

**VOLUME 7 OF 8 - EXS. 108-116
(PAGES 1541-1716)**

EXHIBIT 108

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8 Attorneys for Defendants
9 Warner/Chappell Music, Inc. and
Summy-Birchard, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
WESTERN DIVISION

13 GOOD MORNING TO YOU
PRODUCTIONS CORP.; et al.,
14
15 Plaintiffs,
16 v.
17 WARNER/CHAPPELL MUSIC, INC.,
et al.,
18 Defendants.

Lead Case No. CV 13-04460-GHK
(MRWx)

**DECLARATION OF THOMAS B.
MARCOTULLIO IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Hearing
Date: January 26, 2015
Time: 9:30 a.m.
Judge: Hon. George H. King,
Chief Judge
Courtroom: 650

1 I, THOMAS B. MARCOTULLIO, hereby declare:

2 1. I am currently the Vice President and Senior Counsel, Mergers and
3 Acquisitions, Corporate Governance & Securities at Warner Music Group
4 (“WMG”). In connection with my job responsibilities, I am familiar with the nature
5 and scope of the business, including but not limited to the copyrights, business
6 records, and business relationships, of Warner/Chappell Music, Inc., which is an
7 affiliate entity of WMG, and of Summy-Birchard, Inc., which is a wholly-owned
8 subsidiary of Warner/Chappell Music, Inc. For the sake of convenience, I will refer
9 to Warner/Chappell Music, Inc. and Summy-Birchard, Inc., collectively, as
10 “Warner/Chappell.” Except as noted below, I have personal knowledge of the
11 following facts and/or possession, custody and/or control of the business records of
12 Warner/Chappell relevant thereto and, if called as a witness, could and would
13 competently testify thereto.

14 2. Warner/Chappell is the owner of copyright registration certificates
15 E51990 and E51988. I recognize the documents bearing Bates numbers
16 WC0000388-WC0000390 and WC0000385-WC0000387 as true and correct copies
17 of these registration certificates.

18 3. Copyright registration certificates E51990 and E51988 were issued on
19 December 9, 1935. Copyright was renewed on December 9, 1962, as R306186 and
20 R306185, respectively. I recognize the documents bearing Bates numbers
21 WC0000103-WC0000104 and WC0000953-WC0000954 as true and correct copies
22 of these renewal certificates.

23 4. I recognize the document bearing Bates numbers WC0002081-
24 WC0002090 as a true and correct copy of an agreement between Clayton F. Summy
25 and John F. Sengstack, dated August 7, 1931, that reflects the August 1931
26 reorganization of Clayton F. Summy Co. (Illinois) and sale of assets to Clayton F.
27 Summy Co. (Delaware)).

28

1 5. I recognize the document bearing Bates numbers WC0002091-
2 WC0002093 as a true and correct copy of the minutes of a September 29, 1931,
3 meeting of the Board of Directors of C.F.S. Musical Co. that reflects the August
4 1931 change of name from Clayton F. Summy Co. (Illinois) to C.F.S. Musical Co.
5 (Illinois), and the sale of assets to Clayton F. Summy Co. (Delaware).

6 6. I recognize the document bearing Bates numbers WC0001998-
7 WC0002075 as a true and correct copy of a declaration of David K. Sengstack,
8 which is dated January 20, 1981, and was recorded in the Copyright Office, that
9 attaches business records and/or public records that reflect the following: (a) the
10 1956 change of name of Clayton F. Summy Co. (Delaware) to Summy Publishing
11 Co. (Delaware); (b) the 1957 name change of Summy Publishing Co. (Delaware) to
12 Summy-Birchard Publishing Co. (Delaware), Ex. 7 at WC0002003-05; (c) the 1961
13 name change of Summy-Birchard Publishing Co. (Delaware) to Summy-Birchard
14 Co. (Delaware), *id.* at WC0002006-08; (d) the 1973 merger of Summy-Birchard Co.
15 (Delaware) with Educational Music Bureau, an Illinois corporation, and the
16 resulting surviving company named Summy-Birchard Co., an Illinois corporation,
17 *id.* at WC0002033-48, WC0002062-75; (e) the 1976 merger of Summy-Birchard
18 Co. (Illinois) with New Summy-Birchard Co., a Wyoming corporation, with the
19 surviving corporation being Summy-Birchard Co. (Wyoming), *id.* at WC0002018-
20 32, WC0002049-61; (f) the 1978 name change of Summy-Birchard Co. (Wyoming)
21 to Sumco Corp. (Wyoming), *id.* at WC0002015-17; (g) the May 1979 name change
22 of Sumco Corp. (Wyoming) to Summy-Birchard Co. (Wyoming), *id.* at
23 WC0002013-14; (g) the July 1979 name change of Summy-Birchard Co.
24 (Wyoming) to The Birch Tree Group Ltd. (Wyoming), at WC0002011-12; and
25 (h) the September 1979 name change of The Birch Tree Group Ltd. (Wyoming) to
26 Birch Tree Group Ltd. (Wyoming), *id.* at WC0002009-10.

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1 7. I am informed and believe that the document bearing Bates numbers
2 WC0001998-WC0002075 consists of copies made from microfiche and, according
3 to the Copyright Office, these copies are the best available copies.

4 8. I recognize the document bearing Bates numbers WC0000760-
5 WC0000827 as a true and correct copy of the stock purchase agreement between
6 Warner/Chappell Music, Inc. and David K. Sengstack, dated December 1, 1988,
7 regarding the sale of all the capital stock of Birch Tree Group Ltd. (Wyoming).

8 9. I recognize the document bearing Bates numbers WC0001995-
9 WC0001997 as a true and correct copy of a Certificate of Amendment from the
10 Secretary of State of Wyoming, dated December 27, 1988, which reflects the name
11 change of Birch Tree Group Ltd. (Wyoming) to Summy-Birchard, Inc. (Wyoming).

12 10. I recognize the document bearing Bates numbers WC0002094-
13 WC0002097 as a true and correct copy of the stock certificate that David K.
14 Sengstack transferred to Warner/Chappell Music, Inc. on January 3, 1989.

15 11. Summy-Birchard, Inc., a Wyoming corporation, is the defendant in this
16 lawsuit and is a wholly owned subsidiary of defendant Warner/Chappell Music, Inc.

17
18 I declare under penalty of perjury under the laws of the United States that the
19 foregoing is true and correct. Executed this 24th day of November 2014, at New
20 York, New York.

21
22 
23 Thomas B. Marcotullio

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EXHIBIT 109

1 UNITED STATES DISTRICT COURT CENTRAL
2 DISTRICT OF CALIFORNIA
3 WESTERN DIVISION
4

5 GOOD MORNING TO YOU)
PRODUCTIONS CORP., et al.,)

6)
Plaintiffs,) Lead Case Number
7) CV 13-04460-GHK

VS.) (MRWx)

8)
WARNER/CHAPPELL MUSIC INC.,)
9 et al.,)

10 Defendants.)
_____)

11
12
13
14 DEPOSITION OF JEREMY BLIETZ
15 Los Angeles, California
16 Thursday, July 10, 2014
17
18
19
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21
22

23 Job No: 81817

24 Reported by: NIKKI ROY

25 CSR No. 3052

1 Deposition of JEREMY BLIETZ, taken on behalf of
2 the Plaintiffs, at 355 South Grand Avenue,
3 35th Floor, Los Angeles, California, on Thursday,
4 July 10, 2014 at 10:36 a.m., before NIKKI ROY,
5 CSR No. 3052.
6
7

8 APPEARANCES OF COUNSEL:
9

10 FOR THE PLAINTIFFS:

11 WOLF HALDENSTEIN ADLER FREEMAN & HERZ
12 BY: BETSY C. MANIFOLD, Attorney at Law
13 Symphony Towers
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15 San Diego, California 92101

16 DONAHUE FITZGERALD ATTORNEYS
17 BY: DANIEL SCHACHT, Attorney at Law
18 1999 Harrison Street
19 Oakland, California 94612
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1 APPEARANCES OF COUNSEL (CONTINUED):

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3 FOR THE DEFENDANTS:

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BY: MELINDA EADES LeMOINE, Attorney at Law

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MUNGER TOLLES & OLSON

BY: ADAM KAPLAN, Attorney at Law

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560 Mission Street

San Francisco, California 94105

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13

ALSO PRESENT:

14

NATHAN OSHER

Vice President Legal & Business Affairs

15

Warner/Chappell Music, Inc.

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I N D E X

WITNESS	EXAMINATION	PAGE
JEREMY BLIETZ	MS. MANIFOLD	6, 111, 160
	MS. LeMOINE	157

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
Exhibit 42	Plaintiffs' Second Amended Notice Continuing the Taking of Deposition of Jeremy Blietz Pursuant to Fed. R. Civ. P. 30(b)(1)	8
Exhibit 43	Color photocopy of Application for Copyright	89
Exhibit 44	Letter from William Lichtenwanger to Robert Olsen, January 23, 1961	137

(Exhibits previously marked for identification:
Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6,
Exhibit 7, Exhibit 9, Exhibit 10, Exhibit 12,
Exhibit 13, Exhibit 17, Exhibit 19, Exhibit 21,
Exhibit 39, Exhibit 40, and Exhibit 41)

I N D E X (CONTINUED):

QUESTIONS INSTRUCTED NOT TO ANSWER

Page	Line
86	18

INFORMATION REQUESTED

None

1 (The record was read as follows:

2 Q Do you have any general
3 recollection -- I know you don't have
4 a specific one. Do you have any
5 general recollection of sending a song
6 question over to legal on Happy
7 Birthday to You?)

8 MS. LEMOINE: You can answer to the extent
9 you don't reveal any communication.

10 THE WITNESS: No, I don't.

11 (The document referred to was marked
12 by the CSR as Deposition Exhibit 43
13 for identification and attached to the
14 deposition transcript hereto.)

15 BY MS. MANIFOLD:

16 Q. Okay. I placed in front of the witness --
17 excuse me -- an exhibit that's been marked as
18 Plaintiffs' Exhibit 43 for identification. It is the
19 same document as Plaintiffs' Exhibit 2 for
20 identification. It's just what I think is a more
21 legible copy.

22 Plaintiffs' 2 for identification was used in
23 the Marcotullio's deposition, and we've decided to
24 mark a clearer version so you can look at the
25 document.

1 Do you know what this is?

2 A. Yes. It's an application for copyright.

3 Q. And for which copyright?

4 A. Well, I can read the document. It says here
5 Happy Birthday to You unison song.

6 Q. And to the best of your knowledge, in
7 looking at this document, does this refer to
8 copyright number 51988?

9 MS. LeMOINE: Objection; lacks foundation.
10 You can answer if you can.

11 THE WITNESS: Well, that is the number that
12 does appear here on the document.

13 BY MS. MANIFOLD:

14 Q. In the archives at Warner/Chappell, would
15 you have this type of information, pictures of a card
16 catalog?

17 A. No. We wouldn't have pictures of a card
18 catalog. We may have copies of registrations if they
19 are in the files.

20 Q. Okay. All that work to get a nice copy, but
21 at least you had a nice copy to look at.

22 A. Yeah.

23 MS. MANIFOLD: I'm placing in front of the
24 witness a document that's been previously marked as
25 Plaintiffs' Exhibit 4 for identification, and this is

1 entitled Copy of Registration E51988. It's -- excuse
2 me -- Bates-stamped WC 385 to 387.

3 Q. Do you recognize this document?

4 A. I recognize that this was a document that I
5 received from the copyright office on a search
6 request.

7 Q. And did you make that search request in or
8 about December of 2013?

9 A. Yes, that is correct.

10 Q. And did the archives at Warner/Chappell not
11 have a copy of this registration prior to December of
12 2013?

13 MS. LEMOINE: Objection; it's broad -- It's
14 overbroad and vague.

15 As of the time he made the request or at any
16 time?

17 MS. MANIFOLD: At the time he made the
18 request.

19 THE WITNESS: I can't say as to whether we
20 had this specific document. The look of this looks
21 different than most typical copyright searches. So I
22 couldn't say we had it on file.

23 BY MS. MANIFOLD:

24 Q. And what is this a copyright registration
25 for?

1 MS. LeMOINE: Objection to the extent it
2 calls for a legal conclusion. Objection to form.

3 You can answer if you can.

4 THE WITNESS: I mean, all I can say is I
5 could read this to you, but it looks fairly different
6 from how registrations look today, so I couldn't
7 testify as to the intent here. I see the same number
8 that appears on the previous picture, but I can't --
9 can't speak to the content here.

10 BY MS. MANIFOLD:

11 Q. Okay. I notice in the upper right-hand
12 corner of Bates-stamped 386 of Plaintiffs' Exhibit 4
13 for identification, there's a number 27970. Do you
14 know what that number means?

15 A. I do not.

16 Q. Okay. And it says on this registration,
17 copy of registration for E51988, it says (reading):

18 Published musical composition by

19 Mildred J. Hill.

20 Do you see that?

21 A. Yes, I do.

22 Q. Do you have an understanding of what that
23 means on the registration?

24 MS. LeMOINE: Objection; that's asked and
25 answered. That's asked and answered.

1 the record while you get a chance to look at. I
2 don't want to hurry.

3 And it's Plaintiffs' Exhibit 5 for
4 identification. It's Bates-stamped WC 413, 414.
5 It's entitled Happy Birthday to You unison song,
6 Mildred J. Hill's name appears in caps to the right,
7 arranged by Mrs. RR Forman is on the left, and the
8 front of it is School Choral -- Chorus Music.

9 And I note in pencil in the front cover it
10 says M1998. And, again, is this what you would refer
11 to as the lead sheet for E51988?

12 MS. LeMOINE: Objection; it calls for
13 speculation, but you can answer if you can.

14 THE WITNESS: Yeah. As I review it here and
15 I see that number printed on the cover, and the
16 contents appear to match with the record that we
17 reviewed.

18 BY MS. MANIFOLD:

19 Q. Do you have an understanding of what a
20 deposit copy is?

21 A. Yes, I do.

22 Q. And what's a deposit copy?

23 A. A deposit copy is something that we file
24 with the copyright office as support for our
25 copyright certificate and could be a lead sheet,

1 could be a recording. Speaking in general terms, the
2 item can vary.

3 Q. And do you know whether this Plaintiffs'
4 Exhibit 5 for identification is the deposit copy for
5 E51988?

6 A. I know that when I inquired to the copyright
7 office as to receive copies of the deposit copies,
8 they informed me that they had separated the lead
9 sheets or the backup copies from the certificates and
10 that I would need to contact their music division.
11 So we did receive this lead sheet with cover from
12 that music division, and I can see the numbers there,
13 but I can't tell you definitively because they have
14 separated the documents.

15 Q. Okay. So you have no reason to doubt that
16 this is the deposit copy for E51988; is that correct?

17 MS. LeMOINE: As he sits here today, you're
18 asking him that question?

19 MS. MANIFOLD: Yeah.

20 MS. LeMOINE: As someone reading the
21 document.

22 THE WITNESS: As I sit here today and review
23 it, I think that it is the deposit copy as I read it
24 here.

25 BY MS. MANIFOLD:

1 Q. As I understand your testimony -- and
2 correct me if I'm misstating it -- you made a request
3 to the US Copyright Office to get both the copy of
4 registration for E51988; is that correct?

5 A. Yes, that is correct.

6 Q. And then you made a separate request, since
7 the deposit copy had been separated from the
8 registration, to get the sheet music; is that
9 correct?

10 A. Yes.

11 Q. And this is, to the best of your knowledge,
12 a copy of that deposit copy that you received from
13 the US copy department, is that correct, referring to
14 Plaintiffs' Exhibit 5 for identification?

15 A. To the best of my knowledge, yes.

16 Q. And looking at Bates stamp WC 414 of
17 Plaintiffs' Exhibit 5 for identification, it says on
18 the left ARR. Can we agree that that stands for
19 arranged?

20 A. I think that is the common term used, yes.

21 Q. Arranged by Mrs. RR Forman. Do you have an
22 understanding of what that means with regard to this
23 lead sheet?

24 A. I would be speculating because I haven't
25 reviewed the music itself to know what that -- what

1 that is, but it appears that this is a lead sheet of
2 an arrangement by this individual.

3 Q. And you notice all the way over to the
4 right, it's in all caps, it says Mildred J. Hill. Do
5 you have an understanding of what that means to have
6 her name all the way over to the right?

7 A. From the placement of the name on the lead
8 sheet, I would say that they are one of the creators
9 of the work.

10 Lead sheets are often though limited in
11 names and so -- and since it doesn't have anything in
12 front of it clarifying what that individual
13 contributed, all I can say is they're one of the
14 creators of the work based on this.

15 Q. Okay. I've placed -- I haven't yet, but I
16 will.

17 I've placed in front of the witness a
18 document that's been previously marked as Plaintiffs'
19 Exhibit 7 for identification. It's a certificate of
20 copyright registration.

21 And it's Bates-stamped WC 952.

22 Have you seen this document before?

23 A. Yes, I believe I have, yeah.

24 Q. And what is it?

25 A. This is a copyright registration

1 A. Could you be -- could you rephrase the
2 question?

3 Q. Well, in reviewing the documents in the
4 archives at Warner/Chappell in your database, when
5 you see the use of the word "arrangement," have you
6 ever understood it to include lyrics?

7 A. I think because people use that term
8 differently, I think I've often received, in general,
9 songs where people call things arrangements and they
10 have changed lyrics, so it's pretty broad. I
11 couldn't say specifically.

12 MS. MANIFOLD: So I'm going to start on 5 --
13 can we go off the record for two seconds?

14 MS. LeMOINE: Sure.

15 (Off-the-record discussion.)

16 (At 1:21 P.M., the deposition of JEREMY BLIETZ was
17 adjourned for luncheon recess.)

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1 LOS ANGELES, CALIFORNIA, THURSDAY, JULY 12, 2014

2 2:19 P.M.

3
4 EXAMINATION

5 BY MS. MANIFOLD:

6 Q. Good afternoon. Back on the record.

7 Did you discuss your testimony at all with
8 your counsel during the break?

9 A. No.

10 Q. I'm placing in front of the witness a
11 document that's been previously marked as Plaintiffs'
12 Exhibit 9 for identification. It's a copy of
13 registration E51990. It's Bates-stamped WC 388, 389.

14 Can you identify this document?

15 A. Yeah. This is a copy of a copyright
16 registration that I received from the copyright
17 office in Washington.

18 Q. And did you receive it on or about December
19 2013?

20 A. That is correct.

21 Q. And do you know whether there was a copy of
22 this registration in Warner/Chappell's archives
23 before you requested it?

24 A. I do not.

25 Q. Did you make a search of the records to see

1 if there was a copy of it?

2 A. I don't believe I did, no.

3 Q. And did you also make a request for the
4 deposit copy of the lead sheet for registration
5 E51990?

6 A. Yes, I did.

7 Q. And what was the result of that request?

8 A. Similar to as we discussed with the other
9 registration -- I'm sorry, I can't recall the
10 number -- I was told that the deposit copies had been
11 separated from the registrations and that I would
12 need to speak with the separate department at the
13 copyright office to obtain anything they may have on
14 file.

15 Q. And did you speak with the separate
16 department at the copyright office in an attempt to
17 obtain a deposit copy for E51990?

18 A. I did ask for copies of any lead sheets they
19 had on file, yes.

20 Q. I apologize. Were you done? I didn't mean
21 to talk over you.

22 A. No.

23 Q. And what were you told by the US Copyright
24 Office with regards to lead sheets for E51990?

25 A. I was provided with a few lead sheets, but

DECLARATION UNDER PENALTY OF PERJURY

I, JEREMY BLIETZ, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken July 10, 2014; that I have made such corrections as appear noted herein, in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this _____ day of _____, 2014, at _____, California.

JEREMY BLIETZ

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF LOS ANGELES)
3

4 I, NIKKI ROY, Certified Shorthand Reporter,
5 certificate number 3052, for the State of California,
6 hereby certify:

7 The foregoing proceedings were taken before me
8 at the time and place therein set forth, at which
9 time the deponent was placed under oath by me;

10 The testimony of the deponent and all objections
11 at the time of the examination were recorded
12 stenographically by me and were thereafter
13 transcribed;

14 The foregoing transcript is a true and correct
15 transcript of my shorthand notes so taken;

16 I further certify that I am neither counsel for
17 nor related to any party to said action nor in any
18 way interested in the outcome thereof.

19 In witness whereof I have hereunto subscribed my
20 name this 12th day of July, 2014.

21
22 _____
23 NIKKI ROY
24
25

EXHIBIT 110

In The Matter Of:

GOOD MORNING TO YOU PRODUCTIONS CORP.

v.

WARNER/CHAPPELL MUSIC, INC.

SACHS, Ph.D., JOEL - Vol. 1

September 9, 2014

MERRILL CORPORATION

LegalLink, Inc.

20750 Ventura Boulevard
Suite 205
Woodland Hills, CA 91364
Phone: 818.593.2300
Fax: 818.593.2301

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

-----x

GOOD MORNING TO YOU PRODUCTIONS
CORP.; et al.,

Plaintiffs,
Lead Case No.

-against-

CV 13-04460-GHK

WARNER/CHAPPELL MUSIC, INC.,
et al.,

Defendants.

-----x

September 9, 2014
9:32 a.m.

Videotaped Deposition of JOEL SACHS, Ph.D.
taken by Defendants, pursuant to Notice, at the
offices of Paul, Weiss, Rifkind, Wharton &
Garrison, 1285 Avenue of the Americas, New
York, New York, before William Visconti, a
Shorthand Reporter and Notary Public within and
for the State of New York.

1 A P P E A R A N C E S:

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12 BY: MELINDA LE MOINE, ESQ.
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14 ADAM I. KAPLAN, ESQ.
15 adam.kaplan@mto.com

16 ALSO PRESENT:

17 WILLIAM PACE, VIDEOGRAPHER
18
19
20
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E X H I B I T S		
	DESCRIPTION	PAGE
1		
2		
3	(Sachs Exhibit 45 for	14
4	identification, Deposition Notice	
5	for Professor Sachs.)	
6	(Sachs Exhibit 46 for	43
7	identification, letter from	
8	Mr. Rifkin to Professor Sachs.)	
9	(Sachs Exhibit 47 for	45
10	identification, Expert report of	
11	Professor Sachs.)	
12	(Sachs Exhibit 48 for	45
13	identification, CV of Professor	
14	Sachs dated November, 2012.)	
15	(Sachs Exhibit 49 for	74
16	identification, Binder.)	
17	(Sachs Exhibit 50 for	110
18	identification, document.)	
19	(Sachs Exhibit 51 for	140
20	identification, document.)	
21	(Sachs Exhibit 52 for	142
22	identification, document reflecting	
23	Irving Berlin's Pretty Girl Is Like	
24	A Melody.)	
25		

1	E X H I B I T S	PAGE
2	DESCRIPTION	
3	(Sachs Exhibit 53 for	144
4	identification, document.)	
5	(Sachs Exhibit 54 for	226
6	identification, document.)	
7	(Sachs Exhibit 55 for	267
8	identification, document.)	
9	(Sachs Exhibit 56 for	272
10	identification, document.)	
11	(Sachs Exhibit 57 for	275
12	identification, document.)	
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1 IT IS HEREBY STIPULATED AND AGREED
2 by and between the attorneys for the
3 respective parties herein that filing and
4 sealing be and the same are hereby waived.

5 IT IS FURTHER STIPULATED AND AGREED
6 that all objections, except as to the form
7 of the question, shall be reserved to the
8 time of the trial.

9 IT IS FURTHER STIPULATED AND AGREED
10 that the within deposition may be signed
11 and sworn to before any officer authorized
12 to administer an oath with the same force and
13 effect as if signed and sworn to before the
14 Court.

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1 Q. Do you have any evidence looking at 11:01:16
2 this that the other words are as you understand 11:01:16
3 them today? 11:01:18

4 A. No, there is no way to know that. 11:01:21
5 I would say that the odds are that they are 11:01:23
6 because of the structure of the poem. You 11:01:26
7 sing Happy Birthday To You, Happy Birthday To 11:01:31
8 You, Happy Birthday Dear So And So, Happy 11:01:34
9 Birthday To You. This is not exactly a haiku. 11:01:36

10 Q. Are you relying on anything other 11:01:37
11 than just these sentences -- 11:01:37

12 A. No. 11:01:39

13 Q. -- for the principle that this was 11:01:41
14 widely known at this time? 11:01:43

15 A. I'm relying only on the sentence 11:01:47
16 and the context of this entire bottom paragraph. 11:01:50

17 Q. Do have any evidence that this 11:01:53
18 sentence means that it was widely known at the 11:01:53
19 time? 11:01:56

20 A. No. It's an inference and I 11:02:02
21 certainly acknowledge that. I guess you might 11:02:04
22 say it's a kind of circumstantial evidence but 11:02:08
23 only a little type of circumstantial evidence. 11:02:12
24 But it is more an inference which we make all
25 the time as historians.

1 We see evidence and we try to 11:02:17
2 decide what it means. It could mean various 11:02:20
3 things but sometimes it seems so clear what it 11:02:23
4 means that you sort of accept it. You know you 11:02:26
5 don't have the absolute proof of it. We are 11:02:30
6 not alive in 1901 so we don't immediately know 11:02:32
7 that someone sang Happy Birthday. But this 11:02:35
8 certainly suggests very strongly that they did. 11:02:37

9 Q. So the absence of the additional 11:02:41
10 lyrics suggests to you that the lyrics were 11:02:42
11 well known? 11:02:44

12 A. That people knew the words. 11:02:55

13 Q. You didn't survey materials other 11:02:57
14 than what Mr. Rifkin provided you to confirm 11:02:58
15 that belief? 11:03:01

16 A. Frankly it probably would have taken 11:03:05
17 me a couple of years to locate the materials if 11:03:07
18 they even exist. This could be unique. 11:03:09

19 Q. That is not my question. My 11:03:10
20 question is you did not? 11:03:12

21 A. I did not. I did not feel that I 11:03:12
22 could do that. 11:03:19

23 Q. Do you know whether Clayton F. 11:03:24

24 Summy authorized the publication of Good

25 Morning To You lyrics in the Inland Educator

1 Journal here? 11:03:28

2 A. I have no idea. 11:03:30

3 Q. Do you have any idea whether 11:03:33

4 Clayton F. Summy knew that the lyrics were 11:03:34

5 reprinted in this book? 11:03:36

6 A. I don't know. There is no evidence 11:03:37

7 based on what I have. 11:03:39

8 Q. How about the Hill sisters, do you 11:03:43

9 have any evidence that they knew this was 11:03:45

10 printed in the Inland Educator Journal? 11:03:47

11 A. There is no evidence. Since they 11:03:51

12 were both educators and apparently very dedicated 11:03:54

13 educators, I think there is a reasonable possibility 11:03:54

14 that they read this journal. 11:03:56

15 Q. But you don't have any evidence of 11:03:56

16 that? 11:03:57

17 A. I don't have any evidence of that. 11:04:01

18 Q. Do you have any evidence that they 11:04:04

19 authorized the reprinting of the lyrics in this 11:04:04

20 journal? 11:04:05

21 A. Neither that they did or they 11:04:09

22 didn't. But if they authorized the reprint of 11:04:10

23 the Good Morning To You, why would they not 11:04:14

24 have wanted them also to print Happy Birthday

25 To You to be sure that people knew those words.

1 That was the question that I asked myself. 11:04:20

2 Q. You don't know whether they 11:04:20

3 authorized -- 11:04:21

4 A. I don't, no. 11:04:23

5 Q. Do you have a opinion either way as 11:04:25

6 to whether they authorized this printing of 11:04:26

7 Good Morning To You in this journal? 11:04:28

8 A. I don't. There is no way to form 11:04:41

9 an opinion based on what is here. 11:04:42

10 Q. Look at paragraph 18. 11:04:43

11 A. 18 did you say? 11:04:52

12 Q. Yes, sir. Paragraph 18 some of 11:04:54

13 these questions are going to be the same but I 11:04:56

14 want to make sure that your testimony is the 11:04:56

15 same. 11:04:56

16 A. Right. 11:04:59

17 Q. This is with regard to material 11:05:02

18 called "Tell Me A True Story Tales Of Bible 11:05:04

19 Heros For The Children Of To-day" which 11:05:10

20 includes a birthday service. Again, we have 11:05:14

21 here and that is at tab C; correct? 11:05:14

22 A. That's right. 11:05:16

23 Q. If we look at tab C? 11:05:18

24 A. Page 250.

25 Q. Page 250 the last line says "Sing

1 Happy Birthday To You music same as Good-Bye To 11:05:34
2 You." Correct? And you say in your report 11:05:37
3 that "Because the author did not include the 11:05:39
4 printed words for Happy Birthday To You that 11:05:42
5 that indicates that the lyrics were well known 11:05:42
6 at that time."? 11:05:44

7 A. Yes, I probably could have added 11:05:48
8 that it also didn't include the words to Good-Bye 11:05:50
9 To You which would indicate to me that both of 11:05:53
10 those texts were very well known at that time. 11:06:00

11 Q. If you look at the prior page, 11:06:03
12 those are the lyrics to Good-Bye To You, aren't 11:06:04
13 they? 11:06:07

14 A. Yes, sure. 11:06:10

15 Q. Does the fact that those lyrics -- 11:06:12

16 A. I'm sorry, I didn't notice that, I 11:06:14
17 have to say that Good-Bye To You was already 11:06:14
18 printed. 11:06:16

