

**PARIS  
JUDICIAL  
TRIBUNAL**



3rd chamber 2nd  
section

**NO. RG  
20/06208  
N° Portalis  
352J-W-B7E-CSLQU**

**JUDGMENT  
due March 31, 2023**

MINUTE :

Summons dated:  
June 03, 2020

**APPLICANTS**

**S.A.R.L. ZEASSOCIATES**  
144 avenue Jean Jaurès  
92140 CLAMART

**Mr Jean-François PORCHEZ**

*represented by Maître Pierre LAUTIER, member of the PARIS bar,  
courtroom #B0925*

**DEFENDERESSES**

**Company GOOGLE LLC**  
1600 Amphitheatre Parkway  
Mountain View  
CA 94043 (UNITED STATES)

*represented by Alexandra NERI of HERBERT SMITH FREEHILLS  
PARIS LLP, attorney at the PARIS bar, courtroom #J0025*

**S.A.S. Production Systems**  
73 boulevard Sébastopol  
75002 PARIS

*represented by Maître Florence GAULLIER of SELARL CABINET  
VERCKEN & GAULLIER, attorney at the PARIS bar, courtroom  
#P0414*

**Société MARTIN represented by Maître Pierre MARTIN in his  
capacity as legal representative of PROTOTYPO**  
20 boulevard Eugène Deruelle  
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*faulty*

**Copies issued on :**

- Maître LAUTIER # B925 - certified true
- Maître NERI #J25 - executory

- Maître  
GAULLIER  
#P414 -  
executory



### **COURT COMPOSITION**

Mrs Irène BENAC, Vice-President Mrs Elodie  
GUENNEC, Vice-President Mr Arthur  
COURILLON-HAVY, Judge

assisted by Quentin CURABET, Clerk

### **DEBATES**

At the hearing of January 27, 2023, held in open court before Irène BENAC and Arthur COURILLON-HAVY, judges-rapporteur, who, without opposition from counsel, held the hearing alone, and after hearing the parties' counsel, reported to the Tribunal, in accordance with the provisions of article 805 of the French Code of Civil Procedure.

In the presence of Mrs Anne BOUTRON, Magistrate in training

Notice was given to the parties that the judgment would be handed down at the clerk's office on March 31, 2023.

### **JUDGMENT**

Pronounced publicly by delivery to the clerk's office Deemed  
contradictory  
In the first instance

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### **FACTS AND PROCEDURE**

1. **Jean-François Porchez** is one of the pioneers of digital typography, having created the "Le Monde Journal" font family in 1994, commissioned by Le Monde newspaper.
2. At the end of 2011, he founded **ZeAssociates SARL**, operating under the trade name Typofonderie, which publishes and distributes models, works and books in the specialized fields of creation, design, typography and software.
3. Mr. Jean-Baptiste Levée is a typographer who in 2014 founded **SAS Production Systems**, a digital font design agency, which operates under the trade name Production Type. He collaborated with Mr. Jean-François Porchez in 2008, notably to convert the Le Monde Courier font to Opentype format.
4. SAS Production Systems created the "Spectral" typeface on order dated October 5, 2016 from **the American company Google LLC**, which distributed it as part of its free hosting service for Google Fonts digital writing fonts for the Internet, used by website publishers and word processing software users.

