

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

-----x		
BRIGHTER SKY PRODUCTIONS, LLC,	)	
DAN TRAMON, DIANA BELKOWSKI, and	)	
CARL ANTHONY TRAMON,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 18-cv-06723
	)	
MARRIOTT INTERNATIONAL, INC.;	)	Honorable Charles R. Norgle, Sr.
DTRS LINCOLNSHIRE, LLC; MARRIOTT	)	
HOTEL SERVICES, INC.; STRATEGIC	)	
HOTELS & RESORTS, LLC; OLD GLOBE	)	
THEATER; RFMBG LINCOLNSHIRE,	)	
LLC; LA-RFMBG LINCOLNSHIRE, LLC;	)	
MICHAEL MAHLER; AARON THIELEN;	)	
and TERRY JAMES,	)	
	)	
Defendants.	)	
-----x		

**AMENDED COMPLAINT**

Plaintiffs Brighter Sky Productions, LLC (“Brighter Sky”), Dan Tramon (“Dan Tramon”), Diana Belkowski (“Belkowski”) and Carl Anthony Tramon (“Carl Tramon”) (collectively “Plaintiffs”), by and through their undersigned attorneys, based upon actual knowledge with respect to their own acts and upon knowledge, information and belief with respect to all other matters, allege as follows:

**NATURE OF THE CASE**

1. This lawsuit seek remedy for the unlawful actions of Defendants (as identified below) to infringe on Plaintiffs’ intellectual property: a theatrical musical Plaintiffs created called, *Rocket Boys The Musical* (the “Rocket Boys Musical”). The Rocket Boys Musical is based on the New York Times No. 1 best-selling book, ROCKET BOYS: A MEMOIR (the “Book”), written by

world-renowned author Homer Hickam, Jr. (“Hickam”). Plaintiffs and Hickam (the “Rocket Boys Team”) worked collaboratively on the project, turning the Book into the Rocket Boys Musical.

2. In 1996, over a decade before the Rocket Boys Team began their collaborative work, Universal Pictures, a division of Universal City Studios, LLC (“Universal”) had purchased the rights to the Book and adapted it into the beloved movie, *October Sky*, starring acclaimed actor Jake Gyllenhaal as Hickam. After creation of the Rocket Boys Musical, however, with knowledge of and access to it, Defendants in conspiracy with Universal created a competing musical called, *October Sky The Musical* (“October Sky Musical”) that materially infringes upon the intellectual property rights of Plaintiffs.

3. Defendants’ actions have caused serious economic damage to Plaintiffs (believed to be in the millions of dollars), constitute violations of the following laws and give rise to the following claims: (i) Federal Copyright Infringement under the Copyright Act (17 U.S.C. §§ 501(a) and 106); (ii) Contributory Copyright Infringement; (iii) Federal Infringement of an Unregistered Trademark, False Designation of Origin, False or Misleading Description of Fact, and False or Misleading Representation of Fact Under Section 43(a)(1)(A) of the Lanham Act 15 U.S.C. § 1125(a)(1); (iv) Federal Unfair Competition of Trademarks under Section 43(a) of the Lanham Act 15 U.S.C. § 1125(a);(v) Common Law Trademark Infringement and Unfair Competition; (vi) Unfair Competition under the Illinois Uniform Deceptive Practices Act, 815 ILCS 510/2; (vii) Intentional/Tortious Interference with Prospective Business or Economic Advantage; (viii) Unjust Enrichment; and (ix) Civil Conspiracy.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1331, because this suit asserts causes of action under 15 U.S.C. §1125, 17 U.S.C. §501, and 17 U.S.C. §§ 101.

5. This Court has subject matter jurisdiction under 28 U.S.C. §1338(a)-(b).

6. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the claims in this Amended Complaint that arise under the common law and statutes of the State of Illinois because the claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

7. In the alternative, pursuant to 28 U.S.C. § 1332(a)(1), this Court has diversity jurisdiction over the claims in this Amended Complaint because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and the parties are citizens of different states.

8. Defendants are each subject to this Court's personal jurisdiction because (a) the Defendant corporations and limited liability companies either (i) maintain a principal place of business in the State of Illinois, (ii) are organized to do business in the State of Illinois, (iii) operate and transact business in the State of Illinois, (iv) can be found in the State of Illinois, (v) acted with, assisted, conspired, engaged, authorized and/or controlled the other Defendant corporations and limited liability companies conducting business in the State of Illinois; (vi) acted with, assisted, conspired, engaged, authorized and/or controlled the actions that occurred in the State of Illinois that give rise to the causes of action pled in this Amended Complaint; (vii) committed the acts in furtherance of their business in the State of Illinois; and/or (viii) conduct business in the State of Illinois that generates a substantial amount of revenue; and (b) the individual Defendants either (i)

reside in the State of Illinois; (ii) transact or conduct business in the State of Illinois; (iii) can be found in the State of Illinois; (iv) acted with, assisted, conspired, engaged, authorized and/or controlled other Defendants conducting business in the State of Illinois; (v) acted with, assisted, conspired, engaged, authorized and/or controlled the actions that occurred in the State of Illinois that give rise to the causes of action pled in this Amended Complaint; and/or (vi) committed the acts in furtherance of their business in the State of Illinois; and (c) Plaintiffs have suffered injury in the State of Illinois as a result of Defendants' unlawful acts; and (d) much of the development, writing, casting, rehearsing and production activities relating to the October Sky Musical took place in the State of Illinois.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)-(d) and § 1400(a) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district; a substantial part of property that is the subject of the action is situated in this district; Defendants reside in and are subject to personal jurisdiction in this district; Defendants are doing and have done business within this district; and/or this Amended Complaint alleges claims against Defendants or their agents who either reside in the district or can be found in the district.

### **THE PARTIES**

#### **A. Plaintiffs**

10. Plaintiff Brighter Sky is a limited liability company organized under the laws of the State of New Jersey with a principal place of business located at 301 45th Street, #14A, New York, New York, 10001. Plaintiff Brighter Sky is comprised of four members, three of which are the individual Plaintiffs in this action.

11. Plaintiff Dan Tramon is an individual who resides at 815 Ramapo Valley Road, Oakland, New Jersey 07436.

12. Plaintiff Belkowski is an individual who resides at 13 H Brookside Heights, Wanaque, New Jersey 07465.

13. Plaintiff Carl Tramon is an individual who resides at 301 West 45th Street, #14A, New York, New York 10036.

**B. Defendants**

14. Defendant Marriott Hotel Services, Inc. is a corporation organized under the laws of Delaware with a principal place of business located at 10400 Fernwood Road, Bethesda, MD 20817. Marriott Hotel Services, Inc. managed the Lincolnshire Marriott Resort (the “Lincolnshire Resort”), located at Ten Marriott Drive, Lincolnshire, Illinois 60069, where the Marriott Theatre (the “Marriott Theatre”) is located, at all times relevant to the Amended Complaint.

15. Defendant Marriott International, Inc. is a corporation organized under the laws of Delaware with a principal place of business located at 10400 Fernwood Road, Bethesda, MD 20817. Marriott International, Inc. was the parent corporation of Marriott Hotel Services, Inc. at all times relevant to the Amended Complaint.

16. Defendant DTRS Lincolnshire, LLC is a limited liability company organized under the laws of Delaware with a principal place of business located at 200 West Madison Street, Suite 1700, Chicago, Illinois 60606. DTRS Lincolnshire, LLC was the operating lessee of the Lincolnshire Resort and Marriott Theater at all times relevant to the Amended Complaint.

17. Defendant Strategic Hotels & Resorts, LLC is a limited liability company organized under the laws of Delaware, also registered in Illinois, with a principal place of business located at 150 N Riverside Plaza, Suite 4100, Chicago, IL 60606. Strategic Hotels & Resorts, LLC was the successor owner of Defendant DTRS at all times relevant to the Amended Complaint.

18. Defendant Old Globe Theater is a nonprofit corporation organized under the laws of California, with a principal place of business located at 1363 Old Globe Way, San Diego, California 92101-1696.

19. Defendant RFMBG Lincolnshire, LLC is a limited liability company organized under the laws of Delaware, registered to do business in Illinois, with a principal place of business located at 1250 Feehanville Drive, Suite 200, Mt. Prospect, Illinois 60056. Upon information and belief, RFMBG Lincolnshire, LLC is a current owner of the Lincolnshire Resort, but did not own the Lincolnshire Resort during the time of the infringement and other wrongdoing alleged herein. It is nonetheless included as a defendant herein because, absent discovery, it is not possible to know the extent to which it assumed liabilities of one or more Defendants herein who are liable to Plaintiffs, whether by contract or through operation of law as a successor entity.

