Griner v. King
104 F.4th 1 (8th Cir. 2024)

Year	2024
Court	United States Court of Appeals for the Eighth Circuit
Key Facts	In 2007, Plaintiff Laney Griner took a photograph of her then 11-month-old son, Sam, on the beach that went viral and became the template for one of the first, and most popular, internet memes, known as "Success Kid." In 2012, Griner registered the copyright in the Success Kid template. Griner subsequently licensed the template to many companies that used versions of it in advertisements. In 2020, the King for Congress Committee (the "Committee") posted a version of the meme on its website and other social media pages urging viewers to donate to their political campaign. The Committee's version of the meme placed the Success Kid in front of the United States Capitol with a text box declaring "*FUND OUR MEMES!!!*" and a link to click to donate. After the parties could not reach a settlement, Griner sued for copyright infringement. At trial, the jury rejected all defenses, including fair use, and found that the Committee had innocently infringed the copyright, awarding the statutory minimum of $750 in damages. The Committee appealed.
Issue	Whether use of a meme template in social media posts for fundraising purposes constitutes fair use.
Holding	The court held that the first factor, the purpose and character of the use, weighed against fair use because the use was not transformative, was undisputedly commercial, and was not otherwise justified. Specifically, the court noted that while "[c]reating a meme was not the original purpose when Griner photographed Sam," "controlling the commercial use of the meme" was the original purpose for registering the copyright in the work. The court found that the Committee's use did not add any "further purpose or different character" to the Success Kid template. Next, the court stated that since the Committee's meme was a "purely commercial" use of the Success Kid template to seek political campaign donations, a "particularly compelling justification is needed" to make the use transformative. However, the Committee's justification—that they were "creating and disseminating a meme on social media, as happens millions (if not billions) of times each day"—did not convince the court, "especially considering that the vast majority of [those other] uses are non-commercial." The Committee conceded the second factor, the nature of the copyrighted work. The third factor, the amount and substantiality of the portion of the work used, weighed against fair use because the "heart" of the template, the Success Kid himself, was used in the Committee's meme. The fourth factor, the effect of the use upon the potential market for or value of the work, was neutral because it was "difficult to determine what impact the Committee's use of the Success Kid template had on its commerciality." The court noted that licensing requests had decreased before the Committee's use but acknowledged that "a reasonable jury could conclude that association with King would drive away some potential licensees." Additionally, there was "no evidence that the Committee's meme revitalized the market for licensing the Success Kid template." Weighing the factors, the court held that the jury properly concluded that the Committee's use was not fair use.
Tags	Internet/Digitization; Painting/Drawing/Graphic; Photograph
Outcome	Fair use not found

Source: U.S. Copyright Office Fair Use Index. For more information, see https://www.copyright.gov/fair-use.