

ESTTA Tracking number: **ESTTA1358473**
Filing date: **05/14/2024**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner information

Name	Superbabies Limited		
Entity	Private Limited Company	Incorporated or registered in	United Kingdom
Address	INTERNATIONAL HOUSE, 142 CROMWELL ROAD LONDON, SW7 4EF UNITED KINGDOM		
Attorney information	ADAM ADLER REICHMAN JORGENSEN LEHMAN & FELDBERG 1909 K STREET NW SUITE 800 WASHINGTON, DC 20006 UNITED STATES Primary email: aadler@reichmanjorgensen.com Secondary email(s): khoang@reichmanjorgensen.com, sjr9982@yahoo.co.uk, dlacayo@reichmanjorgensen.com, mquintana@reichmanjorgensen.com 650-623-1480		
Docket no.			

Registration subject to cancellation

Registration no.	1179067	Registration date	11/24/1981
Register	Principal		
Registrants	MARVEL CHARACTERS, INC. 500 SOUTH BUENA VISTA STRETT BURBANK, CA 91521 UNITED STATES DC COMICS 2900 WEST ALAMEDA AVENUE BURBANK, CA 91505 UNITED STATES		

Goods/services subject to cancellation

Class 016. First Use: Oct 1966 First Use In Commerce: Oct 1966
All goods and services in the class are subject to cancellation, namely: PUBLICATIONS, PARTICULARLY COMIC BOOKS AND MAGAZINES AND STORIES IN ILLUSTRATED FORM (((; CARD-BOARD STAND-UP FIGURES; PLAYING CARDS; PAPER IRON-ON TRANSFER; ERASERS; PENCIL SHARPENERS; PENCILS; GLUE FOR OFFICE AND HOME USE, SUCH AS IS SOLD AS STATIONERY SUPPLY; NOTEBOOKS AND STAMP ALBUMS)))]

Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
The mark is or has become generic	Trademark Act Section 14(3)

Registration subject to cancellation

Registration no.	1140452	Registration date	10/14/1980
Register	Principal		
Registrants	Marvel Characters, Inc. BURBANK, CA 91521 UNITED STATES DC Comics 500 SOUTH BUENA VISTA STREET BURBANK, CA 91505 UNITED STATES		

Goods/services subject to cancellation

Class 028. First Use: Jul 2, 1973 First Use In Commerce: Jul 2, 1973 All goods and services in the class are subject to cancellation, namely: Toy Figures
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Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
The mark is or has become generic	Trademark Act Section 14(3)

Registration subject to cancellation

Registration no.	3674448	Registration date	08/25/2009
Register	Principal		
Registrants	MARVEL CHARACTERS, INC. 500 SOUTH BUENA VISTA STREET BURBANK, CA 91521 UNITED STATES DC COMICS 2900 WEST ALAMEDA AVENUE BURBANK, CA 91505 UNITED STATES		

Goods/services subject to cancellation

Class 025. First Use: Jan 1, 2005 First Use In Commerce: Jan 1, 2005 All goods and services in the class are subject to cancellation, namely: t-shirts

Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
The mark is or has become generic	Trademark Act Section 14(3)

Registration subject to cancellation

Registration no.	0825835	Registration date	03/14/1967
Register	Principal		
Registrants	MARVEL CHARACTERS, INC. 500 SOUTH BUENA VISTA STREET BURBANK, CA 91251 UNITED STATES DC COMICS 2900 WEST ALAMEDA AVENUE BURBANK, NY 91505 UNITED STATES		

Goods/services subject to cancellation

Class 039. First Use: Oct 29, 1965 First Use In Commerce: Mar 4, 1966
All goods and services in the class are subject to cancellation, namely: MASQUERADE COSTUMES

Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
The mark is or has become generic	Trademark Act Section 14(3)

Related proceedings	DC Comics v. Superbabies Limited, TTAB Opposition No. 91290757
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Attachments	5-14-24_FINAL Cancellation Petition.pdf(3877561 bytes) Ex. A_Amazon Genre Page.pdf(2111062 bytes) Ex. B_Netflix Genre Page.pdf(420420 bytes) Ex. C_448 Response to Office Action.pdf(32422 bytes) Ex. D_ttabvue-91204438-OPP-1.pdf(320841 bytes) Ex. E_452 Registration Prosecution File.pdf(1824638 bytes) Ex. F_067 Registration Prosecution File Excerpt.pdf(1833409 bytes)
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Signature	/Adam Adler/
Name	Adam Adler
Date	05/14/2024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERBABIES LIMITED,

Petitioner,

v.

DC COMICS &
MARVEL CHARACTERS, INC.

Registrants.

Cancellation No. _____

Mark: SUPER HEROES
SUPER HERO

Registration Nos:
1179067, 1140452, 3674448, 825835

Petition to Cancel SUPER HEROES Trademark Registrations

1. We live in a world of super heroes. For the better part of a century, super heroes and the superhero genre have ruled the imagination and inspired millions to achieve greatness.

2. Super heroes are ubiquitous. They are featured on products of all shapes and sizes, appear in countless stories, and have a presence in every major storytelling medium.

3. This case is about two companies—DC and Marvel—who claim the *exclusive* right to use the term SUPER HERO.

4. Marvel and DC did not invent the concept of super heroes, superheroes, or the superhero genre. The term in its varied spellings has origins dating back to at least 1909—decades before DC or Marvel even existed. The first comic book characters to receive the super hero label were not affiliated with DC or Marvel.

5. In 1980—decades after the birth of super heroes—DC and Marvel jointly registered SUPER HEROES as a trademark.¹

6. DC and Marvel claim that no one can use the term SUPER HERO (or superhero, super-hero, or any other version of the term) without their permission. DC and Marvel are wrong. Trademark law does not permit companies to claim ownership over an entire genre. SUPER HERO is a generic term that should not be protected as a trademark.

7. Trademark law also does not allow competitors to claim joint ownership over a single mark. The purpose of a trademark is to identify a *single* source of goods and services.

8. Over the years, DC and Marvel have used their SUPER HERO registrations not to prevent confusion, but to stifle competition and exclude others from the marketplace.

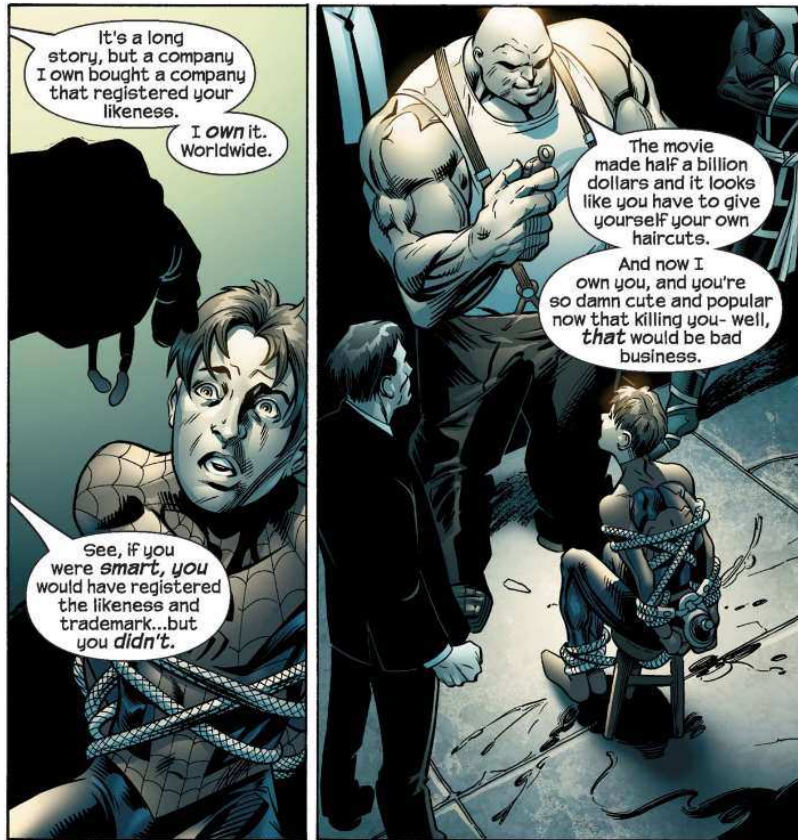
¹ This petition seeks cancellation of Trademark Registration Nos. 1179067, 1140452, 3674448, and 825835.

9. DC and Marvel's strategy is ripped straight from their own supervillains' playbook.

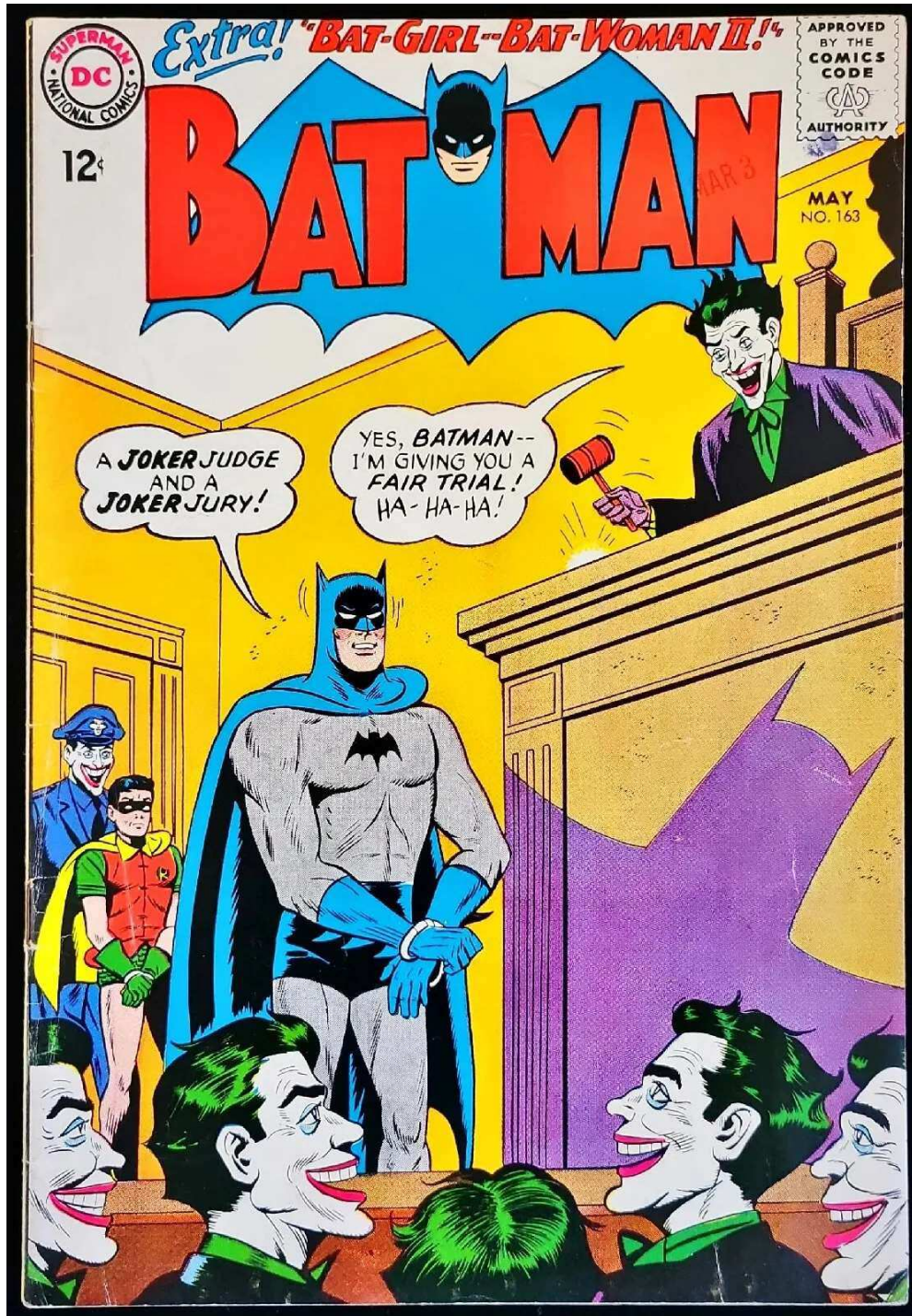
In *Fantastic Four* #7 (2023), Dr. Doom defeats the Fantastic Four by stealing key words from their vocabulary—including SUPER HERO:



10. In *Ultimate Spider-Man* #109, villain Wilson Fisk (Kingpin) used a more direct approach: he registered Spider-Man as a trademark, and used threats of litigation and financial ruin to pressure Spider-Man into letting Kingpin operate without SUPER HERO interference:



11. In *Batman* #163, the Joker executed a similar strategy by weaponizing the legal system to dispense with Batman and Robin:



12. And in *Justice League of America* #28, villain Headmaster Mind facilitated a crime spree by tricking the United Nations into clamping down on “super”-related rights:



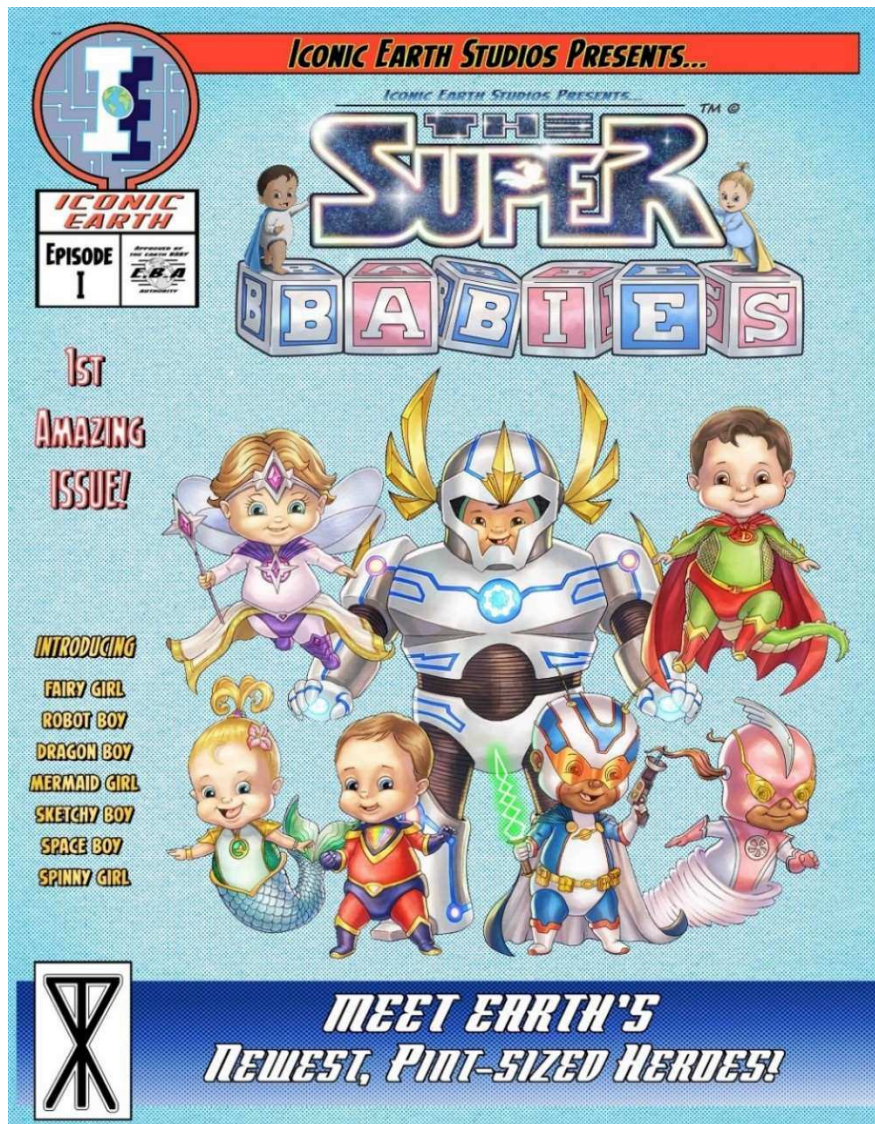
13. It is time for DC and Marvel’s villainous reign to end. SUPER HEROES belong to the people—they do not belong to Marvel or DC, just as they do not belong to Dr. Doom, Kingpin, or the Joker.

14. Petitioner Superbabies Limited creates and sells SUPER HERO comics and story books. Petitioner seeks cancellation of DC and Marvel’s SUPER HERO registrations so it can describe and promote its work without fear of legal jeopardy or retaliation.

PARTIES

15. Petitioner Superbabies Limited (“Petitioner” or “Superbabies”) is a private limited company, registered in the United Kingdom. Petitioner’s address is International House, 142 Cromwell Road, London, United Kingdom, SW7 4EF. Petitioner’s Director is Scott Richold.

16. Petitioner creates super hero stories featuring a team of super-powered super hero babies called THE SUPER BABIES:



17. The goal of THE SUPER BABIES is to deliver classic children’s stories while promoting charity, teamwork, and adventure.

18. Petitioner competes with Marvel and DC with respect to the sale of comics, toys, t-shirts, and costumes (i.e., the goods covered by the challenged registrations). Petitioner offers goods for sale in the United States with prominent retailers, including Amazon, Barnes & Noble, and Shopify. Petitioner also sells goods through its website, <http://www.iconicearthstudios.com>.

19. Petitioner competes with Marvel and DC with respect to goods featuring super heroes or otherwise relating to the superhero genre.

20. DC has accused Superbabies of infringing DC's "SUPER"-related trademarks, has filed an opposition to Superbabies' trademark applications (TTAB Trademark Opposition No. 91290757), and has threatened further legal action. DC has asserted the exclusive right to use "the prefix SUPER followed by a generic term for a human being."

21. Petitioner is and has been harmed by DC and Marvel's SUPER HERO registrations, which limit Petitioner's ability to market, describe, and promote Petitioner's work. Petitioner has an interest in using SUPER HERO and related terms to describe its goods.

22. Respondents, DC Comics ("DC") and Marvel Characters, Inc. ("Marvel") have a correspondence address of Hunton Andrews Kurth LLP, 200 Park Avenue, New York, NY, 10166, and a correspondence e-mail address of TMDocketNY@HuntonAK.com.

REGISTRATIONS

23. Petitioners seek cancellation of Trademark Registration Nos. 1179067, 1140452, 3674448, and 825835. These registrations cover the use of SUPER HERO and SUPER HEROES in connection with various goods. Each of the marks is jointly registered to Marvel and DC. This petition will refer to these marks, collectively, as "the Challenged Marks."

24. Trademark registration 1179067 (“the ’067 registration”) covers the use of SUPER HEROES in connection with “publications, particularly comic books and magazines and stories in illustrated form.”

25. Trademark registration 1140452 (“the ’452 registration”) covers the use of SUPER HEROES in connection with “toy figures.”

26. Trademark registration 3674448 (“the ’448 registration”) covers the use of SUPER HEROES in connection with “t-shirts.”

27. Trademark registration 825835 (“the ’835 registration”) covers the use of SUPER HERO in connection with “masquerade costumes.”

