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The Suit Against Iron Man's Suit is Not Iron Clad

Iron Man's suit is at the centre of an intergalactic copyright infringement battle brought by Horizon Comics Productions Inc. ("Horizon") against Marvel Entertainment, LLC et al. ("Marvel"). The alleged infringement is largely directed to Horizon's Canadian created *Radix* comic book series (the "Works") and Marvel's Iron Man suit from the movie Iron Man 3.

Background

Horizon owns the copyright in the Works, a series published in 2001-2002. According to the decision in *Horizon Comics Productions Inc c Marvel Entertainment*, the characters in the Works wear highly detailed, futuristic, armored, and weaponized suits of body armor.

Marvel's Iron Man comic book series first appeared in the 1960s. Following the release of the movie Iron Man 3 in 2013, Horizon instituted a first copyright action against Marvel in Massachusetts, United States in 2015 alleging that Iron Man's suit in Iron Man 3 was strikingly similar to that of Caliban, a character in the Works. The action was dismissed for lack of jurisdiction in February 2016.

In April 2016, Horizon commenced the 'same action' against the same parties in the U.S. District Court for the Southern District of New York. In 2017 that action was dismissed. In 2019 a stipulation was entered into between the parties in which Horizon agreed not to appeal the 2017 decision or to otherwise prosecute the case in any further way (the "Stipulation").

The third sequel in this series began in April 2021 when Horizon filed its Originating Application in the province of Quebec. Horizon asserts that new Marvel movies continue to appropriate its Works. It now further asserts that Iron Man's suit is also substantially similar to another of its character's suits, Maxwell. In August 2021 Marvel filed a motion for, among other things, Exception to Dismiss and Abuse of Process.

Horizon amended its application in September 2021 ("Amended Application"). The Amended Application asserts copyright infringement due to costumes of Iron Man, Ant-Man and the WASP characters based on sections 3(1) and 27(1) of the Canadian *Copyright Act*. There are also allegations pursuant to section 35 of the Canadian *Copyright Act* stemming from

alleged public exhibition, reproduction, communication to the public, making available to the public or otherwise exploiting the Works in Canada by Marvel without consent. Is this copyright dispute an infinity war or is an endgame in sight?

Several issues were in dispute on the motion before the Court including whether the Quebec Superior Court has jurisdiction over the Marvel defendants, whether the Amended Application is barred by *res judicata* and whether the Amended Application is an abuse of process.

Discussion

Horizon continues to use weapons in its arsenal to fight its copyright clash. After having tried twice to make out its allegations in the United States it has moved the battlefield to the Superior Court of Quebec.

On this motion the Court held *prima facie* that infringement may have occurred in Quebec and Canada and that Quebec courts have jurisdiction to hear the application. It is not disputed between the parties that Iron Man 3 and relevant Avengers films were presented in cinemas in Quebec and across Canada. The films were also made available on the internet via platforms like Disney+ and Amazon Prime Video. Further, a tweet about Canadian box office success in April 2018 about the film may support direct or indirect revenue in Canada resulting from the alleged infringement.

On the issue of *res judicata*, the Court held that the matter should be examined by the judge hearing the merits of the case. A key consideration for the Court is the fact that in the US proceedings, the U.S. *Copyright Act* was at issue. However, in this proceeding the allegations are brought pursuant to the Canadian *Copyright Act* for alleged infringement in Canada.

The Court found that Horizon raised serious questions to be determined by a judge hearing the merits. As such it held the argument that the proceeding was an abuse of process was ill founded.

Conclusion

As a practical reminder, IP disputes may arise in multiple jurisdictions. Enforcement of IP is on a jurisdictional basis with consideration of each country's relevant statute(s) and cause(s) of action. See also the recent patent decision in *Google LLC v Sonos, Inc*. IP rights owners can protect, commercialize, and enforce their IP portfolios including copyright, trademarks and patents in each jurisdiction in which those rights exist.

Will Horizon be able to avenge Marvel for alleged copyright infringement? Although Horizon's claims against Marvel have

not yet met success, the Superior Court of Quebec has kept the door open for the litigation to continue. Despite Horizon's heroic efforts in seeking to protect its IP, it is not clear that the suit against Iron Man's suit is iron clad. As Spiderman once said "no man can win every battle, but no man should fall without a struggle". Look out for a fourth sequel in this saga (hearing on the merits) coming soon to a court near you.