

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERBABIES LIMITED,

Petitioner,

v.

DC COMICS &  
MARVEL CHARACTERS, INC.

Registrants.

Cancellation No. \_\_\_\_\_

Mark: SUPER HEROES  
SUPER HERO

Registration Nos:  
1179067, 1140452, 3674448, 825835

**Petition to Cancel SUPER HEROES Trademark Registrations**

1. We live in a world of super heroes. For the better part of a century, super heroes and the superhero genre have ruled the imagination and inspired millions to achieve greatness.

2. Super heroes are ubiquitous. They are featured on products of all shapes and sizes, appear in countless stories, and have a presence in every major storytelling medium.

3. This case is about two companies—DC and Marvel—who claim the *exclusive* right to use the term SUPER HERO.

4. Marvel and DC did not invent the concept of super heroes, superheroes, or the superhero genre. The term in its varied spellings has origins dating back to at least 1909—decades before DC or Marvel even existed. The first comic book characters to receive the super hero label were not affiliated with DC or Marvel.

5. In 1980—decades after the birth of super heroes—DC and Marvel jointly registered SUPER HEROES as a trademark.<sup>1</sup>

6. DC and Marvel claim that no one can use the term SUPER HERO (or superhero, super-hero, or any other version of the term) without their permission. DC and Marvel are wrong. Trademark law does not permit companies to claim ownership over an entire genre. SUPER HERO is a generic term that should not be protected as a trademark.

7. Trademark law also does not allow competitors to claim joint ownership over a single mark. The purpose of a trademark is to identify a *single* source of goods and services.

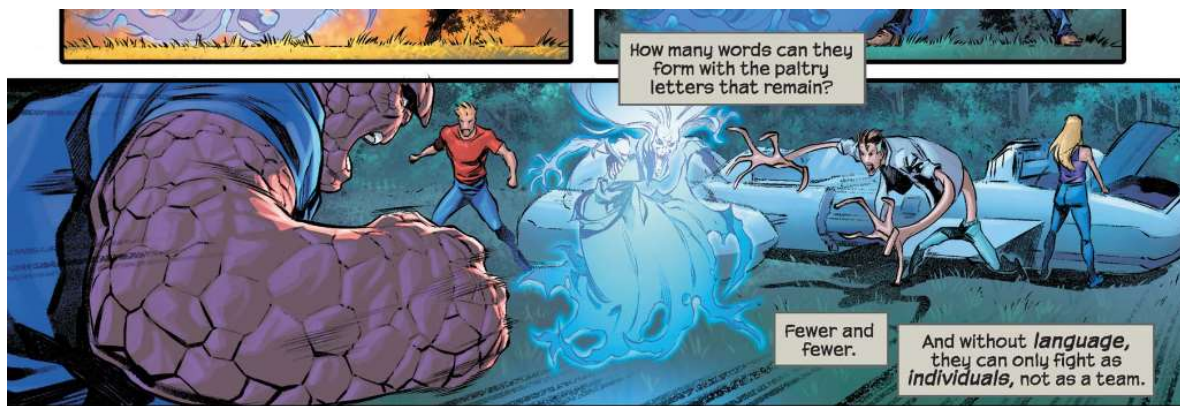
8. Over the years, DC and Marvel have used their SUPER HERO registrations not to prevent confusion, but to stifle competition and exclude others from the marketplace.

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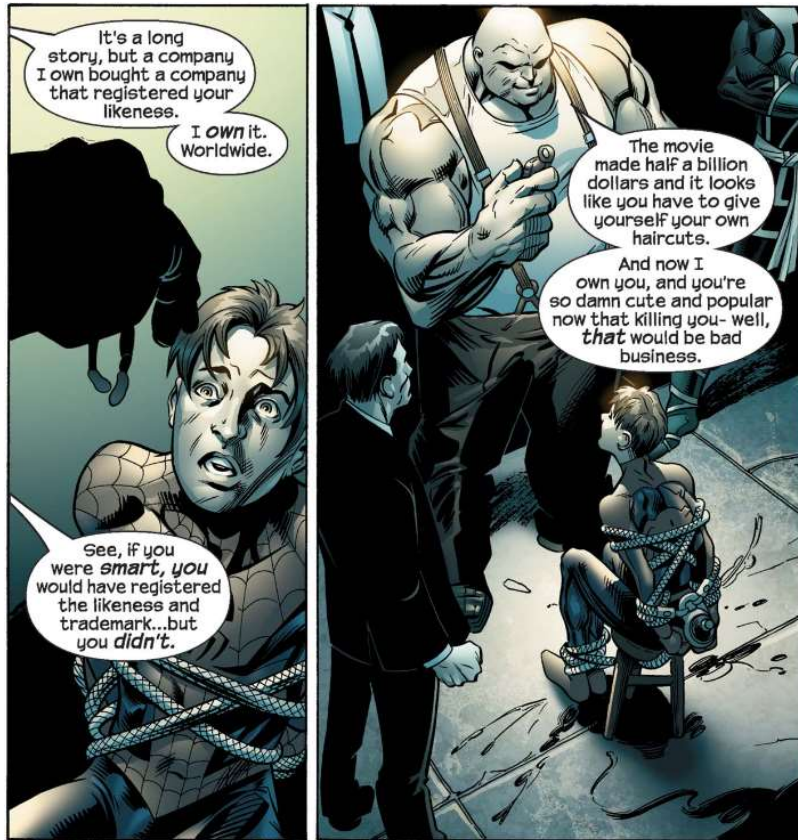
<sup>1</sup> This petition seeks cancellation of Trademark Registration Nos. 1179067, 1140452, 3674448, and 825835.

9. DC and Marvel's strategy is ripped straight from their own supervillains' playbook.

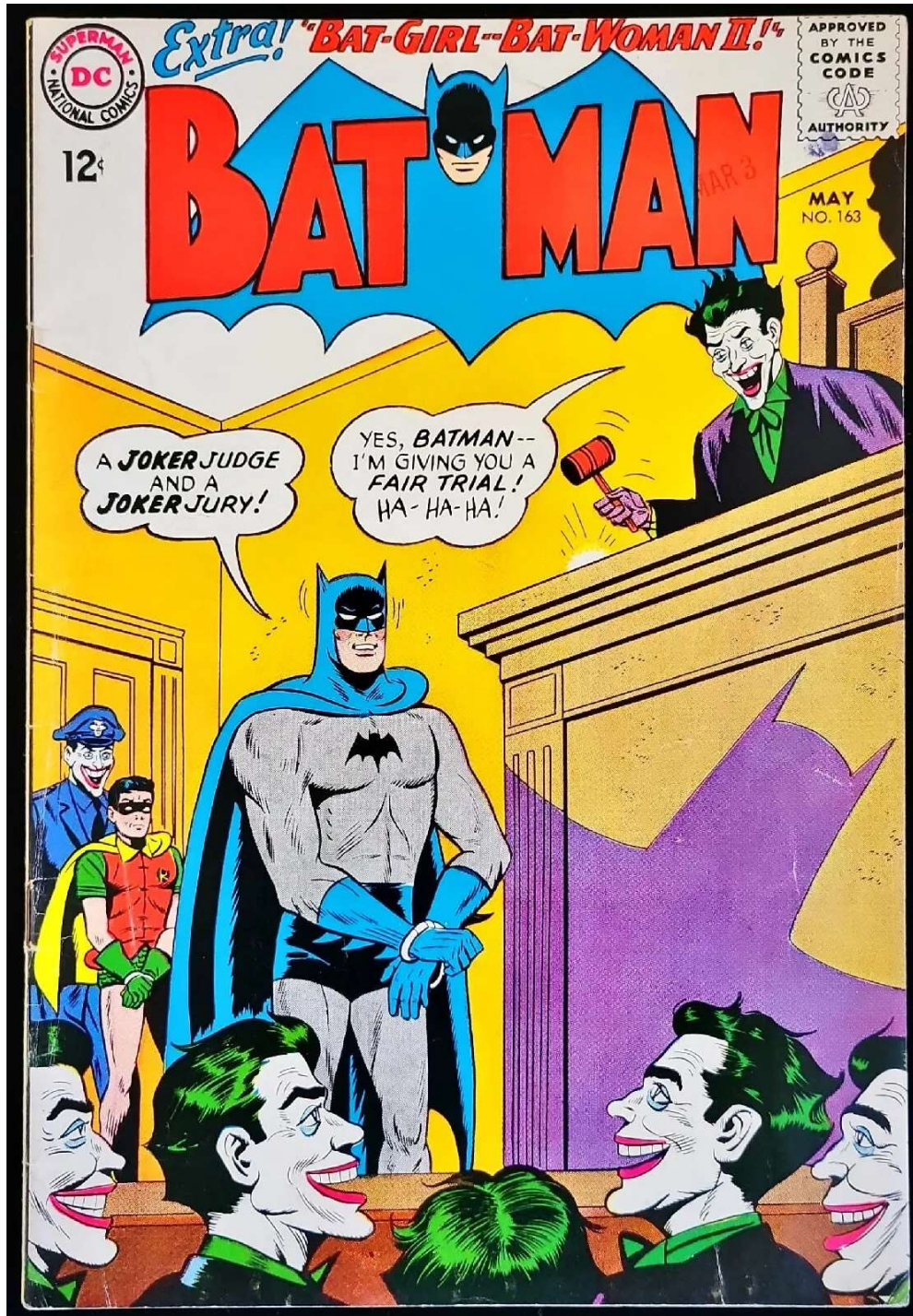
In *Fantastic Four* #7 (2023), Dr. Doom defeats the Fantastic Four by stealing key words from their vocabulary—including SUPER HERO:



