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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 FARAH
DEGRAVE**

I, FARAH DEGRAVE, hereby declare as follows:

1. I have worked at the Associated Press (“AP”) since 2006. My title is manager of Sales Operations for New Media Markets with AP Images. Prior to working for AP, I was the Sales Manager of Sales Development for Getty Images. For the last 7 years, I have worked in the image licensing industry.

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 AP Images

3. AP Images markets itself as the essential source of editorial and creative photographs, videos, graphics and interactives for professional image buyers. As such, AP Images makes compelling photographs available to its customers to license for a myriad different uses, including but not limited to promotional, commercial, editorial, educational, and for television and video.

4. Through APImages.com, commercial customers can both browse and search the AP's entire archive of roughly 8.6 million digitized photographs.

5. The AP modeled certain of the key elements of AP Images after common industry standards and practices, including its pricing plans and rates, which are similar to those of Getty Images and involve a shift toward licensing deals structured more closely to revenue sharing arrangements and away from a flat-rate pricing model.

6. Once a commercial customer has identified the image(s) that he/she wishes to license, the customer calls AP Images and speaks directly with a sales representative to negotiate a license for the particular image(s) and use(s).

7. AP's sales representatives customize each license to a commercial customer based on the particular characteristics of each customer's planned use and AP's pricing guidelines.

8. Licenses are typically negotiated very quickly, with price quotes usually being provided within hours and in some cases during the customer's initial conversation with the sales representative.

AP Images Licenses

9. AP Images licenses its photos both “as is” and for incorporation into derivative works. For example, on December 12, 2008, the AP licensed an image of a Palestinian woman to Amanda Fairey, who I understand is the wife and business partner of Shepard Fairey, Fairey for use in a derivative image made by Mr. Fairey. Obey Clothing used that image on t-shirts and other merchandise. The AP’s licensed image (left), Mr. Fairey’s derivative work (middle), and Obey Clothing’s merchandise bearing the image (right), are pictured below.



AP Photograph

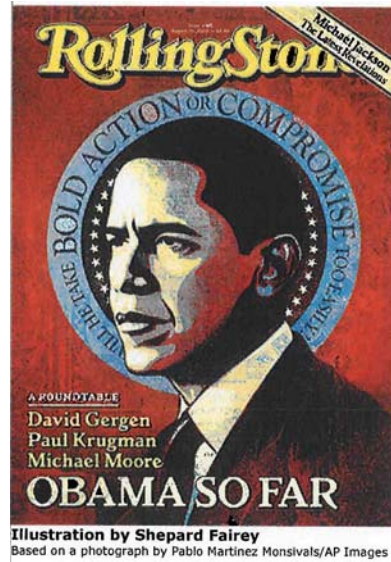
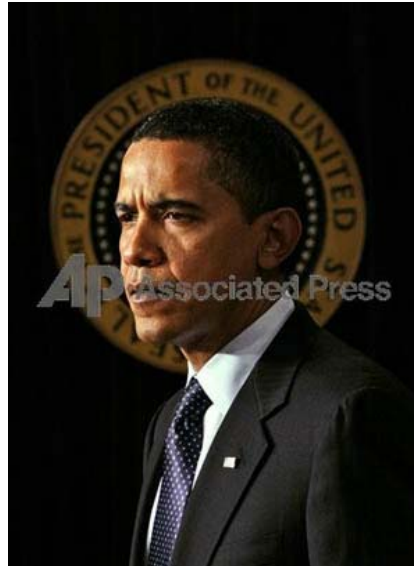


Fairey’s Licensed Work



Obey Clothing’s t-shirt

10. Mr. Fairey has also used AP photographs to make images of world leaders for the cover of *Rolling Stone* magazine. For example, Fairey used an AP image of Mr. Obama appearing in front of the presidential seal to make a derivative work based on the image, as pictured below.



11. *Rolling Stone* obtained a license for Mr. Fairey to use the image as a derivative work. The licensed image was featured on the cover of the August 2009 issue of *Rolling Stone* magazine with the credit, “Based on a photograph by Pablo Martinez Monsivais/AP Images.”

12. *Rolling Stone* magazine’s Italian edition also obtained a license from the AP for Mr. Fairey to use an AP photograph of Italian prime minister Silvio Berlusconi as the source image for the cover design of the magazine. The original source image and Mr. Fairey’s licensed derivative design are pictured below.



13. AP Images also licenses its photographs for use by political campaigns and supporters of political candidates, among other things. For example, the AP licensed a photograph of Mr. Obama waving to a crowd to Flashbags, a Burlington, Vermont company, for use as a derivative work on tote bags supporting Mr. Obama. The original image (left) and the tote bag (right) are pictured below:



AP Photograph



Flashbags' Licensed Work

14. AP Images has specific sales representatives who handle licensing inquiries for campaign-related issues.

15. In addition, AP Images licenses images of political leaders for use in connection with advertising and marketing. For example, the AP licensed an image of President Obama and Mrs. Obama at the 2009 inauguration to Apple Computer, Inc.

16. The AP also licenses images for advertising. For example, in 2009, the AP licensed images of Tiger Woods on a non-exclusive basis to Accenture for commercial advertising.

17. If Mr. Fairey or Obey Clothing had approached the AP for a license to use the Obama Photo to make the Obama Image prior to the lawsuit being filed on February 9, 2009, the

AP would have willingly entered into a license with Mr. Fairey and Obey Clothing for their use of the photograph.

18. 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.



FARAH DEGRAVE