

GINA L. DURHAM (Bar No. 295910)
gina.durham@dlapiper.com
DLA PIPER LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105-2933
Tel: 415.836.2500
Fax: 415.836.2501

STANLEY J. PANIKOWSKI (Bar No. 224232)
stanley.panikowski@dlapiper.com
DLA PIPER LLP (US)
401 B Street, Suite 1700
San Diego, CA 92101
Tel: 619.699.2700
Fax: 619.699.2701

ANDREW L. DEUTSCH (Bar No. 319286)
andrew.deutsch@dlapiper.com
DLA PIPER LLP (US)
2000 Avenue of the Stars
Suite 400, North Tower
Los Angeles, CA 90067-4704
Tel: 310.595.3000
Fax: 310.595.3300

*Attorneys for Plaintiff
Dr. Seuss Enterprises, L.P.*

Tamar Y. Duvdevani (admitted *pro hac vice*)
tamar.duvdevani@dlapiper.com
Marc E. Miller (admitted *pro hac vice*)
marc.miller@dlapiper.com
DLA PIPER LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Tel: 212.335.4500
Fax: 212.335.4501

Ryan Compton (admitted *pro hac vice*)
ryan.compton@dlapiper.com
James Stewart (admitted *pro hac vice*)
james.stewart@dlapiper.com
DLA PIPER LLP (US)
500 Eight Street, NW
Washington, D.C. 20004
Tel: 202.799.4000
Fax: 202.799.5000

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DR. SEUSS ENTERPRISES, L.P.,

Plaintiff,

v.

**COMICMIX LLC; GLENN
HAUMAN; DAVID JERROLD
FRIEDMAN a/k/a DAVID
GERROLD; and TY
TEMPLETON,**

Defendants.

Case No.: 3:16-cv-02779-JLS (BGS)

**JOINT MOTION FOR ENTRY OF
CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

Honorable Janis L. Sammartino

Pursuant to L.R. 7.2, plaintiff Dr. Seuss Enterprises, L.P. (“DSE”) and defendants ComicMix LLC, Glenn Hauman, David Gerrold, and Ty Templeton (“Defendants”) hereby jointly move the Court to enter the proposed consent judgment and permanent injunction filed concurrently herewith (the “Consent Judgment and Permanent Injunction”).

Because DSE and Defendants have agreed to resolve this action through the Court’s entry of the Consent Judgment and Permanent Injunction, good cause exists for the Court to grant this joint motion.

DSE and Defendants therefore respectfully request that the Court grant this joint motion and So Order the Consent Judgment and Permanent Injunction.

Dated: October 5, 2021

DLA Piper LLP (US)

Dan Booth Law LLC

/s/ Tamar Y. Duvdevani

/s/ Dan Booth

Tamar Y. Duvdevani (admitted *pro hac vice*)

Dan Booth (admitted *pro hac vice*)

Marc E. Miller (admitted *pro hac vice*)

DAN BOOTH LAW LLC

DLA PIPER LLP (US)

60 Thoreau Street #121

1251 Avenue of the Americas

Concord, MA 01742

New York, NY 10020-1104

(646) 573-6596

(212) 335-4500

Internet Law

Stanley Panikowski

T.C. Johnston

401 B Street, Suite 1700

INTERNET LAW

San Diego, CA 92101

3245 University Avenue, Suite 1245

(619) 629-2700

San Diego, CA 92104

(619) 446-6750

Attorneys for Plaintiff

Attorneys for Defendants

Dr. Seuss Enterprises, L.P.

ComicMix LLC, Glenn Hauman,

David Gerrold, and Ty Templeton

SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Dan Booth, Counsel for Defendants, and that I have obtained his authorization to affix his electronic signature thereto.

/s/ Tamar Y. Duvdevani

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **DR. SEUSS ENTERPRISES, L.P.,**

11 Plaintiff,

12
13 v.

14 **COMICMIX LLC; GLENN**
15 **HAUMAN; DAVID JERROLD**
16 **FRIEDMAN a/k/a DAVID**
17 **GERROLD; and TY**
18 **TEMPLETON,**

19 Defendants.

Case No.: 3:16-cv-02779-JLS (BGS)

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

Honorable Janis L. Sammartino

20 **CONSENT JUDGMENT AND PERMANENT INJUNCTION**

21 WHEREAS, on November 10, 2016, plaintiff Dr. Seuss Enterprises, Inc.
22 (“**DSE**”) initiated the above-captioned action by filing a complaint against
23 ComicMix, LLC, Glenn Hauman, David Jerrold Friedman a/k/a David Gerrold, and
24 Ty Templeton (collectively, “**Defendants**”) (all collectively, the “**Parties**”) for
25 copyright infringement of five works by Dr. Seuss: *Oh, The Places You’ll Go!*
26 (“**Go!**”), *How the Grinch Stole Christmas!* (“**Grinch**”), *The Sneetches and Other*
27 *Stories* (“**Sneetches**”) (*Go!*, *Grinch* and *Sneetches* collectively the “**DSE Works**”),
28 *The Lorax*, and *Horton Hears a Who!*; as well as trademark infringement and unfair

1 competition under the Lanham Act and California law relating to Defendants’
2 unpublished work, *Oh, The Places You’ll Boldly Go!* (“**Boldly**”) (ECF No. 1);

3 WHEREAS, on June 9, 2017, the Court dismissed DSE’s trademark and
4 unfair competition claims on the grounds of nominative fair use, granting DSE
5 leave to amend (ECF No. 38);

