

# EXHIBIT 100

**Ex. 100**

---

1200

1 GLENN D. POMERANTZ (State Bar No. 112503)  
glenn.pomerantz@mto.com  
2 KELLY M. KLAUS (State Bar No. 161091)  
kelly.klaus@mto.com  
3 MELINDA E. LeMOINE (State Bar No. 235670)  
melinda.lemoine@mto.com  
4 ADAM I. KAPLAN (State Bar No. 268182)  
adam.kaplan@mto.com  
5 MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue  
6 Thirty-Fifth Floor  
Los Angeles, California 90071-1560  
7 Telephone: (213) 683-9100  
Facsimile: (213) 687-3702

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 Plaintiffs,

15 v.

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

18 Defendants.

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

**DECLARATION OF ADAM I.  
KAPLAN IN SUPPORT OF  
NOTICE OF MOTION AND  
CROSS-MOTION AND MOTION  
AND CROSS-MOTION FOR  
SUMMARY JUDGMENT**

Hearing

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

23  
24  
25  
26  
27  
28 Ex. 100

1 I, ADAM I. KAPLAN, hereby declare:

2 1. I am an attorney at the firm Munger, Tolles & Olson LLP, counsel for  
3 Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (jointly,  
4 "Warner/Chappell"). I am admitted to practice law in the State of California and  
5 before this Court. I submit this declaration in support of Warner/Chappell's Motion  
6 for Summary Judgment. If called upon as a witness to testify as to the contents of  
7 this declaration, I could and would competently do so.

8 2. I recognize the document bearing Bates numbers WC0000388-90 as a  
9 true and correct copy of the Registration Certificate for E51990, which was marked  
10 as Exhibit 9 to the deposition of Thomas Marcotullio (Warner/Chappell's Fed. R.  
11 Civ. P. ("Rule") 30(b)(6) witness). This document is Appendix Exhibit 101.

12 3. I recognize the document bearing Bates numbers WC0000103-104 as a  
13 true and correct copy of the Certificate of Registration of a Claim to Renewal  
14 Copyright for R306186. This document is Appendix Exhibit 102.

15 4. I recognize the document bearing Bates numbers WC0000385-87 as a  
16 true and correct copy of the Registration Certificate for E51988, which was marked  
17 as Exhibit 4 to the deposition of Thomas Marcotullio (Warner/Chappell's Rule  
18 30(b)(6) witness). This document is Appendix Exhibit 103.

19 5. I recognize the document bearing Bates numbers WC0000953-54 as a  
20 true and correct copy of the Certificate of Registration of a Claim to Renewal  
21 Copyright for R306185. This document is Appendix Exhibit 104.

22 6. I recognize the document bearing Bates number P003299 as a true and  
23 correct copy of the Record of the Filing of Copyright Deposits under the Act of  
24 March 4, 1909. This document is Appendix Exhibit 105.

25 7. I recognize the document bearing Bates number WC0000977-979 as a  
26 true and correct copy of sheet music for Happy Birthday to You!, published in 1935  
27 by Clayton F. Summy Co. as publication number 3075. This document is Appendix  
28 Exhibit 106.

Ex. 100

1 8. I recognize Appendix Exhibit 107 as a true and correct copy of  
2 Excerpts of the Confidential Deposition Transcript of Thomas Marcotullio,  
3 Warner/Chappell's Rule 30(b)(6) witness, taken on June 3, 2014 [*provisionally*  
4 *lodged under seal*].

5 9. I recognize Appendix Exhibit 109 as a true and correct copy of  
6 Excerpts of the Deposition Transcript of Jeremy Blietz, taken on July 10, 2014.

7 10. I recognize Appendix Exhibit 110 as a true and correct copy of  
8 Excerpts of the Deposition Transcript of Plaintiffs' Expert Witness, Joel Sachs,  
9 Ph.D., taken on September 9, 2014.

10 11. I recognize Appendix Exhibit 111 as a true and correct copy Excerpts  
11 of Exhibit 47 to the Deposition of Joel Sachs, Ph.D (Expert Report of Joel Sachs,  
12 Ph.D. and Exs. J and L thereto).

13 12. I recognize the documents bearing Bates numbers WC0001450-52 and  
14 WC0000844-45 as true and correct copies of a Recorded Assignment of Copyright  
15 from Patty S. Hill and Jessica S. Hill to The Hill Foundation, Inc., dated October 16,  
16 1944. These documents are Appendix Exhibits 112 and 113, respectively.

17 13. I recognize the documents bearing Bates numbers WC0001456-62 and  
18 WC0000838-45 as true and correct copies of a Recorded Assignment of Copyright  
19 from The Hill Foundation, Inc., to Clayton F. Summy Co., dated October 16, 1944.  
20 These documents are Appendix Exhibits 114 and 115, respectively.

21 14. I recognize Appendix Exhibit 116 to be a true and correct copy of the  
22 Declaration of David K. Sengstack , dated January 20, 1981 recorded in the  
23 Copyright Office on February 2, 1981 (WC0001998-2075).

24 15. I recognize Appendix Exhibit 117 to be a true and correct copy of  
25 Confidential Minutes of a September 29, 1931, Meeting of the Board of Directors of  
26 C.F.S. Musical Co. (WC0002091-93) [*provisionally lodged under seal*].

27 16. I recognize Appendix Exhibit 118 to be a true and correct copy of  
28 Confidential Stock Certificate for Birch Tree Group, Ltd. and Stock Power

Ex. 100

1 (WC0002094-97) [*provisionally lodged under seal*].

