

**Brewer v. Hustler Magazine, Inc.,  
749 F.2d 527 (9th Cir. 1984)**

Year	1984
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Plaintiff James Brewer created a photo using special effects and had it imprinted on business cards, of which he distributed approximately 200 between 1975 and 1977. In 1980, he agreed to commercially distribute the photo on a postcard. In 1981, defendant Hustler Magazine, Inc. reproduced a portion of the postcard in a magazine column without plaintiff's permission. A jury found that Hustler had infringed Brewer's copyright. Hustler appealed, claiming among other things that Hustler's reproduction of the postcard constituted fair use.
Issue	Whether defendant's reproduction of plaintiff's postcard in its magazine was fair use.
Holding	The Ninth Circuit concluded that there was sufficient evidence from which a jury could have found that Hustler's publication of Brewer's photo was not fair use. Regarding purpose, the jury could have reasonably concluded that the photo was "used as a humorous feature designed to enhance readership, rather than as a social commentary." As to the nature of the work, the jury could have reasonably found that the work was a creative product, rather than an information work for which the fair use defense would have been broader. Regarding the amount of the work, Hustler cropped off only a small portion of the photo, again supporting the jury's verdict. As to the market effect, the court looked to <i>Sony Corp. v. Universal City Studios</i> , noting that harm to Brewer could be presumed because the use was of a commercial nature. The court also observed that the jury could have found that the value of the photograph as a novelty item could have decreased due to overexposure.
Tags	Ninth Circuit; Photograph
Outcome	Fair use not found

Source: U.S. Copyright Office Fair Use Index. For more information, see <http://copyright.gov/fair-use/index.html>.