

Fruit of the Poisonous Font: Owner Seeks Destruction of Materials Created With Copyrighted Font Software

February 13, 2012 by [Jenevieve Maerker](#)



A small law firm in Brooklyn appears to be developing a cottage industry in helping digital font foundries enforce copyrights in the software programs that create their typefaces. Last month, the [Martinez Group PLLC](#) settled, on undisclosed terms, [a lawsuit we have been following](#) since last summer, in which P22 Type Foundry claimed that merchandise sold at the Wizarding World of Harry Potter theme park was created through unauthorized use of its “Cezanne” font software.

On the same day, the Martinez Group’s Frank Martinez filed a new [complaint](#), this time on behalf of a German graphic designer doing business as “+ISM.” +ISM claims that promotional materials for the TBS television series “Falling Skies” have been created through the unauthorized use of +ISM’s “Anthropolymorphics” font software. +ISM alleges that it has no record of licensing the “Anthropolymorphics” font software to TBS or to co-defendant Titleboy Films, which apparently created the titles and other allegedly infringing promotional materials for “Falling Skies.” +ISM further alleges that, even if defendants did have a license for the software, its standard license agreement does not cover promotional uses of the font. This argument may be more difficult for

+ISM to advance than it was for P22, however, since +ISM's license, unlike P22's, does not appear to explicitly exclude promotional or commercial uses.

Finally, Martinez is once again seeking, among other forms of relief, the court-ordered destruction of all marketing materials and merchandise "that were created [by] or that bear the result of the unauthorized use of +ISM's Copyrighted Works." Complaint at 12-13. 17 U.S.C. § 503(b) authorizes a court to order destruction of infringing copies and the means for making infringing copies but does not, on its face, address the *products* of infringing copies. Whether the case proceeds far enough to produce a ruling on this novel theory remains to be seen.

© Foley Hoag LLP. All rights reserved. Attorney advertising. Prior results do not guarantee a similar outcome.