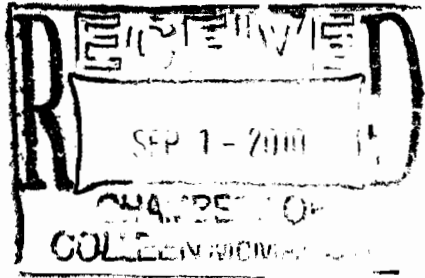
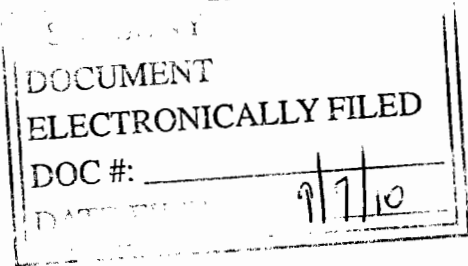


haynesboone



Direct Phone: 212.659.4989
Direct Fax: 212.884.9567
david.fleischer@haynesboone.com



MEMO ENDORSED

9/7/2010
I can sort out the relevance of all this when I decide the motion. I will accept the supplemental declaration but if it is irrelevant I will pay it no mind

September 1, 2010

VIA FACSIMILE (212-805-6326)

Hon. Colleen McMahon
United States District Judge
Daniel P. Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: Marvel Worldwide, Inc. v. Kirby, 10-cv-141 (CM) (KF)

Dear Judge McMahon:

My firm, together with Weil, Gotshal & Manges LLP and Paul, Hastings, Janofsky & Walker LLP, represents plaintiffs in the above referenced action. I write in response to a letter dated August 31, 2010 to Your Honor from defendants' counsel, Marc Toberoff, enclosing Mr. Toberoff's supplemental declaration dated August 31, 2010 in opposition to plaintiffs' pending motion to dismiss defendants' counterclaims.

The gist of Mr. Toberoff's letter and declaration is that had defendants been aware that Marvel had in its possession the various items of artwork described in my August 26, 2010 letter to Mr. Toberoff (exhibit 2 to his declaration) when defendants filed their opposition to plaintiffs' motion to dismiss, that information would have been included in their opposition.

Mr. Toberoff, however, fails to state why this information would have been included in defendants' opposition or how this information affects plaintiffs' pending motion to dismiss defendants' counterclaims. In fact, this information is irrelevant. Plaintiffs' motion to dismiss defendants' conversion and breach of contract claims is based on their discharge in bankruptcy, the bar of the statute of limitations and counterclaimants' lack of standing. Furthermore, as my August 26 letter indicates, Marvel is making arrangements to deliver 37 of the 60 pages in accordance with its artwork return policy; the remainder of the pages will be made available to the other contributors to that artwork or their heirs.

Haynes and Boone, LLP
Attorneys and Counselors
1221 Avenue of the Americas, 26th Floor
New York, New York 10020-1007
Phone: 212.659.7300
Fax: 212.918.8989
www.haynesboone.com

haynesboone

Hon. Colleen McMahon
September 1, 2010
Page 2

In sum, plaintiffs respectfully submit that Mr. Toberoff's supplemental declaration should have no effect on plaintiffs' pending motion to dismiss defendants' counterclaims.

Sincerely,



David Fleischer

cc: Marc Toberoff, Esq.
James W. Quinn, Esq.
Jodi A. Kleinick, Esq.
(via facsimile)