10. In *Ultimate Spider-Man* #109, villain Wilson Fisk (Kingpin) used a more direct approach: he registered Spider-Man as a trademark, and used threats of litigation and financial ruin to pressure Spider-Man into letting Kingpin operate without SUPER HERO interference:



11. In *Batman* #163, the Joker executed a similar strategy by weaponizing the legal system to dispense with Batman and Robin:



12. And in *Justice League of America* #28, villain Headmaster Mind facilitated a crime spree by tricking the United Nations into clamping down on “super”-related rights:



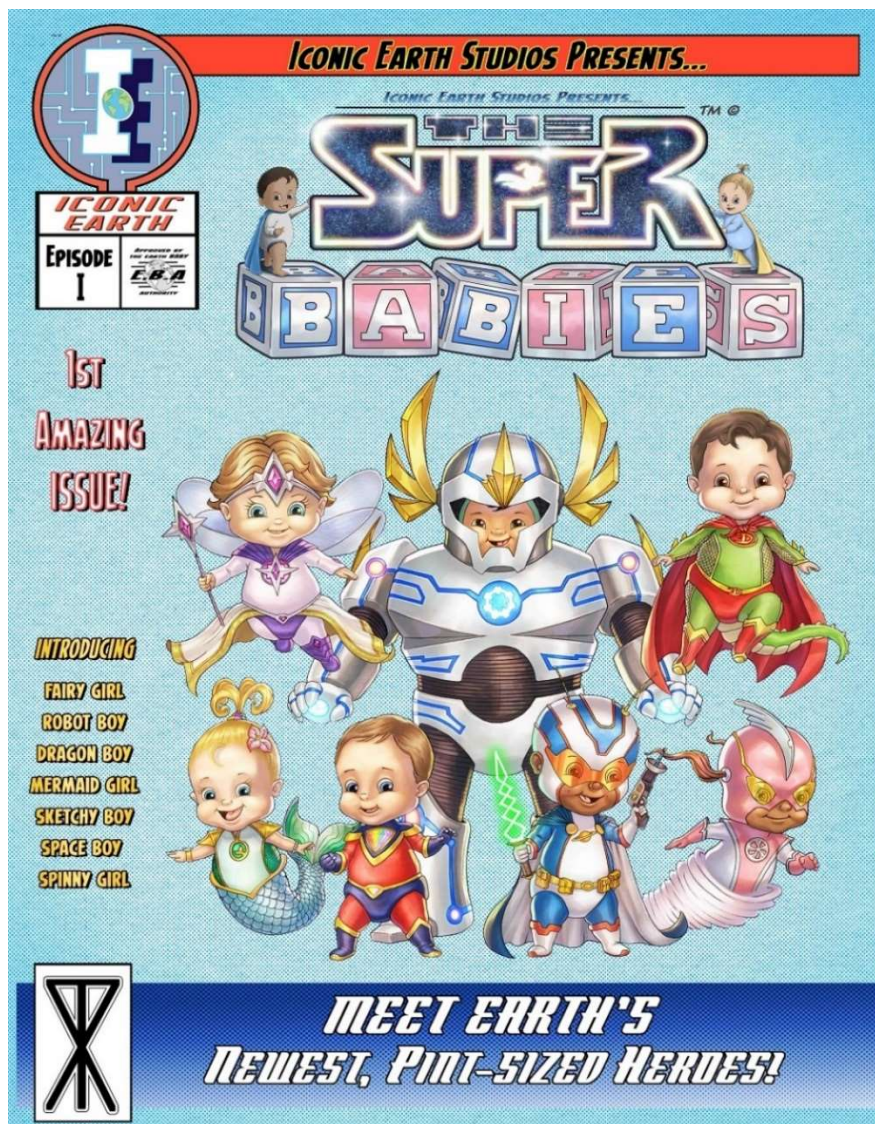
13. It is time for DC and Marvel’s villainous reign to end. SUPER HEROES belong to the people—they do not belong to Marvel or DC, just as they do not belong to Dr. Doom, Kingpin, or the Joker.

14. Petitioner Superbabies Limited creates and sells SUPER HERO comics and story books. Petitioner seeks cancellation of DC and Marvel’s SUPER HERO registrations so it can describe and promote its work without fear of legal jeopardy or retaliation.

## PARTIES

15. Petitioner Superbabies Limited (“Petitioner” or “Superbabies”) is a private limited company, registered in the United Kingdom. Petitioner’s address is International House, 142 Cromwell Road, London, United Kingdom, SW7 4EF. Petitioner’s Director is Scott Richold.

16. Petitioner creates super hero stories featuring a team of super-powered super hero babies called THE SUPER BABIES:



17. The goal of THE SUPER BABIES is to deliver classic children’s stories while promoting charity, teamwork, and adventure.

18. Petitioner competes with Marvel and DC with respect to the sale of comics, toys, t-shirts, and costumes (i.e., the goods covered by the challenged registrations). Petitioner offers goods for sale in the United States with prominent retailers, including Amazon, Barnes & Noble, and Shopify. Petitioner also sells goods through its website, <http://www.iconicearthstudios.com>.

19. Petitioner competes with Marvel and DC with respect to goods featuring super heroes or otherwise relating to the superhero genre.

20. DC has accused Superbabies of infringing DC's "SUPER"-related trademarks, has filed an opposition to Superbabies' trademark applications (TTAB Trademark Opposition No. 91290757), and has threatened further legal action. DC has asserted the exclusive right to use "the prefix SUPER followed by a generic term for a human being."

21. Petitioner is and has been harmed by DC and Marvel's SUPER HERO registrations, which limit Petitioner's ability to market, describe, and promote Petitioner's work. Petitioner has an interest in using SUPER HERO and related terms to describe its goods.

22. Respondents, DC Comics ("DC") and Marvel Characters, Inc. ("Marvel") have a correspondence address of Hunton Andrews Kurth LLP, 200 Park Avenue, New York, NY, 10166, and a correspondence e-mail address of [TMDocketNY@HuntonAK.com](mailto:TMDocketNY@HuntonAK.com).

### **REGISTRATIONS**

23. Petitioners seek cancellation of Trademark Registration Nos. 1179067, 1140452, 3674448, and 825835. These registrations cover the use of SUPER HERO and SUPER HEROES in connection with various goods. Each of the marks is jointly registered to Marvel and DC. This petition will refer to these marks, collectively, as "the Challenged Marks."



24. Trademark registration 1179067 (“the ’067 registration”) covers the use of SUPER HEROES in connection with “publications, particularly comic books and magazines and stories in illustrated form.”

