



07-CV-00034-CMP

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AT SEATTLE CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

OCTAVE MUSIC PUBLISHING CORP., WARNER BROS., INC., EMI MILLS MUSIC, INC., DUBOSE & DOROTHY HEYWARD MEMORIAL FUND PUBLISHING, GEORGE GERSHWIN MUSIC, IRA GERSHWIN MUSIC, EMI ROBBINS CATALOG INC., and PARAMOUNT MUSIC CORPORATION,

Plaintiffs,

v.

GIUSEPPE'S ITALIAN RESTAURANT, INC. and MAURO GIUSEPPE,

Defendants.

No. C 07-0034 JPD COMPLAINT

Plaintiffs, complaining of the Defendants, by PERKINS COIE LLP, their attorneys, allege:

1. This is a suit for copyright infringement under Title 17, U.S.C. Jurisdiction of this Court is based upon Title 28, U.S.C., Section 1338(a).

2. Plaintiffs allege six (6) causes of action for copyright infringement based on the Defendants' public performances of copyrighted musical compositions. SCHEDULE A annexed to the Complaint sets forth in summary form the allegations hereinafter made with respect to the Plaintiffs, their copyrighted musical compositions, and Defendants' acts of infringement.

COMPLAINT - 1

Perkins Coie LLP 1201 Third Avenue, Suite 4800 Seattle, WA 98101-3099 Phone: 206.359.8000 Fax: 206.359.9000

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1 3. Plaintiffs named in Column 2 (all references to columns are to columns in
2 SCHEDULE A) are the owners of the copyrights in the works listed in Column 3, and are
3 properly joined in this complaint under Rule 20, Fed. R. Civ. P.
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7 4. Defendant Giuseppe's Italian Restaurant, Inc. is a Washington corporation which
8 did at the times hereinafter mentioned and still does own, control, manage, operate and maintain
9 a place of business for public entertainment, accommodation, amusement and refreshment
10 known as Giuseppe's Italian Restaurant, located at 1414 Cornwall Avenue, in Bellingham, in the
11 State of Washington.
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15 5. Defendant Mauro Giuseppe is a resident of this District and, at all times herein-
16 after mentioned was and still is an officer of Defendant Giuseppe's Italian Restaurant, Inc., with
17 primary responsibility for the control, management, operation and maintenance of the affairs of
18 said corporation. The acts hereinafter complained of were done with his active assistance,
19 cooperation, acquiescence and procurement, and he derives financial benefit therefrom.
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23 6. Musical compositions were and are publicly performed at said place of business.
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27 7. The original musical compositions listed in Column 3 were created and written by
28 the persons named in Column 4.
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32 8. Each composition was published on the date stated in Column 5, and since the
33 dates of publication have been printed and published in strict conformity with Title 17, U.S.C.
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37 9. The compositions named in cause of action 1 was registered as unpublished
38 compositions on the dates stated in Column 5.
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41 10. The Plaintiffs named in each cause of action, including their predecessors in
42 interest, if any, complied in all respects with Title 17, U.S.C., and secured the exclusive rights
43 and privileges in and to the copyright of each composition listed in Column 3, and received from
44 the Register of Copyrights a Certificate of Registration, identified as set forth in Column 6.
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48 11. All of the compositions are now in the renewal term of copyright, secured by due
49 filing of an application for renewal of copyright in the office of the Register of Copyrights. The
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1 Register of Copyrights thereupon issued Certificates of Registration of the respective claims to
2 the renewal of copyrights in the names of those claimants listed in Column 7. The dates and
3 identification numbers of such certificates are set forth in Column 8.
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7 12. Defendants on the dates specified in Column 9, and upon information and belief,
8 at other times prior and subsequent thereto, infringed the copyright in each composition named
9 in Column 3 by giving public performances of the compositions on Defendants' premises, for the
10 entertainment and amusement of the patrons attending said premises, and Defendants threaten to
11 continue such infringing performances.
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16 13. The performances of the Plaintiffs' copyrighted musical compositions on the dates
17 specified in Column 9 on Defendants' premises were unauthorized: neither Defendants, nor any
18 of the Defendants' agents, servants or employees, nor any performer was licensed by, or
19 otherwise received permission from any Plaintiff or any agent, servant or employee of any
20 Plaintiff to give such performances.
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26 14. In undertaking the conduct complained of in this action, Defendants knowingly
27 and intentionally violated Plaintiffs' rights. Defendants' knowledge and intent are established by
28 the following facts:
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32 (a) Defendants have not sought or obtained a license agreement from Plaintiffs or the
33 American Society of Composers, Authors and Publishers (ASCAP), a performing rights
34 licensing organization of which all Plaintiffs are members.
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38 (b) Despite numerous letters and other contacts by ASCAP representatives in-
39 forming the Defendants of their liability under the United States Copyright Law, Defendants
40 have continued to perform copyrighted music without permission during the hours that
41 Defendants' establishment are open to the public for business and presenting musical
42 entertainment.
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45 (c) The many unauthorized performances at Giuseppe's Italian Restaurant include the
46 performances of the six copyrighted musical compositions upon which this action is based.
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1 15. At the times of the acts of infringement complained of, the Plaintiff named in
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3 each cause of action was the owner of the copyright in the composition therein named.

