

Dr. Seuss Enterprises, L.P. v. ComicMix LLC
Case No. 16-CV-2779 JLS (BGS) (S.D. Cal. Mar. 12, 2019)

Year	2019
Court	United States District Court for the Southern District of California
Key Facts	Plaintiff owns, by assignment, the copyrights of works authored and illustrated by the late Theodor S. Geisel (a/k/a Dr. Seuss), including the book <i>Oh, the Places You'll Go!</i> (“ <i>Go!</i> ”). Plaintiff publishes the works and licenses the works for use in other entertainment products. Defendants combined elements of <i>Go!</i> and the sci-fi franchise <i>Star Trek</i> to create the book <i>Oh, the Places You'll Boldly Go!</i> (“ <i>Boldly!</i> ”). Defendants intended <i>Boldly</i> to be a parody and copied liberally from <i>Go!</i> to parallel its visual style and textual structure. In two disclaimers on the copyright page of their unpublished draft and in a public Kickstarter funding campaign, Defendants expressed their view that <i>Boldly</i> was a fair use of <i>Go!</i> Plaintiff subsequently brought suit alleging copyright infringement of <i>Go!</i> and four other Seuss works. On Defendants’ first motion to dismiss, although the court found <i>Boldly</i> was transformative, it concluded that a “near-perfect balancing of the [fair use] factors” allowed Plaintiff’s copyright claims to proceed. After Plaintiff filed an amended complaint to revive its related trademark claims, Defendants filed a second motion to dismiss. Reexamining the fourth factor, effect of the use upon the potential market for or value of the original, the court concluded that the potential harm to derivative works favored Plaintiff and thus denied Defendants’ motion.
Issue	Whether the use of certain elements from copyrighted works, where combined with elements from other works to create a “mash-up,” constitutes fair use.
Holding	On cross-motions for summary judgment, the court found that the balance of factors favored fair use. On the first factor, purpose and character of the use, the court affirmed its earlier decision that <i>Boldly</i> was “highly transformative” (but not a parody) because the “elements borrowed [from <i>Go!</i>] were always adapted and transformed,” in contrast with cases that involved “wholesale” copying. The court also rejected Plaintiff’s arguments that <i>Boldly</i> served the same purpose (<i>i.e.</i> , an “illustrated book with an uplifting message”), was created in bad faith, and was a derivative work. As the court previously found, the second factor, nature of the copyrighted work, again slightly favored Plaintiff because its works are “highly creative” but have been long and widely published. The court found the third factor, amount and substantiality of the portion used, did not weigh against Defendants because, although one Defendant admitted he “did, in fact, slavishly copy from Seuss,” the elements that he copied—“cross-hatching, object placements, certain distinctive facial features, lines written in anapestic tetrameter” —were no more than necessary for the purpose of creating a “mash-up” of <i>Go!</i> and <i>Star Trek</i> . On the fourth factor, because <i>Boldly</i> was transformative, Plaintiff had the burden to demonstrate a likelihood of future market harm for <i>Go!</i> and licensed derivatives. The court found that Plaintiff had demonstrated “minimal risk” of <i>Boldly</i> usurping <i>Go!</i> ’s children’s market and presented insufficient evidence that <i>Boldly</i> would impact Plaintiff’s graduate and derivative licensing markets. Thus, viewing any market harm as speculative, the court deemed the fourth factor neutral. On balance, the court concluded the factors favored fair use and granted summary judgment for the Defendants.
Tags	Ninth Circuit; Parody/Satire; Textual work
Outcome	Fair use found

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