19 Q. Does the fact that Good-Bye To You 11:06:21
20 was printed indicate to you that the lyrics were 11:06:22
21 not well known at that time? 11:06:24

22 A. Well since the song always says 11:06:28
23 Good Morning To You I suppose that the author 11:06:28
24 might have wanted to provide the words to
25 Good-Bye To You because maybe you couldn't

1 was? 11:10:08

2 A. No, we don't unless we find a 11:10:10

3 written version of the text. 11:10:18

4 Q. So when you say well known by that 11:10:20

5 time -- in paragraph 17 you said well known by 11:10:24

6 1901. The absence of the lyrics here and just 11:10:27

7 the reference in Exhibit C led you to conclude 11:10:27

8 that the lyrics were well known by 1901; 11:10:30

9 correct? 11:10:30

10 A. Yes. 11:10:40

11 Q. Let's go through a few more of 11:10:44

12 these. Paragraph 18, did we cover that, we 11:10:48

13 did. When you say -- I'm at paragraph 18 for 11:10:51

14 Exhibit C. 11:10:53

15 A. That is what we just did. 11:10:56

16 Q. You say it indicates the lyrics 11:10:59

17 were well known by that time. What does that 11:11:00

18 time mean there? 11:11:05

19 A. Whenever this came out. Is there 11:11:10

20 some kind of indication? That is copyright 11:11:15

21 1909 by Revel & Company which means it was at 11:11:23

22 least by 1909. 11:11:25

23 Q. Do you know whether in Exhibit C of 11:11:27

24 Exhibit 47 --

25 A. Exhibit C or D did you say?

1 Q. I said C. I'm still at Tell Me A 11:11:32
2 True Story. 11:11:32
3 A. Okay. 11:11:36
4 Q. Do you have any knowledge of 11:11:39
5 whether the Clayton F. Summy Corporation 11:11:46
6 authorized the reprinting of Good-Bye To You? 11:11:47
7 A. There is no evidence in this. 11:11:48
8 Q. Do you have any evidence that the 11:11:51
9 Hill sisters authorized the reprinting of 11:11:53
10 Good-Bye To You? 11:11:54
11 A. There is no evidence. 11:11:58
12 Q. How about whether they knew that it 11:11:59
13 was reprinted in this book? 11:12:00
14 A. There is no evidence. 11:12:02
15 Q. That is true for both the Hill 11:12:04
16 sisters and the Summy Corporation; correct? 11:12:06
17 A. Based on what we have in front of 11:12:19
18 us there is no evidence of any of that. However, 11:12:25
19 sorry to just continue that. I think the same 11:12:29
20 probability exists that as admired apparently 11:12:32
21 and busy educators that this is the kind of 11:12:36
22 volume that they probably would have seen and 11:12:40
23 they might have gotten very angry. So it is 11:12:42
24 possible that they did authorize it.
25 Q. Do you have any basis for that

1 statement? 11:12:47

2 A. No. No, it is just the inference 11:12:50

3 that it seems to be intended for teachers and 11:12:54

4 they were teachers and lots of teachers who are 11:12:57

5 very diligent would keep up on the journals 11:12:59

6 about teaching and try to be abreast of what is 11:13:01

7 going on. So I think it is possible that they 11:13:01

8 saw it. 11:13:03

9 Q. Do you have any evidence that they 11:13:03

10 saw it? 11:13:04

11 A. No. 11:13:07

12 Q. Are you opining today that they did 11:13:07

13 see it? 11:13:09

14 A. I'm opining that they may have seen 11:13:12

15 it. I would not say they did see it because I 11:13:13

16 don't know. I think they might have seen it. 11:13:16

17 It is the kind of thing that might have crossed 11:13:19

18 their vision. 11:13:21

19 Q. What are you relying on for that 11:13:22

20 statement other than the fact that they were 11:13:23

21 teachers? 11:13:24

22 A. That is all and that this is 11:13:26

23 intended for teachers. 11:13:29

24 Q. Did you read any biographies of the 11:13:29

25 Hill sisters in preparation of your report? 11:13:29

1 A. No, I haven't. 11:13:38

2 Q. Have you done any study of what the 11:13:40

3 Hill sisters did or how they prepared or what 11:13:41

4 kind of things they read at all? 11:13:43

5 A. No, I only know the fact that they 11:13:46

6 were educators that had a very good reputation. 11:13:47

7 Q. How do you know that? 11:13:51

8 A. Marc probably informed me of that 11:13:54

9 and it seemed like a reasonable supposition 11:13:57

10 since he seemed to have done his research. I 11:13:58

11 could have duplicated the research, but I think 11:14:00

12 the main point was that I knew they were 11:14:02

13 educators and that was the market. 11:14:04

14 Q. The only fact that you're relying 11:14:06

15 on to conclude that they may have seen this is 11:14:06

16 something that you learned from Mr. Rifkin; is 11:14:11

17 that correct? 11:14:12

18 A. The only thing that led me to this 11:14:15

19 conclusion is that I knew they were educators. 11:14:17

20 That I did know. I looked them up. But I 11:14:20

21 didn't see any elaborate biography and didn't 11:14:22

22 after that. I just needed to know they were 11:14:27

23 composer and a writer pair who were educators. 11:14:30

24 And since I know many educators who

25 routinely read all the journals, it seems to me

1 possible that they did the same. 11:14:37

2 Q. Because you know today that 11:14:40

3 educators read journals you're concluding that 11:14:42

4 it is possible that the Hill sisters read this 11:14:44

5 journal in the early 20th century? 11:14:46

6 A. No, I know that educators in the 11:14:52

7 late 19th early 20th century also read journals. 11:14:52

8 Q. How do you know that? 11:14:55

9 A. From my research into Henry Cowell 11:14:56

10 and his mother. 11:14:57

11 Q. But again, just to be clear, you 11:14:59

12 don't have any evidence, this is speculation? 11:15:07

13 A. This is purely speculation. 11:15:19

14 Q. Go to paragraph 19 which refers to 11:15:33

15 Exhibit D or tab D of Exhibit 47, correct? 11:15:36

16 This is an excerpt from something called 11:15:38

17 Program For Beginners' Department? 11:15:38

18 A. Yes. 11:15:41

19 Q. This does include the lyrics to 11:15:42

20 Happy Birthday as we understand them. 11:15:43

21 A. That's right. 11:15:45

22 Q. And you say that that leads you to 11:15:51

23 conclude that the words were widely known at 11:15:51

24 that time, correct?

25 A. It leads me to conclude that they

1 could be widely known at that time. 11:15:57

2 Q. But I thought the absence of the 11:15:59
3 lyrics would lead you to conclude that they 11:16:05
4 were widely known at that time? Here it is the 11:16:09
5 presence -- I'm trying to determine in previous 11:16:12
6 examples the absence of the lyrics led you to 11:16:14
7 conclude they were widely known? 11:16:15

8 A. Yes. 11:16:17

9 Q. Here the lyrics are included and 11:16:19
10 that leads you to conclude that they were 11:16:20
11 widely known? 11:16:24

12 A. Well, in the sense that it seems 11:16:26
13 they are now being picked up by people and put 11:16:28
14 in their books, so in the context of what we 11:16:30
15 have gone through it strikes me that it is 11:16:32
16 becoming known to people who feel that they 11:16:43
17 want to include it for one reason or another. 11:16:45

18 Q. But doesn't under the prior logic 11:16:48
19 of when we were talking about the words 11:16:50
20 Good-Bye To You having been included, that 11:16:53
21 indicated to you people did not know the 11:16:55
22 lyrics. So by that same logic doesn't the fact 11:16:58
23 that these lyrics are included here indicate 11:16:59
24 that people did not know --

25 A. I think that you're quite right

1 that that was the question that you asked. 11:27:56

2 MS. LE MOINE: I asked whether it 11:27:58
3 was authorized by Clayton F. Summy Co. and 11:27:59
4 Professor Sachs testified that he thought the 11:28:02
5 note 2 strongly suggested that it was. 11:28:05

6 MR. RIFKIN: I would object to the 11:28:07
7 prior question because I don't think the prior 11:28:10
8 question referred to the song Happy Birthday To 11:28:17
9 You that appears on page 63 in Exhibit D to 11:28:19
10 Exhibit 47. I thought the reference was more 11:28:20
11 general. 11:28:21

12 MS. LE MOINE: Let's clarify. 11:28:23

13 Q. Let me be clear then. I want to be 11:28:25
14 clear. I apologize if that was not clear. 11:28:27

15 What I'm trying to determine is 11:28:29
16 whether it is your testimony today that the 11:28:31
17 words "Happy Birthday To You, Happy Birthday To 11:28:34
18 You, Happy Birthday Dear John, Happy Birthday 11:28:36
19 To You," the printing of those in this book 11:28:38
20 Program For Beginners' Department was 11:28:41
21 authorized by the Clayton F. Summy Co. or 11:28:44
22 authorized by the Hill sisters? 11:28:47

23 A. I would have to go back and say I 11:28:51
24 would only say that note 2 indicates that some
25 contact was made between the publisher of this

1 and the Clayton F. Summy Company since, as Marc
2 pointed out, we don't actually know whether the
3 words to Happy Birthday To You were included in
4 the volume that referred to Song Stories For
5 The Sunday School. We simply don't know that.

11:28:59

11:29:01

11:29:03

11:29:06

11:29:07

6 But something in the text of this
7 program for the Beginner's Department I think
8 clearly provoked the publisher of it to make
9 contact with Summy because Summy is referred to
10 here.

11:29:10

11:29:13

11:29:16

11:29:17

11:29:18

11 Q. Song Stories For The Sunday School
12 is referred to here in note 2?

11:29:20

11:29:21

13 A. Song Stories For The Sunday School
14 and Clayton F. Summy is given as the publisher. No, it isn't
15 actually.

11:29:25

11:29:26

11:29:27

16 Q. It isn't?

11:29:27

17 A. It isn't, yes.

11:29:30

18 Q. So let's try again. Do you have
19 any evidence -- let's start very generally.

11:29:33

11:29:37

20 You pointed me to the note and I want to start -- I'm
21 taking it from the top, very general.

11:29:39

11:29:39

22 A. Okay.

11:29:41

23 Q. Are you aware of any evidence that

11:29:43

24 the Clayton F. Summy Co. authorized the

25 printing of the lyrics to Happy Birthday To You

1 in Program For Beginners' Department? 11:29:48

2 A. No. 11:29:50

3 Q. Are you aware of any evidence that 11:29:55

4 the Hill sisters authorized printing of Happy 11:29:57

5 Birthday To You in Program For Beginners' 11:29:57

6 Department? 11:29:57

7 A. No. 11:29:59

8 Q. Are you aware of any evidence that 11:30:03

9 they are even aware of the printing of Happy 11:30:05

10 Birthday To You in this volume, either the Hill 11:30:07

11 sisters or the Clayton F. Summy Co.? 11:30:08

12 A. There is no direct evidence of 11:30:08

13 that. To that I might add, however, that the 11:30:17

14 confusion in my mind about Song Stories came 11:30:21

15 from Exhibit A which is Song Stories For The 11:30:22

16 Kindergarten Published by Clayton F. Summy 11:30:24

17 Corporation which strikes me as probably 11:30:32

18 related to Song Stories For The Sunday School 11:30:35

19 because the title is the same. 11:30:37

20 So it strongly suggests that it is 11:30:40

21 Clayton F. Summy Company who is referred to in 11:30:43

22 footnote 2. But it does not imply that Happy 11:30:46

23 Birthday is in the collection Song Stories. 11:30:49

24 Q. Nor does it imply, does it, that 11:30:49

25 Clayton F. Summy Co. authorized the printing of

1 Happy Birthday To You in this volume; is that 11:30:54

2 right? 11:30:56

3 A. No, it does imply that Clayton F. 11:30:59

4 Summy may have authorized the publication of 11:31:01

5 something in this volume, but it doesn't refer 11:31:02

6 specifically to Happy Birthday To You. 11:31:04

7 Q. So just to be totally clear, you're 11:31:08

8 not offering any opinion that this is an authorized 11:31:11

9 publication of Happy Birthday To You by Clayton 11:31:14

10 F. Summy Co. or by the Hill sisters; correct? 11:31:27

11 A. Not on the basis of any evidence. 11:31:29

12 Q. Let's talk about paragraph 20. In 11:31:33

13 paragraph 20 and it is referring to tab E, 11:31:38

14 Exhibit E. We are discussing a song book 11:31:45

15 entitled "The 101 Best Songs For Home School 11:31:50

16 And Meeting." And you note that this print has 11:31:59

17 no copyright date, correct? Do you know when 11:32:02

18 this was published, tab E? 11:32:05

19 A. Well, I don't. This was the first 11:32:08

20 of the compositions to provoke me to write 11:32:11

21 Nicholas Bell about the backwards based clef on 11:32:14

22 page 23. Because that struck me as a very old 11:32:17

23 form of musical notation that one almost never 11:32:21

24 sees. And it happened that there was one song

25 in the Julliard Library that was published in

1 the 1840s, if I remember correctly, I think I 11:32:33
2 may refer to it here, which used that backwards 11:32:36
3 based clef. And it was publication of Novello, 11:32:39
4 a famous English publisher. 11:32:40

5 At that point I wrote to Nicholas 11:32:42
6 Bell and said how late do you see this 11:32:45
7 backwards based clef and he replied that it is 11:32:51
8 impossible from the Novello archives to know 11:32:54
9 when they changed their orthography, but 11:32:58
10 certainly the 19th century I think he said. 11:33:00

11 In any case this is the 10th 11:33:02
12 edition of something. It means that whatever 11:33:06
13 we are looking at goes back probably 10 years, 11:33:10
14 if not more. Which makes me infer that it is 11:33:13
15 probably from the very early 20th century or 11:33:15
16 possibly even the late 19th century. 11:33:18

17 Q. Let's take a minute to discuss this 11:33:20
18 backward based clef issue. 11:33:22

19 A. Yes. 11:33:24

20 Q. What can you conclude based on the 11:33:26
21 use of a backwards based clef in a piece of 11:33:27
22 printed music? 11:33:30

23 A. The same thing that one concludes 11:33:33
24 with various symbols. It may date the
25 engraving. It may date the visual practice.

1 putting out new editions. It is lot a work to 11:47:50
2 put out new editions. 11:47:51

3 Q. I think we covered that you don't 11:47:58
4 have expertise in music publishing in this era? 11:48:00

5 A. I don't have any expertise in music 11:48:00
6 publishing, but if you just think about it, you 11:48:02
7 realize that putting out a new edition is an 11:48:04
8 expense and you probably wouldn't want to do it 11:48:05
9 every week. 11:48:10

10 Q. I'm wondering why you are making an 11:48:13
11 assumption about the music publishers' practice 11:48:15
12 in the early 20th century? 11:48:18

13 A. It is purely instinct based on 11:48:20
14 music that I have looked at and new editions 11:48:21
15 that I looked at that they don't come out that 11:48:23
16 frequently. 11:48:25

17 I have to say that I think that 11:48:27
18 while I understand the need for hard evidence 11:48:33
19 of a lot, I think my 60 or 65 years of experience 11:48:38
20 in working with and looking at music gives me a 11:48:42
21 certain amount of basis to make some 11:48:46
22 inferences. Because as an historian I know you 11:48:48
23 can't always depend upon evidence. The 11:48:50
24 evidence may not be there. So you have to take
25 other circumstances and that includes your own

1 experience. You have to be careful about it 11:48:57
2 because you don't want to draw conclusions 11:48:59
3 based on experience that might not prove to be 11:49:00
4 valid. 11:49:02

5 Q. What I'm trying to define is what 11:49:04
6 is it about your experience that you're relying 11:49:06
7 on when you make some of these inferences? 11:49:07

8 A. Exactly, in this case it is from 11:49:10
9 looking at a lot of music that's comes out in 11:49:13
10 multiple editions and having some sense of the 11:49:15
11 time span they covered and therefore some sense 11:49:19
12 of perhaps a publisher's instinct about when it 11:49:21
13 is time to do a new edition. 11:49:27

14 Q. Just to clarify. You haven't done 11:49:30
15 any actual study of how frequent editions were 11:49:32
16 issued of music collections in the early 20th 11:49:33
17 century in America? 11:49:39

18 A. That's correct. 11:49:46

19 Q. In tab E this Good Morning To You 11:49:51
20 printing referred to as number 23 it says under 11:49:54
21 that Good-Bye To You, Happy Birthday To You, my 11:49:56
22 questions are going to be similar to those that 11:49:58
23 we already covered. 11:50:00

24 Do you have any evidence that the
25 Clayton F. Summy Co. was aware of this edition

1 of the printing of Good Morning To You? 11:50:08

2 A. There is no evidence of that. 11:50:13

3 Q. How about the Hill sisters, do you 11:50:15

4 have any evidence that they knew about this 11:50:17

5 version of Good Morning To You and Happy 11:50:17

6 Birthday To You? 11:50:19

7 A. There is no evidence of that. And 11:50:23

8 if I may add there is no evidence that they 11:50:23

9 wrote the thing. 11:50:24

10 Q. There is no evidence that they 11:50:25

11 wrote what? 11:50:28

12 A. Good Morning To You. Number 23 in 11:50:29

13 that publication. 11:50:38

14 Q. What about tab A? 11:50:40

15 A. That is the one that we talked 11:50:44

16 about before. Where it credits Mildred J. Hill 11:50:46

17 composing and arranging and Patty Hill with 11:50:49

18 writing and adapting. And that is a publication 11:50:53

19 only of Good Morning To You which we know is by 11:50:54

20 them. 11:50:56

21 Q. Why would you say the song Good 11:50:57

22 Morning To You there is no evidence that they 11:50:58

23 wrote the thing? 11:51:01

24 MR. RIFKIN: He said in tab E.

25 A. In tab E there is no evidence that

1 they wrote the thing. 11:51:05

2 MR. RIFKIN: You were asking him 11:51:06
3 about tab E. 11:51:07

4 Q. I want to clarify. There is 11:51:10
5 evidence that they wrote that thing? 11:51:11

6 A. But not in tab E. 11:51:16

7 Q. What is the significance of that to 11:51:18
8 you that there is none in tab E? 11:51:20

9 A. Well, actually, you know, I was not 11:51:22
10 able to really make a conclusion as to why they 11:51:25
11 are not named there. The only thing I see is 11:51:28
12 they aren't named there, which did strike me as 11:51:31
13 very strange. Why would this be published 11:51:32
14 without them being named. 11:51:35

15 We seem to have the title page, 11:51:39
16 which doesn't refer to the Hill sisters at all. 11:51:43
17 So, I don't know. Frankly Amicci the one below 11:51:47
18 it also didn't indicate who wrote it. The 11:52:11
19 whole thing may be a pirate. 11:52:12

20 Q. Let's go to, there is a lot of 11:52:20
21 referring back and forth. Go to paragraph 21. 11:52:23
22 Paragraph 21 we are talking about a book called 11:52:26
23 "The Golden Book Of The Favorite Songs." 11:52:26
24 Correct? 11:52:26

25 A. Yes.

1 Q. And you again reference the 11:52:35

2 backward -- 11:52:37

3 A. I'm sorry, may I interrupt you to 11:52:37

4 go back one? 11:52:38

5 Q. Sure. 11:52:39

6 A. To the previous example? 11:52:40

7 Q. Sure. 11:52:42

8 A. The one thing that we didn't 11:52:45

9 mention is that the title is Good-Bye To You, 11:52:48

10 Happy Birthday To You, but Happy Birthday To 11:52:49

11 You is not included. 11:52:50

12 Q. What is the significance of that? 11:52:55

13 A. I could infer that the engraver 11:52:57

14 felt that if he tried to fit two lines of words 11:52:59

15 in there he wouldn't be able to fit the next 11:53:03

16 song in and that would cause him some sort of 11:53:06

17 problem. Although this doesn't quite have the 11:53:09

18 very end it clearly seems like the double bar 11:53:11

19 for Amicci is there. Which means that is the 11:53:13

20 whole of the second song. 11:53:20

21 And if he had tried to put the 11:53:20

22 Happy Birthday words under Good Morning To 11:53:23

23 You he would have had to space it out so that 11:53:23

24 that next song would not fit there. Another

25 solution would have been to put a different

1 song there that only occupied two staves, but 11:53:30
2 he didn't or she didn't do that. 11:53:32

3 Again, it implied to me that people 11:53:36
4 knew what the words of Happy Birthday were, 11:53:38
5 they didn't have to be printed. And perhaps 11:53:43
6 one might say the reasons why Good Morning To 11:53:45
7 You is printed is because that was copyrighted, 11:53:46
8 we know that. 11:53:48

9 Q. You said you don't have any 11:53:52
10 evidence that this is authorized or they knew 11:53:52
11 about it? 11:53:55

12 A. No, but the implication is whoever 11:53:59
13 put this together felt that there was no need 11:54:01
14 to put the words of Happy Birthday in there. I 11:54:04
15 think one can go on to say that since the words 11:54:09
16 of Good Morning To You are in there, Good 11:54:10
17 Morning To All along with the music, whether 11:54:14
18 this is a pirated edition, whoever put it 11:54:16
19 together seems to have respected the 11:54:19
20 association of those two which were 11:54:22
21 copyrighted. And it may be that there was no 11:54:22
22 association in mind between the Happy Birthday 11:54:25
23 words and anything else, but that so many 11:54:27
24 people knew them that there was no point in
25 fiddling around with the layout of this page in

1 order to try to fit them in. 11:54:32

2 Q. Do you have any evidence of what 11:54:34

3 you're describing right now that that was what 11:54:35

4 was going on in the minds of the engraver? 11:54:38

5 A. No, I don't have evidence of it. 11:54:40

6 But it would have required a major rearrangement 11:54:44

7 of the page. There is simply no room to fit in 11:54:46

8 Happy Birthday To You in addition to the words 11:54:48

9 to Good Morning To You. There is no room. 11:54:48

10 There is no space 11:54:52

11 Q. Could that be the reason just as 11:54:55

12 well that it was widely known? 11:54:57

13 A. It could be, but I think the two go 11:54:59

14 hand in hand. If you want people to know what 11:55:00

15 they are singing you either have to figure out 11:55:01

16 a way to layout the page. The solution was 11:55:04

17 clear to me. You have to find a shorter part 11:55:06

18 song for the bottom half of the page and be 11:55:10

19 able to space out the staves a little bit so 11:55:12

20 you can fit in Happy Birthday. 11:55:15

21 It seems, again, we don't know what 11:55:18

22 the engraver was thinking, but it seems that 11:55:19

23 the engraver didn't feel it was necessary to 11:55:21

24 put in those words. Probably, I have to say

25 probably because people knew the words.

1 Q. But again, the same question, you 11:55:34
2 don't have any evidence that people knew the 11:55:36
3 words at the time other than the documents that 11:55:38
4 you have been provided by Mr. Rifkin? 11:55:39
5 A. That's right. 11:55:41
6 Q. We haven't done any independent 11:55:44
7 study about how widely, quote unquote, widely 11:55:47
8 the lyrics to Happy Birthday To You were known 11:55:48
9 at this time, correct? 11:55:49
10 A. Well as I explained to you before, 11:55:53
11 yes, I don't see how you could do that. You're 11:55:55
12 talking about lyrics that may be associated 11:55:59
13 with hundreds of thousands, millions of people 11:56:03
14 perhaps even who never wrote down yesterday we 11:56:06
15 sang Happy Birthday or who may have written it 11:56:08
16 down but those letters can't be found anywhere 11:56:11
17 or if you went through 500,000 letters you 11:56:13
18 might find two that referred to it. But that 11:56:16
19 doesn't prove anything because it is not the 11:56:19
20 sort of thing that you bother writing about. 11:56:22
21 Look at it this way, you write Dear 11:56:24
22 Granny we went yesterday or we had yesterday my 11:56:28
23 birthday party and we sang Happy Birthday. Do 11:56:30
24 you think that letter is going to be preserved
25 somewhere.

1 Q. Is it possible that it is? 11:56:33

2 A. Yes, somewhere sure in the 11:56:35

3 universe. 11:56:39

4 Q. But you have not looked for -- 11:56:43

5 A. It's a haystack. It's a haystack 11:56:46

6 with maybe a needle in it and maybe not. 11:56:50

7 Because on something that may be, as I have to 11:56:53

8 say may be on a universal popular level the 11:56:58

9 chances of finding documentation are extremely 11:56:59

10 tiny. 11:57:00

11 Live me give you one example of 11:57:05

12 this. Popular music in the 17th century. We 11:57:08

13 know there was popular music in the 17th 11:57:11

14 century that is referred to, but hardly a note 11:57:14

15 of it is preserved because popular music was 11:57:16

16 sung by poorer people and they couldn't even 11:57:19

17 read, so nobody would bother engraving it. But 11:57:22

18 even if they engraved it, who had the money to 11:57:22

19 buy it. 11:57:25

20 So it is a complete mystery. We 11:57:27

21 know it is there. We can't say there was no 11:57:31

22 popular music because there is no evidence of 11:57:31

23 it, but it is there. You see paintings with 11:57:33

24 people singing and they were singing something

25 and they are poor. This is very much the same.

1 If three-quarters of the world were 11:57:39
2 singing Happy Birthday by 1910, which we don't 11:57:41
3 know, the chances of finding evidence of it I 11:57:45
4 would say are extremely small. Maybe if you 11:57:47
5 went through every last page of every English 11:57:50
6 language newspaper in that period you might 11:57:54
7 find some little item about people singing 11:57:55
8 Happy Birthday. 11:57:59

9 Q. The paintings you're talking about, 11:58:03
10 you're hypothesizing about a means by which 11:58:05
11 someone could conduct a study, correct? 11:58:08

12 A. No. There have been major studies 11:58:09
13 done of what is called musical iconography. I 11:58:11
14 didn't do them. But it's a major part of the 11:58:14
15 music history. Looking at pictures that show 11:58:17
16 music being made and trying to determine what 11:58:18
17 is happening. There are some paintings in 11:58:20
18 which you can read the music, but those are 11:58:22
19 paintings for rich people. 11:58:24

20 Q. Are you aware of any such paintings 11:58:27
21 that have any evidence of Happy Birthday To You 11:58:29
22 contained within any of these paintings? 11:58:31

23 A. None whatsoever. But that doesn't 11:58:36
24 mean that there wasn't one. Somebody might 11:58:36
25 have sketched the birthday party which they are 11:58:36

1 all singing Happy Birthday. 11:58:44

2 Q. But you're not aware of that 11:58:45

3 sitting here today? 11:58:47

4 A. No. 11:58:53

5 Q. Paragraph 21 The Golden Book Of 11:58:53

6 Favorite Songs. 11:58:59

7 A. Yes 11:59:12

8 Q. Look at tab F. Look at the piece 11:59:16

9 of music again similar to the one, the previous 11:59:16

10 one; is that correct 11:59:19

11 A. Yes, the same thing with the 11:59:20

12 backward base. 11:59:21

13 Q. My questions are the same, is there 11:59:23

14 any evidence from this document that this was 11:59:28

15 authorized by the Clayton F. Summy Co., this 11:59:35

16 printing in tab F? 11:59:37

17 A. No, although as I think about it it 11:59:43

18 is another Chicago company and maybe that would 11:59:45

19 have been a little dangerous. 11:59:48

20 Q. When you say a little dangerous, 11:59:48

21 what do you mean? 11:59:57

22 A. To Hall & McCreary. The publisher 11:59:59

23 of this excerpt. 12:00:00

24 Q. What I'm asking you is do you have

25 any evidence that it was authorized by the

1 Clayton F. Summy Co. 12:00:04

2 A. No. 12:00:07

3 Q. Do you have any evidence that it 12:00:10

4 was authorized by the Hill sisters, either one? 12:00:10

5 A. No. 12:00:11

6 Q. Do you have any evidence that 12:00:14

7 Clayton F. Summy Co. knew about this publication? 12:00:14

8 A. No. 12:00:16

9 Q. How about the Hill sisters, any 12:00:17

10 evidence that they knew about this publication? 12:00:23

11 A. No. And in fact it is exactly the 12:00:25

12 same as the example in number E. So this seems 12:00:31

13 to be a reprint of something. 12:00:33

14 Q. The type phase is a little 12:00:35

15 different, correct, between E and F? 12:00:39

16 A. Just looking at this, let me just 12:00:52

17 compare. I would say it is the same. 12:01:00

18 Q. In the sample in Exhibit E and the 12:01:02

19 sample Exhibit F of your report you say it is 12:01:03

20 the same. 12:01:04

21 A. No, I'm sorry, there is one 12:01:12

22 difference. There are two differences. This 12:01:15

23 must have been re-engraved in some way. Namely 12:01:17

24 the bottom line, the first cord of the last

25 line in the left-hand and the last cord have

1 their stem facing downward rather than upward. 12:01:26

2 Q. Can you could look at the title, 12:01:27

3 aren't the titles printed differently? 12:01:30

4 A. Yes, the title is redone. That is 12:01:32

5 not a re-engraving that could be done with type 12:01:36

6 I would think. The rest of it to be sung 12:01:40

7 standing brightly Good Morning To You/Happy 12:01:41

8 Birthday To You that all seems to be the same. 12:01:43

9 In fact it could even be that the 12:01:48

10 engraver of 23 decided to have the left hand 12:01:51

11 stems face up so it wouldn't look so crowded 12:01:53

12 with respect to the next song, I don't know. 12:02:04

13 But they are essentially the same. 12:02:10

14 Q. Look at tab G paragraph 22 of your 12:02:13

15 report you state that tab G is an undated copy 12:02:24

16 of Harvest Hymns from the '20s. How do you 12:02:25

17 know it is from the '20s? 12:02:28

18 A. One of the pieces, "Let Others See 12:02:34

19 Jesus In You" is copyrighted 1924. It would 12:02:37

20 probably be better to say no later than the 12:02:46

21 '20s. But I suspect pretty close to that. The 12:02:49

22 next one is copyrighted 1922 of the three 12:02:53

23 examples that we have here number 37. 12:02:54

24 Q. You note in your report that there

25 is no author -- Good Morning To You, number

1 218? 12:02:59

2 A. Yes. 12:03:01

3 Q. And you note in your report that 12:03:04

4 there is no author, composer or copyright 12:03:09

5 indication despite the fact that such information 12:03:11

6 is given for the other two pieces that you 12:03:12

7 include, correct? 12:03:12

8 A. Yes. 12:03:14

9 Q. What is the significance of that to 12:03:14

10 you? 12:03:15

11 A. I don't know. It struck me as odd. 12:03:17

12 Q. What do you mean by odd? 12:03:19

13 A. Supposedly Good Morning To You 12:03:22

14 was copyrighted and yet the compiler of this is 12:03:25

15 very careful to indicate the copyright of the 12:03:29

16 other two specimens that I was sent. It seems 12:03:31

17 very strange that there was no credits for this 12:03:34

18 nor any authorship of either the music or the 12:03:37

19 words. Whereas Herbert Tovey is credited in 12:03:40

20 one example and what is his name in the other 12:03:43

21 one for having written the words and music. 12:03:48

22 And you notice in 37 Herbert G. Tovey in the 12:03:52

23 composer's place and HGT on the left hand side 12:03:55

24 as the author.

