKGROUND

As we previously described:

This is a copyright-infringement action brought by Unicolors, Inc. (“Unicolors”), a company that creates designs for use on textiles and garments, against H&M Hennes & Mauritz L.P. (“H&M”), which owns domestic retail clothing stores. Unicolors alleges that a design it created in 2011 is remarkably similar to a design printed on garments that H&M began selling in 2015. The heart of this case is the factual issue whether H&M's garments bear infringing copies of Unicolors's 2011 design. Presented with that question, a jury reached a verdict in favor of Unicolors, finding the two works at least substantially similar....

Unicolors's business model is to create artwork, copyright it, print the artwork on fabric, and market the designed fabrics to garment manufacturers. Sometimes, though, Unicolors designs “confined” works, which are works created for a specific customer. This customer is granted the right of exclusive use of the confined work for at least a few months, during which time Unicolors does not offer to sell the work to other customers. At trial, Unicolors's President, Nader Pazirandeh, explained that customers “ask for privacy” for confined designs, in respect of which Unicolors holds the confined designs for a “few months” from other customers. Mr. Pazirandeh added that his staff follows instructions not to offer confined designs for sale to customers generally, and Unicolors does not even place confined designs in its showroom until the exclusivity period ends.

In February 2011, Unicolors applied for and received a copyright registration from the U.S. Copyright Office for a two-dimensional artwork called EH101, which is the subject of this suit. Unicolors's registration—No. VA 1-770-400 (“the '400 Registration”)—included a January 15, 2011 date of first publication. The '400 Registration is a “single-unit registration” of thirty-one separate designs in a single registration, one of which designs is EH101. The name for twenty-two of the works in the '400 Registration, like EH101, have the prefix “EH”; the other nine works were named with the prefix “CEH.” Hannah Lim, a Unicolors textile designer, testified at trial that the “EH” designation stands for “January 2011,” meaning these works were created in that month. Ms. Lim added that a “CEH” designation means a work was designed in January 2011 but was a “confined” work.

When asked about the '400 Registration at trial, Mr. Pazirandeh testified that Unicolors submits collections of works in a single copyright registration “for saving money.” Mr. Pazirandeh added that the first publication date of January 15, 2011 represented “when [Unicolors] present[ed] [the designs] to [its] salespeople.” But these salespeople are Unicolors employees, not the public. And the presentation took place at a company member-only meeting. Following the presentation, according to Mr. Pazirandeh, Unicolors would have placed non-confined designs in Unicolors's showroom, making them “available for public viewing” and purchase. Confined designs, on the other hand, would not be placed in Unicolors's showroom for the public at large to view.

H&M owns and operates hundreds of clothing retail stores in the United States. In fall 2015, H&M stores began selling a jacket and skirt made of fabric bearing an artwork design named “Xue Xu.” Upon discovering H&M was selling garments bearing the Xue Xu artwork, Unicolors filed this action for copyright infringement, alleging that H&M's sales infringed Unicolors's copyrighted EH101

design. Unicolors alleges that the two works are “row by row, layer by layer” identical to each other.

The case proceeded to trial, at which a jury returned a verdict in Unicolors's favor, finding Unicolors owned a valid copyright in the EH101 artwork, H&M infringed on that copyright by selling the contested skirt and jacket, and H&M's infringement was willful. The jury awarded Unicolors \$817,920 in profit disgorgement damages and \$28,800 in lost profits.

H&M filed a renewed motion for judgment as a matter of law, or in the alternative, for a new trial. The district court denied H&M's renewed motion for judgment as a matter of law, but conditionally granted H&M's motion for a new trial subject to Unicolors accepting a remittitur of damages to \$266,209.33. Unicolors accepted the district court's remittitur and the district court entered judgment against H&M accordingly. Unicolors subsequently moved for attorneys' fees and costs, which the district court awarded in the amounts of \$508,709.20 and \$5,856.27, respectively.

