

Why Are British Artists Suing a British Fashion House Over Graffiti on British Buildings, in America?

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By Asena Baran and David Halberstadter

This case seems so straight-forward that fans of self-effacing legal articles might question why this one is worth the ink. UK-based graffiti artists Cole Smith, Reece Deardon and Harry Matthews, known professionally as DISA, SNOK and RENNEE, respectively, claim that a British fashion house, Vivienne Westwood, used images of their graffiti to adorn items of clothing without permission.[1] Glancing at the artists' complaint against the fashion behemoth, it is hard to dispute that photographs of their graffiti were printed as a collage on the suspect clothing.[2] This is boldfaced copyright infringement, right? Not necessarily.

It is unclear if the Copyright Act even protects DISA, SNOK and RENNEE's graffiti. According to the most commonly adopted definition, graffiti is "an inscription, drawing or design scratched, painted, sprayed or placed without the consent of the owner on a surface so as to be seen by the public."[3] As one court has observed, however, "[t]his unusual phenomenon of illegal and rebellious activity [is] gaining social acceptance and commercial value" such that "real estate firms hire graffiti painters to decorate building facades," even though "a legal project may be regarded as 'selling out' by the graffiti community and may thus undermine the status of the artist."[4] Such commissioned (*e.g.*, legal) graffiti is, without a doubt, protected by the Copyright Act as a pictorial or graphic work fixed in a tangible medium of expression.[5] Whether its illegal, albeit much cooler, counterpart enjoys the same privilege remains a subject of scholarly debate that courts all over the United States have managed to avoid.

DISA, SNOK and RENNEE's complaint does not explicitly state that their graffiti is uncommissioned, but their failure to claim the contrary; pictures showing the graffiti at issue is painted over less-artistic graphics in poorly maintained urban spaces, rather than on buildings artwashed by real estate developers with an eye for gentrification; and stated concern about becoming "corporate sellouts,

willing to trade their artistic independence, legacy and credibility for a quick buck" suggest that the graffiti at issue is in fact illegal.[6] While there is no precedent on point and legality is not an explicit prerequisite for protection under the Copyright Act, courts have suggested that an illegal work may not be entitled to copyright protection under the laws of the United States.[7] In contrast, under UK law, artists "are entitled to the full scope of copyright entitlements, irrespective of the illegality of their work."[8]

So, the obvious question remains: why are British artists suing a British fashion house over graffiti on British buildings, in America? Perhaps they are hoping to land on a judge who interprets the Berne Convention — which enables infringement actions over foreign works in the United States — as requiring the court to decide copyright ownership under the law of the country that has the closest relationship to the work, in this case, UK law, and copyright infringement under the laws of the United States.[9] But that hope may be dashed by a judge who interprets the same convention as requiring both copyright ownership and infringement to be decided under United States law,[10] which, as discussed, may not protect illegal graffiti.

Regardless, even a judge whose interpretation of muddled precedent is colored by her appreciation for graffiti artistry might find that DISA, SNOK and RENNEE cannot enforce their claimed copyright against Vivienne Westwood.

First, as discussed in our introductory Passle post about this case, while these artists may pursue their copyright infringement claims under the Berne Convention without having registered their tags with the United States Copyright Office, they probably are not entitled to recover either statutory damages or attorneys' fees without registrations in the United States.

Second, Vivienne Westwood's use of images of DISA, SNOK and RENNEE's graffiti in a collage print on clothing may be fair use under the Copyright Act.[11] According to the Supreme Court's most recent (and hotly contested) interpretation of "fair use," regardless of how literally transformative the unauthorized use of copyrighted work may be, the larger the difference between the purpose or character of the use at issue and the original work, the "more likely the [analysis] weighs in favor of fair use."[12] "The smaller the difference, the less likely."[13] A court may find that the admitted difference between the purpose and character of DISA, SNOK, and RENNEE's graffiti and Vivienne Westwood's use of that work, is akin to the difference between Andy Warhol's paintings of the Campbell's soup can and Campbell's copyrighted logo, which the Supreme Court exemplified as fair use: just as Warhol's Soup Cans series is "an artistic commentary on consumerism," and the purpose of the copyrighted logo is "advertising soup,"[14] the goal of the artists' graffiti here is to "reference and harken back to their cultural origins, in which youths from marginalized groups spray-painted their (coded) identities on subway cars or abandoned buildings, as a way of expressing to the world that they exist

and matter," and Vivienne Westwood's goal is "to sell some clothing."[15] As such, Vivienne Westwood's incorporation of the graffiti may be fair use, regardless of how transformative it is to print a collage of graffiti pictures on pants for the sake of fashion.

