

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MARVEL ENTERTAINMENT, INC. f/k/a
MARVEL ENTERPRISES, INC. and MARVEL
CHARACTERS, INC.

Plaintiffs,

-against-

MGA ENTERTAINMENT, INC.,

Defendant.

09600003

Docket No. _____

SUMMONS

FILED
JAN 02 2009
NEW YORK
COUNTY CLERK'S OFFICE


TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York), and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
January 2, 2009

OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP

By: _____


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COMPLAINT

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Plaintiff Marvel Entertainment, Inc. f/k/a Marvel Enterprises, Inc. and Marvel Characters, Inc. (collectively "Marvel") for their complaint against Defendant MGA Entertainment, Inc., respectfully alleges as follows:

INTRODUCTION

1. This is a civil action by Marvel against MGA Entertainment, Inc. for breach of license agreements by which Plaintiff licensed Defendant certain merchandising rights for the Marvel characters and associated intellectual property. MGA breached the license agreements between it and Marvel by failing to comply with their terms and owes Marvel at least \$1,504,796 per the terms of the license agreements.

JURISDICTION

2. The Court has personal jurisdiction over Defendant by virtue of a forum selection clause in the license agreements between Marvel and MGA by which the parties agreed that disputes between the parties are subject to the jurisdiction of the state or federal courts in New York.

PARTIES

3. Plaintiff, Marvel Entertainment, Inc. is and at all times hereinafter mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with an office at 417 Fifth Avenue, New York, New York, 10016. Marvel Entertainment, Inc. was formerly known by the name Marvel Enterprises, Inc.

4. Plaintiff Marvel Characters, Inc. is and at all times hereinafter mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of Delaware. Marvel Characters, Inc. maintains its principal office at 9242 Beverly Boulevard, Los Angeles, California 90210.

5. Marvel is one of the leading comic book/entertainment and licensing companies in the world, and owns a library of over 5,000 proprietary characters (the "Marvel Characters"), including the including IRON MAN, CAPTAIN AMERICA, the X-MEN, SPIDER-MAN, GHOST RIDER and THE FANTASTIC FOUR. Marvel's business is based on the exploitation of the Marvel Characters and other intellectual property through licensing, publishing, comic books, television and movie productions, and other similar ventures.

6. Upon information and belief, Defendant MGA Entertainment, Inc. ("MGA" or "Defendant"), is and at all times hereinafter mentioned has been a corporation, organized and existing under and by virtue of the laws of the State of California. Upon further information and belief, MGA maintains its principal office at 16340 Roscoe Blvd., Van Nuys, CA 91406.

THE LICENSE AGREEMENTS

7. On or about June 30, 2005, Marvel granted MGA a license for the exploitation by MGA of certain Marvel characters in connection with certain specifically delineated "Licensed Articles." License Agreement No. D05089 had a stated term commencing on June 30, 2005 and expiring on December 31, 2008.

8. On or about January 30, 2006, Marvel granted MGA a license for the exploitation by MGA of certain Marvel characters in connection with certain specifically delineated "Licensed Articles." License Agreement No. D06002 had a stated term commencing on January 30, 2006 and expiring on December 31, 2009. (License Agreements Nos. D05089 and D06002 collectively referred to as the "License Agreements.")

9. Over the last eighteen (18) months, MGA has been in default of various payment obligations to Marvel.

10. Pursuant to paragraphs 17(c) of the License Agreements, Marvel is entitled to its attorneys' fees incurred to "any of its rights" under the License Agreements.

AUDIT

11. Per their rights under the License Agreements, Marvel's designated auditor, Gingold & Company, performed an audit of MGA.

12. On or about November 26, 2008, Gingold & Company issued an audit report (the "Audit Report") finding that at least \$1,129,796 is due and owing Marvel as a result of MGA's failure to comply with the terms of the License Agreements and the Settlement Agreement. A copy of the Marvel Audit Report was sent to MGA on or about November 26, 2008.

13. On or about December 22, 2008, Marvel wrote MGA and demanded that MGA pay Marvel all monies it owes to Marvel. To date, MGA has not paid any of the sums identified in the Marvel Audit Report as due and owing to Marvel.

