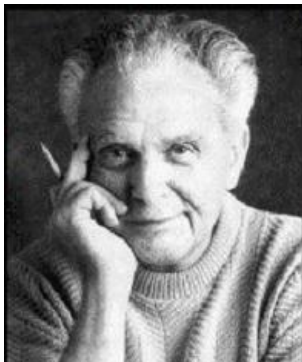


Ka-Pow! Marvel Defeats Kirby in Epic Struggle

Jack Kirby, the world renowned comic book artist and creators of iconic characters such as the Incredible Hulk, the X-Men, The Avengers, the Fantastic Four, Thor and even Iron Man, has lost a titanic legal battle with publishing heavyweight Marvel Worldwide, Inc.



Actually it was the Estate of Jack Kirby, who died in 1994, that lost an ongoing civil lawsuit with Marvel in July of this year when Judge Colleen McMahon, presiding in a U.S. federal court in the Southern District of New York, sided with Marvel in granting a motion for summary judgment. Kirby's Estate had sought to terminate 45 copyrights held by Marvel in several of its comics published between 1958 and 1963 by arguing that Kirby was a freelance artist when he created the characters in stories purchased by Marvel.

Later, in 1972, Kirby signed a contract with Marvel assigning his copyrights in all subsequent works to Marvel, but there was an issue about its applicability to the earlier works, at least according to the Estate. However, Judge McMahon granted Marvel's motion for summary judgment and pointed out in her ruling that the contract contained "definite language" stating that Kirby created the works for hire and did not retain any copyright to his works during the years at issue.

If the court had determined that the stories were not "works for hire," Marvel would still have owned the copyrights, but Kirby's family soon would have been able terminate Marvel's copyright under changes made to the U.S. Copyright Act of 1976. When Congress extended the amount of years copyrights could remain protected to 75 (previously it was 56 years), it provided that persons who sold their copyright could terminate the transfer benefit from those extra years of protection. With that 56 year period approaching, the Kirby Estate could have terminated the transfer and gain at least partial ownership of the copyrights to the characters. As it stands, Marvel clearly owns them all.



David Baker is an Intellectual Property attorney who represents small start-ups to large companies with issues involving copyrights and trademarks, trade secrets, non-disclosure agreements, advertising, rights of publicity, Internet law, counterfeiting issues, licensing, patents and commercial litigation. For more information, please call 714-432-8700 or email dbaker@hkclaw.com.