Third, if DISA, SNOK and RENNEE's graffiti is in fact uncommissioned, a court may find that the artists lack standing to sue for copyright infringement because the only property right attached to the works would concern the tangible copies of the work owned by the owner of the buildings on which the graffiti is painted.[16] And without the benefit of copyright protection extended to commissioned murals on buildings,[17] the imagery on Vivienne Westwood's clothing may be evaluated as pictorial representations of architectural works located in or ordinarily visible from a public place, which are fair game under the Copyright Act.[18]

All this being said, DISA, SNOK and RENNEE may have a viable claim that their tags are copyright management information subject to the Digital Millennium Copyright Act (17 U.S.C. § 1202) — as other courts in the Central District have ruled in similar cases against fashion houses Moschino and Roberto Cavalli.[19] They might also have successful claims under the Lanham Act, and its state law counterpart, California unfair competition law (Cal. Bus. & Prof. Code §§ 17200 et seq.), given their allegation that their tags, like signatures and names, are recognized by members of the public as signaling their association or involvement.[20] Under these statutes, they may be able to recover damages for their reputations being "diminished by a false association with an entity who has proven a continued pattern of deplorable disregard towards independent artists and street art."[21]

It is hard to gauge, especially at this early stage of the litigation, whether DISA, SNOK and RENNEE will prevail. If the long string of similar lawsuits by street artists against fashion brands like Moschino, Roberto Cavalli, North Face and Puma are any indication, this case will likely settle out of court before a judge decides the extent of the artists' rights.[22] Still, the case may open a Pandora's box of unresolved legal questions and better define the legal landscape faced by foreign street artists pursuing copyright infringement in the United States. And that possibility is exciting enough to titillate seasoned intellectual property scholars and attorneys alike.

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1 *See Smith v. Vivienne Westwood, Inc.*, Case No. 2:25-cv-01221 (C.D. Cal. Filed 02/12/25).

2 *See id*, ECF No. 11, ¶ 3.

3 *Sherwin-Williams Co. v. City and County of San Francisco*, 857 F. Supp 1355, 1359 (N.D. Cal. 1994).

4 *In re Art & Architecture Books of the 21st Century*, Case No. 2:13-bk-14135-RK, 2023 Bankr. LEXIS 441, *136 (C.D. Cal. Bankr. Feb. 15, 2023).

5 *See*17 U.S.C. § 102.

6 *Smith, supra* note 1, ECF No. 11, ¶ 1 and ¶ 4.

7 *See Flava Works, Inc. v. Gunter*, 689 F.3d 754, 756 (7th Cir. 2012).

8 Chelsea Kim, An Examination of Graffiti Protection and the Social Obligation Theory of Property, 36 Emory Int'l L. Rev. 539, 563 (2022).

9 See *Prod. Pit Ltd. v. Warner Bros. Ent. Inc.*, Case No. 2:24-cv-04286-AB-E, 2025 U.S. Dist. LEXIS 80484, *16 (C.D. Cal. Apr. 22, 2025) (citing *Lahiri v. Universal Music & Video Distribution, Inc.*, 513 F. Supp. 2d 1172, 1176 n. 4 (C.D. Cal. Aug. 9, 2007)).

10 *See Court Warm v. Innermost LTD*, Case No. CV 21-4402-MWF, 2023 U.S. Dist. LEXIS 82232, *8 (C.D. Cal. Aprl. 13, 2023) (citing *Hasbro v. Sparkle*, 780 F.2d 189 (2d Cir. 1985)).

11 *See Blanch v. Koons*, 467 F. 3d 244, 246 (2nd Cir. 2006).

12 *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 529 (2023).

13 *Id.*

14 *Id.* at 539.

15 *Smith, supra* note 1, ECF No. 11, ¶¶ 19-20.

16 17 U.S.C. § 202.

17 *See Falkner v. GM, LLC*, 393 F. Supp. 3d 927, 930 (C.D. Cal. Sept. 17, 2018).

18 *See* 17 U.S.C. § 120(a); *see also Leicester v. Warner Brothers*, 232 F.3d 1212 (9th Cir. 2000).

19 *Tierney v. Moschino S.p.A.*, Case No. 2:15-cv-05900-SVW-PJW, 2016 U.S. Dist. LEXIS 195333, *13 (C.D. Cal. Jan. 13, 2016); *Williams v. Cavalli*, Case No. CV 14-06659-AB (JEMx), 2015 U.S. Dist. LEXIS 34722, *7 (C.D. Cal. Feb. 12, 2015).

20 *Id.*

21 *Smith, supra* note 1, ECF No. 11, ¶ 20.

22 *See* Louise Carron, Street Art: Is Copyright for "Losers™"? A Comparative Perspective on the French and American Legal Approach to Street Art, N.Y. St. B.J. 34, 38 (2019); Britney Karim, The Right to Create Art in A World Owned by Others - Protecting Street Art and Graffiti Under Intellectual Property Law, 23 U.S.F. Intell. Prop. & Tech. L.J. 53, 70 (2019).

CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.



Asena Baran
+1.310.788.4418
asena.baran@katten.com



David Halberstadter
+1.310.788.4408
david.halberstadter@katten.com

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