

**Balsley v. LFP, Inc.,
691 F.3d 747 (6th Cir. 2012)**

Year	2012
Court	United States Court of Appeals for the Sixth Circuit
Key Facts	Plaintiff, a female television news anchor, alleged that defendant LFP (Larry Flynt Publications), Inc., owner of the adult magazine <i>Hustler</i> , infringed her copyright in a photograph. In 2003, without plaintiff's knowledge, an amateur photographer took photos of her on vacation while she was taking part in a wet t-shirt contest and dancing nude. After the photographer posted the photos on the internet and plaintiff lost her job, plaintiff acquired the copyrights to the photos and registered them with the Copyright Office in 2004. <i>Hustler</i> published one of the copyright protected photos in a 2006 issue of its magazine, the subject of this lawsuit. Defendant allegedly searched unsuccessfully to identify the copyright owner and was advised by legal counsel that publication without authorization was fair use. LFP appealed the jury's verdict of liability.
Issue	Whether defendant's unauthorized publication of plaintiff's copyright-protected photograph constituted fair use.
Holding	The appeals court held that the jury reasonably determined that publication of the photograph was not fair use. The court found that the photograph was used for the commercial purpose of selling magazines. The court further found that the publication was not transformative in any way because defendant did not alter or add any meaning or message to the photograph. The court then found that defendant had published the entire photograph with minimal editing, weighing against a finding of fair use. The court rejected defendant's argument that plaintiff had no intention of marketing the work to the public and therefore no market harm existed. Instead, it found that, despite plaintiff's intentions not to use or market the work, defendant's commercial use had a negative effect on any potential market for plaintiff's work.
Tags	Sixth Circuit; Photograph
Outcome	Fair use not found

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