25 As far as this piece by McKinney

1 which doesn't seem to have a number on it, 12:04:01
2 there is -- it is bound in so it is really hard 12:04:03
3 to see. Do you know what number that is in the 12:04:05
4 big binder off hand? 12:04:15

5 Q. McKinney, not offhand. You might 12:04:18
6 know, I'm assuming that these are organized in 12:04:25
7 the way that you provided them? 12:04:28

8 A. Whatever, this is bound tightly but 12:04:31
9 I could see the K period on the left-hand side. 12:04:35
10 So I think what it probably says is BBK or 12:04:36
11 BBMK. 12:04:37

12 Q. BBM? 12:04:40

13 A. BBMK. But there is a copyright 12:04:44
14 credit there and author. In both cases Tovey 12:04:48
15 and McKinney apparently did both the words and 12:04:51
16 music and that is carefully credited and yet no 12:04:53
17 information at all about Good Morning To You. 12:04:57

18 Q. Does the absence of there being any 12:04:58
19 of that sort of information on Good Morning to 12:05:00
20 You suggest to you that Good Morning To You has 12:05:01
21 no author? 12:05:03

22 A. Yes, that would be the implication. 12:05:05
23 That nobody wrote it. Nobody wrote the music 12:05:08
24 and nobody wrote the words. Dropped from
25 heaven.

1 Q. We know that is not true? 12:05:12

2 A. We know that is not true. And also 12:05:14

3 if you look at the example of Good Morning To 12:05:17

4 You you can see on the right the beginning of 12:05:20

5 220 where there is credit of some sort. 12:05:22

6 Q. Is it possible that Good Morning To 12:05:24

7 You the authorship was not known by the 12:05:27

8 publisher, is that possible? 12:05:31

9 A. I suppose anything is possible. It 12:05:33

10 seems kind of stupid to me. 12:05:35

11 Q. Why is that you stupid? 12:05:36

12 A. That tune was around in 12:05:39

13 circulation. We know, we have seen so many 12:05:40

14 prints of it. 12:05:43

15 Q. What reason do you give for there 12:05:46

16 being no authorship noted here? 12:05:48

17 A. One is I don't know, and the other 12:05:53

18 is the publisher of this was very careless, 12:05:56

19 possibly assuming that everybody knew that it 12:05:59

20 must have been like a folk song that has been 12:06:02

21 in the air for years. And the third is that he 12:06:05

22 is stupid and did not bother to check because 12:06:07

23 it's a little dangerous it strikes me. 12:06:09

24 Q. For this publication you're not

25 aware of any evidence that Clayton F. Summy Co.

1 authorized this publication? 12:06:17

2 A. No, actually strangely enough 12:06:19

3 unless I'm missing something here there doesn't 12:06:21

4 seem to be any indication on the cover who 12:06:22

5 published it. 12:06:25

6 Q. You're not aware if Clayton F. 12:06:27

7 Summy Co. knew about this publication? 12:06:27

8 A. No idea. 12:06:29

9 Q. You're not aware that the Hill 12:06:32

10 sisters authorized publication, are you, any 12:06:33

11 evidence of that? 12:06:34

12 A. There is no evidence. 12:06:35

13 Q. How about whether they knew about 12:06:36

14 this publication? 12:06:38

15 A. No evidence. When I say no 12:06:41

16 evidence it always means maybe so, maybe not. 12:06:41

17 But there is evidence. 12:06:43

18 Q. No evidence that you're aware of? 12:06:44

19 A. That I'm aware of, yes. 12:07:02

20 Q. Let's look at tab H which is 12:07:09

21 referred to in paragraph 23 of your report. 12:07:11

22 Again the version of Happy Birthday To You 12:07:17

23 printed in this volume, do you note that it 12:07:17

24 does not include any author information;

25 correct?

1 A. Whereas the one above it does? 12:07:31

2 Q. Right. Nor any copyright 12:07:33

3 information whereas the one above it does? 12:07:37

4 A. Yes. 12:07:39

5 Q. I guess my question is the same. 12:07:42

6 What do you conclude based on that? Is it the 12:07:45

7 same three things that you concluded about 12:07:46

8 absence in the prior document? 12:07:48

9 A. Yes, the music is identical, I 12:07:54

10 believe it is identical. I haven't compared it 12:07:56

11 completely. It is identical to the music of, 12:08:03

12 for example, tab F with the exception that to 12:08:08

13 accommodate happy and birthday -- sorry, happy, 12:08:11

14 it is always necessary to divide the single 12:08:29

15 pickup D into two parts. 12:08:32

16 Q. My questions are the same with 12:08:35

17 regard to this publication? 12:08:36

18 A. My answers are the same. 12:08:37

19 Q. You don't have any evidence of any 12:08:39

20 authorization or knowledge by Clayton F. Summy 12:08:42

21 or the Hill sisters with regard to this publication, correct? 12:08:44

22 A. That's correct and there is no 12:08:47

23 evidence as to who wrote it. 12:08:49

24 MS. LE MOINE: Let take a break.

25 THE VIDEOGRAPHER: Going off the

1 record at 12:09. 12:18:22

2 (Recess Taken.) 12:18:26

3 THE VIDEOGRAPHER: Returning to 12:18:30

4 the record at 12:18. 12:18:30

5 BY MS. LE MOINE: 12:18:34

6 Q. Professor Sachs, let's look at 12:18:47

7 paragraph 23. Paragraph 23 you say, "In song 12:18:54

8 number 219 Birthday states copyright 1924 with 12:18:55

9 the composer's name on the right where by 12:18:58

10 convention the music composer is identified and 12:19:00

11 his initials on the left where by convention 12:19:04

12 the lyricist is identified." Do you see that? 12:19:06

13 A. Yes. 12:19:07

14 Q. Is it true that the convention that 12:19:10

15 you're referencing is not always followed? 12:19:12

16 A. I would say it is followed about 12:19:14

17 99.999 percent of the time. 12:19:21

18 Q. But the survey you didn't find that 12:19:23

19 it was followed 99.999 percent of the time, 12:19:24

20 right? 12:19:27

21 A. Well, there were other examples. 12:19:30

22 For example just the indication traditional or 12:19:33

23 nothing at all because it's a Gospel song or 12:19:36

24 things like that. But of the ones in which

25 there is author attribution that is where it

1 the composer. I don't know what I would think 12:25:42
2 frankly if it appeared on the left. It would 12:25:48
3 be so weird because the composer's name is on 12:25:50
4 the right except for that one example which you 12:25:53
5 managed to find. At that time everybody knew 12:25:56
6 he wrote his words and music, so there is no 12:25:57
7 reason not to put it that way. 12:25:58

8 Q. By seeing it on the right you would 12:26:01
9 conclude that he wrote the words and music? 12:26:04

10 A. Since there is no other reference 12:26:06
11 to a writer, yes. 12:26:07

12 MS. LE MOINE: I'm going to 12:26:15
13 identify this as Exhibit 53. 12:26:17

14 A. But I would add that because one 12:26:22
15 does know a little bit about Irving Berlin. 12:26:25
16 What one knows is he wrote his words a music. 12:26:27

17 Q. You assume perhaps it is outside of 12:26:29
18 the convention because everyone knows that 12:26:31
19 Irving Berlin wrote the words and music? 12:26:34

20 A. Or maybe because he wanted you to 12:26:46
21 remember that he did it all. 12:26:47

22 MS. LE MOINE: Mark this as 12:26:48
23 Exhibit 53. 12:27:12

24 (Sachs Exhibit 53 for
25 identification, Document.)

1 Q. Similarly we have the composer and 12:27:18
2 writer of the words in the same place? 12:27:19

3 A. Yes. 12:27:21

4 Q. On the right-hand side of the page? 12:27:21

5 A. Yes. 12:27:23

6 Q. And it does not say words by, 12:27:23
7 correct? 12:27:23

8 A. Correct. 12:27:26

9 Q. So is this consistent with 12:27:30
10 convention for there to be on the right-hand 12:27:33
11 side of the page one name when that person 12:27:35
12 wrote both the words and the music? 12:27:56

13 A. Yes, I think that is fine. 12:27:59

14 Q. Go back to paragraph 23 for a 12:28:06
15 moment of your report. When the preface -- 12:28:16
16 page 6 the last line of paragraph 23. It says 12:28:18
17 "The preface to this volume says that the 12:28:21
18 publishers or compilers pay hundreds of dollars 12:28:23
19 to get permissions, but if that is true, there 12:28:25
20 is no evidence that such permission was 12:28:28
21 required for Happy Birthday To You." Right? 12:28:29

22 A. Right. 12:28:32

23 Q. So I want to confirm that though it 12:28:36
24 says in the preface that the publishers and the
25 compilers pay hundreds of dollars to get

1 permissions, you don't see any evidence in that
2 volume at tab H that Happy Birthday To You is
3 authorized by the publisher Clayton F. Summy
4 Co.?

12:28:44

12:28:48

12:28:48

12:28:48

5 A. There is no evidence.

12:28:50

6 Q. And there is no evidence that the
7 Hill sisters authorized it?

12:28:51

12:28:54

8 A. There is no evidence.

12:28:55

9 Q. Right before we took a break you
10 also said there is no evidence that the Hill
11 sisters wrote the song that is at tab H and I
12 want to confirm you're talking about in tab H
13 there is no evidence?

12:28:59

12:29:04

12:29:07

12:29:08

12:30:08

14 A. In tab H there is no evidence.

12:30:13

15 Q. Let's look at paragraph 24. I want
16 to clear up some confusion first and make sure
17 we are clear on the record about this.

12:30:17

12:30:19

12:30:24

18 Tabs B -- you say paragraph 24 "The
19 materials before 1934 carry only two references
20 to Patty Hill. Tabs B, Inland Educator Indiana
21 School Journal and D, Program For Beginners'
22 Department." Right? And I'm looking at B it
23 is Inland Educator and D is Program For
24 Beginners' Department. And only one reference,
25 Tab A, Inland Educator and Indiana School

12:30:27

12:30:32

12:30:37

12:30:39

12:30:44

12:30:45

1 Journal to Mildred is author of the song. Tab 12:30:57
2 A is actually Song Stories For The 12:31:03
3 Kindergarten. So should that read tab B, 12:31:03
4 Inland Educator School Journal? 12:31:05
5 A. Tab B, probably, yes. 12:31:10
6 Q. Significantly Happy Birthday To You 12:31:14
7 is not present in tab A. It says Inland 12:31:15
8 Educator and Indiana School Journal but I think 12:31:17
9 is what you mean there, tab B? Since that is 12:31:21
10 where Indiana -- Inland Educator and Indiana 12:31:22
11 School Journal is? 12:31:25
12 A. Yes, I don't know how those -- oh, 12:31:30
13 yes, that may have come from Marc's office 12:31:32
14 rearranging things in chronological order and 12:31:35
15 perhaps forgetting to change the tab references 12:31:38
16 there. That is why I put the titles in on 12:31:40
17 everything to be sure it is clear. 12:31:43
18 Q. If the tabs are incorrect and this 12:31:45
19 happens a few times, there are things that 12:31:47
20 aren't present -- there is a tab that you 12:31:49
21 referenced that doesn't have a document or 12:31:52
22 there is tabs that are called something that 12:31:55
23 don't match up, should we rely on the title 12:31:55
24 rather than the tab?
25 A. Yes, rely on the title.

1 that is in Exhibit J? 12:54:30

2 MS. LE MOINE: That is a fair 12:54:32

3 question. What I'm asking if I could clarify, 12:54:32

4 Marc. 12:54:34

5 MR. RIFKIN: I'm trying to follow 12:54:35

6 all of this. 12:54:38

7 MS. LE MOINE: Is Professor Sachs 12:54:40

8 relying on anything other than what is behind -- 12:54:43

9 because the paragraph referring to what is 12:54:46

10 behind Exhibit J does not reflect what is 12:54:49

11 actually behind the Exhibit J tab. 12:54:50

12 MR. RIFKIN: I disagree with that 12:54:52

13 characterization. I think in paragraph 29 he 12:54:55

14 refers to the sample that is attached as 12:54:57

15 Exhibit J and he also references the fact that 12:55:01

16 there are other samples of that same music that 12:55:05

17 are identical except as he knows. 12:55:07

18 If you want to see them I think if 12:55:10

19 we let him point to you in Exhibit 49 where 12:55:14

20 they might be, maybe that is the easiest way to 12:55:17

21 get the information. It is up to you, do 12:55:18

22 whatever you want. 12:55:21

23 Q. If it is important -- what I was 12:55:23

24 trying to identify, if this is the only sample

25 you feel that I need to look at to support the

1 point that you're making in paragraph 28, fine. 12:55:34
2 If there are other documents that you feel you 12:55:38
3 need to include in your report, then I want you 12:55:39
4 to have the opportunity to do that. Maybe we 12:55:39
5 don't take that now. Maybe we take a break and 12:55:40
6 you identify it in the production which ones 12:55:40
7 you think -- 12:55:42

8 A. No, I could tell you right now. I 12:55:45
9 just want to look back at that paragraph to see 12:55:48
10 what I actually referred to, but the various 12:55:57
11 samples start in the big black binder, Exhibit 49, 12:56:06
12 up to tab 38 and continue to tab 50. 12:56:09

13 Q. Look at paragraph 28 where it says 12:56:11
14 "Various samples of this piece differ in their 12:56:15
15 cover information, design, publisher or price. 12:56:21
16 Some say Summy Publishing Company, (Summy 12:56:23
17 3075)." What does Summy 3075 refer to there? 12:56:25

18 A. The publication number so you can 12:56:28
19 find it among the various samples, some of them 12:56:32
20 have different numbers to indicate what they 12:56:32
21 are. That is standard. 12:56:35

22 Q. If I look at J and I see the 12:56:39
23 publication number, I see the number 3075 in 12:56:40
24 the lower left corner?

25 A. Yes, that is the one.

1 Q. Is that what you're referring to? 12:56:44

2 A. Yes. 12:56:45

3 Q. What does that number tell you? 12:56:49

4 A. Normally when a publisher puts a 12:56:51

5 number it is the number of their publication. 12:56:54

6 It is his 3,075th publication. 12:56:57

7 Q. So is it sequential? 12:57:04

8 A. It should be. It may be in some 12:57:06

9 periods it is called a plate number for the 12:57:07

10 engraving plate. 12:57:11

11 Q. My question is the one before it 12:57:16

12 the engraving plates would be number. And 12:57:17

13 3074 would be something else? 12:57:19

14 A. Yes. And 76 would follow it. 12:57:22

15 Q. Can you look at Exhibit L for a 12:57:31

16 moment. You see in the lower left-hand corner 12:57:32

17 that is 3076? 12:57:33

18 A. That is probably the next one. 12:57:34

19 Q. The next what? 12:57:36

20 A. The next thing they published. 12:57:40

21 That would be my inference based on what I know 12:57:42

22 that they would number sequentially. 12:57:49

23 Q. Let's look back at paragraph 28 to 12:58:00

24 make sure that I'm done there. Did you review

25 the certificate for the copyright registration,

1 E 51990, in preparing your report that is

12:58:10

2 referred to in paragraph 28?

12:58:11

3 A. I think I did. I don't remember

12:58:12

4 the number offhand.

12:58:15

5 Q. It is referred to here in paragraph

12:58:15

6 28?

12:58:16

7 A. Then I did.

12:58:19

8 Q. It says it suggests that it may be

12:58:22

9 the print for the December 6th, 1935 copyright

12:58:24

10 certificate which says, "arrangement as easy

12:58:28

11 piano solo with text." You said the thing that

12:58:33

12 led you to believe that about Exhibit J is that

12:58:37

13 it was copyright 1935. Does the fact that the

12:58:40

14 cover of Exhibit J also says it is underlined

12:58:43

15 piano with words, does that also support that?

12:58:46

16 A. Yes. However there are a few of

12:58:48

17 them and that is what is in 30 whatever is the

12:58:50

18 number I just gave you that do that and there

12:58:53

19 are certain differences among them. They seem

12:58:56

20 possibly to be reprinted later, who knows. But

12:58:59

21 some of them have Preston Ware Orem's name and

12:59:02

22 some don't and that is peculiar, but that is

12:59:02

23 what it is.

12:59:04

24 Q. The fact that this says this is the

25 piano solo with words version also supports

1 that it is the copy of copyright 51990? 12:59:13

2 MR. RIFKIN: What are we referring 12:59:16

3 to that says piano solo with words? 12:59:17

4 MS. LE MOINE: Exhibit J. 12:59:19

5 MR. RIFKIN: I thought you were 12:59:20

6 referring to Exhibit J. 12:59:21

7 MS. LE MOINE: I am. 12:59:22

8 MR. RIFKIN: Where does it say 12:59:22

9 that. 12:59:24

10 MS. LE MOINE: The title page. 12:59:25

11 MR. RIFKIN: I thought you were 12:59:28

12 looking at plate number 3074. 12:59:29

13 MS. LE MOINE: No I'm asking the 12:59:31

14 professor if the fact that that piano solo with 12:59:33

15 words is underlined that that is the indication 12:59:36

16 that this is this piece of music. 12:59:46

17 A. As far as I could say yes. 12:59:49

18 Q. Let's look at paragraph 29 which 12:59:58

19 refers to tab K. If you look at tab K it has 13:00:02

20 the Hill sisters both names in the upper right 13:00:04

21 and arranged by Preston Ware Orem underneath 13:00:04

22 that. 13:00:05

23 A. Yes. 13:00:07

24 Q. Do you have any opinion as to why

25 Mildred Hill and Patty Hill are listed in the

1 upper right? 13:00:12

2 A. I don't know why Patty is listed 13:00:15

3 there because again there are no words. 13:00:17

4 Mildred Hill is there because she wrote the 13:00:20

5 original music and Preston Ware Orem made this 13:00:23

6 arrangement. The problem with that being in J -- 13:00:24

7 Q. I'm in K? 13:00:30

8 A. I'm sorry, in K is that that is 13:00:33

9 redacted. But there is an unredacted copy in 13:00:37

10 the big binder which is more important and I'm 13:00:41

11 not sure why this was bound in. Let's see if I 13:00:42

12 could quickly find that for you. 13:00:48

13 Q. We did not locate it but maybe you 13:00:51

14 can tell me where it is. 13:00:53

15 (Witness reviewing document.) 13:00:56

16 A. It is number 42 in the big binder. 13:01:00

17 Q. So you're saying number 42 in the 13:01:04

18 big binder is the unredacted. This does 13:01:07

19 include -- this is not exactly the same, is it, 13:01:10

20 because what I'm looking at is behind K has 13:01:14

21 Mildred Hill and Patty Hill and arranged by 13:01:16

22 Preston Ware Orem and the one that you pointed 13:01:20

23 me to behind 42 just says Mildred Hill and 13:01:22

24 arranged by Preston Ware Orem scratched out.

25 A. Yes. The problem that I said with

1 well with her -- the edition that she had. With her 13:03:53
2 original version. 13:03:57

3 Q. You're presuming that she didn't? 13:03:59

4 A. Well, Preston Ware Orem had to do 13:04:00
5 something and since the piano part has changed, 13:04:05
6 that's what he did. The piano part is more 13:04:10
7 elaborate than the earlier versions of Good 13:04:12
8 Morning To You and -- because they are all the 13:04:14
9 same up to there. Very, very tiny change. 13:04:16

10 He has made something that is a 13:04:20
11 little bit more difficult. Suggests a slightly 13:04:23
12 higher level of piano playing. There are a lot 13:04:26
13 of perhapses, perhaps Summy Birchard said why 13:04:28
14 don't you do this, we could sell it to a 13:04:31
15 slightly more advanced piano store. Who knows. 13:04:33

16 Q. The fact that Preston Ware Orem is 13:04:41
17 referred to in 51990 and not in tab J doesn't -- you still 13:04:46
18 believe tab J has been arranged by Preston Ware 13:04:46
19 Orem? 13:04:49

20 A. Well, it is identical to the ones 13:04:51
21 that have his name on it. We don't know why 13:04:54
22 his name was deleted from that copy. Nobody 13:04:56
23 knows who or why as far as I have been told. 13:05:02

24 Q. My point is the absence of the 13:05:02
25 attribution to Mr. Orem doesn't indicate it was

1 arranged by Mr. Orem?

13:05:09

2 A. I would say the absence in the

13:05:10

3 attribution does not indicate and in fact that

13:05:14

4 he said later he said wait a minute, I want my

13:05:16

5 name on it. The copyright certificate talks

13:05:20

6 about an easy piano solo with words and that is

13:05:36

7 what this is.

13:05:39

8 Q. In tab K paragraph 29 that refers

13:05:42

9 to tab K, I apologize for bouncing back and

13:05:42

10 forth.

13:05:43

11 A. That's all right.

13:05:44

12 Q. You say at the end of this

13:05:47

13 paragraph, "The fact that one sample has Orem's

13:05:51

14 name crossed out is immaterial another does

13:05:55

15 not. It appears that his name should be on it

13:05:58

16 since he created the new piano part."

13:06:01

17 Again that is not behind tab K but

13:06:03

18 it is somewhere in there?

13:06:05

19 A. It is in the black binder

13:06:10

20 somewhere.

13:06:12

21 Q. Do you know why those portions of

13:06:17

22 tab K were redacted?

13:06:19

23 A. Marc explained it to me a long time

13:06:19

24 ago and I seem to have forgotten.

25 Q. You don't independently know, you

1 just know from Marc? 13:06:25

2 A. Well I assume there was some 13:06:25

3 copyright reason and whoever provided that 13:06:32

4 decided it was better at that point to not 13:06:34

5 provide the actual text lest it being an 13:06:36

6 infringement of some sort. 13:06:40

7 Q. Let's look at paragraph 30. 13:06:44

8 Paragraph 30 refers to tab L that we looked at 13:06:48

9 briefly. The sequential catalog number, right 13:06:51

10 or engraving plate number, I'm not sure what -- 13:06:54

11 A. Yes. I don't know what it is 13:06:57

12 called now but that is what it is. It is some 13:07:01

13 kind of publisher's index. 13:07:03

14 Q. And indicating the order in which 13:07:04

15 these items were published? 13:07:06

16 A. Yes, I assume so. That is what it 13:07:07

17 always does. 13:07:09

18 Q. You have here at the top arranged 13:07:10

19 by Mrs. R.R. Forman? 13:07:11

20 A. Yes. 13:07:14

21 Q. And again Mildred Hill's name on 13:07:14

22 the right? 13:07:14

23 A. Yes. 13:07:17

24 Q. And you say, "It is customary for

25 arrangers to appear either on the upper right

1 under the composer's name or on the left." 13:07:24

2 A. Yes. 13:07:25

3 Q. What is the basis for that? 13:07:26

4 A. Just experience of looking at many 13:07:27

5 many scores. 13:07:29

6 Q. I think one of the earlier Preston 13:07:32

7 Ware Orem samples that we just looked at a few 13:07:35

8 moments ago, his name is under the composer's 13:07:35

9 name? 13:07:35

10 A. Yes, it can appear both ways. 13:07:37

11 Q. So it can appear both ways? 13:07:39

12 A. Sometimes it just depends on the 13:07:42

13 eye of the engraver that decides is it's going 13:07:43

14 to look nicer if is balanced rather than with a 13:07:43

15 big space on the right. 13:07:46

16 Q. Does it always say arranged by if 13:07:47

17 it is an arranger? 13:07:48

18 A. I would say yes. I would put it 13:07:51

19 another way. If it doesn't say arranged by 13:07:53

20 then we don't know. But if it says arranged by 13:07:58

21 we know that is what the arranger did. 13:08:00

22 Q. Would you say that this is a custom 13:08:05

23 but, it being a custom but sometimes it is not 13:08:05

24 followed? 13:08:05

25 A. I would say it is possible that it

1 Q. Paragraph 39 you describe -- 14:37:23

2 A. Exhibit U? 14:37:23

3 Q. Yes. Exhibit U. That is a 14:37:29

4 redacted version of a work. Did you obtain an 14:37:31

5 unredacted version of this document? 14:37:37

6 A. Let me see what I wrote and then I 14:37:46

7 could tell you. That was paragraph? 14:37:50

8 Q. Paragraph 39. Tab U. 14:37:53

9 A. No, if there had been anymore I 14:37:55

10 would have said something more than that. This 14:37:57

11 is just based on what little I can glean from 14:38:03

12 looking at the unredacted bits. 14:38:06

13 Q. Again it says Hill - Wilson and 14:38:10

14 Mildred is written on there. Can you conclude 14:38:14

15 anything from the cover and then from Mildred 14:38:16

16 Hill - Wilson on the upper right corner? 14:38:21

17 A. Since we know that Mildred Hill was 14:38:23

18 dead and probably didn't remarry in recent 14:38:26

19 years, my conclusion was that Mildred Hill was 14:38:29

20 the original composer and this Wilson, whoever 14:38:33

21 it is, did this vocal instrumental version of 14:38:37

22 it and Gene Barry we know wrote the words 14:38:38

23 because that is clearly identified. 14:39:03

24 Q. Paragraph 40, you note that in the

25 upper right of tab V it says Mildred J. Hill and the

1 upper left of tab V it says traditional? 14:39:17

2 A. I sure did note that. 14:39:19

3 Q. You say, "This is consistent with 14:39:22
4 the convention for identifying the author or 14:39:27
5 authors of the words and music and acknowledges 14:39:29
6 that the lyrics were originally a traditional 14:39:30
7 adaptation of the earlier work Good Morning To 14:39:32
8 All." 14:39:35

9 What about this is consistent with 14:39:37
10 the convention for identifying the author or 14:39:39
11 authors of the words and music? 14:39:43

12 A. Because on the examples that I saw 14:39:47
13 at Julliard where the text was a traditional 14:39:54
14 text, in some cases a psalm or some spirituals 14:39:57
15 that were arranged, it will often say 14:40:00
16 traditional on the left-hand side. It clearly 14:40:03
17 doesn't refer to the music because a composer's 14:40:06
18 name is on the right as normal. This to me 14:40:10
19 says the text for Happy Birthday was a 14:40:13
20 traditional text and not something written by a 14:40:13
21 person. 14:40:15

22 Q. Tell me what a traditional text is? 14:40:22

23 A. Perhaps from a folk poem, folk 14:40:24
24 song. Let's see if I could think of one
25 offhand. Yankee Doodle which was originally an

1 English popular song. That would be a 14:40:35
2 traditional text by now certainly. I do know 14:40:39
3 there are songs by German poets that were used 14:40:43
4 by people like Schubert for songs. But 14:40:45
5 ordinary Germans don't realize that they were 14:40:50
6 written by some poet who was published as part 14:40:50
7 of the German literary tradition think it is a 14:40:52
8 traditional text that has been in the folk law 14:40:55
9 for hundreds of years. 14:40:58

10 Q. Does traditional mean no author? 14:41:00

11 A. Traditional means no known author. 14:41:02

12 Q. Is sometimes the word traditional 14:41:05
13 used when the publisher doesn't know the author 14:41:09
14 but the author is known generally? 14:41:13

15 A. Not by any decent publisher. As 14:41:13
16 you know this was published by C.C. Birchard. 14:41:21
17 I don't know what their relationship to Summy 14:41:23
18 Birchard is but there seems to be some kind of 14:41:24
19 resemblance in the name. 14:41:27

20 Q. I understood from your testimony 14:41:29
21 earlier that you're not opining as to any 14:41:32
22 connection between -- or rather the history of 14:41:33
23 the Clayton F. Summy Company? 14:41:37

24 A. No, no, all I'm saying it struck me
25 as odd because the name is the same to think

1 they would publish it with the word traditional 14:41:46
2 for the authorship. That is the reflection on 14:41:46
3 it. 14:41:50

4 Q. If you look at the title page it 14:41:51
5 says C.C. Birchard Co.; correct? 14:41:51

6 A. Yes. 14:41:54

7 Q. And it says sole selling agent 14:41:56
8 Summy Publishing Company? 14:41:56

9 A. Yes. 14:41:58

10 Q. So Summy is not the publisher? 14:42:01

11 A. Summy is not the publisher, no. 14:42:04

12 And since I don't know when Summy and Birchard 14:42:07
13 united, I don't know that. But it really 14:42:08
14 doesn't particularly matter. 14:42:11

15 What is bizarre to me is that the 14:42:15
16 tune appears here as authorship listed as 14:42:17
17 traditional and somehow there is some 14:42:19
18 connection between the publisher and the 14:42:23
19 original publisher of Happy Birthday. 14:42:25

20 Q. Did you find any other examples of 14:42:30
21 this song identified, with the authorship 14:42:32
22 identified as traditional? 14:42:32

23 A. No. 14:42:35

24 Q. There are examples of songs where
25 authorship is identified by Mildred and Patty

1 Hill, correct, that we have seen in this 14:42:41
2 collection? 14:42:43

3 A. Yes. Where we don't know -- there 14:42:46
4 is no attribution that says words except in 14:42:49
5 those two examples that we saw back around 14:42:50
6 letter P or Q. 14:42:58

7 Q. So, there is some examples that -- 14:43:00
8 there is this example that calls the authorship 14:43:01
9 traditional? 14:43:02

10 A. Yes. 14:43:04

11 Q. There is some examples that don't 14:43:05
12 give any authorship? 14:43:06

13 A. Yes. 14:43:08

14 Q. And there is some examples that 14:43:11
15 include both Mildred and Patty's name on the 14:43:12
16 work? 14:43:14

17 A. Without giving authorship. 14:43:16

18 Q. Without giving authorship because 14:43:17
19 of the placement on the page? 14:43:21

20 A. No, it just says by Mildred and 14:43:25
21 Patty Hill. It doesn't say words by. So we 14:43:28
22 can infer it but it doesn't actually say it. 14:43:29

23 Q. And then there are the other two 14:43:33
24 examples that do say words and music by Patty
25 Hill and Mildred Hill?

