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U.S. DISTRICT COURT  
EAST. DIST. MICH.  
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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PACKSON MUSIC PUBLISHING COMPANY,  
Registered in New York,

Plaintiff, CIVIL ACTION

v.

NO. 28 687

JOBETE MUSIC CO., INC., a Michigan  
corporation, MOTOWN RECORD CORPORATION,  
a Michigan corporation, and MOTOWN  
SALES CORPORATION, a Michigan corpora-  
tion, jointly and severally,

Defendants.

ORDER GRANTING SUMMARY JUDGMENT  
AND JUDGMENT

A motion having been regularly made by the Defendants  
herein for Summary Judgment in the Defendants' favor  
dismissing the action on the ground that there is no  
genuine issue as to any material fact and that the  
Defendants are entitled to judgment as a matter of law.

Now, on considering the Affidavits filed herein,  
having read and considered the Briefs filed herein and  
after hearing counsel for the respective parties, and due  
deliberation having been had, and the decision of the  
Court having been filed, it is

ORDERED, that said Motion be and the same hereby is  
granted, and that judgment be entered herein in the  
Defendants' favor dismissing the action with costs and

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UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
EAST DIST. MICH.  
Oct 26 2 50 PM '67  
CLERK

PACKSON MUSIC PUBLISHING COMPANY,  
registered in New York,

Plaintiff,

-vs-

JOBETE MUSIC COMPANY, INC., a Michigan  
corporation, MOTOWN RECORD CORPORATION,  
a Michigan corporation, and MOTOWN SALES  
CORPORATION, a Michigan corporation,  
Jointly and Severally,

Defendants.

CIVIL ACTION

NO. 28 687

FINDINGS OF FACT  
and  
CONCLUSIONS OF LAW

Defendants respectfully submit the following as the  
findings of fact and the conclusions of law in the above-  
entitled cause:

FINDINGS OF FACT

1. Plaintiff is LORENZO PACK, d/b/a PACKSON MUSIC PUBLISHING COMPANY, an unincorporated business name registered in New York.
  2. Defendant JOBETE MUSIC COMPANY, INC., is a Michigan corporation with its main office in Detroit.
  3. Defendant MOTOWN RECORD CORPORATION is a Michigan corporation with its main office in Detroit.
  4. Defendant MOTOWN SALES CORPORATION was a Michigan corporation and a subsidiary of MOTOWN RECORD CORPORATION. MOTOWN SALES CORPORATION was dissolved on December 31, 1966.
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5. Plaintiff LORENZO PACK together with HARPER EVANS in 1962 wrote a musical composition entitled I'M AFRAID, which musical composition was registered for copyright as an unpublished work, registration #EU723057.

6. In 1964 defendant JOBETE MUSIC COMPANY, INC. caused three writers under exclusive contract to it, namely Eddie Holland, Lamont Dozier, Brian Holland, to write a musical composition entitled BABY LOVE, which musical composition was registered for copyright on the 2nd day of September, 1964, receiving registration #EP191753.

7. The musical composition I'M AFRAID and the musical composition BABY LOVE are dissimilar in every material respect except that they each use as the basis for their melodies a two-note motive.

8. The Court having heard the musical composition I'M AFRAID and the musical composition BABY LOVE finds that the two compositions have an entirely different structure, melodic line, accompaniment and lyric. The two compositions do not sound alike upon a playing of the melody lines alone, the melody lines with the respective accompaniments as written or in vocal rendition.

9. The two-note motive is common in musical literature. The two-note motive is one of fourteen possible major seconds in the diatonic scale and, consequently, nothing more than basic musical vocabulary.

10. The two-note motive was utilized as the basis of the melodic structure of the following musical compositions, among others:

CHOPIN's POLANAISE #6  
TILL THE END OF TIME  
CHEEK TO CHEEK  
IT MIGHT AS WELL BE SPRING

The court having heard some of the above compositions in open court and the two-note motive is easily recognized and the same two-note motive is utilized in the composition I'M AFRAID and the composition BABY LOVE.

11. The plaintiff, LORENZO PACK, was familiar with the musical compositions TILL THE END OF TIME, CHEEK TO CHEEK and IT MIGHT AS WELL BE SPRING before he collaborated in the writing of I'M AFRAID.

12. A recording of the composition BABY LOVE by the vocal artists known as The Supremes was made and ordinary commercial phonograph records thereof were released to the public on September 17, 1964. From that time until November 21, 1964 or thereafter, the recording of BABY LOVE was played several times daily on a number of New York City radio stations. During the period from September 17th to November 21st, sales of the recording mounted and the record achieved a listing in so-called charts utilized in the record industry. The record reached the number one position in those charts and began to descent from that position after November 21st.

13. During the period between the release of the record and November 21st, the plaintiff heard the recording of BABY LOVE a number of times. The plaintiff learned the melody of BABY LOVE from hearing radio broadcasts of it. The plaintiff did not recognize any similarity between BABY LOVE and I'M AFRAID until after the recording began to descend from the number one position on the chart.

14. No facts have been established to show unfair competition. The only facts alleged with regard to unfair competition are the copying of musical material.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the claim of copy-right infringement under Title 17USC, Act of July 30, 1947, c. 391,61 Stat 652 as amended and 28USC Sec. 1338 (a & b).

2. Plaintiff has a valid copyright in the musical composition I'M AFRAID.

3. Plaintiff's copyright in the musical composition I'M AFRAID does not extend to the two-note motive because copyright does not extend to the basic musical vocabulary.

4. The two-note motive cannot be comprehended in plaintiff's copyright because he did not create it but rather was familiar with its prior uses in other musical compositions.

5. Even if the two-note motive had been copied by the writers of BABY LOVE from the musical composition I'M AFRAID, there did not exist any substantial taking.

6. Although it is not essential to the conclusion reached, the Court further concludes that there was no evidence that the writers of BABY LOVE had access to the musical composition I'M AFRAID.

7. The copyright in the musical composition I'M AFRAID is not infringed by the musical composition BABY LOVE.

8. The claim of unfair competition being based solely

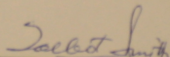
on acts within the ambit of the copyright act, the composition or exploitation of BABY LOVE does not compete unfairly with I'M AFRAID.

9. There is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

10. That in accordance with § 116 of Title 17 U.S.C.A., act of July 30, 1947, C 391, § 1, 61 Stat.652 defendants shall recover their full costs, ~~and~~ ~~as reasonable attorney's fees as part of the costs.~~

Based upon the foregoing findings of fact and conclusions of law,

IT IS ORDERED, and counsel for defendants shall submit an appropriate judgment in accordance herewith dismissing the Complaint, with costs.

  
United States District Judge

Dated: August , 1967.