

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

MARVEL WORLDWIDE, INC.,  
MARVEL CHARACTERS, INC. and  
MVL RIGHTS, LLC,

Plaintiffs,

- against-

LISA R. KIRBY, BARBARA J. KIRBY,  
NEAL L. KIRBY and SUSAN N. KIRBY,

Defendants.

-----X

Civil Action No. 10 Civ. 141 (CM) (KNF)

LISA R. KIRBY, BARBARA J. KIRBY,  
NEAL L. KIRBY and SUSAN N. KIRBY,

Counterclaimants,

- against-

MARVEL ENTERTAINMENT, INC.,  
MARVEL WORLDWIDE, INC.,  
MARVEL CHARACTERS, INC.,  
MVL RIGHTS, LLC,  
THE WALT DISNEY COMPANY,  
and DOES 1 through 10,

Counterclaim-Defendants.

-----X

**ANSWER OF COUNTERCLAIM-DEFENDANTS**  
**MARVEL WORLDWIDE, INC., MARVEL CHARACTERS, INC., MVL RIGHTS LLC,**  
**MARVEL ENTERTAINMENT, INC., AND THE WALT DISNEY COMPANY TO**  
**COUNTERCLAIMANTS' COUNTERCLAIM**

Marvel Entertainment, LLC (successor by merger to Marvel Entertainment, Inc.), Marvel Worldwide, Inc., Marvel Characters, Inc. (“Marvel Characters”), MVL Rights LLC (“MVL Rights”), and The Walt Disney Company (collectively, the “Counterclaim-Defendants”), by and through their undersigned counsel, hereby answer the counterclaimants’ first counterclaim (the “Counterclaim”). Pursuant to the Opinion and Order of the Honorable Colleen McMahon, issued November 22, 2010, the counterclaimants’ second, third, fourth, and fifth counterclaims for relief have been dismissed. Accordingly, no response is required as to paragraphs 33 through 87 of the Counterclaim. With respect to Counterclaim-Defendant The Walt Disney Company, its responses to paragraphs 18-22 and 24-25 of the Counterclaim are made upon information and belief.

### **JURISDICTION AND VENUE**

1. Paragraph 1 of the Counterclaim states legal conclusions as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants admit that the Counterclaim purports to state a cause of action for declaratory relief arising out of their attempt to terminate alleged prior grants of copyright ownership rights to certain characters listed in Paragraph 1 of the Counterclaim, and deny all other allegations of Paragraph 1 of the Counterclaim.

2. Paragraph 2 of the Counterclaim states legal conclusions as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants admit that this Court has subject matter jurisdiction over the only remaining counterclaim, and deny all the remaining allegations of Paragraph 2 of the Counterclaim.

3. Paragraph 3 of the Counterclaim states legal conclusions as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-

Defendants admit that this Court has personal jurisdiction over the Counterclaim-Defendants.

4. Paragraph 4 of the Counterclaim states legal conclusions as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants admit that venue is proper.

### **PARTIES**

5. The Counterclaim-Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Counterclaim.

6. The Counterclaim-Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Counterclaim.

7. The Counterclaim-Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Counterclaim.

8. The Counterclaim-Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Counterclaim.

9. The Counterclaim-Defendants admit the allegations in Paragraph 9 of the Counterclaim.

10. The Counterclaim-Defendants admit that Marvel Entertainment, LLC regularly conducts business in the State of New York, and deny all the remaining allegations in Paragraph 10 of the Counterclaim.

11. The Counterclaim-Defendants admit the allegations in Paragraph 11 of the Counterclaim.

12. The Counterclaim-Defendants admit that Marvel Characters is a Delaware Corporation which maintains its principal place of business in Manhattan Beach, California, and deny all the remaining allegations in Paragraph 12 of the Counterclaim.

13. The Counterclaim-Defendants deny the allegations in Paragraph 13 of the Counterclaim.

14. The Counterclaim-Defendants admit that Marvel Characters and MVL Rights are each successors-in-interest to certain of the entities identified in Paragraph 14 of the Counterclaim and deny all the remaining allegations in Paragraph 14 of the Counterclaim.

15. Paragraph 15 of the Counterclaim states legal conclusions as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants deny the allegations in Paragraph 15 of the Counterclaim.

16. The Counterclaim-Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Counterclaim.

17. Paragraph 17 of the Counterclaim states legal conclusions as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants deny the allegations in Paragraph 17 of the Counterclaim.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

18. The Counterclaim-Defendants admit that Jack Kirby was a comic book artist who contributed to numerous comic books and deny all other allegations in Paragraph 18 of the Counterclaim.

19. The Counterclaim-Defendants admit that, between 1958 and 1963, Jack Kirby made contributions to comic books featuring a variety of characters and deny all other allegations in Paragraph 19 of the Counterclaim.

20. The Counterclaim-Defendants deny the allegations in the first sentence of Paragraph 20 of the Counterclaim. The Counterclaim-Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20

of the Counterclaim.

