

Viacom Int'l v. Pixi Universal
Civ. Action No H-21-2612, 2022 U.S. Dist. LEXIS 57400 (S.D. Tex. Mar. 25, 2022)

Year	2022
Court	United States District Court for the Southern District of Texas
Key Facts	Plaintiff Viacom International Inc. (“Viacom”) is the owner of the SpongeBob SquarePants (“SpongeBob”) entertainment franchise and holds over 400 copyright registrations for SpongeBob works, including the animated television series, feature films, two-dimensional drawings, and stylebooks featuring extensive artwork from the franchise (the “Works”). The SpongeBob television series features a fictional fast-food restaurant called the “Krusty Krab,” which Viacom once recreated as an immersive experience at a comics convention in 2019. Defendant Pixi Universal, LLC (“Pixi”) operates themed “pop-up” restaurants and bars. In 2021, Pixi recreated the Krusty Krab as a pop-up called “The Rusty Krab,” which featured recreations of the fictional restaurant and other elements of the SpongeBob series. Pixi charged a fee for admission and for food and drink. After demanding that Pixi cease using SpongeBob intellectual property, Viacom brought copyright and trademark infringement claims and sought injunctive relief. Pixi asserted fair use as its sole defense to the copyright claim.
Issue	Whether using elements of copyrighted works to create a themed “pop-up” business based on those works is fair use.
Holding	The court decided that the first factor, the purpose and character of the use, weighed against fair use. The court found that Pixi’s use was wholly commercial and that it did not transform the Works by merely changing the medium of expression. Instead, Pixi’s use shared the same purpose as the original, that is, “light-hearted entertainment.” Rejecting Pixi’s “post-hoc characterization” of its pop-up as a parody, the court found that Pixi embraced, replicated, and intended to profit from the Works. The second factor, the nature of the copyrighted work, also weighed against fair use because of the “fictional, imaginative nature” of the Works. The third factor, the amount and substantiality of the work used, likewise weighed against fair use. The court determined that, although Pixi did not copy all the details of the SpongeBob universe or even specific episode storylines, Pixi’s use of “central, principal characters and iconic locals and backgrounds from the series” was nonetheless “substantial” as it used the “heart” of the Works. Lastly, the court determined that the fourth factor, the effect of the use on the potential market for or value of the work, also weighed against fair use. The court found that the type of immersive experience that Pixi created, which was based exclusively on Viacom’s SpongeBob franchise, affected the potential market for Viacom to venture into creating or licensing derivative immersive works. Because the factors together weighed against a finding of fair use, the court concluded that Viacom was likely to succeed on its copyright infringement claim and granted its motion for preliminary injunctive relief.
Tags	Painting/Drawing/Graphic; Parody/Satire
Outcome	Fair use not found

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