

**Ty, Inc. v. Publ'ns Int'l, Ltd.,
333 F. Supp. 2d 705 (N.D. Ill. 2004)**

Year	2004
Court	United States District Court for the Northern District of Illinois
Key Facts	Plaintiff Ty, Inc. created the popular Beanie Babies series of beanbag toy animals and registered them as sculptural works. Plaintiff alleged that defendant Publications International, Ltd. infringed its copyrights by publishing several collector's guides that included photographs of Beanie Babies. The guides also contained descriptive text that was sometimes critical of plaintiff. Defendant appealed the district court's first ruling, which was in plaintiff's favor. On appeal, the circuit court remanded the case back to the district court for further consideration.
Issue	Whether defendant's unauthorized use of photographs of Beanie Babies in collector's guides was fair use.
Holding	<p>On remand, the district court found defendant liable for infringement. The court found that the defendant's photographs of plaintiff's copyrighted works were non-transformative because both the toys and the photographs served the same decorative, aesthetic purposes. The court also found that defendant's works were primarily commercial and the unauthorized use of the photographs served no broader public purpose than to avoid paying the customary price plaintiff charged for licensing images of its works. Additionally, the court found that defendant copied more of the work than was necessary to achieve the goal of comment or criticism of the works. The court then determined that defendant's books harmed the market for plaintiff's products or licensed derivatives by functioning as market substitutes for these licensed works. The court then rejected defendant's argument that the photographs were necessary to create a competitive collector's guide because, even if defendant had a right to produce such a guide, it still copied more of plaintiff's work than was necessary.</p> <p><i>Note:</i> This case was before the court on remand from the U.S. Court of Appeals for the Seventh Circuit. <i>See: Ty, Inc. v. Publ'ns Int'l, Ltd.</i>, 292 F.3d 512 (7th Cir. 2002).</p>
Tags	Seventh Circuit; Photograph; Review/Commentary; Sculpture
Outcome	Fair use not found

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