25. Trademark registration 1140452 (“the ’452 registration”) covers the use of SUPER HEROES in connection with “toy figures.”

26. Trademark registration 3674448 (“the ’448 registration”) covers the use of SUPER HEROES in connection with “t-shirts.”

27. Trademark registration 825835 (“the ’835 registration”) covers the use of SUPER HERO in connection with “masquerade costumes.”

### **“SUPER HERO” IS GENERIC**

28. SUPER HERO is a generic term used in connection with super hero stories, characters, and products. The term refers to a stock character archetype (super heroes) and a genre of stories that features that archetype and its associated tropes (the superhero genre).<sup>2</sup>

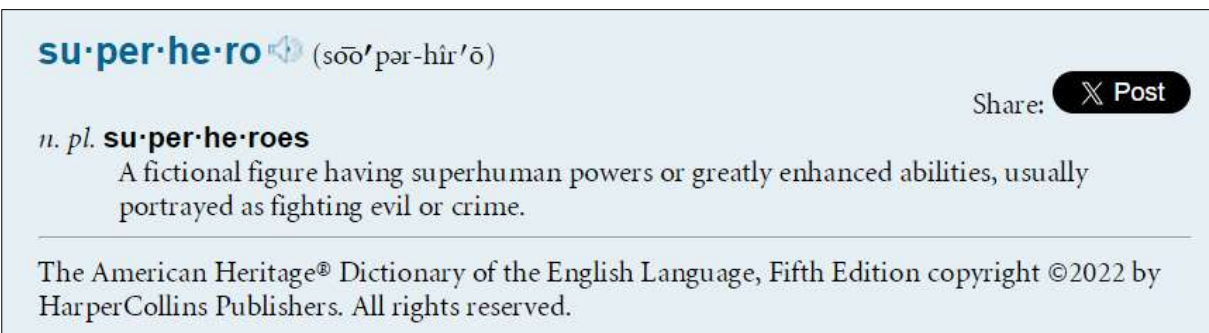
29. Consumers do not associate SUPER HEROES with any single brand, company, or character. Instead, consumers understand that the term refers to a broad category of stories and characters tied together by common themes and conventions, as well as to products that relate to or feature super hero stories or characters.

30. Consumers view and understand SUPER HEROES the same way they view other genre labels (e.g., Western, Spy) and character archetypes (e.g., cowboys, secret agent).

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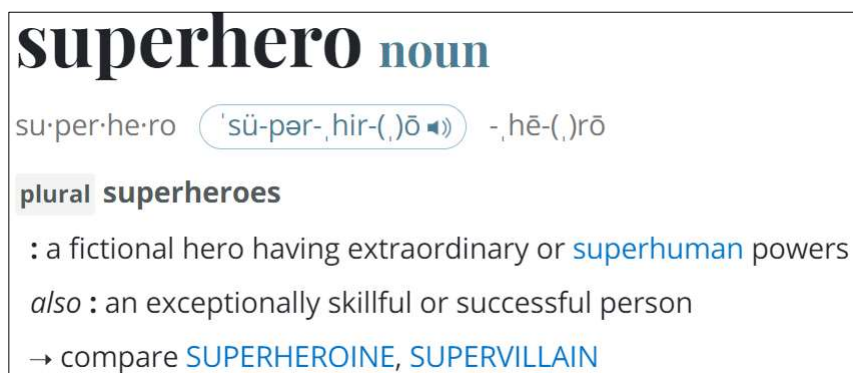
<sup>2</sup> Unless otherwise indicated, references to SUPER HERO include SUPER HEROES and vice versa.

31. Dictionary definitions confirm that “super hero” and its variants<sup>3</sup> (e.g., super-hero, super heroes, superhero) refers to a *category* of stories and characters rather than a particular source of goods:



The screenshot shows the dictionary entry for "superhero" from The American Heritage Dictionary. The word is written as "su·per·he·ro" with a speaker icon and the phonetic transcription (sōō'pær-hîr'ō). Below it, the plural form "su·per·he·roes" is listed, followed by the definition: "A fictional figure having superhuman powers or greatly enhanced abilities, usually portrayed as fighting evil or crime." At the bottom, it states "The American Heritage® Dictionary of the English Language, Fifth Edition copyright ©2022 by HarperCollins Publishers. All rights reserved." There is also a "Share: X Post" button.

*American Heritage Dictionary*<sup>4</sup>



The screenshot shows the dictionary entry for "superhero" from Merriam-Webster. The word "superhero" is in a large, bold font, followed by "noun". Below it, the phonetic transcription is given as "su·per·he·ro" with a speaker icon and the transcription ('sü-pær-, hir-(,)ō) - , hē-(,)rō. The plural form "plural superheroes" is listed, followed by the definition: "a fictional hero having extraordinary or superhuman powers" and "also : an exceptionally skillful or successful person". At the bottom, it says "→ compare SUPERHEROINE, SUPERVILLAIN".

*Merriam-Webster Dictionary*<sup>5</sup>

<sup>3</sup> The Challenged Marks include SUPER HEROES in both singular and plural forms (e.g., SUPER HERO and SUPER HEROES), and in one-word and two-word forms (e.g., SUPER HERO and SUPERHERO). Marvel and DC expressly claimed those variants in their trademark applications and have asserted the exclusive right to use the mark in all of its variations. Ex. C (Application for the '448 registration at Doc. ID 26, Response to Office Action (June 11, 2009)), at 2 (“Applicant seeks to register SUPERHERO for ‘t-shirts’ ... either in the form SUPERHERO, SUPER HERO and/or SUPER HEROES”); Ex. D (*DC Comics & Marvel Characters, Inc. v. Felix*, TTAB Opposition 91204438, 1 TTABVUE), at ¶ 7 (DC and Marvel claiming that the SUPER HEROES registration grants them “the exclusive right to use ‘SUPER HEROES’ and variations thereof”); Ex. E (Application for the '452 registration at Doc. ID 9 (2/5/2008), at 10 (“SUPER HERO/SUPER HEROES are identical for all intents and purposes”); Ex. F (Excerpt of Application for the '067 registration at Doc. ID 9, Unclassified (Mar. 12, 2008)), at 24 (Marvel and DC explaining that SUPER HEROES and SUPER HERO “must be adjudged ‘substantially’ the same because the substance of one is manifestly embodied in the other, and would be recognized as such by the public[.] ... Indeed, the two titles are verbalized interchangeably in the parlance of children and other purchasers ... [and] are mentally indistinguishable[.]”); see also *In re Cordua Rests., Inc.*, 823 F.3d 594, 603 (Fed. Cir. 2016) (pluralization does not alter meaning of mark); *In re Iolo Techs., LLC*, 95 U.S.P.Q.2d 1498 (TTAB 2010) (joining words as compound does not alter meaning of mark). This petition uses the terms “superhero” and “super hero” interchangeably.

<sup>4</sup> <https://www.ahdictionary.com/word/search.html?q=superhero>.

<sup>5</sup> <https://www.merriam-webster.com/dictionary/superhero>.

# superhero

Word Frequency ●●●●●

in American English

(ˈsuːpərˌhɪərəʊ)

**NOUN**

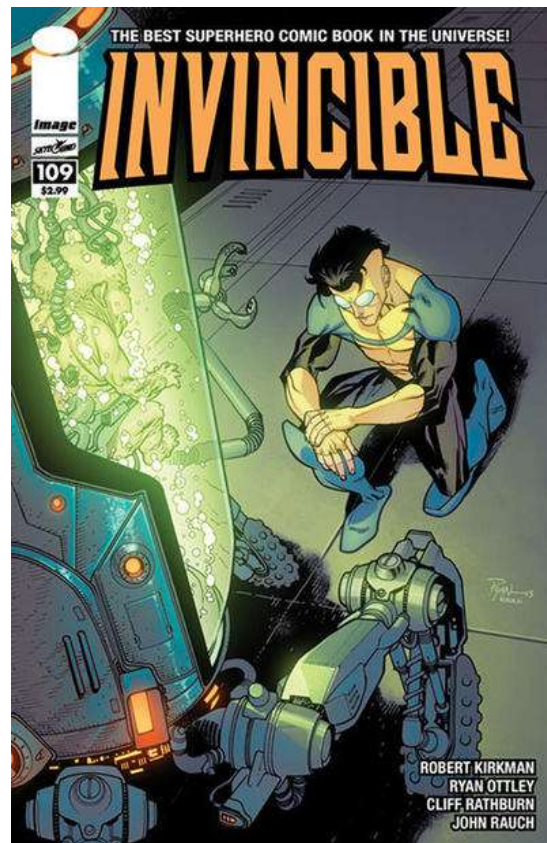
Word forms: plural -roes

a hero, esp. in children's comic books and television cartoons, possessing extraordinary, often magical powers

*Random House Dictionary*<sup>6</sup>

32. Common usage conventions further demonstrate that SUPER HEROES is a generic term that refers to super hero stories, characters, and products.

