

**2014 TENNESSEE STATE HIGH SCHOOL
MOCK TRIAL COMPETITION
CASE MATERIALS**

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TENNESSEE

JESSIE JAMESON,)	
)	
PLAINTIFF,)	No. 8.67-cv-5309
)	
V.)	
)	
JORDAN EVERGREEN,)	
)	
DEFENDANT.)	

The Tennessee State High School Mock Trial Competition is organized by the Young Lawyers Division of the Tennessee Bar Association.

Questions or comments may be directed to your Mock Trial District Coordinator or to the Chair of the State Competition Committee. Teams may not edit materials.

Please note the rule changes that apply to this year's competition. **In particular, please review the updated rules of evidence, as well as the rules regarding the use of audio equipment.**

The problem stands as written. If there are discrepancies, please regard them as complexities for consideration in developing a trial strategy. **Plaintiff, defendant, and all witnesses may be portrayed by persons of any gender. All similarities between this problem and true events or actual persons should be disregarded.**

This year's High School Mock Trial Committee is comprised of:

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Candi Henry, Chair, Mock Trial Long Range Planning Committee, Dodson, Parker Behm & Capparella, P.C.

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Tommy Santel, PARKERSON | SANTEL PLLC

PAST WINNERS

1980	Austin-East High School
1981	Bearden High School
1982	White Station High School
1983	White Station High School
1984	Knoxville West High School
1985	Father Ryan High School
1986	Knoxville Doyle High School
1987	Greeneville High School
1988	Memphis Central High School
1989	Jackson-Central Merry High School
1990	Father Ryan High School
1991	Father Ryan High School
1992	Franklin High School
1993	Montgomery Bell Academy
1994	McCallie School
1995	Montgomery Bell Academy
1996	Clinton High School
1997	Clinton High School†
1998	Houston High School
1999	Clinton High School
2000	Clinton High School
2001	Clinton High School
2002	Family Christian Academy*
2003	Family Christian Academy*
2004	Hume-Fogg Academic High School
2005	Hume-Fogg Academic High School
2006	Knoxville West High School
2007	St. Mary's Episcopal School of Memphis
2008	St. Mary's Episcopal School of Memphis
2009	White Station High School
2010	White Station High School
2011	White Station High School
2012	McCallie School
2013	Kingsport Area Christian Home Education Association

* Indicates a team that went on to win the National Championship.

† Indicates a team that went on to place second in the National Championship.

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CASE SUMMARY¹

The year was 2008, and country music filled the Tennessee radio waves. Jessie Jameson and Harley Flint, two back-country friends, spent a great deal of time together while completing their last year of high school in Weston County, Tennessee. Jessie, a budding musician, spent much time playing guitar and writing songs, and performing here and there.

Late in the spring semester of 2008, Harley's girlfriend, Danielle Sun, whom Harley had dated through all five years of his high school career, broke up with him. Early in May 2008, Danielle told Harley that she intended to attend college at Kiffin University, a flashy but substandard California school. Although Harley was crushed, he seemed to recover well. Harley continued to hang out with Jessie, and Harley also found a new flame that summer – Mia Ghee. Harley and Mia hit it off immediately after meeting at one of Jessie's gigs (err, yard sale performances) in June. But Harley was still stuck on Danielle. When one of his friends commented on his new relationship with Mia, Harley responded, "Nah, she's just my June to July girl."

Harley's comment struck a chord with Jessie. Inspired, Jessie wrote a new song: "June to July Girl." It was Jessie's most popular song to date – a big hit at birthday parties and yard sales. Focusing on guitar playing and newfound songwriting skills, Jessie continued to perform around Weston County.

Five years passed quickly. Jessie's performances became much less frequent as the demands of adult life grew. In 2013, while listening to the radio, Jessie heard a song eerily similar to the yard sale hit, "June to July Girl." The song Jessie heard, "He's My Still Loving You," was recorded by a young country artist named Erika Cole. Climbing several spots every week, the song was then just outside the top ten on the Billboard country charts, and Erika's face was all over television. But to Jessie, Erika Cole's song was so similar to "June to July Girl" that Jessie knew deep down that the song was just a stolen version of "June to July Girl."

Jessie discovered that "He's My Still Loving You" was written by Jordan "Catnip" Evergreen. Assuming that Erika's song was making millions in royalties, Jessie filed a copyright infringement lawsuit against Evergreen in the United States District Court for the Northern District of Tennessee. Jessie's attorneys retained a musicologist, Dr. Doe Raymie, to testify that "He's My Still Loving You" is substantially similar to "June to July Girl." Jessie's legal team also plans to present evidence tending to show that Evergreen had access to "June to July Girl." Specifically, Jessie plans to call Stonie Tarck to testify regarding Evergreen's access to Jessie's musical composition.

¹ This case summary is meant only to quickly acquaint participants with the 2014 problem. It is not evidence, nor does it represent a statement by any of the characters/witnesses.

The Defendant, Jordan Evergreen, is a songwriter living in Shrader, Tennessee. Evergreen, known locally as “Catnip”, finally struck it rich with “He’s My Still Loving You.” Although Evergreen has written many songs, “He’s My Still Loving You” is by far Evergreen’s most successful song.

Contrary to Jameson’s position, Evergreen’s defense team will attempt to show that Catnip Evergreen did not factually copy “June to July Girl,” and that there is no similarity between “He’s My Still Loving You” and “June to July Girl.” The defense will present expert testimony as to similarity from expert musicologist Dr. Jan Christin Dagmar Bøud. Evergreen and Tommie Ghee will offer testimony with regard to the independent origin of “He’s My Still Loving You” as well as Evergreen’s lack of access to Jessie’s song.

Witnesses for the Plaintiff:

1. Jessie Jameson
2. Stonie Tarck
3. Dr. Doe Raymie

Witnesses for the Defendant:

1. Jordan “Catnip” Evergreen
2. Tommie Ghee
3. Dr. Jan Christin Dagmar Bøud

AGREED STIPULATIONS

1. Whenever a rule of evidence requires reasonable notice, teams must presume that such notice has been given.
2. No props may be used. Teams may use markers, pens, pointers, or sticky notes to assist in the presentation of witness testimony concerning an exhibit. Exhibits may be copied and enlarged for demonstrative purposes if the proper foundation for admission is laid at trial. Enlargements may not exceed 36" by 48".
3. Participants may only cite evidence contained herein. Cross-reference to other mock trial problems is prohibited. Any similarity to true events or actual persons is to be disregarded. Participants may not cite legal or factual authority outside that presented in the problem, the Rules of the Competition, and the Mock Trial Rules of Evidence.
4. Stipulations may not be contradicted or challenged. It shall be the responsibility of the teams to bring the stipulations to the attention of the Court as the situation may require.
5. All exhibits included with these materials, including the audio recordings of the two musical works at issue in this case, are authentic. No objections to the authenticity of the exhibits may be made.
6. All witness statements have been sworn to by the declarant.
7. The Federal Court for the Northern District of Tennessee has both personal jurisdiction and subject matter jurisdiction over the parties, witnesses, and material at issue in this case. The Federal Court for the Northern District of Tennessee is the proper venue for this action. No objections or arguments may be made upon the grounds of jurisdiction or venue.
8. The Complaint was filed within the applicable statute of limitations. No objections or defenses shall be raised as to the statute of limitations.
9. The Complaint and Answer are provided only for reference purposes. No arguments shall be raised based on any perceived deficiency.
10. Plaintiff Jessie Jameson has a protected interest in the lyrics and musical content of "June to July Girl." Jameson's failure to register the song with the Copyright Office does not impair this interest.

