

14th of August 2013.

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No Counsel - PRO - SE

U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY _____

Teller, an individual

Plaintiff.

v.

Gerard Dogge (Gerard Bakardy),
an individual

Defendant.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

CASE N° 2:12-cv-00591-JCM-GWF

**ANSWER - OPPOSITION
to Plaintiff's motion for
SUMMARY JUDGMENT
as to the copyright infringement claim
(#122)**

Honourable Judge George Foley Jr.,

Forgive me for approaching the Court in this way, for defending myself in a poor English vocabulary. As mentioned before, I'm not a lawyer, and especially not an American lawyer.

I'm also not an American citizen, I'm European, with a Dutch nationality, born and residing in Belgium and therefore obliged to 'know' the Belgian law. Logical. In the same way as, I believe, the American citizens are expected to know the USA Federal Law.

So, forgive me, I don't know the American law. Although plaintiff was so kind to send me a 150 pages with the *Federal Rules of civil procedure* and another 150 pages with the *Local Rules of practice*, it is not realistic to expect that these documents make me a American citizen or lawyer. To translate and understand these 300 pages, written in English, into my language (Flemish-Dutch) would take a long time. To practice the USA law would take another number of years.

./..

MEMORANDUM OF POINTS AND AUTHORITIES

As seen in previous court documents and motions filed by plaintiff, also this time plaintiff does not inform the Honourable Court in a truthful and complete way, but is holding back the relevant facts with 'hollow' statements and allegations.

Defendant has read plaintiffs complaint and seen plaintiffs exhibits.

10 exhibits spread over 93 pages, as overviewed hereunder:

- Exh.1 (p1-2) - a compilation DVD showing Teller performing 'shadows'.
- Exh.2 (p3-8) - Tellers copyright (5 p)
- Exh.3 (p9-28) - some parts of Dogge's deposition (21p)
- Exh.4 (p28-40) - Dogge's responses in discovery Febr.8, 2013 (12p)
- Exh.5 (p41-42) - screenshot easy to perform, plaintiff's exh3
- Exh.6 (p43-57) - Dogge's responses in discovery March 28, 2013 (14p)
- Exh.7 (p59-63) - Dogge's draft + translation (4p)
- Exh.8 (p63-64) - Tellers screenshot, Bakardy's YouTube video, plaintiff's exh3
- Exh.9 (p65-66) - Tellers tampered screenshot exh3
- Exh.10 (p67-93) - Dogge's responses discovery June 12, 2013 (26p)

The Court will notice that plaintiff is filing almost 100 pages of exhibits wherefrom not one single exhibit proves Bakardy's alleged infringement on Tellers questionable copyright.

Defendant likes to remind the Court that the alleged infringement, if there was any, might happened in 'one' (1) week only, the week from March 15,2012. by a YouTube video uploaded by the defendant, wherein according plaintiff, defendant performs Tellers illusion shadows. This video is not filed as an exhibit.

Plaintiff's exhibits are mostly parts of the discovery and deposition, dating from more than a year later, showing defendant answers to cunning and crafty questions from plaintiff's attorney and pulled out their context by plaintiff's attorney.

1
2 Plaintiff cannot prove the infringement and therefore he filed multiple motions to
3 request a Court order for case terminating sanctions, hoping for an order in his favour
4 and to win his case without having to prove the alleged infringement and without
5 given the defendant the chance to prove to the court that he did not infringe.

6 On top, plaintiff debased himself to tampering, spoliation and bribing witnesses
7 as proven in defendants motion (#143).

8 Plaintiff's actions affirm that he can't prove his allegations (in a legal way).

9
10 Defendant on the contrary can prove that **a)** plaintiff's complaint has no ground, **b)**
11 his copyright is questionable, **c)** his witnesses are bribed, **d)** plaintiff committed
12 spoliation on important evidence for the defendant, **e)** that he instructed others to
13 write in their name what he wants them to write on internet forums, **f)** that he
14 instructed others to manipulate the defendant, and at last, **g)** defendants illusion is
15 different from Tellers and therefore defendant not infringed on an alleged copyright or
16 whatsoever.

17 Therefore pro-se Gerard Dogge, respectfully requests the Court to deny plaintiffs
18 motion.

19 *****
20
21

22 During the entire litigation plaintiff was using magician skills, misleading the Court,
23 using hollow statements. Instead of proving his allegations he rather destroys or
24 holds back important evidence.

25 Therefore defendant shall inform the Court in a truthful and complete manner,
26 stipulating and proving all facts in this litigation.

1
2 **I. Introduction and factual background**

3 Before and during the proceedings, the plaintiff did all what is possible to portray the
4 defendant as an infringer, alleging that the defendant was performing Tellers illusion
5 shadows, revealing Tellers method, selling Tellers prop, selling a video wherein he
6 performs Tellers illusion, etc..

7 Plaintiff can not to prove his allegations and hollow statements, simply because it is
8 impossible to prove things that never happened.

9
10
11 **1. History before the litigation.**

12 It is necessary for the Court to know what really happened and what caused the
13 plaintiff to file his complaint.

14 At the age of 55, Gerard Bakardy was recovering from a major surgery and
15 while he was going through chemo therapy he focused on his hobby/profession,
16 music and magic.

17 He invented a unique prop to control, or to make a flower falling apart without
18 touching it, in a way as nobody performed before, with the stem of the flower
19 completely visible and removable in a removable, ordinary, transparent Coca cola
20 bottle, filled with water.

21 To find out if this could be an interesting 'prop' for the magicians or magic
22 lovers, he uploaded a YouTube video as a first market survey.

23 Obviously, the video does not reveal his or any others method. The video was
24 not meant to and does not promote Bakardy's performances. The video does not
25 promote a recorded performance of Bakardy of any other performer. Bakardy's video
26 clearly shows the many differences between his 'new' creation and all other versions
27 performed, rented, sold new or second hand on the market, included Tellers 40 years
28 old illusion shadows and all upgraded versions on the market.

1
2 Although Bakardy is not a professional 'prop' builder and has no manufactory, he
3 invented, created, constructed and built his new creation, on his own.

4 Bakardy could learn that the audience is more amazed when they 'see' a magic trick
5 or illusion performed in 'see trough' or transparent material. Therefore, magicians as
6 Teller, Criss Angel, etc. do perform some of their illusions using transparent objects.

7 **(Exh.1a)** Comparing both 'props' anyone will notice that the transparent one is the
8 most amazing. **(Exh.1b,c)**

9
10 Unfortunately, Tellers 'transparent' illusions expose the secrets behind the illusions
11 and ruin many magicians profession.

12 In contrast to Tellers transparent illusions, Bakardy was researching a way to perform
13 a transparent illusion, as performed by e.g. Chris Angel, without revealing or exposing
14 the secret, and without ruining any anyone's profession. **(Exh.2a,b)**

15
16 Bakardy invented and created his own illusion, he recorded a demo video ,
17 and uploaded this on YouTube , to share his idea with the Magic community and all
18 magic lovers. Shortly after Teller became aware of Bakardy's unique creation and
19 contacted him, and offered to buy the exclusive rights on Bakardy's method or prop.

20 **(Exh.3 to be sealed)** Teller assured Bakardy that the YouTube video was no longer
21 needed since he would buy the exclusive rights on Bakardy's trick and Teller ordered
22 a 'take down' of the YouTube videos.

23
24 Before the litigation ever started, plaintiff recognized and admitted that
25 defendants 'prop' and, as logical result, the performance wherein the performer is
26 using Bakardy's prop, is totally different from Tellers and all others.

1
2 Plaintiff stated in the press, (TMZ) that "*he thinks that Bakardy's trick is slightly*
3 *different, but not so different..*". **(Exh.4)**

4 You can't be slightly pregnant, you can't be slightly dead, ... you can't be slightly
5 different. You're pregnant or not. You're dead or not. Something is different or not.

6
7 For Teller, it was different enough to offer Bakardy the double amount from what
8 he usually pays to develop illusions as such, as proved by defendants EXHIBIT 3 in
9 #39. Obviously, plaintiff requested the Court to seal defendants evidence.
10 **(Exh. 3 to be sealed)**

11 This evidence is very interesting in many ways and shows the real intentions of the
12 plaintiff. The evidence shows an e-mail sent on March 27, 2012 from Teller to
13 Bakardy wherein:

- 14 • plaintiff is extorting the defendant to sell exclusively to Teller,
15 • plaintiff admits that Bakardy's illusion/prop/method is different from Tellers,
16 • plaintiff offers the double amount from what he usually offers for developing
17 illusions as such,
18 • plaintiff calls Bakardy's illusion an 'improvement',
19 • plaintiff offers money to come in possession of Bakardy's method.

20
21 Plaintiff is eager to come in possession of Bakardy's illusion and emailed his friend
22 Gunther Guinee, requesting him to persuade Bakardy to sell his illusion exclusively to
23 Teller. In that same email Teller states that having an illusion wherein the stem is
24 visible standing in water has value to him. **(Exh.5a,b)**

25
26 In order to respect Tellers routine, Bakardy requested multiple times to send him the
27 details of the routine described in the registered copyright. Teller refused.
28 **(Exh.6a,b)**

1
2 Although Bakardy's illusion is different from Tellers, and although Teller refused
3 to inform Bakardy regarding the details in his copyright, Bakardy informed Teller that
4 he was willing to sell or to perform his illusion without the use of a knife and shadow.
5 **(Exh.6b)**. Teller emailed Bakardy stating that he could agree but that he wanted
6 some time to consider whether he would buy the exclusive rights, or not. **(Exh.7)**

7
8 Since Teller did not further reply, Bakardy wrote Teller that he understood that
9 Teller had no further interest in the exclusive rights on Bakardy's illusion and that he
10 intended to sell his prop to the public, but that he will inform the buyer NOT to
11 perform the Teller routine. **(Exh.6b,c)**

12
13 Because Teller couldn't buy the exclusive rights on Bakardy's prop on Tellers terms,
14 he filed a complaint for copyright infringement on date of 04.11.2012.

15
16 **2. History during the litigation.**

17 Plaintiff, Teller, filed a complaint but NEVER filed a single shred of evidence to prove
18 the alleged infringement. On the contrary, the most important 'key' evidence,
19 Bakardy's video is missing.

20 Instead, plaintiff filed thousands of pages printed articles stating that he is a
21 famous magician and that he started performing shadows almost 40 years ago.
22 Noteworthy, none of these pages nor articles mention that 'shadows' is said to be a
23 copyrighted illusion from Teller.

24
25 Further, plaintiff files a document to prove that he obtained a Copyright
26 registration " *as a work of the performing arts in the nature of a "pantomime drama"*
27 , wherein he describes himself as the 'murderer' who is killing a rose by slicing into its
28 shadow.

1
2 As far as defendant is aware, Tellers performs his act 'shadows' in Las Vegas.
3 On date of 07.08.2013 defendant received plaintiff's supplementary disclosures
4 including (bate N° TELLER000420) a DVD showing Tellers performance 'shadows'.
5 That was the first time defendant saw the complete 3:10 minutes performance of
6 'shadows', at least... performed by Teller.

7
8 Prior to the unique creation of the defendant, he noticed multiple magicians
9 such as Petros, Hector, ALSmagic, Teller, Alexander, Ian McCarty, etc.. **(Exh.8a-g)**
10 on the YouTube channel performing a magical routine, similar to 'shadows'.

11
12 Further defendant noticed a 'documentary' video on YouTube wherein some
13 people state that they were 'emotionally touched' and start to cry when they saw
14 Tellers performance, shadows. <http://www.youtube.com/watch?v=YEzo5Krtn10>

15
16
17 The documentary takes 2:04 minutes and shows some fragments of Tellers
18 performance. About 30 seconds, about 10% of the complete routine as showed on
19 plaintiffs DVD filed in his disclosures. It is absurd to say that defendant copied Tellers
20 act while the defendant never saw Tellers act. The shadows routine as performed by
21 Teller is NOT to be seen on the internet. The only thing what defendant ever saw of
22 Tellers 'shadows' is a documentary video, as described above, showing a few short
23 fragments of Tellers performance and an open challenge : "*Nobody knows how it is*
24 *done, and no one will ever figure it out...*"

25
26 Plaintiff does not prove that defendant creation is based on Tellers shadows.
27 Defendant declared and explained to the plaintiff during the discovery that his
28 creation was based on a shadow illusion performed by Criss Angel. **(Exh.9a,b,c):**

1
2
3 **INTERROGATORY NO. 4:**

4 Describe in your own words the creation of *The Rose and Her Shadow*, to
5 include *The Rose*, including when you decided to create it and why you decided
6 to create it.

7
8 **Answer:** *Inspired by Criss Angel's shadow, the 'creation' of my*
9 *method or prop was very exciting. I decided to create my own, newer, more*
10 *modern and more magical method in 2007. Why? Because the 'rose prop' was*
11 *sold out.*

12
13
14 **INTERROGATORY NO. 8:**

15 State all aspects of *The Rose and Her Shadow* that you believe are unique and
16 do not exist in *Shadows*.

17
18 **Answer:** *Tellers 'act' is not spoken, nothing is said or sung, there is no text,*
19 *nothing is written or musically accompanied. The only thing that remains are*
20 *moves, dance moves, choreography and the attitude of the performer himself.*

21
22 *Defendant can read ad nauseam, every movement, even the smallest moves*
23 *have been written and described in Tellers copyright certificate. Such as*
24 *movements of plaintiff's head, the position of Teller's thumb, positioning of*
25 *the knife in the shade, which side Teller is on the stage, left or right, etc ...*
26 *(yes, ad nauseam). This apparently is the way to describe a "pantomime work".*
27

28 *If one would look at the differences in Bakardy's version, looking for the same*
29 *detailed description and all tiny movements, one can enumerate thousand*
30 *differences and it would also be annoying and ad nauseam to read.*

31
32 *Therefore, defendant would like to limit his answer, encouraging the plaintiff,*
33 *Jury and Court to watch 'The Bakardy Rose' video on YouTube. In this video*
34 *Gerard Bakardy performs one of his copyrighted versions with 'The Rose', using*
35 *exactly the same method as used in 'The Rose and her Shadow'. A picture*
36 *(video) says more than thousand words.*

37
38 *The first question everyone is asking after watching a magic trick is: How do*
39 *you do that,... how is this possible?? In Tellers presentation, 'Shadows', the*
40 *answer to this question is often sought in his ...'bud' vase'.*

41
42 *Just as Criss Angel's act, manipulating the shadow of an*
43 *'olive' in a transparent cocktail glass, Bakardy's method uses*
44 *a transparent bottle.*

45
46 *Obviously, this makes a trick more magical. More impossible.*
47 *This was obviously the reason that plaintiff offered to buy Bakardy's method.*

1
2 Plaintiff, Teller stated multiple times in the discovery and deposition, that he never
3 performed shadows in the way as to be seen on Bakardy's demo-video, that he never
4 performed 'shadows' in a water filled, removable, and transparent vase or bottle and a
5 removable and complete visible rose stem.

6
7 It is clear that Bakardy's version is not based on Tellers 40 years old version,
8 wherein he performs an illusion with a non transparent 'bud' vase and wherein the
9 flower is only half visible.

10
11 **3. Are both illusions different from each other ?**

12 Plaintiff admits that both tricks are different from each other, as proven in the
13 exhibits:

14 **(Exh.10,11,12,13,14,15,16,17,18,19)**

15 1. Plaintiff never performed 'shadows' in a transparent vase or bottle.

16 **Defendant can. (Exh.13,14,17)**

17 2. Plaintiff never performed 'shadows' in a transparent vase or bottle, filled with
18 water. **Defendant can. (Exh.13,14,17,18,19)**

19 3. Plaintiff never performed 'shadows' in a non transparent vase or bottle, filled
20 with water. **Defendant can. (Exh.19)**

21 4. Plaintiff never performed 'shadows' with the stem of the rose completely visible.

22 **Defendant can. (Exh.13,14,18)**

23 5. Plaintiff never performed 'shadows', removing the rose stem out of a
24 transparent vase or bottle, showing that his stem was removable.

25 **Defendant can. (Exh.13,14,19)**

26 6. Plaintiff never performed 'shadows' removing a transparent vase or bottle from
27 the table showing that the vase or bottle was removable.

28 **Defendant can. (Exh.13,14)**

1
2 7. Plaintiff never performed 'shadows' pouring out the water of a transparent vase
3 or bottle, showing that there are no gimmicks hidden in the vase or bottle.