2 17. I recognize the document bearing Bates numbers WC0001137 and  
3 WC0001142-43 as a true and correct copy of an excerpt of an October 1988  
4 “Confidential Information Memorandum” regarding Birch Tree Group Ltd. This  
5 document is Appendix Exhibit 119.

6 18. I recognize Appendix Exhibit 120 as a true and correct copy of  
7 Plaintiffs’ Complaint in this matter, filed on June 20, 2013 (Dkt. 9).

8 19. I recognize Appendix Exhibit 121 as a true and correct copy of  
9 Plaintiffs’ First Amended Complaint in this matter, filed on July 26, 2013 (Dkt. 29).

10 20. I recognize Appendix Exhibit 122 as a true and correct copy of  
11 Plaintiffs’ Second Amended Consolidated Complaint, filed on September 4, 2013  
12 (Dkt. 59).

13 21. I recognize Appendix Exhibit 123 as a true and correct copy of  
14 Plaintiffs’ Third Amended Consolidated Complaint, filed on November 5, 2013  
15 (Dkt. 72).

16 22. I recognize Appendix Exhibit 124 as a true and correct copy of  
17 Plaintiffs’ Joint Report on Parties’ Planning Meeting, filed February 10, 2014 (Dkt.  
18 No. 89).

19 23. I recognize Appendix Exhibit 125 as a document bearing Bates number  
20 WC0002098 as a true and correct copy of a letter from the United States Copyright  
21 Office to Lisa Minnerly, of Warner/Chappell Music, Inc., dated December 9, 2013,  
22 regarding the transmission of copies of registrations, including copies of  
23 registrations E51990 and E51998.

24 ///

25 ///

26 ///

27 ///

28 ///

Ex. 100

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

24. I recognize the document bearing Bates numbers WC0000963-973 as a true and correct copy of an agreement among The Hill Foundation, Inc., Patty S. Hill and Jessica M. Hill, and Clayton F. Summy Co., dated October 16, 1944. This document is Appendix Exhibit 126.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of November 2014, at San Francisco, California.

  
\_\_\_\_\_  
ADAM I. KAPLAN

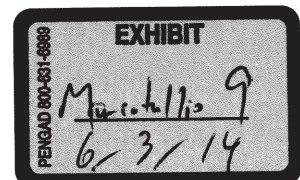
# **EXHIBIT 101**



## ***COPY OF REGISTRATION***

# **E 51990**

**NOTE: due to the nature of the storage medium  
(CARD CATALOG), the attached photocopies  
are the best possible copies available**



Ex. 101



27969 E

Happy birthday to you  
Composers of this

PUBLISHED  
MUSICAL  
COMPOSITION

By Mildred J. Hills, etc., by Preston  
Warren Grant, etc., with words.

*© Copyright for line of Clayton F. Summy Co.*

© Dec. 6, 1935  
2 c. Reg. 9  
Pub. No. 51990

PUBLISHED  
2 c. rec'd and regist'd  
Entry, Cl. M. XXc, No.  
Copyright claimed by

Clayton F. Summy Co., Chicago.

*(© is claimed on arrangement in case)  
(piano solo with text)*

R 306186, Dec. 6, 1962, by Summary-Richard  
Co. (YWH of Prator Ware Co.)

# **EXHIBIT 102**

Original in Renewal File

FORM R

# Certificate of Registration of a Claim to Renewal Copyright

REGISTRATION NO.

R 306186

DO NOT WRITE HERE

This is to certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.



1. Renewal Claimant(s), Address(es), and Statement of Claim: *Abraham L. Kaminstein*  
Register of Copyrights  
United States of America

(a) Name Summy-Birchard Company

Address 1834 Ridge Ave., Evanston, Ill.

Claiming as proprietor of copyright in a work made for hire

(b) Name \_\_\_\_\_

Address \_\_\_\_\_

Claiming as \_\_\_\_\_

(c) Name \_\_\_\_\_

Address \_\_\_\_\_

Claiming as \_\_\_\_\_

2. (a) Title: HAPPY BIRTHDAY TO YOU! -- easy piano solo with text

(b) Renewable Matter: Arrangement as easy piano with text

(c) Contribution to Periodical or Other Composite Work: \_\_\_\_\_  
(Title of periodical or composite work)

If a periodical, give: Vol. \_\_\_\_\_; No. \_\_\_\_\_; Date \_\_\_\_\_

3. Authors of Renewable Matter: Clayton F. Summy Co. (now, by change of name, Summy-Birchard Company) as employer for hire of Preston Ware Orem

4. Facts of Original Registration: Original registration number: Class E. pub No. 51990

If registered as published, give date of publication December 6, 1935

If registered as unpublished, give date of registration \_\_\_\_\_

Original copyright claimant Clayton F. Summy Co.

Complete all applicable spaces on next page. } 7

5. Deposit account:

Sunny-Birchard Publishing Company

6. Send correspondence to:

Name Brown, Jackson, Boettcher & Diener, 53 W. Jackson Blvd., Chicago 4, Ill.  
Mr. C. Lyman Emrich, Jr.

7. Send certificate to:

(Type or print name and address)

Name Sunny-Birchard Company

Address 1834 Ridge Ave. (Number and street)

Evanston, Ill. (City) (Zone) (State)

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication; in the case of a work originally registered in unpublished form, the copyright term lasts for 28 years from the date of registration in the Copyright Office. In either case, the copyright may be renewed for a second 28-year term only if a claim is registered in the Copyright Office within the last (28th) year of the original copyright term. For example, a work copyrighted on June 15,

1940, would be eligible for renewal between June 15, 1967, and June 15, 1968.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires, copyright protection is lost permanently and the work enters the public domain. The Copyright Office has no discretion to extend the renewal time limits.

