

EXHIBIT B
TO CROWTHER DECLARATION
IN SUPPORT OF ONE 3 TWO, INC.'S
MOTION IN LIMINE NO. 1

Certified Copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY and OBEY GIANT
ART, INC.,

Plaintiffs,

vs.

1:09-CV-1123 (AKH)

THE ASSOCIATED PRESS,

Defendant/Counterclaim Plaintiff,

vs.

SHEPARD FAIREY, OBEY GIANT
ART, INC., OBEY GIANT LLC and
STUDIO NUMBER ONE, INC.,

Counterclaim Defendants.

VIDEOTAPED DEPOSITION OF

KATHLEEN KEDROWSKI

December 14, 2010

9:27 a.m.

222 East 41st Street
New York, New York

Joan Urzia
Notary Public of the State of New York



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Suite 4715
New York, N.Y. 10119

EXHIBIT B

1 K. Kedrowski

2 Q. Is it your understanding that The
3 Associated Press -- strike that.

4 Is it your understanding that The
5 Associated Press' burden is to present
6 proof of the infringer's gross revenue
7 attributable to the infringement?

8 MS. RAY: Objection. Form.
9 Calls for a legal conclusion.

10 A. I think again, as a layperson,
11 there has been various case law on that. I
12 understand that a plaintiff may put forth
13 the entire gross revenue of the company, or
14 the plaintiff may choose to put forth a
15 direct subset of that. It's all to some
16 degree dependent on the amount of
17 information available to the plaintiff's
18 expert or whoever is performing that
19 calculation at the time these items are put
20 forth, and clearly, and as an accounting
21 expert, my reading of this clearly is
22 because the defendant has more access to
23 the details than the plaintiff usually at
24 this stage.

25 And so I understand it can be the



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1 K. Kedrowski
2 entire gross revenues of the company, or it
3 can be a subset that is related to the
4 infringement.

5 Q. Okay.

6 And again, I'm not trying to pin
7 you down on the accurate statement of the
8 law, I just want to get your understanding.

9 So you've read the Jarosz reports
10 in this case, correct?

11 A. Yes, I have.

12 Q. All right.

13 With respect to direct profits,
14 do you recall that Mr. Jarosz opined that a
15 portion of the direct profits that Fairey
16 earned on the Obama HOPE image could be
17 attributed to Mr. Fairey's own efforts in
18 distributing and promoting the image as
19 opposed to the Garcia photo itself, do you
20 recall that?

21 MS. RAY: Objection. Vague as to
22 which Jarosz report. The reports
23 speak for themselves.

24 A. The best way I can answer your
25 question is to indicate that I understand



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1 K. Kedrowski
2 would say that while I believe those
3 calculations are conservative, I do
4 recognize that costs would need to be
5 deducted from those numbers, and that's
6 probably the primary up to item that I'm
7 referring to.

8 And then to the extent that any
9 further apportionment related to other
10 factors can be successfully shown or shown
11 through appropriate methodology and things
12 of that nature proven, then perhaps an
13 additional reduction would be done. But I
14 certainly would say that a deduction for
15 costs would be an item that would be
16 considered in that, to those numbers.

17 Q. In calculating the indirect
18 revenue figures in paragraph 18C(vi), did
19 you attempt to differentiate revenues of
20 Fairey and Obey Clothing that resulted from
21 the infringing activity of Fairey and Obey
22 Clothing as opposed to revenue attributable
23 to other conduct of Fairey and Obey
24 Clothing?

25 MS. RAY: Objection. Form.



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1 K. Kedrowski

2 A. My calculations of infringing
3 revenues -- or I'm sorry, of indirect
4 revenues do not include all of the other
5 revenues of either the Fairey companies or
6 Obey Clothing and therefore do exclude to
7 some extent certain revenues that may be
8 deemed unrelated to the infringing works.

9 So while not required as the
10 plaintiff's expert to do such removal of
11 other revenues, I did so by using certain
12 calculations and other methods and analysis
13 that I performed.

14 So just to be clear, I believe,
15 if I recall right, Obey Clothing being the
16 most obvious, they earned close to \$30
17 million in revenue in one of the years and
18 only a couple of million of that is related
19 to the infringing works.