4 **Defendant can. (Exh.13,14)**

5 8. Anyone can perform 'shadows', as seen on the internet before plaintiff
6 interfered with several magicians. Plaintiff is unaware of anyone else in the
7 world performing Bakardy's illusion. **(Exh.10,12,13,14) Defendant is also**
8 **unaware.**

9
10
11 In Bakardy's illusion all items are complete and 100% visible, the flower is
12 completely visible and the transparent Coca Cola bottle shows what's in the vase or
13 bottle, namely water. Bakardy shows the entire rose-stem a 100% visible in the
14 bottle.

15 Just like Chris Angel's illusion, Bakardy's illusion is different and more magical than
16 Tellers, since Teller's shadows is performed in a NON transparent 'bud vase' which
17 might hide the method to make a rose fall apart.

18
19 Plaintiff unjustly refers to Bakardy's 'moves' or choreography as they are
20 similar as the choreography described in Tellers registered copyright. Plaintiff
21 deliberately conceals and is silent about the fact that Bakardy's moves are focused
22 and connected with total different items as Tellers.

23
24 Comparing the choreography in both illusions to discover the similarities or
25 differences cannot be done by disregarding the items. Even if some fragments in the
26 choreography would look similar at first sight, it does not mean that the illusions are
27 similar. Sugar and salt look similar, but are very different.

1
2 Obvious, there is a fundamental difference between the illusions :

- 3 • Bakardy shows that there is no mechanism or whatsoever hidden in the items
4 visible for the audience, **Teller NEVER did.**
- 5 • Plaintiff is silent about the fact that Bakardy shows a complete flower/rose,
6 **Teller NEVER did.**
- 7 • Plaintiff is silent about the fact that Bakardy takes the rose stem out of the
8 transparent bottle, **Teller NEVER did.**
- 9 • Plaintiff is silent about the fact that Bakardy lifts the transparent vase/bottle
10 from the table, **Teller NEVER did.**
- 11 • Plaintiff is silent about the fact that Bakardy pours water out of the transparent
12 vase/bottle, **Teller NEVER did.**

13
14 One can read ad nauseam, every movement, even the smallest moves have been
15 written and described in Tellers copyright certificate. Such as movements of plaintiff's
16 head, the position of Teller's thumb, positioning of the knife in the shade, which
17 side Teller is on the stage, left or right, etc ... (yes, ad nauseam). Apparently this
18 was, 40 years ago, the way to describe a "pantomime work".

19
20 If one would look at the differences in Bakardy's version, looking for the same
21 detailed description and all tiny movements, one can enumerate thousands of
22 differences and it would also be annoying and ad nauseam to read.

23
24 Defendant will spare the Court from reading such a list of differences, but will call the
25 attention to some of the countless differences in the 'choreography' in the list below:

In Tellers description :

1. The stage is dark.
2. Teller describes himself as murderer
3. Teller enters the stage on the left side.
4. Teller carries a 'dagger'.
5. Tellers table supports a white bud vase only, and no more.
6. Teller does not pick up anything from the table.
7. Teller stands stage right edge of the screen.
8. Teller places his knife on a paper screen.
9. Teller stabs gently trough the paper.
10. The murderer pauses, then glides to the far left edge of the screen
11. Teller again cuts through the shadow of the half visible rose stem standing in the non transparent bud vase
12. Teller places the daggers tip on the stem/blossom and cuts in the shadow of the half visible rose stem standing in the non transparent bud vase. he pierces the paper.
13. One by One the petals start to fall off, from the half visible rose stem standing in the non transparent bud vase.
14. Teller gives a final jab, the last petal drops off from the half visible rose stem standing in the non transparent bud vase.
15. Teller pricks his thumb on the knife
16. Teller brings his thumb to his mouth.
17. Teller sucks the blood from the wound.
18. Tellers tip of the shadow of his thumb is bleeding, he reaches up and touches the stream of blood with the heel of his right hand. It's real.
19. The end.

In Bakardy's video:

1. The stage is clearly light up.
2. Bakardy's act is comical as he was a clown
3. Bakardy enters the stage on the right side.
4. Bakardy is empty handed.
5. Bakardy's table supports a water filled transparent coca cola bottle, showing a 100% visible rose/stem, and a knife.
6. Bakardy picks up the knife from the table.
7. Bakardy stands stage left edge of the screen
8. Bakardy places the knife on a hard board on the easel.
9. Bakardy has no paper to stab trough.
10. Bakardy not pauses, and keeps his position
11. Bakardy cuts through the shadow of the complete visible rose stem standing in a transparent Coca Cola bottle.
12. Bakardy walks to the other side of the with board, and cuts the shadow on one part of the blossom, of the complete visible rose stem standing in a transparent Coca Cola bottle. and does not pierces the paper.
13. Bakardy again walks to the other side of the with board, and cuts the shadow on one part of the blossom, of the complete visible rose stem standing in a transparent Coca Cola bottle. and does not pierces the paper. One petal falls.
14. Bakardy does not 'jab' but with a sawing movement he saws the last petal from the stem in the shadow on one part of the blossom, of the complete visible rose stem standing in a transparent Coca Cola bottle.
15. Bakardy does not pricks himself but puts the knife down.
16. Bakardy never brings his thumb to his mouth.
17. Bakardy never sucks blood.
18. Bakardy does not do any of these actions.
19. Bakardy's performance is not finished yet.
20. Bakardy takes the rose stem out of the vase.
21. Bakardy put the rose stem on the table.
22. Bakardy lifts the vase/Coca Cola bottle;
23. Bakardy pours the water out of the bottle in a glass.
24. Bakardy brings the glass to his mouth.
25. Bakardy's table start magically to float in mid air.
26. The end.

1
2 The choreography is not determinative to the degree of difficulty, or to the degree of
3 magical value. Even if the choreography was exactly similar to each other, the illusion
4 is still different since Bakardy's illusion is performed in a higher degree of difficulty
5 and with more magical value. The copyrighted choreography of the 'ballet dancer'
6 on the floor mat may be exactly similar to the copyrighted choreography of the 'rope
7 dancer', dancing 100 feet above the Grand Canyon, but the performances would be
8 considered as different from each other. Which performance is the most beautiful,
9 exiting, difficult, or most magical is irrelevant. Relevant is that the performances
10 are different.

11
12 The missing video could show that Bakardy's illusion is different from Tellers. The
13 internet still shows a video from Bakardy, 'The Bakardy Rose'. Although this video is
14 not showing a magical illusion, the video shows clearly that Bakardy's prop does not
15 limit the performance as in Tellers performance, but surpasses Tellers performance
16 with showing the entire rose stem from the beginning of the illusion and with at least
17 6 more actions towards the end of the illusion. (see list above)

18
19 **4. Is the 'prop' different in both illusions ?**

20 For sure, both props needed to perform the illusions, are different from each other.
21 Obviously, otherwise Teller would not offer the double from what he usually pays for
22 developing a prop or method as such.

23 Unfortunately, 'what goes around, comes around' is now what Teller
24 experiences. Teller, who built his career by exposing and revealing other magicians
25 illusions is now confronted with the WWW Internet as the revealer of shadows and
26 'traitor' of the secret. Nota bene NOT by Videos of the defendant.

27 On the internet anyone can buy, rent or learn how to built the 'prop' to make a rose
28 fall apart as in Tellers 'shadows'. **(Exh.20a-d)**

1
2 Anyone can see on the internet that anyone can perform the illusion since the
3 'prop' is self working and there is no need of sleight of hand or any other magicians
4 skill to perform 'shadows'.

5 When a illusion is self working it means that the performer needs no skills,
6 and that the 'prop' will do the work for him. Since the illusion is not depending on the
7 performers skills but on the 'prop', the 'prop' becomes the essential and most
8 important item to perform the illusion. It is impossible to perform the illusion without
9 the prop.

10 This is the case in 'shadows' by Petros, Hector, ALSmagic, Teller, Alexander, Ian
11 McCarty, and all others... who built, bought or rented the 'prop' as to be seen on the
12 internet. Hector bought his prop 7 years ago, second hand. **(Exh. 21a,b)**

13
14 No one ever performed the illusion in a transparent vase or bottle, simply
15 because the prop doesn't allow to do so, as to be seen on the internet. No one ever
16 performed the illusion in a water filled or removable or transparent vase or bottle,
17 simply because the prop doesn't allow to do so, as to be seen on the internet.

18
19 Bakardy is the first and only in the world, performing an illusion wherein a
20 complete and 100% visible rose/flower falls apart, without touching it, standing in a
21 removable, water filled and transparent vase or bottle.

22 Obvious, the prop is different. Also Teller admit that Bakardy's prop and performance
23 is different.

24
25 Normally, whenever 'copy pirates' are discovered on the market, (Rolex, Cartier,
26 Nike, Lacoste, etc..) the original manufacturer destroys all copies in a demonstrative
27 way, mostly with a bulldozer.

28 Obvious, they never offer money to the 'pirates'. Logic and obvious.

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In contrast to what big brands do, Teller offered money to Bakardy what clearly indicates that Bakardy's prop/illusion is better than Tellers and not just a 'copy'.

Deposition : p92:12-24 (Exh.22c)

Q. *Did you ever offer money, Mr. Teller, to people who are infringing on your copyrighted tricks ?*

A. *Why would I do that?*

Q. *You did it to me ?*

A. *No sir. I--I--if someone were infringing on my copyright, I would expect them to offer me money. Not the other way around. In your case, I have explained exactly why it was that I offered you, as a courtesy to you, on an assumption that you were a good man, something to defray your development costs.*

Q. *Okay. Very kind of you, Mr. Teller.*

The plaintiff's statements that the infringer should pay and not be paid, are in contradiction to what plaintiff did. First offering the defendant \$15.000, then \$40.000. In one of the phone conversations plaintiff considered to pay defendant \$125.000 to assume full ethical and legal possession of the defendants prop or method.

First set admissions (Exh.23):

Request 9: *Admit that in one of the negotiation calls you offered defendant \$40.000 as this would have cost you as much as starting a litigation against defendant.*

Response: *...Teller admits that he attempted to settle and resolve the dispute by acquiring the infringing illusion's prop for \$40.000.*

1
2 Second set admissions (Exh.24):

3 **Request 2:** *Admit that you've wrote to defendant in email from 03.27.2012 that you*
4 *would like to offer \$15.000 to the defendant to "assume full ethical and*
5 *legal possession of your method".*

6 **Response:** *...the answer is admitted. Moreover , the plaintiff offered even larger*
7 *amounts of money to avoid the defendant's threat to sell the illusion to*
8 *the Chinese.*

9 Bakardy's prop must be significant different since Teller was requesting others to
10 approach Bakardy. In the beginning of the litigation Teller requested Guinee to
11 persuade Bakardy, to sell his creation exclusively to Teller and to no one else.
12 As reward Guinee was invited as Tellers guest to come to Las Vegas, and so on.. as
13 stated in **(Exh.25a,b)** his email from April 4th ,2012 :

14 ***"...If we could agree on a realistic fee, I would consider hiring***
15 ***him (Bakardy) as consultant to try and improve my trick, provided***
16 ***of course, he takes it off the market and sells it to no one but***
17 ***me. I think his notion of seeing the stem in water might have***
18 ***value for me."*** and " ***... Know that regardless of the outcome,***
19 ***you now have a new friend in the US. When you come to Vegas***
20 ***you will be most cordially received as my guest.***

21 ***And if there are any Penn & Teller materials (e.g. my David***
22 ***Abbot book) that interest you, they will be on their way to you***
23 ***with my gratitude...Teller."***

24
25 Teller was offering money, before the litigation started, although at that time there
26 was no dispute to 'settle'. Teller just wanted to buy exclusivity on Bakardy's prop.
27 Plaintiff is betraying himself and it's obvious that defendants method/prop is different
28 and logically results in an illusion different from Tellers.

1
2 **5. How many props are there involved to make the illusion 'shadows'**
3 **working?**

4 One. Only one. It is not the magicians knife or whatsoever in his hand, it's not the
5 easel and white board, it's not the shadow or any other way of lighting, etc.. The
6 illusion can be performed without any or all items here stipulated, they are all
7 superfluous and misdirection.

8 The prop/method is situated in the rose/vase-bottle on the table on stage.
9 Without this particular prop it is impossible to perform the illusion 'shadows'. Obvious,
10 this prop is essential and the most important in the illusion.

11 Teller admits that the prop/method is different, but calls it the least important
12 prop. (deposition p122:1) **(Exh.26a,b)** Defendant recognizes Tellers vanity and
13 that he wants to be the most praised and important in the scene, and most probably
14 he thinks he is, but it must be said, if the prop wasn't there, or refuses to work, Teller
15 would be standing there, waving his knife as a clown because simply nothing would
16 happen. Even a spotlight, creating one or thousand shadows will not help him to
17 perform the illusion if his prop fails or is missing.

18
19 When comparing the two illusions, Tellers 'shadows' and Bakardy's 'The Rose
20 and her Shadow' or Bakardy's 'The Bakardy Rose' which is still to be seen on YouTube,
21 it becomes clear that the prop limits the performance. Logic and obvious.

22 Just like the engine limits the performance of a car, just like the tools limit the
23 constructor who can't drill a hole with a hammer, the magic performance is limited by
24 the tools, in this case the prop/method.

25 Teller is aware that his prop does not allow him to perform the illusion in the
26 same way as Bakardy does, and therefore he first offered the double from what he
27 usually pays for developing props as such. Then Teller offered \$40.000 and considered
28 to pay \$125.0000 to assume the exclusive rights on Bakardy's creation/prop/method.

1
2 **6. Are self-working illusions such as shadows to be called 'art' ?**

3 As explained above, no skills are required to perform self working illusions. Anyone
4 can buy or rent or built a prop to perform 'shadows', therefore it's fair to say that
5 there is no art involved. Logic and obvious.

6 Performing shadows is as easy as performing an 'illusion' wherein a slice of
7 bread 'jumps' out of a toaster ..on the magicians magical gestures in its shadow.
8 Obviously, the rose in shadows is just like the bread slices in the toaster, commanded
9 by another action (the prop) than the magicians 'fake' gestures.

10 In contrast to the plaintiff, defendant will never call these self working illusions
11 a piece of 'art', but rather cheating on the audience, since there is no magic involved.

12 It would be fair to call the prop builder an artist, since he made it possible for
13 everyone to pretend that they are performing a magical illusion or trick, while in fact
14 they are just doing ...nothing. The just bought themselves a self working trick.

15 Defendant on the contrary invented, created and constructed a prop, which allows a
16 'magician' to show that there are no 'hidden' commands in a white bud vase as used
17 by Teller in 'shadows' by performing the illusion in a ordinary transparent Coca Cola
18 bottle.

19 The defendants statement 'Better than in Las Vegas' is justified, since, as far
20 as defendant is aware of, there is not one person or magician in the world, even not
21 in Las Vegas, who performs an illusion wherein a rose, placed in a transparent vase
22 or bottle, with the stem completely visible, falls apart on the magicians command, as
23 far as defendant is aware of.

24 Defendant is the first and still the only one in the world who uploaded a video on
25 YouTube, showing that he is the only one who is able to 'control' a rose falling apart,
26 in a removable, water filled, transparent, ordinary Coca Cola bottle, with the
27 removable stem of the flower completely visible, as Teller admitted in tempore non
28 suspect. **(Exh.12,13)**

1
2 **7. Are self-working illusions such as shadows copyrightable ?**

3 Yes, without doubt, Teller has a copyright and Bakardy has a copyright and there may
4 be more persons having a copyright on an illusion as such. **(Exh.27a-e)**

5
6 **8. Does copyright protect a self-working illusion such as 'shadows' ?**

7 No. Absolutely not.

- 8 • Not according the European law. Defendant refers to judgments of the
9 European Court of Justice – Judgment from July 16,2009, Case C-5/08, 521,
10 Infopaq V. Danske Dagblades Forening, -- Judgment from October 4, 2011,
11 Case C-403/08 & C-429/08, AMI, 13, note Premier League V. C Leisure, --
12 Judgment from March 1, 2012, Case C-604/10, Football Dataco V. Yahoo!.

13 The European Court states that originality is not present in the creation when
14 technical considerations, rules or considerations, leave no room for freedom of
15 creativity.

16 The creation "shadows" is a performance in which apply technical
17 considerations, which are offered for sale on the World Wide Internet. A
18 creation like "shadows" is based on a technical rule or consideration, and is
19 therefore not original and can therefore in no way have a copyright. Since the
20 complete performance is based on a technical device, which forms the core of
21 the whole performance, or in other words, if the technicality or technical device
22 would not be there, there would not be a 'shadows' illusion and Mr. Teller would
23 only be waving with a knife without anything happening. **(Exh.1b,c)**

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- Not according the U.S. Government Copyright Office from Washington.