33. For example, the cover of the comic *Invincible* describes the book as “Probably the Best Superhero Comic Book in the Universe” or, alternatively, “The Best Superhero Comic Book in the Universe!” *Invincible* is not affiliated with Marvel or DC:



<sup>6</sup> <https://www.collinsdictionary.com/dictionary/english/superhero>.

34. Similarly, the marketing materials for the comic series *The Ambassadors* describes the comic as “the world’s greatest and most ambitious superhero comic”. *The Ambassadors* is not affiliated with Marvel or DC:



**JUN230064**  
(W) Mark Millar (A) Travis Charest, Olivier Coipel, Matteo Buffagni, Matteo Scalera, Karl Kerschl (A/CA) Frank Quitely

You've cracked the superhuman mystery and can give superpowers to six different people around the world. Who do you choose? The world's greatest and most ambitious superhero comic needs the world's greatest comic book artists. FRANK QUITELY, TRAVIS CHAREST, OLIVIER COIPEL, and an international line-up of superstars step forward to introduce an all-new cast of characters from MARK MILLAR's latest Netflix sensation.

Collects THE AMBASSADORS #1-6

**In Shops: Aug 09, 2023**

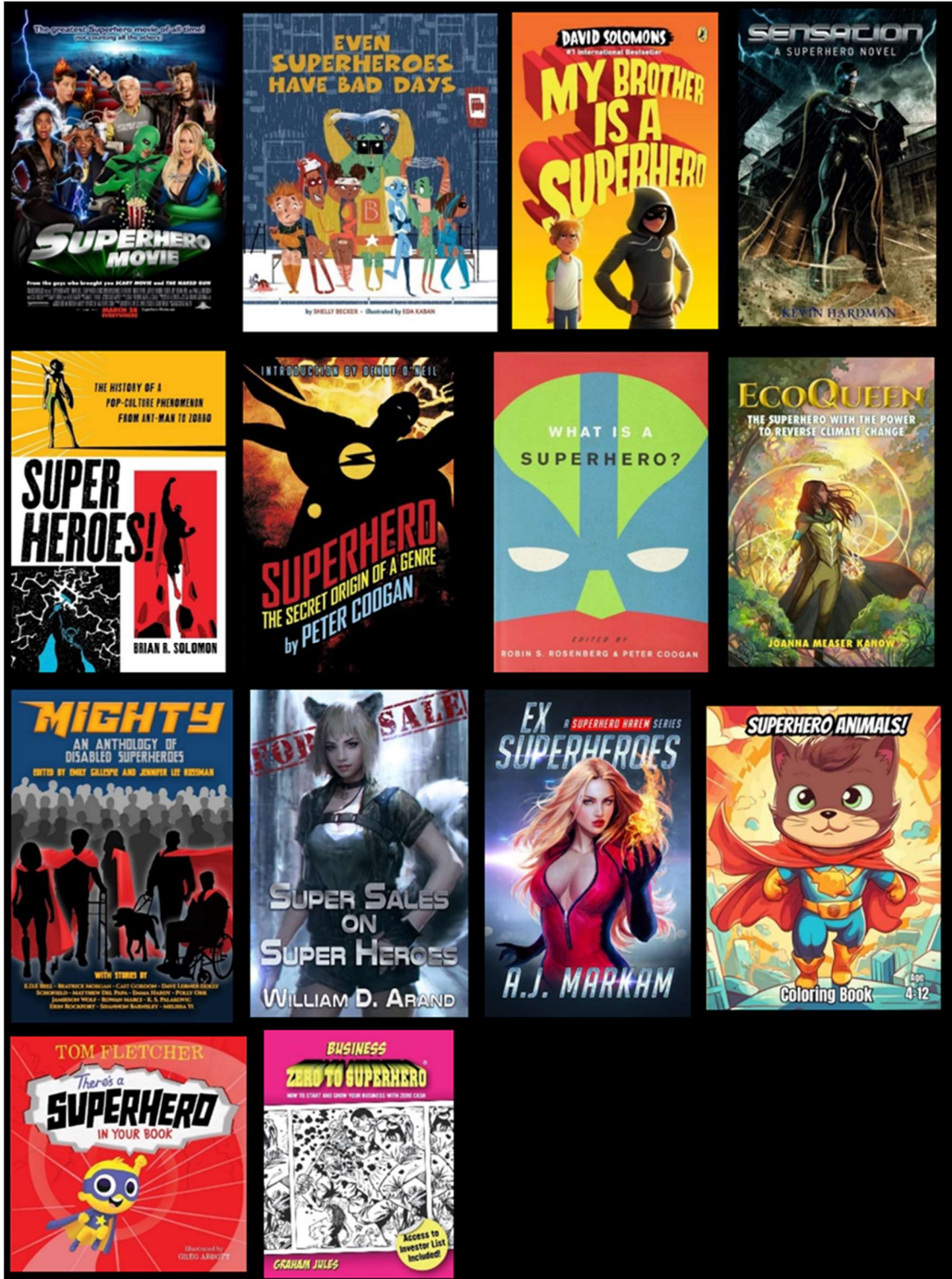
**SRP: \$19.99**

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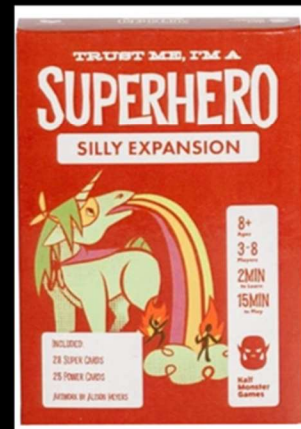
[WISH LIST](#)

35. These are not isolated examples. Virtually every comic, book, toy, or t-shirt relating to super heroes refers to itself as a super hero product, sometimes even including the term in the product name:





Funko POP! Animation: Cow & Chicken - Superhero Cow Multicolor  
 Animation: Cow & Chicken- Superhero Cow Multicolor  
 Visit the Funko Store  
 4.8 ★★★★★ - 523 ratings  
 Amazon's Choice  
 200+ bought in past month



Visit the D.Q.Z Store  
 D.Q.Z Girls Superhero-Costume Cape  
 with TuTu Dress Best Gifts to Big  
 Sisters Baby Shower Party Christmas  
 Favours

- ▶ **【Best Superhero Toys】** :★ Will your girl be a Big sister? How do you help her accept identity transition peacefully and quickly?? This superhero cape and mask set designed with "Super Sis" will give you a hand. It is "magic and powerful" Dress-Up Cape and mask, which will help girls feel special, safe, not yet jealous. Girls dressed in Superhero cape will be a SUPER HERO, and help you take care of newcomer. So it is a best gift for super Sis to be.
- ▶ **【Convenient Kid-Sized】** :★ Super Hero Capes for kids, 27.5 inch L x 27.5 inch W, recommended for 3-9 years old children; you can adjust the neckline with adjustable buckles to make Dress-Up Cape suit neck well. Star Superhero Mask can extremely fit with flat elastic strap, soft wearing.



