

Index No. *CV 20-439*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

THE HILL FOUNDATION, INC.,

Plaintiff,

-against-

POSTAL TELEGRAPH-CABLE COMPANY,

Defendant.

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(Original)

BILL OF COMPLAINT.

SAMUEL MANN,

Attorney for Plaintiff.

70 PINE STREET,
BOROUGH OF MANHATTAN,
CITY OF NEW YORK.



Pm.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

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THE HILL FOUNDATION, INC.,

Plaintiff,

-against-

POSTAL TELEGRAPH-CABLE COMPANY,

Defendant.

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Plaintiff, for its cause of action against the above-named defendant, respectfully shows to the Court and alleges upon information and belief:

FIRST: That at the time of the execution and delivery of the hereinafter mentioned and described assignment, plaintiff was and still is a New York corporation.

SECOND: That at all times hereinafter mentioned the defendant was and still is a New York corporation.

THIRD: That this action arises under the Copyright Laws of the United States, by reason of which jurisdiction is conferred upon this Court.

FOURTH: That at all times hereinafter mentioned the defendant was and still is engaged in the business of transmitting and delivering domestic telegrams and foreign cablegrams and radio messages, for which it charges and receives certain tolls or tariffs prescribed by it. The amount of toll or tariff charged by defendant for the transmission by it of a domestic telegram covers its delivery either by messengers employed by defendant or where no messengers are employed by telephoning such telegram to the addressee.

FIFTH: That prior to October 13th, 1893, one PATTY S. HILL and MILDRED J. HILL, her sister, composed and wrote the

music and words of a number of songs collectively entitled "SONG STORIES FOR THE KINDERGARTEN"; and thereby became the proprietors of the music and words of said songs entitled as aforesaid.

SIXTH: Thereafter the said PATTY S. HILL and MILDRED J. HILL licensed one CLAYTON F. SUMMY to copyright said book in his own name but as their agent; and in accordance with said license SUMMY entered the songs collectively entitled as aforesaid in the office of the Register of Copyrights of the United States in his name under copyright number 45,997 on the 13th day of October, 1893.

SEVENTH: Said book was subsequently revised and enlarged by the said PATTY S. HILL, and a new edition thereof so revised and enlarged was duly copyrighted in the name of SUMMY on the 8th day of June, 1896, under copyright number 34,260.

EIGHTH: That one of the songs contained in the book mentioned and described in paragraphs "FIFTH" to "SEVENTH" inclusive hereof is one entitled "GOOD MORNING TO ALL" which, with words written by the said PATTY S. HILL, was later entitled "HAPPY BIRTHDAY TO YOU" and was included among the songs copyrighted as aforesaid by the said SUMMY as the agent for PATTY S. HILL and MILDRED J. HILL.

NINTH: The said song, "HAPPY BIRTHDAY TO YOU", written and composed by the said PATTY S. HILL and MILDRED J. HILL, thereafter acquired a nation-wide popularity which has continued down to the present time; performances thereof being given vocally, orchestrally, in various dramatic performances on the stage and in moving pictures and over the radio; all of which was and still is known to this defendant.

TENTH: The said MILDRED J. HILL having thereafter died prior to the expiration of the original copyrights mentioned and described above, renewals of said copyrights were thereafter obtained from the Register of Copyrights of the United States as

follows:

a. Original copyright number 45,997; renewal registration in the name of JESSICA M. HILL (a sister of the said MILDRED J. HILL and PATTY S. HILL) as next of kin under number R 19,043 on the 3rd day of September, 1921.

b. Original copyright number 34,260: renewal registration in the name of the aforesaid JESSICA M. HILL as next of kin under number R 25,771 on the 9th day of January, 1924; and

c. Original copyright number 20,441: renewal registration in the name of the aforesaid PATTY S. HILL under number R 36,618 on the 3rd day of January, 1927;

the aforesaid song "HAPPY BIRTHDAY TO YOU" being included in the renewal copyrighted works above set forth.