20. Defendant LA-RFMBG Lincolnshire, LLC is a limited liability company organized under the laws of Delaware with a principal place of business located at 1471 E. Business Center Drive, #900, Mt. Prospect, Illinois 60056. Upon information and belief, LA-RFMBG Lincolnshire, LLC is a current owner of the Lincolnshire Resort, but did not own the Lincolnshire Resort during the time of the infringement and other wrongdoing alleged herein. It is nonetheless included as a defendant herein because, absent discovery, it is not possible to know the extent to which it assumed liabilities of one or more Defendants herein who are liable to Plaintiffs, whether by contract or through operation of law as a successor entity.

21. Defendant Michael Mahler (“Mahler”) is an individual who resides in Oak Park, IL. Defendant Mahler wrote and contributed to the music, lyrics, script, sequences and scenes for the October Sky Musical.

22. Defendant Aaron Thielen (“Thielen”) is an individual who resides in Lincolnshire, Illinois. Defendant Thielen is the Artistic Director of Marriott Theater, wrote the stage play for the October Sky Musical, and co-wrote music and lyrics with Defendant Mahler.

23. Defendant Terry James (“James”) is an individual who resides in Lincolnshire, Illinois. Defendant James was the Executive Producer of the Marriott Theater and was responsible for all aspects of the Marriot Theater’s operations at all times relevant to the Amended Complaint.

### **BACKGROUND ON PLAINTIFFS**

24. Plaintiff Dan Tramon is a Juilliard Prep and Columbia University graduate who has been involved in New York musical theater for most of his life. He has performed piano recitals at The Lincoln Center in New York, and roles at the Metropolitan Museum of Art, also in New York. He studied at the Institute of Audio Research, in New York, led him to Broadway. He has been the Sound Engineer for some of the most successful Broadway productions in history, including *Kinky Boots*, *Sister Act*, *Catch Me If You Can*, *Bonnie & Clyde*, *Billy Joel’s Movin’ Out*, *Dolly Parton’s 9 To 5*, and *Phil Collins/Disney’s Tarzan*. He has been Associate Sound Designer for numerous Broadway productions and served as Music Programmer for *Paul Simon’s Capeman*, *Cats*, and *Beauty and the Beast*. He has orchestrated and performed digital music, composed pre-show music and various scores. Dan Tramon has earned the honor of two ASCAP/Disney Musical Theater Workshop Awards, one of which is for the Rocket Boys Musical that is the subject of this litigation.

25. Plaintiff Carl Tramon is an experienced stage, television and film actor who is a graduate of the Royal Academy of Dramatic Art in London, England. He has performed on Broadway; in national tours, alongside legendary actors like Angela Lansbury and director Stephen Schwartz; in such hit television shows as *Saturday Night Live*, *One Life to Live*, *Saved by the Bell*, *Growing Pains*; in over 50 national commercials; and in several feature films. He has received many

awards, including the coveted Best Actor award nomination by the Broadway League. He was also the lead member of the pop group UNETI, which has toured internationally, had videos air globally on MTV, and was chosen to be the soundtrack for The New York Yankees in their television and radio promotions for New York City. Carl Tramon has also directed countless stage productions and co-wrote many stage plays, including the stage play for the Rocket Boys Musical that is the subject of this litigation.

26. Plaintiff Diana Belkowski is a graduate of The Juilliard School, and the BMI Lehman-Engel Musical Theatre Workshop. She is the recipient of two Billboard Music Awards for work in musical theatre and contemporary Christian music. She has traveled nationwide as a member of the Presidential Arts Committee and has written material for both presidential and gubernatorial campaigns. A long-time Director of Sacred Music, Belkowski has written extensively for choirs, won numerous awards as a classical pianist, written a 50-song educational series for Random House, and written countless television theme songs. She is a two-time winner of the ASCAP/Disney Musical Theatre Award, one of which was for the Rocket Boys Musical that is the subject of this litigation.

27. Plaintiff Brighter Sky is a New Jersey limited liability company that was created to create, produce, develop, exploit, promote and present the Rocket Boys Musical in conjunction with the Rocket Boys Team.

#### **BACKGROUND ON HOMER HICKAM AND UNIVERSAL**

28. Hickam is an acclaimed and best-selling author, having penned 18 novels and 27 memoirs. Hickam has received numerous awards over his career, for both his literary output and his commitment to charitable causes and volunteer efforts. While Hickam has made numerous appearances on the New York Times best-seller list, he is best known for the Book – an inspirational and uplifting story about Hickam’s life growing up in the little town of Coalwood, West Virginia.

After Hickam sold the rights to the Book to Universal, the book was turned into the critically-acclaimed *October Sky* movie. The Book and *October Sky* movie are each considered to be American classics, and have inspired generations of readers and movie-goers.

### **THE ROCKET BOYS MUSICAL**

29. In or about 2006, the three individual Plaintiffs approached Hickam and told him that they wanted to develop the Book into a musical. They gave a dramatic presentation to Hickam that included music that Plaintiffs Dan Tramon and Belkowski had written that could be used for the musical.

30. In or about 2007, Hickam notified Universal about his desire and intentions to work with Plaintiffs to develop a musical. Universal responded to Hickam, advising that they owned the rights to the musical pursuant to his agreement with Universal. Hickam then contacted Ron Meyer (“Meyer”), then-President of Universal, and requested that Universal grant him the rights to produce the musical. Meyer agreed, and Universal and Hickam entered into an agreement that amended the parties existing rights agreement (the “Amended Universal Agreement”).

31. The Amended Universal Agreement granted Hickam the exclusive stage rights for five years to produce a live performance of the Book. The Amended Universal Agreement further provided that upon the expiration of Hickam’s five-year exclusivity to the live stage rights, Hickam’s rights would thereafter become non-exclusive.

32. With Hickam’s rights to the musical secured, the Rocket Boys Team developed the Rocket Boys Musical. In or about April 2008, the Rocket Boys Musical was chosen as one of three top winners in The Academy for New Musical Theatre’s “Search for New Musicals” competition, and the project was awarded a full staff-reading and workshop that was held in Los Angeles in late April 2008.

33. On May 24 and May 25, 2008, the first staged readings of the Rocket Boys Musical were held at the Merrimack Theater in Huntsville, Alabama. Universal was notified and invited.

34. Subsequently, from 2010 through 2015, the Rocket Boys Musical had successful readings, private performances, and public runs in New York, West Virginia, and Georgia, as follows:

- a. A June 7, 2010 New York industry read featuring an all-Broadway cast;
- b. Performance runs in 2011, 2012, and 2013 at Theatre West Virginia;
- c. A performance run in 2015 at the Legacy Theatre in Atlanta, Georgia;
- d. A private showing in May 2015 in New York intended as a showcase for a group of potential investors.

35. Each of these performances were met with positive reactions and reviews. The May 2015 New York performance led the Rocket Boys Team to obtain many key investors, which led to talks with New York theaters about opening a production of the Rocket Boys Musical in 2016. Ultimately, Plaintiffs and New World Stages, a renowned performing arts complex in New York's Theater District, agreed to terms, contracts were drafted, and Plaintiffs prepared to announce their opening at New World Stages in April of 2016. These performances never came to fruition due to the actions of Defendants (and Universal).

36. Also in 2009, the Rocket Boys Team turned down inquiries and offers from multiple sources, and entered into negotiations with the Old Globe Theater with respect to a potential 2012 run. Negotiations with the Old Globe Theater resumed in June 2014, only for Old Globe Theater to advise Plaintiff Carl Tramon that the theater was not interested in moving forward two weeks later.

37. Not surprisingly, given the success and acclaim enjoyed by the Rocket Boys Musical, representatives from Universal attended multiple performances of the Rocket Boys Musical and had access to both musical and stage play versions of the Rocket Boys Musical, some of which include the following:

- a. Aaron Glick and Patrick Catullo, representatives of Universal, and Marc Platt, a producer who had collaborated with Universal, attended the June 7, 2010 New York industry read;
- b. On October 11, 2011, Hickam delivered sampler compact discs of the Rocket Boys Musical and the Rocket Boys stage play to Universal's legal department and other individuals associated with Universal, such as Universal's then-President, Ron Meyer, and Chuck Gordon, producer of the *October Sky* movie; and
- c. On May 9, 2015, Herzberger attended a performance of the Rocket Boys Musical in Atlanta, Georgia.