“SUPER HERO” IS GENERIC

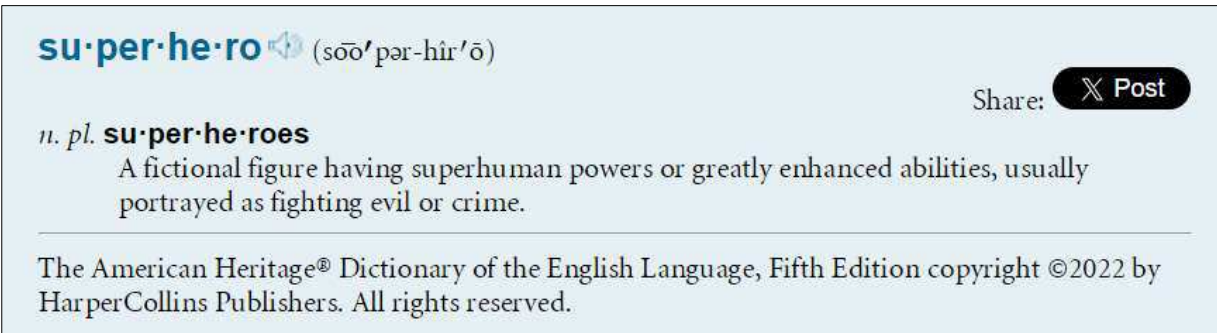
28. SUPER HERO is a generic term used in connection with super hero stories, characters, and products. The term refers to a stock character archetype (super heroes) and a genre of stories that features that archetype and its associated tropes (the superhero genre).²

29. Consumers do not associate SUPER HEROES with any single brand, company, or character. Instead, consumers understand that the term refers to a broad category of stories and characters tied together by common themes and conventions, as well as to products that relate to or feature super hero stories or characters.

30. Consumers view and understand SUPER HEROES the same way they view other genre labels (e.g., Western, Spy) and character archetypes (e.g., cowboys, secret agent).

² Unless otherwise indicated, references to SUPER HERO include SUPER HEROES and vice versa.

31. Dictionary definitions confirm that “super hero” and its variants³ (e.g., super-hero, super heroes, superhero) refers to a *category* of stories and characters rather than a particular source of goods:



The screenshot shows the online definition for 'superhero' from The American Heritage Dictionary. The word is written as 'su·per·he·ro' with a speaker icon and the phonetic transcription '(sōō'pær-hîr'ō)'. Below it, the plural form 'su·per·he·roes' is listed. The definition states: 'A fictional figure having superhuman powers or greatly enhanced abilities, usually portrayed as fighting evil or crime.' At the bottom, it includes the copyright notice: 'The American Heritage® Dictionary of the English Language, Fifth Edition copyright ©2022 by HarperCollins Publishers. All rights reserved.'

*American Heritage Dictionary*⁴



The screenshot shows the online definition for 'superhero' from Merriam-Webster. The word is written as 'superhero' followed by 'noun'. Below it, the phonetic transcription is given as 'su·per·he·ro' with a speaker icon and the transcription 'sū-pær-, hir-(,)ō - , hē-(,)rō'. The plural form 'plural superheroes' is listed. The definition states: ': a fictional hero having extraordinary or superhuman powers' and 'also : an exceptionally skillful or successful person'. At the bottom, it includes a note: '→ compare SUPERHEROINE, SUPERVILLAIN'.

*Merriam-Webster Dictionary*⁵

³ The Challenged Marks include SUPER HEROES in both singular and plural forms (e.g., SUPER HERO and SUPER HEROES), and in one-word and two-word forms (e.g., SUPER HERO and SUPERHERO). Marvel and DC expressly claimed those variants in their trademark applications and have asserted the exclusive right to use the mark in all of its variations. Ex. C (Application for the '448 registration at Doc. ID 26, Response to Office Action (June 11, 2009)), at 2 (“Applicant seeks to register SUPERHERO for ‘t-shirts’ ... either in the form SUPERHERO, SUPER HERO and/or SUPER HEROES”); Ex. D (*DC Comics & Marvel Characters, Inc. v. Felix*, TTAB Opposition 91204438, 1 TTABVUE), at ¶ 7 (DC and Marvel claiming that the SUPER HEROES registration grants them “the exclusive right to use ‘SUPER HEROES’ and variations thereof”); Ex. E (Application for the '452 registration at Doc. ID 9 (2/5/2008), at 10 (“SUPER HERO/SUPER HEROES are identical for all intents and purposes”); Ex. F (Excerpt of Application for the '067 registration at Doc. ID 9, Unclassified (Mar. 12, 2008)), at 24 (Marvel and DC explaining that SUPER HEROES and SUPER HERO “must be adjudged ‘substantially’ the same because the substance of one is manifestly embodied in the other, and would be recognized as such by the public[.] ... Indeed, the two titles are verbalized interchangeably in the parlance of children and other purchasers ... [and] are mentally indistinguishable[.]”); see also *In re Cordua Rests., Inc.*, 823 F.3d 594, 603 (Fed. Cir. 2016) (pluralization does not alter meaning of mark); *In re Iolo Techs., LLC*, 95 U.S.P.Q.2d 1498 (TTAB 2010) (joining words as compound does not alter meaning of mark). This petition uses the terms “superhero” and “super hero” interchangeably.

⁴ <https://www.ahdictionary.com/word/search.html?q=superhero>.

⁵ <https://www.merriam-webster.com/dictionary/superhero>.

superhero

Word Frequency ●●●●●

in American English

(ˈsuːpərˌhɪərəʊ)

NOUN

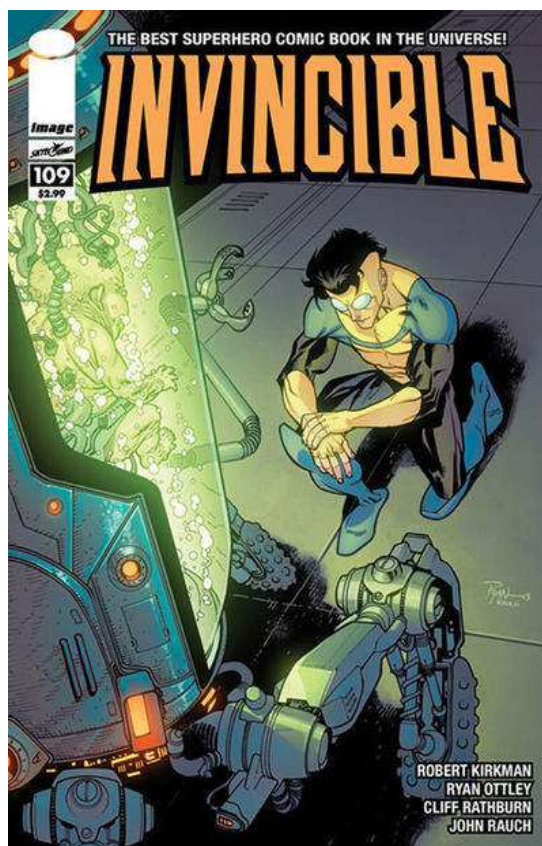
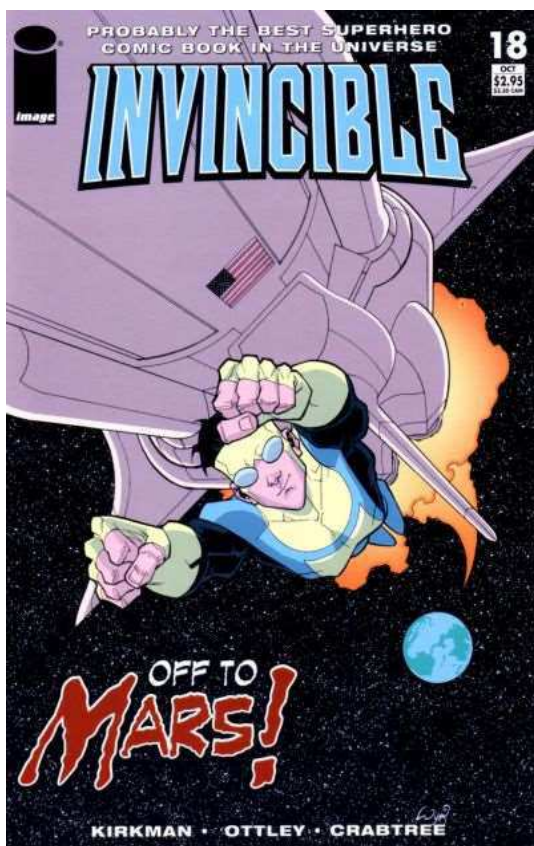
Word forms: plural -roes

a hero, esp. in children's comic books and television cartoons, possessing extraordinary, often magical powers

*Random House Dictionary*⁶

32. Common usage conventions further demonstrate that SUPER HEROES is a generic term that refers to super hero stories, characters, and products.

33. For example, the cover of the comic *Invincible* describes the book as “Probably the Best Superhero Comic Book in the Universe” or, alternatively, “The Best Superhero Comic Book in the Universe!” *Invincible* is not affiliated with Marvel or DC:



⁶ <https://www.collinsdictionary.com/dictionary/english/superhero>.

34. Similarly, the marketing materials for the comic series *The Ambassadors* describes the comic as “the world’s greatest and most ambitious superhero comic”. *The Ambassadors* is not affiliated with Marvel or DC:



JUN230064
(W) Mark Millar (A) Travis Charest, Olivier Coipel, Matteo Buffagni, Matteo Scalera, Karl Kersch (A/CA) Frank Quitely

You've cracked the superhuman mystery and can give superpowers to six different people around the world. Who do you choose? The world's greatest and most ambitious superhero comic needs the world's greatest comic book artists. FRANK QUITELY, TRAVIS CHAREST, OLIVIER COIPEL, and an international line-up of superstars step forward to introduce an all-new cast of characters from MARK MILLAR's latest Netflix sensation.

Collects THE AMBASSADORS #1-6

In Shops: Aug 09, 2023

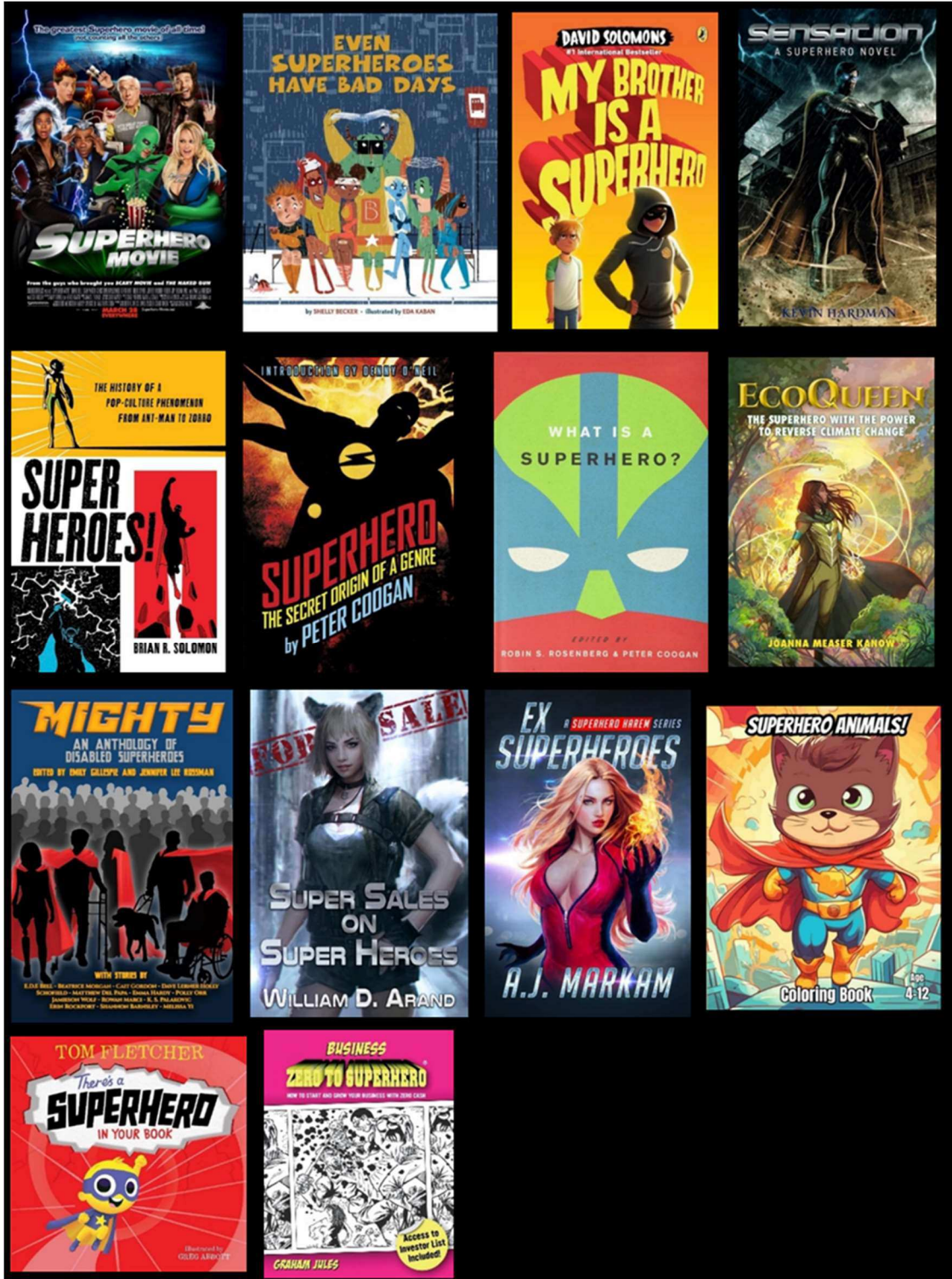
SRP: \$19.99

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35. These are not isolated examples. Virtually every comic, book, toy, or t-shirt relating to super heroes refers to itself as a super hero product, sometimes even including the term in the product name:





Funko POP Animation: Cow & Chicken - Superhero Cow Multicolor
 Animation: Cow & Chicken- Superhero Cow Multicolor
 Visit the Funko Store
 4.8 ★★★★★ 523 ratings
 Amazon's Choice
 200+ bought in past month



EASY to learn!
EXCITING to play!
ENTERTAINING family fun!

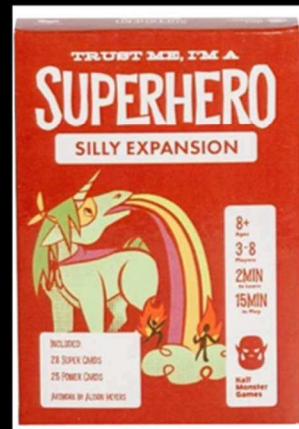
The **SUPERHERO** card game that makes fitness and learning FUN!

Get ready for a thrilling adventure as you join the Fit Heroes team in protecting the planet from the villains of G.L.U.E.! Save the day by doing superhero actions, exercises, and other amazing challenges!

Bold-colored, interactive playing cards engage children, both physically and mentally, all while helping them discover their own unique superpowers!

Specially designed to bring classrooms, friends, and families closer together through the power of fitness!

www.FitHeroes.com
 1st Edition, 1st Printing
 Printed in Shenzhen, China D.M. 8/2021



Visit the D.Q.Z Store
 D.Q.Z Girls Superhero-Costume Cape with TuTu Dress Best Gifts to Big Sisters Baby Shower Party Christmas Favors

- ▶ **【Best Superhero Toys】** :★ Will your girl be a Big sister? How do you help her accept identity transition peacefully and quickly?? This superhero cape and mask set designed with "Super Sis" will give you a hand. It is "magic and powerful" Dress-Up Cape and mask, which will help girls feel special, safe, not yet jealous. Girls dressed in Superhero cape will be a SUPER HERO, and help you take care of newcomer. So it is a best gift for super Sis to be.
- ▶ **【Convenient Kid-Sized】** :★ Super Hero Capes for kids, 27.5 inch L x 27.5 inch W, recommended for 3-9 years old children; you can adjust the neckline with adjustable buckles to make Dress-Up Cape suit neck well. Star Superhero Mask can extremely fit with flat elastic strap, soft wearing.



Personalized Superhero In Scrubs Shirt With Stethoscope Ornament



Girls' "Daddy is My Superhero" Graphic T-Shirt

★★★★★ (5.0) 3 reviews

\$7.32

Price when purchased online ⓘ



Super Hero Logo T-Shirt

Superhero T-Shirt Designed and Sold by ozant



Generic Superhero T Shirt

★★★★★ Rating: 5.0

\$13.95 ~~\$25.96~~

36. The terms “super heroes” and “superheroes” are used in numerous trademark registrations to name a category of goods or services. For example, Registration 5390991 covers the mark BLIND WAVE in connection with “fan films in the fields of science fiction, comedy, drama, **super heroes**, fantasy, and video games, and original content in the fields of science fiction, comedy, drama, **super heroes**, fantasy, and video games”; Registration 4770416 covers the mark IMPERIUM in connection with “books featuring cartoons and adventure stories about **super heroes**”; Registration 2032816 covers the mark VALLATOR in connection “comic books featuring a **superhero.**” None of these marks or registrations is owned by or affiliated with DC or Marvel.

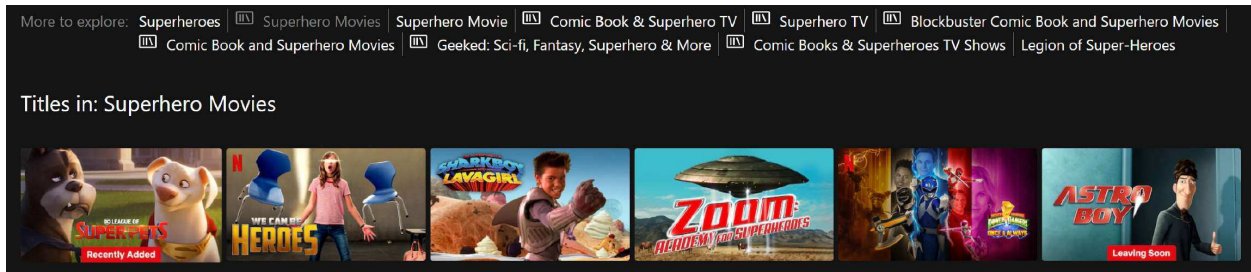
37. The USPTO Trademark Search function shows there are dozens of registered trademarks that use “super heroes” or “superheroes” to identify categories of goods or services.

38. Retailers use SUPER HERO as a category of goods, to help consumers find super hero stories, products, and characters, and to allow consumers to search by genre. For example, Amazon.com lists “Superhero” as a genre, alongside “Science Fiction,” “Fantasy,” and “Romance.”

