

July 25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JESSICA M. HILL,

Plaintiff,

- against -

AMENDED COMPLAINT

SAM H. HARRIS, SAM H. HARRIS  
THEATRICAL ENTERPRISES INC., IRVING  
BERLIN AND MOSS HART,

Defendants.

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The plaintiff herein by McKercher & Link, her  
solicitors, complaining of the defendants Sam H. Harris and  
Sam H. Harris Theatrical Enterprises Inc. alleges:

1. The plaintiff is a citizen of the United  
States and resides in the City, County, and State of New York.

2. That upon information and belief defendant  
Sam H. Harris is a citizen of the United States and resides  
in the State of New York.

3. That upon information and belief defendant  
Sam H. Harris Theatrical Enterprises Inc. is a corporation  
organized and existing under the laws of the State of  
Delaware and is authorized to do business in the State of  
New York.

4. That upon information and belief defendants  
presented and still continue to present a dramatic musical  
production for the convenience, accommodation, entertainment  
and refreshment of the public generally, known as "As  
Thousands Cheer"; that said dramatic musical production was  
and is presented as a commercial enterprise for the profit of

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defendants and for the purposes of profit; that said dramatic musical production was and is presented for the entertainment and amusement of the public generally and to promote and advance the interests and business of defendants; that defendants gave and caused to be given, daily performances and renditions of said dramatic musical production publicly for profit.

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5. That upon information and belief defendants presented and continue to present publicly for profit the said dramatic production and received and continue to receive income therefrom.

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6. That on or about or prior to October 13, 1893, Mildred J. Hill and Patty S. Hill originated, devised, created, and wrote, composed, and arranged the words, lyrics, and music of a new and original musical composition entitled "Good Morning to All".

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7. That upon information and belief on or about the 13th day of October, 1893, Clayton F. Summy duly copyrighted said composition by publishing the same and offering the same to the general public in a volume entitled "Song Stories for the Kindergarten" and offering same to the general public with the following notice of copyright on the first and title page of said volume as follows: "Copyright, 1893, by Clayton F. Summy".

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8. That upon information and belief after publication of such volume with such notices of copyright said Clayton F. Summy on or about the 16th day of October, 1893, deposited in the office of the Register of Copyrights, Washington, D.C., two complete copies of the best edition thereof then published accompanied by a claim of copyright

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and paid to the Register of Copyrights the fee required by law for the registration of the said work and the said work was duly registered by the said Register of Copyrights who thereupon issued his certificate of copyright registration thereunder #45997.

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9. That upon information and belief on or about the 8th day of June, 1896, Clayton F. Summy Co. copyrighted said composition by publishing a new revised, enlarged, and illustrated edition of "Song Stories for the Kindergarten" and offering the same to the general public with the following notice of copyright on the first and title page thereof "Copyright, 1896, by Clayton F. Summy".

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10. That upon information and belief after publication of such volume with such notices of copyright said Clayton F. Summy Co. on or about the 18th day of June, 1896, deposited in the office of the Register of Copyrights, Washington, D.C., two complete copies of the best edition thereof then published, accompanied by a claim of copyright and paid to the Register of Copyrights the fee required by law for the registration of the said work and said work was duly registered by the said Register of Copyrights who thereupon issued his certificate of copyright registration thereunder #34260.

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11. That upon information and belief since the date of the aforesaid copyright such volumes have been published by Clayton F. Summy Co.; that upon each copy of such volumes so published there has been inscribed on the first and title page thereof the copyright notices required by law in the words and figures set forth in paragraphs 7 and 9 hereof.

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12. That on or about the 3rd day of September,

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1921, a renewal registration for the copyright #45997 was made with the Register of Copyrights, Washington, D.C. by Jessica M. Hill under #R-19043 and that Jessica M. Hill is now the owner of said copyright.

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13. That on or about the 9th day of January, 1924, renewal registration copyright #34260 was made by the filing thereof with the Register of Copyrights, Washington, D.C. by Jessica M. Hill under #R-25771, and that Jessica M. Hill is now the owner of said copyright.

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14. That in each and all of the volumes published under copyright #45997 and #34260 and renewal registrations thereof #R-19043 and R-25771 there appeared and still appears a certain musical composition composed and arranged by Mildred J. Hill, words written and adapted by Patty S. Hill, entitled "Good Morning to All".

