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Susan S. Blaha

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**BOOSEY & HAWKES MUSIC PUBLISHING LTD.
V.
THE WALT DISNEY CO.**

145 F.3d 481 (2d Cir. 1998).

INTRODUCTION

In 1993, Boosey & Hawkes Music Publishers ("Boosey"), an English corporation that owns the rights to Igor Stravinsky's composition "The Rite of Spring," brought an action against the Walt Disney Company ("Disney")¹, in connection with Disney's foreign distribution of the film *Fantasia*.² Boosey is the assignee of Igor Stravinsky's "The Rite of Spring", a composition featured in the Disney animated film *Fantasia*.³ Boosey contended Stravinsky's 1939 license to Disney, which authorized the use and distribution of "The Rite of Spring" in *Fantasia*, did not authorize its distribution in video format.⁴ The District Court granted partial summary judgment to Boosey, holding the 1939 license agreement did not authorize a video format release of the motion picture.⁵ The lower court also granted partial summary judgment to Disney, dismissing Boosey's claims of breach of contract with respect to the license; violations of the Lanham Act §43(a); and foreign copyright infringement.⁶ The Second Circuit Court of Appeals affirmed the District Court's holding with respect to Boosey's Lanham Act claims, but vacated the judgments on the license agreement and foreign copyright violations.⁷

1. *Id.* Buena Vista Home Video, a Disney affiliate, was also named as a defendant. Collectively, both defendants are referred to as "Disney."

2. *Id.* at 485.

3. *Id.* at 483.

4. Boosey & Hawkes, 145 F.3d at 483-4.

5. *Id.* at 484.

6. *Id.*

7. *Id.*

FACTS

The Walt Disney film *Fantasia* (hereinafter “the film” or “the motion picture”) was released in 1940.⁸ The film contains no dialogue, but pairs animated creatures, such as Mickey Mouse, with passages of celebrated classical music.⁹ The soundtrack includes compositions by Bach, Beethoven, Schubert, Tchaikovsky and Stravinsky, all performed by the Philadelphia Orchestra.¹⁰

A. *The 1939 Agreement*

In 1938, Disney sought Stravinsky's authorization to use “The Rite of Spring” in the film.¹¹ No permission was required to record or distribute the composition in the United States because the work was deemed in the United States’ public domain; however, authorization was required for distribution in foreign countries where Stravinsky enjoyed copyright protection.¹² In 1939, Disney and Stravinsky¹³ executed an agreement (“the 1939 Agreement”) granting Disney the right to use Stravinsky's composition in exchange for a six thousand dollar fee.¹⁴

The 1939 Agreement granted Disney “the nonexclusive, irrevocable right, license, privilege and authority to record in any manner, medium or form, and to license the performance of, the musical composition . . .”¹⁵ The pertinent paragraphs of the license agreement are as follows: Paragraph Three of the Agreement specified:

The music of said musical composition may be used in one motion picture throughout the length thereof or through such portion or portions thereof as the Purchaser shall desire. The said music may be used

8. *Id.*

9. Boosey & Hawkes, 145 F.3d at 484.

10. *Id.*

11. *Id.*

12. *Id.* Under United States law, “The Rite of Spring” was deemed in the public domain.

13. *Id.* at 483.

14. Boosey & Hawkes, 145 F.3d at 484.

15. *Id.*

in whole or in part and may be adapted, changed, added to or subtracted from, all as shall appear desirable to the Purchaser in its uncontrolled discretion.¹⁶

Paragraph Four provided the license is "limited to the use of the composition in synchronism or timed-relation with the motion picture."¹⁷ Paragraph Five specified that the right to record the composition is conditioned upon its performance in theaters with valid licenses from the American Society of Composers, Authors & Publishers ("ASCAP"), or any other performing rights society having jurisdiction in the territory in which the motion picture is performed.¹⁸ And Paragraph Seven provided "the licensor reserves to himself all rights and uses in and to the said musical composition not herein specifically granted."¹⁹

For more than five decades, Disney exhibited "The Rite of Spring" in *Fantasia* under the 1939 Agreement.²⁰ The film has been re-released at least seven times since 1940.²¹ Neither Boosey nor Stravinsky ever objected to any of these distributions.²²

B. Fantasia on Video

In 1991, Disney released a videotape version of *Fantasia*, which was sold in the United States as well as foreign countries.²³ In

16. *Id.* Paragraph Three further provides the title "The Rite of Spring" or "Le Sacre de Printemps", or any other title, may be used as the title of said motion picture, and Stravinsky's name may be announced in connection with the motion picture. *Id.*

17. *Id.*

18. *Id.* at 484. The Court referred to this as "The ASCAP Condition."