The screenshot shows the Amazon Best Sellers page for Superhero Comics & Graphic Novels. The header is teal with the text "Amazon Best Sellers" and "Our most popular products based on sales. Updated frequently." Below the header is a navigation menu on the left with categories like "Comics & Graphic Novels", "Action & Adventure Manga", etc., and "Superheroes" selected. The main content area displays four best-selling items:

Rank	Product	Author	Rating	Format	Price
#1	Invincible Compendium Volume 1	Robert Kirkman	7.726	Paperback	\$57.99
#2	Invincible Compendium Volume 2	Robert Kirkman	4.858	Paperback	\$45.28
#3	The Batman Who Laughs (The Batman Who...)	Scott Snyder	6.495	Kindle Edition	\$1.99
#4	Invincible Compendium Volume 3	Robert Kirkman	5.028	Paperback	\$58.49

39. The same is true for Netflix, which has over a dozen genre categories covering superheroes:



40. Consumers do not associate SUPER HEROES exclusively with DC or Marvel. Dozens of companies create, market, and sell super hero comics and toys. Publishers of super hero comics include IDW Publishing, Dark Horse Comics, Image Comics, Millarworld, and Boom! Studios. Toy manufacturers include Hasbro and Saban.

41. Three of the four top “Best Sellers” in Amazon’s “Superhero Comics & Graphic Novels” category are published by Image Comics, not DC or Marvel. Ex. A.

42. Sixteen of Netflix’s eighteen featured “Superhero Movies” are produced by companies other than DC or Marvel. Ex. B.

43. Marvel and DC have not taken meaningful steps to limit or restrict others’ use of SUPER HERO or any related terms, including with respect to the above examples.

44. On the few occasions where Marvel or DC have asserted the mark, they did so through legal machinations, by misleading low-resourced opponents into abandoning their mark.

45. The story of Reinaldo T. Felix is instructive. Mr. Felix filed a trademark application for the word mark CUP O JAVA STUDIO COMIX A WORLD WITHOUT SUPERHEROES. DC and Marvel opposed registration in view of each of the Challenged Marks. In his answer, Mr. Felix explained what happened next:

I have had several communications with DC/Marvel[’s] lawyer ... who has made several misleading promises. [DC/Marvel’s lawyer] repeatedly gave me the impression that an out of court settlement could be reached. The reality is that he doesn’t call the shots and is there to waste my time. With each ... court extension[], they literally gave me the run around by dangling a variety of offers/carrots that ended up being a bill of false goods and outlandish promises. ... I would get such responses until a following court extension would be granted ... and then they would repeat the cycle to wind me down towards hopelessness. ... I can’t afford a lawyer. No lawyer is willing to take this case without \$10,000 upfront. ... I have no choice but to represent myself. I’m “David” pitted to fight against “Goliath” except in the 21st century “Goliath” wins.⁷

46. Mr. Felix’s experience is not unique. In *The “Amazing Adventures” of SUPER HERO*, Professor Ross D. Petty provides a comprehensive look at Marvel and DC’s efforts to police the SUPER HERO marks.⁸ At the time the article was published, in 2010, DC and Marvel had filed three dozen TTAB oppositions based on the SUPER HEROES marks.⁹ “Not a single TTAB opposition proceeding was decided on the merits of either infringement or dilution of the opposing mark.”¹⁰ Instead, DC and Marvel “managed to obtain an abandonment or a settlement” in each case.¹¹

⁷ *Felix v. DC Comics & Marvel Characters, Inc.*, TTAB Opp. 91204438, TTABVUE 19 at 7-8.

⁸ Ross D. Petty, *The “Amazing Adventures” of SUPER HERO*, 100 TMR 729,743-47 (2010).

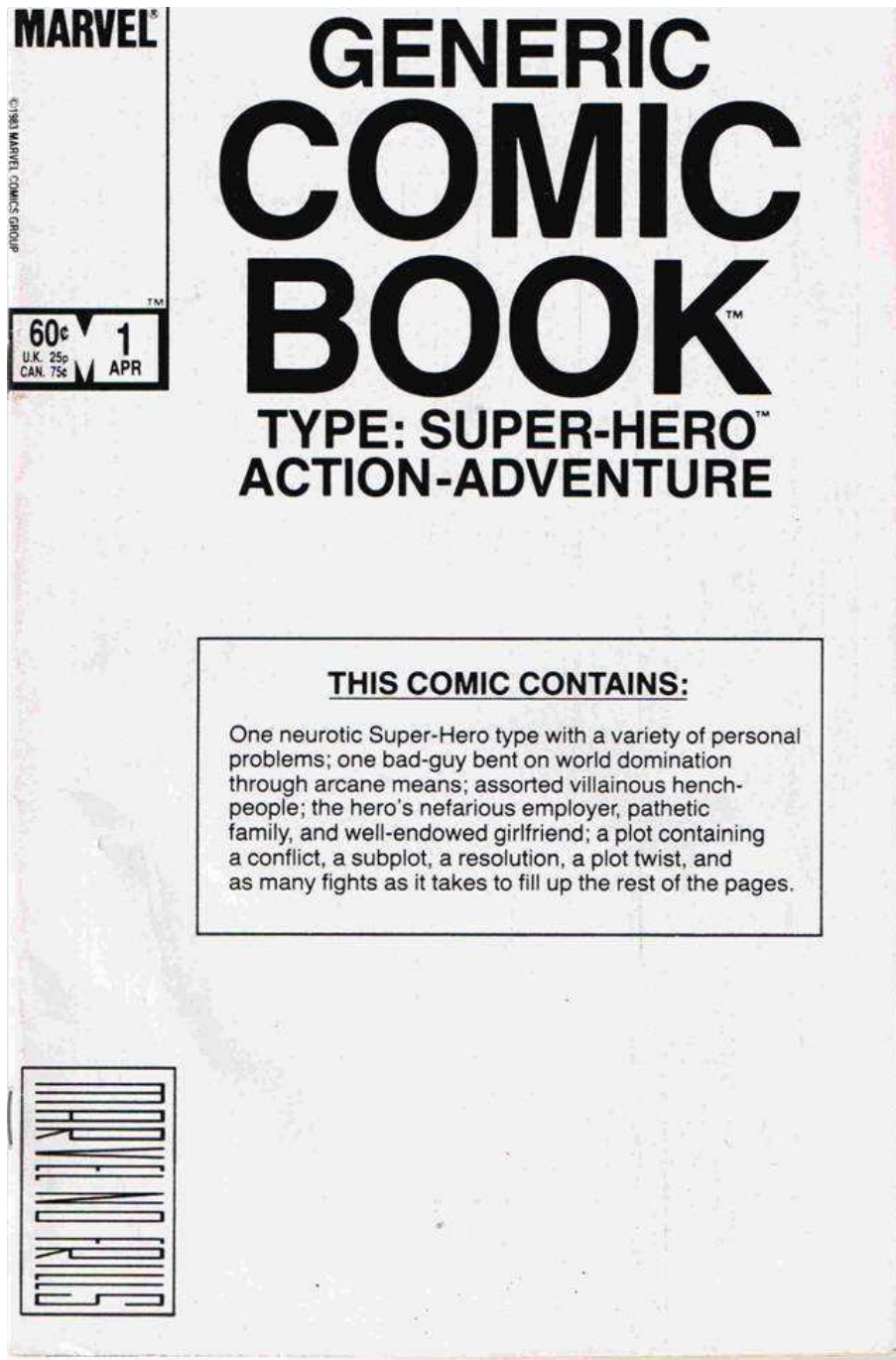
⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* There is one exception. In connection with one of the oppositions, Marvel and DC defaulted by requesting too many time extensions, resulting in TTAB dismissing the opposition.

MARVEL AND DC'S OWN USE OF "SUPER HERO" CONFIRMS IT IS GENERIC

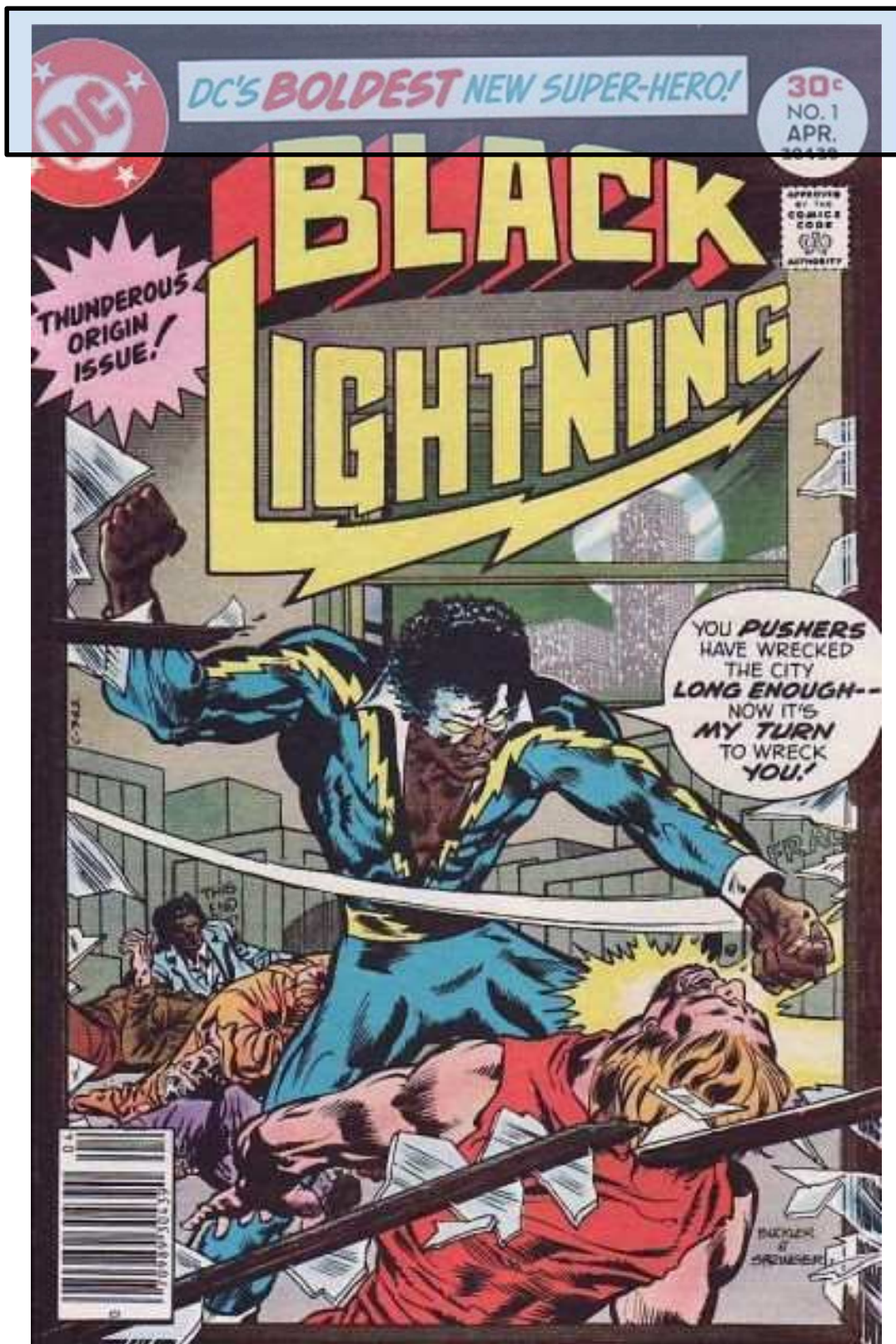
47. Marvel and DC's *own use* of SUPER HERO demonstrates that even Marvel and DC do not consider or treat SUPER HERO as an identifier for a source of goods. To the contrary, Marvel and DC use "super hero" as a generic descriptor that fails to function as a trademark:



Marvel's *Generic Comic Book* (1984)



Marvel's *X-Men* #1 (1963)



DC's *Black Lightning* #1 (1977)

48. Marvel and DC’s senior leadership use “super hero” as a generic term, rather than a brand identifier.

49. In *What Is A Superhero?*, top leaders at Marvel and DC offered their opinions on the meaning of super hero. **None of the contributors limited super hero or superhero to DC, Marvel, or any other brand. Instead, each described “super hero” as a kind of character or genre.**

50. Stan Lee was Marvel’s first editor-in-chief and the creator of Marvel’s most popular super heroes, including Spider-Man, Iron Man, Thor, Ant-Man, Black Panther, the X-Men, Hulk, and Daredevil. For decades, Stan Lee served as a spokesman for Marvel and was widely regarded as an ambassador for comics as a whole.

51. According to Stan Lee, “[a] superhero is a person who does heroic deeds and has the ability to do them in a way that a normal person couldn’t.”¹²

52. Tom DeFalco was the editor-in-chief of Marvel Comics from 1987 to 1994. He also authored stories for nearly every major Marvel character including Spider-Man, Thor, and the Fantastic Four. DeFalco also created *Spider-Girl*.

53. According to Tom DeFalco, a super hero is “anyone who possesses a superhuman trait.” DeFalco further confirmed that there is a superhero genre in comic books, which he characterized as “comic books featuring superheroes.”¹³

54. Joe Quesada was the editor-in-chief of Marvel Comics from 2000-2011. From 2010-2019, Joe Quesada served as Marvel’s Chief Creative Officer. Joe Quesada was also a prominent author and artist for Marvel.

¹² *What Is a Superhero* at 115.

¹³ *Id.* at 139.

55. Joe Quesada provided Marvel’s definition of super hero. He explained that Marvel’s view of a super hero is “an extraordinary person placed under extraordinary circumstances who manages to do extraordinary things to ultimately triumph over evil.”¹⁴

56. Jeph Loeb is a prominent writer for DC and Marvel. His stories feature Marvel and DC super heroes, including Batman, Superman, Hulk, Iron Man, Spider-Man, and Daredevil.

57. According to Jeph Loeb, “superheroes are people with powers and abilities beyond those of mortal men ... who make a choice to use them to help those who need it.”¹⁵

58. Kurt Busiek is a prolific author who has written extensively for DC and Marvel. Kurt Busiek created major Marvel properties, including *Thunderbolts* and *Marvels*, and has authored stories featuring Superman, Wonder Woman, and The Avengers.

59. According to Kurt Busiek, “[t]he primary hallmarks of the superhero are *superpowers, costume, code name, secret identity, heroic ongoing mission, and superhero milieu*. If the character has three of those six, he or she is probably a superhero.”¹⁶

60. Danny Fingerioth is a comic book writer and editor, best known for his work as editor of Marvel’s Spider-Man related comics.

61. According to Danny Fingerioth, “a superhero is a figure who embodies the best aspects of humankind, differing from a heroic real person ... due to—in addition to one or more special powers or mechanical or magical enhancements—a nobility of purpose.”¹⁷

62. Tom Brevoort is Marvel’s current Executive Editor and Vice President of

¹⁴ *Id.* at 147.

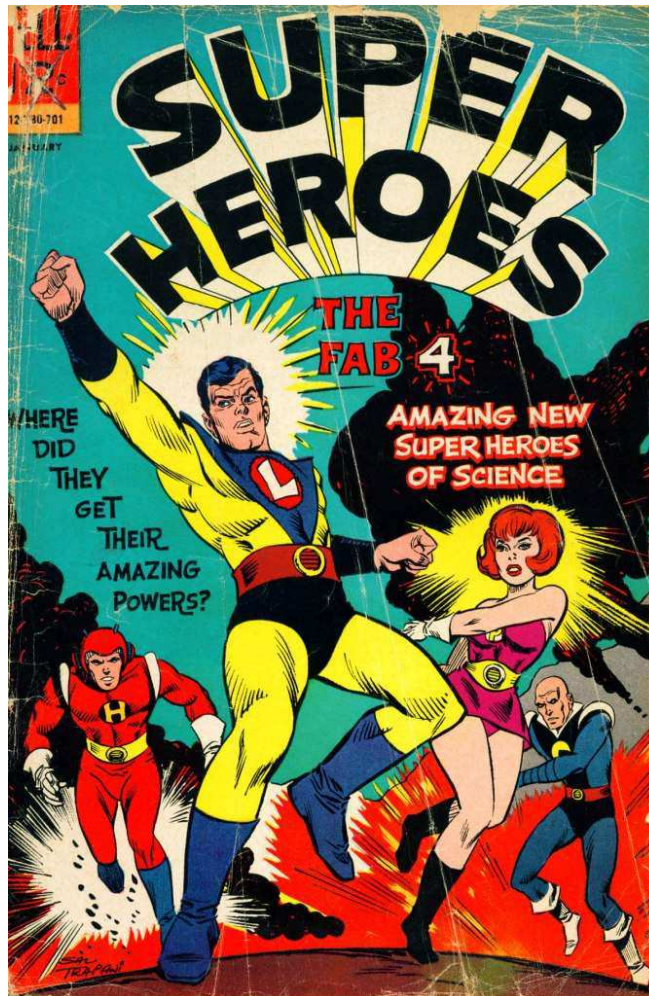
¹⁵ *Id.* at 119.

¹⁶ *Id.* at 133 (emphasis in original).

¹⁷ *Id.* at 125.

Publishing, with decades of experience in the comic industry. Tom Brevoort regularly uses SUPER HERO to refer to a genre of stories and to describe super hero stories published by companies other than Marvel or DC.

63. For example, in a November 23, 2019 blog post,¹⁸ Tom Brevoort referred to Dell Comics’ “Super Heroes” comic (pictured below) as an example of “super hero fiction.” He explained that “interest in super heroes became a full-blown fad in the mid-1960s,” and that “just about everybody got into the act, trying to capture some portion of that marketplace for themselves.” Dell Comics was a competitor to Marvel and DC.



Dell Comics’ *SUPER HEROES* (1967)

¹⁸ <https://tombrevoort.com/2019/11/23/brand-echh-super-heroes-1>.

64. In October 2023, Tom Brevoort discussed other super hero comics published by a variety of non-Marvel, non-DC publishers, including Noble Comics, Texas Comics, and Comico. For example, Tom Brevoort explained that *The Justice Machine* (pictured below) “was clearly a super hero series.”¹⁹



Texas Comics' *Justice Machine Annual* (1983)

65. In a newsletter dated December 24, 2023, Tom Brevoort confirmed that the prevalence of super hero creators other than Marvel or DC continues to this day. Specifically, Brevoort acknowledged that creators Ed Brubaker and Sean Phillips have “built up an enormous library” of “super hero” stories, including *Where The Body Was*, which was published by Image Comics (not Marvel or DC) in December 2023.²⁰ In other recent posts, Tom Brevoort referred to *Invincible* (published by Image Comics) as “one of the best action-oriented super hero titles

¹⁹ <https://tombrevoort.substack.com/p/79-back-on-the-chain-gang>.

²⁰ <https://tombrevoort.substack.com/p/91-things-from-1991>.

available,”²¹ described *Supermassive* (published by Image Comics) as a “good, unique interconnected super hero line,”²² and discussed “the idiom of the super hero concept.”²³

AS COMPETITORS, DC AND MARVEL CANNOT JOINTLY OWN A TRADEMARK

66. It is fundamental that a trademark identifies a *single* source of goods. Competitors cannot jointly own a trademark.²⁴

67. DC and Marvel are fierce competitors with respect to comics, toys, and the other categories of goods covered by the Challenged Marks.

68. Consumers recognize Marvel and DC as competitors.

69. In an SEC filing, Marvel stated that “the industries in which the Company competes are highly competitive.” Marvel specifically identified D.C. Comics as one of its most significant competitors.²⁵ This sentiment was shared by Marvel editor Tom Brevoort, who described DC as Marvel’s “number one competitor.”²⁶

70. Over the years, Marvel and DC have gone to great lengths to ensure their respective comics make distinct commercial impressions on consumers. To that end, DC and Marvel use distinctive logos, trade names, and trade dress.

