



All's Fair in Whoville: Dr. Seuss Parody is Fair Use

A play about an adult Cindy Lou Who is a fair use of *How the Grinch Stole Christmas* ("*Grinch*"), according to a July 6, 2018, opinion issued by the U.S. Court of Appeals for the Second Circuit. Affirming a declaratory judgment for plaintiffs Matthew Lombardo and Who's Holiday LLC, the Second Circuit held that the play, *Who's Holiday!* ("Play"), does not infringe Dr. Seuss Enterprises, L.P.'s ("DSE") copyright and trademark rights in *Grinch*. *Lombardo and Who's Holiday, LLC v. Dr. Seuss Enterprises, L.P.*, Case No. 17-2952 (2nd Cir. 2018).

In the Play, a 45-year-old Cindy Lou Who describes, in rhyme, the "un-Seussian" events that have taken place in her life since *Grinch*. Seeking declaratory judgment of noninfringement, the plaintiffs argued the Play is a parody, using mature themes like teenage pregnancy, domestic violence, and murder to comment on the naiveté of *Grinch*. DSE counterclaimed for copyright and trademark infringement. The district court granted judgment to the plaintiffs on all claims.

On appeal, the Second Circuit agreed the four copyright fair use factors weigh in the plaintiffs' favor. Specifically: (i) the Play is a parody, merely emulating *Grinch*'s style for comedic effect and mocking the characters; (ii) the second factor—the nature of the copyrighted work—is "rarely useful" with parodies, and thus has little weight; (iii) the Play's use of elements of *Grinch* is "in service of the parody"; and (iv) there is little likelihood of harm to the market. *Summ. Order* 2-3. Therefore, the Second Circuit affirmed the judgment in the plaintiffs' favor on DSE's copyright claims. *Id.* at 3. The Second Circuit also affirmed the judgment in the plaintiffs' favor on DSE's trademark claims, holding that "the public's interest in free speech here outweighs DSE's interest in protecting its trademarks." *Id.* at 3-4.

This decision demonstrates the significant protection that parodies receive under the First Amendment, both as to copyright and trademark claims.



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