

# Bereskin & Parr

INTELLECTUAL PROPERTY LAW

January 9, 2017

Cynthia Rowden B.A., LL.B.  
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Our Reference: 8147-OT9476CA00

## By Email and Registered Mail

Ian Brett

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## Re: Use of REAL ESTATE SUPERHERO and related SUPERMAN Indicia

Dear Mr. Brett,

We act on behalf of DC Comics, the owner of all intellectual property rights, including trademarks and copyright, in and to the SUPERMAN property, including the character, trademarks and related indicia. Our client has used the SUPERMAN marks for more than seventy years. In addition to the SUPERMAN mark, which has been registered around the world, including in Canada, the SUPERMAN indicia include the distinctive appearance of the SUPERMAN character, who wears a blue suit, with the distinctive and well-known red and yellow S-in-Shield on his chest. The image of the SUPERMAN character transforming from Clark Kent to SUPERMAN by ripping open his shirt to reveal his blue outfit bearing the S-in-Shield is iconic. The features of the SUPERMAN indicia, including the shield, have been incorporated into many trademark registrations, including in Canada, and are immediately recognizable as the marks of our client.

As a result of our client's trademark, copyright and related intellectual property rights, our client has the exclusive right to use the SUPERMAN indicia, and any unauthorized use of such indicia is an infringement of our client's rights.

Our client is also the co-owner of rights in the SUPER HEROES and SUPER HERO trademarks (the "SUPER HERO Trademarks") which are used in connection with the collection of characters that have been promoted and publicized by our client for decades in association with a wide range of goods and services. Copies of some of our client's trademark registrations are attached.

We have just become aware of your trademark application for Real Estate Superhero, and the related use of that mark and image, as well as a red and yellow shield design with a red "R". Images noted in our online investigations include those shown below. We have advised our client that the use of REAL ESTATE SUPERHERO, as a trademark, domain name or trade name, the R Shield Design, and any related imagery

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**TORONTO MISSISSAUGA WATERLOO MONTRÉAL**

(such as the iconic SUPERMAN imagery of a shirt being ripped open to reveal a blue outfit with a shield design), infringes our client's intellectual property rights.



While we appreciate your intent may have been to compare your success in real estate to the success of the SUPERMAN character, our client's intellectual property rights are very important assets, and it devotes considerable time and attention to protecting them. Your use not only infringes our client's rights, but damages and depreciates the goodwill associated with the SUPERMAN marks and indicia, and risks consumer confusion, should customers believe that your use of the SUPERMAN indicia has been authorized or licensed by our client.

Accordingly, we request that you withdraw the application for REAL ESTATE SUPERHERO, and cease all use of the indicia mentioned above, including the use and depictions of a blue shirt with a red and yellow shield design, the shield itself, and the image of you ripping your shirt open to reveal the blue outfit with the Shield design. While our client does not object to use of CAPTAIN VANCOUVER to promote your real estate business, use of SUPERMAN indicia and the SUPER HERO trademarks is not permissible.

We hope to resolve this quickly, and avoid any unnecessary steps such as an opposition to your trademark application for REAL ESTATE SUPERHERO or legal

proceedings regarding unauthorized use of our client's rights. In particular, we would appreciate receiving, as soon as possible, confirmation of the following:

1. that the application for REAL ESTATE SUPERHERO has been withdrawn;
2. that you will cease any and all use of the words REAL ESTATE SUPERHERO, and any and all use of the SUPERMAN indicia, including, but not limited to, the blue shirt and R shield design, the iconic SUPERMAN pose, and the R Shield Design, alone, or on clothing, in any publicity or promotional materials in any format; and
3. that you undertake in future not to use or apply to register any SUPERMAN or other DC Comics indicia, including trademarks, copyright, images or other indicia.

Should we receive a positive response **within 2 weeks of the date of this letter**, our client is prepared to permit you a reasonable time (up to one month) to fully cease all use of the SUPERMAN indicia, as described above. However, if we have not been able to confirm a successful resolution of this matter by then, our client will have no choice but to proceed accordingly to fully protect its rights.

We look forward to your reply.

Regards,

BERESKIN & PARR LLP/S.E.N.C.R.L., s.r.l.



Cynthia Rowden  
/cb  
Encl.

## Trademarks Owned by DC Comics

Trademark	Status	Goods and Services	Owner
<p>1. S &amp; DESIGN</p> 	<p>Registered  <b>App</b> 642789  <b>App</b> 17-OCT-1989  <b>Reg</b> TMA427993  <b>Reg</b> 03-JUN-1994</p>	<p>9 25 28                      (1) Computer software program sold in the form of cartridges, disks, cassettes or other media; home computer systems; electronic games and video games.                      (2) Toys, sporting goods, games and playthings, namely action figures and accessories therefor, plush toys, balloons, bathtub toys, ride-on toys, toy vehicles, dolls, electronic hand held game units, games equipment sold as a unit for playing a board game, a card game, a manipulative game, a board game, puzzles, paper face masks, costumes, namely body suits and face masks.                      (3) Motion picture, video and television films, pre-recorded audio-video tapes, cassettes and discs.</p>	<p>DC Comics, a partnership                      2900 West Alameda Avenue                      Burbank, CA 91505                      UNITED STATES</p>
<p>2. S &amp; DESIGN</p> 	<p>Registered  <b>App</b> 611454  <b>App</b> 18-JUL-1988  <b>Reg</b> TMA364174  <b>Reg</b> 12-JAN-1990</p>	<p>30                      (1) Candy.</p>	<p>DC Comics, a partnership                      2900 West Alameda Avenue                      Burbank, CA 91505                      UNITED STATES</p>
<p>3. SUPER HEROES</p>	<p>Registered  <b>App</b> 494962  <b>App</b> 17-NOV-1982  <b>Reg</b> TMA420863  <b>Reg</b> 17-DEC-1993</p>	<p>16 41                      (1) Publications particularly comic books and magazines and stories in illustrated form.                      (1) Entertainment services rendered through the medium of television and film exhibitions.</p>	<p>A Joint Venture consisting of Marvel Characters, Inc., a Delaware corporation, and DC Comics, a New York General Partnership                      10474 Santa Monica Boulevard,                      Suite 206,                      Los Angeles, California 90025,                      UNITED STATES</p>
<p>4. SUPERMAN &amp; DESIGN</p> 	<p>Registered  <b>App</b> 179157  <b>App</b> 13-MAR-1941  <b>Reg</b> UCA15440  <b>Reg</b> 13-MAR-1941</p>	<p>9 16                      (1) Periodical publications and comic strips.                      (2) Electric computerized cassettes and holographic cartridges.</p>	<p>DC Comics, a partnership                      2900 West Alameda Avenue                      Burbank, CA 91505                      UNITED STATES</p>
<p>5. SUPERMAN AND SUPERMAN DESIGN</p> 	<p>Registered  <b>App</b> 992989  <b>Reg</b> NFLD2989  <b>Reg</b> 05-DEC-1947</p>	<p>16 25 28 30                      (1) Magazines, periodicals, comic strips, cartoons, features for publication, toys, games, dolls, sporting goods, athletic goods, clothing and costumes, food stuffs such as candy and confectionery; and beverages.</p>	<p>DC Comics, a partnership                      2900 West Alameda Avenue                      Burbank, CA 91505                      UNITED STATES</p>