5. **SAS Prototypo** is described as "the first online application enabling designers to create unique brand images using customized fonts, in just a few clicks", and its partner is Mr. Jean-Baptiste Levée. It is the subject of judicial liquidation proceedings ordered by the Lyon Commercial Court on February 27, 2020, which appointed **SELARLU Martin** as liquidator.
6. Considering that the distribution by Prototypo and Google LLC of the Spectral typeface constituted acts of infringement of the "Le Monde Journal" font and, in the alternative, unfair competition, Mr. Jean-François Porchez and ZeAssociates unsuccessfully sent a 19-page letter of formal notice on October 25 and 29, 2018 to Google France, Google LLC, Production Systems and Prototypo to cease their actions.
7. It is under these conditions that by deeds of June 3 and July 8, 2020, Mr. Jean-François Porchez and ZeAssociates summoned Production Systems, Google LLC and SELARLU Martin, acting as legal representative of Prototypo, before the Paris Court.
8. In an order dated January 21, 2022, the pre-trial judge declared ZeAssociates' claims for copyright infringement inadmissible, noting that the rights to the typefaces created by Jean-François Porchez had not been assigned to it.
9. In their **final pleadings served on August 29, 2022, Mr. Jean-François Porchez and the company ZeAssociates** asked the court, under articles 1240 and 1358 of the French Civil Code, L.112-2, L.121-1, L.122-1, L. 122-2 and L.122-4 of the French Intellectual Property Code 2 and 8 of the Vienna Agreement of June 12, 1973, to :
  - order the withdrawal of the project presentations and the removal of the Spectral typeface from the downloads made available by Google LLC, Production Systems and Prototypo and, insofar as it constitutes an infringement of the Le Monde Journal typeface, the withdrawal of all sources and files for this typeface, the cessation of all communications and campaigns associated with the Spectral typeface, and the publication on the Google Fonts, Prototypo and Production Type websites of a press release announcing that the Spectral typeface has been withdrawn as an infringement of the Le Monde Journal typeface,
  - order Production Systems, Google LLC and Prototypo, jointly and severally, to pay Mr. Jean François Porchez the sum of 450,000 euros in compensation for material loss, 150,000 euros in compensation for non-material loss and 75,000 euros in compensation for loss of image and reputation,
  - in the alternative, order the same parties to pay the same sums to Mr. Jean François Porchez (moral prejudice) and the company ZeAssociates (material prejudice and loss of image) on the grounds of unfair competition,

- order Production Type, Google LLC and Prototipo to pay the costs and the sum of 14,000 euros to ZeAssociates under article 700 of the French Code of Civil Procedure, with the benefit of provisional execution.
10. In its **final pleadings, served on September 2, 2022, Production Systems** asked the court, under the following articles L. 112-2, 8°), L. 121-1 and L. 122-4 of the Intellectual Property Code, 122, 699 and 700 of the Code of Civil Procedure, 1240 and 1353 of the Civil Code, of :
    - Dismiss all of ZeAssociates' and Mr. Jean-François Porchez's claims, or *in the alternative*, reduce their claims to a fairer proportion,
    - order the company ZeAssociates and Mr. Jean-François Porchez to pay it the sum of 50,000 euros as compensation for acts of unfair competition against it,
    - order the company ZeAssociates and Mr. Jean-François Porchez jointly and severally to pay the costs, with diversion to SELARL Vercken & Gaullier, and the sum of 50,000 euros under article 700 of the French Code of Civil Procedure,
    - order provisional enforcement of the decision for its sole benefit.
  11. In its **final pleadings served on June 21, 2022, Google LLC** asks the court to :
    - dismiss Mr. Jean-François Porchez's copyright claims for lack of originality of the policy, in the alternative, for lack of infringement and, in the further alternative, for lack of damages,
    - dismiss all ZeAssociates and Mr. Porchez claims for unfair competition and parasitism,
    - order Production Systems to indemnify the company against any and all penalties that may be awarded against it, as well as any consequences that Google may justify in application of article 8 of the font development contract of September 12, 2017,
    - Dismiss ZeAssociates and Mr Porchez's request for provisional enforcement of the judgment;
    - order ZeAssociates and Mr. Porchez jointly and severally to pay the costs and the sum of 20,000 euros under article 700 of the French Code of Civil Procedure.
  12. SELARLU Martin was not represented by counsel, although it was duly summoned.
  13. The closing order was issued on September 8, 2022.

### **MOTIVATION**

14. Pursuant to article 472 of the French Code of Civil Procedure, if the defendant fails to appear, a decision is nevertheless taken on the merits of the case. The judge will grant the claim only to the extent that he or she deems it lawful, admissible and well-founded.

