



At left, Janine Gordon, *Casey at Paramount*, 2000, and at right, Ryan McGinley, Levi's advertisement, 2010

DISMISSED! JUDGE TOSSES COPYRIGHT LAWSUIT AGAINST RYAN MCGINLEY

by Rachel Corbett

Did [Ryan McGinley](#) rip off fellow photographer [Janine Gordon](#), as she claimed in a [lawsuit](#) filed last month? Maybe, a judge said yesterday, but that's a question best left to the art critics. Did McGinley infringe on her copyright? Not at all, read the detailed decision from **Judge Richard Sullivan** of the **U.S. District Court for the Southern District of New York**. "The dictates of good eyes and common sense lead inexorably to the conclusion that there is no substantial similarity" between the two artists' works, he said.

In the decision, the judge analyzed a few of the 150 images Gordon, who also goes by the name Jah Jah, submitted as evidence of infringement. In one comparison, two photographs by McGinley and Gordon each featured a young man suspended in the sky with outstretched arms. The judge broke down the composition, pointing out that Gordon's was in black and white, vertically oriented and featured a model in tennis shoes, while McGinley's was full-color, horizontal and the model, who was barefoot, wore a different style of clothing.

The judge went further to argue that there was an "utter lack of similarity" between the photographs' "total concept and overall feel." Gordon's model was "muscular and taut," displaying a "gesture of virile triumph," which set a mood distinct from McGinley's slim, "dreamy" model who's merely "surrendering to gravity."

"I'm delighted that justice was served," McGinley's lawyer, **Jack Gordon**, told *artnet Magazine*. "The judge did a nice job formatting his decision; he embedded images, he didn't just type something up in

Courier font.” **Nicole Hyland**, attorney for co-defendant **Chris Perez** and **Ratio 3** gallery, said in a statement that the decision was “a victory not only for artistic expression, but for the legal system as well.”

Janine Gordon declined to comment, and her attorneys did not immediately respond to requests for interviews.

Gordon was not without her supporters, however. One of her more prominent backers was former **New Museum** curator **Dan Cameron**, who wrote in an affidavit that “Ms. Gordon’s work is completely original, in concept, color, composition and content, and that Ryan McGinley has derived much of his work from her creations.” Yet the judge said expert opinion was beside the point -- cases determining artistic similarity must be left to lay observers. “Despite the prestigious credentials of the artists and aficionados who have rallied to Plaintiff’s side, their testimony bears no relevance,” he wrote.

The judge noted that “not all copying results in copyright infringement,” and added that Janine Gordon’s “apparent theory of infringement would assert copyright interests in virtually any figure with outstretched arms, any interracial kiss, or any nude female torso.”

Attorneys for the defendants say they are considering motions to recoup legal fees, which McGinley’s lawyers estimate is collectively “well north of a \$100,000.” Also at issue is whether to seek damages for alleged physical threats Gordon made to McGinley. McGinley’s lawyer said they are “seriously considering” it, but added that “sometimes you don’t want to stir things up.”



More examples from Gordon v. McGinley, with Gordon on the left and McGinley on the right



More examples from Gordon v. McGinley, with Gordon on the left and McGinley on the right

RACHEL CORBETT is news editor of *Artnet Magazine*. She can be reached at rcorbett@artnet.com

