

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF NEW YORK
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4

5 MARVEL WORLDWIDE, INC., MARVEL)
6 CHARACTERS, INC., and MVL RIGHTS,)
7 LLC,)
8)
9 PLAINTIFFS,)

10)
11 VS.) NO. 10 CV 141 (CM)(KNF)

12)
13 LISA A. KIRBY, BARBARA J. KIRBY,)
14 NEAL L. KIRBY and SUSAN N. KIRBY,)
15)
16 DEFENDANTS.)

17 _____)

18
19 VIDEOTAPED DEPOSITION OF MARK EVANIER
20 LOS ANGELES, CALIFORNIA
21 DECEMBER 6, 2010
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24 REPORTED BY: CHRISTY A. CANNARIATO, CSR #7954, RPR, CRR
25 JOB NO.: 34168

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December 6, 2010

9:35 a.m.

Deposition of Mark Evanier, taken on behalf of
Plaintiffs, held at the offices of Paul Hastings,
515 S. Flower Street, 25th Floor, Los Angeles,
California, before Christy A. Cannariato,
CSR #7954, RPR, CRR.

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A P P E A R A N C E S

REPRESENTING THE PLAINTIFFS:

WEIL, GOTSHAL & MANGES

BY: JAMES W. QUINN, ESQ.

BY: RANDI W. SINGER, ESQ.

767 FIFTH AVENUE

NEW YORK, NY 10153

-AND-

HAYNES AND BOONE

BY: DAVID FLEISCHER, ESQ.

1221 AVENUE OF THE AMERICAS, 26TH FLOOR

NEW YORK, NY 10020

REPRESENTING THE DEFENDANTS:

TOBEROFF & ASSOCIATES

BY: MARC TOBEROFF, ESQ.

2049 CENTURY PARK EAST, SUITE 2720

LOS ANGELES, CA 90067

ALSO PRESENT:

ELI BARD, DEPUTY GENERAL COUNSEL MARVEL ENTERTAINMENT

CHRIS JORDAN, VIDEOGRAPHER

1 with other people relating to Marvel history who had done
2 similar interviews or investigations over time. Who would
3 those people be?

4 A. Well, I spent an awful lot of time talking to
5 people about comic book history. Want me to just start
6 naming names?

7 Q. Yeah. Did you talk to John Morrow?

8 A. Yes, I talked to John Morrow many times.

9 Q. Did you talk to him in connection with his
10 acting as an expert in this case?

11 A. No, I did not.

12 Q. Who else have you talked to?

13 A. About?

14 Q. About Marvel history.

15 A. Marvel history? Every year I go to the Comic
16 Convention in San Diego and talk to dozen, if not
17 hundreds, of people about Marvel history. I go to
18 conventions all the time, and I talk to people there. I
19 talked to a pretty large percentage of people who worked
20 for Marvel or worked freelance for Marvel or did freelance
21 work for Marvel or were around the offices.

22 MR. TOBEROFF: You can name names. Even if
23 there are hundreds, you can still name names.

24 A. Names. All right. People I have talked to
25 about Marvel: Steve Ditko, Don Heck, Wally Wood, Gene

1 Colan, John Buscema, Saul Buscema, Marie Severin. Did I
2 say Roy Thomas? Gary Friedrich, Alan Brodsky, Sol
3 Brodsky, Janice Cohen, John Verpooten, Tony Mortellaro,
4 Herb Trimpee, Chick Stone, Joe Sinott, Frank Giacoia, Mike
5 Esposito, Barry Smith.

6 These are just people who did work for Marvel
7 or did freelance work for Marvel. I have talked to people
8 at other companies about Marvel history.

9 Getting back to people at Marvel, Len Wein,
10 Marv Wolfman, Steve Englehart, Steve Gerber, Gerry Conway,
11 Dan Adkins, Vince Colletta, Syd Shores.

12 I apologize. You're going to have to look up
13 a lot of these on the Internet to find the spellings.

14 George Tuska, Johnny Craig, Archie Goodwin.
15 Did I say Jim Shooter? Tom DeFalco, Mark Gruenwald, Carol
16 Kalish, Peter David.

17 Q. That's fine.

18 A. I've got about another 300 if you want to take
19 the time.

20 Q. No, we can move on.

21 But I'm correct that in connection with the
22 actual preparation of your report, you didn't actually
23 discuss -- have the interviews with those people; correct?

24 A. No. And quite a few of those people are
25 deceased.

1 Q. Do you know whether all those people actually
2 worked at Marvel between 1958 and 1963?

3 A. Some of them did.

4 Q. And others didn't?

5 A. Correct.

6 Q. In fact, during that period of time,
7 between '58 and '63, Marvel had a very small staff; right?

8 A. Correct.

9 Q. So most of those people didn't work there
10 between '58 and '63, did they?

11 MR. TOBEROFF: Objection. Vague as to "worked
12 there."

13 A. Well, I talked to a very large percentage of
14 people who either worked on staff at Marvel between '58
15 and '63 or did freelance work for Marvel between '58 and
16 '63.

17 Q. Do you know who the people were who worked at
18 Marvel between '58 and '63 that you talked to?

19 MR. TOBEROFF: Same objection. Vague.

20 A. Are you talking about people in the office or
21 talking about freelancers?

22 Q. Either.

23 A. All right. Well, in the office there was Stan
24 Lee. There was Flo Steinberg. There was Sol Brodsky.

25 I'm not sure if Nancy Murphy was there at that time. I

1 briefly met Martin Goodman. But between '58 and '63, I
2 think -- well, Stan Goldberg was partly on staff during
3 that time.