1 A. Yes, that's right. 14:43:37

2 Q. What can you conclude based on all 14:43:40
3 of these pieces of evidence? 14:43:43

4 A. There is incredible confusion about 14:43:48
5 this. Quite extraordinary confusion. 14:43:49

6 Q. In the sheet music that you have 14:43:51
7 been provided by Mr. Rifkin? 14:43:55

8 A. Yes. Patty's name being there when 14:43:58
9 there were no words, Patty and Mildred with no 14:44:01
10 indication of who did what. Again, if you're 14:44:04
11 looking for evidence based on what is in the 14:44:07
12 specimen that is what you have to go by, there 14:44:07
13 is no evidence. There is two songs that do say 14:44:10
14 Patty wrote the words. And then this one says 14:44:12
15 the words are traditional, I mean, I would find 14:44:15
16 it very difficult to come to any firm conclusion 14:44:18
17 about who wrote those words. It seems to me 14:44:20
18 everything is contradicting everything else. 14:44:30

19 Q. What did you mean in paragraph 40 14:44:34
20 when you say the lyrics were originally a 14:44:38
21 traditional adaptation of the earlier work Good 14:44:39
22 Morning To All. What does that mean? 14:44:42

23 A. That means that if these are 14:44:44
24 traditional -- if they really are traditional
25 words, that there were lyrics Good Morning To

1 the videotape deposition at 16:09.

2 (TIME NOTED: 4:09 P.M.)

3

4

5

JOEL SACHS, Ph.D.

6

7 Subscribed and sworn to before me

8 this _____ day of _____, 2014

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1 C E R T I F I C A T E

2 STATE OF NEW YORK)

3 : ss.

4 COUNTY OF NEW YORK)

5 I, WILLIAM VISCONTI, a Shorthand Reporter
6 and Notary Public within and for the State of New York,
7 do hereby certify:

8 That prior to being examined, the witness named in
9 the foregoing deposition was duly sworn to testify the truth,
10 the whole truth, and nothing but the truth;

11 That said deposition was taken down by me in
12 shorthand at the time and place therein named and
13 thereafter reduced by me to typewritten form and that the
14 same is a true, correct, and complete transcript of said
15 proceedings.

16 Before completion of the deposition, review of the
17 transcript [X] was [] was not requested. If requested,
18 any changes made by the deponent (and provided to the
19 reporter) during the period allowed are appended hereto.

20 I further certify that I am not interested in the
21 outcome of the action.

22 Witness my hand this 23rd day of September, 2014.

23

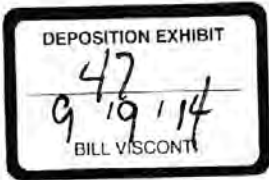
24

25



WILLIAM VISCONTI

EXHIBIT 111



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9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**
 12 **WESTERN DIVISION**

13 GOOD MORNING TO YOU
 PRODUCTIONS CORP., *et al.*,
 14
 Plaintiffs,
 15
 v.
 16
 WARNER/CHAPPELL MUSIC,
 17 INC., *et al.*
 18
 Defendants.
 19

) Case No. CV 13-04460-GHK (MRWx)
)
) **EXPERT REPORT OF**
) **JOEL SACHS, Ph.D.**

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EXPERT REPORT OF JOEL SACHS, Ph.D.

I. Qualifications

1. I am a graduate faculty member of The Juilliard School, where I have been a professor of Music History and Chamber Music for over 40 years. The focus of my academic study is 19th, 20th and 21st century music history and performance.

2. I earned my Bachelor of Arts degree in Music from Harvard University in 1961, my Master of Arts degree in Musicology from Columbia University in 1965 and my Doctorate degree in Musicology from Columbia University in 1968. In 2011, I became an honorary member of the Phi Beta Kappa Society at Harvard University in recognition of my work in contemporary music.

3. I have received several professional awards and honors, including Columbia University's Alice M. Ditson Conductor's Award, which recognizes distinguished conductors for their contributions to American music. In 2011, I received the Gloria Artis Medal, a decoration in Arts awarded by the Ministry of Culture and National Heritage from the Republic of Poland for my contributions to Polish music and culture.

4. In 1993, I founded the New Juilliard Ensemble, which celebrates contemporary music and repertory of the last decade. I also produce and direct The Juilliard School's annual FOCUS! Festival and, since 1993, have been the artistic director of The Juilliard School's concerts at the Museum of Modern Art (MoMA). I was a co-director of the Sonic Boom Music Festival, a project organized by some of New York's most prestigious contemporary music ensembles.

5. In June 2012, Oxford University Press published my book, *Henry Cowell: A Man Made of Music*, the first complete biography of one of the most influential figures in 20th century American music.

6. I have performed a variety of traditional and contemporary music as a conductor and pianist in hundreds of performances throughout the United States Europe, Asia, and Latin America and have guest-conducted orchestras and ensembles in Austria, China, El Salvador, Germany, Iceland, Mexico, Mongolia, Poland, Switzerland, and

Ukraine. I have held new music residencies in Berlin, Germany; London, England; Salzburg, Austria; Curitiba, Brazil; Helsinki, Finland; and Banff Alberta, Canada.

7. In 2006, I conducted the internationally-acclaimed contemporary music ensemble, Continuum, in Jakarta, Indonesia, including a performance of Tony Prabowo's opera, *The King's Witch*, in full staging, Mr. Prabowo's piano concerto, *Psalm* (both of which were composed for and premiered by the New Juilliard Ensemble) and music by American composers. In 2007, I conducted a concert of American music at the Shanghai Conservatory, including the Chinese premiere of Ives's Symphony No. 3, and I conducted the Danube-Hudson Project, comprising works by Juilliard and Liszt Academy composition students in Budapest, Hungary.

8. In 2012 and 2013, I conducted the Arthur Rubinstein Philharmonic, in Lodz, Poland, in the prize-winners' concert of the Grazyna Bacewicz international composition competition and the Mongolian State Philharmonic Orchestra in Ulaan Baatar, Mongolia. I also made my third, annual appearance conducting Camerata Aberta, the distinguished São Paulo contemporary chamber orchestra,

9. My keyboard appearances include numerous performances of John Cage's seminal work, *Sonatas and Interludes for Prepared Piano*, in Brazil, China, and mixed recitals around the world, including a Beethoven and Hummel recital in France.

10. My recordings appear on the Advance, CRI, Naxos, New Albion, Nonesuch, and TNC labels. The Dorian Sono Luminus label released a CD of my music with Camerata de las Américas, a leading chamber ensemble based in Mexico City.

11. I have been a regular delegate to international music conferences and a radio commentator on contemporary music.

II. Scope of Assignment

12. Plaintiffs' counsel in the matter captioned *Good Morning to You Productions Corp., et al., v. Warner/Chappell Music, Inc., et al.*, Case No. CV 13-04460-GHK (MRWx), have asked me to review certain musical compositions relating to the song *Happy Birthday to You*, including several versions of the song *Happy Birthday to You*

itself, as well as versions of the song *Good Morning to All*, and to give my expert opinion regarding the new matter contained in the various versions.

13. Plaintiffs' counsel also have asked me to give my expert opinion regarding the historical and conventional meaning ascribed to certain indications in the printed music, including the placement and identification of the composer, arranger, and author of lyrics on musical scores.

14. Finally, Plaintiffs' counsel have asked me to give my expert opinion regarding the conventional meaning of the term "arrangement" as applied in musical composition.

15. The various works I have studied, the sources of information I have considered, and my analysis, opinions, and conclusions are set forth below.

III. Study of "Good Morning to All" and "Happy Birthday to You" Compositions

A. Materials Before 1934

16. Tab A: *Song Stories for the Kindergarten* © 1896, Clayton F. Summy, renewed in 1921 with various reprints. This volume contains *Good Morning to All*. The cover attributes the music to Mildred J. Hill and the words to Patty S. Hill. The index to this volume does not include any version called *Happy Birthday to You*. A later copy of *Song Stories for the Kindergarten*, hand-dated, "1918," with the same cover but no designation of copyright ownership, was probably published by the London-based, Curwen, whose name appears at the lower right-hand corner. This later copy includes *Good Morning to All* in A-major with a more elaborate piano part than the piano part in the earlier copy. The British Library catalog shows a Curwen publication of *Song Stories for the Kindergarten* as early as 1900.

17. Tab B: A chapter called "*First Grade Opening Exercises*" within the *Inland Educator and Indiana School Journal* (January 1901), notes that "[s]imple devices assist in securing unity." The author suggests singing *Good Morning to You*, and provides the words to the song, without any designation of authorship. The chapter also suggests singing "*Happy Birthday to You*" to the same music for birthday celebrations. The author

does not include the words to *Happy Birthday to You*, which indicates that the words were well known by 1901.

18. Tab C: “*Tell Me a True Story: Tales of Bible Heroes for the Children of Today*” includes a “*Birthday Service*,” (p. 250), which suggests that this sample comes from a volume about teaching in a church-affiliated school. The author advises that when a student has a birthday, the class should recite a prayer and sing *Happy Birthday to You*. The sample provides music that is the same as the music for *Good-bye to You*. Again, that the author did not include the printed words for *Happy Birthday to You* indicates that the lyrics were well-known by that time. The sample does not provide authorship credit or designate copyright ownership.

19. Tab D: Unidentified volume, marked 1911, “*Program for Beginners’ Department*,” pp. 63 and 67, excerpts from a Methodist teachers’ manual. The author writes (p. 63) that when a student has a birthday, the class should sing *Happy Birthday to You* to the same tune as *Good Morning*. The section includes the words to *Happy Birthday to You*, but not the music. In addition, the section includes a note about sources – how to get the music – and refers to “*Song Stories for the Sunday School*,” by Patty Hill. That the author suggests the class should sing *Happy Birthday to You* to the same tune as “*Good Morning*,” indicates that the words to *Happy Birthday to You* were widely known at the time. In any event, the copy of *Song Stories for the Sunday School* (Tab D) does not include *Happy Birthday to You*.

20. Tab E: “*The One Hundred and One Best Songs for Home, School, and Meeting*,” 10th edition, published by The Cable Company, Chicago. No. 23. Cable, a piano, player-piano, and organ manufacturer in Chicago, was founded in 1880. This print has no copyright date. Another print, marked 1912, includes the same music except for one discrepancy in the left hand of the piano in measure 9, and is a fresh engraving, without the backwards bass clef. The use of a backwards bass clef implies a reprint of an earlier edition of *Good-Morning to You. Good-Bye to You – Happy Birthday to You*. See ¶¶ 21, 54, 56 (discussing backwards bass clef). The usual musical setting; no attribution of author or

composer. Only the text of *Good Morning* is provided. Again, this short reference to *Happy Birthday to You* without accompanying text implies widespread public knowledge of the alternate words. The sample does not provide authorship credit. I assume that the “tenth edition” sample was printed a number of years before 1912, again reinforcing the idea that the words to *Happy Birthday to You* were well known in the early 20th century and possibly the late 19th century.

21. Tab F: “*The Golden Book of Favorite Songs*,” 10th edition, Hall & McCreary, Chicago © 1915. Compiled and edited by N. H. Aitch. The engraving on the cover is in a dated style, with a backwards bass clef that I have seen in music as early as 1840, typically by English engravers. Nicolas Bell, Curator of Music Collections at the British Library, informed me that the backwards bass clef is associated with Novello, a very old English publishing house. Mr. Bell could not recall seeing the backward bass clef in music published after the late 19th century. On page 81, “*Good Morning to You. Good-Bye to You - Happy Birthday to You.*” The music is printed, but only the text for *Good Morning to You* is printed in full. Again, the short reference to *Happy Birthday to You* without accompanying text suggests that the words to that variation were popular and well known at the time. The sample does not give authorship credit for either the words or music.

22. Tab G: An undated copy of “*Harvest Hymns*” from the 1920s includes song number 218: *Good Morning to You!* with four verses, the second of which is *Happy Birthday to You*. There is no author, composer, or copyright indication, despite the fact that such information is given for two other pieces from that collection supplied to me, *Let Others See Jesus in You* and *The Place of Peace and Rest*. This work has the backwards bass clef, implying that it might have come from an older publication to which other pieces were added.

23. Tab H: “*Children’s Praise and Worship for the Beginners, Primary and Junior Grades of the Sunday School*” [Anderson is a Christian College in Anderson, Indiana.] Warner Press, Anderson, Indiana. © 1928, Gospel Trumpet Company. Song no. 220: *Happy Birthday to You* does not designate an author, composer, or copyright. The

previous piece, Song no. 219, *Birthday*, states © 1924, with the composer's name on the right (where by convention the music composer is identified) and his initials on the left (where by convention the lyricist is identified), indicating that he wrote both music and words. The composer's and author's positions on *Happy Birthday to You* (Song no. 220) are empty except for black dots; this meaning is unknown. The use of the backwards bass clef suggests that many of the songs came from an earlier edition, to which the 1924 piece was added. The preface to this volume says the publishers or compilers paid hundreds of dollars to get permissions, but if that is true, there is no evidence that such permission was required for *Happy Birthday to You*.

B. Summary of Materials Before 1934

24. The materials before 1934 carry only two references to Patty Hill (Tabs B: *Inland Educator and Indiana School Journal* and D: *Program for Beginners' Department*) as the author of *Good Morning to You*, and only one reference (Tab A: *Inland Educator and Indiana School Journal*) to Mildred as author of the song. Significantly, *Happy Birthday to You* is not present in Tab A (*Inland Educator and Indiana School Journal*); it is mentioned but not included in Tab D (*Program for Beginners' Department*). There is no reference in any of these items to the author or composer of *Happy Birthday to You*, although it is clear that the music itself is the same as Mildred's music for *Good Morning to You*. The short references to the birthday lyrics in prefaces to the various song and hymn collections strongly implies-that the lyrics were widely known and simply substituted for the words of *Good Morning to You*.

25. Nothing in these materials suggests that the words to *Happy Birthday to You* were copyrighted. To the contrary, the absence of copyright or authorship attribution in any of these works strongly implies that the words were commonly known as early as the very beginning of the 20th century.

26. Apart from the Curwen edition of *Good Morning to All* appearing in Tab B (*Inland Educator and Indiana School Journal*), the piano parts are identical in the pre-1934 samples. The small exception is *Good Morning to You!* appearing in in Tab G (*Harvest*

Hymns), which includes a fermata in the next-to-last phrase. (In the vocal line, the rhythm is altered to provide for the two short syllables of “happy,” as opposed to the single syllable of “good”.)

C. Materials from 1934 and Later

27. Tab I: “*Happy Birthday! March.*” © 1934, Clayton F. Summy Co. is a piano solo piece with no words or separate melodic line. The main credit for the song appears on the upper-right: “Mildred J. Hill and Patty S. Hill.” Also, the words “Arranged by Preston Ware Orem” appear on the left. I understand that the copyright is for the march arrangement, since the original music for the song itself had been around so long. Since there are no words, the reason for Patty Hill’s name is unclear; the piece could be construed as Orem’s arrangement of Mildred’s copyrighted music to *Good Morning to You*, with the title referring to the common practice of singing the words *Happy Birthday to You* to the melody. On the cover of the specimen in black-white reversal appear the words, “Happy Birthday by Mildred Hill.” A vocal version attached (“Happy Birthday to You! / Vocal or instrumental”) [WC0000122] does not mention Patty at all although this particular piece is for voice and piano. Another copy of the same music and copyright date, was published, with the imprint by Keith Prowse, London, has the same date, 1935 Clayton F. Summy.

28. Tab J: “*Happy Birthday*” By Mildred J. Hill. Piano Solo with Words. Copyright 1935 Clayton F. Summy Co. This seems to be the same as the version in Sample I at the end, WC000122, but the negative copy in Sample I is not clear. Various samples of this piece differ in their cover information, design, publisher, or price; some say Summy Publishing Company (Summy 3075); those that say Summy Birchard are clearly reissues. One sample has the imprint of Keith Prowse & Co., Ltd, a London publisher. Although this copy has words – the subtitle reads “Vocal or Instrumental” – only Mildred Hill is mentioned on the upper right of the score (where by convention the composer of the music is identified); there is no name on the upper left (where the lyricist would be identified), nor any other attribution as to lyricist. For each sample of this publication, the only credit is on the upper right, to Mildred Hill. One sample says “Arranged by Preston Ware Orem,” also

on the upper right below Mildred Hill's name, suggesting it may be the print for which the Dec. 6, 1935 copyright certificate (No. E51990) says "arrangement as easy piano solo, with text." In that sample, Orem is credited with the arrangement, but nothing else, indicating that was his only creative addition to the original work. For more on this, see my summary below.

29. Tab K: "*Happy Birthday to You: Piano Solo with Words plus Vocal-Instrumental Arrangement*" Copyright 1935 by Summy Birchard Company Copyright renewed 1962. Copyright 1952 by Summy-Birchard Company. Sumco 6031. On the cover, by Mildred J Hill, Patty S. Hill. On the score, credit: Mildred J. Hill / Patty S. Hill / Arranged by Preston Ware Orem. Although there is no explicit mention of who wrote the words or the music, all of the credits appear on the right where, by convention, the composer is typically identified; nothing appears on the left, where credit for the lyricist would appear. Orem is credited as creator of the slightly different piano part. It is not uncommon for composers to revise their compositions to obtain new or extension copyrights; Igor Stravinsky, for example, was widely known for doing this. The fact that one sample has Orem's name crossed out is immaterial; another does not. It appears that his name should be on it, since he created the new piano part. None of the samples include any implication that Orem provided the familiar words; he could have been credited with the new arrangement even if the words had not been printed. The piece can be played as an easy piano solo or as a sing-along.

30. Tab L: *School Chorus Music. "Happy Birthday to You!"* Unison song" © 1935 by Clayton F. Summy Co. Upper right of score: Mildred J. Hill. Upper left: Arr. By Mrs. R.R. Forman. It is customary for arrangers to appear either on the upper right, under the composer's name, or on the left. There is no mention of Patty Hill. Forman doubtless created the new piano part, which is more elaborate than Orem's arrangement, in the style of a waltz, with some new harmonies. Forman's arrangement appears intended for more accomplished pianists, as opposed to Orem's very basic version. The sample includes a second verse without crediting authorship. I am aware that the 1935 copyright certificate

(No. E51988) says “for unison chorus and revised text.” The phrase “revised text” can only mean the added second verse since there is no other revised text on the sample. The piano part is entirely new and apparently was written by Forman, since Mildred Hill was long since dead. The phrase “unison chorus” simply means a single line of music sung by any number of people simultaneously. With regard to musical notation, a piece for a single singer and a piece for unison chorus are notationally indistinguishable. The notation signifies absolutely nothing about Forman making a musical contribution to the vocal line, which differs from other scores of *Happy Birthday to You* only by the addition of one dynamic marking, a trivial contribution.

31. Tab M: “*HAPPY BIRTHDAY!*”: A piano four-hands version of the march, copyright 1935 by Clayton F. Summy Co. On the cover and on the right, where the composer’s name usually appears, Mildred J. Hill; on the left, Arranged by Preston Ware Orem. There is no reference to Patty Hill and no words. This appears to be the work covered by the copyright for the four-hands arrangement, which is Orem’s new contribution.

32. Tab N. “*HAPPY BIRTHDAY!*”; A piano six-hands version of the march, copyright Clayton F. Summy Co. 1935. On the cover, by Mildred J. Hill. On the score, right, where the composer’s name usually appears, Mildred J. Hill & Patty S. Hill. The sample has no lyrics. Arranged Preston Ware Orem, on the left. This appears to be the work covered by the copyright for the six-hands version, which is Orem’s new contribution.

33. Tab O: Two-piano version of the march; the cover reads “*Second Piano Part*”. Copyright 1935 by Clayton F. Summy Co. On the cover, by Mildred J. Hill. On the score, right, where the composer’s name usually appears, Mildred J. Hill & Patty S. Hill. Arranged by Preston Ware Orem. This sample, which has no lyrics, appears to be the work covered by the copyright for the arrangement for two pianos, which is again Orem’s new contribution.

34. Tab P: “The World Famous Birthday Song Happy Birthday to You” by Mildred J. Hill. Waltz arrangement by Debroy Somers, Copyright 1935 by Clayton F.

Summy Co. of Chicago. Arrangement copyright MCMXXXIX by Keith Prowse for all countries. Authorized for sale only in the British Empire, excluding Canada and Newfoundland. On the right, Mildred S. Hill. On the left, Arr. By Debroy Somers (Irish band leader, 1890-1952). No mention of Patty, although the words are provided. But another print of the same version (P2) says "Words and Music by Patti S. Hill and Mildred J. Hill." The words, however, have a second verse that is not on the 1935 version and is a new contribution. On the left, arr. by Debroy Somers. Another, P3, has on the cover various references to a South African publisher, Gallo (Africa) Ltd. The music is very different, very extended, with modulations from G to C to F. The music is a unique composition.

35. Tab Q: *Happy Birthday*, by Mildred Hill, arranged By Charles Lee Hill. Instrumentation for full band. Redacted, but clearly an elaboration. Southern Music Company, San Antonio. Copyright 1948 by Clayton F. Summy Co. No mention of Patty, although even through the redactions one can see that there are words.

36. Tab R: "*Happy Birthday to You by Mildred J. Hill.*" My copy has no copyright information, which was cut off. A redacted copy [R1] seems to be the same, with copyright date of 1948 by Clayton F. Summy Co. On the right, where the composer is identified, Hill-Coburn. Borrowing from the original musical composition, this sample is a sentimental version in 4/4, with new melodies and more elaborate harmonies throughout. The second system of the last page has very elaborate chromatic harmonies not seen before. These changes appear to be the musical composition of Coburn. The original lyrics have been rewritten and expanded. On the left, where the lyricist is identified, "Words by Gene Barry." This appears to attribute authorship of the expanded and rewritten lyrics to Gene Barry. There is no attribution for authorship of the original lyrics.

37. Tab S: "*Happy Birthday to You,*" with an arrangement for any size instrumental combination on the back cover. Clayton F. Summy Co. Chicago copyright 1950. The score, which has a new piano part, reads "arranged by Kenneth Kimes" on the upper right side, and "by Mildred and Patty Hill" on the left. This is highly unconventional and the only example like it I have seen. The piano part is quite different from the other

versions, including a key change from the key of G to the key of C and different harmonies at the end.

38. Tab T: "*Happy Birthday to You*" with an arrangement for any size instrumental combination on back cover. Redacted score and set of parts for instruments. Copyright 1950, Clayton F. Summy Co. The left side of the redacted score reads, "Arranged by Kenneth Kimes;" on the right, "by Mildred and Patty Hill."

39. Tab U: *Happy Birthday to You*. Vocal-inst. Edition Hill-Wilson. Vocal in G. Redacted. On the score: on right, Mildred Hill-Wilson; on left, Gene Barry. No mention of Patty. An extended version. Although redacted, the visible chord changes show very elaborate harmonies.

40. Tab V: "*Twice 55 Community Songs, The Brown Book*," Revised edition. C. C. Birchard Co. Sole selling agent Summy Publishing Company. © 1957. Song no. 15 "*Happy Birthday to You!*" for voice only. Upper right: Mildred J. Hill. Upper left, the normal place for the author of the words, "Traditional." This is consistent with the convention for identifying the author or authors of the words and the music, and acknowledges that the lyrics were originally a traditional adaptation of the earlier work "*Good Morning to All*."

41. Tab W: A vocal instrumental version arranged by Robert Dahnert, whose name appears along with Mildred and Patty's on the upper right corner of the score. On the upper left (where by convention the author of the lyrics is listed) is the name Gene Barry. Robert Dahnert is clearly identified as the person who arranged it with instruments and made the transposed parts for B flat and E flat instruments (clarinets and saxophones). The piano part is also very different from earlier one, with new harmonies and different voice-leading throughout, plus chord symbols. Gene Barry must be the author of the considerably lengthened words for the vocal-instrumental version. Also another copy with different cover and no mention of Patty Hill at all. Marked 1952 by hand, which is wrong; on the bottom, marked 1998 by hand, which could be correct.

42. Tab X: "*Happy Birthday to You!*" Mildred J Hill and Patty S. Hill. Copyright 1935, Summy-Birchard Music, division of Summy-Birchard Inc. Exclusive print rights administered by Alfred Publishing Inc. I am informed that Summy-Birchard Music and Summy-Birchard Inc. did not exist in 1935, meaning that this sample was printed later than the copyright date. On the right: Words and Music by Mildred J. Hill and Patty S. Hill. This is a new musical version, with a four-measure introduction and many changes to the piano part, including a distinctive harmonic change on the last beat of the third bar from the end. This version also has chord symbols. It seems to be a later version than the prior versions of the song; however, it bears no credit to who revised the music, nor any sign of a later copyright, but the new version is a unique work. A short introduction claims that Mildred Hill and Patty Hill wrote the song, although who made what contribution is not stated. I am generally aware of historical evidence that Mildred Hill (a music teacher) composed the music for *Good Morning to All* and Patty Hill (a kindergarten teacher) wrote the words for that song.

43. Tab Y: "*Happy Birthday to You!*" The same as Tab X, but on the text on the right reads, "Mildred J. Hill / Patty S. Hill" without the phrase "Words and Music by". © 1935 Summy Birchard Music, division of Birch Tree Group, Ltd., Princeton New Jersey. Copyright renewed. This arrangement has a copyright date of 1979. This sample is otherwise identical to the previous Tab X, suggesting that the arrangement in both samples, which is very different from any other arrangements, was created in 1979. I am informed that Birch Tree Group came into existence after Summy-Birchard Inc., suggesting that this sample is more recent than the sample in Tab X. The deletion of the phrase "Words and Music by" appears to correct the earlier sample.

D. Summary of Materials from 1935 and Later

44. Perhaps the most important aspect of the samples from 1935 and later is the new piano parts by R.R. Forman and Preston Ware Orem. Orem's and Forman's new piano parts began a series of transformations departing from the simple G-major diatonic harmonic style in which the song was first composed by Mildred Hill, then gradually

“modernizing” the song with chromatic alterations, secondary dominants, and elaborate voice leadings or piano writing. Based on all the materials I reviewed, I conclude that Mildred Hill’s original music was never again published after 1935. Orem’s score, though described in the copyright (No. E51990) as an easy piano solo, is not particularly simpler than Mildred Hill’s original composition.

45. These later samples have considerable contradictory information. The fact that on some of them, only Mildred Hill is listed on the cover but both sisters are on the score is not unusual in music publishing. Typically, only the composer’s name is listed on the front cover, unless the composer is also the lyricist, in which event a phrase such as “Words and Music by” may appear with the author’s name. If the lyricist is also identified along with the composer, the contributions of both will be delineated on the cover. I cannot recall ever seeing only the lyricist’s name listed on the cover of published music.

