

ESTTA Tracking number: **ESTTA657382**

Filing date: **02/23/2015**

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	DC Comics
Granted to Date of previous extension	02/22/2015
Address	1700 Broadway New York, NY 10019 UNITED STATES

Name	Marvel Characters, Inc.
Granted to Date of previous extension	02/22/2015
Address	1600 Rosecrans Avenue Manhattan Beach, CA 90266 UNITED STATES

Attorney information	Jonathan D. Reichman, Esq. Kenyon & Kenyon LLP One Broadway New York, NY 10004 UNITED STATES tmdocketny@kenyon.com
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**Applicant Information**

Application No	86217271	Publication date	08/26/2014
Opposition Filing Date	02/23/2015	Opposition Period Ends	02/22/2015
Applicant	Kovalic, Jr., Robert J. 5655 Cobblestone Ln Waunakee, WI 53597 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 016. First Use: 2004/06/30 First Use In Commerce: 2004/06/30  
All goods and services in the class are opposed, namely: Comic books; Comic strips; Comics


**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

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 ILLUSTRATEDFORM [( ; CARDBOARD STAND-UP FIGURES; PLAYING CARDS; PAPER IRON-ON TRANSFER; ERASERS; PENCIL SHARPENERS; PENCILS; GLUEFOR OFFICE AND HOME USE, SUCH AS IS SOLD AS STATIONERY SUPPLY; NOTEBOOKS AND STAMP ALBUMS ) ]		

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 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.	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.png( bytes ) Kovalic Opposition.pdf(509682 bytes )
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### **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	02/23/2015

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

In re Application of : Robert J. Kovalic, Jr.  
 Serial No. : 86/217,271  
 Filed : March 11, 2014  
 For : DR. BLINK SUPERHERO SHRINK  
 Published Official Gazette : August 26, 2014

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 DC COMICS and :  
 MARVEL CHARACTERS, INC., :  
 :  
 Opposers, :  
 :  
 vs. :  
 :  
 ROBERT J. KOVALIC, JR., :  
 :  
 Applicant. :  
 -----X

Opposition No. \_\_\_\_\_

NOTICE OF OPPOSITION

DC Comics, a New York general partnership having a place of business at 1700 Broadway, New York, New York 10019, and Marvel Characters, Inc. (“Marvel”), a Delaware corporation having a place of business at 1600 Rosecrans Avenue, Manhattan Beach, California 90266 (collectively, “Opposer”), believe that they will be damaged by registration of the above-identified mark, and hereby oppose the registration of said mark. The grounds of opposition are as follows:

1. By the application herein opposed, Robert J. Kovalic, Jr. is seeking to obtain, under the provisions of the Trademark Act of 1946 (15 U.S.C. § 1051 *et seq.*), registration for the mark “DR. BLINK SUPERHERO SHRINK” for “comic books; comic strips; comics” in International Class 16.
2. Applicant has alleged a first use date and a first use in commerce date of June 30, 2004.

3. Opposer is engaged in the businesses of, *inter alia*, publishing, entertainment, media, 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 alleged first use dates, 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 HEROES	1,179,067	11/24/81	publications, particularly comic books and magazines and stories in illustrated form; notebooks and stamp albums
SUPER HERO	825,835	3/14/67	masquerade costumes
SUPER HEROES	3,674,448	8/25/09	t-shirts

SUPER HEROES

1,140,452

10/14/80

toy figures

Most of these registrations issued prior to Applicant's alleged first use dates, 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. Applicant's mark fully incorporates Opposer's mark. Moreover, Applicant's mark is being used in connection with goods which are identical 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 “SUPER HERO<sup>®</sup>”, “SUPER HEROES<sup>®</sup>” and variations thereof which are superior to the alleged rights of Applicant with respect to the purported goods of Applicant.

10. If Applicant is granted registration for the mark opposed herein, he 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.

11. Registration should be denied under Lanham Act Section 2(d) (15 U.S.C. § 1052(d)) based upon the likelihood of Applicant’s mark to cause confusion, or to cause mistake, or to deceive with respect to Opposer’s marks and its goods and services.

12. Applicant’s use and registration of his 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<sup>®</sup>” and “SUPER HEROES<sup>®</sup>” 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. 86/217,271 should be denied registration under Lanham Act Section 2(d) (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. 86/217,271 be rejected, and that the registration of the mark be denied and refused, and that this Opposition be sustained.

KENYON & KENYON LLP

Dated: February 22, 2015

By: 

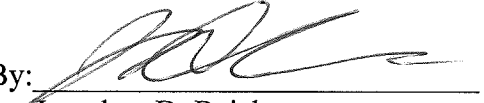
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CERTIFICATE OF ELECTRONIC FILING

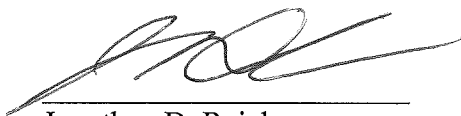
I hereby certify that this correspondence is being filed through the electronic system for the Trademark Trial and Appeal Board in the United States Patent and Trademark Office on February 22, 2015.

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 22<sup>nd</sup> day of February, 2015, by first class mail, postage prepaid, upon Applicant, through his counsel of record, as follows:

Melinda S. Giftos, Esq.  
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Jonathan D. Reichman