

Intellectual Property Case Studies

Rogers versus Koons



Photograph: Art Rogers – 1985; Polychrome: Jeff Koons – 1988 (both via [The Design Observer Group](#))

Case

Photographer Art Rogers shot a photograph of a couple holding a line of puppies in a row and sold it for use in greeting cards and similar products. Internationally, renowned artist Jeff Koons in the process of creating an exhibit on the banality of everyday items, ran across Rodgers' photograph and used it to create a set of statues based on the image. Koons sold several of these structures, making a significant profit. Upon discovering the copy, Rodgers sued Koons for copyright. Koons responded by claiming fair use by parody.

Outcome

The court found the similarities between the 2 images too close, and that a "typical person" would be able to recognize the copy. Koon's defense was rejected under the argument that he could have used a more generic source to make the same statement — without copying Rogers' work. Koons was forced to pay a monetary settlement to Rodgers.

Significance

This is one of those famous cases that encompassed a larger issue in the art world, the issue of appropriation art. Can you build upon another's work to create your own original piece? And if you do so, does that constitute derivative work? It also brought up the issue of photography as art, was photography just a documentation of the world, or is it a creative and artistic product? Neither of these issues was entirely answered by the case, of course, but it has also become a reference used in many cases afterward.

Adidas America Inc. v. Payless Shoesource Inc.



In 1994, Adidas and Payless got into a scuffle over stripes. Adidas had used its three-stripe mark as a logo of sorts since 1952, and had recently registered it as a trademark. But Payless was selling confusingly similar athletic shoes with two and four parallel stripes. The two companies hashed out a settlement, but by 2001, Payless was again selling the look-alikes. Fearing that the sneakers would dupe buyers and tarnish its name, Adidas America Inc. demanded a jury trial. The trial lasted seven years, during which 268 pairs of Payless shoes were reviewed. In the end, Adidas was awarded \$305 million—\$100 million for each stripe, as the *Wall Street Journal's* Law Blog calculated.

Case Study – Associated Press v Shephard Fairey



Famous street artist Shephard Fairey created the Hope poster during President Obama's first run for presidential election in 2008.

The design rapidly became a symbol for Obama's campaign, technically independent of the campaign but with its approval.

In January 2009, the photograph on which Fairey allegedly based the design was revealed by the Associated Press as one shot by AP freelancer Mannie Garcia — with the AP demanding compensation for its use in Fairey's work. Fairey responded with the defence of fair use, claiming his work didn't reduce the value of the original photograph.

The artist and the AP press came to a private settlement in January 2011, part of which included a split in the profits for the work.

Though there wasn't a court case and an actual verdict, this case created a lot of discourse around the value of work in these copyright battles. It's unlikely that Garcia's work could have ever reached the level of fame it did, if not for Fairey's poster.

Garcia himself stated he was "so proud of the photograph and that Fairey did what he did artistically with it, and he was happy the effect it has had on his career and the subsequent exposure he got," but he still had a problem with the fact that Fairey took the image without permission and without credit for its originator.