

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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A N S W E R

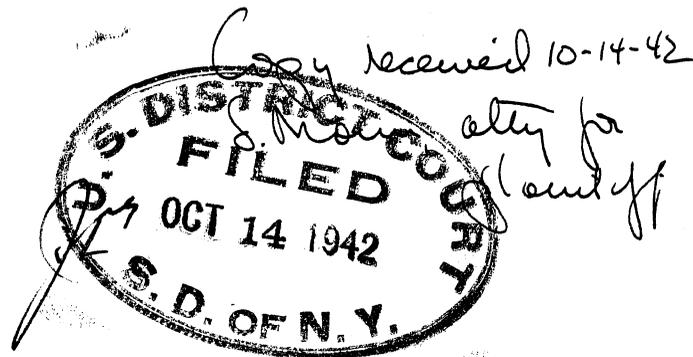
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BEEKMAN, BOGUE, STEPHENS & BLACK  
*Attorneys for* Defendant

15 BROAD ST.,  
BOROUGH OF MANHATTAN,

NEW YORK.





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.

3. Referring to the allegations of paragraph Fifth of the 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 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.

4. Referring to the allegations of paragraph Sixth of the 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

averred the defendant denies each and every allegation in  
the several parts thereof; and except as so admitted and  
interleaf, respectively of 'MILLY' in said composition and  
MILLY 1. HILL, respectively obtained some right, title and  
benefit 2. HILL, and such as said benefit 2. HILL and yet stated,

Office of the United States of America, in Washington,  
D. C. under copyright No. 45997Y; and published and offered  
for sale the said book as in said written instrument provid-  
ed; 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  
Seventh of the complaint, admits that said book was there-  
after 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 one Clayton F. Summy Co., an Illinois corporation (herein-  
after referred to as "the first Illinois corporation"), in  
the Copyright Office of the United States of America, in  
Washington, D. C. under copyright No. 34260B<sup>2</sup> on June 8th,  
1896; and except as so admitted and averred the defendant  
denies each and every allegation in said paragraph contained.

6. Referring to the allegations of paragraph  
Eighth of the complaint, admits and avers that thereafter  
and on or about April 17, 1899 the said Mildred J. Hill  
and the first Illinois corporation entered into an agree-  
ment in writing, wherein and whereby the said Mildred J.  
Hill sold, assigned and transferred to the said corporation  
the 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 said Illinois corporation

... and except as so admitted and averred the defendant  
for the said book as in said written instrument hereinafter  
D. C. number copyright no. 733341 and distributed and offered  
Office of the United States of America, in Washington

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.

7. Referring to the allegations in paragraph  
Ninth of the complaint, admits that one of the songs con-  
tained in the books mentioned and described in paragraphs  
Fourth to Eighth inclusive of the 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 includ-  
ed among the songs copyrighted as aforesaid by the said  
Clayton F. Summy and the first Illinois corporation respect-  
ively; and except as so admitted and averred the defendant  
denies each and every allegation in said paragraph contained.

8. Admits the allegations of paragraph Tenth of  
the complaint, except that it denies upon information and  
belief the averment that said song "Happy Birthday to You"  
was written and composed by the said Patty S. Hill and one  
Jessica M. Hill.

9. Denies each and every allegation contained in  
paragraph Twelfth of the complaint, except that the defend-  
ant admits and avers that subsequent to the renewal of the  
several copyrights as set forth in paragraph Eleventh of  
the complaint, the first Illinois corporation and thereafter

unreleg copies? and except as so admitted and averred the  
for all copies sold of said work, excepting the first three  
agreed to pay to the said Mitchell 1. Hill \$1.50 per unreleg

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 Fourth to Eighth of the complaint as had theretofore been granted by said instrument of February 1, 1893 and said agreement of April 17, 1899.

10. Denies each and every allegation contained in paragraph Thirteenth of the complaint, except that the defendant admits that at the time of the execution of the instrument and agreement respectively hereinbefore referred to sound motion pictures were unknown commercially.

11. Denies each and every allegation contained in paragraph Fourteenth of the 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, and admits that in consequence thereof it has received from such producers sums of money by way of royalties, without disclosing the amounts thereof to the said Patty S. Hill and the said Jessica M. Hill.

THIS DEFENDANT'S BY AGREEMENT WITH THE SAID PATTY S. HILL AND  
JESSICA M. HILL UNDER THE LAWS OF THE STATE OF ILLINOIS, AND THEREAFTER  
A SUCCESSOR CORPORATION, CLEVELAND M. SUMNER CO., ALSO ORGAN-

12. Referring to paragraph Fifteenth of the 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.

13. Referring to the allegations in paragraph Sixteenth of the complaint, this defendant admits and avers that it has collected upwards of \$5,000 from 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; and except as so admitted and averred, the defendant denies each and every allegation in said paragraph contained.

