

E-FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 13-4460 GHK (MRWx) Date May 18, 2015

Title *Rupa Marya, et al. v. Warner/Chappell Music, Inc.*

Presiding: The Honorable

GEORGE H. KING, CHIEF U. S. DISTRICT JUDGE

Beatrice Herrera

N/A

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: (In Chambers) Order Re: Further Briefing on Summary Judgment Motion

On March 23, 2015, we took the Parties' Cross-Motions for Summary Judgment under submission. Reviewing the record, we do not believe the Parties have adequately addressed Plaintiffs' argument that Patty Hill abandoned the copyright to the *Happy Birthday to You* lyrics. The issue was barely discussed at oral argument and the summary judgment briefing frequently conflates the issue with the question of whether the copyright was lost due to general publication. Accordingly, we hereby **ORDER** the parties to meet and confer, preferably in person, and submit a **joint supplementary brief** of no more than twenty-four pages (divided evenly between the Parties) on the issue of abandonment **within fourteen days hereof**. The Parties are further **ORDERED** to attend oral argument on the issue on **Tuesday, June 9, 2015 at 9:30 A.M.** In their joint brief, the Parties shall bear in mind the following:

“[A]bandonment of copyright occurs only if there is an intent by the copyright proprietor to surrender rights in his work.” *A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1026 (9th Cir. 2001) (internal quotation marks omitted). Under Ninth Circuit law, abandonment “must be manifested by some overt act indicative of a purpose to surrender the rights and allow the public to copy.” *Hampton v. Paramount Pictures Corp.*, 279 F.2d 100, 104 (9th Cir. 1960).

Accordingly, Plaintiffs shall state what evidence there is of an overt act taken by Patty Hill abandoning her alleged rights to the *Happy Birthday* lyrics. Defendants shall state why Plaintiffs' evidence of an overt act is insufficient as a matter of law and, even if it is sufficient, what contrary evidence exists such that there would be a triable issue on the question of abandonment in any event. Both Parties shall address the admissibility of all evidence relevant to this issue with fully articulated arguments and citations to applicable authority supporting their positions.

The Parties shall *not* submit any new evidence. Moreover, for purposes of discussing this issue, the Parties shall not assume that the question of abandonment is conclusively resolved by reference to the presumption of validity. Finally, no further briefing is needed on the question of whether a general publication occurred before 1935, and the Parties would do well to bear in mind the analytical distinction between abandonment and loss of a copyright due to the failure to follow statutory

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-4460 GHK (MRWx)	Date	May 18, 2015
Title	<i>Rupa Marya, et al. v. Warner/Chappell Music, Inc.</i>		

formalities. *See, e.g.*, 2 Patry on Copyright § 5:155 (“Abandonment . . . turns on the copyright owner’s intent, while forfeiture results by operation of law regardless of intent.”).

IT IS SO ORDERED.

_____ : _____
 Initials of Deputy Clerk Bea