## **I. Copyright**

### *1. On originality*

15. Jean-François Porchez and ZeAssociates argue that :
  - The originality of the "Le Monde Journal" typeface is established by the long process of its creation and its novel character;
  - The artistic choices made by Mr. Porchez are revealed by the following characteristics: French-style typeface, oblique axis, open counterforms to appear wider on the inside, triangular serifs, individual emphasis on each letter, assertive characters, more contrast, horizontal aspect, capitals smaller than the heights of the lowercase letters, all of which make the Le Monde Journal typeface more legible than Times New Roman ;
  - the drop has been replaced by a termination that ends in a point at the bottom broken by a short stroke, an aesthetic choice that is the very essence of the Le Monde Journal typeface;
  - instructions from Le Monde to produce a more legible typeface taking up less space left Mr. Porchez free to make arbitrary choices, given the infinite number of possible variations;
  - This typeface has won several awards and is used in major dictionaries and interministerial cabinets, all of which help to establish its original character;
  - Mr. Porchez's personality necessarily stands out in this typeface, as he is identified in his field as "the creator of the so-called Le Monde typeface", which is an acknowledged reference in specialist publications.
16. Production Systems argues that the Le Monde Journal typeface lacks originality.  
She explains that :
  - the creative process invoked by the plaintiffs does not constitute proof of the originality of the Le Monde Journal typeface, nor does the fact that it has been selected by the newspaper Le Monde, that Mr. Porchez has received awards or that the disputed typeface is used by French or foreign administrations;
  - the certificates submitted in support of the claim are not conclusive;
  - some of the typefaces are very similar to those of the 18<sup>th</sup> and 19<sup>th</sup> centuries, or even more recent, especially the truncated drops and endings.
17. Google LLC also claims that the Le Monde Journal typeface lacks originality, on the grounds that the choices made by Mr. Porchez are merely the result of technical requirements imposed by the technical specifications of the Le Monde newspaper, demanding improved legibility, space savings in page layout and ink savings in printing, thus preventing him from expressing his own personality.  
It adds that the Le Monde Journal typeface bears significant similarities to other earlier typefaces, and in particular to the Times New Roman typeface on which Mr. Porchez based the disputed typeface. Porchez developed the disputed font. She points out that

the reputation of Mr. Porchez and his collaboration with the newspaper Le Monde are not sufficient to characterize the originality claimed.

*On that note,*

18. In accordance with article L.111-1 of the French Intellectual Property Code, the author of a work of the mind enjoys, by the sole fact of its creation, an exclusive intangible property right enforceable against all, comprising intellectual and moral attributes as well as economic attributes.  
According to article L.112-1 of the same code, this right belongs to the author of any work of the mind, whatever its genre, form of expression, merit or purpose.  
Article L.112-2 of the same code states that "*The following in particular are considered to be works of the mind within the meaning of this code: (...) 8° Graphic and typographical works*".
19. All original typographic typefaces are protected by copyright by virtue of their very creation, provided they bear the stamp of their creator's personality and constitute an intellectual creation manifested in free and arbitrary choices, without their form having been dictated by purely technical requirements.  
The recognition of copyright protection is not based on an examination of the work invoked by reference to the anteriorities produced, even if these may contribute to the appreciation of the creative research.
20. It is up to the person claiming a copyright whose existence is disputed to define and explain the contours of the originality he or she is alleging. Only the author, for whom the judge cannot make up, is in a position to identify the elements that reflect his personality and justify his monopoly.
21. It is clear from the plaintiffs' written submissions that they claim copyright protection for the Le Monde Journal font, including letters of the alphabet, accents, punctuation, numerals, as well as special signs such as symbols, and their declination in italics, capital letters and bold, according to their Exhibit 59, from which the following illustration is taken.

Le Monde Journal

àbcdéfg hijklmnopqrstuv wxy

àbcdéfg hijklmnopqrstuv wxyz

àbcdéfg hijklmnopqrstuv wx

@£0123456789{(.!\*#-— ]