The United States Government - Copyright Office specialists informed the defendant on date of January 29, 2013 in an official letter that: "Copyright does not protect magic routines", confirming their statement on April 10, 2013, **(Exh.28 e-h).**

The European jurisdiction is clear when it comes to technical limited performances and the U.S. Government is even more clear, stating that magic routines are not protected anyhow.

To defendants opinion, wise laws. It is impossible to protect an "illusion", because an "illusion" is something what is not really happening, it is 'make believe' which each individual can experiences, through his own eyes, in his own way.

9. Does Tellers copyright prove that he is the inventor of 'shadows' ?

Not at all. It only proves that Teller performs 'shadows' from a certain date. Teller was for sure not the first to perform a shadow illusion. It is proven that sympathetic/voodoo' magic, like 'shadows' was performed hundreds of years ago. (1584- English book, *The discovery of witchcraft by Reginald Scot*) & (1770- British magician Jonas) (1784- Italian magician Pinetti) as explained by plaintiff's 'expert witness' Jim Steynmeyer in his expertise report. **(Exh.29)**

The 'idea' of sympathetic/voodoo illusions exists for many, many years and was absolutely not invented by Teller. Anyhow, 'ideas' are not copyrightable, according the copyright rules of the U.S. Government Copyright Office. **(Exh.28a,h)**

1
2 **10. Tellers copyright is questionable and doubtful.**

3 To prove copyright infringement, Teller must prove "ownership" of a valid copyright.

4 There is no doubt that Teller registered shadows as his work on date of January
5 6th, 1983, but it is questionable and doubtful whether Teller registered and described
6 the nature of his work in the right way.

7 Tellers work is titled 'Shadows' and the nature of this work is titled pantomime
8 drama. **(Exh.27e)**

9
10 Everyone describes 'shadows' as a magic trick, a magic illusion, a magic routine, as
11 to be seen in the hundreds of newspaper-articles filed in plaintiff's exhibits. Teller
12 himself describes 'shadows' as a magic trick-magic illusion. **(Deposition Exh.30)**

13
14 Misleadingly he registered his work as a pantomime drama to achieve a copyright on a
15 magic routine, which is not copyrightable according the U.S. Government Copyright
16 Office of Washington. Therefore, Tellers copyright is not valid.

17
18 The U.S. Government Copyright Office of Washington statement is clear:
19 **"magic routines are NOT protected by copyright". (Exh.28e-h)**

20
21 **Plaintiff copyright is questionable for several other reasons.**

- 22 • Similar magic routines were performed hundreds of years ago. **(Exh.29)**
23 • An 'idea' is not copyrightable. **(Exh.28 a-h)**
24 • Magic routines are not protected by copyright. **(Exh.28e-h)**
25 • Teller abandoned his work, the illusion 'shadows' is sold, rented, performed
26 worldwide and is a standard illusion of many magicians. **(Exh.8a-e & 20a-n)**
27 • Teller is aware that 'shadows' is a standard trick. **(Exh.39a)**

- 1
- 2 • Teller openly challenged others to copy his work shadows when Penn stated on
- 3 television and on the internet: "No one knows how shadows is done and no one
- 4 will ever figure it out" . **(Exh.31a)**
- 5 • Teller did not inform anyone that he has a copyright on 'shadows'.
- 6 **(Exh.31b-e)**
- 7 • Teller neglected the ruling of the U.S. Copyright Office. **(Exh. 28a-d)**
- 8

9 **11. Plaintiff is aware that his copyright is questionable and doubtful, and**
10 **that therefore his complaint is questionable and doubtful.**

11 On April 11th, 2012, plaintiff overloaded the internet with one-sided statements that
12 Tellers magic trick 'shadows' was stolen and revealed by a Dutch thief and crook and
13 that he filed a complaint to prove the alleged infringement in the Nevada Court,
14 demanding a JURY TRIAL . **(Exh.32a,b)**

15
16 Now, plaintiff seems to make an 180°. U turn.

17
18 • **Plaintiff's multiple motions.**

19 In the last weeks, plaintiff filed multiple motions requesting the Court 'to deem
20 defendants answers in the discovery', or for 'Case terminating sanctions' every time
21 with the same 'goal' in mind, to end the proceedings without advocating the 'ground'
22 of the litigation: did Bakardy infringe the alleged copyright.

23 Apparently plaintiff's motions have two reasons:

- 24 1. Plaintiff cannot prove any infringement.
- 25 2. Plaintiff wants to keep the defendant from proving that plaintiff's complaint is
- 26 unfounded, hypocritical and based on questionable exhibits, on a questionable
- 27 copyright, and on doubtful witnesses, and that plaintiff, (to use his own words)
- 28 " would look very, very bad, whenever this comes out"

1
2 • **Plaintiff acts in bad faith.**

3 Unfortunately, these particular reasons were inspiring the plaintiff to debase himself
4 to do all possible to obstruct the pro-se defendant in his defence.

- 5 • Plaintiff pretended that he had sent letters to YouTube as the Court ordered,
6 plaintiff stated that he never got an answer, (**Exh. 33a,b**) while defendant
7 received three (3) answers (**Exh.33c-f**) the same day that the requests were
8 made. After defendant filed a motion on June 25, (#112) to compel plaintiff
9 because he was not 'honestly' seeking the 'missing' video by YouTube, plaintiff
10 rapidly send the requesting 'letter' to YouTube which was, just like all the
11 answers to defendants requests, answered the same day. Although plaintiff
12 was ordered by the Court, to request YouTube to produce the video at issue,
13 he didn't. Although defendant had informed the plaintiff that he could get the
14 videos from YouTube, by issuing a proper subpoena, plaintiff refused to do so.
- 15 • Carefully planned, plaintiff waited till Aug.9th to issue a subpoena to YouTube to
16 produce his evidence, until he was sure that defendant did not follow the Courts
17 Order, to present his hard drive, which contains privileged and private
18 information, for an image mirror copy of defendants private hard drive.
- 19 • Plaintiff could have filed this subpoena many weeks ago, ...but he didn't.
20 Intentionally, he trapped the pro-se defendant with his litigation technique.
- 21 • Defendant clearly stated twice in the deposition that he didn't finish the DVD
22 nor Manual and that there was a lot of work to finish them.

23 Defendant was very clear in the deposition where he stated twice:

24 *" I don't instruct anyone, Mr. Tratos, because I'm not selling this product. I'm*
25 *not selling the prop. And the manual is not even ready, and the CD is not even*
26 *ready. Because before the first person could ever buy this trick, I got this*
27 *lawsuit filed by Mr. Teller. And I prefer to wait until the Court decides if I'm able*
28 *or allowed to sell my invention." (Exh.34a dep.P.109:12)*

1
2 " *The manual I was working on was still a very rough "draft" and needed to be*
3 *finished. There was a lot of work to do on this manual.*" (Exh.34b dep.P.181:7)

- 4 • Nevertheless, plaintiff pulled defendants words out of its context and
5 succeeded to persuade the Court to make an order that defendant has to
6 produce two things he can impossibly produce, since they do not exist !

7 With disrespect to the defendant's right to a fair trial and his right to privacy, plaintiff
8 succeeded to persuade the Court to order (#135) the defendant to deliver a copy of
9 the hard drive of his computer.

10 Plaintiff is aware and knows that the defendant will never hand over the hard drive
11 of his computer, containing vital information on the life of the defendant. Demanding
12 a mirror of this hard drive, and demanding to hand over the mirror to the plaintiff's
13 counsel, is clearly an infringement of the right of the defendant to his privacy. Filing a
14 motion to request the Court to grant case terminating sanctions, when the defendant
15 does not comply with the plaintiff's demands to copy the hard drive of the defendant's
16 computer infringes the right of the defendant to a fair trial.

17 As a result, plaintiff might present such a court order as the proof that the
18 defendant infringed his copyright, whereas in reality, plaintiff did not prove any
19 infringement at all, such a court order would only be possible by infringing the
20 defendant's fundamental rights.

- 21 • **Plaintiff is provoking others to copy shadows.**

22 The actions of plaintiff seems to demonstrate that he is hoping that someone is
23 copying the 'shadows' illusion.

24 First he is silent about the fact that the shadows illusion is copyrighted, he
25 never and nowhere mentions a single word regarding a copyright on this illusion, not
26 in the thousands newspaper articles, nowhere on his website and never and nowhere
27 in the comments on the YouTube channel. (Exh.31a-e) When Bakardy requested
28 Teller to inform him about his copyright, he refused. (Exh.6a,b)

1
2 Plaintiff is instructing others to write comments on the internet, he could easily
3 instruct one of his employees or just by himself write an informative comment on the
4 YouTube 'shadows' documentary video stating that shadows is copyrighted by Teller.
5 But he didn't and he doesn't.

6
7 The U.S. Government Copyright Office advises all copyright holders to inform
8 the public with a © notice symbol that the work is copyrighted since it is often
9 beneficial. Because prior law did contain such a requirement, however, the use of
10 notice is still relevant to the copyright status of older works. Notice was required
11 under the 1976 Copyright Act. Use of the notice may be important because it informs
12 the public that the work is protected by copyright, identifies the copyright owner, and
13 shows the year of first publication. Furthermore, in the event that a work is
14 infringed, if a proper notice of copyright appears on the published copy or copies to
15 which a defendant in a copyright infringement suit had access, then no weight shall be
16 given to such a defendant's interposition of a defense based on innocent infringement
17 in mitigation of actual or statutory damages, except as provided in section 504(c)(2)
18 of the copyright law. Innocent infringement occurs when the infringer did not realize
19 that the work was protected. **(Exh. 28a-d)**

20
21
22 The use of the copyright notice is the responsibility of the copyright owner and does
23 not require advance permission from, or registration with, the Copyright Office.

24
25 Teller did not behave responsible, on the contrary. In the only shadows
26 documentary video to be seen on the internet he challenges and provokes everyone
27 by stating: "nobody knows how 'shadows' is done and no one will ever figure it out.."
28 simultaneously plaintiff challenges everyone,

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in the TV show Fool Us, also to be seen on the WWW internet, wherein the challenge is to perform a magic trick/illusion which can't be figured out by Penn & Teller <http://www.youtube.com/watch?v=YEzo5Krtm10>

(1:10) **(Exh.31a)**

Bakardy could easily have fooled Penn & Teller in their challenging and provoking television show 'Fool Us' since it seems clear that Teller can't figure out how to perform an illusion wherein a 100% visible and removable rose falls apart in a water filled, removable and transparent coca cola bottle as to be seen in Bakardy's video, since he offered Bakardy the double of what he usually pays for developing illusions/props as such. **(Exh. 35a-c)**

Plaintiff is known for his challenging and provoking statements in TV shows, wherein e.g. veterans are humiliated when they see the U.S. Flag burned in a magic trick, or the Christian people are ridiculed and humiliated when they hear plaintiff's statements filled with profanity and sacrilege. **(Exh.36)**

In the magic community and on the internet , Plaintiff is known as one of 'the Bad Boys'. Many magicians feel humiliated and ridiculed by plaintiff's multiple revealing and exposure of many valuable illusions/tricks, ruining many magicians earnings. **(Exh.37)**

• **Plaintiff committed spoliation of evidence BEFORE the litigation started.**

It came to light that plaintiff committed spoliation of evidence. Deliberately. purposefully and intentionally, as proved in the following:

- 1
- 2 • In a phone conversation between the parties on or about 03.21.2012, Teller
- 3 informed the defendant that Teller did not want anyone else in the world to
- 4 perform a similar trick to Tellers (shadows). The day after, plaintiff confirmed
- 5 this in an e-mail. **(Exh.38)**

6 Defendant was surprised and told Teller that defendants trick was very different

7 from Tellers but that there were other magicians performing a very similar trick

8 as Tellers. Such as ALS – Petros – Hector etc.. all to be seen on YouTube.

- 9
- 10 • After plaintiff realized that these videos were the factual prove that 'shadows'
- 11 has become a standard manufactured trick and that the illusion became public
- 12 information, he rapidly contacted HECTOR, on date of April 2nd 2012, requesting
- 13 to pull off his videos of the YouTube channel video.

14

15 On April 2nd , 2012, Plaintiff sent an E-mail to Hector, stating:

16

17 ***"... to assist me in my current thinking, would you mind pulling the***

18 ***video off of YouTube? It could be used by the current manufacturer***

19 ***(meaning the defendant) to "prove" that this is now a standard,***

20 ***manufactured trick. Thank you, Teller."***

21

22 About 30 minutes later, Hector answered : "Yes, sure I will pull it off." **(Exh.39a,b).**

23 And he did. Important evidence for the defendant was spoiled.

- 24
- 25 • **Plaintiff committed spoliation of evidence DURING the litigation.**

26 Plaintiff filed his complaint on April 11th, 2012. Plaintiff was fully aware that 'shadows'

27 was performed all over the internet and that this could be a proof for the defendant

28 that 'shadows' is now a standard manufactured trick.

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After he discovered another video on YouTube, again uploaded many years ago, again with thousands of views, he again contacted Hector, on date of April 15th, 2012, requesting:

"It appears somebody posted your drawing-version of the (shadows) routine without your knowledge. Would you be willing to ask YouTube to take that down..."

Again Hector followed Tellers instructions. Again spoliation took place on important evidence for the defendant. **(Exh. 39c,d)**

Plaintiff has deliberately, purposefully and intentionally instructed Hector to destroy or tamper evidence which could prove that defendant didn't infringe on his alleged copyright.

Another magician, 'ALSmagic' uploaded his version of shadows on the WWW Internet and commented or stated on the YouTube channel:

"... it is actually public information... I found it on the web and made a newer version, there are a bunch of people who have made different versions and twice as many theories.. " and further *"...I don't need permission because this was exposed some years back by multiple magicians so his (meaning Teller) methods are now public information..."*

Defendant was able to take a screenshot **(Exh.8a)** before the ALS magician's comment 'magically' disappeared from the internet and has been changed to 'more Teller friendly' comments, as to be seen in the last lines of the comment, wherein the public is spurred to go see the Penn & Teller show. **(Exh.8b)**

More than likely on Tellers demand, instructing the magician to 'remove' his comments since they were showing that Tellers trick 'shadows' became public information.

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• **Plaintiff creates false evidence.**

As we all know the internet is fast, has no secrets and is a big source of information, also for the defendant in this litigation. To obstruct and hinder the defendant's search for evidence, plaintiff did not only instruct others to remove certain YouTube videos, but also instructed others what to write and comment on the internet.

The Magic Café, a forum for magicians, picked up Tellers lawsuit against Bakardy, the same day it was filed in Court. Multiple commenter's were suggesting that Tellers complaint was hypocrite, since Penn & Teller are known as the 'Bad Boys' revealing many magicians secrets by exposure, other commenter's noticed that there were more magicians performing a similar act to Tellers, where under Hector.

Hector, who was already in contact with Teller for weeks, noticed this and contacted Teller again, on date of April 15th 2012, and wrote:

" There is a thread on the magic Café forum about your lawsuit... and some people were attacking me, so I had to clear a bit my situation...I haven't given any information about the situation but I thought I had to say something. I hope it is OK for you, please, let me know if you want me to remove the comment or say something else.. Hector" (Exh.39e)

On date of April 15th 2012 (4 days after Teller filed the copyright complaint against Dogge) Teller instructed Hector to add the text (hereunder) as reply to the thread on the Magic Café Forum:

"When I recently realized what happened, I contacted Mr. Teller myself. I told him (and I live by my word) that, as much as I love my routine, I will do whatever Mr. Teller deems right

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2 ***in this situation. If he asks me to limit its use or even remove***
3 ***it from my repertoire, I will do so. I will let you know the***
4 ***outcome of our discussions.” (Exh.39f)***
5

6 On April 16, Hector responded to Teller:

7 ***“Hello, I did add that, I hope it’s OK now. I wish you the best on all***
8 ***this process. Hector.” (Exh.39f)***
9

10 It is clear that Hector was doing what he was instructed to do, by Teller, the plaintiff,
11 and sadly writes “and I live by my word” while he actually lives by Tellers words, or
12 even worse, by Tellers instructions to obstruct the defendant in this litigation
13 ‘process’.