46. What is odd is that Patty Hill’s name does not appear on any vocal version until Tabs S, T, X, and Y, all of which were published much later than 1935. On the other hand, Patty’s name appears on many of the purely instrumental versions, usually without being identified as the author of the “text” or “words.” Even when Patty Hill is referred to as the author of the words, there usually are no words at all. Furthermore, the samples also contain reprints of exactly the same plates, making dating of the various samples quite difficult.

47. As noted above, there are a number of variations to the original composition of *Good Morning to All*, one of which is the familiar lyrics *Happy Birthday to You*. I saw no definitive indication of whether the attribution of text authorship to Patty Hill in a few 1935 publications refers to the lyrics to *Happy Birthday to You* or to *Good Morning to All*.

48. From my review of the materials from 1935 and later, it is certain that Forman wrote a new second birthday verse; Gene Barry also wrote new and expanded lyrics.

49. The familiar *Happy Birthday to You* words resemble a folk text commonly sung to this tune, as is also suggested by the short-hand references prior to 1934. The later samples added new work in the form of changes in the music, including arrangements for

other performers, new harmonies, etc. The new words by Forman and Barry are original works. Other than the new words by Forman and Barry, the only new work that appears in any of the scores from 1935 and later are the new arrangements (such as the march in Tab I, the four-hand piano part in Tab M, and the second piano part in Tab O) and the more complex musical compositions as I have noted above.

50. Orem was 70 years old at the time his arrangement was published (and presumably around the time it was composed). By then, he had a long career behind him as an educator and author of an elementary harmony text book (published in 1919) and had been a prolific composer. As an aside, I note that I was taught from Orem's elementary harmony text book around 1954. Apart from Orem's vast experience as a musical composer, having spent decades as a teacher Orem surely heard *Happy Birthday to You* sung many times before 1935. I do not recall seeing any lyrics credited to Orem. Since the published version of *Happy Birthday to You* credits him for the arrangement but not for the words, I conclude that his contribution to the publication was limited to the new, simple piano part.

51. My conclusion is not contradicted by any additional information that I have reviewed, namely, that the "new matter" for which a copyright was claimed is an "arrangement as an easy piano solo, with text." Although the description as "easy piano solo, with text" is different than "easy piano solo" without referring to "text," the addition of the term "with text" does not carry any implication that Orem wrote the text. Rather, it merely describes the music as an easy piano part with some words, which can be performed either as a piano solo or with the melody sung, by the pianist or other persons.

52. I understand that Orem served as a Director and Vice President of Summy, which makes it extraordinarily unlikely he did not know of Forman's version with revised text, which also included the familiar *Happy Birthday to You* lyrics. If her revision of the text consisted of the added second verse as well as the familiar *Happy Birthday to You* words, and if Orem also had been the author of the *Happy Birthday to You* words, then both of them wrote and copyrighted *Happy Birthday to You* for the same employer at the same

time, which would be a remarkable coincidence. Considering Orem's position at Summy, he in all probability he knew that Forman was creating another version of the song with a more elaborate part and a new verse. Indeed, it appears that what Summy wanted was two versions of *Happy Birthday to You* with piano parts of different difficulty intended for pianists of different skill levels.

53. The sample in Tab V (*Twice 55 Community Songs, The Brown Book*) is particularly informative. Published in 1957 by C.C. Birchard, which apparently had some formal publishing arrangement with Summy – I note that the company was later identified as Summy-Birchard, Inc. – this score identifies the authorship of the words as “traditional.” In common publishing practice, this attribution means that the words are a folk-type text, for which no individual is known as the author. All the works I have discussed, including the early works that referred to the short-hand *Happy Birthday to You* words or that used the words in combination with the song *Good Morning to All* without attributing authorship of the lyrics to anyone, strongly suggest that the *Happy Birthday to You* lyrics (except the second verse plainly written by Forman and those additional lyrics plainly written by Barry) were widely known without any single author being identified. Therefore, I agree with the designation in Tab V that the words were traditional. In Tab V, the publisher acknowledged there was no known author of the *Happy Birthday to You* words.

54. One other matter concerns the form of the bass clef, which represents the letter F. The two dots are the remains of the cross bars of the letter; they took on this form over many years of notational evolution. The curved part of the clef is normally open to the left. In the *Happy Birthday to You* samples, some are open to the right, an older form which, in my experience, has not been used since the early 20th century.

55. Two scores at Juilliard, both from about 1840, show this older form. In my memory, it was used by some British publishers through the 19th century and early in the 20th century, after which it disappeared.

56. To verify my recollections, I asked Nicolas Bell, the Curator of Music Collections at the British Library, if he recalled seeing that form of the clef. He replied that

he remembered it only from some 19th century publications, especially by Novello Co., a leading London publisher. I believe, therefore, that any original publications using that clef would have originated in the 1890s and perhaps prior to World War I. After that, they are most likely to be reprints using old plates.

IV. Study of Position of Composers and Authors' Names on Scores

57. By convention, the credit for the author of words normally appears on the upper-left side of the score or the score will identify the author of the words explicitly, using terminology such as "lyrics by" or "words by" together with the author's name.

58. I reviewed 560 scores of single songs that I selected from approximately 1,500 such scores in the Juilliard library, an extensive collection of musical compositions. These were all scores for authors whose last names began from "A" to "Ha." I selected these scores as a representative sample of the full number of approximately 1,500 scores in the Juilliard library. My purpose was to determine where the name of the composer is listed, and where the name of the author of the words is listed. All of these scores were published from the late 19th century to very recently.

59. The convention is clear in the scores I reviewed. In 460 or 72.5% of the scores, the composer's name is placed on the upper right of the first page of the score. The lyricist's name is placed with no meaningful exception on the upper left. In the two exceptions I saw where the lyricist is also on the right, the functions of composer and lyricist are clearly differentiated. This was how-the composer and the lyricist were identified in 406 of the 560 scores I reviewed.

60. In 49 or 8.75% of the scores, the name of the author of the words was given only on the cover, or a preface. In all 49 of those instances, the author of the lyrics was identified as such.

61. In 28 or 5% of the scores, the pieces used sacred texts for which no author was given because the words are of ancient origin and the authors are unknown.

62. In 38 or 6.7% of the scores the words are considered traditional – either of folkloric or spiritual (but not liturgical) origin. In a few cases, the arranger’s name was given on the right; the author of the words and composer of the melody are both unknown.

63. In 45 or 8% of the scores, mostly arrangements of extracts from famous operas, no author’s name was given.

64. In only 1 case was the author’s name given on the right side of the score. In that lone instance, the words and music were written by the same person, which was indicated by the phrase “words and music by” preceding the author’s name.

65. In a few instances, especially in German publications, the name of the author is centered under the title of the composition, sometimes in parentheses; the composer is on the right, as usual. There are also some instances where the name of the author is printed on the cover but not credited on the first page of the score.

66. When the text is traditional, such as a carol, a spiritual, a folk text or a religious text, there may be a credit such as “traditional,” “gospel,” etc., but there is almost never any citation of an author (or a composer, for that matter). Also, in my experience, the absence of a citation of an author for either words or music indicates that that part of the work is traditional.

V. Meaning of “Arrangement”

67. In conventional musical terminology, an “arrangement” applies to changes (additions, elaborations, instrumentations, and the like) to the musical content of a composition.

68. The term “arrangement” is defined that way in *The New Grove Dictionary*, an authoritative text in the field of music. *The New Grove Dictionary* has an extensive article on the history of arranging, which makes clear that the term is used as I have seen it.

69. The word “arranger” is used only for a person who has made some kind of changes to the original music, such as a new instrumentation, some kind of elaboration – which can be small or extensive – and similar. In my long experience as a musician and music historian, I do not recall ever seeing the term used for someone who has set words to

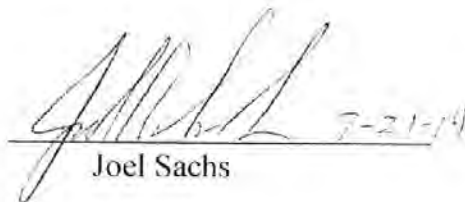
music. That includes hundreds, if not thousands, of pieces composed during the period from the late 19th century through the present day.

70. In my experience, the term “arrangement” is never used to describe adding words to an existing song or instrumental piece. The technical term for adding words to an existing song or instrumental piece is “setting.” Thus, words are “set” to music; to the best of my knowledge, they are never said to be “arranged” to music. In my recollection, I am not aware of ever seeing the word “arrangement” or any derivative thereof used to refer to the addition of words to music.

71. I do not believe anyone active in the music field and familiar with conventional music notation would understand the word “arrangement” to mean setting words to music. I believe that to be true in the early part of the 20th century as well as today.

72. The claim that Forman and Orem composed arrangements of the pre-existing song *Happy Birthday to You* does not indicate that either of them wrote any lyrics or set existing lyrics to the existing melody. The arrangements that Forman and Orem composed are unique works, for which the arrangement claim gives them credit. In addition, as noted above, it appears that Forman also wrote a second verse of lyrics for *Happy Birthday to You* that is different from the familiar *Happy Birthday to You* lyrics.

73. I hold these opinions to a reasonable degree of certainty in my professional judgment.

 7-21-14
Joel Sachs



HAPPY BIRTHDAY



by
MILDRED J. HILL

Piano Solo with words....25 cents
Piano Solo-March.....30 cents
Four Hands.....40 cents
Six Hands.....40 cents
Second Piano Part.....40 cents
Unison Chorus.....08 cents

CLAYTON F. SUMMY CO.
CHICAGO NEW YORK

HAPPY BIRTHDAY TO YOU!

(Vocal or Instrumental)

MILDRED J. HILL

Brightly

mf Hap-py Birth-day to you, Hap-py

The first system of music is in G major (one sharp) and 3/4 time. It consists of two staves: a treble clef staff and a bass clef staff. The treble staff contains the melody with notes G4, A4, B4, G4, F#4, E4, D4, C4. The bass staff contains a simple accompaniment with notes G2, B2, D3, G2, B2, D3, G2, B2. The lyrics 'Hap-py Birth-day to you, Hap-py' are written below the treble staff. Fingerings are indicated by numbers 1-5 above the notes. A dynamic marking of *mf* is present.

Birth-day to you, Hap-py Birth-day, dear

The second system continues the melody and accompaniment. The treble staff notes are G4, A4, B4, G4, F#4, E4, D4, C4. The bass staff notes are G2, B2, D3, G2, B2, D3, G2, B2. The lyrics 'Birth-day to you, Hap-py Birth-day, dear' are written below the treble staff. Fingerings are indicated by numbers 1-5 above the notes.

* _____, Hap-py Birth-day to you!

The third system concludes the piece. The treble staff notes are G4, A4, B4, G4, F#4, E4, D4, C4. The bass staff notes are G2, B2, D3, G2, B2, D3, G2, B2. The lyrics '* _____, Hap-py Birth-day to you!' are written below the treble staff, with a blank line for a name. Fingerings are indicated by numbers 1-5 above the notes.

* Here insert the name of the one celebrating.

Copyright 1935 by Clayton F. Summy Co.
International Copyright

2075

WC.0000978

SCHOOL CHORUS MUSIC

No.		Price
51	SONG OF GREETING (SATB) . . . . .	.10
6	THE CURFEW (SATB) . . . . .	.10
92	COME THE HOURS ARE FLEETING (SSA) . . . . .	.12
88	THE SLUMBER BOAT (SA) . . . . .	.10
26	THE SLUMBER BOAT (SSA) . . . . .	.10
65	TO DAFFODILS (SSA) . . . . .	.06
88	THE CUCKOO CLOCK (SA) . . . . .	.10
78	THE CUCKOO CLOCK (SSA) . . . . .	.10
88	IT ISN'T RAINING RAIN TO ME (Unison) . . . . .	.06
94	THE MAN IN THE MOON (Unison) . . . . .	.10
52	CARMENA (SSA) . . . . .	.12
55	A SONG OF CHEER (SA) . . . . .	.08
50	THE TROUT (SA) . . . . .	.08
91	WHEN THE REGIMENT GOES MARCHING (SA) . . . . .	.06
95	A SAILOR DEAR (SSA) . . . . .	.10
96	HAPPY BIRTHDAY (Unison) . . . . .	.08

CLAYTON F SUMMY COMPANY
CHICAGO NEW YORK

Happy Birthday to You!

Arr. by Mrs. R. R. Forman

Unison Song

MILDRED J. HILL

Lively
mf

Hap - py birth - day to you, Hap - py birth - day to
you, Hap - py birth - day, dear * Hap - py birth - day to
you; May your birth - day be bright, Full of cheer and de -
light, Hap - py birth - day, dear * Hap - py birth - day to you.

* Here insert the name of the one celebrating.

3076

Copyright 1935 by Clayton F. Summy Co.
International Copyright

WC.0000975

EXHIBIT 112

RECEIVED FOR RECORD November 10, 1944

ASSIGNORS, Patty S. Hill and Jessica M. Hill

ASSIGNEE, The Hill Foundation, Inc.

The following assignment of copyright is recorded in the Copyright Office of the United States,
November 10, 1944, in book 552, page s 61-62, in conformity with the
of the United States respecting copyright.

1000

KNOW ALL MEN BY THESE PRESENTS, that we, PATTY S. HILL
and ESTHER A. HILL, both residing at No. 11 Claremont Avenue,
New York, New York, parties of the first part, for and in con-
sideration of the sum of one (\$1.00) dollar and other good and
valuable consideration of which one is in hand paid by THE HILL
ASSOCIATION, INC., a New York corporation with its principal office
at No. 11 Claremont Avenue, New York, New York, party of the
second part, the said parties of the first part, acknowledged, have
hereby granted, sold, conveyed, assigned, and by these presents
do hereby confirm, ratify and confirm to the said party of
the second part, its heirs, assigns, joint and
several, all the right, title and interest therein.

Witness my hand and seal of said original United
States District Court, Southern District of New York, this 1st day of

1941, at New York, New York.

Signature of Patty S. Hill

Signature of Esther A. Hill

Witness my hand and seal of said original United
States District Court, Southern District of New York, this 1st day of

1941, at New York, New York.

Signature of Patty S. Hill

Signature of Esther A. Hill

IN WITNESS WHEREOF, the said parties of the first part, the said interest of the
said party of the second part, the said parties of the first part, presents and
do hereby confirm, ratify and confirm to the said party of the second part
its heirs, assigns, joint and several, all the right, title and interest therein

causes of action, heretofore accrued or which may at any time hereafter accrue, for unpaid royalties or by reason of any infringements of said copyrights and renewal copyrights, and howsoever arising.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever.

In WITNESS WHEREOF the parties of the first part have executed this instrument at New York City this 16th day of October, 1944, the year nine hundred and forty-four.

[Faint signature]

Fatty Klice
.....
Individually and as Next of Kin

Jessie M. Hill
.....
Individually and as Next of Kin

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 16th day of October, 1944, before me, a notary public, personally came FATTY S. KLICE and JESSIE M. HILL, to me known, who, as to the individuals described in and who executed the foregoing instrument, and they severally duly acknowledged the same.

[Faint signature]
.....
Notary Public
My Comm. Expires



EXHIBIT 113

ALL MEN BY THESE PRESENTS, that we, PATTY S. HILL and JESSICA M. HILL, both residing at No. 21 Claremont Avenue, New York, New York, parties of the first part, for and in consideration of the sum of one (\$1.00) dollar and other good and valuable consideration to each of us in hand paid by THE HILL FOUNDATION, INC., a New York corporation with its principal office at Room 4810, No. 70 Pine Street, New York, New York, party of the second part, the receipt whereof is hereby acknowledged, have sold, transferred, conveyed and assigned, and by these presents do hereby sell, transfer, convey and assign to the said party of the second part, all our right, title and interest, joint and several, in and to the following copyrights:

- (1) "Good Morning to All" (original United States copyright registration, July 28, 1921, entry #513745),
- (2) "Happy Birthday", a March, Piano Solo (original United States copyright registration, December 27, 1934, entry #45655),
- (3) "Happy Birthday", 1 Piano - 4 Hands, (original United States copyright registration, February 15, 1935, entry #46661),
- (4) "Happy Birthday", 1 Piano - 6 Hands, (original United States copyright registration, April 3, 1935, entry #47440),
- (5) "Happy Birthday", 2nd Piano Part, (original United States copyright registration, April 3, 1935, entry #47439),
- (6) "Happy Birthday to You", Piano Solo with Words, (original United States copyright registration, December 6, 1935, entry #51990), and
- (7) "Happy Birthday to You", Oct. #96 Unison, (original United States copyright registration, December 6, 1935, entry #51988);

TOGETHER WITH all the right, title and interest of the parties of the first part in and to all licenses, agreements and contracts for the publication and sale of the aforementioned works, and in and to any and all rights, demands, claims and

causes of action, heretofore accrued or which may at any time hereafter accrue, for unpaid royalties or by reason of any infringements of said copyrights and renewal copyrights, and howsoever arising.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF the parties of the first part have executed this instrument at New York City this 16th day of October, one thousand nine hundred and forty-four.

*Witness:
Fred Mann*

Patty Hill
.....
Individually and as Next of Kin

Jessica M. Hill
.....
Individually and as Next of Kin

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.

On this 16th day of October, 1944, before me, a notary public, personally came PATTY S. HILL and JESSICA M. HILL, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally duly acknowledged to me that they executed the same.

Grace D. Gordon
.....
GRACE D. GORDON
Notary Public, Kings County
Kings County Clerk's No. 483
New York County Clerk's No. 347
Commission Expires March 31, 1945



EXHIBIT 114

ASSIGNOR , The Hill Foundation, Inc.

ASSIGNEE , Clayton F. Summy Co.

The following assignment of copyright is recorded in the Copyright Office of the United States,
November 10, 1944 , in book 552 , page^s 63-68 , in conformity with the
laws of the United States respecting copyright.

16-4,000

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS that THE HILL FOUNDATION, INC., a corporation of the State of New York, having its principal place of business at No. 70 Pine Street, New York City, in consideration of the sum of ONE (\$1.00) DOLLAR and other good and valuable consideration to us in hand paid by CLAYTON P. SUMLEY CO., a corporation of the State of Delaware, having its principal office at No. 321 South Wabash Avenue, Chicago, Illinois,

DOES HEREBY sell, convey, assign, transfer and set over to CLAYTON P. SUMLEY CO.,

TO HAVE AND TO HOLD so long to said CLAYTON P. SUMLEY CO. or any corporation into which it may merge or consolidate is now or hereafter a bankrupt; or does not make a general assignment for the benefit of creditors; or does not take the benefit of any insolvency or debtor and creditor law; or does not suffer the appointment of receiver or trustee of its property or the assignment or transfer of its property by operation of law upon any other person, firm, association or corporation; or (except in connection with its merger or consolidation with such firm, association or corporation) does not attempt to assign, transfer, sell or pledge its rights in and to this assignment or the interests conveyed thereby to any person, firm, association or corporation for

2.

any purpose whatsoever, provided, however, that Clayton F. Summy Co. may assign the rights now enjoyed by the American Society of Composers, Authors and Publishers under certain assignments heretofore made, to any other person, firm or corporation, in return for substantially the same services now rendered or for substantially the same consideration as now rendered and paid by the said American Society of Composers, Authors and Publishers.

and of its property, right, title and interest in and to the books, copyrights and present renewals and extensions of copyrights (including the copyrights and renewals and extensions of copyrights hereinafter specifically described) secured in the United States of America or in any foreign country or countries, in and to the following books, musical compositions and arrangements thereof:

- (1) "Songs for the Kindergarten" (original United States copyright registration, October 17, 1898, entry #45997 or #45997; renewal registration, September 3, 1921, renewal registration #19021);
- (2) "Song Stories for the Kindergarten. New edition, revised, illustrated and enlarged." (original United States copyright registration, June 3, 1898, entry #34260 or #34260; renewal registration, January 9, 1921, renewal registration #35771);
- (3) "Song Stories for the Sunday School" (original United States copyright registration, March 20, 1899, entry #20441; renewal registration, January 3, 1927, renewal registration #36013);

3.

- (4) "Good Morning to All" (original United States copyright registration, February 7, 1907, entry #142468 or #C142468; renewal registration, January 2, 1935, renewal registration #34377 or #R34377);
- (5) "Good Morning to All" (original United States copyright registration, July 28, 1901, entry #513745);
- (6) "Happy Birthday", a March, Piano Solo (original United States copyright registration, December 27, 1934, entry #45655);
- (7) "Happy Birthday", 1 Piano - 4 Hands, (original United States copyright registration, February 15, 1935, entry #46661);
- (8) "Happy Birthday", 1 Piano - 6 Hands, (original United States copyright registration, April 3, 1935, entry #47440).
- (9) "Happy Birthday", 2nd Piano Part, (original United States copyright registration, April 3, 1935, entry #47439);
- (10) "Happy Birthday to You", Piano Solo with Words, (original United States copyright registration, December 6, 1935, entry #51990); and
- (11) "Happy Birthday to You", Oct. #96 Unison, (original United States copyright registration, December 6, 1935, entry #51988);

all of its right, title and interest in and to all renewals and extensions of the copyrights thereto that have been and may, can or shall hereafter be secured under the laws now or hereafter in effect in the United States or in any foreign country or countries; all of its property, right, title and

4.

interest in and to said books, musical compositions and arrangements, including both the words and music thereof; and all of its right, title and interest in and to any further or other arrangements hereafter made by others than Patty S. Hill or Jessica M. Hill of the words or musical compositions above enumerated or any new words or music or arrangements in connection therewith, and any copyrights or renewals of copyrights thereof; and also all rights, claims, demands and causes of action which it now has or hereafter can, shall, or may have against any person or persons, firms or corporations who have heretofore infringed any of the rights and privileges which it may, can or shall have in and to said books, musical compositions or arrangements, and the copyrights thereto and the renewals and extensions of said copyrights;

IT BEING EXPRESSLY UNDERSTOOD AND AGREED that this assignment includes and effects the sale, assignment, conveyance or transfer of all copyrights to the above-enumerated books, musical compositions and arrangements thereof and of all renewals and extensions of said copyrights which may have been omitted from the descriptions of copyrights, renewals and extensions of copyrights appearing in the above specific enumeration;

IT BEING ALSO EXPRESSLY UNDERSTOOD AND AGREED that this assignment includes and effects a sale, assignment, conveyance and transfer of all of its property, right, title

5.

and interest in and to said books, musical compositions and arrangements thereof, said copyrights, and the renewals and extensions of copyrights, and of said rights, titles, demands and causes of action which it may lawfully own as assignee of the estate of him and as assignee of the assignees of the heirs of him of William J. Hill.

IN WITNESS WHEREOF, THE HILL FOUNDATION, INC. has caused its corporate seal to be hereunto affixed this *17* day of *October*, 1944.

THE HILL FOUNDATION, INC.,

Walter Hill

President.

STATE OF NEW YORK)
)
) :ss.
)
COUNTY OF NEW YORK)

On this *16th* day of *October*, 1944, before me personally came *MARY S. HILL*, to me known, who, being by me duly sworn, did depose and say that she resides at No. 21 *East 44th Street*, New York, New York; that she is the President of *The Hill Foundation, Inc.*, the corporation described in the instrument executed the foregoing instrument; that she is a member of said corporation; that the seal affixed to said instrument is such corporate seal; that it was authorized by order of the Board of Directors of said corporation, and that she signed her name thereto by like order.

Grace D. Gordon

GRACE D. GORDON
Notary Public
New York State
Commission Expires March 30, 1945

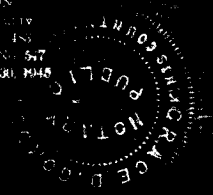


EXHIBIT 115

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS that THE HILL FOUNDATION, INC., a corporation of the State of New York, having its principal place of business at No. 70 Pine Street, New York City, in consideration of the sum of ONE (\$1.00) DOLLAR and other good and valuable consideration to us in hand paid by CLAYTON F. SUMMY CO., a corporation of the State of Delaware, having its principal office at No. 321 South Wabash Avenue, Chicago, Illinois,

DOES HEREBY sell, convey, assign, transfer and set over to CLAYTON F. SUMMY CO.,

TO HAVE AND TO HOLD so long as said CLAYTON F. SUMMY CO. or any corporation with which it may merge or consolidate is not adjudicated a bankrupt; or does not make a general assignment for the benefit of creditors; or does not take the benefit of any insolvency or debtor and creditor law; or does not suffer the appointment of receiver or trustee of its property or the assignment or transfer of its property by operation of law upon any other person, firm, association or corporation; or (except in connection with its merger or consolidation with such firm, association or corporation) does not attempt to assign, transfer, sell or pledge its rights in and to this assignment or the interests conveyed thereby to any person, firm, association or corporation for

2.

any purpose whatsoever, provided, however, that Clayton F. Summy Co. may assign the rights now enjoyed by the American Society of Composers, Authors and Publishers under certain assignments heretofore made, to any other person, firm or corporation, in return for substantially the same services now given and substantially the same consideration as now computed and paid by the said American Society of Composers, Authors and Publishers.

ALL of its property, right, title and interest in and to the present copyrights and present renewals and extensions of copyrights (including the copyrights and renewals and extensions of copyrights hereinafter specifically described) secured in the United States of America or in any foreign country or countries, in and to the following books, musical compositions and arrangements thereof:

- (1) "Song Stories for the Kindergarten"
(original United States copyright registration, October 13, 1893, entry #45997 or #45997Y; renewal registration, September 3, 1921, renewal registration #19043);
- (2) "Song Stories for the Kindergarten. New edition, revised, illustrated and enlarged."
(original United States copyright registration, June 8, 1896, entry #34260 or #34260B2; renewal registration, January 9, 1924, renewal registration #25771);
- (3) "Song Stories for the Sunday School"
(original United States copyright registration, March 20, 1899, entry #20441; renewal registration, January 3, 1927, renewal registration #36618);

3.

- (4) "Good Morning to All" (original United States copyright registration, February 7, 1907, entry #142468 or #C142468; renewal registration, January 2, 1935, renewal registration #34877 or #R34877);
- (5) "Good Morning to All" (original United States copyright registration, July 28, 1921, entry #513745);
- (6) "Happy Birthday", a March, Piano Solo (original United States copyright registration, December 27, 1934, entry #45655);
- (7) "Happy Birthday", 1 Piano - 4 Hands, (original United States copyright registration, February 15, 1935, entry #46661);
- (8) "Happy Birthday", 1 Piano - 6 Hands, (original United States copyright registration, April 3, 1935, entry #47440).
- (9) "Happy Birthday", 2nd Piano Part, (original United States copyright registration, April 3, 1935, entry #47439);
- (10) "Happy Birthday to You", Piano Solo with Words, (original United States copyright registration, December 6, 1935, entry #51990); and
- (11) "Happy Birthday to You", Oct. #96 Unison, (original United States copyright registration, December 6, 1935, entry #51988);

all of its right, title and interest in and to all renewals and extensions of the copyrights thereto that have been and may, can or shall hereafter be secured under the laws now or hereafter in effect in the United States or in any foreign country or countries; all of its property, right, title and

4.

interest in and to said books, musical compositions and arrangements, including both the words and music thereof; and all of its right, title and interest in and to any further or other arrangements hereafter made by others than Patty S. Hill or Jessica M. Hill of the words or musical compositions above enumerated or any new words or music or arrangements in connection therewith, and any copyrights or renewals of copyrights thereof; and also all rights, claims, demands and causes of action which it now has or hereafter can, shall, or may have against any person or persons, firms or corporations who have heretofore infringed any of the rights and privileges which it may, can or shall have in and to said books, musical compositions or arrangements, and the copyrights thereto and the renewals and extensions of said copyrights;

IT BEING EXPRESSLY UNDERSTOOD AND AGREED that this assignment includes and effects the sale, assignment, conveyance or transfer of all copyrights to the above-enumerated books, musical compositions and arrangements thereof and of all renewals and extensions of said copyrights which may have been omitted from the descriptions of copyrights, renewals and extensions of copyrights appearing in the above specific enumeration;

IT BEING ALSO EXPRESSLY UNDERSTOOD AND AGREED that this assignment includes and effects a sale, assignment, conveyance and transfer of all of its property, right, title

5.

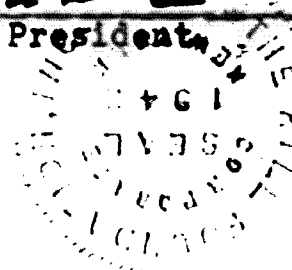
and interest in and to said books, musical compositions and arrangements thereof, said copyrights, and the renewals and extensions of copyrights, and of said rights, claims, demands and causes of action which it may now have or own as assignee of the next of kin and as assignee of the assignees of the next of kin of Mildred J. Hill.

IN WITNESS WHEREOF, THE HILL FOUNDATION, INC.

has caused its corporate seal to be hereunto affixed this 16th day of October, 1944.

THE HILL FOUNDATION, INC.,

By *Walter S. Hill*
President

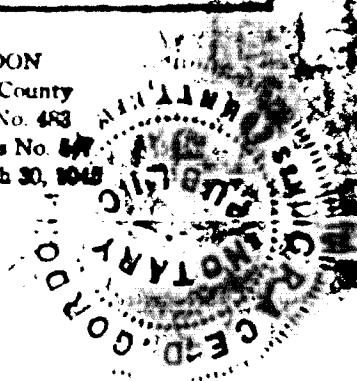


STATE OF NEW YORK)
) :ss.
 COUNTY OF NEW YORK)

On this 16th day of October, 1944, before me personally came PATTY S. HILL, to me known, who, being by me duly sworn, did depose and say that she resides at No. 21 Claremont Avenue, New York, New York; that she is the President of The Hill Foundation, Inc., the corporation described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that she signed her name thereto by like order.