11. The proof in this case does not rise to the level such that Plaintiff may prove factual copying by showing a striking similarity. Instead, Plaintiff must establish access and probative similarity. See Applicable Law below.
12. Damages in this case are the payments that Defendant has received as a result of the publication and performances of “He’s My Still Loving You.” The parties stipulate that damages are \$125,000.00, as addressed in Defendant’s statement, plus costs and attorney’s fees. The nature and amount of damages are not a subject of argument in this problem.

Additional stipulations may accompany exhibits.

APPLICABLE LAW²

Burden of Proof

The Plaintiff must prove every element of this case by a preponderance of the evidence. “Preponderance of the evidence” means the amount of evidence that causes the factfinder³ to conclude that an allegation is probably true. To prove an allegation by a preponderance of the evidence, a party must convince the factfinder that the allegation is more likely true than not true. If the evidence on a particular issue is equally balanced, that issue has not been proven by a preponderance of the evidence, and the party having the burden of proving that issue has failed.

Direct and Circumstantial Evidence

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of a witness about what the witness personally observed.

Circumstantial evidence is indirect evidence that gives clues about what happened. Circumstantial evidence is proof of a fact, or a group of facts, that cause the factfinder to conclude that another fact exists. It is for the factfinder to decide whether a fact has been proven by circumstantial evidence. If the factfinder bases its decision upon circumstantial evidence, it must be convinced that the conclusion that it reaches is more probable than any other explanation.

For example, if a witness testified that the witness saw it raining outside, that testimony would constitute direct evidence that it was raining. On the other hand, if a

² As compiled, summarized, and adopted by the Tennessee High School Mock Trial Committee, and based upon certain Federal case law and jury instructions. Copyright infringement is an intricate area of the law that is further complicated by the various standards adopted by the Federal Circuit Courts of Appeal. For purposes of this case, the Mock Trial Committee has chosen to adopt the law as promulgated here.

³ In a jury trial, the jury is the factfinder.

witness testified that the witness saw someone enter a room wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which the factfinder could conclude that it was raining.

The law permits equal weight to be given to both types of evidence, but it is for the factfinder to decide how much weight to give to any evidence. In making its decision, the factfinder must consider all of the evidence in light of reason, experience, and common sense.

Copyright – General Principles

As a general rule, musical compositions and their accompanying lyrics are protected by copyright law. But not every note and word, taken individually, is protected. Instead, it is the assembly of these building blocks into unique phrases and structures that becomes protected material. The law speaks, therefore, of protected and unprotected material. Unprotected material includes ideas, facts, concepts, and principles. On the other hand, the unique expression of an idea is protected material.

For example, an author might write a story about a couple who meet, fall in love, and face hardship due to illness. Even though the story may be based on real events, the author's expression of these ideas and facts is generally protected material. But another author is permitted to recount, in a different way, the same events and ideas.

Copyright protection subsists from the time the work is created in fixed form. Fixed form may include electronic recording or creation. A work does not need to be registered with the United States Copyright Office in order for copyright protection to take effect. The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

Copyright Infringement

An actionable copyright infringement case consists of two elements. First, a plaintiff must prove that the defendant *factually copied* the protected material. Second, a plaintiff must also prove that the two works are *substantially similar*.

A. Factual Copying

In a copyright infringement case, the first question is whether the defendant actually used the plaintiff's copyrighted material in the defendant's own work. Factual copying can be proven by direct or circumstantial evidence.

Direct evidence of copying is rare.⁴ Thus, plaintiffs usually must rely upon circumstantial evidence to show factual copying. As established by the Northern District Court of Weston County and per the stipulations of the parties, in this case, when using circumstantial evidence to prove copying, a plaintiff must prove (1) that the defendant had access to the allegedly infringed work, and (2) that there is a probative similarity between the works.

Proof of access is generally proven by lay, not expert, testimony. A plaintiff must present proof leading a factfinder to conclude, by a preponderance of the evidence, that a defendant had some means of access to the allegedly infringed-upon work.

Probative similarity means that the works are sufficiently similar to support a conclusion that one was actually copied from the other. This involves a relatively low threshold: probative similarity for the purpose of showing factual copying involves a comparison of the works in their entirety, including protectable and unprotected elements. Stated another way, a plaintiff can meet the probative similarity burden by showing that *some* portions of an infringing song are similar to the infringed work; however, it does not matter *which* portions are similar. Typically, a plaintiff presents expert testimony to support the assertion that the allegedly infringing work is probatively similar to the work in which the plaintiff holds an interest; it is here that an analytic discussion is most helpful.

B. Substantial Similarity

In addition to proving factual copying, a plaintiff must also prove that there is a substantial similarity between the two works. Here, a “reasonable observer” test applies. Using this test, the factfinder attempts to remove the unprotected elements of a work and consider whether the remaining protected material is substantially similar to the infringing work. Stated another way, the issue is whether, after putting aside those portions of plaintiff’s work that are unprotected, a reasonable person would think that defendant’s work was taken from plaintiff’s work.

For example, consider a hypothetical situation in which a factfinder must decide whether two alphabet quilt patterns are substantially similar. The letters themselves found in a plaintiff’s quilt are not protected content. But the factfinder must also look to the arrangement and shapes of the letters, the colors chosen to represent the letters, the quilting patterns, and so on. It is the assembly and use of the letters that becomes protected content.

For these reasons, the piece-by-piece analysis conducted by experts generally carries less weight when evaluating the element of substantial similarity. Instead, the

⁴ For example, a defendant’s direct admission that he or she attempted to copy a protected work would be direct evidence of factual copying.

factfinder must consider the impression given by the works as a whole to an ordinary observer.

Independent Creation

Often, a defendant will deny a plaintiff's charge of factual copying by asserting that the defendant created the song independently of any interaction with the plaintiff's work. Evidence of independent creation typically involves testimony from the author of the allegedly infringing work (or other associated witnesses) that tracks the creative process and demonstrates that the work was created without reference to the plaintiff's work. Documentary evidence, such as drafts of a manuscript, may also be critical in demonstrating the independent creation of a work.

Scènes à Faire⁵

A defendant may raise the defense of *scènes à faire*. A defendant has the burden of proving this defense by a preponderance of the evidence. Stated another way, a plaintiff is not required to disprove *scènes à faire*.

The *scènes à faire* defense provides a defense to an infringement claim when the alleged similarities are merely the use of (i) common scenes or themes, (ii) clichéd language, metaphors, and the very words of which the language is constructed, or (iii) expressions that are standard, stock, or common to a particular subject matter or are dictated by external factors.

Damages

A plaintiff in a copyright case must also prove that damages were incurred. If the Plaintiff succeeds in this case, the parties have stipulated that damages are \$125,000.00 in compensation received by Jordan Evergreen as a result of the licensing, recording, and publication of "He's My Still Missing You".

