

elements comprising the photograph, emanating from Plaintiff's artistic choices and artistic discretion, results in protectable expression in the form of the Iconic Miles Davis Portrait, as described in detail herein.

In advance of Plaintiff's creation of the Iconic Miles Davis Portrait, he conducted substantial research into Miles Davis' life history and creative works, primarily by reading books, magazines, newspaper articles, reviews, and liner notes, and by listening to Miles Davis' recent and past musical works, as well as watching videos of Miles Davis interviews and performances. Plaintiff then distilled his learnings into concepts representing Plaintiff's desired creative expression and further refined the concepts into visual representations of those concepts through preliminary hand-drawn sketches, and iteratively refined those sketches until Plaintiff arrived at a series of conceptual sketches representing the original expression that Plaintiff intended to create in the photographs. Plaintiff then pre-envisioned and designed his creative approach to natural and artificial lighting, lighting modifiers, camera selection, camera position, lens choice, depth of field, backgrounds, foregrounds, props, wardrobe, styling, makeup, pose, expression, subject direction, film type, and other creative and aesthetic details, all for the purpose of achieving Plaintiff's desired original expression in his photographs. In this effort, Plaintiff acted independently and received no artistic direction from others.

In preparation for the creation of Plaintiff's photographs, Plaintiff discussed his plans with Miles Davis and his representatives to ensure that Plaintiff's creative approach was both acceptable and possible to achieve at the designated location, Miles Davis' home in Malibu. Plaintiff was advised that Plaintiff would have access to Miles Davis' back patio and the beach behind the home. As several of Plaintiff's planned photographs were low-key and dramatic with deep shadows and black background, and as the bright, sunny, outdoor beach location was not

conducive to achieving Plaintiff's desired expression, Plaintiff designed a custom, one-of-a-kind, 400 square foot outdoor studio to be constructed on site to create the environment necessary to achieve his desired creative expression. In advance, Plaintiff built that outdoor studio in the parking lot outside of his downtown Los Angeles photography studio, and iteratively revised the outdoor studio design until he arrived at the lighting, background, and other creative aspects necessary to achieve Plaintiff's desired expression. Plaintiff documented every aspect of that design and then dismantled the outdoor studio.

Plaintiff interviewed makeup artists and hair stylists and identified and hired crew members whom Plaintiff deemed capable of supporting his production and his efforts to achieve his desired creative expression. Plaintiff further selected and tested a film stock best suited to achieve his desired creative expression.

On the date of Plaintiff's appointment with Miles Davis, Plaintiff traveled to his home with his crew members and a rental truck containing the dismantled outdoor studio, together with a large quantity of camera equipment, lighting equipment, grip equipment, backdrops, and supplies. On arrival Plaintiff further discussed his final sketches with Miles Davis and further discussed Plaintiff's unique approach to achieving Plaintiff's desired creative expression. With Plaintiff's crew, he assembled the outdoor studio, lighting, lighting modifiers, and backdrops, and also set up equipment for various photographs to be created on the property.

Plaintiff then instructed the makeup and hair stylist on the makeup to be used, and on the hair styling required to achieve Plaintiff's desired creative expression. For example, Plaintiff instructed the makeup artist to apply oil to Miles Davis' skin in order to achieve a desired reflective quality in the highlights on his face, consistent with Plaintiff's lighting design.

Plaintiff then walked with Miles Davis to his closet and selected the wardrobe and jewelry to be worn by Miles Davis in the photographs to achieve Plaintiff's desired creative expression. While Miles Davis was dressing, Plaintiff further refined the lighting in the custom outdoor studio, responding dynamically to the lighting conditions at the beach location. Due to the position and intensity of the sun, Plaintiff altered the custom studio design. The roof of the outdoor studio was a 20 x 20 foot white sailcloth suspended in a metal frame. Plaintiff covered the entire sailcloth with black opaque fabric, blocking the sunlight. With an assistant standing in for Miles Davis at a location that Plaintiff determined, Plaintiff then created a small opening in the black cloth, near the center of the suspended sailcloth, and adjusted the height and angle of the suspended sailcloth so that Miles Davis's face and body would be sculpted by a shaft of light emanating from directly over his head. Plaintiff then draped the sides of the custom studio with black fabric, supplementing the black background suspended from the rear of the overhead frame, in order to deepen and enhance the quality of the shadows in the portrait.

