

Gaiman Wins Share Of 'Spawn' Profits In IP Battle

By **Melissa Lipman**

Law360, New York (August 02, 2010) -- A federal judge has ruled that author Neil Gaiman deserves a share of the profits from three characters in Todd McFarlane's "Spawn" comic book series that bear a strong resemblance to two fictional warriors Gaiman created for the series in 1992.

Judge Barbara B. Crabb of the U.S. District Court for the Western District of Wisconsin ruled Thursday that the three characters — Domina, Tiffany and Dark Ages Spawn — are derivative of Angela and Medieval Spawn, two characters that the courts have already determined that McFarlane and Gaiman co-own.

The judge ordered "Spawn" series creator McFarlane to turn over all documents related to the profits stemming from the three derivative characters for the ongoing accounting of how much Gaiman is owed for his work.

The long-running copyright dispute dates back to 1992, when Gaiman agreed to script an issue of "Spawn" for McFarlane, and came up with three new characters in the series about Al Simmons, a murdered government assassin who made a deal with a devil called Malebolgia to return to Earth and his wife as part of an army from Hell trying to conquer Heaven.

Gaiman conceived of Medieval Spawn as a fellow officer in Malebolgia's army and created Angela as a warrior from Heaven. While Angela killed Medieval Spawn early in his first and only issue, the angelic mercenary had her own spinoff series, and both were marketed as action figures.

In 2002, a jury found that Gaiman had an ownership interest in those characters, and the U.S. Court of Appeals for the Seventh Circuit eventually upheld that decision.

The resulting accounting of profits was delayed by McFarlane's appeal and bankruptcy proceedings and remained on hold until earlier in 2010. But when the process resumed, the two writers butted heads over whether McFarlane had to turn over information related to Tiffany, Domina and Dark Ages Spawn, which joined the comic empire later without input from Gaiman.

Judge Crabb pointed out that both Medieval and Dark Ages Spawn — which, unlike Gaiman's version, had success as a 28-issue spinoff series — have similar backgrounds and wear similar costumes. Likewise Tiffany and Domina are part of the same army of 300,000 "female, kickass warrior angels, who are hunters, merciless and not very nice" that are part of Gaiman's back-story for Angela, according to the opinion.

While the two Spawns set in the Middle Ages have slightly differing histories, the judge said, those differences simply make them individually copyrightable without preventing McFarlane's version from being derivative of Gaiman's.

Judge Crabb further questioned the individuality of McFarlane's version based on the series' rules, which bar more than one Hellspawn from being on Earth at the same time. McFarlane, however, failed to explain why he introduced a second knight in the same century when he could have easily established a new version in any number of other settings, the judge said.

"Not only does this break the Hellspawn 'rule' that Malebolgia never returns a Hellspawn to Earth more than once every 400 years ... it suggests that what defendant really wanted to do was exploit the possibilities of the knight introduced in [Gaiman's] issue," the opinion said.

As such, the judge ruled that McFarlane's version "substantially copied" from Gaiman's Spawn creation and would have infringed the plaintiff's copyright if anyone not working for the defendant had developed it.

Judge Crabb saw similar issues with Gaiman's Angela and McFarlane's Tiffany and Domina, who all have "voluptuous physiques," "glamorous hairstyles" and wear "thong bikinis, garters, wide weapon belts, elbow-length gloves and ill-fitting armor bras," among other accessories.

"Certainly they are similar enough to be infringing if they had been produced and sold by someone other than the copyright owners," the opinion said.

Gaiman attorney Allen A. Arntsen of Foley & Lardner LLP praised the latest decision, calling it consistent with the earlier rulings in the litigation.

An attorney for McFarlane was not immediately available for comment Monday.

Gaiman is represented by a team from Foley & Lardner LLP, including Allen A. Arntsen and Jeffrey A. Simmons, and by Kenneth F. Levin & Associates Chtd.

McFarlane is represented by a team from Bryan Cave LLP, including Michael A. Kahn and J. Alex Grimsley, and a team from Godfrey & Kahn SC, including Todd G. Smith.

The case is Gaiman v. McFarlane, case number 3:02-cv-00048, in the U.S. District Court for the Western District of Wisconsin.