

Superman and Captain Marvel: Three Degrees of Separation

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Captain Marvel, the latest heroine of Marvel Studio's Cinematic Universe, has a real-life legal history even stranger than her comic book and movie origin story.

Ask anyone who the most famous comic book superhero is and they are almost certain to say Superman. Superman made his debut in Action Comics No. 1 which was published by DC Comics and which first appeared on newsstands in May of 1938. About 200,000 copies were printed and quickly sold. In 2014 one of the last remaining copies of *Action Comics* No. 1 [sold for \\$3.2 million](#). To date, Superman has appeared in thousands of comic book issues, not to mention his appearances on lunch boxes, trading cards, action figures, board games, and other licensed merchandise. Superman also originated the blockbuster Hollywood superhero movie. While superheroes had previously appeared in movies and on TV, it was 1978's "Superman" starring Christopher Reeve that first demonstrated that superheroes could be convincingly (and profitably) portrayed on the big screen.

Today superheroes are big business. Most people currently experience superheroes at the movie theater. At the moment, the most successful superhero movies are those that are part of what has become known as the [Marvel Cinematic Universe](#). Beginning with 2008's "Iron Man," Marvel Studios, the movie-making arm of Marvel Comics, has launched a multi-billion-dollar superhero movie franchise. This franchise currently consists of 20 titles and shows no signs of slowing down. Recent releases include the box office busting "Black Panther" and "Avengers: Infinity War" and the lower-grossing but still entertaining "Ant-Man and the Wasp." This week will see the release of "Captain Marvel," the latest addition to the MCU. "Captain Marvel" will be the first movie in the MCU to feature a solo female superhero. The character is also expected to appear in the upcoming film "Avengers: Endgame," in which she is rumored to play a key role in resolving the cliff-hanger ending of "Infinity War." For these reasons, "Captain Marvel" is one of the most anticipated superhero movies in years.

But aside from her pending significance to the MCU and to the superhero genre in general, what makes Captain Marvel perhaps even more interesting is her strange connection to Superman. How could a lesser known Marvel superhero be connected to the granddaddy of all superheroes from an entirely separate company? The story can get complicated, but it is a perfect example of how copyright and trademark law were utilized to protect assets that would ultimately be worth billions of dollars.

Returning to May 1938, DC's *Action Comics* No. 1 featuring Superman has been released and is flying off the shelves. The success of Superman was nothing short of seismic and the rush was on to attempt to replicate that success. At the time there were dozens of competing comic book publishers, and almost every one of them came out with a superhero title. Some of them were straight knock-offs of Superman and most were not very good. One character, however would prove to be a significant challenger to the popularity of Superman.

Fawcett Comics introduced Captain Marvel in Fawcett's *Whiz Comics* No. 2 in December of 1939. Fawcett's Captain Marvel was not the same character as the Captain Marvel of Marvel Comics and the MCU. This Captain Marvel's true identity was Billy Batson, an orphaned newsboy, who one day comes upon an aging wizard at the end of a mysterious subway tunnel. Billy learns that if he repeats the wizard's name "Shazam," he will be instantly transformed into Captain Marvel, "The World's Mightiest Man." From there Billy and Captain Marvel would set off on all sorts of adventures in their fight against the forces of evil.

One evil force that proved too great a match for Billy, Captain Marvel and Fawcett, however, was DC Comics. When Fawcett's Captain Marvel began outselling even Superman, DC did what any sensible comic publisher would have done - it sued Fawcett for copyright infringement. In its argument for infringement, DC pointed to several similarities between the two heroes - both wore a skin-tight costume with a cape and both possessed the powers of super strength and super speed. Also, the alter-egos for both Superman and Captain Marvel worked for newspapers. The case lasted 10 years and eventually the courts sided with DC. Rather than suffer through further appeals, Fawcett decided to settle the case. By now it was the early 1950s and superheroes had fallen out of favor. Fawcett transferred to DC all of its rights to Captain Marvel and went out of the superhero business altogether. Because it did not really know what to do with its new acquisition, and because it was having enough trouble selling its existing titles, including Superman, DC Comics put Captain Marvel on the shelf and would not seek to dust him off again for a couple of decades.

Flash forward to the early 1960s. A man working for a comic book publisher across town from DC Comics was about to launch a superhero renaissance. That man was the late Stan Lee. The company Stan worked for had been around since the 1940s under various names but had finally settled on the name Marvel Comics. Lee and Marvel would go on to revolutionize the superhero and the comic book industry with the introduction of such iconic characters as Spider-Man, The Fantastic Four, The Incredible Hulk, Iron Man, Thor, The Avengers and The X-Men. To this day, Marvel has been DC Comic's main rival in the comic book industry and between them, the two companies have pretty much cornered the market for comic book superheroes.

At some point in the late 1960s, Marvel learned that DC was considering reintroducing the Fawcett Captain Marvel. Not wanting its chief competitor to have a character that shared its company brand, Marvel and Stan Lee decided to beat DC to the punch and they introduced their own character named "Captain Marvel" in 1967. Marvel's original Captain Marvel was a warrior from the Kree society named "Mar-Vell" who was sent to observe Earth, became one of Earth's greatest defenders, was exiled to the Negative Zone, and eventually died from exposure to a toxic nerve gas while battling the supervillain Nitro. If you have not followed all of this, you are not reading enough comic books.

By 1982, Mar-Vell was dead, and had never been that popular anyway. However, since Captain Marvel was now a recognized trademark, from time to time Marvel needed to publish a character with the name Captain Marvel or risk eventually losing the name altogether. After Mar-Vell's death, there were at least six other characters that bore the name Captain Marvel. None of these generated much excitement, but at least the trademark was preserved. Then in 2012 long-time Marvel character and [Air Force officer Carol Danvers](#), assumed the mantle of Captain Marvel and the character finally appeared to gain some traction. This version of Captain Marvel will be the subject of the upcoming MCU movie.

What happened to the original Fawcett/D.C. Captain Marvel? Since it could no longer use the Captain Marvel name without infringing Marvel's trademark, DC reintroduced the character in 1973 under the name "Shazam" and the hero

has gone on to have a respectable career as a DC superhero. In addition to comic books, Shazam has appeared in an animated series, a television series, a music video, and numerous video games. There is also a [full-length feature film starring Shazam](#) scheduled for release in April.

So, this is how you get from Superman to Captain Marvel to the other Captain Marvel to Shazam in three easy steps.

If you have any questions on trademark infringement - or if you just want to talk comic books - please [reach out to me](#) or contact anyone in the [Intellectual Property Practice Group](#).

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