14
15 On date of May 4th, 2012 Teller wrote: (Exh. 39g)

16 ***“Dear Hector, Just an update. On the sad side: I’m still unresolved***
17 ***with Gerard Dogge. That law suit against him has been filed and is***
18 ***proceeding. But on the happy side (and please don't share this***
19 ***until we've completed it) I am confident you and I can work out an***
20 ***agreement...”***
21

22 On date of May 4th, 2012 Hector responded to Teller: (Exh.39h)

23 ***“Hello Teller, Thank you for the update. I feel so happy to read that***
24 ***you give me this privilege, thank you very much for the***
25 ***consideration. I won't say anything, do not worry about that, not***
26 ***even when we agree on something. This is something between you***
27 ***and me. Our life consists on keeping secrets, is not going to be a***
28 ***problem...”***

1
2 Hector got rewarded for his silence and cooperation with some 'free' tickets for the
3 Penn & Teller shows and... a 'free' license from Teller. Not really free, for a 100\$ as
4 Teller wrote in his email from July 23rd, 2012: **(Exh.39i)**

5
6 ***"Send both copies to me. I'll sign both and return one to you. And***
7 ***the hundred dollars makes the transaction official (and helps to***
8 ***pay the cost of my attorney drawing up the agreement)..."***

9
10 Apparently Teller realized that, although he can intimidate some magicians to make
11 them do what 'he' wants them to do, he cannot control the internet, he cannot turn
12 the clock backwards, making all 'evidence' disappear, evidence for the defendant that
13 Tellers 'shadows' is a manufactured standard illusion performed by many, since many
14 years all over the world.

15
16 • **Plaintiff is intentionally obstructing the proceedings - discovery.**

17 On date of March 13th, 2013, Teller was asked in the (1st set -R38) discovery to
18 "Admit that you're aware that there are more magicians performing the act 'shadows'.
19 And responded: ***".. Teller denies the request as he knows of no professional***
20 ***magicians performing the shadows illusion."*** (Exh.40a)

21 Obviously, plaintiff was lying again, since he was instructing Hector, a year before
22 on April 2nd 2012, to take down several YouTube videos wherein shadows was
23 performed by others than Teller, since he instructed others what to write in their
24 name on the internet forums and since he licensed several other magicians.

25 Plaintiff knew very well that 'his' trick was performed by Hector and others, for
26 many years and seen by thousands all over the world, and plaintiff knew that exactly
27 this could form the evidence for the defendant proving that plaintiff's copyright is
28 questionable and doubtful.

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2 Plaintiff instructed to destroy important evidence for the defendant, evidence not in
3 the 'spoliator's' favor.

4 More than likely, a similar thing happened with 'ALS Magic', another
5 professional magician performing the illusion "plants and 'shadows'", on YouTube.
6 **(Exh.8a,b)**

7 When plaintiff was requested, during the discovery (2nd set), to produce all
8 correspondence between Teller and ALS regarding ALS performance of his version of
9 shadows, Teller refused to reply, with the lame excuse that this could not be done
10 since there was no protective order nor confidential agreement. **(Exh.40b)**

11
12 **• Was plaintiff violating the defendants rights by destroying evidence?**

13 Yes he was, without doubt. Deliberately, purposefully and intentionally he
14 tampered and destroyed evidence that proves that Tellers copyright is questionable
15 and that defendant did not infringe on whatsoever.

16 It is not the first time that plaintiff is trying to turn the clock backwards by
17 tampering legal evidence, even after it was legally filed in the U.S. Court of Nevada-
18 Las Vegas. On date of April 11th, 2012, plaintiff filed exhibit 3 to his complaint,
19 showing screenshots taken by and on Tellers computer, showing Tellers favourite
20 web links right above the defendants name and picture.

21
22 Unfortunately five of the web links were gay orientated hard porn sites.
23 **('mantube', 'Corbin', 'CFSelect', '2Long', 'Tyler')** Web sites which are absolutely
24 not the defendants favourites, he abhors them.

25
26 Defendant had to ask Teller 4 (four) times for an explanation regarding the
27 incriminating screenshots before he wanted to answer.

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Tellers answer (**Exh.41**) shows that he was not intended to replace the incriminating exhibits and does not show any 'courtesy' at all. On the contrary Teller wrote: "***There is no injury to you and no actionable bases for objecting to documents filed with the US Federal Court... Stop wasting my time***". Afterwards it turned out that Tellers answer was no more than one of his many hypocritical lies since he re-filed the exhibits at issue after being **tampered** that same day (04.25.2012) (**Exh.42a-d**)

Plaintiff could have redact or seal the incriminating documents, ..but he didn't. When defendant asked him in the deposition how this could happen having an army of the best attorney's in the Greenberg Traurig Law Firm, Teller responded flatly that his attorneys makes mistakes. (**Exh.43a,b**)

Afterwards it turned out that plaintiff tampered the legal evidence after it was filed, without the defendants approval to conceal the porn web links.

Plaintiff stated that he altered the screenshots originally filed as exhibit 3, on the defendants request, after receiving Dogge's concerns, out of courtesy to Dogge.

It is a fact that Dogge never requested the plaintiff to exchange original legal evidence filed in the US Court with altered, modified, manipulated, corrected, or photo shopped exhibits, since it is a crime to tamper legal evidence after it is filed in Court, without giving notice to, or without all parties approval.

Even if defendant would have requested so, quod non, the world famous Greenberg Traurig law firm attorneys knows, or should know, that tampering legal evidence is a crime and that 'out of courtesy' is no excuse to violate the Federal Rules.

1
2 There is no doubt that defendants rights are violated. The litigation began with an
3 enormous defamation and is now coming to an end with multiple motions of the
4 plaintiff requesting the Court for terminating sanctions, without given the defendant
5 the chance to prove that plaintiff's complaint has no ground and ON TOP by tampering
6 and destroying evidence for the defendant.

7
8 • **Plaintiff's witnesses are questionable and instructed by Teller.**

9 Plaintiff's disclosures informed the defendant that Mr. Hector and Mr. Guinee are
10 expected to testify regarding the facts and circumstances concerning the claims
11 alleged in this action. **(Exh.44)**

12 1. Regarding Hector, it needs no explanation that his testimony will be doubtful.

13 As the Belgium sentence states, 'wiens brood men eet, diens taal men spreek'
14 meaning 'whose bread you eat, whose language you speak'.

15 Hector was helping Teller, in all silence, to destroy defendants evidence and got
16 rewarded with a 'free' licence to continue what he was doing already for years.
17 Performing shadows. Obviously Hector is eating out of Tellers hand and will never
18 bite the hand that feeds him, and handed him a 'free' license to continue his earnings
19 with performing shadows.

20
21 2. Regarding Guinee, it needs to be said that Teller approached Gunther Guinee
22 in the beginning of the litigation. Teller requested Guinee to persuade Bakardy, to sell
23 his creation exclusively to Teller and to no one else.

24 As reward Guinee was invited as Tellers guest to come to Las Vegas, and so on.. as
25 stated in **(Exh.45a,b)** his email from April 4th ,2012 :

26
27 ***"...If we could agree on a realistic fee, I would consider hiring***
28 ***him (Bakardy) as consultant to try and improve my trick, provided***

1
2 ***of course, he takes it off the market and sells it to no one but***
3 ***me. I think his notion of seeing the stem in water might have***
4 ***value for me.*** and " ... ***Know that regardless of the outcome,***
5 ***you now have a new friend in the US. When you come to Vegas***
6 ***you will be most cordially received as my guest. And if there are***
7 ***any Penn & Teller materials (e.g. my David Abbot book) that***
8 ***interest you, they will be on their way to you with my***
9 ***gratitude...Teller."***

10
11 And that's what he did: for a few silver coins, Guinee contacted Bakardy trying to
12 persuade him as Teller asked him to do. Defendant told Guinee that he was surprised
13 with his interference, especially because Guinee, who is the publisher of the
14 Escamoteur a Magazine for Magicians, accepted Bakardy's advertisement a few weeks
15 earlier.

16 Bakardy, sure that his creation/illusion is the first and only one in the world
17 wherein a removable and complete visible flower falls apart on the magicians control,
18 in a water filled, transparent, removable vase or Coca Cola bottle, chose not to be
19 intimidated. Not by Teller. Not by Guinee.

20
21 It is obvious that Tellers friend and 'guest' Guinee, will not bite the hand that feeds
22 him, treats him as a guest and sends him presents 'with Tellers gratitude'.

23
24 There is no doubt that at least those two witnesses, Mr. Hector and Mr. Guinee are
25 instructed by the plaintiff and that plaintiff is obstructing the proceedings, violating
26 the defendant rights for a fair trial.

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• **Tellers deposition.**

Tellers deposition took place on July 1st, in Las Vegas, Tellers home town. Pro-se defendant, for the first time in his life confronted with 'depositions', understood that the deposition needed to be done in a legal way, in the presence of a legal Court Reporter and videographer, who would afterwards provide a legal transcript and video recording.

Of course, the Belgian defendant not knowing anyone in Vegas, could only hope that he selected an upright legal service office. Defendant selected the Offices of Lawyers Solutions Group, 900 South Fourth Street, Suite 100, Las Vegas, with Yvette Rodriguez as court reporter, to take the deposition on Teller.

Some strange things happened, although it was agreed that the transcript would be send to the defendant within 10 days after the deposition, the transcript was 'released' only on date of July 25th. Most inconvenient for the defendant, since he needed to refer to the transcript in his responses to the Court, before July 25.

Coincidence ? Or is there more?

There is more, because, when reading the transcript, the defendant was surprised by the many 'clerical errors' and noticed, after comparing the transcript with the video/audio recording he had received, that there were important things 'missing'.

The transcript delivered by the Legal Court Reporter counts 39.624 words.

The video transcript, with the 'missing words' corrected, counts 43.223 words.

Meaning 3.599 words or 20 pages more than the transcript delivered by the Las Vegas Court reporter.

Most of the 'missing parts' are in plaintiff's favour. Coincidence ?

1
2 Defendant therefore requested the Court reporter to deliver a proper and complete
3 transcript. **(Exh. 46a,b)** Until now defendant did not receive a correct transcript.
4

5 Defendant cannot prove that plaintiff approached or instructed anyone in this
6 matter, but can only add this experience to his previous experiences.
7

8 Defendant experienced during the proceedings that Mr. Teller is an influential
9 and intimidating person, not only regarding the instructed witnesses, but defendant
10 experienced that he had difficulties to serve Teller with the 'summons' for the Antwerp
11 defamation litigation. The official server, working for and presented by The Central
12 Authority, could not locate the most famous celebrity in Las Vegas, Teller. **(Exh.47)**
13 Defendant had to contract another Legal Server to get the job done.
14

15 On date of May 16th 2013, defendant filed a motion to the Court for
16 investigating Tellers hard drives to exclude criminal facts, and the same day the
17 Courts clerk informed the defendant that defendants further filings will not be
18 accepted. Only after defendants insisting, his filings were further accepted.
19

20 Defendant cannot prove that all this happened due to plaintiff's 'influence', but
21 defendant cannot believe that all this is 'coincidence '. Assuming that plaintiff did
22 'steer' all this, it matches with plaintiff's previous behaviour towards other magicians
23 and witnesses , which is proven.
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II. LEGAL ARGUMENTS

A. Legal standard

Being a Belgian citizen and not a American lawyer, defendant is not supposed to know the U.S. Federal Rules, but tries his best to defend himself , pro-se. Defendant is not able to refer to previous Court orders ever made in the U.S. unknown for the defendant. Defendants defence is based on common sense, honesty and truthful facts.

B. Plaintiffs alleged 'Undisputed Facts' are not proven.

To prove copyright infringement, Teller must prove two elements:

1. "ownership" of a valid copyright.
2. "copying" – that Dogge copied Tellers copyrighted work.

1. Is Tellers copyright 'valid' ?

Plaintiff shows a copy of a registered copyright. This is not a prove that it is still valid. There are many reasons to believe that Tellers copyright lost its legitimacy already years ago. Since it is proven, **(a)** That Teller abandoned his work. **(b)** That Teller wrongly registered a magic routine/trick/illusion as a pantomime-drama. **(c)** That the USA Government Copyright Office does not register magic routines and states that **(d)** magic routines are not protected by copyright. **(e)** That Teller never and nowhere informed anyone that 'shadows' is copyrighted, while this is recommended by the US Copyright Office **(Exh.) (d)** That defendant requested multiple times for a copy of the copyright details, but that Teller refused to inform the defendant. **(f)** That based on a prop, shadows is a standard illusion, performed, sold, rented, bought and sold second hand, all over the world. **(g)** That the internet reveals how the prop works and how to built the prop to perform 'shadows'. **(h)** That Penn and Teller openly, on TV and on Internet, challenge anyone to ravel out the 'shadows' illusion. For these reasons, Tellers copyright is not valid or is at least doubtful.

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2. Did Dogge copied Tellers copyrighted work ?

Regarding plaintiff (p3:6): *Copying is proven with two sub-elements: Teller must show that (a) Dogge had access to the copyrighted work.. (b) and that the works are substantially similar.*

Plaintiff statement that defendant had 'access' to Tellers 'shadows', is false.

(a) Defendant NEVER admitted to having viewed Tellers Shadows Illusion. The shadows routine performed by Teller is NOT to be seen on the internet. Defendant admits that he saw a 'documentary' video on YouTube wherein some people do statements that they were 'emotionally touched' and started crying when the saw Tellers performance, shadows.

The documentary takes 2:04 minutes and does show some fragments of Tellers performance. About 30 seconds, about 10% of the complete routine as showed on plaintiffs DVD filed in his disclosures.

The only thing what defendant ever saw of Tellers 'shadows' is no more than a few short fragments in a documentary video, as described above.

(b) Defendant proves in many ways that his work differs so much from the work of plaintiff, that the creation of the work of the defendant is the unique expression of the intellectual creation of its author and of his creative mind.

The result is the intellectual creation/illusion of the defendant, which was recognized and copyrighted on date of April 10, 2012 by the United States Copyright Office Washington- DC , with 10 (ten) different performances. **(Exh.27a-d)**

In fact, Teller tries, with his claim, to convince the Court that he has the copyright on the work of the defendant, while it is beyond any doubt that Teller is unable to perform Bakardy's work.

1
2 Impossible indeed, precisely because Teller does not master the original
3 intellectual creation of the defendant. In other words, Teller, who recognizes that the
4 creation of the defendant differs from his own work, claims the copyright on a work
5 that is different from his own, due to the intellectual creation of the defendant, which
6 the plaintiff cannot reproduce.

7
8 Plaintiff does not prove that Dogge copied Tellers work shadows.

9 Plaintiff does not file any 'key' evidence, and tries to justify his hollow statements,
10 only with defendants answers on plaintiff's crafty and cunning questions, pulled out of
11 its context, more than a year after plaintiff accused Bakardy of alleged
12 infringement.

13
14 Plaintiff refers to Dogge's answers in the deposition, before defendant had the chance
15 to overview, correct or complete his answers. Defendant has corrected and completed
16 his answers in the deposition and has sent an 'errata sheet' to Tellers attorney on
17 date of 07.30.2013. **(Exh.48a-d)**

18
19 Plaintiff does not prove the alleged infringement.

20 Plaintiff wrongly states multiple times that the defendant posted video's offering his
21 'prop' for sale for 2.249 € (around \$3000). Plaintiff does not prove this and will
22 NEVER be able to prove this, since defendant did NOT offer his prop for sale,
23 NOWHERE and NEVER.

24 Falsely plaintiff tries to mislead the Court, showing a DRAFT from an advertisement
25 which NEVER was published by the defendant.

26 On Tellers request, defendant cancelled an advertisement **(Exh.49a,b)** before it ever
27 was published. The Court will notice that the cancelled advertisement mentions
28 another price and that plaintiff refers to no more than a DRAFT.

1
2 Plaintiff does NOT prove that Bakardy EVER performed, sold, shipped,
3 explained, promoted, advertised his illusion. The demo video was 'taken down' on
4 Tellers demand after one week and had 14 views, Teller assured Bakardy that the
5 YouTube video was no longer needed since he would buy the exclusive rights on
6 Bakardy's trick.

7
8
9 Defendant on the contrary, proves that Bakardy's illusion is different from
10 Tellers: (a) with the many statements of plaintiff and by (b) comparing the
11 description of both illusions (see list page 12).

12
13
14 Further defendant proves **(c)** that Tellers copyright is invalid or at least
15 doubtful and **(d)** that shadows is a standard trick in the repertoire of many magician,
16 and **(e)** that Teller is aware of this and therefore debases himself together with his
17 attorneys to do all possible to conceal the real facts for the Court and to obstruct the
18 defendant in his defence. Further defendant proves that **(f)** plaintiff was committing
19 tampering and **(g)** spoliation of important evidence for the defendant and **(h)** that
20 plaintiff instructed others what to do and what to write on the internet forums in their
21 name to obstruct the defendant in his defence.

22
23 It is obvious that plaintiff, debased himself, committed felony by tampering and
24 spoliation of important evidence for the defendant, for one reason only, plaintiff is
25 fully aware that his copyright is questionable and that Bakardy's trick is a total
26 different trick and not an infringement on Tellers copyright or whatsoever.