How to register your claim

Procedure to follow. Complete an application for renewal registration on Form R and send it to the Register of Copyrights, Washington 25, D. C. The application should be accompanied by the registration fee of \$2.00. Do not send copies of the work.

Who may claim renewal

Except in the case of five specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term. If the author is deceased, the statute gives the right to claim renewal to certain of his statutory beneficiaries as explained below. The present owner (proprietor) of a copyright is entitled to claim renewal only in the five cases listed in Paragraph B, below.

A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below:

- 1. The author, if living. State the claim as: *the author*. there is no surviving widow, widower, or child. State the claim as: *the executors of the author*.
- 2. The widow, widower, and/or children of the author, if the author is not living. State the claim as: *the widow (widower) of the author and/or the child (children) of the deceased author*.
- 3. The author's executors, if the author left a will and if
- 4. The next of kin of the author, if the author left no will and if there is no surviving widow, widower, or child. State the claim as: *the next of kin of the deceased author, there being no will*.

B. In the case of the following five types of works, the proprietor (owner of the copyright at the time of renewal registration) may claim renewal:

- 1. Posthumous work (work first published and copyrighted after the death of the author). State the claim as: *proprietor of copyright in a posthumous work*. a corporate body otherwise than as assignee or licensee of the individual author. (This type of claim is considered appropriate in relatively few cases.)
- 2. Periodical, cyclopedic, or other composite work. State the claim as: *proprietor of copyright in a composite work*.
- 3. "Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author." State the claim as: *proprietor of copyright in a work copyrighted by*
- 4. Work copyrighted by an employer for whom such work was made for hire. State the claim as: *proprietor of copyright in a work made for hire*.
- 5. Print or label originally registered in the Patent Office prior to July 1, 1940. State the claim as: *proprietor of copyright in a print or label*.

FOR COPYRIGHT OFFICE USE ONLY

Application received	
DEC -6 1962	
Fee received	

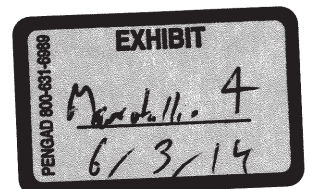
# **EXHIBIT 103**



## ***COPY OF REGISTRATION***

# **E 51988**

**NOTE: due to the nature of the storage medium  
(CARD CATALOG), the attached photocopies  
are the best possible copies available**



Ex. 103

WC0000385  
1212

E

27970

Happy birthday to you, unison song,  
Composer or title

PUBLISHED  
MUSICAL  
COMPOSITION

by Mildred J. Hill, rev. text and arr.  
of music by Mrs. R. B. Norman, ~~etc.~~

*\*(employee for hire of Clayton F. Summy Co.)*

PUBLISHED

© Dec. 6, 1935

2 c. rec'd and regist'd  
Entry, Cl. E.Xc. No.

2 c. Dec. 9

E pub. 51988

Copyright claimed by

Clayton F. Summy Co., Chicago.

*(© is claimed on arrangement for  
(Unison Chorus) and record copy.)*

*(OVER)*



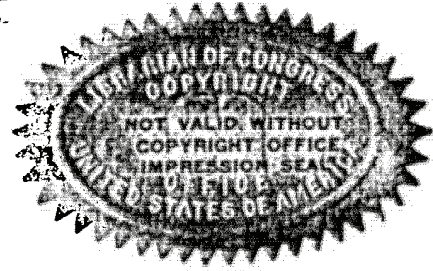
R 306185, Dec. 6, 1962, by Summy-Bickard  
Co (Rev. of Mrs. R. R. Farmer)

# **EXHIBIT 104**

# Certificate of Registration of a Claim to Renewal Copyright

REGISTRATION NO.
R 306185
DO NOT WRITE HERE

This is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.



*Abraham L. Kaminstein*

1. Renewal Claimant(s), Address(es), and Statement of Claim:

Abraham L. KAMINSTEIN  
Register of Copyrights  
United States of America

(a) Name Summy-Birchard Company

Address 1834 Ridge Ave., Evanston, Ill.

Claiming as proprietor of copyright in a work made for hire

(b) Name .....

Address .....

Claiming as .....

(c) Name .....

Address .....

Claiming as .....

2. (a) Title:

HAPPY BIRTHDAY TO YOU! -- Unison Song

(b) Renewable Matter:

Arrangement and revised text

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol. ....; No. ....; Date .....

3. Authors of Renewable Matter:

Clayton F. Summy Co. (now, by change of name, Summy-Birchard Company) as employer for hire of Mrs. R.R. Forman

4. Facts of Original Registration:

Original registration number: Class E pub No. 51988

If registered as published, give date of publication December 6, 1935

If registered as unpublished, give date of registration .....

Original copyright claimant Clayton F. Summy Co.

Complete all applicable spaces on next page. (A)

5. Deposit account:

Summy-Birchard Company

6. Send correspondence to:

Name: Brown, Jackson, Boettcher & Diener, Mr. C. Lyman Enrich, Jr. Address: 53 W. Jackson Blvd., Chicago 4, Ill.

7. Send certificate to:

(Type or print name and address)

Form with fields for Name (Summy-Birchard Company), Address (1834 Ridge Ave., Evanston, Illinois), and State (Illinois).

