

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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| BERTHOLD L.L.C. and<br>BERTHOLD DIRECT CORP.,<br><br>Plaintiffs,<br><br>v.<br><br>TARGET CORPORATION,<br><br>Defendant. | Civil Action No.: 1:17-cv-07180<br><br>Honorable Robert M. Dow, Jr.<br>Magistrate Judge Michael T. Mason |
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**SECOND AMENDED COMPLAINT**

Plaintiffs, BERTHOLD L.L.C. and BERTHOLD DIRECT CORP., through their attorneys, complain against Defendant, TARGET CORPORATION, as follows:

**Nature of the Action**

1. This is a civil action for copyright infringement and breach of license agreement for unauthorized use of Plaintiffs' copyrighted font software programs and refusal to document all uses of Plaintiffs' font software programs as required by the parties' license agreement.

**Jurisdiction and Venue**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1388(a) because (i) this is a civil action arising under the Copyright Act of 1976, 17 U.S.C § 101 *et seq.* This Court has supplemental jurisdiction over Plaintiffs' related state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this district pursuant to the forum selection clause in the parties' license agreement which provides that all disputes involving the license will be resolved in this forum.

### **The Parties**

4. Plaintiff Berthold L.L.C. (“Berthold LLC”), is an Illinois limited liability company with its principal place of business in Chicago, Illinois. Berthold LLC owns the copyrights in the font software at issue.

5. Plaintiff Berthold Direct Corporation (“Berthold Direct”) is an Illinois corporation with its principal place of business in Chicago, Illinois. At all times relevant, Berthold Direct had been granted the exclusive right to license the copyrighted font software at issue. Berthold LLC and Berthold Direct are affiliated companies and may be referred to herein collectively as “Berthold.”

6. Defendant Target Corporation (“Target”) is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota.

### **Factual Background**

7. Plaintiffs and their affiliates comprise a leading, independent type foundry.

8. Since 1858, Plaintiffs have been in the business of marketing typefaces. H. Berthold AG, the original Berthold type foundry founded in Berlin, Germany, was known worldwide as an expert producer of high quality typefaces.

9. Under the guidance of former artistic director and master typographer Günter Gerhard Lange, the Berthold foundry has developed one of today’s leading type libraries in the world: the Berthold “Exklusiv” Collection.

10. Plaintiffs offer, market, license, and distribute typeface font computer software programs through their website [www.bertholdtypes.com](http://www.bertholdtypes.com) and through their authorized resellers.

11. Akzidenz-Grotesk is Plaintiffs’ most popular and successful typeface and represents valuable goodwill owned by Plaintiffs.

12. Plaintiff Berthold LLC owns the U.S. Copyright Registrations for certain Akzidenz-Grotesk typeface font software programs in OpenType format first published in 2006 with Registration Numbers (collectively the “Akzidenz-Grotesk Pro Condensed Font Software”),

Exhibit A:

- a. Akzidenz-Grotesk Pro Light Condensed, TX 6-380-812
- b. Akzidenz-Grotesk Pro Light Condensed Italic, TX 6-380-805
- c. Akzidenz-Grotesk Pro Regular Condensed, TX 6-380-806
- d. Akzidenz-Grotesk Pro Condensed Italic, TX 6-380-807
- e. Akzidenz-Grotesk Pro Medium Condensed, TX 6-380-808
- f. Akzidenz-Grotesk Pro Medium Condensed Italic, TX 6-380-809
- g. Akzidenz-Grotesk Pro Bold Condensed, TX 6-380-824
- h. Akzidenz-Grotesk Pro Bold Condensed Italic, TX 6-380-825
- i. Akzidenz-Grotesk Pro Extra Bold Condensed, TX 6-380-804
- j. Akzidenz-Grotesk Pro Extra Bold Condensed Italic, TX 6-380-801
- k. Akzidenz-Grotesk Pro Extra Bold, TX 6-380-803
- l. Akzidenz-Grotesk Pro Extra Bold Italic, TX 6-380-802

13. Plaintiffs’ copyrights are valid and subsisting.

14. Berthold licenses the use of the Berthold font software programs to end users, and controls such licensing by way of individually negotiated licenses agreements.

15. Berthold offers a limited, traditional desktop license that permits the end user to use the font software programs for internal business purposes only and allowed installation of the font software programs on up to 5 licensed computers at a single location (“Traditional Desktop Licenses”).

16. With the advent of new technologies over the past decade, Berthold began offering an enterprise license which provided more licensing options that incorporate these latest technologies, such as web fonts, digital publishing, e-books, web video publishing, smart phone/tablet apps, etc.

17. Berthold's enterprise licenses allow a licensee to use and embed the font software programs to create and distribute printed and digital materials for commercial or non-commercial purposes.

18. On August 22, 2013, Target purchased a Traditional Desktop License to use Plaintiffs' Akzidenz-Grotesk Condensed BE OpenType font software (a total of 12 font software programs), subject to a license agreement which only allowed Target to use the font software on 10 computers for internal business purposes with limited embedding rights. Exhibit B.

19. Plaintiffs' Akzidenz-Grotesk Condensed BE OpenType font software is comprised entirely of copyrighted software code from Plaintiffs' Akzidenz-Grotesk Pro Condensed Regular font software.

20. In or around June 2017, Plaintiffs came across a video posted online created by Calango, a design firm retained by Target to produce certain advertising and branding materials using Plaintiffs' Akzidenz-Grotesk Font Software. Subsequent to filing this lawsuit, the video has been removed from the Vimeo website where it was posted.

21. The video's description states that "Target asked Calango to produce an animated version of Akzidenz Grotesk, one of the main typefaces in their branding." As seen in the online video, Calango did as Target requested and used Plaintiffs' Akzidenz-Grotesk Pro Condensed Font Software to create certain advertising and branding material.

22. Target, without knowledge or authorization from Plaintiffs, created and sent

Calango copies of Plaintiffs' Akzidenz-Grotesk BE Light Condensed and Akzidenz-Grotesk BE Bold Condensed font software programs, which amounted to creating and sending copies of Plaintiffs' copyrighted Akzidenz-Grotesk Pro Light Condensed and Akzidenz-Grotesk Pro Condensed Bold font software programs.

23. Target sent the copies of these two font software programs to Calango so that Calango could create animated versions of each of the font software programs ("Animated Font Software Programs") and a video that embedded the Animated Font Software ("Animated Font Software Video").

24. Calango then delivered the Animated Font Software Programs and Animated Font Software Video to Target. Target then created one or more copies of the and Animated Font Software Programs and Animated Font Software Video by downloading, storing, and loading the files onto its computers or servers. Target also broadcast the Animated Font Software Video and Animated Font Software Programs at one of its sales meetings.

25. According to Calango's statements next to the Animated Font Software Video posting on the internet, Target uses Akzidenz-Grotesk as one if its main typefaces in its branding which entails using Plaintiffs' Akzidenz-Grotesk font software to create advertising and branding materials.

26. Target also has embedded Plaintiffs' Akzidenz-Grotesk BE Regular font software into portable document files that have been disseminated to third parties and made available for access and download online. See Exhibit C attached hereto. The Akzidenz-Grotesk BE Regular font software is comprised entirely of copyrighted software code from Plaintiffs' Akzidenz-Grotesk Pro Regular font software for which Plaintiff Berthold LLC owns the U.S. Copyright Registration (TX 6-380-794). Exhibit D.



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