

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY and OBEY GIANT ART,
Plaintiffs,

vs. CASE NO. 09CIV01123 (AKH)

THE ASSOCIATED PRESS,
Defendant and Counterclaim Plaintiff,

vs.

SHEPARD FAIREY, et al.,
Counterclaim Defendants

VIDEOTAPED DEPOSITION OF EXPERT
GABRIELE GOLDAPER

November 20, 2010

8:33 a.m. - 5:40 p.m.

333 South Hope Street
Los Angeles, California

Marceline F. Noble, CSR No. 3024

**GOLDAPER DEPOSITION
TO ONE 3 TWO'S OPPOSITION TO
AP'S MOTION IN LIMINE NO. 1**

1 A. No, I didn't. I had to stay on an extra year
2 anyway to get all those classes to work out so I could
3 get that B.A. Since I had to stay on, I took a B.S. in
4 education. I had enough hours left to take it, so I
5 just took it. And I always thought -- remember this is
6 1959 -- that as a woman a B.S. in education was a good
7 union card if I ever needed it. So that's why I went
8 and I got that B.S. in education.

9 I knew I could always teach.

10 Q. You were already working for Federated when you
11 were attending college?

12 A. While I was attending college, I worked for
13 Federated in New York. Federated moved me to Ohio,
14 which is where their corporate office then was and still
15 is. That's how I got to Ohio.

16 Q. What were you doing for Federated at the time?

17 A. I worked for Federated in their operations
18 area. So I did staffing; I did budgets. For example,
19 if a buyer had -- if a department's opened 10 hours a
20 day, when do you bring in eight-hour people? When do
21 you bring -- because you don't want overtime. When do
22 you bring in the part timers?

23 So you have to figure out the rate of sale, you
24 know, and the transactions. So I did that kind of
25 behind the scenes work for Federated.

1 I also did inventory control, how many size
2 34Bs, pink, black, blue and green do you get when -- you
3 know, remember, that's before computers. So I did
4 inventory management for them.

5 I did all the numbers and all the behind the
6 scenes for Federated.

7 Federated owned at that point major department
8 stores, Shillito's in -- in -- in Ohio, Bloomingdale's
9 in New York, and A & S in New York, and so forth. You
10 know, Macy's -- today, it's Macy's, same outfit.

11 That's -- and that's how I got to California,
12 by the way. Federated, when they bought Bullocks and
13 I. Magnin's moved me to California to do the same thing,
14 the operations, only then they expanded my role because
15 by that time, you know, I had a college degree and so
16 forth. I did buyer trainings, how do you get markdowns
17 from your manufacturers and how you do open to buys,
18 meaning if you go to the market to buy clothes for your
19 departments, how many tops, how many bottoms, how many
20 knits, how many wovens. So I did behind the scenes
21 operations type work.

22 Q. When did you first start working in the fashion
23 industry?

24 A. I started with Federated while I was going to
25 Barnard, okay, and I took some time off. I have three

1 Q. You've worked for both the plaintiff and the
2 defense?

3 A. Yes.

4 Q. How do those cases break down?

5 A. I would say almost equally. I've done both
6 sides.

7 Q. In approximately -- and I'm just asking for the
8 number. In approximately how many of the cases have you
9 testified at trial?

10 A. Oh. I think there have been six.

11 Q. Were they all in California?

12 A. Yes.

13 Q. In approximately how many cases have you
14 testified at a deposition?

15 A. I think I've been deposed somewhere between a
16 low of 15 and a high of 18, 19 times.

17 Q. Again, all in California?

18 A. Yes.

19 Q. Turning to your business management consulting
20 work.

21 A. Okay.

22 Q. What does it mean to work as an apparel expert
23 for the U.S. Agency For International Development?

24 A. Okay. Well, the U.S. -- the State Department
25 qualified me way back as a -- what they call an apparel

1 expert, like you'd be a legal expert or, you know, a
2 financial expert. And then the State Department has an
3 agency called United States Agency For -- For
4 International Development.

5 And Third World countries apply to that State
6 Department for assistance in specific areas. And then
7 the State Department uses this agency to find them
8 experts in those areas. Okay. And that agency sent
9 me -- like I went to Moscow and set up the Russian
10 Fashion Association, because they used me as a
11 consultant. I went to Thailand and set up a pajama
12 factory. I went to Egypt and helped develop -- the guy
13 had 30 retail stores, everything in the stores he
14 manufactured and he wasn't making money, why wasn't he
15 making money? And I told him why and showed him how.

16 So I've spent a lot of time overseas for the
17 United States Government as an apparel expert helping,
18 you know, whatever countries apply for a grant. They
19 have to apply for an expert. And I've been -- I went to
20 Honduras and set up a bra factory; El Salvador, a dress
21 factory.