71. Marvel and DC have frequently designed and redesigned their logos and trade dress specifically to distinguish their respective goods.

²¹ <https://tombrevoort.substack.com/p/43-weaponized-nostalgia>.

²² <https://tombrevoort.substack.com/p/29-pining-for-the-man-of-steel>.

²³ <https://tombrevoort.substack.com/p/82-shock-of-the-new>.

²⁴ 2 McCarthy on Trademarks and Unfair Competition § 16:40 (5th ed.) (“Legal recognition of more than one owner of a single mark is contrary to the basic definition of a mark as identifying and distinguishing a single seller’s goods or services.”).

²⁵ <https://www.sec.gov/Archives/edgar/data/933730/000093373000000003/0000933730-00-000003.txt>.

²⁶ <https://tombrevoort.com/2021/01/01/blah-blah-blog-throw-an-elbow>.

72. To further differentiate the companies, DC and Marvel’s leaders and editorial staff speak directly to consumers to make clear that DC and Marvel are not affiliated and that the companies have vastly different standards when it comes to style, quality, and editorial tastes. For example, in *Fantastic Four* #51, Stan Lee described DC Comics as “shabby, carelessly produced, badly written and drawn, conscienceless IMITATIONS of our Marvel mags—imitations which are callously lacking in quality[.]”

73. Stan Lee went on to accuse DC Comics of infringing Marvel’s trademarks and confusing readers, stating: “We have been flooded with indignant letters from readers who have bought issues ... and have been shocked at the undisguised effort these opportunists have made to confuse the public into believing that their titles are the same as Marvel’s! ... [A]ll they are doing is confusing the public, and giving new ammunition to those who choose to downgrade comics!”

74. DC Comics responded in kind by noting that *its* comics predated Marvel’s, and staking out its ground as an early publishers of super hero comics:



DC’s *Brave and the Bold* #74 (1967)



DC’s *Adventure Comics* #350 (1966)

75. The Marvel/DC rivalry is documented in detail in Reed Tucker's *Slugfest: Inside the Epic, 50-Year Battle Between Marvel and DC*. Tucker summarized the Marvel/DC rivalry, and explained how that rivalry impacts consumer expectations. He explained:

For more than half a century Marvel and DC have faced off across newsstands and spinner racks, rivals in the billion-dollar superhero business. The two companies ... have spent the last fifty years clawing for market share and trying to kneecap each other in ways both above board and below. ... [A]s in any war, you better pick a side. Comic readers are often fiercely loyal to one team, which naturally sets them in opposition to the other. Inside dusty comic stores, at conventions, and in online forums, debates have been raging for decades about the superiority of each publisher. The debate is hardly trivial. Quite possibly the most revealing question you can ask a comic book fan is, "Marvel or DC?" The answer is as telling, as integral to his personality as which Beatle he prefers or his favorite flavor of ice cream. The two companies were shaped by different eras, have different publishing philosophies, and stand for two completely different worldviews.²⁷

76. The rivalry between Marvel and DC is ongoing, and frequently encouraged by both companies. Joe Quesada, former Editor-in-Chief at Marvel, believes the DC/Marvel rivalry "made it better for the fans. You know, if you like DC, then you hated Marvel. If you like Marvel, then you hated DC."²⁸

77. For example, at the World Premiere of DC's *Suicide Squad*, director David Ayer worked up the audience by shouting "F-ck Marvel!" to the attendees.²⁹ A few years prior, Robert Downey Jr., who starred as Iron Man in Marvel's cinematic universe, said the same ("F-ck DC comics") while comparing *The Dark Knight* to *Iron Man* in a press interview.³⁰

²⁷ Reed Tucker, *Slugfest: Inside the Epic, 50-year Battle between Marvel and DC* (2017) at xvi-xvii.

²⁸ <https://observer.com/2002/04/as-the-139-million-spiderman-debuts-in-movie-theaters-joe-quesada-the-trashtalking-editor-in-chief-of-marvel-comics-spins>.

²⁹ https://www.youtube.com/watch?v=lk_NdrBYdJ8.

³⁰ https://www.huffpost.com/entry/robert-downey-jr-on-the-d_n_119414;
<https://web.archive.org/web/20120215065931/https://moviehole.net/200814729-interview-robert-downey-jr-2>.

78. Marvel editor Tom Brevoort succinctly summarized the current state of affairs. Referring to DC, he stated: “They’re the competition! They’re not supposed to talk good about us and what we’re doing. And vice versa.”³¹

79. To gain an edge, Marvel encouraged comic shops to destroy each other’s products, including by offering retailers valuable comics in exchange for destroying DC comic books.³²

80. Consumers do not view Marvel and DC as a single source of goods, but as distinct companies with “different publishing philosophies” and “completely different worldviews.”

81. Consumers do not view any of the Challenged Marks as reflecting a single source of goods.

82. The fact that Marvel and DC both use and claim ownership over SUPER HEROES confirms that neither company uses the term as a trademark, but rather as a generic description for a category of goods offered by both companies.

83. Despite the fierce rivalry between the companies, neither Marvel nor DC has challenged the other’s use of SUPER HEROES. Instead, by seeking and obtaining joint registrations, Marvel and DC have each expressly sanctioned and authorized the use of the marks by their most significant competitor (each other). This is antithetical to the foundational purpose of trademarks, which is to associate a mark with a *single* source of goods.

³¹ *Slugfest* at 243.

³² Jason Cranforteaue, *Marvel Bribes Retailers to Destroy DC Comics*, <https://www.wired.com/2011/08/the-great-marvel-comics-rip-off>, *Wired* (Aug. 10, 2011).

COUNT I – THE CHALLENGED MARKS ARE GENERIC

(Genericness: Applies to all Challenged Marks)

84. Petitioners incorporate and reallege the foregoing paragraphs of this Petition.

85. SUPER HEROES (in both plural and singular form and in both single-word and two-word form) is a generic term that refers to a genre of stories (the superhero genre) and an associated character archetype (the super hero archetype).

86. Consumers do not associate SUPER HERO or SUPER HEROES with any single brand, company, or character. Instead, consumers view SUPER HERO and SUPER HEROES as generic labels for stories, characters, and products in the superhero genre or character archetype.

87. 15 U.S.C. § 1064(3) allows for cancellation of registered marks that “become[] the generic name for the goods or services, or a portion thereof, for which it is registered.”

88. Each of the Challenged Marks is the generic name for each of the claimed goods or services and should be cancelled pursuant to 15 U.S.C. § 1064(3).

COUNT II – MARVEL AND DC HAVE CAUSED THE CHALLENGED MARKS TO LOSE THEIR SIGNIFICANCE BY ALLOWING USE OF THE MARKS BY A COMPETITOR

(Abandonment: Applies to all Challenged Marks)

89. Petitioners incorporate and reallege the foregoing paragraphs of this Petition.

90. Under the Lanham Act, a mark may only be registered if it allows the goods of “the applicant” (singular) to “be distinguished from the goods of others.” 15 U.S.C. § 1052. The Lanham Act does not allow two competitors to jointly own a single mark.

91. Marvel has expressly assented to DC’s use of the Challenged Marks, including by allowing DC to register and own the marks and by failing to object to DC’s use of the marks.

92. DC has expressly assented to Marvel's use of the Challenged Marks, including by allowing Marvel to register and own the marks and by failing to object to Marvel's use of the marks.

93. Marvel and DC's concurrent and overlapping use of SUPER HERO and SUPER HEROES means the Challenged Marks cannot be used to distinguish the companies' respective goods.

94. Consumers cannot use the Challenged Marks to distinguish Marvel products from DC products.

95. Marvel and DC's assent to the use of the Challenged Marks by a competitor constitutes abandonment of the marks under 15 U.S.C. § 1127, as the assent and joint registration has caused SUPER HEROES to "lose its significance as a mark" (to the extent it had any such significance to begin with).

96. In view of Marvel and DC's abandonment, each of the Challenged Marks should be cancelled pursuant to 15 U.S.C. § 1064(3).

**COUNT III – MARVEL AND DC HAVE CAUSED THE CHALLENGED MARKS TO
LOSE THEIR SIGNIFICANCE BY USING THE MARKS AS GENERIC LABELS
RATHER THAN TRADEMARKS**

(Abandonment: Applies to all Challenged Marks)

97. Petitioners incorporate and reallege the foregoing paragraphs of this Petition.

98. Marvel and DC do not use SUPER HEROES or SUPER HERO as a trademark, but rather as generic labels for their characters and stories.

99. Through their generic use of SUPER HEROES and SUPER HERO, Marvel and DC have encouraged consumers, competitors, and retailers to use the terms as generic labels, rather than as a mark that identifies the source of goods.

100. Neither Marvel nor DC has taken meaningful steps to enforce the Challenged Marks or to curb the widespread usage of the mark as a name for a category of goods.

101. Marvel and DC's generic use of and failure to enforce the Challenged Marks constitutes abandonment of the marks under 15 U.S.C. § 1127, as it has caused SUPER HEROES to "lose its significance as a mark" (to the extent it had any such significance to begin with).

102. In view of Marvel and DC's abandonment, each of the Challenged Marks should be cancelled pursuant to 15 U.S.C. § 1064(3).

**COUNT IV – MARVEL AND DC HAVE ABANDONED THE CHALLENGED MARKS
BY FAILING TO USE THEM AS TRADEMARKS**

(Abandonment: Applies to all Challenged Marks)

103. Petitioners incorporate and reallege the foregoing paragraphs of this Petition.

104. Marvel and DC have never used SUPER HEROES or SUPER HERO as a trademark, including in the last three years. Instead, both Marvel and DC have used the Challenged Marks solely as a generic label for their goods and characters. This constitutes prima facie evidence of abandonment under 15 U.S.C. § 1127.

105. By entering and maintaining a joint ownership arrangement over the Challenged Marks, both Marvel and DC assent to the use of the Challenged Marks by their largest competitor, such that it is and has been impossible for either company to use any of the Challenged Marks as an *exclusive* indicator of origin.

106. Marvel and DC have been joint owners of the Challenged Marks for decades. In that time, neither company has used any of the Challenged Marks as an exclusive indicator of origin (i.e., as a trademark), including in the last three years. Thus, neither company has used any of the Challenged Marks *as a trademark* for at least decades, including in the last three years. This constitutes prima facie evidence of abandonment under 15 U.S.C. § 1127.

107. Neither Marvel nor DC has any plans or intent to commence exclusive use of any of the Challenged Marks as trademarks.

108. In view of Marvel and DC's abandonment, each of the Challenged Marks should be cancelled pursuant to 15 U.S.C. § 1064(3).

~

For the reasons stated above, Petitioner Superbabies Limited requests that Registration Numbers 1179067, 1140452, 3674448, and 825835 be cancelled.

Dated: Washington, D.C.
May 14, 2024

Respectfully submitted,

/s/Adam Adler

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Attorneys for Petitioner Superbabies Limited

EXHIBIT A




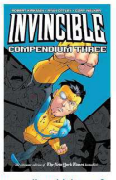
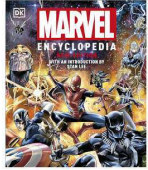



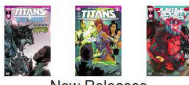

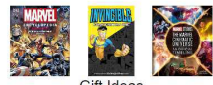







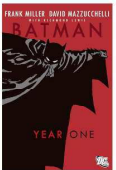








Amazon Best Sellers



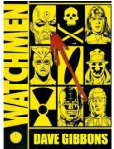




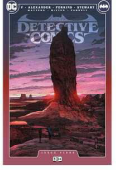


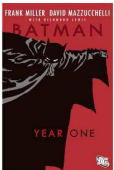
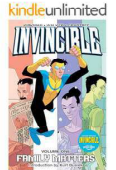
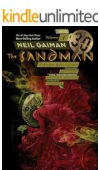















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#49



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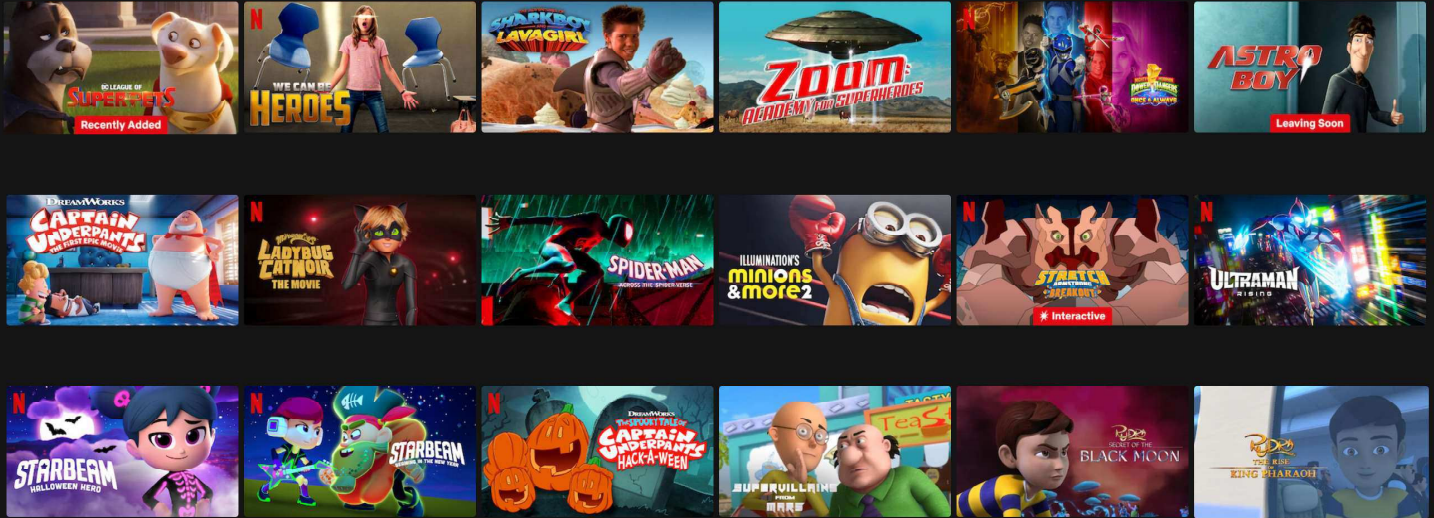


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ARGUMENT(S)	
<u>REMARKS</u>	
<p>The Examining Attorney has refused registration of Applicant's mark under Sections 1, 2 and 45 of the Trademark Act, 15 U.S.C. Sections 1051, 1052 and 1127. It is the Examining Attorney's contention that the public would perceive the Applicant's mark merely as a decorative or ornamental feature of the goods. Applicant respectfully disagrees, and requests that the Examining Attorney reconsider and withdraw her refusal.</p> <p>Applicant seeks to register SUPERHERO (the "Mark") for "t-shirts." As noted from the attached web pages retrieved from the following addresses: www.shopmarvel.com and www.dccomics.com, the Mark (either in the form SUPERHERO, SUPER HERO and/or SUPER HEROES) is a trademark used by the Applicant on numerous items. Moreover, the Applicant has registered the term SUPER HERO and/or SUPER HEROES for, inter alia, masquerade costumes, toy figures and publications. Accordingly, the Mark serves as an identifier of a secondary source of the goods, and as such is registrable.</p> <p>Further, Applicants submits that the public readily recognizes the Mark as an indication that the goods come from a particular source, and thus capable of functioning as a trademark.</p> <p>Additionally, Applicant finds particularly on point the Board's decision that a stylized "O" design was not ornamental as used on T-shirts. See <u>In re Olin Corp.</u>, 181 USPQ 182 (TTAB 1973). In reversing the ornamentation refusal, the Trademark Trial and Appeal Board noted:</p> <p>The "ornamentation" of a T-shirt can be of a special nature which inherently tells the purchasing public the source of the T-shirt, not the source of manufacture but the secondary source. Thus, the name "New York University" and an illustration of the Hall of Fame, albeit it will serve as ornamentation on a T-shirt will also advise the purchaser that the university is the secondary source of that shirt. It is not imaginable that Columbia University will be the source of an N.Y.U. T-shirt. Where the shirt is distributed by other than the university the university's name on the shirt will indicate the sponsorship or authorization by the university. [¶] In the case before us, the T-shirt is ornamented with applicant's trademarks, and considering the nature of T-shirts, that particular ornamentation can serve as an indication of a secondary source of origin. The matter sought to be registered is an arbitrary symbol and can and does function as a trademark. As used on the T-shirts, we conclude that the mark serves as an identifier of a secondary source and as such is registrable. <u>Id.</u> at 182-83.</p> <p>See also <u>In re Paramount Pictures Corp.</u>, 217 USPQ 292, 293 (TTAB 1983), wherein the Trademark Trial and Appeal Board noted that the STAR TREK television series/movie title mark serves as a trademark when used on towels, sheets, and pillowcases even though it is linked with a picture from a STAR TREK episode. ("Obviously, the Lanham Act does not exclude registration of a mark simply because it has an ornamental as well as a source indicating purpose.")</p>	

Similar to the mark NEW YORK UNIVERSITY on t-shirts, and the mark STAR TREK on towels, etc., the Applicant's mark serves to identify a secondary source of origin. As used on the above-identified goods, Applicant's Mark indicates to the purchasing public the secondary source of the goods, namely, Marvel Characters, Inc. and DC Comics. Accordingly, Applicant respectfully requests that the Examining Attorney's refusal to register the Mark be withdrawn.

CONCLUSION

In view of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw his refusal and accept Applicant's Statement of Use at his earliest convenience. If the Examining Attorney has any further questions regarding this application, he is urged to call the undersigned attorney.

SIGNATURE SECTION

RESPONSE SIGNATURE	/Jonathan D. Reichman/
SIGNATORY'S NAME	Jonathan D. Reichman, Esq.
SIGNATORY'S POSITION	Attorney of Record
DATE SIGNED	06/11/2009
AUTHORIZED SIGNATORY	YES

FILING INFORMATION SECTION

SUBMIT DATE	Thu Jun 11 17:39:45 EDT 2009
TEAS STAMP	USPTO/ROA-XX.XXX.XXX.XXX- 20090611173945358806-7835 6610-430516f13b3fee1e7bea d796f7b8585-N/A-N/A-20090 611173449642121

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **78356610** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

REMARKS

The Examining Attorney has refused registration of Applicant's mark under Sections 1, 2 and 45 of the Trademark Act, 15 U.S.C. Sections 1051, 1052 and 1127. It is the Examining Attorney's contention that the public would perceive the Applicant's mark merely as a decorative or ornamental feature of the goods. Applicant respectfully disagrees, and requests that the Examining Attorney reconsider and withdraw her refusal.

Applicant seeks to register SUPERHERO (the "Mark") for "t-shirts." As noted from the attached web pages retrieved from the following

addresses: www.shopmarvel.com and www.dccomics.com, the Mark (either in the form SUPERHERO, SUPER HERO and/or SUPER HEROES) is a trademark used by the Applicant on numerous items. Moreover, the Applicant has registered the term SUPER HERO and/or SUPER HEROES for, inter alia, masquerade costumes, toy figures and publications. Accordingly, the Mark serves as an identifier of a secondary source of the goods, and as such is registrable.