14. MGA owed a \$375,000 minimum guarantee payment on or before January 1, 2009. MGA has failed to make this payment.

15. There having been more than two previous defaults by MGA within the prior 18 months, Marvel has exercised its right to immediately terminate License Agreement No. D06002.

FIRST CLAIM FOR RELIEF FOR BREACH OF CONTRACT
(Sale of Unlicensed Articles)

16. Marvel realleges the allegations in paragraphs 1 through 15 as if set forth fully herein.

17. Pursuant to License Agreement No. D05089, Marvel granted MGA certain rights with respect to specifically delineated articles.

18. As found in the Audit Report, however, MGA sold additional articles including "Marvel Insane Darts" and "Spider-Man Web Crawl" that were not licensed to MGA.

19. Per the terms of License Agreement No. D05089, MGA owes Marvel an amount equal to its net sales on the unlicensed articles.

20. As a result of the foregoing, Marvel has been damaged in an amount to be determined at trial but that is at least \$625,620, plus its attorneys' fees, costs and cost of audit.

SECOND CLAIM FOR RELIEF FOR BREACH OF CONTRACT
(Sale of Unlicensed Characters)

21. Marvel realleges the allegations in paragraphs 1 through 20 as if set forth fully herein.

22. Pursuant to License Agreement No. D05089, Marvel granted MGA certain rights with respect to specifically delineated licensed characters and articles.

23. As found in the Audit Report, however, MGA sold a "Ghost Rider Walkie Talkie Combo" product even though MGA was not licensed to exploit the Ghost Rider character in connection with a "Walkie Talkie" product.

24. Per the terms of License Agreement No. D05089, MGA owes Marvel an amount equal to its net sales on the unlicensed units of the "Ghost Rider Walkie Talkie Combo" product.

25. As a result of the foregoing, Marvel has been damaged in an amount to be determined at trial but that is at least \$153,351, plus its attorneys' fees, costs and cost of audit.

THIRD CLAIM FOR RELIEF FOR BREACH OF CONTRACT
(Unreported Sales)

26. Marvel realleges the allegations in paragraphs 1 through 25 as if set forth fully herein.

27. As found in the Audit Report, MGA failed to report to Marvel all sales of Marvel licensed product as required by the License Agreements between Marvel and MGA.

28. As a result of the foregoing, Marvel has been damaged in an amount to be determined at trial but that is at least \$15,069 plus its attorneys' fees, costs and cost of audit.

FOURTH CLAIM FOR RELIEF FOR BREACH OF CONTRACT
(Disallowed Deductions)

29. Marvel realleges the allegations in paragraphs 1 through 28 as if set forth fully herein.

30. Pursuant to paragraph 5 of License Agreements Nos. D05089 and D06002, Marvel allowed MGA to deduct certain standard trade discounts actually given by MGA and actual returns for damaged goods in determining MGA's net sales under the license agreements.

31. As found in the Audit Report, however, MGA claimed certain deductions for discounts and returns but was unable to provide support for those discounts and returns.

32. As a result of the foregoing, Marvel has been damaged in an amount to be determined at trial but that is at least \$85,316, plus its attorneys' fees, costs and cost of audit.

FIFTH CLAIM FOR RELIEF FOR BREACH OF CONTRACT
(Unpaid Marketing Payments)

33. Marvel realleges the allegations in paragraphs 1 through 32 as if set forth fully herein.

34. Per the terms of License Agreements Nos. D05089 and D06002, MGA is obligated to make certain Advertising and Marketing Contributions as specified therein.

35. MGA failed to make \$75,000 in such payments as specified in License Agreements Nos. D05089 and D06002.

36. As a result of the foregoing, Marvel has been damaged in an amount to be determined at trial but that is at least \$75,000 plus its attorneys' fees, costs and cost of audit.

SIXTH CLAIM FOR RELIEF FOR BREACH OF CONTRACT
(Interest)

37. Marvel realleges the allegations in paragraphs 1 through 36 as if set forth fully herein.

38. Per paragraph 17(c) of the License Agreements between Marvel and MGA, Marvel is owed interest at 3% above the prime lending rate on unpaid sums due Marvel under the License Agreements.