Unicolors, Inc. v. H&M Hennes & Mauritz, L.P., 959 F.3d 1194, 1195–97 (9th Cir. 2020). On appeal, this panel reversed and remanded the district court's judgment. As a matter of first impression, we interpreted the “single unit of publication” requirement of 37 C.F.R. § 202.3(b)(4)(i)(A) to require “that the registrant [have] first published the collection of works in a singular, bundled collection.”¹ *Id.* at 1199. As “the undisputed evidence adduced at trial showed that Unicolors included the inaccurate information ‘with knowledge that it was inaccurate,’ 17 U.S.C. § 411(b)(1)(A),”² we held that Unicolors ran afoul of 37 C.F.R. § 202.3(b)(4)(i)(A). We reversed and remanded the case back to the district court “with instructions to submit an inquiry to the Register of Copyrights asking whether the known inaccuracies contained in the '400 Registration, if known to the Register, would have caused it to refuse registration.” *Id.* at 1200. Critically, we further held that the knowledge inquiry is not whether Unicolors knew that including a mixture of confined and non-confined designs would run afoul of the single-unit registration requirements; the inquiry is merely

¹ As before, the current version of § 202.3(b)(4) refers to registration “as one work” rather than “as a single work.” We use the language of the regulation's version effective January 24, 2011, which is the operative version of the regulation in this case.

² This provision of the Copyright Act is known as the safe-harbor provision. It states in full that

A certificate of registration satisfies the requirements of this section and section 412, regardless of whether the certificate contains any inaccurate information, unless—

(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

(B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

17 U.S.C. § 411(b)(1).

whether Unicolors knew that certain designs included in the registration were confined and, therefore, were each published separately to exclusive customers.

Id. It was on this last point that the Supreme Court vacated this panel's opinion. The Court held that § 411(b), the safe-harbor provision, “does not distinguish between a mistake of law and a mistake of fact. Lack of knowledge of either fact *or law* can excuse an inaccuracy in a copyright registration.” *Unicolors*, 142 S. Ct. at 945 (emphasis added). We now revisit this case anew.

II. STANDARD OF REVIEW

Orders on motions for new trial and remittitur are reviewed for abuse of discretion. *See Oracle Corp. v. SAP AG*, 765 F.3d 1081, 1086–87 (9th Cir. 2014). Factual findings underlying the district court's decision are affirmed unless they are “illogical, implausible or without support in inferences that may be drawn from the record.” *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). Denials of motions for judgment as a matter of law are reviewed de novo. *See Dunlap v. Liberty Nat. Prods., Inc.*, 878 F.3d 794, 797 (9th Cir. 2017). ...

III. ANALYSIS

On appeal, H&M asserts several arguments relating to the district court's handling of this case before, during, and after trial. However, as we previously noted, a threshold issue was whether Unicolors possessed a valid copyright in the '400 Registration. 17 U.S.C. § 411(a) (“[N]o civil action for infringement ... shall be instituted until ... registration of the copyright claim has been made in accordance with this title.”); *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 157 (2010) (Registration is generally required “before suing for copyright infringement.”). We therefore first analyze the validity of Unicolors's copyright in its '400 Registration and then we turn to the other arguments H&M raises on appeal.

A. Unicolors holds a valid copyright in the '400 Registration

1. Legal standard under the safe-harbor provision

Because a valid copyright is a precondition for a copyright owner to bring an infringement action in court, the validity of a copyright registration is a pivotal threshold question that a court must resolve before reaching any other issues. The effect of inaccurate information in a registration application on the validity of the registration is governed by the safe-harbor provision, which is codified at 17 U.S.C. § 411(b)(1). As noted above, § 411(b)(1) saves a copyright registration from invalidity when its application contains errors unless the registrant *knowingly* transmitted inaccurate *material* facts to the Register of Copyrights. *DeliverMed Holdings, LLC v. Schaltenbrand*, 734 F.3d 616, 625 n.3 (7th Cir. 2013). The scope of an inaccuracy's materiality is determined by making a statutorily mandated request of “the Register of Copyrights to advise the court whether the inaccurate

