

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:09cv418**

Slep-Tone Entertainment Corporation, a North Carolina corporation; and **Sound Choice Studios, Inc.**, a Delaware corporation,
Plaintiffs,

v.

Cindy Kay d/b/a Cindy Kay Music; **RAVE Productions**, a general partnership; **John Halliburton** d/b/a LA Sound; **Dave Patton** d/b/a Tidal Storm Productions; **VWE Music Network, LLC**; **John Doe No. 1** a/k/a “Dangerous Doug” d/b/a Party Time Karaoke; **Donald E. Alston** d/b/a Creative Entertainment Karaoke & Mobile DJ Service; **Devan Casey** d/b/a DJ Diva Entertainment; **David Price** d/b/a Original Super Karaoke; and **John Doe No. 2** d/b/a Rev. Jim’s Karaoke,
Defendants.

COMPLAINT

JURY TRIAL DEMANDED

COME NOW the Plaintiffs, **Slep-Tone Entertainment Corporation** (“Slep-Tone”), a North Carolina corporation, and **Sound Choice Studios, Inc.** (“SCS”), a Delaware corporation (SCS and Slep-Tone being collectively referred

to as “Sound Choice”), by and through their counsel, complaining of the Defendants and for their Complaint stating as follows:

INTRODUCTION

Sound Choice was founded almost 25 years ago by Kurt and Derek Slep, two brothers with a vision to nurture the development in America of a participatory entertainment phenomenon now known as “karaoke.” During that time, Sound Choice came to be recognized as the leading producer of high-quality karaoke backing music. The company invested over \$18 million to re-record and replicate the authentic sound of popular music across different eras and genres of music.

Sound Choice’s dedication to producing music of the highest quality and most authentic character led its music to become the staple of most every karaoke show in the country. As karaoke grew in popularity, Sound Choice became the brand that most every karaoke fan wanted to sing and that most every karaoke jockey (“KJ”) wanted in his or her library.

KJs play karaoke songs using compact discs written in a special encoded format known as “CD+G” (“compact disc plus graphics”), in which the CD contains the music and the lyrics, which will display on a screen. In recent years, computer technology, cheap file memory devices, and the internet have made it possible for CD+G discs to be decoded and “ripped” (copied) to a user’s hard drive

and easily copied and distributed between KJs. This technology has proven irresistible to KJs, many of whom have used this opportunity to copy one purchased disc to several different computer based systems, copy a singer's personal discs if they use them during a show, "swap" song files among each other, download them from illegal file-sharing sites and build libraries of tens of thousands of karaoke songs without paying for them. Whereas in the past a KJ would buy multiple copies of an original CD+G, now they simply "clone" their songs for multiple commercial systems or even their entire karaoke song libraries to start a new operation. Additionally, many KJs or operators starting in the business simply buy computer drives pre-loaded with thousands of illegally copied songs.

These practices have become so widespread that Sound Choice has been nearly driven out of business. At its peak, Sound Choice employed 75 individuals and produced as many as 5 new karaoke discs per month. Today, Sound Choice employs fewer than 10 individuals and loses money on every new karaoke disc it produces, since sales are not high enough to cover recording and licensing costs. For example, the latest karaoke disc Sound Choice produced has sold fewer than 750 copies—yet the songs from that disc can be found on as many as 30,000 karaoke systems around the United States.

For KJs, karaoke is a commercial enterprise. KJs who legitimately acquired all of their music at great cost are being forced by illicit competition to produce shows for lower and lower fees. Illegitimate competitors offer libraries of tens of thousands of songs, which would have cost \$50,000 to \$100,000 or more to acquire legitimately, but produce shows for one-third the rates a legitimate KJ can offer. The result is significant financial pressure on once-legitimate KJs to skirt or ignore the law and become pirates, simply to stay in business.

Sound Choice has been forced to undertake this litigation in order to ensure that it survives and continues to produce the high-quality karaoke music its fans demand, and to level the playing field for the legitimate KJs.

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition arising under §§ 32 and 43 of the Trademark Act of 1946, 15 U.S.C. §§ 1114 and 1125. This Court has exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, in that this is a civil action arising under the laws of the United States.
2. This Court further has exclusive jurisdiction pursuant to 28 U.S.C § 1338(a), in that this civil action arises under an Act of Congress relating to trademarks, and, as to the Plaintiffs' unfair competition claim, pursuant to 28

U.S.C. § 1338(b), in that the claim is joined with a substantial and related claim under the trademark laws of the United States.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), because all of the defendants reside in this State, and at least one of the defendants resides in this judicial district.

