Oh, The Places You'll Boldly Go Where No Man Has Gone Before –

Court rejects argument that mash-up of Dr. Seuss and Star Trek is a fair use

By David Roy Ellis

In June 2017, a U.S. District Court judge in California preliminarily ruled in favor of representatives of the late Theodor S. Geisel, better known as "Dr. Seuss," in a copyright infringement suit. The suit alleged that the defendants had infringed Dr. Seuss's book, Oh, the Places You'll Go! by writing what they claimed was a parody "mash-up" of the book with various elements of the fictional universe of Star Trek. Dr. Seuss Enterprises v. Comicmix, 2017 WL 2505007 (S.D. Cal. 2017).

The court denied the defendants' motion to dismiss the complaint. The defendants had argued that their use of Dr. Seuss's work was shielded by the copyright fair use doctrine because it was a parody. The fair use doctrine provides that the "fair use" of a copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship or research is not an infringement, and sets out a number of factors for courts to consider in making a determination.

These factors include the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work. 17 U.S.C. §§107.

In their motion, the defendants argued that their work was entitled to protection as a parody, relying on a Supreme Court case, Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994). In that case, the rap group Two Live Crew wrote a parody of Roy Orbison's iconic 1960s song O Pretty Woman and claimed it was a fair use.

The Supreme Court held that parody, although not specifically listed in §107, is a form of comment and criticism that may constitute a fair use of the copyrighted work being parodied. Parody, which is directed toward a particular literary or artistic work, is distinguishable from satire, which more broadly addresses the institutions and mores of society. For purposes of fair use analysis, the court said it would treat a work as a parody if its aim is to comment upon or criticize a prior work by appropriating elements of the original in creating a new artistic, as opposed to scholarly or journalistic, work.

In the Dr. Seuss case, the court rejected the defendants' argument that their work was a protected parody. The judge said that the defendants' work is most appropriately termed a "literary and pictorial mash-up," i.e. "something created by combining elements from two or more sources such as underlying-work-specific characters or situations."

Such a work may be a parody when it juxtaposes the underlying work in a way that creates comic effect or ridicule. However, the judge wrote, there is no such juxtaposition here. Rather, the defendants merely used Dr. Sues' illustration style and story format as a means of conveying particular adventures and tropes from the Star Trek canon.

The court also addressed the question whether the defendants' work was "transformative" and therefor filling a different niche in the market. The court said it was transformative in that it combines into a unique work the disparate worlds of Dr. Seuss and Star Trek. Whereas Oh, the Places You'll Go! tells the tale of a young boy setting out on adventure and discovering and confronting many strange beings and circumstances along his path, the defendants' work tells a tale of similarly strange beings and circumstances encountered during the voyages of the Star Trek Enterprise.

It does so through a communicative style and method similar to Dr. Seuss's, with rhyming lines and striking images, but the copied elements are interspersed with original writing and illustrations that transform the original work into a repurposed, Star-Trek–centric one. On balance, said the judge, the first factor, the purpose and character of the use, tends to favor a finding of fair use by the defendants.

The court analyzed the second fair use factor by finding that the nature of the work did not significantly favor either party. As for the third factor, the amount and substantiality of the portion used, the judge said that the defendants copied many aspects of Dr. Seuss's illustrations, but not in their entirety. Each is infused with new meaning and additional illustrations that reframe the Seuss images from a unique Star-Trek viewpoint. The defendants did not copy more than necessary to accomplish their transformative purpose.

Finally, as to the fourth factor, the court said it is unlikely that the defendants' work would severely impact the market for Dr. Seuss's works because it is transformative and is therefore less likely to have an adverse impact on the market of the original than a work that merely supersedes the copyrighted work. Indeed, the defendants relied on the fact that consumers have already read and greatly appreciated Dr. Seuss's works at the same time as they have a strong working knowledge of the Star Trek series.

The judge concluded by saying that the case presents an important question regarding the emerging "mash-up" culture where artists combine two independent works in a new and unique way. He said that the various fair use factors were almost perfectly balanced between the parties, and there was insufficient evidence to determine the extent to which the defendants' work might harm the market for or value of Dr. Seuss's works. Under the circumstances, he denied defendants' motion to dismiss the complaint as fair use without obtaining further evidence in the case.

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