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18 UNITED STATES DISTRICT COURT
19 SOUTHERN DISTRICT OF CALIFORNIA

20 DR. SEUSS ENTERPRISES, L.P., a
21 California limited partnership,

22 Plaintiff,

23 v.

24 COMICMIX LLC, a Connecticut
25 limited liability company; MR.
26 GLENN HAUMAN, an individual;
27 MR. DAVID JERROLD
28 FRIEDMAN A/K/A DAVID
GERROLD, an individual; and MR.
TY TEMPLETON, an individual,

Defendants.

CASE NO.: 3:16-cv-02779-JLS-BGS

**FIRST AMENDED COMPLAINT
FOR:**

1. **COPYRIGHT
INFRINGEMENT;**
2. **TRADEMARK
INFRINGEMENT; AND**
3. **UNFAIR COMEPTITION**

DEMAND FOR JURY TRIAL

1 Plaintiff Dr. Seuss Enterprises, L.P. (“DSE”), by its attorneys, DLA Piper
2 LLP (US), brings this action for copyright infringement, trademark infringement,
3 and unfair competition against defendants ComicMix LLC (“ComicMix”), Mr.
4 David Jerrold Friedman a/k/a David Gerrold (“Gerrold”), Mr. Ty Templeton
5 (“Templeton”), and Mr. Glenn Hauman (“Hauman”) (collectively, “Defendants”),
6 and by and for their First Amended Complaint (the “First Amended Complaint”)
7 alleges as follows:

8 NATURE OF THE ACTION

9 1. This is an action for: (a) infringement of registered copyrights in
10 violation of the Copyright Act (17 U.S.C. § 101 *et seq.*); (b) federal trademark
11 infringement in violation of 15 U.S.C. § 1114; (c) unfair competition and passing
12 off in violation of 15 U.S.C. § 1125(a); and (d) violation of California Business and
13 Professions Code Section 17200, arising out of Defendants’ unauthorized
14 exploitation of the works of Theodor S. Geisel, better known under his pseudonym,
15 “Dr. Seuss,” one of the most successful children’s books authors and illustrators of
16 all time. Generations of children, and adults, around the world have been
17 entertained and instructed by Dr. Seuss’s whimsical stories, unique poetry and
18 drawing style, and beloved characters. Plaintiff DSE owns the intellectual property,
19 including copyrights and trademarks, in these treasured works—which includes
20 nearly 60 books published over more than a half-century—and it continues to
21 produce new original content, including books, animated and live-action television
22 and film adaptations, theatrical and other works and consumer products.

23 2. Defendants have created, without DSE’s authorization, a book entitled,
24 “Oh, The Places You’ll Boldly Go!” (the “Infringing Work”), and have solicited
25 investors to finance their mass production and distribution efforts for the Infringing
26 Work. The Infringing Work infringes DSE’s works by using innumerable
27 copyrighted elements of several well-known Dr. Seuss works, including the works’
28 settings, illustrations, characters, prose, and themes. The Infringing Work

1 unabashedly misappropriates DSE’s intellectual property to create the “look and
2 feel” of an authorized Dr. Seuss work, while also taking without authorization
3 intellectual property from another rights holder, the owner of intellectual property
4 in the Star Trek works. Upon information and belief, Defendants have raised nearly
5 \$30,000 so far to produce the Infringing Work, and have agreed to a publishing
6 deal, intending to print and ship thousands of copies of the Infringing Work in time
7 for the 2016 holiday season. Upon information and belief, Defendants have already
8 distributed portions of the Infringing Work online in connection with their
9 fundraising efforts. Defendants, via the Infringing Work, not only appropriate
10 without authorization and blatantly infringe DSE’s valuable copyrights in the Dr.
11 Seuss works, but also mislead and deceive or are likely to mislead or deceive the
12 public as to the Infringing Work’s source and as to DSE’s approval, sponsorship,
13 endorsement, or licensing of the Infringing Work. Unless enjoined, Defendants
14 will cause irreparable injury to DSE’s goodwill, identity, and reputation, for which
15 DSE has no adequate remedy at law.

16 THE PARTIES

17 3. Plaintiff DSE is a California limited partnership which owns the
18 copyrights and trademarks, and all related rights to the characters, illustrations and
19 words of the works of Theodor S. Geisel, the author and illustrator of the well-
20 known children’s educational books written under the pseudonym “Dr. Seuss.”

21 4. Upon information and belief, defendant ComicMix is a limited liability
22 company organized and existing under the laws of the State of Connecticut with its
23 principal place of business located at 304 Main Avenue, Suite 194, Norwalk,
24 Connecticut 06851, and is doing business in and with the State of California as a
25 publisher and distributor of books, e-books, and webcomics. Upon information and
26 belief, defendant ComicMix markets, and intends to sell, reproduce, and distribute,
27 the Infringing Work throughout the United States, on the Internet, and in the State
28 of California.

1 5. Upon information and belief, defendant Hauman is an individual who
2 resides in the State of New Jersey and is the Co-founder, Vice President, Operations
3 and Production Manager of defendant ComicMix, and is doing business in and with
4 the State of California. Upon information and belief, defendant Hauman is the
5 editor of the Infringing Work. Upon information and belief, defendant Hauman
6 intends to sell, reproduce, and distribute, the Infringing Work throughout the United
7 States, on the Internet, and in the State of California.

8 6. Upon information and belief, defendant Gerrold is an individual who
9 resides in the State of California. Upon information and belief, defendant Gerrold
10 is a co-author of the Infringing Work. Upon information and belief, defendant
11 Gerrold intends to sell, reproduce, and distribute, the Infringing Work throughout
12 the United States, on the Internet, and in the State of California.

13 7. Upon information and belief, defendant Templeton is an individual
14 who resides in Toronto, Ontario, and is doing business in and with the State of
15 California. Upon information and belief, defendant Templeton is the illustrator of
16 the Infringing Work. Upon information and belief, defendant Templeton intends to
17 sell, reproduce, and distribute, the Infringing Work throughout the United States, on
18 the Internet, and in the State of California.

19 **JURISDICTION AND VENUE**

20 8. This action arises under the Copyright Act of 1976 (17 U.S.C. §§ 101,
21 *et seq.*) and the Federal Trademark Act of 1946, known as the Lanham Act (15
22 U.S.C. § 1125(a)).

23 9. This Court has subject matter jurisdiction over this action pursuant to
24 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court also has
25 subject matter jurisdiction over DSE’s related claims under state law pursuant to 28
26 U.S.C. § 1367(a).

27 10. This Court has personal jurisdiction over Defendants pursuant to Cal.
28 Code Civ. Proc § 410.10 because some or all of them reside in this state, because

1 all Defendants conduct continuous, systematic, and routine business within this
2 state and this District, and because all Defendants have personally and intentionally
3 planned, authorized, and facilitated infringing acts that have or will take place in
4 California.

5 11. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and
6 1400(a) because a substantial part of the events giving rise to DSE's claims arose in
7 this District and because Defendants reside or may be found in this District.

8 **FACTUAL ALLEGATIONS**

9 **A. The Dr. Seuss Intellectual Property**

10 12. Theodor S. Geisel, under the pseudonyms Dr. Seuss and Theo LeSeig,
11 began writing and illustrating children's books at least as early as 1937. Between
12 1937 and 1990, Theodor S. Geisel wrote, illustrated, and published almost 60 Dr.
13 Seuss and LeSeig books. After Theodor S. Geisel's death in 1991, DSE published
14 additional Dr. Seuss books written and illustrated by Theodor S. Geisel. Most of
15 the Dr. Seuss books were written to entertain children, but more importantly, to
16 promote and stimulate children's love of reading and literary skills.

17 13. Theodor S. Geisel authored the Dr. Seuss books in simple, rhyming,
18 repetitive prose, accompanied by his descriptions and illustrations of characters that
19 are distinctive, recognizable, and appealing to children. The Dr. Seuss characters
20 are often zany animals with human-like characteristics. The Dr. Seuss books are set
21 in distinctive, whimsical and fantastical landscapes and created in a style unique to
22 Dr. Seuss that makes them immediately recognizable as Dr. Seuss works.

23 14. The Dr. Seuss books are iconic, and among the most popular
24 children's books of all time. The Dr. Seuss books have topped many bestseller
25 lists, sold over 650 million copies worldwide, and been translated into more than a
26 dozen languages. Children around the world read the Dr. Seuss books, and parents
27 and educators worldwide use the Dr. Seuss books to motivate children, teach
28 community values, and enhance literacy.

1 15. The Dr. Seuss books and the Dr. Seuss characters are widely-known
2 and recognized throughout the world. Some of the most well-known Dr. Seuss
3 books, for example, are: *Oh, the Places You'll Go!*; *The Cat in the Hat*; *Horton*
4 *Hears a Who*; *How the Grinch Stole Christmas!*; *The Lorax*; *One Fish Two Fish*
5 *Red Fish Blue Fish*; *Green Eggs and Ham*; *Yertle the Turtle*; *Fox in Socks*; and *The*
6 *Sneetches and Other Stories*.

7 16. The Dr. Seuss books and characters are original works of authorship
8 and constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. §§
9 101, *et seq.* The Dr. Seuss books and characters are duly registered for copyright
10 with the United States Copyright Office. These copyright registrations are
11 perfected and, where appropriate, have been renewed with the United States
12 Copyright Office and all registrations are in full force. The United States Copyright
13 Office has issued Certificates of Registration for these works that bear the numbers
14 identified in Appendix A (collectively, the “Dr. Seuss Copyrighted Works”). DSE
15 is the owner of all of these registrations and rights, by assignment.

16 17. In addition, DSE is the owner of registered and common law
17 trademark rights in multiple aspects of Dr. Seuss books and various goods that
18 function, individually and collectively, as indicators of source, and make those
19 goods immediately recognizable as deriving from Dr. Seuss. With respect to this
20 litigation, those aspects include in relevant part: (1) the title OH, THE PLACES
21 YOU'LL GO!; (2) the stylized font used consistently on the front and back covers,
22 spine, and title page of the Dr. Seuss books such that this use of the stylized font
23 has come to be recognized by consumers as a source identifier for Dr. Seuss, and
24 (3) the unique illustration style of the characters and backgrounds found throughout
25 Dr. Seuss books (collectively, the “Unregistered Dr. Seuss Marks”).

26 18. In connection with its trademark rights in multiple aspects of the Dr.
27 Seuss books and various goods, DSE owns a number of United States trademark
28 registrations. In fact, DSE uses *Oh, The Places You'll Go!* as an identifier of source

1 for a variety of goods including for books and other works and consumer products.
2 DSE currently owns eight United States trademark registrations, plus one pending
3 application, for OH THE PLACES YOU'LL GO, and one United States trademark
4 registration for OH, THE PLACES YOU'LL GO! 25TH ANNIVERSARY in
5 connection with a wide variety of goods, including books and electronic books,
6 across International Classes 06, 09, 16, 14, 21, 24, 25, 28, 30, 32, 35, 41. Of
7 particular relevance to this litigation, DSE owns United States Trademark
8 Registration No. 5,099,531 for OH THE PLACES YOU'LL GO in connection with
9 downloadable digital children's books, among other goods (the "OTPYG E-Book
10 Mark"). The OTPYG E-Book Mark is distinctive and has acquired secondary
11 meaning in the minds of the public, and is readily associated with Theodor S.
12 Geisel, Dr. Seuss, and DSE.

13 19. As discussed in Paragraph 22 below, DSE is also the owner of a family
14 of common law trademarks deriving from the title *Oh, The Places You'll Go!*,
15 which DSE has used in connection with the publication of several books and other
16 works that are derivative of *Oh, The Places You'll Go!*, such as *Oh, the Places I'll*
17 *Go! By ME, Myself, Oh, Baby, the Places You'll Go!*, and *Oh, the Places I've Been!*
18 *Journal*, and a live-action production titled *Oh! The Stories You'll Hear!*
19 (collectively, the "OTPYG Title Marks"). The OTPYG Title Marks are distinctive
20 and have acquired secondary meaning in the minds of the public, and are readily
21 associated with Theodor S. Geisel, Dr. Seuss, and DSE.

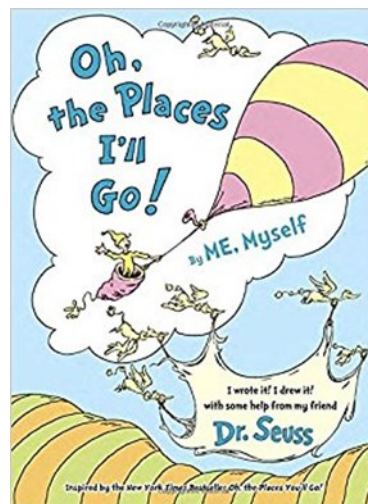
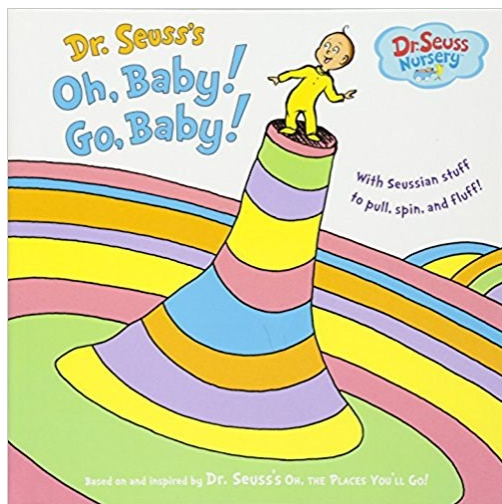
22 20. The Unregistered Dr. Seuss Marks, the OTPYG E-Book Mark, and the
23 OTPYG Title Marks are referred to collectively as the "Dr. Seuss Marks," and
24 together with the "Dr. Seuss Copyrighted Works," are referred to collectively as the
25 "Dr. Seuss Intellectual Property". The Dr. Seuss Marks are well-known and
26 recognized worldwide. The Dr. Seuss Marks are distinctive and have acquired
27 secondary meaning in the minds of the public, and are readily associated with

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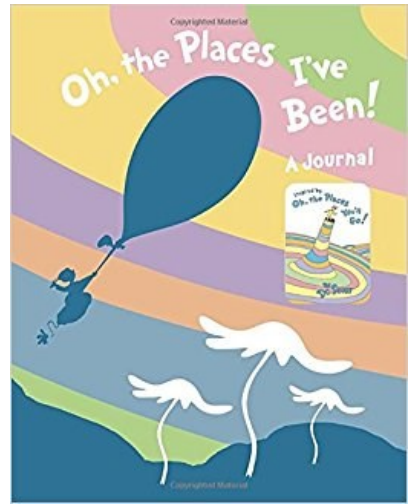
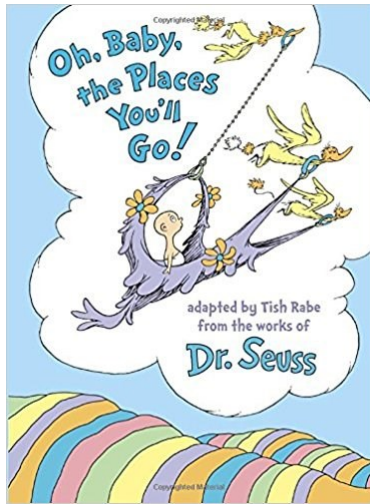
1 Theodor S. Geisel, Dr. Seuss, and DSE. As the owner of the Dr. Seuss Marks, DSE
2 enjoys extensive goodwill associated therewith.

