

**Reyes v. Wyeth Pharm., Inc.,
603 F. Supp. 2d 289 (D.P.R. 2009)**

Year	2009
Court	United States District Court for the District of Puerto Rico
Key Facts	Plaintiff Martha Reyes was a sculptor who created a glass sculpture entitled <i>The Watcher of Fire (The Watcher)</i> . Defendants, including Wyeth Pharmaceuticals, Inc., were conducting an ongoing public health service campaign to educate the public about living a healthy life and the risks of certain ailments. The campaign was widely promoted in many different media formats and outlets. In connection with the campaign, defendants used an unauthorized photograph of <i>The Watcher</i> in an advertisement designed to raise awareness of rheumatoid arthritis. The advertisement depicted plaintiff's sculpture in combination with informational text, corporate logos, and advertising slogans.
Issue	Whether defendants' unauthorized use of a photo of plaintiff's sculpture in an advertisement was fair use.
Holding	The court held that defendants' use of a photo of the sculpture did not qualify as fair use. In reaching its conclusion, the court relied on its findings that defendants' use of the work was minimally transformative; that defendants' advertisement included a depiction of almost the entire work; and that defendants' unauthorized use of the work in advertisements could destroy the market for plaintiff to sell or license her sculpture for use in advertisements.
Tags	First Circuit; Photograph; Sculpture
Outcome	Fair use not found

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