Further, Applicants submits that the public readily recognizes the Mark as an indication that the goods come from a particular source, and thus capable of functioning as a trademark.

Additionally, Applicant finds particularly on point the Board's decision that a stylized "O" design was not ornamental as used on T-shirts. See In re Olin Corp., 181 USPQ 182 (TTAB 1973). In reversing the ornamentation refusal, the Trademark Trial and Appeal Board noted:

The "ornamentation" of a T-shirt can be of a special nature which inherently tells the purchasing public the source of the T-shirt, not the source of manufacture but the secondary source. Thus, the name "New York University" and an illustration of the Hall of Fame, albeit it will serve as ornamentation on a T-shirt will also advise the purchaser that the university is the secondary source of that shirt. It is not imaginable that Columbia University will be the source of an N.Y.U. T-shirt. Where the shirt is distributed by other than the university the university's name on the shirt will indicate the sponsorship or authorization by the university. [¶] In the case before us, the T-shirt is ornamented with applicant's trademarks, and considering the nature of T-shirts, that particular ornamentation can serve as an indication of a secondary source of origin. The matter sought to be registered is an arbitrary symbol and can and does function as a trademark. As used on the T-shirts, we conclude that the mark serves as an identifier of a secondary source and as such is registrable. Id. at 182-83.

See also In re Paramount Pictures Corp., 217 USPQ 292, 293 (TTAB 1983), wherein the Trademark Trial and Appeal Board noted that the STAR TREK television series/movie title mark serves as a trademark when used on towels, sheets, and pillowcases even though it is linked with a picture from a STAR TREK episode. ("Obviously, the Lanham Act does not exclude registration of a mark simply because it has an ornamental as well as a source indicating purpose.")

Similar to the mark NEW YORK UNIVERSITY on t-shirts, and the mark STAR TREK on towels, etc., the Applicant's mark serves to identify a secondary source of origin. As used on the above-identified goods, Applicant's Mark indicates to the purchasing public the secondary source of the goods, namely, Marvel Characters, Inc. and DC Comics. Accordingly, Applicant respectfully requests that the Examining Attorney's refusal to register the Mark be withdrawn.

CONCLUSION

In view of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw his refusal and accept Applicant's Statement of Use at his earliest convenience. If the Examining Attorney has any further questions regarding this application, he is urged to call the undersigned attorney.

SIGNATURE(S)

Response Signature

Signature: /Jonathan D. Reichman/ Date: 06/11/2009

Signatory's Name: Jonathan D. Reichman, Esq.

Signatory's Position: Attorney of Record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 78356610

Internet Transmission Date: Thu Jun 11 17:39:45 EDT 2009

TEAS Stamp: USPTO/ROA-XX.XXX.XXX.XXX-200906111739453

58806-78356610-430516f13b3fee1e7bead796f

7b8585-N/A-N/A-20090611173449642121

EXHIBIT D

ESTTA Tracking number: **ESTTA463679**

Filing date: **03/26/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	DC Comics
Granted to Date of previous extension	03/25/2012
Address	1700 Broadway New York, NY 10019 UNITED STATES

Name	Marvel Characters, Inc.
Granted to Date of previous extension	03/25/2012
Address	1600 Rosecrans Avenue Manhattan Beach, NY 90266 UNITED STATES

Attorney information	Jonathan D. Reichman, Esq. Kenyon and Kenyon LLP One Broadway New York, NY 10004 UNITED STATES tmdocketny@kenyon.com Phone:212-425-7200
----------------------	--

Applicant Information

Application No	85098521	Publication date	09/27/2011
Opposition Filing Date	03/26/2012	Opposition Period Ends	03/25/2012
Applicant	Felix, Reinaldo T. Apt. #2 1343 Elder Avenue Bronx, NY 10472 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 1993/03/17 First Use In Commerce: 2005/12/01 All goods and services in the class are opposed, namely: Comics
Class 041. All goods and services in the class are opposed, namely: Providing online non-downloadable comic books and graphic novels


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1179067	Application Date	07/03/1979
Registration Date	11/24/1981	Foreign Priority Date	NONE
Word Mark	SUPER HEROES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1966/10/00 First Use In Commerce: 1966/10/00 PUBLICATIONS, PARTICULARLY COMIC BOOKS AND MAGAZINES AND STORIES IN ILLUSTRATED FORM [((; CARDBOARD STAND-UP FIGURES; PLAYING CARDS; PAPER IRON-ON TRANSFER; ERASERS; PENCIL SHARPENERS; PENCILS; GLUE FOR OFFICE AND HOME USE, SUCH AS IS SOLD AS STATIONERY SUPPLY; NOTEBOOKS AND STAMP ALBUMS))]		

U.S. Registration No.	1140452	Application Date	01/24/1974
Registration Date	10/14/1980	Foreign Priority Date	NONE
Word Mark	SUPER HEROES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1973/07/02 First Use In Commerce: 1973/07/02 Toy Figures		

U.S. Registration No.	3674448	Application Date	01/23/2004
Registration Date	08/25/2009	Foreign Priority Date	NONE
Word Mark	SUPER HEROES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 t-shirts		

U.S. Registration No.	825835	Application Date	04/12/1966
Registration Date	03/14/1967	Foreign Priority Date	NONE
Word Mark	SUPER HERO		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class U039 (International Class 025). First use: First Use: 1965/10/29 First Use In Commerce: 1966/03/04 MASQUERADE COSTUMES
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Attachments	78356610#TMSN.gif (1 page)(bytes) Notice of Opposition - Reinaldo T Felix.pdf (12 pages)(433410 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jonathan D. Reichman/
Name	Jonathan D. Reichman, Esq.
Date	03/26/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re application of: Reinaldo T. Felix

Serial No.: 85/098,521

Filed: August 2, 2010

For: A WORLD WITHOUT SUPERHEROES
and Design

Published Official Gazette: September 27, 2011

DC COMICS and MARVEL
CHARACTERS, INC.,

Opposers,

vs.

REINALDO T. FELIX,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

DC Comics, a New York general partnership having a place of business at 1700 Broadway, New York, New York 10019 (“DC Comics”), and Marvel Characters, Inc., a Delaware corporation having a place of business at 1600 Rosecrans Avenue, Manhattan Beach, California 90266 (“Marvel”) (collectively, “Opposer”), believe that they will be damaged by registration of the above-identified mark, and hereby oppose the registration of said mark. The grounds of opposition are as follows:

1. By the application herein opposed, Reinaldo T. Felix (“Applicant”) is seeking to obtain, under the provisions of the Trademark Act of 1946 (15 U.S.C. § 1051 *et seq.*), registration for the mark “A WORLD WITHOUT SUPERHEROES and Design”, covering “comics” in International Class 16, and “providing online non-

downloadable comic books and graphic novels” in International Class 41.

Applicant filed this application on August 2, 2010.

2. In Class 16, Applicant has alleged a first use date of March 17, 1993 and a first use in commerce date of December 1, 2005. In Class 41, Applicant has alleged an intention to use this mark under Trademark Act Section 1(b) (15 U.S.C. § 1051(b)), and therefore has alleged no date of first use of this mark in commerce.
3. Opposer is engaged in the businesses of, *inter alia*, entertainment, media, publishing, and merchandise licensing. Opposer DC Comics is the owner and publisher of “DC Comics” and related intellectual property, which feature such world-famous characters and properties as “SUPERMAN®” and “BATMAN®.” Opposer Marvel (including related companies) is the owner and publisher of “Marvel Comics” and related intellectual property, which feature such world-famous characters and properties as “SPIDER-MAN®” and “IRON MAN®.”
4. Opposers are the joint owners of the trademark and service mark “SUPER HEROES®” and variations thereof. Beginning at least as early as 1958, *i.e.*, well prior to Applicant’s alleged first use date, Opposers (including their predecessors-in-interest) have used “SUPER HEROES®” and variations thereof as trademarks and service marks for a wide variety of products and services, including, without limitation, comic books, online media, clothing, toys, television programming, motion pictures, and foods.

5. Opposer is the owner of numerous registrations on the Principal Register of the United States Patent and Trademark Office for its mark “SUPER HEROES®” and variations thereof, including without limitation the following (copies of which are attached hereto as Exhibit “A”):

Mark	Reg. No.	Reg. Date	Goods/Services
SUPER HEROES	1,179,067	11/24/1981	Publications, particularly comic books and magazines and stories in illustrated form; notebooks and stamp albums
SUPER HEROES	1,140,452	10/14/1980	Toy figures
SUPER HEROES	3,674,448	8/25/2009	T-shirts
SUPER HERO	825,835	3/14/1967	Masquerade costumes

Most of these registrations issued prior to both Applicant’s alleged first use dates and filing date. Consequently, there is no question of priority of rights, such priority clearly belonging to Opposer. Moreover, most of these registrations are incontestable under 15 U.S.C. § 1065.

6. Through Opposer’s activities, and through the extensive promotion and advertising of Opposer and its licensees connected therewith, the public and trade have come to associate the trademark and service mark “SUPER HEROES®” and variations thereof with Opposer, and with its products and services.

7. By virtue of its prior use in commerce of “SUPER HEROES®” and variations thereof, Opposer is entitled to hold itself out to the public and trade as having the exclusive right to use “SUPER HEROES®” and variations thereof as trademarks and service marks for its products and services. Registration of the applied-for mark would be inconsistent with such right of Opposer.
8. Substantial efforts have been made by Opposer and its licensees to advertise and promote their goods and services under Opposer’s “SUPER HEROES®” trademarks and service marks. Opposer, by its aforesaid use of “SUPER HEROES®” and variations thereof, and by its promotional efforts in connection therewith, has built up valuable goodwill associated with these marks. As a result of their long use, advertising, and promotion by Opposer, such marks have acquired secondary meaning in the minds of both the trade and public in connection with Opposer and with its products and services.
9. If Applicant is granted registration for the mark opposed herein, he would obtain thereby at least the *prima facie* exclusive right to use such mark. Such registration would be a significant source of damage and injury to Opposer.
10. Registration should be denied under Lanham Act Section 2(d) (15 U.S.C. § 1052(d)), because Applicant’s applied-for mark is confusingly similar to Opposer’s “SUPER HEROES®” trademarks and service marks, as it incorporates Opposer’s “SUPER HEROES®” trademark in its entirety.

11. Moreover, Applicant's mark is allegedly used and intended to be used in connection with goods and services which are identical, similar, and/or related to the goods and/or services on and in connection with which Opposer has used and/or registered its "SUPER HEROES®" marks, as well as many of its other marks. As a result, Opposer holds rights in the term "SUPER HEROES®" and variations thereof which are superior to Applicant's alleged rights in the applied-for mark with respect to the identified goods and services.
12. Applicant's use and registration of his mark is likely to cause injury to Opposer's rights in its "SUPER HEROES®" marks, as such use and registration will inevitably cause confusion and mistake and will deceive the public into believing that Applicant's goods and services are affiliated with, sponsored by, or jointly developed with Opposer or Opposer's licensees, and that such goods and services emanate from the same source, and/or that Applicant is in some other fashion connected with Opposer, all to Opposer's injury.
13. If Applicant is permitted to register the applied-for mark so as to claim exclusive rights therein, confusion among the public and trade will result, causing damage and injury to Opposer. Members of the trade and public familiar with Opposer's "SUPER HEROES®" trademarks and service marks would be likely to believe that Applicant's goods and services originate from Opposer, or an entity in some way associated with Opposer, or are licensed or authorized by Opposer or with Opposer's approval. Furthermore, any objection or fault found with Applicant's goods and/or services would necessarily reflect upon and seriously injure the

reputation which Opposer has established in connection with the goods and services sold by Opposer and its licensees under its "SUPER HEROES®" marks.

14. By reason of the foregoing, Applicant's registration of the mark herein opposed will cause damage and injury to Opposer, and to Opposer's rights in its "SUPER HEROES®" marks.
15. For the above reasons, the subject application should be denied registration under 15 U.S.C. § 1052(d).
16. The statutory fee of six hundred dollars (\$600.00), and any additional required fees, should be changed to the undersigned's Deposit Account No. 11-0600.

WHEREFORE, Opposer prays that Application Serial No. 85/098,521 be rejected, and that the registration of the mark be denied and refused, and that this Opposition be sustained.

KENYON & KENYON LLP

Dated: March 26, 2012

By:



Jonathan D. Reichman
Aaron D. Johnson
One Broadway
New York, NY 10004
Phone: (212) 425-7200
Fax: (212) 425-5288

Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on this 26th day of March, 2012, by first class mail, postage prepaid, upon Applicant at the following address:

Mr. Reinaldo T. Felix
1343 Elder Avenue, Apt #2
Bronx, New York 10472


Jonathan D. Reichman

EXHIBIT "A"

Int. Cl.: 16

Prior U.S. Cls.: 5, 22, 37 and 38

Reg. No. 1,179,067

United States Patent and Trademark Office

Registered Nov. 24, 1981

TRADEMARK
Principal Register

SUPER HEROES

Cadence Industries Corporation (Del. corporation),
a.k.a. Marvel Comics Group and DC Comics Inc.
575 Madison Ave.
New York, N.Y. 10022

For: PUBLICATIONS, PARTICULARLY
COMIC BOOKS AND MAGAZINES AND
STORIES IN ILLUSTRATED FORM; CARD-
BOARD STAND-UP FIGURES; PLAYING
CARDS; PAPER IRON-ON TRANSFERS; ERAS-
ERS; PENCIL SHARPENERS; PENCILS; GLUE
FOR OFFICE AND HOME USE, SUCH AS IS
SOLD AS STATIONERY SUPPLY; NOTEBOOKS
AND STAMP ALBUMS, in CLASS 16 (U.S. Cls. 5,
22, 37 and 38).

First use Oct. 1966; in commerce Oct. 1966.

Ser. No. 222,079, filed Jul. 3, 1979.

HENRY S. ZAK, Primary Examiner

Int. Cl.: 28

Prior U.S. Cl.: 22

Reg. No. 1,140,452

Registered Oct. 14, 1980

United States Patent and Trademark Office

**TRADEMARK
Principal Register**

SUPER HEROES

Cadence Industries Corporation (Delaware
corporation)
575 Madison Ave.
New York, N.Y. 10022
and

DC Comics Inc. (New York corporation)
75 Rockefeller Plz.
New York, N.Y. 10019, assignees of
Ben Cooper, Inc. (New York corporation)
Brooklyn, N.Y.

For: TOY FIGURES, in CLASS 28 (U.S. Cl. 22).
First use Jul. 2, 1973; in commerce Jul. 2, 1973.
Owner of U.S. Reg. No. 1,080,655.

Ser. No. 11,796, filed Jan. 24, 1974.

M. MERCHANT, Primary Examiner

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,674,448

Registered Aug. 25, 2009

TRADEMARK
PRINCIPAL REGISTER

SUPER HEROES

MARVEL CHARACTERS, INC. (DELAWARE
CORPORATION)
9442 BEVERLY BOULEVARD
SUITE 350
BEVERLY HILLS, CA 90210 AND
DC COMICS (NEW YORK PARTNERSHIP)
1700 BROADWAY
NEW YORK, NY 10019

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,140,452 AND
1,179,067.

FOR: T-SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND
39).

SN 78-356,610, FILED 1-23-2004.

FIRST USE 1-1-2005; IN COMMERCE 1-1-2005.

ESTHER BELENKER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office

Renewal

Reg. No. 825,835

Registered Mar. 14, 1967

OG Date Oct. 4, 1988

**TRADEMARK
PRINCIPAL REGISTER**

SUPER HERO

MARVEL ENTERTAINMENT GROUP,
INC. (DELAWARE CORPORATION)
387 PARK AVENUE SOUTH
NEW YORK, NY 10016 AND

DC COMICS, INC. (NEW YORK CORPO-
RATION)
666 FIFTH AVENUE
NEW YORK, NY 10103, ASSIGNEE BY
MESNE ASSIGNMENT BEN COOPER,
INC. (NEW YORK CORPORATION)
BROOKLYN, NY

FOR: MASQUERADE COSTUMES, IN
CLASS 39 (INT. CL. 25).

FIRST USE 10-29-1965; IN COMMERCE
3-4-1966.

SER. NO. 243,225, FILED 4-12-1966.

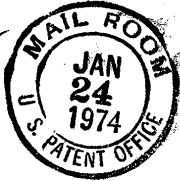
*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Oct. 4, 1988.*

COMMISSIONER OF PATENTS AND TRADEMARKS

EXHIBIT E

JAN 24 1974 -24
(Dkt. T-73661-B)

PR-C-6 M
11796



APPLICATION FOR TRADEMARK REGISTRATION

MARK : SUPER HEROES

CLASS: 22 (Int. Class 28)

TO THE COMMISSIONER OF PATENTS:

Applicant : Ben Cooper, Inc.
State of Incorporation : New York
Business Address : 33 34th Street, Brooklyn, New York 11232

The above-identified applicant has adopted and is using the trademark shown in the accompanying drawing for toy figures

and requests that said mark be registered in the U.S. Patent Office on the Principal Register established by the Act of July 5, 1946.

The trademark was first used on the goods July 2, 1973; was first used in interstate commerce July 2, 1973; and is now in use in such commerce.

The mark is used by applying it to containers in which the goods are packed and five specimens showing the mark as actually used are presented herewith.

Applicant is the owner of Reg. No. 825,835, issued to it on March 14, 1967.

The undersigned hereby appoints Alex Friedman, Harold I. Kaplan, Martin J. Beran and James K. Silberman, all members of the Bar of the State of New York, its attorneys to prosecute the above application for registration with full power of substitution and revocation, to transact all business in the Patent Office connected therewith, and to receive the certificate; correspondence address: BLUM, MOSCOVITZ, FRIEDMAN & KAPLAN, 555 Madison Avenue, New York, New York 10022, telephone 212-752-9110.

The undersigned Nathan Cooper, declares: That he is the Vice President of applicant corporation and is authorized to execute this declaration on behalf of said corporation; he believes said corporation to be the owner of the trademark sought to be registered; that to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like, so made, are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Z0426 01/29/74 SUPER HEROES 02-2845 6 201 35.00CH
BEN COOPER, INC.

By: [Signature]
Title _____

Date: January 10, 1974

INT. CL.	28
SEARCH CL.	22

11796

APPLICANT— Ben Cooper, Inc.