19. Boosey & Hawkes, 145 F.3d at 484.

20. *Id.* at 485.

21. *Id.* As it appears in the film soundtrack, The Rite of Spring was shortened from its original thirty-four minutes to twenty-two and a half minutes, and portions of the composition were reordered.

22. *Id.* Excerpts of *Fantasia*, including portions of "The Rite of Spring", have been televised over the years, though never in its entirety.

23. Boosey & Hawkes, 145 F. 3d at 485. The *Fantasia* video release has generated more than three hundred sixty million dollars in gross revenue for Disney.

1993, Boosey filed a complaint against Disney, seeking: 1) a declaratory judgment that the 1939 Agreement did not include Disney's rights to use Stravinsky's composition in video format; 2) damages under the Lanham Act for Disney's false designation of origin and misrepresentation, due to Disney's alteration of the work; 3) damages for copyright infringement in at least eighteen different foreign countries; 4) damages for breach of contract of the 1939 Agreement; and 5) damages for unjust enrichment.²⁴

After cross motions for summary judgment, the District Court dismissed Boosey's breach of contract claim, finding Disney had discharged its only contractual obligations by paying Stravinsky the six thousand dollars.²⁵ The court determined the language of the 1939 Agreement, while giving Disney the broad right to record "The Rite of Spring" in the film on video and laser disc, prevented Disney from distributing video tapes or laser discs directly to consumers under the ASCAP Condition.²⁶ The District Court dismissed Boosey's claim for damages under the Lanham Act, concluding Boosey had failed to introduce evidence of actual consumer confusion.²⁷ With respect to Boosey's copyright claims, Disney invoked the doctrine of *forum non conveniens* and the court dismissed Boosey's claims because they involved the application of foreign copyright law.²⁸ Thus, the lower court's decision declared Disney an infringer, but granted Boosey no relief, leaving it free to sue in the various foreign countries under whose copyright laws it claimed infringement.²⁹ Both parties timely appealed the district court's decision.³⁰

24. *Id.* Boosey abandoned its unjust enrichment claim early in the litigation and the issue was not raised on appeal.

25. *Boosey & Hawkes Music Publishers Ltd v. The Walt Disney Company*, 934 F. Supp. 119, 126-27 (S.D.N.Y. 1996).

26. *Id.* at 123.

27. *Id.* at 126.

28. *Id.* at 124-25.

29. *Id.* at 125.

30. *Boosey & Hawkes*, 145 F.3d at 485.

LEGAL ANALYSIS

A. Scope of the 1939 Agreement

The Second Circuit, in an opinion by Judge Leval, began its analysis with a discussion of contractual interpretation. First, the court examined whether the 1939 Agreement allowed Disney to distribute "The Rite of Spring" in video format, since the license contained no express provision for "future technologies," and because Stravinsky had reserved to himself all rights not granted in the Agreement.³¹ Second, it examined whether Paragraph Five, the ASCAP Condition, prevented Disney from distributing "The Rite of Spring" directly to consumers.³²

B. The Video Format

The Second Circuit found the language of the 1939 Agreement broad enough to include Disney's distribution of the motion picture in video format.³³ The Agreement conveyed to Disney the right "to record ["The Rite of Spring"] in any manner, medium or form" for use "in a motion picture."³⁴ The court looked to whether the license included a grant of rights which may be reasonably read to cover new use.³⁵

31. *Id.* at 486. Disputes concerning licensee's rights to exploit licensed works through new marketing channels made possible by technologies developed after the licensing contract are frequently called "new use" problems. *see* 3 Melville B. Nimmer and David Nimmer, *NIMMER ON COPYRIGHT*, Section 10.10[A] at 10-86; *see also* Kirke La Shilte Co. v. Paul Armstrong Co., 263 N.Y. 79, 188 N.E. 163 (1933) (early case deciding whether a license for a stage production also conveyed rights in a sound motion picture).

32. *Id.* at 488.

33. *Id.* at 486.