Personalized Superhero In Scrubs Shirt With Stethoscope Ornament



Girls' "Daddy is My Superhero" Graphic T-Shirt

★★★★★ (5.0) 3 reviews

\$7.32

Price when purchased online ⓘ



Super Hero Logo T-Shirt

Superhero T-Shirt Designed and Sold by ozant



Generic Superhero T Shirt

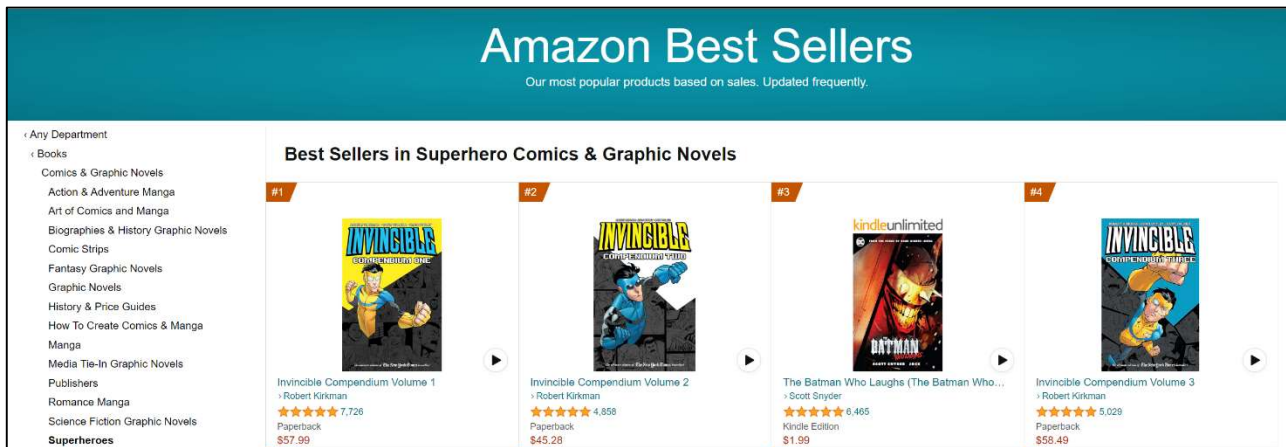
★★★★★ Rating: 5.0

\$13.95 ~~\$25.96~~

36. The terms “super heroes” and “superheroes” are used in numerous trademark registrations to name a category of goods or services. For example, Registration 5390991 covers the mark BLIND WAVE in connection with “fan films in the fields of science fiction, comedy, drama, **super heroes**, fantasy, and video games, and original content in the fields of science fiction, comedy, drama, **super heroes**, fantasy, and video games”; Registration 4770416 covers the mark IMPERIUM in connection with “books featuring cartoons and adventure stories about **super heroes**”; Registration 2032816 covers the mark VALLATOR in connection “comic books featuring a **superhero.**” None of these marks or registrations is owned by or affiliated with DC or Marvel.

37. The USPTO Trademark Search function shows there are dozens of registered trademarks that use “super heroes” or “superheroes” to identify categories of goods or services.

38. Retailers use SUPER HERO as a category of goods, to help consumers find super hero stories, products, and characters, and to allow consumers to search by genre. For example, Amazon.com lists “Superhero” as a genre, alongside “Science Fiction,” “Fantasy,” and “Romance.”



**Amazon Best Sellers**  
Our most popular products based on sales. Updated frequently.

Any Department  
Books

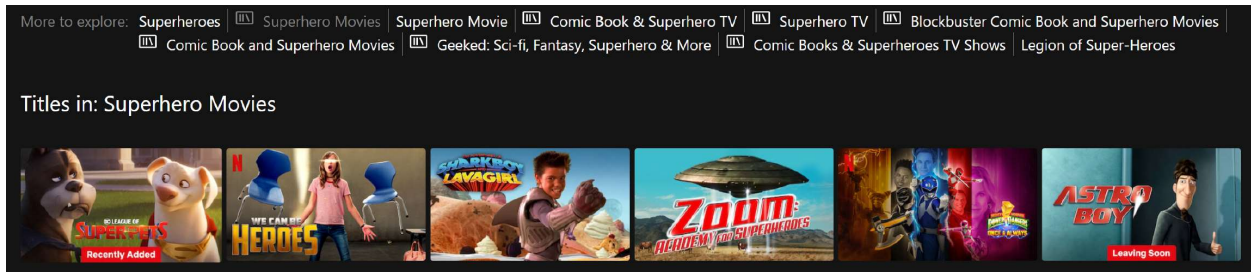
Comics & Graphic Novels  
Action & Adventure Manga  
Art of Comics and Manga  
Biographies & History Graphic Novels  
Comic Strips  
Fantasy Graphic Novels  
Graphic Novels  
History & Price Guides  
How To Create Comics & Manga  
Manga  
Media Tie-In Graphic Novels  
Publishers  
Romance Manga  
Science Fiction Graphic Novels  
**Superheroes**

**Best Sellers in Superhero Comics & Graphic Novels**

Rank	Product	Author	Rating	Format	Price
#1	Invincible Compendium Volume 1	Robert Kirkman	7.726	Paperback	\$57.99
#2	Invincible Compendium Volume 2	Robert Kirkman	4.858	Paperback	\$45.28
#3	The Batman Who Laughs (The Batman Who...)	Scott Snyder	6.465	Kindle Edition	\$1.99
#4	Invincible Compendium Volume 3	Robert Kirkman	5.028	Paperback	\$58.49



39. The same is true for Netflix, which has over a dozen genre categories covering superheroes:



40. Consumers do not associate SUPER HEROES exclusively with DC or Marvel. Dozens of companies create, market, and sell super hero comics and toys. Publishers of super hero comics include IDW Publishing, Dark Horse Comics, Image Comics, Millarworld, and Boom! Studios. Toy manufacturers include Hasbro and Saban.

41. Three of the four top “Best Sellers” in Amazon’s “Superhero Comics & Graphic Novels” category are published by Image Comics, not DC or Marvel. Ex. A.

42. Sixteen of Netflix’s eighteen featured “Superhero Movies” are produced by companies other than DC or Marvel. Ex. B.

43. Marvel and DC have not taken meaningful steps to limit or restrict others’ use of SUPER HERO or any related terms, including with respect to the above examples.

44. On the few occasions where Marvel or DC have asserted the mark, they did so through legal machinations, by misleading low-resourced opponents into abandoning their mark.

45. The story of Reinaldo T. Felix is instructive. Mr. Felix filed a trademark application for the word mark CUP O JAVA STUDIO COMIX A WORLD WITHOUT SUPERHEROES. DC and Marvel opposed registration in view of each of the Challenged Marks. In his answer, Mr. Felix explained what happened next:

I have had several communications with DC/Marvel[’s] lawyer ... who has made several misleading promises. [DC/Marvel’s lawyer] repeatedly gave me the impression that an out of court settlement could be reached. The reality is that he doesn’t call the shots and is there to waste my time. With each ... court extension[], they literally gave me the run around by dangling a variety of offers/carrots that ended up being a bill of false goods and outlandish promises. ... I would get such responses until a following court extension would be granted ... and then they would repeat the cycle to wind me down towards hopelessness. ... I can’t afford a lawyer. No lawyer is willing to take this case without \$10,000 upfront. ... I have no choice but to represent myself. I’m “David” pitted to fight against “Goliath” except in the 21st century “Goliath” wins.<sup>7</sup>

46. Mr. Felix’s experience is not unique. In *The “Amazing Adventures” of SUPER HERO*, Professor Ross D. Petty provides a comprehensive look at Marvel and DC’s efforts to police the SUPER HERO marks.<sup>8</sup> At the time the article was published, in 2010, DC and Marvel had filed three dozen TTAB oppositions based on the SUPER HEROES marks.<sup>9</sup> “Not a single TTAB opposition proceeding was decided on the merits of either infringement or dilution of the opposing mark.”<sup>10</sup> Instead, DC and Marvel “managed to obtain an abandonment or a settlement” in each case.<sup>11</sup>

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<sup>7</sup> *Felix v. DC Comics & Marvel Characters, Inc.*, TTAB Opp. 91204438, TTABVUE 19 at 7-8.

<sup>8</sup> Ross D. Petty, *The “Amazing Adventures” of SUPER HERO*, 100 TMR 729,743-47 (2010).

