

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Castle Rock Entertainment, Inc. v. Carol Publishing Group, Inc.

150 F.3d 132 (2d Cir. 1998) · No. No. 97-7992 · Decided July 10, 1998

SUMMARY

The United States Court of Appeals for the Second Circuit held that The Seinfeld Aptitude Test copied protectable expression from the Seinfeld television series and was substantially similar to the copyrighted work. The court rejected the defendants’ fair-use defense, concluding that the commercial trivia book was not sufficiently transformative and infringed Castle Rock’s copyrights. The court affirmed the district court’s judgment, including damages and a permanent injunction.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	John M. Walker, Jr.; Van Graafeiland; Walker; Jed S. Rakoff, District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	July 10, 1998
DOCKET	No. 97-7992
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a summary judgment ruling in favor of Castle Rock on its copyright infringement claim, including an award of damages, a permanent injunction, and an order requiring destruction of copies of the allegedly infringing book.
STANDARD OF REVIEW	The court reviewed the district court's legal conclusions de novo and its findings of fact for clear error. Summary judgment was proper only if there was no genuine dispute of material fact and the movant was entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Carol Publishing Group, Inc., Beth B. Golub v. Castle Rock Entertainment, Inc.

TOPICS

copyright fair use copyright infringement derivative works appellate procedure standard of review

PRACTICE AREAS

copyright law

copyright infringement

copyright fair use

derivative works

appellate procedure

QUESTIONS PRESENTED

1. Whether The Seinfeld Aptitude Test copied a quantitatively and qualitatively sufficient amount of protectable expression from the Seinfeld television series to establish actionable copyright infringement.
2. Whether The Seinfeld Aptitude Test was a fair use of the Seinfeld television series under 17 U.S.C. § 107.
3. Whether summary judgment was appropriate where the material facts were undisputed and the copyright and fair-use questions could be resolved as matters of law.

HOLDINGS

1. The Seinfeld Aptitude Test unlawfully copied protectable expression from the Seinfeld television series. Because the book copied 643 fragments from the continuous series and drew on the series' fictional characters, events, and dialogue, the copying was quantitatively and qualitatively sufficient to constitute substantial similarity and actionable infringement.
2. The Seinfeld Aptitude Test was not a fair use of the Seinfeld television series. All four statutory factors, considered together in light of copyright's purposes, weighed against defendants or otherwise supported Castle Rock.
3. Summary judgment was appropriate because the material facts concerning copying and the fair-use factors were undisputed and the legal conclusions could be resolved by the court.

KEY QUOTATIONS

"Where the secondary work focuses on an entire continuous television series such as Seinfeld, there is no basis for looking in isolation at the amount copied from each separately copyrighted episode." (¶ 33)

"The SAT's plain purpose, therefore, is not to expose Seinfeld's 'nothingness,' but to satiate Seinfeld fans' passion for the 'nothingness' that Seinfeld has elevated into the realm of protectable creative expression." (¶ 53)

"Considering all of the factors discussed above, we conclude that the copyright law's objective '[t]o promote the Progress of Science and useful Arts' would be undermined by permitting The SAT's copying of Seinfeld." (¶ 70)

FACTUAL BACKGROUND

Castle Rock produced and owned the copyrights in episodes of the fictional television series Seinfeld. Beth Golub authored, and Carol Publishing Group published, The Seinfeld Aptitude Test, a 132-page book containing 643 trivia questions and answers drawn from 84 Seinfeld episodes, including questions based on fictional characters, events, and dialogue. Golub acknowledged creating the book from notes and videotapes of Seinfeld episodes, and the book prominently used the Seinfeld name and images of the show's actors. Castle Rock had

licensed or considered licensing other Seinfeld-related products and asserted that the quiz book occupied a potential derivative-work market.

PROCEDURAL HISTORY

Castle Rock sued Carol Publishing Group and Beth Golub for copyright and trademark infringement and state-law unfair competition based on publication of *The Seinfeld Aptitude Test*. The Southern District of New York granted Castle Rock summary judgment on the copyright claim, denied defendants' cross-motion, and entered judgment for \$403,000 plus interest, injunctive relief, and destruction of copies. The parties stipulated to damages and attorneys' fees and dismissed the remaining claims without prejudice; Carol Publishing's cross-claims against Golub were dismissed with prejudice. Defendants appealed.

DISPOSITION

affirmed

CASES CITED

- *Garza v. Marine Transportation Lines, Inc.*, 861 F.2d 23, 26 (2d Cir. 1988)
- *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 560 (1985)
- *Wright v. Warner Books, Inc.*, 953 F.2d 731, 735, 737 (2d Cir. 1991)
- *Leibovitz v. Paramount Pictures Corp.*, 137 F.3d 109 (2d Cir. 1998)
- *American Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 918, 921, 926, 930 (2d Cir. 1994)
- *Repp v. Webber*, 132 F.3d 882, 889 & n.1 (2d Cir. 1997)
- *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 347, 361-64 (1991)
- *Laureysens v. Idea Group, Inc.*, 964 F.2d 131, 139-41 (2d Cir. 1992)
- *Ringgold v. Black Entertainment Television, Inc.*, 126 F.3d 70, 75 (2d Cir. 1997)
- *Twin Peaks Productions, Inc. v. Publications International, Ltd.*, 996 F.2d 1366, 1372-78, 1381 (2d Cir. 1993)
- *Wainwright Securities Inc. v. Wall Street Transcript Corp.*, 558 F.2d 91, 94 (2d Cir. 1977)
- *Craft v. Kobler*, 667 F. Supp. 120, 124-25 (S.D.N.Y. 1987)
- *New Era Publications International, ApS v. Carol Publishing Group*, 904 F.2d 152, 158, 160 (2d Cir. 1990)
- *Salinger v. Random House, Inc.*, 811 F.2d 90, 98-99 (2d Cir. 1987)
- *Horgan v. Macmillan, Inc.*, 789 F.2d 157, 161-63 (2d Cir. 1986)
- *Arica Institute, Inc. v. Palmer*, 970 F.2d 1067, 1072, 1077 (2d Cir. 1992)
- *Peter Pan Fabrics, Inc. v. Martin Weiner Corp.*, 274 F.2d 487, 489 (2d Cir. 1960)
- *Williams v. Crichton*, 84 F.3d 581, 588 (2d Cir. 1996)
- *Reyher v. Children's Television Workshop*, 533 F.2d 87, 91 (2d Cir. 1976)
- *Warner Bros. Inc. v. American Broadcasting Cos.*, 720 F.2d 231, 240, 242 (2d Cir. 1983)
- *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 575-93 (1994)
- *Folsom v. Marsh*, 9 F. Cas. 342, 348 (C.C.D. Mass. 1841)

- Stewart v. Abend, 495 U.S. 207, 237 (1990)
- Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 449-50 (1984)

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