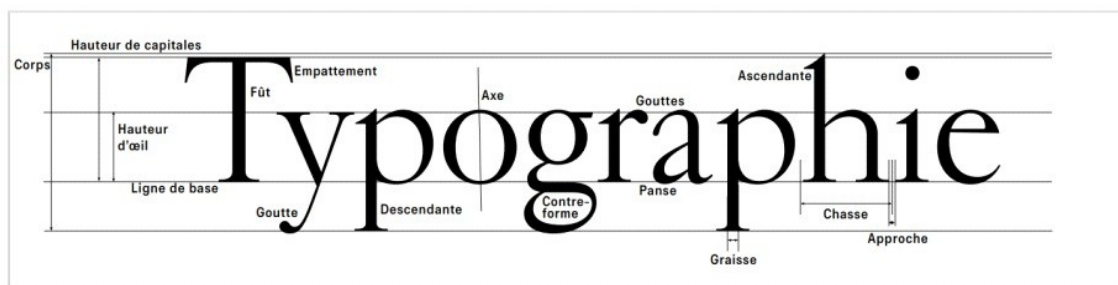
@£0123456789{(.!\*#-— ]

@£0123456789{(.!\*#-— ]

22. With regard to the originality of the "Le Monde Journal typeface", it can be deduced from their pleadings and Exhibit 59, a document drafted by Mr. Porchez, that he considers it to consist of :
- reduced contrast,
  - eye level (a, e, n, o) enlarged in relation to ascenders (b, d, h) to broaden perception,
  - capitals drawn smaller than the ascenders of lowercase letters,
  - the proportions of the letters (wide and narrow),
  - interior letter openings, counter platform openings,
  - the lower serifs of lower-case letters and capitals, designed as trapezoids,
  - s, S, C, G glyph serifs drawn without the top curved return,
  - lowercase leading serifs (top of n, p, etc.) and some exits bottom serifs (a, d, etc.) drawn at an angle on the barrel to open up the top counterform,
  - drop-shaped endings replaced by a rounded shape ending in a point broken by a short line



- degreasing verticals in favor of horizontals.
23. It is a fact that the Le Monde Journal typeface was created from the Times New Roman typeface previously used by this daily newspaper, and that it was the starting point for Mr. Porchez's work, who proposed a different typeface, as shown in the comparison document drawn up at the request of Production Systems.
24. It's a serif typeface, designed for the creation of texts for the printing press, subject to legibility requirements. However, this constraint does not exclude creativity, since the typographer works on a large number of characteristics and variants, including, but not limited to, serif, barrel, drop, axis, caster, grease and eye height, all of which are explained in the following figure.



25. The reproduction below, taken from the plaintiffs' Exhibit 67, showing text in the two fonts in dispute as well as two other common fonts, nevertheless demonstrates the subtle differences between different serif typefaces.



<p>Etiam luctus odio. Aliquam adipiscing urna a felis. Quisque sed elit in eros aliquet ultrices. Donec at sem. Vestibulum cursus. Integer dolor. Vestibulum sit amet sem nec augue fermentum consectetur. Integer justo.</p> <p>Le Monde Journal</p>	<p>Etiam luctus odio. Aliquam adipiscing urna a felis. Quisque sed elit in eros aliquet ultrices. Donec at sem. Vestibulum cursus. Integer dolor. Vestibulum sit amet sem nec augue fermentum consectetur. Integer justo.</p> <p>Minion</p>
<p>Etiam luctus odio. Aliquam adipiscing urna a felis. Quisque sed elit in eros aliquet ultrices. Donec at sem. Vestibulum cursus. Integer dolor. Vestibulum sit amet sem nec augue fermentum consectetur. Integer justo.</p> <p>Spectral</p>	<p>Etiam luctus odio. Aliquam adipiscing urna a felis. Quisque sed elit in eros aliquet ultrices. Donec at sem. Vestibulum cursus. Integer dolor. Vestibulum sit amet sem nec augue fermentum consectetur. Integer justo.</p> <p>Palatino</p>