information, if known, would have caused the Register ... to refuse registration.” 17 U.S.C. § 411(b)(2); *Roberts v. Gordy*, 877 F.3d 1024, 1029 (11th Cir. 2017). Before making such a request, a court must first establish whether the registrant had the proper “knowledge” of the inaccuracy under § 411(b)(1)(A). *DeliverMed*, 734 F.3d at 625 (advising courts to analyze § 411(b)(1)(A)'s requirements prior to making a § 411(b)(2) request to the Register of Copyrights given the provision's “obvious potential for abuse” as a delay tactic); *Beatriz Ball, L.L.C. v. Barbagallo Co.*, 40 F.4th 308, 316 n.5 (5th Cir. 2022) (same). We had previously disagreed with the district court's reasoning that Unicolors lacked the requisite knowledge under the safe-harbor provision because we denied that the statute encoded an “intent-to-defraud requirement” and held that “knowledge” referred only to a registrant's knowledge of the facts not to the registrant's knowledge of the law that the registrant intended to evade. *Unicolors*, 959 F.3d at 1198, 1200 (relying on *Gold Value Int'l Textile, Inc. v. Sanctuary Clothing, LLC*, 925 F.3d 1140, 1147 (9th Cir. 2019) for both propositions). The Supreme Court's reversal in this case requires that we revisit both holdings.

First, in contrast to our prior holding, it is now clear that “[l]ack of knowledge of either fact *or* law can excuse an inaccuracy in a copyright registration.” *Unicolors*, 142 S. Ct. at 945 (emphasis added).³³ Thus, prior to making a materiality determination, a court must assess if the registrant submitted his application with knowledge that the information was factually inaccurate and with knowledge that the application failed to comply with the governing legal requirements.

However, that does not end matters because the Supreme Court also discussed whether § 411(b) saved a copyright registration from invalidation when there was no “indicia of fraud.” *Unicolors*, 142 S. Ct. at 948–49. In the Court's view, whether the safe-harbor provision protected innocent mistakes of law in addition to innocent mistakes of fact constituted “a subsidiary question fairly included in the petition[for certiorari]'s question presented” regarding fraud, *id.* at 949 (internal quotation marks omitted), because fraud is properly defined as “[a] *knowing* misrepresentation ... of a material fact,” *id.* (quoting Black's Law Dictionary 802 (11th ed. 2019)) (emphasis and alterations in original). This linking of the Court's interpretation of § 411(b) to the legal definition of fraud is in tension with our holding in *Gold Value* as well as our application of that holding in our now vacated opinion. In *Gold Value*, we had rejected the argument that § 411(b) required a showing of an intent to defraud, 925 F.3d at 1147, thereby disagreeing

³³ Because we relied on the same distinction in *Gold Value*, to the extent that its holding concluded that a party's knowledge of the law is irrelevant under § 411(b), it is “clearly irreconcilable” with the Supreme Court's analysis here and is thereby abrogated. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc).

with our sister courts that the 2008 revision of the Copyright Act “codifie[d] the defense of Fraud on the Copyright Office.” *Roberts*, 877 F.3d at 1029.⁴

“Fraud on the Copyright Office” was a judicial doctrine that courts had developed under the 1909 Copyright Act to protect registration certificates from invalidity for “inadvertent mistakes” unless “the claimant intended to defraud the Copyright Office by making the misstatement.” *Urantia Found. v. Maaherra*, 114 F.3d 955, 963 (9th Cir. 1997) (explaining the universal practice of protecting copyright registrations from innocent mistakes); *see also* 2 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 7.20[B] (Matthew Bender rev. ed. 2022) (same). Although the 1909 Act was no longer in force after Congress revised the statute by enacting the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. No. 110–403, 122 Stat. 4256 (“PRO-IP Act”), our court consistently treated the newly added safe-harbor provision as preserving the status quo: § 411(b) became the statutory hook for applying the initially judicially-implied fraud on the Copyright Office doctrine whenever an alleged infringer challenged a registration certificate as invalid because the registration application had contained inaccuracies. *See Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 991 (9th Cir. 2017); *L.A. Printex Indus., Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 854 (9th Cir. 2012); *United Fabrics Int'l, Inc. v. C&J Wear, Inc.*, 630 F.3d 1255, 1259 (9th Cir. 2011).

