

# EXHIBIT 3

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF NEW YORK  
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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  
22  
23

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.

A P P E A R A N C E S

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3 REPRESENTING THE PLAINTIFFS:

4 WEIL, GOTSHAL & MANGES

5 BY: JAMES W. QUINN, ESQ.

6 BY: RANDI W. SINGER, ESQ.

7 767 FIFTH AVENUE

8 NEW YORK, NY 10153

9 -AND-

10 HAYNES AND BOONE

11 BY: DAVID FLEISCHER, ESQ.

12 1221 AVENUE OF THE AMERICAS, 26TH FLOOR

13 NEW YORK, NY 10020

14  
15 REPRESENTING THE DEFENDANTS:

16 TOBEROFF & ASSOCIATES

17 BY: MARC TOBEROFF, ESQ.

18 2049 CENTURY PARK EAST, SUITE 2720

19 LOS ANGELES, CA 90067

20  
21 ALSO PRESENT:

22 ELI BARD, DEPUTY GENERAL COUNSEL MARVEL ENTERTAINMENT

23 CHRIS JORDAN, VIDEOGRAPHER

24

25

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

1 called Commandee for DC that ran for quite awhile. He  
2 went back to Marvel and created a book called Machine Man,  
3 and a book called The Eternals, which they keep reviving  
4 both of those. And it had a best-selling series of  
5 reprints of those.

6 He created a book -- well, if you want to go  
7 through the list, for DC he created The New Gods, The  
8 Forever People, Mr. Miracle. Some of these were ideas  
9 that he had while he was still at Marvel but they were  
10 published first by DC. The Demon, Commandee. He did --  
11 and each one of these comics had many, many spin off  
12 characters who are now toys and games and even go out to  
13 the toy store and buy model figures of an awful lot of  
14 these characters that he created for DC in the early 70s.

15 Then he went to work for Marvel, back to  
16 Marvel for a while. And he did The Eternals. And I  
17 mentioned he did Machine Man. He did -- he went back to  
18 Captain America and the Black Panther. And he introduced  
19 a lot of supporting characters in those books which have  
20 since been used over and over.

21 He then went to work for Pacific Comics, and  
22 he did Captain Victory and Silver Star.

23 Q. Anything else?

24 A. There's a lot of other lesser characters.

25 Q. And what's your definition of successful in