34. *Id.*

35. *Boosey & Hawkes*, 145 F. 3d at 486. (citing *Bartsch v. Metro-Goldwyn-Mayer, Inc.* 391 F.2d 150, 155 (2d Cir. 1968); *see also* *Bloom v. Hearst Entertainment Inc.*, 33 F.3d 518, 524-25 (5th Cir. 1994) (applying *Bartsch* to hold a grant of movie and television rights to a book also encompassed video rights).

The Second Circuit relied on its previous decision in *Bartsch v. Metro-Goldwyn-Mayer, Inc.*,³⁶ which held that a license assigning rights to the motion picture version of a musical play included the right to televise the motion picture version of the play. *Bartsch*, however, left open the question of foreseeability pertaining to the new channels of distribution at the time of contracting.³⁷ Judge Leval noted not all Circuits are in accord on the issue of a license's broad capacity to cover future developed markets resulting from future technologies.³⁸ Some circuits have found the license of rights in a given medium (such as motion pictures) only includes such uses as fall under the unambiguous core meaning of the term, and exclude any uses that lie within the ambiguous penumbra (for example, the exhibition of motion pictures on television).³⁹ The burden of excluding the right to a new use rests on the grantor, and the court found no indication in the 1939 Agreement that such rights should not be granted to Disney.⁴⁰

Further, the court found Disney proffered unrefutable evidence that a nascent market for home video viewing of feature films existed in 1939.⁴¹ While other circuits interpreting issues of new use have construed such licenses in accordance with the purposes of copyright law,⁴² Judge Leval based his opinion on neutral principles of contract interpretation.⁴³

Second Circuit precedent in *Bartsch* placed the burden of framing an exception to a license on the grantor, but Judge Leval

36. *Bartsch v. Metro-Goldwyn-Mayer, Inc.* 391 F.2d 150, 155 (2d Cir. 1968).

37. *Id.*

38. *Boosey & Hawkes*, 145 F.3d at 486.

39. *Id.* see *Cohen v. Paramount Pictures Corp.*, 845 F.2d 851, 853-54 (9th Cir. 1988) (holding license to use musical score in television production does not extend to use in videocassette release); see also *Rey v. Lafferty*, 990 F.2d 1379, 1390-91 (1st Cir. 1993) (holding license for television viewing did not extend to videocassette release).

40. *Boosey & Hawkes*, 145 F.3d at 486.

41. *Id.*

42. See *Cohen*, 845 F.2d at 854; see also *Jondora Music Publish. Co. v. Melody Recordings, Inc.* 506 F.2d 392, 395 (3d Cir. 1974); *Warner Bros. Pictures v. Columbia Broadcasting System*, 216 F.2d 945, 949 (9th Cir. 1954).

43. *Boosey & Hawkes*, 145 F.3d at 487.

did not interpret this as a default rule in favor of copyright licensees.⁴⁴ Judge Leval concluded the words of the contract favored neither licensor nor licensee; the party seeking deviation or exception from the meaning reasonably conveyed by the words of the contract should bear the burden of negotiating for language expressing that deviation.⁴⁵ Thus, if Stravinsky, had wished to exclude new markets arising from subsequently developed technologies, he could have inserted such language of limitation into the license.⁴⁶

Judge Leval further noted that although contract interpretation normally requires an inquiry into the intent of the contracting parties, such an inquiry would not be helpful in this case.⁴⁷ Many years after the formation of the contract, it might be impossible to consult the principals or retrieve documentary evidence to ascertain the parties' intent with respect to new uses.⁴⁸ Since evidence of intent is likely to be both scant and unreliable, the Second Circuit found the burden of justifying a departure from a reasonable reading of the contract should fall on the party advocating departure.⁴⁹

Finally, Judge Leval stated the presence of the reservation clause contributed nothing to the scope of the license, and merely affirmed that Stravinsky retained what he had not given away.⁵⁰

44. *Id.* The opinion notes that commentators and courts have misinterpreted Bartsch as "pro licensee." *see, e.g.,* Filmvideo Releasing Corp. v. Hastings, 426 F.Supp. 690, 695 (S.D.N.Y. 1976); James W. Dabney, Licenses and New Technology: Apportioning and Benefits, C674 ALI-ABA 85, 89, 96.

45. Boosey & Hawkes, 145 F.3d at 487.

46. *Id.*

47. *Id.* at 488. The court noted "intent is not likely to be helpful when the subject of the inquiry is something the parties were not thinking about."