38. After contractual disputes ultimately resulting in litigation between Hickam and Universal, Plaintiffs ultimately released Universal and other individuals connected with Universal from liability on any and all claims relating to the Rocket Boys Musical. As part of the settlement, Hickam retained the rights to continue performing the Rocket Boys Musical within the State of West Virginia, and Hickam continues to grant those rights to Plaintiff.

39. The Rocket Boys Musical has continued to run at the Theater West Virginia as recently as July 20, 2018 through July 22, 2018.

#### **THE OCTOBER SKY MUSICAL**

40. Though undisclosed to Hickam or Plaintiffs until 2018, in contravention of the terms of the Amended Universal Agreement, Herzberger (Universal's Vice President of Live Theatricals, met with various Defendants in April 2013 to discuss the creation of a musical based on the movie *October Sky*.

41. Hickam first learned of the possibility of an *October Sky* musical by way of an email message from a fan on May 27, 2013. On May 30, 2013, Herzberger informed Hickam by phone that Universal had already agreed that the Marriott Theater could produce the October Sky Musical. Herzberger told Hickam that the October Sky Musical was not yet written, and that it would not interfere with or infringe upon the Rocket Boys Musical.

42. Also on May 30, 2013, Herzberger sent an email to Defendant Thielen, noting that the material available to develop the October Sky Musical included (i) the *October Sky* movie; (ii) the Book, and (iii) “original material inspired by all of that source material,” of which the Rocket Boys Musical falls within that definition.

43. On August 1, 2014, Herzberger advised Hickam that the October Sky Musical was going forward in the Fall of 2015. Subsequently, the October Sky Musical ran at the Marriott Theater from August 19, 2015 through October 18, 2015, and it ran again at the Old Globe Theatre from September 22, 2016 through October 23, 2016 at the Old Globe in San Diego.

**PLAINTIFF’S INTELLECTUAL PROPERTY AND  
PROPRIETARY RIGHTS TO THE ROCKET BOYS MUSICAL**

44. Plaintiff Brighter Sky is the owner of all live stage rights to the Rocket Boys Musical.

45. Plaintiff Dan Tramon composed music and wrote lyrics for the Rocket Boys Musical, both alone and with Plaintiff Belkowski, and owns the copyright to all compositions and lyrics he created alone or in conjunction with Plaintiff Belkowski.

46. Plaintiff Belkowski composed music and wrote lyrics for the Rocket Boys Musical, both alone and with Plaintiff Dan Tramon, and owns the copyright to all compositions and lyrics she created alone or in conjunction with Plaintiff Dan Tramon.

47. Plaintiff Carl Tramon wrote the stage play with Hickam and co-owns the copyright to the stage play in conjunction with Hickam. The stage play for the Rocket Boys Musical was registered in the names of Plaintiff Carl Tramon and Hickam with the Writer’s Guild of America, East on May 30, 2008 for ten years and was renewed on May 18, 2018 for another ten years.

48. On January 6, 2015, a Certificate of Registration was issued by the U.S. Copyright Office for music titled, “Rocket Boys – Theme & Variation,” for the Rocket Boys Musical, evidencing Plaintiff Belkowski as the copyright claimant with authorship of the music and musical

arrangements and the year of completion of 2014. It bears the copyright registration number PAu003760398.

49. On May 25, 2016, Plaintiff Carl Tramon filed a copyright application with the U.S. Copyright Office for the Rocket Boys Musical Cast CD Cast Album with a year of completion of 2008, and date of first publication in the United States of August 26, 2011. The application indicates that each of the three individual Plaintiffs were copyright claimants. Authorship was broken down as follows: Plaintiff Dan Tramon created the music, lyrics, musical arrangement and artwork; Plaintiff Belkowski created the music, lyrics and artwork, Plaintiff Carl Tramon created the text and artwork; and Hickam created the text and artwork. This application was accepted and registered by the U.S. Copyright Office on May 25, 2016 and bears the copyright registration number PAu003889161.

50. Plaintiffs' artwork and logo (the "Trademarks") were an integral part of Plaintiffs' branding and have continuously used those Trademarks in connection with the Rocket Boys Musical. Plaintiffs have spent significant financial resources in connection with the Trademarks, brand development and marketing in an effort to build consumer trust in the Rocket Boys Musical as identified by their Trademarks. Copies of the Trademarks, side-by-side with infringing materials, are attached hereto as Group Exhibit A.

51. Plaintiffs are the sole and exclusive owner of the Trademarks which are distinctive, are used in intrastate and interstate commerce, identifies Plaintiffs as the source of goods provided, and was and is relied on by consumers (thereby acquiring a secondary meaning).

52. Plaintiff first used the Trademarks in interstate commerce on or about 2008. Plaintiff used the trademarks on-site at productions of the Rocket Boys Musical, and in print and digital media.

53. Plaintiffs' Trademarks are inherently distinctive.

54. In the alternative to the preceding paragraph, Plaintiffs' Trademarks have become distinctive by acquiring a secondary meaning. Such secondary meaning has been acquired through (1) Plaintiffs' advertising efforts and expenditures made to market the business, (2) the success of the Rocket Boys Musical as is evidenced by the repeatedly sold out shows in different venues in different states in the country; (3) unsolicited media coverage of the Rocket Boys Musical, Plaintiffs and their use of the Trademarks, (4) attempts by Defendants' to plagiarize, use and copy Plaintiffs' Trademarks, and (5) the length and exclusivity of the Trademarks' use by Plaintiffs, who have been the sole and exclusive user of the Trademarks since 2008, apart from Defendants' unauthorized use.

55. Plaintiffs' use of the Trademarks have been deliberate and continuous, not sporadic, casual, or transitory; Plaintiffs started using the Trademarks on or about May 8, 2008, and have used such Trademarks continuously through the present.

56. Plaintiffs have asserted their sole and exclusive ownership and proprietary interest in the Trademarks by sending a cease-and-desist letter to Defendant Marriott. Plaintiffs never authorized the use or reproduction of the Trademarks to any third party.

57. Plaintiffs and producers authorized by Plaintiffs have invested significant resources in the Rocket Boys Musical and undertook significant efforts to advertise, market and promote the Rocket Boys Musical for over ten (10) years, generating considerable press and public attention for Plaintiffs' creative and commercial efforts.

58. Throughout all phases of the Rocket Boys Musical and through all productions, the Rocket Boys Musical received stellar reviews from critics and audiences throughout the country, played to sold out theaters and received numerous awards.

**DEFENDANTS' WRONGFUL ACTS, INJURY TO  
PLAINTIFFS AND UNJUST ENRICHMENT OF DEFENDANTS**

59. Defendants have misappropriated and used Plaintiffs' proprietary intellectual property without any permission, authorization, consent, sale, or license of Plaintiffs' ownership rights and have conducted themselves in a form and manner inconsistent with and detrimental to the Plaintiffs' ownership rights.

60. Defendants have neither sought nor obtained permission for any use of the content of the Rocket Boys Musical and have not paid Plaintiffs proper consideration or accounted financially to them prospectively or otherwise for the aforementioned uses.

61. Under the doctrines of vicarious liability and respondeat superior, the actions specified in this Amended Complaint taken by the individual Defendants could be imputed to each of the Defendant corporations that had a legal right to supervise and control the conduct of the individual Defendants and had an obvious and direct financial interest in the actions taken by the individual Defendants.

**A. Access to the Rocket Boys Musical**

62. As noted above, Defendants, by and through Universal, had access to the stage play, musical compositions and lyrics of the Rocket Boys Musical. Universal was given the aforementioned intellectual property on multiple occasions as specified in this Amended Complaint, and, on information and belief, transferred such intellectual property to one or more of the Defendants.

63. Defendants also had access to Plaintiffs' intellectual property as a result of the fact that the Rocket Boys Musical was publicly performed a great number of times in multiple states. As noted, multiple representatives from Universal attended these performances and any Defendant or

member of the general public could have paid to attend these performances. The performances could have been recorded, and audio and video of the performances were sometimes featured online.

**B. Copyrights**

64. Defendants infringed on Plaintiff Carl Tramon's copyrights when they used various elements of the dialog and stage play, including but not limited to structure, sequencing, scenes, and stage directions, that were written and owned by Plaintiff Carl Tramon without his knowledge, consent or authorization.

