

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE HILL FOUNDATION, INC., :

Plaintiff, : Civil 19-377

~~-against-~~ :

CLAYTON F. SUMMY CO., :

Defendant. :

NOTICE TO
TAKE DEPOSITIONS

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SIR:

PLEASE TAKE NOTICE, that the depositions of Patty S. Hill and Jessica M. Hill, the plaintiff's assignors herein, will be taken by the undersigned upon oral examination, on the 28th day of January, 1943, at Room 506 in the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, before the Judge there presiding, or before some other person authorized by law to take depositions, at ten o'clock in the forenoon of that day, the said oral examinations to be continued from day to day until completed.

Dated, New York City
January 18, 1943.

Yours, etc.

BEEKMEN, BOGUE, STEPHENS & BLACK
Attorneys for Defendant
Office & P. O. Address
15 Broad Street
Borough of Manhattan
New York City

TO:

SAMUEL MANN, ESQ.
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70 Pine Street
New York City

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

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THE HILL FOUNDATION, INC.,

Plaintiff,

--against--

CLAYTON F. SUMMY CO.,

Defendant.

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Paragraph of
Amended Com-
plaint.

FIRST CAUSE OF ACTION.

FIRST Admitted.

SECOND Admitted.

THIRD Admits that prior to October 13th, 1893, Patty S. and Mildred J. Hill prepared a compilation of songs and music entitled "Song Stories For The Kindergarten", whereof the music was composed and/or arranged by said Mildred J. Hill, and whereof the words were written and/or adapted by the said Patty S. Hill, and that said Patty S. Hill and her sister, Mildred J. Hill, thereby obtained some right, title and interest, respectively or jointly, in said compilation and the several parts thereof; rest denied.

FOURTH Admits that on or about February 1st, 1893, Patty S. Hill and Jessica M. Hill executed and delivered to one Clayton F. Summy, who was then engaged in the business of publishing and dealing in music and musical compositions in sheet music and book form, a written instrument whereby there was sold and assigned to said Clayton F. Summy the said book entitled "Song Stories For The Kindergarten", and all of the right, title and interest therein of the said Patty S. Hill and Mildred J. Hill, and wherein and whereby the said Summy was authorized and empowered to copyright the said book in his own name and to publish and sell said book, all in consideration of the said Summy's accepting, copyrighting and publishing, and offering for sale in the usual course of business, said book, and from the proceeds of such sales, if any, paying to the said Patty S. Hill and Mildred J. Hill the sum of ten per cent (10%) of the retail price per copy for each and every copy so sold; rest denied.

FIFTH and SEVENTH Substantially admitted except that trusteeship thereof is denied.

SIXTH Admitted.

EIGHTH Admits that the book was thereafter revised and enlarged but denies having knowledge or information sufficient to form a belief that such revision and enlargement were by Patty S. Hill and admits that book was copyrighted by the first corporation on June 8th, 1896.

NINTH Substantially admitted.

- TENTH Substantially admitted except that it denies knowledge or information sufficient to form a belief that the new words were written by Patty S. Hill and that the song was included among the songs copyrighted by Summy.
- ELEVENTH Admitted in its entirety.
- TWELFTH Admitted in its entirety.
- THIRTEENTH Denied for lack of knowledge or information sufficient to form a belief.
- FOURTEENTH Denied except that defendant admits that subsequent to the renewal of the several copyrights as set forth in paragraph Twelfth of the amended complaint, the first corporation and thereafter a successor corporation, Clayton F. Summy Co., also organized under the laws of the State of Illinois, and thereafter this defendant, by agreement with the said Patty S. Hill and Jessica M. Hill, received from said Patty S. Hill and Jessica M. Hill at least all of the right, title and interest in respect of said books or works mentioned in paragraphs Third to Tenth of the amended complaint as had theretofore been granted by said instrument of February 1, 1893 and said agreement of April 17, 1899.
- FIFTEENTH Denied, except that defendant admits that at the time of the execution of the instrument and agreement respectively hereinbefore referred to sound motion pictures were unknown commercially.
- SIXTEENTH Denied, except that defendant admits that at the times therein referred to Summy and the second corporation, therein referred to, continued to publish and offer for sale the books and works therein referred to.
- SEVENTEENTH Defendant admits that the said Summy individually, as distinguished from the two Illinois corporations mentioned in the amended complaint, retired from business prior to the date of the incorporation of the defendant herein, and avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that on or about May 17, 1933 the second Illinois corporation was dissolved by action of the Attorney General of the State of Illinois for non-payment of taxes.
- EIGHTEENTH Denied, except that it admits it entered into various agreements with producers of sound motion pictures and of stage or dramatic performances with respect to the use of the said song entitled "Happy Birthday to You", without the express permission or consent of the said Patty S. Hill and Jessica M. Hill, avers that it is without knowledge or information sufficient to form a belief as to the truth or averment that said agreements were made without the knowledge of said Patty S. Hill and Jessica M. Hill, admits that it held itself out as having the right to enter into such agreements, and admits that in consequence of such agreements it has received from such producers sums of money by way of royalties, without disclosing the amounts thereof to the said Patty S. Hill, or the said Jessica M. Hill or the plaintiff.
- NINETEENTH Denied for lack of knowledge or information sufficient to form a belief.
- TWENTIETH Defendant admits it has collected upwards of \$5,000 from such producers pursuant to such agreements with such producers, and that it is continuing to grant such producers, without the express permission or consent of the said Patty S. Hill and Jessica M. Hill or of the plaintiff, rights for the use of the said song above

