



Seltzer v. Green Day

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i. Derek Seltzer and *Scream Icon*

Derek Seltzer is a Los Angeles artist and illustrator. He is primarily a street artist who, in the 2000s, strongly identified with skater culture in Los Angeles. In 2003, while still in high school, he created *Scream Icon* – a drawing of a contorted, frightened & fang-toothed woman’s face (shown on the right, above). Sometimes he would modify the image – for example, by overlaying it with the words, “euth rock has a posse” (a reference to Shepard Fairey’s poster of Andre the Giant). Seltzer also created a large number of small prints with adhesive backs (commonly known as stickers), which he sold or gave to friends. These stickers were posted at various locations (on buildings, walls, street signs and other public places) in Los Angeles and Las Vegas. Seltzer occasionally used this image to identify his other work by placing it on promotional materials for his gallery appearances.

One of the many versions of the image was affixed to a publicly visible brick wall at the corner of Sunset Boulevard and Gardner Avenue in Los Angeles. In 2008, Roger Staub, a photographer and set-lighting and video designer, took a photo of this wall, which included other posters and graffiti in addition to the weathered version of *Scream Icon*.

ii. Green Day & *21st Century Breakdown*

Billie Joe Armstrong, Michael Pritchard, and Tre Cool (born Frank Wright) are members of the punk rock band Green Day. Since its debut in 1987, Green Day has sold over 70 million records worldwide. *21st Century Breakdown* is the band’s eighth album, released in 2009. “East

Jesus Nowhere” is the eighth track on *21st Century*. It was written by Billie Joe Armstrong as “scalding rebuke of fundamentalist religion” after attending a friend’s baby’s baptism.

iii. *Scream Icon on Tour*

In 2009-2010, Green Day went on tour to promote *21st Century Breakdown*. The Band hired Performance Environment Design (PED) to create the backdrop, lighting, and pyrotechnic effects for the tour. PED, in turn, hired Richard Staub to create the backdrops.

For “East Jesus Nowhere,” Staub wanted to convey “the song’s ‘mood, tone or themes.’” To make the video backdrop, Staub cropped his photograph of the brick wall at Sunset and Gardner, removing everything except the copy of *Scream Icon*. He added a red “spray-painted” cross over the face, changed the contrast and color and added black streaks down the right side of the face. (Staub later testified that he added the cross to represent “the relationship between organized religion and pain and suffering.”) He then incorporated the altered image in a four-minute video, which Green Day employed as a backdrop for the band’s performances of “East Jesus Nowhere.” In the course of the video, additional art, posters and graffiti are added to the brick wall surrounding the unchanging *Scream Icon*. At least three graffiti images of Jesus Christ are defaced during the video.

This video backdrop was played during approximately seventy concerts during the *21st Century* tour. (A 5-minute film of one of the performances is available at <https://vimeo.com/100675524> . You certainly need not watch more than one minute of it.)

After learning of the use of his image, Seltzer brought a copyright infringement suit against the band. The band’s principal defense was fair use.