26. The defendants rightly maintain that the existence of preparatory work, the commercial success of the typeface and its creator and the prestige of the latter are inoperative to characterize the originality of the Le Monde Journal typeface.
27. It is not disputed that the Le Monde Journal typeface has the above-mentioned characteristics, i.e. the eye height is greater than that of the jams, the size of the capitals is smaller than that of the ascenders of the lowercase letters, the serifs at the bottom of the lowercase letters and capitals are trapezoidal, the teardrop-shaped endings have been replaced by a rounded shape ending in a point broken by a short stroke, and the verticals have been reduced in favor of the horizontals.
28. None of these choices is new, and each can be found in certain other traditional typographies or recent typefaces. In particular, the replacement of the drop by an ending that ends in a point at the bottom broken by a short stroke, presented by Mr. Porchez as an aesthetic choice that constitutes the very essence of the Le Monde Journal typeface, can be found in typefaces from the XVIII<sup>ème</sup> century, as well as current typefaces (Charter, Swiss works, Malabar). However, Le Monde Journal's typography has a distinctive look, achieved by a number of choices, such as downsizing the verticals in favor of the horizontals, the respective sizes of the eye heights on the one hand, and the capitals and ascenders on the other, as well as the details of the trapezoidal serifs and the particular design of the drops. This combination, which achieves the objective of greater legibility and space but could have been achieved by other means, is original, reveals arbitrary choices and reflects the personality of its author.
29. Consequently, the combination of the characteristics listed in point 27 above makes the Le Monde Journal font an original typographical work protectable as such by copyright.

*2. Infringement of the Le Monde Journal typographic work by the Spectral typeface*

30. Mr. Porchez and ZeAssociates argue that :

- The Spectral typeface fully embodies the aesthetic bias that is the very essence of the "Le Monde Journal" typeface,
- a comparison of certain superimposed glyphs (z, a g, c, r, £, 5, 0) shows that at identical sizes, the proportions, weights, strokes, shapes and curves added together are identical, as are the terminations (c, e),
- these superimpositions are systematically repeated for different signs and styles, ruling out the possibility of chance,
- Production Systems must have obtained this character illegally, as it was never marketed,
- the antecedents are insignificant, particularly the Charter font, which the author himself indicates he does not consider to be similar,
- the expert reports were carried out by people who all affirmed the originality of Le Monde Journal typography,
- the use of software facilitates the manipulation of fonts, and the defendants do not provide evidence of a creative process behind the Spectral font,
- the differences are minute.

31. In response, Production Systems argues that :

- The assessment of infringement involves examining not only points of similarity but also differences, since the existence of similarities is inherent to the art of typography;
- the similarities between the two typographies do not concern copyrightable elements due to their commonplace nature;
- the alleged similarities concern only a few characters and can be found in other fonts;
- the constraints of typography mean that point correspondences and curve tensions are commonplace;
- on the other hand, there are differences in the elements that enable creative choices, such as serifs, spacing between characters, line spacing and the overall impression given by the two typefaces, which rule out any infringement. This is demonstrated by analyses carried out by typographic designers and teachers, who conclude that there are differences in the vertical proportions of the two typefaces, as well as in the ascenders, descendants and height of the x glyph (x-height or eye-height) of the lowercase letters, the kerning, the serifs, triangular rather than trapezoidal, the round characters of the more circular capitals, on the italics and emphasizing the darker typographic color of the Le Monde Journal font;
- The Spectral font is an original creation by Mr. Levée, inspired by the Elzevir n°9 font from the Warnery foundry and an image of the word *party*, taken from an old edition of the book *Gargantua*, just as Mr. Porchez was inspired by the Times New Roman font;
- Spectral's italics have been entirely created ;
- the similarity of typeface organization is not an infringement, as it is not protected by copyright.

32. Google uses a similar argument to conclude that there is no infringement, pointing out that the features claimed to be similar are not original and relate to only five points.

It also points out that the certificates produced by the plaintiffs are not conclusive. It adds that the Google Fonts teams cannot substitute themselves for the judge in assessing the infringing nature of a typeface.

