

One 3 Two's Notes on the AP's Complaint:

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GREEN SECTIONS: material believed to be out of the case, but which the AP refuses to remove

GREEN UNDERLINE: allegations regarding fair use, which the AP refuses to remove; One 3 Two believes these are still at issue

BLUE INTERLINEATIONS: admissions

RED INTERLINEATIONS: denials. Many are to allegations as to which One 3 Two has no personal knowledge and so cannot admit or deny, although it does not dispute them. One 3 Two also disputes certain allegations to the extent the AP has defined the term *Fairey* and Counterclaim Defendants to include One 3 Two, and makes allegations as to the conduct of *Fairey* or Counterclaim Defendants as to which One 3 Two took no part.

**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**

Case No.: 09-1123 (AKH)

ECF Case

**THE ASSOCIATED PRESS'S FIRST
AMENDED ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS**

Plaintiff/Defendant,
v.
**SHEPARD FAIREY AND OBEY GIANT
ART, INC.,**
Counterclaim Defendants,
And
THE ASSOCIATED PRESS,
**Cross Claim
Plaintiff/Defendant.**

Defendant, The Associated Press (hereinafter “The AP”), by and through its attorneys, Kirkland & Ellis LLP, hereby answers the Amended Complaint of Plaintiffs Shepard Fairey (“Fairey”) and Obey Giant Art, Inc. (“Obey Giant Art”) (collectively, “Plaintiffs”), in this action, dated October 16, 2009, as follows:

NATURE OF THE ACTION

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 1 of the Complaint and therefore denies the same, except admits that Plaintiffs have asserted claims for declaratory and injunctive relief.

2. Denies the allegations contained in ¶ 2 of the Complaint, except admits that The AP has asserted that Plaintiffs have created derivative works that infringe The AP’s rights in and to one or more of its copyrighted works, and further admits that Plaintiffs have asserted claims for declaratory and injunctive relief which seek, among other things, a declaration that Plaintiffs have not infringed The AP’s copyrights.

PARTIES

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 3 of the Complaint and therefore denies the same.

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 4 of the Complaint and therefore denies the same.

5. Denies the allegations contained in ¶ 5 of the Complaint, except admits that its principal place of business is located in New York, New York and further admits that it is one of the largest, oldest and most prominent news-gathering organizations in the world.

JURISDICTION AND VENUE

6. States that the allegations contained in ¶ 6 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but that to the extent any response is required, admits that this Court has subject matter jurisdiction over Plaintiffs' claims.

7. States that the allegations contained in ¶ 7 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but that to the extent any response is required, admits that this Court has personal jurisdiction over The AP.

8. States that the allegations contained in ¶ 8 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but that to the extent any response is required, admits that venue is proper in this District.

FACTUAL ALLEGATIONS

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 9 of the Complaint and therefore denies the same.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 10 of the Complaint and therefore denies the same.

11. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 11 of the Complaint and therefore denies the same.

12. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 12 of the Complaint and therefore denies the same.

13. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 13 of the Complaint and therefore denies the same.

14. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 14 of the Complaint and therefore denies the same, except admits that a photographer named Mannie Garcia was employed by The AP as a staff photographer in 2006, and further admits that Mr. Garcia took photographs of then-Senator, now-President Barack Obama (“President Obama”) at an event held at the National Press Club on April 27, 2006, while on assignment for The AP.

15. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 15 of the Complaint and therefore denies the same, except admits that among the photographs that Mr. Garcia took of President Obama at the National Press Club on April 27, 2006 was a photograph depicting President Obama looking up and to his left.

16. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 16 of the Complaint and therefore denies the same, except admits that Fairey has publicly stated that he has created various posters and other

merchandise depicting President Obama, which posters were based on a photograph for which The AP owns the copyright.

17. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 17 of the Complaint and therefore denies the same, except admits that Fairey has publicly stated that he has created various posters and other merchandise depicting President Obama, which posters were based on a photograph for which The AP owns the copyright.

18. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 18 of the Complaint and therefore denies the same, except admits that Fairey has publicly stated that he has created various posters and other merchandise depicting President Obama, which posters were based on a photograph for which The AP owns the copyright.

19. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 19 of the Complaint and therefore denies the same, except admits that Fairey has publicly stated that he has distributed various posters and other merchandise depicting President Obama, which posters were based on a photograph for which The AP owns the copyright.

20. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 20 of the Complaint and therefore denies the same.

21. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 21 of the Complaint and therefore denies the same.

22. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 22 of the Complaint and therefore denies the same.

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