3 21. DSE oversees a robust publishing program, which includes
4 anniversary editions, reissues in new formats or sizes, and updated editions of the
5 iconic Dr. Seuss books and posthumous releases of Dr. Seuss's previously-
6 unpublished works, such as *What Pet Should I Get?*, published in 2015. DSE also
7 works with authors and illustrators to create additional authorized Dr. Seuss works.

8 22. DSE has published several books that are derivative of *Oh, The Places*
9 *You'll Go!*, such as *Oh, Baby! Go, Baby!*, *Oh, the Places I'll Go! By ME, Myself*,
10 *Oh, Baby, the Places You'll Go!*, and *Oh, the Places I've Been! Journal*, covers of
11 which are seen below. Accordingly, the consuming public has come to associate
12 these derivative works and the OTPYG Title Marks with Dr. Seuss, and
13 understands that additional works that include artwork from *Oh, The Places You'll*
14 *Go!*, have titles similar to *Oh, The Places You'll Go!*, and use the OTPYG Title
15 Marks originate from or are sponsored by Dr. Seuss.

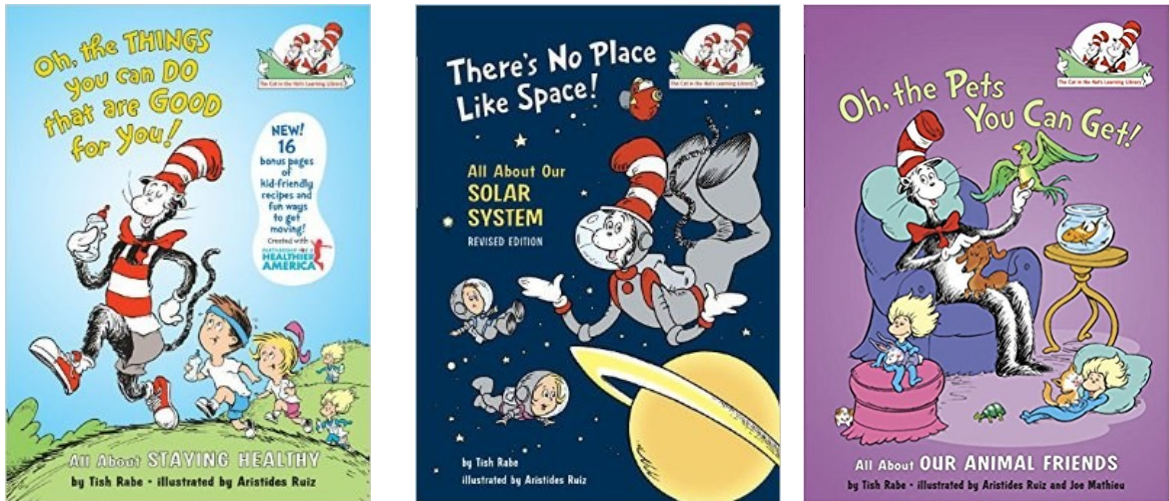


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23. DSE also publishes several series, including, for example, the Bright and Early series, which includes works by Dr. Seuss and other authors and illustrators whose works reflect the same source-indicating whimsical, lyrical style of Dr. Seuss’s books. Another DSE series, titled The Cat In The Hat Learning Library, includes books written and illustrated by other authors and artists that are based upon and incorporate the Dr. Seuss Intellectual Property, including the OTPYG Title Marks. The Cat In The Hat Learning Library series includes titles such as *Oh, The Things You Can Do That Are Good For You!*, *There’s No Place Like Space!*, *Oh, The Pets You Can Get!*, and many more. Examples of the covers of some of these works are seen below. Notably, “Dr. Seuss” does not appear on any of the below covers, and all of the covers include names of other authors, despite the fact that these works are authorized by DSE and are recognized by the public as Dr. Seuss works.

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24. In addition to publishing, DSE often licenses the Dr. Seuss Intellectual Property in connection with the creation of new works based upon and incorporating the Dr. Seuss Intellectual Property. DSE has licensed the Dr. Seuss Intellectual Property in connection with the *Seuss Landing* attraction at the Universal Islands of Adventure theme park in Orlando, Florida, which includes a live-action production titled *Oh! The Stories You'll Hear!* featuring many of Dr. Seuss's well-known and beloved characters and stories. DSE has also licensed the Dr. Seuss Intellectual Property in connection with the production of several children's television series, including *The Cat In The Hat Knows A Lot About That* educational series on PBS Kids and *The Wubbulous World Of Dr. Seuss*, a live-action/puppet show produced by The Jim Henson Company featuring Dr. Seuss's well-known and beloved characters alongside new, Muppet-like characters created by The Jim Henson Company.

25. DSE also oversees an extensive licensing and merchandising program that extends the Dr. Seuss Intellectual Property across toys and games, children's apparel, young adult and adult apparel, puzzles and educational kits, home furnishings, cards and stationery, hats, bags, accessories, party supplies, art, collectibles, classroom materials, and fabrics. Such licensing activities have included collaborations with other rights holders. Examples of such authorized co-

1 branding initiatives include everything from co-branded collegiate bibs to Dr. Seuss
2 Chuck Taylors®:



10 26. DSE's primary focus is to protect the integrity of the Dr. Seuss books
11 while expanding beyond books into ancillary areas through this licensing program.
12 This effort is a strategic part of the overall mission to nurture and safeguard the
13 relationship consumers have with Dr. Seuss books and characters and to control the
14 goodwill associated with Dr. Seuss.

15 **B. Defendants' Infringing Use Of The Dr. Seuss Intellectual Property**

16 27. Upon information and belief, Defendants' Infringing Work is a book
17 which purports to be an amalgamation of the Dr. Seuss works and certain
18 characters, imagery, and other elements from *Star Trek*, the well-known science
19 fiction entertainment franchise created by Gene Roddenberry.

20 28. Upon information and belief, defendant Gerrold authored the text of
21 the Infringing Work and has a meaningful role in its promotion and sale.

22 29. Upon information and belief, defendant Templeton illustrated the
23 Infringing Work and has a meaningful role in its promotion and sale.

24 30. Upon information and belief, defendant Hauman edited the Infringing
25 Work and has a meaningful role in its promotion and sale.

26 31. Upon information and belief, defendant ComicMix is publishing,
27 distributing, promoting, and marketing the Infringing Work.

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1 32. Upon information and belief, when Defendants wrote, illustrated, and
2 edited the Infringing Work, and at all times relevant to this action, Defendants had
3 access to and copied the Dr. Seuss Copyrighted Works.

4 33. At all times relevant to this action, Defendants have acted without
5 authorization or license from DSE.

6 34. At all times relevant to this action, Defendants have acted without
7 authorization or license from CBS Studios, Inc. (“CBS Studios”), the owner of the
8 intellectual property in *Star Trek*.

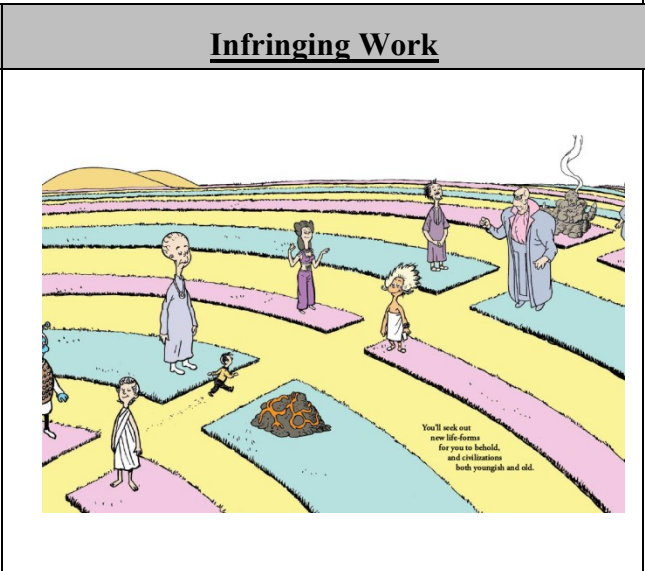
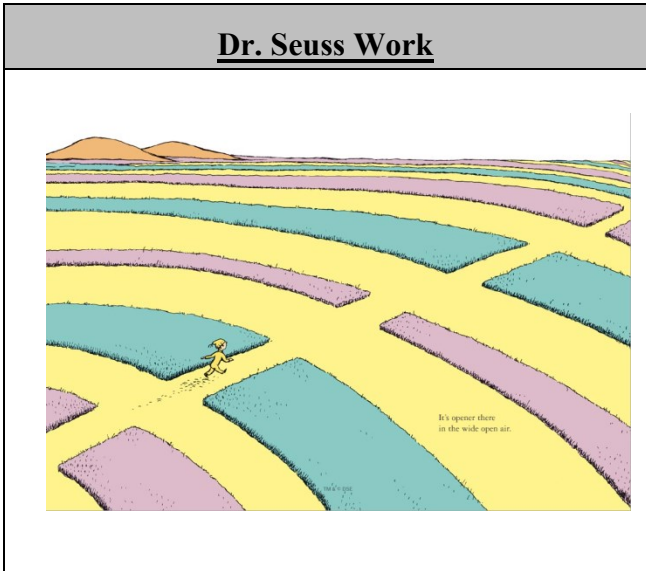
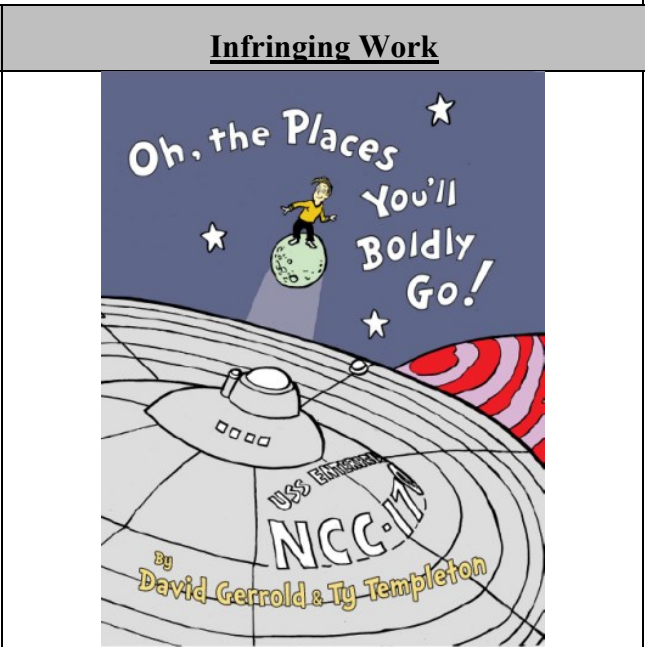
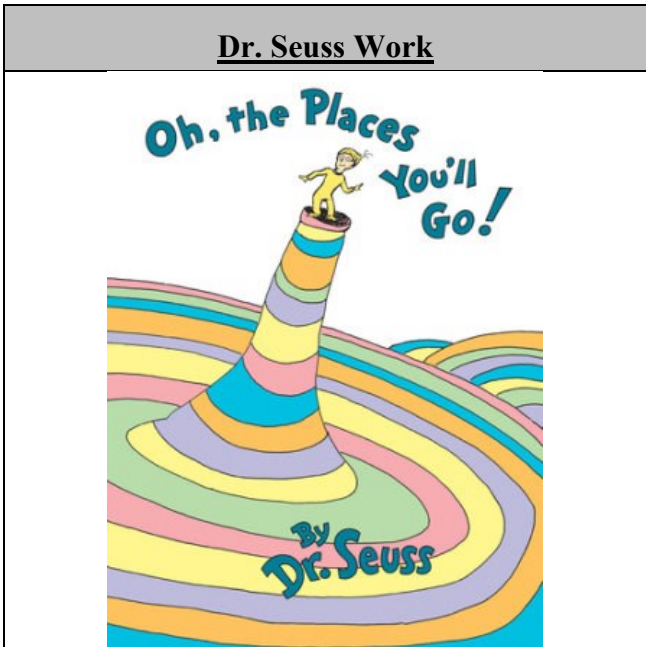
9 35. Defendants have misappropriated many of the most recognizable
10 protected elements of the Dr. Seuss Copyrighted Works into the Infringing Work,
11 including making wholesale slavish copies of the Dr. Seuss Copyrighted Works’
12 distinctive illustrations and text. The Infringing Work misappropriates key
13 protected elements of *Oh, The Places You’ll Go!*, including without limitation its
14 title, story arc, characters, and illustrations. The Infringing Work also
15 misappropriates key protected elements of *Horton Hears a Who*, *How the Grinch*
16 *Stole Christmas!*, *The Lorax*, and *The Sneetches and Other Stories*, including
17 without limitation characters and illustrations therefrom.

18 36. Defendants have also misappropriated and, without permission, used
19 the Dr. Seuss Marks in the Infringing Work.

20 37. Set forth below are several examples, among many, of Defendant’s
21 slavish copying of the Dr. Seuss Copyrighted Works, which attempt to recreate
22 entire pages from the Dr. Seuss Books with meticulous precision, and thereby
23 infringe both copyrights owned by DSE and the Dr. Seuss Marks:

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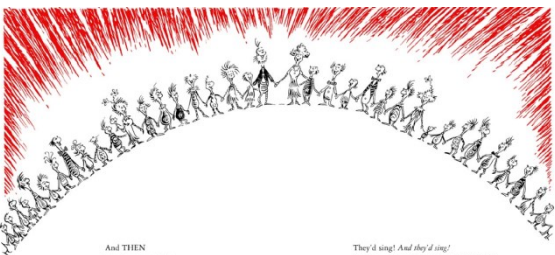
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Dr. Seuss Work



And THEN
They'd do something
He liked best of all!
Every Who down in Whoville, the tall and the small,
Would stand close together, with Christmas bells ringing.
They'd stand hand-in-hand. And the Who would start singing!

They'd sing! And they'd sing!
AND they'd SING! SING! SING! SING!
And the more the Grinch thought of this Who-Christmas-Sing,
The more the Grinch thought, "I must stop this whole thing!"
"Why, for fifty-three years I've put up with it now!
"I MUST stop this Christmas from coming!"
... But HOW?"

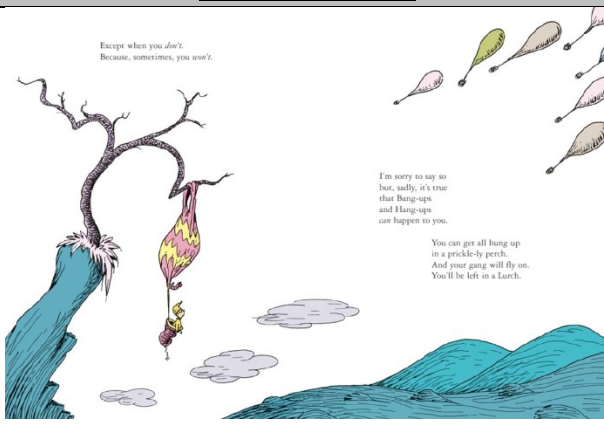
Infringing Work



You'll make lifelong friends. You'll love them like brothers.
(Even when they cannot stand one another.)
You'll encounter lovers of every hue
(though they'll never be back for an episode two).

Wild things will happen,
and usually do,
to starship explorers
and their marvelous crew.