*On that note,*

33. According to article L. 122-1 of the French Intellectual Property Code, the author's exploitation rights include the right of representation and the right of reproduction.  
Under the terms of article L. 122-4 of the French Intellectual Property Code, any representation or reproduction in whole or in part without the consent of the author or his successors or assigns is unlawful. The same applies to translation, adaptation or transformation, arrangement or reproduction by any art or process whatsoever.
34. Infringement is assessed by looking for similarities in the work's protectable characteristics.
35. It should be noted at the outset that the plaintiffs' exhibits 61 to 77, from 16 typography professionals, support their opinion on the originality of the Le Monde Journal typeface, the relationship of the Spectral typeface to it and the likelihood that the latter was inspired by the former, but it must be noted that, with the exception of two, they proceed by assertion without any demonstration or example.
36. The most precise (translation of Mr. Jérémy Tankard's attestation dated September 6, 2021, exhibit no. 67) concludes:  
*"Le Monde Journal" strongly influenced Spectral's design. Many of Spectral's glyph shapes are uncomfortably close to those of Le Monde Journal. The similarity in the construction of the curves is undeniably that of Le Monde Journal and the hand of its creator, Jean François Porchez.*  
*Spectral is almost an evolution of Monde Journal. Many of Spectral's glyphs can be considered early versions of Monde Journal.*  
*Before the details are worked out as the typeface design develops. The serifs, though different, are in a similar design space. (...) It is said that Spectral owes much of its visual design to the historic typeface Elzévir n°9, published by the Warnery foundry in 1882. However, there are more differences than similarities, especially if we consider the design details specific to Monde Journal. It would seem that the italics and numerals of Monde Journal had a strong influence where Elzévir n°9 did not.* "He illustrates these conclusions with the examples of glyphs a, c, e, 5 and £.
37. In Exhibit 74 (translation of Mr. Paul Shaw's attestation dated September 5, 2021), it is stated that *"There is a similarity in structure (width, height, counter-form) between these characters"* and the following examples are given: the same hump curvature of the m and n, very strong similarities of the a and q, identical left-hand curvature of the e and near-identity of the g, e, 0, 5, £, r and 5.

38. For its part, Production Systems produced five expert reports (exhibits 42, 47, 52, 55 and 56), which came to radically opposite conclusions.
39. Mr. Krys Sowersby (Exhibit 47, translation of the certificate dated June 14, 2022) states, in particular for lowercase letters: "*the proportions of ascendants and descendants and x-height are totally different between the two fonts*", taking the examples of a, h, m, n, u and w.
40. Taking the examples of these characters as well as b, H, x, o, v, c, f, r, £, 5, ! and \*, Mr. Thomas Phinney (Exhibit 52 of the certificate dated June 15, 2022) concludes: "*In general, the similarities between these two typefaces lie in certain details, and these details are similar, but not at all identical. Conversely, the differences are large and profound, and concern many of the font's glyphs*".
41. The plaintiffs characterize the infringement by the reproduction of trapezoidal-triangular serifs, construction points, weights and proportions of glyphs (the glyphs z, a, g, c, r, £ and the numerals 5 and 0 overlap almost perfectly for the different styles (roman, bold, italic, etc.), identical strokes, shapes, ratios and curved designs.
42. In support of their allegations, they compare the capitals C, D, G, H, N, O, R, S, Z and the lower-case letters s, z, r, a, c, n and e, as well as the numerals 0, 3, 5 and 7 and the signs @, £ and \* highlighting similarities in the width of the weights, curves and construction points when the characters are superimposed, according to the examples below:



However, the similarities thus identified concern only a very limited number of glyphs containing three of the five characteristics constituting originality, listed in point 27 *above*.

43. What's more, as the defendants rightly point out, the serifs on the upper ends appear much finer in the Le Monde Journal font, just as the ends of the belly appear finer in the Spectral font, making these two glyphs quite distinct, and the trapezoid shape is not identical to the triangle shape.

Le Monde Journal	Spectral	Le Monde Journal	Spectral
<b>n</b>	<b>n</b>	<b>a</b>	<b>a</b>

44. Nor do the plaintiffs demonstrate the presence of the other elements whose combination has been retained to characterize the originality of the Le Monde Journal typeface, namely the enlarged eye height in relation to the jambs, the size of the capitals smaller than the ascenders of the lowercase letters, and the degreasing of the verticals in favor of the horizontals.
45. In particular, it is undisputed that the proportions of the typefaces are clearly different in the two typographies: the difference in eye height is greater in the Journal world, and the typefaces are narrower, as pointed out by Ms. Carey-Smith in her report of June 13, 2022 (Production Systems exhibit no. 56). However, eye height is an essential characteristic of typeface appearance in that it changes the overall impression given by the text, and is claimed to be part of the originality of the typography.
46. A comparison of blocks of text written in each of the Le Monde Journal and Spectral fonts reveals a clear difference on reading: Le Monde Journal typeface is darker and denser than Spectral, as shown in the following reproduction (extract from Production Systems exhibit no. 38).