65. Specifically, while both musicals were based on common source material – the Book – the selection of which scenes to include, the order in which these scenes are placed, and which scenes to exclude are almost identical. The overall dramatic structure of both the Rocket Boys Musical and the October Sky Musical is substantially similar to a degree that cannot be explained by common source material and must be the result of deliberate infringement.

66. The Book consists of approximately 200 discrete scenes. Of those 200 scenes, the Rocket Boys Musical used 26 of these scenes. The October Sky Musical used 16 scenes from the Book. Of these 16 scenes, 12 were also used in the Rocket Boys Musical. It is statistically unlikely that the such a high percentage of scenes from the Book chosen by the creators of the October Sky Musical would also be in the Rocket Boys Musical absent copying, especially considering the numerous important scenes that Plaintiffs decided to exclude that Defendants also excluded.

67. Beyond such a statistical analysis, the Rocket Boys Musical and the October Sky Musical match almost precisely on the level of dramatic and thematic structure. The musical numbers of each musical, in sequence, is as follows:

<b>MUSICAL NUMBERS OF ROCKET BOYS MUSICAL (Act I)</b>	<b>MUSICAL NUMBERS OF OCTOBER SKY MUSICAL (Act I)</b>
Where a Man Should Be	Marching Into Hell
Coalwood	Never Getting Out Alive
Dorothy Plunk	Loverboy
Up Till Now	Look to the Stars
Build A Rocket	We're Gonna Build a Rocket
	Girls
	Solid Ground
BCMA ('05-'08)	Big Creek Missile Agency
Myrtle Beach	The Man I Met
There's a Brighter Sky	If We Get It Right
	All My Fault
	You Are What You Are
If You've Got It (Someone Wants It)	Make a Little Money ('07-'08)
Altitude	Hey Did You Hear
<b>(Act 2)</b>	<b>(Act 2)</b>
Brighter Sky Reprise (chorale)/Nuts & Boltsmotif ('07-'08)	Return to the Earth (chorale)
Something Else	Something That's Divine
John Eye Blevin (Heaven in a Jar)	Moonshine
Up Till Now	Stars Shine Down
Why Stay	The Man I Met (Reprise)
Sonny Needs You	I Don't Know Him
Diamonds in the Dust	Mining Engineer
Altitude	Hey Did You Hear (reprise)
(Up till Now)/Rise	Look to the Stars (reprise)

68. A large majority of the October Sky Musical songs match directly in concept (song-to-song) and/or theatrical placement (song-to-scene) to the Rocket Boys Musical, as follows:

- a. *“Where a Man Should Be” versus “Marching Into Hell”*: In both songs, Homer and the miners sing about what it takes to be a miner and why they do what they do. Rhythmic patterns and melodic motifs are substantially similar as well;
- b. *“Coalwood” versus “Never Getting Out Alive”*: Both songs constitute a musical guided tour of life in Coalwood through the eyes of the “Sonny” character and the townspeople;
- c. *“Up Till Now” versus “Look to the Stars”*: Each song has Sonny realizing how Sputnik has changed him, and describes him watching it move across the sky;
- d. *“(We’re Gonna) Build a Rocket” versus “We’re Gonna Build a Rocket,”*: These songs are exactly the same in concept, and use identical phrases from the Book, as well as one lyric original to the Rocket Boys Musical;
- e. *“BCMA” versus “Big Creek Missile Agency”*: In both songs, Sonny and the “Rocket Boys” decide to form the “BCMA” to begin their rocket launches;
- f. *“Myrtle Beach” and “Why Stay” versus “The Man I Met” and its reprise*: Both Myrtle Beach and The Man I Met show the “Elsie” character recalling how different things were between her and “Homer” when they were courting and in love, with Why Stay and the Man I Met reprise finding Elsie questioning why she should remain;
- g. *“There’s a Brighter Sky” versus “If We Get It Right”*: These songs encompass the same concept in the same moment of the story – the boys show hope that with more tries they will eventually succeed;
- h. *“If You’ve Got It (Someone Wants It)” versus “Make a Little Money”*: These songs are identical in concept, scene and timeline, with the “Rocket Boys” looking for anything they can sell to fund their rocket launch sites;
- i. *“Altitude” versus “Hey Did You Hear”*: These songs are identical in concept, and some individual lyrics are substantially similar. In both songs, the town gathers to watch the Rocket Boys launch their biggest rockets yet and put the town of Coalwood on the map;
- j. *“Brighter Sky (Reprise)” versus “Return to Earth”*: These songs are similar in both theme and tone, representing a somber moment as the townspeople hold a vigil after an explosion;

- k. *“Something Else” versus “Something That’s Divine”*: The concept of both songs are similar, with the “Miss Riley” character relaying the idea that Sonny should grab on to “something else” or “something divine,” showing an emotional investment by the “Miss Riley” character in Sonny’s dream;
- l. *“John Eye Blevin (Heaven in a Jar)” versus “Moonshine”*: Again, these songs share the same concept at the same moment in the story. Notably, the entire concept is based only on a few passing lines in the Book, but is expanded in scope in the same way in both the Rocket Boys Musical and the October Sky Musical; and
- m. *“Sonny Needs You” versus “I Don’t Know Him”*: These songs have not only the same concept at the same dramatic moment, but each abridge the Book source material in the same ways, and contain similar musical structures.

69. The similarity of content of the various compositions of the two musicals not only evidences theft of structure of the Rocket Boys Musical by Defendants, in violation of Plaintiff Car Tramon’s copyright, but also infringes upon Plaintiffs Dan Tramon’s and Belkowski’s copyrights in the lyrical contents of the songs – all done without any of Plaintiffs’ knowledge, consent or authorization.

70. Notably, dozens of important scenes from the Book were excluded from both the Rocket Boys Musical and the October Sky Musical. A list of such scenes is attached hereto as Exhibit B. The chances that the creators of both the Rocket Boys Musical and the October Sky Musical would have chosen to exclude each of these important scenes independently and by coincidence is vanishingly small.

71. Defendants infringed on Plaintiffs Dan Tramon’s and Belkowski’s copyrights when Defendants used parts of musical compositions that were created and owned by Plaintiffs Dan Tramon and Belkowski without their knowledge, consent or authorization.

72. The songs comprising the October Sky Musical share at least seven repeating musical motifs with the Rocket Boys Musical. These motifs recur throughout the musical and form the foundational structure of both the Rocket Boys Musical and, later, the October Sky Musical. The

fact that these motifs recur at similar dramatic moments and are used for similar dramatic purposes only increases the musical similarities between the pieces.

73. The melodic similarities between the Rocket Boys Musical and the October Sky Musical could only be the result of planned and deliberate copying. It is impossible that so many close musical similarities between two full-length musicals could arise through coincidence or independent creation. Any slight dissimilarities between some of the comparisons represent either an attempt by Defendants to conceal the source of the copying or a belief that making these changes would skirt accusations of plagiarism.

74. The similarities between the Rocket Boys Musical and the October Sky Musical, while already substantially similar in the October Sky Musical's run at the Marriott, increased in the subsequent run at the Old Globe Theater.

**C. Trademarks**

75. Defendants infringed on Plaintiffs' trademark rights when they unlawfully used, copied, reproduced and used Trademarks, or elements of Trademarks, that belonged to Plaintiffs in Defendants marketing and promotional materials for the October Sky Musical without Plaintiffs' knowledge, consent, permission or authorization. As noted above, copies of the infringing material are included in Group Exhibit A.

76. The graphic depictions used by Defendants are sufficiently similar to Plaintiffs' Trademarks to create confusion in the marketplace between the Rocket Boys Musical and October Sky Musical, in the following respects:

a. The Rocket Boys Musical trademark materials include a stylized rendering of the phrase "ROCKET BOYS" with a rocket flying through the second "O." The October Sky

Musical infringing materials include a stylized rendering of the phrase “OCTOBER SKY,” also with a rocket flying through the second “O”;

b. The Rocket Boys Musical trademark material include the “ROCKET BOY” logo described in section (a) above, with silhouettes of the titular “boys” watching the rocket launch through the “O.” The October Sky Musical infringing materials also include figures, in silhouette, watching the rocket launch through the “O” in the logo; and

c. The Rocket Boys Musical trademark materials include a silhouetted figure, with arms upraised seemingly in victory. The October Sky Musical infringing materials also include a silhouetted figure, of identical proportions, in an identical pose with arms upraised.

