

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEL WYCLEF JEAN, JERRY DUPLESSIS, HUSS-
ZWINGLI PUBLISHING, INC., and TE-BASS
MUSIC, INC.,

Plaintiffs,

-against-

BUG MUSIC, INC. and R & B MUSIC LLC,

Defendants.

00 Civ. _____ ()

COMPLAINT

FILED
U.S. DISTRICT COURT
MAY 26 3 52 PM '08
SOUTHERN DISTRICT OF NEW YORK

Plaintiffs Nel Wyclef Jean, Huss-Zwingli Publishing, Inc., Jerry Duplessis, Te-Bass Music, Inc. (hereinafter referred to collectively as "Plaintiffs"), by their attorneys, RubinBaum, LLP, as and for their complaint allege, upon knowledge as to their own acts and upon information and belief as to the acts of all others, as follows:

Nature of The Action

1. This action involves a justiciable controversy concerning whether plaintiffs infringed a copyright in a musical composition allegedly owned and/or controlled by defendants. Plaintiffs herein seek a declaratory judgment that their musical composition entitled "My Love Is Your Love," authored by plaintiff songwriters Nel Wyclef Jean and Jerry Duplessis, which is embodied on a sound recording thereof by recording artist and performer Whitney Houston, does not infringe any asserted copyright of defendants in the musical composition entitled "The Hand Clapping Song."

Jurisdiction and Venue

2. This action for declaratory relief, pursuant to 28 U.S.C. §§ 2201 and 2202, is for the purpose of determining a question of actual controversy within the Court's jurisdiction and resolving an existing conflict of asserted rights between the parties, as more fully set forth below.

3. Plaintiffs' request for declaratory relief concerns a justiciable controversy that arises under the copyright laws of the United States, 17 U.S.C. §101, et seq. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1338(a).

4. Personal jurisdiction exists over the defendants pursuant to New York Civil Practice Law and Rules §§ 301 and 302(a)(1).

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

Parties

6. Plaintiff Nel Wyclef Jean ("Wyclef") is a musician, performer and composer who resides in New Jersey.

7. Plaintiff Huss-Zwingli Publishing, Inc ("Zwingli"), the music publishing entity through which Wyclef owns and controls his musical compositions, is a New Jersey corporation, with its principal place of business in New York, New York.

8. Plaintiff Jerry Duplessis a/k/a Jerry Wonder ("Duplessis") is a musician, performer and composer who resides in New Jersey.

9. Plaintiff Te-Bass Music, Inc. ("Te-Bass"), the music publishing entity through which Duplessis owns and controls his musical compositions, is a New Jersey corporation, with its principal place of business in New York, New York.

10. Defendant R & B Music LLC ("R&B") is a California corporation that does and transacts business in New York, New York.

11. Defendant Bug Music, Inc. ("Bug Music") is a California corporation that does and transacts business in New York, New York. Bug Music, which has an office and place of business in New York, is a general partner of R & B and its agent.

The Controversy

12. Wyclef and Duplessis co-authored the music, and Wyclef wrote the lyrics, of the musical composition entitled "My Love Is Your Love" ("Plaintiffs' Composition").

13. Zwingli and Te-Bass are co-publishers and co-owners of the copyright in Plaintiffs' Composition under separate co-publishing agreements with publishers Sony Music Publishing and EMI Blackwood Music, Inc. ("EMI"), respectively.

14. A United States copyright registration, No. PA 927-024, was issued for Plaintiffs' Composition in November 1998 in the name of copyright owners Zwingli, Te-Bass, EMI and Sony/ATV Tunes LLC. A copy of the Certificate of Registration for Plaintiffs' Composition is attached hereto as Exhibit A.

15. Plaintiffs' Composition is embodied on a sound recording containing the performance of Whitney Houston, which was released and distributed by Arista Records in 1998 (the "Houston Recording").