48. Boosey & Hawkes, 145 F.3d at 488.

49. *Id.* Leval bolstered this conclusion by pointing out policy concerns justifying such a position. He noted construing new use problems against licensees might lead to anti-progressive incentives. Producers might be reluctant to explore innovative technologies for the exhibition of movies if the consequence were they would lose their rights to exhibit the licensed works. *Id.* at note 4. And Leval added holding contracting parties accountable to the reasonable interpretation of their agreements encourages both licensors and licensees to anticipate and bargain for the full value of potential future uses. *Id.*

50. *Id.* at 488.

The Second Circuit's "preferred approach" in analyzing new use cases thus remains a "reasonable reading" of the language of the contract, and the court affirmed the district court's holding that Disney's license included the right to distribute *Fantasia* in video format.⁵¹

C. *The ASCAP Condition*

Even if a reasonable reading in the broad language of the 1939 Agreement allowed Disney to distribute *Fantasia* on videotape, Boosey contended the ASCAP Condition in the Agreement expressly prohibited such distribution directly to consumers.⁵² Although the district court had granted summary judgment to Boosey on this issue, the Second Circuit vacated its judgment, holding the language of the ASCAP Condition facially unclear.⁵³

The terms of the ASCAP Condition allowed Disney the right to record "The Rite of Spring" only "upon the performance of the . . . work in theaters having ASCAP or similar licenses."⁵⁴ Boosey argued this condition precluded Disney from distributing the film in video format.⁵⁵ The Second Circuit read this language literally as requiring no more of Disney than exposing the film in two or more ASCAP-certified theaters, a condition surely satisfied long ago.⁵⁶ The court held the ASCAP Condition was ambiguous with respect to prohibiting Disney from exhibiting Stravinsky's work in non-ASCAP theaters, or from distributing the film directly to consumers.⁵⁷

According to the Second Circuit, since "The Rite of Spring" was in the public domain in the United States, the license pertained only to foreign rights, which were described in the contract as world-wide.⁵⁸ Thus, to construe the ASCAP Condition as Boosey suggested would mean the film was prohibited from being shown

51. Boosey & Hawkes, 145 F.3d at 488.

52. *Id.*

53. *Id.*

54. *Id.* at 489.

55. *Id.*

56. Boosey & Hawkes, 145 F.3d at 489.

57. *Id.*

58. *Id.*

in any form in all countries where the work was protected and theaters did not have ASCAP-like licenses.⁵⁹ The court also relied on a well-known treatise on music licensing, which described such ASCAP clauses as "industry boilerplate," appearing in countless licenses for American films.⁶⁰ Interpreting the ASCAP clause according to Boosey, studios with copyrighted works licensed with such clauses would be completely prohibited from showing their films at all in the United States if U.S. theaters ever ceased to use ASCAP licenses.⁶¹ Judge Leval doubted the entire film industry entered contracts placing it at the mercy of its licensors in case ASCAP licensing were abandoned.⁶² Further, Judge Leval noted Boosey did not cite any court decisions confirming its view of the ASCAP provision.⁶³ The Second Circuit found neither party's interpretation of the ASCAP clause compelling under the plain terms of the provision; the court did find the condition facially unclear, thereby justifying consideration of extrinsic evidence of negotiations for the 1939 Agreement.⁶⁴

The court, however, did not find Boosey's extrinsic evidence persuasive.⁶⁵ Boosey argued Disney knew the 1939 Agreement permitted distribution only to ASCAP-licensed theaters. In support of this contention, Boosey pointed to several post-1939 negotiations between Disney and Boosey over whether Disney

59. *Id.*

60. *Id.* (citing Al Kohn and Bob Kohn, *Kohn on Music Licensing*, 838-40, 857-58 (2d ed. 1996))

61. *Boosey & Hawkes*, 145 F.3d at 489.

62. *Id.* Judge Leval added ASCAP licenses did indeed disappear from U.S. theaters as a result of an antitrust ruling in 1948. *See Alden-Rochelle, Inc. v. ASCAP*, 80 F. Supp. 888, 894-96 (S.D.N.Y. 1948).

63. *Id.* The court also noted the Kohn treatise indicated the ASCAP condition remained industry boilerplate until sometime in the 1950's. If this was true, Leval stated, then Boosey's interpretation of the condition required the court to believe that studios agreed to limit distribution of movies containing licensed works to ASCAP-licensed theaters even after ASCAP licensing of theaters had been declared unlawful. Leval found such a presumption "nonsensical" and "unimaginable."