6 WHEREAS, on June 22, 2017, DSE amended its complaint by adding a
7 claim under the Lanham Act for infringement of its trademark registered under
8 United States Trademark Registration No. 5,099,531, adding certain factual
9 allegations, and otherwise maintaining its claims against Defendants (ECF No. 39);

10 WHEREAS, Defendants filed their operative answer with affirmative
11 defenses on December 22, 2017 (ECF No. 53);

12 WHEREAS, on May 21, 2018, the Court denied Defendants’ motion (ECF
13 No. 57) for issuance of a request to the Register of Copyrights to opine on the
14 validity of the *Go!* and *Sneetches* copyright registrations (ECF No. 88);

15 WHEREAS, on May 21, 2018, the Court, applying the test set forth in
16 *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989), granted in part Defendants’
17 motion for partial judgment on the pleadings (ECF No. 54) as to DSE’s trademark
18 and unfair competition claims related to the title of *Go!* (ECF No. 89);

19 WHEREAS, on March 12, 2019, the Court granted summary judgment to
20 Defendants on DSE’s copyright infringement claim on the grounds that *Boldly* is a
21 fair use, and on DSE’s remaining trademark and unfair competition claims on the
22 grounds that DSE did not have enforceable trademarks in an artistic style or an
23 illustrated typeface, and denied DSE’s motion for summary judgment (the “**MSJ**
24 **Decision**”) (ECF No. 139);

25 WHEREAS, on March 26, 2019, DSE appealed the MSJ Decision to the
26 United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”) (No. 19-
27 55348) (ECF Nos. 151-152);

28 /////

1 WHEREAS, on December 18, 2020, the Ninth Circuit reversed the MSJ
2 Decision as to Defendants' fair use defense to DSE's copyright infringement claims
3 related to the DSE Works, affirmed the MSJ Decision as to dismissal of DSE's
4 trademark infringement and unfair competition claims pursuant to the *Rogers* test,
5 and remanded the action to this Court for proceedings consistent with its opinion,
6 *Dr. Seuss Enters., L.P. v. ComicMix LLC*, 983 F.3d 443 (9th Cir. 2020);

7 WHEREAS, on January 11, 2021, the Ninth Circuit provided notice of
8 spreading the mandate to this Court (ECF No. 165), which took effect on March 5,
9 2021, following a hearing on the spreading of the mandate (ECF No. 174);

10 WHEREAS, on April 29, 2021, DSE renewed its motion for summary
11 judgment on copyright infringement as to the DSE Works (ECF No. 176) and
12 Defendants filed a motion for reconsideration of the Court's order denying their
13 motion for issuance of a request to the Register of Copyrights (ECF No. 177);

14 WHEREAS, the Court denied both Parties' April 29, 2021 motions (ECF No.
15 187) and set a pretrial schedule (ECF No. 189);

16 WHEREAS, DSE filed a motion for reconsideration, or alternatively for
17 certification of interlocutory appeal under 28 U.S.C § 1292(b) concerning the
18 Court's denial of its renewed motion for summary judgment (ECF No. 188) and the
19 Court has continued briefing on this motion in light of the Parties' settlement
20 discussions (ECF No. 191);

21 WHEREAS, the Parties have agreed to fully and finally resolve the
22 remaining claims in this action and all potential claims between them arising from
23 the facts alleged in DSE's amended complaint by consenting to entry by the Court
24 of a judgment for copyright infringement of the DSE Works and a permanent
25 injunction (over which the Court will exercise continuing jurisdiction for purposes
26 of enforcement) on the terms and conditions set forth herein;

27 /////

28 /////

1 THEREFORE, based on the Parties' concurrently filed joint motion and
2 consent to the entry of the following Consent Judgment and Permanent Injunction,
3 it is hereby ORDERED that:

4 1. Judgment is entered in favor of DSE and against Defendants on DSE's
5 claim that *Boldly* infringes the copyrights owned by DSE in the DSE Works.

6 2. Defendants, and all of their officers, affiliates, directors, agents,
7 servants, employees, heirs, successors and assigns ARE HEREBY
8 PERMANENTLY RESTRAINED AND ENJOINED from any other infringement
9 of copyrights in the DSE Works, including but not limited to the sale, offer for sale,
10 distribution, reproduction, marketing, display, advertising, promoting, or otherwise
11 exploiting *Boldly* or any portion thereof or any other work substantially similar to
12 *Boldly* as well as from assisting, aiding, or encouraging any other person or business
13 entity in engaging in or performing any of the activities referred to herein, so long as
14 any of the DSE Works are under copyright.

15 3. All claims, including any request or claim for damages, attorneys' fees,
16 or costs, which any Party has asserted or could have asserted in this action, are hereby
17 fully and finally dismissed with prejudice. This paragraph shall not prevent DSE
18 from undertaking actions and proceedings to enforce the Permanent Injunction.

19 4. To the extent not covered by Paragraph 3 above, DSE's claims that
20 *Boldly* infringes DSE's copyrights in *The Lorax* and *Horton Hears A Who!*, and its
21 claims that any infringement was willful, are dismissed with prejudice.

22 5. All deadlines set in the pretrial schedule (ECF No. 189), and for briefing
23 on DSE's motion for reconsideration (ECF Nos. 188 & 191) are cancelled.

24 /////

25 /////

26 /////

27 /////

28 /////

1 6. The Court will exercise continuing jurisdiction over the Parties for
2 purposes of enforcement of this Consent Judgment and Permanent Injunction.

3 IT IS SO ORDERED.

4 Dated: _____

5 Hon. Janis L. Sammartino
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28