

EXHIBIT 5

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Deponent: *Evaniel Expet*
Date: *12-6-70* Rptr. *cc*
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:
MARVEL ENTERTAINMENT GROUP, INC.;
THE ASHER CANDY COMPANY; FLEER CORP.;
FRANK H. FLEER CORP.; HEROES WORLD
DISTRIBUTION, INC.; MAUBU COMICS) Case No. 97-638-
RRM
ENTERTAINMENT, INC.; MARVEL)
CHARACTERS, INC.; MARVEL DIRECT)
MARKETING INC.; and SKYBOX)
INTERNATIONAL, INC.,)
Debtors.)
DEPOSITION OF MARK EVANIER
Tuesday, October 12, 1999

NEWLANDER & NEWLANDER
1136 WILSHIRE BOULEVARD, SUITE 200
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 482-1522

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Deposition of MARK EVANIER, taken by
Marvel Enterprises, Inc. at 2049 Century
Park East, Suite 2350, Los Angeles,
California, commencing at 11:35 a.m.,
Tuesday, October 12, 1999, before
Laura L. Gray, C.S.R. No. 4104, and
Gerrilynn Strosnider, C.S.R. No. 4128.

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New York, New York 10022

ON BEHALF OF MARVIN A. WOLFMAN:
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Los Angeles, California 90067-3112

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APPEARANCES OF COUNSEL: (Cont'd)
ON BEHALF OF NEW LINE CINEMA:
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ALSO PRESENT:
MARVIN A. WOLFMAN (As Noted)

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	EXHIBITS	
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EXHIBIT NO.	DESCRIPTION	PAGE
1	Deposition notice (10 pages)	5
2	Marvel Comics Group voucher (1 page)	10

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EXHIBIT NO.	DESCRIPTION	PAGE
3	Letter from Mark S. Evanier to Western Publishing Company, Inc. (1 page)	13
4	Document titled "Artwork Release" dated 6/14/79 (1 page)	13
5	Document titled "Assignment" (10 pages)	15
6	February 20, 1987 letter on Marvel Entertainment Group letterhead from Joseph A. Calamari to Mr. Jack Kirby, with attachment (11 pages)	16
7	Document titled "Acknowledgement Of Copyright Ownership" (2 pages)	17
8	Complaint and second amended complaint in Simon vs. Goodman, et al. (14 pages)	19

EXHIBIT NO.	DESCRIPTION	PAGE
9	Document titled "Expert Report of Mark Evanier" (9 pages)	21
10	Copy of a portion of "The Art of the Comic Book, an Aesthetic History" (12 pages)	200
11	Copy of a portion of "The Comics Journal" (41 pages)	213
12	Copy of a portion of "The Comics Journal" (9 pages)	259

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(1) MARK EVANIER,
(2) having been duly sworn, (3) was examined and testified as follows:
(5) EXAMINATION
(6) BY MR. FLEISCHER:
(7) Q: Mr. Evanier, would you state your address (8) for the record, please.
(9) A: 6282 Drexel Avenue, D-r-e-x-e-l, Avenue, (10) L.A., 90048.
(11) Q: How old are you, sir?
(12) A: 47.
(13) MR. FLEISCHER: Let me ask the reporter to (14) mark for identification as Evanier Exhibit 1 a photocopy (15) of a deposition notice dated September 24, 1999.
(16) (Evanier Exhibit No. 1 (17) was mrk'd for identification.)
(18) BY MR. FLEISCHER:
(19) Q: Mr. Evanier, have you ever seen a copy of (20) what we've marked as Exhibit 1?
(21) A: I believe this is a copy of a document (22) that I was given, yes.
(23) Q: Directing your attention to page 8 of the (24) document, there are a series of numbered paragraphs (25) requesting documents. Did you review your files for the

