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16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA -**
 18 **WESTERN DIVISION**

19 GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)

20 PRODUCTIONS CORP., *et al.*,)

21 Plaintiffs,

22 v.

23 WARNER/CHAPPELL MUSIC,)
 24 INC., *et al.*)

25 Defendant.)

) **PLAINTIFFS' NOTICE OF MOTION**
) **AND MOTION TO EXCLUDE**
) **EVIDENCE; MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF; AND**
) **[PROPOSED] ORDER GRANTING**
) **MOTION TO EXCLUDE EVIDENCE**

) Date: February 9, 2015
) Time: 9:30 a.m.
) Room: 650
) Judge: Hon. George H. King,
) Chief Judge

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on or about February 9, 2015, at 9:30 a.m., or as soon thereafter as this matter may be heard before the Honorable George H. King, Chief Judge, in Courtroom 650 of the Edward R. Roybal Federal Building, located at 255 E. Temple Street, Los Angeles, CA 90012, Plaintiffs Rupa Marya, Robert Siegel, and Good Morning To You Productions Corp. and Majar Productions, LLC (“Plaintiffs”) will, and hereby do, move this Court for an order to exclude Defendants’ Exhibits 101-104, 106, and 119 (collectively, “Defendants’ Exhibits”) of the Amended Joint Evidentiary Appendix in Support of Notice of Cross-Motions and Cross-Motions for Summary Judgment Filed Pursuant to Court’s Dec. 5, 2014 Order, filed December 17, 2014 (Dkts. 187 (Vol. 1, Exs. 1-10, Pages 1-220); 188 (Vol. 2, Ex.11, Pages 221-486); 189 (Vol. 3, Exs. 12-54, Pages 487-706); 190 (Vol. 4, Exs. 55-81, Pages 707-974); 191 (Vol. 5, Exs. 82-99, Pages 975-1141); 192 (Vol. 6, Exs. 100-106, Pages 1200-1540); 193 (Vol. 7, Exs. 107-116, Pages 1541-1750); and 194 (Vol. 8, Exs. 117-126, Pages 1751-1947)) (collectively, the “Appendix”) from the Appendix and to strike all references to Defendants’ Exhibits as well as the arguments based upon them from the Cross-Motions for Summary Judgment (as amended Nov. 26, 2014, Dkt. 182) (“Joint Brief”) and the [Corrected] Joint Statement of Uncontroverted Facts (as amended Dec. 1, 2014, Dkt. 183) (“SOF”).

Plaintiffs specifically seek to strike the following references from the Joint Brief Motion for Summary Judgment (Dkt. 182):

From Page:Line	To Page:Line	Text to be Deleted
2:13	2:15	“On December 9, 1935, Summy published two versions of <i>Happy Birthday to You</i> that included lyrics and obtained registration certificates E51988 and E51990. Exs. 101, 103.”
2:19	2:20	“ <i>Id.</i> Forman also arranged the music for the 51988 version. Ex. 103.

From Page:Line	To Page:Line	Text to be Deleted
2:19	2:20	“Forman also arranged the music for the 51988 version. Ex. 103.”
2:22	2:23	“The music for this version was arranged by Preston Ware Orem, another Summy employee. Ex. 101.”
2:24	2:26	“On December 6, 1962, Summy-Birchard Co.—Summy’s successor—renewed these copyrights. Exs. 120 [sic, should be 102], 104.”
6:11	6:13	Certificate E51990 establishes prima facie that Warner/Chappell has a copyright in <i>Happy Birthday to You</i> ’s “ words ” and “ text ”—what the undisputed evidence shows to be the “familiar lyrics.” Ex. 101.”
6:18	6:21	“If any further proof were needed—and it is not—it is supplied by certificate E51988, registered the exact same day by Clayton F. Summy, Warner/Chappell’s predecessor, which refers to an “arrangement of unison chorus” and “revised text.” Ex. 103.”
6:22	7:1	“The only ‘revised text’ therein is the ‘second verse.’ Thus, the <i>unrevised</i> text is, and can only be, the ‘familiar lyrics,’ which were registered the same day in E51990. Plaintiffs, who bear the burden proof, have no admissible evidence rebutting the certificates.”
6:27	6:28	“Warner/Chappell has submitted admissible copies of the <i>registrations</i> from the Copyright Office. Exs. 101, 103, 107 at 109 at 1553-54, 1561 (Blietz Dep.), 125.”
15:7	15:10	“Certificates E51990 and E51988 each identify Mildred J. Hill as the author of <i>Happy Birthday to You</i> . Exs. 101, 103. This is prima facie evidence that Mildred authored the lyrics of <i>Happy Birthday to You</i> and that the lyrics were original to her.”
15:12	15:15	“Plaintiffs object to Warner/Chappell’s registration certificates, which Warner/Chappell received from the Copyright Office and which include official Copyright Office cover pages that state ‘Copy of Registration.’”

