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Sent: Monday, August 5, 2019 2:37 PM
To: ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>
Subject: Comments on ANTITRUST CONSENT DECREE REVIEW - ASCAP AND BMI 2019

To whom it may concern at the Department of Justice-

We are submitting the following public comments related to ASCAP and their consent decree. We are concerned that ASCAP/BMI/SESAC are assessing fees on expenditures unrelated to music and hurting small businesses.

The Inn at Christmas Place is a family business owned hotel in Pigeon Forge, TN. We have been in operation since 2007, and have paid ASCAP, BMI and SESAC annual fees for all musical entertainment which is performed here at the hotel, according to the ASCAP License Agreement for Hotels and Motels.

The license clearly states in bullet point #1.- Grant and Term of License: "ASCAP grants and LICENSEE accepts a license to perform publicly at or in any part or section of the hotel or motel known as [name of hotel] and not elsewhere (the premises), *non-dramatic renditions of the separate musical compositions in the "ASCAP Repertory"*. The performances licensed under this Agreement may be by means of live entertainment, "mechanical music" or "jukeboxes". Again, we have always paid fees on any entertainment where music is performed. We have included the contract above for your information.

However, ASCAP is now laying claim to other types of guest entertainment, and employee-related expenses that have nothing to do with musical entertainment.

To compete in today's highly competitive hospitality market, providing outstanding guest experiences is an imperative. We are a year-round themed Christmas hotel, and have a full time Santa on staff, who interacts daily with our guests in a variety of ways. He may greet guests at breakfast, read stories, greet them in our lobby upon arrival, and he also entertains our guests by performing a short holiday music concert three times a week. We also occasionally bring in local music groups who play bluegrass music as well as perform holiday music to delight our guests. We have always paid ASCAP the required fees for any entertainment where a musical component was included.

Earlier this year, we were audited and learned that ASCAP also feels that they are entitled to fees associated with any and all live guest experiences at The Inn at Christmas Place, regardless of whether there is a musical component to the entertainment! Additionally, ASCAP is claiming that every hour we pay our employee who plays "Santa", is to be included in the live entertainment expense, regardless of whether he is interacting with guests, or performing in any musical capacity. He is a member of our marketing team, attends staff meetings, does community service for us in local nursing homes and hospitals, and still ASCAP is claiming that they are entitled to have these expenses included in the "Entertainment Expenditures" upon which their fee is calculated. We feel this is OUTRAGEOUS and a large overreach of their mission to protect songwriters and performers. Frankly, the overreach feels like extortion to a small business.

And, ASCAP is not only laying claim to the expenditures with our "Santa", but to any dressed up character visit at the hotel! These other characters, (Mrs. Claus, Rudolf the reindeer, Snowman, or Angel) are employees who dress up, and do not perform any music. They simply greet guests and take

pictures with them. Yet, ASCAP is saying that these are LIVE entertainment expenses, and that they are due fees on these expenditures.

To recap, we see that there are four expenditure areas in our business where ASCAP is claiming to have rights to charge fees for live entertainment, and we believe only one category is legitimate- Live Musical Performances. We would ask the DOJ to protect small businesses from ASCAP/BMI in their assessment of fees on other types of entertainment or employee expenses. By right and mission, ASCAP and BMI fees should only be related to musical performances, jukeboxes or mechanical music. **The exclusion of live entertainment which does not have a musical component should be a part of the Consent decree going forward.**

The four areas Live Entertainment Expenses upon which we are currently being charged fees on are:

MUSICALLY RELATED EXPENSES

1. **Musical LIVE performances** (which we agree with, and have paid for since our opening).
 - a. Performed by an employee (our Santa).
 - b. Performed by hired performers- not our employees.

NON- MUSICALLY RELATED EXPENSES:

2. **Non Musical but Costumed Character Guest Interactions-** NOT A LEGITIMATE EXPENSE for ASCAP to assess fees.
 - a. This includes all time when an employee, dressed as Santa, greets guest at breakfast, reads stories, visits during cookie decorating events, or calls out Bingo numbers on family night.
 - b. It also includes all time when other employees playing characters such as a Gingerbread Man, Angel, Mrs. Claus are greeting guests, or walking in a parade.
3. **Other employee- related expenses of our staff member who plays Santa, which are not related to any live performances-** NOT A LEGITIMATE EXPENSE for ASCAP to assess fees.
 - a. ASCAP is claiming that all activities of our employee who plays Santa (including dressing/undressing in costume, community visits, answering Santa letters, practicing music) are legitimate expenses upon which they can assess fees.
 - b. ASCAP is also claiming that the personnel expenses related to this employee's vacation time, sick days, internal meeting time, and any bonuses paid are also legitimate expenditures upon which their fees can be assessed.
4. **Non-Musical, Non Costumed Character Guest Interactions-** NOT A LEGITIMATE EXPENSE for ASCAP to assess fees.
 - a. This includes other guest experiences we offer, such as Appalachian crafts, face painting, lye soap making. Here too, ASCAP is claiming that these guest entertainment expenditures are also subject to their fees, even though there is nothing related to music that these individuals are involved with.

Thank you for providing small businesses the opportunity to comment on the ASCAP/BMI consent decree. We implore you to assure that these organizations do not overreach their mandate and mission to protect musicians and songwriters, by extorting small businesses for entertainment and labor expenses unrelated to musical performances, such as those outlined above. We also understand that our only recourse is to dispute audit findings with a federal court in New York, which is frankly cost prohibitive for us.

Should you have any questions on the above, feel free to reach me via email at kkin@innatchristmasplace.com or by phone at [REDACTED].

Again, thank you,

Carolyn (K-Kin) Fairbank

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