

Dale M. Cendali
 Claudia Ray
 Brendan T. Kehoe
 KIRKLAND & ELLIS LLP
 601 Lexington Avenue
 New York, New York 10022
 Tel: 212-446-4800
 Fax: 212-446-4900

Attorneys for Defendants
 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
 BRENDAN T. KEHOE, ESQ., IN
 SUPPORT OF THE ASSOCIATED
 PRESS'S MEMORANDUM OF
 LAW IN OPPOSITION TO ONE 3
 TWO, INC.'s (d/b/a OBEY
 CLOTHING) MOTION FOR
 SUMMARY JUDGMENT**

I, BRENDAN T. KEHOE, Esq., hereby declare as follows:

1. I am an associate of the firm of Kirkland & Ellis LLP, counsel to the Associated Press ("AP") in this action. I submit this declaration in support of the AP's memorandum of law in opposition to One 3 Two, Inc.'s (d/b/a Obey Clothing) motion for summary judgment. I make this declaration based upon my knowledge of matters in this action, and to place before the Court the following documents.

2. Attached hereto as Exhibit 74, is a true and correct copy of OTT 0017176-79.
3. Attached hereto as Exhibit 75, are true and correct copies of subpages from Obey Giant Art, Inc.'s website and Obey Clothing's website (last visited January 25, 2011) at <http://obeygiant.com/prints/eye-alert-cream>, <http://shop.obeyclothing.com/p-2571-eye-alert-heather-tee.aspx>, <http://obeygiant.com/prints/your-eyes-here>, <http://shop.obeyclothing.com/p-2612-your-eyes-here-basic-tee.aspx>, <http://obeygiant.com/prints/global-warning>, <http://obeygiant.com/prints/operation-oil-freedom-gold>, and <http://shop.obeyclothing.com/p-2227-global-warming-everyday-crew-neck-tee.aspx> .
4. Attached hereto as Exhibit 76, is a true and correct copy of Exhibit 35 from the deposition of Regan Donald Juncal, dated August 26, 2010.
5. Attached hereto as Exhibit 77, are true and correct copies of Exhibit 39 and Exhibit 40 from the deposition of Regan Donald Juncal, dated August 26, 2010.
6. Attached hereto as Exhibit 78, are true and correct copies of excerpts from the deposition transcript of Regan Donald Juncal, dated August 26, 2010.
7. Attached hereto as Exhibit 79, are true and correct copies of excerpts from the deposition transcript of Regan Donald Juncal, dated March 23, 2010.
8. Attached hereto as Exhibit 80, are true and correct copies of subpages from Obey Giant Art, Inc.'s website, Obey Clothing's website, and the website for Obey Clothing's UK affiliate, Obey Clothing UK, as linked from obeyclothing.com (last visited January 25, 2011) at <http://shop.obeyclothing.com/p-2612-your-eyes-here-basic-tee.aspx>, <http://shop.obeyclothing.com/p-2571-eye-alert-heather-tee.aspx>, <http://shop.obeyclothing.com/p->

[2282-og-face-sweatshirt.aspx](http://shop.obeyclothing.com/p-2282-og-face-sweatshirt.aspx), http://shop.obeyclothing.co.uk/products/43/446/star_basic_t-shirt/,
and http://shop.obeyclothing.co.uk/products/32/171/peeking_boatneck_t/.

9. Attached hereto as Exhibit 81, is a true and correct copy of the “Revenue Analysis” tab from OTT 00028371-418.

10. Attached hereto as Exhibit 82, is a true and correct copy of the “Revenue Analysis” tab from OTT 00028300-380.

11. Attached hereto as Exhibit 83, are true and correct copies of subpages from Obey Clothing’s website, and Obey Clothing’s UK website (last visited January 25, 2011) at <http://shop.obeyclothing.com/p-2656-eye-alert-bag.aspx>,
http://shop.obeyclothing.co.uk/products/16/193/peeking_tote_bag/,
<http://shop.obeyclothing.com/p-2751-mujer-tote-bag.aspx>,
http://shop.obeyclothing.co.uk/products/30/185/death_disco_necklace/, and
<http://shop.obeyclothing.com/p-2651-zapatista-stencil-scarf.aspx>.

12. Attached hereto as Exhibit 84, is a true and correct copy of OTT 0011185.

13. Attached hereto as Exhibit 85, is a true and correct copy of Counterclaim Defendant One 3 Two’s Supplemental Responses and Objections to First Set of Requests for Production Propounded by Defendant, Counterclaim Plaintiff and Cross-claim Plaintiff/Defendant the Associated Press, dated March 12, 2010.

14. Attached hereto as Exhibit 86, are true and correct copies of excerpts from the deposition transcript of Mannie Garcia, dated March 5, 2010.

15. Attached hereto as Exhibit 87, are true and correct copies of excerpts from the deposition of Mark L. Hair, dated December 6, 2010.

16. Attached hereto as Exhibit 88, are true and correct copies of excerpts from the expert report of Mark L. Hair, dated November 2, 2010.

17. Attached hereto as Exhibit 89, are true and correct copies of excerpts from the deposition transcript of Kathleen Kedrowski, dated December 15, 2010.

18. Attached hereto as Exhibit 90, are true and correct copies of excerpts from the deposition transcript of Alexander Van Berckelaer, dated March 11, 2010

19. Attached hereto as Exhibit 91, are true and correct copies of excerpts from the deposition transcript of Alexander Van Berckelaer, dated August 26, 2010

20. Attached hereto as Exhibit 92, are true and correct copies of Obey Clothing's websites, at <http://obeyclothing.com/#/contact/>, and obeyclothing.com/#/propaganda/ .