TWENTIETH (cont.) referred to, to wit, "Happy Birthday to You", and that it will possibly continue to collect and receive royalties therefrom, avers that it is under no obligation to disclose the amounts thereof to the plaintiff; otherwise denied.

TWENTY-FIRST Denied.

TWENTY-SECOND Denied for lack of any knowledge or information sufficient to form a belief.

SECOND CAUSE OF ACTION.

TWENTY-THIRD Realleges denials and admissions with respect to paragraphs 1 to 14 of amended complaint.

TWENTY-FOURTH Admits that during 1934 and 1935 Jessica M. Hill and this defendant entered into several so-called royalty contracts wherein and TWENTY-FIFTH TWENTY-SIXTH whereby it was provided that the said Jessica M. Hill sold, assigned and transferred to this defendant various piano arrangements of the said musical composition "Good Morning To All" and all world rights (including publishing, public performance and mechanical reproduction rights) of and to copyright, extension of copy-right, publication, sale and performance of said work in and for the United States of America, Europe, Great Britian and its colonies, and wherein and whereby among other things this defendant agreed to pay to the said Jessica M. Hill, in each instance, five per cent (5%) of the marked retail price on the first seven hundred copies sold of the particular arrangement covered by the particular royalty contract, and ten per cent (10%) on all subsequent sales, subject to the credit to this defendant of \$25 in each instance for having the particular arrangement made, and wherein and whereby it was further provided that an accounting should be rendered and payment made once each year, if desired, but that no accounting should be required unless and until five hundred copies of the particular arrangement had been sold; and wherein and whereby it was further provided that, should this defendant receive any payment for publication of said work in any foreign country, or for the mechanical reproduction or performance thereof in any country, or for any arrangements that are permitted to be published by any other publishing house under royalty contract, one-half of the amount so received should be paid to the said Jessica M. Hill; rest denied.

TWENTY-SEVENTH Substantially admitted.

TWENTY-EIGHTH Denied for lack of knowledge or information sufficient to form a belief.

TWENTY-NINTH Denies that the licenses are revocable at will, and that it has been guilty of any breach of duty.

THIRTIETH Denied.

THIRD CAUSE OF ACTION.

THIRTY-FIRST Repeats and reiterates denials and admissions.

THIRTY-SECOND Substantially admitted; alleges a nephew also survived and denies knowledge or information as to surviving next of kin being of full age.

EXHIBIT 40
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- THIRTY-THIRD Substantially admitted.
- THIRTY-FOURTH Denied for lack of knowledge or information sufficient to form a belief except that it admits making such payments to Jessica M. Hill subsequent to August, 1931.
- THIRTY-FIFTH Admitted.
- THIRTY-SIXTH Denied for lack of knowledge or information sufficient to form a belief.
- THIRTY-SEVENTH
- THIRTY-EIGHTH
- THIRTY-NINTH Admits the purchase from Allen Davy of the right, title and interest of William Wallace Hill, deceased, in and to the copyrights described in this paragraph for the consideration recited; denies knowledge or information sufficient to form a belief that such purchase was without the knowledge, permission or consent of plaintiff's assignors; rest denied.
- FORTIETH Substantially admitted.
- FORTY-FIRST Substantially admitted.
- FORTY-SECOND Denied for lack of knowledge or information sufficient to form a belief.
- FORTY-THIRD Denied.