Gold Value and our previous decision in this case took a different tack because the statute employed the word “knowledge” rather than “fraud” when articulating what a challenger would need to show before a court declared a registration invalid. 925 F.3d at 1147 & n.4. But, we were able to find a distinction between fraud and knowledge only by concluding that the statute required knowledge of solely factual errors regardless of a party’s knowledge of the law: a registrant could have knowledge of the inaccuracy by being aware of the facts without intending to defraud the Copyright Office by presuming—incorrectly—that those facts complied with the relevant legal requirements. *Id.* at 1147 (“[T]he term ‘knowingly’ does not necessarily have any reference to a culpable state of mind ... [and] ‘the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law.’ ” (emphasis added) (quoting *Bryan v. United States*, 524 U.S. 184, 192 (1998) (citations omitted))). However, because we now know § 411(b) requires knowledge of both mistakes of

⁴ *DeliverMed*, 734 F.3d at 618, 624, 625 n.3; *cf. Energy Intelligence Grp., Inc. v. Kanye Anderson Capital Advisors, L.P.*, 948 F.3d 261, 267 n.4 (5th Cir. 2020); *Mon Cheri Bridals, Inc. v. Wen Wu*, 383 F. App’x 228, 232 (3d Cir. 2010). Notably, the Copyright Office adopted the same position as our sister courts immediately following the 2008 revision of the Copyright Act. U.S. Copyright Office, *Annual Report of the Register of Copyrights, Fiscal Year Ending September 30, 2008* 13 (2008), <https://www.copyright.gov/reports/annual/2008/ar2008.pdf> (contending that Congress “amend[ed] section 411 of the copyright law to codify the doctrine of fraud on the Copyright Office in the registration process”).

law and of fact, there is no daylight between a court's determination that a party had knowledge of the legal and factual inaccuracies and a finding that the party committed fraud on the Copyright Office.

As the Supreme Court explained, our prior analysis was erroneous because treating § 411(b) as not excusing inadvertent legal errors meant that our holding did not “always require knowledge of the misrepresentation in the registration application,” as is required by statute, and which the Court explained is the equivalent of not “requir[ing] the typical elements of fraud.” *Unicolors*, 142 S. Ct. at 949. And the Court reached this conclusion by finding that Congress's passage of the PRO-IP Act did not upset the prior caselaw's application of fraud on the Copyright Office under the 1909 Copyright Act. *Id.* at 947–48. After favorably quoting our explanation of the doctrine in *Urantia* and noting its widespread adoption, the Court held that there was “no indication that Congress intended to alter this well-established rule when it enacted § 411(b).” *Unicolors*, 142 S. Ct. at 947–48 (quoting *Urantia*, 114 F.3d at 963). Thus, rather than upend the framework by using the word “knowledge,” as we held in *Gold Value* and applied in our prior decision in this case, the Supreme Court's analysis further suggests that the PRO-IP Act codified this doctrine in the safe-harbor provision. *See Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 813 (1989) (“When Congress codifies a judicially defined concept, it is presumed, absent an express statement to the contrary, that Congress intended to adopt the interpretation placed on that concept by the courts.”).

Thus, the clear implication of the Supreme Court's holding in this case is that a proper construction of the safe-harbor provision's broad protection of copyright registrants leads to the conclusion that the PRO-IP Act was intended to codify the fraud on the Copyright Office doctrine.⁵⁵ As a result, our holding in *Gold*