**L**a maîtrise pleine et entière du numérique – de ses programmes, de ses outils, de ses méthodes et même de ses codes – est aujourd’hui une dimension essentielle de la sécurité et de la souveraineté. L’État, au même titre que les entreprises, ne peut se contenter d’être le consommateur passif de solutions développées par d’autres, pas plus qu’il ne peut se satisfaire d’anciennes méthodes et de protocoles figés.

*Le Monde Journal*

**L**a maîtrise pleine et entière du numérique – de ses programmes, de ses outils, de ses méthodes et même de ses codes – est aujourd’hui une dimension essentielle de la sécurité et de la souveraineté. L’État, au même titre que les entreprises, ne peut se contenter d’être le consommateur passif de solutions développées par d’autres, pas plus qu’il ne peut se satisfaire d’anciennes méthodes et de protocoles figés.

*Spectral*

47. It is clear from the foregoing that the combination of original features of the Le Monde Journal typeface is not found in the Spectral typeface, so that no infringement has occurred. All the claims made on this basis are rejected.

## **II . Unfair competition**

48. In the alternative, Mr. Porchez and ZeAssociates argue that :
- Production Systems has committed acts of unfair competition through unfair and parasitic practices;
  - ZeAssociates, which commercially exploits the Le Monde Journal font, has a valid claim for unfair competition;
  - Production Systems and Prototypo behaved in a parasitic manner by capturing Mr. Levée's clientele through the massive use of the Spectral font, unduly increasing their reputation and that of Mr. Levée, and adversely affecting the commercial exploitation of the Le Monde Journal font;
  - the massive and free exploitation of the font by Google LLC weakens the value of the Le Monde Journal font, undermines the entire profession of type designers and is part of an abuse of a dominant position sanctioned several times by the European Union Commission.
49. Production Systems maintains that :
- the plaintiffs allege unfair competition in respect of acts of counterfeiting and do not establish fault in respect of allegations of parasitism
  - it has not benefited from the investments made by the plaintiffs, and establishes that it has carried out its own research and made its own human and financial investments to create the Spectral policy;
  - the alleged loss has not been demonstrated either in principle or in quantum;
  - there is no causal link between the publication of the Spectral policy and the alleged damage.
50. Google LLC argues that it has not committed any unfair or parasitic acts. It added that it had paid Mr. Levée \$75,000 for the right to host the Spectral font, which it provides free of charge under an open license via its Google Fonts service.

*On that note,*

51. Article 1240 of the French Civil Code stipulates that any human act which causes damage to another person obliges the person by whose fault it occurred to repair it.  
Under article 1241 of the French Civil Code, everyone is liable for damage caused not only by his or her own actions, but also by negligence or imprudence.
52. Under article 9 of the French Code of Civil Procedure, it is incumbent on each party to prove, in accordance with the law, the facts necessary for the success of its claim.
53. Unfair competition must be assessed in the light of the principle of freedom of commerce, which implies that a sign or product that is not the subject of intellectual property rights may be freely reproduced, in the absence of fault, which may be constituted by the creation of a risk of confusion as to the origin of the product in the mind of customers, a circumstance prejudicial to the peaceful and loyal exercise of trade.

The assessment of this fault with regard to the risk of confusion must result from a concrete and detailed approach to the facts of the case, taking into account in particular the more or less slavish, systematic or repetitive nature of the reproduction or imitation, the age of the use, and the originality and notoriety of the service copied. Unfair competition requires proof of fault based on facts distinct from those alleged in the case of counterfeiting.

