

PUBLIC VERSIONUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKSHEPARD FAIREY AND OBEY GIANT
ART, INC.,

Plaintiffs,

v.

THE ASSOCIATED PRESS,

Defendant and Counterclaim
Plaintiff,

v.

SHEPARD FAIREY, OBEY GIANT ART,
INC., OBEY GIANT LLC, STUDIO
NUMBER ONE, INC., and ONE 3 TWO,
INC. (d/b/a OBEY CLOTHING),

Counterclaim Defendants.

ECF

Case No. 09-01123 (AKH)

**DECLARATION OF REGAN DONALD JUNCAL IN SUPPORT OF COUNTERCLAIM
DEFENDANT ONE 3 TWO, INC.'S MOTION FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

I, Regan Donald Juncal declare and state:

1. I am one of the owners and founders of Counterclaim Defendant One 3 Two, Inc. d/b/a Obey Clothing ("One 3 Two). I submit this Declaration in support of One 3 Two's Motion for Summary Judgment. I have personal knowledge of the facts stated herein, and could and would testify competently thereto if called as a witness in this matter.

2. One 3 Two is based in Irvine, California, having previously been based in Santa Ana, California.

3. One 3 Two is a clothing company formed in 1999 for the purpose of selling apparel featuring designs created by the artist Shepard Fairey ("Fairey"). From its very first season onward, however, One 3 Two's products have included substantial sportswear lines that do not include Fairey's designs. As One 3 Two's products have expanded to include accessories, hats, handbags, jewelry and sportswear items, its sales have also increased, and it

has enjoyed growth in revenues and profits even during the recent economic downturn that has harmed other clothing manufacturers and retailers. Indeed, One 3 Two was selling this diverse line of clothing and other merchandise in the 2008-2009 time period when the alleged infringement took place. Attached hereto as Exhibit "H" is a true and correct copy of one of One 3 Two's "Look Books" from 2010 which demonstrates the diversity of its products.

4. I am aware that Fairey created a design featuring the then Presidential candidate, Barack Obama, (the "Obama Image") in late January 2008, primarily as a result of my review of press reports at the time and through conversations with others at One 3 Two. One 3 Two was not involved in Fairey's creation or production of the Obama Image, and did not even obtain a copy of the Obama Image until weeks later, in late February 2008.

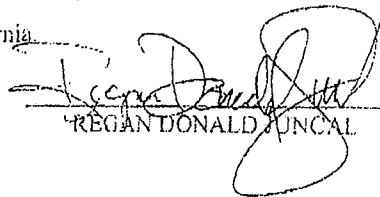
5. Although One 3 Two is Fairey's exclusive licensee for apparel, One 3 Two did not originally have any intention to seek to use the Obama Image to create any merchandise. While some of the founders of One 3 Two supported Barack Obama in his run for the presidency, we did not want to profit from his candidacy or create an appearance that we hoped to do so. However, other apparel manufacturers began using the Obama Image for t-shirts, even though such use was prohibited by One 3 Two's exclusive license agreement with Fairey, and One 3 Two was asked repeatedly by one of its largest customers – the retail store Urban Outfitters – to create t-shirts with the Obama Image. After discussing the issue with Fairey and his companies, One 3 Two decided to create some t-shirts with the Obama Image and to donate as much of the profits generated by the sales of that merchandise to support the Obama campaign.

6. Fairey never provided to One 3 Two a copy of the photograph that he used as a reference, and One 3 Two would not otherwise have had access to that image. Indeed, prior to this litigation, neither I nor anyone else at One 3 Two had any knowledge of which photograph Fairey used as a reference in creating the Obama Image. In addition, Fairey never told me or anyone else at One 3 Two that he stripped copyright management information from the photograph he used as a reference to create the Obama Image, and we would not have the ability to tell whether he had done so based on the art that we received from him. In short,

prior to this litigation. One 3 Two had no information regarding what actions Fairey took to create the Obama Image from the Garcia photograph.

7. Neither I nor anyone else at One 3 Two was aware that Fairey initially misrepresented which photograph he used as a reference in this litigation, or that he destroyed evidence in an attempt to conceal which photograph he used. I only learned about Fairey's actions shortly before he issued a public statement to that effect on October 16, 2009.

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed on January 4, 2011, at Irvine, California.


REGAN DONALD JUNCAL