

**Baraban v. Time Warner, Inc.,  
No. 99 Civ. 1569-JSM (S.D.N.Y. April 6, 2000)**

Year	2000
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Joe Baraban owned the copyright in a photograph of a dairy farmer posing with a cow in a field of yellow clover. The U.S. Council for Energy Awareness (USCEA) used the photograph with the author's permission in an advertisement supporting nuclear energy that ran in several national newspapers and magazines. Defendant Time Warner, Inc. published defendant Gerald Celente's book, <i>Trends 2000: How to Prepare for and Profit from the Changes of the 21<sup>st</sup> Century (Trends)</i> . The book included the advertisement along with commentary criticizing the nuclear energy industry. Defendants only slightly altered the advertisement by making it black and white, shrinking it to fit the page layout, and cropping it to exclude USCEA's information. Defendants alleged that they were unable to get permission because USCEA apparently had ceased to exist, and they could not locate plaintiff. Plaintiff Baraban claimed that using his photograph in the book without permission infringed his copyright.
Issue	Whether the unauthorized reproduction of an advertisement including a photographer's image, in a book criticizing the underlying subject matter of the advertisement, constituted fair use.
Holding	The court held that defendants' use of the advertisement in <i>Trends</i> qualified as fair use. The court concluded that defendants' use was clearly for purposes of criticism and comment as the book's author used the photo to show the nature of the nuclear energy industry's advertisements and provided additional commentary concerning those advertisements. The court rejected plaintiff's argument that the use was satirical, not for parody. According to the court, <i>Trends</i> criticized the photo, at least in part, because it highlighted a particular view—the "sunny" view of nuclear power—that the industry intended to promote. The court found the second factor was neutral because while the purposeful setting, angles, and other artistic elements made the photo highly creative and weighed in plaintiff's favor, the context of its use was as part of an advertisement, and this weighed in favor of the defendants. For the third factor, the court held that defendants' slight modifications were enough to give the reader the sense of the campaign without completely copying the work exactly. Finally, the court held that the market value of the photograph was not harmed by the publication in <i>Trends</i> , since it was unlikely that a black-and-white, comparatively miniscule version would negatively affect a market, the existence of which was already "dubious."
Tags	Second Circuit; Photograph; Review/Commentary; Textual work
Outcome	Fair use found

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