⁵ We note that this comes with two small caveats. First, a colorable argument might have been made under the original fraud on the Copyright Office doctrine that a registration should be invalidated when it contained nonmaterial “clerical error[s]” and was “[l]accompanied by fraud.” *Advisers, Inc. v. Wiesen-Hart, Inc.*, 238 F.2d 706, 708 (6th Cir. 1956). But that outcome is unambiguously foreclosed by the language in the safe-harbor provision, which invalidates a registration only if the knowing misrepresentations are *material*. 17 U.S.C. § 411(b)(1)(B) (requiring a court to find that the error “if known, would have caused the Register of Copyrights” to change the registration decision). Second, our holding in *Urantia* introduced prejudice to the alleged infringer as another means for a court to invalidate a copyright when the registration application contained inaccurate information. 114 F.3d at 963 (holding that innocent mistakes “do not invalidate a copyright ... unless the alleged infringer has relied to its detriment on the mistake”). But for the same reason as the previous caveat, this prior holding is foreclosed: “[p]rejudice has no relevance to the fraud on the Copyright Office inquiry” under the provision's unambiguous language. *DeliverMed*, 734 F.3d at 625 n.3; *cf. Morgan v. Sundance, Inc.*, --- U.S. ----, 142 S. Ct. 1708, 1714 (2022) (relying on the Federal Arbitration Act's unambiguous language to hold that courts should not imply a prejudice requirement when evaluating whether a party waived his right to compel arbitration).

Value—and our prior reliance on it—is clearly irreconcilable with the Supreme Court’s analysis and thus has been abrogated to the extent that it held that the safe-harbor provision does not require a showing of fraud. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc).

We therefore hold that a party seeking to invalidate a copyright registration under § 411(b) must demonstrate that (1) the registrant submitted a registration application containing inaccuracies, (2) the registrant knew that the application failed to comply with the requisite legal requirements, and (3) the inaccuracies in question were material to the registration decision by the Register of Copyrights. *Roberts*, 877 F.3d at 1030. Put differently, a registration is invalid under § 411(b) if the registrant perpetrated fraud on the Copyright Office by knowingly misrepresenting material facts.

2. Existence of the inaccuracy in Unicolors’s ‘400 Registration

Thus, to evaluate the validity of Unicolors’s ‘400 Registration, our first step is to assess whether its application contained an inaccuracy. Our previous decision in this case evaluated this question by analyzing what, at the time, was a matter of first impression: “what it means to publish multiple works as a ‘single unit’ ” under 37 C.F.R. § 202.3(b)(4)(i)(A). *Unicolors*, 959 F.3d at 1199. We ultimately concluded that “the plain meaning of ‘single unit’ in § 202.3(b)(4)(i)(A) requires that the registrant first published the collection of works in a singular, bundled collection.” *Id.* While our previous opinion in this case has been vacated, our “single unit” holding was not implicated in the Supreme Court’s vacatur, and we see no reason to depart from our earlier determination on this point.

As we previously noted:

The relevant language of the regulation provides, in full:

For the purpose of registration on a single application and upon payment of a single registration fee, the following shall be considered a single work:

(A) In the case of published works: all copyrightable elements that are *otherwise recognizable as self-contained works*, that are *included in a single unit of publication*, and in which the copyright claimant is the same[.]

37 C.F.R. § 202.3(b)(4)(i)(A) (emphasis added). The plain meaning of the word “single” unsurprisingly commands a sense of singularity. *See Single*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/single> (defining “single” as “unaccompanied by others”). The plain meaning of “unit” is no different. *See Unit*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/unit> (defining “unit” as “a single thing, person, or group that is a constituent of a

whole”). Together, the two words suggest that a “single unit of publication” refers to some singular, bundled item that contains all works identified in the registration.

The proverbial toolkit of statutory interpretation reinforces that a collection of published works that make up “a single unit of publication” must have been first published as part of some singular, bundled collection. The principle of *noscitur a sociis*—“it is known by its associates” or “birds of a feather flock together”—instructs that words in statutes are given more precise content by neighboring words. See *Life Techs. Corp. v. Promega Corp.*, 580 U.S. 140 (2017); see also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 195–98 (2012) (describing *noscitur a sociis* and explaining its meaning as “birds of a feather flock together”). Here, § 202.3(b)(4)(i)(A) refers to “copyrightable *elements* that are *otherwise* recognizable as *self-contained works*, which are included in a single unit of publication.” (emphasis added). By referring to “elements” that are “otherwise ... self-contained works,” the regulation unambiguously contemplates that a “single-unit of publication” does not cover separate self-contained works, but instead covers the unification of such works that otherwise could be self-contained.^[3]