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15. That upon information and belief on or about the 10th day of September, 1933, and at other times prior and subsequent thereto without the previous knowledge, approval, procurement of consent of the plaintiff or Clayton F. Summy Co. and without the subsequent ratification or consent by either the plaintiff or Clayton F. Summy Co., in infringement of the aforesaid copyright and with full knowledge of the rights of plaintiff in such work and of such copyright belonging to said plaintiffs, the defendants herein by means of a dramatic musical production entitled "As Thousands Cheer" gave, and caused to be given, and still give and cause to be given, public performances and renditions, for profit and for the purposes of profit, of the musical composition entitled "Good Morning to All" on and in premises known as "Music Box", a theatre situated at 239 West 45th Street, New York City, and other theatres, and that the defendants continue and threaten to continue such infringing performances.

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16. That upon information and belief said performances of said composition "Good Morning to All" were given on and in said "Music Box" and other theatres by said defendants causing and participating therein and under the direction and control of said defendants; that same was for the entertainment and amusement of the patrons attending and patronizing said premises and to attract trade and custom to said premises; that such renditions and performances were public and for profit and for the purposes of profit; that same was for the purpose of making "As Thousands Cheer", the dramatic musical production presented by the defendant, well and favorably known and attractive to the public generally and to encourage the public to attend such performances of said production and to pay for the same for the purpose of ultimate profit of defendants.

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17. That the said wrongful acts of the defendants have caused and are causing great injury and damage to the plaintiff which damage cannot accurately be computed and unless the court restrains the defendants from the further commission of said acts the plaintiff will suffer irreparable injury for all of which the plaintiff is without any adequate remedy at law.

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18. That the continuation of such infringing performances will destroy the value of plaintiff's copyright and her rights thereunder and will lead and induce others to perform publicly for profit, and for the purposes of profit, public performances of said musical composition "Good Morning to All"; that others now paying a fixed royalty to plaintiff and/or her agents for the privilege of publicly performing such composition for profit will be induced to

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discontinue such payment of royalties to said plaintiff, and to give public performances for profit, of such composition without leave or license of said plaintiff; that by the acts of defendants as aforesaid plaintiff is deprived of the exclusive right to give public performances for profit of said musical composition and to grant others the right so to do.

I.B. M.H.

Plaintiff complaining of the defendants Irving Berlin and Moss Hart alleges:

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19. That plaintiff is a citizen of the United States and resides in the City, County, and State of New York.

20. That upon information and belief defendants are citizens of the United States and reside in the State of New York.

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21. That upon information and belief defendants prepared and wrote the script, book, lyrics, and music for a dramatic musical production known as "As Thousands Cheer" for the convenience, accommodation, entertainment and refreshment of the public generally; that said dramatic musical production was and is presented as a commercial enterprise for the profit of defendants and for the purpose of profit. That said dramatic musical production was and is presented for the entertainment and amusement of the public generally and to promote and advance the interests and business of defendants.

22. That upon information and belief said production "As Thousands Cheer" was presented publicly for profit and that defendants received and continue to receive income therefrom.

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23. Repeats and realleges the allegations contained in Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, and 14 herein with the same force and effect as if set out at length.

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24. That upon information and belief without the previous knowledge, approval, or procurement of consent of plaintiff or Clayton F. Summy or without the subsequent approval, ratification, or consent by plaintiff or Clayton F. Summy in infringement of the aforesaid copyright and with full knowledge of the rights of plaintiff in such work and of such copyright belonging to said plaintiff, defendants herein included in the script, book, lyrics, and music of said dramatic musical production "As Thousands Cheer" the musical composition "Good Morning to All".

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25. That upon information and belief on or about the 10th day of September, 1933, and at other times prior and subsequent thereto without the previous knowledge, approval, procurement of consent of plaintiff or Clayton F. Summy Co. and without the subsequent ratification or consent of plaintiff or Clayton F. Summy in infringement of the aforesaid copyright public performances and renditions for profit and for the purposes of profit of the musical composition "Good Morning to All" were given by means of said dramatic musical production "As Thousands Cheer" on and in premises known as "Music Box", a theatre situated at 239 West 45th Street, New York City, and other theatres.

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26. Repeats and realleges the allegations contained in Paragraphs 16, 17, and 18 herein with the same force and effect as if set out at length.

WHEREFORE, as her remedies against defendants herein plaintiff prays:

(a) That the defendants and all persons acting under their direction, permission, control, or license, be enjoined and restrained from publicly performing said composition "Good Morning to All" and from causing or permitting same to be publicly performed in the respective places of business of defendants or in any other place owned, used, controlled, or operated by them and from aiding or abetting the public performance of such composition in any public place or otherwise.

(b) That defendants be decreed to pay such damages as may have been sustained by plaintiff in consequence of defendants' said unlawful acts but in no event less than the sum of \$250.00.

(c) That defendants be decreed to pay the costs of this action and that a reasonable attorneys' fee be allowed.

(d) For such other and further relief in the premises as to this court may seem just and proper together with the costs of this action.

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Solicitors for Plaintiff  
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Borough of Manhattan  
City of New York