20 My indirect revenue calculation
21 is not the net of that. It falls short of
22 that. So it's conservative. It clearly
23 has adjusted out some other revenues, as is
24 the same somewhat true with the Fairey
25 companies.



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1 K. Kedrowski
2 double that looks like a huge growth rate
3 because the base is so small.

4 So I did look at those, but I
5 decided that that would only have
6 overestimated my, the growth because it
7 would look like these huge percentages
8 that, in fact, were not happening.

9 And so I went with the year
10 before the event as an indication of what a
11 stabilized growth would have been the
12 company at a million dollar level. It was
13 not at a million dollar level prior to
14 that.

15 So the answer is yes, I did, but
16 I felt it wasn't -- it was not appropriate
17 to include it in the ultimate calculation
18 here.

19 Q. If you look at the notes to
20 Exhibit D3, the second note provides the
21 formula for your CAGR calculation, correct?

22 A. Yes.

23 Q. All right.

24 A. It's just awfully small.

25 Q. So which number did you use as



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K. Kedrowski

your ending value?

MS. RAY: Objection. Form.

A. You're looking at the growth year over year, so it's one year over the next.

Q. I understand.

You've got this table in Exhibit D3 that has total revenues for Obey Giant Art Inc., right?

A. Uh-huh.

Q. And then it's got residual revenues?

A. Uh-huh.

Q. It's got that for each of 4 years?

A. Uh-huh.

Q. Can you tell me which of those numbers did you use as the ending value in your CAGR calculation?

A. The ending value would have been the value at the last year.

Q. 2009?

A. Yes.

Q. Which column?

A. I believe the first column.



1 K. Kedrowski

2 Q. Okay?

3 A. Unless I'm mistaken.

4 Q. All right.

5 And which did you use at the
6 beginning value?

7 A. The 2006.

8 Q. I'll tell you, Ms. Kedrowski, I
9 don't think that's right.

10 A. Okay. I'm giving you the best
11 recollection, as I sit here today.

12 Q. Because for me, and I'll tell you
13 that I use an online CAGR calculator as
14 opposed to -- because I got a Texas
15 instruments \$25 special which doesn't have
16 powers on it -- to get to the 32.2 percent
17 CAGR figure that you arrive at, I have to
18 use the 2007 figure as my beginning value.

19 A. Okay.

20 Q. All right? Is that how you
21 intended to run the CAGR calculation?

22 A. If that's what's in there, then
23 that's what I intended, yes. Well, you
24 have to keep in mind that this is growth
25 between years. So to me, I guess looking



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1 K. Kedrowski

2 Q. Why not?

3 A. Because I'm looking at the
4 overall growth of the company as a whole,
5 and I'm recognizing in the calculation that
6 I perform that a portion of that has to do
7 with growth that the company would have
8 experienced absent the image.

9 Otherwise, I quite frankly would
10 have gone back to 2007 or 2006 where there
11 was only a million dollars worth of
12 revenues.

13 So I believe this calculation
14 looks at the overall growth of the company
15 and attributes a portion of that to the
16 Obama, but not assuming that none of the
17 growth would have occurred but for Obama,
18 the image.

19 Q. In the process of preparing your
20 report and arriving at your expert
21 opinions, did you perform any CAGR
22 calculations other than the one set forth
23 in Exhibit D3?

24 MS. RAY: Objection to form.

25 A. No.



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C E R T I F I C A T E

STATE OF NEW YORK)

: SS.

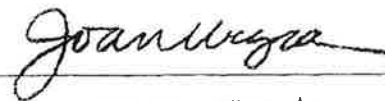
COUNTY OF NEW YORK)

I, Joan Urzia, a Notary Public within and for the State of New York, do hereby certify:

That KATHLEEN KEDROWSKI, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of December, 2010.



Joan Urzia



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY and
OBEY GIANT ART, INC.,

Plaintiffs,

vs.

1:09-CV-1123 (AKH)

THE ASSOCIATED PRESS,

Defendant/
Counterclaim Plaintiff,

vs.

SHEPARD FAIREY, OBEY GIANT
ART, INC., OBEY GIANT LLC and
STUDIO NUMBER ONE, INC.,

Counterclaim Defendants.

VIDEOTAPED DEPOSITION OF

KATHLEEN KEDROWSKI

December 15, 2010
9:30 a.m.