Grace D. Gordon

GRACE D. GORDON
 Notary Public, Kings County
 Kings County Clerk's No. 483
 New York County Clerk's No. 57
 Commission Expires March 30, 1948



ALL MEN BY THESE PRESENTS, that we, PATTY S. HILL and JESSICA M. HILL, both residing at No. 21 Claremont Avenue, New York, New York, parties of the first part, for and in consideration of the sum of one (\$1.00) dollar and other good and valuable consideration to each of us in hand paid by THE HILL FOUNDATION, INC., a New York corporation with its principal office at Room 4810, No. 70 Pine Street, New York, New York, party of the second part, the receipt whereof is hereby acknowledged, have sold, transferred, conveyed and assigned, and by these presents do hereby sell, transfer, convey and assign to the said party of the second part, all our right, title and interest, joint and several, in and to the following copyrights:

- (1) "Good Morning to All" (original United States copyright registration, July 28, 1921, entry #513745),
- (2) "Happy Birthday", a March, Piano Solo (original United States copyright registration, December 27, 1934, entry #45655),
- (3) "Happy Birthday", 1 Piano - 4 Hands, (original United States copyright registration, February 15, 1935, entry #46661),
- (4) "Happy Birthday", 1 Piano - 6 Hands, (original United States copyright registration, April 3, 1935, entry #47440),
- (5) "Happy Birthday", 2nd Piano Part, (original United States copyright registration, April 3, 1935, entry #47439),
- (6) "Happy Birthday to You", Piano Solo with Words, (original United States copyright registration, December 6, 1935, entry #51990), and
- (7) "Happy Birthday to You", Oct. #96 Unison, (original United States copyright registration, December 6, 1935, entry #51988);

TOGETHER WITH all the right, title and interest of the parties of the first part in and to all licenses, agreements and contracts for the publication and sale of the aforementioned works, and in and to any and all rights, demands, claims and

causes of action, heretofore accrued or which may at any time hereafter accrue, for unpaid royalties or by reason of any infringements of said copyrights and renewal copyrights, and howsoever arising.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF the parties of the first part have executed this instrument at New York City this 16th day of October, one thousand nine hundred and forty-four.

*Witness:
Sud Mann*

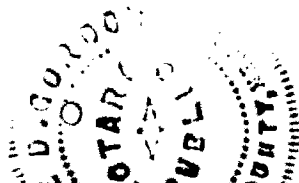
Patty Hill
.....
Individually and as Next of Kin

Jessica M. Hill
.....
Individually and as Next of Kin

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.

On this 16th day of October, 1944, before me, a notary public, personally came PATTY S. HILL and JESSICA M. HILL, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally duly acknowledged to me that they executed the same.

Grace D. Gordon
.....
GRACE D. GORDON
Notary Public, Kings County
Kings County Clerk's No. 483
New York County Clerk's No. 347
Commission Expires March 31, 1945



THE ABOVE PLAN AND AGREEMENT OF MERGER, has been executed on behalf of each corporate party thereto, and has been adopted separately by the stockholders of each corporate party thereto, in accordance with the provisions of the General Corporation Law of the State of Delaware, and the Business Corporation Act of the State of Illinois, the President of each corporate party thereto does now hereby execute the said Plan and Agreement of Merger and the Secretary of each corporate party thereto does now hereby attest the said Plan and Agreement of Merger, as the respective act, deed and agreement of each of said corporations, and that the facts stated herein are true, on this 21st day of December, 1973.

[CORPORATE SEAL]

SUNNY-BIRCHARD COMPANY

By [Signature]
Its President

ATTEST:

[Signature]
Its Secretary

[CORPORATE SEAL]

EDUCATIONAL MUSIC BUREAU

By [Signature]
Its President

ATTEST:

[Signature]
Its Secretary

EXHIBIT 116A

STATE OF NEW JERSEY)
) SS:-
COUNTY OF MERCER)

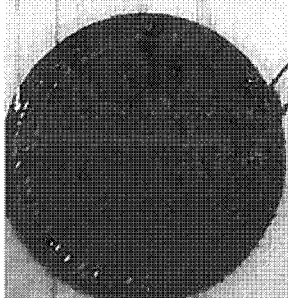
DAVID K. SENGSTACK, being duly sworn, states:

1. I am President of Birch Tree Group Ltd., a Wyoming corporation with its principal place of business in Princeton, New Jersey.

2. I make this affidavit to inform the Copyright Office that as a result of a series of corporate name changes "Summy-Birchard Music division of Birch Tree Group Ltd." shall be regarded as the proper name of the copyright owner of all copyrights previously registered under the following names:

- Summy Publishing Company
- Summy-Birchard Publishing Company
- Summy-Birchard Company
- New Summy-Birchard Company
- Sumco Corporation

Copyright Office
of the
United States
THE LIBRARY OF CONGRESS



Register of Copyrights
and
Assistant Librarian
for
Copyright Services

David K. Sengstack

THIS IS TO CERTIFY
THAT THE ATTACHED
DOCUMENT WAS RE-
CORDED IN THE COPY-
RIGHT OFFICE ON THE
DATE AND IN THE
PLACE SHOWN BELOW.

THIS CERTIFICATE IS IS-
SUED UNDER THE SEAL
OF THE COPYRIGHT OF-
FICE.

Date of Registration 27Feb81

Volume 1834

Pages 101-177

Continuation of Copyright No. 101-177

re certified
changes listed
Secretaries of

Sengstack

STATE OF NEW JERSEY)
) SS:
COUNTY OF MERCER)

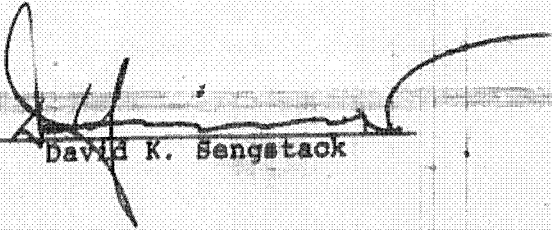
DAVID K. SENGSTACK, being duly sworn, states:

1. I am President of Birch Tree Group Ltd., a Wyoming corporation with its principal place of business in Princeton, New Jersey.

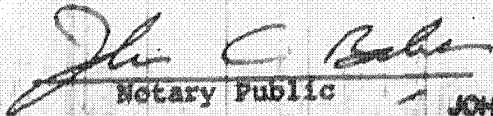
2. I make this affidavit to inform the Copyright Office that as a result of a series of corporate name changes, "Summy-Birchard Music division of Birch Tree Group Ltd." should be regarded as the proper name of the copyright owner of all copyrights previously registered under the following names:

- Summy Publishing Company
- Summy-Birchard Publishing Company
- Summy-Birchard Company
- New Summy-Birchard Company
- Sumco Corporation
- Birch Tree Group Ltd.

3. Annexed hereto as Exhibit A are certified copies of the documents evidencing the name changes listed in paragraph 2 as recorded by the appropriate Secretaries of State.


David K. Sengstack

Sworn to before me
this 20th day of JANUARY, 1981.


Notary Public

JOHN C. BAKER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
NOVEMBER 30, 1983

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION**

CLAYTON F. SUMMY CO., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: That the Board of Directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED that the Certificate of Incorporation of Clayton F. Summy Co. be amended by striking out all of Article First of the Certificate of Incorporation, as amended, and inserting in lieu thereof a new Article First to be and read as follows:

"FIRST: The name of the corporation is Summy Publishing Company."

SECOND: That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance with the provisions of Section 228 of Title 8 of the Delaware Code of 1953, and filed with the corporation on the 25th day of November, 1955.

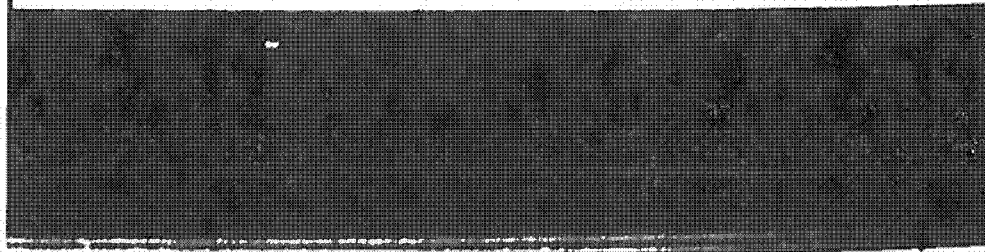
THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of sections 242 and 228 of Title 8 of The Delaware Code of 1953.

IN WITNESS WHEREOF the said CLAYTON F. SUMMY CO. has caused its corporate seal to be hereunto affixed and this certificate to be signed by John P. Bengtack, its President, and Davis K. Bengtack, its Secretary this 9th day of January, 1956.



CLAYTON F. SUMMY CO.
[Signature]
By *[Signature]*

VOL. 00000000



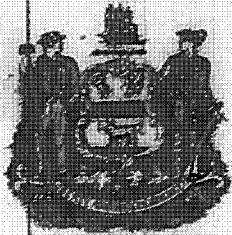
STATE OF New York }
COUNTY OF New York } ss:

BE IT REMEMBERED, That on this 9th day of January, A.D. 1956, personally came before me, Richard W. Williams, a Notary Public in and for the County and State aforesaid, John F. Bengstaek, President of Clayton F. Summy Co., a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said John F. Bengstaek as such President duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the Secretary of said corporation to the said foregoing certificate are in the handwriting of the said President and Secretary of said corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Richard W. Williams
Notary Public

Richard W. Williams
Notary Public, State of New York
No. 45-123-45
Qualified in Queens County
New York with New York License No.
Expiration Expires March 31, 1957



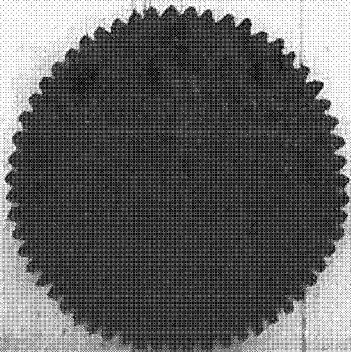
VOL. 1834 PAGE 105

State of DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton Secretary of State of the State of Delaware,
do hereby certify that the above and foregoing is a true and correct copy of
Certificate of Amendment of the "CLAYTON F. SUMMY CO.", as received and filed in this
office the twenty-third day of January, A.D. 1956, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand
and official seal at Dover this twenty-ninth day
of February in the year of our Lord
one thousand nine hundred and eighty.



Glenn C. Kenton

Glenn C. Kenton, Secretary of State

Sept 27, 1957

VOL. 1834 PAGE 10

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION**

SUNNY PUBLISHING COMPANY, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: That the Board of Directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED that the Certificate of Incorporation of Sunny Publishing Company be amended by striking out all of Article First of the Certificate of Incorporation, as amended, and inserting in lieu thereof a new Article First to be and read as follows:

"FIRST: The name of the corporation is Sunny-Birchard Publishing Company."

SECOND: That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance with the provisions of Section 228 of Title 8 of the Delaware Code of 1953, and filed with the corporation on the 19th day of September 1957.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of sections 242 and 238 of Title 8 of The Delaware Code of 1953.

IN WITNESS WHEREOF, the said **SUNNY PUBLISHING COMPANY** has caused its corporate seal to be hereunto affixed and this certificate to be signed by David K. Sangstak, its Vice President, and Robert G. Olsen, its Assistant Secretary, this 20th day of September 1957.



[Signature]
[Signature]
Assistant Secretary

VOL. 1834 PAGE 10

STATE OF ILLINOIS }
COUNTY OF COOK } ss:

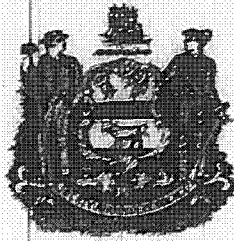
BE IT REMEMBERED, that on this 20th day of September, A.D. 1957, personally came before me Fred Perence a Notary Public in and for the County and State aforesaid, David K. Sengstack, Vice President of Sunny Publishing Company, a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said David K. Sengstack as such Vice President duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said Vice President and of the Assistant Secretary of said corporation to the said foregoing certificate are in the handwriting of the said Vice President and Assistant Secretary of said corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Fred Perence
Notary Public

My Commission Expires August 2, 1961





State
of
DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton Secretary of State of the State of Delaware,
do hereby certify that the above and foregoing is a true and correct copy of
Certificate of Amendment of the "SUMMY PUBLISHING COMPANY", as received and filed in
this office the twenty-seventh day of September, A.D. 1957, at 10 o'clock A.M.

In Testimony Whereof, *I have hereunto set my hand*
and official seal at Dover this twenty-ninth *day*
of February *in the year of our Lord*
one thousand nine hundred and eighty.

Glenn C. Kenton

Glenn C. Kenton, Secretary of State

Dec. 22, 1961

VOL. 1 834 PAGE 1

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION**

SUMMY-BIRCHARD PUBLISHING COMPANY, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: That the Board of Directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

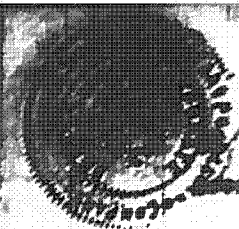
RESOLVED that the Certificate of Incorporation of Summy-Birchard Publishing Company be amended by striking out all of Article First of the Certificate of Incorporation, as amended, and inserting in lieu thereof a new Article First to be and read as follows:

"**FIRST:** The name of the corporation is Summy-Birchard Company"

SECOND: That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance with the provisions of Section 228 of Title 8 of the Delaware Code of 1953, and filed with the corporation on the 29th day of September, 1961.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of sections 242 and 228 of Title 8 of The Delaware Code of 1959.

IN WITNESS WHEREOF, the said **SUMMY-BIRCHARD PUBLISHING COMPANY** has caused its corporate seal to be hereto affixed and this certificate to be signed by David H. Bengtson, its President, and Robert O. Olson, its Assistant



Secretary, this 29th day of September, 1961.

SUNNY-HIRSHARD PUBLISHING COMPANY

By [Signature]
President

Attest: [Signature]
Assistant Secretary

VOL. 1834 PAGE 11

STATE OF ILLINOIS }
COUNTY OF COOK } ss,

BE IT REMEMBERED, that on this 29th day of September, A.D. 1961, personally came before me Lorraine Moburg, a Notary Public in and for the County and State aforesaid, David K. Sengstack, President of Sunny-Hirshard Publishing Company, a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said David K. Sengstack as such President duly presented said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the Assistant Secretary of said corporation to the said foregoing certificate are in the handwriting of the said President and Assistant Secretary of said corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Lorraine Moburg
Notary Public

My commission expires: SEP 28 1962

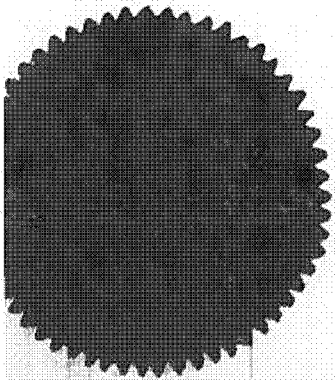


State of DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton Secretary of State of the State of Delaware
do hereby certify that the above and foregoing is a true and correct copy of
Certificate of Amendment of the "SUMMY-BIRCHARD PUBLISHING COMPANY", as received and
filed in this office the twenty-second day of December, A.D. 1961, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand
and official seal at Dover this twenty-ninth day
of February in the year of our Lord
one thousand nine hundred and eighty.



Glenn C. Kenton

Glenn C. Kenton, Secretary of State

134685

STATE OF WYOMING
FILED

At 1:43 p.m.

OCT 12 1979

163851
THYRA THOMSON
SECRETARY OF STATE

ARTICLES OF AMENDMENT
TO ARTICLES OF INCORPORATION OF
THE BIRCH TREE GROUP LTD.
A WYOMING CORPORATION

Pursuant to the provisions of Sections 51 and 52 of the Wyoming Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is THE BIRCH TREE GROUP LTD.

SECOND: The following amendment of the Articles of Incorporation was adopted by the shareholders of the corporation on September 6, 1979, in the manner prescribed by the Wyoming Business Corporation Act:

ARTICLE FIRST of the Articles of Incorporation of this company is hereby amended to read as follows:

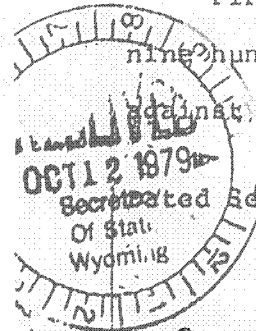
"FIRST: The name of this corporation is BIRCH TREE GROUP LTD."

THIRD: The number of shares of the corporation at the time of such adoption was nine hundred sixty-three (963) and the number of shares entitled to vote thereon was nine hundred sixty-three (963).

FOURTH: The designation and number of outstanding shares of each class entitled to vote thereon as a class were as follows:

Class:	None
Number of shares:	963

FIFTH: The number of shares voted for each amendment was nine hundred sixty-three (963), and the number of shares voted against such amendment was none.



Recorded September 6, 1979

THE BIRCH TREE GROUP LTD.

By:

John W. Hodgh
John W. Hodgh
Vice President

ATTEST:

David V. Kinsella

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

I, LAWRENCE G. STAAT, a Notary Public in and for said County, do hereby certify that on this 6th day of September, 1979, personally appeared before me JOHN W. HOUGH and DANIEL V. KINSELLA, who, being first duly sworn by me, declared that they are Vice President and Assistant Secretary, respectively, of THE BIRCH TREE GROUP LTD., a Wyoming corporation, and that they signed the foregoing document as Vice President and Assistant Secretary, respectively, of the corporation, and that the statements therein contained are true.

Lawrence G. Staat
Notary Public

My Commission expires:

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES MAR 11 1983
ISSUED THRU ILLINOIS NOTARY ASSOC

134685
DOMESTIC

STATE OF WY.
FILED

AT 10:35 AM

1979

ARTICLES OF AMENDMENT
TO ARTICLES OF INCORPORATION OF
SUMMY-BIRCHARD COMPANY,
A WYOMING CORPORATION

VOL. 1834 PAGE 114

Pursuant to the provisions of Sections 51 and 52 of the Wyoming Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is SUMMY-BIRCHARD COMPANY.

SECOND: The following amendment of the Articles of Incorporation was adopted by the shareholders of the corporation on July 10, 1979, in the manner prescribed by the Wyoming Business Corporation Act:

ARTICLE FIRST of the Articles of Incorporation of this company is hereby amended to read as follows:

"FIRST: The name of this corporation is THE BIRCH TREE GROUP LTD."

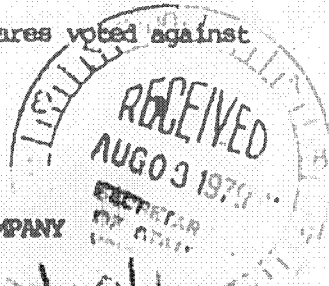
THIRD: The number of shares of the corporation at the time of such adoption was nine hundred sixty-three (963) and the number of shares entitled to vote thereon was nine hundred sixty-three (963).

FOURTH: The designation and number of outstanding shares of each class entitled to vote thereon as a class were as follows:

Class:	None
Number of shares:	963

FIFTH: The number of shares voted for such amendment was nine hundred sixty-three (963), and the number of shares voted against such amendment was none.

Dated July 10, 1979.



SUMMY-BIRCHARD COMPANY

By:

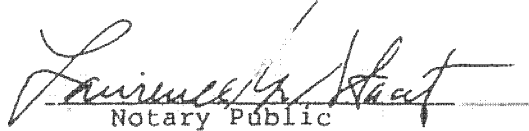
John W. Hough
Vice President

ATTEST:

[Handwritten signature]

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, LAWRENCE G. STAAT, a Notary Public in and for said County, do hereby certify that on this 10th day of July, 1979, personally appeared before me JOHN W. HOUGH and DANIEL V. KINSELLA, who, being first duly sworn by me, declared that they are Vice President and Assistant Secretary, respectively, of SUMMY-BIRCHARD COMPANY, a Wyoming Corporation, and that they signed the foregoing document as Vice President and Assistant Secretary, respectively, of the corporation, and that the statements therein contained are true.


Notary Public

My Commission expires:

NOTARY PUBLIC STATE OF ILLINOIS
COMMISSION EXPIRES MAR. 11 1983
ISSUED THROUGH ILLINOIS NOTARY ASSOC.

134685
Jom.

10:30AM
1979

ARTICLES OF AMENDMENT
TO ARTICLES OF INCORPORATION OF
SUMCO CORPORATION
A WYOMING CORPORATION

Vol. 1834 PAGE 116

Pursuant to the provisions of Section 51 and 52 of the Wyoming Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is SUMCO CORPORATION.

SECOND: The following amendments of the Articles of Incorporation were adopted by the shareholders of the corporation on May 1, 1979, in the manner prescribed by the Wyoming Business Corporation Act:

ARTICLE FIRST of the Articles of Incorporation of this company is hereby amended to read as follows:

"The name of this corporation is SUMMY-BIRCHARD COMPANY."

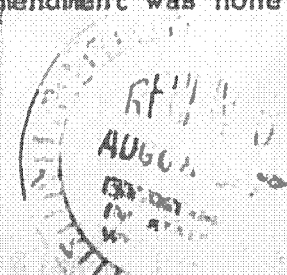
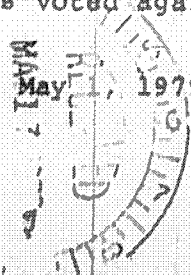
THIRD: The number of shares of the corporation at the time of such adoption was nine hundred sixty three (963) and the number of shares entitled to vote thereon was nine hundred sixty three (963).

FOURTH: The designation and number of outstanding shares of each class entitled to vote thereon as a class were as follows:

Class: None
Number of Shares: 963

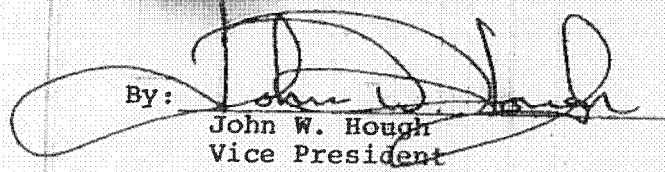
FIFTH: The number of shares voted for such amendment was nine hundred sixty three (963), and the number of shares voted against such amendment was none.

Dated May 1, 1979.




203

SUNCO CORPORATION

By: 
John W. Hough
Vice President

ATTEST:


Daniel V. Kinseella
Assistant Secretary

134685

ARTICLES OF AMENDMENT
TO ARTICLES OF INCORPORATION OF
SUMMY-BIRCHARD COMPANY
A WYOMING CORPORATION

STATE OF WYOMING
FILED

At 2:05 P

NOV 9, 1978
154139

THYRA THOMSON
SECRETARY OF STATE

Vol 1834 PAGE 118

Pursuant to the provisions of Sections 51 and 52 of the Wyoming Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is SUMMY-BIRCHARD COMPANY.

SECOND: The following amendments of the Articles of Incorporation were adopted by the shareholders of the corporation on October 5, 1978, in the manner prescribed by the Wyoming Business Corporation Act:

ARTICLE FIRST of the Articles of Incorporation of this company is hereby amended to read as follows:

"The name of this corporation is SUMCO CORPORATION".

THIRD: The number of shares of the corporation at the time of such adoption was nine hundred sixty three (963) and the number of share entitled to vote thereon was nine hundred sixty three (963).

FOURTH: The designation and number of outstanding shares of each class entitled to vote thereon as a class were as follows:

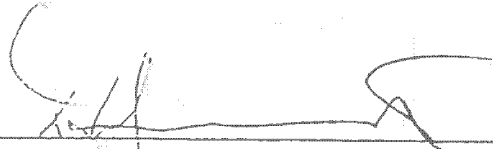
Class: None
Number of Shares: 963

FIFTH: The number of shares voted for such amendment was nine hundred sixty three (963), and the number of shares voted against such amendment was none.

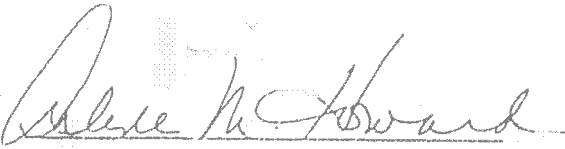
Dated October 5, 1978.

SUMMY-BIRCHARD COMPANY

BY:


David K. Sengstack

ATTEST:



Arlene M. Howard, its Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Marlene Meyer, a Notary Public in and for said County, do hereby certify that on this 5th day of October 1978, personally appeared before me DAVID K. SENGSTACK and ARLENE M. HOWARD, who, being first duly sworn by me, declared that they are President and Secretary, respectively, of SUMMY-BIRCHARD COMPANY, a Wyoming Corporation, and that they signed the foregoing document as President and Secretary, respectively, of the corporation, and that the statements therein contained are true.

Marlene Meyer
Notary Public

My Commission expires: 4/19/79

134685

STATE OF WYOMING
FILED

at 10:30

MAR 19 1976

134871

ETTYA THOMSON
REGISTRAR DE STATE

ARTICLES OF MERGER

OF

VOL. 1834 PAGE 121

SUMMY-BIRCHARD COMPANY,

an Illinois Corporation

and

NEW SUMMY-BIRCHARD COMPANY,

a Wyoming Corporation

The undersigned corporations, pursuant to Section 68 of the "Wyoming Corporation Act" as amended, hereby execute the following Articles of Merger:

ARTICLE ONE

The names of the corporations proposing to merge and the names of the States under the law of which such corporations are organized, are as follows:

SUMMY-BIRCHARD COMPANY
NEW SUMMY-BIRCHARD COMPANY

Illinois
Wyoming

ARTICLE TWO

The laws of the State of Illinois, the State under which the foreign corporation is organized permit such merger.

ARTICLE THREE


The name of the surviving corporation shall be SUMMY-BIRCHARD COMPANY and it shall be governed by the laws of the State of Wyoming.

RECEIVED
MAR 20 1976
SECRETARY
OF STATE
WYOMING

#19429
10 00

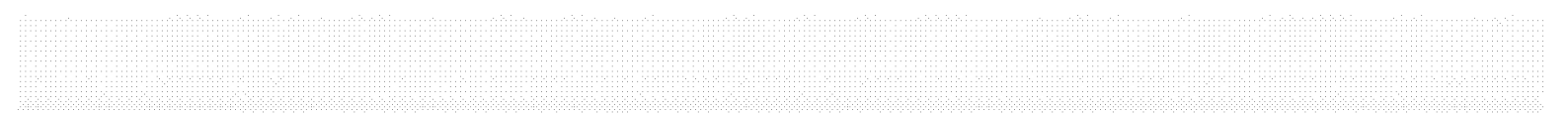
VOL 1834 PAGE 122

STATE OF WYOMING
Secretary of State

 I hereby certify that this is a true and complete copy of the document as filed in this office and admitted to record in File No. 184685
Dated 2/27, 1970

Thomas Harrison
Secretary of State

BY Linda Maskey



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public,
do hereby certify that on the _____ day of _____, 197____,
personally appeared before David K. Sengstack; who declares
that he is the President of Summy-Birghard Company, one of the
corporations executing the foregoing documents, and being first
duly sworn, acknowledged that he signed the foregoing Agreement
in the capacity therein set forth and declared that the state-
ments therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal the day and year before written.

Notary Public

[Notary Seal]

NEW SUMMY-BIRCHARD COMPANY

By David K. Sengstack, Its President

ATTEST:

Roberta Lysaght, Its Secretary

David K. Sengstack,
Its Sole Director

or to otherwise carry out the provisions hereof, the proper officers and directors of the absorbed corporation as of the effective date of the merger shall execute and deliver any and all proper deeds, assignments and assurances in law, and do all things necessary or proper to vest, perfect or confirm title to such property or rights in the surviving corporation, and otherwise to carry out the provisions hereof.

6. Each of the Constituent Corporations shall take, or cause to be taken, all action or so cause to be done all things necessary, proper or advisable under the laws of the State of Illinois and of the State of Wyoming, or either of such States, to consummate and make effective and the merger, subject to the appropriate vote or consent of the stockholders of each of the Constituent Corporations in accordance with the requirements of the applicable provisions of the laws of the State of Illinois and of the State of Wyoming.

7. Anything herein or elsewhere to the contrary notwithstanding, this Agreement and Plan of Merger may be abandoned by action of the Board of Directors of either the surviving corporation or the absorbed corporation at any time prior to the effective date of the merger, whether before or after submission to their respective stockholders, upon the happening of the following event: If the merger fails to obtain the requisite vote of stockholders of the surviving corporation or of the stockholders of the absorbed corporation not later than June 1, 1976.

IN WITNESS WHEREOF, each of the undersigned corporations has caused these Articles of Merger to be executed in its name by its president and its corporate seal to be hereunto affixed, attested by its secretary, and signed by its directors this ___ day of March 1976.