From Page:Line	To Page:Line	Text to be Deleted
16:23	17:1	Warner/Chappell's copyright certificates constitute prima facie evidence that Summy was authorized to copyright <i>Happy Birthday to You</i> ."
35:22	36:1	"Certificate E51990 describes the publication of <i>Happy Birthday to You</i> as "pf., with words" and states that "© is claimed on arrangement as easy piano solo <i>with text</i> ." Ex.101 (emphasis added). Certificate E51988 states, with respect to that publication of <i>Happy Birthday to You</i> , that "© is claimed on arrangement for unison chorus <i>and revised text</i> ." Ex. 103 (emphasis added). The plain language of these certificates demonstrates that the copyrights cover <i>the lyrics</i> to the songs, and not simply the arrangements."
36:14	36:21	"Certificate E51990 covers "arrangement as easy piano solo <i>with text</i> ," while certificate E51988 covers "arrangement for unison chorus" and ' <i>revised text</i> .' Exs. 101, 103. As discussed above, if the 'revised text' in E51988 is the second verse of <i>Happy Birthday to You</i> , then the 'text' claimed in E51990 (on the same day) must have been the 'familiar,' first verse of <i>Happy Birthday to You</i> . "Warner/Chappell's certificates are prima facie evidence that Summy had the right to copyright these lyrics."
38:4	38:6	"It is the registration certificates—both of which identify Mildred J. Hill as the author of the work—and not the applications—that receive the statutory presumption. 17 U.S.C. § 410(c); <i>see</i> Exs. 101, 103."
40:3	40:4	"In 1935, Summy published only two versions of <i>Happy Birthday to You</i> with lyrics. Exs.101, 103"
40:7	40:8	"The other version contains only the familiar lyrics, and bears the publication number 3075. Ex. 106."
40:13	41:1	Because there is no evidence that Summy published other lyrical versions of <i>Happy Birthday to You</i> in 1935, publication 3075, which was not submitted in connection with E51988, must have been submitted in connection with E51990. "The information on publication 3075 also corresponds with the Copyright Office's record of the work deposited

From Page:Line	To Page:Line	Text to be Deleted
		for E51990. The cover of publication 3075 contains the title ‘Piano Solo with words,’ which is the exact same phrase that appears in the Copyright Office deposit record for E51990, down to the capitalization of the first two words only, and which is different from the description in the application and the certificate (which include the phrases ‘pf., with words’ and ‘Arrangement as easy piano solo, with text’). . . . 103 (certificate) . . . 106 (3075 publication).”
41:2	41:10	“in completing the deposit record for E51990, the Copyright Office was actually looking at the deposit copy, which was Summy publication 3075. Other information on publication 3075 matches the description contained in the deposit record for E51990. The title of publication 3075, as shown above the sheet music, is ‘Happy Birthday to You!’—with an exclamation mark. Ex. 106. The deposit record likewise lists an exclamation mark, which was not at the end of the title on the application or the title on the certificate. Exs. 48, 103, 105. The statement ‘by Mildred J. Hill’ also appears on both the cover of publication 3075 and the deposit record for E51990. Exs. 105-06.”
41:16	41:18	“(1) an original version, which was deposited for 51990, that contains only the familiar lyrics to the song, and claims copyright in the entirety of those lyrics (‘© is claimed on arrangement on easy piano solo with text’). . . .”
43:7	43:9	As shown above, the evidence conclusively demonstrates that the E51990 deposit copy contained the familiar lyrics for <i>Happy Birthday to You</i> .”
43:11	43:12	“Here, there is no suggestion of any defect with the deposit copies submitted for E51990.”
48:13	48:15	“On December 9, 1935, Summy Co. deposited in the Copyright Office two copies of each of the works published in connection with E51990 and E51988. Exs. 101, 103.”
48:18	48:21	“the evidence shows that the only other 1935 publication of <i>Happy Birthday to You</i> that contained words aside from the E51988 deposit copy also contained the term “Copyright,”

From Page:Line	To Page:Line	Text to be Deleted
		the name of the proprietor, and the year in which copyright was secured. Ex. 106”
50:7	50:9.	“The undisputed evidence demonstrates that, at the time of the 1988 acquisition, Warner-Chappell’s predecessor-in-interest was “100% owned by its chairman, David K. Sengstack.” Ex 119. at 1761.”