222 East 41st Street
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Reported by: Joan Urzia, Notary Public of the State of New York



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1 K. Kedrowski
2 fame and widespread recognition as a result
3 of the infringing works," is based solely
4 on paragraph 88 of this report?

5 MS. RAY: Objection to form.
6 Misstates her testimony. Misstates
7 the report. The report speaks for
8 itself.

9 A. I provided certain examples in
10 paragraph 88, but in response to the
11 preface to your question that you're
12 entitled to know everything that I relied
13 upon, you have a 9-page list of everything
14 that I considered and relied upon, you have
15 a section in here that talks about who I
16 spoke to and whose deposition testimony I
17 read.

18 So you have the complete set of
19 everything that I looked at, reviewed and
20 relied upon or considered in the course of
21 my work.

22 Q. You testified earlier that the
23 fame of Shepard Fairey also buoyed Obey
24 Clothing.

25 What support do you have for



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1 K. Kedrowski

2 that?

3 MS. RAY: Objection to form. The
4 report speaks for itself.

5 A. Well, in part, as I've said,
6 paragraph 88, the fame and notoriety was
7 Mr. Fairey, but it was also the image, and
8 the image is on the clothing sold by Obey
9 Clothing.

10 So I believe that since the
11 notoriety that is associated with the image
12 itself -- and if I remember Mr. Juncal's
13 testimony, that this T-shirt should be the
14 seminal one for the people, if I remember
15 right, or the seminal product that they
16 sold, that's an example of a testimony that
17 I'm recalling now that supports the fact
18 that they were receiving a benefit from
19 being able to sell this merchandise.

20 Q. Did you --

21 A. And -- and the merchandise
22 containing the image, just to be clear.

23 Q. Did you undertake any surveys to
24 determine whether Obey Clothing achieved
25 substantial fame and widespread recognition



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K. Kedrowski

Q. Sorry, strike that.

You calculated that by multiplying the 16.7 percent times the residual revenue of \$81,415,000, correct?

A. Correct.

Q. Which means that your calculation includes the residual revenue from 2006 and 2007, correct?

MS. RAY: Objection. Form. The report speaks for itself.

A. The math to determine the \$13.6 million does include the multiplication of the CAGR times 2006 and 2007, yes.

Q. Do you believe that that calculation is correct?

A. As I indicated yesterday, there was a math error in including those, and as a result of realizing that, I went back and looked at the 13.6, as I testified yesterday, I looked at the 2.7 for the Fairey numbers, and I am still comfortable with the 13.6 million number based upon all of the other factors, even though, yes, the calculation of it here included this,



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1 K. Kedrowski
2 included 2006 and 2007 inadvertently, I am
3 still comfortable that from an indirect
4 profits that there is an indirect profit
5 number that is up to 13.6 out of the total
6 of 48, \$49 million of residual revenue in
7 those two years.

8 So there is some number up to
9 \$13.6 million that is indirect profits, and
10 that is, I remain comfortable with that
11 number as I sit here recognizing the math
12 error that occurred.

13 Q. Was it also a math error to
14 multiply the CAGR number times the revenue
15 earned in January through March of 2008?

16 MS. RAY: Objection. Form.
17 Misstates her testimony. The report
18 speaks for itself.

19 A. I do not believe that that is
20 true, no. I believe the calculation that I
21 performed, because it is apportioning the
22 \$49 million down to a much lower number, is
23 appropriate as it is if I were to include
24 only 2008 and 2009.

25 Q. I thought you testified it was a



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1 K. Kedrowski
2 math error to multiply the CAGR times the
3 residual revenue of 2006 and 2007, didn't
4 you say that?

5 MS. RAY: Objection to form.
6 Misstates her testimony.

7 A. I did say that, yes.

8 Q. So isn't it also a math error to
9 multiply the CAGR for the revenue earned in
10 January, February, March of 2008 when no
11 Obama merchandise was sold?

12 MS. RAY: Objection. Asked and
13 answered. Misstates her testimony.

14 A. No, because the calculation is
15 done on an annual basis, and I believe that
16 because I've done it that way it's
17 appropriate to apply it to an annual
18 revenue number.

