

David Halberstadter Comments on Richard Prince Fair Use Case

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David Halberstadter, a Litigation partner in Katten's Los Angeles—Century City office, was quoted in Law360 regarding the most recent Richard Prince fair use case. Known as an "appropriation artist," Mr. Prince is once again at the center of a high-profile fair use trial in New York federal court in which he is being sued by photographer Donald Graham over his "New Portraits" project—a 2014 installation that consists of images the artist enlarged, placed within an Instagram frame and hung in a gallery. These works were later reportedly sold for more than $100,000.

Mr. Prince sought a court ruling that his "New Portraits" was fair use, saying his versions provided "a message sharply different" from the original by commenting on the power and pervasiveness of social media. David said the critical inquiry is, "Did Prince's virtually unaltered enlargement of an Instagram user's posting of Donald Graham's photograph 'Rastafarian Smoking a Joint,' along with user comments, use the photograph for a purpose or imbue it with a character different from that for which it was created?" David continued, "The focus is supposed to be on whether the pre-existing work has been transformed in some way, not whether the new work is for a different purpose and effect." The eventual answer to that question may not be looking good for Mr. Prince. (Read "And the Next Big Fair Use Case is … ," August 4, 2017)

CONTACTS

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