

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Court
Southern District of Texas
FILED

JUL 16 2010

KELLY CHERELLE PRICE

Plaintiff,

vs.

NEW LIGHT CHURCH, IRA HILLIARD,
BRIDGET HILLIARD, and
PRESHEA HILLIARD,

Defendants.

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David J. Bradley, Clerk of Court

CIVIL ACTION NO: _____

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Kelly Cherelle Price complains of New Light Church, Ira Hilliard, Bridget Hilliard and Preshea Hilliard, Defendants, and for cause of action shows the following:

**I.
PARTIES**

1. Plaintiff, Kelly Cherelle Price, is an individual residing in Harris County, Texas.
2. Defendant, New Light Church is a Texas corporation whose principal place of business is located at 11233 Crown Park Dr., Suite A, Houston, Harris County, Texas 77067. Defendant New Light Church may be served with process by serving its registered agent for service, Ira Hilliard, at 11233 Crown Park Dr., Suite A, Houston, Harris County, Texas 77067.
3. Defendant, Ira Hilliard, is a resident of Harris County, Texas and may be served at his place of business located at 11233 Crown Park Dr., Suite A, Houston, Harris County, Texas 77067.

4. Defendant, Bridget Hilliard, is a resident of Harris County, Texas and may be served at her place of business located at 11233 Crown Park Dr., Suite A, Houston, Harris County, Texas 77067.

5. Defendant, Preshea Hilliard, is a resident of Harris County, Texas and may be served at her place of business located at 11233 Crown Park Dr., Suite A, Houston, Harris County, Texas 77067.

6. Whenever in this petition it is alleged that a certain Defendant did or failed to do any act or thing, it is meant that said Defendant performed or failed to perform, or that said Defendant was responsible for such act or thing, or that such action was performed by the partners, officers, agents, representatives or employees, in the normal and routine course and scope of their employment, authority or agency for said Defendant, and that such acts were pursuant to a common scheme, design and/or conspiracy by Defendants and others acting on their behalf with the full knowledge, authority and ratification of said Defendant to engage in the facts and perpetrate the omissions hereinafter alleged. Each of the Defendants benefitted from the acts complained of herein.

II. JURISDICTION AND VENUE

7. Jurisdiction is proper because the action arises under the Copyright Act, Title 17 of the United States Code. 17 U.S.C. §101 et seq. This Court is vested with jurisdiction pursuant to Section 1338 of Title 28 of the United States Code. 28 U.S.C. §1338. This Court has inherent power to hear related causes of action arising under state law. 28 U.S.C. §1367(a).

8. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. §1391, as

Defendants currently conduct business within the State of Texas and within this District. Further, a substantial part of the events or omissions giving rise to the claimed causes of action occurred in this District, and Defendants are, thus, amendable to personal jurisdiction in this District at this time. 28 U.S.C. §1391.

III.
FACTS APPLICABLE TO ALL COUNTS

9. Plaintiff, Kelly Cherele Price, composed and recorded the song “Women Who Win” (“the Work”) and then duly registered the musical composition through the Royalty Network in 2008, registration number PAu 3-428-731. Defendants had knowledge that a license had to be obtained in order to utilize the Work. In fact, Defendants requested a synchronization license to use the Work, the license was refused, but Defendants proceeded to use the Work in a variety of ways without a license. Instances of use include but are not limited to the following: the song was used in the telecast of the New Light Church show, “Women Who Win;” it was used to promote DVD’s and other products on Defendant’s website; it was on the “Women Who Win” website home page; it was performed and recorded several times at the 2008 Women Who Win conference. Audio CD’s and DVD’s incorporating the song and performances currently remain on sale. Defendant has profited at the loss of Plaintiff and continues to profit from its unapproved use and sale of products and information which contain the musical composition “Women Who Win.”

IV.
CAUSES OF ACTION

A. COPYRIGHT INFRINGEMENT

10. Plaintiff hereby adopts and realleges each and every paragraph of the Facts Applicable to All Counts as well as the allegations made in all other parts of this pleading.

11. Plaintiff wrote the musical composition "Women Who Win," which is copyrightable under the laws of the United States. Further, Plaintiff has complied with the statutory registration and deposit requirements of the Federal Copyright Act of 1976 as the work at issue herein. Plaintiff is the owner of the copyright for the musical composition "Women Who Win."

12. Upon information and belief, Defendants intentionally continued to use the musical composition without obtaining the appropriate licenses from Plaintiff. Plaintiff never executed a written assignment of her copyright or ownership in the Work.

13. Upon information and belief, after the creation of the Work, and continuing to the present, Defendants have infringed and continue to infringe upon Plaintiff's common law and statutory copyrights. Plaintiff contests any and all SR, PA and VA copyrights of Plaintiff's Work, name, image and likenesses registered in Defendant's names, if any, and seeks a finding that Plaintiff is the said owner of said copyrights.