Dr. Seuss Work

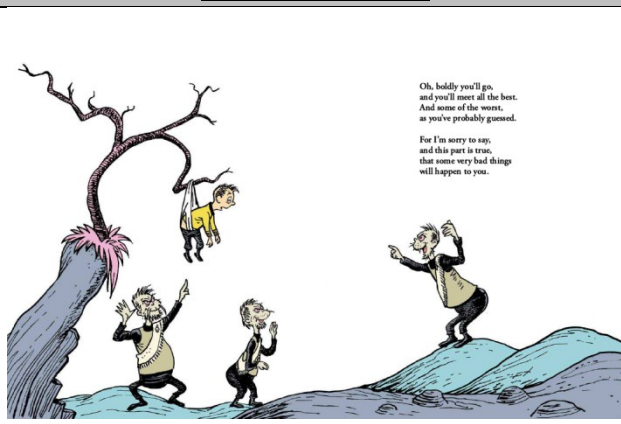


Except when you *don't*,
Because, sometimes, you *are*'t.

I'm sorry to say so
but, sadly, it's true
that Bang-ups
and Hang-ups
can happen to you.

You can get all hung up
in a prickly perch.
And your gang will fly on.
You'll be left in a lurch.

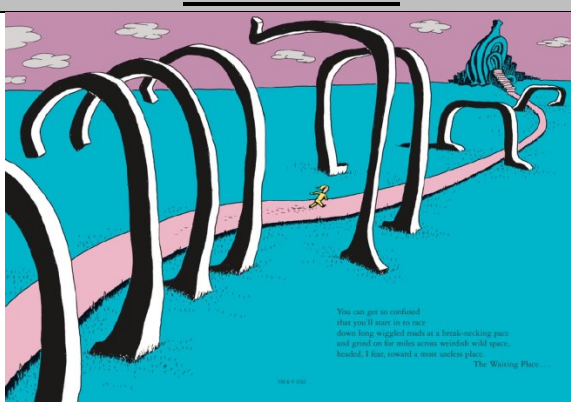
Infringing Work



Oh, holdy you'll go,
and you'll meet all the best.
And some of the worst,
as you've probably guessed.


For I'm sorry to say,
and this part is true,
that some very bad things
will happen to you.

Dr. Seuss Work



You can get so confused
that you'll start to go nuts
down long-winded roads in a brain-aching jolt,
and grand old far-remote some-where-ville with never-
loaded, I fear, toward a more useless place.
The Waiting Place.

Infringing Work



You will come to strange regions, where the stars have gone dark
at the edge of the galaxy, where everything sparks.
And when you go out there, it's hard to return
tomorrow is yesterday (they're the same, you will learn).
And if it turns out that your plan is a dud,
and your luck has run out and your name is now Mudd...

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Dr. Seuss Work

...for people just waiting.
Waiting for a train to go
or a bus to come, or a plane to go
or the mail to come, or the rain to go
or the phone to ring, or the snow to snow
or waiting around for a Yes or No
or waiting for their hair to grow.
Everyone is just waiting.

Waiting for the fish to bite
or waiting for wind to fly a kite
or waiting around for Friday night
or waiting, perhaps, for their Uncle Jake
or a pot to boil, or a Better Book
or a string of pearls, or a pair of pants
or a wig with curls, or Another Chance.
Everyone is just waiting.

Infringing Work

...you may find yourself aging, deadely years fly,
with time moving past in the wink of an eye.

You might fall in love from a princesse's tears,
or fight some fierce creatures who live off your fears.

But when things all get scary,
don't worry, don't stew.
For as you believe, so shall you do.
You are the bravest in all of the fleet.
Do you go forward or do you retreat?

Dr. Seuss Work

Then, quickly, Sylvester McMonkey McBean
Put together a very peculiar machine.
And he said, "You want stars like a Star-Belly Sneetch . . . ?
My friends, you can have them for three dollars each!"

"Just pay me your money and hop right aboard!"
So they clambered inside. Then the big machine roared
And it klunked! And it bonked. And it jerked. And it berked
And it hopped them about. But the thing really worked!
When the Plain-Belly Sneetches popped out, they had stars!
They actually did. They had stars upon thars!

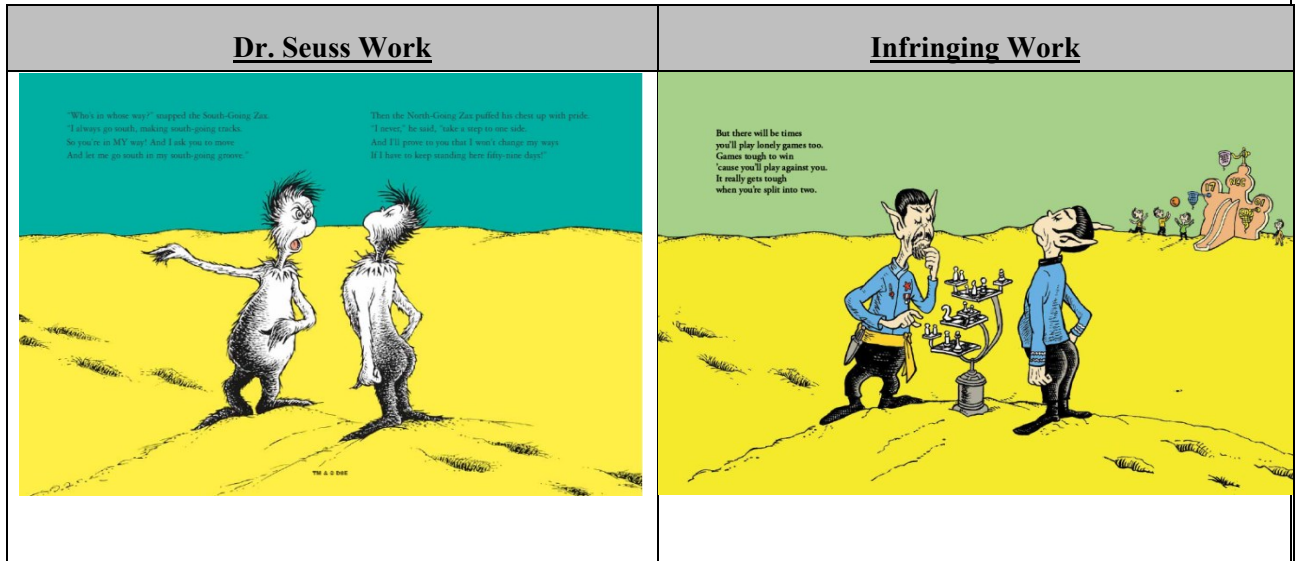
Infringing Work

You can get out of trouble, any that's known,
because in a pinch you'll be beam'd out by Scotty.

(Assuming, of course, you're in transporter range.
There are the physics, they can't be changed.)

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38. Defendants have willfully misappropriated and used the Dr. Seuss Marks in the Infringing Work with the intent to commercially benefit from the popularity and extensive goodwill associated with the Dr. Seuss Marks.

39. Defendants deliberately wrote and illustrated the Infringing Work with the intention of imitating the Dr. Seuss Marks, and creating confusion in the minds of the relevant public as to the origin of the Infringing Work and/or deceiving the public as to Dr. Seuss's approval, sponsorship, endorsement, or licensing of the Infringing Work.

40. For example, by willfully misappropriating the stylized font that DSE uses consistently on the front and back covers, spine, and title page of the Dr. Seuss books which consumers recognize as indicative of a Dr. Seuss book, willfully misappropriating the title OH, THE PLACES YOU'LL GO!, and slavishly copying Dr. Seuss's unique illustration style, Defendants explicitly mislead and confuse consumers as to the Infringing Work's source and falsely suggest that the Infringing Work is sponsored or endorsed by DSE.

41. Consumers have come to recognize the Dr. Seuss Marks, such as the stylized font, the title OH, THE PLACES YOU'LL GO!, and the unique illustration style, the OTPYG E-Book Mark, and the OTPYG Title Marks as associated with

1 and originating from DSE as an authorized Dr. Seuss work. As such, Defendants'
2 unauthorized use of these marks is highly likely to result in consumer confusion,
3 particularly in the ambit of children's books where Plaintiff's books and
4 Defendants' work could appear in commerce side by side on the shelves of
5 bookstores and online. The inclusion of Defendants' names on the Infringing
6 Work's cover does not alleviate consumer confusion as to Dr. Seuss's approval,
7 sponsorship, endorsement, or licensing of the Infringing Work. Indeed, as seen in
8 the images below Paragraph 20, it is often the case that DSE works incorporating
9 the Dr. Seuss Intellectual Property are authored and illustrated by individuals other
10 than Dr. Seuss and whose names appear on the cover, credits, and/or other
11 promotional materials, such as the books in the Bright and Early series and the Cat
12 In The Hat Learning Library series or the shows in *The Cat In The Hat Knows A*
13 *Lot About That* and *The Wubbulous World Of Dr. Seuss* children's television series.

14 42. Defendants have slavishly copied and used the Dr. Seuss Marks in
15 their entirety in the Infringing Work, particularly on the Infringing Work's front
16 cover, back cover, and spine, and title page, where consumers typically find source-
17 identifying information, which exceeds any legitimate referential purpose for such
18 use and creates confusion in the minds of the relevant public as to the origin of the
19 Infringing Work and/or deceiving the public as to Dr. Seuss's approval,
20 sponsorship, endorsement, or licensing of the Infringing Work.

21 43. Indeed, Defendants could have created their own unique content and
22 illustrations and refrained from blatantly using Dr. Seuss indicia and still have
23 gotten their point across, but they did not. Instead, Defendants have simply
24 slavishly copied many of the most recognizable and protected elements of the DSE
25 Works in order to get attention and trade off DSE's goodwill, and to avoid the
26 drudgery in working up something fresh.

27 44. While Defendants included a disclaimer inside the Infringing Work,
28 this disclaimer is ineffective and does not alleviate the potential for consumer

1 confusion. The disclaimer, which is purposely printed in inconspicuously small,
2 fine lettering on the Infringing Work’s third page, states: “This is a work of parody,
3 and is not associated with or endorsed by CBS Studios or Dr. Seuss Enterprises,
4 L.P.” Upon information and belief, consumers are not likely to view a fine-print
5 disclaimer located on the third page of a book prior to purchase. Rather, upon
6 information and belief, consumers look primarily at the front cover, back cover, and
7 spine of a book prior to purchase. Defendants, however, did not include a
8 disclaimer on the Infringing Work’s front cover, back cover, or spine. Accordingly,
9 the disclaimer is ineffective and does not alleviate the potential for consumer
10 confusion as to Dr. Seuss’s approval, sponsorship, endorsement, or licensing of the
11 Infringing Work. Moreover, the act of blatantly taking intellectual property from
12 two rights holders and calling it a parody or a “mash-up” does not transform
13 infringement into parody or any other form of fair use.

14 45. Defendants, without permission, have willfully copied many elements
15 of the Dr. Seuss books that are protected by the copyrights owned by DSE, and
16 intend to further infringe those copyrights by acts of reproduction, distribution,
17 display, and unauthorized creation of derivative works.

18 46. It is not uncommon for DSE to license the Dr. Seuss Intellectual
19 Property in connection with the creation of new works based upon, and
20 incorporating, the Dr. Seuss Intellectual Property. As mentioned herein and
21 discussed above in Paragraphs 21-22, such licensing activities have included
22 collaborations with other rights holders, such as The Jim Henson Company,
23 Universal Studios, and Converse, for example. In addition, as also mentioned
24 herein and exemplified under Paragraph 19 above, DSE has created or caused to be
25 created works derivative to *Oh, The Places You’ll Go!* Here, however, Defendants
26 created the Infringing Work without license or authorization from DSE, and thereby
27 usurped DSE’s licensing opportunities and explicitly caused confusion as to DSE’s
28 sponsorship or approval of the Infringing Work.

1 47. As a result of Defendants’ aforementioned use of the Dr. Seuss Marks
2 in the Infringing Work, the relevant universe of consumers, including potential
3 purchasers of books in the State of California, are likely to be misled and confused
4 as to the nature, origin, and sponsorship of the Infringing Work, and are likely to
5 form the false impression that the Infringing Work has been authored, approved,
6 licensed, sponsored, endorsed, guaranteed by, or is in some way affiliated with
7 Theodor S. Geisel, Dr. Seuss, DSE, and the Dr. Seuss Marks.

8 48. Upon information and belief, defendants have been running a
9 campaign to fund printing and distribution of the Infringing Work on Kickstarter,
10 <www.kickstarter.com>, a crowdfunding website where parties can raise money for
11 various projects. The Kickstarter page reproduced pages from the Infringing Work.

12 49. On its Kickstarter page, Defendants admit that their blatant and willful
13 infringement presents “Risks and challenges” to their project:

14 While we firmly believe that our parody, created with
15 love and affection, fully falls within the boundary of fair
16 use, there may be some people who believe that this
17 might be in violation of their intellectual property rights.
18 And we may have to spend time and money proving it to
19 people in black robes. And we may even lose that.

20 50. After learning of Defendants’ unauthorized use and planned uses of
21 the Dr. Seuss Intellectual Property in the Infringing Work, on or about September
22 28, 2016, the undersigned counsel for DSE sent Defendants a letter asserting DSE’s
23 exclusive rights in the Dr. Seuss Intellectual Property, and stating that Defendants’
24 use thereof was an infringement of DSE’s rights. The letter demanded that
25 Defendants immediately cease all use of the Dr. Seuss Intellectual Property.

26 51. Defendants did not respond to the September 28, 2016 letter.

27 52. On or about October 7, 2016, the undersigned counsel for DSE sent
28 Defendants an additional letter reiterating its previous demands, and requesting
29 Defendants’ immediate substantive response thereto.

1 53. Defendants did not substantively respond to the October 7, 2016 letter
2 either.

3 54. On or about October 7, 2016, the undersigned counsel for DSE sent a
4 notice, pursuant to 17 U.S.C. § 512(c)(1)(C), to Kickstarter asserting DSE's
5 exclusive rights in the Dr. Seuss Copyrighted Works, and stating that Defendants'
6 use thereof was an infringement of DSE's rights.

7 55. On or about October 7, 2016, Kickstarter disabled access to
8 Defendants' campaign, pursuant to 17 U.S.C. § 512(g).

9 56. On or about October 25, 2016, the undersigned counsel for DSE sent
10 Defendants an additional letter reiterating its previous demands, and requesting
11 Defendants' immediate substantive response thereto.

12 57. On or about October 28, 2016, counsel for Defendant ComicMix sent a
13 letter to the undersigned counsel for DSE responding to DSE's October 7 takedown
14 notice to Kickstarter, refusing DSE's demands to cease all use of the Dr. Seuss
15 Intellectual Property, threatening to pursue claims for tortious interference, unfair
16 business practices, and violations of 17 U.S.C. § 512(f), and advising that
17 Defendants would be sending a counter-notice, pursuant to 17 U.S.C. § 512(g)(3),
18 to Kickstarter to reinstate its campaign.

19 58. On or about October 31, 2016, counsel for Defendant ComicMix sent a
20 counter-notice, pursuant to 17 U.S.C. § 512(g)(3), to Kickstarter.

21 59. On or about February 27, 2017, counsel for CBS Studios, the owner of
22 the intellectual property in *Star Trek*, sent Defendants a letter asserting CBS
23 Studios' exclusive rights in the intellectual property in *Star Trek*, and stating that
24 Defendants' use thereof was an infringement of CBS Studios' rights. The letter
25 demanded that Defendants immediately cease all use of the intellectual property in
26 *Star Trek*.

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COUNT I
Copyright Infringement, 17 U.S.C. § 106
(Against All Defendants)

60. DSE repeats and realleges every allegation in Paragraphs 1 through 59 of its First Amended Complaint as if fully set forth herein.

