

What Was Left of Mayor's Image Not Enough for Copyright Infringement

The image of the Madison, Wisconsin mayor on tee shirts and tank tops was so altered that not enough of the underlying photograph remained to support a copyright infringement lawsuit, the Seventh Circuit found.

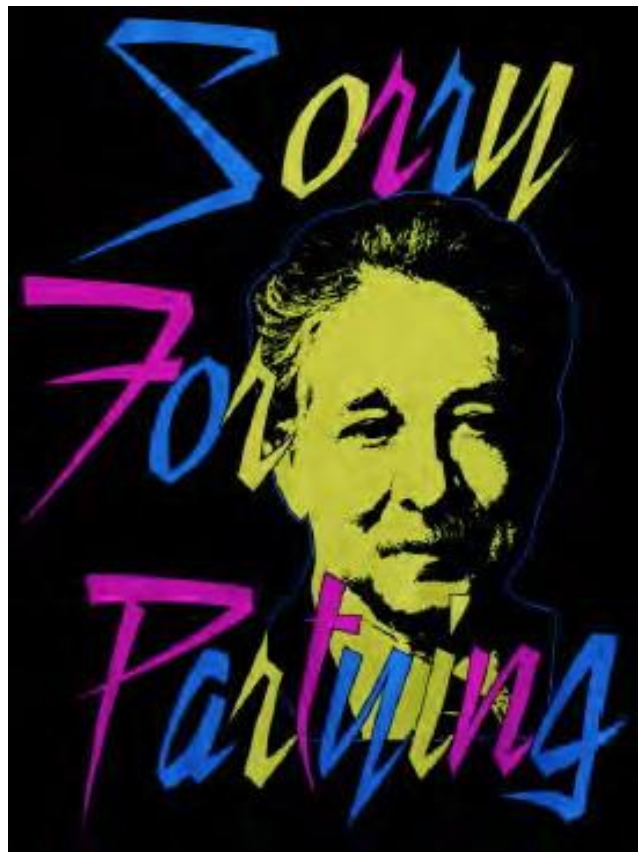
The tee shirts and tank tops were sold in connection with the Mifflin Street Block Party, which Mayor Paul Soglin wants to shut down, even though he attended the event in 1969 as a University of Wisconsin student. The theme of the party, the Mayor said, is to taking “a sharp stick and poking it in the eye of authority.”

The tee shirts displayed an image of Soglin's face and the phrase “Sorry for Partying.” Scennie Nation based its image on a photograph by Michael Kienitz, who sued Scennie Nation for copyright infringement. Scennie Nation had downloaded the photograph from the City of Madison's website.

The original image was a low resolution photograph but then the Defendants “removed so much of the original that, as with the Cheshire Cat, only the smile remains,” the opinion states. “What is left, besides a hint of Soglin's smile, is the outline of his face, which can't be copyrighted.”

The district court had debated whether the tee shirts were a “transformative use.” However, the appellate court said transformative use is not one of the statutory factors evaluated for copyright infringement. “To say that a new use transforms the work is precisely to say that it is derivative and thus, one might suppose, protected under §106(2).”

The opinion noted that the defendants did not need to use the copyrighted work to create the image. “There's no good reason why defendants should be allowed to appropriate someone else's copyrighted efforts as the starting point in their lampoon, when so many non-copyrighted alternatives (including snapshots they could have taken themselves) were available. The fair-use privilege under §107 is not designed to protect lazy appropriators.”



The appellate court also observed that the use of the image “may injure Kienitz’s long-range commercial opportunities, even though it does not reduce the value he derives from this particular picture.” However, the appellate court said, “Kienitz does not present an argument along these lines” to offset the fact that “by the time defendants were done, almost none of the copyrighted work remained.”

Kienitz v. Scornie Nation LLC, Seventh Cir. No. 13-3004, issues September 15, 2014