B. NON-COPYRIGHT CAUSES OF ACTION

14. Plaintiff hereby adopts and realleges each and every paragraph of the Facts Applicable to All Counts as well as the allegations made in all other parts of this pleading.

15. Defendants and Defendants' affiliates are liable to Plaintiff because Defendants received a benefit from the use of Plaintiff's Work in derogation of Plaintiff's rights to the musical composition. Defendants used the musical composition owned and controlled by Plaintiff for their own benefit without Plaintiff's authorization and without compensating Plaintiff. Defendants reaped the benefits of using the Work and Plaintiff should be compensated for those benefits received.

16. Defendants used Plaintiff's name, image and likeness without permission and as a result damaged Plaintiff while benefitting from this misappropriation.

17. Defendants attempted to copyright a work similar in substance and/or title as a means of causing confusion among consumers as to the source and content of this other work.

C. DECLARATORY JUDGMENT

18. Plaintiff hereby adopts and realleges each and every paragraph of the Facts Applicable to All Counts as well as the allegations made in all other parts of this pleading.

19. Plaintiff requests that the Court declare that:

- a. Plaintiff is entitled to an accounting for all revenue and profits which Defendants have received from all sources which it has not remitted to Plaintiff;
- b. Defendants are not entitled to possess or exploit any of Plaintiff's Work or Plaintiff's name, images or likenesses; and
- c. Plaintiff is the owner of, and is entitled to possess and control, all rights in all sound recordings, VA's and PA's in "Women Who Win."

**V.
ATTORNEYS' FEES**

21. Plaintiff has retained counsel to represent her in this cause and has agreed to pay the firm reasonable and necessary attorneys' fees. Such an award would be equitable and is authorized by Section 39.009 of the Texas Civil Practice and Remedies Code, as well as 17 U.S.C. §505.

**VI.
DAMAGES AND REMEDIES**

22. As a direct, producing and proximate cause the acts and omissions of Defendants, Plaintiff has suffered losses and damages as alleged above. Plaintiff seeks the destruction of all products and copies embodying the Work in addition to an award of fees, costs, profits of Defendants, and the disgorgement of all revenue received by Defendants. Plaintiff seeks a recovery

for any and all unauthorized use of her name, likeness and image, as well as any confusion caused by Defendants' action.

23. In addition to the foregoing remedies, Plaintiff seeks an Order requiring Defendants to return to Plaintiff all of Plaintiff's Work and to refrain from representing to any persons that Defendants have any right or interest in such Work and that they are representing or acting on behalf of Plaintiff.

24. Plaintiff further requests that the Court declare the rights and obligations of the parties in respect of the Work.

25. Plaintiff seeks statutory damages for Defendants' copyright infringement as provided by 17 U.S.C. §504(c), amended by the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999."

26. Further, Plaintiff seeks an increase in statutory damages for Defendants' willful infringement, provided in 17 U.S.C. §504(c)(2), amended by the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999." Defendants have acted with conscious indifference and a total disregard for the rights of Plaintiff.

27. Plaintiff has sustained actual damages by reason of the breach of trust and other tortious acts of Defendant.

28. Plaintiff seeks a recovery of all court costs.

29. Plaintiff seeks a recovery of reasonable costs and attorneys' fees provided by 17 U.S.C. §505 and in connection with Plaintiff's request for declaratory relief.

VII.
DEMAND FOR A JURY TRIAL

30. Plaintiff hereby demands a jury trial.

VIII.
PRAYER

WHEREFORE, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial, Plaintiff has:

1. Judgment against Defendants for all actual damages as alleged by Plaintiff;
2. That Plaintiff recovers the amount of Defendants' profits attributable to the infringement or, in the alternative, for statutory damages as authorized by 17 U.S.C.A. §504(c), amended by the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999;"
3. That Defendants pay Plaintiff additional damages for willfully infringing Plaintiff's copyright, as authorized by 17 U.S.C. §504(c)(2), amended by the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999;"
4. A declaration that the Defendant have no rights in and to any of Plaintiff's Work, that Defendant must return same to Plaintiff and that Defendants have no right to exploit Plaintiff's name, images or likeness;
5. Reasonable and necessary attorneys' fees with conditional sums for the service of Plaintiff's attorney in the event of subsequent appeals, which include the following:
 - a. Preparation and trial legal services;
 - b. Post-trial, pre-appeal legal services;
 - c. An appeal to the Fifth Circuit Court of Appeals; and
 - d. An appeal to the United States Supreme Court.
6. Post-judgment discovery and collection in the even execution on the judgment is not necessary;
7. Pre-judgment and post-judgment interest at the highest rate allowed by law;
8. Court costs; and
9. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

SHOWALTER LAW FIRM

By: _____


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ATTORNEY FOR PLAINTIFF
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