16. In early 1999, defendant Bug Music wrote to plaintiffs and other third parties alleging that Plaintiffs' Composition, embodied on the Houston Recording, infringed the copyright in a musical composition entitled "The Hand Clapping Song" (the "Clapping Song"),

purportedly authored by four artists professionally known as The Meters. Bug Music asserted that it controlled one hundred percent of the copyright in the Clapping Song.

17. In subsequent correspondence, plaintiffs disputed and denied defendants' assertions of infringement.

18. Later, in January 2000, plaintiffs, among others, received a further written communication from a representative of defendant R & B, asserting that R & B is the copyright owner of the Clapping Song, and that Plaintiffs' Composition embodied on the Houston Recording infringed R & B's alleged sole copyright ownership in the Clapping Song, in violation of 17 U.S.C. §106.

19. R & B demanded that plaintiffs immediately cease any further reproduction, adaptation, performance, distribution or other exploitation of Plaintiffs' Composition and the Houston Recording, and deposit all music publishing monies and recording income and related revenues in escrow. R & B threatened litigation if its demands were not met.

20. R & B supported its claim of alleged copyright ownership with a purported 1970 certificate of copyright registration for the Clapping Song in the name of Rhineland Music, Inc., a copy of which is attached hereto as Exhibit B, without providing any documentation of transfer or assignment from, or affiliation with, Rhineland Music, Inc.

21. Upon information and belief, a renewal of copyright registration No. RE 780-857, effective January 20, 1998, was issued in the name of claimants and authors Leo Nocentelli, Arthur Neville, George Porter and Joseph Modeliste, the original members of

The Meters, in care of Bug Music. The copyright renewal registration, a copy of which is annexed hereto as Exhibit C, lists defendant Bug Music as the agent/representative of the claimants.

22. Musicologist reports analyzing the alleged similarities between the two compositions and further correspondence were exchanged between representatives of R & B and plaintiffs, including a request by plaintiffs for evidence of a written transfer of Rhinelander Music, Inc.'s copyright to R & B or Bug Music, without resolution.

23. Despite plaintiffs' demonstration to R & B that Plaintiffs' Composition does not infringe upon any copyright interest of defendants in the Clapping Song, R & B continued to threaten plaintiffs and various third parties that, unless plaintiffs capitulated to R & B's demands, R & B would file suit for copyright infringement, seeking the maximum amount of damages.

24. Plaintiffs did not copy the Clapping Song or in any way infringe any copyright interest of defendants in the Clapping Song. Plaintiffs' Composition was independently created by Wyclef and Duplessis.

25. There is no substantial similarity between Plaintiffs' Composition and the Clapping Song.

26. Any allegedly similar elements of the Clapping Song are not protectable under the copyright laws of the United States.

27. As a result of the foregoing, there exists an actual controversy between plaintiffs and defendants within the jurisdiction of this Court involving whether or not Plaintiffs' Composition infringes defendants' copyright interest, if any, in the Clapping Song, which controversy may be determined and adjudicated by a judgment of this Court, without other suits.

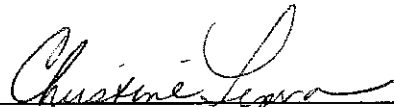
WHEREFORE, plaintiffs are entitled to a declaratory judgment that:

- (A) in the event this Court determines that defendants have a copyright interest in the Clapping Song, Plaintiffs' Composition does not infringe any such copyright interest and plaintiffs have not violated the copyright laws;
- (B) plaintiffs are entitled to reproduce, distribute, adapt, exploit, market and sell, in any medium, Plaintiffs' Composition;
- (C) plaintiffs be awarded their costs and reasonable attorneys fees pursuant to 17 U.S.C. § 505; and
- (D) plaintiffs be awarded such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 26, 2000

RUBINBAUM LLP

By: _____


Christine Lepera (CL 9311)
Jeannie Costello (JC 7536)
30 Rockefeller Plaza
New York, New York 10112
212-698-7700

Attorneys for Plaintiffs
Nel Wyclef Jean, Huss-Zwingli
Publishing, Inc, Jerry Duplessis, and
Te-Bass Music, Inc.



