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

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

Plaintiffs,

v.

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

Defendants.

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

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO EXCLUDE
EVIDENCE**

) Date: February 9, 2015
) Time: 9:30 A.M.
) Courtroom: 650
) Judge: Hon. George H. King,
Chief Judge

1 renewals, marked as Plaintiffs' Exhibits 67 and 68 (for R306185 and R306186), are
2 materially different than the copies of unofficial documents proffered by Defendants.

3 5. Defendants base their claim that Mildred Hill wrote the familiar *Happy*
4 *Birthday* lyrics upon the "fact" that her name appears on the purported registration
5 certificates for E51988 and E51990 and then argue they are entitled to a presumption
6 that Mildred Hill wrote the Song based on the "fact" stated in those purported
7 registration certificates.

8 6. After reviewing the official additional registration certificates, Mildred
9 Hill's name does not appear on the official registration certificates for the original
10 copyrights, which are marked as Plaintiffs' Exhibits 44 and 48.

11 7. The Court accepts Plaintiffs' Exhibits 44, 48, 67, and 68 as the official
12 sealed, signed, and certified additional registration certificates and strikes
13 Defendants' Exhibits 101-104, which are not registration certificates or additional
14 registration certificates.

15 8. Defendants also contend that Exhibit 106 is a copy of the work covered
16 by E51990.

17 9. Based on the record before the Court, no one with personal knowledge
18 has identified Exhibit 106 as a copy of the work covered by E51990.

19 10. To conclude that Exhibit 106 represents the work covered by E51990 is
20 speculation because Defendants do not have a copy of the work deposited with the
21 1935 application filed with the U.S. Copyright Office for E51990 (the copyright for
22 a piano arrangement composed by Preston Ware Orem as an employee-for-hire of
23 the Clayton F. Summy Co.).

24 11. Defendants' speculative argument that Exhibit 106 "must have been"
25 the work covered by E51990 fails here.

26 12. Because Exhibit 106 has not been authenticated by anyone with
27 knowledge of what that work was and meets none of the other criteria for
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1 admissibility, it also should be stricken from the Appendix and all references to it
2 stricken from the Joint Brief and the SOF.

3 13. Defendants rely upon Exhibit 119, an October 1988 “Confidential
4 Information Memorandum” (“CIM”) regarding Birch Tree Group Ltd. (“BTG”) to
5 support the chain of title to their claim of ownership of E51988 and E51990 and the
6 renewals thereof. Jt. Br. at 50:7-9 (*citing* App’x, Ex. 119 at 1761).

7 14. The only witness who claims to “recognize” Exhibit 119 is Defendants’
8 outside counsel, Adam Kaplan, an associate with Munger Tolles & Olson LLP. Mr.
9 Kaplan does not claim to have, and plainly lacks, personal knowledge of the CIM or
10 its creation.

11 15. The out-of-court statements from the unknown author in the CIM
12 regarding BTG, which Defendants offer to prove the truth of the matter asserted, are
13 inadmissible hearsay.

14 16. Furthermore, there is no foundation for the hearsay statements in the
15 CIM regarding Defendants’ chain of title.

16 17. The CIM does not indicate that it was prepared by a person with
17 personal knowledge of BTG’s ownership and does not identify any author – only
18 that it was prepared by Wertheim Schroder & Co. There is no indication that anyone
19 with personal knowledge of the purported facts stated in the CIM was competent to
20 testify as to those purported facts.

21 17. The CIM’s out-of-court statements from the unknown author, which
22 Defendants proffer to prove the truth of the matter asserted, are inadmissible
23 hearsay.

24 18. Defendants’ Exhibit 119 should be stricken from the Appendix and any
25 reference to it stricken from the Joint Brief and the SOF.

26 **ORDER**

27 **THEREFORE**, based upon the foregoing Findings of Fact and Conclusions
28 of Law, Plaintiffs’ Motion To Exclude Evidence is hereby **GRANTED**, as follows:

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1. Defendants’ Exhibits 101-104 (App’x at 1204-1217), 106 (*id.* at 1220-1223), and 119 (*id.* at 1760) in 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”) are excluded.
2. All references to those exhibits as well as the arguments based upon them are excluded 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”).
3. The specific text to be stricken from the Joint Brief and from the SOF is set in the chart attached here as Exhibit A.

IT IS SO ORDERED.

Dated: _____

HON. GEORGE H. KING, CHIEF JUDGE
UNITED STATES DISTRICT COURT JUDGE