

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION**

BROADCAST MUSIC, INC.;)
WARNER-TAMERLANE PUBLISHING)
CORP.; GIBB BROTHERS MUSIC;)
CROMPTON SONGS; RONDOR MUSIC)
INTERNATIONAL, INC. d/b/a)
IRVING MUSIC; ELEKSYLUM MUSIC,)
INC.; NO SURRENDER MUSIC, A)
DIVISION OF PRAXIS)
INTERNATIONAL COMMUNICATIONS,)
Inc.; AL GREEN MUSIC, INC.;)
STONE DIAMOND MUSIC CORP.,)

Plaintiffs,)

CIVIL ACTION NO.:

v.)

TENN-VOL CORP. d/b/a RADIO)
STATION KLDE-FM; DANNY ROY)
BOYER, individually,)

Defendants.)

Complaint for Copyright Infringement

Plaintiffs complain against Defendants as follows:

Introduction

1. The authors of musical compositions often grant the right to license the public performance of those musical compositions to third-parties such as Plaintiff Broadcast Music, Inc. (“BMI”). In this case, Plaintiff BMI has been granted the right to license the public performance rights in approximately 6.5 million copyrighted musical compositions (the “BMI repertoire”). Defendants operate a radio broadcasting station which broadcasts copyrighted musical compositions, including compositions contained in the BMI repertoire, without the

permission of BMI or the authors of those musical compositions. Thus, Defendants have infringed and continue to infringe the copyrights on musical compositions contained in the BMI repertoire.

Jurisdiction and Venue

2. This is a suit for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act").

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(a).

The Parties

5. Plaintiff Broadcast Music, Inc. ("BMI") is a corporation organized and existing under the laws of the State of New York. BMI's principal place of business is 7 World Trade Center, 250 Greenwich Street, New York, New York 10007.

6. The other Plaintiffs are the owners of the copyrights in the musical compositions that are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).

7. Plaintiff Warner-Tamerlane Publishing Corp. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

8. Plaintiff Gibb Brothers Music is a partnership owned by the Estate of Maurice Ernest Gibb and Robin Gibb. This Plaintiff is the copyright owner of at least one of the songs in this matter.

9. Plaintiff Crompton Songs is a sole proprietorship owned by Barry Alan Gibb. This Plaintiff is the copyright owner of at least one of the songs in this matter.

10. Plaintiff Rondor Music International, Inc. is a corporation d/b/a Irving Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

11. Plaintiff Eleksylum Music, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

12. Plaintiff No Surrender Music, which is a division of Praxis International Communications, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

13. Plaintiff Al Green Music, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

14. Plaintiff Stone Diamond Music Corp. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

15. Defendant Tenn-Vol Corp. is a corporation organized and existing under the laws of the state of Texas, which operates, maintains and controls a radio broadcasting station known as KLDE-FM, located at 712 North Divide Street, Eldorado, Schleicher County, Texas, in this judicial district (the "Station").

16. In connection with the operation of this business, Defendant Tenn-Vol Corp. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

17. Defendant Tenn-Vol Corp. has a direct financial interest in the Station.

18. Defendant Danny Ray Boyer is an officer of Defendant Tenn-Vol Corp. with primary responsibility for the operation and management of that corporation and the Station.

19. Defendant Danny Roy Boyer has the right and ability to supervise the activities of Defendant Tenn-Vol Corp. and a direct financial interest in that corporation and the Station.

Claims of Copyright Infringement

20. Plaintiffs repeat and reallege each of the allegations contained in Paragraphs 1 through 19 of this Complaint

21. Plaintiffs allege seven (7) claims of willful copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendants.

22. Exhibit A to this Complaint (the "Schedule") contains a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the seven (7) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information: Line 1 providing the claim number; Line 2 listing the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 identifying the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the Registration number(s); Line 7 showing the date(s) of infringement; and Line 8 identifying the station where the infringement occurred.

23. For each of the musical compositions identified on the Schedule, the person(s) named on Line 3 was the creator of the work (all references to Lines are lines on the Schedule).

24. For each work, on or about the date(s) indicated on Line 5, the publisher(s) named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing

the number(s) listed on Line 6.

25. For each work, on the date listed on Line 7, Plaintiff BMI was (and still is) the licensor of the public performance rights in the musical composition identified on Line 2. For each work, on the date(s) listed on Line 7, the Plaintiff(s) listed on Line 4 was (and still is/are) the owner(s) of the copyright in the respective musical composition listed on Line 2.

26. For each work, on the date(s) listed on Line 7, Defendants performed and/or caused the musical composition identified on Line 2 to be publicly performed at the Station without a license or permission to do so. Thus, Defendants have committed copyright infringement.