ELEVENTH: That some time prior to or in or about the month of February, 1938, the defendant herein conceived or had suggested to it and adopted the idea of transmitting and delivering, as a regular part of its business, birthday greetings for a fixed toll or tariff; the manner or method of transmitting such greetings being substantially as follows: in consideration of the payment to it of a toll or tariff prescribed by it, the defendant would undertake to convey birthday greetings from any sender by causing a messenger in its employ to call at the residence of the addressee or at any other address designated by the sender and there have such messenger sing the words and music of the aforesaid copyrighted song "HAPPY BIRTHDAY TO YOU" to the recipient of such birthday greetings, or, where such messenger was not or could not be used to sing said song the defendant would cause the same to be sung by one of its employees over the telephone; and in either case the name of the sender of such greetings would be furnished at the end of each such transmission to the recipient thereof.

TWELFTH: Defendant then put into execution the idea of transmitting and delivering, for a prescribed toll or charge and as a regular part of its business, birthday greetings by the use of said copyrighted song "HAPPY BIRTHDAY TO YOU" and in the manner described above; and as plaintiff and its assignors are informed and commencing with February, 1938, and for a period of more than three

and one-half years continuously thereafter the defendant accepted for transmission and delivery and did transmit and deliver, as plaintiff is informed and verily believes, upwards of fifty thousand of such birthday messages or greetings throughout the several states of the United States of America and elsewhere, in the manner mentioned and described in paragraph ELEVENTH hereof, and for which it charged and received for each such message or birthday greeting transmitted and delivered by it a toll or tariff prescribed by it.

THIRTEENTH: That the use by the defendant herein of said copyrighted song "HAPPY BIRTHDAY TO YOU" in the transmission and delivery of each and every birthday greeting transmitted and delivered by it in the manner and at the times set forth in paragraphs ELEVENTH and TWELFTH hereof was without the consent or authority of plaintiff's assignors, the aforesaid PATTY S. HILL and JESSICA M. HILL, who were then the owners and proprietors of said copyrighted song, or of this plaintiff, or of any other person, firm or corporation authorized by plaintiff's assignors or by this plaintiff to grant licenses in respect to the use of said copyrighted song; but on the contrary this defendant in each and every instance infringed said copyrighted song or work by its use in the manner and for the purpose hereinabove set forth.

FOURTEENTH: Prior to the commencement of this action plaintiff's assignors, the aforesaid PATTY S. HILL and JESSICA M. HILL, by an instrument in writing bearing date the 2nd day of June, 1942, duly assigned to the plaintiff herein all their right, title and interest, joint and several, in and to the above-mentioned and described copyrights and renewals thereof, together with all their right, title and interest in and to licenses, agreements and contracts for the publication and sale of said 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 or renewal copyrights, and howsoever arising; which assignment was duly recorded in the Copyright Office of the United States of America on June 8th, 1942, in Copyright Office Book 485, at pages 242-243, in conformity with the laws of the United States respecting copyrights; and plaintiff is still the owner and holder thereof.

FIFTEENTH: That thereafter plaintiff notified defendant that it, the said defendant, infringed the aforesaid copyrights and requested said defendant to account to plaintiff for the proceeds received by it by reason of such infringement; but defendant refused and continues to refuse to render any accounting whatsoever.

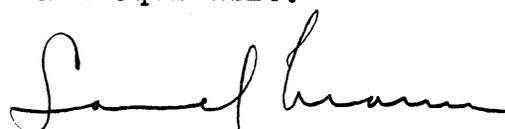
WHEREFORE plaintiff demands judgment:

1. That the defendant, its agents, servants and employees, be enjoined and restrained during the pendency of this action and permanently from infringing said copyrights of the plaintiff in any manner.

2. That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and to account and pay over to plaintiff all the gains, profits, and advantages derived by defendant from its infringement of plaintiff's copyrights or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than two hundred and fifty dollars.

3. That defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

4. That the plaintiff may have such other and further relief in the premises as may be just and equitable.



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