4 Q. How about Larry Lieber?

5 A. Larry Lieber was freelance during that period,
6 I believe. I don't believe he was on staff.

7 Q. But he was working from Marvel between '58 and
8 '63?

9 A. He was in the freelance category, I believe.

10 MR. QUINN: I though I said either.

11 MR. TOBEROFF: You can continue with your
12 answer because he asked for both freelance and at the
13 office.

14 A. In freelance, people who worked for Marvel --
15 excuse me.

16 People who did freelance work for Marvel
17 during '58 and '63 would include Jack Kirby, Steve Ditko,
18 Don Heck, Dick Ayers, Gene Colan, Vince Colletta, Russ
19 Heath, Stan Goldberg, Al Hartley. Leaving some people
20 out. These are people who I spoke to.

21 John Buscema did, I think, a few jobs for them
22 during this period. Bill Everett did a few jobs for them
23 during this period. Joe Sinott, Larry Lieber, Don Rico.
24 I think George Roussos. I'm missing somebody. Paul
25 Reinman, Artie Simek, Sam Rosen.

1 to the comic as a co-creation.

2 Q. But you are aware that Mr. Lee has said that
3 he did do the plot outline and gave it to Mr. Kirby before
4 Kirby started to draw?

5 A. Yes. And he still sometimes referred to Jack
6 as the co-creator of the comic.

7 Q. Now, you say in your expert report in
8 paragraph 15 --

9 A. Okay, I'm losing my paperwork here. Hold on
10 here.

11 Q. Exhibit 1.

12 A. Paragraph 15. Page 15 or paragraph 15?

13 Q. Page 15. I'm sorry. Second paragraph on page
14 15.

15 A. Okay.

16 Q. "The Fantastic Four contained so many elements
17 that have antecedents in Kirby's other work, particularly
18 his Challengers of the Unknown for DC Comics."

19 Do you see that?

20 A. Yes.

21 Q. It's fair to say that it was not uncommon for
22 comic books to have a team or a group of characters;
23 right? That wasn't something all that new, was it?

24 A. It wasn't that common.

25 Q. It wasn't uncommon either, was it?

1 A. Let me think about that for a second.

2 When Challengers of the Unknown came out, it
3 was the first comic in quite some time that had four
4 characters. Usually teams were either huge or -- well,
5 most team comics were huge. Challengers of the Unknown
6 spawned a whole series of four-person teams in comics, DC
7 and at other publishers. And The Fantastic Four followed
8 in that momentum.

9 Q. Justice League, was that --

10 A. That was about nine characters.

11 Q. But was that before or after Challengers of
12 the Unknown?

13 A. Justice League followed Challengers.

14 Q. Okay. And it's not uncommon in these
15 circumstances for a group to have, you know, a leader and
16 a muscle man and a girl?

17 A. Yes, it would be -- when Challengers of the
18 Unknown came out, that was uncommon. Challengers of the
19 Unknown did not have a girl in it.

20 Q. Did it have comic relief?

21 A. Yes. There was a character in it named Rocky
22 who was a dese, dem, and does type guy, talked low with a
23 Brooklyn accent, very much like The Thing with the
24 Fantastic Four.

25 MR. TOBEROFF: I reject to the pun.

1 THE WITNESS: You're objecting to me now?

2 MR. TOBEROFF: No. When you said comic
3 relief.

4 A. No, I thought he meant comic relief for real.
5 There was a lighter character. There was a
6 professorial type character.

7 Q. You say at the bottom of page 15 that you find
8 it highly unlikely that Lee acted alone in conceiving
9 these characters. Is it your testimony that Lee is just
10 misremembering or lying? Or how have you concluded that
11 his version is false?

12 A. Well, I am addressing one of his versions.
13 When I have talked to Stan, he talks about -- he has in
14 the past frequently talked about Jack coming up with ideas
15 left and right for everything they did.

16 And so when you've got this person like Jack
17 Kirby who was famous for coming up with ideas for new
18 characters, and when you look at the way these men always
19 worked, the way they had worked on unimportant nonseries
20 romance stories before then, when Jack was involved in
21 plotting the things, I don't understand the logic behind
22 leaving -- omitting Jack from the process of creating what
23 was going to be a very important new comic for them. I
24 don't see the reason to leave him out of that process. If
25 you were an editor or writer, you would beg to have a guy

1 like that in the room helping flesh out whatever ideas you
2 had, change them, and bring in his input.

3 I'm not saying Stan is lying. I'm saying he's
4 choosing his words carefully, remembering a version. I
5 disagree with Stan about some aspects of Marvel history.
6 We've had friendly arguments about certain issues and
7 certain comics and how things came about and how they were
8 published. And sometimes I get him to agree with me. I
9 show him evidence.

10 Q. Well, one thing we've established, during this
11 period from '58 to '63, Stan was there, and you weren't.

12 A. Yes.

13 Q. You say in your expert report at page 15
14 carrying over to 16 that "It is also worth noting that
15 Stan Lee did not create any important characters either
16 before Jack Kirby first worked with Lee or after Jack
17 Kirby stopped working with Lee in 1970."

18 Do you see that bottom of 15 over to 16 in
19 your report?

20 A. Hold on here. Yes, I see that.

21 Q. After he stopped working for Lee in 1970, what
22 successful characters did Kirby create?

23 A. Well, he created a series for DC called The
24 New Gods. Featured a villain called Dark Side, one of the
25 most important villains in Allied DC Comics. Did a book