Marvel Sues 2 Cos. Over Role-Playing Game

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LOS ANGELES -- Marvel Enterprises Inc. is suing two firms behind a computer superhero role-playing game it claims allows players to make virtual characters that are too similar to "The Hulk," "X-Men" and other heroes in the comic book company's stable.

The lawsuit claims South Korea-based NCSoft Corp. and San Jose-based Cryptic Studios Inc. violated Marvel's trademark characters in their game "City of Heroes." Marvel seeks unspecified damages and an injunction against the two companies to stop using its characters.

The personal computer game enables players to design superheroes' look and abilities and then battle against other players' characters in a virtual city. Like similar so-called massively multiplayer role-playing games where thousands of players can be playing simultaneously at any given time, "City of Heroes" claims to offer a myriad of combinations so that no two players' characters are exactly the same.

But in its lawsuit, filed Wednesday in U.S. District Court, Marvel argues that the game's character creation engine easily allows players to design characters that are virtual copies of its own superheros, including "The Incredible Hulk."

The company singles out a game feature for creating "a gigantic, green, 'science-based tanker'-type hero that moves and behaves nearly identically" to the "Hulk." Players can also create a "mutant-based" hero powers and a costume nearly identical to Marvel's "Wolverine," according to the suit.

The New York-based company also took issue with the ability of players to go so far as to name their superhero creations after Marvel comic book characters.

Marvel claims the firms' are responsible because the game is played on servers operated by the companies, raising the question of whether a company is responsible for their customers' actions on its computer server.

Marvel also claims the companies have disrupted its "existing and future" business prospects for licensing its characters in video games similar to "City of Heroes."

An e-mail sent to NCSoft seeking comment was not immediately returned after-hours Thursday. No number was listed for Cryptic Studios.

The Marvel lawsuit appears to be the first to raise this question in the scope of an online game. But early copyright infringement lawsuits brought by recording companies against pioneer file-sharing service Napster successfully argued Napster was liable for its customers' sharing of music online because they could do so only by accessing the company's computer system.

The argument can still be made that "City of Heroes" is only empowering users to the same degree that an establishment like Kinkos enables customers to make paper copies of copyrighted material, said Fred
von Lohmann, senior intellectual property attorney with the Electronic Frontier Foundation.

"Is it a violation of copyright to make up a character in the virtual world or is that fair use?" von Lohmann said. "This is really untested ground in the courts."

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