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication...

1940, would be eligible for renewal between June 15, 1967, and June 15, 1968.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires...

How to register your claim

Procedure to follow. Complete an application for renewal registration on Form R and send it to the Register of Copyrights, Washington 25, D. C. The application should be accompanied by the registration fee of \$2.00.

Who may claim renewal

Except in the case of five specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term.

- A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below: 1. The author, if living. State the claim as: the author. 2. The widow, widower, and/or children of the author... 3. The author's executors... B. In the case of the following five types of works, the proprietor (owner of the copyright at the time of renewal registration) may claim renewal: 1. Posthumous work... 2. Periodical, cyclopedic, or other composite work... 3. 'Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author.'... 4. Work copyrighted by an employer for whom such work was made for hire... 5. Print or label originally registered in the Patent Office prior to July 1, 1940...

FOR COPYRIGHT OFFICE USE ONLY. Application received DEC - 6 1962. Fee received.

# **EXHIBIT 105**

# COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA

RECORD OF THE FILING OF COPYRIGHT DEPOSITS UNDER THE ACT OF MARCH 4, 1909

Year 1935

51 Thousand

9 Hundred

And

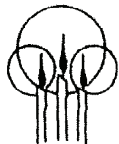
## CLASS E.—MUSICAL COMPOSITIONS (U. S. PUBLISHED)

No.	DATE OF RECEIPT OF TWO COPIES	TITLE	CLAIMANT, DATE OF PUBLICATION, ETC.
90	Dec. 9 1935	Happy Birthday to You! By Mildred J. Hill, Preston Ward (employed for hire by Clayton F. Summy Co.), of U. S. Copyright is claimed on arr. as easy piano solo with text.	<small>Claimant of copyright</small> Clayton F. Summy Co. 429 S. Wabash Ave., Chicago, Ill. <small>Date of publication</small> Dec. 6, 1935. <small>Claimant of copyright</small> Louise Daggett Fischer, 302 E. Myrtle St., San Antonio, Tex. <small>Renewal</small> R-30618
91	Dec. 7 1935	A Celtic Plaint. (Theme in the 1st Gregorian mode). By Louise Daggett Fischer, of U. S. for piano.	<small>Date of publication</small> Oct. 15, 1935. <small>Claimant of copyright</small> Roland C. Bucher, 427 East 8th St., Brooklyn, N. Y. <small>Date of publication</small> Aug. 7, 1935. <small>Claimant of copyright</small> Leon H. Hagen, 2910 James Ave., S., Minneapolis, Minn. <small>Date of publication</small> Dec. 6, 1935. <small>Claimant of copyright</small> Leon H. Hagen, 2910 James Ave., S., Minneapolis, Minn. <small>Renewal</small> R-31381
92	Dec. 9 1935	Attorneys and Counsellors at Law. March. By Roland C. Bucher, of U. S. For band, with solo x 1st Bb trumpet conductor.	<small>Date of publication</small> Aug. 7, 1935. <small>Claimant of copyright</small> Leon H. Hagen, 2910 James Ave., S., Minneapolis, Minn. <small>Date of publication</small> Dec. 6, 1935. <small>Claimant of copyright</small> Leon H. Hagen, 2910 James Ave., S., Minneapolis, Minn. <small>Renewal</small> R-31381
93	Dec. 9 1935	The Pilgrim. Words and music by Leon H. Hagen, of U. S. S. A., J. B.	<small>Date of publication</small> Aug. 7, 1935. <small>Claimant of copyright</small> Leon H. Hagen, 2910 James Ave., S., Minneapolis, Minn. <small>Date of publication</small> Dec. 6, 1935. <small>Claimant of copyright</small> Leon H. Hagen, 2910 James Ave., S., Minneapolis, Minn. <small>Renewal</small> R-31381

# **EXHIBIT 106**



# 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

T



# 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, 3/4 time, and 4/4 meter. It features a treble and bass clef. The melody in the treble clef starts with a quarter note G4, followed by quarter notes A4 and B4, then a quarter rest, and finally quarter notes A4 and G4. The bass clef accompaniment consists of a whole note chord G2-B2-D3 in the first measure, followed by quarter notes G2 and B2 in the second measure, and quarter notes D3 and G2 in the third measure. Fingerings are indicated with numbers 1-5. 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 clef melody has quarter notes G4, A4, B4, and G4. The bass clef accompaniment has a whole note chord G2-B2-D3, followed by quarter notes G2 and B2, and quarter notes D3 and G2. Fingerings and dynamics are consistent with the first system.

\* \_\_\_\_\_, Hap-py Birth-day to you!

The third system concludes the piece. The treble clef melody has quarter notes G4, A4, B4, and G4. The bass clef accompaniment has a whole note chord G2-B2-D3, followed by quarter notes G2 and B2, and quarter notes D3 and G2. The system ends with a double bar line. A handwritten signature is visible in the bottom right corner of the page.

\* Here insert the name of the one celebrating.

Copyright, 1935 by Clayton F. Summy Co.  
International Copyright

3075

Ex. 106

1222

WC0000978

# OUTSTANDING PIANO SOLOS

For Teaching and Recital Purposes

Price 30¢ **Vale of Song**  
WALTZ WALTER HOLFF  
Tempo di Valse  
*Moderato marc.*  
*mf*

Musical score for 'Vale of Song' by Walter Holff, a waltz in 3/4 time. It features a melody in the right hand and a supporting bass line in the left hand. The piece is marked 'Tempo di Valse' and 'Moderato marc.' with a dynamic of 'mf'.