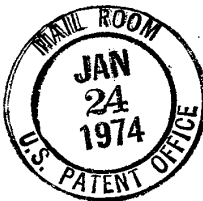
P.O. ADDRESS— 33 34th Street, Brooklyn, New York 11232

DATE OF FIRST USE— July 2, 1973 COMMERCE— July 2, 1973

GOODS OR SERVICES— toy figures

3

SUPER HEROES



1140452
REGISTERED

OCT 14 1980

PAT. & T.M. OFFICE

ATTORNEYS:

ALEX FRIEDMAN
HAROLD I. KAPLAN
MARTIN J. BERAN
JAMES K. SILBERMAN

CORRESPONDENCE ADDRESS:

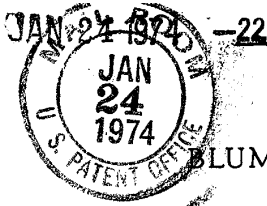
BLUM, MOSCOVITZ, FRIEDMAN & KAPLAN
555 MADISON AVENUE
NEW YORK, NEW YORK, 10022

PE- PUBLISHED
APR 22 1980

~~PUBLISHED IN O.G.
FEB 19 1980
PATENT & TRADEMARK
OFFICE~~



11796



TM

LAW OFFICES OF

BLUM, MOSCOVITZ, FRIEDMAN & KAPLAN

555 MADISON AVENUE, NEW YORK, N.Y. 10022

(212) PLAZA 2-9110

ASHER BLUM (1889-1960)
RICHARD W. BLUM (1923-1966)
DAVID J. MOSCOVITZ (1901-1972)

ALEX FRIEDMAN
HAROLD I. KAPLAN
MARTIN J. BERAN
JAMES K. SILBERMAN
LAWRENCE ROSENTHAL
HOWARD I. SCHULDENFREI

GEORGE A. DALIN
REG. PATENT AGENT

PATENTS
TRADEMARKS
COPYRIGHTS
UNFAIR COMPETITION

CABLE ADDRESS
MOSBLUM NEWYORK

January 23, 1974

Hon. Commissioner of Patents
Washington, D.C., 20231

Re: Our Docket No. : T-73661-B
Applicant : Ben Cooper, Inc.

Serial No. :
Filed :
MARK : SUPER HEROES
Registrant :

Registration No. :
Issued :

Sir:

Kindly file the annexed papers indicated below, charging the fee (including any deficiency in the fee as estimated below) to the undersigned attorneys' Account No. 02-2845:

- Trademark Application including specimens and drawing
CLASS NO. 22 (Int. Class 28)
- Foreign certificate with translation
- Certificate of label approval
- Trademark Renewal Application with specimen
- Sec. 8 Affidavit with specimen
- Secs. 8 & 15 Affidavit with specimen
- Notice of Appeal
- Appeal Brief
- Notice of Opposition
- Petition for Cancellation
- Assignment to:
- Other:

Respectfully,
BLUM, MOSCOVITZ, FRIEDMAN & KAPLAN

Estimated Fee \$ 35.00

By: Alex Friedman
Alex Friedman
Attorney for Applicant

APR 23 1974 -17,

TW

#1

Docket

T-73661-B



IN THE UNITED STATES PATENT OFFICE

Applicant(s) : Ben Cooper, Inc.
 Serial No. : 11 796
 Filed : January 24, 1974
 T/M : SUPER HEROES

*Copy
cc. 28*

CHANGE OF ADDRESS AND TELEPHONE NUMBER

Hon. Commissioner of Patents
Washington, D.C. 20231

Sir:

Effective April 29, 1974, please direct all written communications in connection with the above-captioned application to the following new address:

BLUM, MOSCOVITZ, FRIEDMAN & KAPLAN
 730 Third Avenue
 New York, New York 10017

Also effective April 29, 1974, please direct all future telephone communications in connection with said case to the following new telephone number:

212 - 867-2200

Respectfully submitted,

Lawrence Rosenthal

Lawrence Rosenthal
 Attorney for Applicant(s)
 BLUM, MOSCOVITZ, FRIEDMAN & KAPLAN
 730 Third Avenue
 New York, New York 10017
 212-867-2200



**U.S. DEPARTMENT OF COMMERCE
Patent Office**

Address Only: COMMISSIONER OF PATENTS
Washington, D.C. 20231

PAPER NO. 2

BLUM, MOSCOVITZ, FRIEDMAN
& KAPLAN
730 THIRD AVENUE
NEW YORK, N.Y. 10017

IN REPLY PLEASE REFER TO:

SERIAL NO.
11796

MAILED
JUN 2 1974

MARK
SUPER HEROES

APPLICANT
BEN COOPER, INC.

(Please Furnish Your Zip Code In All Correspondence)

- 1. Applicant's request for suspension of action by this Office is granted. Action is suspended for _____ months from the date of mailing of this communication.
- 2. Action on this application is suspended pending the termination of
 - Cancellation No(s) . _____
 - Civil Action No(s). _____
 - Opposition No(s). 55127

When the proceeding(s) is terminated, applicant, if a party thereto, should advise the Examiner. (Annual inquiry may be made as to the status of the inter partes proceeding; failure to respond may result in removal from suspension.)

- 3. Action on this application is suspended pending receipt of a certification or certified copy of the the registration in the country of origin of the applicant. If the registration is in a foreign language, an English translation thereof should be submitted. The certification or certified copy of the registration should be forwarded to the Examiner as soon as possible. If the foreign application is abandoned, the Examiner should be advised. (Annual inquiry may be made as to the status of the foreign application; failure to respond may result in removal from suspension.)
- 4. Action on this application is suspended pending the disposition of application(s) No(s). _____
- 5. Since applicant's filing date is subsequent to the filing date(s) of the application(s) referred to in No. 4 above, the latter, if and when it matures into a registration, will be cited against this application. Trademark Rule 2.83, Conflicting Marks, 37 Fed. Reg. 2880, Feb. 9, 1972. A photocopy of the drawing(s) of the pending application(s), as filed in the Search Room of this Office, is attached herewith.

Lenore Lady
EXAMINER

AUG 5 1974 -23



TM 3

Docket No. T-73661-B-2

IN THE UNITED STATES PATENT OFFICE

Applicant : Ben Cooper, Inc. ✓
Serial No. : 11,796 ✓
Filed : January 24, 1974 ✓
Trademark : SUPER HEROES ✓

July 26, 1974

REQUEST FOR RESUMPTION OF PROCEEDING

Hon. Commissioner of Patents
Washington, D. C. 20231

Sir:

This is in response to the U.S. Patent Office Action mailed July 2, 1974 (Paper No. 2). The Examiner has suspended proceedings until the termination of Opposition No. 55,129.

It is respectfully requested that proceedings in regard to the captioned application be reinstated.

The issue in Opposition No. 55,129, to be discussed herein, has no bearing on the issue in the proceedings regarding the captioned application, namely, the applicant's right to register the captioned mark. Because the issues in the aforementioned opposition have no bearing on the issues in the proceedings regarding the captioned application, the outcome of the opposition will not be determinative of applicant's right in these proceedings, namely the applicant's right to register.

The issue in Opposition No. 55, 129 is whether the applicant's mark, WORLD'S GREATEST SUPER HEROES, is confusingly similar to Opposer's trademark SUPER HEROES.

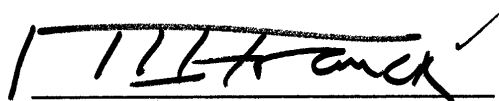
The issue in the instant proceedings is whether the applicant herein has the right to register its trademark SUPER HEROES for toy figures. The applicant already owns Reg. No. 825,835 for SUPER HERO for masquerade costumes. The marks, SUPER HERO/SUPER HEROES are identical for all intents and purposes. The goods, masquerade costumes/toy figures, are related goods because they are sold to the same consumers, namely, parents for the use of their children, and children, and through the same channels of trade, namely, department stores and specialty shops. The costumes are often used in conjunction with playing with the toy figures.

Given the instant applicant's Registration No. 825,835 SUPER HERO and the practical identity of the marks SUPER HERO/SUPER HEROES, and the strong relationship of the goods, the addition to the register of the applicant's mark has no relationship to the outcome of the aforementioned opposition. The applicant's right to register is clear in view of the application and of its ownership of Reg. No. 825,835.

There is no relationship between the outcome of the opposition and the outcome of the instant application.

Further and favorable action is respectfully requested
upon reinstatement of proceedings in response to this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Murray I. Franck", is written over a horizontal line. The signature is stylized and includes a checkmark at the end.

Murray I. Franck
Attorney for Applicant
BLUM, MOSCOVITZ, FRIEDMAN & KAPLAN
730 Third Avenue
New York, New York 10017
(212) 867-2200



**U.S. DEPARTMENT OF COMMERCE
Patent Office**

In Reply Refer To The Following And The Filing Date:

1. SER. NO. 11796	2. APPLICANT BEN COOPER, INC.	3. MARK SUPER HEROES	4. PAPER NUMBER 4
BLUM, MOSCOVITZ, FRIEDMAN & KRPLAN 730 THIRD AVENUE NEW YORK, N.Y. 10017		ADDRESS ONLY COMMISSIONER OF PATENTS WASHINGTON, D.C. 20231 AND FURNISH YOUR ZIP CODE AND TELEPHONE NUMBER IN ALL CORRESPONDENCE	5. MAILING DATE SEP 6 1974

Responsive to communication of August 5, 1974.

Applicant's remarks are noted. However, in view of the fact that this is an International Class 28, U.S. Class 22 application, it is not believed action may be taken on the merits until determination of Opposition No. 55,127.

The fact that applicant owns the mark SUPER HEROES for masquerade costumes in International Class 25, U.S. Class 39 would not extend its rights in the instant case if the opposition was decided in favor of the defendant. Toy figures and dolls are considered more closely related than masquerade costumes and toy figures.

The proceedings will be reinstated upon termination of Opposition No. 55,127.

DLLady:psb (703-557-3273)

Lenore Lady
Examiner Div I

A proper response to THIS OFFICE action must be received within 6 months from the date of this action in order to avoid ABANDONMENT.

ASSIGNMENTS

No previous assignments of record as of JUN. 23, 1977
 See Title Record for ownership information prior to this record T.

REG. NO.
SER. NO. <u>11,796</u>

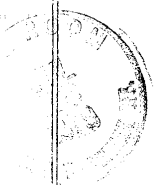
cadence industries corporation

AUG 20 1977

JUN 15 1981

11,796	Jan. 24, 1974	309	931		
Serial No.	Filing Date	Reel	Frame	Registration Date	Reg. No.
Date	Not Dated	(Trade-Mark)		Date Recorded	June 23, 1977
Registrant Ben Cooper, Inc.					
Assignor BEN COOPER, INC. 33-34th Street Brooklyn, N.Y. 11232, a N.Y. corp.					
Assignee MARVEL COMICS GROUP, a division of Cadence Industries Corporation, 575 Madison Avenue, New York, N.Y. 10022, and DC COMICS INC., 75 Rockefeller Plaza, New York, N.Y.					
Brief /10019, a N.Y. corp., jointly/ Assigns its entire interest and the good will.					

11,796	Jan. 24, 1974	309	931		
Serial No.	Filing Date	Reel	Frame	Registration Date	Reg. No.
Date	Not Dated	(Trade-Mark)		Date Recorded	June 23, 1977
Registrant Ben Cooper, Inc.					
Assignor BEN COOPER, INC. 33-34th Street Brooklyn, N.Y. 11232, a N.Y. corp.					
Assignee MARVEL COMICS GROUP, a division of Cadence Industries Corporation, 575 Madison Avenue, New York, N.Y. 10022, and DC COMICS INC., 75 Rockefeller Plaza, New York, N.Y.					
Brief /10019, a N.Y. corp., jointly/ Assigns its entire interest and the good will.					



234
10/18/77 McConner

A
Ge
T.M.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#5

Applicants : Marvel Comics Group
a division of Cadence Industries Corporation
and DC Comics Inc. by assignment from
Ben Cooper, Inc.

Mark : SUPER HEROES

Serial No. : 11,796

Filed : January 24, 1974

SEP 21 11 52 AM '79
T.M.E.O.
DIRECTOR'S OFFICE

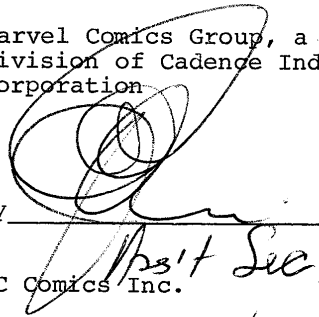
SUBSTITUTE POWER OF ATTORNEY

Marvel Comics Group, a division of Cadence Industries Corporation and DC Comics Inc., joint owners of record of the above-captioned application pursuant to an Assignment recorded in the Patent and Trademark Office on June 23, 1977 on Reel 0309, Frame 931, hereby revoke all prior powers of attorney and appoint Charles R. Brainard (Reg. No. 21,069) and Martin P. Michael (Reg. No. 27,823), attorneys at law, of Kenyon & Kenyon, 59 Maiden Lane, New York, New York 10038 to prosecute the above-captioned application to register, to transact all business in the Patent and Trademark Office in connection therewith and to receive the certificate of registration.

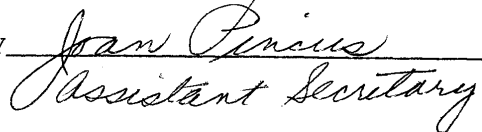
Please direct all correspondence to Charles R. Brainard at the above address.

Marvel Comics Group, a
division of Cadence Industries
Corporation

Date: 7/10/79

By 
DC Comics Inc.

Date: July 2, 1979

By 
Assistant Secretary



**U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

September 26, 1979

Paper No. 6

Blum, Moscovitz, et al.
730 Third Avenue
New York, NY 10017

Applicant : Marvel Comics Group, a
division of Cadence
Industries Corporation and
DC Comics Inc., assignee
of Ben Cooper, Inc.

Serial No.: 11,796

Mark : SUPER HEROES

This is in response to the communication re the Power of Attorney filed July 18, 1979

- 1. The power of attorney to you in this application has been revoked by the ^{assignee.} ~~applicant~~ ~~XXXX~~
- 2. In view of the notice in this application of the death of _____
his power of attorney is terminated.
- 3. The power of attorney to you in this application has been accepted by the Commissioner of Patents, & Trademarks.

For Director, Operation

- 4. The assignee in this application has intervened and appointed an attorney of his own selection. Further correspondence will be held with said attorney. (Rule 36, Rules of Practice.)
- 5. The revocation of the power of attorney to Blum, Moscovitz, et al. has been entered and said attorney has been notified. Further correspondence will be addressed to you.
- 6. On _____, the applicant appointed _____
as additional attorney in this application. Further correspondence will continue to be addressed to you as specified in the new power of attorney.
- 7. On _____, the applicant appointed _____
as additional attorney in this application. Further correspondence will be addressed to said attorney. MPEP 403.02
- 8. The associate power of attorney to you in this application has been revoked by the attorney of record.

Charles R. Brainard
Kenyon & Kenyon
59 Maiden Lane
New York, NY 10038

Jerry Bruner
For Director, Operation

RETAIN THIS COPY IN THE APPLICATION FILE



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

1. SERIAL NO. 11,796	2. MARK SUPER HEROES Ben Cooper, Inc., a. N. Y. Corp., by assignment to	ADDRESS COMMISSIONER OF PATENTS AND TRADEMARKS WASH., D.C. 20231 AND FURNISH YOUR ZIP CODE AND TELEPHONE NO. IN ALL CORRESPONDENCE	5. PAPER NO. (if box 2 checked) 7/11
3. APPLICANT MARVEL COMICS GROUP, a division of Cadence Industries Corporation, a Delaware Corp., 575 Madison Avenue, New York, N. Y., 10022 and DC COMICS INC., a N. Y. Corp., 75 Rockefeller Plaza, New York, N. Y., 10019 - jointly. KENYON & KENYON 59 MAIDEN LANE NEW YORK, NEW YORK 10038			6. MAILING DATE 30 OCT 1979

TRADEMARK INTERVIEW AND AMENDMENT RECORD

EXAMINER M. Merchant	PERSON CALLED/INTERVIEWED Martin P. Michael	<input type="checkbox"/> APPLICANT <input checked="" type="checkbox"/> ATTORNEY
<input type="checkbox"/> PERSONAL INTERVIEW	<input checked="" type="checkbox"/> PHONE CALL	INTERVIEW DATE: Oct. 2, 1979
CALL RECORD	AREA CODE 212	PHONE NUMBER 425-7200
		<input type="checkbox"/> will return call

- PRIORITY ACTION:** Applicant has two months from this interview date to submit the items listed below for this case to be given priority as an amended case.
- EXAMINER'S AMENDMENT:** In accordance with the authorization granted by the above applicant or attorney of record, the application has been amended as noted below.

REMARKS Counsel of record states Cadence Industries Corporation is a corporation organized under the laws of the State of Delaware.

Counsel requests that at an appropriate place in the application the following statement be entered:

a' Assignee applicant is the owner of Registration No. 1,080,655.

M. Merchant

M. Merchant, Attorney, Div. II

Examiner

Division

(703) 557-3277

Phone

If a proper response is not received within six months of this interview date, the case will be abandoned.

J. Clark

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office
Washington D.C. 20231

SER. NO. MARK
011796 SUPER HERDES

APPLICANT
Ben Cooper, Inc.

PUBLICATION DATE
APR. 22, 1980

NOTICE OF PUBLICATION UNDER SECTION 12(a)

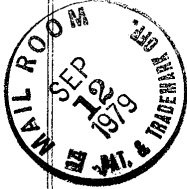
The mark of the application above identified appears to be entitled to registration. The mark will, in accordance with section 12(a) of The Trademark Act of 1946, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by section 13 of the statute or by Rules 2.101 and 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a Certificate of Registration.

Copies of the Trademark portion of the Official Gazette containing the publication of the mark may be obtained at \$1.70 each from The Superintendent of Documents, Government Printing Office.

By direction of the Commissioner

SEND CORRESPONDENCE TO:

Charles R. Brainard
Kenyon & Kenyon
59 Maiden La.
New York, NY. 10038



T M
625 9
2-22-80

UNITED STATES PATENT AND TRADEMARK OFFICE

Mark : SUPER HEROES ✓
 Serial No. : 11,796 ✓
 Filed : January 24, 1974
 Int. Class : 28
 Applicant of Record (by Assignment) : Marvel Comics Group a division of Cadence Industries Corporation and DC Comics Inc.

625
2/19/80

28

28
4-22-80

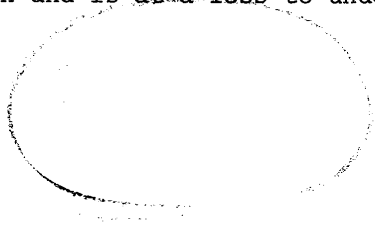
Hon. Commissioner of Patents and Trademarks
Trademark Examining Operation
Washington, D.C. 20231

SIR:

Prosecution of the above-referenced application was suspended in 1974 pending the termination of trademark Opposition No. 55,127. This opposition was dismissed with prejudice in 1977. Nonetheless, it appears that the Patent and Trademark Office has not resumed the prosecution as no correspondence has been received from the Office since 1974.

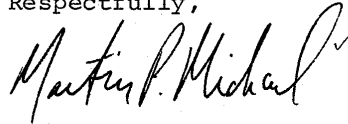
In June, 1979, applicant's counsel contacted the Patent and Trademark Office by telephone respecting the status of this application. Applicant's counsel was promised by Examiner McGrane that the Office would resume the prosecution and would send applicant's counsel a letter regarding same. No communication has been received.

Applicant is most anxious to resume the prosecution of this application and is at a loss to understand the delay.



