

NOTICE

## MINORITY MEMORANDUM

March 6, 1942

Remitter: National Process Company (W.R. 40133)

Title: The place of Chain Stores in Distribution and Investment.

Question: Should the Copyright Office record a claim in a book which was published with the notice of copyright containing the initials only of the copyright owner?

This deposit, originally received in the Copyright Office on Sept. 5, 1941, is a book. The front cover is the title page inasmuch as it is the only page on which the title is found. On the back of this page appears the following:

"Copyright 1941 M. L. P. F. B."

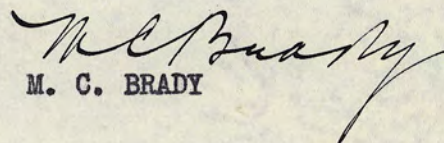
The initials are those of the firm Merrill, Lynch, Pierce, Fenner & Beane, who are declared in the application to be the owners of the copyright. The work was very properly rejected Sept. 13, 1941, as having been published with faulty notice. Circular 54 was sent on that date. On Sept. 17 a reply was received from the remitters regretting that the initials and not the full name of the claimant appear in the notice of copyright and pointing out that the full name, Merrill, Lynch, Pierce, Fenner & Beane is found on the front cover. This letter was answered on Sept. 23, by Mr. Lasica, in the following terms: "Since according to the application and affidavit filed the book was first published on Aug. 26, 1941, with the faulty notice of copyright, no registration of copyright can be made. Section 10 of the copyright law makes prior publication with adequate notice a condition essential to the issuance of a certificate of registration." On Feb. 10, 1942, new copies with correct notice were received. These copies were rejected by means of Circular 21--"Subsequent publication with correct copyright notice does not remedy the defect of prior publication with insufficient notice," and this circular was sent by Mr. Lasica. It should be noted at this point that no subsequent publication was claimed in the new affidavit accompanying the deposits of Feb. 10.

In reply to this circular No. 21 sent on Feb. 20, 1942, a further communication from the remitters, dated Feb. 26, was received. It is pointed out that the remitters are the printers, evidently endeavoring to repair the damage occasioned by their own inexcusable negligence in printing the defective notice. In this letter they quoted Section 20 of the Copyright Act, adding to this quotation the following: "It is therefore submitted that if we made a mistake originally, the copyright is not invalidated and the certificate should issue." They point out further that the courts only should decide whether there has been compliance with Sections 18 and 19 of the Act. Upon the receipt of this letter in the Copyright Office, the Examiner again rejected because subsequent addition of correct notice does not remedy original

publication with defective notice. The case then came to the Revisory Board for reconsideration with the result:

Mr. MacCarteney, who had previously voted to reject now voted to accept this notice, stating that it was analogous to "Copyright by Author," where author's name is given on another page. Mr. Lasica and Mrs. Brady voted to reject. Mr. Lasica subsequently changed his vote, sustaining Mr. MacCarteney. The undersigned, Mrs. Brady, still holds that there should be no record in this Office of a publication made with defective notice. Publication in this case was not a partial publication, as original publication took place on August 26 with totally defective notice.

It is recognized that certain well-known organizations, such as Newspaper Enterprise Association, American Automobile Association, and one or two others, have through prolonged usage established the initials of their names so that the public has become aware of such initials to the exclusion of the full name for which they stand. The initials in this case, however, M. L. P. F. B., are those of a law firm whose members have changed so often that the initials used in this instance do not serve to notify the public as in the cases above quoted; in other words, the initials M. L. P. F. B. convey no knowledge of the ownership of copyright to the public. It is a fact that this firm which started a number of years ago under the name of E. A. Pierce & Co. merged with Merrill and Lynch first, then with Cassat, then with Fenner & Beane, and that the name of Cassatt has been in and out of the firm name a number of times in the last three years. The firm as now established is only a few months old, and there could be no possible secondary meaning attached to the set of initials found in the notice. It is held that the work was published on August 26, 1941 with a fatally defective notice, and therefore no registration could be made in this Office.

  
M. C. BRADY

Majority sustained. Register. Give benefit of doubt under Section 20.

W. H. Wise, March 9, 1942.

MAJORITY MEMORANDUM

NOTICE OF **(6)**

Initials in place of name

March 6, 1942 Decided under Sec. 20

Remitter: National Process Company (W.R. No. 40133)

Title: "The Place of Chain Stores in Distribution and Investment."

Question: Whether the initials of the copyright claimant appearing in the notice of copyright on the back of the title page constitutes sufficient compliance with the provisions of Section 18, where the claimant's full name appears upon the title page and is moreover repeated on the back cover in two very prominent positions.

The Office originally received copies bearing a notice of copyright reading:

Copyright 1941  
M. L. P. F. B.

The claimant is Merrill, Lynch, Pierce, Fenner & Beane and the full name appears on the outside cover which is the title page. The full name also appears on the back cover in two prominent positions. Since it is the practice of the Office to accept a notice of copyright reading:

"Copyright 19\_\_ by author"

where the author's name is apparent upon the copy, the Majority feels that the inclusion of the claimant's initials on the back of the title page furnishes sufficient advisement to the public as to who the claimant is, especially in view of the fact that the claimant's full name appears upon the cover which would be seen at the outset by anyone examining the copy and would, therefore be immediately connected as being the name represented by the initials in the notice of copyright on the back of the cover or title page. The copies as now resubmitted by applicant's agent, bear a full and correct form of notice and the original copies bearing faulty notice were inadvertently returned following original rejection. The Office actually, therefore, lacks copies of the publication with faulty notice.

*Richard S. McCartney*  
*Garner*