77. Defendants’ marketing and promotional efforts resulted in the dissemination of marketing and promotional print, online and video materials that contained unauthorized use and copying of Plaintiff’s Trademarks.

78. Defendants’ unauthorized use of the Rocket Boys Musical’s trademark materials has confused and/or is likely to further confuse the general public and professionals engaged in theater and entertainment into believing there is an association or affiliation between Plaintiffs and Defendants, and/or Plaintiffs’ association, affiliation, authorization, sponsorship or endorsement of the October Sky Musical.

79. Defendants have stated that the October Sky Musical is the only musical based on the *October Sky* movie and the Book despite the fact that this is untrue, adding to the confusion engendered by the similarity of the infringing material to the Rocket Boys Musical trademarks, and the substantially similar nature of the two musicals.

**D. Tortious Interference**

80. Defendants started conspiring with Universal when they began negotiations regarding and development of the October Sky Musical in or around 2012, a time period during which Plaintiffs had an exclusive contract with Hickam for the exclusive live stage rights to the Book and whatever rights Hickam owned in the *October Sky* movie, of which Defendants knew or should have known. Defendants intentionally and/or tortiously interfered with Plaintiffs' rights by negotiating and developing a live stage play with Universal during this time.

81. Defendants' development of a live stage play based on the Rocket Boys Book and October Sky Movie, alone and in furtherance of a conspiracy with Universal, interfered with the prospective business relationships between: (a) Plaintiffs and investors in the Rocket Boys Musical; (b) Plaintiffs and New World Stages in New York; and (c) Plaintiffs and Hickam.

82. Defendants interfered with Plaintiffs' exclusive rights to authorize, or decline to authorize, public performances of its work thereby causing financial, personal, and professional harm to Plaintiffs while Defendants inaccurately take credit for Plaintiffs' intellectual property as belonging to Defendants while benefitting financially from the enhanced corporate goodwill.

83. Defendants took actions, alone and in furtherance of a conspiracy with Universal, that stopped production of the Rocket Boys Musical and/or that led to the disruption of the Rocket Boys Musical.

**E. Damages**

84. The dollar amount of damages gained by Defendants as result of their wrongdoing, and the loss suffered by Plaintiffs, is not yet calculable absent discovery. Nonetheless, Defendants wrongfully profited, and Plaintiffs suffered, in the following manners.

85. Defendants' unauthorized exploitation of Plaintiffs' intellectual property is for the purpose of commercial gain and was done without Plaintiffs' knowledge, consent or authorization.

86. Defendants illegally profited from the unauthorized use of Plaintiffs' copyrights and trademarks.

87. Defendants caused economic damage to Plaintiffs as a result of Defendants' unauthorized use of Plaintiffs' copyrights and trademarks.

88. Defendants' unlawful actions as pled in this Amended Complaint, including but not limited to the infringing content of the October Sky Musical and theft of Plaintiff's intellectual property, is a proximate cause of confusion in the marketplace and investors in the Rocket Boys Musical becoming unsure as to who truly owned the intellectual property rights, thereby resulting in the investors withdrawing their financial support of the Rocket Boys Musical and the loss of the engagement at New World Stages in New York.

89. Plaintiffs suffered lost income from lost investment funds and lost show revenues that they would have earned but for Defendants' unlawful actions as pled herein.

90. Defendants' actions, alone and in furtherance of a conspiracy with Universal, resulted in damage to the professional reputations of Plaintiffs as a result of their wanton acts, reputations painstakingly built over decades within the Broadway community.

**COUNT I**  
**Federal Copyright Infringement Under the**  
**Copyright Act (17 U.S.C. §§ 501(a) and 106)**  
**Asserted by Plaintiffs Against All Defendants**

91. Plaintiffs repeat and reallege every allegation previously set forth as though fully restated herein.

92. Plaintiffs have registered copyrights as described specifically in this Amended Complaint and as is evidenced in the public records of the U.S. Copyright Office.

93. Plaintiffs also have copyrights as a result of use of the copyrights dating back to the dates specifically provided herein.

94. Defendants have copied constituent, original elements of Plaintiffs' copyrights that are original works that belong to Plaintiffs.

95. Defendants have encroached upon the exclusive right conferred by Plaintiffs' copyrights by, *inter alia*, reproducing Plaintiffs' copyrights (or sufficiently similar and confusing versions thereof), preparing derivatives of Plaintiffs' copyrights, causing elements of Plaintiffs' copyrighted music to be publicly performed, causing elements of Plaintiffs' copyrighted lyrics to be publicly performed, and using elements of Plaintiffs' stage play in Defendants' production of the October Sky Musical.

96. Through their conduct as set forth in the preceding allegations, Defendants, acting individually and/or in concert, alone and in furtherance of a conspiracy with Universal, have infringed on Plaintiffs' copyright in and to the Rocket Boys Musical in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

97. Defendants had access to Plaintiffs' copyrighted intellectual property for reasons and pursuant to events stated herein.

98. Defendants' acts of infringement of Plaintiffs' copyrights, as specifically alleged above, are willful, intentional, and purposeful with complete indifference and disregard for those rights.

99. The October Sky Musical is substantially similar to the Rocket Boys Musical and infringes upon the copyrighted creation of the Plaintiffs.

100. The similarities between portions of the October Sky Musical and the copyrighted material contained in the Rocket Boys Musical cannot be attributed to similarities that also exist in the *October Sky* movie or the Book as Defendants' copyright infringements relate to Plaintiffs'

proprietary intellectual property that is original and unique to the Rocket Boys Musical, but not contained in the Book or the *October Sky* movie, including but not limited to the selection, coordination and arrangement of material originating from the Book.

**COUNT II**  
**Contributory Copyright Infringement Under the**  
**Copyright Act (17 U.S.C. §§ 501(a) and 106)**  
**Asserted by Plaintiffs Against the Entity Defendants**

101. Plaintiffs repeat and reallege every allegation set forth above as though fully restated herein.

102. Each of Defendants Marriott Hotel Services, Inc., Marriott International, Inc., DTRS Lincolnshire, LLC, Strategic Hotels & Resorts, LLC, and Old Globe Theater (together with Defendants RFMBG Lincolnshire, LLC and LA-RFMBG Lincolnshire, LLC, the “Entity Defendants”), through their respective ownership and/or control of the facilities at which the infringing activity occurred, had the right and ability to supervise the infringing conduct of Defendants Mahler, Thielen and/or James, and a direct financial interest in the infringing activity. 1 0 3 .

Despite such right and ability, the Entity Defendants failed to prevent the infringing activity from occurring at facilities they owned and/or controlled.

104. As noted Defendants RFMBG Lincolnshire, LLC and LA-RFMBG Lincolnshire, LLC are liable to the extent that have assumed liabilities of one or more of the other Entity Defendants, whether through contract or by operation of law.

**COUNT III**  
**Federal Infringement of an Unregistered Trademark, False Designation of Origin, False or Misleading Description of Fact, and False or Misleading Representation of Fact Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1),**  
**Asserted by Plaintiffs Against all Defendants**

105. Plaintiffs repeat and reallege every allegation previously set forth as though fully restated herein.

106. As of the date of the filing of this Amended Complaint, Plaintiffs' Trademarks are not yet registered; however, Plaintiffs' Trademarks are still entitled to protection under 15 U.S.C. § 1125 for the reasons specifically stated herein.

107. Without Plaintiffs' knowledge, consent or authorization, Defendants used, copied, and reproduced substantially similar graphics and artwork as those contained in Plaintiffs' Trademarks for use in Defendants' promotional and marketing materials, including posters, online advertisements and videos.

108. Plaintiffs' Trademarks are designations for the Rocket Boys Musical in and among the general public and the theater community that convey certain information to the consumer, including but not limited to the fact that Plaintiffs produced and wrote the production, and the Trademarks have also acquired secondary meaning so that the Trademarks are perceived as identifying and distinguishing the source of the goods.

109. By virtue of Plaintiffs' longstanding and extensive use of the Trademarks in interstate commerce, the Trademarks have come to serve as a designation of origin for the Rocket Boys Musical and have become valuable symbols of the goodwill Plaintiffs have labored to acquire over the years.

110. The actions of Defendants in unlawfully using the Trademarks is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of each

Defendant, and their commercial activities, by or with Plaintiffs, and thus constitute trademark infringement, false designation of origin, false or misleading description of fact, and false or misleading representation of fact and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

111. The actions of Defendants in unlawfully using the Trademarks are likely to cause confusion, or to cause mistake, or to deceive or as to the origin, sponsorship, or approval of Defendants' goods or commercial activities by another person.