In view of the foregoing, applicant hereby again requests that the Office recommence the prosecution of the above-referenced trademark application without further delay.

Respectfully,



Martin P. Michael
Reg. No. 27,823

KENYON & KENYON
59 Maiden Lane
New York, New York 10038
212-425-2700

Attorneys for Applicant of Record

September 12, 1979



UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

REGISTRATION NO. 1140452

SERIAL NO. 73/011796

PAPER NO.

MAILING DATE: 02/17/87

MARK: SUPER HEROES

REGISTRANT: CADENCE INDUSTRIES CORPORATION

CORRESPONDENCE ADDRESS:

CHARLES R. BRAINARD
KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

Please furnish the following
in all correspondence:

1. Your phone number and zip code.
2. Mailing date of this action.
3. Affidavit-Renewal Examiner's name.
4. The address of all correspondence not containing fees should include the words "Box 5".
5. Registration No.

RECEIPT IS ACKNOWLEDGED OF THE SUBMITTED REQUEST UNDER:

SECTION 8 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.161-2.166.

SECTION 15 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.167-2.168.

YOUR REQUEST FULFILLS THE STATUTORY REQUIREMENTS AND HAS BEEN ACCEPTED.

FRANCES A. PFOHL
AFFIDAVIT-RENEWAL EXAMINER
TRADEMARK EXAMINING OPERATION
(703) 557-1988



09-18-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #58

U.S. Patent & TMO/TM Mail Rpt Dt. #58

Attorney Ref.: 45555/39901P

PQM

CJ

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**COMBINED DECLARATION OF USE IN COMMERCE AND APPLICATION FOR
RENEWAL OF REGISTRATION OF MARK**

SECTIONS 8 AND 9, TRADEMARK ACT OF JULY 5, 1946

Reg. No.: 1,140,452

Mark: SUPER HEROES

Reg. Date: October 14, 1980

Int. Cl.: 28

TO: The Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
BOX POST-REGISTRATION FEE

DC Comics
A New York Corporation
1700 Broadway
New York, NY 10019

Marvel Entertainment Group, Inc.
A Delaware Corporation
387 Park Avenue
New York, NY 10016

The above-identified applicants request that the subject registration which they own, as shown by records in the U.S. Patent and Trademark Office, be renewed in accordance with the provisions of Sections 8 and 9 of the Trademark Act of July 5, 1946, as amended.

09/22/2000 EPIHR1 00000173 110600 1140452

01 FC:372 100.00 CH
02 FC:365 400.00 CH

EL 307135717 US

The owners are using the mark in commerce in connection with all the goods listed in the certificate of registration.

The owners are using the mark in commerce in connection with the goods identified above, as evidenced by the attached specimen(s) showing the mark as currently used in commerce.

The owners further request that the registration be renewed for the goods identified above.

POWER OF ATTORNEY

Applicants hereby appoint Jonathan D. Reichman, , a member of the bar of the State of New York, and practicing under the firm name and style of Kenyon & Kenyon, as their attorney, with full power of substitution and revocation, to file this application for renewal, to transact all business in the Patent and Trademark Office in connection therewith, and to receive all communications and notices relative thereto. Please send all correspondence to JONATHAN D. REICHMAN, ESQ. at Kenyon & Kenyon, One Broadway, New York, New York 10004.

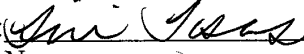
DECLARATION

The undersigned being hereby warned that willful false statements and the like are punishable by fine or by imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the owner; and all

statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

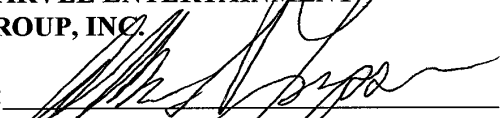
DC COMICS

Dated: 8/8/00

By: 
Name: **LILLIAN J. LASERSON**
Title: **VICE PRESIDENT & GENERAL COUNSEL**

**MARVEL ENTERTAINMENT
GROUP, INC.**

Dated: 8/23/00

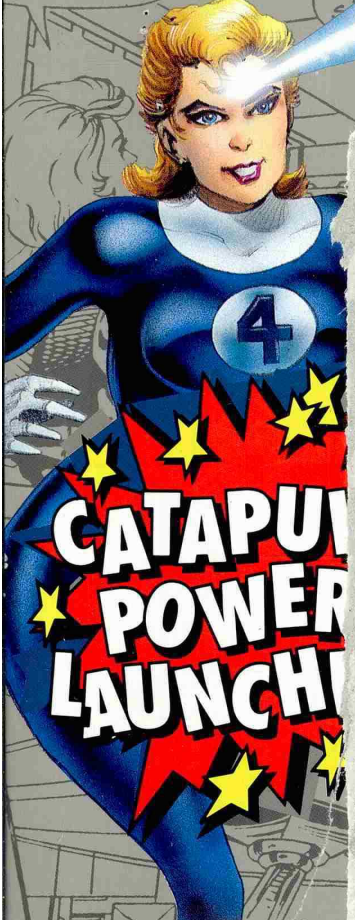
By: 
Name: Allen S. Lipson
Title: Vice President

MARVEL
SUPER HEROES™

COSMIC DEFENDERS™

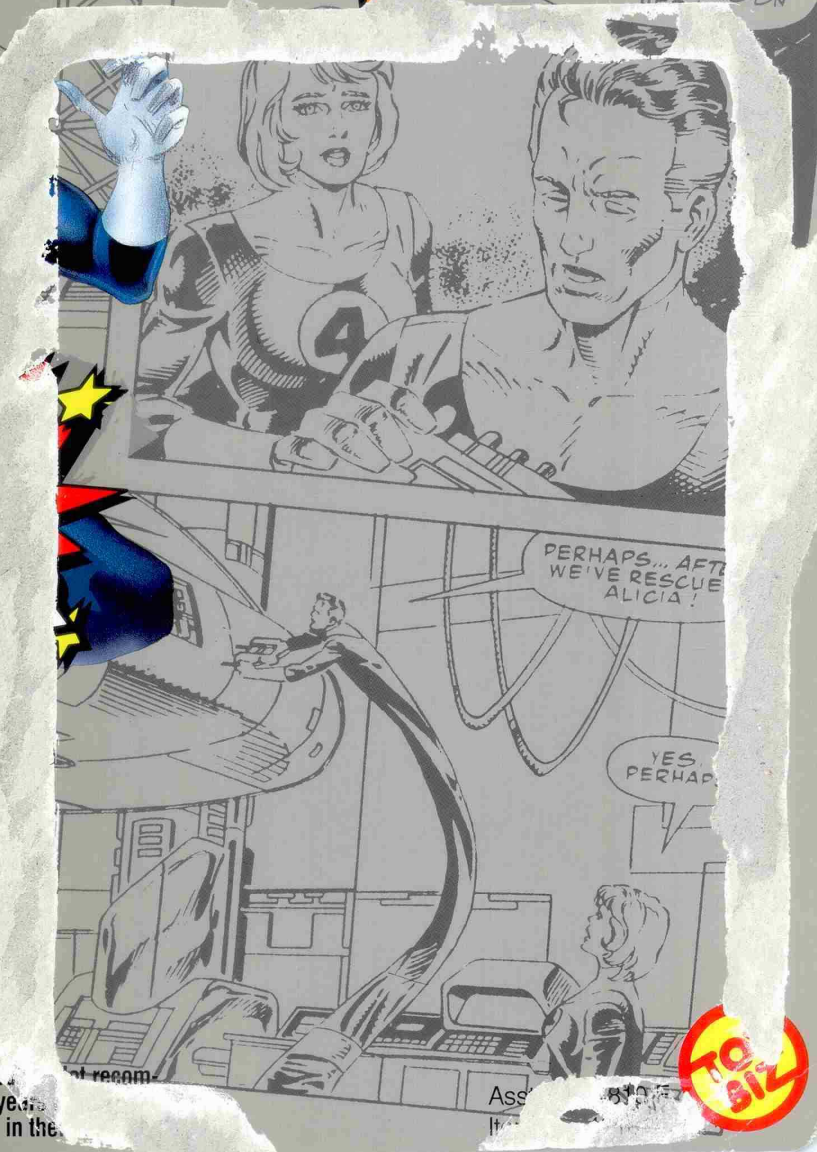
Ages 5 and up

Fantastic Four™ FOUR™



**CATAPULT
POWER
LAUNCH**

**INVISIBLE
WOMAN**

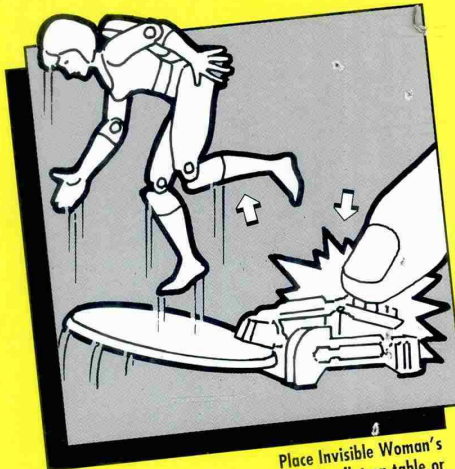


Warning: May contain small parts. Not recommended for children under 3 years of age. Not for use by those who still put objects in their mouths.

TOY BIZ™ TOLL FREE
 CUSTOMER
 SERVICE NUMBER
 1-800-634-7539

INVISIBLE WOMAN™

The Invisible Woman loves to vanish into thin air! She can also use her amazing power to turn other people and things invisible too! The Invisible Woman can also create invisible force balls and discs that she can mentally throw at enemies. She can levitate herself and others out of harms way with this invisible force in the blink of an eye. Super-villains know that what they can't see can hurt them when they have to fight the Invisible Woman! Use her invisible catapult launcher to spring her into action.



Place Invisible Woman's launcher flat on table or other firm surface. Stand her on the circular platform and hit the launcher button to launch her into battle.

MARVEL™ SUPER HEROES



DAREDEVIL™ INVISIBLE WOMAN™ SPIDER-MAN® PUNISHER™ U.S. AGENT™



VENOM™ HULK™ SPIDER-MAN® DR. DOOM™ CAPT. AMERICA™ PUNISHER™ DR. OCTOPUS™

COLLECT THEM ALL!

Meets or exceeds all safety requirements of ASTM F963. Some assembly required. Product contents and color may vary from photography. Made in China.
 ©1994 Toy Biz, Inc. New York 10016
 Marvel, MARVEL SUPER HEROES, all characters, their names and distinctive likenesses are trademarks of Marvel Entertainment Group, Inc. and are used with permission.
 ©1994 Marvel Entertainment Group, Inc. All rights reserved.





09-18-2000

U.S. Patent & TMO/TM Mail RptDt. #58

TEL. (212) 425-1200
FAX. (212) 425-5288

WASHINGTON, D.C. OFFICE
1500 K STREET, N.W., SUITE 700
WASHINGTON, D.C. 20005-1257
TEL. (202) 220-4200
FAX. (202) 220-4201

SILICON VALLEY OFFICE
RIVERPARK TOWERS, SUITE 600
333 W. SAN CARLOS ST.
SAN JOSE, CA 95110-2731
TEL. (408) 975-7500
FAX. (408) 975-7501

FRANKFURT OFFICE
SCHILLERSTRASSE 19-25
60313 FRANKFURT AM MAIN
FEDERAL REPUBLIC OF GERMANY
TEL. (49) (69) 97 58 05 0
FAX. (49) (69) 97 58 05 99

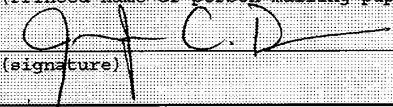
WWW.KENYON.COM

Attorney Ref.:45555/39901P

September 18, 2000

VIA EXPRESS MAIL

Assistant Commissioner for Trademarks
2900 Crystal Drive
BOX POST REG FEE
Arlington, VA 22202-3513

EXPRESS MAIL CERTIFICATE	
Express Mail Label No.	EL 307135717 US
Date of Deposit	September 18, 2000
I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.	
Jennifer C. Dross	
(Printed name of person mailing paper(s))	
	
(signature)	

Re: **Mark** : **SUPER HEROES**
Registration No. : **1,140,452**
Registration Date : **October 14, 1980**

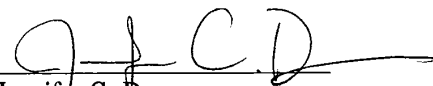
Dear Madam:

Enclosed herewith is a combined application for renewal and Declaration Under Section 8 for the above-identified trademark registration. Also enclosed is a specimen of the mark as currently used.

Please charge the statutory fee of \$500.00, and any deficiency therein, to Kenyon & Kenyon's Deposit Account No. 11-0600. For this purpose, a duplicate copy of this letter is enclosed.

Respectfully submitted,

KENYON & KENYON

By: 
Jennifer C. Dross
Legal Assistant

Enclosures
cc: Jonathan D. Reichman, Esq.

Mrs. Permitt

Please place
this file with
the next batch
to be sent to

Pub.

Thank you

L. STICKMAN

2/26/80

EXHIBIT F

35-0001-179
222079



APPLICATION FOR TRADEMARK REGISTRATION

Mark : SUPER HEROES

Int. Class No.: 16

Hon. Commissioner of Patents and Trademarks
Trademark Examining Operation
Washington, D.C. 20231

SIR:

Fb 039
F7 NY
DEX
[Handwritten signature]

~~Gadence Industries Corporation, doing business through its Marvel Comics Group division, a corporation organized and existing under the laws of the State of Delaware, and having a place of business at 575 Madison Avenue, New York, New York 10022/ and DC Comics Inc., a corporation organized and existing under the laws of the State of New York, and having a place of business at 75 Rockefeller Plaza, New York, New York 10019~~ (hereinafter collectively referred to as the "Applicant") hereby makes this application for trademark registration.

F8 014
Great
[Handwritten signature]

Applicant has adopted and is using the trademark in the accompanying drawing for: (PUBLICATIONS, PARTICULARLY COMIC BOOKS AND MAGAZINES AND STORIES IN ILLUSTRATED FORM; CARDBOARD STAND-UP FIGURES; PLAYING CARDS; PAPER IRON-ON TRANSFERS; ERASERS; PENCIL SHARPENERS; PENCILS; ^{glue}GLUE; NOTEBOOKS AND STAMP ALBUMS; and requests that said mark be registered on the Principal Register of the United States Patent and Trademark Office established by the Act of July 5, 1946. The mark is also used by licensees who are related companies within the provisions of the Trademark Act of 1946 whose use inures to the benefit of Applicant. The nature and quality of the goods sold in connection with the mark by the licensees is controlled by Applicant.

The trademark was first used on comic books and magazines by Applicant's predecessor in interest at least as early as October, 1966 and first so used in interstate commerce at least as early as October, 1966 and is now in use in such commerce.

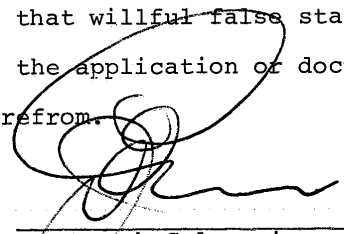
The mark is used by applying it to the goods and/or to packaging containing the goods and five specimens showing the mark as actually used are presented herewith.

Applicant is the owner of Trademark Registration No. 1,080,655 dated December 27, 1977, for WORLD'S GREATEST SUPER HEROES and Design; Trademark Application Serial No. 11,796 filed January 24, 1974, for SUPER HEROES; Trademark Application Serial No. 103,729 filed October 18, 1976, for THE WORLD'S GREATEST SUPER HEROES; and Trademark Application Serial No. 87,824 filed May 20, 1976, for SUPER HEROES.

DECLARATION

Joseph Calamari, the undersigned, declares that he is Assistant Secretary of Cadence Industries Corporation doing business through its Marvel Comics Group division, and is authorized to execute this declaration on behalf of said corporation; and Joan Pincus, the undersigned, declares that she is Assistant Secretary of DC Comics Inc., and is authorized to execute this declaration on behalf of said corporation; that they believe Applicant to be the owner of the mark sought to be registered; that to the best of their knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the services of such other person, firm, corporation or association, to cause confusion, or to cause mistake, or to deceive; that all statements made herein are true to the best of their knowledge, information and/or belief; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of the application of document or any registration resulting therefrom.

7/2/79
Dated



Joseph Calamari

6/28/79
Dated



Joan Pincus

POWER OF ATTORNEY

Applicant hereby appoints the following members of the Bar of the State of New York as their attorneys with full power to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith; and to receive the Certificate of Registration:

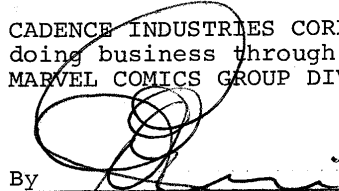
F9 NY

(Charles R. Brainard) (Reg. No. 21,069) and Martin P. Michael (Reg. No. 27,823), both of whose address is:

(Kenyon & Kenyon
59 Maiden Lane
New York, New York 10038

Please direct all correspondence to Charles R. Brainard at the above address.

CADENCE INDUSTRIES CORPORATION
doing business through its
MARVEL COMICS GROUP DIVISION

By 
Joseph Calamari
Assistant Secretary

DC COMICS INC.

By 
Joan Pincus

INT. CL. 16
PRIOR U.S. CL. 37-38

222079

CADENCE INDUSTRIES CORPORATION
DOING BUSINESS THROUGH ITS
MARVEL COMICS GROUP DIVISION
575 Madison Avenue
New York, New York 10022

DC COMICS INC.
75 Rockefeller Plaza
New York, New York 10019

Date of First Use : Respecting comic books and
magazines, at least as early
as October, 1966

Date of First Use
in Interstate Commerce : Respecting comic books and
magazines, at least as early
as October, 1966

For : PUBLICATIONS, PARTICULARLY COMIC
BOOKS AND MAGAZINES AND STORIES
IN ILLUSTRATED FORM; CARDBOARD
STAND-UP FIGURES; PLAYING CARDS;
PAPER IRON-ON TRANSFERS; ERASERS;
PENCIL SHARPENERS; PENCILS;
GLUE; NOTEBOOKS; AND STAMP ALBUMS

Int. Class No. : 16

REGISTERED

NOV 24 1981

PAT. & T.M. OFFICE

1179067

SUPER HEROES

REGISTERED

NOV 24 1981

PAT. & T.M. OFFICE

PUBLISHED IN O.G.

JUN 9 1981

PATENT & TRADEMARK
OFFICE



3

MARVEL
SUPER-
HEROES

21
JULY



MARVEL SUPER- HEROES



11 OF
MARVEL'S
MIGHTIEST...
IN ONE
PULSE-POUNDING
MAG!!



sell as
as I can
them."
w Henlin
ri

ES Seeds



TODAY
a Friend

17604
one order of 45 packs of
k, send you the money

is

Zip
Code

Pa. 17604
one order of 45 packs of
uck, send you the money

ile
eda

Zip
Code



MARVEL
COMICS
GROUP

THE
CREDIBLE
MILK!

IRON
MAN!

THE
LIGHTNING
HOR!

SUB-
DRIVER!

WANT
MAN!

