

Artists Battle Marvel Bid To Destroy Iron Man Infringement Suit

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Law360, New York (May 29, 2019, 9:33 PM EDT) -- Two comic book artists battled a bid by [Disney's Marvel Entertainment](#) to bring their copyright lawsuit over an "Iron Man 3" poster to an untimely end in Manhattan federal court on Wednesday, calling testimony from entertainment executives "very suspicious."



An image of an exhibit from Horizon Comics Production Inc's complaint against Marvel Entertainment, alleging copyright infringement of its Radix comic series.

Sparring with Marvel before U.S. District Judge J. Paul Oetken, Horizon Comics Productions Inc. reiterated its claim that Marvel's Editor-in-Chief C.B. Cebulski [perjured himself](#) when he "unfailingly denied having any knowledge" of Horizon artists Ben and Ray Lai —

the same brothers Cebulski allegedly solicited and hired for artwork in their "Radix" series that is alleged to have been copied, Horizon argued.

"He was interested in their work," Horizon counsel Jeffrey Wiesner said, citing hundreds of emails exchanged between Cebulski and Ray Lai. Wiesner went on to say the idea that Marvel then copied that work in an "Iron Man 3" poster is "not a far-fetched proposition," countering an argument from Marvel counsel Sanford Litvack.

Litvack, however, did not stop at that characterization as he attacked Horizon's various arguments. He called Horizon's contention that "Radix" was well-known "irrelevant" and threw up his hands incredulously as he cited Horizon's ambiguity about what year Cebulski might have copied a "Radix" drawing.

"You want to talk about conjecture? That's conjecture!" Litvack said.

In regard to the similarity of the images themselves, Litvack disagreed with the judge's earlier ruling that the images bore similarities but balked at the notion that it met the legal standard for copyright infringement at this stage in this lawsuit.

"Substantially similar? Maybe," Litvack said. "Strikingly similar? Not a chance."

Litvack then asked the judge to consider the "hundreds of thousands of documents" showing a lengthy creative process as well as the absence of evidence that the Marvel team had access to a drawing

from Horizon's "Radix" comic series when it was developing the "Iron Man 3" poster.

But Horizon questioned that evidence of Marvel's creative process, saying that there was no sketch that resembled the final movie poster that Marvel is alleged to have copied. "There are not any building blocks along the way," Weisner said.

With regard to the issue of the Marvel team having access to a drawing of "Radix" character Caliban, the notion that Horizon "has to prove access" is wrongheaded, Weisner said. "They don't."

Nevertheless, Judge Oetken told Horizon, "You do have a problem," referring to the so-called chain of people passing along the "Radix" artwork, considering the "Iron Man 3" poster creators said under oath that they didn't see the "Radix" poster.

"It's a pretty attenuated chain," Judge Oetken said.

Weisner countered by questioning the truthfulness of those testimonies, saying that it was remarkable that people who had worked with the Lai brothers "disavowed" knowing them.

"That's very suspicious," Weisner said, highlighting evidence that Cebulski allegedly recruited, hired and worked as the Lai brothers' direct supervisor. Cebulski did not testify that he simply didn't recall the Lai brothers, Weisner noted. He denied knowing them at all.

Litvack later responded that even if Cebulski has a "faulty memory" or

told a "dumb lie," Horizon's case rests on showing that the art team who put together the "Iron Man 3" poster copied the "Radix" poster at issue — something Marvel has repeatedly said Horizon has failed to do.

"This is a creative process," Litvack said. "They can reach out and grasp. There's nothing to hold on to."

In the midst of the jousting, Judge Oetken appeared to tip his hand somewhat, saying that he questioned himself on an earlier motion to dismiss, given Marvel's extensive "development evidence" showing its creative process. Ultimately, however, Judge Oetken reserved judgment and adjourned — leaving the comic book artists and Marvel to await news of their fate.

Counsel for Marvel and Horizon declined to comment further after the proceedings. A spokesman for Marvel did not immediately respond to an after-hours request for comment.

Horizon was represented by Jeffrey Wiesner of Wiesner McKinnon LLP and Paul S. Sennott of Sennott Williams & Rogers LLP.

The defendants are represented by Sanford M. Litvack of [Chaffetz Lindsey LLP](#) and Benjamin A. Fleming of [Hogan Lovells](#).

The case is Horizon Comics Productions Inc. v. Marvel Entertainment LLC et al., case number 1:16-cv-02499, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Hannah Albarazi. Editing by Jay Jackson Jr.

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