INFORMATION AND DIRECTIONS REGARDING AUDIO RECORDINGS⁶

The Mock Trial Committee extends its warmest thanks to Erika Cole, the writer and performer of "He's My Still Missing You." The Committee recognizes that this case would have been sorely lacking without Ms. Cole's generosity in allowing the use of her music for the purposes of this competition. The Committee also thanks Christian Barker

⁵ Scènes à Faire's proper pronunciation is "Sin ah fair."

⁶ This portion of the case materials is meant to supplement the Competition Rules published with the 2014 problem. To the extent that any provision of this section conflicts with any Competition Rule, this section shall control.

for creating the lyrics to “June to July Girl”, and to Trevor Hill for creating the accompanying audio recording.

The Committee emphasizes that any use of “He’s My Still Missing You” is absolutely restricted to those students and coaches participating in the 2014 Tennessee High School Mock Trial competition. Ms. Cole retains all rights to “He’s My Still Missing You,” and has licensed the use of the musical content, lyrics, and audio recording of “He’s My Still Missing You” solely for the purposes of this mock trial competition. In the event that any person wishes to obtain “He’s My Still Loving You” for personal use, the Committee encourages a visit to Ms. Cole’s website, EricaColeMusic.com. Erika’s EP, “Home to Me”, is available for download on iTunes.

The Committee has long restricted the use of electronic devices during competition to prevent impermissible communications and to ensure a level playing field. While this year's problem involves a musical recording, the problem has been intentionally crafted such that use of a recording is optional. That said, the Committee also recognizes that some teams may decide that a presentation of the audio recordings of one or both songs may benefit their case. Thus, teams may present all or part of one or both songs at issue during trial, subject to the following restrictions:

1. Teams must use only unmodified audio as available on the Tennessee High School Mock Trial Competition webpage. Rerecordings, remixes, editing, or other modifications are not allowed. Per the stipulations, the recordings are deemed authentic.
2. The use of any software, application, or program to loop, overdub, mix, splice, combine, transpose, or otherwise edit the audio recordings is prohibited.
3. Teams who choose to proffer portions of an audio work into evidence are not required to play the entire song. They may begin and end the audio presentation at the places of their choosing.
4. Recordings are to be used only during direct examinations or closing statements. A recording may not be played during opening statement or cross examination.
5. At the request of either party, the entire recordings shall be admitted into evidence without the necessity of any portion being played in court.
6. Teams electing to play a recording as evidence must make their election known on the roster sheet provided to the bailiff. Before the trial begins, they must tender the electronic device(s) they will

use to the bailiff until such time as such device(s) are needed during trial. After the attorney has played the recording, the attorney shall return the electronic device(s) to the custody of the bailiff until the end of trial.

7. Teams must provide their own means of sound amplification. Neither the Mock Trial Committee, district committee personnel, nor courthouse staff will provide any equipment or facilities of this type. Teams are **expressly prohibited** from using any existing technical equipment that may be present at any competition's location.
8. Any time spent preparing sound equipment, presenting audio evidence, or suffering technical difficulties will be counted against the total time allotted for each team's presentation. Official timekeepers are specifically instructed that time shall not be paused or stopped due to any technical errors, audio equipment preparation or manipulation, or similar issues.
9. Teams should not assume that competition locations at either the district or state level will provide internet access. Teams that choose to present audio evidence are encouraged not to rely on an internet connection at the time of trial.
10. If properly elicited during an examination, a witness may choose to sing some of either or both works during the course of trial. However, the use of instruments or other accompaniment is prohibited.

The Committee emphasizes that simply presenting the audio recordings of the works at issue, whether in whole or in part, should not and does not, in itself, impact a team's score. As with other evidence, the strategic choice to introduce exhibits and the skill with which they are used are components of the overall score. Teams should keep in mind that the use of the provided audio recordings may work to a team's disadvantage. Scorers have wide discretion – they may view proffered audio to be an effective way of illuminating the issues at hand; alternatively, they may find the introduction of the materials to be unnecessary, "clunky", or wasteful of time that could have been better spent otherwise.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TENNESSEE

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PLAINTIFF,)	No. 8.67-cv-5309
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v.)	
)	
JORDAN EVERGREEN,)	
)	
DEFENDANT.)	

COMPLAINT FOR COPYRIGHT INFRINGEMENT

COMES NOW the Plaintiff, Jessie Jameson, by and through counsel, and brings this Complaint against Defendant Jordan Evergreen for damages and an injunction arising from Defendant’s infringement of Plaintiff’s copyright. In support of these allegations, Plaintiff alleges as follows:

Jurisdiction and Venue

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*
2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*, 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (copyright).
3. This Court has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that the Defendant resides in this District and the alleged acts of infringement occurred in this District.

Parties

4. Plaintiff is an individual residing in the State of Tennessee, Weston County.

5. Upon information and belief, Defendant is an individual residing in the State of Tennessee, Weston County.

Count One: Infringement of Copyright

6. Plaintiff incorporates by reference each and every allegation contained above as if fully restated herein.

7. Plaintiff is, and at all times relevant to this action has been, the sole copyright owner of a certain musical composition, including lyrical content, known as “June to July Girl” (the “Copyrighted Work”).

8. Plaintiff’s sole copyright interest in the Copyrighted Work began at its transcription into a fixed and tangible medium of expression in August of 2008.

9. Among the exclusive rights granted to Plaintiff under the Copyright Act are the exclusive rights to license the Copyrighted Work, reproduce the Copyrighted Work, and publish the Copyrighted Work to the public.

10. Plaintiff is informed and believes that Defendant, without Plaintiff’s knowledge or consent, used and copied the whole or substantial portions of the Copyrighted Work which Defendant held out to be Defendant’s own original musical and lyrical composition.

11. Plaintiff is informed and believes that Plaintiff’s Copyrighted Work, which Defendant held out as Defendant’s own, has been licensed, recorded, and released

under the name “He’s My Still Loving You”. Defendant’s actions constitute infringement of Plaintiff’s copyright and exclusive rights under copyright.

12. Plaintiff is informed and believes that Defendant has received substantial financial payments as a result of the success of “He’s My Still Loving You”. Plaintiff is informed and believes that Defendant has received significant financial compensation.

13. Plaintiff is informed and believes that the foregoing acts of infringement are willful and intentional, and in disregard of and in indifference to Plaintiff’s rights.

14. As a result of Defendant’s infringement of Plaintiff’s copyright and exclusive rights under copyright, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant’s infringement of the Copyrighted Work. Plaintiff is further entitled to attorney’s fees and the costs of this action pursuant to 17 U.S.C. § 505.

15. Defendant’s conduct is causing, and unless restrained and enjoined by this Court, will continue to cause Plaintiff great and irreparable injury that cannot be fully compensated or measured in financial terms. Plaintiff has no adequate remedy at law. Thus, pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief prohibiting Defendant from further infringing Plaintiff’s copyright and exclusive rights under copyright.

WHEREFORE, premises considered, Plaintiff respectfully asks this Court to grant a judgment in Plaintiff’s favor against Defendant as follows:

1. For an injunction enjoining Defendant from directly or indirectly infringing Plaintiff’s rights under federal or state law in the Copyrighted Work or in any sound recording, whether now in existence or later created, that is owned or controlled by Plaintiff.

2. For statutory damages pursuant to 17 U.S.C. § 504.
3. For Plaintiff's costs incurred in this action.
4. For Plaintiff's attorney's fees incurred herein.
5. For any such other and further relief as this Court may deem just and proper.