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(1) purpose of ascertaining whether you had any documents (2) responsive to the numbered paragraphs in the document (3) request?
(4) A: Could I have that one more time?
(5) Q: Did you review your records, wherever you (6) keep them, to determine whether you had in your (7) possession or control any documents that fell into the (8) categories requested in paragraphs 1 through 17 of the (9) document request?
(10) A: Yes, I did.
(11) Q: And did you bring them with you today?
(12) A: I brought the material I understood was (13) covered, yes.
(14) Q: Okay. May I see it, please.
(15) MR. DILIBERTO: This is an original we'd (16) like to have back, but I have made a copy for you, which (17) is in here.
(18) MR. FLEISCHER: Okay. (19) Off the record a second.

ff-the-record discussion.)
(21) MR. FLEISCHER: Let me mark for (22) identification as Evanier Exhibit 2 a photocopy of a (23) document that has a voucher number of 125733 at the (24) upper right-hand corner and the document control number (25) WOLF 239 in the lower right-hand corner.

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(1) (Evanier Exhibit No. 2 (2) was mrk'd for identification.)
(3) BY MR. FLEISCHER:
(4) Q: Mr. Evanier, how did you come into (5) possession of Exhibit 2?
(6) A: When I was working for Marvel in the (7) Eighties, I was sent a pile of these, of which this is (8) one copy of many duplicates.
(9) Q: I notice that the document has a control (10) number in the lower right-hand corner. Was the control (11) number placed on the document after you furnished it to (12) Mr. Wolfman's counsel?
(13) A: Yes, it was. When you asked me how did I (14) come into possession of this, I was referring to the (15) document that was xeroxed, not the document that you (16) handed me.
(17) Q: Right. You were referring to the (18) original.
(19) A: Correct.
(20) Q: And are you able to tell us when for the (21) first time you received a document in the form of (22) Exhibit 2 from Marvel?
(23) MR. DILIBERTO: Objection. Vague and (24) ambiguous.

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(1) BY MR. FLEISCHER:
(2) Q: Do you understand the question?
(3) A: What do I do now?
(4) Q: You can answer.
(5) A: All right.
(6) Q: Throughout the deposition, you will hear (7) objections.
(8) A: All right. Ask me again, please.
(9) MR. FLEISCHER: Would you read it back, (10) please.
(11) (The record was read as follows:
(12) "Q. And are you able to tell us (13) when for the first time you received a (14) document in the form of Exhibit 2 from (15) Marvel?"
(16) BY THE WITNESS:
(17) A: I received it at some point in the early (18) to mid Eighties.
(19) BY MR. FLEISCHER:
(20) Q: Do you remember in connection with what (21) work, if any, you received the first document of this (22) type?
(23) A: No.

[14] profit-sharing plan - I take that back. It would be a [15] royalty provision, which was similar to the [16] profit-sharing plan that Western Publishing had in the [17] Sixties and into the Seventies, but DC had not similarly [18] had that across-the-board plan for anyone who created [19] new property for them or who was doing a comic that sold [20] over a certain level.

[21] Q: Any other changes between those two [22] periods that you are aware of?

[23] A: There were many changes, as there continue [24] to be changes in the business constantly as different [25] deals are made and as different contracts are made. I'm

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[1] not sure - If you could ask me a more specific [2] question, I'll try to give you a more specific answer.

[3] Q: I'm not referring to specific transactions [4] between a specific writer and a specific company. I'm [5] trying to ascertain whether it is your understanding [6] that on an industrywide basis there were material [7] changes in the way the rights to comic book materials [8] were handled by comic book publishers before 1978 and [9] after 1978.

[10] A: Okay. Yes. I understand now. Thank you. [11] In the latter period - not necessarily [12] immediately after 1978, but in the period that you're [13] describing, there was much more reliance on written [14] contracts, deal memos in advance of doing the work, [15] allowing lawyers to consult on comic book company [16] contracts, agents. There actually were agents that - [17] I never heard prior to '78 of anyone having an agent [18] represent them in a negotiation with a comic book [19] company, but that happened later on.

[20] There were new contracts and new language [21] we had never seen before, some of which I believe was [22] retroactively trying to acquire rights to materials [23] created prior to 1978.

[24] Q: Anything else?