Plaintiff then placed 4 x 8 foot "flags" constructed of black fabric at the left and right sides of the stool on which Miles Davis would sit, in order to achieve a desired effect in the transitions between highlights and shadows on Miles Davis's face. Plaintiff then positioned 4x8 foot white reflectors behind Plaintiff's camera, exercising control over the size, distance and angle of those cards in order to reflect diffused light into the studio, and to create white "catchlights" in Miles Davis' eyes, for a desired creative result. Plaintiff then covered the ground with 400 square feet of black cloth, to control reflected sunlight and to maintain the quality of the shadows for desired creative effect.

Plaintiff then selected a lens of a focal length purposefully employed by Plaintiff to visually compress Miles Davis' features, to achieve Plaintiff's desired

expression. Plaintiff adjusted his shutter speed to freeze any movement in the scene, in order to achieve Plaintiff's desired expression. Plaintiff then selected a lens aperture and focal point specially purposed to achieve the depth of field and range of sharpness required to achieve Plaintiff's desired expression.

Once Miles Davis was seated in Plaintiff's outdoor studio wearing the wardrobe and jewelry that Plaintiff had earlier selected, Plaintiff measured the distance from the ground to the center of Miles Davis' eyes and adjusted the height of Plaintiff's camera so that the height of the center of Plaintiff's selected lens exactly matched the height of Miles Davis' eyes. This was not a routine formulaic device. Rather, on this occasion, Plaintiff chose to match his lens height to the height of Miles Davis' eyes in order to achieve a desired creative effect.

Plaintiff then adjusted the distance between the camera and Miles Davis and fine tuned the vertical tilt and horizontal angle of the camera, for desired creative effect. Next, Plaintiff approached Miles Davis, fine tuned the positions of the lighting modifiers, fine tuned the angle and height of the overhead sailcloth, and fine tuned the size and position of the opening in the overhead black fabric, while visually observing the effect of each such adjustment, in order to achieve Plaintiff's desired original expression. For example, Plaintiff precisely adjusted the position, size and quality of the highlights, midtones and shadows in the scene, as rendered by the position, angle, distance, fabric type and other characteristics of the lighting modifiers employed by Plaintiff in Plaintiff's outdoor studio. Plaintiff also physically adjusted the angle of Miles Davis' shoulders relative to the camera, and meticulously directed him in positioning his arms, hand and face, for desired creative effect.

Returning to the camera, Plaintiff adjusted the composition of the scene by making fine adjustments to the position of the camera on the tripod, to achieve a desired creative expression, precisely controlling the proportion of the frame

dedicated to negative space (the black background) relative to the proportion of the frame dedicated to Miles Davis' face and body.

In this manner, having studied Miles Davis' face during initial research and in their personal interactions, Plaintiff exercised control over the rendering of visual elements to photographically sculpt Miles Davis's face, such as by controlling the size and position of the highlights on Miles Davis' face, the shadows on Miles' Davis's cheeks, the shadows falling beneath Miles Davis' nose and brow, the catchlights in Miles Davis' eyes, the rendering of texture of Miles Davis' skin, and the lines of Miles Davis' jaw. Plaintiff selected and arranged Plaintiff's lighting to articulate shape, line, depth and tone on each and every visual element of Plaintiff's photographs, individually and collectively. With each such adjustment, Plaintiff could, and did, exercise artistic discretion to control the photographic rendering of the scene, such as by purposefully emphasizing (or de-emphasizing) every aspect of Miles Davis' appearance within the composition.