112. The actions of Defendants in unlawfully using the Trademarks in commercial advertising and promotion as detailed herein, have misrepresented the nature, characteristics, source and qualities, of Defendants' goods and commercial activities.

113. Defendants and their activities, as described in this Amended Complaint, have damaged the reputation of Plaintiffs, and the reputation, and goodwill of Plaintiffs' Trademarks and the value thereof.

114. Defendants' wrongful acts have irreparably injured Plaintiff and will continue to do so unless and until such acts are enjoined by this Court under 15 U.S.C. § 1116.

115. Plaintiffs have no adequate remedy at law.

**COUNT IV**  
**Violation of Section 43(a) of the Lanham Act 15 U.S.C. § 1125(a)**  
**Asserted by Plaintiffs Against all Defendants**

116. Plaintiff repeats and realleges every allegation previously set forth as though fully restated herein.

117. Defendants have used the Trademarks without permission in interstate commerce in connection with the provision of goods or services, including the October Sky Musical.

118. Defendants unauthorized use and copying of Plaintiffs' Trademarks or sufficiently similar versions of the Plaintiffs' Trademarks has caused and is likely to cause confusion, deception and mistake in part by creating the false and misleading impression that Defendants owned or licensed Plaintiffs' Trademarks, which it did not, that the Trademarks used in Defendants' marketing and promotional materials for the October Sky Musical identify Plaintiffs as the source of the October Sky Musical, or that October Sky Musical is affiliated, connected or associated with Plaintiffs, or have the sponsorship, endorsement, or approval of Plaintiffs.

119. Defendants have made false misrepresentations, false descriptions, and false designations of origin of Defendants goods and Plaintiffs goods in violation of 15 U.S.C. § 1125(a), and Defendants' activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of the trade and public and injury to Plaintiffs' goodwill and reputation, for which Plaintiffs have no adequate remedy at law.

120. The graphics and artwork used to market and promote the October Sky Musical is sufficiently similar to the Trademarks used to market and promote the Rocket Boys Musical.

121. The goods being provided by Plaintiffs and Defendants are similar in that they are both musicals based on Hickam's life as presented in the Book. As such, the general public would attribute both Plaintiffs' and Defendants' goods to a single source.

122. Defendants have acted intentionally and maliciously by using Plaintiffs' Trademarks as is evidenced, upon information and belief, by representations made by some Defendants regarding the fact that the October Sky Musical is the only musical based on the Book or Hickam's life as represented in the *October Sky* movie.

123. Defendants' use of Plaintiffs' Trademarks has caused actual confusion to consumers.

124. Defendants' conduct has caused, and is likely to continue causing, substantial injury to the public and to Plaintiffs.

125. By continuing to utilize the Trademarks, Defendants have impaired the distinctiveness of the Trademarks, and unfairly competed with Plaintiffs and caused irreparable harm to the reputation and goodwill of Plaintiffs' Trademarks and the business reputation of Plaintiffs.

**COUNT V**  
**Common Law Trademark Infringement**  
**Asserted by Plaintiffs Against All Defendants**

126. Plaintiffs repeat and reallege every allegation previously set forth as though fully restated herein.

127. Plaintiffs' Trademark is protectable and Defendants' use of the Trademark is likely to cause confusion among consumers.

128. Defendants' activities, as described above, have damaged the reputation and goodwill held by Plaintiffs' Trademarks and the value thereof. Defendants' wrongful acts have irreparably injured Plaintiffs as set forth above, and will continue to do so unless and until such acts are enjoined by this Court.

129. Plaintiffs were the first parties to use the Trademarks and thus have a common law right to prevent others from using the Trademarks or from using confusingly similar Trademarks.

**COUNT VI**  
**Unfair Competition Under the Illinois Uniform**  
**Deceptive Practices Act, 815 ILCS 510/2**  
**Asserted by All Plaintiffs Against All Defendants**

130. Plaintiff repeats and Plaintiffs repeat and reallege every allegation previously set forth as though fully restated herein.

131. Defendants violated the Illinois Uniform Deceptive Practices Act by and through the following acts: (a) passing off Plaintiffs' copyrights and Trademarks, or elements thereof, as their

own; (b) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of the October Sky Musical for reasons specifically pled above; (c) causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with or certification by Plaintiffs; and (d) disparaged the Rocket Boys Musical by making assertions, upon information and belief, that the October Sky Musical was the only musical based on Hickam's life as memorialized in the Book and *October Sky* musical.

132. Defendants, through the unauthorized use and reproduction of Plaintiffs' Trademarks and copyrights, and sufficiently similar altered versions thereof, engaged in an intentional misrepresentation designed to cause consumers to believe that Plaintiffs were somehow associated with the October Sky Musical. Defendants improperly benefitted from the goodwill built up by Plaintiffs and their copyrights and Trademarks after Plaintiffs expended nearly ten years of hard work, funds, marketing and promotion to increase the goodwill associated with the infringed-upon copyrights and Trademarks.

**COUNT VII**  
**Tortious Interference with Prospective Business or**  
**Economic Advantage Asserted Under Common Law**  
**Asserted by All Plaintiffs Against All Defendants**

133. Plaintiffs repeat and reallege every allegation previously set forth as though fully restated herein.

134. Plaintiffs had a reasonable expectation of entering into a valid business relationship with various investors who pledged funds for the production of the Rocket Boys Musical.

135. Plaintiffs had a reasonable expectation of entering into a valid business relationship with the New World Stage in New York for a run of the Rocket Boys Musical off-Broadway in or around 2016, and the Old Globe Theatre in San Diego.

136. Defendants had knowledge of Plaintiffs' expectancy as it relates to Plaintiffs' investors and the engagements at the New World Stage and Old Globe Theatre.

137. Defendants purposefully interfered, alone and as part of a conspiracy with Universal, to prevent the Plaintiffs' legitimate interest from ripening into a valid business relationship with potential investors, the New World Stage, and the Old Globe Theatre as it relates to the Rocket Boys Musical.

138. Plaintiffs suffered economic damages as a result of Defendants interference as it relates to their investors and the engagement at the New World Stage regarding the Rocket Boys Musical.

**COUNT VIII**  
**Unjust Enrichment Asserted Under the Common Law**  
**Asserted by All Plaintiffs Against All Defendants**

139. Plaintiffs repeat and reallege every allegation previously set forth as though fully restated herein.

140. As a result of all of Defendants' misconduct and illegal actions, taken alone and in furtherance of a conspiracy with Universal, Defendants have been unjustly enriched.

141. It would be unfair to allow Defendants to retain the enrichment.

142. Defendants have unjustly retained a benefit to Plaintiffs' detriment.

**COUNT IX**  
**Civil Conspiracy Asserted Under the Common Law**  
**Asserted by All Plaintiffs Against All Defendants**

143. Plaintiffs repeat and reallege every allegation previously set as though fully restated herein.

144. Defendants conspired with Universal to authorize the Rocket Boys Team to develop and produce the Rocket Boy Musical so that Plaintiffs would incur the continued time and expense

to write the Rocket Boys Musical's stage play and music which Universal and Defendants intended to steal, and did in fact steal, so that it could be utilized in the October Sky Musical.

145. Defendants have agreed to participate with each other and Universal in conspiracies to engage in each of the other Counts pled in this Amended Complaint.

146. Defendants agreed to accomplish by concerted action an unlawful purpose, as specifically pled herein.

147. Defendant agreed to accomplish by concerted action a lawful purpose by unlawful means, as specifically pled herein.

148. Defendants committed multiple tortious acts in furtherance of their agreement as specifically pled herein

149. The unlawful overt acts committed by Defendants as alleged herein have resulted in injuries to Plaintiffs, in furtherance of the common schemes as alleged herein.

**JURY TRIAL DEMANDED**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury on any issue triable of right by a jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs prays that this Court enter judgment in their favor on each and every Count set forth above, and award it relief including, but not limited, the following:

A. An Order declaring that Defendants' unauthorized reproduction of Plaintiffs' copyrights, and altered but sufficiently similar and/or confusing derivations thereof, constitutes Federal Copyright Infringement Under the Copyright Act (17 U.S.C. §§ 501(a) and 106);

B. An Order declaring that Defendants' unauthorized reproduction of Plaintiffs' copyrights, and altered but sufficiently similar and/or confusing derivations thereof, constitutes

contributory Copyright Infringement Under the Copyright Act (17 U.S.C. §§ 501(a) and 106) as to the Entity Defendants;

C. An Order declaring that Defendants' use of Plaintiffs' Trademarks, and altered but sufficiently similar and/or confusing derivations thereof, was an unlawful infringement and constitutes unfair competition under Section 43(a) of the Lanham Act 15 U.S.C. § 1125(a) and Illinois and/or California common law, as applicable.