Price 25¢ **Soldiers Marching**  
N. LOUISE WRIGHT  
Allegro  
*mf* *legato*

Musical score for 'Soldiers Marching' by N. Louise Wright, an allegro piece in 4/4 time. It features a rhythmic melody in the right hand and a steady bass line in the left hand. The piece is marked 'Allegro' and 'mf legato'.

Price 30¢ **Moccasin Dance**  
FRANCES TERRY  
Con moto  
*mf animato*

Musical score for 'Moccasin Dance' by Frances Terry, a piece in 2/4 time. It features a lively melody in the right hand and a rhythmic bass line in the left hand. The piece is marked 'Con moto' and 'mf animato'.

Price 30¢ **The Old Clock**  
HUBBARD HARRIS  
Not too fast  
*mf*

Musical score for 'The Old Clock' by Hubbard Harris, a piece in 3/4 time. It features a melody in the right hand and a simple bass line in the left hand. The piece is marked 'Not too fast' and 'mf'.

Price 30¢ **The Band**  
N. LOUISE WRIGHT  
Allegro con spirito  
*ff* *marcato*

Musical score for 'The Band' by N. Louise Wright, a piece in 4/4 time. It features a rhythmic melody in the right hand and a complex bass line in the left hand. The piece is marked 'Allegro con spirito' and 'ff marcato'.

Price 30¢ **Down a Woodland Path**  
VALSETTE GODFREY UREN  
Allegretto  
*mf*

Musical score for 'Down a Woodland Path' by Godfrey Uren, a waltz in 3/4 time. It features a melody in the right hand and a bass line in the left hand. The piece is marked 'Allegretto' and 'mf'.

The above six numbers copyrighted by Clayton F. Summy Co.

Op. 1-2

R.F.I.

**CLAYTON F. SUMMY CO., MUSIC PUBLISHERS**  
429 So. Wabash Ave., Chicago, Ill. 9 East 45th Street, New York City, N. Y.

# **EXHIBIT 107**

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

4

5 -----x

6 GOOD MORNING TO YOU PRODUCTIONS CORP.,  
7 et al.,

8 Plaintiffs,

9 vs.

10 WARNER/CHAPPELL MUSIC INC., et al.,  
11 Defendants.

12 -----x

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

14

15

16

17 DEPOSITION OF THOMAS B. MARCOTULLIO

18 New York, New York

19 Tuesday, June 3, 2014

20 CONFIDENTIAL

21

22

23

24 Reported by: David Henry

25 JOB NO. 80120

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

June 3, 2014  
9:00 a.m.

Videotaped 30(b)(6) Deposition of  
THOMAS B. MARCOTULLIO, held at the  
offices of Wolf Haldenstein Adler Freeman  
& Herz, 270 Madison Avenue, New York, New  
York, pursuant to Notice, before David  
Henry, a Certified Court Reporter and  
Notary Public of the State of New York.

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

2  
3 WOLF HALDENSTEIN ADLER FREEMAN  
& HERZ  
4 Attorneys for Plaintiffs  
270 Madison Avenue  
New York, NY 10016  
5 BY: MARK RIFKIN, ESQ.  
AND: BETH LANDES, ESQ.

6  
7 RANDALL S. NEWMAN  
8 Attorneys for Plaintiffs  
37 Wall Street  
New York, NY 10005  
9 BY: RANDALL NEWMAN, ESQ.

10  
11 MUNGER ROLLES & OLSON  
Attorneys for Defendants and  
the Witness  
12 355 South Grand Avenue  
Los Angeles, CA 90071  
13 BY: KELLY KLAUS, ESQ.

14  
15  
16  
17  
18  
19 ALSO PRESENT:

20 ELLEN HOCHBERG, ESQ.,  
Warner Music Group  
21  
22 ALI TOUMADJ, Summer Associate,  
Wolf Haldenstein Adler & Herz  
23 MANUEL GARCIA, Videographer

24  
25

Pages 1228 – 1264 of Exhibit 107 are Intentionally Omitted

1 the application for the copyright E51988?

2 A. I do.

3 Q. Do you recognize this as the  
4 application for 51988?

5 A. Yes.

6 Q. Okay. Do you need to see the  
7 certificate as well?

8 MR. KLAUS: I think your  
9 question was about the renewal.

10 Q. Well, hold on a second. When I  
11 asked you the question about the renewal  
12 you said you needed to see the certificate.  
13 When I asked you which certificate you  
14 needed, you said both, both 306185 and  
15 51988. To answer the question that I had  
16 asked you about who you obtained  
17 information from, and what you knew, do you  
18 want me to show you the applications, the  
19 renewals, the certificates, what would you  
20 like to see? I've got all the documents  
21 you might need.

22 A. I did want to see the renewal  
23 that you were referring to.

24 (Marcotullio Exhibit 3,  
25 WC341-343, marked for identification.)



1           Q.    Mr. Marcotullio, the court  
2   reporter has placed in front of you for  
3   identification a three-page document  
4   bearing the production number WC 341  
5   through 343.  Do you recognize this as a  
6   copy of an application for registration of  
7   a claim to renew a copyright for R306185?

8           A.    I do.

9           Q.    Is there anything else you need  
10  to look at in order to be able to answer  
11  the question that I had asked you before?

