

**Davis v. Gap, Inc.,
246 F.3d 152 (2d Cir. 2001)**

Year	2001
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiff On Davis created and designed nonfunctional decorative eyewear, “Onoculii Designs,” that he described as “sculptured metallic ornamental wearable art.” Defendant Gap, an international retailer of clothing and accessories, created an advertisement that prominently featured a model wearing plaintiff’s copyrighted eyewear. On Davis filed an infringement action against defendant Gap, and the district court granted summary judgment in the Gap’s favor. On Davis appealed.
Issue	Whether defendant’s use of plaintiff’s copyright-protected decorative eyewear in an advertisement constituted fair use.
Holding	The court held that defendant’s use of the copyrighted work in its advertisement was not protected as a fair use. The court found that the purpose of the use was not transformative in any way and that the ad displayed the eyewear in the manner it was designed to be worn. The court also found that defendant’s use was paradigmatically commercial in nature. Regarding the nature of the work, the court determined that plaintiff’s decorative eyeglasses were an artistic creation that fell close to the core of copyright’s protective purposes. The use was also substantial, as the ad prominently featured the glasses. Finally, concerning the market effects of the use, the court held that defendant merely adopted plaintiff’s design for its ad without authorization. Plaintiff suffered market harm through the loss of royalty revenue for such use and diminution of the opportunity to license to others who may regard the plaintiff’s design as preempted by the defendant’s ad.
Tags	Second Circuit; Other
Outcome	Fair use not found

Source: U.S. Copyright Office Fair Use Index. For more information, see <http://copyright.gov/fair-use/index.html>.