Once satisfied with the composition, lighting and pose, Plaintiff then began creating photographs of Miles Davis, all the while engaging in discussion with Miles Davis about art, music, current events, and other topics in order to put Miles Davis at ease and to achieve desired expressions and poses. Throughout the photo session, Plaintiff gave Miles Davis detailed direction as to the positions of his shoulders, body, head, and hands, and as to his facial expressions, to achieve Plaintiff's desired creative expression.

On several occasions, Plaintiff approached Miles Davis in order to add or remove props from the scene and to make adjustments to his wardrobe and hair, such as in adjusting the position of his collar and sleeves, creating strategically placed ripples in his jacket, moving the curls of his hair on his forehead and the sides of his face, and positioning the curls of hair over his ear, to achieve desired creative expression. Throughout the session, Plaintiff repeatedly instructed the

makeup artist to approach Miles Davis to adjust his hair and makeup, in particular, to refresh the oil that had been applied to his skin in order to achieve a reflection of the overhead sailcloth and to define and photographically “sculpt” the rendering of features of Miles Davis face, hand and jacket, controlling the photographic rendering of these visual elements to achieve desired expression.

During this photo session, Plaintiff created photographs based on a number of Plaintiff’s previsualized, sketched concepts, including the Iconic Miles Davis Portrait. In making the Iconic Miles Davis Portrait, Plaintiff approached Miles Davis and physically adjusted the cascading positions of his fingers, to achieve Plaintiff’s desired original expression. Plaintiff instructed Miles Davis in the tilt of his head, the position of his shoulders and arms, and in his eye direction. Plaintiff instructed Miles Davis to lower and raise his hand and to simultaneously tense his facial muscles, in order to render his cheeks and the veins in his face, to achieve an intensity of expression in contrast with the symbolic pose, for desired creative expression.

In Plaintiff’s concept for the Iconic Miles Davis Portrait, Plaintiff designed the pose with Miles Davis’ finger to his lips to symbolize and connote Miles Davis’ masterful use of negative space (silence) in his musical works, placing as much emphasis on the notes as on the pauses between them. In addition, the pose was a visual homage to Miles Davis’ use of the mute on his horn, and to his great masterpiece, “In a Silent Way.” Plaintiff rotated Miles Davis’s hand and positioned his fingers in a cascade visually representing aurally perceived musical notes. This purposeful pose is one element in a combination of countless other subjective artistic decisions that Plaintiff made in creating the Iconic Miles Davis Portrait, his original expression.

After completing the session, Plaintiff exercised creative control over the development of the exposed film, by instructing the film laboratory to adjust the

film processing to achieve the tonal range desired by Plaintiff in order to render the highlights, midtones and shadows of the photograph in a manner desired by Plaintiff for creative expression. Plaintiff then printed the Iconic Miles Davis portrait in his darkroom, making subjective artistic decisions as to paper selection, developer selection, contrast, and composition, making local adjustments, lightening and darkening selected areas and making dozens of additional adjustments to further refine the rendering of the photograph, to achieve desired original expression. After digitally scanning the print, Plaintiff made additional subjective creative adjustments to the digital copy of the photograph, to achieve desired original expression. Plaintiff further added his name and copyright notice to the digital copies.

Through Plaintiff's creative process, Plaintiff selected, arranged and combined numerous creative elements, combining subject matter, pose, camera angle and myriad other elements, and this combination and juxtaposition of elements constitutes Plaintiff's protected expression embodied in the Iconic Miles Davis Portrait. Plaintiff exercised substantial subjective artistic discretion in selecting, arranging and combining every element present in the photograph to achieve Plaintiff's desired original creative expression.

The range of creative choices available to Plaintiff in producing the Iconic Miles Davis Portrait was not merely broad - it was infinite. Even the slightest adjustment of the camera, lens, lighting, subject position or other elements would have significantly altered the resulting expression, and as an artist, Plaintiff exercised control over these and other adjustments to achieve Plaintiff's desired creative result. None of Plaintiff's artistic choices in creating the Iconic Miles Davis Portrait was dictated by subject matter or convention.

In addition to the detailed description above, Plaintiff provides the following list of elements protected by copyright in the Iconic Miles Davis Photograph.