

**Dr. Seuss Enters., LP v. Penguin Books USA, Inc.,
109 F.3d 1394 (9th Cir. 1997)**

Year	1997
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Defendants, Penguin Books and Dove Audio, Inc., were book publishers who sought to publish and distribute a book titled <i>The Cat NOT in the Hat! A Parody by Dr. Juice</i> , a rhyming summary of the O.J. Simpson trial. Plaintiff Dr. Seuss Enterprises, LP owned most of the copyright and trademark rights for the children's books written and illustrated by Theodor S. Geisel under the pseudonym "Dr. Seuss," including <i>The Cat in the Hat</i> . Defendants were not authorized to use any element of plaintiff's original books and did not attempt to obtain permission. Defendants' book had many similarities to the original work, including rhyme scheme, thematic and narrative elements, and certain chief character identifiers, such as the distinctive red and white striped hat. Plaintiff filed suit, and the district court granted a preliminary injunction. Defendants filed an interlocutory appeal.
Issue	Whether unauthorized copying of an original work's artistic style, plot, themes, and certain key character elements qualified as fair use.
Holding	The Ninth Circuit concluded that the district court's finding that plaintiff had shown a likelihood of success on the merits was not clearly erroneous, in light of fair use analysis of defendants' work, and affirmed the preliminary injunction. First, the court found that the use was not transformative. The work was not a parody, because it did not hold up Dr. Seuss's style, but merely mimicked it to attract attention or avoid the difficult work of developing original material. Furthermore, according to the court there was "no effort to create a transformative work with 'new expression, meaning, or message.'" Second, the court found that the creative, imaginative and original nature of plaintiff's work weighed against fair use. Third, the court found that defendant had copied substantial portions, because the character of the cat, used in both works, was the "highly expressive core" of plaintiff's work. Other principal thematic and narrative elements were also copied. Finally, because the use was commercial and non-transformative, harm to the market for the original work could be more readily inferred. Further, because fair use is an affirmative defense, and defendants failed to submit evidence on the fourth factor, this disentitled defendants from relief from the preliminary injunction.
Tags	Ninth Circuit; Parody/Satire; Textual work
Outcome	Preliminary ruling, mixed result, or remand

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