

Matthew Lombardo and Who’s Holiday LLC v. Dr. Seuss Enterprises, L.P.
No. 1:16-cv-09974-AKH (S.D.N.Y. Sept. 15, 2017)
aff’d, No. 17-2952-cv, 2018 WL 3323476 (2d Cir. July 6, 2018)

Year	2017, affirmed 2018
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Matthew Lombardo authored the play <i>Who’s Holiday</i> , and Defendant Dr. Seuss Enterprises owns the copyright in the book <i>How the Grinch Stole Christmas!</i> , which was authored by popular children’s author Dr. Seuss. <i>Who’s Holiday</i> “make[s] fun of” and “criticize[s]” <i>Grinch</i> by incorporating its characters, plot elements, and distinctive rhyming style into a “bawdy, off-color” Christmas comedy that imagines Cindy Lou Who, a <i>Grinch</i> character, in middle-age. In 2016, Defendant sent Plaintiffs a cease-and-desist letter alleging copyright infringement, after which Plaintiffs halted production on <i>Who’s Holiday</i> and filed suit against Defendant, seeking, among other claims, a declaratory judgment that the play constitutes fair use. Defendant filed counterclaims alleging copyright and trademark infringement. The court invited Plaintiffs to file a motion for judgment on the pleadings on the issue of fair use, stating that fair use could be resolved by conducting a side-by-side comparison of <i>Who’s Holiday</i> and <i>Grinch</i> .
Issue	Whether Plaintiffs’ use of elements from <i>Grinch</i> in the play <i>Who’s Holiday</i> constitutes fair use.
Holding	<p>Following its four-step fair use analysis, the court held that <i>Who’s Holiday</i> is a fair use, and it granted Plaintiffs’ motion for judgment on the pleadings and dismissed Defendant’s counterclaims for copyright and trademark infringement. As to the first factor (the purpose and character of the use), the court found that the work is a parody since it “subverts the expectations of the Seussian genre,” and therefore it is necessarily transformative. Because the work was deemed to be transformative, the court gave less weight to the fact that the work is of a commercial nature, also a consideration under the first factor. In discussing the second factor (the nature of the copyrighted work), the court reasoned that <i>Grinch</i> is “closer to the core of intended copyright protection” since it is sufficiently creative to merit parodying, but the court noted, for that reason, the second factor is generally of little significance in a parody case. As to the third factor (the amount and substantiality of the use), the court explained that <i>Who’s Holiday</i>’s “use of <i>Grinch</i> is not excessive in relation to the parodic purpose of the copying.” Lastly, the court held that the fourth factor (the effect on the potential market for the copyrighted work), favored a finding of fair use, because the intended “adult audience[]” for <i>Who’s Holiday</i> did not interfere with the market for the original book or the licensing market for derivative works. While Defendant claimed to have previously authorized works that included “themes and jokes aimed at adult audiences,” the court reasoned that Defendant was unlikely to license a parody referencing “bestiality, drug use, and other distinctly ‘un-Seussian’ topics.”</p> <p>On appeal, the Second Circuit found that the district court had correctly analyzed each factor. Regarding the third factor, the Second Circuit noted that <i>Who’s Holiday</i> does not “copy verbatim or quote from the original book.” The Second Circuit</p>

	affirmed the district court's decision.
Tags	Second Circuit; Parody/Satire; Textual work
Outcome	Fair use found

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