

# Beastie Boys vs. GoldieBlox

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## Previous Cases for Precedent

### ***Campbell v. Acuff-Rose***

Acuff-Rose Music, Inc. sued 2 Live Crew and their record company, claiming that 2 Live Crew's song "Pretty Woman" infringed Acuff-Rose's copyright in Roy Orbison's "Oh, Pretty Woman."

The District Court granted summary judgment for 2 Live Crew, holding that its song was a parody that made fair use of the original song. In reversing, the Court of Appeals held that the commercial nature of the parody rendered it presumptively unfair.

In a unanimous opinion delivered by Justice David H. Souter, the U.S. Supreme Court held that a parody's commercial character is only one element to be weighed in a fair use inquiry and that insufficient consideration was given to the nature of parody in weighing the degree of copying. The Court found that the Court of Appeals erred in applying the presumption that the commercial nature of the parody rendered it presumptively unfair, as no such evidentiary presumption was available to address either the character and purpose of the use or the market harm. Justice Souter wrote that the appellate court "erred in holding that 2 Live Crew had necessarily copied excessively from the Orbison original, considering the parodic purpose of the use." Justice Anthony M. Kennedy filed a concurring opinion.

### ***Suntrust v. Houghton Mifflin***

In *Suntrust v. Houghton Mifflin* (a reinterpretation of the novel "Gone with the Wind" from the slaves' perspective) two courts looked at the same exact facts and one found the use to be satire, one to be parody. The distinction between parody and satire is hard for courts to apply consistently, and nearly impossible for creators of derivative works to predict.

## Evaluation

### **Legal Considerations**

Here are a few considerations in this case:

1. Is it actually a parody? Parody is protected by fair use, satire is not.
2. Should it have been used in an advertisement without permission when one of the group members explicitly states not to use in any advertisements of products?
3. Can GoldieBlox counter-sue if there isn't a *true* complaint or suit from the Beastie Boys?
4. How much was taken from the music and lyrics, and what parts?
5. Could GoldieBlox commercially use the parody under fair use?

### **Our Viewpoint**

Because parodies are meant to poke fun at the original, in many cases, they won't be approved by the copyright owner, which is why there's fair use. Based on previous cases, we would say that a parody could be used for a commercial nature as it's only one of the factors to evaluate. We also examine the substantiality of what was taken. To be a true parody, it should poke fun at

the core or heart of the song, meaning what would be recognizable in the original, to tie into what new material that's added -- basically, taking no more than necessary.

The only parts copied were the lyric "Girls" and the melody. The music was played/re-recorded on toy xylophones. It was little girls singing as opposed to the Beastie Boys. It is important to note that the use of direct samples, or the use of similar melody lines, does not negate the originality of the work *as a whole*. Even songs or DJ tracks that contain only already existing songs can still be original as a whole. Therefore, as a whole, "Girls" is original. It seems to criticize the idea of the original song and the role/purpose girls play, hinting that girls have more to offer and shouldn't be underestimated.

The difference is (according to judges) that parody is a use that makes fun of the original work, and satire makes fun of some outside subject. One could say that the song is making fun of the sexist lyrics in the Beastie Boys song, but one could also say they're making fun of a general construct about women and utilizing the song to support that. If you look at the lyrics to the GoldieBlox version, it's targeted at making a comment on the state of the toy industry and marketing towards girls, and *not* targeted at making a point about the Beastie Boys song itself.

The line between parody and satire in this situation is very thin. It seems to depend on how people interpret the usage of "Girls". Irregardless, The Beastie Boys clearly stated that they didn't approve of any of their work being used in advertising to promote products. It was even handwritten into member, Adam Yauch's will. No matter their intent, this should have been a stopping point for Goldieblox as it is obviously in clear violation of the group's wishes.

### **Conclusion**

On March 16, 2014, the parties settled. The GoldieBlox settlement granted them a retroactive license to use the musical composition of 'Girls' between November 18, 2013 and November 28, 2013. GoldieBlox agreed to pay \$1m to a charity of the band's choice supporting science, technology, engineering and/or math (STEM) education for girls, in return for a backdated license to use the track in the ad, which was a YouTube hit in November 2013. The Beastie Boys went on to state: *"As creative as it is, make no mistake, your video is an advertisement that is designed to sell a product, and long ago we made a conscious decision not to permit our music and/or name to be used in product ads."* GoldieBlox did take down the ad in respect of the group's wishes.