12           MR. KLAUS:    What was the  
13  question?

14           MR. RIFKIN:    We're going to have  
15  to go back and read the question.

16           Q.    So the question that I asked you  
17  that you were unable to answer is, did you  
18  obtain information about the renewal  
19  copyright R306185 from Mr. Blietz, and you  
20  asked to see all these documents in order  
21  to answer that question.  So have they  
22  helped you answer that question?

23                        So just so we're clear, the  
24  question is, did you receive any  
25  information from Mr. Blietz about the

1 application or the renewal copyright  
2 R306185?

3 A. Yes, with respect to the renewal,  
4 my understanding is that this is one of the  
5 documents we received as part of our  
6 request for information from the Copyright  
7 Office.

8 Q. What information did you receive  
9 from Mr. Blietz about R306185?

10 A. Just what I mentioned, was that  
11 it was part of the documents that we  
12 received.

13 Q. So he told you that you received  
14 this when you requested documents in  
15 December of 2013, correct?

16 A. That's my understanding.

17 Q. Did he tell you anything else  
18 about the renewal copyright R306185?

19 A. I'm not sure. Other than that,  
20 that was the scope of our discussion.

21 Q. How much time did you spend  
22 discussing all of your investigation with  
23 Mr. Blietz during of the course of your  
24 investigation?

25 A. Probably 45 minutes to an hour,

1 if not more.

2 Q. Did you receive any information  
3 from Mr. Blietz about the copyright renewal  
4 R306186?

5 A. Again, similarly with 306185,  
6 just that it was received in connection  
7 with the request from the Copyright Office  
8 in that no other individuals I think had  
9 any information with respect to it.

10 Q. Are you the person most  
11 knowledgeable about assignments to  
12 Warner/Chappell of the copyrights relating  
13 to Happy Birthday To You?

14 MR. KLAUS: Object to the form.  
15 You can answer.

16 A. Again, I believe I've conducted a  
17 thorough investigation of the information  
18 provided.

19 Q. Before you began your  
20 investigation, what if anything did you  
21 know about assignments of copyrights  
22 relating to Happy Birthday To You to  
23 Warner/Chappell?

24 A. Just a passing knowledge.

25 Q. Okay. Are you the person most

Pages 1269 – 1296 of Exhibit 107 are Intentionally Omitted

1           A.    I can tell you what I do know,  
2    and I can read this card and what it states  
3    on the face of the card in connection with  
4    the request for stating exactly what new  
5    matter copyright is claimed, see Section 6  
6    of act of 1909, and it's arrangement for  
7    unison chorus and revised text.

8           Q.    Okay, was Mrs. Forman an employee  
9    for hire of the Clayton F. Summy Company  
10   when she wrote the arrangement for unison  
11   chorus and revised text that is the subject  
12   matter of this copyright application?

13           MR. KLAUS:    Object to the form  
14           of the question.   You can answer.

15           A.    I don't have particular knowledge  
16   with the relationship at the time that this  
17   was done.   I don't think anybody is alive  
18   that can give us the specific information.

19           Q.    Well, did your review of the  
20   records disclose for you whether  
21   Mrs. Forman was an employee for hire of the  
22   Clayton F. Summy Company when she wrote the  
23   arrangement for unison chorus and revised  
24   text?

25           MR. KLAUS:    Object to the form

1 of the question. You can answer.

2 A. I reviewed the registration  
3 itself and I believe on the registration it  
4 may identify that. I don't have a copy, I  
5 don't know if you have a copy that I can  
6 just take a look at and confirm that.

7 (Marcotullio Exhibit 4,  
8 WC385-387, marked for identification.)

9 Q. Mr. Marcotullio, the court  
10 reporter has placed before you a document  
11 marked for identification as Marcotullio 4.  
12 It's a copy of the registration for  
13 copyright number E51988 bearing the  
14 production numbers WC385 through 387. Have  
15 you seen this before?

16 A. Yes, I have.

17 Q. And on page two of Exhibit  
18 Marcotullio 4, is there an indication that  
19 Mrs. Forman is an employee for hire of  
20 Clayton F. Summy Co.?

21 A. Yes, there is a handwritten note.

22 Q. Is this the record to which you  
23 were just referring?

24 A. Yes, it is.

25 Q. So Warner/Chappell does not

Pages 1299 – 1357 of Exhibit 107 are Intentionally Omitted

1 mentioned, I just looked at the face of the  
2 documents.

3 Q. Did you uncover any information  
4 in the course of your investigation,  
5 whether documents or information given to  
6 you by someone else, that Mildred Hill and  
7 Mrs. Forman collaborated to write the song  
8 Happy Birthday To You?

9 A. Again, it wasn't part of the  
10 discussion that I had or a review of the  
11 documents that I had. I just can tell you  
12 what I've seen on the face of the  
13 documentation.

14 MR. RIFKIN: Okay, we're going  
15 to switch topics a little bit here, so  
16 maybe now might be a good time for  
17 another five minute break.

18 (Recess taken: 11:39-11:53 a.m.)

19 FURTHER EXAMINATION BY MR. RIFKIN:

20 Q. Mr. Marcotullio, we've spoken now  
21 about 51988 and also renewal 306185. Let's  
22 switch gears a little bit and let's talk  
23 about 51990. So let's have the court  
24 reporter mark for identification as the  
25 next exhibit a document I'd like to ask you



1 about.

2 (Marcotullio Exhibit 9,  
3 WC388-390, marked for identification.)

4 Q. So after that little bit of  
5 confusion, the court reporter has marked  
6 for identification as Marcotullio 9 a copy  
7 of the registration for copyright E51990  
8 bearing the production number WC388 through  
9 WC390. Have you seen this document before?