[25] A: They started printing on different paper

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[1] stocks a lot during the Eighties. Comic books were more [2] distributed by a method called direct distribution, [3] which sold the comics on a non-returnable basis to comic [4] book shops as opposed to selling them through what were [5] called ID distributors which put them on newsstands on a [6] returnable basis.

[7] There was more emphasis on credits, on [8] artists and writers having their names prominently [9] displayed on their works in the Eighties. There were [10]

more cases of artists retaining creative control over [11] their work. There were more cases of people making [12] deals where they held the copyrights to their [13] characters.

[14] There were more cases where people were [15] working in even a wider variety of methods for [16] individual companies. That is to say that there was [17] less reliance on any given company on one way of doing [18] comics. I think the business matured in that they were [19] willing to tolerate even more creative variance. People [20] got to write about more adult-subject material [21] sometimes, they got to be more experimental in the [22] artwork, they began experimenting with computer [23] lettering and computer coloring that had not existed [24] before '78.

[25] It's a very different - The industry

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[1] every year or so is different from, you know, the years [2] before.

[3] (Mr. Askarieh left the room.)

[4] BY MR. FLEISCHER:

[5] Q: Specifically with respect to the ownership [6] of copyright, were there any changes in the industry of [7] which you were aware that occurred after January 1 of [8] 1978?

[9] A: Some of the companies became more willing [10] to make deals in which the artist or writer or some [11] combination thereof held the copyright to material than [12] they had been before.

[13] Q: Focusing on the mainstream publishers that [14] you identified earlier, what was the position of DC on [15] the ownership of copyright prior to 1978?

[16] A: I don't know.

[17] Q: What was the position of Marvel?

[18] A: I don't know that there ever was a clearly [19] stated position.

[20] Q: What was the position of Western?

[21] A: I don't know what their position was.

[22] Q: What was the position of Archie?

[23] A: I don't know what their position was.

[24] Q: What was the position of Harvey?

[25] A: I don't know what their position was.

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[1] Q: What was the position of Charlton?

[2] A: I don't know what their position was.

[3] Q: What was the position of Print Mint?

[4] A: Print Mint, generally I believe the [5] artists usually held the copyrights on their work.

[6] Q: And how did you come to that [7] understanding?

[8] A: Looking at Print Mint comics and seeing [9] the copyright notices.

[10] Q: And in your view, Print Mint was a [11] mainstream publisher prior to 1978?

[12] A: Well, by my definition, it would be. They [13] certainly sold an awful lot of comics. I'm basing [14] "mainstream" on sales figures.

[15] (Mr. Askarieh returned to the room.)

[16] BY MR. FLEISCHER:

[17] Q: By order of magnitude, what would you say [18] that Print Mint's total comic book sales in 1977 were as [19] compared with those of either DC or Marvel?

[20] A: I don't know. The sales figures in the [21] comic book industry at that time were generally [22] considered to fall into two categories: secrets and [23] lies.

[24] Q: I thought you numbered Print Mint among [25] the mainstream publishers because of your understanding

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[1] of their sales.

[2] A: Yes.

[3] Q: So what was your understanding of their [4] sales?

[5] A: My understanding of their sales was that [6] they sold an awful lot of comic books that were around [7] on an awful lot of racks.

[8] Q: What do you mean by "awful lot of comic [9] books"?

[10] A: They published a substantial number of [11] comics. I can't quote you accurate sales figures here [12] because the sales figures in the business have long been [13] kept very secretive or, when they were published, [14] rumored to have been completely inaccurate. But we [15] heard stories of individual Print Mint titles selling [16] 200, 300,000 copies.

[17] Q: Which titles were those?

[18] A: I can't give you the names off-hand. I [19] believe they published Zap Comix for a while. I believe [20] they published a couple of ghost, monster-type comics. [21] I don't really know.

[22] Q: What was the name of the comic that you [23] saw the copyright notice on that led you to believe that [24] the practice of Print Mint was to leave the copyright [25] with the writer?

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[1] A: I can't cite a specific one. I just [2] always saw copyright notices in Print Mint comics.

[3] Q: And what did the copyright notices in [4] Print Mint comics say that you recall?