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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DR. SEUSS ENTERPRISES, L.P.,  
a California limited partnership,  
  
Plaintiff,  
  
v.  
  
COMICMIX LLC, a Connecticut limited  
liability company; GLENN HAUMAN,  
an individual; DAVID JERROLD  
FRIEDMAN a/k/a DAVID GERROLD,  
an individual; and TY TEMPLETON,  
an individual,  
  
Defendants.

Case No.: 16-CV-2779 JLS (BGS)  
  
**ORDER (1) DENYING  
DEFENDANTS’ MOTION FOR  
RECONSIDERATION AND  
(2) DENYING PLAINTIFF’S  
RENEWED MOTION FOR  
SUMMARY JUDGMENT**  
  
(ECF Nos. 176, 177)

Presently before the Court are Defendants ComicMix LLC, Glenn Hauman, David  
Jerrold Friedman, and Ty Templeton’s (collectively, “ComicMix” or “Defendants”)  
Motion for Reconsideration of Order Denying Motion for Issuance of Request to the  
Register of Copyrights Pursuant to 17 U.S.C. § 411(b) (“Reconsid. Mot.,” ECF No. 177)  
and Plaintiff Dr. Seuss Enterprises, L.P.’s (“Seuss” or “Plaintiff”) Renewed Motion for  
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1 Summary Judgment (“MSJ,” ECF No. 176).<sup>1</sup> Also before the Court are Seuss’s opposition  
2 to the Reconsideration Motion (“Reconsid. Opp’n,” ECF No. 178), ComicMix’s reply in  
3 support of the Reconsideration Motion (“Reconsid. Reply,” ECF No. 181), ComicMix’s  
4 opposition to the MSJ (“MSJ Opp’n,” ECF No. 179), and Seuss’s reply in support of the  
5 MSJ (“MSJ Reply,” ECF No. 180). The Court took both matters under submission without  
6 oral argument pursuant to Civil Local Rule 7.1(d)(1). *See* ECF No. 182. Having  
7 considered the Parties’ arguments, the law, and the facts, the Court **DENIES** ComicMix’s  
8 Reconsideration Motion and **DENIES** Seuss’s MSJ for the reasons set forth below.

## 9 **BACKGROUND**

### 10 **I. Factual and Procedural Background**

11 The Parties, who are intimately familiar with the facts of this case, do not submit  
12 new Statements of Fact in support of or in opposition to Seuss’s MSJ. Rather, Seuss  
13 “directs the Court to the Statement of Facts (“SOF”) submitted in connection with its  
14 original motion for summary judgment,” MSJ at 3 n.1 (citing ECF No. 107-2), and, other  
15 than a brief, one-paragraph summary of the procedural history, ComicMix does not provide  
16 any recitation of the facts, *see* MSJ Opp’n. Accordingly, the Court incorporates by  
17 reference the factual and procedural background as set forth in its Order Granting  
18 Defendants’ Motion for Summary Judgment and Denying Plaintiff’s Motion for Summary  
19 Judgment (“MSJ Order,” ECF No. 149 at 2–13) and its Order Denying Defendants’ Motion  
20 for Issuance of Request to the Register of Copyrights (“Referral Order,” ECF No. 88 at 2–  
21 3).

22 Seuss is the owner, by assignment, of the copyrights to the works of Theodor S.  
23 Geisel, the author and illustrator of the books written under the pseudonym “Dr. Seuss.”  
24 Pl.’s Statement of Undisputed Material Facts in Support of Pl.’s MSJ (“SOF”), ECF No.  
25 115-1, ¶¶ 1–4. Mr. Geisel wrote and illustrated the works at issue here: *Oh, the Places*  
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28 <sup>1</sup> Seuss filed what appears to be a substantively identical motion earlier the same day, *see* ECF No. 175,  
which the Court **DENIES AS MOOT** in light of the second filing.

1 *You'll Go!* (“Go!”); *How the Grinch Stole Christmas!* (“Grinch”); and *The Sneetches and*  
2 *Other Stories* (“Sneetches”) (collectively, the “Copyrighted Works”). SOF ¶¶ 2–7

3 In 2016, Defendants set out to create *Oh, the Places You'll Boldly Go!* (“*Boldly!*”).  
4 Each of Mr. Templeton, Mr. Gerrold, and Mr. Hauman testified that he considered *Boldly!*  
5 a parody, a mash-up, and a transformative work of the Copyrighted Works. *See, e.g.,*  
6 Declaration of Tamar E. Duvdevani in Support of Pl.’s MSJ (“Duvdevani Decl.”) Ex. 1,  
7 ECF No. 107-23 at 120:14–23; Duvdevani Decl. Ex. 2, ECF No. 107-24, at 68:7–8, 77:19–  
8 78; Duvdevani Decl. Ex. 3, ECF No. 107-25, at 75:23–76:11. However, each Defendant  
9 also testified that he copied the Copyrighted Works to create *Boldly!*. SOF ¶¶ 33, 51–54,  
10 56, 64.

11 After learning about *Boldly!*, Seuss sent ComicMix three letters, dated September  
12 28, October 7, and October 25, 2016, demanding that ComicMix immediately cease all use  
13 of the Copyrighted Works. SOF ¶¶ 103–05. Seuss also sent a DMCA takedown notice to  
14 Kickstarter on October 7, 2016. *Id.* ¶ 68. ComicMix sent Seuss a responsive letter on  
15 October 28, 2016, which refused Seuss’s demands. SOF ¶¶ 106–08. Seuss filed this  
16 infringement action on November 10, 2016. ECF No. 1.

