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Top Marvel Editor Perjured Self In Iron Man IP Suit, Artists Say

By **Hannah Albarazi**

Law360 (April 26, 2019, 9:29 PM EDT) -- Two comic artists argued Thursday they should be allowed to pursue copyright infringement claims against Disney's Marvel Entertainment for allegedly ripping off their armor designs for an "Iron Man 3" poster, and raised allegations that Marvel's top editor perjured himself while being deposed for the case.

In opposing Marvel's motion for summary judgment, Horizon Comics Productions Inc. argued that Marvel is "willfully blind" to the fact that it recruited Horizon comic artists Ben and Ray Lai because Marvel employees were familiar with their work on the "Radix" comic book series, the very series from which the design for the "Iron Man 3" poster was supposedly stolen.

Horizon pointed to emails it says show employees who worked with the Lai brothers at Marvel knew of "Radix," and then went on to work with the creators of the "Iron Man 3" poster.

Horizon says Marvel's Editor-in-Chief C.B. Cebulski testified that he had almost no interaction with the Lai brothers, but Horizon points to hundreds of emails showing that Cebulski worked with them on comic books.

"Faced with Cebulski's startling testimony, Ray Lai searched old hard drives and computers, and was finally able to forensically recover hundreds of emails exchanged between him and Cebulski concerning work on the very comic books Cebulski denied he had any role in creating," Horizon says. "The conclusion that Cebulski perjured himself at his deposition is inescapable."

Horizon says another Marvel editor, Tom Brevoort, testified that he had never seen issues of "Radix" before Horizon's lawsuit. But Horizon points to a 2002 email to the Lai Brothers by Brevoort's assistant editor — in which Brevoort is copied — that reads, "After seeing the work you have been doing both in Radix and with C.B., we'd love for [the new Thor] art team to be you guys!"

In 2016, Horizon sued Marvel, claiming that Stan Lee's **original Iron Man** was clad in spandex and "minimal armor," but after the Lai brothers sent Marvel copies of "Radix" — and after the comic giant hired them in 2002 — the Iron Man seen in the films was "radically" different. The mechanized armored bodysuit worn by Iron Man in the multibillion-dollar film franchise and in its 2013 poster was lifted from their 2001 comic book series "Radix."

Horizon says the armor in Marvel's "Iron Man 3" poster has "virtually identical dimensions and proportions" as their "Radix" illustration.

In March 2017, U.S. District Judge J. Paul Oetken **trimmed part of the suit**, leaving in arguments that the poster may have infringed the "Radix" designs, court records show.

Marvel denies the copyright infringement accusations by Horizon and claims that discovery revealed that Marvel never had access to the "Radix" drawing in question, and that the individuals responsible for the creation of the poster had never heard of "Radix."

"The claim that [the poster's artists] would copy a drawing made some 10 years earlier by unknown artists, to promote an unheard-of comic book, depicting an anonymous character wearing a generic armored suit in a stock fighting pose is, candidly, ludicrous," Marvel said in its **motion for summary judgment**. "It did not happen; fortunately, the undisputed facts make that crystal clear."

Horizon told the court Thursday, "demeaning characterizations ... notwithstanding," Marvel recruited the Lai brothers to work for it specifically because it liked their work in "Radix."

Counsel for Marvel declined to comment.

Horizon is represented by Jeffrey Wiesner and Jennifer McKinnon of Wiesner McKinnon 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 Dave Simpson. Editing by Adam LoBelia.

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