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February 10, 2009

Artist Sues The A.P. Over Obama Image

By [RANDY KENNEDY](#)

In a pre-emptive strike, the street artist Shepard Fairey filed a lawsuit on Monday against The Associated Press, asking a federal judge to declare that he is protected from copyright infringement claims in his use of a news photograph as the basis for a now ubiquitous campaign poster image of [President Obama](#).

The suit was filed in federal court in Manhattan after The Associated Press said it had determined that it owned the image, which Mr. Fairey used for posters and stickers distributed grass-roots style last year during the election campaign. The photo, showing Mr. Obama at the National Press Club in April 2006, was taken for The A.P. by a freelance photographer, Mannie Garcia.

According to the suit, A.P. officials contacted Mr. Fairey's studio late last month demanding payment for the use of the photo and a portion of any money he makes from it.

Mr. Fairey's lawyers, including Anthony T. Falzone, the executive director of the Fair Use Project and a law lecturer at [Stanford University](#), contend in the suit that Mr. Fairey used the photograph only as a reference and transformed it into a "stunning, abstracted and idealized visual image that created powerful new meaning and conveys a radically different message" from that of the shot Mr. Garcia took.

The suit asks the judge to declare that Mr. Fairey's work is protected under fair-use exceptions to copyright law, which allow limited use of copyrighted materials for purposes like criticism or comment.

"Fairey did not do anything wrong," said Julie A. Ahrens, associate director of the Fair Use Project and another of Mr. Fairey's lawyers, in a statement on Monday. "He should not have to put up with misguided threats from The A.P." Paul Colford, a spokesman for The A.P., said on Monday that the agency was "disappointed by the surprise filing by Shepard Fairey and his company and by Mr. Fairey's failure to recognize the rights of photographers in their works."

He added: "A.P. was in the middle of settlement discussions with Mr. Fairey's attorney last week in order to resolve this amicably and made it clear that a settlement would benefit the A.P. Emergency Relief Fund, a charitable fund that supports A.P. journalists around the world who suffer personal loss from natural disasters and conflicts."

Mr. Fairey, 38, has become one of the most visible practitioners of a guerrilla-style art that has grown out of the graffiti scene but has expanded beyond paint to include a wide variety of techniques and materials, producing works usually displayed illegally on buildings and signs.

Mr. Fairey decided to create the image on his own before contacting the Obama campaign, which welcomed

it but never officially adopted it because of copyright concerns. Before the election, Mr. Fairey was best known for his fake-advertising stickers and posters, pasted in cities across the country, showing an ominous, abstracted image of the wrestler Andre the Giant along with the word “Obey.”

Mr. Fairey is the focus of a retrospective that opened last week at the [Institute of Contemporary Art](#) in Boston. (In a development that was not much of a surprise, he was arrested there on Friday, accused of illegally pasting his work in places around Boston; he has pleaded not guilty.) A collaged work made by Mr. Fairey based on his Obama poster was acquired last month by the National Portrait Gallery in Washington, part of the [Smithsonian Institution](#), and placed in its permanent collection.

After Mr. Obama’s victory, speculation increased about which picture had served as the basis for Mr. Fairey’s posters. In interviews the artist said that it was one he had found on the Internet. Bloggers, including the Manhattan gallery owner James Danziger, pursued several leads until, according to the lawsuit, Tom Gralish, a [Pulitzer Prize](#)-winning photographer for The Philadelphia Inquirer, helped track down a photo by Mr. Garcia that showed Mr. Obama sitting beside the actor [George Clooney](#) at a 2006 event about Darfur at the National Press Club.

Further complicating the dispute, Mr. Garcia contends that he, not The Associated Press, owns the copyright for the photo, according to his contract with the The A.P. at the time. In a telephone interview on Monday, Mr. Garcia said he was unsure how he would proceed now that the matter had landed in court. But he said he was very happy when he found out that his photo was the source of the poster image and that he still is.

“I don’t condone people taking things, just because they can, off the Internet,” Mr. Garcia said. “But in this case I think it’s a very unique situation.”

He added, “If you put all the legal stuff away, I’m so proud of the photograph and that Fairey did what he did artistically with it, and the effect it’s had.”

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