[FN 3] Even if the term “single unit” were ambiguous, we would hold the term has the same meaning. If it were ambiguous, we would look to how the U.S. Copyright Office has defined the term in its internal manual, *Compendium of Copyright Office Practices* (“*Compendium*”), which is entitled to *Skidmore* deference. *Inhale, Inc. v. Starbuzz Tobacco, Inc.*, 755 F.3d 1038, 1041–42 & n.2 (9th Cir. 2014). The *Compendium* details that the “single unit of publication” option applies to a collection of published works “first distributed to the public in the packaged unit.” *Compendium* § 1103. In other words, a single unit of publication refers to separately copyrightable works “that are physically bundled together and distributed to the public as a unit, such as a board game containing instructions, a game board, and sculpted playing pieces.” *Id.* The *Compendium*'s definition for “single unit” thus aligns with what we ascribe as its unambiguous and plain meaning.

For these reasons, we hold that a collection of works does not qualify as a “single unit of publication” unless all individual works of the collection were first published as a singular, bundled unit. Therefore, it is an inaccuracy for a registrant like Unicolors to register a collection of works (such as the works identified in the

'400 Registration) as a single-unit publication when the works were not initially published as a singular, bundled collection. At a minimum, the confined works included in the '400 Registration were initially made available only to individual, exclusive customers.

Unicolors, 959 F.3d at 1199–1200 (emphases in original). Therefore, we again conclude that Unicolors's '400 Registration contained an inaccuracy.

3. Unicolors's knowledge of the inaccuracy

Our analysis regarding the second step—whether Unicolors submitted the application knowing it contained errors—is where we depart from our previous decision in this case. Normally, we would be required to remand to the district court to make a finding of fact regarding Unicolors's knowledge about its legal obligations under the single unit rule when it submitted the '400 Registration application. *But see Jules Jordan Video, Inc. v. 144942 Can. Inc.*, 617 F.3d 1146, 1156–57 (9th Cir. 2010) (making a finding of fact *on appeal* that the registrant did not have an intent to defraud). But the district court expressly concluded that H&M failed to make “any showing that Unicolors intended to defraud the Copyright Office.” And as we explained above, under the correct reading of the safe-harbor provision in light of the Supreme Court's ruling, *see supra* Section III.A.1, a court's § 411(b) finding regarding a registrant's lack of intent to defraud is also a § 411(b) finding regarding the registrant's lack of knowledge that his copyright application contained inaccuracies—factual or legal. Thus, the district court determined that Unicolors lacked knowledge that it submitted inaccuracies with its application and as a result, that its '400 Registration is entitled to the safe-harbor provision's protection. The district court did not abuse its discretion in making this determination.

To begin with, our prior ruling on the proper interpretation of “a single unit of publication” in 37 C.F.R. § 202.3(b)(4)(i)(A) was the first binding precedent in the Circuit on the matter. It is hardly unreasonable to conclude that Unicolors could not have knowingly violated our interpretation of the relevant regulation before we announced it. Although “willful blindness may support a finding of actual knowledge,” *Unicolors*, 142 S. Ct. at 948, this case does not present a context where Unicolors has taken a legal position that egregiously misapplies a clear statute. The only other circuit court precedent on the single unit issue did not directly construe the provision and permitted a single registration of multiple works even though they were not “related.” *Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199, 205–06 (3d Cir. 2005). And the version of the internal manual published by the Copyright Office in existence at the time Unicolors submitted its '400 Registration application did not provide meaningful guidance to registrants regarding the meaning of the term “single unit,” because it simply restated the statute using different wording. U.S. Copyright Office, Compendium of U.S.