19 Q. Why do you feel comfortable with
20 the \$13,621,682 number?

21 A. For all of the reasons that I
22 testified this morning related to the
23 growth of the individual years, there was a
24 41 percent increase in revenues from 2007
25 to 2008 that can only be explained to a, I



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1 K. Kedrowski

2 think it's 40 percent nature -- I need to
3 go, I would need to look at that -- but
4 some, all of the revenue change is not
5 coming from the infringing works, along
6 with the fact that I've not included
7 anything for 2010 without having included,
8 without having that information.

9 So in looking at that number,
10 with all of the information that I know
11 about this matter, that number to me -- and
12 again, it's an "up to" number -- is
13 reasonable from all of the information
14 available.

15 Q. Is it your opinion that Obey
16 Clothing would have lost money from 2007 to
17 2008, but for the Obama merchandise?

18 MS. RAY: Objection. Form. The
19 report speaks for itself. Asked and
20 answered.

21 A. Without -- I've not performed
22 that analysis, and couldn't perform that
23 analysis because I don't have the detailed
24 data of Obey Clothing.

25 It's certainly a possibility.



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1 K. Kedrowski
2 to be able to try to explain some the
3 results of the regression and to be able to
4 effectively analyze its results.

5 Q. Do you know whether the AP ever
6 asked Obey Clothing for that information?

7 MS. RAY: Objection. Form.

8 A. I don't know. I'm unaware of all
9 the, every single document request. So I
10 don't know the answer to that.

11 Q. Is it fair to say you did not
12 perform a regression analysis for Obey
13 Clothing then?

14 MS. RAY: Objection. Asked and
15 answered. The report speaks for
16 itself.

17 A. That is not true.

18 Q. Did you perform a regression
19 analysis as to Obey Clothing?

20 A. I did perform an analysis, and
21 what I've testified to is the
22 interpretation of that could not be done
23 because the detail was not available to
24 help me understand the results.

25 So I did a very basic regression



1 K. Kedrowski
2 using totals, and the results did not make
3 sense, and without the detail -- and that's
4 why I walked away from this, as a way to
5 analyze this, because if I had put it
6 forth, either Mr. Jarosz or Mr. Hair would
7 have probably had the same questions I had
8 about it that couldn't be resolved with the
9 available data.

10 Q. What was the result of that very
11 basic regression analysis that you did?

12 MS. RAY: Object to the form and
13 to the extent it gets into our
14 stipulation, which is part of her work
15 papers.

16 A. I don't recall it sitting here.
17 What I just testified to, I do recall, is
18 that the result did not make sense, just as
19 a general basis, and without additional
20 detail, there was nothing I could do to
21 figure out that. So it was, you know, I
22 basically got a result that to me made no
23 sense.

24 Q. What do you mean, it made no
25 sense to you?



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K. Kedrowski

MS. RAY: Objection. Asked and answered. And again, to the extent this gets into the stipulation area of your work papers and drafts, I'll direct you not to answer on that.

Can you answer it without getting into work papers and drafts.

A. Without being able to have that in front of me, but I don't even recall if I kept, I don't know that I can answer all that, but regression comes out with certain statistics, and my recollection is the interpretation of those statistics did not make sense in the overall scheme of things and as a result that's why I didn't use it.

Q. Did the results show that Obey Clothing had not achieved a financial benefit as a result of the Obama merchandise?

DI MS. RAY: I'm going to object and I'm going to instruct you not to answer that based on the parties' stipulation which says that we will not get into expert's work papers, drafts and the



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K. Kedrowski

like.

BY MS. FUGATE:

Q. Are you going to follow Ms. Ray's instruction?

MS. RAY: Yes.

A. I believe I have, I'm being told to do so.

Q. Just perfecting the record. I have to ask it.

A. Okay, I just --

Q. I would also encourage you to follow your counsel's instructions.

A. I think that's what I need to do.

MS. FUGATE: I'm handing to the court reporter the expert report of Neil J. Zoltowski to be marked as Exhibit 23.

(Kedrowski Exhibit 23, Expert report of Neil J. Zoltowski, marked for identification, as of this date.)

BY MS. FUGATE:

Q. Ms. Kedrowski, have you seen Exhibit 23 before?

A. It appears like the copy of the



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1 K. Kedrowski
2 that you have seen was the Soup Nazi
3 \$30,000 license; is that correct?