Respectfully submitted,

(signed)
Attorneys for Plaintiff Jessie Jameson

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TENNESSEE

JESSIE JAMESON,)	
)	
PLAINTIFF,)	No. 8.67-cv-5309
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v.)	
)	
JORDAN EVERGREEN,)	
)	
DEFENDANT.)	

ANSWER OF DEFENDANT JORDAN EVERGREEN

COMES NOW the Defendant, Jordan Evergreen, by and through counsel, and answers the Complaint brought by Plaintiff Jessie Jameson as follows:

FIRST DEFENSE

Defendant responds to the separately numbered paragraphs of Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted, upon information and belief.
5. Admitted.
6. Paragraph 6 is a legal statement that requires no response. To the extent

that any response is required, Defendant denies the allegations of Paragraph 6.

7. Defendant is without sufficient information to form a belief as to the truth or falsity of the Plaintiff's averments with regard to "June to July Girl." Accordingly, the Defendant denies the allegations contained in Paragraph 7 of the Complaint.

8. Defendant is without sufficient information to form a belief as to the truth or falsity of the Plaintiff's averments with regard to Paragraph 8. Accordingly, the Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. Paragraph 9 is a legal argument that requires no response. To the extent that any response is required, Defendant denies the allegations of Paragraph 9.

10. Denied.

11. Denied.

12. Defendant admits that Defendant has received financial compensation as a result of Defendant's creation of "He's My Still Loving You". Defendant denies that Plaintiff is entitled to any such compensation, or that such compensation was a result of any infringement on any copyrighted work in which Plaintiff may hold an interest.

13. Denied.

14. Denied.

15. Denied.

In response to Plaintiff's prayer for relief, Defendant responds to each separately numbered paragraph as follows:

1. Denied.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

Defendant further generally denies that Plaintiff is entitled to any relief whatsoever, and denies that a judgment should be awarded in Plaintiff's favor.

SECOND DEFENSE

Each allegation not specifically addressed above is hereby denied. Defendant demands strict proof of the allegations contained therein.

THIRD DEFENSE

Defendant asserts the defense of scènes à faire in that any similarity between "June to July Girl" and "He's My Still Loving You" is merely the use of (i) common scenes or themes, (ii) clichéd language, metaphors, and the very words of which language is constructed, or (iii) expressions that are standard, stock, or common to this particular subject matter or are dictated by external factors.

WHEREFORE, having fully answered, Defendant asks that this Court dismiss Plaintiff's Complaint with prejudice and that costs be taxed to Plaintiff.

Respectfully submitted,

(signed)
Attorneys for Defendant Jordan Evergreen.

WITNESSES FOR PLAINTIFF JESSIE JAMESON

• Jessie Jameson •

Hey y'all. I'm Jessie Jameson! Let me fill y'all in on what's been goin' on. Let's see here...well, I guess it all goes back to my senior year at Weston High (Class of 2008, y'all! WOO!). Growing up, my buddy Harley Flint and I spent all kinds of time together. Our folks used to laugh at us being attached at the hip, but hey – that's what friends do, amiright? Me and him been spending time together since before we were in school – our parents used to let us play with lawn darts together while they played music on the back porch. My parents, especially, were very musical, and I grew up listening to and learning to play all kinds music. And, now that I'm grown, I am still playing music. I'm a pretty darn good musician, too. It seems like I've spent my whole life writing music, and songs, and words to songs, and ...you name it, I can crank it out!

So back to my story. During our senior year, Harley had himself a gal pal he was dating named Danielle Sun. He dated her the whole five years we were in school (let's just say we got ourselves some extra time in our school because we were just that good...). I liked Danielle alright. I mean, she was seeing one of my best friends, so I guess I kinda had to. Plus, Harley was in loooooove! Whew, was he in love! But unfortunately for Harley, Danielle seemed to kinda want bigger and better things because right around the time we finally got ourselves out of Weston High, Danielle told Harley she was up and leaving Weston County and moving to California to go to Kiffin University! I don't even think they've got country music out there so I'm not sure why she'd wanna go all the way out there. Not to mention that I've heard lots of strange stuff about that place, like people talkin' about the fire lanes at Kiffin all the time. Whatever.

Now where was I? Aw yeah – back to poor Harley. So when Danielle broke his heart, he was pretty tore up. Thankfully, I was there to hang out with him, and he was able to follow me around to all of my gigs that summer as he tried to take his mind off of Danielle. In fact, I was playin' a gig at one of Ol' Lady Brush's famous monthly yard sales when Harley met this girl Mia, who turned out to be his summer fling. They hit it off like ducks on a junebug! I thought she may have been "the one," but Harley, well, not so much. In fact, I guess I wasn't the only one who thought they looked like a match made in heaven, because one of our buds asked him if he was gonna pop the question, he said, "Nah, she's just my June to July girl."

Well shoot. I don't think I had ever heard better words for a song than those! I wrote the song "June to July Girl," right after that, using Harley and his comment as inspiration. Don't mean to toot my own horn but everyone LOVED it. I played it at all my special gigs, from Andy Burns' birthday party, to some more yard sales for Ol' Lady Brush. Heck, at the rate I was goin', I was movin' fast toward a spot headlinin' at the Weston County Ag Center. Unfortunately, even my really big gigs weren't payin' all my bills, so although I kept playin', I also had to spend some time on my other job at the Denim 'N More factory.

I still play whenever I get the chance. And, I tell you what, to this day, when people see me out they'll walk up to me and sing a bar or two of "June to July Girl," and ask when my next gig is. And, although I still break out the guitar from time to time, I don't play quite as much as I used to. But everybody sure loves "June to July Girl" when they hear it, and it is by far my most requested song.

"June to July Girl" is the reason that we are here. A while back, I was driving down the road listening to our local country station, 108.1, The Lunatic, when I heard a song by that girl Erika Cole that was nearly a carbon copy of "June to July Girl." Nearly the same lyrics and identical music. I mean, sure, it's a little bit different, but I think anyone would agree that when you hear it, y'all, it's my song! Everyone knows it! You can change the name all ya want – who calls a song "He's My Still Loving You," anyway? That don't even make sense. But call it what y'all want – she was singin' my words throughout the whole song!

So I did what any self-respecting songwriter would do – I googled it! I found out that Catnip Evergreen supposedly wrote that song. Now how about that! I know that Catnip is a major player in the country music scene, and has written some hits, but I also know my song. You don't get genius like those words I wrote more than one time. So I'm not gonna be sitting around letting that crummy Catnip and Ms. Cole get the millions I deserve, so I called a lawyer and got myself a lawsuit. You know, I like being a big fish in a small pond, which is why I've never tried to make it big. But let's be honest here, I think it's only fair that credit be given where credit's due!

I ain't never really been in trouble, at least not what I'd call trouble. A couple years back, I got arrested for setting a couch on fire to protest the county's plan to build a giant dump right down the river from my parents' house. My expression of free speech was met with a reckless burning warrant. Everything ultimately got dropped thanks to my lawyer, Carol Cravens. But that's about it.

Also, I once had to sit through some pretty stiff questioning by a police investigator. Like I said earlier, I used to work at this big factory, but it burned down a couple years back. There was some big to-do about how somebody set it on fire on purpose. They talked to a lot of the employees, and talked to me a couple of times regarding one of my fellow employees, Jamie Whineshack. I think that they were interested in me because I used to sub-in for Jamie's band's guitar player every now and then, so they thought Jamie and me were close. We weren't, and I couldn't offer much help. So, after a while, they stopped questioning me, and I never heard about how that case ended up.