Copyright Office Practices (“*Compendium II*”) § 607.01 (2d ed. 1988).⁶ Moreover, the district court held, albeit erroneously, that Unicolors had indeed complied with 37 C.F.R. § 202.3(b)(4)(i)(A) by “publishing” the confined designs in the '400 Registration at the same time as it did the unconfined designs. *Unicolors, Inc. v. Hennes & Mauritz L.P.*, No. 16-cv-02322-AB (SK), 2018 WL 10307045, at *3 (C.D. Cal. Aug. 1, 2018). Given that our prior holding was new binding precedent and that the issue was truly unsettled at the time, as evidenced by the district court's contrary conclusion below, we can draw a sensible inference that Unicolors did not know that its '400 Registration application would run afoul of the single unit requirement. *See Archie MD, Inc. v. Elsevier, Inc.*, 261 F. Supp. 3d 512, 520 (S.D.N.Y. 2017) (holding that a registrant lacked knowledge of the inaccuracy in an application because “whether the Work had been published ... was an unsettled legal question at the time the [registrant] sought” registration).

H&M points to two facts to support its contention that Unicolors committed fraud—that is to say a knowing misrepresentation of a material fact—when submitting the '400 Registration: (1) that Unicolors knew it combined confidential and public designs together in its registration application, and (2) that Mr. Pazirandeh testified that the registration was submitted as a bundle partly to “sav[e] money.” Relying on the first factual contention does not help H&M to demonstrate that Unicolors had knowledge of the *legal* requirements applicable to its application because it speaks only to Unicolors's factual knowledge of the mistake in its application. *Unicolors*, 959 F.3d at 1200.

In addition, H&M's characterization of Mr. Pazirandeh's testimony as proof that Unicolors's bundled submission was a fraudulent money grab overstates the inferences that can be drawn from that admission in light of the other evidence in the record. Certainly, it is not unheard of for a party to cut legal corners to save a few dollars. But this is not such a context. Given that there was legal uncertainty over how a court would rule on the single-unit requirement at the time Unicolors submitted its application, it would be reasonable to infer that Mr. Pazirandeh evaluated several plausible legal interpretations of the single unit rule and chose the least expensive course of action to minimize Unicolors's costs—as would any profit-motivated businessperson.

This less nefarious reading of Mr. Pazirandeh's testimony is bolstered by his other answers to the same line of questioning. He testified that the designs in the '400 Registration were bundled together because “collectively the[designers]

⁶ In fact, the U.S. Copyright Office recently appeared to share the concern that was repeatedly expressed in public feedback that the definition of “publication” was too difficult for lay individuals to parse and to apply. The Office sent out a notice of inquiry that identified its interest in drafting new regulations that would assist registrants in determining whether works to be registered together were deemed published or unpublished. Notification of Inquiry, U.S. Copyright Office, 84 Fed. Reg. 66,328 (Dec. 4, 2019).

thought that these florals and ... ethnics ... [we]re going to be successful” and were “going to go to public [sic].” And he explained that Unicolors had a consistent practice of presenting designs, which the designers anticipated registering together, as one group to Unicolors's salespeople. Contrary to H&M's narrative, these statements, when combined with the lack of a clear legal interpretation of the single unit rule, sensibly create the impression that Mr. Pazirandeh believed the mix of published and unpublished designs merited being bundled together in line with Unicolors's past, consistent practice.

Thus, the district court's conclusion that Unicolors did not know it submitted a registration application that contained false information because it lacked an intent to defraud the Copyright Office is plausibly supported by inferences drawn from the facts in the record and follows logically from the fact that the single-unit issue was an unsettled question of law at the time that the '400 Registration was submitted. Therefore, we affirm the district court's decision regarding the '400 Registration because its finding that Unicolors did not have the requisite knowledge of its application's inaccuracy per § 411(b)(1)(A) is not clearly erroneous. *See Hinkson*, 585 F.3d at 1262. This lack of knowledge means that the '400 Registration falls within the ambit of the safe-harbor provision's protection, notwithstanding its failure to comply with the single unit requirement. Thus, Unicolors's copyright is valid.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH INSTRUCTIONS.

APPENDIX A