EFFECTIVE DATE OF REGISTRATION
 PA / PAU
 NOV 27 1998
 Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼
 MY LOVE IS YOUR LOVE
 (as contained on the CD entitled "MY LOVE IS YOUR LOVE" #07822-19037-2 / WHITNEY HOUSTON)
 PREVIOUS OR ALTERNATIVE TITLES ▼

NATURE OF THIS WORK ▼ See instructions
 WORDS AND MUSIC

2 a NAME OF AUTHOR ▼ DUPLESSIS, JERRY DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼
 Was this contribution to the work a "work made for hire"?
 Yes
 No
 AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR { Citizen of ► UNITED STATES
 Domiciled in ►
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No
 If the answer to either of these questions is "Yes," see detailed instructions
 NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼
 MUSIC

NOTE
 Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼ JEAN, WYCLEF DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼
 Was this contribution to the work a "work made for hire"?
 Yes
 No
 AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR { Citizen of ► UNITED STATES
 Domiciled in ►
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No
 If the answer to either of these questions is "Yes," see detailed instructions
 NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼
 WORDS AND MUSIC

c NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼
 Was this contribution to the work a "work made for hire"?
 Yes
 No
 AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR { Citizen of ►
 Domiciled in ►
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No
 If the answer to either of these questions is "Yes," see detailed instructions
 NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 1998 Year This information must be given in all cases
b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
 Complete this information ONLY if this work has been published.
 Month ► NOVEMBER Day ► 17 Year ► 1998
 UNITED STATES Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given space 2. ▼
 EMI BLACKWOOD MUSIC INC.; TE-BASS MUSIC, INC.;
 HUSS-ZWINGLI PUBLISHING; SONY/ATV TUNES LLC
 810 Seventh Avenue, New York, New York 10019

DO NOT WRITE HERE OFFICE USE ONLY
 APPLICATION RECEIVED
 NOV 27 1998
 ONE DEPOSIT RECEIVED
 NOV 27 1998
 TWO DEPOSITS RECEIVED
 REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼
 BY VIRTUE OF WRITTEN AGREEMENT

EXAMINED BY

FORM PA

CHECKED BY

CORRESPONDENCE
Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box)

- a. This is the first published edition of a work previously registered in unpublished form.
- b. This is the first application submitted by this author as copyright claimant.
- c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

PENDING

1998

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

EMI MUSIC PUBLISHING

DAO 40983

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

GLENN GOLDSTEIN

EMI MUSIC PUBLISHING

810, 7TH AVENUE - 36TH FLOOR

NEW YORK, NEW YORK, 10019

Area Code & Telephone Number ▶ (212) 830-2000 X4022

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one ▼

- author
- other copyright claimant
- owner of exclusive right(s)

authorized agent of CLAIMANTS OF SPACE 4

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

GLENN GOLDSTEIN

Date ▶ 11/18/98

Handwritten signature (X) ▼

MAIL
CERTIFI-
CATE TO

Certificate
will be
mailed in
window
envelope

Name ▼	EMI MUSIC PUBLISHING GOLDSTEIN	ATTENTION: GLENN
Number/Street/Apartment Number ▼	810 SEVENTH AVENUE - 36TH FLOOR	
City/State/ZIP ▼	NEW YORK, NEW YORK - 10019	

YOU MUST:
• Complete all necessary spaces
• Sign your application in space 8
**SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:**

1. Application form
2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:
Register of Copyrights
Library of Congress
Washington, D.C. 20559

The Copyright Office has the authority to adjust fees at 5-year intervals, based on changes in the Consumer Price Index. The next adjustment is due in 1996. Please contact the Copyright Office after July 1995 to determine the actual fee schedule.

5

6

See instructions
before completing
this space.

7

Be sure to
give your
daytime phone
number.