14. Denies each and every allegation contained in paragraph Seventeenth of the complaint.

15. 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 Eighteenth of the complaint.

AS TO THE SECOND ALLEGED CAUSE OF ACTION

16. Referring to paragraph Nineteenth of the complaint, and the repetitions and reiterations therein con-

statement that said Jessica M. Hill and defendant M. Hill were  
from sufficient to form a belief as to the truth of the  
complaint, the defendant is without knowledge or informa-  
tion referring to falsity or truth of the

tained, the defendant repeats and realleges the denials,  
admissions and averments herein contained in paragraphs  
1 to 8 inclusive.

17. Referring to the allegations in paragraph  
Twentieth, Twenty-first and Twenty-Second of the 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 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 (in-  
cluding publishing, public performance and mechanical repro-  
duction 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 parti-  
cular arrangement covered by the particular royalty con-  
tract, and ten per cent (10%) on all subsequent sales, sub-  
ject 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 the publica-  
tion of said work in any foreign country, or for the mechan-  
ical reproduction or performance thereof in any country,  
or for any arrangements that are permitted to be published

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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.

18. Referring to the allegations in paragraph Twenty-Third of the 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 Illinois 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.

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

20. Referring to the allegations in paragraph Twenty-Fifth of the complaint, this defendant denies that it has been guilty of any breach of duty as alleged in the complaint, and therefore denies each and every allegation in said paragraph contained.

21. Denies each and every allegation contained in paragraph Twenty-Sixth of the complaint.

plaintiff M. Hill: and except as so admitted and alleged  
part of the amount so received should be paid to the estate  
by any other party claiming under any contract, one-

AS TO THE THIRD ALLEGED CAUSE OF ACTION

22. Referring to paragraph Twenty-seventh of the 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.

23. Referring to the allegations in paragraph Twenty-Eighth of the complaint, admits that the said Mildred J. Hill died intestate on June 5, 1916, a resident of Louisville, Kentucky, avers that she left her surviving as her sole heirs and next of kin three sisters, to wit, the above-mentioned Patty S. Hill and Jessica M. Hill and one Mary Hill, a brother, one William Wallace Hill, and a nephew, one Archibald Anderson Hill; avers that it is without knowledge or information sufficient to form a belief as to whether said next of kin were of full age at the time of the death of said Mildred J. Hill; and except as so admitted and averred the defendant denies each and every allegation in said paragraph contained.

24. Referring to the allegations in paragraph Twenty-Ninth of the complaint, admits that in October, 1916 the said Patty S. Hill, Jessica M. Hill and William Wallace Hill executed and delivered to the first Illinois corporation a 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

AS TO THE THIRD ALLEGED CAUSE OF ACTION

indemnify and hold you harmless against all claims whatsoever by reason of your action in making such payments as herein requested."

Defendant further admits that subsequent to its organization in August, 1931 it made payments to the said Jessica M. Hill of royalties payable to the said Mildred J. Hill; and except as hereinbefore admitted the defendant denies each and every allegation in said paragraph contained.

25. The defendant is without knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs Thirty-First, Thirty-Second and Thirty-Third of the complaint.

26. Referring to the allegations in paragraph Thirty-Fourth of the 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 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.

Defendant further admits that agreement to the organiza-

tion making such payments as herein requested. It claims whatsoever by reason of some section judgmentally and not by any other means.

27. Referring to the allegations in paragraph Thirty-Fifth of the complaint, admits and avers that the copyrights and renewals referred to in paragraph Thirty-Fourth of the 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.

28. Referring to the allegations in paragraph Thirty-Sixth of the 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 thereupon became and continues to be the holder of some further interest in and to the aforesaid copyrights and the renewals thereof in its own capacity, and for its own benefit; and except as so admitted the defendant denies each and every allegation in the said paragraph contained.

29. The defendant is without knowledge or information sufficient to form a belief as to the truth of each and every averment contained in paragraph Eighteenth of the complaint, the allegations of which said paragraph are repeated and reiterated in paragraph Thirty-Seventh of the complaint.

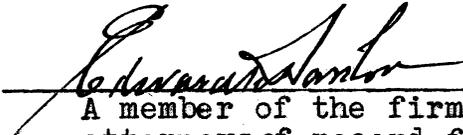
30. Denies each and every allegation contained in paragraph Thirty-Eighth of the complaint.

Fourth of the complaint are some of the same cobaltite  
cobaltite and renemata referred to in paragraph thirty-  
thirty-five of the complaint, admits and avers that the  
SA. Referring to the allegations in paragraph

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

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By

  
A member of the firm of  
attorneys of record for the  
defendant.