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C. Was the defendant wilfully infringing on Tellers copyright?

Absolutely not.

First of all, defendant was not aware that 'shadows' was copyrighted by Teller. Defendant had seen a video on the internet how to built the prop to perform an illusion such as 'shadows'. Defendant has seen that the prop was sold and bought second hand, that the prop is for sale and for rent on the internet, and that shadows is a standard illusion performed by many magicians/persons all over the world. Defendant wanted to be different and invented and created a prop that surpasses all other versions ever sold, rented or performed.

Defendant saw that performers (ALSmagic) described their performance as 'public information' and that the illusion was performed by many others.

Defendant could impossible know that one of the performers had a copyright. Not one of the performers, including Teller, does mention that 'shadows' is a copyrighted illusion. Neither the manufacturer who sells and rent the prop to perform an illusion such as shadows, does not mention a single word regarding a copyright. Further, defendant was, and still is convinced that his creation is 'new' and different from all others, so infringement was not the issue.

Plaintiff wrongly states that defendant's infringement was wilful because defendant was made aware of plaintiff's valid ownership of a copyright registration when Teller and Dogge started to discuss on March 15, 2012. Again plaintiff is making false statements without any prove. Defendant proves **(Exh.50a,b)** that Teller contacted Bakardy for the first time on March 21st, 2012, a week after defendant had uploaded the YouTube video on March 15th ,2012. **(Exh.50c)**

1
2 In that phone conference on March 21, 2012, plaintiff mentioned that he had a
3 copyright on shadows. Defendant responded that he immediately would cancel the
4 planned advertisement and asked Teller to send a copy of his copyright registration.

5
6 Plaintiff refused to inform defendant about his copyright. Defendant insisted
7 multiple times to be informed with the details of Tellers copyright so that he could
8 create a performance that respected Tellers copyright. Teller refused and NEVER
9 informed Bakardy regarding the copyrighted details of 'shadows'.

10
11 Although plaintiff refused to inform the defendant, defendant always showed
12 that he was willing to respect Tellers copyright. **(Exh.51a,b,c)**

13 The only information defendant got from plaintiff is that he ordered a DMCA 'take
14 down' of defendants videos. Defendant could impossible know that plaintiff
15 'mistakenly' left one video posted on YouTube, which was taken down a few days
16 later. **(Exh.52)**

17
18 Although defendant could have re-uploaded his videos, although defendant could have
19 started performing his 'new' illusion, although defendant could have started selling
20 and advertising his 'new' prop etc, after Teller made clear that he was not further
21 interested in the exclusivity rights on Bakardy's invention, defendant didn't.

22
23 On the contrary, while plaintiff is not filing a single shred of evidence, while plaintiff
24 commits obstruction, tampering and spoliation on important evidence for the pro-se
25 defendant, defendant respectfully awaits the Courts order whether his work is
26 infringing or not.

27
28 Plaintiff's motion to be awarded with maximum statutory damages makes no sense.

1
2 **D. Is plaintiff entitled to his attorney's fees and costs ?**

3 Plaintiff and his attorneys committed tampering, spoliation, obstruction and instructed
4 others what to do and what to write on internet forums in the plaintiff's favour,
5 instructed and rewarded others for destroying evidence not in the plaintiff's favour, to
6 afterwards present these persons as witnesses to testify against the defendant.

7 It is naive to assume that defendant can be hold responsible for all felonies committed
8 by the plaintiff and his attorney's, before and during the litigation.

9 Plaintiff's motion to be awarded its attorneys' fees and costs makes no sense.
10

11 **E. Is plaintiff suffering damages due to alleged infringement?**

12 Absolutely not, on the contrary. According to the Belgian law (art. 1382 and following
13 BW), plaintiff must not only prove his damages, but also an causal relation between
14 his damages and the infringement.

15 Defendant likes to remind the Court that the alleged infringement, if there was
16 any, has happened in 'one' (1) week only, the week from March 15th ,2012. by a
17 YouTube video uploaded by the defendant, wherein according to plaintiff, defendant
18 performs Tellers illusion shadows.

19 The video was taken down on plaintiffs demand and was seen by 14 (fourteen)
20 people. Most of these few viewers were Teller, his friend and his attorneys. Fourteen
21 views cannot have caused any damage to Teller. On the contrary, Teller used the
22 alleged infringement to boost his business, as he overloaded the internet with
23 sympathy seeking interviews to defame the defendant and to bring his 40 years old
24 illusion again in the spotlight. If any damages were caused, they are caused by the
25 plaintiff's behaviour. Professional magicians recognized Tellers action as a 'clever' way
26 to gain a massive publicity, for free. **(Exh. 53a)** The Esquire reporter recognized the
27 publicity. **(Exh.53b)** Whenever Teller was asked to prove his damage, he didn't or he
28 couldn't. **(Exh.53c-g)**

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Defendant asked Mr. Teller in the deposition to prove his damage.
This proof seems to be difficult to deliver. Except for losing his temper, Mr. Teller did not deliver anything that proves his damages. (p153:19-154:24) **(Exh. 53d,e)** :

Q. *"When I when I asked you in discovery, Mr. Teller, to prove with some documents the damage you had ,you have had because of me, caused by Bakardy and his creation, you stated to answer later. Can you tell me now what the damage is that you have had because of my invention, alleged infringing video?"*

A. *You have ripped my heart out Mr. Bakardy. You have ruined my faith in humanity. You have ruined my faith in the ethics of magic. I don't mean to sound angry, but you really have done serious, personal damage to me. You have taken amounts of time that I would have devoted to building my career, and instead have them wasted on -- on this -- on this deposition, on all of this -- on all of this work, which I had to do to protect my own interest against you. You have also cost me hundreds of thousands of dollars just to resolve something that should have been resolved in a simple and gentlemanly manner. Is that clear?"*

Q. *You want a drink, Mr. Teller?*

A. *I don't drink.*

Q. *Try to relax , Mr. Teller,*

A. *I don't drink Mr. Bakardy – or Mr. Dogge, pardon me.*

Q. *Try to stay calm, Mr. Teller. This is the second time you lose your temper. It's not good for your heart.*

A. *Thank you. I appreciate your concern.*

(p157:21) (Exh. 53f,g)

Q. *Mr. Teller, do you think that the US tax office report will show that there were less tickets sold in the Penn & Teller shows during... the period of a year, from March 2012 to March 2013 compared with the previous year, March 2011 to March 2012 ? Meaning, during the period that we are in this litigation, did you sell less tickets to your show?"*

A. *I did not.*

1
2 Unfortunately, the deposition transcript does not represent the real and complete and
3 correct text, defendant requested the court reporter to deliver a proper and complete
4 transcript in accordance with the video and audio recording of the deposition.

5 Plaintiff does not prove any damages. On the contrary, in the sympathy seeking
6 interviews he admits that the litigation brought more ticket sales to his shows.
7 **(Exh.53b)** Obviously, as planned by the plaintiff.

8
9 **III. CONCLUSION.**

10 Since plaintiff does not prove:

- 11 • that the illusions are similar
12 • that defendant committed infringement
13 • that he had any damage at all
14 • that he was behaving responsible regarding the ©

15
16 Since defendant proves:

- 17 • that both illusions are significant different,
18 • that plaintiff NEVER performed Bakardy's illusion,
19 • that defendant's prop is the first and only one in the world to allow a person to
20 perform the illusion with all items 100% visible,
21 • that plaintiff's copyright is invalid or at least questionable,
22 • that plaintiff was irresponsible and provoking,
23 • that plaintiff had no damage, but publicity instead,
24 • that plaintiff acts in bad faith,
25 • that plaintiff committed tampering and spoliation on important evidence for the
26 defendant,
27 • that plaintiff instructed others what to write in their name on internet forums to
28 obstruct the defendant in his research for evidence,

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- that plaintiff rewarded others for doing and writing what he instructed them to do or write,
- that plaintiff bribed his witnesses,

defendant can only concludes that he was wrongly brought in Court, and this litigation is unjustified.

It is clear that plaintiff debased himself, committing felonies to help him in his arguments in this litigation and to obstruct the defendant in his research for evidence.

Granting plaintiff's motion would be one more violation of the defendant's rights.

For these reasons defendant respectfully requests the Honourable Court,

- **to deny plaintiffs motion for summary Judgement as to the copyright infringement claim, and**
- **to render Judgment, acquitting the defendant and exonerating Gerard Dogge of the alleged infringement.**

Looking forward to the pleadings in Court.

With the deepest respect,



Hoevensebaan 2, B2950 Kapellen
Belgium - Europe

Inventory list on next page.

Inventory list – 53 Exhibits in support of opposition 8.14.2013

Exh. Nr.	Description
1a	Screenshot Criss Angel performing shadows
1b	Image Bakardy's 'prop'
3c	Image Teller's 'prop'
2a,b	Screenshots - Penn & Teller exposures
3	Email Teller to Bakardy March 27 - 2012 (to be sealed)
4	Screenshot - TMZ interview Teller
5a,b	E-mail from Teller to Gunther, April 3 - 2012
6a,b	E-mails from Bakardy to Teller April 4,11 - 2012
6c - 7	E-mails from Teller to Bakardy, April 5, 6 - 2012
8a-g	Screenshots others performing 'shadows'
9a-c	Discovery - interrogatories defendant
10-13	Discovery - admissions plaintiff
14-19	Deposition plaintiff
20a-n	Screenshots - prop for sale/rent and how to built
21a,b	Screenshots - Hector bought prop second hand
22a-c	Deposition plaintiff
23,24	Discovery - admissions plaintiff
25a,b	E-mail from Teller to Gunther, April 4 - 2012
26a,b	Deposition plaintiff
27a-e	Copyright docs. - Bakardy & Teller
28a-h	Copyright Gov. Docs and letters to Bakardy
29	Fragment from Jim Steynmeyer report
30	Deposition plaintiff
31a	Screenshot YouTube video 'shadows'
31b-e	Deposition plaintiff
32a,b	Screenshots internet
33a-f	Docs regarding missing videos YouTube
34a,b	Deposition defendant
35a-c	Docs. Regarding Penn & Teller show Fool Us
36	Screenshots
37	Screenshot google search Bad Boys
38	E-mail from Teller to Bakardy March 22 - 2012
39a-I	E-mails between Teller and Hector
40a,b	Discovery requests to plaintiff
41	E-mail from Teller to Bakardy April 24 - 2012
42a-c	Plaintiff's Exhibit 3
43a,b	Deposition plaintiff
44	Plaintiff's disclosures - witnesses
45a,b	E-mail from Teller to Gunther April 4 - 2012
46a,b	Email to court reporter deposition plaintiff
47	Status report server
48a-e	Errata sheet
49a,b	Screenshot cancelled advertisement
50a,b	E-mails (first) between Teller & Bakardy
51a-c	E-mail from Teller to Bakardy - re. alternative presentation
52	E-mail from Teller to Bakardy March 29 - 2012
53a-g	Docs. Re.: Tellers damages

53 EXHIBITS – 138 pages
in support of opposition 8.14.2013
CASE N° 2:12-cv-00591-JCM-GWF
Teller v Bakardy

EXHIBIT 1a

YouTube magic shadows cris angel Q Upload



M90

Criss Angel's real magic "Shadows" - Video.flv

lol 03456524910 23 videos 4,458 **Criss Angel Mindfreak** (f)

EXHIBIT 1b

Bakardy's prop



EXHIBIT 1c

Teller's prop

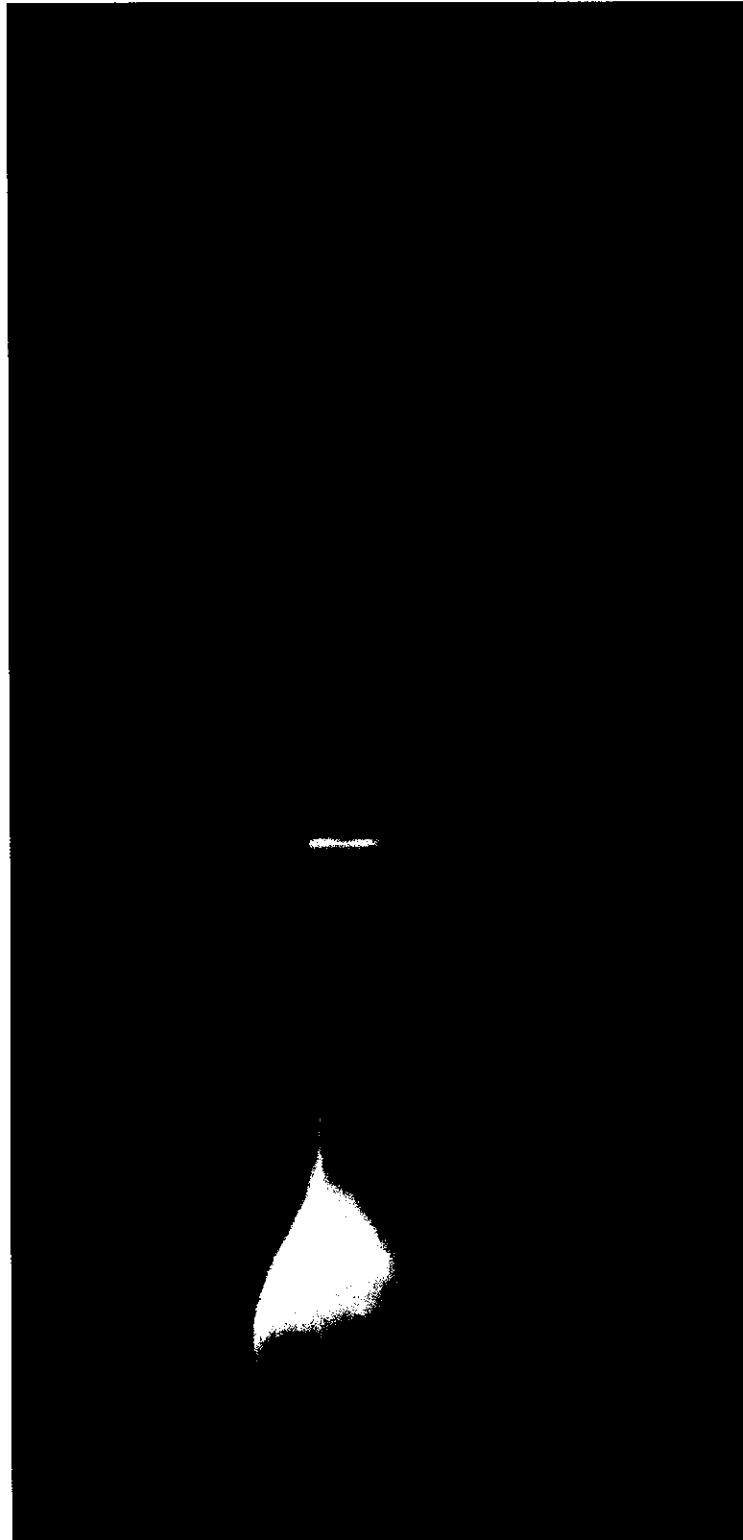


EXHIBIT 2a



EXHIBIT 2b



EXHIBIT 3
TO BE SEALED
CASE Nº 2:12-cv-00591-JCM-GWF

EXHIBIT 3 --- TO BE SEALED

J Teller Penn & Teller
Aan Gerard Bakardy

27/03/2012
Beantwoorden

Dear Gerard,

This is a tough thing to figure out, and I don't think either of us ends up being totally happy with any plan, but here's my best attempt at being fair to each of us.

Sometimes I hire people to help develop mechanical parts of tricks. If I had hired you for that purpose, and you'd developed a way to allow the rose stem to be visible and mobile, I would think a reasonable price for that improvement would be about \$7500.

But at this point, I have no idea whether I can build on what you've developed to make the movement smooth enough to have the look I want on stage. So for me, that \$7500 would be a total gamble.

On the other hand, I understand that you have put a lot of experimentation and ingenuity into what you've done, and were hoping to have good sales. Unfortunately those sales would have forced me to defend my rights by unpleasant and protracted lawsuits in both the U.S. and Europe. We would both lose large amounts of money and would end up poorer and bitterly angry at each other.

That is not the way I want to live.

So here's what I suggest:

I would like to offer you \$15,000. For this, you send me everything you've built. You cease manufacture of your prop. You share your idea with nobody and assist nobody else in copying my trick. I assume full ethical and legal possession of your method. I would pay \$7500 upon signing the agreement, and the remaining \$7500 upon receipt of the props.

Now, understand, this is a total gamble for me. I do not know whether what I'm buying will actually be usable in any way for me. But the reason I'm offering such a generous settlement is to reflect three things:

1. The thought and work you have put into developing the alternate method.
2. Your respectful and ethical willingness to step completely away from this project.
3. The wish not be compelled to solve this problem through strife and lawsuits.

