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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY and OBEY GIANT
ART, INC.,

Plaintiffs,

v.

THE ASSOCIATED PRESS,

Defendant and Counterclaim
Plaintiff,

v.

SHEPARD FAIREY, et al.,

Counterclaim Defendants

Case No.: 09 CIV 01123 (AKH)

ECF CASE

DECLARATION OF KEN DALE

I, KEN DALE, hereby declare as follows:

1. I am the Senior Vice President, Chief Financial Officer, of the Associated Press (“AP”). I joined the AP in 2000 as the Deputy Director of Business Development and have been the CFO of the AP since 2004.

2. I submit this declaration in support of the AP’s Motion for Summary Judgment against Obey Clothing based on my personal knowledge of the facts and statements contained herein.

About the AP and Its Mission

3. The AP is a not-for-profit membership cooperative founded in 1846 and owned by its 1,400 U.S. daily-newspaper members.

4. With its headquarters in New York City, the AP serves over 1,700 newspapers and 5,000 radio and television outlets in the U.S. as well as countless international newspaper, radio, and television subscribers.

5. According to the AP's research, more than half of the world's population sees news from the AP on any given day.

6. The AP's stated mission is to be the essential global news network, providing distinctive news services of the highest quality, reliability, and objectivity with reports that are accurate, balanced, and informed.

7. To achieve this mission, the AP reports the news from every corner of the world to all media platforms and formats.

8. The AP creates content and licenses and distributes it to news media outlets, which in turn broadcast and publish the news.

How the AP Funds Its Newsgathering Operations

9. The AP's newsgathering operations are funded almost entirely through licensing content.

10. A primary source of the AP's licensing revenue is the receipt of assessments paid by AP's news-media-outlet owners, or members.

11. Because of the financial difficulties facing the news industry, members have been unable to continue funding the monetary assessments that are used to operate the AP at levels they previously had.

12. To assist its news-outlet members, the AP has recently decreased its assessments by nearly one-third, including a cut of \$30 million in 2009 and a cut of \$35 million in 2010.

13. In light of the financial difficulties facing its member newspapers, and the resulting cuts in member assessments, the AP has increasingly had to rely on alternative sources of revenue in order to support its newsgathering operations.

AP Images as an Alternative Revenue Source

14. The AP has developed AP Images, a photo-archive business, as a primary alternative source of revenue. AP Images is a division of the AP that is intended to be a major source of photographs, videos, graphics for professional image buyers and commercial customers.

15. AP Images was launched in late 2005 as a strategic initiative to leverage the AP's vast archive of photographic images into a steady and substantial revenue source.

16. Over the past several years, the AP has dedicated significant resources to the creation and development of AP Images' photo-licensing business, including the AP Images Web-based platform located at APImages.com.

17. Specifically, to develop AP Images, the AP has made significant investment in personnel, technology, additional photo equipment, a reorganization of the company away from

regional control of image sales, and the hiring of new managers and sales staff with experience and expertise in the business of image licensing.

18. Creating AP Images has involved substantial capital investments. From 2005 through 2010 the AP has invested \$7.6 million in capital in AP Images.

19. The AP's annual costs of photo acquisition and production were more than \$56 million in 2009 and more than \$247 million from 2006 through 2009.

20. Revenue from AP Images has helped offset declines in other areas stemming from the financial difficulties currently affecting the newspaper business.

21. The AP has lost significant licensing revenue from Fairey's and Obey Clothing's unlicensed uses of the Obama Photo.

22. The AP lost licensing revenue from Fairey's and Obey Clothing's unauthorized use of the image.

23. The AP has lost licensing opportunities from other potential customers as a result of Fairey and Obey Clothing's failure to credit the AP as the source image of the Obama Merchandise.

24. The AP would have likely earned significant additional revenue if Fairey and Obey Clothing had licensed the Obama Photo and given the AP appropriate credit prior to this lawsuit.

25. If everyone were allowed to download and use AP Images photos without compensating the AP, it would erode the AP Images business.

26. I declare under penalty of perjury that the foregoing is accurate to the best of my knowledge.

Executed this 6th day of January 2011 at New York, New York.



KEN DALE