22 The best one was Moscow where I did the Russian
23 Fashion Association. It took me a while, but I set that
24 up as -- that's what that is.

25 Q. Now, what percentage of time do you spend

1 you joined it as partner?

2 A. All right. Let me give you some background.

3 Q. Sure.

4 A. I was teaching in the graduate school at UCLA
5 and in my class sat a couple who owned a garment company
6 and they said we've been in business for three years and
7 we haven't made a dime. We've only lost money. Will
8 you come in and tell us how to save this company or turn
9 it around.

10 I said, here's the deal. If I turn you around,
11 you have to give me one-third of your company. You're
12 worth nothing today, you're a loser. But I can turn it
13 around. And if I don't turn it around, you've lost
14 nothing. But if I do, I want one-third of it.

15 Well, I took it to \$20 million and then I said
16 I'm out, because the handwriting was on the wall and I
17 knew if we sold we'd get advantage of it.

18 So how big was it when I came in? It shipped
19 maybe a million dollars but it lost probably that much
20 over the first three years.

21 Q. When did you first join Prisma Corp.?

22 A. Maybe '74, '75. It was after High Tide.

23 Q. Is this Nancy Johnson's Prisma Corporation?

24 A. That's the original Nancy Johnson.

25 Q. Was Nancy Johnson one of the students in your

1 A. That's correct.

2 Q. Are you holding yourself out as an expert in
3 graphic design?

4 A. I am not holding myself out as an expert in
5 graphic design.

6 Q. Do you believe that you are an expert in
7 graphic design?

8 A. I don't believe I'm an expert in graphic
9 design.

10 Q. Are you holding yourself out as an expert in
11 design more generally?

12 A. I am not here as an expert in design the way we
13 talk about design in the garment industry. I am not a
14 designer; I am not an expert in the creative process.

15 I am an expert in the garment industry as it
16 relates to buying habits of both the retail buyer and
17 the consumer as a buyer.

18 Q. Did you say you were holding yourself out as an
19 expert as to the buying habits of both the retail buyer
20 and the consumer as a buyer?

21 A. Yes. As it applies to buying apparel.

22 Q. I just want to make sure that we have this
23 clear. Your expertise today is as an expert in the
24 buying habits for the retail buyer and consumer as a
25 buyer as it relates to the buying of apparel; correct?

1 And my -- and I said that what counted in the
2 OBEY merchandise was the fact that they had Mr. Obama on
3 their merchandise, and that, if nothing else, on an
4 impulse is what got consumers to buy it. It's what
5 attracted them. It was the focus point of that apparel,
6 of that merchandise.

7 And, you know, I couldn't go back and validate
8 that other than looking at -- later on I found out the
9 sales numbers because there was no consumer, you know,
10 data, that -- I couldn't go to the store anymore. If
11 it's current merchandise, I do go to the store.

12 Q. When you say you go to the store, what do you
13 mean?

14 A. If it's merchandise that's currently being
15 sold, I do go to the stores to check it out. But I
16 couldn't go to the stores for this. And then I would
17 query consumers buying it or not buying it, why didn't
18 you buy it, why are you buying it. Or I query
19 salespeople, what made the consumer buy it or not buy
20 it. But we couldn't do it with this because it was
21 long, long gone.

22 Q. And because you couldn't do it with that, you
23 relied upon your own, let's say, informed impression of
24 what consumers wanted based on your experience in the
25 industry.

1 A. That's correct.

2 Q. When -- did you consult any historical trend
3 analyses for the years when the Obama merchandise was
4 being sold?

5 A. No, I did not.

6 Q. Are there magazines or publications that you
7 could have read to determine trend analyses?

8 A. Not for this kind of merchandise, not for
9 merchandise that is strictly -- this -- you know, this
10 had a li- -- a shelf life. The shelf life was during
11 the time that Obama was running for President and
12 shortly thereafter. Okay.

13 So to do a trend analysis -- trend analysis is
14 totally different. Trend analysis is, for example,
15 they'll analyze like the length of the skirts, they're
16 going up, they're going down. They analyze the trend in
17 is the direction going up, is the direction going down,
18 is the bustier going up or going down.

19 That's not available on this kind of
20 merchandise, which is strictly image-directed, you know,
21 where it's with a face on it as opposed to embroidered
22 stuff or -- you know, there was a trend, for example,
23 for garments with a lot of beads on it for a while.
24 Well, the -- the trend analysis showed that that's what
25 was going to be happening in six months down the road.