10 A. Yes, I have.

11 Q. And do you recognize this as the  
12 registration record for copyright E51990?

13 A. Yes, it appears to be.

14 Q. Do you know whether a copy of  
15 this document existed in Warner/Chappell's  
16 files before the request was made of the  
17 Copyright Office in December of 2013 for  
18 records?

19 MR. KLAUS: Object to the form.

20 You can answer.

21 A. I don't believe we discussed that  
22 in particular but I do know that the copy  
23 we had was from that request.

24 Q. Okay. And does this appear to be  
25 the same as the copy you received from the

1 Copyright Office?

2 A. To my knowledge yes, based on  
3 information I received. That's the  
4 December, 2013 request.

5 Q. Yes. Let me ask the court  
6 reporter to mark the next document for  
7 identification.

8 (Marcotullio Exhibit 10, WC831,  
9 marked for identification.)

10 Mr. Marcotullio, for the record  
11 Exhibit Marcotullio 10 is a one-page  
12 document. It is the certificate of  
13 copyright registration for copyright E51990  
14 bearing the production number WC831. Have  
15 you seen this document before?

16 A. Yes, I have.

17 Q. Do you recognize this as the  
18 certificate of copyright registration for  
19 copyright E51990?

20 A. Yes, it appears to be, yes.

21 Q. And again, is this a copy of the  
22 record that Warner/Chappell received in  
23 response to its request in December of  
24 2013?

25 A. My understanding is no, this was

Pages 1361 – 1367 of Exhibit 107 are Intentionally Omitted

1 outside the scope. I believe you can  
2 testify to what your factual  
3 investigation told you about the  
4 search for documents in the case.

5 A. Sure. So as I mentioned, I spoke  
6 with Jeremy Blietz and others at  
7 Warner/Chappell. I understand, I think, I  
8 believe we may have received this in  
9 connection with our request from the  
10 Copyright Office. In any case they  
11 conducted an extensive investigation of  
12 their records, including microfiche files  
13 that they had, hard copy files that were  
14 retained by Warner/Chappell, and other  
15 digital files that they had already copied  
16 and pdf'd into a digital file. So they  
17 went through a fairly extensive review of  
18 those materials including with respect to  
19 the copyrights, the Hills, Summy-Birchard  
20 and otherwise, in addition as I mentioned  
21 earlier the requests to the Copyright  
22 Office.

23 Q. Okay. And as a result of all  
24 that you were told, or you learned that you  
25 do not have a copy of the deposit copy

1 either, correct?

2 MR. KLAUS: Object to the form.

3 You can answer.

4 A. My understanding is they could  
5 not find a copy of it either.

6 Q. Okay. Were you told what that  
7 work was?

8 A. What work was?

9 Q. What the deposited work was.

10 MR. KLAUS: Object to the form.

11 You can answer.

12 A. I think we believe that the work  
13 was the Happy Birthday To You, I think you  
14 called it the familiar Happy Birthday To  
15 You.

16 Q. Well, why do you think -- what is  
17 your basis for thinking that?

18 A. Sure, so obviously we know from  
19 both this letter and the record that there  
20 were deposit copies received. We know from  
21 the registration that those were I think on  
22 December 9th they were received. We know  
23 that on the same day they registered --  
24 they applied for and registered for the  
25 51988, which as I mentioned earlier is

1 substantially similar and that does have  
2 the deposit copy with it, you know,  
3 Warner/Chappell has been licensing --  
4 Warner/Chappell and its predecessors Summy  
5 and otherwise have been licensing the works  
6 for many, many years and there has never  
7 been an objection about what this applied  
8 to, the music, what Happy Birthday To You,  
9 what the lyrics and music were, and we've  
10 seen sheet music provided in terms of, you  
11 know, sheet music that's been sold and  
12 licensed that clearly indicates what Happy  
13 Birthday To You refers to.

14 Q. Well, there's two things you said  
15 that I want to follow up on.

16 A. Sure.

17 Q. You said there's never been an  
18 objection to what the scope of 51990 is?

19 MR. KLAUS: That's not what he  
20 said.

21 Q. Well, what did you say -- what  
22 did you mean to say when you said there has  
23 never been an objection? An objection to  
24 what?

25 A. I think when people ask for a

Pages 1371 – 1466 of Exhibit 107 are Intentionally Omitted

1 the record.

2 MR. KLAUS: Then let's keep  
3 going.

4 MR. RIFKIN: That's okay, I'm  
5 just trying to speed things up. It  
6 just seems to me that we're wasting  
7 valuable time. But so be it.

8 Q. Alright, and so is it also  
9 correct that you did not learn anything  
10 about whether E51990 was still in effect in  
11 the course of your investigation?

12 MR. KLAUS: Same objections.  
13 You can answer.

14 A. Sure. We didn't discuss that in  
15 particular.

16 (Marcotullio Exhibit 21,  
17 WC344-346, marked for identification.)

18 Q. For the record, Mr. Marcotullio,  
19 Exhibit 21 is a multi-page document  
20 beginning with WC344 and ending WC346. It  
21 is a copy of the application for  
22 registration of a claim to renewal  
23 copyright for copyright number R306186.  
24 Have you seen this before?

25 A. Yes, I have seen a copy of this,



1 yes.

2 Q. As part of your investigation?

3 A. Correct.

4 Q. And do you recall discussing this  
5 with anyone as part of your investigation?

6 A. Yes, I discussed it with, again,  
7 Jeremy Blietz and Nathan Osher in  
8 connection with their collection of  
9 information.