61. The Dr. Seuss Copyrighted Works constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. §§ 101, *et seq.* DSE has recorded the copyrights in and to the Dr. Seuss Copyrighted Works with the United States Copyright Office and have complied with all applicable statutory registration and renewal requirements, and with the requirements of 17 U.S.C. §411 regarding registration of copyrights preceding an infringement action.

62. Upon information and belief, in direct violation of DSE's exclusive rights, Defendants have directly infringed, and unless enjoined by this Court, will continue to infringe the copyrights in the Dr. Seuss Copyrighted Works by, among other things:

- a. Preparing unauthorized derivative works of the Dr. Seuss Copyrighted Works in the form of the Infringing Work;
- b. Reproducing copyrighted elements of the Dr. Seuss Copyrighted Works in the Infringing Work;
- c. Distributing copies of the Infringing Work, which contains copyrighted elements of the Dr. Seuss Copyrighted Works;
- d. Displaying or causing display of the Infringing Work, which contains copyrighted elements of the Dr. Seuss Copyrighted Works.

63. As a direct and proximate result of the foregoing acts, DSE has been damaged and has suffered, and will continue to suffer, significant damages, in an amount to be proved at trial.

64. Upon information and belief, Defendants have infringed the copyrights in the Dr. Seuss Copyrighted Works with actual or constructive knowledge of

1 DSE's rights such that said acts of copyright infringement were, and continue to be,
2 willful and intentional.

3 65. In addition, Defendants' violations of the Copyright Act have caused
4 and, unless enjoined by this Court, will continue to cause irreparable injury to DSE.
5 DSE is therefore entitled to a preliminary and permanent injunction enjoining and
6 restraining Defendants from infringing the copyrights in the Dr. Seuss Copyrighted
7 Works, including but not limited to continuing to reproduce, distribute, display,
8 market, advertise, promote, produce, sell, or offer for sale the Infringing Work or
9 any works that are derivative of or copied from the Dr. Seuss Copyrighted Works.

10 **COUNT II**
11 **Lanham Act Violation, 15 U.S.C. § 1114**
12 **(Against All Defendants)**

13 66. DSE repeats and realleges every allegation in Paragraphs 1 through 65
14 of its First Amended Complaint as if fully set forth herein.

15 67. DSE owns United States Trademark Registration No. 5,099,531 for
16 OH THE PLACES YOU'LL GO in connection with downloadable digital
17 children's books, among other goods, which, as alleged above, is referred to as the
18 OTPYG E-Book Mark.

19 68. The OTPYG E-Book Mark is distinctive and has acquired secondary
20 meaning in the minds of the public, and is readily associated with Theodor S.
21 Geisel, Dr. Seuss, and DSE.

22 69. Defendants' unauthorized use of DSE's OTPYG E-Book Mark, or a
23 confusingly similar copy or colorable imitation thereof, in connection with the sale,
24 offering for sale, distribution, or advertising of the Infringing Work is highly likely
25 to cause confusion, or to cause mistake, or to deceive as to Dr. Seuss's approval,
26 sponsorship, endorsement, or licensing of the Infringing Work in violation of 15
27 U.S.C. § 1114(1).

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1 70. As a direct and proximate result of the foregoing acts, DSE has been
2 damaged and has suffered, and will continue to suffer, significant damages, in an
3 amount to be proved at trial.

4 71. Defendants' use of the OTPYG E-Book Mark, or a confusingly similar
5 copy or colorable imitation thereof, in connection with the sale, offering for sale,
6 distribution, or advertising of the Infringing Work was and is without consent from
7 DSE, and constitutes willful and intentional infringement of DSE's OTPYG E-
8 Book Mark. Pursuant to 15 U.S.C. § 1117(a), DSE is entitled to recover its
9 reasonable attorneys' fees incurred in this action.

10 72. Defendants' violations of 15 U.S.C. § 1114(1) have also caused, and,
11 unless enjoined by this Court, will continue to cause, irreparable injury to DSE
12 which is not fully compensable in monetary damages. DSE is therefore entitled to a
13 permanent injunction enjoining and restraining Defendants from use of the OTPYG
14 E-Book Mark or any other mark that is confusingly similar to the OTPYG E-Book
15 Mark.

16 **COUNT III**
17 **Lanham Act Violation, 15 U.S.C. § 1125(a)**
18 **(Against All Defendants)**

19 73. DSE repeats and realleges every allegation in Paragraphs 1 through 72
of its First Amended Complaint as if fully set forth herein.

20 74. The Dr. Seuss Marks are distinctive and have acquired secondary
21 meaning in the minds of the public, and are associated with Theodor S. Geisel, Dr.
22 Seuss, and DSE.

23 75. Defendants' use of the Dr. Seuss Marks and any colorable imitation of
24 DSE's Dr. Seuss Marks in the Infringing Works, is a use in commerce of any word,
25 term, name, symbol, or device, or combination thereof, and a false designation of
26 origin, which is likely to cause confusion or mistake in the public mind or to
27 deceive the public, as to the affiliation, connection or association of Defendants
28

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1 with Theodor S. Geisel, Dr. Seuss, and DSE, or as to the origin, sponsorship, or
2 approval of Defendants' goods, services, or commercial activities by DSE.

3 76. Defendants' willful misappropriation of the stylized font that DSE uses
4 consistently throughout the Dr. Seuss books, willful misappropriation of the title
5 OH, THE PLACES YOU'LL GO!, and slavish copying of Dr. Seuss's unique
6 illustration style explicitly misleads and confuses consumers as to the Infringing
7 Work's source and falsely suggests that the Infringing Work is sponsored or
8 endorsed by DSE.

9 77. Defendants' fine-print disclaimer buried on the Infringing Work's
10 third page is ineffective and does not alleviate the potential for consumer confusion
11 as to DSE's approval, sponsorship, endorsement, or licensing of the Infringing
12 Work.

13 78. Defendants' acts constitute false designation of origin, false
14 endorsement, and unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

15 79. As a direct and proximate result of the foregoing acts, DSE has been
16 damaged and has suffered, and will continue to suffer, significant damages, in an
17 amount to be proved at trial.

18 80. Defendants' conduct has been intentional and willful and is calculated
19 specifically to trade off the goodwill that DSE has developed in its Dr. Seuss
20 Marks. Pursuant to 15 U.S.C. § 1117(a), DSE is entitled to recover its reasonable
21 attorneys' fees incurred in this action.

22 81. In addition, Defendants' violations of 15 U.S.C. § 1125(a) have caused
23 and, unless enjoined by this Court, will continue to cause irreparable injury to
24 DSE's goodwill, business identity and reputation. DSE is therefore entitled to a
25 preliminary and permanent injunction enjoining and restraining Defendants from
26 use of the Infringing Works or any other mark that is confusingly similar to DSE's
27 Dr. Seuss Marks.

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1 **COUNT IV**
2 **California Statutory Unfair Competition, Business and Professions**
3 **Code § 17200**
4 **(Against All Defendants)**

5 82. DSE repeats and realleges every allegation in Paragraphs 1 through 81
6 of its First Amended Complaint as if fully set forth herein.

7 83. DSE is the exclusive owner of the common law trademark rights in the
8 Dr. Seuss Marks. No license or authorization has been granted to Defendants to use
9 any of these marks, or variations thereon.

10 84. Defendants, with full knowledge of the public awareness and value of
11 the Dr. Seuss Marks, have traded on the goodwill associated with them and have
12 misled and will continue to mislead the public into assuming a connection between
13 DSE and the Infringing Work by Defendants' continued use of the Dr. Seuss
14 Marks, even though such use is not authorized by DSE.

15 85. By willfully misappropriating the stylized font that DSE uses
16 consistently throughout the Dr. Seuss books, willfully misappropriating the title
17 OH, THE PLACES YOU'LL GO!, and slavishly copying Dr. Seuss's unique
18 illustration style, Defendants have explicitly mislead and confused consumers as to
19 the Infringing Work's source and falsely suggest that the Infringing Work is
20 sponsored or endorsed by DSE constituting unfair competition within the meaning
21 of California Business and Professions Code Section 17200 *et seq.*

22 86. By falsely suggesting a connection with or sponsorship by DSE,
23 Defendants' use of the Dr. Seuss Marks has caused and is likely to cause public
24 confusion constituting unfair competition within the meaning of California
25 Business and Professions Code Section 17200 *et seq.*

26 87. In addition, Defendants' violations of California Business and
27 Professions Code Section 17200 *et seq.* have caused and, unless enjoined by this
28 Court, will continue to cause irreparable injury to DSE's goodwill, business identity
and reputation. DSE is therefore entitled to a permanent injunction enjoining and

1 restraining Defendants from use of the Infringing Works or any other mark that is
2 confusingly similar to DSE's Dr. Seuss Marks.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, DSE requests that the Court grant the following relief:

5 A. A judgment against Defendants, determining and adjudging:

- 6 1. that Defendants have willfully infringed and are infringing
7 copyrights in the federally registered Dr. Seuss Copyright
8 Works under 17 U.S.C. § 106;
- 9 2. that Defendants have willfully infringed and are infringing
10 DSE's rights in United States Trademark Registration No.
11 5,099,531 by using a reproduction, copy, or colorable imitation
12 of DSE's OTPYG E-Book Mark that is likely to cause
13 confusion, mistake, or to deceive, in violation of 15 U.S.C. §
14 1114(1);
- 15 3. that Defendants have willfully committed and are committing
16 acts of false designation of origin, false or misleading
17 description of fact, or false or misleading representation in
18 violation of DSE's rights under 15 U.S.C. § 1125(a) and
19 California state law;
- 20 4. that Defendants have willfully and deliberately competed
21 unfairly with DSE in violation of DSE's rights under 15 U.S.C.
22 § 1125(a) and California state law;

23 B. An Order preliminarily and permanently enjoining Defendants, their
24 officers, agents, representatives, servants, employees, attorneys, successors and
25 assigns, and all others in active concert or participation with Defendants from:

- 26 1. infringing the copyrights in the Dr. Seuss Copyrighted Works,
27 including but not limited to continuing to reproduce, distribute,
28 display, market, advertise, promote, produce, sell, or offer for

- 1 sale the Infringing Work or any works that are derivative of or
2 copied from the Dr. Seuss Copyrighted Works;
- 3 2. manufacturing, assembling, producing, distributing, offering for
4 distribution, circulating, selling, offering for sale, advertising,
5 importing, promoting, or displaying any simulation,
6 reproduction, counterfeit, copy, or colorable imitation of the
7 OTPYG E-Book Mark or any mark confusingly similar thereto;
- 8 3. manufacturing, assembling, producing, distributing, offering for
9 distribution, circulating, selling, offering for sale, advertising,
10 importing, promoting, or displaying any simulation,
11 reproduction, counterfeit, copy, or colorable imitation of the Dr.
12 Seuss Marks or any mark confusingly similar thereto;
- 13 4. using any false designation of origin or false description or
14 statement which can or is likely to lead the public or individuals,
15 erroneously to believe that the Infringing Work has been
16 provided, produced, distributed, offered for distribution,
17 circulation, sold, offered for sale, imported, advertised,
18 promoted, displayed, licensed, sponsored, approved, or
19 authorized by or for DSE, when such is not true in fact;
- 20 5. engaging in any other activity constituting an infringement of
21 the Dr. Seuss Intellectual Property, or of DSE's rights in, or
22 right to use or to exploit the Dr. Seuss Intellectual Property; and
- 23 6. assisting, aiding, or abetting any other person or business entity
24 in engaging in or performing any of the activities referred to in
25 subparagraphs (1) through (5) above.

26 C. An award to DSE, at its election prior to entry of final judgment, of
27 statutory damages of up to \$150,000 for each separate Dr. Seuss Copyrighted Work
28 infringed, for willful infringement pursuant to 17 U.S.C. § 504(c), or DSE's actual

1 damages sustained as a result of Defendants’ acts of copyright infringement
2 according to proof and Defendants’ profits obtained as a result of their acts of
3 copyright infringement according to proof;

4 D. An Order requiring Defendants to account and pay over to DSE all
5 gains, profits, and advantages derived by them as a result of its infringement of the
6 Dr. Seuss Marks to the full extent provided for by Section 35 of the Lanham Act,
7 15 U.S.C. § 1117;

8 E. An award to DSE of such damages as it has sustained by reason of
9 Defendants’ infringement of the Dr. Seuss Marks; and that, because of the willful
10 nature of said infringement, the Court enter judgment for DSE for three times of the
11 amount of said damages, pursuant to Section 35 of the Lanham Act, 15 U.S.C. §
12 1117;

13 F. An award to DSE of its costs and expenses incurred in the
14 investigation and prosecution of this action, including reasonable attorneys’ fees,
15 pursuant to 17 U.S.C. § 505 and Section 35 of the Lanham Act, 15 U.S.C. § 1117;
16 and

17 G. Such other and further relief as the Court deems just and proper.

18
19 Dated: June 22, 2017

20 DLA PIPER LLP (US)

21 Of Counsel:

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DEMAND FOR JURY TRIAL

DSE hereby demands a trial by jury on all issues and claims so triable.

Dated: June 22, 2017

DLA PIPER LLP (US)

Of Counsel:

By: /s/ Gina Durham

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APPENDIX A: COPYRIGHTED DR. SEUSS WORKS

1. *How the Grinch Stole Christmas!*, U.S. Copyright Registration No. A 312043, Renewal Registration No. RE 238319.
2. *The Lorax*, U.S. Copyright Registration No. A 301289, Renewal Registration No. RE 805038.
3. *Horton Hears a Who*, U.S. Copyright Registration No. A 152927, Renewal Registration No. RE 115184.
4. *The Sneetches and Other Stories*, U.S. Copyright Registration No. A 543386, Renewal Registration No. RE 425704.
5. *Oh, the Places You'll Go!*, U.S. Copyright Registration No. VA-430950.

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25 UNITED STATES DISTRICT COURT
26 SOUTHERN DISTRICT OF CALIFORNIA

27 DR. SEUSS ENTERPRISES, L.P., a
28 California limited partnership,

Plaintiff,

v.

CASE NO.: 3:16-cv-02779-JLS-BGS

FIRST AMENDED COMPLAINT
FOR:

1. COPYRIGHT

1 COMICMIX LLC, a Connecticut
2 limited liability company; MR.
3 GLENN HAUMAN, an individual;
4 MR. DAVID JERROLD
5 FRIEDMAN A/K/A DAVID
6 GERROLD, an individual; and MR.
7 TY TEMPLETON, an individual,
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9 Defendants.
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INFRINGEMENT;
2. TRADEMARK
INFRINGEMENT; AND
3. UNFAIR COMEPTITION
DEMAND FOR JURY TRIAL

1 Plaintiff Dr. Seuss Enterprises, L.P. (“DSE”), by its attorneys, DLA Piper
 2 LLP (US), brings this action for copyright infringement, trademark infringement,
 3 and unfair competition against defendants ComicMix LLC (“ComicMix”), Mr.
 4 David Jerrold Friedman a/k/a David Gerrold (“Gerrold”), Mr. Ty Templeton
 5 (“Templeton”), and Mr. Glenn Hauman (“Hauman”) (collectively, “Defendants”),
 6 and by and for their [First Amended](#) Complaint (the “[First Amended](#) Complaint”)
 7 alleges as follows:

8 NATURE OF THE ACTION

9 1. This is an action for: (a) infringement of registered copyrights in
 10 violation of the Copyright Act (17 U.S.C. § 101 *et seq.*); (b) [federal trademark](#)
 11 [infringement in violation of 15 U.S.C. § 1114](#); (c) unfair competition and passing
 12 off in violation of 15 U.S.C. § 1125(a); and (ed) violation of California Business
 13 and Professions Code Section 17200, arising out of Defendants’ unauthorized
 14 exploitation of the works of Theodor S. Geisel, better known under his
 15 pseudonym, “Dr. Seuss,” one of the most successful children’s books authors and
 16 illustrators of all time. Generations of children, and adults, around the world have
 17 been entertained and instructed by Dr. Seuss’s whimsical stories, unique poetry
 18 and drawing style, and beloved characters. Plaintiff DSE owns the intellectual
 19 property, including copyrights and trademarks, in these treasured works—which
 20 includes nearly 60 books published over more than a half-century—and it
 21 continues to produce new original content, including books, animated and live-
 22 action television and film adaptations, theatrical and other works [and consumer](#)
 23 [products](#).

