

**IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CIV-2018-488-77
[2018] NZHC 3088**

UNDER	The Copyright Act 1994
BETWEEN	AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED Plaintiff
AND	3228 BUSINESS LIMITED First Defendant
	FENDING SU Second Defendant

Hearing:	27 November 2018
Appearances:	C I Hadlee and L Clews for the Plaintiff No appearance by or for the First or Second Defendants
Judgment:	27 November 2018

ORAL JUDGMENT OF PALMER J

Solicitors:
LeeSalmonLong, Auckland

[1] The songs performed as background music, at the Rocksalt Bar and Restaurant in Kerikeri on 16 March 2018, were evocative: “Stuck in a Moment You Can’t Get Out of”; “So Beautiful”; and “Into the Dark”. But the Australasian Performing Right Association (APRA) sues the owners of Rocksalt for infringing its copyright by playing the songs without permission. The defendants appear to have actively avoided service of documents and did not take any steps to defend the claim.

[2] Under r 15.9 of the High Court Rules 2016, if a defendant does not file a statement of defence the plaintiff may seek judgment by formal proof. The plaintiff must file evidence establishing each cause of action and sufficient information to enable the judge to calculate damages. That has happened here.

[3] Copyright is an important means of recognising the rights of songwriters. APRA is a not-for-profit royalty-collecting society for songwriters, which holds copyright for the performance or broadcast of virtually all currently-played musical works. APRA had numerous interactions with Rocksalt from November 2016, pointing out its permission was required before songs from APRA’s repertoire were played in public. It offered Rocksalt a Hospitality Licence in five letters from October 2017 to July 2018 and even offered to backdate them.

[4] I am satisfied APRA held copyright in the relevant songs in New Zealand and Rocksalt played them without permission. There is evidence obtained from Rocksalt’s social media presence of a significant number of live performances or DJs, including most Fridays and about every second weekend in 2017 and 2018. APRA’s copyright was infringed. There is evidence that it intended to continue to do so.

[5] I award compensatory damages of \$4,605.61 against Rocksalt based on the annual licence fees APRA would have invoiced a business of its type for 2017 and 2018. Taking that into account I award additional damages under s 121(2) of the Copyright Act 1994, in the amount of \$18,000 against the defendants jointly and severally, on the basis of: the flagrancy of the breach; the importance of the music as

a reason for customers' attendance over a significant period of time; and the contempt towards the copyright regime indicated by the defendants' behaviour.¹

[6] I grant a permanent injunction under s 120 of the Copyright Act 1994 restraining the defendants from performing (including playing on a sound system or otherwise) or authorising performance of these songs, and any works in APRA's repertoire, in public, without a licence from APRA.

[7] I award costs and reasonable disbursements to APRA on a 2B basis.

[8] Rocksalt would do better to pay the licence fee next time.

Palmer J

¹ *World TV Ltd v Best TV Ltd* HC Auckland CIV 2005-404-1239, 6 September 2006; *Australasian Performing Right Association v Cougar Tavern* [2008] FMCA 369; *Skids Programme Management Ltd v McNeill* [2012] NZCA 314, [2015] 1 NZLR 1; *Jeanswest Corporation (New Zealand) Ltd v G-Star Raw* [2015] NZCA 14, (2015) 13 TCLR 787.