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5 16. The said wrongful acts of the Defendants have caused and are causing great injury
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7 to the Plaintiffs, which damage cannot be accurately computed, and unless this Court restrains
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9 the Defendants from the further commission of said acts, said Plaintiffs will suffer irreparable
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11 injury, for all of which the said Plaintiffs are without any adequate remedy at law.

12 WHEREFORE, Plaintiffs pray:

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14 I. That Defendants and all persons acting under the direction, control, permission or
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16 authority of Defendants be enjoined and restrained permanently from publicly performing the
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18 aforementioned compositions or any of them and from causing or permitting the said
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20 compositions to be publicly performed in Defendants' said premises, or in any place owned,
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22 controlled or conducted by Defendants, and from aiding or abetting the public performance of
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24 such compositions in any such place or otherwise.

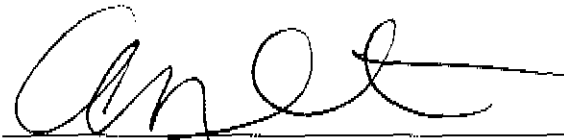
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26 II. That Defendants be decreed to pay such statutory damages as to the Court shall
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28 appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than Thirty Thousand
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30 Dollars (\$30,000) nor less than Seven Hundred And Fifty Dollars (\$750) in each cause of action
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32 herein.

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34 III. That Defendants be decreed to pay the costs of this action and that a reasonable
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36 attorney's fee be allowed as part of the costs.

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38 IV. For such other and further relief as may be just and equitable.
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DATED: January 8, 2007



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Attorneys for Plaintiffs
Octave Music Publishing Corp., Warner Bros.,
Inc., Emi Mills Music, Inc., Dubose & Dorothy
Heyward Memorial Fund Publishing, George
Gershwin Music, Ira Gershwin Music, Emi
Robbins Catalog Inc., and Paramount Music
Corporation

Columns	1	2	3	4	5	6	7	8	9
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Renewal	Renewal Certificate Date and Number	Date of Known Infringement	

1.	OCTAVE MUSIC PUBLISHING CORP.	MISTY	ERROLL GARNER	4/11/55 REGISTERED AS UNPUBLISHED 9/2/54 EU 359532	EP 90042 EU 359532	MARTHA GLASER, AS AN EXECUTOR OF THE COMPOSER ERROLL GARNER, DECEASED"; THEODORE PRESENT, AS "AN EXECUTOR OF THE COMPOSER ERROLL GARNER, DECEASED";	3/3/82 RE 123-364	8/18/06
2.	WARNER BROS., INC.	AS TIME GOES BY	HERMAN HUPFELD	7/28/31	EP 24416	MONTCLAIR NATIONAL BANK AND TRUST CO., AS "SUBSTITUTORY ADMINISTRATOR C.T.A. OF HERMAN HUPFELD, THE DECEASED AUTHOR AND COMPOSER";	9/19/58 R 224326	8/18/04
3.	EMI MILLS MUSIC, INC.	IT DON'T MEAN A THING (IF IT AIN'T GOT THAT SOUND)	IRVING MILLS DUKE ELLINGTON	10/28/32	EP 33029	DUKE ELLINGTON, AS "AUTHOR";	10/28/59 R 244626	8/18/06

1	2	3	4	5	6	7	8	9
Columns								
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Renewal	Renewal Certificate Date and Number	Date of Known Infringement

4. DURBOSE & DOROTHY HEYWARD MEMORIAL FUND PUBLISHING, GEORGE GERSHWIN MUSIC AND IRA GERSHWIN MUSIC
 SUMMERTIME
 GEORGE GERSHWIN DU BOSE HEYWARD
 9/28/35 EP 50655
 IRA GERSHWIN, ARTHUR BERSHWIN AND FRANCES BERSHWIN GODOWSKY, AS "NEXT OF KIN OF THE DECEASED COMPOSER OF THE MUSIC (GEORGE GERSHWIN)"; JENNIFER HEYWARD, AS "THE CHILD OF THE DECEASED AUTHOR OF THE WORDS (DURBOSE HEYWARD)".
 9/28/62 R 301749
 8/18/06

5. EMI ROBBINS CATALOG INC.
 SPRING IS HERE
 LORENZ HART RICHARD ROGERS
 5/9/38 EP 69173
 ROBBINS MUSIC CORP., AS "PROPRIETOR OF A WORK MADE FOR HIRE".
 7/23/65 R 365925
 8/18/06

6. PARAMOUNT MUSIC CORPORATION
 THAT'S AMORE (A/K/A THAT'S LOVE)
 JACK BROOKS HARRY WARREN
 7/9/53 EP 72978
 PARAMOUNT MUSIC CORPORATION, AS "PROPRIETOR OF A COPYRIGHT IN A WORK MADE FOR HIRE (JACK BROOKS)".
 1/5/81 RE 77-369
 8/18/06