1 So we all read that and we all had clothes that had
2 beads on them.

3 There was nothing available like this. This
4 was very much for the moment.

5 And you do know from reading the depositions
6 that this -- they didn't even have this in their
7 catalog. It was kind of like a last-minute thing. It
8 was a very quick thing. It was for the moment. It was
9 as it was happening as opposed to trend analysis where,
10 you know, you see the color story develop and that kind
11 of stuff.

12 Q. Can you point me to any fashion industry text
13 that described the methodology that you used to
14 determine whether or not consumers attributed value --
15 let me withdraw the question and ask it again.

16 Can you point me to any fashion industry texts
17 that describe the methodology that you used to determine
18 whether or not -- the protectable elements of the Obama
19 photo?

20 A. Well, we just defined my -- my methodology.

21 Q. And it's internal; correct?

22 A. Yes.

23 Q. That is, you can't point me to a textbook that
24 shows that methodology?

25 A. Right.

1 Q. Any scholarly literature that goes over that
2 methodology?

3 A. No. But there's lots of people, like myself,
4 who have been in the industry for more years than they
5 care to admit -- in my case it's well over 45 because I
6 started in '59 -- and who use -- you know, who operate
7 the way I do when it's this kind of a current item.

8 There were many times that we put into the line
9 something like that real fast. You couldn't use trend
10 analysis. You went by the gut. You just felt this was
11 something we got to go with.

12 And Obama was something they had to go with and
13 they went with it. And the consumers just ate it up.
14 They just went with it.

15 Q. Who were some of the other people who you
16 consider qualified to make this sort of gut analyses
17 that you're describing?

18 A. There are -- you know, I can't mention names,
19 but there are -- there are a few people in the industry
20 that have been around as long as I have who will do the
21 same thing, who will, you know, give the same kind of a
22 description as to the approach to looking at something
23 like this for merchandise that doesn't exist anymore;
24 for a political theme that's nonexistent anymore. And
25 they'll tell you the same thing, okay.

1 I'd rath- -- I mean, I -- I won't mention
2 names, but there are a few of us that are in that age
3 category who have been around the block and who will do
4 the same -- who will say the same thing.

5 Q. And when you refer to your approach, that
6 approach is understand consumer motives; understand
7 current events; review a design for its overarching
8 theme; and based on those factors determine consumer
9 preferences?

10 A. Determine the viability of the product; and --
11 and determine whether it fits the consumer preferences
12 or the consumer motives for buying, and then go for it
13 if we're in the development stage, or go for it if we're
14 in this stage where it's already in the market.

15 Q. But --

16 A. Yes.

17 Q. But with that caveat, I didn't misstate your
18 methodology at all, did I?

19 A. No.

20 Q. Would you agree with me that there's something
21 of a leap between determining the viability of a product
22 and separating out which aspects of the product
23 contribute to its value?

24 A. Let me just say this. The garment industry is
25 one of the few industries that is not scientific.

1 There's nothing scientific in its approach. It now
2 finally is using technology, but it was the last
3 industry to use, you know, real computer technology.

4 And coming from that background, and using that
5 nonsophisticated, nontextbook, so to speak approach,
6 what you got from me is the way it's been working for
7 years, which is exactly my methodology that I
8 described -- which I have now repeated many, many
9 times -- as opposed to following a -- a set of -- of
10 kind of rules or a set of perspectives that you fill in,
11 you know, and check off.

12 It's now being developed on a more scientific
13 basis, but it hasn't been fully developed and it isn't
14 here yet.

15 Q. And there are a few practitioners who still --
16 who are still capable of giving your sort of analysis;
17 correct?

18 A. Yes.

19 Q. But you'd agree with me it's not a scientific
20 analysis.

21 A. Exactly. That's what I just said. It's not
22 scientific.

23 Q. And it's not a -- I think you used the term
24 "perspective" that you go in check off methodology;
25 correct?

1 A. Right. A lot of the garment industry, a lot of
2 the guys who have been successful out there, they've
3 gone by the gut, and they just say this is gonna sell.
4 And, you know, lo and behold, it does.

5 Q. It works for them?

6 A. Yes.

7 Q. But it's more impressionistic; correct?

8 A. It's more, you know, by the gut, yeah.

9 Q. And that's the sort of analysis that you've
10 given here; correct?

11 A. Yeah. A lot of that is it's based on the
12 experience of working with product and so forth.

13 Q. Now, are you familiar with the term "hedonic
14 regression analysis"?

15 A. No.

16 Q. Scientific term.

17 A. Never heard of it.

18 Q. Are you aware that there are statistical
19 surveys of consumer preferences that can be conducted,
20 provided there's sufficient data, to determine whether
21 or not consumers prefer certain aspects of certain --

22 A. In the garment industry?

23 Q. Generally.

24 A. Yeah. The garment industry is slightly
25 different.