21. Attached hereto as Exhibit 93, are true and correct copies of subpages from Obey Clothing's website (last visited January 25, 2011) at <http://obeyclothing.com/#/history/fineart/>, <http://obeyclothing.com/#/history/streetart/>, <http://obeyclothing.com/#/history/posterart/>, and <http://obeyclothing.com/#/video/miamiart/> .

22. Attached hereto as Exhibit 94, are true and correct copies of subpages from Obey Clothing's website (last visited January 25, 2011) at <http://obeyclothing.com/news/?p=7405>, <http://obeyclothing.com/news/?p=7383>, <http://obeyclothing.com/news/?p=7289>, and <http://obeyclothing.com/news/?p=5920> .

23. Attached hereto as Exhibit 95, are true and correct copies of subpages from Obey Clothing's website (last visited January 25, 2011) at <http://obeygiant.com/headlines/obey-clothing-holiday-sample-sale-2010> and <http://obeygiant.com/store/clothing/> .

24. Attached hereto as Exhibit 96, is a true and correct copy of a Google.com search result for "one 3 two," "1 3 2," and "one three two" in Obey Clothing's website (last visited January 25, 2011) at <http://www.google.com/#sclient=psy&hl=en&q=%22one+3+two%22+%221+3+2%22+%22one+three+two%22+site:obeyclothing.com&aq=&aqi=&aql=&oq=&pbx=1&fp=241062ed1d424d73> .

25. Attached hereto as Exhibit 97, are true and correct copies of subpages from Obey Clothing's website (last visited January 25, 2011) at <http://obeyclothing.com/news/?p=5722> and <http://obeyclothing.com/news/?p=6041> .

26. Attached hereto as Exhibit 98, are true and correct copies of subpages from Obey Clothing's website (last visited January 25, 2011) at <http://obeyclothing.com/news/?p=6893> and <http://obeyclothing.com/news/?p=6922> .

27. Attached hereto as Exhibit 99, are true and correct copies of subpages from Obey Giant Art, Inc.'s website (last visited January 25, 2011) at <http://obeygiant.com/free> .

28. Attached hereto as Exhibit 100, are true and correct copies of subpages from Obey Clothing's website (browsing individual-item subpages) at <http://shop.obeyclothing.com/> .

29. Attached hereto as Exhibit 101, is a true and correct copy of the home page for Obey Clothing's website at <http://obeyclothing.com> .

30. Attached hereto as Exhibit 102, is a true and correct copy of a subpage for Obey Clothing's website (listing all contact addresses under Obey Clothing) at <http://obeyclothing.com/#/contact/> .

31. Attached hereto as Exhibit 103, are true and correct copies of excerpts from the deposition transcript of Olivia Perches, dated September 22, 2009.

32. Attached hereto as Exhibit 104, are true and correct copies of various websites at http://shop.obeyclothing.co.uk/products/9/533/icon_face_tri-blend_t-shirt/, <http://shop.obeyclothing.com/p-2282-og-face-sweatshirt.aspx>, and <http://shop.obeyclothing.com/p-2581-obey-badge-everyday-scoop-neck-tee.aspx> .

33. Attached hereto as Exhibit 105, are true and correct copies of subpages from the Obey Clothing website (last visited January 25, 2011) at <http://obeyclothing.com/news/?p=7211> .

34. Attached hereto as Exhibit 106, is a true and correct copy of a photograph of Obey Clothing merchandise taken in store on January 25, 2011.

35. Attached hereto as Exhibit 107, is a true and correct copy of OTT0012188-90.

36. Attached hereto as Exhibit 108, is a true and correct copy of OTT0019054-55.

37. Attached hereto as Exhibit 109, is a true and correct copy of OTT0011860.

38. Attached hereto as Exhibit 110, is a true and correct copy of FAIREY124583.

39. Attached hereto as Exhibit 111, is a true and correct copy of MCCORMACK0000175-78.

40. Attached hereto as Exhibit 112, is a true and correct copy of FAIREY10955-62.
41. Attached hereto as Exhibit 113, is a true and correct copy of FAIREY113622-24.
42. Attached hereto as Exhibit 114, is a true and correct copy of
MCCORMACK0000471-74.
43. Attached hereto as Exhibit 115, is a true and correct copy of OTT018818-20.
44. Attached hereto as Exhibit 116, is a true and correct copy of OTT026471-72.
45. Attached hereto as Exhibit 117, is a true and correct copy of OTT 0000163-64.
46. Attached hereto as Exhibit 118, is a true and correct copy of OTT 00028223-41.
47. Attached hereto as Exhibit 119, is a true and correct copy of OTT 00028204-22.
48. Attached hereto as Exhibit 120, is a true and correct copy of Exhibit 4 from the
deposition of Alexander Van Berckelaer, dated March 11, 2010.
49. Attached hereto as Exhibit 121, is a true and correct copy of Exhibit 24 from the
deposition transcript of Chris Broder, dated March 16, 2010.
50. Attached hereto as Exhibit 122, are true and correct copies of excerpts from the
deposition transcript of Marita Sturken, dated November 24, 2010.
51. Attached hereto as Exhibit 123, is a true and correct copy of
MCCORMACK0000409.

52. Attached hereto as Exhibit 124, is a true and correct copy of the Capital IQ “Private Company Profile” for Stussy, Inc.

53. Attached hereto as Exhibit 125, is a true and correct copy of the Lexis Nexis “Private Company Insight” and related company data for Stussy, Inc.

54. Attached hereto as Exhibit 126, are true and correct copies of excerpts from the rebuttal expert report of John C. Jarosz, dated November 2, 2010.

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

Executed this 26th day of January 2011 at New York, New York.

/s/Brendan T. Kehoe
Brendan T. Kehoe, Esq.