

Harry Potter Vanquishes Willy the Wizard in Court

A Manhattan federal judge dismissed a copyright infringement lawsuit against J.K. Rowling's U.S. publisher Scholastic, Inc. on January 6, 2011. In *Allen v. Scholastic*, Judge Shira Scheindlin found that Rowling's fourth book, *Harry Potter and the Goblet of Fire* ("Goblet"), did not infringe on *The Adventures of Willy the Wizard – No. 1 Livid Land* ("Livid Land"), a children's book published in the U.K. in 1987.

The plaintiff – Trustee for the estate of Adrian Jacobs (Livid Land's author) – claimed that Jacobs provided copies of the book to his literary agent, Christopher Little, who later represented Rowling. The Trustee alleged that *Goblet* – which he claims was written after Rowling began working with Little – was similar to *Livid Land* "in theme, plot, characters, setting, and total concept and feel" and that "the central theme of each work – a year long wizard contest – unfolds as similar characters enact parallel plot points."

In her 49-page decision, Judge Scheindlin engaged in a detailed comparison of the two works to determine whether "a substantial similarity exists between the defendant's work and the protectible elements of the plaintiff's." As Judge Scheindlin explained, "substantial similarity" is not assessed by "dissect[ing] the works into separate components and compar[ing] only the copyrightable elements," but by comparing the "total concept and overall feel" of the works to determine whether "an ordinary observer" would regard their "aesthetic appeal" as the same.

This wasn't even a close call. Judge Scheindlin found that "the contrast between the total concept and feel of the works is so stark that any serious comparison of the two strains credulity." Although both stories feature as their main character a wizard who participates in a contest, the similarities appear to end there. Not only are the works dramatically different in length (16 pages versus 734 pages), but "they are distinctly different in both substance and style, and ultimately engender very different visceral responses from their readers."

While literary merit is not a factor in the substantial similarity analysis, *Livid Land* clearly suffers by comparison to Rowling's opus. Judge Scheindlin notes that the events in *Livid Land* "are dryly set forth, rather than described" and that characters "frequently pop up without introduction or purpose, never to appear again." Not only is the book "entirely devoid of a moral message or intellectual depth," it is "enlivened only by the illustrations that accompany it." Apparently, *Livid Land* was so confusing and poorly written it required "several readings" before the Judge could "identify basic plot elements." By contrast, *Goblet's* "storyline is highly developed and complex," is "rich in imagery, emotive and suspenseful," and has "a highly developed moral core."

Livid Land's central character, Willy, fares no better in comparison to *Harry Potter*. Unlike Harry, Willy has no "discernible personality or distinguishable appearance," but is merely

“a bland and interchangeable medium through which a story is told.” Indeed, Willy is rendered so “superficially” that it is not even clear whether he is “a ‘good’ moral character.” Consequently Willy’s character is too “indistinct” to merit copyright protection.

The court also rejected plaintiff’s efforts to introduce a foreign order denying summary judgment in a similar lawsuit filed against Rowling’s U.K. publisher. Because the order “involves different parties, different standards of law,” and is not a “final judgment,” it could not be considered in this case.

Apart from the interesting subject matter, this case is important because it makes clear that judges have the power – at the outset of a case – to compare two works and determine before an answer is filed or discovery is taken that there is no merit to a plaintiff’s claim.

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