64. *Id.*

65. *Id.* at 490.

could use sections of the composition.⁶⁶ The Second Circuit found none of these proposed uses involved the use of the musical composition in "synchronism or timed-relation," as required by Paragraph Four of the Agreement, and therefore were beyond its scope.⁶⁷

Boosey also presented examples of similar contracts for other compositions used in *Fantasia*, which contained the ASCAP clauses that conditioned Disney's "right to license the performance"; in Stravinsky's contract, Disney's "right to record" was so conditioned (emphasis added).⁶⁸ Boosey argued the drastic limitation on rights demonstrated Stravinsky's bargaining for an enhanced interest in *Fantasia's* continuing revenue stream.⁶⁹ The court found this point illusory, since "The Rite of Spring" was in the public domain in the United States, and Disney did not need a license to record the composition.⁷⁰

The Second Circuit found neither the plain terms of the 1939 Agreement nor the "sparse and contradictory" evidence presented could compel the conclusion that Disney's license was limited to theatrical performances of "The Rite of Spring."⁷¹ The court vacated the summary grant of a declaratory judgment in Boosey's favor, and remanded the issue to trial.⁷²

66. Boosey & Hawkes, 145 F. 3d at 490. All extrinsic evidence presented was documentary, as no known witnesses to the negotiation of the 1939 Agreement had survived to the time of this litigation.

67. *Id.* In 1941, Disney acknowledged the Agreement did not license use of The Rite of Spring on radio. In 1969, Disney negotiated and paid for the rights to release the soundtrack recording of the Rite of Spring as part of a complete *Fantasia* album. And in 1990, Disney unsuccessfully sought Boosey's permission to use sections of the composition in a performance by Pink Floyd to be filmed at the Great Pyramid at Giza.

68. *Id.*

69. *Id.*

70. *Id.* Judge Leval even noted it was arguable the ASCAP Condition had no functional significance at all, since the condition applied only to something Disney had the right to do without Stravinsky's permission. *Id.* at 490-91.

71. Boosey & Hawkes, 145 F.3d at 491.

72. *Id.*

D. Foreign Copyright

The Second Circuit next examined the District Court's invocation of *forum non conveniens* with respect to Boosey's copyright infringement claims.⁷³ Judge Leval explained while district courts enjoy broad discretion to decide whether to dismiss an action under this doctrine,⁷⁴ this discretion is still subject to meaningful appellate review.⁷⁵

The standard for granting a motion to dismiss under *forum non conveniens* was established in *Gulf Oil Corp. v. Gilbert*.⁷⁶ Gilbert provided a two-step analysis: first, the court must determine whether there exists an adequate forum with jurisdiction to hear the case, and if so, then the court must weigh a balance of public and private interests⁷⁷ to decide which formula will best serve the ends of justice.⁷⁸ Applying this two-step analysis to Boosey, the Second Circuit found the doctrine of *forum non conveniens* inappropriate and reversed the District Court's ruling.⁷⁹

Under the first prong of the test, the court found New York was an adequate forum and had jurisdiction over the causes of action.⁸⁰

The Second Circuit noted the District Court had failed to consider whether there were alternate fora capable of adjudicating Boosey's claims,⁸¹ and made no determination that Disney was subject to jurisdiction in the various countries where the court anticipated trials would occur.⁸² Therefore, the District Court did not

73. *Id.*

74. *Id.* see also *Scottish Air Int'l, Inc. v. British Caledonian Group, PLC*, 81 F.3d 1224, 1232 (2d Cir. 1996).

75. *Id.* at 491; see *R. Maganlal & Co. v. M.G. Chem. Co., Inc.*, 942 F.2d 164, 167 (2d Cir. 1991).

76. 330 U.S. 501, 508, 67 S.Ct. 839, 843, 91 L. Ed. 1055 (1947).

77. *Id.* at 508.

78. *Boosey & Hawkes*, 145 F.3d at 491 (citing *Peregrine Myanmar Ltd v. Segal*, 89 F.3d 41,46 (2d Cir. 1996)). These interests may include the availability of witnesses and evidence, the cost, and the speed with which litigation will proceed.

79. *Id.*

80. *Id.* at 492.

81. *Id.* at 491.

