

Civil 19-377
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE HILL FOUNDATION, INC.,

Plaintiff,

-against-

CLAYTON F. SUMMY CO.,

Defendant

JRC 273 869 A

ANSWER TO AMENDED COMPLAINT

BEEKMAN, BOGUE, STEPHENS & BLACK
Attorneys for Defendant

15 BROAD ST.,
BOROUGH OF MANHATTAN,
NEW YORK.

J. S. District Court
FILED
DEC 29 1942
*Dec and bench record
is being corrected
12/28/42
Summy
Atty for Plaintiff*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE HILL FOUNDATION, INC., :
 : ANSWER TO
Plaintiff, : AMENDED COMPLAINT
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-against- : Civil 19-377
CLAYTON F. SUMMY CO., :
 :
Defendant. :
----- X

The defendant, answering the amended complaint herein, by its attorneys Beekman, Bogue, Stephens & Black:

AS TO THE FIRST ALLEGED CAUSE OF ACTION

1. Referring to the allegations of paragraph Third of the amended complaint, admits and avers that prior to October 13, 1893, one Patty S. Hill and her sister, 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; and except as so admitted and averred the defendant denies each and every allegation in said paragraph contained.

2. Referring to the allegations of paragraph Fourth of the amended complaint, admits and avers that on or about February 1, 1893, said Patty S. Hill and Mildred J. 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; and except as so admitted and averred the defendant denies each and every allegation in said paragraph contained.

3. Referring to the allegations of paragraph Fifth and Seventh of the amended complaint, admits and avers that thereafter and on October 13, 1893, in accordance with the provisions of said written instrument hereinbefore referred to, the said Clayton F. Summy copyrighted the said book in the Copyright Office of the United States of America, in Washington, D.C. under copyright No. 45997Y, and that Summy and the first corporation referred to in the amended complaint published and offered for sale and did sell said book as in said written instrument provided; and except as so admitted and averred the defendant denies each and every allegation in said paragraphs contained.

4. Referring to the allegations of paragraph Eighth of the amended complaint, admits that said book was thereafter revised and enlarged, states that it is without knowledge or information sufficient to form a belief as to the truth of the averment that such revision and enlargement were by the aforesaid Patty S. Hill, and admits and avers

that the said new edition thereof was thereafter copyrighted by Clayton F. Summy Co., an Illinois corporation (being the corporation referred to in the amended complaint and herein as "the first corporation"), in the Copyright Office of the United States of America, in Washington, D. C. under copyright No. 34260B² on June 8th, 1896; and except as so admitted and averred the defendant denies each and every allegation in said paragraph contained.

5. Referring to the allegations of paragraph Ninth of the amended complaint, admits and avers that thereafter and on or about April 17, 1899 the said Mildred J. Hill and the first corporation entered into an agreement in writing, wherein and whereby the said Mildred J. Hill sold, assigned and transferred to the first corporation certain songs from the said book hereinbefore referred to, to be published as a collection entitled "Song Stories For The Sunday School", and all rights of and to copyright, extension of copyright, publication, sale and performance of said work in and for the United States of America and Europe, and wherein and whereby the first corporation agreed to pay to the said Mildred J. Hill \$1.20 per hundred for all copies sold of said work, excepting the first three hundred copies; and except as so admitted and averred the defendant denies each and every allegation in said paragraph contained.

6. Referring to the allegations in paragraph Tenth of the amended complaint, admits and avers that one of the songs contained in the books mentioned and described in paragraphs Third to Ninth inclusive of the amended complaint is one entitled "Good Morning to All", which, with different words, later became entitled "Happy Birthday to

You", avers that it is without knowledge or information sufficient to form a belief as to the truth of the averment that said new words were written by the aforesaid Patty S. Hill, admits and avers that the said song entitled "Good Morning to All" was included among the songs copyrighted as aforesaid by the said Clayton F. Summy and the first corporation respectively; and except as so admitted and averred the defendant denies each and every allegation in said paragraph contained.

7. Avers that it is without knowledge or information sufficient to form a belief as to the truth of each and every averment contained in paragraph Thirteenth of the amended complaint.

8. Denies each and every allegation contained in paragraph Fourteenth of the amended complaint, except that the defendant admits and avers 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.

9. Denies each and every allegation contained in paragraph Fifteenth of the amended complaint, except that the defendant admits that at the time of the execution of the instrument and agreement respectively hereinbefore referred

insufficient to form a belief as to the truth of the averment
that it is without knowledge or information sufficient

to sound motion pictures were unknown commercially.

10. Denies each and every allegation contained in paragraph Sixteenth of the amended complaint, except the 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.

11. Referring to the allegations in Paragraph Seventeenth of the amended complaint, 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.

12. Denies each and every allegation contained in paragraph Eighteenth of the amended complaint, except that it admits that 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 of the averment that said agreements were made without the knowledge of said Patty S. Hill or 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.

13. Referring to paragraph Nineteenth of the amended complaint, the defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that said Patty S. Hill and Jessica M. Hill did not learn of the said agreements with such producers until about November, 1941, and otherwise the defendant denies each and every allegation in said paragraph contained.

