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# Hughes Hubbard & Reed

## Hughes Hubbard Helps Secure Appellate Win for Spanish Broadcasting System

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**October 27, 2018** — The firm led Spanish Broadcasting System (SBS) to an important appellate victory when a federal appeals court in New York upheld dismissal of a copyright infringement case against the Spanish-language broadcaster for allegedly airing unlicensed songs over its radio stations.

On Oct. 4, a Second Circuit panel affirmed a lower court's finding that some of Latin American Music Company's (LAMCO) copyright infringement claims against SBS were time-barred and that the remainder lacked merit for other reasons.

LAMCO, a music publisher that claims to own the copyrights in works by numerous Puerto Rican and foreign artists, and its affiliate Asociación de Compositores y Editores de Musica Latinoamericana de Puerto Rico Inc. (ACEMLA) filed the suit in 2013 against SBS, eventually claiming infringement of 13 salsa songs.

Miami-based SBS owns and operates 17 radio stations across the country, including the two at issue in the lawsuit: "Mega 97.9" in New York, the nation's top-rated Spanish-language radio station, and "La Zeta" in Puerto Rico. HHR helped SBS obtain summary judgment dismissing seven songs, and the case then proceeded to trial on the other six. Plaintiffs sought \$150,000 for each alleged violation.

In April 2017, U.S. District Judge Richard Sullivan dismissed the case after trial, ruling that the plaintiffs "miserably failed" to offer any credible evidence of SBS' alleged infringement. Judge Sullivan found that the plaintiffs had not proved that SBS in fact played the six songs on its stations in New York and Puerto Rico as the music publisher claimed. The only evidence plaintiffs presented was the testimony of LAMCO's president, which Judge Sullivan rejected as "incredible, self-contradictory, implausible and evasive."

In its four-page summary order, the Second Circuit noted that the appellants failed to challenge this factual finding in their opening brief. "Such a finding is fatal to appellants' claims as to those six songs," the panel wrote.

The court also affirmed Judge Sullivan's summary judgment ruling on the statute of limitations as to the other seven songs. That ruling concerned an important issue in copyright law when there are adverse claims to the ownership of a copyright: does the limitations period begin to run when the plaintiff was on notice that another party claims to own the copyright or when the infringement occurs? Because LAMCO and ACEMLA were on notice -- via decades-old copyright registration certificates, among other things -- that a well-known publisher had claimed ownership to the works long before plaintiffs' purported acquisition of their rights, plaintiffs' claims were barred long before the supposed performances in question.

HHR represented SBS because SBS holds a license from firm client BMI, and the license provides indemnification against alleged infringements of works in the BMI repertoire. BMI licenses nearly half of all music publicly performed, including online, on radio, television and live concerts. BMI's membership consists of approximately 700,000 songwriters, composers and music publishers. HHR worked together with SBS's counsel Stroock & Stroock & Lavan on the case.

Jim Fitzpatrick, Michael Salzman, Meaghan Gragg, Danny Nuzzaci and Hannah Miller worked on the case. Fitzpatrick argued the appeal.

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