82. *Id.*

condition its dismissal of Boosey's foreign copyright claims on Disney's consent to jurisdiction in those foreign nations.⁸³

The court found the second prong, balancing public and private interests, also favored holding the trial in New York.⁸⁴ With respect to the private interests, the court concluded evidence and witnesses were available for presentation in New York, and a trial in that forum would proceed sooner, allowing the parties to sort out their rights in a single proceeding.⁸⁵ The court did not view Boosey's choice of forum to be motivated by harassment, and further found that Disney's motion would complicate, delay, and ultimately render the trial more expensive by splitting the suit into eighteen parts in eighteen nations.⁸⁶ Judge Leval also noted other factors that weighed in favor of adjudicating the case in New York: such as Disney being a United States corporation, the fact that the 1939 Agreement was substantially negotiated and signed in New York, that the Agreement was governed by New York law, and the trial was ready to proceed in New York.⁸⁷ In sum, the court vacated the *forum non conveniens* dismissal of Boosey's foreign copyright claims and remanded the issue for trial in New York.⁸⁸

E. Breach of Contract

Boosey also sought relief for Disney's breach of contract, alleging the foreign release of *Fantasia* in video format violated the 1939 Agreement.⁸⁹ The District Court had granted summary judgment in favor of Disney on this claim, finding the Agreement obligated Disney to do no more than pay six thousand dollars in

83. Boosey & Hawkes, 145 F.3d at 491.

84. *Id.*

85. *Id.*

86. *Id.* The district court had concluded these foreign copyright claims involved strong national interest best litigated in their respective countries. Boosey & Hawkes, 934 F. Supp. at 124. The Second Circuit conceded that reluctance to apply foreign law is a valid factor favoring dismissal under *forum non conveniens*, but it alone does not justify dismissal. Boosey & Hawkes, 145 F.3d at 492.

87. *Id.*

88. Boosey & Hawkes, 145 F.3d at 492.

89. *Id.*

consideration to Stravinsky.⁹⁰ Because the Second Circuit had already deemed the ASCAP Condition facially unclear, it did not conclude as a matter of law that Disney had discharged all its contractual obligations.⁹¹ If Boosey could prove the ASCAP Condition contracted Disney to perform *Fantasia* only in theaters with ASCAP licenses, then Boosey could indeed be entitled to seek relief for a breach of that contract.⁹²

F. The Lanham Act

Finally, the court examined Boosey's claims for damages under §43(a) of the Lanham Act,⁹³ which alleged Disney misleadingly represented *Fantasia* as containing a "full and accurate" recording of "The Rite of Spring," when in fact the composition was shortened and edited.⁹⁴ To receive damages under the Lanham Act, a plaintiff must prove either actual consumer confusion, deception resulting from a violation of the Act, or that defendant's actions were intentionally deceptive, giving rise to a rebuttable presumption of consumer confusion.⁹⁵ The Second Circuit found Boosey had proffered no evidence of actual confusion or

90. *Id.*

91. *Id.*

92. *Id.*

93. Lanham Act §43(a) provides:

(1) Any person who, on or in connection with any goods or services ... uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which –

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act. 15 U.S.C. §1125 (a).

94. *Boosey & Hawkes*, 145 F.3d at 493.

95. *Id.* (citing *George Basch C. v. Blue Coral, Inc.*, 968 F.2d 1532, 1537 (2d Cir. 1992)).

intentional deception.⁹⁶ The court noted Paragraph Three of the Agreement gave Disney express authorization to represent to the public that the composition as it appears in *Fantasia* is Stravinsky's;⁹⁷ and Disney had represented it as such in countless theatrical performances.⁹⁸ The court found no deception arose simply from the video format release of the same composition in the same film, and held Boosey waived any rights to a deception claim.⁹⁹

CONCLUSION

The Second Circuit vacated the grant of summary judgment in favor of Boosey, which contended Disney's foreign video format market exceeded the terms of its 1939 license.¹⁰⁰ It vacated as well the grant of summary judgment in favor of Disney, which had dismissed Boosey's claim of breach of contract.¹⁰¹ The court reversed the District Court's dismissal of Boosey's foreign copyright claims through forum non conveniens,¹⁰² and affirmed the District Court's dismissal of Boosey's Lanham Act claims.¹⁰³

Susan S. Blaha

96. *Id.*

97. *Id.*

98. *Id.*

99. Boosey & Hawkes, 145 F.3d at 493.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*