

ESTTA Tracking number: **ESTTA500305**

Filing date: **10/16/2012**

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

**Notice of Opposition**

Notice is hereby given that the following parties oppose registration of the indicated application.

**Opposers Information**

Name	Marvel Characters, Inc.
Granted to Date of previous extension	10/17/2012
Address	1600 Rosecrans Avenue Manhattan Beach, CA 90266 UNITED STATES

Name	DC Comics
Granted to Date of previous extension	10/17/2012
Address	1700 Broadway New York, NY 10019 UNITED STATES

Attorney information	Jonathan D. Reichman, Esq. Kenyon and Kenyon LLP One Broadway New York, NY 10004 UNITED STATES tmdocketny@kenyon.com Phone:212-425-7200
----------------------	--

**Applicant Information**

Application No	85529122	Publication date	06/19/2012
Opposition Filing Date	10/16/2012	Opposition Period Ends	10/17/2012
Applicant	Low Level Ventures 1988 Sandalwood Dr Santa Maria, CA 93455 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. All goods and services in the class are opposed, namely: Hats; Shirts
---

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	825835	Application Date	04/12/1966
Registration Date	03/14/1967	Foreign Priority Date	NONE
Word Mark	SUPER HERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U039 (International Class 025). First use: First Use: 1965/10/29 First Use In Commerce: 1966/03/04 MASQUERADE COSTUMES		

U.S. Registration No.	3674448	Application Date	01/23/2004
Registration Date	08/25/2009	Foreign Priority Date	NONE
Word Mark	SUPER HEROES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 t-shirts		

U.S. Registration No.	1179067	Application Date	07/03/1979
Registration Date	11/24/1981	Foreign Priority Date	NONE
Word Mark	SUPER HEROES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1966/10/00 First Use In Commerce: 1966/10/00 PUBLICATIONS, PARTICULARLY COMIC BOOKS AND MAGAZINES AND STORIES IN ILLUSTRATED FORM [( ; CARDBOARD STAND-UP FIGURES; PLAYING CARDS; PAPER IRON-ON TRANSFER; ERASERS; PENCIL SHARPENERS; PENCILS; GLUE FOR OFFICE AND HOME USE, SUCH AS IS SOLD AS STATIONERY SUPPLY; NOTEBOOKS AND STAMP ALBUMS ) ]		

U.S. Registration No.	1140452	Application Date	01/24/1974
Registration Date	10/14/1980	Foreign Priority Date	NONE
Word Mark	SUPER HEROES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1973/07/02 First Use In Commerce: 1973/07/02 Toy Figures		

Attachments	78356610#TMSN.gif ( 1 page )( bytes ) Notice of Opp - LL LOW LEVEL SUPERHERO and Design.pdf ( 12 pages ) (386044 bytes )
-------------	--

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jonathan D. Reichman/
Name	Jonathan D. Reichman, Esq.
Date	10/16/2012



2. Applicant has alleged an intention to use this mark under Trademark Act Section 1(b) (15 U.S.C. §1051(b)), and therefore has alleged no date of first use of this mark in commerce.

3. Opposer is engaged in the businesses of, *inter alia*, entertainment, media, publishing, and merchandise licensing. Opposer DC Comics is the owner and publisher of “DC Comics” and related intellectual property, which feature such world-famous characters and properties as “SUPERMAN<sup>®</sup>” and “BATMAN.<sup>®</sup>” Opposer Marvel (including its related companies) is the owner and publisher of “Marvel Comics” and related intellectual property, which feature such world-famous characters and properties as “SPIDER-MAN<sup>®</sup>” and “IRON MAN.<sup>®</sup>”

4. Opposers are the joint owners of the trademarks and service marks “SUPER HERO,<sup>®</sup>” “SUPER HEROES<sup>®</sup>” and variations thereof. Beginning at least as early as 1958, *i.e.*, well prior to Applicant’s filing date, Opposer (including its predecessors-in-interest) has used “SUPER HERO,<sup>®</sup>” “SUPER HEROES<sup>®</sup>” and variations thereof as trademarks and service marks for a wide variety of products and services, including, without limitation, comic books, clothing, toys, television programming, motion pictures and foods.

5. Opposer is the owner of numerous registrations on the Principal Register of the United States Patent and Trademark Office for its marks “SUPER HERO,<sup>®</sup>” “SUPER HEROES,<sup>®</sup>” and variations thereof, including without limitation the following:

<u>Mark</u>	<u>Reg. No.</u>	<u>Date of Reg.</u>	<u>Goods/ Services</u>
SUPER HERO	825,835	3/14/67	masquerade costumes
SUPER HEROES	3,674,448	8/25/09	t-shirts

SUPER HEROES	1,179,067	11/24/81	publications, particularly comic books and magazines and stories in illustrated form; notebooks and stamp albums
SUPER HEROES	1,140,452	10/14/80	toy figures

Each of these registrations (copies of which are attached hereto as Exhibit "A") issued prior to Applicant's filing date, and consequently there is no question of priority of rights, such priority clearly belonging to Opposer. Moreover, most of these registrations are incontestable under 15 U.S.C. § 1065.

