

**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, OBEY GIANT ART, INC.,
OBEY GIANT LLC, STUDIO NUMBER ONE, INC.,
and ONE 3 TWO, INC. (d/b/a OBEY CLOTHING)

Counterclaim Defendants.

And

MANNIE GARCIA,

Defendant, Counterclaim Plaintiff and
Cross-claim Plaintiff/Defendant,

v.

SHEPARD FAIREY and OBEY GIANT ART, INC.,

Counterclaim Defendants.

And

THE ASSOCIATED PRESS,

Cross-claim Plaintiff/Defendant.

ECF

No. 09 Civ. 1123 (AKH)

JURY TRIAL DEMAND

**OBEY CLOTHING'S
AFFIRMATIVE DEFENSES
MARKED BY THE ASSOCIATED
PRESS AS DENIED, RESOLVED,
OR AN ISSUE FOR TRIAL**

**ANSWER AND AFFIRMATIVE DEFENSES BY COUNTERCLAIM DEFENDANT
ONE 3 TWO, INC. d/b/a OBEY CLOTHING TO THE ASSOCIATED PRESS'S
FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Counterclaim Defendant One 3 Two, Inc. d/b/a Obey Clothing ("One 3 Two") hereby
responds to the Counterclaims contained in Defendant, Counterclaim Plaintiff and Cross-claim

207. Answering paragraph 207, The AP's allegation states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation.

208. Answering paragraph 208, One 3 Two denies each and every allegation in this paragraph.

209. Answering paragraph 209, One 3 Two denies each and every allegation in this paragraph.

210. Answering paragraph 210, The AP's allegation states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation.

211. Answering paragraph 211, One 3 Two denies each and every allegation in this paragraph.

212. Answering paragraph 212, One 3 Two denies each and every allegation in this paragraph.

RESPONSE TO PRAYER FOR RELIEF

213. Answering paragraphs (a) through (m) of the prayer for relief, One 3 Two denies that The AP is entitled to the relief sought in these paragraphs and denies that The AP is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses, and without conceding that they bear the burden of proof as to any of these issues, One 3 Two asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

214. The AP's First Amended Counterclaims, and each cause of action alleged therein, fails to state a claim upon which relief can be granted.

AP: Denied

SECOND AFFIRMATIVE DEFENSE

215. The AP's First Amended Counterclaims, and each cause of action alleged therein,
is barred by the doctrine of unclean hands.

AP: Denied; evidence of
this defense should not be
permitted as it is deficient
as a matter of law

THIRD AFFIRMATIVE DEFENSE

216. The AP's First Amended Counterclaims, and each cause of action alleged therein,
is barred by the doctrine of waiver.

AP: Denied; Obey
Clothing has stated it is
not asserting this at trial

FOURTH AFFIRMATIVE DEFENSE

217. The AP's First Amended Counterclaims, and each cause of action alleged therein,
is barred by the doctrine of estoppel.

AP: Denied; Obey
Clothing has stated it is
not asserting this at trial

FIFTH AFFIRMATIVE DEFENSE

218. The AP's First Amended Counterclaims, and each cause of action alleged therein,
is barred by the doctrine of laches.

AP: Denied; evidence of
this defense should not be
permitted as it is deficient
as a matter of law

SIXTH AFFIRMATIVE DEFENSE

219. The AP's First Amended Counterclaims, and each cause of action alleged therein,
is s barred because The AP's alleged copyright registration is invalid or enforceable due to the
failure to comply with the requirements of Title 17 of the United States Code.

AP: Resolved
by Stipulation

SEVENTH AFFIRMATIVE DEFENSE

220. The AP's First Amended Counterclaims, and each cause of action alleged therein,
is barred by the First Amendment to the United States Constitution.

AP: Resolved
by 2/17/11
Summary
Judgment
Order

EIGHTH AFFIRMATIVE DEFENSE

221. Any damages and profits sought by The AP are limited, in whole or in part,
pursuant to 17 U.S.C. § 504(b) and exclude deductible expenses and any elements of profit
attributable to factors other than the alleged infringement of The AP's copyrighted work.

AP: Denied
that it states
an affirmative
defense

NINTH AFFIRMATIVE DEFENSE

222. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred because One 3 Two's use of the subject material constitutes fair use.

AP: Resolved
by 2/17/11
Summary
Judgment
Order

TENTH AFFIRMATIVE DEFENSE

223. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred because One 3 Two's use of the subject material is de minimis.

AP: Denied; Obey
Clothing has stated it is
not asserting this at trial

ELEVENTH AFFIRMATIVE DEFENSE

224. Any statutory damages sought by The AP pursuant to 17 U.S.C. § 504 are limited, in whole or in part, because any alleged infringement was not committed willfully and One 3 Two was not aware and had no reason to believe that its acts constituted an infringement of copyright.

AP: Denied;
wilfulness
an issue for
trial

TWELFTH AFFIRMATIVE DEFENSE

225. As to each and all of the claims for relief based on alleged infringement of alleged copyrights allegedly owned by The AP, the AP is barred from recovering damages based on such alleged infringement in violation of 17 U.S.C. § 1202, or such damages should be reduced, because any infringement by One 3 Two was innocent and without notice or knowledge of The AP's purported rights.

AP: Denied

THIRTEENTH AFFIRMATIVE DEFENSE

226. As to each and all of the claims for relief based on alleged infringement of alleged copyrights owned by The AP, The AP's actions constitute misuse of their alleged copyrights.

AP: Denied;
Obey Clothing
has stated it is
not asserting
this at trial

FOURTEENTH AFFIRMATIVE DEFENSE

227. To the extent that The AP is entitled to recover from One 3 Two, One 3 Two is entitled to equitable indemnity from other persons and parties causing or contributing to such damages.

AP: Denied;
Obey Clothing
has stated it is
not asserting
this at trial

FIFTEENTH AFFIRMATIVE DEFENSE

228. Because there was no primary violation of the Copyright Act, 17 U.S.C. § 101, et seq., One 3 Two cannot be held vicariously or secondarily liable.

AP: Denied;
an issue for
trial

SIXTEENTH AFFIRMATIVE DEFENSE

229. The AP failed to mitigate their damages, if there were any, which One 3 Two expressly denies.

AP: Denied;
Obey Clothing
has stated it is
not asserting
this at trial

SEVENTEENTH AFFIRMATIVE DEFENSE

230. The damages alleged in The AP's First Amended Counterclaims are impermissibly remote and speculative, and, therefore, The AP is barred from the recovery of any such damages.

AP: Denied

EIGHTEENTH AFFIRMATIVE DEFENSE

231. The AP's claims are barred by the doctrine of justification and privilege, in that all actions by One 3 Two were lawful and were fair and reasonable under all circumstances.

AP: Resolved
by 2/17/11
Summary
Judgment
Order

NINETEENTH AFFIRMATIVE DEFENSE

232. One 3 Two reserves the right to assert additional affirmative defenses that may arise in the course of discovery or during any trial of this matter.

AP: Denied

PRAYER FOR RELIEF

WHEREFORE, One 3 Two prays as follows:

1. The AP take nothing by reason of its Complaint;
2. That judgment be rendered in favor of One 3 Two;
3. That One 3 Two be awarded its costs of suit incurred in the defense of this action, including reasonable attorneys' fees to the extent such fees are authorized; and

4. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Counterclaim Defendant One 3 Two d/b/a Obey Clothing hereby demands trial by jury in this action.

Dated: New York, New York
December 4, 2009

Respectfully submitted,

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