I would also expect that you would agree to keep our arrangement absolutely confidential. If this were to get out in the magic community, I believe it would make both of us look very, very bad and cause future problems. And I'd expect your sworn promise never to emulate or endeavor to manufacture any of the material Penn and I have developed on stage or television (unless you contact Penn and me and develop the material exclusively for us -- we do appreciate clever thinking.)

As I said above, there is no perfect solution to this situation. I suspect you were hoping for greater profits in sales than I am offering. And I'm not very pleased to be offering a large amount of money for something that should not have been done without my consent in the first place, and which may turn out to be of no use to me.

But if we follow this plan, and back it up with proper paperwork, you make a respectable amount for your work and ingenuity, avoid legal headaches, and have a new friend in Vegas. I end up without the aggravation of lawsuits, get a potential step towards improving my signature trick, and gain an ingenious new colleague in Spain.

So we turn bad to good and move on with clear hearts and warm feelings.

Please let me know your thoughts on this proposal.

Cordially,

TELLER

EXHIBIT 4

Law and Magic Blog

Subscribe to this blog's feed

« Psychics On Trial In Fort Lauderdale | Main | Follow Up on How Copyright Might Protect Magicians' Secrets »



Online Journals

- ❖ Miller-McCune
- ❖ Picturing Justice
- ❖ Caslon Analytics: Afterlives
- ❖ iTricks
- ❖ Spiked

Other Blogs

- ❖ Law and Magic Blog
- ❖ Religion Clause
- ❖ Bird's Brain, The
- ❖ CLEWS: The Historic True Crime Blog
- ❖ CLEWS: The Historic True Crime Blog
- ❖ Cocktail Party Physics
- ❖ Contemporary Art Porcelain (John Tilton's Blog)
- ❖ Counterfeit Chic
- ❖ Curious Cat Science and Engineering Blog
- ❖ Deceptology

Teller Sues For Copyright Infringement Over Famous (and Beloved) Illusion

From TMZ via iTricks. Teller is suing another (a foreign) magician named Gerard Bakardy (real name Dogge) for disclosing the method behind his famous (and wonderful) illusion "Shadows". Mr. Bakardy had posted a video of his own version of the illusion, called "The Rose & Her Shadow," on YouTube, which has since been taken down, and is selling the secret to the

illusion for more than \$3000 to all comers. The illusion is slightly different from Teller's, but Teller thinks it's not so different that it doesn't constitute copyright infringement. Since he registered the illusion in 1983, he has filed suit in U. S. District Court in Nevada, requesting an injunction to prohibit Mr. Bakardy from continuing to perform the illusion and continuing to sell his explanation of it, and requesting damages. Why federal court? The Copyright Act is a federal statute. Of course, since the defendant is overseas (presumably), assuming Teller wins his injunction and damages, he might have trouble enforcing it, and/or getting Mr. Bakardy to pay unless he has assets in the U.S. that could be seized. I don't teach copyright, and don't know enough about international IP to know how one would go about enforcing such a judgment abroad.

Here are the relevant sections of the Copyright Act, explaining remedies for copyright infringement.

§ 501. Infringement of copyright

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illusion for more than \$3000 to all comers. The illusion is slightly different from Teller's, but Teller thinks it's not so different that it doesn't constitute copyright infringement. Since he

Exhibit 5a

From: Teller <[REDACTED]@[REDACTED].com>
Subject: Re: Question
Date: April 3, 2012 11:52:08 PM PDT
To: Gunther Guinea <[REDACTED]@[REDACTED].com>

Kind Gunther,

I'd be grateful if you would try communicating with Gerard. Clearly he respects you. He needs to know that I'm not the lone voice saying what he's doing is morally wrong.

I get the sense that he's very new in our world. He needs to be aware that Rafael recently won the case against Hans Klock for an infringement of something much less original and distinctive than my "Shadows." Manufacturing the item multiplies the damage many times.

I hate lawsuits. No one benefits except the attorneys. But if Gerard compels me to go the legal route, I would enforce based on Copyright (I registered the effect in 1983), Unfair Competition, Trademark Infringement (it has been my signature piece since 1975), and Droit Moral in the US and EU. If I prevail, he'll be stuck with all my legal costs. It would be dreadful for him and a waste of both our time.

The problem in coming to an agreement is that he imagines this trick will bring him \$4-5,000,000. That's insane, especially when one considers the difficulty of advertising and selling an item that is under legal dispute.

Now, all this said, I would rather make a friend of Gerard and have another clever person in my employ. If we could agree on a realistic fee, I would consider hiring him as consultant to try and improve my trick, provided of course, he takes it off the market and sells to nobody but me. I think his notion of seeing the stem in water might have value to me, if he could achieve the kind

TELLER000056

EXHIBIT 5b

of slow, mysterious movement my method involves; his is more abrupt and mechanical looking.

But he is, I think, expecting a hundred thousand dollars for such a consultation, and that's completely irrational and out of line with anything I've ever paid for such thing.

There, I think that about sums it up.

You may find that it would take less time and be more productive just to talk with him on the phone (+34.606356504). Sometimes when people talk on the phone in a language that they are comfortable in, it's easier to resolve problems than it is in writing (which can be rigid and forbidding).

Thanks so much for your kindness. Know that regardless of the outcome, you now have a new friend in the U.S. When you come to Vegas you will be most cordially received as my guest, and if there are any Penn & Teller materials (e.g. my David Abbott book) that interest you, they will be on their way to you with my gratitude.

TELLER

P.S. Many famous magicians around the world agree with us on this issue, and if you know of someone whose opinions might impress and influence Gerard (Lance Burton, Copperfield, Tamariz, Johnny Thompson, Derren Brown, etc.) let me know and I'll ask if they'd be willing to call and talk with him. It would be so much better to settle all of this like gentlemen.

EXHIBIT 6a



gerard bakardy 4/04/2012
Aan Teller Penn & Teller

Good morning Mr. Teller,

This time I'm so glad we spoke today, I sincerely hope that you accept my apology for my bad expressions in my last email.

I never intend to upset, threaten nor blackmail the man who's my idol.

Once again, I'm not a greedy person, and I do not want you to think I want millions from you.

This never crossed my mind in the first place. I just wanted to make some money with the prop I designed.

First I thought that my trick was very different due to the improvements. Now I understand that the copyright is protecting

the "Tellers" routine or presentation.

I will do respect the copyright. But still, I can't walk away from the expected profits, selling my prop could bring. So, I'm working on a new presentation which will be different, not using any shadow effect, or knife cutting.

Please Mr. Teller, as I asked you in my previous email and our last phonecall, can you please inform me about the exact copyright on your 'Shadows' so I can adjust my presentation and respect your copyright.

Yours sincerely,
Gerard Bakardy.

EXHIBIT 6b



gerard bakardy 11/04/2012

Aan Teller Penn & Teller ✘

Hello Mr. Teller,

I hope everything is good with you.

I regret not receiving any news from you, especially since you told me in the last phone conversation, on April 6th, that you would like to end this situation and would decide whit in a couple of days which way you want to go.

It is actually very simple, or I sell my apparatus exclusively to you, or I sell my apparatus to the whole world.

In the last case of course I will inform the buyer NOT to use the Teller Routine.

Since you don't send me the exact detail from your 'copyrights' (I asked all ready four times) I conclude that you are scared to send me these. However, I tell you once again I will do respect your routine and use a different one, where I don't use any shadow or knife.

People are calling me every day, asking me when they can expect delivery and telling me that they are happy to use the apparatus in a different way from the Teller Routine. I promised them to answer on the end of this week.

Mr. Teller, I think it's fair to say that if I don't receive any news from you before April 13th, I may conclude that you're not interested in the apparatus, and that you're aware that I will start selling to public.

Respectfully,
Gerard Bakardy.

EXHIBIT 6c



Teller Penn & Teller 6/04/2012

Aan gerard baker@y

Dear Gerard,

Thanks for phoning back. I apologize for not getting your call. My best friend had to have emergency eye surgery, could not drive, and called on me to help at the clinic. His surgery went fine, but by the time I got home, it was too late to reach you.

When I called this afternoon I had realized that I hadn't answered the most urgent of your questions: As you are working to come up with a new effect using your flower apparatus -- what you should avoid in order to respect my copyright?

As you said in your email, of course you would avoid anything with shadows and knives. You also mentioned using a flower different from the rose (you mentioned the tulip of your native Holland) and that would keep the distinction clear. Finally, it's important to avoid a procedure in which you act upon on one flower (whether shadow, painted, or otherwise) to affect the other. That "voodoo" idea, coupled with the flower, is identifying, central action of my trick.

I like very much the direction you proposed when we talked on the phone. You suggested centering the magic on a love poem or a letter about a broken heart. That is a rich, romantic idea, very fitting to the poetic image of the dying flower, and would be very different from mine.

I've looked at your website, and both you and your wife seem to be very talented and versatile musical performers. Perhaps there is a way to use a sad song of lost love to weave the spell that makes the flower die.

I think you and I are on the right path toward resolving this as colleagues, and saving hundreds of thousands of dollars that would otherwise be wasted in conflict. Let's keep moving forward.

Best wishes from windy Las Vegas. I will try calling in the morning (my time) or you may call me, and we can keep working this out together.

Teller

EXHIBIT 7

Re: Gerard Bakaroy



Groep berichten op discussie om berichten te zien die bij dit bericht horen.



Teller Penn & Teller 5/04/2012

Aan: gerard.bakaroy ▾

Dear Gerard,

Thanks for the conversation yesterday, as well as your note and apology. I now have some hope we can come to terms that are acceptable to both of us.

I'll meet this afternoon with my attorneys to come up with a proposal that would allow you to produce and sell your flower apparatus without violating the elements that define my presentation. Several of the presentations you described yesterday might, indeed, be workable.

I'll email you the terms under which I propose we proceed, then follow up with a phone call where we can clarify and discuss. If we agree, my attorneys will then put the agreement into writing, and after signing and completion of the agreement, you will be able to sell your apparatus without danger of infringement on my authorship or performance rights.

I am as eager as you are to put this matter to rest quickly, but let's do it carefully and thoroughly, so there is no chance of any misunderstanding and we can move on with our careers as friends and without problems.

Cordially,

TELLER

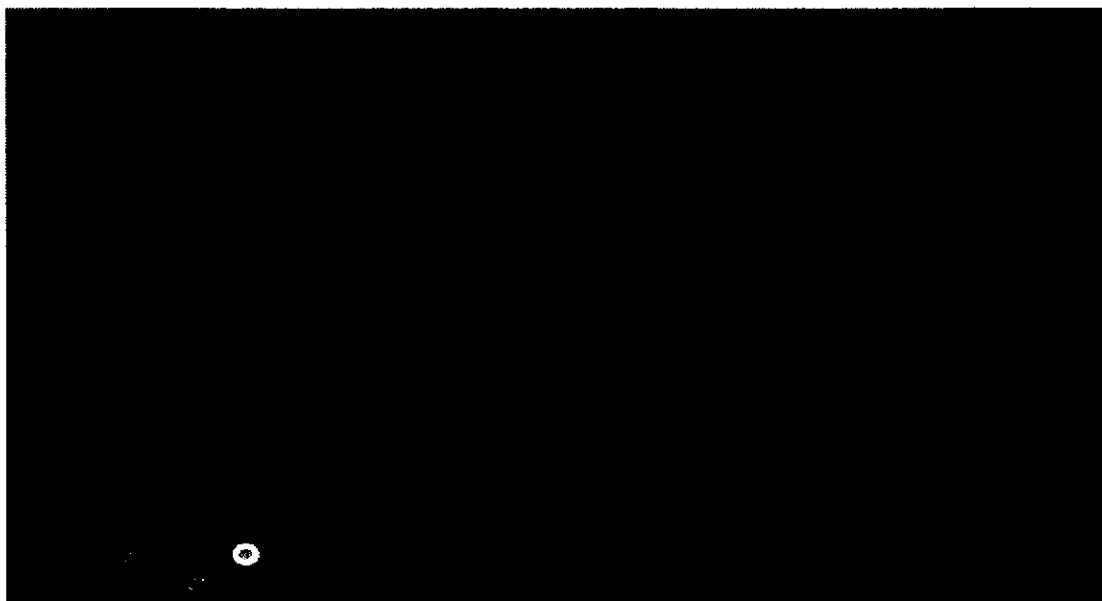
EXHIBIT 8a



Search Bar

plants and shadows.wmv

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2,403

no.. I cant tell the secret. it is actually public information... well... its information thats in the public. I found it on the web and made a newer version. their are a bunch of people who have made different versions and twice as many theories. I myself have three ways that I have thought up and Im not an engineer so I can just imagine a M.I.T student giving this a try...

AlSmagic2008 in reply to cinemaker006 (Show the comment) 3 months ago

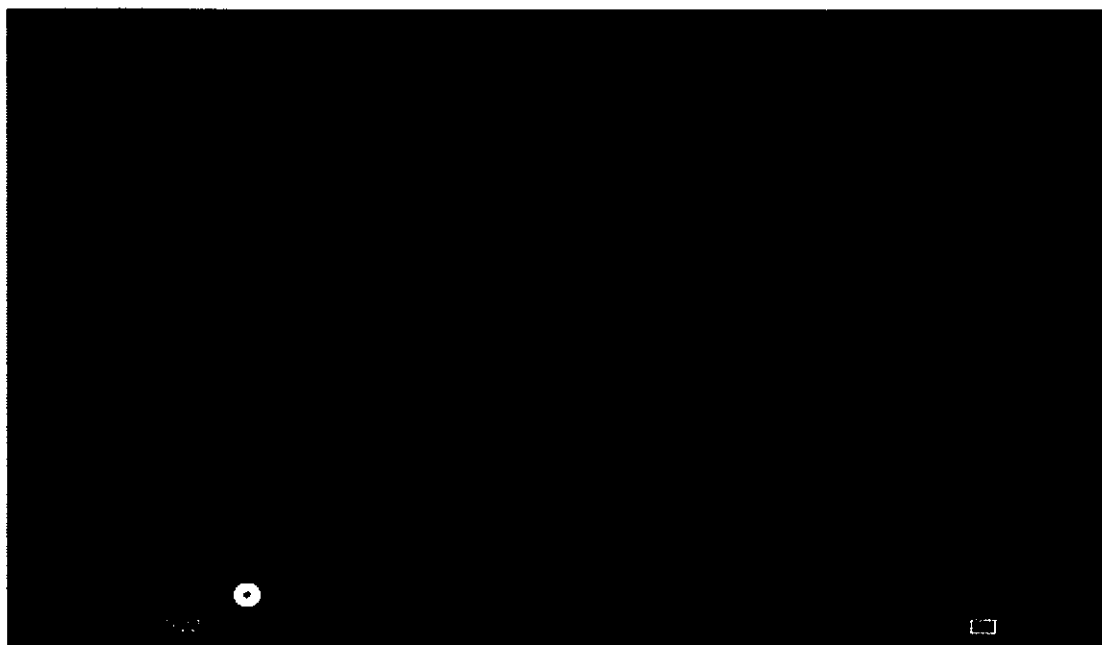
y even comment? I use diffrnt methods and props my illusion is much more complex its like asking copperfield to get permission from water blaney to do a levitation (Its not needed) 2nd I dont need his permission because this was exposed some years back by multiple magicians so his methods are now public information 3rd Its FAN ART Im not making money off of so why are you worried? do you work 4 teller? if not you can feel free not 2 not comment is that all champ?