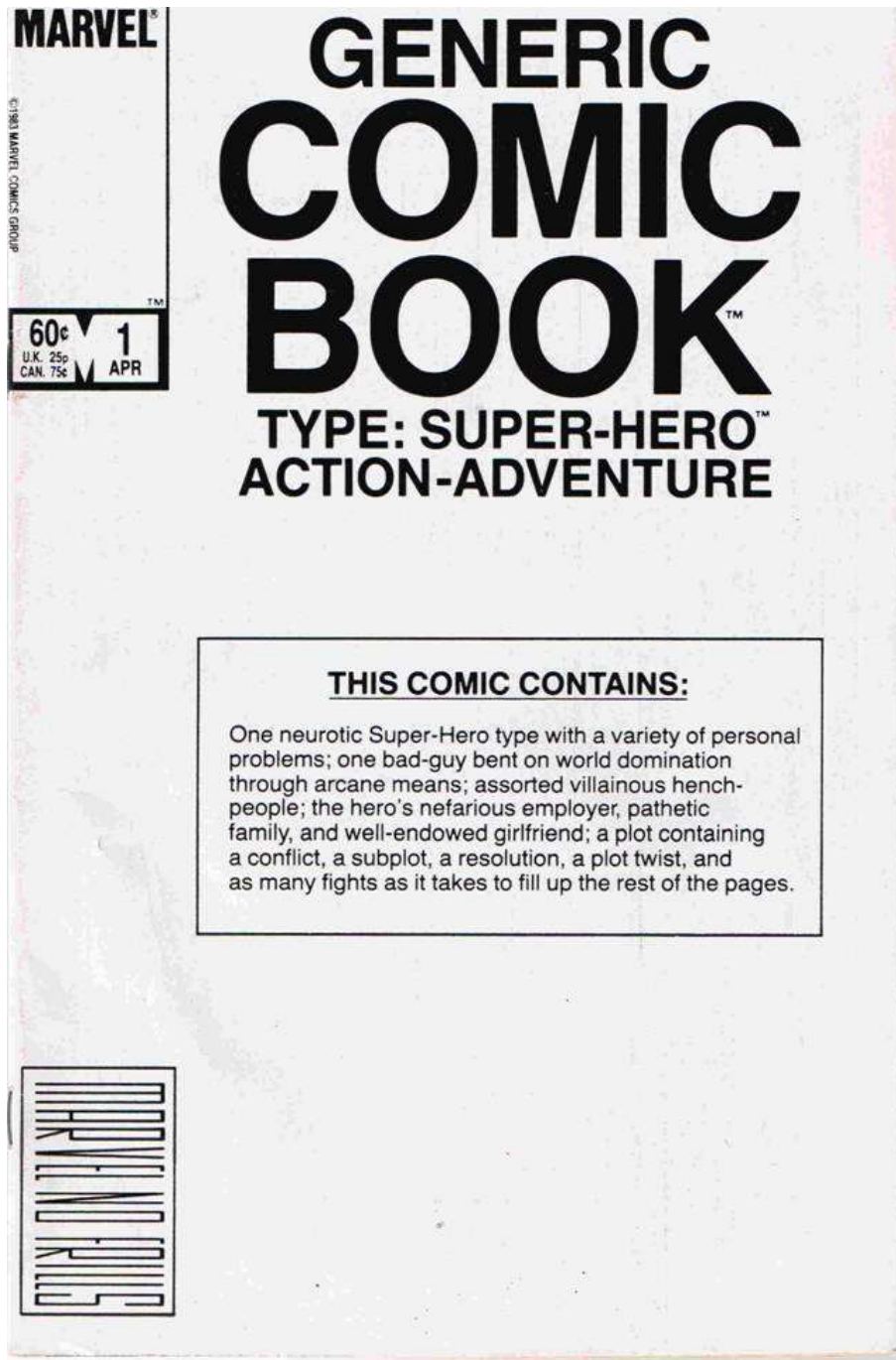
<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* There is one exception. In connection with one of the oppositions, Marvel and DC defaulted by requesting too many time extensions, resulting in TTAB dismissing the opposition.

**MARVEL AND DC’S OWN USE OF “SUPER HERO” CONFIRMS IT IS GENERIC**

47. Marvel and DC’s *own use* of SUPER HERO demonstrates that even Marvel and DC do not consider or treat SUPER HERO as an identifier for a source of goods. To the contrary, Marvel and DC use “super hero” as a generic descriptor that fails to function as a trademark:



Marvel’s *Generic Comic Book* (1984)



Marvel's *X-Men* #1 (1963)



DC's *Black Lightning* #1 (1977)

48. Marvel and DC’s senior leadership use “super hero” as a generic term, rather than a brand identifier.

49. In *What Is A Superhero?*, top leaders at Marvel and DC offered their opinions on the meaning of super hero. **None of the contributors limited super hero or superhero to DC, Marvel, or any other brand. Instead, each described “super hero” as a kind of character or genre.**

50. Stan Lee was Marvel’s first editor-in-chief and the creator of Marvel’s most popular super heroes, including Spider-Man, Iron Man, Thor, Ant-Man, Black Panther, the X-Men, Hulk, and Daredevil. For decades, Stan Lee served as a spokesman for Marvel and was widely regarded as an ambassador for comics as a whole.

51. According to Stan Lee, “[a] superhero is a person who does heroic deeds and has the ability to do them in a way that a normal person couldn’t.”<sup>12</sup>

52. Tom DeFalco was the editor-in-chief of Marvel Comics from 1987 to 1994. He also authored stories for nearly every major Marvel character including Spider-Man, Thor, and the Fantastic Four. DeFalco also created *Spider-Girl*.

53. According to Tom DeFalco, a super hero is “anyone who possesses a superhuman trait.” DeFalco further confirmed that there is a superhero genre in comic books, which he characterized as “comic books featuring superheroes.”<sup>13</sup>

54. Joe Quesada was the editor-in-chief of Marvel Comics from 2000-2011. From 2010-2019, Joe Quesada served as Marvel’s Chief Creative Officer. Joe Quesada was also a prominent author and artist for Marvel.

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<sup>12</sup> *What Is a Superhero* at 115.

<sup>13</sup> *Id.* at 139.

55. Joe Quesada provided Marvel’s definition of super hero. He explained that Marvel’s view of a super hero is “an extraordinary person placed under extraordinary circumstances who manages to do extraordinary things to ultimately triumph over evil.”<sup>14</sup>

56. Jeph Loeb is a prominent writer for DC and Marvel. His stories feature Marvel and DC super heroes, including Batman, Superman, Hulk, Iron Man, Spider-Man, and Daredevil.

57. According to Jeph Loeb, “superheroes are people with powers and abilities beyond those of mortal men ... who make a choice to use them to help those who need it.”<sup>15</sup>

58. Kurt Busiek is a prolific author who has written extensively for DC and Marvel. Kurt Busiek created major Marvel properties, including *Thunderbolts* and *Marvels*, and has authored stories featuring Superman, Wonder Woman, and The Avengers.

59. According to Kurt Busiek, “[t]he primary hallmarks of the superhero are *superpowers, costume, code name, secret identity, heroic ongoing mission, and superhero milieu*. If the character has three of those six, he or she is probably a superhero.”<sup>16</sup>

60. Danny Fingerth is a comic book writer and editor, best known for his work as editor of Marvel’s Spider-Man related comics.

61. According to Danny Fingerth, “a superhero is a figure who embodies the best aspects of humankind, differing from a heroic real person ... due to—in addition to one or more special powers or mechanical or magical enhancements—a nobility of purpose.”<sup>17</sup>

62. Tom Brevoort is Marvel’s current Executive Editor and Vice President of

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<sup>14</sup> *Id.* at 147.

