

*A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.*

## [Shop Tools by Marvel Comics?](#)

Posted on October 22, 2010 by [Dan Kelly](#)

Last Friday, MVL Rights, LLC, a [Disney](#) subsidiary and apparent owner of rights in the [HULK name and character](#) of [Marvel Comics](#) origin, filed a lawsuit in the [U.S. District Court for the Southern District of Ohio](#) against Airbase Industries, LLC regarding Airbase's use of HULK in connection with air compressors. [Insert obligatory Hulk-angry-lawsuit quip here.] The first newflash I read reported that Airbase's HULK-branded compressors are green (like the Marvel Comics Hulk character). Even so, without further investigation, knowing only the word marks (identical) and goods and services of the parties (fictional character vs. air compressors), and potential color similarity, I reserved initial judgment, envisioning a host of scenarios that could cut in different directions, for or against either party.

A back-of-the-envelope trademark infringement analysis usually focuses on the two leading elements in the likelihood of confusion analysis: the similarity of the marks and the similarity of the goods. Here, the word components of the marks are identical--both are HULK. The goods and services? Much more difficult. I am not accustomed to seeing comic-book characters adorn or endorse shop equipment, but I suppose it is not beyond the realm of possibility. The word "hulk," after all, has a dictionary definition of "a large or unwieldy boat or other object," which could describe or suggest many types of shop equipment. (In terms of a character to endorse or sponsor heavy-duty shop equipment, I suppose that a company could do worse than The Hulk. On the other hand, he is not terribly eloquent and is a bit juvenile.)

Today I had time to actually review the complaint and exhibits filed with the complaint, and here's an image of the accused infringing goods:



Now, compare this to this stylized HULK mark from a promo piece for one of the HULK movies:



(See more examples [here](#).) On top of this, Marvel included with its complaint numerous images of Hulk t-shirts sporting variants of the word UNLEASH.

To my mind, all of the above may well go to the "intent" element in the likelihood of confusion analysis--it really looks like Airbase is trying to play off of the Marvel property. Marvel, by the way, claims to have once licensed the HULK mark for use with "tool storage units," so a claim of endorsement or sponsorship may not be terribly outlandish with respect to shop equipment.

| I have a hard time seeing this case making it far, particularly with the 800 lb. Disney gorilla, er, "Hulk" in one corner. Even were the facts to look more favorable to Airbase (and who knows--maybe Airbase will surprise everyone and demonstrate priority to before 1962--the year of *The Hulk's* introduction), few companies really want to go the distance with a company that so evidently *can* go the distance, in terms of the overall expense of litigation. Alas, look for this case to settle out. (And think outside of the box for licensing opportunities!)



Capella Tower | Suite 3500 | 225 South Sixth Street | Minneapolis, MN 55402  
Main: (612) 604-6400 | Fax: (612) 604-6800 | [www.winthrop.com](http://www.winthrop.com) | *A Professional Association*