AlSmagic2008 in reply to manfrombeyond (Show the comment) 3 weeks ago

EXHIBIT 8b



plants and shadows



plants and shadows.wmv



AISmagic2008 6 videos

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About

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Published on Sep 16, 2010

not for sale. This is just a technical performance. This illusion uses No blood or Gore but utilizes a different routine that allows you to cut multiple plants or branches. pick up and show off the vase for inspection, and you can freely cross in front of the vase, table, shadows or plants at anytime while using your left or right hand to cut with so as to prove that no strings are connected to the table or walls. you never have to look at the plant... just cut. this is not a comedy routine... it is not for sale. at best this is a parody or a fan art demo of a universal concept. I just think its neat. the concept of moving objects with your shadow or with your mind is as old as shadows themselves but I believe the first televised or video recorded version of this type of illusion was done by teller of Penn and teller. Go see his

Category Comedy

License Standard YouTube license

Buy "Halo" on



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Artist

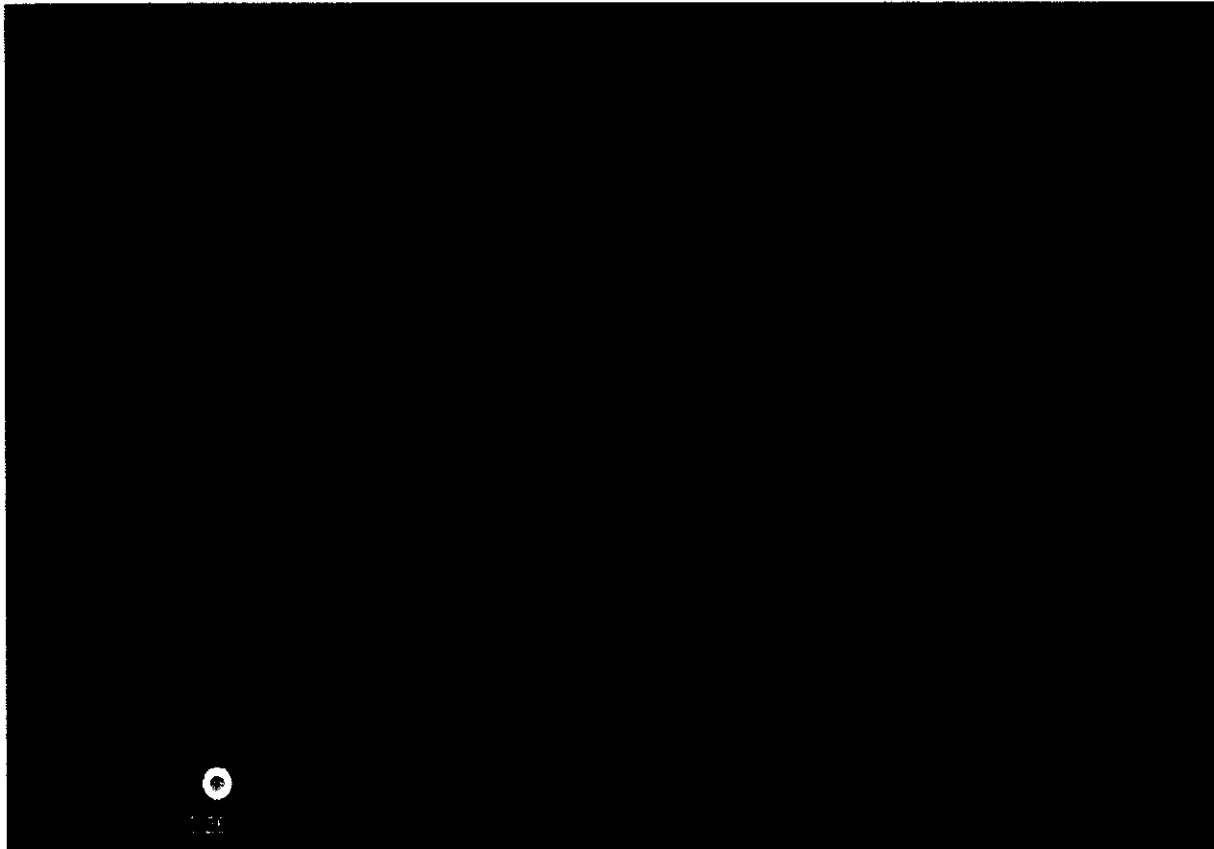
Beyoncé

EXHIBIT 8c



"shadows" by petros

xana2226 Subscribe 3 videos



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Uploaded by xana2226 on Aug 25, 2009

me attempting to do tellers amazing magic that he came up with long time ago. after i saw it i finally decided to go ahead and do it, i am not revealing it any way i respect a fellow magicians work and i will perform it in public as per tellers approval. thank you for your ideas

16 likes 3 dislikes

EXHIBIT 8d

The image is a screenshot of a YouTube video player. At the top, the browser address bar shows the URL <http://www.youtube.com/watch?v=...>. The YouTube logo is in the top left corner. The video title is "Hector Is Magic! - illusion Show". Below the title, the channel name "hectorismagic" is displayed with a plus sign icon, followed by "Abonneren" and "13 video's". The video player itself shows a man in a white suit performing a magic trick on a stage. A large, glowing, teardrop-shaped light is visible in the background. The text "hectorismagic.com" is overlaid on the video. In the bottom right corner of the video frame, the text "Hector IS MAGIC!" is visible. Below the video player, there are interaction buttons: "Leuk" (thumbs up), "Delen" (share), and "Aantal keren bekeken" (653). Below these, it says "Geüpload door hectorismagic op 4 okt 2011" and "www.hectorismagic.com". There are also buttons for "Geüploade video's" and "hectorismagic". At the bottom of the page, the system tray shows the time "11:10 AM" and the date "6/11/2012".

EXHIBIT 8e

My impromptu(ish) version of Penn and Teller's Shadow Rose : Forum of Visual Curiosities - Windows Internet Explorer

Internet address: talkmagic.co.uk/topic24465.php

My impromptu(ish) version of... X

Bestand Bewerken Beeld Favorieten Extra Help

X Google Ian McCarthy Shadows Zoeken Oelen Vertalen Meer Aanmelden

POSTREPLY Search this topic... Search 21 posts • Page 1 of 2 • 1 2

My impromptu(ish) version of Penn and Teller's Shadow Rose

By Ian McCarthy > Tue Apr 01, 2008 11:34 am

Hey guys, I have been working on this for a while, but I have finally come up with a nearly impromptu version of Penn and Teller's shadow rose effect.

It's not totally impromptu, because of course you need a vase of flowers and a strong light to project the shadow. But this can be done with nearly any type of flower (Anything that has smallish petals, this will not work for the likes of tulips). The flowers require hardly any setup, so you should be able to preform it using someone else's vase. Obviously this will only be suitable for dinner parties and the like. I commonly preform it by putting the vase on a table near the wall and tilting a lamp towards it.

One of the major restrictions with my version is it will not work if the lamp uses those new energy saving bulbs (The ones where the glass is kinda coiled) you need to use one of the older ones (which most people have anyway)

I don't think I will be able to sell this effect as it is a Penn and Teller item obviously, but I am more than willing to share the method with any talkmagic members of good standing (IE anyone that has been around for a while)

If you have not seen the effect, Penn and Tellers version is HERE : <http://www.youtube.com/watch?v=un1pNtmYguA>

My version is here : http://www.youtube.com/watch?v=Yu_moia-oVl (As you can see there are one or two kinks that need to be ironed out, but I have a couple of ideas)

Ian McCarthy
Senior Member
Posts: 366
Joined: Mon Sep 04, 2006 12:21 pm
Location: Kerry, Ireland 31:AH

Talkmagic Forum

<http://www.talkmagic.co.uk/topic24465.php?sid=fecfb430236fd10685ba585988bcf167#p235988>

18:37 3/07/2013

EXHIBIT 8f

My impromptu(ish) version of Penn and Teller's Shadow Rose : Forum of Visual Curiosities - Page - Windows Internet Explorer

http://www.talkmagic.co.uk/topic/2446-publisio-feed/430235f110630ea559983bcf1571a1e1e15

My impromptu(ish) version of... X

Bestand Bewerken Beeld Favorieten Extra Help

X Google Ian McCarthy Shadows Zoeken Delen Vertalen Meer Aanmelden

Re: My impromptu(ish) version of Penn and Teller's Shadow Ro

by mikefallen • Sat May 04, 2013 2:18 pm

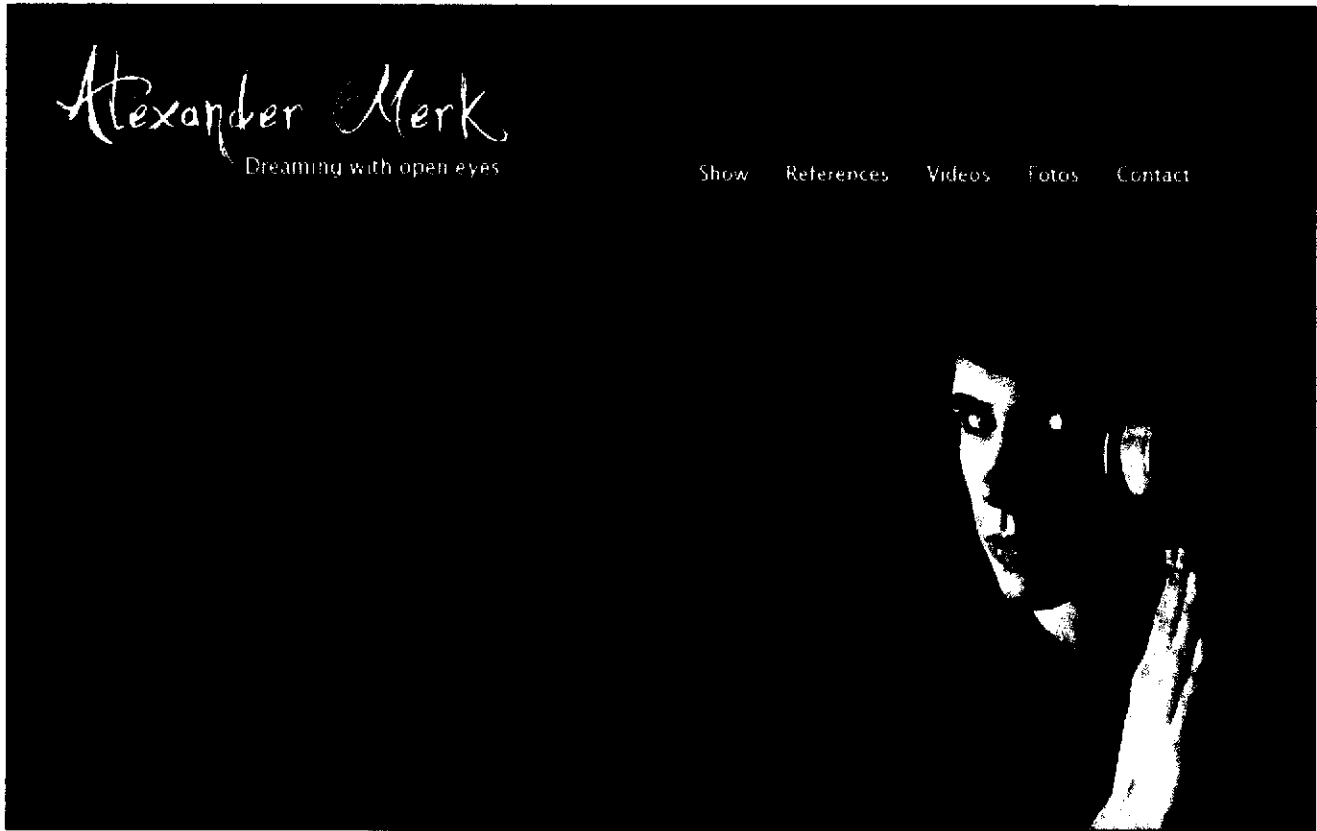
Mikefallen
New User

Posts: 3
Joined: Sat May 04, 2013 2:04 pm

Hello Ian, i saw the topic on talk magic and i would love to discuss about the shadow illusion that teller performs. I do not copy the act but i study magic history... I have created a method of my own that works, but i am always readdy for new ideas that can be usefull for the art so i would love to discuss about it

Best wishes, Mike

EXHIBIT 8g



David oldrake Posted: Jan 17, 2008 6:17pm

Dear members,

The guy in Germany was Alexander Merk. I pointed out to him two years ago that he was doing Teller's piece and that he should ask for permission. With the help of Todd Karr he got in touch with Teller and has stopped doing it since. He has come up with a new personal routine that is terrific in many ways and has nothing to do with Teller's effect.

Regards,

D

EXHIBIT 9a

CASE N° 2:12-cv-00591-JCM-GWF

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Although plaintiff and defendant agreed, in the phone conference (11.27.2012) discussing the 'discovery plan' , that the 'pre' interrogabon would take place 'in person' and hereafter in the Nevada court chambers, I will try my best to answer plaintiff's interrogatories.

INTERROGATORY NO. 1:

Identify each time you have seen Teller perform live.

Answer: Never.

INTERROGATORY NO. 2:

Identify the first time you became aware of Teller.

Answer: I do not remember exactly, around 2007.

INTERROGATORY NO. 3:

Identify the first time you became aware that Teller performs an illusion where he cuts the shadow of a rose and the rose itself appears to be cut, now known to you as Shadows.

Answer: I do not remember exactly, around 2007.

INTERROGATORY NO. 4:

Describe in your own words the creation of The Rose and Her Shadow, to include The Rose, including when you decided to create it and why you decided to create it.

Answer: Inspired by Criss Angel's shadow, the 'creation' of my method or prop was very exciting. I decided to create my own, newer, more modern and more magical method in 2007. Why? Because the 'rose prop' was sold out.

INTERROGATORY NO. 5:

For each person who assisted You in creating The Rose and Her Shadow, to include The Rose, explain their role in the creation process (brainstorming, building, developing, research, etc.).

EXHIBIT 9b

CASE NO. 2:12-cv-00591-JCM-GWF

1
2 **Answer:** When someone says 'I create', then I believe that this means more
3 than hiring someone else to develop your (sometimes impossible) idea. When I
4 say, 'I create' it means that I'm the person who invents, builds, develops, and
5 constructs it. There were no other persons involved. I did storm my own brains.

6 **INTERROGATORY NO. 6:**

7 Identify how long it took you to create The Rose and Her Shadow, to include
8 The Rose.

9 **Answer:** It took approximately 2 years. (2011-2012)

10 **INTERROGATORY NO. 7:**

11 Identify with specificity your employment history from 2002 to the present.
12 Please include the name of your employer, the nature of your work (job
13 description), and your wages or salary. If you were self-employed or acted as
14 an independent contractor, please provide the same information. If you were
15 unemployed, please state that you were unemployed.

16 **Answer:** No, this has nothing to do with the fact if I did or did not infringe
17 copyright. On top it's rude and impolite to ask these private questions.

18 **INTERROGATORY NO. 8:**

19 State all aspects of The Rose and Her Shadow that you believe are unique and
20 do not exist in Shadows.

21 **Answer:** Tellers 'act' is not spoken, nothing is said or sung, there is no text,
22 nothing is written or musically accompanied. The only thing that remains are
23 moves, dance moves, choreography and the attitude of the performer himself.
24 Defendant can read ad nauseam, every movement, even the smallest moves
25 have been written and described in Tellers copyright certificate. Such as
26 movements of plaintiff's head, the position of Teller's thumb, positioning of
27 the knife in the shade, which side Teller is on the stage, left or right, etc ...
28 (yes, ad nauseam). This apparently is the way to describe a "pantomime work".

EXHIBIT 9c

CASE NO. 2:12-cv-00591-JCM-GWF

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If one would look at the differences in Bakardy's version, looking for the same detailed description and all tiny movements, one can enumerate thousand differences and it would also be annoying and ad nauseam to read.

Therefore, defendant would like to limit his answer, encouraging the plaintiff, Jury and Court to watch 'The Bakardy Rose' video on YouTube. In this video Gerard Bakardy performs one of his copyrighted versions with 'The Rose', using exactly the same method as used in 'The Rose and her Shadow'. A picture (video) says more than thousand words.

The first question everyone is asking after watching a magic trick is: How do you do that,... how is this possible?? In Tellers presentation, 'Shadows', the answer to this question is often sought in his ...'bud' vase'.

Just as Coss Angel's act, manipulating the shadow of an 'olive' in a transparent cocktail glass, Bakardy's method uses a transparent bottle.

Obviously, this makes a trick more magical. More impossible.

This was obviously the reason that plaintiff offered to buy Bakardy's method.

INTERROGATORY NO. 9:

Identify all live performances before an audience of any illusion that includes The Rose, to include performances of The Rose and Her Shadow. Please include in your answer the date and location of each performance, whether tickets were sold to the event, and whether the event was recorded.

Answer: Defendant never performed The Rose and her Shadow live, nor before any audience.

EXHIBIT 10

1 defamation litigation, and is accordingly outside the scope of the Federal Rules.
2 Notwithstanding the objection, Teller denies the request as many exhibits in this matter have
3 been filed by the defendant.

4 **REQUEST NO. 38:**

5 Admit that you're aware that there are more magicians performing the act 'Shadows'.

6 **RESPONSE:**

7 Objection. The request is vague and ambiguous with respect to the phrase "more
8 magicians." Notwithstanding this objection, Teller denies the request as he knows of no
9 professional magicians performing the Shadows illusion. Teller admits that there have been
10 Teller Tributes which attempt to reproduce some aspect of Shadows.

11 **REQUEST NO. 39:**

12 Admit that Gerard Bakardy is the only person you've seen on YouTube controlling a
13 flower/rose in a with water filled, removable transparent bottle/vase, with the stem of the
14 flower completely visible.