8

9

CLASS	REGISTRATION NO.
E	EU 185627
DO NOT WRITE HERE	
EP	EU

Application for Registration of a Claim to Copyright

in a musical composition the author of which is a citizen or domiciliary of the United States of America or which was first published in the United States of America

Instructions: Make sure that all applicable spaces have been completed before you submit the form. The application must be **SIGNED** at line 9. For published works the application should not be submitted until after the date of publication given in line 4(a), and should state the facts which existed on that date. For further information, see page 4. Pages 1 and 2 should be typewritten or printed with pen and ink. Pages 3 and 4 should contain exactly the same information as pages 1 and 2, but may be carbon copies.

Mail all pages of the application to the Register of Copyrights, Library of Congress, Washington, D.C. 20540, together with:

- (a) If unpublished, one complete copy of the work and the registration fee of \$6.
- (b) If published, two copies of the best edition of the work and the registration fee of \$6.

Make your remittance payable to the Register of Copyrights.

1. **Copyright Claimant(s) and Address(es):** Give the name(s) and address(es) of the copyright owner(s). In the case of published works the name(s) should ordinarily be the same as in the notice of copyright on the copies deposited.

Name RHINELANDER MUSIC, INC.

Address 1211 St. Philip Street, New Orleans, La.

Name _____

Address _____

2. **Title:** HAND CLAPPING SONG
(Give the title of the musical composition as it appears on the copies)

3. **Authors:** Citizenship and domicile information must be given. Where a work is made for hire, the employer is the author. Organizations formed under U.S. Federal or State law are U.S. citizens. Authors include composers of music, authors of words, arrangers, compilers, etc. If the copyright claim is based on new matter (see line 5) give information about the author of the new matter.

Name Leo Nocentelli A Citizenship: U.S.A. Other _____
(Give legal name followed by pseudonym if latter appears on the copies) (Check if U.S. citizen) (Name of country)

Domiciled in U.S.A. Yes No _____ Address c/o above address Author of words & music
(State which: words, music, arrangement, etc.)

Name George Porter A Citizenship: U.S.A. Other _____
(Give legal name followed by pseudonym if latter appears on the copies) (Check if U.S. citizen) (Name of country)

Domiciled in U.S.A. Yes No _____ Address same as above Author of words & music
(State which: words, music, arrangement, etc.)

Name Arthur Neville Joseph Modeliste A Citizenship: U.S.A. Other _____
(Give legal name followed by pseudonym if latter appears on the copies) (Check if U.S. citizen) (Name of country)

Domiciled in U.S.A. Yes No _____ Address both same as above Author of words & music
(State which: words, music, arrangement, etc.)

➡ NOTE: Leave all spaces of line 4 blank unless your work has been PUBLISHED. ◀

4. (a) **Date of Publication:** Give the date when copies of this particular version of the work were first placed on sale, sold, or publicly distributed. The date when copies were made or printed, or the date when the work was performed should not be confused with the date of publication. NOTE: The full date (month, day, and year) must be given.

(Month) (Day) (Year)

(b) **Place of Publication:** Give the name of the country in which this particular version of the work was first published.

➡ NOTE: Leave all spaces of line 5 blank unless the instructions below apply to your work. ◀

5. **Previous Registration or Publication:** If a claim to copyright in any substantial part of this work was previously registered in the U.S. Copyright Office in unpublished form, or if any substantial part of the work was previously published anywhere, give requested information.

Was work previously registered? Yes _____ No _____ Date of registration _____ Registration number _____

Was work previously published? Yes _____ No _____ Date of publication _____ Registration number _____

Is there any substantial **NEW MATTER** in this version? Yes _____ No _____ If your answer is "Yes," give a brief general statement of the nature of the **NEW MATTER** in this version. (New matter may consist of compilation, arrangement, adaptation, editorial revision, and the like, as well as additional words and music.)

EXAMINER
<i>[Signature]</i>

6. If registration fee is to be charged to a deposit account established in the Copyright Office, give name of account:

Paul G. Marshall

7. Name and address of person or organization to whom correspondence or refund, if any, should be sent:

Name Marshall & Morris Address 130 W. 57th St., New York, N.Y.