17 As relevant to the present motions, on December 22, 2017, ComicMix filed a motion  
18 for issuance of a request to the Register of Copyrights pursuant to 17 U.S.C. § 411(b)(2),  
19 on the basis that Mr. Geisel’s copyright registration applications for *Go!* and *Sneetches*  
20 were knowingly and materially inaccurate and incomplete. *See* ECF No. 57. On May 21,  
21 2018, the Court denied ComicMix’s motion. *See generally* Referral Order. In the Referral  
22 Order, the Court concluded that neither of the copyright applications was based on  
23 inaccurate information, as neither of the works in question contained a “substantial”  
24 amount of the undisclosed previously published material, and accordingly the Court  
25 declined to issue a request to the Register of Copyrights. *See id.* at 8–10.

26 On December 11, 2018, the Parties filed cross-motions for summary judgment. *See*  
27 ECF Nos. 107, 108. ComicMix sought summary judgment as to all of Seuss’s surviving  
28 claims on the ground that ComicMix was entitled to summary adjudication on its

1 affirmative defenses for fair use and the First Amendment. *See generally* ECF No. 108.  
2 Seuss sought summary judgment of ComicMix’s willful copyright infringement. *See*  
3 *generally* ECF No. 107. On March 12, 2019, the Court granted ComicMix’s motion as to  
4 the copyright infringement claims, finding ComicMix was entitled to its fair use defense.  
5 *See* MSJ Order at 33. ComicMix also sought summary judgment of the surviving  
6 trademark infringement claims on the grounds that neither a stylized font nor an illustration  
7 style is subject to trademark protection, and, even if they were, ComicMix’s use thereof  
8 merits First Amendment protection under *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989).  
9 *See generally* ECF No. 108. The Court agreed that an illustration style is not protectable,  
10 *see* MSJ Order at 34, and that the “use of Seussian typefaces, not in conjunction with an  
11 enforceable mark, cannot support a claim for violation of the Lanham Act.” *Id.* at 36–37.  
12 Accordingly, the Court granted ComicMix’s motion as to the surviving trademark and  
13 unfair competition claims. *Id.* at 35, 37. Given this disposition, the Court declined to  
14 address the First Amendment issues. *Id.* at 37. Further, given the Court’s determination  
15 that ComicMix was entitled to summary judgment on its fair use defense, the Court denied  
16 Seuss’s cross-motion. *Id.*

17 On March 26, 2019, Seuss appealed the MSJ Order. *See* ECF No. 151. The Ninth  
18 Circuit heard oral argument on Seuss’s appeal on April 27, 2020. *See Dr. Seuss Enters.,*  
19 *L.P. v. ComicMix LLC*, 983 F.3d 443, 443 (9th Cir. 2020). On December 18, 2020, the  
20 Ninth Circuit issued its opinion affirming in part and reversing in part the MSJ Order. *See*  
21 *id.* The Court held a mandate hearing on March 5, 2021, during which the Court set a  
22 briefing schedule for any motions. *See* ECF No. 173. The present motions followed.

## 23 **II. The Ninth Circuit’s Opinion**

24 The Ninth Circuit reversed the Court’s grant of summary judgment in favor of  
25 ComicMix on the copyright infringement claim but affirmed the Court’s Rule 12(c)  
26 dismissal and grant of summary judgment in favor of ComicMix on the trademark claim.  
27 *ComicMix*, 983 F.3d at 448.

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1 As relevant to the present motions, the Ninth Circuit concluded that each of the four  
2 statutory fair use factors “decisively weigh[s] against ComicMix and no countervailing  
3 copyright principles counsel otherwise.” *Id.* at 451. As to the first factor, the purpose and  
4 character of the use, because *Boldly!* is “indisputably commercial” and not transformative,  
5 the Ninth Circuit found that the first factor weighs against fair use. *Id.* at 451–52. The  
6 Ninth Circuit concluded *Boldly!* is not a parody because it does not critique or comment  
7 on the Copyrighted Works by, for example, holding Dr. Seuss’s style up to ridicule or  
8 criticizing the “purported self-importance of [the Copyrighted Works’] characters.” *Id.* at  
9 452–53. Nor does replacing Seuss characters and elements with *Star Trek* material render  
10 the work transformative, as this replacement does not give Seuss’s work new purpose or  
11 meaning. *Id.* at 453. *Boldly!* lacks the benchmarks of transformative use, instead  
12 paralleling the Copyrighted Works’ purpose. *Id.* at 453–55.

13 As to the second factor, the nature of the copyrighted work, the Copyrighted Works  
14 are creative and expressive works, which weighs against a finding of fair use. *Id.* at 456.  
15 As to the third factor, the amount and substantiality of the portion of the copyrighted work  
16 used, the quantitative amount of the Copyrighted Works taken by *Boldly!* “was  
17 considerable,” *id.*, with close replication of well-known and significant illustrations from  
18 all of the Copyrighted Works and copying of 14 of *Go!*’s 24 pages, *id.* The Ninth Circuit  
19 also found the qualitative value used by *Boldly!* to be “substantial,” as *Boldly!* “took the  
20 heart of Dr. Seuss’s works” by, for example, taking the machine at the heart of *Sneetches*  
21 and repurposing it as a *Star Trek* transporter. *Id.* at 457–58.

22 As to the fourth factor, the effect on the value or market for the copyrighted work,  
23 the Ninth Circuit found that the Court erred in shifting the burden of showing market harm  
24 to Seuss, resulting in a “skewed analysis” of this factor. *Id.* at 458. Weighing the factors,  
25 the Ninth Circuit concluded that ComicMix could not sustain its fair use defense and that  
26 this Court therefore erred in granting summary judgment in favor of ComicMix on the  
27 copyright infringement claim. *Id.* at 461.

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