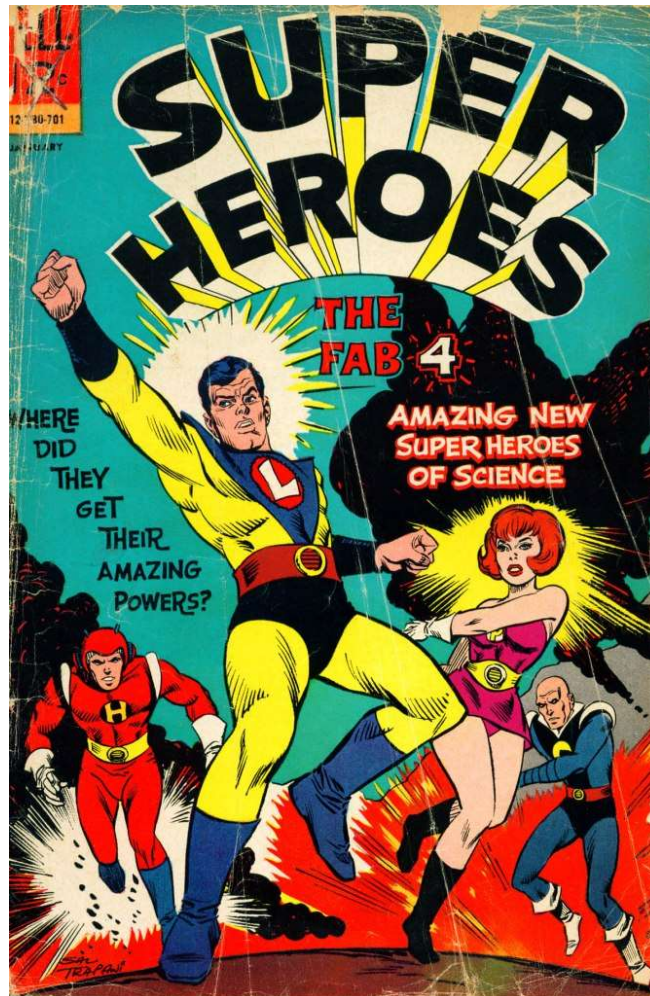
<sup>15</sup> *Id.* at 119.

<sup>16</sup> *Id.* at 133 (emphasis in original).

<sup>17</sup> *Id.* at 125.

Publishing, with decades of experience in the comic industry. Tom Brevoort regularly uses SUPER HERO to refer to a genre of stories and to describe super hero stories published by companies other than Marvel or DC.

63. For example, in a November 23, 2019 blog post,<sup>18</sup> Tom Brevoort referred to Dell Comics’ “Super Heroes” comic (pictured below) as an example of “super hero fiction.” He explained that “interest in super heroes became a full-blown fad in the mid-1960s,” and that “just about everybody got into the act, trying to capture some portion of that marketplace for themselves.” Dell Comics was a competitor to Marvel and DC.



Dell Comics’ *SUPER HEROES* (1967)

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<sup>18</sup> <https://tombrevoort.com/2019/11/23/brand-echh-super-heroes-1>.



64. In October 2023, Tom Brevoort discussed other super hero comics published by a variety of non-Marvel, non-DC publishers, including Noble Comics, Texas Comics, and Comico. For example, Tom Brevoort explained that *The Justice Machine* (pictured below) “was clearly a super hero series.”<sup>19</sup>



Texas Comics' *Justice Machine Annual* (1983)

65. In a newsletter dated December 24, 2023, Tom Brevoort confirmed that the prevalence of super hero creators other than Marvel or DC continues to this day. Specifically, Brevoort acknowledged that creators Ed Brubaker and Sean Phillips have “built up an enormous library” of “super hero” stories, including *Where The Body Was*, which was published by Image Comics (not Marvel or DC) in December 2023.<sup>20</sup> In other recent posts, Tom Brevoort referred to *Invincible* (published by Image Comics) as “one of the best action-oriented super hero titles

<sup>19</sup> <https://tombrevoort.substack.com/p/79-back-on-the-chain-gang>.

<sup>20</sup> <https://tombrevoort.substack.com/p/91-things-from-1991>.

available,”<sup>21</sup> described *Supermassive* (published by Image Comics) as a “good, unique interconnected super hero line,”<sup>22</sup> and discussed “the idiom of the super hero concept.”<sup>23</sup>

### **AS COMPETITORS, DC AND MARVEL CANNOT JOINTLY OWN A TRADEMARK**

66. It is fundamental that a trademark identifies a *single* source of goods. Competitors cannot jointly own a trademark.<sup>24</sup>

67. DC and Marvel are fierce competitors with respect to comics, toys, and the other categories of goods covered by the Challenged Marks.

68. Consumers recognize Marvel and DC as competitors.

69. In an SEC filing, Marvel stated that “the industries in which the Company competes are highly competitive.” Marvel specifically identified D.C. Comics as one of its most significant competitors.<sup>25</sup> This sentiment was shared by Marvel editor Tom Brevoort, who described DC as Marvel’s “number one competitor.”<sup>26</sup>

70. Over the years, Marvel and DC have gone to great lengths to ensure their respective comics make distinct commercial impressions on consumers. To that end, DC and Marvel use distinctive logos, trade names, and trade dress.

71. Marvel and DC have frequently designed and redesigned their logos and trade dress specifically to distinguish their respective goods.

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<sup>21</sup> <https://tombrevoort.substack.com/p/43-weaponized-nostalgia>.

<sup>22</sup> <https://tombrevoort.substack.com/p/29-pining-for-the-man-of-steel>.

<sup>23</sup> <https://tombrevoort.substack.com/p/82-shock-of-the-new>.

<sup>24</sup> 2 McCarthy on Trademarks and Unfair Competition § 16:40 (5th ed.) (“Legal recognition of more than one owner of a single mark is contrary to the basic definition of a mark as identifying and distinguishing a single seller’s goods or services.”).

<sup>25</sup> <https://www.sec.gov/Archives/edgar/data/933730/000093373000000003/0000933730-00-000003.txt>.

<sup>26</sup> <https://tombrevoort.com/2021/01/01/blah-blah-blog-throw-an-elbow>.

72. To further differentiate the companies, DC and Marvel’s leaders and editorial staff speak directly to consumers to make clear that DC and Marvel are not affiliated and that the companies have vastly different standards when it comes to style, quality, and editorial tastes. For example, in *Fantastic Four* #51, Stan Lee described DC Comics as “shabby, carelessly produced, badly written and drawn, conscienceless IMITATIONS of our Marvel mags—imitations which are callously lacking in quality[.]”

73. Stan Lee went on to accuse DC Comics of infringing Marvel’s trademarks and confusing readers, stating: “We have been flooded with indignant letters from readers who have bought issues ... and have been shocked at the undisguised effort these opportunists have made to confuse the public into believing that their titles are the same as Marvel’s! ... [A]ll they are doing is confusing the public, and giving new ammunition to those who choose to downgrade comics!”

74. DC Comics responded in kind by noting that *its* comics predated Marvel’s, and staking out its ground as an early publishers of super hero comics:



DC’s *Brave and the Bold* #74 (1967)



DC’s *Adventure Comics* #350 (1966)

75. The Marvel/DC rivalry is documented in detail in Reed Tucker's *Slugfest: Inside the Epic, 50-Year Battle Between Marvel and DC*. Tucker summarized the Marvel/DC rivalry, and explained how that rivalry impacts consumer expectations. He explained:

For more than half a century Marvel and DC have faced off across newsstands and spinner racks, rivals in the billion-dollar superhero business. The two companies ... have spent the last fifty years clawing for market share and trying to kneecap each other in ways both above board and below. ... [A]s in any war, you better pick a side. Comic readers are often fiercely loyal to one team, which naturally sets them in opposition to the other. Inside dusty comic stores, at conventions, and in online forums, debates have been raging for decades about the superiority of each publisher. The debate is hardly trivial. Quite possibly the most revealing question you can ask a comic book fan is, "Marvel or DC?" The answer is as telling, as integral to his personality as which Beatle he prefers or his favorite flavor of ice cream. The two companies were shaped by different eras, have different publishing philosophies, and stand for two completely different worldviews.<sup>27</sup>

76. The rivalry between Marvel and DC is ongoing, and frequently encouraged by both companies. Joe Quesada, former Editor-in-Chief at Marvel, believes the DC/Marvel rivalry "made it better for the fans. You know, if you like DC, then you hated Marvel. If you like Marvel, then you hated DC."<sup>28</sup>

77. For example, at the World Premiere of DC's *Suicide Squad*, director David Ayer worked up the audience by shouting "F-ck Marvel!" to the attendees.<sup>29</sup> A few years prior, Robert Downey Jr., who starred as Iron Man in Marvel's cinematic universe, said the same ("F-ck DC comics") while comparing *The Dark Knight* to *Iron Man* in a press interview.<sup>30</sup>

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<sup>27</sup> Reed Tucker, *Slugfest: Inside the Epic, 50-year Battle between Marvel and DC* (2017) at xvi-xvii.