6. Through Opposer's activities, and through the extensive promotion and advertising of Opposer and its licensees connected therewith, the public and trade have come to associate the trademarks and service marks "SUPER HERO,<sup>®</sup>" "SUPER HEROES<sup>®</sup>" and variations thereof with Opposer, and with its products and services.

7. By virtue of its prior use in commerce of "SUPER HERO,<sup>®</sup>" "SUPER HEROES<sup>®</sup>" and variations thereof, Opposer is entitled to hold itself out to the public and trade as having the exclusive right to use "SUPER HERO,<sup>®</sup>" "SUPER HEROES<sup>®</sup>" and variations thereof as trademarks and service marks for its products and services. Registration of the applied-for mark would be inconsistent with such right of Opposer.

8. Substantial efforts have been made by Opposer and its licensees to advertise and promote their goods and services under Opposer's "SUPER HERO<sup>®</sup>" and "SUPER HEROES<sup>®</sup>" trademarks and service marks. Opposer, by its aforesaid use of "SUPER HERO,<sup>®</sup>" "SUPER HEROES<sup>®</sup>" and variations thereof, and by its promotional efforts in connection therewith, has built up valuable goodwill associated with these marks. As a result of their long use, advertising

and promotion by Opposer, such marks have acquired secondary meaning in the minds of both the trade and public in connection with Opposer and with its products and services.

9. If Applicant is granted registration for the mark opposed herein, it would obtain thereby at least the *prima facie* exclusive right to use such mark. Such registration would be a significant source of damage and injury to Opposer.

10. Registration should be denied under Lanham Act Section 2(d) (15 U.S.C. § 1052(d)), because Applicant's applied-for mark is confusingly similar to Opposer's "SUPER HERO<sup>®</sup>" and "SUPER HEROES<sup>®</sup>" trademarks and service marks, as it incorporates Opposer's "SUPER HERO<sup>®</sup>" trademark in its entirety.

11. Moreover, Applicant's mark is allegedly intended to be used in connection with goods which are identical and/or similar and/or related to goods on and in connection with which Opposer has used and/or registered its "SUPER HERO<sup>®</sup>" and "SUPER HEROES<sup>®</sup>" marks, as well as many of its other marks. As a result, Opposer holds rights in the terms "SUPER HERO<sup>®</sup>", "SUPER HEROES<sup>®</sup>" and variations thereof which are superior to Applicant's alleged rights with respect to the identified goods.

12. Applicant's use and registration of its mark is likely to cause injury to Opposer's rights in its "SUPER HERO<sup>®</sup>" and "SUPER HEROES<sup>®</sup>" marks, as such use and registration will inevitably cause confusion and mistake and will deceive the public into believing that Applicant's goods are affiliated with, sponsored by, or jointly developed with Opposer or Opposer's licensees, and that such goods emanate from the same source, and/or that Applicant is in some other fashion connected with Opposer, all to Opposer's injury.

13. If Applicant is permitted to register the applied-for mark so as to claim exclusive rights therein, confusion among the public and trade will result, causing damage and injury to

Opposer. Members of the trade and public familiar with Opposer's "SUPER HERO®" and "SUPER HEROES®" trademarks and service marks would be likely to believe (and would be justified in so believing) that Applicant's goods originate from Opposer, or an entity in some way associated with Opposer, or are licensed or authorized by Opposer or with Opposer's approval. Furthermore, any objection or fault found with Applicant's goods would necessarily reflect upon and seriously injure the reputation which Opposer has established in connection with the goods and services sold by Opposer and its licensees under its "SUPER HERO®" and "SUPER HEROES®" marks.

14. Consequently, the applied-for mark does not and cannot exclusively identify the goods of Applicant, nor can it distinguish those goods from the goods and services of Opposer, nor can it serve as an indication of source or origin of such goods.

15. By reason of the foregoing, Applicant's registration of the mark herein opposed will cause damage and injury to Opposer, and to Opposer's rights in its "SUPER HERO®" and "SUPER HEROES®" marks.

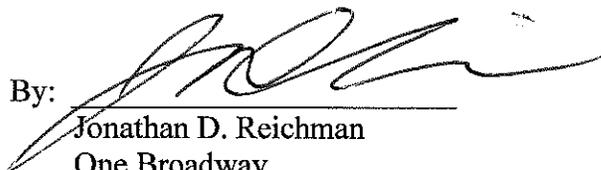
16. For the above reasons, Application Serial No. 85/529,122 should be denied registration under 15 U.S.C. § 1052(d).

17. The statutory fee of three hundred dollars (\$300.00), and any additional required fees, should be charged to the undersigned's Deposit Account No. 11-0600.