These days, I'm working at a car plant. We make these fancy electric cars. Well, the other folks make them; I just help keep parts coming on the supply line. They don't sell too well yet, but I bet they'll take off soon, what with the price of gas and such! We had some bad publicity a while back because some local mover and shaker down south

of here got killed in a wreck while driving one of the cars we made. Something about the brakes giving out or something.

For some reason, I never hung on to any videos of me playing and singing “June to July Girl.” Guess not many people thought to bring video cameras to yard sales! But my buddy Harley liked the song so much that he learned how to play it. I’ve got an old cell phone recording of Harley singing and playing the song from back a few years ago. Seems like this recording was made in late 2008, sometime after Harley and Mia broke up. Oh, but I did go through my old guitar case and find the original handwritten lyrics! That’s pretty cool, eh?

Actually, that kinda helps prove when I wrote it. Like I said, I wrote it in the late summer of 2008. After I had the words down, I just grabbed some paper and jotted down the words and chords. Turns out, the paper was some letterhead from R.M. Construction, LLC. I interned there for a few weeks in high school. So that kinda proves when I wrote the song, right? Wasn’t any reason for me to keep letterhead laying around.

•Stonie Tarck•

My name is Stonie Tarck. I'm originally from Tunica, Mississippi, but I've been in and around the Nashville area all my adult life. When I was about 16, I snuck into the Sam's Town Casino in Tunica to see if I could get in on the crab claw buffet. Well, it turned out that the man himself, the one and only "Possum" – Mr. George Jones – was playing a show that night. Once I laid eyes on the man with his black jeans, his perfectly quaffed silver hair, singing that sweet sound, I couldn't move. When he sang "Hello Darlin," I dropped to my knees. Soon after that, I quit school, went to Nashville, and immersed myself in the country scene. I knew I'd never be a singer, but I wanted to be around the music constantly and I wanted to be just like the "Possum."

Well, I started wearing black jeans and ostrich cowboy boots and never looked back. I started traveling the country circuit, seeing every show I could and partying with every singer I could. Of course, living that lifestyle brought with it a few vices, which I couldn't resist. It wasn't long before I was drinking a pint of sour mash a day and smoking two packs of "Camel no-filters." But man, those were the days. Of course, I never did operate an underground lab or anything like that, if you know what I mean.

For years that's all I did – drink whiskey and party with country music stars. And, for years, I was able to do that without getting a job – money wasn't a problem. See, when I was real young I was hurt in a car wreck. I don't remember it, but apparently a limo driver on the strip in Vegas hit a car I was riding in and caused me to have what they called a "mild traumatic brain injury," but I don't think it did anything to me other than sometimes I get headaches and say my words backwards. Since my doctors were concerned that the injury hurt my abilities to read and write and make rational life decisions, I received a pretty good sized settlement and lived off that money.

Well, anyway, I eventually spent up all that money on whiskey, smokes, and cowboy boots, so I needed to figure out how to get a little scratch and still hit up all my shows and do what I liked to do. Luckily, in all my time partying with Willie, Waylon and the boys, I made some pretty good contacts. I knew a bunch of record label employees and songwriters. One of these people was Catnip Evergreen. Some of these folks would throw me a few bucks from time to time when I would give them the heads-up on new talent or up-and-comers I would find in little honky-tonks. I wasn't getting rich, but it at least kept me in the booze and smokes. Heh – one of the guys once said I reminded him of Ironman because I kept flying all over the place but seemed mentally unstable. Maybe it was that shiny pendant that I always wore with a piece of glass from my first bottle of Crown Royal...

Of course, I don't mind telling you that this period in my life was a dark time. Heck, there's some whole years I still can't remember. I drank more whiskey than the law should allow and probably spilled more in a night than a normal person drinks in a

lifetime. Of course, like everyone, I had my fair share of run-ins with the law. I got thrown in the drunk tank more times than I can recall and even got a DUI on a lawnmower one time when it jumped the curb and ran into the liquor store. I spent most of my time in little backwoods honky-tonks surrounded by a cloud of cigarette smoke and lights from a neon moon. It wasn't a healthy lifestyle, but it sure was fun. My dinner usually consisted of a bottle of something brown and cheap and a year-old pickled egg from a jar behind a bar.

Well, sometime around this time in my life – I'm thinking sometime in late 2008 or early 2009 – I woke up in a bowling alley parking lot. Still haven't figured that one out. But, I remember getting up and seeing a beautiful sight – a big neon sign that said "Weston County Bowling Alley – Clean Lanes and Coldest Beer Around." Naturally, I went in to inspect. I ended up sitting there for a few drinks. As I recall, I moved from the so-called "Coldest Beer Around" to my brunch-time cocktail of choice – white Russians. It's funny how you can remember the little things sometimes. I remember the bartender looked like Sam Elliot and the cocktail napkin said "The Dude Abides." And even though the air was cold, there was some bow-tied dude who wasn't wearing any socks.

Anyways, while I was there a big birthday party started up. They had a band and free cake, so naturally I moseyed on over to inspect. There was some kid singing; maybe 19 or 20 years old. A little rough around the edges, but didn't sound too bad, I thought, even with my screaming hangover. Knowing an opportunity when I saw it, I whipped out my Blackberry and recorded a little bit of the show. There was one song in particular that seemed to get the locals all riled up – think it was called "June to July Honey" or something like that. I was hoping I could interest some of the talent development guys I knew into hooking up with him and maybe throwing me a few bones.

Anyway, after they kicked me out of the birthday party, I hitched a ride with some bikers I found at the pool hall next door who took me back to my place. A week or so later, I was at one of my local watering holes in downtown and ran into Catnip Evergreen. I started telling him about this kid I saw at a bowling alley out in Weston County and let him hear the recording on my phone, thinking he might have an idea of what talent development guy I should show first. He made me play it for him a couple times, so I thought maybe he was getting into it, but then he told me that the drinking had finally killed off what last brain cells I had, and told me I had become a complete derelict. I think I remember him telling me that I didn't know what talent was and that I'd be better off in a pine box on a slow train back to Georgia – whatever the heck that meant. I just put my phone back in my pocket and looked away. I was offended, but he was buying my drinks, so I stayed for a bit. We had several more shots before the bar closed and they kicked us out.

Catnip and I went out of the bar together to the back alley where my Harley and his Benz were parked. The next thing I remember is being woken up by the police and the EMT guys. Apparently, I hit an Australian tourist with my bike as he was coming out from a show on Printers Alley. It's all a little blurry, but I do remember the EMTs and the

police emptying my pockets in the ambulance, and my Blackberry was gone and so were my Camel No-Filters. I never did get that phone back. I didn't think I was hurt too badly, but they took me to the hospital anyway and the doctors said my liver had suffered irreversible damage and the MRI of my brain was "troubling."

Well, they charged me with vehicular homicide because apparently the Australian didn't pull through. My lawyer said I had a good chance to fight it, so we had a trial. Can you believe it, the Possum himself even showed up to wish me luck before the trial started. Well my lawyer was wrong – what an idiot. I thought he was the best. All the music guys used him, even Catnip used him for something I think. They found me guilty. I just know I would've gotten off had it not been for Catnip testifying against me and telling them how much I had been drinking and that I had been living in a drunken stupor for years.