8. Send certificate to:

(Type or print name and address) Name Address

MARSHALL & MORRIS		

130 W. 57th St.		
(Number and street)		
New York, N.Y.	10019	
(City)	(State)	(ZIP code)

9. Certification:

(Application not acceptable unless signed)

I CERTIFY that the statements made by me in this application are correct to the best of my knowledge.

Stuart Siffer

(Signature of copyright claimant or duly authorized agent)

Application Forms

Copies of the following forms will be supplied by the Copyright Office without charge upon request.

- Class A Form A—Published book manufactured in the United States of America.
 - Form A-B Foreign—Book or periodical manufactured outside the United States of America (except works subject to the ad interim provisions of the copyright law).
 - Form A-B Ad Interim—Book or periodical in the English language manufactured and first published outside the United States of America.
- Class B Form B—Periodical manufactured in the United States of America.
 - Form BB—Contribution to a periodical manufactured in the United States of America.
- Class C Form C—Lecture or similar production prepared for oral delivery.
- Class D Form D—Dramatic or dramatico-musical composition.
- Class E Form E—Musical composition the author of which is a citizen or domiciliary of the United States of America or which was first published in the United States of America.
 - Form E Foreign—Musical composition the author of which is not a citizen or domiciliary of the United States of America and which was not first published in the United States of America.
- Class F Form F—Map.
- Class G Form G—Work of art or a model or design for a work of art.
- Class H Form H—Reproduction of a work of art.
- Class I Form I—Drawing or plastic work of a scientific or technical character.
- Class J Form J—Photograph.
- Class K Form K—Print or pictorial illustration.
 - Form KK—Print or label used for an article of merchandise.
- Class L or M Form L-M—Motion picture.
- Form R—Renewal copyright.
- Form U—Notice of use of copyrighted music on mechanical instruments.

FOR COPYRIGHT OFFICE USE ONLY	
Application received UN - 1 1970	
One copy received UN - 1 1970	
Two copies received	
Fee received	
Renewal 780-857	

FORM RE

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER RE 780-857
EFFECTIVE DATE OF RENEWAL REGISTRATION JAN 20 1998

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

1 Renewal Claimant(s)	RENEWAL CLAIMANT(S), ADDRESS(ES), AND STATEMENT OF CLAIM: (See Instructions)	
	1	Name... Leo Nocentelli Address... c/o Bug Music, 6777 Hollywood, Bl., 7th Fl., Hollywood, CA 90028 Claiming as... the author <small>(Use appropriate statement from instructions)</small>
	2	Name... Arthur Neville Address... c/o Bug Music, 6777 Hollywood, Blvd., 9th Fl., Hollywood, CA 90028 Claiming as... the author <small>(Use appropriate statement from instructions)</small>
3	Name... George Porter & Joseph Modeliste Address... c/o Bug Music 6777 Hollywood Blvd., 9th Fl., Hollywood, CA 90028 Claiming as... the author <small>(Use appropriate statement from instructions)</small>	

2 Work Renewed	TITLE OF WORK IN WHICH RENEWAL IS CLAIMED: Hand Clapping Song
	RENEWABLE MATTER: Words and Music
	CONTRIBUTION TO PERIODICAL OR COMPOSITE WORK: Title of periodical or composite work: If a periodical or other serial, give: Vol. No. Issue Date
4 Facts of Original Registration	AUTHOR(S) OF RENEWABLE MATTER: Leo Nocentelli George Porter Arthur Neville Joseph Modeliste

097303256
-097303256*

4 Facts of Original Registration	ORIGINAL REGISTRATION NUMBER: EU 185 627	ORIGINAL COPYRIGHT CLAIMANT: Rhineland Music, Inc.
	ORIGINAL DATE OF COPYRIGHT: • If the original registration for this work was made in published form, give: DATE OF PUBLICATION: <small>(Month) (Day) (Year)</small>	
		• If the original registration for this work was made in unpublished form, give: DATE OF REGISTRATION: *6/1/70 - 3/11/70 <small>(Month) (Day) (Year)</small>