

Sketchworks Indus. Strength Comedy, Inc. v. Jacobs
No. 19-CV-7470-LTS-VF, 2022 U.S. Dist. LEXIS 86331 (S.D.N.Y. May 12, 2022)

Year	2022
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Sketchworks Industrial Strength Comedy, Inc. (“Sketchworks”) is a sketch comedy company that created and owns a copyright in <i>Vape</i> , a stage musical that is an alleged parody of the theatrical work and film, <i>Grease</i> . <i>Vape</i> follows the same characters along roughly the same story-arc and in the same setting as <i>Grease</i> and incorporates portions of the film’s music. Defendants are the trustees for the individual trusts of the co-authors of <i>Grease</i> . Just before <i>Vape</i> was scheduled to be performed, Defendants sent Sketchworks and the theater where <i>Vape</i> was to be performed cease and desist letters, and the performances were cancelled. Sketchworks brought an action against Defendants seeking a declaratory judgment that <i>Vape</i> constitutes fair use of <i>Grease</i> , asserting that <i>Vape</i> is a parody that uses millennial slang, pop culture references, and exaggeration to comment on <i>Grease</i> and criticize its misogynistic and sexist elements. Defendants disputed that <i>Vape</i> is a parody and asserted that it infringes their copyright in <i>Grease</i> . The parties cross-moved for judgment on the pleadings.
Issue	Whether the use of protected elements, including music, plot, characters, dialogue, and setting, from a theatrical work and film to create a parodic stage musical is fair use.
Holding	The court found that the first factor, the purpose and character of the use, favored fair use because <i>Vape</i> is a parody of <i>Grease</i> and is therefore transformative. Critical to this determination, the court found that <i>Vape</i> juxtaposed “familiar elements from <i>Grease</i> , such as the main characters and the plot arc, with alterations to the script and song lyrics” to highlight the experiences of <i>Grease</i> ’s female characters and “comment on how misogynistic tendencies have both evolved since <i>Grease</i> was developed and remain the same.” The second factor, the nature of the copyrighted work, disfavored fair use because <i>Grease</i> ’s creative expression fell “within the core of the copyright’s protective purposes.” The court, however, declined to give this factor much weight, reasoning that parodies typically copy publicly known, expressive works. The third factor, the amount and substantiality of the use, weighed in favor of fair use. Although <i>Vape</i> took “substantial elements” from <i>Grease</i> , the court found that “the taking was not excessive” because use of those elements was necessary to achieve <i>Vape</i> ’s parodic purpose and communicate its criticism of certain aspects of <i>Grease</i> . The fourth factor, the effect of the use on the potential market for or value of the copyrighted work, also weighed in favor of fair use because any potential harm to <i>Grease</i> ’s market value for derivatives was likely “minimal.” While <i>Vape</i> updated some of the language and cultural references from <i>Grease</i> , the court found that <i>Vape</i> “cannot be reasonably viewed as a derivative ‘sequel to, . . . or updated remake, of <i>Grease</i> ,’” because its updates were done “in a spirit of mockery.” Further, the court commented that any effect on the demand for derivatives attributable to <i>Vape</i> ’s “critical nature” is not remediable under copyright law. Weighing the four factors together, the court concluded that <i>Vape</i> constitutes a fair use of <i>Grease</i> and granted Sketchworks’ motion for judgment on the pleadings.
Tags	Film/Audiovisual; Music; Parody/Satire; Review/Commentary
Outcome	Fair use found

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