

Easter Unlimited, Inc. v. Rozier
No. 18-cv-06637, 2021 U.S. Dist. LEXIS 184636 (E.D.N.Y. Sep. 17, 2021)

Year	2021
Court	U.S. District Court for the Eastern District of New York
Key Facts	Plaintiff Easter Unlimited, Inc. is a business that designs, manufactures, and supplies costumes and masks, including a “Ghost Face Mask” for which Plaintiff holds a copyright registration as a sculptural work. Plaintiff licensed the mask for use in the horror film <i>Scream</i> , in which it was worn by a serial killer. Defendant Terry Rozier is a professional basketball player. After acquiring a reputation as a “dangerous scorer” and “fearless shooter,” fans and sports media nicknamed Rozier “Scary Terry.” Rozier created a clothing line that featured this nickname and a cartoon depiction of himself wearing a mask. Rozier specifically requested the mask used on the clothing be “the <i>Scream</i> mask.” Rozier sold and authorized other entities to sell the Scary Terry clothing and received approximately \$150,000 in gross sales revenue. Plaintiff brought an action alleging copyright infringement of the Ghost Face Mask. Rozier asserted the use was a fair use.
Issue	Whether a professional athlete’s use of a costume mask associated with a movie serial killer in a cartoon drawing of himself next to his “Scary Terry” nickname on sports apparel is fair use.
Holding	On the first factor, the purpose and character of the use, the court found that Rozier’s use was transformative, parodical, and satirical, which favored fair use. On transformativeness, the court determined that the purpose of Rozier’s use was to identify and connect fans with Rozier’s “Scary Terry” persona, which differed from the purpose of the original sculptural work. Although related to the licensed use of the Ghost Face Mask in <i>Scream</i> , rather than the original mask itself, the court concluded that Rozier’s use to “lampoon” the <i>Scream</i> killer could be seen as a parody commenting on the movie or the mask. In addition, the court found Rozier’s use provided a means of “satirizing and ridiculing the perception of ruthless, high-scoring [NBA] athletes.” Lastly, the court determined that the importance of commerciality was diminished by the use’s transformativeness. The second factor, the nature of the work, disfavored fair use due to the undisputed creative nature of Plaintiff’s Ghost Face Mask. The court determined that the third factor, the amount and substantiality of the work used, was neutral because although the use involved copying a substantial portion of the mask, Rozier arguably needed to use the main features of the mask to achieve his intended purpose. On the fourth factor, the effect of the use on the potential market for or value of the original, the court concluded that the two works occupied distinct markets – finding that the primary market of holiday and party consumers for the Ghost Face Mask would not be usurped by Rozier’s sports apparel. While the Court acknowledged that similar conduct, if widespread, could adversely impact Plaintiff’s potential market, those “hypothetical fair uses are not the type of contemplated use that would compel a finding” for Plaintiff. Concluding that the factors together favored fair use, the court granted summary judgment in favor of Rozier on the copyright infringement claims.
Tags	Parody/Satire; Review/Commentary; Sculpture; Painting/Drawing/Graphic
Outcome	Fair use found

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