Plaintiffs specifically seek to strike the following text (only) from the facts listed in the parties’ [Corrected] Joint Statement of Uncontroverted Facts (Dkt. 183 at 21-22, 24-25, 49-51, 83-86, 87, 90-91, 95-99, 104-122, 124-129, 138-141, 143-147):

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party’s Response	Admissible Evidence Supporting Response
D9.		<ul style="list-style-type: none"> • App’x Ex. 103 (E51988 registration certificate which states, “By Mildred J. Hill”) • App’x Ex. 101 (E51990 registration certificate which states, “By Mildred J. Hill”) • App’x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office • App’x Ex. 106 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
		(1935 publication of "Happy Birthday to You!," which states "By Mildred J. Hill on the cover and "Mildred J. Hill" at the top of the sheet music)		
D16.	On or about December 9, 1935, Clayton F. Summy Co. obtained copyright Registration Certificate E51990.	<ul style="list-style-type: none"> • App'x Ex. 101 (E51990 registration certificate) • App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office 		
D18.	Registration Certificate 51990 states that it applies to a "published musical composition" entitled "Happy birthday to you."	<ul style="list-style-type: none"> • App'x Ex. 101 (E51990 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561: App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
		by the Copyright Office		
D19.	The listing under the byline in Registration Certificate E51990 states: "By Mildred J. Hill, arr. by Preston Ware Orem;* pf., with words."	<ul style="list-style-type: none"> • App'x Ex. 101 (E51990 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561: App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 2, 9 		
D20.	Registration Certificate E51990 also states: "(© is claimed on arrangement as easy piano solo with text)."	<ul style="list-style-type: none"> • App'x Ex. 101 (E51990 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561: App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
		<ul style="list-style-type: none"> • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 2, 9 		
D21.	Registration Certificate E51990 lists the date of publication as December 6, 1935.	<ul style="list-style-type: none"> • App'x Ex. 101 (E51990 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561: App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl. at ¶¶ 2,9) 		
D22.	Registration Certificate E51990 states that two copies of the published musical composition were received and registered in the Copyright Office on December 9, 1935.	<ul style="list-style-type: none"> • App'x Ex. 101 (E51990 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561 App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
		Office • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 2, 9		
D23.		• App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!).		
D25.		• App'x Ex.106 (1935 publication of sheet music for Happy Birthday to You!)		
D26.		• App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!)		
D28.	The version of <i>Happy Birthday to You</i> with publication number 3075 identifies the title of the composition, on the sheet music, as "Happy Birthday	• App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) • App'x Ex. 100 (Kaplan Decl.) at ¶ 7		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
	to You!"			
D31.		<ul style="list-style-type: none"> • App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) 		
D33.		<ul style="list-style-type: none"> • App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) 		
D36.		<ul style="list-style-type: none"> • App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) 		
D41.		<ul style="list-style-type: none"> • App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) • App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 101 (E51990 registration 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
		certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54, 1561: App'x Exs. 101 and 103 (Marcotullio Exs. 9 and 4) were provided to Warner/Chappell by the Copyright Office		
D42.		• App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office		
D44.	Registration Certificate E51988 applies to a "published	• App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 109		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
	musical composition” entitled “Happy birthday to you; unison song.”	(Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 4, 9		
D45.	The listing under the byline in Registration Certificate E51988 states: “By Mildred J. Hill, rev. text and arr. of music by Mrs. R. R. Forman* 4to.”	• App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 4, 9		
D46.	Registration	• App'x Ex. 103 (E51988		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
	Certificate E51988 also states: "(© is claimed on arrangement for unison chorus and revised text)."	<p>registration certificate)</p> <ul style="list-style-type: none"> • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 4, 9 		
D47.	Registration Certificate E51988 lists the date of publication as December 6, 1935.	<ul style="list-style-type: none"> • App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl.) at 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
		¶¶ 4, 9		
D48.	Registration Certificate E51988 states that two copies of the published musical composition were received and registered in the Copyright Office on December 9, 1935.	<ul style="list-style-type: none"> • App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 4, 9 		
D67.	On or about December 6, 1962, Summy-Birchard Co. obtained Registration Certificate R306186, which was a renewal of Registration E51990.	<ul style="list-style-type: none"> • App'x Ex. 102 (certificate of registration of a claim to renewal copyright, 306186) 		
D68.	Registration Certificate R306186 applies	<ul style="list-style-type: none"> • App'x Ex. 102 (certificate of registration of a 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
	to "HAPPY BIRTHDAY TO YOU! – easy piano solo with text."	claim to renewal copyright, 306186)		
D69.	Registration Certificate R306186 states that the "Renewable Matter" is "Arrangement as easy piano solo with text."	<ul style="list-style-type: none"> App'x Ex. 102 (certificate of registration of a claim to renewal copyright, 306186) 		
D70.	Registration Certificate R306186 states "By Mildred J. Hill" in the area designated for Copyright Office notations.	<ul style="list-style-type: none"> App'x Ex. 102 (certificate of registration of a claim to renewal copyright, 306186) 		
D71.	On or about December 6, 1962, Summy-Birchard Company obtained Registration Certificate R306185, which was a renewal of Registration	<ul style="list-style-type: none"> App'x Ex. 104 (certificate of registration of a claim to renewal copyright, 306185) 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
	E51988.			
D72.	Registration Certificate R306185 applies to "HAPPY BIRTHDAY TO YOU! – Unison Song."	<ul style="list-style-type: none"> • App'x Ex. 104 (certificate of registration of a claim to renewal copyright, 306185) 		
D79.	As of October 1988, Birch Tree Group Ltd. Was 100% owned by its then chairman, David K. Sengstack.	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17 		
D82.		<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 16-17 		
D83.	Between	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
	<p>approximately September 1931 and January 1989, the Sengstack family continuously operated Warner/Chappell's predecessors-in-interest (in chronological order): Clayton F. Summy Co. (Delaware), Summy Publishing Co. (Delaware), Summy-Birchard Publishing Co. (Delaware), Summy-Birchard Co. (Delaware), Summy-Birchard Co. (Illinois), Summy-Birchard Co. (Wyoming), Sumco Corp. (Wyoming), Summy-Birchard Co. (Wyoming), The Birch Tree Group Ltd. (Wyoming), Birch</p>	<p>October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.)</p> <ul style="list-style-type: none"> • App'x Ex. 100 (Kaplan Decl.) at ¶ 17 		