54. Parasitism, which is assessed in the same context as unfair competition of which it is an offshoot, but whose characterization is however independent of the risk of confusion, consists in the fact that a natural or legal person voluntarily takes advantage, unjustifiably and without purse strings, of the investments, know-how or intellectual work of others, producing individualized economic value and generating a competitive advantage.
55. In this case, it was ruled that the Spectral typeface is not a slavish copy of the Le Monde Journal typeface, and the existence of similarities limited to a restricted number of glyphs is insufficient to characterize a risk of confusion between the two typefaces in dispute in the minds of moderately vigilant and attentive customers.
56. The unfair competition claims against Production Systems and Prototypo are therefore dismissed.
57. The plaintiffs do not provide evidence of any wrongful imitation of the Le Monde Journal font, as the similarities are limited to a few glyphs, which is not such as to give the defendants a competitive advantage. Nor do they demonstrate that Mr. Levée would have exploited the files to which he had access while working on the adaptation of another police force (Le Monde Courrier) between 2005 and 2010. On the contrary, it is undisputed that Mr. Levée is an internationally recognized professional in the field of typography, and the documents submitted by Production Type show that the Spectral font was developed by Mr. Levée and his teams.
58. Accordingly, there is no evidence in the proceedings to suggest that Production Systems intended to follow in ZeAssociates' footsteps, or that it took advantage of the company's know-how or economic value to gain a competitive advantage.
59. The plaintiffs have not demonstrated any acts of parasitism that could be imputed to Production Systems and Prototypo.
60. As for Google, it has established that it paid Mr. Levée the sum of \$75,000 for the right to host the Spectral font on its Google Fonts service, so that it cannot be accused of having saved investment by using the fruit of the plaintiffs' labor, which consequently fails to establish parasitism against it. Google LLC's allegations of dominance in distinct sectors of the typography market are inoperative to characterize acts of unfair competition or parasitism.

61. Mr. Porchez and ZeAssociates are therefore dismissed from their claims for damages based on unfair competition and parasitism against all defendants.

### **III . Production Systems' counterclaim for disparagement**

62. Production Systems argues that sending a formal notice for allegations of infringement may constitute denigration and that the plaintiffs have engaged in acts of denigration by disseminating false allegations to its customers, causing it moral prejudice.
63. Mr. Porchez and ZeAssociates maintain that Mr. Porchez sought an amicable solution.

*On that note,*

64. Denigration consists of publicly discrediting a competitor's products, company or personality in order to profit from the disclosure of information.  
Information describing these products as counterfeit, when no court decision has yet been handed down in this respect, constitutes an act of disparagement, unless the information in question relates to a subject of general interest and has a sufficient factual basis, and provided that it is expressed with a certain degree of restraint.  
It constitutes a fault within the meaning of article 1240 of the aforementioned Civil Code.
65. In this case, the only act of disparagement invoked by Production Systems is the sending of formal notice letters on October 25 and 29, 2018 to its address.  
To be at fault, a disparaging message must be public, even if it is only addressed to a third party. As the above-mentioned letter was only sent to Production Systems, it could not have constituted disparagement likely to divert its customers.
66. Production Systems' claim in this respect should therefore be rejected.

### **IV . Ancillary claims**

67. There is no need to examine the warranty claim lodged by Google LLC, which has not been condemned.
68. As losing parties within the meaning of article 696 of the French Code of Civil Procedure, Mr. Porchez and ZeAssociates will be ordered to pay the costs of the proceedings, as well as the sum of 20,000 euros to Production Systems and the sum of 10,000 euros to Google LLC, each in application of the provisions of article 700 of the French Code of Civil Procedure.
69. Please note that provisional execution is automatic.



**FOR THESE REASONS**

*The court,*

**REJECTS** all the claims of Mr. Jean-François Porchez and the company ZeAssociates;

**DISMISSES** Production Systems' counterclaim;

**ORDER** Mr. Jean-François Porchez and the company ZeAssociates *to* pay the costs, which may be recovered directly by SELARL Vercken & Gaullier in accordance with article 699 of the French Code of Civil Procedure;

**ORDER** Mr. Jean-François Porchez and ZeAssociates *jointly and severally* to pay Production Systems the sum of 20,000 euros under article 700 of the French Code of Civil Procedure;

**ORDER** Mr. Jean-François Porchez and ZeAssociates *jointly and severally* to pay Google LLC the sum of 10,000 euros under article 700 of the French Code of Civil Procedure.

Done and judged in Paris on March 31, 2023

The  
Quentin

ClerkThe President  
CURABETIrène BENAC