14. Referring to the allegations in paragraph Twentieth of the amended complaint, this defendant admits and avers that it has collected upwards of \$5,000 from such producers pursuant to such agreements with such producers, and that it is continuing to grant to 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 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; and except as so admitted and averred, the defendant denies each and every allegation in said paragraph contained.

15. Denies each and every allegation contained in paragraph Twenty-first of the amended complaint.

16. Avers that it is without knowledge or information sufficient to form a belief as to the truth of each and every averment contained in paragraph Twenty-second of the amended complaint.

AS TO THE SECOND ALLEGED CAUSE OF ACTION

17. Referring to paragraph Twenty-third of the amended complaint, and the repetitions and reiterations therein contained, the defendant repeats and realleges the denials, admissions and averments herein contained in paragraphs 1 to 8 inclusive.

18. Referring to the allegations in paragraphs Twenty-fourth, Twenty-fifth and Twenty-sixth of the amended complaint, admits and avers that during the calendar years 1934 and 1935 the said Jessica M. Hill and this defendant entered into several so-called royalty contracts wherein and 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 copyright, publication, sale and performance of said work in and for the United States of America, Europe, Great Britain 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; and except as so admitted and averred the defendant denies each and every allegation in said paragraphs contained.

19. Referring to the allegations in paragraph Twenty-seventh of the amended complaint, admits and avers that a copyright on the musical composition entitled "Good Morning To All" was duly registered in the name of the first corporation, under No. C142468 on February 7, 1907, and renewal thereof was obtained in the office of the Register of Copyrights in the Copyright Office of the United States on January 2nd, 1935, under No. R34877, in the names of the said Jessica M. Hill and Patty S. Hill as next of kin; and except as so admitted and averred the defendant denies each and every allegation in said paragraph contained.

20. This defendant is without knowledge or information sufficient to form a belief as to the truth of each and every averment contained in paragraph Twenty-second of the amended complaint, the allegations of which said paragraph are repeated and reiterated in paragraph Twenty-eighth of the amended complaint.

21. Referring to the allegations in paragraph Twenty-ninth of the amended complaint, denies that the instruments therein referred to are by their terms revocable at the will of said Jessica M. Hill and denies that it has been guilty of any breach of duty as alleged in the amended complaint,

paper writing reading as follows, to wit:

"The undersigned, Patty S. Hill, Jessica M. Hill, and William Wallace Hill, being the sole heirs at law of the late Mildred J. Hill, and all of legal age, hereby request you to make payment of any royalties due under contracts with the late Mildred J. Hill, to Jessica M. Hill, 620 West 116th Street, New York City, N.Y., and we hereby indemnify and hold you harmless against all claims whatsoever by reason of your action in making such payments as herein requested."

26. Referring to the allegations in paragraph Thirty-fourth of the amended complaint, avers that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation in said paragraph contained, except that it admits that subsequent to August, 1931, it made payments to the said Jessica M. Hill of royalties payable to the said Mildred J. Hill.

27. The defendant is without knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs Thirty-sixth, Thirty-seventh and Thirty-eighth of the amended complaint.

28. Referring to the allegations in paragraph Thirty-ninth of the amended complaint, the defendant admits that in March, 1939 it purchased from one Allen Davy, as administrator de bonis non with the will annexed of the estate of William Wallace Hill, deceased, for the recited consideration of \$25, all of the right, title and interest of the said administrator, and all of the right, title and interest of the said William Wallace Hill, deceased, and all of the right, title and interest of the estate of the said William Wallace Hill, deceased, in and to the property described in the said paragraph of the amended complaint; avers that it is without knowledge or information sufficient to form a belief as to the truth of the averment that such

purchase was without the knowledge, permission or consent of the said Patty S. Hill and Jessica M. Hill; and except as hereinabove admitted and averred, the defendant denies each and every allegation in the said paragraph contained.

29. Referring to the allegations in paragraph Fortieth of the amended complaint, admits and avers that the copyrights and renewals referred to in paragraph Thirty-ninth of the amended complaint are some of the same copyrights and renewals referred to in various instruments and agreements running to or entered into by said Clayton F. Summy, said Illinois corporations, and this defendant with respect to the publication, sale and performance of said works; and except as so admitted and averred the defendant denies each and every allegation in said paragraph contained.

30. Referring to the allegations in paragraph Forty-first of the amended complaint, admits that this defendant furnished the money to pay the aforesaid purchase price to the said Allen Davy, as administrator as aforesaid, for the conveyance by him to this defendant of the property hereinbefore referred to; and that this defendant claims to be the holder of some interest in and to the aforesaid copyrights and the renewals thereof; and except as so admitted the defendant denies each and every allegation in the said paragraph contained.

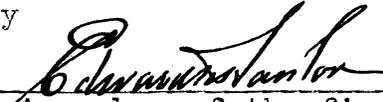
31. The defendant is without knowledge or information sufficient to form a belief as to the truth of each and every averment contained in paragraph Twenty-second of the amended complaint, the allegations of which said paragraph are repeated and reiterated in paragraph Forty-second of the amended complaint.

in paragraph Forty-third of the amended complaint.

WHEREFORE, the defendant demands judgment dismissing the amended complaint herein, together with the costs and disbursements of this action.

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By



A member of the firm of
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defendant.