

The Curious Case of Comic Con; Or is it Comic-Con?

by LaVar Oldham

On Friday, December 8, 2017, a jury in San Diego, California found that Salt Lake Comic Con infringed the trademark of San Diego Comic-Con. The jury found, however, that the infringement was not willful and therefore awarded \$20,000 instead of the \$12 Million sought by San Diego Comic-Con. The case is likely not over, as San-Diego Comic-Con has stated “from the beginning all that we asked of the defendants was to stop using our Comic-Con trademarks ... [t]oday we obtained a verdict that will allow us to achieve this.” The Salt Lake Comic Convention has stated that they will continue to use “comic con,” noting that “there’s the appeal process and there’s a cancellation proceeding at the trademark office.” See e.g., <http://fox13now.com/2017/12/08/jury-sides-with-san-diego-comic-con-in-lawsuit-against-salt-lake-comic-con/>.

The case is particularly interesting because of the history of comic con and comic-con (and other variants) as they relate to previous and current uses and registrations with the United States Trademark Office, as can be found at <http://tess2.uspto.gov>. The earliest attempt to register a related mark shown on the TESS of the USPTO is an attempt by San Diego Comic-Con to register the mark “COMIC CON” on July 26, 1995. That application was abandoned on April 19, 1999. On January 19, 1999, a registration was issued to San Diego Comic-Con for the mark “COMIC CON INTERNATIONAL”. On March 20, 2007 a trademark was issued for COMIC-CON to San Diego Comic-Con. Since the first registration, several different COMIC CON, COMIC-CON and COMICON registrations have been issued to various entities.

As to uses, according to their trademark applications, San Diego Comic-Con has used the mark “Comic-Con” since at least as early as 1970. Prior to that, “The New York Comicon” (widely held to be the first comic book art convention in the United States) was held in 1964. See here <http://gobacktothepast.com/fabulous-find-1964-new-york-comicon-book/> for examples of original artwork using “1964 New York Comicon”. The Academy of Comic-Book Fans and Collectors hosted “Comi Con: Second Annual Convention of Academy of Comic-Book Fans and Collectors” in 1965. See <https://www.newyorker.com/magazine/1965/08/21/comicon>. In 1968 the first British Comic Art Convention, also known as COMICON was held in Birmingham, England. See e.g.,

The Curious Case of Comic Con; Or is it Comic-Con?

by LaVar Oldham

https://wikivisually.com/wiki/British_Comic_Art_Convention for an example of original artwork using "COMICON". Currently, there are dozens of conventions in the United States (and indeed throughout the world) which are unaffiliated with San Diego Comic-Con, but use "Comic Con", "Comicon" or "Comic-Con" in their name, description, and/or URL address. Wikipedia lists some examples:

<https://www.alamocitycomiccon.com/>

<http://baltimorecomicon.com/>

<https://www.bigapplecc.com/>

<https://denvercomiccon.com/>

<http://www.eastcoastcomicon.com/>

<http://www.emeraldcitycomiccon.com/>

<http://motorcitycomiccon.com/>

<http://www.newyorkcomiccon.com/>

<https://wizardworld.com/comiccon/cleveland>

<https://phoenixcomicon.com/>

<https://www.steelcitycon.com/>

<http://www.ricomicon.com/>

<http://www.saltlakecomicon.com/>

<http://www.svcomiccon.com/>

<http://news.psu.edu/story/264197/2013/02/14/save-date-wildcat-comic-con-returning-sept-28-penn-college>

<https://wizardworld.com/comiccon/chicago>

The recent jury decision is almost guaranteed to result in additional action between the current parties and/or others. Whether that additional action includes an appeal by one or both sides, additional proceedings in the United Patent and Trademark Office, and/or San Diego Comic-Con now becoming emboldened to challenge the uses of comic con, comic-con and/or comicon used by the dozens of other comic conventions, remains to be seen. If the jury verdict stands, it would seem that this case could be seen as a template for how to

The Curious Case of Comic Con; Or is it Comic-Con?

by LaVar Oldham

protect seemingly descriptive or seemingly genericized marks that are widely used by others.

A more comprehensive discussion of the history of the uses of Comicon, Comic-con, and Comic Con, as well as a detailed history of the current litigation can be found at the Salt Lake Comic Convention website here:

<http://saltlakecomiccon.com/san-diego-comic-con-intl-v-salt-lake-comic-con/>

UPDATE: On December 29, 2017, I received an email from the Salt Lake Comic Convention. It seems that www.saltlakecomicon.com now redirects to www.saltlakecomicconvention.com and all branding now seems to have been updated to Salt Lake Comic Convention.