



Grease Is The Word And Vape Is The Parody In This Copyright Infringement Fair Use Case

By David Ellis

Grease! If you have seen the popular musical play or the iconic film starring John Travolta and Olivia Newton-John, “Grease is the word.” The musical *Grease* has oiled its way into the American canon, a classic show ripe to be parodied, and sure enough, some people did write a parody, leading to a copyright lawsuit and a fair use defense.

In a case brought in the U.S. District Court in Manhattan, a federal judge ruled that a sketch comedy play called *Vape: The Musical* is a parody of the film version of *Grease* and is therefore protected under copyright law’s fair use doctrine. *Sketchworks Industrial Strength Comedy, Inc. v. Jacobs*, No. 1:2019cv07470 - Document 79 (S.D.N.Y. 2022).

The plaintiff, Sketchworks, representing the authors of *Vape*, brought suit against the defendants, the authors of *Grease*, seeking a declaratory judgment that *Vape* does not infringe the defendants’ copyright in *Grease* because *Vape* is a parody of *Grease* and constitutes a fair use of the copyrightable elements of *Grease*.

According to the Court, *Grease* follows a group of teenagers in the 1950s “as they navigate adolescence, peer pressure, personal values, sexual exploration, love, and friendship.” *Grease* has been produced in multiple versions, including the original musical play and the popular 1978 film version on which *Vape* is based. *Vape*, a stage musical, follows the same characters, particularly Danny and Sandy, along roughly the same story arc as *Grease* over the course of a school year at Rydell High School. In addition to using the setting and character names from *Grease*, *Vape* features portions of nine songs from *Grease* including their instrumental tracks and chord progressions.

The plaintiff asserted that *Vape* is a parody of *Grease*, explaining that it “pokes fun at various absurdities in *Grease*” and “uses millennial slang, popular culture, a modern lens, and exaggeration to comment upon the plot, structure, issues, and themes

of *Grease* and to criticize its misogynistic and sexist elements.” In so doing, *Vape*, which was written and directed by women, “reexamines *Grease* from a



female perspective in the #MeToo era,” and “exposes how the ‘humor’ and rape-cultured elements of *Grease* have not aged well” by, for example, “directly criticiz[ing] *Grease*’s ‘happy ending,’ where a woman completely changes who she is in order to please a man.” *Vape* also “recognizes that modern youth still navigate complex issues relating to sex, drugs, and peer pressure – just in different forms from their 1950s counterparts.”

The defendants argued that *Vape* does not constitute a parody because it utilizes the same music, plot, characters, settings, and other elements of *Grease*. When they learned *Vape* was scheduled to be performed in New York City in August 2019, the defendants sent the plaintiff a cease and desist letter, and Sketchworks cancelled its scheduled performances. Sketchworks then brought suit asking

for a declaratory judgment that it did not infringe *Grease*’s copyright because it was a fair use parody of the work.

The plaintiffs argued that their use of elements of *Grease* 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 four principal factors for courts to consider in making a determination.

1. the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

2. the nature of the copyrighted work;

3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

4. the effect of the use upon the potential market for or value of the copyrighted work. 17 U.S.C. §107.

The most authoritative opinion on the fair use defense and whether a work is entitled to protection as a parody is the Supreme Court case, *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994). There, the rap group Two Live Crew wrote a parody of Roy Orbison’s iconic 1960s song, *O Pretty Woman*, and claimed that it was fair use.

The Supreme Court held that parody, although not specifically listed in §107, is a form of comment and criticism that may constitute 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 her opinion, Chief Judge Laura Taylor Swain wrote that the central inquiry of the first factor is “whether and to what extent the new work is transformative,” or the extent to which the new work “merely supersedes the objects of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.” *Campbell*, at 579.

Here, the judge found that *Vape* sufficiently changed certain elements of *Grease*, including the script and lyrics to songs, in order to emphasize misogynistic features of the original work, and thus was transformative:

[T]his is not a case in which the authors of *Vape* have taken elements from *Grease* “for the sake of convenience and then changed the lyrics [and script] to satirize a subject having nothing to do with the original [work]. Nor is it merely a derivative update of *Grease*. On the contrary, *Vape* relies on an allusion to *Grease* to convey its central message about *Grease*’s misogynistic storyline.

Under the second factor, the judge recognized that *Grease* falls within the core of the Copyright Act’s protection, but declined to afford much weight to it because “parodies almost invariably copy

publicly known, expressive works’ and thus, in parody cases, this factor is ‘not much help’ in determining whether the new work constitutes fair use.”

Under the third factor, the judge found that *Vape*’s “taking” of elements from *Grease* was not excessive because they were necessary for *Vape* to achieve its parodic purpose. For example, *Vape* would not have been able to communicate its critique of *Grease*’s “happy ending,” (Sandy changing who she is to please Danny) without incorporating their overall plot arc. The judge also noted that *Vape* does add new features that did not exist in *Grease*.

Under the fourth factor, the judge considered whether *Vape* would potentially take away demand from *Grease* by serving as “a market substitute.” Under that analysis, she found the potential harm to *Grease*’s market value to be minimal because *Vape* could not reasonably be viewed as a derivative work – like a sequel or updated remake – because it mocks and critiques *Grease*.

In conclusion, the judge ruled that *Vape* is a parody and fair use of *Grease*, and also that the plaintiff was entitled to recover its reasonable attorneys’ fees incurred in the prosecution of the case.

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