24 2. Defendants have created, without DSE’s authorization, a book
 25 entitled, “Oh, The Places You’ll Boldly Go!” (the “Infringing Work”), and have
 26 solicited investors to finance their mass production and distribution efforts for the
 27 Infringing Work. The Infringing Work infringes DSE’s works by using
 28

1 innumerable copyrighted elements of several well-known Dr. Seuss works,
2 including the works' settings, illustrations, characters, prose, and themes. The
3 Infringing Work unabashedly misappropriates DSE's intellectual property to create
4 the "look and feel" of an authorized Dr. Seuss work, while also taking without
5 authorization intellectual property from another rights holder, the owner of
6 intellectual property in the Star Trek works. Upon information and belief,
7 Defendants have raised nearly \$30,000 so far to produce the Infringing Work, and
8 have agreed to a publishing deal, intending to print and ship thousands of copies of
9 the Infringing Work in time for the ~~upcoming~~2016 holiday season. Upon
10 information and belief, Defendants have already distributed portions of the
11 Infringing Work online in connection with their fundraising efforts. Defendants,
12 via the Infringing Work, not only appropriate without authorization and blatantly
13 infringe DSE's valuable copyrights in the Dr. Seuss works, but also mislead and
14 deceive or are likely to mislead or deceive the public as to the Infringing Work's
15 source and as to DSE's approval, sponsorship, endorsement, or licensing of the
16 Infringing Work. Unless enjoined, Defendants will cause irreparable injury to
17 DSE's goodwill, identity, and reputation, for which DSE has no adequate remedy
18 at law.

19 THE PARTIES

20 3. Plaintiff DSE is a California limited partnership which owns the
21 copyrights and trademarks, and all related rights to the characters, illustrations and
22 words of the works of Theodor S. Geisel, the author and illustrator of the well-
23 known children's educational books written under the pseudonym "Dr. Seuss."

24 4. Upon information and belief, defendant ComicMix is a limited liability
25 company organized and existing under the laws of the State of Connecticut with its
26 principal place of business located at 304 Main Avenue, Suite 194, Norwalk,
27 Connecticut 06851, and is doing business in and with the State of California as a
28

1 publisher and distributor of books, e-books, and webcomics. Upon information
2 and belief, defendant ComicMix markets, and intends to sell, reproduce, and
3 distribute, the Infringing Work throughout the United States, on the Internet, and in
4 the State of California.

5 5. Upon information and belief, defendant Hauman is an individual who
6 resides in the State of New Jersey and is the Co-founder, Vice President,
7 Operations and Production Manager of defendant ComicMix, and is doing business
8 in and with the State of California. Upon information and belief, defendant
9 Hauman is the editor of the Infringing Work. Upon information and belief,
10 defendant Hauman intends to sell, reproduce, and distribute, the Infringing Work
11 throughout the United States, on the Internet, and in the State of California.

12 6. Upon information and belief, defendant Gerrold is an individual who
13 resides in the State of California. Upon information and belief, defendant Gerrold
14 is a co-author of the Infringing Work. Upon information and belief, defendant
15 Gerrold intends to sell, reproduce, and distribute, the Infringing Work throughout
16 the United States, on the Internet, and in the State of California.

17 7. Upon information and belief, defendant Templeton is an individual
18 who resides in Toronto, Ontario, and is doing business in and with the State of
19 California. Upon information and belief, defendant Templeton is the illustrator of
20 the Infringing Work. Upon information and belief, defendant Templeton intends to
21 sell, reproduce, and distribute, the Infringing Work throughout the United States,
22 on the Internet, and in the State of California.

23 **JURISDICTION AND VENUE**

24 8. This action arises under the Copyright Act of 1976 (17 U.S.C. §§
25 101, *et seq.*) and the Federal Trademark Act of 1946, known as the Lanham Act
26 (15 U.S.C. § 1125(a)).

27 9. This Court has subject matter jurisdiction over this action pursuant to
28

1 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court also
2 has subject matter jurisdiction over DSE’s related claims under state law pursuant
3 to 28 U.S.C. § 1367(a).

4 10. This Court has personal jurisdiction over Defendants pursuant to Cal.
5 Code Civ. Proc § 410.10 because some or all of them reside in this state, because
6 all Defendants conduct continuous, systematic, and routine business within this
7 state and this District, and because all Defendants have personally and
8 intentionally planned, authorized, and facilitated infringing acts that have or will
9 take place in California.

10 11. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and
11 1400(a) because a substantial part of the events giving rise to DSE’s claims arose
12 in this District and because Defendants reside or may be found in this District.

13 **FACTUAL ALLEGATIONS**

14 **A. The Dr. Seuss Intellectual Property**

15 12. Theodor S. Geisel, under the pseudonyms Dr. Seuss and Theo LeSeig,
16 began writing and illustrating children’s books at least as early as 1937. Between
17 1937 and 1990, Theodor S. Geisel wrote, illustrated, and published almost 60 Dr.
18 Seuss and LeSeig books. After Theodor S. Geisel’s death in 1991, DSE published
19 additional Dr. Seuss books written and illustrated by Theodor S. Geisel. Most of
20 the Dr. Seuss books were written to entertain children, but more importantly, to
21 promote and stimulate children’s love of reading and literary skills.

22 13. Theodor S. Geisel authored the Dr. Seuss books in simple, rhyming,
23 repetitive prose, accompanied by his descriptions and illustrations of characters
24 that are distinctive, recognizable, and appealing to children. The Dr. Seuss
25 characters are often zany animals with human-like characteristics. The Dr. Seuss
26 books are set in distinctive, whimsical and fantastical landscapes and created in a
27 style unique to Dr. Seuss that makes them immediately recognizable as Dr. Seuss
28

1 works.

2 14. The Dr. Seuss books are iconic, and among the most popular
3 children’s books of all time. The Dr. Seuss books have topped many bestseller
4 lists, sold over 650 million copies worldwide, and been translated into more than a
5 dozen languages. Children around the world read the Dr. Seuss books, and
6 parents and educators worldwide use the Dr. Seuss books to motivate children,
7 teach community values, and enhance literacy.

8 15. The Dr. Seuss books and the Dr. Seuss characters are widely-known
9 and recognized throughout the world. Some of the most well-known Dr. Seuss
10 books, for example, are: *Oh, the Places You’ll Go!*; *The Cat in the Hat*; *Horton*
11 *Hears a Who*; *How the Grinch Stole Christmas!*; *The Lorax*; *One Fish Two Fish*
12 *Red Fish Blue Fish*; *Green Eggs and Ham*; *Yertle the Turtle*; *Fox in Socks*; and
13 *The Sneetches and Other Stories*.

14 16. The Dr. Seuss books and characters are original works of authorship
15 and constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. §§
16 101, *et seq.* The Dr. Seuss books and characters are duly registered for copyright
17 with the United States Copyright Office. These copyright registrations are
18 perfected and, where appropriate, have been renewed with the United States
19 Copyright Office and all registrations are in full force. The United States
20 Copyright Office has issued Certificates of Registration for these works that bear
21 the numbers identified in Appendix A (collectively, the “Dr. Seuss Copyrighted
22 Works”). DSE is the owner of all of these registrations and rights, by assignment.

23 17. In addition, DSE is the owner of [registered and common law](#)
24 trademark rights in multiple aspects of Dr. Seuss [books and various](#) goods that
25 function, individually and collectively, as indicators of source, and make those
26 goods immediately recognizable as deriving from Dr. Seuss. With respect to this
27 litigation, those aspects include in relevant part: (1) the title OH, THE PLACES
28

1 YOU'LL GO!; (2) the stylized font used consistently ~~throughout~~ on the front and
2 back covers, spine, and title page of the Dr. Seuss books such that this use of the
3 stylized font has come to be recognized by consumers as a source identifier for Dr.
4 Seuss, and (3) the unique illustration style of the characters and backgrounds found
5 throughout Dr. Seuss books (collectively, the "Unregistered Dr. Seuss Marks") ~~(the~~
6 ~~"Dr. Seuss Marks,~~

7 18. In connection with its trademark rights in multiple aspects of the Dr.
8 Seuss books and various goods, DSE owns a number of United States trademark
9 registrations. In fact, DSE uses *Oh, The Places You'll Go!* as an identifier of
10 source for a variety of goods including for books and other works and consumer
11 products. DSE currently owns eight United States trademark registrations, plus
12 one pending application, for OH THE PLACES YOU'LL GO, and one United
13 States trademark registration for OH, THE PLACES YOU'LL GO! 25TH
14 ANNIVERSARY in connection with a wide variety of goods, including books and
15 electronic books, across International Classes 06, 09, 16, 14, 21, 24, 25, 28, 30,
16 32, 35, 41. Of particular relevance to this litigation, DSE owns United States
17 Trademark Registration No. 5,099,531 for OH THE PLACES YOU'LL GO in
18 connection with downloadable digital children's books, among other goods (the
19 "OTPYG E-Book Mark"). The OTPYG E-Book Mark is distinctive and has
20 acquired secondary meaning in the minds of the public, and is readily associated
21 with Theodor S. Geisel, Dr. Seuss, and DSE.

22 19. As discussed in Paragraph 22 below, DSE is also the owner of a
23 family of common law trademarks deriving from the title *Oh, The Places You'll*
24 *Go!*, which DSE has used in connection with the publication of several books and
25 other works that are derivative of *Oh, The Places You'll Go!*, such as *Oh, the*
26 *Places I'll Go! By ME, Myself, Oh, Baby, the Places You'll Go!*, and *Oh, the*
27 *Places I've Been! Journal*, and a live-action production titled *Oh! The Stories*
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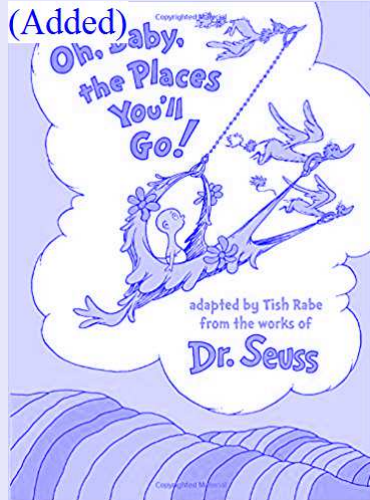
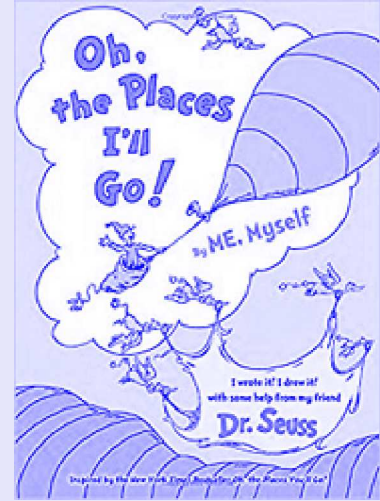
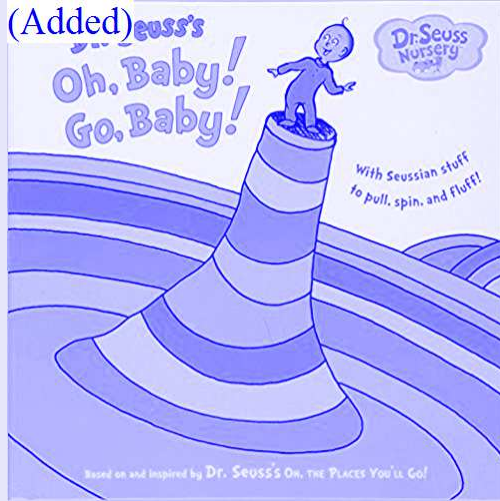
1 You'll Hear! (collectively, the "OTPYG Title Marks"). The OTPYG Title Marks
2 are distinctive and have acquired secondary meaning in the minds of the public,
3 and are readily associated with Theodor S. Geisel, Dr. Seuss, and DSE.

4 20. The Unregistered Dr. Seuss Marks, the OTPYG E-Book Mark, and
5 the OTPYG Title Marks are referred to collectively as the "Dr. Seuss Marks," and
6 together with the "The-Dr. Seuss Copyrighted Works," are referred to collectively
7 as the "Dr. Seuss Intellectual Property"). The Dr. Seuss Marks are well-known
8 and recognized worldwide. The Dr. Seuss Marks are distinctive and have
9 acquired secondary meaning in the minds of the public, and are readily associated
10 with
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12 Theodor S. Geisel, Dr. Seuss, and DSE. As the owner of the Dr. Seuss Marks,
13 DSE enjoys extensive goodwill associated therewith.

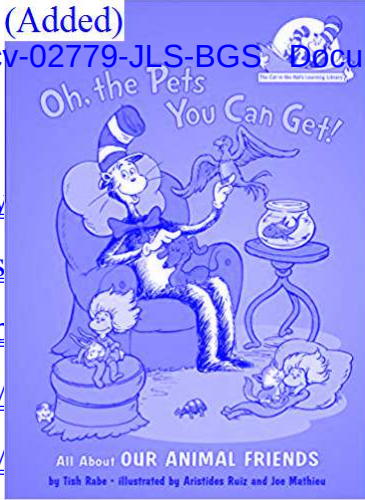
14 21. DSE oversees a robust publishing program, which includes
15 anniversary editions, reissues in new formats or sizes, and updated editions of the
16 iconic Dr. Seuss books and posthumous releases of Dr. Seuss's previously-
17 unpublished works, such as *What Pet Should I Get?*, published in 2015. DSE also
18 works with authors and illustrators to create additional authorized Dr. Seuss
19 works.

20 22. DSE has published several books that are derivative of *Oh, The*
21 *Places You'll Go!*, such as *Oh, Baby! Go, Baby!*, *Oh, the Places I'll Go! By ME,*
22 *Myself, Oh, Baby, the Places You'll Go!*, and *Oh, the Places I've Been! Journal,*
23 covers of which are seen below. Accordingly, the consuming public has come to
24 associate these derivative works and the OTPYG Title Marks with Dr. Seuss, and
25 understands that additional works that include artwork from *Oh, The Places You'll*
26 *Go!*, have titles similar to *Oh, The Places You'll Go!*, and use the OTPYG Title
27 Marks originate from or are sponsored by Dr. Seuss.