27. The specific acts of copyright infringement alleged, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable damage. By continuing to provide unauthorized public performances of works in the BMI repertoire at the Station, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

(a) the Court enter judgment against Defendants, finding that Defendants have willfully infringed the valid copyrighted musical compositions described in the Schedule;

(b) the Court enter an order permanently enjoining Defendants, their agents, servants, employees, and all persons acting under their permission and authority from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. § 502;

(c) the Court order Defendants to pay statutory damages per claim of infringement, pursuant to 17 U.S.C. § 504(c);

(d) the Court order Defendants to pay costs, including reasonable attorneys' fees, pursuant

to 17 U.S.C. § 505; and

(e) the Court grant Plaintiffs such other and further relief as is just and equitable.

Dated: September 21, 2011

Respectfully submitted,

F&B LLP

/s/ Arthur Gollwitzer III

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Attorneys For Plaintiffs

Schedule

Line 1	Claim No.	1
Line 2	Musical Composition	Dance To The Music
Line 3	Writer(s)	Sylvester Stewart
Line 4	Publisher Plaintiff(s)	Warner-Tamerlane Publishing Corp.
Line 5	Date(s) of Registration	3/18/68 4/19/68
Line 6	Registration No(s).	Eu 45049 Ep 246661
Line 7	Date(s) of Infringement	9/22/08 9/23/08
Line 8	Place of Infringement	KLDE-FM

Line 1	Claim No.	2
Line 2	Musical Composition	Emotion
Line 3	Writer(s)	Barry Gibb; Robin Gibb
Line 4	Publisher Plaintiff(s)	Estate of Maurice Ernest Gibb and Robin Gibb d/b/a Gibb Brothers Music; Barry Alan Gibb, an individual d/b/a Crompton Songs
Line 5	Date(s) of Registration	10/28/77 2/14/78 3/19/84 3/19/84
Line 6	Registration No(s).	Eu 837714 PA 537 PA 209-637 PAu 618-247
Line 7	Date(s) of Infringement	9/23/08 9/23/08
Line 8	Place of Infringement	KLDE-FM

Line 1	Claim No.	3
Line 2	Musical Composition	Fun, Fun, Fun
Line 3	Writer(s)	Brian Wilson; Mike Love
Line 4	Publisher Plaintiff(s)	Rondor Music International, Inc. d/b/a Irving Music
Line 5	Date(s) of Registration	1/22/64
Line 6	Registration No(s).	Eu 807824
Line 7	Date(s) of Infringement	9/22/08
Line 8	Place of Infringement	KLDE-FM

Line 1	Claim No.	4
Line 2	Musical Composition	Keep Your Hands To Yourself
Line 3	Writer(s)	Dan Baird
Line 4	Publisher Plaintiff(s)	Warner-Tamerlane Publishing Corp.; Eleksylum Music, Inc.; No Surrender Music, a division of Praxis International Communications, Inc.
Line 5	Date(s) of Registration	10/15/86
Line 6	Registration No(s).	PA 304-742
Line 7	Date(s) of Infringement	9/23/08
Line 8	Place of Infringement	KLDE-FM

Line 1	Claim No.	5
Line 2	Musical Composition	Sha La La a/k/a Sha La La (Make Me Happy)
Line 3	Writer(s)	Al Green
Line 4	Publisher Plaintiff(s)	Al Green Music, Inc.; Rondor Music International, Inc. d/b/a Irving Music
Line 5	Date(s) of Registration	12/31/01 10/4/74
Line 6	Registration No(s).	RE 854-653 Eu 523869
Line 7	Date(s) of Infringement	9/22/08 9/23/08
Line 8	Place of Infringement	KLDE-FM

Line 1	Claim No.	6
Line 2	Musical Composition	When Will I See You Again
Line 3	Writer(s)	Kenneth Gamble; Leon Huff
Line 4	Publisher Plaintiff(s)	Warner-Tamerlane Publishing Corp.
Line 5	Date(s) of Registration	3/1/74 12/16/74
Line 6	Registration No(s).	Eu 467467 Ep 332545
Line 7	Date(s) of Infringement	9/22/08 9/23/08
Line 8	Place of Infringement	KLDE-FM

Line 1	Claim No.	7
Line 2	Musical Composition	You Keep Me Hangin' On
Line 3	Writer(s)	Eddie Holland; Lamont Dozier; Brian Holland
Line 4	Publisher Plaintiff(s)	Stone Diamond Music Corp.
Line 5	Date(s) of Registration	8/8/66
Line 6	Registration No(s).	Ep 220063
Line 7	Date(s) of Infringement	9/23/08
Line 8	Place of Infringement	KLDE-FM

