

The Star Trek/Dr. Seuss Mashup is a Fair Use **By Mark Litwak**

In *Dr. Seuss Enters., L.P. v. ComicMix LLC*, Defendants created a Kickstarter campaign in order to fund printing and distribution of an allegedly infringing work, *Oh, the Places You'll Boldly Go!* ("Boldly"), a mashup which combines aspects of various Dr. Seuss works with certain characters, imagery, and other elements from Star Trek, the science fiction entertainment franchise created by Gene Roddenberry.

The U.S. District Court for the Southern District of California dismissed the trademark claims but refused to dismiss the copyright infringement claim on the grounds that there was insufficient evidence of whether this work would affect the market for Dr. Seuss works. The court found that Boldly failed to qualify as a parody even though it was transformative, explaining "it combines into a completely unique work the two disparate worlds of Dr. Seuss and Star Trek. [Boldly] tells the tale of a young boy setting out on adventure and discovering and confronting many strange beings and circumstances along his path." The court has now made its decision and dismissed the entire suit. This is another in a recent line of cases enhancing the right of fair use.

While the defendants were found to take various elements from Dr. Seuss works, including cross-hatching, object placements, certain distinctive facial features and lines written in anapestic tetrameter, they did not use any words, characters or the universe of the original. The Court concluded that Plaintiff had failed to sustain its burden to demonstrate that Boldly is likely substantially to harm the market for Boldly. Instead, the "potential harm to Plaintiff's market" was found to be "hypothetical."

The court found the work was "highly creative" and that took no more than was necessary even though it was a commercial endeavor that may or may not harm the marketplace for the original.

You can view a sample of the book here: <https://fanfilmfactor.com/tag/oh-the-places-youll-boldly-go/>

You can read the court decision here.

One useful resource in determining fair use is the copyright office's compilation of cases in its Fair Use Index found at: <https://www.copyright.gov/fair-use/fair-index.html>

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