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23. DSE also publishes several series, including, for example, the Bright and Early series, which includes works by Dr. Seuss and other authors and illustrators whose works reflect the same source-indicating whimsical, lyrical style of Dr. Seuss’s books. Another DSE series, titled The Cat In The Hat Learning Library, includes books written and illustrated by other authors and artists that are based upon and incorporate the Dr. Seuss Intellectual Property, including the OTPYG Title Marks. The Cat In The Hat Learning Library series includes titles such as Oh, The Things You Can Do That Are Good For You!, There’s No Place Like Space!, Oh, The Pets You Can Get!, and many more. Examples of the covers of some of these works are seen below. Notably, “Dr. Seuss” does not appear on



1 any and all of the covers include names of other authors,
 2 des works are authorized by DSE and are recognized by the
 3 pub

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18 24. In addition to publishing, DSE often licenses the Dr. Seuss Intellectual
 19 Property in connection with the creation of new works based upon and
 20 incorporating the Dr. Seuss Intellectual Property. DSE has licensed the Dr. Seuss
 21 Intellectual Property in connection with the *Seuss Landing* attraction at the
 22 Universal Islands of Adventure theme park in Orlando, Florida, which includes a
 23 live-action production titled *Oh! The Stories You'll Hear!* featuring many of Dr.
 24 Seuss's well-known and beloved characters and stories. DSE has also licensed the
 25 Dr. Seuss Intellectual Property in connection with the production of several
 26 children's television series, including *The Cat In The Hat Knows A Lot About That*
 27 educational series on PBS Kids and *The Wubbulous World Of Dr. Seuss*, a live-
 28

1 action/puppet show produced by The Jim Henson Company featuring Dr. Seuss’s
2 well-known and beloved characters alongside new, Muppet-like characters created
3 by The Jim Henson Company.

4 25. DSE also oversees an extensive licensing and merchandising program
5 that extends the Dr. Seuss Intellectual Property across toys and games, children’s
6 apparel, young adult and adult apparel, puzzles and educational kits, home
7 furnishings, cards and stationery, hats, bags, accessories, party supplies, art,
8 collectibles, classroom materials, and fabrics. Such licensing activities have
9 included collaborations with other rights holders. Examples of such authorized co-
10 branding initiatives include everything from co-branded collegiate bibs to Dr. Seuss
11 Chuck Taylors®:



19 26. DSE’s primary focus is to protect the integrity of the Dr. Seuss books
20 while expanding beyond books into ancillary areas through this licensing program.
21 This effort is a strategic part of the overall mission to nurture and safeguard the
22 relationship consumers have with Dr. Seuss books and characters and to control
23 the goodwill associated with Dr. Seuss.

24 **B. Defendants’ Infringing Use Of The Dr. Seuss Intellectual**
25 **Property**

26 27. 18- Upon information and belief, Defendants’ Infringing Work is a
27 book which purports to be an amalgamation of the Dr. Seuss works and certain

1 characters, imagery, and other elements from *Star Trek*, the well-known science
2 fiction entertainment franchise created by Gene Roddenberry.

3 28. ~~19.~~ Upon information and belief, defendant Gerrold authored the text
4 of the Infringing Work and has a meaningful role in its promotion and sale.

5 29. ~~20.~~ Upon information and belief, defendant Templeton illustrated the
6 Infringing Work and has a meaningful role in its promotion and sale.

7 30. ~~21.~~ Upon information and belief, defendant Hauman edited the
8 Infringing Work and has a meaningful role in its promotion and sale.

9 31. ~~22.~~ Upon information and belief, defendant ComicMix is publishing,
10 distributing, promoting, and marketing the Infringing Work.

11 ////

12 32. ~~23.~~ Upon information and belief, when Defendants wrote, illustrated,
13 and edited the Infringing Work, and at all times relevant to this action, Defendants
14 had access to and copied the Dr. Seuss Copyrighted Works.

15 33. ~~24.~~ At all times relevant to this action, Defendants have acted without
16 authorization or license from DSE.

17 34. ~~25.~~ At all times relevant to this action, Defendants have acted without
18 authorization or license from CBS Studios, Inc. (“CBS Studios”), the owner of the
19 intellectual property in *Star Trek*.

20 35. ~~26.~~ Defendants have misappropriated many of the most recognizable
21 protected elements of the Dr. Seuss Copyrighted Works into the Infringing Work,
22 including making wholesale slavish copies of the Dr. Seuss Copyrighted Works’
23 distinctive illustrations and text. The Infringing Work misappropriates key
24 protected elements of *Oh, The Places You’ll Go!*, including without limitation its
25 title, story arc, characters, and illustrations. The Infringing Work also
26 misappropriates key protected elements of *Horton Hears a Who*, *How the Grinch*
27 *Stole Christmas!*, *The Lorax*, and *The Sneetches and Other Stories*, including
28

1 without limitation characters and illustrations therefrom.

2 36. ~~27.~~ Defendants have also misappropriated and, without permission,
 3 used ~~many of~~ the Dr. Seuss Marks in the Infringing Work.

4 37. ~~28.~~ Set forth below are several examples, among many, of Defendant’s
 5 slavish copying of the Dr. Seuss Copyrighted Works, which attempt to recreate
 6 entire pages from the Dr. Seuss Books with meticulous precision, and thereby
 7 infringe both copyrights owned by DSE and the Dr. Seuss Marks:

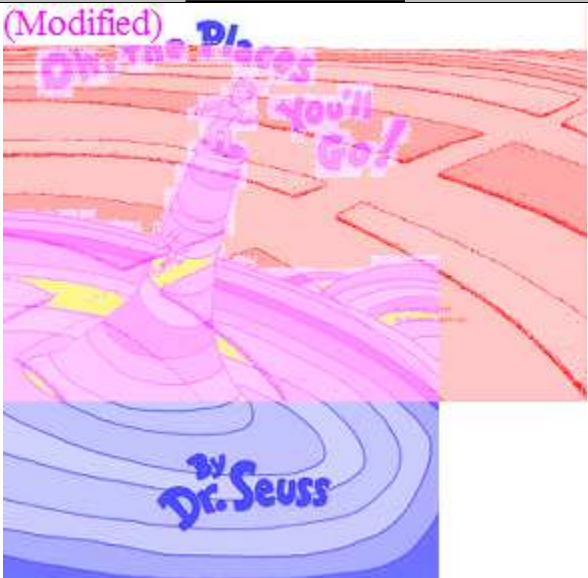
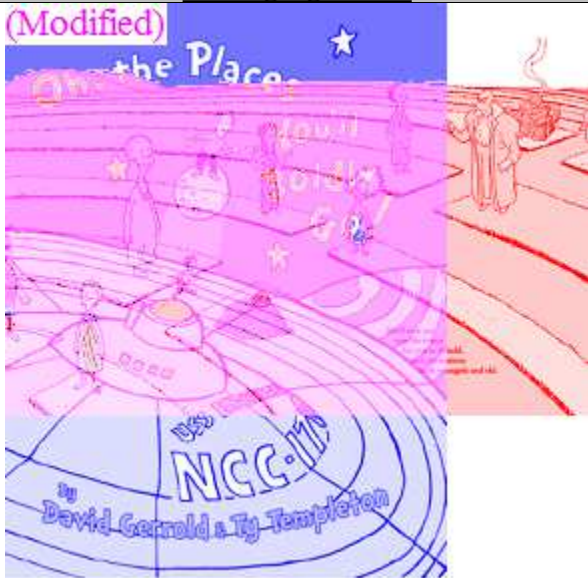
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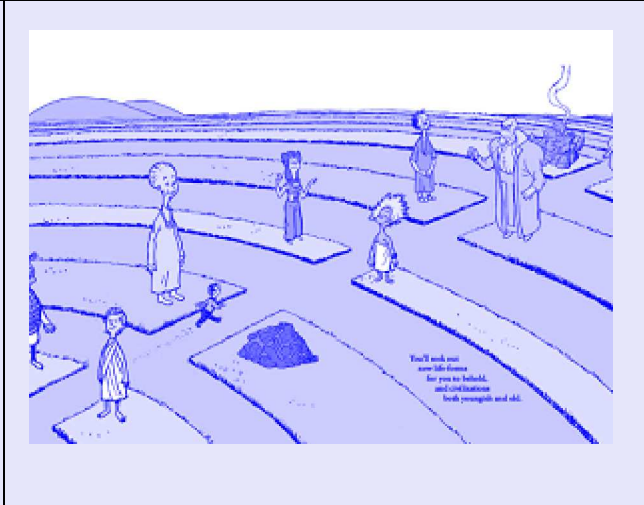
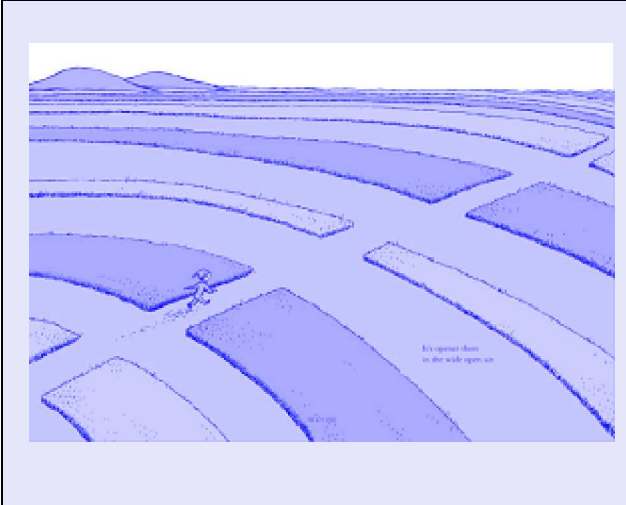
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Dr. Seuss Work	Infringing Work
	

<u>Dr. Seuss Work</u>	<u>Infringing Work</u>
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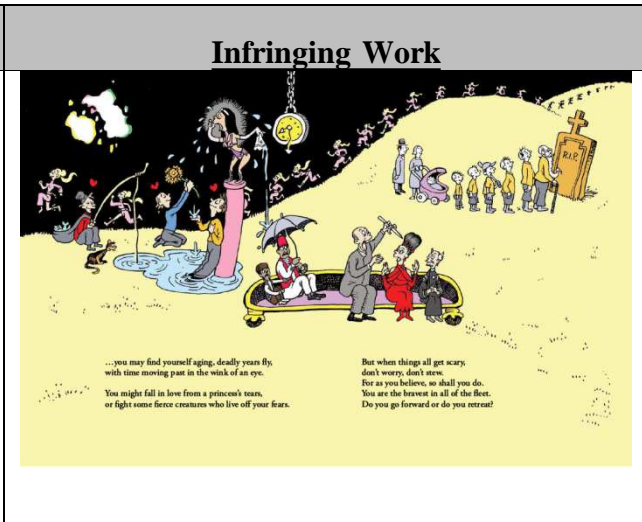
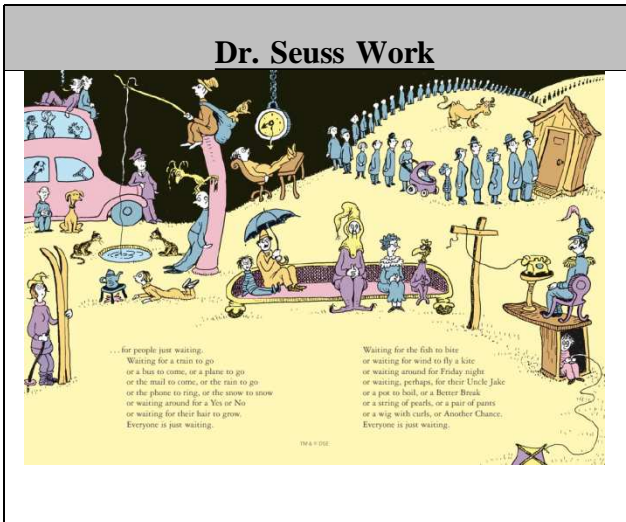
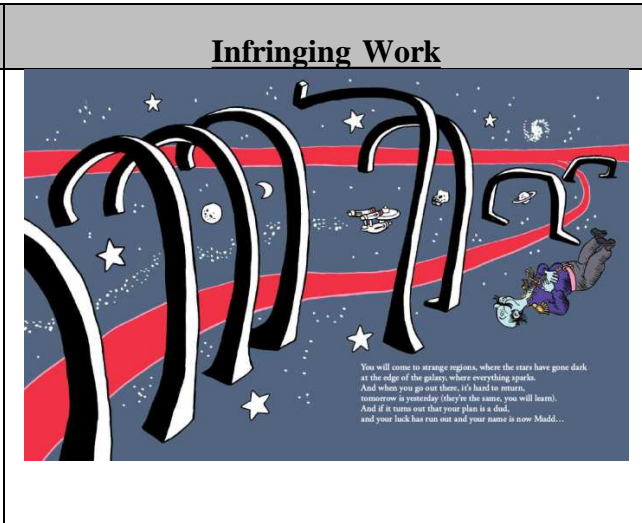
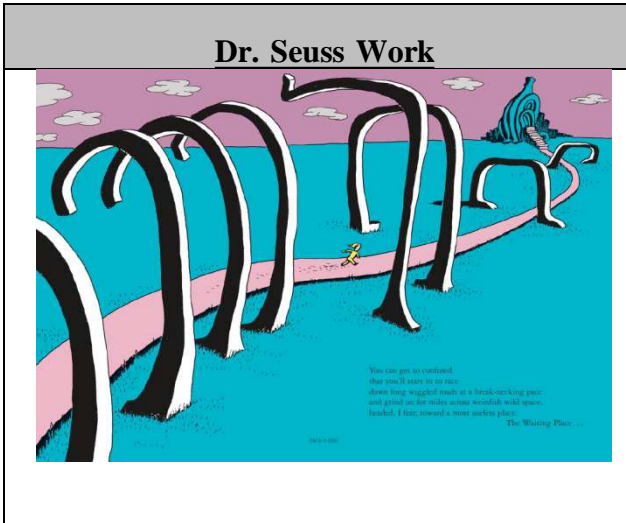
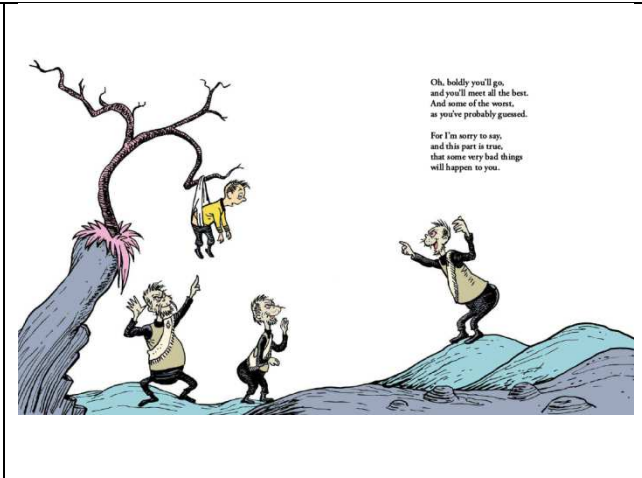
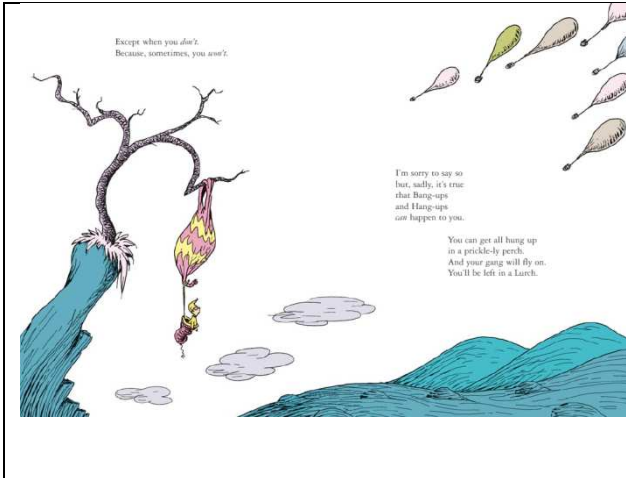


