

Dr. Seuss is Drooling Over Court's Pre-Holiday Ruling

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by J. Michael Keyes



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You know of this lawsuit, we've
blogged on it twice,
It's time for a check-in, to see
who's naughty and nice.

The Plaintiff as you know is the heir
of Dr. Seuss,
And fussing and fuming about an
alleged unfair use.

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The work that's at issue is one that you know,
It's a book of acclaim called "Oh, The Places You'll Go!"

The Defendant was sued a year ago this November,
A federal court skirmish we will forever remember.

The Seuss complaint built on legal mortar and bricks,
It took aim at the Defendant called ComicMix.

The accused work was a copy, purloined as you know,
And given the title "Oh, The Places You'll Boldly Go!"

Why choose this title? Did Defendant not check?
It's actually a mashup of Dr. Seuss and Star Trek.

But Defendant didn't whimper or slink off into the night,
Instead it said, "Hey Dr. Seuss, We're ready to fight!"

So fight did Defendant with great passion and devotion,
And responded to the complaint with a 12(b)(6) motion.

The court almost seemed ready to find *Boldly* was fair,
But last summer ruled that the evidence was a tad bit too bare.

Fair use was denied at that stage of the proceeding,
And the case carried on with an amended pleading.

The new complaint was loaded and packed quite a wallop,
Copyright claims and a trademark dollop.

The Defendant unfazed by Plaintiff's new legal potion,
Dashed off to court with a second 12(b) motion.

Would it prevail? Would it score a fair use goal?
Sadly for Defendant, it scored a big lump of coal.

The court rejected the motion, to Plaintiff's great glee,
No present for Defendant under the Christmas Tree.

So this skirmish continues there is no end in sight,
Lanham Act claims mixed with copyright.

We will keep updates coming, TheTMCA will be here,
Happy Holidays to all and a Happy New Year!