WASP!
KLOPS!

THE
ANGEL!

WANT
MAN!

THE
FAST!

MARVEL
PUB.

alco.

Super Heroes! ERASER



alco.

Super
Heroes!

PENCIL
SHARPENER



222079



Dennison

SUPERHEROES*

GlueStic

Ideal for
paper,
cardboard,
photos,
projects

Non-toxic
Odorless
Washes
out

NET WT.
0.26 OZ.

*Indicates Trademark of DC COMICS INC.
and MARVEL COMICS GROUP

Dennison Manufacturing Company, Framingham, MA 01701

Dennison SUPER HEROES[®] GLUE STIC

ITEM NO. SUPER HEROES[®]

- 00-181 Superman † Glue Stic
- 00-182 Wonder Woman † Glue Stic
- 00-183 The Amazing Spider-Man # Glue Stic
- 00-184 The Incredible Hulk # Glue Stic

Collect All Four!

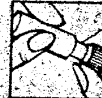
Always handy, always ready to use.

At home, school, office, library, workshop or art studio

Not a Toy . Follow Directions

Children to be Supervised by Adult

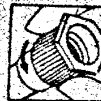
Remove cap and
twist base slightly...



Rub over surface to
be glued...



After use twist base
to retract glue...
Replace cap securely
after use



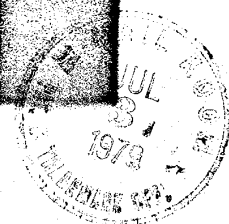
† Superman and Wonder Woman are the
trademarks of DC COMICS, INC.

Spider-Man and the Incredible Hulk are
trademarks of the MARVEL COMICS
GROUP a division of Cadence Industries
Corp. © 1979. All rights reserved.

Mount photos . . . Make posters . . . Make a collage

Do hundreds of quick and easy gluing jobs with no mess
or fuss. Nothing to spill, easy to use... replaces clips,
staples, tape, or messy adhesives.

222079



Super Heroes
NOTE BOOK

3" x 5" Notebook
80 Ruled Sheets

39c

ITEM No.95

MADE & PRINTED IN KOREA





LAW OFFICES OF
KENYON & KENYON
59 MAIDEN LANE
NEW YORK, N. Y. 10038

(212) 425-7200

FRANCIS T. CARP
HUGH A. CHAPIN
CHARLES B. SPENCER
JAMES H. CALLAHAN
RICHARD A. HUETTNER
EDWARD W. GREASON
WILLIAM T. BOLAND, JR.
ROBERT D. FIER
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KENNETH E. MADSEN
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JOHN O. McQUILLAN
DOUGLAS G. BRACE

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JOHN A. FOGARTY, JR.
PAUL H. HELLER
THOMAS L. CREEL
ARTHUR D. GRAY
ALBERT J. BRENEISEN
STUART J. SINDER

DOMESTIC TELEX 12-7799
INTERNATIONAL TELEX 422141
TELECOPIER 212 425-5288
CABLE ADDRESS "AMAXIA" NEWYORK

THEODORE S. KENYON (1919-1978)

OF COUNSEL
W. HOUSTON KENYON, JR.
RICHARD K. PARSELL

CHARLES E. HEPNER
GEORGE E. BADENOCH
EDWIN BARANOWSKI
JOHN C. ALTMILLER
ALLEN I. RUBENSTEIN
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CLAYTON S. GATES
ROBERT C. SCHMERTZ, JR.
RICHARD C. STEWART II

July 3, 1979

Honorable Commissioner of Patents
and Trademarks
Trademark Examining Division
Washington, D.C. 20231

Re: Applicant : Cadence Industries Corporation
doing business through its Marvel
Comics Group division and DC
Comics Inc.

Mark : SUPER HEROES

Class No. : 16

Dear Sir:

We are enclosing an application for registration of
the above mark upon the Principal Register.

Also enclosed is a drawing of the mark, ~~five~~ ^{five} specimens
of the mark as now used, and the statutory fee of \$35.00.

Respectfully submitted, *App*

KENYON & KENYON

By *Martin P. Michael*

Martin P. Michael

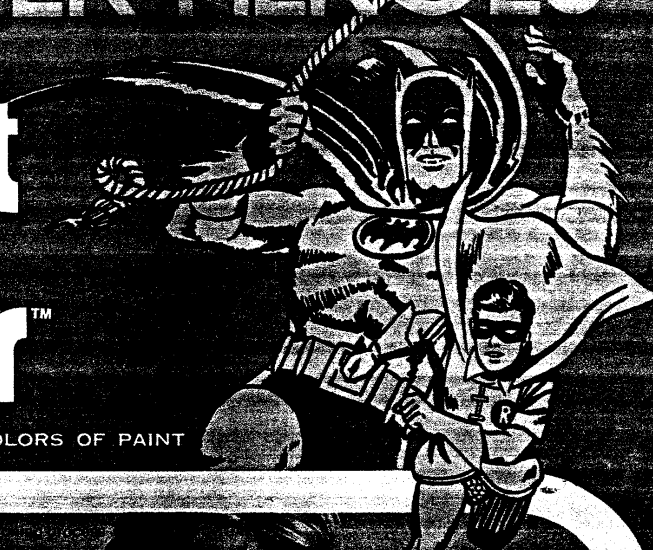
Enclosures

Ages 10 to Adult No. 482

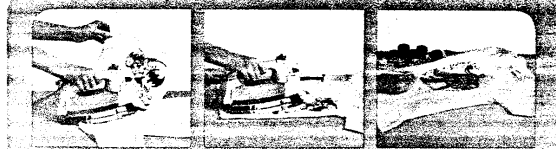
G SUPER HEROES

paint then wear™

INCLUDES 12 TRANSFERS, 6 COLORS OF PAINT



Easy to Craft



1. Test fabric with test patch

2. After test, iron on picture to fabric

3. Paint and wear

Contents listed on side of box
© 1976
National Geographic
Publishing Co.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



JM

Mark : SUPER HEROES
Int. Class : 16 *303 10/79*
Applicant : Cadence Industries Corporation, doing business through its Marvel Comics Group Division, and DC Comics, Inc.
Serial No. : 222,079
Filed : July 3, 1979

59 Maiden Lane
New York, NY 10038

October 30, 1979

Hon. Commissioner of Patents
and Trademarks
Trademark Examining Operation
Washington, D. C. 20231

SUPPLEMENTARY STATEMENT

SIR:

In addition to the list contained in the above-identified application of other trademark registrations and applications owned by applicant, applicant wishes also to make of record in the above-identified application that Cadence Industries Corporation, doing business through its Marvel Comics Group Division, one of the joint owners of the above-identified mark and application, is the owner of United States Trademark Registration No. 1,073,580 for the mark MARVEL SUPER-HEROES in International Class 16, of United States Trademark Application Serial No. 151,236 for the mark MIGHTY MARVEL SUPER-HEROES in International Class 28, and of United States Trademark Application Serial No. 163,176 for the mark MARVEL SUPER-HEROES in International Classes 9 and 41.

Respectfully submitted,
KENYON & KENYON

Dated: *October 30, 1979*

By *Charles R. Brainard*
Charles R. Brainard
Reg. No. 21,069
(212) 425-7200



**U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office**

IN REPLY REFER TO THE FOLLOWING AND THE FILING DATE:

1. SER. NO. 222079	2. MARK SUPER HEROES	ADDRESS COMMISSIONER OF PATENTS AND TRADEMARKS WASHINGTON D. C. 20231 AND FURNISH YOUR ZIP CODE AND TELEPHONE NUMBER IN ALL CORRESPONDENCE	5. PAPER NO. 2
3. APPLICANT CADENCE INDUSTRIES CORPORATION, MARVEL COMICS GROUP DIVISION			6. MAILING DATE JUN 12 1980
4. ADDRESS CHARLES R. BRAINARD KENYON & KENYON 59 MAIDEN LANE NEW YORK, NEW YORK 10038			

PTO-1293 U.S. DEPT. OF COMM. Pat & TM Office

The item "glue" in the identification of goods is indefinite for registration purposes. It appears that the item would be properly identified as --glue for office and home use, sold as a stationery supply--. If correct, amendment in accordance with the above suggestion should be made.

To aid in the consideration of the registrability of the mark, applicant is requested to submit one complete issue of the publication from which the specimens filed were obtained. Trademark Rule 2.61(b).

The above is limited to the goods identified as comic books, magazines and stories in illustrated form.

The names "Russell Manufacturing Co. "Gi"; Alco" Dennison Manufacturing Company; National Periodical Publications Inc." (which seemsto identify a party (or parties) different from applicant) appears on the specimens and/or commercial literature. The relationship between said party (parties) and applicant must be explained; and it must also be explained how this use of the mark inures to applicant's benefit. Section 5 of the Trademark Act; Trademark Rule 2.38; TMEP Section 1201.01(a).

If the above are related companies in the nature of licensees, the following is required:

It is noted that use of the mark is by a related company. However, the facts as to applicant's control over the nature and quality of the goods and/or services are not sufficiently clear. If control is maintained by means of a license agreement, a copy of the parts thereof relating to control should be filed. If there exists no license agreement, applicant must submit an explanation of the method and extent of such control. TMEP Section 1201.03(c).

This explanation must be supported by an affidavit or by a declaration in accordance with Trademark Rule 2.20.

The application was filed by more than one party or by persons designated as joint applicants. It is not clear whether such designation is correct. The application should be filed in the name of the business entity which owns the mark, and normally a mark is owned by a single business entity. The relationship of the parties in this application should be explained. If the

A proper response to THIS OFFICE action must be received within 6 months from the date of this action in order to avoid ABANDONMENT.

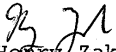
parties are partners in a business activity, the preamble of the application should be corrected to show the partnership as the applicant. TMEP Section 802.03(d).

If the parties are filing as joint applicants, this information should be stated in the preamble.

The mark Super Heros shown on the drawing does not agree with the mark Super Hero, used on the cardboard stand up figures, the colored pencil set and the stamp album actually used, as evidenced by the specimens of record. Either the drawing should be amended so that the mark thereon agrees with the mark as actually used, or specimens showing use of the mark presented on the drawing should be submitted. In the latter event, the use of the substitute specimens as of a date at least as early as the filing date of this application must be supported either by an affidavit or by a declaration in accordance with Trademark Rule 2.20. TMEP Sections 807.14 and 808.10.

A search of the Office records fails to show that the mark, when applied to applicant's goods and/or services, so resembles any registered mark as to be likely to cause confusion, or to cause mistake, or to deceive. TMEP Section 1105.01.

HZ:psb


Henry Zak
Trademark Attorney/Div. I
(703) 557-3273



M 3/4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK EXAMINING OPERATION

Joint Applicants : Cadence Industries Corporation,
doing business as Marvel Comics Group
and
DC Comics Inc.
Ser. No. : 222,079
Filed : July 3, 1979
Mark : SUPER HEROES
Class : 16
Division : I Examiner: Henry Zak

December 12, 1980

Hon. Commissioner of Patents and Trademarks
Washington, D. C. 20231

AMENDMENT

Sir:

This is in response to the Office Action of June 12, 1980.

It is requested that the above application be amended as follows:

(1) In the identification of the goods, change "GLUE;" to read -- ~~GLUE FOR OFFICE AND HOME USE, SUCH AS IS SOLD AS STATIONERY SUPPLY; --~~.

Print

(2) In the preamble of the application, just below "SIR:", change the opening two lines to read:

-- Joint Applicants: Cadence Industries Corporation, doing business as Marvel Comics Group, a corporation organized and --.

U 2

Ser. No. 222,079

REMARKS

The Examiner's constructive suggestion for more properly identifying the item "glue" has been carried out and it is believed that the recital of the goods is now in order for acceptance.

The comments of the Examiner directed to the names of the business entities that filed the present application are acknowledged, and it is confirmed that (as amended above) the parties filing are joint applicants and co-owners of the mark, and in this connection it will be noted that each of the two joint applicants duly executed the application as well as the power of attorney.

The first-named joint applicant was originally identified as "Cadence Industries Corporation, doing business through its Marvel Comics Group Division". However, it is now realized from a scrutiny of TMEP Section 802.02(c) that it would be preferable to restate this name in the following form, "Cadence Industries Corporation, doing business as Marvel Comics Group", and this has now been done.

That question settled, it is proposed for the sake of simplicity in the remainder of this response to employ the term "applicant" (in the singular form), which will be understood always to mean the joint applicants.

The names "Russell Manufacturing Co.", "Dennison Manufacturing Company", "Alco" etc., appearing on the specimens and/or commercial literature, identify some of about 25 or so related company licensees* who -- as recited in the application as filed -- have been authorized to use the mark and whose use thereof inures to applicant's benefit under the terms of executed

*National Periodical Publications, Inc. is the former name of DC Comics, Inc., one of the joint applicants.

Ser. No. 222,079

license agreements, all in consonance with Section 5 of the Trademark Act.

In reply to the Examiner's further inquiry, applicant explains that it enters into written licensing arrangements with its licensees. Standard contract language has been devised, which is revised from time to time. In a typical "License Agreement" form, the portion presumed to be of particular interest to the Examiner is its "Approvals" section, which sets down standards and procedures for seeing that the licensee's product is of proper quality. A copy of "Approvals" paragraph 10 from a typical agreement is enclosed from which it can be seen that it provides for control by applicant over the nature and quality of the goods. The enclosure is taken from an actual agreement entered into with Russell Manufacturing Co. on February 11, 1977, covering playing cards with coloring sets and playing cards in deck form; this agreement is still in force.

Applicant accordingly submits that the foregoing constitutes a satisfactory showing of applicant's control over the nature and quality of the goods as called for in TMEP Section 1201.03(c).

The penultimate paragraph of the Office Action states that the mark SUPER HEROES shown on the drawing does not agree with the mark SUPER HERO actually used on the cardboard stand-up figures, the colored pencil set and the stamp album as evidenced by the specimens of record. The Examiner therefore requires amendment along the lines set out in TMEP Sections 807.14 and 808.10 to achieve such agreement.

Ser. No. 222,079

Applicant, in addressing that requirement, submits that a determination with respect to the comparative display of the mark on the drawing and specimens must necessarily be predicated on the Examiner's key word "agree". In this connection, it is worth noting that the term "agree" is nowhere to be found in TMEP Section 807.14 upon which the Examiner relies in leveling his charge of "does not agree". Instead, the Trademark Manual there states that the mark on the drawing and specimens must be "in accord", the word "accord" meaning (Webster's Third New International) a "balanced interrelationship" connoting something less than a mirror-image exactness.

To what extent, then, must the drawing and specimens agree, or be "in accord"? Shall the mark displayed by them be precisely exact? Or can "accord" be regarded as consummated if the mark on the specimens is only "substantially" the same as shown on the drawing, that is to say a less-than-exact counterpart thereof but which nonetheless suffices to convey the same commercial impression of a common origin to the buying public.

Applicant submits that the latter interpretation is the proper one in the present situation, this view being supported by the Trademark Manual of Examining Procedure. More particularly, it is the introductory TMEP Section 807 which provides the on-target answers. As taught therein, the term "in accord" means "exactly" in the strictest sense only when the drawing is an "ink drawing" (Rule 2.52) as differentiated from a "typed drawing" (Rule 2.51(d)). Section 807 specifically states:

"'Ink drawings' are those drawings which present an exact representation of the mark as it appears on the specimens."
(emphasis supplied)

Ser. No. 222,079

Obviously, if the drawing is other than an ink drawing, i.e. a typed drawing as is the case in the present application, the more flexible alternative rule in that same section of the Manual may be implemented to achieve "accord". There it states:

"The mark as shown on the drawing should be substantially the same as the mark which is actually used as illustrated by the specimens."
(emphasis again supplied)

Proceeding from this, and bearing in mind applicant's typed drawing, the Examiner's term "agree" would appear to equate with the more lenient teaching of the second-quoted precept above, which is to say that the mark on the drawing and specimens need only be "substantially" (not "exactly") the same.

Accordingly, SUPER HEROES (on the drawing) and SUPER HERO (on the specimens) must be adjudged "substantially" the same because the substance of one is manifestly embodied in the other, and would be recognized as such by the public, including especially the loyal followers of the SUPER HEROES. Children buying one of these comic books, to take one example, perceive that it features not just any stamp album but, more impressively, a SUPER HERO STAMP ALBUM. Certainly, the long-standing and indelible impression of the name SUPER HEROES on the public is not lost or blurred by the sighting of the occasional surrogate title SUPER HERO on a book cover. Indeed, the two titles are verbalized interchangeably in the parlance of children and other purchasers of applicant's comic books and/or magazines. To them the titles as used on the submitted specimens are mentally indistinguishable and it would thus be irrational to suppose that there could be the slightest likelihood of confusion on the

Ser. No. 222,079

part of the buyers of applicant's publications -- showing either SUPER HEROES or SUPER HERO -- as to the common source of both titles.

Thus, if it is accepted (as it reasonably must be in obedience to TMEP Section 807) that SUPER HERO on the specimens is in substance ("substantially") the same as SUPER HEROES on the typed drawing of record, such acceptance in effect concedes that the drawing and specimens are "in accord" within the meaning of TMEP Section 807.14. Or, in other words, to use the term favored by the Examiner, they "agree".

In light of the above presentation, it is submitted that the requirement (for amendment of the drawing or filing of substitute specimens) stands obviated and its withdrawal is respectfully requested.

Applicant, in response to the Office Action's second-paragraph requirement, encloses a copy of a complete issue of a publication bearing the mark SUPER HEROES on its cover corresponding to the same issue's cover specimen as originally filed. It occurs to applicant that this latter specimen together with a number of additional ones all showing SUPER HEROES were filed with the application simultaneously with the several SUPER HERO specimens (subject of the foregoing "in accord" discussion). Thus, the Examiner's record will reveal SUPER HEROES specimens variously showing, below the mark, expressions like "Paint Then Wear", "Eraser", "Pencil Sharpener" or "Glue Stic". In fact, the last-named three also bore a licensee's name "Alco" on two of them and "Dennison" on the third, these names having been among those queried by the Examiner and explained supra by applicant.

Ser. No. 222,079

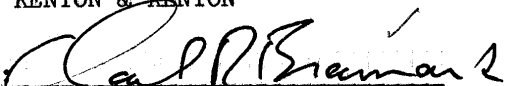
Applicant therefore submits that the issue centering on the specimens should be deemed satisfactorily resolved either by the above "in accord" showing pertinent to the SUPER HERO facsimiles or, in lieu thereof, by acceptance of the SUPER HEROES specimens also of record.

Having, as is believed, responded positively to all points at issue, and noting the negative results of an Office search for confusing resemblance to any registered mark, applicant respectfully requests passage of its mark to publication for opposition. Early notice to this effect is earnestly solicited.

Respectfully submitted,

KENYON & KENYON

By:


Charles R. Brainard
Reg. No. 21,069
59 Maiden Lane
New York, New York 10038
Tel.: (212) 425-7200

CRB:gg

enclosures

excerpt from typical
license agreement (as used
by applicant with licensees);

copy of complete issue of
publication showing
SUPER HEROES mark.