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Dr. Seuss Work	Infringing Work
<p>And THEN They'd do something He liked least of all! Every Who down in Who-ville, the tall and the small, Would stand close together, with Christmas bells ringing, They'd stand hand-in-hand. And the Who would start singing!</p> <p>They'd stop! And they'd sing! AND they'd SING! SING! SING! SING! And the more the Grinch thought of this Who-Christmas-Sing, The more the Grinch thought, "I must stop this whole thing!" "Why, for fifty-three years I've put up with it now! "I MUST stop this Christmas from coming!" ... But HOW?"</p> <p>© 1964 H. P. Lovecraft</p>	<p>You'll make lifelong friends. You'll love them like brothers. (Even when they cannot stand one another.) You'll encounter lovers of every hue (though they'll never be back for an episode two).</p> <p>Wild things will happen, and usually do, to starship explorers and their marvelous crew.</p>

Dr. Seuss Work	Infringing Work
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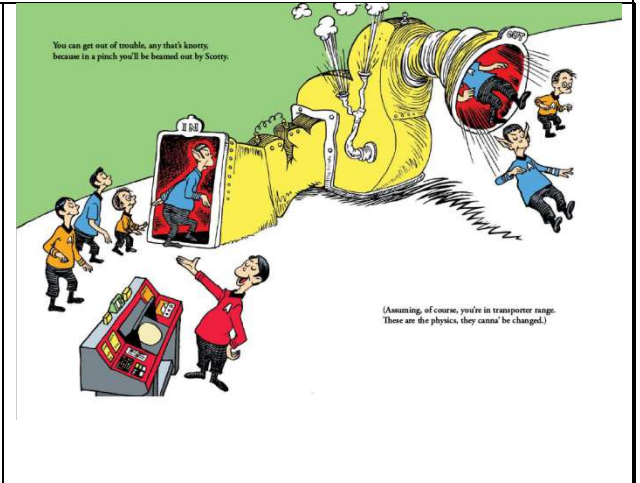
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Dr. Seuss Work

Infringing Work

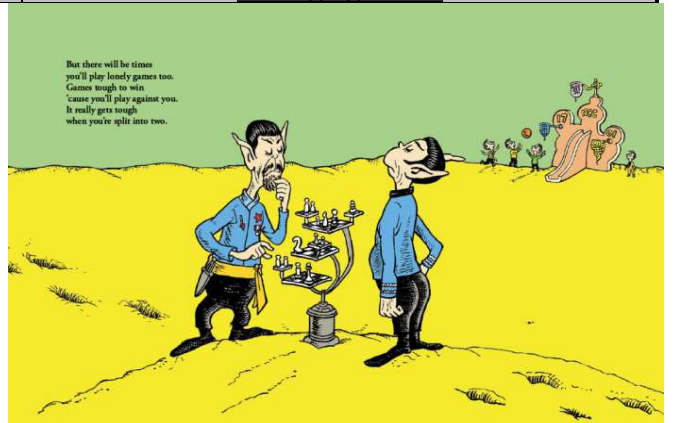
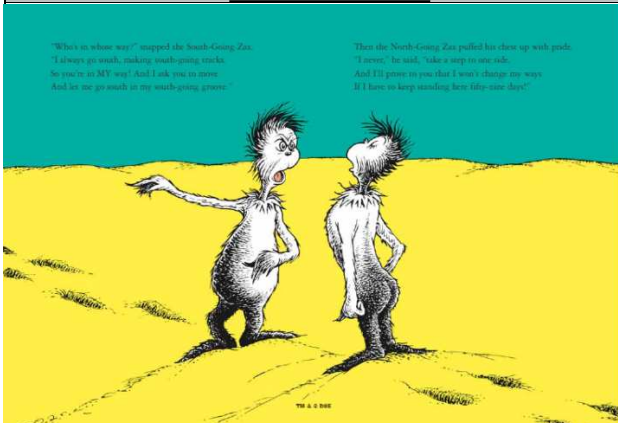
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Dr. Seuss Work

Infringing Work



38. ~~29.~~ Defendants have willfully misappropriated and used the Dr. Seuss

1 Marks in the Infringing Work with the intent to commercially benefit from the
2 popularity and extensive goodwill associated with the Dr. Seuss Marks.

3 39. ~~30.~~ Defendants deliberately wrote and illustrated the Infringing Work
4 with the intention of imitating the Dr. Seuss Marks, and creating confusion in the
5 minds of the relevant public as to the origin of the Infringing Work and/or
6 deceiving the public as to Dr. Seuss's approval, sponsorship, endorsement, or
7 licensing of the Infringing Work.

8 40. For example, by willfully misappropriating the stylized font that DSE
9 uses consistently on the front and back covers, spine, and title page of the Dr.
10 Seuss books which consumers recognize as indicative of a Dr. Seuss book,
11 willfully misappropriating the title OH, THE PLACES YOU'LL GO!, and slavishly
12 copying Dr. Seuss's unique illustration style, Defendants explicitly mislead and
13 confuse consumers as to the Infringing Work's source and falsely suggest that the
14 Infringing Work is sponsored or endorsed by DSE.

15 41. Consumers have come to recognize the Dr. Seuss Marks, such as the
16 stylized font, the title OH, THE PLACES YOU'LL GO!, and the unique
17 illustration style, the OTPYG E-Book Mark, and the OTPYG Title Marks as
18 associated with and originating from DSE as an authorized Dr. Seuss work. As
19 such, Defendants' unauthorized use of these marks is highly likely to result in
20 consumer confusion, particularly in the ambit of children's books where Plaintiff's
21 books and Defendants' work could appear in commerce side by side on the
22 shelves of bookstores and online. The inclusion of Defendants' names on the
23 Infringing Work's cover does not alleviate consumer confusion as to Dr. Seuss's
24 approval, sponsorship, endorsement, or licensing of the Infringing Work. Indeed,
25 as seen in the images below Paragraph 20, it is often the case that DSE works
26 incorporating the Dr. Seuss Intellectual Property are authored and illustrated by
27 individuals other than Dr. Seuss and whose names appear on the cover, credits,
28

1 and/or other promotional materials, such as the books in the Bright and Early
2 series and the Cat In The Hat Learning Library series or the shows in *The Cat In*
3 *The Hat Knows A Lot About That* and *The Wubbulous World Of Dr. Seuss*
4 children’s television series.

5 42. Defendants have slavishly copied and used the Dr. Seuss Marks in
6 their entirety in the Infringing Work, particularly on the Infringing Work’s front
7 cover, back cover, and spine, and title page, where consumers typically find
8 source-identifying information, which exceeds any legitimate referential purpose for
9 such use and creates confusion in the minds of the relevant public as to the origin
10 of the Infringing Work and/or deceiving the public as to Dr. Seuss’s approval,
11 sponsorship, endorsement, or licensing of the Infringing Work.

12 43. Indeed, Defendants could have created their own unique content and
13 illustrations and refrained from blatantly using Dr. Seuss indicia and still have
14 gotten their point across, but they did not. Instead, Defendants have simply
15 slavishly copied many of the most recognizable and protected elements of the DSE
16 Works in order to get attention and trade off DSE’s goodwill, and to avoid the
17 drudgery in working up something fresh.

18 44. While Defendants included a disclaimer inside the Infringing Work,
19 this disclaimer is ineffective and does not alleviate the potential for consumer
20 confusion. The disclaimer, which is purposely printed in inconspicuously small,
21 fine lettering on the Infringing Work’s third page, states: “This is a work of
22 parody, and is not associated with or endorsed by CBS Studios or Dr. Seuss
23 Enterprises, L.P.” Upon information and belief, consumers are not likely to view a
24 fine-print disclaimer located on the third page of a book prior to purchase. Rather,
25 upon information and belief, consumers look primarily at the front cover, back
26 cover, and spine of a book prior to purchase. Defendants, however, did not
27 include a disclaimer on the Infringing Work’s front cover, back cover, or spine.
28

1 Accordingly, the disclaimer is ineffective and does not alleviate the potential for
 2 consumer confusion as to Dr. Seuss’s approval, sponsorship, endorsement, or
 3 licensing of the Infringing Work. Moreover, the act of blatantly taking intellectual
 4 property from two rights holders and calling it a parody or a “mash-up” does not
 5 transform infringement into parody or any other form of fair use.

6 45. ~~31.~~ Defendants, without permission, have willfully copied many
 7 elements of the Dr. Seuss books that are protected by the copyrights owned by
 8 DSE, and intend to further infringe those copyrights by acts of reproduction,
 9 distribution, display, and unauthorized creation of derivative works.

10 46. ~~32.~~ It is not uncommon for DSE to license the Dr. Seuss Intellectual
 11 Property in connection with the creation of new works based upon, and
 12 incorporating, the Dr. Seuss Intellectual Property. ~~Such~~ As mentioned herein and
 13 discussed above in Paragraphs 21-22, such licensing activities have included
 14 collaborations with other rights holders, such as The Jim Henson Company,
 15 Universal Studios, and Converse, for example. In addition, as also mentioned
 16 herein and exemplified under Paragraph 19 above, DSE has created or caused to
 17 be created works derivative to *Oh, The Places You’ll Go!* Here, however,
 18 Defendants created the Infringing Work without license or authorization from DSE,
 19 and thereby usurped DSE’s licensing opportunities and explicitly caused confusion
 20 as to DSE’s sponsorship or approval of the Infringing Work.

21 47. ~~33.~~ As a result of Defendants’ aforementioned use of the Dr. Seuss
 22 Marks in the Infringing Work, the relevant universe of consumers, including
 23 potential purchasers of books in the State of California, are likely to be misled and
 24 confused as to the nature, origin, and sponsorship of the Infringing Work, and are
 25 likely to form the false impression that the Infringing Work has been authored,
 26 approved, licensed, sponsored, endorsed, guaranteed by, or is in some way
 27 affiliated with Theodor S. Geisel, Dr. Seuss, DSE, and the Dr. Seuss Marks.

1 48. ~~34.~~ Upon information and belief, defendants have been running a
2 campaign to fund printing and distribution of the Infringing Work on Kickstarter,
3 <www.kickstarter.com>, a crowdfunding website where parties can raise money
4 for various projects. The Kickstarter page reproduced pages from the Infringing
5 Work.

6 49. ~~35.~~ On its Kickstarter page, Defendants admit that their blatant and
7 willful infringement presents “Risks and challenges” to their project:

8 While we firmly believe that our parody, created with
9 love and affection, fully falls within the boundary of fair
10 use, there may be some people who believe that this
11 might be in violation of their intellectual property rights.
12 And we may have to spend time and money proving it to
13 people in black robes. And we may even lose that.

13 50. ~~36.~~ After learning of Defendants’ unauthorized use and planned uses
14 of the Dr. Seuss Intellectual Property in the Infringing Work, on or about
15 September 28, 2016, the undersigned counsel for DSE sent Defendants a letter
16 asserting DSE’s exclusive rights in the Dr. Seuss Intellectual Property, and stating
17 that Defendants’ use thereof was an infringement of DSE’s rights. The letter
18 demanded that Defendants immediately cease all use of the Dr. Seuss Intellectual
19 Property.

20 51. ~~37.~~ Defendants did not respond to the September 28, 2016 letter.

21 52. ~~38.~~ On or about October 7, 2016, the undersigned counsel for DSE
22 sent Defendants an additional letter reiterating its previous demands, and
23 requesting Defendants’ immediate substantive response thereto.

24 53. ~~39.~~ Defendants did not substantively respond to the October 7, 2016
25 letter either.

26 54. ~~40.~~ On or about October 7, 2016, the undersigned counsel for DSE
27 sent a notice, pursuant to 17 U.S.C. § 512(c)(1)(C), to Kickstarter asserting DSE’s
28

1 exclusive rights in the Dr. Seuss Copyrighted Works, and stating that Defendants'
2 use thereof was an infringement of DSE's rights.

3 55. ~~41.~~ On or about October 7, 2016, Kickstarter disabled access to
4 Defendants' campaign, pursuant to 17 U.S.C. § 512(g).

5 56. ~~42.~~ On or about October 25, 2016, the undersigned counsel for DSE
6 sent Defendants an additional letter reiterating its previous demands, and
7 requesting Defendants' immediate substantive response thereto.

8 57. ~~43.~~ On or about October 28, 2016, counsel for Defendant ComicMix
9 sent a letter to the undersigned counsel for DSE responding to DSE's October 7
10 takedown notice to Kickstarter, refusing DSE's demands to cease all use of the
11 Dr. Seuss Intellectual Property, threatening to pursue claims for tortious
12 interference, unfair business practices, and violations of 17 U.S.C. § 512(f), and
13 advising that Defendants would be sending a counter-notice, pursuant to 17 U.S.C.
14 § 512(g)(3), to Kickstarter to reinstate its campaign.

15 58. ~~44.~~ On or about October 31, 2016, counsel for Defendant ComicMix
16 sent a counter-notice, pursuant to 17 U.S.C. § 512(g)(3), to Kickstarter.

17 59. On or about February 27, 2017, counsel for CBS Studios, the owner
18 of the intellectual property in Star Trek, sent Defendants a letter asserting CBS
19 Studios' exclusive rights in the intellectual property in Star Trek, and stating that
20 Defendants' use thereof was an infringement of CBS Studios' rights. The letter
21 demanded that Defendants immediately cease all use of the intellectual property in
22 Star Trek.

23 ////

24 ////

25
26 **COUNT I**
Copyright Infringement, 17 U.S.C. § 106
(Against All Defendants)

27 60. ~~45.~~ DSE repeats and realleges every allegation in Paragraphs 1
28

1 through ~~44~~⁵⁹ of its First Amended Complaint as if fully set forth herein.

2 61. ~~46.~~ The Dr. Seuss Copyrighted Works constitute copyrightable subject
3 matter under the Copyright Act, 17 U.S.C. §§ 101, *et seq.* DSE has recorded the
4 copyrights in and to the Dr. Seuss Copyrighted Works with the United States
5 Copyright Office and have complied with all applicable statutory registration and
6 renewal requirements, and with the requirements of 17 U.S.C. §411 regarding
7 registration of copyrights preceding an infringement action.

8 62. ~~47.~~ Upon information and belief, in direct violation of DSE's exclusive
9 rights, Defendants have directly infringed, and unless enjoined by this Court, will
10 continue to infringe the copyrights in the Dr. Seuss Copyrighted Works by, among
11 other things:

- 12 a. Preparing unauthorized derivative works of the Dr. Seuss
13 Copyrighted Works in the form of the Infringing Work;
- 14 b. Reproducing copyrighted elements of the Dr. Seuss
15 Copyrighted Works in the Infringing Work;
- 16 c. Distributing copies of the Infringing Work, which contains
17 copyrighted elements of the Dr. Seuss Copyrighted Works;
- 18 d. Displaying or causing display of the Infringing Work, which
19 contains copyrighted elements of the Dr. Seuss Copyrighted
20 Works.

21 63. ~~48.~~ As a direct and proximate result of the foregoing acts, DSE has
22 been damaged and has suffered, and will continue to suffer, significant damages, in
23 an amount to be proved at trial.

