

**Dr. Seuss Enterprises, L.P. v. ComicMix LLC**  
**No. 16CV2779-JLS (BGS) (S.D. Cal. June 9, 2017)**

Year	2017
Court	United States District Court for the Southern District of California
Key Facts	Plaintiff Dr. Seuss Enterprises is the assignee and owner of several copyright registrations for works by the late Theodor S. Geisel, also known as Dr. Seuss, including the book <i>Oh, the Places You'll Go!</i> (" <i>Go!</i> "). Defendants created an allegedly infringing book called <i>Oh, the Places You'll Boldly Go!</i> (" <i>Boldly</i> "). <i>Boldly</i> combines various aspects of Dr. Seuss's works with elements from the science fiction entertainment franchise <i>Star Trek</i> . In a Kickstarter campaign to fund their work, Defendants included a disclaimer stating that <i>Boldly</i> is a parody that falls within the boundaries of fair use, citing Section 107 of the Copyright Act of 1976. Upon learning of <i>Boldly</i> , Plaintiff and Defendants exchanged letters, Plaintiff sent a takedown notice to Kickstarter, and ultimately filed suit, claiming that <i>Boldly</i> misappropriates key elements from <i>Go!</i> and four other Dr. Seuss books. Defendants moved to dismiss the claim, arguing that <i>Boldly</i> was permitted under the fair use doctrine.
Issue	Whether Defendants' combined use of elements from copyright protected works in a book for commercial use constitutes fair use.
Holding	After conducting the four-step analysis, the court could not find that the Defendant's use was fair as a matter of law, and denied Defendant's motion to dismiss. The court concluded that the first factor, purpose and character of the infringing work, weighed in favor of the Defendants. Although <i>Boldly</i> was found to not be a parody, but rather a "mash-up" that combines <i>Go!</i> 's style and format with <i>Star Trek</i> 's tropes for commercial purposes, the court found that the unique world created in <i>Boldly</i> was sufficiently transformative and did not supplant the market for the Dr. Seuss works,. The second factor, nature of the copyrighted work, weighed "only slightly in the Plaintiff's favor" because the Dr. Seuss books have sold millions of copies, and "the first appearance of the artist's expression has already occurred." The third factor, amount and substantiality of the portion used, did not weigh against Defendants because <i>Boldly</i> did not copy more than what was necessary to accomplish its transformative purpose. The final factor, effect of the use upon the potential market, weighed in favor of the Plaintiff because of the potential harm to Plaintiff's licensing opportunities; the court noted, however, that "there is not currently any record evidence on this point," and "Plaintiff's allegations are taken as true," so this harm was presumed. Because the factors weighed evenly, and because there was no relevant evidence regarding factor four in the preliminary "procedural posture" of the case, the court found the "fair use defense . . . fail[ed] as a matter of law."
Tags	Ninth Circuit; Parody/Satire; Textual work
Outcome	Preliminary ruling, fair use not found

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