10 Q. And what did you and Mr. Blietz  
11 discuss about this?

12 A. That he requested information  
13 from the Copyright Office in December of  
14 2013 and this was one of the documents he  
15 received.

16 Q. Did he tell you anything else  
17 about this exhibit other than that he  
18 requested it from the Copyright Office and  
19 received it from the Copyright Office?

20 A. Other than -- we don't have any  
21 documents or information other than what  
22 was provided by the Copyright Office.

23 Q. Okay. And what did Mr. Osher  
24 tell you about this copyright application?

25 A. Nothing else.

Pages 1469 – 1534 of Exhibit 107 are Intentionally Omitted

1           A C K N O W L E D G M E N T

2

3       STATE OF NEW YORK     )

4                                     : ss

5       COUNTY OF                 )

6

7                     I, THOMAS B. MARCOTULLIO, hereby  
8       certify that I have read the transcript of  
9       my testimony taken under oath in my  
10      deposition of June 3, 2014; that the  
11      transcript is a true, complete and correct  
12      record of my testimony, and that the  
13      answers on the record as given by me are  
14      true and correct.

15

16

\_\_\_\_\_

THOMAS B. MARCOTULLIO

17

18

19       Signed and subscribed to before

20       me, this                     day

21       of                             , 2014.

22

23

24

\_\_\_\_\_

25       Notary Public, State of New York

1 C E R T I F I C A T E

2

3 STATE OF NEW YORK )

4 ) ss.:

5 COUNTY OF NEW YORK )

6

7 I, DAVID HENRY, a Notary Public within  
8 and for the State of New York, do hereby  
9 certify:

10 That THOMAS B. MARCOTULLIO, the  
11 witness whose deposition is hereinbefore  
12 set forth, was duly sworn by me and that  
13 such deposition is a true record of the  
14 testimony given by such witness.

15 I further certify that I am not  
16 related to any of the parties to this  
17 action by blood or marriage; and that I am  
18 in no way interested in the outcome of this  
19 matter.

20 IN WITNESS WHEREOF, I have hereunto  
21 set my hand this 13th day of June, 2014.

22

23

24 -----

25 DAVID HENRY

1 E R R A T A

2 PAGE LINE EMENDATION

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 Signature of Deponent

20 SUBSCRIBED AND SWORN BEFORE ME

21 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

22 \_\_\_\_\_

23 \_\_\_\_\_

24 (Notary Public)

25 MY COMMISSION EXPIRES: \_\_\_\_\_

1	INDEX OF EXHIBITS	
2		
3	Marcotullio Exhibit 1, Amended	8
4	Notice of Deposition	
5	Marcotullio Exhibit 2, P3290-91	40
6	Marcotullio Exhibit 3, WC341-343	41
7	Marcotullio Exhibit 4, WC385-387	74
8	Marcotullio Exhibit 5, WC413-414	76
9	Marcotullio Exhibit 6, WC1365-66	120
10	Marcotullio Exhibit 7, WC952	127
11	Marcotullio Exhibit 8, WC953-954	129
12	Marcotullio Exhibit 9, WC388-390	135
13	Marcotullio Exhibit 10, WC831	136
14	Marcotullio Exhibit 11, WC132	138
15	Marcotullio Exhibit 12, WC405	142
16	Marcotullio Exhibit 13,	155
17	WC977-979	
18	Marcotullio Exhibit 14, Record	159
19	of the Filing of Copyright	
20	Deposits Under the At of March	
21	4, 1909	
22	Marcotullio Exhibit 15, Record	160
23	of the Filing of Copyright	
24	Deposits Under the At of March	
25	4, 1909	

1	Marcotullio Exhibit 16,	162
2	P113771-782	
3	Marcotullio Exhibit 17,	166
4	WC443-444	
5	Marcotullio Exhibit 18, P5030	198
6	Marcotullio Exhibit 19,	199
7	P2756-2797	
8	Marcotullio Exhibit 20,	230
9	WC1639-1646	
10	Marcotullio Exhibit 21,	243
11	WC344-346	
12	Marcotullio Exhibit 22,	245
13	WC141-142	
14	Marcotullio Exhibit 23, P5029	246
15	Marcotullio Exhibit 24,	246
16	P122219-237	
17	Marcotullio Exhibit 25,	252
18	WC1482-1497	
19	Marcotullio Exhibit 26,	253
20	P2647-2661	
21	Marcotullio Exhibit 27,	256
22	WC362-374	
23	Marcotullio Exhibit 28,	264
24	WC1446-1449	
25		

1	Marcotullio Exhibit 29,	267
2	WC1453-1455	
3	Marcotullio Exhibit 30,	269
4	P6041-6049	
5	Marcotullio Exhibit 31,	270
6	P6050-6058	
7	Marcotullio Exhibit 32,	272
8	P6034-6040	
9	Marcotullio Exhibit 33,	277
10	WC1411-1412	
11	Marcotullio Exhibit 34, WC1409	283
12	Marcotullio Exhibit 35, WC1416	285
13	Marcotullio Exhibit 36,	287
14	WC1422-1423	
15	Marcotullio Exhibit 37, WC1244	289
16	Marcotullio Exhibit 38,	291
17	WC963-973	
18	Marcotullio Exhibit 39,	293
19	WC957-962	
20	Marcotullio Exhibit 40,	295
21	WC106-107	
22	Marcotullio Exhibit 41,	302
23	WC760-827	
24		
25		