THE PLAINTIFFS

4. Plaintiff Slep-Tone is a North Carolina corporation having its principal place of business at 14100 South Lakes Drive, Charlotte, North Carolina.
5. Plaintiff SCS is a Delaware corporation having its principal place of business at 14100 South Lakes Drive, Charlotte, North Carolina.
6. Plaintiffs Slep-Tone and SCS are related companies by virtue of their common ownership and control, with each company holding rights and interests sought to be vindicated through this action.

THE DEFENDANTS

7. Defendant Cindy Kay d/b/a Cindy Kay Music (“KAY”) is an individual who is engaged in the business of providing karaoke entertainment in the Charlotte area.

8. Defendant RAVE Productions (“RAVE”) is a general partnership composed of Robert J. Allen and Charles G. Powell that is engaged in the business of providing karaoke entertainment in the Charlotte area.
9. Defendant John Halliburton d/b/a L.A. Sound (“HALLIBURTON”) is an individual who is engaged in the business of providing karaoke entertainment in the Greensboro area.
10. Defendant Dave Patton d/b/a Tidal Storm Productions (“PATTON”) is an individual who is engaged in the business of providing karaoke entertainment in the Greensboro area.
11. Defendant VWE Music Network, LLC (“VWE”) is a North Carolina limited liability company that is in the business of providing karaoke entertainment in the Greensboro area.
12. Defendant John Doe No.1 d/b/a Party Time Karaoke (“PARTY TIME”) is an individual of unknown identity who is also known as “Dangerous Doug” and who is in the business of providing karaoke entertainment in the Raleigh area.
13. Defendant Donald E. Alston (“ALSTON”) is an individual who does business, variously, as Creative Entertainment, Creative Karaoke, and Creative Entertainment Karaoke & Mobile DJ Service and who is in the business of providing karaoke entertainment in the Raleigh area.

14. Defendant Devan Casey d/b/a DJ Diva Entertainment (“CASEY”) is an individual who is engaged in the business of providing karaoke entertainment in the Raleigh area.
15. Defendant David Price d/b/a Original Super Karaoke (“PRICE”) is an individual who is engaged in the business of providing karaoke entertainment in the Morrisville area.
16. Defendant John Doe No. 2 d/b/a Rev. Jim’s Karaoke (“REV. JIM”) an individual who is engaged in the business of providing karaoke entertainment in the Charlotte area.

BACKGROUND FACTS

17. The term “karaoke” means “empty orchestra” in Japanese. Karaoke entertainment has grown into a multi-million dollar business in the United States.
18. Karaoke compact disc plus graphics (“CD+G”) recordings contain re-created arrangements of popular songs.
19. Typically, the lead vocal tracks in a recording used for a karaoke show are omitted so that a karaoke participant can sing along, as though he or she were the lead singer. In other situations, the lead vocal track by a sound-alike artist might be included, and some formats allow the lead vocal to be

selectively muted upon playback so that the karaoke recording may be listened to either with or without the lead vocals.

20. The “graphics” portion of a karaoke recording refers to the encoding of the recording with data to provide a contemporaneous video display of the lyrics to the song, in order to aid the performer.
21. This graphics data is also utilized to display the Sound Choice trademarks.
22. Entertainers who provide karaoke services in bars and other venues are known as karaoke jockeys (“KJs”). The services provided by KJs typically include providing the karaoke music and equipment for playback, entertaining the assembled crowd for warm-up purposes, and organizing the karaoke show by controlling access to the stage, setting the order of performance, and operating the karaoke equipment.
23. Typically, a KJ will maintain a catalog of songs available for performance in order to aid participants in selecting a song to sing.
24. Legitimate KJs purchase equipment and songs recorded in CD+G format and charge for the above-mentioned karaoke services.
25. Many KJs, such as the present Defendants, obtain, copy, share, distribute and/or sell digitized copies of the songs via pre-loaded hard drives, USB drives, CD-R’s, or the Internet.