SUMMY-BIRCHARD COMPANY

By _____
David K. Sengstack, Its President

ATTEST:

Roberta Lysaght, Its Secretary

-5- _____
David K. Sengstack, Its Sole Director

tions for licenses, trademarks, trademark registrations and applications for registration of trademark, together with the good will of the business in connection with which said licenses and marks are used, and all debts due on whatever account, including subscriptions to shares of capital stock, and all other choses in action and all and every other interest of or belonging to or due to each of the Constituent Corporations shall be deemed to be transferred to and vested in the surviving corporation without further act or deed, and the title to any real estate, or any interest therein, vested in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the merger.

b. The surviving corporation shall be responsible and liable for all the liabilities and obligations of each of the Constituent Corporations; and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the merger had not taken place, or the surviving corporation may be substituted in its place and neither the rights of creditors nor any liens upon the property of either of the Constituent Corporations shall be impaired by the merger. The surviving corporation shall execute and deliver any and all documents which may be required for it to assume or otherwise comply with outstanding obligations of the absorbed corporation.

c. The aggregate amount of the net assets of the Constituent Corporations which is available for payments of dividends immediately prior to the merger, to the extent that the value thereof is not transferred to stated capital by issuance of shares of stock or otherwise, shall continue to be available for the payment of dividends by the surviving corporation.

4. The surviving corporation shall pay all expenses of accomplishing the merger.

5. If at any time the surviving corporation shall consider or be advised that any further assignment or assurances in law are necessary or desirable to vest or to perfect or confirm of record in the surviving corporation the title to any property or rights of the absorbed corporation,

be deemed for all corporate purposes to evidence the ownership of the number of whole shares of Common Stock of the surviving corporation which the holder of the certificates for shares of Common Stock of the absorbed corporation would be entitled to receive upon surrender thereof for exchange as aforesaid.

4. All shares of Common Stock of the surviving corporation into which shares of Common Stock of the absorbed corporation are converted, as above provided, shall be fully paid and non-assessable.

D. The merger shall effect the following change in the Articles of Incorporation of the surviving corporation:

FIRST. The name of the corporation is "SUMMY-BIRCHARD COMPANY."

E. Other provisions of the merger are as follows:

1. The By-Laws of the surviving corporation shall be and remain the surviving By-Laws of the surviving corporation until altered, amended or repealed.

2. The directors and officers of the absorbed corporation in office on the effective date of the merger shall continue in office and shall constitute the directors and officers of the surviving corporation for the term elected until their respective successors shall be elected or appointed and qualified.

3. On the effective date of the merger:

a. The surviving corporation shall possess all rights, privileges, immunities, powers and franchises as well of a public as of a private nature, and shall be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; and all property, real, personal and mixed, including all licenses, applica-

the surviving corporation outstanding on the effective date of the merger shall remain outstanding, shall be and be deemed fully-paid and non-assessable and shall retain all rights to accrued and unpaid dividends, if any.

2. Each share of Common Stock of the absorbed corporation issued and outstanding on the effective date of the merger, and all rights in respect thereof, shall, on said date, be converted into and exchanged for one share of the presently authorized and unissued Common Stock of the surviving corporation.

3. As soon as practicable after the effective date of the merger, each holder of an outstanding certificate or certificates theretofore representing shares of Common Stock of the absorbed corporation shall surrender the same to the surviving corporation, and such holder shall be entitled, upon such surrender, to receive in exchange therefor a certificate or certificates representing the number of whole shares of Common Stock of the surviving corporation into which the shares of Common Stock of the absorbed corporation theretofore represented by the surrendered certificate or certificates shall have been converted as aforesaid. Until so surrendered for exchange, each outstanding certificate which, prior to the effective date of the merger, represented shares of Common Stock of the absorbed corporation shall

They shall merge into the Wyoming corporation (hereinafter designated as the surviving corporation), which shall thereafter bear the name "SUMMY-BIRCHARD COMPANY."

B. The merger shall take place as of the date of this Agreement, in accordance with applicable provisions of the laws of the State of Illinois and the State of Wyoming. The separate existence of the absorbed corporation shall cease and the existence of the surviving corporation shall continue unaffected and unimpaired by the merger with all the rights, privileges, immunities and powers, and subject to all the duties and liabilities of a corporation organized under the General Corporation Law of the State of Wyoming.

C. The manner and basis of converting the shares of stock of each of the Constituent Corporations into shares of stock of the surviving corporation are as follows:

1. The shares of Common Stock of the surviving corporation, whether authorized or issued on the effective date of the merger shall not be converted or exchanged as a result of the merger, but upon said date all shares of Common Stock of the surviving corporation theretofore authorized (whether issued or unissued) shall be and be deemed to be shares of Common Stock of the surviving corporation, and all such shares of stock of

A G R E E M E N T

THIS AGREEMENT, dated _____, 1976,
made by and between SUMMY-BIRCHARD COMPANY, and a majority of
the directors thereof, and NEW SUMMY-BIRCHARD COMPANY, and a
majority of the directors thereof, referred to together as
the Constituent Corporations,

WITNESSETH, in consideration of the premises and of
the mutual agreements, covenants and provisions hereinafter
contained, the parties hereto agree that SUMMY-BIRCHARD COMPANY,
be merged into NEW SUMMY-BIRCHARD COMPANY and that the terms
and conditions of such merger, the mode of carrying the same into
effect, and the manner and basis of converting the shares of
SUMMY-BIRCHARD COMPANY into shares of NEW SUMMY-BIRCHARD COMPANY
shall be and shall follow the following form:

PLAN OF MERGER

A. The names of the corporations proposing to merge are
SUMMY-BIRCHARD COMPANY, an Illinois corporation (hereinafter referred
to as the absorbed corporation), and NEW SUMMY-BIRCHARD COMPANY,
a Wyoming corporation.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

VOL 1834 PAGE 132

Before me, Myron E. Hake, Jr., a Notary Public in and for the said County and State, personally appeared DAVID K. SENGSTACK, who acknowledged before me that he is the President of SUMMY-BIRCHARD COMPANY, an Illinois corporation and that he signed the foregoing document as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 16th day of March, 1976.

Myron E. Hake, Jr.
Notary Public

My Commission Expires: 10/31/78

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Before me, Myron E. Hake, Jr., a Notary Public in and for the said County and State, personally appeared DAVID K. SENGSTACK who acknowledged before me that he is the President of NEW SUMMY-BIRCHARD COMPANY, a Wyoming corporation and that he signed the foregoing document as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 14th day of March, 1976.

Myron E. Hake, Jr.
Notary Public

My Commission Expires: 10/31/78

ARTICLE SEVEN

All provisions of the law of the State of Wyoming and the State of Illinois applicable to the proposed merger have been complied with.

IN WITNESS WHEREOF each of the undersigned corporations has caused these Articles of Merger to be executed in its name by its president and secretary as of this 16th day of March, 1976.

SUMMY-BIRCHARD COMPANY

By: [Signature]
David K. Sengstack, Its President

-Corporate Seal-

Attest: [Signature]
Roberta Lysaght, Its Secretary

NEW SUMMY-BIRCHARD COMPANY

By: [Signature]
David K. Sengstack, Its President

-Corporate Seal-

Attest: [Signature]
Roberta Lysaght, Its Secretary

ARTICLE FOUR

The plan of merger is as follows: See attached Exhibit 1, Agreement for Merger.

ARTICLE FIVE

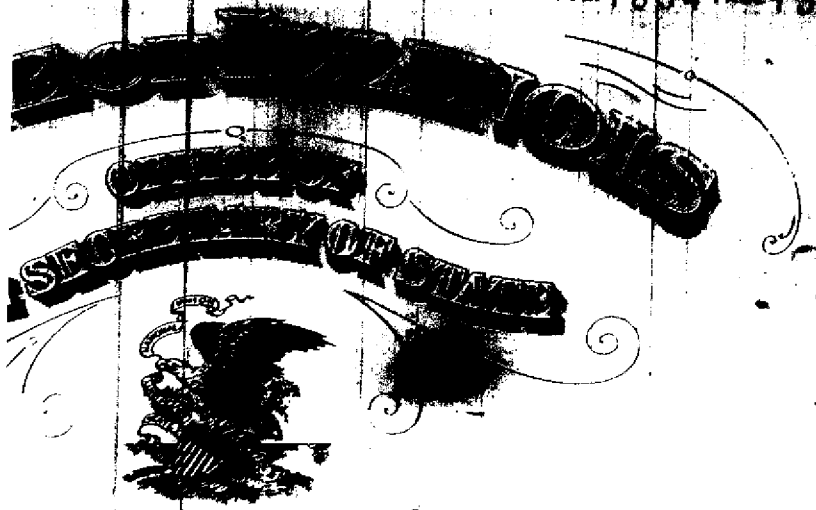
As to each corporation, the number of shares outstanding, the number of shares entitled to vote, and the number and designation of shares of any class entitled to vote as a class are:

CORPORATION	TOTAL NUMBER OF SHARES	TOTAL NUMBER OF SHARES ENTITLED TO VOTE	DESIGNATION OF CLASS EN- TITLED TO VOTE AS CLASS	NUMBER OF SHARES OF SUCH CLASS
Summy-Birchard Company	953	953	None	None
New Summy- Birchard Company	10	10	None	None

ARTICLE SIX

As to each corporation, the number of shares voted for and against the plan and the number of shares of any class entitled to vote as a class voted for and against the plan, are:

CORPORATION	SHARES VOTED FOR	SHARES VOTED AGAINST	CLASS	SHARES VOTED FOR	SHARES VOTED AGAINST
Summy-Birchard Company	953	None	Common	953	None
New Summy- Birchard Company	10	None	Common	10	None



These Presents Shall Come, Greeting:

I, *Secretary of State of the State of Illinois*,
do hereby certify that the following and hereto attached is a true
and correct copy of the articles of Incorporation and all Amendments

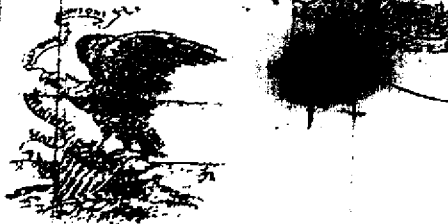
of the *State of Illinois*,
including last Certificate of Change of
and Registered Office of *SUMMY-BERCHARD*

is now on file and a matter of record in this office

I have signed my hand and cause to be affixed the Great Seal of the State of Illinois
Done at Springfield, Illinois, this _____ day of _____ 19____

STATE OF ILLINOIS

THE SECRETARY OF STATE



To all to whom these Presents Shall Come, Greeting:

Whereas, a STATEMENT OF INCORPORATION, duly signed, acknowledged and verified under oath, has been filed in the Office of the Secretary of State, on the 11th day of August A.D. 1923, for the organization of the EDUCATIONAL MUSIC BUREAU

under and in accordance with the provisions of "AN ACT IN RELATION TO CORPORATIONS FOR PECUNIARY PROFIT" approved June 28, 1919, and in force July 1, 1919, and all acts amendatory thereof, a copy of which statement is hereto attached;

Now therefore, I, LOUIS L. EMMERSON, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law do hereby certify that the said

EDUCATIONAL MUSIC BUREAU

is a legally organized Corporation under the laws of this State.

In Testimony Whereof, I have set my hand and cause to be affixed the Great Seal of the State of Illinois, I caused the City of Springfield, this 12th day of August, 1923, and

(THIS STATEMENT MUST BE FILED IN DELEGATE'S)

STATE OF ILLINOIS,

Cook

County,

\$ 20

10

To LOUIS L. EMMERSON, Secretary of State:

We, the undersigned, adult citizens of the United States, at least one of whom is a citizen of Illinois,

NAME	NUMBER	STREET ADDRESS	CITY	STATE
R. J. Blum		Congress Park, Ills.		
F. Juchhoff	1501 W. 60th St.		Chicago	Ill.
C. G. Hoover	6541 Lafay		Chicago	Ill.
T. R. Parker	6825 S. Halsted		Chicago	Ill.
M. J. Hoover	6541 Lafayette		Chicago	Ill.

propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919; and all Acts amendatory thereof; and, for the purpose of such organization, we hereby state as follows, to-wit:

1. The name of such corporation is Educational Music Bureau

2. The object for which it is formed is To organize and maintain a school supply business for the purpose of purchasing, renting, publishing, selling and distributing of school music and musical merchandise of every kind and description.

3. The duration of the corporation is For fifty years

4. The location of the principal office is 64 E. Van Buren

County of Cook

State of Illinois

2-1364

9. The name and address of the subscribers to the capital stock, and the amount subscribed by each, are as follows:

NAME	NUMBER	ADDRESS STREET.	CITY	SHARES	AMOUNT PAID	PAID IN FULL
J. D. Abraham	4934	N. Troy	Chicago	1	\$100.	\$50.00
G. H. Clough	3019	Broadway	"	1	\$100.	\$50.00
T. R. Parker	8828	S. Halsted	"	1	\$100.	\$50.00
M. J. Hoover	6541	Lafayette	"	50	\$5,000.	\$2,500.00
F. Buchhoff	1501	E. 60th St.	"	15	1,500.	750.00
C. G. Hoover	6541	Lafayette	"	120	12,000.	6,000.00
F. D. Eunnel	1648	N. Keystone	"	1	\$100.	\$50.00
R. J. Blum		Congress Park, Ill.		5	\$500.	\$250.00
Emma A. Hoover	6541	Lafayette	"	6	\$500.	\$300.00

Q

18.

11. Amount of capital stock which is to be paid in cash:

(a) On shares having no par value: Common \$ _____

(b) On shares having a par value of \$100.00: Preferred \$ _____
Common \$20,000.00

12. Amount of capital stock actually paid in:

(a) On shares having no par value: Preferred \$ None
Common \$ None

(b) On shares having a par value of \$100.00: Preferred \$ None
Common \$ 10,000.00

13. Amount of capital stock paid in cash is: \$1,500.00

14. Capital stock paid in property, appraised as follows: \$3,500.00

15. The location and a general description of such property is as follows:

(1) Furniture & Fixtures and General Office Equipment located at 64 E. Van Buren St., Chicago, Ill. value \$1,000.00

(2) Stock of Merchandise and Samples consisting of albums, octavo music, band and orchestramusic, books, sundries, etc. located at 64 E. Van Buren St., Chicago, Ill. value \$7,500.00

16. The management of the corporation shall be vested in Five directors.

17. The name and addresses of the first board of directors, at least one of whom is a resident of Illinois, and the respective term for which elected are as follows:

NAME	NUMBER	STREET	CITY	STATE	TERM FOR WHICH ELECTED
J. Hoover	611	Laurel St	Chicago	Ill.	One Year
J. [unclear]	200	W. [unclear]		Ill.	" "
Juchhoff	1701	N. 30th	"	"	" "
R. Darby	8825	S. Halsted	"	"	" "
J. Hoover	611	Laurel St	"	"	" "

18. Subject to the conditions and limitations prescribed by "The General Corporation Act" of Illinois, this corporation shall have the following powers, rights and privileges:

To have succession by its corporate name for the period limited in its certificate of incorporation, or any amendment thereof;

To sue or be sued in its corporate name;

To have and use a common seal and alter the same at pleasure;

To have a capital stock of such an amount, and divided into shares with a par value, or without a par value, and to divide such capital stock into such classes, with such preferences, rights, values and interests as may be provided in the article of incorporation, or any amendment thereof;

To acquire, and to own, possess and enjoy so much real and personal property as may be necessary for the transaction of the business of such corporation, and to lease, mortgage, pledge, sell, convey or transfer the same; and to acquire and to own real property, improved or unimproved, for the purpose of providing a home for its employees or aiding its employees to acquire and own homes and to improve, lease, mortgage, pledge, sell, convey or transfer the same, and to loan money to its employees for such purpose upon such terms and conditions as may be agreed upon.

To purchase or otherwise acquire, whether in exchange for the issuance of its own stock, bonds, or otherwise, and to hold, vote, pledge, or dispose of the stocks, bonds, and other evidences of any corporation, domestic or foreign.

To make and alter its bylaws, and to amend, alter, or repeal the same without regard to any limitations hereon imposed by any statute of this State and to manage or conduct its business in any and all ways that may be deemed best for the interests of the corporation.

19. All estimates of the per cent. of the business of the corporation which will be transacted at various places of business in Illinois for the following year is _____

20. All estimates of the per cent. of the business of the corporation which will be transacted at various places of business in Illinois for the following year is _____

21. Give the location of the principal places of business of the corporation for the following year and an estimate of the amount of business which will be transacted through each.

All business during following year from the Chicago office

Rough estimate of amount of business \$20,000.00

C. G. Hoover
J. J. Blum
W. R. Parker
M. J. Hoover
R. J. Hoover

Incorporators

OATH AND ACKNOWLEDGMENT

STATE OF ILLINOIS,)
 Cook County,) ss.
 I, I. D. Abraham, a Notary Public in and for the County and State aforesaid,
 do hereby certify that on the 10th day of August, A. D. 1923, personally appeared
 before me, C. G. Hoover
 R. J. Blum
 J. J. Blumhoff
 W. R. Parker
 M. J. Hoover

to be personally known to be the same persons who executed the foregoing and severally acknowledged that they executed the same for the purposes therein set forth, and being duly sworn hereby declared on oath that the foregoing statements made, subscribed and verified by them are true in substance and in fact.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

I. D. Abraham
 Notary Public.

FILED

2229

STATE OF ILLINOIS

OFFICE OF
THE SECRETARY OF STATE



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of amendment to the Articles of Incorporation duly signed and verified of

EDUCATIONAL MUSIC BUREAU

have been filed in the Office of the Secretary of State, on the 2nd day of June A. D. 19 48, as provided by "THE BUSINESS CORPORATION ACT" of Illinois, in force July 13, A. D. 1933.

Now Therefore, I, EDWARD J. BARRETT, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate of amendment, and attach thereto a copy of the Articles of Amendment to the Articles of Incorporation of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.

I once at the City of Springfield this 2nd day of June A. D. 19 48 and of the Independence of the United States the one hundred and 72nd.

(SEAL)

Edward J. Barrett

SECRETARY OF STATE

1954

DATE 6-2-48
FILING FEE \$ 70-
CLERK U.S.

(File in Duplicate)

VOL. 1834 PAGE 142

ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF

EDUCATIONAL MUSIC BUREAU
(Exact Corporate Name)

To EDWARD J. BARRETT
Secretary of State
Springfield, Illinois

752 41

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 55 of "The Business Corporation Act" of the State of Illinois, hereby executes the following Articles of Amendment:

PAID
JUN 2 1948

ARTICLE FIRST: The name of the corporation is:
EDUCATIONAL MUSIC BUREAU

Edward J. Barrett
Secretary of State

ARTICLE SECOND: The following amendment or amendments were adopted in the manner prescribed by "The Business Corporation Act" of the State of Illinois:

RESOLVED, that the aggregate number of shares which the corporation will have authority to issue will be 400 common shares of the par value of \$100 per share and the stated capital is hereby reduced from \$51,000 to \$40,000 by the cancellation of 110 preferred shares which have been reacquired by the corporation and are now held in the treasury. Said preferred shares were reacquired by the corporation for not less than \$100 per share.

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

ARTICLE THIRD: The number of shares of the corporation outstanding at the time of the adoption of said amendment or amendments was 400; and the number of shares of each class entitled to vote as a class on the adoption of said amendment or amendments, and the designation of each such class were as follows:

Class	Number of Shares
Common	400

Note: 110 Preferred shares are held in the treasury.

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

ARTICLE FOURTH: The number of shares voted for said amendment or amendments was 400; and the number of shares voted against said amendment or amendments was -0-.

The number of shares of each class entitled to vote as a class voted for and against said amendment or amendments, respectively, was:

Class	Number of Shares Voted	
	For	Against
Common	400	-0-

(Disregard this Article where the amendments contain no such provisions.)

ARTICLE FIFTH: The manner in which the exchange, reclassification, or cancellation of issued shares, or the reduction of the number of authorized shares of any class below the number of issued shares of that class, provided for said amendment or amendments, shall be effected, is as follows:

(Disregard this Paragraph where amendments do not affect stated capital or paid-in surplus.)

ARTICLE SIXTH: Paragraph 1: The manner in which said amendment or amendments effecting a change in the amount of stated capital or the amount of paid-in surplus, or both, is effected is as follows:

The aggregate number of shares which the corporation will have authority to issue will be 400 common shares of the par value of \$100 per share and the stated capital is hereby reduced from \$51,000 to \$40,000 by the cancellation of 110 preferred shares which have been reacquired by the corporation and are now held in the treasury. Said preferred shares were reacquired by the corporation for not less than \$100 per share.

(Disregard this Paragraph where amendments do not reduce stated capital.)

Paragraph 2: The amounts of stated capital and of paid-in surplus as changed by said amendment or amendments are as follows:

	Before Amendment	After Amendment
Stated capital\$	51,000.00	\$ 40,000.00
Paid-in Surplus ...\$	None	\$ None

15

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Amendment to be executed in its name by its _____ President, and its corporate seal to be hereto affixed, attested by its Secretary, this 1st day of June, 1948

EDUCATIONAL MUSIC BUREAU
(Exact Corporate Name)

PLACE
(CORPORATE SEAL)
HERE

By M. J. Hoover
President

Attest:

Fredrick Schneider
Its Secretary

STATE OF ILLINOIS
COUNTY OF COOK ss.

I, L. G. Agasim a Notary Public, do hereby certify that on the 1st day of June, 1948, M. J. Hoover personally appeared before me and, being first duly sworn by me, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

L. G. Agasim
Notary Public.

PLACE
(NOTARIAL SEAL)
HERE

Form 104-SS
Box 1715 File 375

ARTICLES OF AMENDMENT
to the
ARTICLES OF INCORPORATION
of

EDUCATIONAL MUSIC BUREAU

Decrease number of authorized shares from 650 Shs. P.v. to 400 Shs. P.v. & Decrease state capital.

FILED

JUN 1 1948

Edward G. Smith

FILE IN DUPLICATE

Filing Fee \$20.00

EXHIBIT 116B

STATE OF ILLINOIS

OFFICE OF THE
CLERK OF THE SUPREME COURT



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of amendment to the Articles of Incorporation
duly signed and verified of
EDUCATIONAL MUSIC BUREAU

have been filed in the Office of the Secretary of State on the 31st
day of July A. D. 1973, as provided by "THE BUSINESS
CORPORATION ACT" of Illinois, in force July 13, A. D. 1933.

Michael J. Howlett

Now therefore, I, ~~Michael J. Howlett~~, Secretary of State of the State of Illinois
by virtue of the powers vested in me by law do hereby issue this certificate of
amendment, and attach thereto a copy of the Articles of Amendment to
the Articles of Incorporation of the aforesaid corporation.

In Testimony Whereof, I have set my hand and cause to
be affixed the Great Seal of the State of Illinois.

I gave at the city of Springfield this 31st
day of July A. D. 1973 and
of the Independence of the United States
the one hundred and 98th.

(SEAL)

Michael J. Howlett
SECRETARY OF STATE

1713-3256
 (Do not write in this space)
 Date Paid 7-31-77
 License Fee \$
 Franchise Tax \$
 Filing Fee \$25.00
 Clerk

(File in Duplicate)

ARTICLES OF AMENDMENT
 TO THE
 ARTICLES OF INCORPORATION
 OF

VOL. 1834 PAGE 147

EDUCATIONAL MUSIC BUREAU

P A I D

1977

To JOHN W. LEWIS
 Secretary of State
 Springfield, Illinois

Michael J. [Signature]
 Secretary of State

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 55 of "The Business Corporation Act" of the State of Illinois, hereby executes the following Articles of Amendments:

ARTICLE FIRST: The name of the corporation is:

EDUCATIONAL MUSIC BUREAU

ARTICLE SECOND: The following amendment or amendments were adopted in the manner prescribed by "The Business Corporation Act" of the State of Illinois:

Article 3 of the Articles of Incorporation is hereby amended to read as follows:

"Article 3. The duration of the corporation is perpetual."

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

ARTICLE THIRD: The number of shares of the corporation outstanding at the time of the adoption of said amendment or amendments was 367 shares common stock; and the number of shares of each class entitled to vote as a class on the adoption of said amendment or amendments, and the designation of each such class were as follows:

Class	Number of Shares
Common	367

Previously there were 400 shares issued and outstanding, 33 of which were reacquired by the corporation, held as treasury stock, and subsequently retired.

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

ARTICLE FOURTH: The number of shares voted for said amendment or amendments was 367 common shares; and the number of shares voted against said amendment or amendments was None. The number of shares of each class entitled to vote as a class voted for and against said amendment or amendments, respectively, was:

Class	Number of Shares Voted	
	For	Against

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

Item 1. On the date of the adoption of this amendment, restating the articles of incorporation, the corporation had _____ shares issued, itemized as follows:

Class	Series (If Any)	Number of Shares	Par value per share or statement that shares are without par value
-------	--------------------	---------------------	---

Item 2. On the date of the adoption of this amendment restating the articles of incorporation, the corporation had a stated capital of \$ _____ and a paid-in surplus of \$ _____ or a total of \$ _____.

(Disregard this Article where this amendment contains no such provisions.)

ARTICLE FIFTH: The manner in which the exchange, reclassification, or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, provided for in, or effected by, this amendment, is as follows:

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(Disregard this Paragraph where amendment does not affect stated capital or paid-in surplus.)

ARTICLE SIXTH: Paragraph 1: The manner in which said amendment or amendments effect a change in the amount of stated capital or the amount of paid-in surplus, or both, is as follows:

(Disregard this Paragraph where amendment does not affect stated capital or paid-in surplus.)

Paragraph 2: The amounts of stated capital and of paid-in surplus as changed by this amendment are as follows:

	Before Amendment	After Amendment
Stated capital	\$	\$
Paid-in surplus	\$	\$

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Amendment to be executed in its name by its _____ President, and its corporate seal to be hereto affixed, attested by its _____ Secretary, this 16th day of July, 1973

EDUCATIONAL MUSIC BUREAU

(Exact Corporate Name)

By [Signature]
President
Jeffrey S. Sengstack

Place
(CORPORATE SEAL)
Here

ATTEST:

[Signature]
Secretary
Dennis M. Siegel

STATE OF Illinois
COUNTY OF Madison ss.

I, Barbara M. Bacon, a Notary Public, do hereby certify that on the 16th day of July, 1973, Jeffrey S. Sengstack, personally appeared before me and, being first duly sworn by me, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

[Signature]
Notary Public
My Comm. Expires October 3, 1976

Place
NOTARIAL SEAL
Here

Form B-64-55
Box 1013 File

ARTICLES OF AMENDMENT
to the
ARTICLES OF INCORPORATION
of

FILED

JUL 31 1973

[Signature]
Secretary of State

FILE IN DUPLICATE

Filing Fee \$25.00

Filing Fee for Re-Statesd Articles \$100.00

(FORM-B-64-55) 10-67

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of MERGER duly signed and verified of CUMBY-BIRCHARD COMPANY, an Illinois corporation, merged into NEW CUMBY-BIRCHARD COMPANY, a surviving corporation, and name of surviving corporation changed to CUMBY-BIRCHARD COMPANY

have been filed in the office of the Secretary of State on the 19th day of March 1976 as provided by THE BUSINESS CORPORATION ACT of Illinois in force July 15, 1933 as amended.

Now Therefore I MICHAEL HOWLETT, Secretary of State of the State of Illinois by virtue of the powers vested in me by law do hereby issue this certificate of MERGER and attach thereto a copy of the Articles of MERGER of the aforesaid corporation

In Testimony Whereof, I have set my hand and cause to be affixed the Great Seal of the State of Illinois

Done at the City of Springfield this 19th day of March AD 1976 and of the Independence of the United States the ~~888~~^{two} hundred and 00

Michael J. Howlett

SECRETARY OF STATE

18
2016

1713-375-6
(Do not write in this space)
Date Paid 3-19-76
Filing Fee \$ 100.00
Clerk [Signature]

ARTICLES OF MERGER
~~CONSOLIDATION~~
OF DOMESTIC AND FOREIGN
CORPORATION
(Strike Inapplicable Words)

MICHAEL J. HOWLETT,
~~SECRETARY~~ Secretary of State,

VOL. 1834 PAGE 152

The undersigned corporations, pursuant to Section 69a of "The Business Corporation Act" of the State of Illinois, hereby execute the following articles of ~~consolidation~~ merger:

2011 32

ARTICLE ONE

The names of the corporations proposing to ~~consolidate~~ merge and the names of the States under the laws of which such corporations are organized, are as follows:

Name of Corporation	State of Incorporation
DEWY-BIRCHARD COMPANY	Illinois
EW SUMMY-BIRCHARD COMPANY	Wyoming

ARTICLE TWO

The laws of Wyoming state under which such foreign ~~corporations are~~ corporation is organized, permit such ~~consolidation~~ merger.

ARTICLE THREE

The name of the ~~new~~ surviving corporation shall be SUMMY-BIRCHARD COMPANY and shall be governed by the laws of the State of Wyoming.

ARTICLE FOUR

The plan of ~~consolidation~~ merger is as follows: See attached Exhibit 1, Agreement for Merger.