4 MS. RAY: Objection. Form.
5 Misstates her testimony.

6 A. I don't know that I said that
7 yesterday. I don't -- I'm not specifically
8 recalling that.

9 Q. Have you seen a license that
10 generated more than \$30,000 in revenue?

11 MS. RAY: Objection to form.
12 Lack of foundation.

13 A. Are you limiting your question to
14 documents in this record? I just want
15 to -- I mean, I have seen lots of licenses
16 in my career. So I just want to be clear
17 with my answer here on the record. What
18 you limiting -- what is the limitation to
19 your question?

20 Q. A fair point.
21 In this litigation --

22 A. Okay.

23 Q. -- have you seen any license from
24 the AP --

25 A. Okay.



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K. Kedrowski

Q. -- for a photo where the AP generated more than \$30,000 as a result of that?

MS. RAY: Objection to form.

Asked and answered.

A. On a single license is what you're saying, just to be clear?

Q. Yes.

A. I don't think I have. I think that license is the largest one in total that is in the record as a single license.

Q. If you could turn to your second report, which is Exhibit 2 --

A. Can I put away Mr. Zoltowski?

Q. Yes, sorry.

A. Sorry, these things are really big, so.

Q. Okay.

Exhibit 2, if you'll turn to page 7, if you'll look at paragraph 14-A at the bottom of the page, it states that you were retained to render your independent damages related opinions -- sorry, I paraphrased that -- you were asked to render an opinion



1 K. Kedrowski
2 is not just in accounting.

3 Q. Do you have any expertise in the
4 apparel industry?

5 MS. RAY: Objection. Form.

6 A. I have had clients where -- I've
7 had clients throughout my career that have
8 been in the apparel industry, including
9 certain IP cases that I've worked on.

10 Q. How many clients have you worked
11 with who have been in the apparel industry?

12 MS. RAY: Same objection. Form.

13 A. I can think of a couple, that
14 either were my clients or I analyzed data
15 from the opposing side, so I'm aware of
16 different companies. So I can think of a
17 couple as I sit here, but certainly I can't
18 think of a whole list.

19 Q. Do you consider that you are an
20 apparel expert?

21 MS. RAY: Objection. Form.

22 A. What do you mean by apparel
23 expert? Certainly when I pick out my own
24 clothes, I think I'm an apparel expert, but
25 in what way are you referring to an apparel



1 K. Kedrowski

2 expert?

3 Q. Do you feel that you have an
4 expertise in the business of the apparel
5 and clothing industry, such that you can
6 express an opinion about that?

7 MS. RAY: Objection. Form.

8 Vague. The reports speak for itself.

9 A. I believe that based upon my
10 experience and the work that I perform in
11 order to understand various industries when
12 I do my work, the specific elements that I
13 have commented on as it relates to
14 Ms. Goldaper, I believe I have the
15 requisite valuation experience -- I'm going
16 to use at that this in a general sense --
17 to comment on the areas where she was
18 speaking to value.

19 So, for example, her analysis or
20 lack thereof related to increased costs for
21 charitable products.

22 Q. Have you ever assisted a client
23 in the apparel industry who had a
24 philanthropic project that they worked on
25 with you?



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1 K. Kedrowski

2 MS. RAY: Objection. Form. Lack
3 of foundation.

4 A. I don't know that I could
5 classify that. Nothing comes to mind as I
6 sit here.

7 I mean, that's I think an
8 extremely niche item that would have come
9 up.

10 So I can't -- because to some
11 degree my work as a treasurer of a
12 not-for-profit is they're not in the
13 apparel industry, but I'm certainly
14 familiar with philanthropic endeavors, if
15 you will. I can't think of any specific
16 engagement that is as specific as what
17 you've just described.

18 Q. So what is your basis for
19 critiquing Ms. Goldaper's opinion, which is
20 based upon her own experience in the
21 apparel industry, with regards to having
22 philanthropic projects?

23 MS. RAY: Object to the form.
24 Misstates her testimony. The report
25 speaks for itself.



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C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.
COUNTY OF NEW YORK)

I, Joan Urzia, a Notary Public within and for the State of New York, do hereby certify:

That KATHLEEN KEDROWSKI, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of December, 2010.

Joan Urzia

Joan Urzia



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