24 64. ~~49.~~ Upon information and belief, Defendants have infringed the
25 copyrights in the Dr. Seuss Copyrighted Works with actual or constructive
26 knowledge of DSE's rights such that said acts of copyright infringement were, and
27 continue to be, willful and intentional.

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65. ~~50.~~ In addition, Defendants’ violations of the Copyright Act have caused and, unless enjoined by this Court, will continue to cause irreparable injury to DSE. DSE is therefore entitled to a preliminary and permanent injunction enjoining and restraining Defendants from infringing the copyrights in the Dr. Seuss Copyrighted Works, including but not limited to continuing to reproduce, distribute, display, market, advertise, promote, produce, sell, or offer for sale the Infringing Work or any works that are derivative of or copied from the Dr. Seuss Copyrighted Works.

COUNT II
Lanham Act Violation, 15 U.S.C. § 1114
(Against All Defendants)

66. DSE repeats and realleges every allegation in Paragraphs 1 through 65 of its First Amended Complaint as if fully set forth herein.

67. DSE owns United States Trademark Registration No. 5,099,531 for OH THE PLACES YOU’LL GO in connection with downloadable digital children’s books, among other goods, which, as alleged above, is referred to as the OTPYG E-Book Mark.

68. The OTPYG E-Book Mark is distinctive and has acquired secondary meaning in the minds of the public, and is readily associated with Theodor S. Geisel, Dr. Seuss, and DSE.

69. Defendants’ unauthorized use of DSE’s OTPYG E-Book Mark, or a confusingly similar copy or colorable imitation thereof, in connection with the sale, offering for sale, distribution, or advertising of the Infringing Work is highly likely to cause confusion, or to cause mistake, or to deceive as to Dr. Seuss’s approval, sponsorship, endorsement, or licensing of the Infringing Work in violation of 15 U.S.C. § 1114(1).

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//////

1 70. As a direct and proximate result of the foregoing acts, DSE has been
 2 damaged and has suffered, and will continue to suffer, significant damages, in an
 3 amount to be proved at trial.

4 71. Defendants' use of the OTPYG E-Book Mark, or a confusingly
 5 similar copy or colorable imitation thereof, in connection with the sale, offering for
 6 sale, distribution, or advertising of the Infringing Work was and is without consent
 7 from DSE, and constitutes willful and intentional infringement of DSE's OTPYG
 8 E-Book Mark. Pursuant to 15 U.S.C. § 1117(a), DSE is entitled to recover its
 9 reasonable attorneys' fees incurred in this action.

10 72. Defendants' violations of 15 U.S.C. § 1114(1) have also caused, and,
 11 unless enjoined by this Court, will continue to cause, irreparable injury to DSE
 12 which is not fully compensable in monetary damages. DSE is therefore entitled to
 13 a permanent injunction enjoining and restraining Defendants from use of the
 14 OTPYG E-Book Mark or any other mark that is confusingly similar to the OTPYG
 15 E-Book Mark.

16
 17 **COUNT III**
 18 **Lanham Act Violation, 15 U.S.C. § 1125(a)**
 19 **(Against All Defendants)**

20 73. ~~51-~~DSE repeats and realleges every allegation in Paragraphs 1
 21 through ~~50~~72 of its First Amended Complaint as if fully set forth herein.

22 74. ~~52-~~The Dr. Seuss Marks are distinctive and have acquired secondary
 23 meaning in the minds of the public, and are associated with Theodor S. Geisel, Dr.
 24 Seuss, and DSE.

25 75. ~~53-~~Defendants' use of the Dr. Seuss Marks and any colorable
 26 imitation of DSE's Dr. Seuss Marks in the Infringing Works, is a use in commerce
 27 of any word, term, name, symbol, or device, or combination thereof, and a false
 28 designation of origin, which is likely to cause confusion or mistake in the public
mind or to deceive the public, as to the affiliation, connection or association of

1 Defendants

2 ////

3 with Theodor S. Geisel, Dr. Seuss, and DSE, or as to the origin, sponsorship, or
4 approval of Defendants' goods, services, or commercial activities by DSE.

5 76. Defendants' willful misappropriation of the stylized font that DSE
6 uses consistently throughout the Dr. Seuss books, willful misappropriation of the
7 title OH, THE PLACES YOU'LL GO!, and slavish copying of Dr. Seuss's unique
8 illustration style explicitly misleads and confuses consumers as to the Infringing
9 Work's source and falsely suggests that the Infringing Work is sponsored or
10 endorsed by DSE.

11 77. Defendants' fine-print disclaimer buried on the Infringing Work's third
12 page is ineffective and does not alleviate the potential for consumer confusion as
13 to DSE's approval, sponsorship, endorsement, or licensing of the Infringing Work.

14 78. 54. Defendants' acts constitute false designation of origin, false
15 endorsement, and unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

16 79. 55. As a direct and proximate result of the foregoing acts, DSE has
17 been damaged and has suffered, and will continue to suffer, significant damages, in
18 an amount to be proved at trial.

19 80. 56. Defendants' conduct has been intentional and willful and is
20 calculated specifically to trade off the goodwill that DSE has developed in its Dr.
21 Seuss Marks. Pursuant to 15 U.S.C. § 1117(a), DSE is entitled to recover its
22 reasonable attorneys' fees incurred in this action.

23 81. 57. In addition, Defendants' violations of 15 U.S.C. § 1125(a) have
24 caused and, unless enjoined by this Court, will continue to cause irreparable injury
25 to DSE's goodwill, business identity and reputation. DSE is therefore entitled to a
26 preliminary and permanent injunction enjoining and restraining Defendants from
27 use of the Infringing Works or any other mark that is confusingly similar to DSE's
28

1 Dr. Seuss Marks.

2 ////

3
4 **COUNT ~~III~~IV**
5 **California Statutory Unfair Competition, Business and Professions**
6 **Code § 17200**
7 **(Against All Defendants)**

8 82. ~~58.~~ DSE repeats and realleges every allegation in Paragraphs 1
9 through ~~57~~81 of its First Amended Complaint as if fully set forth herein.

10 83. ~~59.~~ DSE is the exclusive owner of the common law trademark rights
11 in the Dr. Seuss Marks. No license or authorization has been granted to
12 Defendants to use any of these marks, or variations thereon.

13 84. ~~60.~~ Defendants, with full knowledge of the public awareness and value
14 of the Dr. Seuss Marks, have traded on the goodwill associated with them and
15 have misled and will continue to mislead the public into assuming a connection
16 between DSE and the Infringing Work by Defendants' continued use of the Dr.
17 Seuss Marks, even though such use is not authorized by DSE.

18 85. By willfully misappropriating the stylized font that DSE uses
19 consistently throughout the Dr. Seuss books, willfully misappropriating the title
20 OH, THE PLACES YOU'LL GO!, and slavishly copying Dr. Seuss's unique
21 illustration style, Defendants have explicitly mislead and confused consumers as to
22 the Infringing Work's source and falsely suggest that the Infringing Work is
23 sponsored or endorsed by DSE constituting unfair competition within the meaning
24 of California Business and Professions Code Section 17200 et seq.

25 86. ~~61.~~ By falsely suggesting a connection with or sponsorship by DSE,
26 Defendants' use of the Dr. Seuss Marks has caused and is likely to cause public
27 confusion constituting unfair competition within the meaning of California Business
28 and Professions Code Section 17200 et seq.

87. ~~62.~~ In addition, Defendants' violations of California Business and

1 Professions Code Section 17200 *et seq.* have caused and, unless enjoined by this
2 Court, will continue to cause irreparable injury to DSE’s goodwill, business
3 identity and reputation. DSE is therefore entitled to a permanent injunction
4 enjoining and restraining Defendants from use of the Infringing Works or any other
5 mark that is confusingly similar to DSE’s Dr. Seuss Marks.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, DSE requests that the Court grant the following relief:

8 A. A judgment against Defendants, determining and adjudging:

9 1. that Defendants have willfully infringed and are infringing
10 copyrights in the federally registered Dr. Seuss Copyright
11 Works under 17 U.S.C. § 106;

12 2. that Defendants have willfully infringed and are infringing
13 DSE’s rights in United States Trademark Registration No.
14 5,099,531 by using a reproduction, copy, or colorable imitation
15 of DSE’s OTPYG E-Book Mark that is likely to cause
16 confusion, mistake, or to deceive, in violation of 15 U.S.C. §
17 1114(1);

18 3. ~~2.~~ that Defendants have willfully committed and are committing
19 acts of false designation of origin, false or misleading
20 description of fact, or false or misleading representation in
21 violation of DSE’s rights under 15 U.S.C. § 1125(a) and
22 California state law;

23 4. ~~3.~~ that Defendants have willfully and deliberately competed
24 unfairly with DSE in violation of DSE’s rights under 15 U.S.C.
25 § 1125(a) and California state law;
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1 B. An Order preliminarily and permanently enjoining Defendants, their
2 officers, agents, representatives, servants, employees, attorneys, successors and
3 assigns, and all others in active concert or participation with Defendants from:

- 4 1. infringing the copyrights in the Dr. Seuss Copyrighted Works,
5 including but not limited to continuing to reproduce, distribute,
6 display, market, advertise, promote, produce, sell, or offer for
7 sale the Infringing Work or any works that are derivative of or
8 copied from the Dr. Seuss Copyrighted Works;
- 9 2. manufacturing, assembling, producing, distributing, offering for
10 distribution, circulating, selling, offering for sale, advertising,
11 importing, promoting, or displaying any simulation,
12 reproduction, counterfeit, copy, or colorable imitation of the
13 OTPYG E-Book Mark or any mark confusingly similar thereto;
- 14 3. ~~2-~~manufacturing, assembling, producing, distributing, offering
15 for distribution, circulating, selling, offering for sale,
16 advertising, importing, promoting, or displaying any simulation,
17 reproduction, counterfeit, copy, or colorable imitation of the Dr.
18 Seuss Marks or any mark confusingly similar thereto;
- 19 4. ~~3-~~using any false designation of origin or false description or
20 statement which can or is likely to lead the public or
21 individuals, erroneously to believe that the Infringing Work has
22 been provided, produced, distributed, offered for distribution,
23 circulation, sold, offered for sale, imported, advertised,
24 promoted, displayed, licensed, sponsored, approved, or
25 authorized by or for DSE, when such is not true in fact;
- 26 5. ~~4-~~engaging in any other activity constituting an infringement of
27 the Dr. Seuss Intellectual Property, or of DSE's rights in, or
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right to use or to exploit the Dr. Seuss Intellectual Property;
and

6. ~~5.~~ assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (1) through (~~4~~5) above.

C. An award to DSE, at its election prior to entry of final judgment, of statutory damages of up to \$150,000 for each separate Dr. Seuss Copyrighted Work infringed, for willful infringement pursuant to 17 U.S.C. § 504(c), or DSE’s actual damages sustained as a result of Defendants’ acts of copyright infringement according to proof and Defendants’ profits obtained as a result of their acts of copyright infringement according to proof;

D. An Order requiring Defendants to account and pay over to DSE all gains, profits, and advantages derived by them as a result of its infringement of the Dr. Seuss Marks to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117;

E. An award to DSE of such damages as it has sustained by reason of Defendants’ infringement of the Dr. Seuss Marks; and that, because of the willful nature of said infringement, the Court enter judgment for DSE for three times of the amount of said damages, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117;

F. An award to DSE of its costs and expenses incurred in the investigation and prosecution of this action, including reasonable attorneys’ fees, pursuant to 17 U.S.C. § 505 and Section 35 of the Lanham Act, 15 U.S.C. § 1117; and

G. Such other and further relief as the Court deems just and proper.



1 Dated: ~~November 10~~June 22,
2 ~~2016~~2017

DLA PIPER LLP (US)

4 Of Counsel:

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DEMAND FOR JURY TRIAL

DSE hereby demands a trial by jury on all issues and claims so triable.

Dated: ~~November 10~~June 22,
~~2016~~2017

DLA PIPER LLP (US)

Of Counsel:

By: /s/ Gina Durham

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APPENDIX A: COPYRIGHTED DR. SEUSS WORKS

1. *How the Grinch Stole Christmas!*, U.S. Copyright Registration No. A 312043, Renewal Registration No. RE 238319.
2. *The Lorax*, U.S. Copyright Registration No. A 301289, Renewal Registration No. RE 805038.
3. *Horton Hears a Who*, U.S. Copyright Registration No. A 152927, Renewal Registration No. RE 115184.
4. *The Sneetches and Other Stories*, U.S. Copyright Registration No. A 543386, Renewal Registration No. RE 425704.
5. *Oh, the Places You'll Go!*, U.S. Copyright Registration No. VA-430950.

Summary report:	
Litéra® Change-Pro TDC 7.5.0.155 Document comparison done on 6/22/2017 12:40:33 PM	
Style name: DLAPiper	
Intelligent Table Comparison: Active	
Original filename: C:\Users\thill\Desktop\DSE filing 6-22-17\ComicMix - Complaint.docx	
Modified DMS: iw://WESTDMS/WEST/277519290/1	
Changes:	
Add	199
Delete	87
Move From	0
Move To	0
Table Insert	10
Table Delete	5
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	2
Embedded Excel	0
Format changes	0
Total Changes:	309

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11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 DR. SEUSS ENTERPRISES, L.P., a
California limited partnership,

15 Plaintiff,

16 v.

17 COMICMIX LLC, a Connecticut
18 limited liability company; MR.
GLENN HAUMAN, an individual;
19 MR. DAVID JERROLD
FRIEDMAN A/K/A DAVID
20 GERROLD, an individual; and MR.
TY TEMPLETON, an individual,

21 Defendants.
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CASE NO.: 3:16-cv-02779-JLS-BGS
CERTIFICATE OF SERVICE

1 I am a resident of the State of California, over the age of eighteen years, and
2 not a party to the within action. My business address is DLA Piper LLP (US), 401
3 B Street, Suite 1700, San Diego, California 92101-4297. On June 22, 2017, I
4 served the within documents: **FIRST AMENDED COMPLAINT**

- 5 [VIA U.S. MAIL] by placing in a sealed, postage prepaid envelope or
6 package containing a true and correct copy of each document(s) above,
7 in DLA Piper LLP (US)'s mail room for collection, processing and
8 delivery this same day to the United States Postal Service. I further
9 declare that I am readily familiar with the business practice for
10 collection and processing of correspondence for mailing with the
11 United States Postal Service; and that the correspondence shall be
12 deposited with the United States Postal Service this same day in the
13 ordinary course of business.
- 14 [VIA PERSONAL DELIVERY] by personally delivering the document(s)
15 listed above to the person(s) at the address(es) set forth below.
- 16 [VIA OVERNIGHT DELIVERY] by consigning such copy in a sealed
17 envelope to an overnight delivery courier for next business day
18 delivery to the person(s) at the address(es) set forth below.
- 19 [VIA CM/ECF] by transmitting via e-filing the document(s) listed
20 above to the Case Management/ Electronic Case filing system.
- 21 [VIA EMAIL] by emailing the document(s) listed above to the email
22 addresses below.

20 Dan Booth
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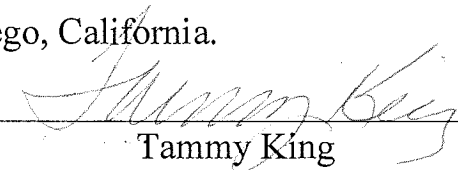
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I declare that I am employed in the office of a member of the Bar of or permitted to practice before this Court at whose direction the service was made.

Executed on June 22, 2017, at San Diego, California.



Tammy King