<sup>28</sup> <https://observer.com/2002/04/as-the-139-million-spiderman-debuts-in-movie-theaters-joe-quesada-the-trashtalking-editor-in-chief-of-marvel-comics-spins>.

<sup>29</sup> [https://www.youtube.com/watch?v=lk\\_NdrBYdJ8](https://www.youtube.com/watch?v=lk_NdrBYdJ8).

<sup>30</sup> [https://www.huffpost.com/entry/robert-downey-jr-on-the-d\\_n\\_119414](https://www.huffpost.com/entry/robert-downey-jr-on-the-d_n_119414);  
<https://web.archive.org/web/20120215065931/https://moviehole.net/200814729-interview-robert-downey-jr-2>.

78. Marvel editor Tom Brevoort succinctly summarized the current state of affairs. Referring to DC, he stated: “They’re the competition! They’re not supposed to talk good about us and what we’re doing. And vice versa.”<sup>31</sup>

79. To gain an edge, Marvel encouraged comic shops to destroy each other’s products, including by offering retailers valuable comics in exchange for destroying DC comic books.<sup>32</sup>

80. Consumers do not view Marvel and DC as a single source of goods, but as distinct companies with “different publishing philosophies” and “completely different worldviews.”

81. Consumers do not view any of the Challenged Marks as reflecting a single source of goods.

82. The fact that Marvel and DC both use and claim ownership over SUPER HEROES confirms that neither company uses the term as a trademark, but rather as a generic description for a category of goods offered by both companies.

83. Despite the fierce rivalry between the companies, neither Marvel nor DC has challenged the other’s use of SUPER HEROES. Instead, by seeking and obtaining joint registrations, Marvel and DC have each expressly sanctioned and authorized the use of the marks by their most significant competitor (each other). This is antithetical to the foundational purpose of trademarks, which is to associate a mark with a *single* source of goods.

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<sup>31</sup> *Slugfest* at 243.

<sup>32</sup> Jason Cranforteaue, *Marvel Bribes Retailers to Destroy DC Comics*, <https://www.wired.com/2011/08/the-great-marvel-comics-rip-off>, *Wired* (Aug. 10, 2011).

**COUNT I – THE CHALLENGED MARKS ARE GENERIC**

***(Genericness: Applies to all Challenged Marks)***

84. Petitioners incorporate and reallege the foregoing paragraphs of this Petition.

85. SUPER HEROES (in both plural and singular form and in both single-word and two-word form) is a generic term that refers to a genre of stories (the superhero genre) and an associated character archetype (the super hero archetype).

86. Consumers do not associate SUPER HERO or SUPER HEROES with any single brand, company, or character. Instead, consumers view SUPER HERO and SUPER HEROES as generic labels for stories, characters, and products in the superhero genre or character archetype.

87. 15 U.S.C. § 1064(3) allows for cancellation of registered marks that “become[] the generic name for the goods or services, or a portion thereof, for which it is registered.”

88. Each of the Challenged Marks is the generic name for each of the claimed goods or services and should be cancelled pursuant to 15 U.S.C. § 1064(3).

**COUNT II – MARVEL AND DC HAVE CAUSED THE CHALLENGED MARKS TO LOSE THEIR SIGNIFICANCE BY ALLOWING USE OF THE MARKS BY A COMPETITOR**

***(Abandonment: Applies to all Challenged Marks)***

89. Petitioners incorporate and reallege the foregoing paragraphs of this Petition.

90. Under the Lanham Act, a mark may only be registered if it allows the goods of “the applicant” (singular) to “be distinguished from the goods of others.” 15 U.S.C. § 1052. The Lanham Act does not allow two competitors to jointly own a single mark.

91. Marvel has expressly assented to DC’s use of the Challenged Marks, including by allowing DC to register and own the marks and by failing to object to DC’s use of the marks.

92. DC has expressly assented to Marvel's use of the Challenged Marks, including by allowing Marvel to register and own the marks and by failing to object to Marvel's use of the marks.

93. Marvel and DC's concurrent and overlapping use of SUPER HERO and SUPER HEROES means the Challenged Marks cannot be used to distinguish the companies' respective goods.

94. Consumers cannot use the Challenged Marks to distinguish Marvel products from DC products.

95. Marvel and DC's assent to the use of the Challenged Marks by a competitor constitutes abandonment of the marks under 15 U.S.C. § 1127, as the assent and joint registration has caused SUPER HEROES to "lose its significance as a mark" (to the extent it had any such significance to begin with).

96. In view of Marvel and DC's abandonment, each of the Challenged Marks should be cancelled pursuant to 15 U.S.C. § 1064(3).

**COUNT III – MARVEL AND DC HAVE CAUSED THE CHALLENGED MARKS TO  
LOSE THEIR SIGNIFICANCE BY USING THE MARKS AS GENERIC LABELS  
RATHER THAN TRADEMARKS**

***(Abandonment: Applies to all Challenged Marks)***

97. Petitioners incorporate and reallege the foregoing paragraphs of this Petition.

98. Marvel and DC do not use SUPER HEROES or SUPER HERO as a trademark, but rather as generic labels for their characters and stories.

99. Through their generic use of SUPER HEROES and SUPER HERO, Marvel and DC have encouraged consumers, competitors, and retailers to use the terms as generic labels, rather than as a mark that identifies the source of goods.

100. Neither Marvel nor DC has taken meaningful steps to enforce the Challenged Marks or to curb the widespread usage of the mark as a name for a category of goods.

101. Marvel and DC's generic use of and failure to enforce the Challenged Marks constitutes abandonment of the marks under 15 U.S.C. § 1127, as it has caused SUPER HEROES to "lose its significance as a mark" (to the extent it had any such significance to begin with).

102. In view of Marvel and DC's abandonment, each of the Challenged Marks should be cancelled pursuant to 15 U.S.C. § 1064(3).

**COUNT IV – MARVEL AND DC HAVE ABANDONED THE CHALLENGED MARKS  
BY FAILING TO USE THEM AS TRADEMARKS**

**(Abandonment: Applies to all Challenged Marks)**

103. Petitioners incorporate and reallege the foregoing paragraphs of this Petition.

104. Marvel and DC have never used SUPER HEROES or SUPER HERO as a trademark, including in the last three years. Instead, both Marvel and DC have used the Challenged Marks solely as a generic label for their goods and characters. This constitutes prima facie evidence of abandonment under 15 U.S.C. § 1127.

105. By entering and maintaining a joint ownership arrangement over the Challenged Marks, both Marvel and DC assent to the use of the Challenged Marks by their largest competitor, such that it is and has been impossible for either company to use any of the Challenged Marks as an *exclusive* indicator of origin.

106. Marvel and DC have been joint owners of the Challenged Marks for decades. In that time, neither company has used any of the Challenged Marks as an exclusive indicator of origin (i.e., as a trademark), including in the last three years. Thus, neither company has used any of the Challenged Marks *as a trademark* for at least decades, including in the last three years. This constitutes prima facie evidence of abandonment under 15 U.S.C. § 1127.



107. Neither Marvel nor DC has any plans or intent to commence exclusive use of any of the Challenged Marks as trademarks.

108. In view of Marvel and DC's abandonment, each of the Challenged Marks should be cancelled pursuant to 15 U.S.C. § 1064(3).

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For the reasons stated above, Petitioner Superbabies Limited requests that Registration Numbers 1179067, 1140452, 3674448, and 825835 be cancelled.

Dated: Washington, D.C.  
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Respectfully submitted,

/s/Adam Adler

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