D. An Order declaring that Defendants' use of Plaintiffs' Trademarks, and altered but sufficiently similar and/or confusing derivations thereof, was an unlawful infringement and constitutes False Designation of Origin, False or Misleading Description of Fact and/or False or Misleading Representation of Fact under Section 43(a)(1)(A) of the Lanham Act 15 U.S.C. § 1125(a)(1);

E. An Order declaring that Defendants' use of Plaintiff's Trademarks, and altered but sufficiently similar and/or confusing derivations thereof, constitutes Unfair Competition under Illinois Uniform Deceptive Practices Act, 815 ILCS 510/2;

F. An Order declaring that Defendants' actions constitute Intentional/Tortious Interference with Prospective Economic Advantage and Business Relations under the common law of Illinois and/or California, as applicable;

G. An Order declaring that Defendants' actions constitute Unjust Enrichment under the common law of Illinois and/or California, as applicable.

H. An Order declaring that Defendants' concerted actions constitute Civil Conspiracy to commit each of the Counts pled in this Amended Complaint;

I. A preliminary and permanent injunction issued under 15 U.S.C. §1116 enjoining Defendants and their respective employees, agents, officers, directors, members, shareholders, subsidiaries, related companies, affiliates, and all persons in active concert or participation with any

of them from using or otherwise using Plaintiffs' Trademarks or sufficiently similar and/or confusing derivations thereof under 15 U.S.C. §1116;

J. An Order issued and judgment entered under 15 U.S.C. §1117(a) wherein Plaintiffs shall be entitled to recover Defendants' profits associated with the sale from all products wherein Defendants used Plaintiffs' Trademarks, and altered but sufficiently similar and/or confusing derivations thereof;

K. An Order issued and judgment entered under 15 U.S.C. §1117(a) wherein Plaintiffs shall be entitled to recover all damages sustained by Plaintiffs as a result of Defendants' improper use of Plaintiffs' Trademarks, and altered but sufficiently similar and/or confusing derivations thereof;

L. An Order issued and judgment entered under 15 U.S.C. §1117(a) wherein Plaintiffs shall be entitled to recover all costs of the action incurred by Plaintiffs as a result of Defendants' improper use of Plaintiff's Trademarks, and altered but sufficiently similar and/or confusing derivations thereof;

M. An Order issued and judgment entered under 15 U.S.C. §1117(a) wherein Plaintiffs shall be entitled to recover reasonable attorneys' fees from Defendants a result of Defendants' improper use of Plaintiffs' Trademarks, and altered but sufficiently similar and/or confusing derivations thereof;

N. A preliminary and final injunction issued under 17 U.S.C. § 502 enjoining Defendants and their respective employees, agents, officers, directors, members, shareholders, subsidiaries, related companies, affiliates, and all persons in active concert or participation with any of them from copying or otherwise reproducing Plaintiffs' copyrighted works or sufficiently similar and/or confusing derivations thereof;

O. An Order issued and judgment entered under 17 U.S.C. §504 wherein Plaintiff shall be entitled to recover all costs of the action incurred by Plaintiffs as a result of Defendants' improper copying and reproduction of Plaintiff's copyrighted works, and altered but sufficiently similar and/or confusing derivations thereof;

P. An Order issued and judgment entered under 17 U.S.C. §504 wherein Plaintiffs shall be entitled to recover all actual damages incurred by Plaintiffs as a result of Defendants' improper copying and reproduction of Plaintiffs' copyrighted works, and altered but sufficiently similar and/or confusing derivations thereof;

Q. An Order issued and judgment entered under 17 U.S.C. §504 wherein Plaintiffs shall be entitled to recover profits of the Defendants from Defendants' improper copying and reproduction of Plaintiffs' copyrighted works, and altered but sufficiently similar and/or confusing derivations thereof or that are otherwise attributable to Defendants' copyright infringement, including an accounting of and a constructive trust with respect to such profits, or, alternatively, the maximum statutory damages as provided in 17 U.S.C. § 504(c).

R. An Order issued and judgment entered under 17 U.S.C. §505 wherein Plaintiffs shall be entitled to recover full costs and attorney's fees from the Defendants as a result of Defendants' copyright infringement;

S. Plaintiffs are entitled to injunctive relief and to recover Defendants' profits, actual damages, enhanced profits and damages, costs and reasonable attorney's fees pursuant to 15 U.S.C. §§ 1125(a), 1116 and 1117 as a result of Defendants' unfair competition;

T. An Order directing Defendants to file with this Court and serve on Plaintiffs' attorneys, thirty (30) days after the entry of any permanent injunction, a report in writing and under oath setting forth in detail the manner and form in which they have complied with the injunction;

U. An Order requiring Defendants to pay Plaintiffs compensatory damages and punitive damages in an amount as yet undetermined for each of the above stated Counts;

V. An Order requiring Defendants to pay Plaintiff compensatory damages and lost profits in an amount as yet undetermined caused by the foregoing unlawful acts, and trebling such damages in accordance with 15 U.S.C. § 1117 and other applicable laws;

W. An Order requiring Defendants to pay pre-judgment and post-judgment interest as permitted by law; and

X. For such other relief as this Court deems just and proper.

Dated: July 19, 2019

Respectfully submitted,



---

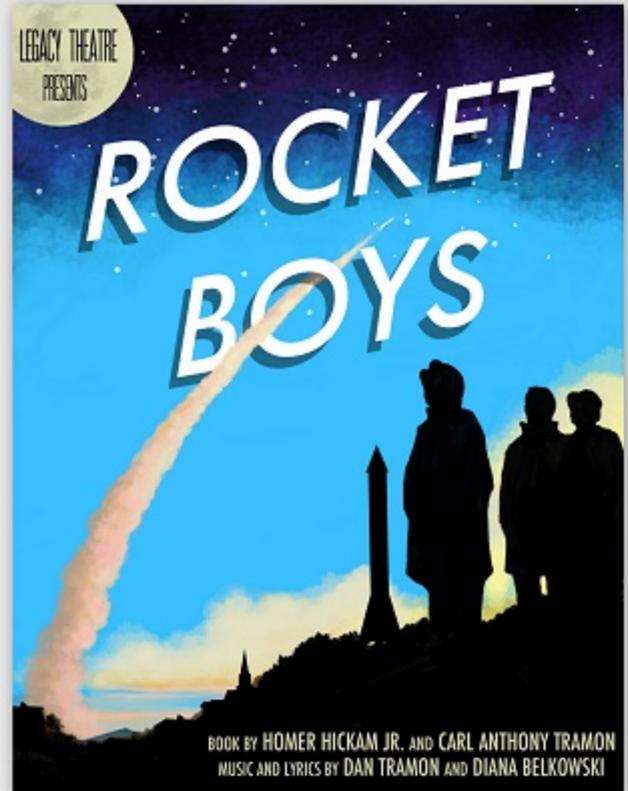
Kenneth J. Ashman (ARDC No. 6206515)  
Neal D. Kitterlin (ARDC No. 6284627)  
ASHMAN LAW OFFICES, LLC  
55 West Monroe Street, Suite 2650  
Chicago, Illinois 60603  
312.596.1700 (p)  
[kashman@ashman.law](mailto:kashman@ashman.law)  
[nkitterlin@ashman.law](mailto:nkitterlin@ashman.law)

Tony Richa (*pro hac vice*)  
RICHA LAW GROUP, P.C.  
One Bethesda Center  
4800 Hampden Lane, Suite 200  
Bethesda, Maryland 20814  
301.424.0222 (p)  
[richa@richalawgroup.com](mailto:richa@richalawgroup.com)

Stephen P. New (*pro hac vice*)  
THE LAW OFFICE OF STEPHEN P. NEW  
1114 Main Street  
Beckley, West Virginia 25801  
304.250.6017 (p)  
[steve@newlawoffice.com](mailto:steve@newlawoffice.com)  
*Attorneys for Plaintiffs*

# **GROUP EXHIBIT A**

Shows: rocket piercing “O”  
and trail of smoke. Similar font,  
use of shadow.



