



THINK FORWARD

A (Free) Birthday Present for Everyone?

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A district court judge in the Central District of California issued an order in *Rupa Marya, et al. v. Warner/Chappell Music, Inc., et al.* (Case. No. CV 13-4460-GHK (MRWx)) granting the plaintiffs' motion for summary judgment seeking to invalidate the copyright to the lyrics of the song "Happy Birthday To You."

The Court's decision turned on what it deemed as the failure of the purported author of the lyrics to assign her rights to the lyrics to Warner/Chappell's successor in interest. While the rights to the "Happy Birthday" melody were properly transferred, the lyrics were not, and the Court ruled that the asserted copyright to the lyrics is invalid. The ruling could potentially put an end to the millions of dollars that the publishing company, Warner/Chappell collects each year in licensing revenue for the use of the lyrics.

The facts underlying this case date back more than a century to 1893 when two sisters, Mildred and Patty Hill, wrote the melody to a song entitled "Good Morning To All," which has the same melody that traditionally accompanies the "Happy Birthday" lyrics, and even has similar lyrics (i.e. "Good morning to you, Good morning to you"). The Hill sisters assigned their rights to "Good Morning to All" to Clayton F. Summy, who subsequently obtained a copyright registration for "Good Morning to All" that expired in 1949. As a result the traditional melody of the "Happy Birthday" song has long been in the public domain, a fact not disputed by the parties. Rather, the parties' dispute focus only on the "Happy Birthday" lyrics.

At some time after 1893 (the record is not clear) people began singing the traditional "Happy Birthday" lyrics to the "Good Morning To All" melody. The lyrics were published several times between 1911 and 1935, when the Clayton F. Summy Company obtained a copyright registration for a work entitled "Happy Birthday To You." In a 1942 lawsuit, the Hill sisters disputed the Summy Company's right to obtain a copyright to the "Happy Birthday to You" work covered by the registration, but as part of the 1944 settlement of the lawsuit, they assigned to the Summy Company all of their rights in the work. This copyright registration, which Warner/Chappell subsequently obtained and the plaintiffs now seek to invalidate, has served as the basis for seeking royalties for the use of the "Happy Birthday" lyrics.

To support their claim that Warner/Chappell's copyright to the "Happy Birthday" lyrics is invalid, the plaintiffs presented several arguments including that Patty Hill did not write the "Happy Birthday" lyrics (as she claimed), and that Ms. Hill had either divested or abandoned any rights she possessed in the lyrics due to the widespread publication of the lyrics prior to the 1935 issuance of the copyright registration for the "Happy Birthday" work. The court found that genuine issues of material fact existed concerning these issues, and denied the parties' cross-motions for summary judgment on these issues.

However, the Court did find credence in plaintiffs' argument that even assuming that the Hill sisters

possessed rights to the “*Happy Birthday*” lyrics, they did not transfer those rights to the Summy Company, thereby invalidating Warner/Chappell’s asserted copyright to the lyrics. Upon analyzing the agreements between the Hill sisters and the Summy Company, the court determined that the Hill sisters assigned only their rights “Happy Birthday” melody, and at no time transferred or sought to transfer any rights to the lyrics. In addition to finding no support in the Hill/Summy agreements, the court noted that there was no evidence apart from the agreements that the Hill sisters claimed or intended to transfer rights to the lyrics to the Summy Company. The sisters never fought to protect or tried to obtain a copyright for the “*Happy Birthday*” lyrics on their own (even though Patty claimed to have written the lyrics). Furthermore, after the Hill sisters transferred their rights to the Summy Company, although the company filed several lawsuits alleging infringement of its rights to “Happy Birthday,” it never asserted that the lyrics had been infringed.

In conclusion, the Court held that because the Hill sisters never transferred the copyright to the “*Happy Birthday*” lyrics to the Summy Company, the company and every successor in interest including Warner/Chappell did not own a valid copyright to the lyrics and cannot properly assert them against a party seeking to sing the lyrics.

The Court’s ruling could potentially end Warner/Chappell’s reported \$2 million in licensing revenue that it collects annually for use of the “Happy Birthday” lyrics.

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If you have any questions or wish to discuss how this decision impacts your business, please contact one of our Brinks Attorneys.