WHEREFORE, Opposer prays that Application Serial No. 85/529,122 be rejected, and that the registration of the mark be denied and refused, and that this Opposition be sustained.

KENYON & KENYON LLP

Dated: October 16, 2012

By: 

Jonathan D. Reichman  
One Broadway  
New York, New York 10004  
Phone: (212) 425-7200  
Fax: (212) 425-5288  
Email: jreichman@kenyon.com

*Attorneys for Opposers*

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being filed through the electronic system for the Trademark Trial and Appeal Board in the United States Patent and Trademark Office on October 16, 2012.

By:   
Jonathan D. Reichman

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing document, entitled Notice of Opposition, was served on this 16<sup>th</sup> day of October, 2012, by first class mail, postage prepaid, upon Applicant, as follows:

Low Level Ventures  
c/o Steven M. Anderson and  
Enrique N. Arias, Jr.  
1988 Sandalwood Drive  
Santa Maria, California 93455



Jonathan D. Reichman

# **EXHIBIT "A"**

Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office  
Renewal

Reg. No. 825,835  
Registered Mar. 14, 1967  
OG Date Oct. 4, 1988

**TRADEMARK  
PRINCIPAL REGISTER**

**SUPER HERO**

MARVEL ENTERTAINMENT GROUP,  
INC. (DELAWARE CORPORATION)  
387 PARK AVENUE SOUTH  
NEW YORK, NY 10016 AND

DC COMICS, INC. (NEW YORK CORPO-  
RATION)  
666 FIFTH AVENUE  
NEW YORK, NY 10103, ASSIGNEE BY  
MESNE ASSIGNMENT BEN COOPER,  
INC. (NEW YORK CORPORATION)  
BROOKLYN, NY

FOR: MASQUERADE COSTUMES, IN  
CLASS 39 (INT. CL. 25).  
FIRST USE 10-29-1965; IN COMMERCE  
3-4-1966.

SER. NO. 243,225, FILED 4-12-1966.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Oct. 4, 1988.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,674,448

Registered Aug. 25, 2009

TRADEMARK  
PRINCIPAL REGISTER

SUPER HEROES

MARVEL CHARACTERS, INC. (DELAWARE  
CORPORATION)  
9442 BEVERLY BOULEVARD  
SUITE 350  
BEVERLY HILLS, CA 90210 AND  
DC COMICS (NEW YORK PARTNERSHIP)  
1700 BROADWAY  
NEW YORK, NY 10019

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,140,452 AND  
1,179,067.

FOR: T-SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND  
39).

SN 78-356,610, FILED 1-23-2004.

FIRST USE 1-1-2005; IN COMMERCE 1-1-2005.

ESTHER BELENKER, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 5, 22, 37 and 38

**United States Patent and Trademark Office**

**Reg. No. 1,179,067**  
Registered Nov. 24, 1981

**TRADEMARK**  
Principal Register

**SUPER HEROES**

Cadence Industries Corporation (Del. corporation),  
a.k.a. Marvel Comics Group and DC Comics Inc.  
575 Madison Ave.  
New York, N.Y. 10022

For: PUBLICATIONS, PARTICULARLY  
COMIC BOOKS AND MAGAZINES AND  
STORIES IN ILLUSTRATED FORM; CARD-  
BOARD STAND-UP FIGURES; PLAYING  
CARDS; PAPER IRON-ON TRANSFERS; ERAS-  
ERS; PENCIL SHARPENERS; PENCILS; GLUE  
FOR OFFICE AND HOME USE, SUCH AS IS  
SOLD AS STATIONERY SUPPLY; NOTEBOOKS  
AND STAMP ALBUMS, in CLASS 16 (U.S. Cls. 5,  
22, 37 and 38).

First use Oct. 1966; in commerce Oct. 1966.

Ser. No. 222,079, filed Jul. 3, 1979.

HENRY S. ZAK, Primary Examiner

**Int. Cl.: 28**

**Prior U.S. Cl.: 22**

**United States Patent and Trademark Office**

**Reg. No. 1,140,452**

**Registered Oct. 14, 1980**

**TRADEMARK**  
**Principal Register**

**SUPER HEROES**

Cadence Industries Corporation (Delaware  
corporation)  
575 Madison Ave.  
New York, N.Y. 10022

and  
DC Comics Inc. (New York corporation)  
75 Rockefeller Plz.  
New York, N.Y. 10019, assignees of  
Ben Cooper, Inc. (New York corporation)  
Brooklyn, N.Y.

For: TOY FIGURES, in CLASS 28 (U.S. Cl. 22).  
First use Jul. 2, 1973; in commerce Jul. 2, 1973.  
Owner of U.S. Reg. No. 1,080,655.

Ser. No. 11,796, filed Jan. 24, 1974.

M. MERCHANT, Primary Examiner