26. Sound Choice has never authorized the digitization of its songs by KJs for use in producing karaoke shows.
27. The copying, sharing, distribution, and selling of these digitized copies is not accompanied by the payment of any royalty to the Plaintiffs, nor authorized by any license agreement.
28. The Plaintiffs pay statutory and negotiated royalties to the owners of copyright in the underlying musical works for their activities in legitimately copying, distributing, and selling CD+Gs and/or recordings in other formats.
29. Those persons, including the Defendants, who illegitimately obtain, copy, share, distribute, and/or sell digitized copies of the Plaintiffs' karaoke discs do not pay royalties to the owners of copyright in the underlying musical works.
30. Plaintiff Sound Choice has spent millions of dollars building and maintaining studios, hiring artists, building a distribution facility, paying royalties to copyright owners, building a company that is capable of reliably producing high-quality karaoke versions of current and historical musical hits, and building a brand that is one of the pre-eminent brands in the industry.

31. The widespread creation of counterfeit copies of the Plaintiffs' karaoke discs in CD+G and other formats has denied the Plaintiffs the benefit of their investments.
32. These counterfeits include Sound Choice's registered trademarks, such that to the consumers of the illegitimate KJs' services, the counterfeits are virtually indistinguishable from genuine Sound Choice materials.
33. For each of the several recent releases of new karaoke music by Sound Choice, approximately at least ten (10) illegitimate copies of the contents of CD+G were created, on average, for each legitimate copy sold. Sound Choice has lost a considerable amount of money due to this widespread piracy.
34. Such widespread illegal copying of music has been made possible by improving and ever cheaper computer technology and memory devices and the easy distribution of digital content over the internet.
35. Widespread pirating of songs has contributed to the loss of more than sixty jobs at Sound Choice headquarters in Charlotte, NC and several consecutive years of operating losses as revenues do not cover fixed costs..
36. Legitimate KJs spend thousands of dollars acquiring the Plaintiffs' karaoke music, an irreducible overhead cost that must be recovered over a significant number of engagements.

37. Illegitimate KJs, who acquire the songs in their libraries illegally, have an unfair advantage over legitimate KJs, because the illegitimate KJs are able to provide karaoke services with a considerably lower overhead cost and significantly more song through the pirating of the Plaintiffs' music.
38. Piracy therefore unfairly increases the profits of illegitimate KJs and unfairly decreases the profits of legitimate KJs, a condition that pressures legitimate KJs to either commit piracy instead of doing business with the Plaintiffs and other karaoke music producers or lose their shows to KJs offering more songs at cheaper prices to the same venues.
39. Because of piracy, it is nearly impossible for legitimate KJs to compete against illegal KJs, who are able to provide less expensive karaoke services and a greater number of songs due to their lower overhead costs.

THE RIGHTS OF THE PLAINTIFFS

40. Plaintiff Slep-Tone is the owner of U.S. Trademark Registration No. 1,923,448 for the trademark SOUND CHOICE.
41. Plaintiff Slep-Tone is also the owner of U.S. Trademark Registration No. 2,000,725, for a display trademark as follows:



42. Plaintiff Slep-Tone has, for the entire time its marks (“the Sound Choice Marks”) have been federally registered, provided the public, including the Defendants, with notice of its federal registrations through the consistent display of the symbol ® with its marks as used.
43. Plaintiff SCS is a beneficiary of the business goodwill associated with the Sound Choice Marks, in that sales of karaoke discs by SCS under the Sound Choice Marks inures to the benefit of both SCS and Slep-Tone.

INVESTIGATION OF THE DEFENDANTS’ ACTIVITIES

44. The Plaintiffs’ investigators observed each of the Defendants possessing and/or using unauthorized counterfeit copies of at least one work bearing the Sound Choice Marks.
45. Defendant KAY was observed infringing the trademarks in suit at Wild Wing Cafe in Charlotte, N.C., during the month of September 2009.
46. Defendant ALLEN was observed infringing the trademarks in suit at the Yellow Rose Cafe in Charlotte, N.C., during the month of August 2009.
47. Defendant HALLIBURTON was observed infringing the trademarks in suit at Ham’s Restaurant in Greensboro, N.C., during the months of August and September 2009.