Ever since then I've been clean and sober. Of course, it helped that I was also known as "Inmate #1771" for a while. While I was in the slammer, they let me keep my antique record player in my cell, but those sadistic guards wouldn't let me listen to anything except "Still Doin Time," by the man who started it all for me – the Possum himself, George Jones.

•Doe Raymie•

My name is Dr. Doe Raymie. I am the expert witness for the plaintiff, Jessie Jameson. I have been a musicologist for approximately 15 years and have testified in over 100 cases on behalf of many talented musicians. I am qualified to make expert analysis of these songs because of my extensive work as a musicologist and my doctorate in Theory and Composition from Volunteer University.

Being a musicologist is challenging and difficult work. However, I do enjoy the opportunity for analysis that it provides. Indeed, one must begin by asking the most basic question: what is a copy? It is true that there are a limited number of notes from which musicians may choose when creating a composition. However, as one can easily tell from listening to the wide variety of music on the radio, those notes are assembled in a variety of ways to form an almost infinite number of compositions.

Therein lies the conundrum at the heart of this case. The task presented to me was the analysis of “June to July Girl” and “He’s My Still Loving You”. The ultimate question: did the writer and composer of “He’s My Still Loving You” arrange the building blocks of music and language in a unique and original way? Or is that work simply a copy, a counterfeit, a modified reproduction of “June to July Girl”?

My true passion for my work comes from the many times that I have seen musicians and songwriters pour their heart and soul into these songs, only to have those same songs stolen by writers and composers with less originality, less musicianship. I feel that my mission is to protect the work of the true artist, to preserve ownership of the genuine article, no matter how destitute or backward the composer may be. Indeed, simply meditating upon this case turns my ears the color of the blood that Tosca drew with her blade from the arrogant body of the terrible Scarpia. May Scarpia’s fate be the fate of each coward who seeks to rip the art from the artist’s grasp! I speak hyperbolically, of course.

So, on to the problem at hand. Honestly, I am not much of a fan of the popular music genre. Three chords, two verses, and a bridge. . .at some point all popular music starts to sound the same. I prefer the classics. And by “classics” I mean Chopin, not the Clash. However, I must say that “June to July Girl” caught my ear when I first heard it. The catchy song is such that it is hard to refrain from tapping one’s foot or “groovin’ to the beat” as the young folks like to say. Likewise, the lyrics pulled me into a summer romance gone sour. And when I began to absorb “He’s My Still Loving You,” it became immediately clear that its composer had doubtlessly adopted from the essence of “June to July Girl”, and that any differences were mere window dressing.

My musical analysis includes two basic elements: words and notes. In addition to examining each individual word, we must also consider how the lyricist has woven the words into themes. Here, when we consider “June to July Girl” and “He’s My Still Loving

You”, we see strikingly similar lyrics, both in the use of individual words and in thematic expression.

As to the words themselves, one marker to be examined when considering the similarity between two lyrics is the recurrence of unusual words. For instance, words like “the”, “you”, or “baby” are common in a tremendous number of songs. They are found even more commonly in the country genre. But in this case, both lyrics show the recurrence of less common words. What’s more, they tend to occur in the same general place of the song. For example, the word “blue” appears in the first verse of each song. “Summer” appears in each chorus, as does the word “star” or “stars”. And of course, “June” and “July” are both staples of each chorus. The presence of uncommon words such as these is the first sign of remarkable similarity between musical works. The placement of these uncommon words in the same relative position in the lyrics of each song is certainly in my experience too frequently occurring to be merely coincidental.

Second, we must examine not only the presence of individual words, but also certain phrases. As with uncommon words, the appearance of identical phrases is a marker of similarity. Here, the first verse of each lyric contains the phrases “broke my heart”, “was out of the blue”, and “just need some time”. We also see the appearance of “never came back”, “moved on” and “want you/y’all to know”. And again, of course, the “hook” of each song is the phrase “June to July”. In my opinion, at least fifteen discreet phrases appear in both works. Clearly, these connections are more than random chance.

A third element of lyrical analysis is the idea of theme. In lay terms, what is a song’s purpose? What is it trying to express? I consider songs to be similar if their themes begin to converge.

Here, both musical stories follow the same pattern. The singer, who tells the story in the first person, suffered a heart broken out of nowhere. The “significant other” in each telling drives off in their car saying they needed some time apart. The singer waits for their love to return but then moves on to find another relationship. However, feelings for the heartbreaker linger, and the new relationship will never be able to take the heartbreaker’s place. Each song ends with unspoken expectancy that the storyteller will wait for the first love to return. Although lost love is the subject of many country songs, the storytelling chronology coupled with the factual themes of these two songs shows that they are quite similar.

In sum, in my professional opinion, it is clear to me that significant portions of “He’s My Still Loving You” are directly taken from “June to July Girl”. The use of unusual words, repeated discreet phrases, and identical thematic elements signify as much. Of course, the change in the lyrics’ objects – “He’s My Still Loving You” is written to the heartbreaker while “June to July Girl” is written about the heartbreaker – does nothing to alter this opinion.

The second major prong of analysis looks to a work's musical content. In this case, this involves the examination of two musical components: melody and chords. A song's melody, or tune, is the sequence of notes that constitutes the essence of what a song "sounds like." That is, if a person were to sing a song with no accompanying sounds, they would sing the song's melody.

Here, the melody of "He's My Still Loving You", particularly that of the chorus, shows distinct similarity to the melody of "June to July Girl". The songs are in different keys, but the structure of the chorus of each is primarily repeated notes. For example, in "June to July Girl", the words "Mia's just my summer fad/Never gonna get the love that Danielle had" are essentially vocalized on the same note. Likewise, with the exception of the opening note, the following lyrics from "He's My Still Loving You" are also vocalized around a single pitch: "He's my missing you bad/Never gonna have the love that we had". This pattern continues throughout the chorus of each song.

Chords are the clusters or groups of notes that provide context or background for a melody. Thus, a single melody may sound quite different when framed with different sets of chords. Although the songs at issue here are recorded in different key signatures, we can compare them by using a simple Roman numeral numbering system. Musical pitches are designated by the repeating letters A through G.⁷ For a song in the key of C major, a C chord is represented by the numeral i. A d chord is represented by ii, an e by iii, an F chord by IV, and so on. So, a V chord in one song is comparable to a V chord in another song, no matter in what key they may be written.

Here, the chordal structure of "He's My Still Missing You" resembles that found in "June to July Girl". The chorus of Jameson's work is accompanied by a theme of four repeating chords: I, V, IV, V. Similarly, the chorus of "He's My Still Loving You" consists of four repeated chords: vi, V, IV, V.. Apart from the first chord, the pattern is the same. Furthermore, a vi chord is easily substituted in place of a I chord; the two chords are the same with the exception of one alteration. What's more, each chord's length is two beats; in other words, the chords change in the same musical length of time. In my opinion, it would be difficult for Evergreen's chorus to more closely track Jameson's without actually copying it.

In conclusion, I feel it to be impossible for two songwriters to create such similar songs independently of one another. Both lyrical content and musical structure point to a finding that one is a copy of the other. As such, it is clear to me that the most important portions of "He's Still My Loving You" – indeed, nearly the entire work – was copied from "June to July Girl."