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 362 Personal Injury - Med. Malpractice
120 Marine 315 Airplane Product Liability 365 Personal Injury - Product Liability
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability
140 Negotiable Instrument 330 Federal Employers' Liability 370 Other Fraud
150 Recovery of Overpayment & Enforcement of Judgment 340 Marine 371 Truth in Lending
151 Medicare Act 345 Marine Product Liability 380 Other Personal Property Damage
152 Recovery of Defaulted Student Loans (Excl. Veterans) 350 Motor Vehicle 385 Property Damage Product Liability
153 Recovery of Overpayment of Veteran's Benefits 355 Motor Vehicle Product Liability
160 Stockholders' Suits 360 Other Personal Injury
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY CIVIL RIGHTS PRISONER PETITIONS
210 Land Condemnation 441 Voting 510 Motions to Vacate Sentence
220 Foreclosure 442 Employment 530 General
230 Rent Lease & Ejectment 443 Housing/Accommodations 535 Death Penalty
240 Torts to Land 444 Welfare 540 Mandamus & Other
245 Tort Product Liability 445 Amer. w/Disabilities - Employment 550 Civil Rights
290 All Other Real Property 446 Amer. w/Disabilities - Other 555 Prison Condition
440 Other Civil Rights

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

BROADCAST MUSIC, INC.;)
WARNER-TAMERLANE PUBLISHING)
CORP.; GIBB BROTHERS MUSIC;)
CROMPTON SONGS; RONDOR MUSIC)
INTERNATIONAL, INC. d/b/a)
IRVING MUSIC; ELEKSYLUM MUSIC,)
INC.; NO SURRENDER MUSIC, A)
DIVISION OF PRAXIS)
INTERNATIONAL COMMUNICATIONS,)
INC.; AL GREEN MUSIC, INC.;)
STONE DIAMOND MUSIC CORP.,)

Plaintiffs,)

CIVIL ACTION NO.: _____

v.)

TENN-VOL CORP. d/b/a RADIO)
STATION KLDE-FM; DANNY ROY)
BOYER, individually,)

Defendants.)

Plaintiffs' Certificate of Interested Persons

Pursuant to Fed. R. Civ. P. 7.1 and LR 3.1(c), LR 3.2(e), LR 7.4, LR 81.1(a)(3)(D), and LR 81.2, Plaintiffs Broadcast Music, Inc., Warner-Tamerlane Publishing Corp., Gibb Brothers Music, Crompton Songs, Rondor Music International, Inc., d/b/a Irving Music, Eleksylum Music, Inc., No Surrender Music, a Division of Praxis International Communications, Inc., Al Green Music, Inc., and Stone Diamond Music Corp., provide the following information.

For a nongovernmental corporate party, the name(s) of its parent corporation and any publicly held corporation that owns 10% or more of its stock:

<u>Plaintiff</u>	<u>Parent corporation or publicly held corporation owning 10% or more of its stock:</u>
Broadcast Music, Inc.	BMI certifies that Gannett Co., Inc., which is publicly held, owns indirectly through a wholly-owned subsidiary more than 10% of BMI's stock. BMI has no publicly held parent companies, affiliates or subsidiaries, and there are no other publicly held companies that own 10% or more of BMI's stock.
Eleksylum Music, Inc.	Elektra/Asylum/Nonesuch Records, a Division of Warner Communications.
Rondor Music International, Inc., d/b/a Irving Music	Vivendi SA
Stone Diamond Music Corp.	EMI Group Global, Ltd.
Warner-Tamerlane Publishing Corp.	Warner Music Group Corp.
International Communications, Inc.	None.
Al Green Music, Inc.	None.

A complete list of all persons, associations or persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities that are financially interested in the outcome of this case:

1. Broadcast Music, Inc.
2. Warner-Tamerlane Publishing Corp.
3. Gibb Brothers Music
4. Crompton Songs
5. Rondor Music International, Inc., d/b/a Irving Music

6. Eleksylum Music, Inc.
7. No Surrender Music, a Division of Praxis International Communications, Inc.
8. Al Green Music, Inc.
9. Stone Diamond Music Corp.
10. Tenn-Vol Corp. d/b/a Radio Station KLDE-FM; and
11. Danny Roy Boyer, Individually.

Dated: September 21, 2011

Respectfully submitted,

F&B LLP

/s/ Arthur Gollwitzer III

Arthur Gollwitzer III (*pro hac vice* application pending)

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