21. The Counterclaim-Defendants deny the allegations in Paragraph 21 of the Counterclaim.

22. The Counterclaim-Defendants admit the allegations in the first sentence of Paragraph 22 of the Counterclaim and deny all the remaining allegations in Paragraph 22 of the Counterclaim.

23. Paragraph 23 of the Counterclaim states legal conclusions as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants deny the allegations in Paragraph 23.

24. The Counterclaim-Defendants admit that, on or about May 30, 1972, Jack Kirby entered into an agreement with Magazine Management Co., Inc. and that Marvel is the successor-in-interest to Magazine Management Co., Inc. Counterclaim-Defendants deny all other allegations in Paragraph 24 of the Counterclaim.

25. The Counterclaim-Defendants admit that on or about September 16, 2009, Counterclaimants served notices that purported to terminate certain grants of renewal copyrights pursuant to the Copyright Act, 17 U.S.C. § 304(c). The Counterclaim-Defendants deny all other allegations in Paragraph 25 of the Counterclaim.

26. Upon information and belief, the Counterclaim-Defendants admit that the copyrights in the copyrightable subject matter to which reference is made in the Counterclaimants' Termination Notices (as defined in paragraph 25 of the Counterclaim) were renewed by Marvel Characters or MVL Rights or their predecessors and deny all other allegations in Paragraph 26 of the Counterclaim.

27. Paragraph 27 of the Counterclaim states a legal conclusion as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants deny the allegations in Paragraph 27 of the Counterclaim.

28. The Counterclaim-Defendants deny the allegations in Paragraph 28 of the Counterclaim.

### **FIRST CLAIM FOR RELIEF**

#### **(Declaratory Relief That the Notices of Termination are Effective Pursuant to 17 U.S.C. § 304(c) – Against All Counterclaim-Defendants)**

29. The Counterclaim-Defendants repeat their responses to each and every allegation contained in Paragraphs 1 through 28 of the Counterclaim as if set forth fully herein.

30. Paragraph 30 of the Counterclaim states a legal conclusion as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants deny the allegations of Paragraph 30.

31. Paragraph 31 of the Counterclaim states a legal conclusion as to which no responsive pleading is required. To the extent an answer is required the Counterclaim-Defendants deny the allegations in Paragraph 31 of the Counterclaim.

32. Paragraph 32 of the Counterclaim states a legal conclusion as to which no responsive pleading is required. To the extent an answer is required, the Counterclaim-Defendants deny the allegations of Paragraph 32 of the Counterclaim.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

Without assuming any burden they would not otherwise bear, and without waiving and hereby expressly reserving the right to assert any and all such defenses at such time and to such extent as discovery and factual developments establish a basis therefor, the Counterclaim-Defendants assert the following additional and/or affirmative defenses as to The Counterclaim:

FIRST ADDITIONAL OR AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, for failure to state a claim upon which relief may be granted.

SECOND ADDITIONAL OR AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, by the doctrine of waiver.

THIRD ADDITIONAL OR AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, by the doctrine of res judicata or estoppel.

FOURTH ADDITIONAL OR AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, by the doctrine of laches.

FIFTH ADDITIONAL OR AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, by the doctrine of unclean hands.

SIXTH ADDITIONAL OR AFFIRMATIVE DEFENSE

The Counterclaim is subject to dismissal based upon documentary evidence.

SEVENTH ADDITIONAL OR AFFIRMATIVE DEFENSE

Counterclaimants have no ownership interests in the characters identified in the copyright termination notices under the work-for-hire provision of the Copyright Act of 1909, which is controlling in this case.

EIGHTH ADDITIONAL OR AFFIRMATIVE DEFENSE

Counterclaimants are not entitled to an award of attorneys' fees or costs.

**PRAYER FOR RELIEF**

For the reasons set forth above, the Counterclaim-Defendants respectfully request that the Court:

1. Dismiss the Counterclaim in its entirety with prejudice;
2. Enter judgment in favor of the Counterclaim-Defendants and against Counterclaimants on the only remaining claim for relief set forth in the Counterclaim;
3. Award all reasonable fees, costs and expenses to the Counterclaim-Defendants as permitted by law; and
4. Award such other and further relief as the Court deems just and proper.

Dated: New York, New York  
December 6, 2010

By: /s/ James W. Quinn

WEIL, GOTSHAL & MANGES LLP  
James W. Quinn  
R. Bruce Rich  
Randi W. Singer  
767 Fifth Avenue  
New York, NY 10153  
Tel: (212) 310-8000  
Fax: (212) 310-8007

PAUL, HASTINGS, JANOFSKY &  
WALKER LLP  
Jodi A. Kleinick  
75 East 55th Street  
New York, NY 10022  
Tel.: (212) 318-6000  
Fax: (212) 319-4090

HAYNES AND BOONE, LLP  
David Fleischer  
1221 Avenue of the Americas, 26th floor  
New York, NY 10020  
(212) 659-7300

*Attorneys for Plaintiffs and Counterclaim-  
Defendants*