

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JAMES SAINT-AMOUR and ALENA
IVLEVA a/k/a JERRRA BLUES, doing
business as SATORII, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

THE RICHMOND ORGANIZATION, INC.
(TRO INC.) and LUDLOW MUSIC, INC.,

Defendants.

C.A. No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, James Saint-Amour (“Saint-Amour”) and Alena Ivleva a/k/a Jerrra Blues (“Jerrra Blues”), doing business as Satorii (“Satorii”), on behalf of themselves and all others similarly situated, by their undersigned attorneys, as their Complaint against Defendants, The Richmond Organization, Inc. (TRO Inc.) (“TRO”) and Ludlow Music, Inc. (“Ludlow”) for: (1) declaratory judgment pursuant to 28 U.S.C. § 2201; (2) declaratory and injunctive relief and damages under 28 U.S.C. § 2202; (3) violations of New York General Business Law § 349; (4) breach of contract; (5) common law money had and received; and (5) rescission for failure of consideration, hereby alleges as follows:

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to claims seeking declaratory and other relief arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; and supplemental jurisdiction over the entire case or controversy pursuant to 28 U.S.C. § 1367.

2. The Court has personal jurisdiction over Defendants and venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 28 U.S.C. § 1400(a), in that the claims arise in this Judicial District where Defendants' principal place of business is located and where they regularly conduct business.

PARTIES

3. Plaintiffs Saint-Amour and Jerrra Blues are individuals residing in Kings County, New York, doing business as Satorii. Under a disputed claim of copyright ownership by Defendants, on or about February 18, 2016, pursuant to 17 U.S.C. § 115, Plaintiffs paid the sum of \$45.50 to Defendants for a compulsory license (commonly known as a "mechanical license") to use the musical composition *This Land is Your Land* ("*This Land*" or the "Song") to produce and distribute digital phonorecords, as alleged more fully below.

4. Defendant TRO is a New York corporation with its principal place of business located at 266 W. 37th Street, 17th Floor, New York, New York 10018.

5. Defendant Ludlow is a New York corporation with its principal place of business also located at 266 W. 37th Street, 17th Floor, New York, New York 10018. Upon information and belief, at all relevant times, Defendant TRO has wholly owned Defendant Ludlow as a subsidiary and imprint.

6. Throughout the Class Period (defined below), Defendants have falsely claimed they own the exclusive copyright to *This Land* based upon the copyright Defendant Ludlow registered in 1956.

a. Non-party BMI provides non-dramatic public performance licenses to bars, clubs, websites, and many other venues. According to BMI's website, its blanket

license includes *This Land*. As a BMI member and purported owner of the copyrights in *This Land*, Defendants obtain a share of blanket license revenue that would otherwise be paid to all other BMI members, in proportion to their songs' survey shares. At all relevant times, Plaintiffs have been members of BMI.

b. Established in 1927, non-party Harry Fox Agency is the leading provider of rights management, licensing, and royalty services for the music industry in the United States. It licenses, collects, and distributes royalties on behalf of musical copyright owners, and provides a variety of online tools to help music publishers manage their catalogs. According to the Harry Fox Agency's website, Defendant Ludlow owns the copyright to *This Land*.

INTRODUCTION

7. This is an action to declare that, despite their claim to the contrary, Defendants do not own a valid copyright to *This Land* and that the Song is dedicated to public use and in the public domain; and for return of the unlawful licensing fees collected by Defendants pursuant to their wrongful assertion of copyright ownership of the Song.

8. According to the United States Copyright Office ("Copyright Office"), a "musical composition consists of music, including any accompanying words, and is normally registered as a work of the performing arts." Copyright Office Circular 56A, "Copyright Registration of Musical Compositions and Sound Recordings," at 1 (Feb. 2012) (available at www.copyright.gov/circs/circ.56a.pdf). The author of a musical composition is the composer, and the lyricist (if a different person). *Id.*

9. *This Land* is one of the nation's most famous and important folk songs.

10. Upon information and belief, the melody to *This Land* was taken from a Baptist

gospel hymn from the late 19th or early 20th century.

11. Upon information and belief, the Song's lyrics were written by American folk singer Woody Guthrie ("Guthrie") in 1940 in response to Irving Berlin's song *God Bless America*.

12. Guthrie published the Song in 1945 with a proper copyright notice, which created a federal copyright in the Song. The copyright to the 1945 publication was not renewed. As a result, the copyright expired after 28 years, and the Song fell into the public domain in 1973.

13. Despite Guthrie's 1945 publication of the Song, Defendant Ludlow purportedly copyrighted the Song in 1956. Based on that 1956 copyright, Defendant Ludlow has wrongfully and unlawfully insisted it owns the copyright to *This Land*, together with the exclusive right to control the Song's reproduction, distribution, and public performances pursuant to federal copyright law.

14. For example, on July 23, 2004, Defendant Ludlow's counsel wrote to counsel for Jib Jab Media, Inc. ("Jib Jab"), regarding Jib Jab's use of the Song. In that letter, Defendant Ludlow's counsel asserted that "Ludlow is the exclusive copyright owner of the classic folk song 'This Land is Your Land' written by the well-known folk artist Woody Guthrie." The letter also asserted that Jib Jab's use of the Song's melody and "the well-known lyrics 'This land is your land, this land is my land' and 'From California to the New York Island'" infringed Ludlow's copyright.

15. Irrefutable documentary evidence shows that Defendants own no valid copyright related to *This Land*. The popular verses of the Song were first published in 1945, and the copyright in those verses ended no later than 1973 (if not earlier). Defendants never owned a valid copyright to the Song's pre-existing melody.

16. Significantly, no court has ever adjudicated either the scope or validity of Defendants' claimed interest in *This Land*, nor in the Song's melody or its familiar lyrics, which are independent works.

17. Defendants have unlawfully demanded and extracted licensing fees from those unwilling or unable to challenge their false ownership claims.

18. Plaintiffs, on behalf of themselves and all others similarly situated, seek a declaration that Defendants do not own copyright in the melody of *This Land*, the familiar lyrics to that Song, a variety of additional lyrics for that Song, or the combination of the melody and any of those lyrics, and that the Song is dedicated to public use and is in the public domain. Plaintiffs also seek monetary damages and restitution of all the unlawful licensing fees that Defendants have improperly collected from Plaintiffs and all other Class members.

FACTUAL BACKGROUND

The Origin of the Song

19. Guthrie did not write the melody to *This Land*. The Song's melody is substantially identical to that of a previously existing work, a Baptist gospel hymn which has been variously called "Fire Song," "When the World's on Fire," "What you gonna do when the world's on fire," and "O My Loving Brother," ("Fire Song"), all of those titles derived from lyrics associated with that hymn. Guthrie did not write that hymn or its melody.

20. Upon information and belief, Guthrie heard "Fire Song," or a variation, before writing the lyrics for *This Land* and copied the melody for use with the lyrics for *This Land*.

21. Upon information and belief, Guthrie wrote the Song's lyrics in or about 1940 to accompany the pre-existing melody of "Fire Song."

22. Upon information and belief, Guthrie's 1940 lyrics for *This Land* were as follows:

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