48. Defendant PATTON was observed infringing the trademarks in suit at Cooper's Ale House in Greensboro, N.C., during the month of August 2009.
49. Defendant VWE was observed infringing the trademarks in suit at Stumble Stilskins bar in Greensboro, N.C., during the month of August 2009.
50. Defendant PARTY TIME was observed infringing the trademarks in suit at the Brickhouse Bar and Grill in Raleigh, N.C., during the month of August 2009.
51. Defendant ALSTON was observed infringing the trademarks in suit at Jax Sports Grill in Raleigh, N.C., during the month of August 2009.
52. Defendant CASEY was observed infringing the trademarks in suit at Champps Americana in Raleigh, N.C., during the month of August 2009.
53. Defendant PRICE was observed infringing the trademarks in suit at Champions Bar & More in Morrisville, N.C., during the months of August and September 2009.
54. Defendant REV. JIM was observed infringing the trademarks in suit at Picadelis Pub-in-Deli in Matthews, N.C., during the month of August 2009.
55. Based upon the popularity of Sound Choice's music and the size of the Defendants' libraries, the Plaintiffs have a good-faith belief that discovery will show that each of the Defendants is in possession of unauthorized

counterfeit copies of the Plaintiffs' karaoke discs, primarily in digitized format, which are marked with the Sound Choice Marks.

FIRST CLAIM FOR RELIEF
TRADEMARK INFRINGEMENT

56. Sound Choice realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein, and incorporates them herein by reference.
57. Each of the Defendants used a reproduction, counterfeit, or copy of the Sound Choice Marks in connection with the provision of services including karaoke services, by displaying the reproduction, counterfeit, or copy of the Sound Choice Marks during the provision of those services.
58. The Defendants' use of the Sound Choice Marks was "in commerce" within the meaning of the Trademark Act of 1946 as amended.
59. Plaintiff Slep-Tone did not license any of the Defendants to use the Sound Choice Marks in connection with the provision of those services.
60. The Defendants' use of the Sound Choice Marks is likely to cause confusion, or to cause mistake, or to deceive the Defendants' customers and patrons into believing that the Defendants' services are being provided with the authorization of the Plaintiffs.

61. Unless enjoined by the Court, the Defendants' infringing activities as described above will continue unabated and will continue to cause harm to the Plaintiffs.

SECOND CLAIM FOR RELIEF
UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)

62. Sound Choice realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein, and incorporates them herein by reference.

63. On each occasion when they caused a Sound Choice song to be played during a karaoke show, the Defendants displayed the Sound Choice Marks in connection with the Defendants' karaoke services.

64. The display of the Sound Choice Marks is likely to cause confusion, or to cause mistake, or to deceive those present during the display, in that those present are likely to be deceived into believing, falsely, that the Plaintiffs sponsored or approved the Defendants' services and commercial activities.

65. The display of the Sound Choice Marks is also likely to cause confusion, or to cause mistake, or to deceive those present during the display, in that those present are likely to be deceived into believing, falsely, that the works being performed were sold by Plaintiff and purchased by the Defendants.

66. The Defendants' use of the Sound Choice Marks in this fashion would have inured to the benefit of the Plaintiffs if the Defendants had legitimately acquired genuine Sound Choice discs instead of counterfeiting them or acquiring counterfeit copies, in that each of the Plaintiffs would have received revenue from such sales.
67. Because the Plaintiffs have been denied this revenue, they have each been damaged by the Defendants' uses.
68. Unless enjoined by the Court, the Defendants' unfair competition activities as described above will continue unabated and will continue to cause harm to the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment against the Defendants and that the Court:

- A. Find that each of the Defendants has committed acts of infringement, including but not limited to counterfeiting, of the federally registered Sound Choice Marks;
- B. Find that each of the Defendants has engaged in unfair competition against each of the Plaintiffs in violation of 15 U.S.C. § 1125(a);
- C. Enter judgment against each of the Defendants and in favor of the Plaintiffs;

- D. Find the that Defendants' activities were in all respects conducted willfully and for profit;
- E. Award to the Plaintiffs the Defendants' profits and the damages sustained by the Plaintiffs because of the Defendants' conduct in infringing the Sound Choice Marks, or, in the alternative, statutory damages per trademark infringed by counterfeiting;
- F. Award to the Plaintiffs the Defendants' profits and the damages sustained by the Plaintiffs because of the Defendants' acts of unfair competition under 15 U.S.C. § 1125(a);
- G. Award to the Plaintiffs treble and/or punitive damages, as available, for the Defendants' acts of willful infringement;
- H. Order the seizure of all computer disks, drives, or other media belonging to any of the Defendants, which media contain illegal counterfeits of registered trademarks;
- I. Grant the Plaintiffs injunctive relief against further infringement of the Sound Choice Marks by the Defendants;
- J. Award the Plaintiffs their costs of suit and attorney's fees; and
- K. Grant the Plaintiffs such other and further relief as justice may require.

A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE.

Respectfully submitted this the 25th day of September, 2009.

THE HARRINGTON PRACTICE

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