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
	Tree Group Ltd. (Wyoming), Summy-Birchard, Inc. (Wyoming).			
P59			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Declaration of Adam I. Kaplan ("Kaplan Decl.") at ¶ 17
P60			Disputed. Summy-Birchard Company has been operated	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P61			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	
P62			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
P68			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P115				<ul style="list-style-type: none"> • App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) at 1221-23 • App'x Ex. 101 (E51990

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
				registration certificate, marked as Marcotullio Ex. 9) at 1205-07
P116			Disputed. Defendants do possess copies of Happy Birthday to You that were published in 1935 as a "Piano Solo with words." Defendants do not possess a copy of the specific copy deposited with the Copyright Office.	App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) at 1220-23 App'x Ex. 100 (Kaplan Decl.) at ¶ 7
P192			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	(Kaplan Decl.) at ¶ 17
P193			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			then chairman David K. Sengstack.	
P196			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P197			Disputed. Summy-Birchard Company has been operated continuously by the	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P198		.	Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			Group Ltd., was 100% owned by its then chairman David K. Sengstack.	
P202			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P208			Disputed. Summy-Birchard Company has	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P209			Disputed. Unsupported by the evidence. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988,	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	
P224			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			David K. Sengstack.	
P225			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P226			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P227			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd.,	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			was 100% owned by its then chairman David K. Sengstack.	
P228			Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P229			Disputed. Summy-Birchard Company has been operated	<ul style="list-style-type: none"> • App'x Ex. 119 (Excerpt of October 1988 "Confidential Information

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
P230			Disputed. Unsupported by the evidence. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.)

Fact No.	Text to be Deleted			
	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Betsy C. Manifold filed concurrently herewith, all the pleadings and documents on file herein, such other oral and documentary evidence as may be presented at or before the hearing on this motion, and all facts of which this Court may take judicial notice.

This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on December 12, 2014.

Dated: December 22, 2014

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

By: /s/ Betsy C. Manifold
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