⁷ Visually, these pitches are represented by the white keys on a piano.

WITNESSES FOR DEFENDANT JORDAN EVERGREEN

•Jordan Evergreen•

My name is Jordan Evergreen. I am an accomplished songwriter born and raised in Music City, Tennessee. I've lived in Weston County for the past few years now. Ever since I heard my first Hank Williams song, I knew I was destined to be involved in country music.

I got the nickname "Catnip" after a humorous incident regarding a housecat and a glass of soda. Me and some songwriting friends were out on the back porch, trading licks and lending listening ears to each other. Just when I was taking a swig, all of my friends started to guffaw. They told me that when I'd been in the house, a cat had crept up to my glass and taken a nip of my drink. Somehow, the name Catnip stuck. You know, they say that entertainers ought to have names that people can remember!

I don't have much of a voice, so I took to songwriting at an early age. Many of my friends enjoyed singing covers from big country artists, but I always preferred writing and performing (although badly) songs that I wrote. I've had some pretty good success in getting my songs in the hands of reputable artists and publishers. The odd job mixing and producing helps to supplement my income, too.

While I had some moderate successes for a few years now, my first really big hit was "He's My Still Loving You," which was performed by Erika Cole. I wrote it in the autumn of 2010.

The background on "He's My Still Loving You" is very personal to me, in that it was inspired by my own love life. In 2009, I'd been dating someone for a while, when abruptly I was left alone as my significant other decided to move out of the country to attend the Icelandic Elf School. After that, I hopped from relationship to relationship. I had a good time, but it was nothing that compared to what I had lost to Reykjavík. I struggled for awhile, but then a good friend of mine told me to write a song about the whole experience, and I did. One night, I laid in the bed of my pickup truck staring up at the stars and the lyrics just flowed as I strummed my guitar. That heartbreak was the best thing that ever happened to me.

Of course, somebody had to come and throw a monkey wrench into things. Jessie Jameson has filed this lawsuit against me trying to get in on the cash I am making. Jessie claims that I stole a song called "June to July Girl." That nutcase, Stonie Tarck, has taken Jessie's side in this whole mess. Apparently, Stonie says that I saw a video of some bar entertainer playing "June to July Girl," or whatever the name of that song is, on Stonie's cell phone. I'm sure that's not the case. How could I copy the song if I can't even remember seeing or hearing it?

I do remember meeting Stonie for drinks on the day that he killed that Aussie. Stonie was as high as a Georgia Pine upon arrival. Stonie kept trying to show me some video, which wouldn't play all the way through. Stonie was nearly incoherent, and frankly, I assumed that whatever video that was trying to queue up was not something that honest Americans should be looking at. Stonie kept ordering drinks, which I later learned were put on my tab, and when Stonie left I assumed that mayhem would ensue. So, to the extent that Stonie suggests that this is the evening that I learned of and decided to copy "June to July Girl," I would counter that assertion by saying that Stonie's memory is not spot on, since Stonie got so drunk that someone got killed. In truth, though, drunk enough to kill someone is Stonie's baseline.

Anyway, I'm pretty sure that if I heard a good song, I would have asked the singer about it. Obviously, I have some connections with the music industry. It wouldn't be the first time that I made some money from hooking up a novice songwriter with the right people. I know how to write music, but I can and have served as a vehicle to get other songwriters' music to the right industry people. So, if I had heard this song before, I would have found an appropriate way to market it, not invented some complicated scheme to take credit for its creation.

I never copy other people's work. I am much too talented for that. I've worked hard to make it in this town based on my own original songwriting, not from stealing some nobody's song. As to "June to July Girl," well, I think it's silly. It's a terrible song and I don't think it sounds anything like my song.

Although I was making decent money here and there from songwriting, "He's My Still Loving You" really turned things around for me financially. So far, I've received \$125,000 from the song alone. Of course Jessie isn't entitled to any of that money – it's my song!

Yes, I'm confident that I wrote the song in autumn of 2010. There's an embarrassing reason for my memory, too. I'm a huge hockey fan, and sometimes get carried away at the games. Long story short, I got kicked out of the local team's arena for waiving a foam finger in an "inappropriate" way; at least, security said it was inappropriate. They filled out an incident report and gave it to me on the way out. That's when I really hit rock bottom. Later that night, I drove out into the country, pulled off into a field, and that's when the "He's My Still Loving You" hook came to mind. What a great line! That song is going to make money for me for a long time.

•Tommy Ghee•

My name is Tommy Ghee. We ain't from around here. I'm kin to Mia Ghee's mom, and I've raised Mia since Mia was two. Mia and I moved here to Weston County, Tennessee about seven years ago. We'd been livin' west of here till then, but just got tired of it. So, Weston County is now our home-sweet-home. Everyone has been so nice to us except them two characters, Jessie and Harley. Harley is one of Mia's old flames. I just can't... you wouldn't believe what... well, lemme' just tell you about Jessie and Harley.

Me and Mia really like yard sales. In fact, we used to go to them all the time where we used to live. When you don't have anything to begin with, yard sales are good ways to buy things and good ways to fill the time on weekends. Then, we heard about the Westons; or, the Weston Countians. I heard the Westons had yard sales all them time. Goodun's too. Tell you the truth, that's one of the reasons we moved out here. We'd go lookin; you'd find clothes, bed sheets, furniture, cleaning products; they'd have hot dogs, free drinks... mmm, mmm, don't get me started.

Anyway, we was at a yard sale one June Saturday morning about 7:30 a.m., because you always got to get there early, and there was this one sad, pathetic character standing in the back of a pickup truck playing some music. Turned out it was Jessie. And then sitting on the tailgate in front of him is Harley. Harley was trying pretty hard, all decked out in a faux-leather jacket, fingerless gloves, and 100% polyester bandanna. Apparently, it was Harley's truck. They both was acting like it was a concert, but nobody was listening. One thing's for sure, they just don't play music at yard sales where me and Mia come from.

And, well, Harley immediately had Mia's heart. I don't even know how it happened. They'd look at each other while we was shoppin' and I knew they was just meant to be. They ended up wandering off together to look for porcelain elephants. I kinda felt sorry for Jessie. Nobody was listening and the music was horrible. Mia talked to Jessie during one of the intermissions, but she spent most of her time with Harley. The way they was all smiling at one another, seemed to me like anybody could tell this wasn't gonna be just some summer thing.

Mia and Harley started going steady. They saw each other a whole lot. You see, I didn't really have a legal driver's license, as I can't see so good. Anyhow, Mia would get Harley to come pick us up to take us to all the yard sales, or as we liked to call it, "salin'." We'd go to lots of yard sales each weekend. The problem though ... the problem ... we always had to listen to Jessie sing. Jessie worked every yard sale in Weston. Well, I guess it wasn't that bad, I just got tired of hearing the same ole' thing over and over again. I remember this one song in particular, "June to July Girl." Jessie'd sing it two or three

times at each yard sale. Seemed like Jessie was always testing it out. Never seemed to be a finished song.

Of course, Jessie didn't make it big for a reason. There didn't seem to be much songwriting there. For example, "June to July Girl" never really sounded the same—there was always a different verse thrown in, and the more longnecks that Jessie consumed, then more erratic the song. So, I suppose that the fair thing to say is that "June to July Girl" is really a loose collection of Jessie's musical ramblings. I certainly never heard it sung or played the same way twice, but the title always stayed the same. That's how I knew which song Jessie was singing.

