



A poster of President Barack Obama, right, by artist Shepard Fairey is shown for comparison with this A

(AP Photo/Manny Garcia/ Shepard Fairey) (Manny Garcia, AP / February 4, 2009)

by Hillel Italie | AP National Writer

NEW YORK (AP) — On buttons, posters and Web sites, the image was everywhere during last year's presidential campaign: a pensive Barack Obama looking upward, as if to the future, splashed in a Warholesque red, white and blue and underlined with the caption HOPE.

Designed by Shepard Fairey, a Los Angeles based street artist, the image has led to sales of hundreds of thousands of posters and stickers, and has become so much in demand that copies signed by Fairey have been purchased for thousands of dollars on eBay.

The image, Fairey has acknowledged, is based on an Associated Press photograph, taken in April 2006 by Mannie Garcia on assignment for the AP at the National Press Club in Washington.

The AP says it owns the copyright, and wants credit and compensation. Fairey disagrees.

"The Associated Press has determined that the photograph used in the poster is an AP photo and that its use required permission," the AP's director of media relations, Paul Colford, said in

a statement. "AP safeguards its assets and looks at these events on a case-by-case basis. We have reached out to Mr. Fairey's attorney and are in discussions. We hope for an amicable solution."

"We believe fair use protects Shepard's right to do what he did here," says Fairey's lawyer, Anthony Falzone, executive director of the Fair Use Project at Stanford University and a lecturer at the Stanford Law School. "It wouldn't be appropriate to comment beyond that at this time because we are in discussions about this with the AP."

Fair use is a legal concept that allows exceptions to copyright law, based on, among other factors, how much of the original is used, what the new work is used for and how the original is affected by the new work.

Legal experts offered differing views on the Obama image.

Jane Ginsburg, a Columbia University law professor who specializes in copyright cases, questioned whether Fairey has a valid fair-use claim and says that he should have at least credited the AP.

"What makes me uneasy is that it kind of suggests that anybody's photograph is fair game, even if it uses the entire image, and it remains recognizable, and it's not just used in a collage," Ginsburg said. "I think that's pretty radical."

Robin Gross, an intellectual property attorney who heads IP Justice, an international civil liberties organization, believes that Fairey had the right to use the photo, saying that he intended it for a political cause, not commercial use.

"Fairey's purpose of the use for the photo was political or civic, and this will certainly count in favor of the poster being a fair use," said Gross, based in San Francisco. "Nor will the poster diminish the value of the photo, if anything, it has increased the original photo's value beyond measure, another factor counting heavily in favor of fair use."

A longtime rebel with a history of breaking rules, Fairey has said he found the photograph using Google Images. He released the image on his Web site shortly after he created it, in early 2008, and made thousands of posters for the street.

As it caught on, supporters began downloading the image and distributing it at campaign events, while blogs and other Internet sites picked it up. Fairey has said that he did not receive any of the money raised.

A former Obama campaign official said they were well aware of the image based on the picture taken by Garcia, a temporary hire no longer with the AP, but never licensed it or used it officially. The Obama official asked not to be identified because no one was authorized anymore to speak on behalf of the campaign.

The image's fame did not end with the election.

It will be included this month at a Fairey exhibit at the Institute of Contemporary Art in Boston and a mixed-media stenciled collage version has been added to the permanent collection of the National Portrait Gallery in Washington.

"The continued use of the poster, regardless of whether it is for galleries or other distribution, is part of the discussion AP is having with Mr. Fairey's representative," Colford said.

A New York Times book on the election, just published by Penguin Group (USA), includes the image. A Vermont-based publisher, Chelsea Green, also used it — credited solely to Fairey—

as the cover for Robert Kuttner's "Obama's Challenge," an economic manifesto released in September. Chelsea Green President Margo Baldwin said that Fairey did not ask for money, only that the publisher make a donation to the National Endowment for the Arts.

"It's a wonderful piece of art, but I wish he had been more careful about the licensing of it," said Baldwin, who added that Chelsea Green gave \$2,500 USD to the NEA.

Fairey also used the AP photograph for an image designed specially for the Obama inaugural committee, which charged anywhere from \$100 USD for a poster to \$500 USD for a poster signed by the artist.

Fairey has said that he first designed the image a year ago after he was encouraged by the Obama campaign to come up with some kind of artwork. Last spring, he showed a letter to The Washington Post that came from the candidate.

"Dear Shepard," the letter reads. "I would like to thank you for using your talent in support of my campaign. The political messages involved in your work have encouraged Americans to believe they can help change the status quo. Your images have a profound effect on people, whether seen in a gallery or on a stop sign."

At first, Obama's team just encouraged him to make an image, Fairey has said. But soon after he created it, a worker involved in the campaign asked if Fairey could make an image from a photo to which the campaign had rights.

"I donated an image to them, which they used. It was the one that said "Change" underneath it. And then later on I did another one that said "Vote" underneath it, that had Obama smiling," he said in a December 2008 interview with an underground photography Web site.

Associated Press writer Philip Elliott in Washington contributed to this report.

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AP alleges copyright infringement of Obama image, seeks compensation; artist claims fair use

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