39. As a result, MGA owes Marvel in excess of \$170,000 in interest per the terms of the License Agreements.

40. As a result of the foregoing, Marvel has been damaged in an amount to be determined at trial but that is at least \$170,000 plus its attorneys' fees, costs and cost of audit.

SEVENTH CLAIM FOR RELIEF FOR BREACH OF CONTRACT
(Cost of Audit)

41. Marvel realleges the allegations in paragraphs 1 through 40 as if set forth fully herein.

42. Paragraph 5(e) of the License Agreements provides that MGA shall be responsible for paying Marvel's costs and expenses incurred in auditing MGA if there is a deficiency of 3% or more of the royalties paid to Marvel.

43. There was deficiency of more than 3% under the License Agreements.

44. Accordingly, MGA owes Marvel its costs and expenses incurred in connection with its audit of MGA, or at least \$7,225.

45. As a result of the foregoing, Marvel has been damaged in an amount to be determined at trial but that is at least \$7,225 plus its attorneys' fees and costs.

EIGHTH CLAIM FOR RELIEF FOR BREACH OF CONTRACT
(Failure to Pay Minimum Guarantee)

46. Marvel realleges the allegations in paragraphs 1 through 45 as if set forth fully herein.

47. Under License Agreement No. D06002, MGA owed Marvel a minimum guarantee payment of \$375,000 on or before January 1, 2009.

48. MGA has failed to make this payment.

49. As a result of the foregoing, Marvel has been damaged in an amount to be determined at trial but that is at least \$375,000 plus its attorneys' fees and costs.

NINTH CLAIM FOR RELIEF FOR UNJUST ENRICHMENT

50. Marvel realleges the allegations in paragraphs 1 through 49 as if set forth fully herein.

51. At the request of MGA, Marvel performed under the License Agreements and thereby conferred a benefit upon MGA in the form of its intellectual property that was exploited by MGA.

52. The fair and reasonable value of the property exploited by MGA for which MGA has not paid Marvel is at least \$1 million.

53. Marvel conferred this value and benefit upon to MGA, enriching MGA at its request, and as a result, Marvel is entitled to recover damages in the amount of at least \$1 million.

54. By reason of the foregoing, MGA is liable to Marvel in an amount to be determined at trial but that is at least \$1,000,000.

WHEREFORE, Marvel prays for a judgment against MGA, as follows:

1. On the First Claim for Relief for Breach of Contract:
 - a. For damages in an amount to be determined at trial but that is at least \$625,620; and
 - b. For costs of suit and attorneys' fees incurred herein.
2. On the Second Claim for Breach of Contract:
 - a. For damages in an amount to be determined at trial but that is at least \$153,351; and
 - b. For costs of suit and attorneys' fees incurred herein.
3. On the Third Claim for Relief for Breach of the Contract:
 - a. For damages in an amount to be determined at trial but that is at least \$15,069; and
 - b. For costs of suit and attorneys' fees incurred herein.
4. On the Fourth Claim for Breach of Contract:
 - a. For damages in an amount to be determined at trial but that is at least \$85,316; and
 - b. For costs of suit and attorneys' fees incurred herein.
5. On the Fifth Claim for Breach of Contact:
 - a. For damages in an amount to be determined at trial but that is at least \$75,000; and

- b. For costs of suit and attorneys' fees incurred herein.
6. On the Sixth Claim for Breach of Contract:
- a. For damages in an amount to be determined at trial but that is at least \$170,000; and
 - b. For costs of suit and attorneys' fees incurred herein.
7. On the Seventh Claim for Breach of Contract:
- a. For damages in an amount to be determined at trial but that is at least \$204,602; and
 - b. For costs of suit and attorneys' fees incurred herein.
8. On the Eighth Claim for Breach of Contract:
- a. For damages in an amount to be determined at trial but that is at least \$375,000; and
9. For costs of suit and attorneys' fees incurred herein.
10. On the Ninth Claim for Unjust Enrichment:
- a. For damages in an amount to be determined at trial but that is at least \$1,000,000; and
 - b. For costs of suit and attorneys' fees incurred herein.
11. On all Claims for Relief:
- a. For reasonable attorneys' fees;
 - b. For costs of suit incurred herein;
 - c. For interest thereon; and
 - d. For such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 2, 2009

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