I remember one Saturday mornin', around the end of July, when Harley was takin' us and Jessie to a yard sale. Mia asked Jessie how Jessie came up with the title for "June to July Girl." Jessie just laughed and told Mia that it was nothin' really personal. Then, Jessie winked at Harley. It wasn't real obvious, but it made me uncomfortable. Seemed like the two of them was privy to some secret.

Come to find out, Jessie must've wrote that song about Mia and Harley! I never heard any of the lyrics too well in any of the versions I would hear Jessie sing—just the title. Seems like that dirtbag Harley never really did love Mia at all. Instead, he was just using her as his rebound girlfriend. What a varmint.

I don't know who sang the song, "He's My Still Loving You," but I can tell you it sounds a whole lot better than that junk Jessie wrote. I'm still upset at Jessie for his role in Mia and Harley's breakup. Dagnabbit, I get upset just thinking about it. Where's my Tums?

• Jan Christin Dagmar Bøud •

My name is Dr. Jan Christin Dagmar Bøud. I have been retained to testify on behalf of Jordan Evergreen as to the similarity, or lack thereof, between “He’s My Still Missing You” and “June to July Girl.”

First, a bit about my background. I’m a proud Scandinavian, a native of the city of Flekkefjord, found in the lovely county of Vest-Adger. I graduated a year early from high school and then went on to complete an undergraduate degree in music theory and composition from the University of Bergen. I hold a doctor of musical arts degree from the University of Southern California. My dissertation focused on the early techniques of keyboard improvisation as incorporated into the formal written preludes and fugues of German composers from the Baroque era. I have also completed post-doctoral work at the Franz Schubert Institute in Vienna, Austria. Currently, I work as a full professor of theory and composition at the Juilliard School in New York City. Although I’ve lived in the states for many years, my accent does give me away sometimes.

Early in my childhood, my parents began to instill in me a love and appreciation for the classical arts. I have studied many instruments, and although I am a master of none, I can hold my own with most bassoon players. As to my qualifications for this case, well, although my background is in what the unwashed masses know as “classical” music, my extensive training gives me the ability to analyze any sort of composition. This is particularly easy here, given the rudimentary structure of the country-western genre.

Once on a research trip to Colorado, I came to have an appreciation for handmade cowboy boots. This led to my first trip to Tennessee, where a former member of the Chuckwagon Gang now works as a cobbler. Although there’s a two-year waiting list for his boots, it’s worth it! While in Tennessee, I came to know certain wealthy members of the legal community who also enjoy fine footwear. Word gets around, and when this case arose, I received a call from a member of Jordan Evergreen’s defense team asking for my assistance.

To prepare for this case, I requested audio versions of both “He’s My Still Missing You” and “June to July Girl.” I also received lyric sheets. I then analyzed the two primary components of each song: lyrics and musical composition.

As to lyrical content, although there might be some faint similarity between the lyrics of each song, there is no evidence that the words of “He’s My Still Loving You” were copied from those of “June to July Girl”. First off, the direction of each storyline is different. The singer of “June to July Girl” is telling the story to the song’s listener. That is, the person whose heart was broken is talking about it while addressing some third person – whoever might be hearing the song. In contrast, “He’s My Still Loving You” is a song addressed to the former significant other of the singer.

Both “He’s My Still Missing You” and “June to July Girl” are built around a similar chord structure. But, this isn’t enough to show that they are really similar. To explain: Western music is built around a system of pitches with corresponding letter names from A to G. No matter the key of the song, most popular music uses some progression of three major chords, so there is just not a lot of variety in chord structure no matter what the song. To use the work of my fellow Scandinavian Max Martin as an example, just try to sing “...Baby One More Time” and “Oops. . . I Did It Again” at the same time. Same chord progression, same beats of music, different songs.

In this case, an analysis of the rhythm found in these works also shows that they are not alike. Rhythm, or beat, is the way in which time is measured in music. Almost every song in Western music has a time signature. The signature shows the number of beats in every measure (measures are the basic markers of music) and shows how long each beat lasts. For example, a waltz is almost always written with a 3/4 time signature. The 3 shows that there are three beats in every measure, while the 4 signifies that each beat is a quarter note. Here, both “He’s My Still Missing You” and “June to July Girl” are written in 4/4 time. But the difference is in the details! “He’s My Still Missing You” is sung with a straight 4/4 feel, while “June to July Girl” has a bit of a swing to it. But another way, in the most basic time unit of “He’s My Still Missing You” contains four beats or pulses. The same basic time unit of “June to July Girl” contains three.

Perhaps this might not seem to be a significant difference, but consider this example: first, think about how the popular American holiday tune “Jingle Bells” sounds while played by a marching band in the Macy’s Thanksgiving Day Parade. It’s a snappy, crisp sound, marked by rhythmic precision. Now imagine how different the same “Jingle Bells” sounds when played by a jazz trio. It’s a smooth, swinging shuffle. Same song, maybe even the same basic accompanying chords, but a totally different song. In this case, had “He’s My Still Loving You” been a copy instead of an original work, surely its writer would have adopted the swing feel of “June to July Girl” – a critical element of that song’s identity.

I also reviewed Dr. Raymie’s submission. Clearly, that poor soul stands only on the dull outskirts of musicology, looking longingly towards those of us who inhabit its inner workings. In my esteemed opinion, it is obvious that the comparisons that Dr. Raymie strains to make are of no significance. They are mere *scènes à faire*: common themes, language, and expressions that are visible across a wide swath of country music.

When opining as to similarity, we musicologists must, of course, turn our attention to the words and notes that carry meaning. But here, Dr. Raymie has expended his energy upon the common, the mundane, the clichéd. We need only look to Deana Carter’s “Strawberry Wine” or Heidi Newfield’s “Johnny and June” to see that the words “June” and “July” – so “uncommon” to Dr. Raymie – appear regularly

throughout the country music genre. In short, these uncommon words are not uncommon at all, and their presence in both songs is no basis for a finding of similarity.

In the same way, Dr. Raymie's finding of similarity based on the themes of these works is unsupported by the evidence. Once again, we cannot find similarity based on the presence of common and clichéd material. Here, both works address the singer's longing for a familiar lover while demeaning the longstanding nature of his or her current relationship. This theme – that of lost love and a yearning for what once was – is central to innumerable songs in the country music genre. A quick survey of the lyrics of top-10 hits from the past 50 years reveals that lost love is the center of country music. Dr. Raymie's contrived comparison holds no water.

The other facets of Dr. Raymie's concern fare no better. The concern over the accompaniment's structure again overlooks the standard nature of this musical genre. As I noted above, a large majority of popular music uses such an arrangement. If this were enough to give rise to an actionable copyright infringement case, then the composer of "June to July Girl" could have a cause of action against thousands of songwriters.

My professional expert opinion is that "He's My Still Missing You" really is not similar to "June to July Girl" in any meaningful way. Indeed, any similarity is just scènes à faire – material that is easily found in a large percentage of this musical genre. I have no reason to believe that Evergreen copied "June to July Girl." Indeed, "June to July Girl" is such a terrible effort that it is difficult to imagine how anyone could improve it to any degree of listenability.