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ENTERTAINMENT

Tattoo artist Kat Von D didn't violate photographer's copyright of Miles Davis portrait, jury says



FILE - Tattoo artist Kat Von D poses for photographers during the presentation of her new line of makeup in Madrid, Spain, Oct. 7, 2015. On Friday, Jan. 26, 2024, a jury found that celebrity tattoo artist Kat Von D did not violate a photographer's copyright when she used his portrait of Miles Davis as the basis for a tattoo she put on the arm of a friend. (AP Photo/Abraham Caro Marin, File)

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BY ANDREW DALTON

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LOS ANGELES (AP) — A jury found Friday that celebrity tattoo artist Kat Von D did not violate a photographer's copyright when she used his portrait of Miles Davis as the basis for a tattoo she put on the arm of a friend.

The Los Angeles jury deliberated for just over two hours before deciding that the tattoo by the former star of the reality shows “Miami Ink” and “LA Ink” was not similar enough to photographer Jeffrey Sedlik’s 1989 portrait of the jazz legend that she needed to have paid permission.

“I’m obviously very happy for this to be over,” Von D, who inked her friend’s arm with Davis as a gift about seven years ago, said outside the courtroom. “It’s been two years of a nightmare worrying about this, not just for myself but for my fellow tattoo artists.”

The eight jurors made the same decision about a drawing Von D made from the portrait to base the tattoo on, and to several social media posts she made about the process, which were also part of Sedlik’s lawsuit. And they found that the tattoo, drawing and posts also all fell within the legal doctrine of fair use of a copyrighted work, giving Von D and other tattoo artists who supported her and followed the trial a resounding across-the-board victory.

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"We've said all along that this case never should have been brought," Von D's attorney Allen B. Grodsky said after the verdict. "The jury recognized that this was just ridiculous."

Sedlik's attorney Robert Edward Allen said they plan to appeal. He said the images, which both featured a close-up of Davis gazing toward the viewer and making a "shh" gesture, were so similar he didn't know how the jury could reach the conclusion they did.

"If those two things are not substantially similar, then no one's art is safe," Allen said.

He told jurors during closing arguments earlier Friday that the case has "nothing to do with tattoos."

"It's about copying others' protected works," Allen said. "It's not going to hurt the tattoo industry. The tattoo police are not going to come after anyone."

Allen emphasized the meticulous work Sedlik did to set up the shoot, to create the lighting and mood, and to put Davis in the pose that would make for an iconic photo that was first published on the cover of JAZZIZ magazine in 1989. Sedlik registered the copyright in 1994.

And he said that subsequently, licensing the image to others including tattoo artists was a major part of how he made his living.

Von D said during the three-day trial that she never licenses the images she recreates, and she considers work like the Davis tattoo a form of "fan art."

"I made zero money off it," she testified. "I'm not mass-producing anything. I think there is a big difference."

Her attorney Grodsky emphasized for jurors that that lack of an attempt to cash in on the image was essential to the tattoo being a form of fair use, an exception in copyright law used for works including commentary, criticism and parody.

Allen argued in his closing that the social media posts about the tattoo were a promotion of her and her studio, and thus a form of monetizing the image.

If jurors had sided with Sedlik, they could have awarded him as little as a few hundred dollars or as much as \$150,000.

Von D was among the stars of the reality series "Miami Ink" then was the featured artist on its spinoff "LA Ink," which ran on TLC from 2007 to 2011.

The 41-year-old Von D, whose legal name is Katherine von Drachenberg, was already a prominent young tattoo artist when she became a TV personality through her appearances on TLC's "Miami Ink" starting in 2005 on TLC. She was the central star of its spinoff, "LA Ink," which ran from 2007 to 2011 and made her possibly the most famous tattoo artist in the country.

Von D said that despite the victory, she's not enthused about getting back to work.

"I think I don't want to ever tattoo again, my heart has been crushed through this in different ways," she said. "We'll see with time."

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