ARTICLE FIVE

As to each corporation, the number of shares outstanding, the number of shares entitled to vote, and the number and designation of the shares of any class entitled to vote as a class, are: VOL. 1834 PAGE 153

Name of Corporation	Total Number of Shares Outstanding	Total Number of Shares Entitled to Vote	Designation of Class Entitled to Vote as a Class (if any)	Number of Shares of Such Class (if any)
<u>Sunny-Birchard Company</u>	<u>953</u>	<u>953</u>	<u>None</u>	<u>None</u>
<u>New Sunny-Birchard Company</u>	<u>10</u>	<u>10</u>	<u>None</u>	<u>None</u>

ARTICLE SIX

As to each corporation, the number of shares voted for and against the plan, respectively, and the number of shares of any class entitled to vote as a class voted for and against the plan, are:

Name of Corporation	Total Shares Voted for	Total Shares Voted Against	Class	Shares Voted for	Shares Voted Against
<u>Sunny-Birchard Company</u>	<u>953</u>	<u>None</u>	<u>Common</u>	<u>953</u>	<u>None</u>
<u>New Sunny-Birchard Company</u>	<u>10</u>	<u>None</u>	<u>Common</u>	<u>10</u>	<u>None</u>

ARTICLE SEVEN

All provisions of the laws of the State of Illinois and the State of Wyoming applicable to the proposed ~~consolidation~~ ^{merger} have been complied with.

ARTICLE EIGHT

(Delete this article if surviving or new corporation is to be governed by the laws of the State of Illinois.)

It is agreed that, upon and after the issuance of a certificate of ~~consolidation~~ merger by the Secretary of State of the State of Illinois:

VOL. 1834 PAGE 154

1. The ~~XXXX~~ surviving corporation may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of any corporation organized under the laws of the State of Illinois which is a party to the ~~XXXXXX~~ merger and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such corporation organized under the laws of the State of Illinois against the surviving or new corporation;
2. The Secretary of State of the State of Illinois shall be and here ~~by~~ irrevocably appointed as the agent of the ~~new~~ surviving corporation to accept service of process in any such proceedings; and
3. The ~~new~~ surviving corporation will promptly pay to the dissenting shareholders of any corporation organized under the laws of the State of Illinois which is a party to the ~~consolidation~~ merger the amount, if any, to which they shall be entitled under the provisions of "The Business Corporation Act" of the State of Illinois with respect to the rights of dissenting shareholders.

IN WITNESS WHEREOF each of the undersigned corporations has caused these articles of ~~consolidation~~ merger to be executed in its name by its president or vice president and its corporate seal to be hereunto affixed, attested by its secretary or assistant secretary, this 16th day of March, 1976.

Place
(Corporate Seal)
Here

SUMMY-BIRCHARD COMPANY

By: [Signature]
Its President
~~XXXXXX~~

TEST:
[Signature]
Secretary
~~XXXXXX~~

Place
(Corporate Seal)
Here

NEW SUMMY-BIRCHARD COMPANY

By: [Signature]
Its President
~~XXXXXX~~

TEST:
[Signature]
Secretary
~~XXXXXX~~

(over)

STATE OF ILLINOIS
COUNTY OF COOK

ss.

I, Marion E. Hulsey, Jr., a Notary Public, do hereby certify that on the 16th day of March, A.D. 1976, personally appeared before me David K. Sengstack

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who declares that he is the President of Sunny-Birchard Company one of the corporations executing the foregoing documents, and being first duly sworn, acknowledged that he signed the foregoing articles of merger ~~consolidation~~ in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Marion E. Hulsey, Jr.
Notary Public

Place
(Notarial Seal)
Here

STATE OF ILLINOIS
COUNTY OF COOK

ss.

I, Marion E. Hulsey, Jr., a Notary Public, do hereby certify that on the 16th day of March, A.D. 1976, personally appeared before me David K. Sengstack

who declares that he is the President of New Sunny-Birchard Company, one of the corporations executing the foregoing documents, and being first duly sworn, acknowledged that he signed the foregoing articles of merger ~~consolidation~~ in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Marion E. Hulsey, Jr.
Notary Public

Place
(Notarial Seal)
Here

Form BCA-69a

Box 1713 File 305-5

ARTICLES OF
MERGER
~~CONSOLIDATION~~

OF

SUNNY-BIRCHARD COMPANY

and

NEW SUNNY-BIRCHARD COMPANY

(File in Duplicate)

Filing Fee \$100.00

If merger involves more than two corporations, \$50.00 for each additional corporation.

(1976-3-1-55) 10

A G R E E M E N T

THIS AGREEMENT, dated _____, 1976,
made by and between SUMMY-BIRCHARD COMPANY, and a majority of
the directors thereof, and NEW SUMMY-BIRCHARD COMPANY, and a
majority of the directors thereof, referred to together as
the Constituent Corporations,

WITNESSETH, in consideration of the premises and of
the mutual agreements, covenants and provisions hereinafter
contained, the parties hereto agree that SUMMY-BIRCHARD COMPANY,
be merged into NEW SUMMY-BIRCHARD COMPANY and that the terms
and conditions of such merger, the mode of carrying the same into
effect, and the manner and basis of converting the shares of
SUMMY-BIRCHARD COMPANY into shares of NEW SUMMY-BIRCHARD COMPANY
shall be and shall follow the following form:

PLAN OF MERGER

A. The names of the corporations proposing to merge are
SUMMY-BIRCHARD COMPANY, an Illinois corporation (hereinafter referred
to as the absorbed corporation), and NEW SUMMY-BIRCHARD COMPANY,
a Wyoming corporation.

They shall merge into the Wyoming corporation (hereinafter designated as the surviving corporation), which shall thereafter bear the name "SUMMY-BIRCHARD COMPANY."

B. The merger shall take place as of the date of this Agreement, in accordance with applicable provisions of the laws of the State of Illinois and the State of Wyoming. The separate existence of the absorbed corporation shall cease and the existence of the surviving corporation shall continue unaffected and unimpaired by the merger with all the rights, privileges, immunities and powers, and subject to all the duties and liabilities of a corporation organized under the General Corporation Law of the State of Wyoming.

C. The manner and basis of converting the shares of stock of each of the Constituent Corporations into shares of stock of the surviving corporation are as follows:

1. The shares of Common Stock of the surviving corporation, whether authorized or issued on the effective date ~~of the merger shall not be converted or exchanged as a result~~ of the merger, but upon said date all shares of Common Stock of the surviving corporation theretofore authorized (whether issued or unissued) shall be and be deemed to be shares of Common Stock of the surviving corporation, and all such shares of stock of

the surviving corporation outstanding on the effective date of the merger shall remain outstanding, shall be and be deemed fully-paid and non-assessable and shall retain all rights to accrued and unpaid dividends, if any.

2. Each share of Common Stock of the absorbed corporation issued and outstanding on the effective date of the merger, and all rights in respect thereof, shall, on said date, be converted into and exchanged for one share of the presently authorized and unissued Common Stock of the surviving corporation.

3. As soon as practicable after the effective date of the merger, each holder of an outstanding certificate or certificates theretofore representing shares of Common Stock of the absorbed corporation shall surrender the same to the surviving corporation, and such holder shall be entitled, upon such surrender, to receive in exchange therefor a certificate or certificates representing the number of whole shares of Common Stock of the surviving corporation into which the shares of Common Stock of the absorbed corporation theretofore represented by the surrendered certificate or certificates shall have been converted as aforesaid. Until so surrendered for exchange, each outstanding certificate which, prior to the effective date of the merger, represented shares of Common Stock of the absorbed corporation shall

be deemed for all corporate purposes to evidence the ownership of the number of whole shares of Common Stock of the surviving corporation which the holder of the certificates for shares of Common Stock of the absorbed corporation would be entitled to receive upon surrender thereof for exchange as aforesaid.

4. All shares of Common Stock of the surviving corporation into which shares of Common Stock of the absorbed corporation are converted, as above provided, shall be fully paid and non-assessable.

D. The merger shall effect the following change in the Articles of Incorporation of the surviving corporation:

FIRST. The name of the corporation is "SUMMY-BIRCHARD COMPANY."

E. Other provisions of the merger are as follows:

1. The By-Laws of the surviving corporation shall be and remain the surviving By-Laws of the surviving corporation until altered, amended or repealed.

2. The directors and officers of the absorbed corporation in office on the effective date of the merger shall continue in office and shall constitute the directors and officers of the surviving corporation for the term elected until their respective successors shall be elected or appointed and qualified.

3. On the effective date of the merger:

a. The surviving corporation shall possess all rights, privileges, immunities, powers and franchises as well of a public as of a private nature, and shall be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; and all property, real, personal and mixed, including all licenses, applica-

tions for licenses, trademarks, trademark registrations and applications for registration of trademark, together with the good will of the business in connection with which said licenses and marks are used, and all debts due on whatever account, including subscriptions to shares of capital stock, and all other choses in action and all and every other interest of or belonging to or due to each of the Constituent Corporations shall be deemed to be transferred to and vested in the surviving corporation without further act or deed, and the title to any real estate, or any interest therein, vested in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the merger.

b. The surviving corporation shall be responsible and liable for all the liabilities and obligations of each of the Constituent Corporations; and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the merger had not taken place, or the surviving corporation may be substituted in its place and neither the rights of creditors nor any liens upon the property of either of the Constituent Corporations shall be impaired by the merger. The surviving corporation shall execute and deliver any and all documents which may be required for it to assume or otherwise comply with outstanding obligations of the absorbed corporation.

c. The aggregate amount of the net assets of the Constituent Corporations which is available for payments of dividends immediately prior to the merger, to the extent that the value thereof is not transferred to stated capital by issuance of shares of stock or otherwise, shall continue to be available for the payment of dividends by the surviving corporation.

4. The surviving corporation shall pay all expenses of accomplishing the merger.

5. If at any time the surviving corporation shall consider or be advised that any further assignment or assurances in law are necessary or desirable to vest or to perfect or confirm of record in the surviving corporation the title to any property or rights of the absorbed corporation,

or to otherwise carry out the provisions hereof, the proper officers and directors of the absorbed corporation as of the effective date of the merger shall execute and deliver any and all proper deeds, assignments and assurances in law, and do all things necessary or proper to vest, perfect or confirm title to such property or rights in the surviving corporation, and otherwise to carry out the provisions hereof.

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6. Each of the Constituent Corporations shall take, or cause to be taken, all action or do so cause to be done, all things necessary, proper or advisable under the laws of the State of Illinois and of the State of Wyoming, or either of such States, to consummate and make effective and the merger, subject to the appropriate approval or consent of the stockholders of each of the Constituent Corporations in accordance with the requirements of the applicable provisions of the laws of the State of Illinois and of the State of Wyoming.

7. Anything herein or elsewhere to the contrary notwithstanding, this Agreement and Plan of Merger may be abandoned by action of the Board of Directors of either the surviving corporation or the absorbed corporation at any time prior to the effective date of the merger, whether before or after submission to their respective stockholders, upon the happening of the following event: If the merger fails to obtain the requisite vote of stockholders of the surviving corporation or of the stockholders of the absorbed corporation not later than June 1, 1976.

IN WITNESS WHEREOF, each of the undersigned corporations has caused these Articles of Merger to be executed in its name by its president and its corporate seal to be hereunto affixed, attested by its secretary, and signed by its directors this ___ day of March 1976.

SUMMY-BIRCHARD COMPANY

By David K. Sengstack, Its President,

ATTEST:

Roberta Lysaght, Its Secretary

-6- David K. Sengstack, Its Vice President

W.L. 1834, P.M.E. 162

NEW SUMMY-BIRCHARD COMPANY

By David K. Sengstack, Its President

ATTEST:

Roberta Lysaght, Its Secretary

David K. Sengstack,
Its Sole Director

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____ a Notary Public,
do hereby certify that on the _____ day _____, 197____,
personally appeared before David K. _____, who declares
that he is the President of New Sunny-Birchard Company, one
of the corporations executing the foregoing documents, and
being first duly sworn, acknowledged that he signed the fore-
going Agreement in the capacity therein set forth and declared
that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal the day and year before written.

Notary Public

[Notary Seal]

CERTIFICATE OF CHANGE OF REGISTERED AGENT AND REGISTERED OFFICE BY
A FOREIGN OR DOMESTIC CORPORATION OF ILLINOIS

STATE OF Illinois
Cook COUNTY

5116 17

88. PAID
AUG 3 1972
John W. Lewis
Secretary of State

TO JOHN W. LEWIS
Secretary of State,
Springfield, Illinois

The undersigned corporation, organized and existing under the laws of the State of Illinois
for the purpose of changing its registered agent and its registered office, or both, in Illinois as provided
by "The Business Corporation Act," of Illinois represents that:

1. The name of the corporation is Educational Music Bureau
2. The address, including street and number, if any, of its present registered office (before change)
is 33 North La Salle Street, Chicago, Illinois 60602
3. Its registered office (including street and number if any change in the registered office is to
be made) is hereby changed to 1834 Ridge Avenue 16 Street,
in the city of Evanston (60204) County of Cook
(Zip Code)
4. The name of its present registered agent (before change) is Max A. Kopstein
5. The name of the new registered agent is David K. Sengstack
6. The address of its registered office and the address of the business office of its registered agent, as
changed, will be identical.
7. Such change was authorized by resolution duly authorized by the board of directors.

(OVER)

IN WITNESS WHEREOF, the undersigned corporation has caused this report to be executed in its name by its sole President, attested by its sole Secretary, this twenty-seventh day of July, A. D. 19 72

Esther Falkson
President
(Exact Corporate Title)

By J.S.S.
President or Vice-President

VOL. 1831 P. 105

Place
(Corporate Seal)
Here

Attest:

Ann M. Sengstack
Secretary or Assistant Secretary

STATE OF Illinois
COUNTY OF Cook ss.

I, Esther Falkson, a Notary Public, do hereby certify that on the 27th day of July, A. D. 19 72, personally appeared before me Jeffrey S. Sengstack who declares he is sole President of the corporation, executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Place
(Notarial Seal)
Here

Esther Falkson
Notary Public

Form BCA (12 or 110)

1773 File 375-A

CHANGE OF REGISTERED AGENT
AND OFFICE OF

Educational Music Bureau, Inc.

Filing Fee \$1.00

NOTICE

This certificate must be filed in *duplicate*. The corporation cannot act as its own registered agent.

The registered office may be, but need not be, the same as the place of business of the corporation, but the registered office and the address of the registered agent must be the same.

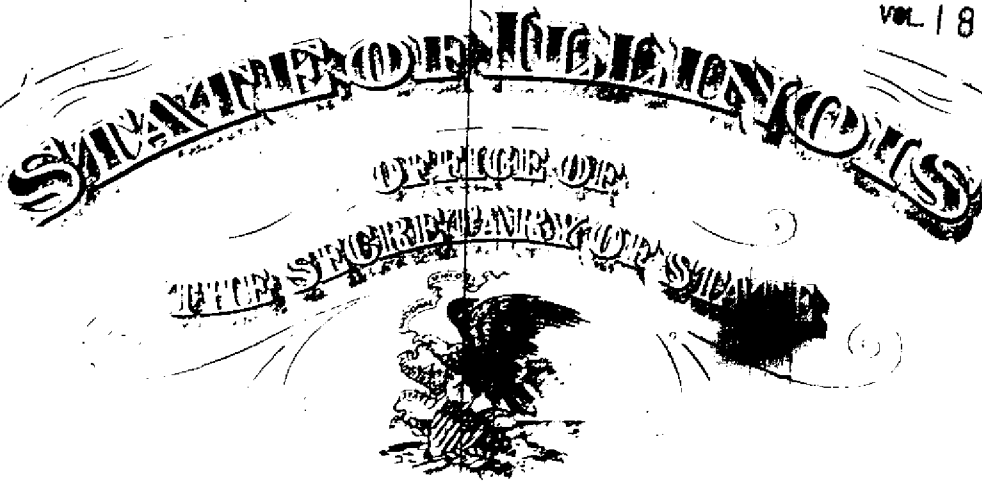
Any subsequent change in the registered office or agent must be reported immediately to the Secretary of State in blanks furnished

FILED

AUG 2 1972

John S. Sengstack
Secretary of State

(20631-404-4-72)



To all to whom these presents shall come, Greeting:

Whereas, Articles of MERGER duly signed and verified of SUMMY-BIRCHARD COMPANY, a Delaware Corporation, merged into EDUCATIONAL MUSIC BUREAU, an Illinois Corporation, and name of surviving corporation changed to SUMMY-BIRCHARD COMPANY

have been filed in the Office of the Secretary of State on the 28th day of December 1st 19 73 as provided by "THE BUSINESS CORPORATION ACT" of Illinois, in force July 13th 1st 1933 as amended.

Now Therefore, I, ^{Michael J. Howlett} ~~SECRETARY OF STATE~~ Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate of MERGER and attach thereto a copy of the Articles of MERGER of the aforesaid corporation

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, Done at the City of Springfield this 28th day of December AD 19 73 and of the Independence of the United States the one hundred and 98th

(SEAL)

Michael J. Howlett

SECRETARY OF STATE

1713-375-6
(Do not write in this space)
Date Paid 12-28-73
Filing Fee \$ 100.00
Clerk [Signature]

ARTICLES OF MERGER
OF DOMESTIC AND FOREIGN
CORPORATION
(Strike Inapplicable Words)

JOHN W. LEWIS
~~PATL. POWELL~~ Secretary of State,

625 48
VOL. 1836 PAGE 167

The undersigned corporations, pursuant to Section 69a of "The Business Corporation Act" of the State of Illinois, hereby execute the following articles of ~~consolidation~~ merger :

ARTICLE ONE

The names of the corporations proposing to ~~consolidate~~ merge and the names of the States under the laws of which such corporations are organized, are as follows:

Name of Corporation	State of Incorporation
EDUCATIONAL MUSIC BUREAU	ILLINOIS
SUMMY-BIRCHARD COMPANY	DELAWARE

PAID
JAN 7 1974

ARTICLE TWO

The laws of Delaware State under which such foreign ~~corporations are~~ corporation is organized, permit such ~~consolidation~~ merger

ARTICLE THREE

The name of the ~~new~~ surviving corporation shall be SUMMY-BIRCHARD COMPANY and it shall be governed by the laws of the State of ILLINOIS

ARTICLE FOUR

The plan of ~~consolidation~~ merger is as follows:

See Exhibit A attached hereto and made a part hereof.

ARTICLE FIVE

As to each corporation, the number of shares outstanding, the number of shares entitled to vote, and the number and designation of the shares of any class entitled to vote as a class, are: VOL. 1831 11 1987

Name of Corporation	Total Number of Shares Outstanding	Total Number of Shares Entitled to Vote	Designation of Class Entitled to Vote as a Class (if any)	Number of Shares of Such Class (if any)
<u>Educational Music Bureau</u>	<u>367*</u>	<u>367</u>	<u>D.N.A.</u>	<u>D.N.A.</u>
<u>Summy-Birchard Company</u>	<u>1500 ✓</u>	<u>1500</u>	<u>D.N.A.</u>	<u>D.N.A.</u>
<u>An additional 22 shares held in treasury</u>				

ARTICLE SIX

As to each corporation, the number of shares voted for and against the plan, respectively, and the number of shares of any class entitled to vote as a class voted for and against the plan, are:

Name of Corporation	Total Shares Voted for	Total Shares Voted Against	Class	Shares Voted for	Shares Voted Against
<u>Educational Music Bureau</u>	<u>367</u>	<u>0</u>			
<u>Summy-Birchard Company</u>	<u>1500 ✓</u>	<u>0</u>			

ARTICLE SEVEN

All provisions of the laws of the State of Illinois and the State of Delaware applicable to the proposed ~~merger~~ merger ~~reorganization~~ have been complied with.

ARTICLE EIGHT

(Delete this article if surviving or new corporation is to be governed by the laws of the State of Illinois.)

It is agreed that, upon and after the issuance of a certificate of ~~consolidation~~ merger by the Secretary of State of the State of Illinois: VOL. 183

1. The surviving corporation may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of any corporation organized under the laws of the State of Illinois which is a party to the merger and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such corporation organized under the laws of the State of Illinois against the surviving or new corporation;
2. The Secretary of State of the State of Illinois shall be and he irrevocably appointed as the agent of the surviving corporation to accept service of process in any such proceedings; and
3. The surviving corporation will promptly pay to the dissenting shareholders of any corporation organized under the laws of the State of Illinois which is a party to the merger the amount, if any, to which they shall be entitled under the provisions of "The Business Corporation Act" of the State of Illinois with respect to the rights of dissenting shareholders.

IN WITNESS WHEREOF each of the undersigned corporations has caused these articles of merger to be executed in its name by its president or vice president and its corporate seal to be hereunto affixed, attested by its secretary or assistant secretary, this 21st day of December, 1973

Place (Corporate Seal) Here

EDUCATIONAL MUSIC BUREAU

By [Signature] Its President Vice President

ATTEST:

[Signature] Its Secretary Assistant Secretary

Place (Corporate Seal) Here

BUMBY-BIRCHARD COMPANY

By [Signature] Its President Vice President

ATTEST:

[Signature] Its Secretary Assistant Secretary

(over)

STATE OF ILLINOIS
COUNTY OF COOK

§§.

I, MARLENE MEYER, a Notary Public, do hereby certify that on the 21st day of December, A.D. 19 73, personally appeared before me JEFFREY SENGSTACK

who declares that he is the President of Educational Music Bureau, one of the corporations executing the foregoing documents, and being first duly sworn, acknowledged that he signed the foregoing articles of merger ~~consolidation~~ in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal ~~the~~ day and year before written.

VOL. 1834 PAGE 170

Marlene Meyer
Notary Public

Place
(Notarial Seal)
Here

STATE OF ILLINOIS
COUNTY OF COOK

§§.

I, MARLENE MEYER Notary Public, do hereby certify that on the 21st day of December, A.D. 19 73, personally appeared before me DAVID SENGSTACK,

who declares that he is the President of Summy-Birchard Company one of the corporations executing the foregoing documents, and being first duly sworn, acknowledged that he signed the foregoing articles of merger ~~consolidation~~ in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Marlene Meyer
Notary Public

Place
(Notarial Seal)
Here

Form BCA-69a

Doc 1713 File 32546

ARTICLES OF
MERGER
CONSOLIDATION

OF

EDUCATIONAL MUSIC BUREAU

AND

SUMMY-BIRCHARD COMPANY

(File in Duplicate)

Filing Fee \$100.00

If merger involves more than two corporations, \$50.00 for each additional corporation.

See Form 117-2047-4a-1-51

PLAN AND AGREEMENT OF MERGER

VM-1834 PAGE 171

THIS PLAN and AGREEMENT OF MERGER is made and entered into this 21st day of December, 1973, by and between SUMMY-BIRCHARD COMPANY, a Delaware Corporation (hereinafter called "SUMMY") and EDUCATIONAL MUSIC BUREAU, an Illinois Corporation (hereinafter called "EMB").

WITNESSETH:

WHEREAS, the Board of Directors of SUMMY and the Board of Directors of EMB deem it advisable that SUMMY merge with and into EMB under and pursuant to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein contained, the parties hereto agree as follows:

1. Pursuant to the provisions of section 69a of the Illinois Business Corporation Act and section 253 of the Delaware Corporation Law, SUMMY shall be merged into EMB as a single corporation which shall be the surviving corporation. The terms and conditions of the merger and the mode of carrying it into effect are as hereinafter set forth.

2. The Articles of Incorporation of EMB in force at the effective date of the merger shall remain and be the Articles of Incorporation after the merger until altered or amended as provided by law.

3. The By-Laws of EMB in force at the effective date of the merger shall remain and be the By-Laws after the merger until the same shall be altered or amended.

4. ~~The directors of EMB on the effective date of the~~ merger shall remain and be the directors after the merger and thereafter until their respective successors are chosen or appointed.

5. The officers of EMB on the effective date of the merger shall remain and be the officers after the merger and thereafter until the Board of Directors shall otherwise determine.

6. The manner and basis of converting the shares of SUMMY into shares or other securities or obligations of EMB is as follows:

FILE 1034 PAGE 172

a. Forthwith on the effective date of the merger and without further act on the part of either corporation or its stockholders, 2.712 shares of the common stock, without par value, of SUMMY issued and outstanding on the effective date of the merger shall be converted into one share of fully paid and assessable common stock, par value \$100.00 per share, of EMB. Certificates representing shares of the common stock of SUMMY shall thenceforth represent shares of the common stock of EMB on the basis hereinabove provided, and the holder thereof shall be entitled to the same rights as though he held certificates issued by EMB.

b. Upon the surrender of certificates of SUMMY to EMB, the holder of the certificates surrendered shall receive in exchange a certificate or certificates of EMB for ONE share of common stock of EMB for 2.712 shares of common stock of EMB represented by such surrendered certificate.

7. This Plan and Agreement of Merger shall be submitted to the respective stockholders of SUMMY and EMB as provided by law, and, for the merger to become effective, must be approved and adopted by the affirmative vote of stockholders of both SUMMY and EMB in the manner and as provided by law. Anything herein to the contrary notwithstanding, this Plan and Agreement of Merger may be abandoned by either SUMMY or EMB by appropriate resolution of its Board of Directors at any time prior to its approval or adoption by the stockholders thereof.

8. Upon the effective date of this merger, the separate existence of SUMMY shall cease and said corporation shall be merged, in accordance with the provisions of the agreement, into the entity which shall survive such merger and shall continue in existence and shall

without other transfer, succeed to the possession of all the rights, privileges, powers, franchises and immunities, as well of a public as of a private nature, and be subject to all the restrictions, disabilities and duties of SUMMY and of EMB; and all and singular the rights, privileges, powers, franchises and immunities of SUMMY and of EMB, and all property, real, personal and mixed, and all debts due to SUMMY or EMB on whatever account, including subscriptions to shares, and all other choses in action belonging to SUMMY and EMB, shall be vested in EMB; and all property, rights, privileges, powers and franchises, and all and every other interest, shall be thereafter as effectually the property of EMB as they were of the several and SUMMY and EMB; the title to any real estate, vested by deed or otherwise, under the laws of the States of Illinois or Delaware, or of any of the other states of the United States, in either SUMMY or EMB, shall not revert or be in any way impaired by reason of the merger; provided that all rights of creditors and all liens upon any property of SUMMY and EMB shall be preserved unimpaired, limited to the property affected by such liens at the time of such merger, and all debts, liabilities and duties of SUMMY and EMB, shall thenceforth attach to EMB and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

9. If at any time before or after the effective date of this merger EMB shall consider or be advised that any instruments of further assurance are necessary or desirable to vest or to perfect or confirm, of record or otherwise, the title of EMB to any property of SUMMY acquired or to be acquired by reason of or as a result of the merger provided for by this agreement, SUMMY and its proper officers and directors shall and will execute and deliver any and all such proper deeds, assignments and assurances and do all things necessary or proper so to vest, perfect or confirm title to such property in EMB and otherwise to carry out the purposes of this Plan and Agreement of Merger.

10. The Articles of Incorporation of EMB shall be amended

a. To change the name of the corporation to "Summy-Birchard Company" and

b. To change the number of authorized shares to 953 shares of common stock, par value of \$100.00 per share.

11. This Plan and Agreement of Merger, or adoption thereof by the stockholders of the Company, shall be subject to the requirements of the laws of the State of Illinois and of the State of Delaware, and upon the execution, filing and recording of such documents and the doing of such acts and things as shall be required for accomplishing the merger under the provisions of the applicable statutes of the state of Illinois and of the state of Delaware as heretofore amended and supplemented, shall become effective at the close of business on the date this Plan and Agreement of Merger is filed with the Secretary of State of Delaware and a Certificate of Merger is issued by the Secretary of State of Illinois.

IN WITNESS WHEREOF, the parties to this agreement, pursuant to the approval and authority duly given by resolutions adopted by their respective boards of directors have caused these presents to be executed by the President and attested by the Secretary of each party hereto, and have caused to be affixed their respective corporate seals.

[CORPORATE SEAL]

SUMMY-BIRCHARD COMPANY

By [Signature]
Its President

ATTEST:

[Signature]
Its Secretary

[CORPORATE SEAL]

EDUCATIONAL MUSIC BUREAU

By [Signature]
Its President

ATTEST:

[Signature]
Its Secretary

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

WL 1834

BE IT REMEMBERED that on this 21st day of December, 1973, personally came before me, Marlene Meyer, a Notary Public in and for the county and state aforesaid, David Sengstack, President of Sunny-Birchard Company, a corporation of the state of Delaware and one of the corporations described in and which executed the foregoing Plan and Agreement of Merger, known to me personally to be such, and he, as such President, duly executed said Plan and Agreement of Merger before me and acknowledged said Plan and Agreement of Merger to be the act, deed and agreement of said Sunny-Birchard Company, that the facts stated therein are true, that the signatures of the said President and the Secretary of said corporation to said foregoing Plan and Agreement of Merger are in the handwriting of the said President and Secretary of said Sunny-Birchard Company, and that the seal affixed to said Plan and Agreement of Merger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Marlene Meyer
Notary Public

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

BE IT REMEMBERED that on this 21st day of December, 1973, personally came before me, Marlene Meyer, a Notary Public in and for the county and state aforesaid, Jeffrey S. Sengstack, President of Educational Music Bureau, a corporation of the state of Illinois and one of the corporations described in and which executed the foregoing Plan and Agreement of Merger, known to me personally to be such, and he, as such President, duly executed said Plan and Agreement of Merger to be the act, deed and agreement of said Educational Music Bureau, that the facts stated therein are true, that the signatures of the said President and the Secretary of said corporation to said

following Plan and Agreement of [unclear] [unclear] [unclear]
of the said President and Secretary of the [unclear]
Bureau, and that the seal affixed to said Plan and [unclear]
of Berger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal of office the day and year aforesaid.

Max Meyer
Public