The Marriott Theatre

Speaks for itself. BLATANT copy of graphic concept on RBTM show poster (based on the same story!!) in active marketing use for 8 yrs



October Sky



OS LOGO ON POSTERS AND ONLINE - MARRIOTT THEATRE



LEGACY THEATRE PRODUCTION POSTER LOGO FOR RBTM



Shows OS using same blue and black, also rocket piercing "O", confusing the two productions.

RBTM poster blue and all graphic design was created & established (in public use!) February '08

# **EXHIBIT B**

**IMPORTANT SCENES / EVENTS / CHARACTERS  
IN THE BOOK "ROCKET BOYS"  
EXCLUDED FROM ROCKET BOYS THE MUSICAL AND,  
SUBSEQUENTLY, EXCLUDED FROM OCTOBER SKY THE MUSICAL**

Chapter 1

- Anything and everything about the founding of Coalwood.
- Advice from the black preacher on life.
- The "Poppy" scene where young Sonny is removed from his grandfather's lap after the legless gentleman told him the boy was just like his dad. Elsie goes out on the porch singing "No you're not!"

Chapter 2

- A huge fight between Sonny and his brother Jim.
- Coal miners argue Sputnik on the company store steps.

Chapter 3

- Elsie's speech to Sonny that he'd best get out of Coalwood after he blows up her rose garden fence.
- Another argument about Sputnik and Sonny's dad on the company store steps. Working with black powder and learning how to mix it. Testing black powder mixes by blowing them up inside coke bottles.

Chapter 4

- Buck and Sonny get kicked off school bus for arguing about football players.

Chapter 5

- Junior the company clerk warns Sonny about potassium nitrate (saltpeter)
- Quentin proposes that a "body of knowledge" is the fundamental purpose of working on rockets.
- Black powder rockets blow up.

Chapter 6

- Daisy Mae, Sonny's beloved cat.
- Chipper, Elsie's beloved squirrel.
- Emily Sue warns Sonny about Dorothy.
- Black powder rocket chasing the boys around the launch site.
- Big Creek Missile Agency members argue on how to build a rocket.

## Chapter 7

- Big Creek Missile Agency savor being outlaws.
- Roy Lee teaches the boys how to unstrap a bra.
- Elsie tells Sonny he should be more like Quentin.
- Elsie and Sonny go to Homer to ask for a launch site. An argument ensues.
- Reverend Lanier gives an impassioned sermon that the rocket boys should have a launch site.
- Homer takes Sonny to an abandoned slack dump and gives it to the Big Creek Missile Agency.

## Chapter 8

- Mr. Turner, the principal, gives a speech to tell the student body that Big Creek high school athletic teams and the band are suspended for the year because of the lawsuit. He also announces a new, tougher curriculum because of Sputnik.
- Sonny meets Valentine, an older experienced girl, who pretends to lust after him.
- The boys trade things around town to build their blockhouse.
- Homer (Dad) agrees to let Sonny and the boys be taught machining and welding at the mine machine shop.

## Chapter 9

- We meet Jake Mosby, a junior engineer (also a drunk and womanizer) who will mentor the Big Creek Missile Agency.
- Homer gives the Big Creek Missile Agency cement to build their launch pad.
- Jake starts to attend launches and gives the boys advice.
- Jake puts a telescope atop the club house roof for the boys to study the stars and planets.

## Chapter 10

- Quentin builds a theodolite to determine altitude of the rockets.
- Sonny has a revelation that physics and geometry are the same throughout the universe. He has a theological discussion with preacher Little Richard.
- O'Dell and Roy Lee go into the old mule barn at night to remove surplus company telephones to use at the launch site. They are caught and Sonny has to go help them escape the clutches of the company. Tag, the town constable, takes up for the boys. The company lets them keep the phones.
- Miss Riley demonstrates Potassium Chlorate and sugar leading the boys to decide to combine Potassium Nitrate and sugar as a propellant.
- The first attempts to use Potassium Nitrate and sugar is not successful.

### Chapter 11

- Sonny melts Potassium Nitrate and sugar into rocket candy using his mom's pots and pans and ruining them.
- Buck and the other football boys tear down the rocket boys' blockhouse. They are made to rebuild it by Tag, the town constable.
- Homer takes Sonny down in the mine to show him how it all works. His mom meet them at the surface and rigorously complains to her husband.

### Chapter 12

- Sonny makes up to his mom.
- Ike and Mary Bykovski talk about their daughter, who was Sonny's friend before she had to go to stay at a state hospital because of epilepsy, and they ask him to intercede with his father for a new toilet.
- Ike Bykovski and Sonny talk about Wernher von Braun. Ike, a Russian Jew, reflects on atonement.
- Sonny bargains with Mr. Ferro, the machine shop supervisor, for work on his rockets.
- Rocket candy and new steel rockets work.
- Sonny and Dorothy travel on the band bus. Dorothy shows some interest in Sonny.
- Sonny given an autographed photo of Wernher von Braun for Christmas.

### Chapter 13

- After a huge snowstorm, Sonny and the boys take their sleds across two mountains to Big Creek High School.
- The kids had a card game. Sonny gets Dorothy to kiss him. The other boys leave early.
- Sonny nearly freezes to death on the trek back to Coalwood but is saved by Geneva Eggers, the town prostitute. It turns out she was saved as a baby in a house fire by Homer, Sonny's father.

### Chapter 14

- Sonny and Quentin work through the science behind DeLaval rocket nozzles.
- There is a pillar collapse in the mine that presages another disaster to come.
- More successful launches. The Subdebs wave their panties out of their car at the boys.

### Chapter 15

- Miss Riley argues for calculus classes for the boys. It is given but Sonny can't qualify. He has to learn on his own.

### Chapter 16

- Homer advises Sonny on his rocket drawings and they argue about the future.

### Chapter 17

- After Dorothy disappoints Sonny again, Valentine seduces him.

### Chapter 18

- Sonny feels numb after Mr. Bykovski is killed and his dad grievously injured in mine accident. His mother rejects him.

### Chapter 19

- Mr. Bykovski encourages Sonny to keep building his rockets.
- The boys decide to switch from rocket candy to Zinc dust and sulfur.

### Chapter 20

- Jake and Miss Riley spark up a romance.
- The boys go after the railroad pipe beneath abandoned tracks to sell. Sonny nearly dies after falling into a pit of jagged cast iron.

### Chapter 21

- The union starts to threaten a strike but does nothing.
- Zinc and sulfur doesn't work. The boys decide they need alcohol.
- A new superintendent, Mr. Fuller, arrives and orders the boys to stop building rockets after one of their rockets lands near houses.
- Sonny's dad take up for the rocket boys.
- Quentin decides they need to reach space with one of their rockets.

### Chapter 22

- Valentine and Buck get married and leave town.
- Jim and Dorothy break up.
- Quentin and Sonny sit down and design the rocket nozzles using calculus.
- The machinists experiment with different nozzle designs and submit them to the boys for approval.
- O'Dell convinces the boys to hunt ginseng to make money for rocket parts.
- Rocket fails to launch and boys have to crawl out to it to try again.
- Homer advises Sonny on politics and Sen. Kennedy right before bullet breaks window, just missing them.

### Chapter 23

- Elsie tells Homer she's buying a house in Myrtle Beach while cleaning up the glass from the window.
- Miss Riley admits she has cancer.
- Calvin, who has beaten Sonny up before, chases him "to talk."
- Sen. Hubert Humphrey makes a speech suggesting miners be retrained.
- Coalwood is flooded. Calvin makes Sonny lose his nozzles but finds them for him and asks for a job at Cape Canaveral.
- Daisy Mae is killed. Sonny grieves.

### Chapter 24

- Sonny procures an orange suit (because it will stick out) to go to the National Science Fair.
- Sonny suggests to JFK that the USA should go to the moon.

### Chapter 25

- Sonny meets a member of von Braun's team but not von Braun at the National Science Fair.
- Sonny and Tex, as friend, fight for inclusion of a separate category - propulsion - at the fair. It is included and Sonny wins.

### Chapter 26

- Sonny returns to Coalwood to learn that his dad settled a union strike to get him nozzles to replace the ones stolen.
- The boys decide to have a final series of rocket launches to thank everybody who has helped them.
- Homer nearly dies from coughing after launching the boys' last rocket. Sonny has to hold his father up.