



With the permission of *Paste* magazine, we used the Obamicon generator to create the derivative “Hope” posters seen here.

## FAIR USE AND FOUL PLAY

What can Shepard Fairey teach designers about ethics?

By Eileen MacAvery Kane

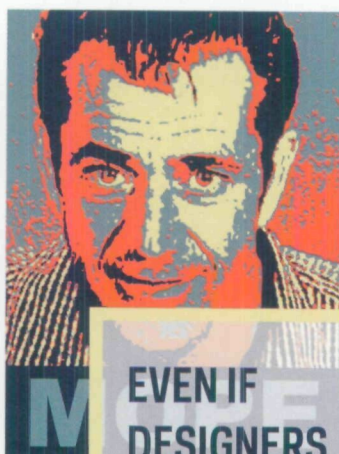
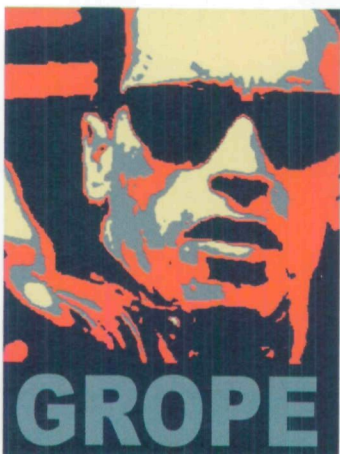
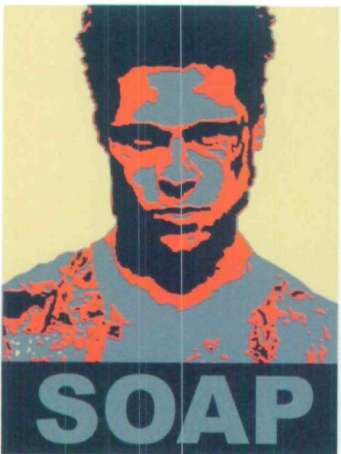
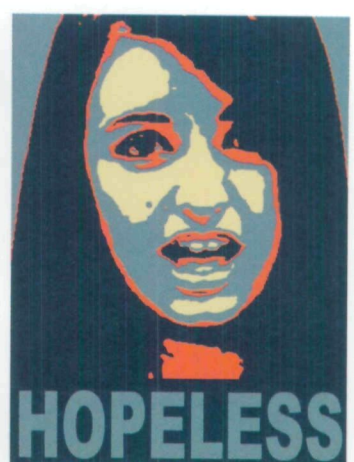
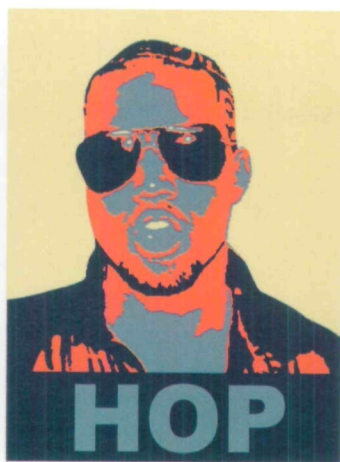
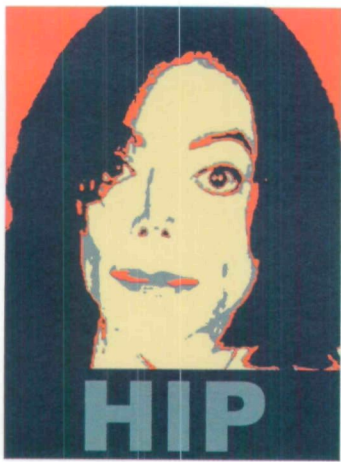
**I**N THE FILM *Thank You for Smoking*, the main character, a spokesman for the tobacco lobby, says, “My job requires a certain...moral flexibility.” The same could be said of graphic designers. While every profession has its ethical concerns, designers are trained to make things look good, and the nature of that mission leads to a certain “moral flexibility.” It is their art to persuade, leading some to see their mission as similar to an attorney’s—to argue for their clients, regardless of the message. A. C. Grayling, a British philosopher and Oxford professor, says, “Asking graphic designers not to persuade is like asking fishermen not to fish—it’s what they are trained to do.”

But designers have a wide range of choices available to them, and these choices can be both persuasive and ethical. Historically, graphic design has been a powerful vehicle of moral and ethical thought, from the Code of Hammurabi to the broadsheets of Martin Luther. The challenge for graphic design students today is to understand the many ethical issues likely to face them in their careers. These can be separated into three areas: legal concerns, or the rules that govern the profession, including copyright law and photo manipulation; integrity, the principles of proper conduct governing things like spec work and

plagiarism; and morality, which covers larger considerations such as sustainability and the cultural influence of one’s work. (Of course, there is overlap. Photo manipulation, for instance, raises not just legal questions but also involves morality and professional integrity.) It’s only through recognizing and understanding these challenges that graphic designers, whether students or professionals, can meet their ethical responsibilities.

In his book *Iron Fists: Branding the 20th Century Totalitarian State* (Phaidon, 2008), *Print* contributing editor Steven Heller writes about how branding, which started as a way to keep track of slaves and criminals, has become an essential tool for toothpaste and soft-drink companies as well as cities and colleges. He asks, “How did a practice as vile as branding become so valued, indeed, the very mark of value?” He goes on to compare corporate branding strategies—slogans, mascots, jingles, and the like—to those adopted by four of the most destructive 20th-century regimes: Fascist Italy, Nazi Germany, the Soviet Union under Lenin and Stalin, and Mao’s China. Heller argues that the design and marketing methods used to inculcate doctrines and encourage consumption are frighteningly similar.

But even if graphic designers aren’t shilling for an evil em-



**EVEN IF DESIGNERS AREN'T SHILLING FOR AN EVIL EMPIRE OR A GREEDY CORPORATION, THEY MIGHT STILL RUN AFOUL OF THE LAW.**

pire or a greedy corporation, they might still run afoul of the law. Shepard Fairey's "Hope" poster is at the center of the most famous graphic-design-related court case of recent times, a lawsuit between the artist and the Associated Press. Fairey argues that his appropriation of an AP photo counts as fair use; the AP claims copyright infringement. The case is also an example of ethics in the area of morality, as the image has been a powerful advocate for political change. Was Fairey's borrowing permissible because it had (to his mind) a moral goal? Compounding the irony, the Obama poster has spurred an ongoing parade of dubiously legal uses, both parodies (Alfred E. Neuman with the word "Hopeless") and tributes (a Libyan revolutionary in the colors of the pre-Gadhafi flag).

Often a legal issue is also an ethical

one, especially when dealing with plagiarism. That was the case last December, when the design studio Fly Communications was accused of lifting six-year-old artwork by Thomas Porostocky and using it on T-shirts for the newly formed political party No Labels. Fly's cofounder Dave Warren initially insisted that his team had come up with the design using royalty-free clip art, but he ultimately acknowledged the borrowing and issued an apology. Although the legal issue was resolved, it had a lasting impact on Fly Communications' integrity.

In today's information-overloaded world, graphic designers have access to an unprecedented amount of material. That abundance gives them huge

opportunities and responsibilities. According to Mark Johnson, author of *Moral Imagination* (University of Chicago Press, 1993), the ability to reach ethical decisions is not based on following moral absolutes; instead, it requires imagination and exploration. He argues that it is irresponsible to act as though we can tell right from wrong using categorical laws alone. It is up to educators to create a learning environment for students that lets them explore the full spectrum of ethical issues, learn the rules of conduct in their profession, and help them determine what their own behavior should be. ■

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