15 **RESPONSE:**

16 Objection. The request is vague and ambiguous with respect to the phrase the "only
17 person you've seen on YouTube controlling." This request for admission is not reasonably
18 calculated to lead to this discovery of admissible evidence, as minor variations in method or
19 presentation have no bearing upon copyright infringement liability. Notwithstanding this
20 objection, Teller admits the request.

21 **REQUEST NO. 40:**

22 Admit that Gerard Bakardy never revealed his method to you.

23 **RESPONSE:**

24 Objection. This request is vague and ambiguous with respect to the terms "revealed"
25 and "method." Notwithstanding this objection, admit.

26 **REQUEST NO. 41:**

27 Admit that you don't know anyone who [sic] Gerard Bakardy revealed his method to.

28 ///

041158180, DEVI, RIC, LLP
1771 Howard Hughes Parkway, Suite 4000
Las Vegas, Nevada 89155
Telephone: (702) 734-1100
Facsimile: (702) 734-1101

EXHIBIT 11

17 **REQUEST NO. 31:**

18 Admit that Gerard Bakardy, the defendant never revealed his methods or tricks
19 including 'The Rose and her Shadow' to you.

20 **RESPONSE:**

21 Objection. This request is vague and ambiguous with respect to the phrases "revealed"
22 and "methods or tricks." Notwithstanding this objection, Teller admits this request for
23 admission.

24 **REQUEST NO. 32:**

25 Admit that you don't know anyone to whom the defendant has revealed his methods
26 or tricks including 'The Rose and her Shadow'.

27 ///

28 ///

LV 419872119v1

Page 12 of 18

1 **RESPONSE:**

2 Objection. This request is vague and ambiguous with respect to the phrases "revealed"
3 and "methods or tricks." Notwithstanding this objection, Teller admits this request for
4 admission.

EXHIBIT 13

16 **REQUEST NO. 44:**

17 Admit that you never performed 'shadows' in a with water filled and removable
18 transparent vase, with a removable and completely visible rose stem.

19 **RESPONSE:**

20 Objection. The method behind Shadows is not relevant to the instant litigation, as
21 copyright protects the expression of an idea, not the mechanical aspects of an invention.

22 Notwithstanding this objection, admit.

26 **REQUEST NO. 56:**

27 Admit that you don't know any other magician/person in the world, except from [sic]
28 Gerard Bakardy who can perform "The Rose and her Shadow" in the way he does it.

Page 19 of 22

1 **RESPONSE:**

2 Objection. This request is vague and ambiguous with respect to the terms "know,"
3 "magician/person," and "in the way he does it." Notwithstanding these objections, Teller is
4 unaware of whether or not anyone "can perform "The Rose and her Shadow" in the way he
5 does it" and therefore denies this request for lack of knowledge and accuracy.

EXHIBIT 14

25

1 hand is a method. Mr. Dogge. And because
2 slight of hand is a method, if he answers that,
3 yes or no, either one of those answers will
4 then reveal information about the trick itself.
5 For that reason, it is an improper question
6 unless there is a protective order in place.

7 MR. DOGGE: I understand that. Actually,
8 this question Mr. Tratos, Mr. Teller is maybe
9 superfluous because this question is actually
10 answered already on the internet. But I wanted
11 the jury to understand if shadows could be a
12 difficult illusion or magic trick to perform.

13 On the internet you can see that it is not
14 so difficult and you can see it is not -- I
15 just wanted to clear it up for the jury.

16 BY MR. DOGGE:

17 Q So Mr. Teller, did you ever perform
18 shadows in a removal and transparent vase or bottle
19 filled with water and a removal rose stem? Do you
20 ever perform like that?

21 A No.

22 Q Oh. Now, I don't want you to go into my
23 methods, but do you think my methods, the rose
24 and/or shadow were difficult to perform?

25 A I don't know, sir.

EXHIBIT 15

2-

1 Q You should know, Mr. Teller. Because it
2 was on the YouTube movie, and it was easy to
3 perform.

4 A I know that you asserted that it was easy
5 to perform, sir --

6 Q Yeah.

7 A -- but I don't believe that is true.

8 Q Yeah.

9 A I have no way of knowing that it was true.
10 It was in an advertisement, you know.

11 Q Yeah. Okay. I tell you that it is easy
12 to perform.

13 A Well, good.

14 Q So Mr. Teller, why did you never performed
15 shadow -- shadows that are removal in transparent
16 glass or bottle with a removal stem? Why did you
17 never do that?

18 MR. TRATOS: Objection. Incomplete
19 hypothetical. Calls for speculation.

20 You can answer the question.

21 THE WITNESS: The central image of the
22 trick is the rose, the shadow in a vase that is
23 reminiscent very much of Japanese art. The
24 whole look of it is very Japanese and very
25 simple. The idea of performing it in a

EXHIBIT 16

25

1 transparent vase didn't occur to me at any
2 point. It didn't interest me in any point,
3 because it didn't go with that imagery.

4 BY MR. DOGGE:

5 Q Okay. And the removal stem, what is
6 that -- you never considered to -- to improve your
7 shadows version with a removal stem, completely
8 visible stem?

9 A Over the years, I've considered all sorts
10 of possibilities. I am very, very happy with the
11 way my piece plays. The only reason that I have
12 ever considered to possibly remove the stem was if,
13 in my final gesture, I would prick my finger on --
14 on the thorn of the rose. But that is not very
15 practical for me, because I play in large theaters
16 in which the vase and the moving of the stem would
17 be irrelevant to the final gesture of the piece.

18 Q Mm-hmm. Okay. And do you see ever -- did
19 you ever see another person except me, expect
20 Bakardy, performing this magic trick with a removal
21 rose in a removal transparent bottle with water,
22 filled in water?

23 A No. I never saw my trick performed that
24 way.

25 Q Mm-hmm.

EXHIBIT 17

103

1 hidden behind a curtain like the method which was

2 revealed by your colleague, the Masked Man?

3 A My colleague?

4 Q The Masked Man. He reveals all the

5 tricks, you know --

6 A The Masked Magician, yes. I saw -- I saw

7 some of those shows. No. David Copperfield could

8 not fly around the stage being lifted by a forklift

9 in the way that he does. That -- that is certainly

10 correct.

11 Q Thank you very much for your answer.

12 Mr. Teller. At least we agree that the props -- or

13 the methods is limiting the performance. I think

14 you understand my question now.

15 A I understand the point that you're

16 arguing, but I disagree with your overall thinking.

17 sir.

18 Q Yeah. Okay. Again, to the -- to the

19 items, Mr. Teller, did you ever perform shadows in a

20 transparent vase or bottle?

21 A No, sir --

22 MR. TRATOS: Objection. Asked and

23 answered.

24 MR. DOGGE: Sorry. I didn't understand.

25 MR. TRATOS: I made an objection, sir.

EXHIBIT 18

130

1 You've asked and answered that question.

2 MR. DOGGE: I don't understand it.

3 BY MR. DOGGE:

4 Q Anyhow, you didn't -- you didn't perform

5 in a transparent vase or not?

6 A I did not.

7 Q Okay. Can I ask you, Mr. Teller -- I'm

8 sorry, I am hardheaded. Why did you never perform

9 in a transparent vase?

10 A It never --

11 MR. TRATOS: Objection. Asked and

12 answered, previously.

13 THE WITNESS: -- it never occurred to

14 me --

15 MR. DOGGE: Okay.

16 THE WITNESS: It seems inconsistent, also.

17 with the beautiful sort of Japanese look that

18 the trick has.

19 BY MR. DOGGE:

20 Q Okay. Did you ever perform shadows in

21 your light of that vase, which was filled with

22 water?

23 A You're asking me the about method of the

24 trick, and I -- I decline to answer that, without

25 entering into a protective agreement. And even

EXHIBIT 19

151

1 then, it's proprietary information. You've been
2 prying about this for a long time. Mr. Dogge.

3 Q No, sir. Mr. Teller --

4 A And I have --

5 Q I am not interested --

6 A -- no interest in giving you my
7 proprietary information. Really, I don't.

8 Q No, No. I understand it. I am not
9 asking you about the method. I am just asked if you
10 ever performed with a vase with water inside.
11 That's the question.

12 A You're asking me about my method.

13 Q Okay. Did you ever perform shadows
14 removing the stem of the rose at the end of the
15 magic trick?

16 A No, I did not.

17 Q Why not?

18 A It's inappropriate to the story of the
19 trick. There is as I -- as you and I have
20 discussed -- we've said this again and again, that
21 at some point, I -- I -- I don't need to repeat
22 this. Do I need to repeat this?

23 MR. TRATOS: No --

24 THE WITNESS: I gave you all this -- every
25 answer to this earlier in this -- in this

EXHIBIT 20a



The screenshot shows a YouTube video player. The video content is a high-contrast, black and white image of a construction site. A large, circular structure, possibly a well or a large pipe, is the central focus. To the left, there's a structure with the word "WALY" visible. The overall scene is dark with some bright highlights.

Building the Rose for Beauty and The Beast

yourbeekeeper 363 videos 4,055

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With 90% of construction completed . now it's the fun details like the wilting rose.

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7:26 PM
5/10/2013

EXHIBIT 20b



The screenshot shows a web browser window displaying a YouTube video. The address bar shows the URL "http://www.youtube.com/watch?v=..." and the page title "Building the Rose for Beaut...". The browser's security status is "Secure (SSL)" and the McAfee security software is visible. The YouTube interface includes the logo, the video title "building the rose for the beauty and the beast", and a video player with a play button. Below the video, the title "Building the Rose for Beauty and The Beast" is repeated. The channel name "yourbeekeeper" is shown with 387 videos and a subscriber count of 2,294. The video has 4,400 views and 26 likes. The video description states: "Uploaded on Mar 13, 2011 With 90% of construction completed ... now it's the fun details like the wilting rose."

Building the Rose for Beauty and The Beast

yourbeekeeper 387 videos 4,4

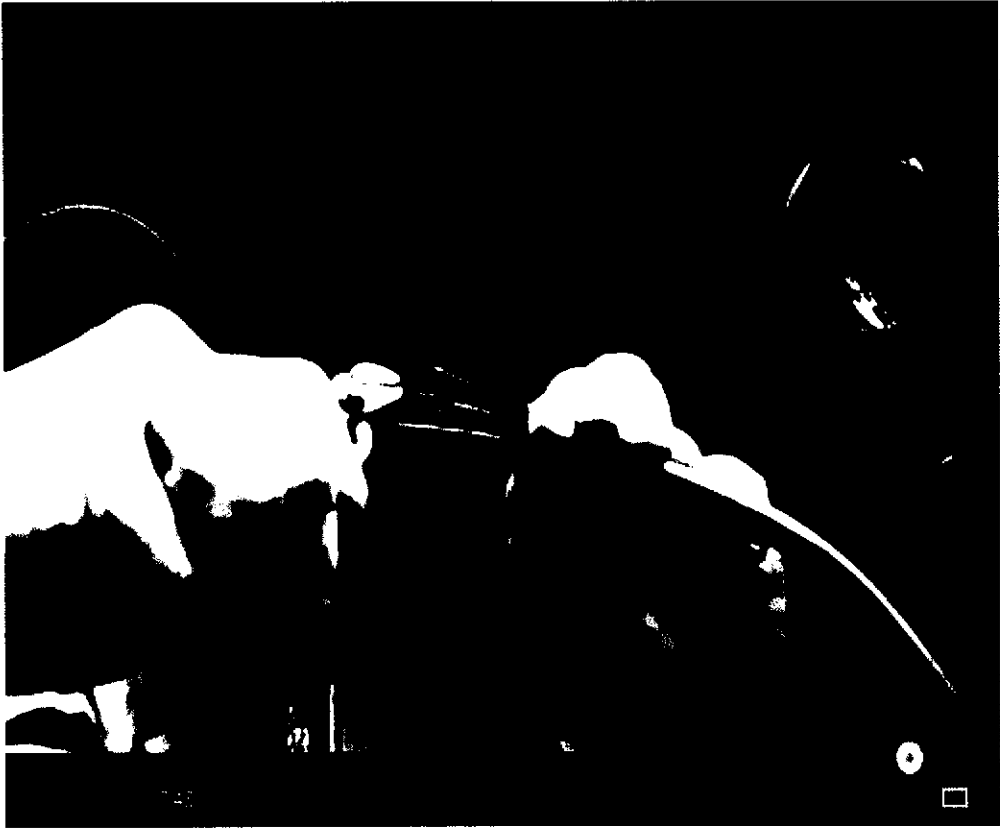
 **Subscribe** 2,294  26

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the wilting rose.


EXHIBIT 20c







YouTube building the rose for the beauty and the beast



Building the Rose for Beauty and The Beast

 **yourbeekeeper** 387 videos 4,4

 **Subscribe** 2,294 26

 Like  About    

Uploaded on Mar 13, 2011
With 90% of construction completed... now it's the fun details like the wilting rose.

[Show more](#)

EXHIBIT 20d

The screenshot shows a YouTube video player interface. At the top, the browser address bar displays "http://www.youtube.com/watch?v=SCMq...". The video title is "Building the Rose for Beaut...". Below the video player, there are navigation icons for Like, About, Share, Add to, and a flag icon. The video description reads: "Uploaded on Mar 13, 2011 With 90% of construction completed... now it's the fun details like the wilting rose....". A "Show more" link is visible below the description. The "Uploader Comments" section shows four comments:

- Liz Berliant** (2 months ago): "Wow! That's amazing. I am a middle school music teacher putting on a production of Beauty and the Beast right now - this looks perfect. Do you ever sell any of your products? We would love to have something like this for our production!"
Reply: in reply to Beauty and the Beast
- yourbeekeeper** (3 months ago): "Honestly I don't have the extra time to make and sell the stuff I build for the shows. I Tech three performances a school for them and basically as one show closes I am right on the next. Good luck in your performance, and if I can advise you in any way, please feel free to ask."
Reply: in reply to Liz Berliant
- Bobby Hall** (5 months ago): "Good video but I am having problems with it working like yours. You say 1/4" tubing but 6 wires will not fit in that and move freely so I went to 3/8 tubing. I went from 16 gauge wire to 18 gauge works a bit easier put tends to pull a few wires at a time. Also the #12 solid wire what lengths do you cut them. I have cut them several different lengths and the do not fall. The cover seems to fit tight not real tight on the wires and they do not drop."
Reply:
- yourbeekeeper** (5 months ago): "If you are having issues with multiple wires pulling at once, try spraying a silicone spray or comparable lube in the entire tube..that should solve that problem. The #12 wire was cut about 2" long. Remember to stick about 3/4" of the solid copper wire back into the insulation to end weight the pieces. The control wire I used was steel piano wire and was a smaller than 18ga. Good luck! If you have a camera, you could take some vid and I can check it out."
Reply: in reply to Bobby Hall

At the bottom of the page, the system tray shows the time "7:24 PM" and the date "5, 10, 2013".

EXHIBIT 20e

My impromptu(ish) version of Penn and Teller's Shadow Rose : Forum of Visual Curiosities - Windows Internet Explorer

http://www.talkmagic.co.uk/ftopic24465.php

My impromptu(ish) version of... X

Bestand Bewerken Beeld Favorieten Extra Help

X Google Ian McCarthy Shadows Zoeken Delen Vertalen Meer Aanmelden

POSTREPLY Search this topic... Search 21 posts • Page 1 of 2

My impromptu(ish) version of Penn and Teller's Shadow Rose

by Ian McCarthy • Tue Apr 01, 2008 11:34 am

Ian McCarthy
Senior Member

Posts: 366
Joined: Mon Sep 04, 2006 12:21 pm
Location: Kerry, Ireland 31:AM

Hey guys, I have been working on this for a while, but I have finally come up with a nearly impromptu version of Penn and Teller's shadow rose effect.

It's not totally impromptu, because of course you need a vase of flowers and a strong light to project the shadow. But this can be done with nearly any type of flower (Anything that has smallish petals, this will not work for the likes of tulips). The flowers require hardly any setup, so you should be able to preform it using someone else's vase. Obviously this will only be suitable for dinner parties and the like. I commonly preform it by putting the vase on a table near the wall and tilting a lamp towards it.

One of the major restrictions with my version is it will not work if the lamp uses those new energy saving bulbs (The ones where the glass is kinda coiled) you need to use one of the older ones (Which most people have anyway)

I don't think I will be able to sell this effect as it is a Penn and Teller item obviously, but I am more than willing to share the method with any talkmagic members of good standing (IE anyone that has been around for a while)

If you have not seen the effect, Penn and Tellers version is HERE : <http://www.youtube.com/watch?v=un1pNtmYguA>

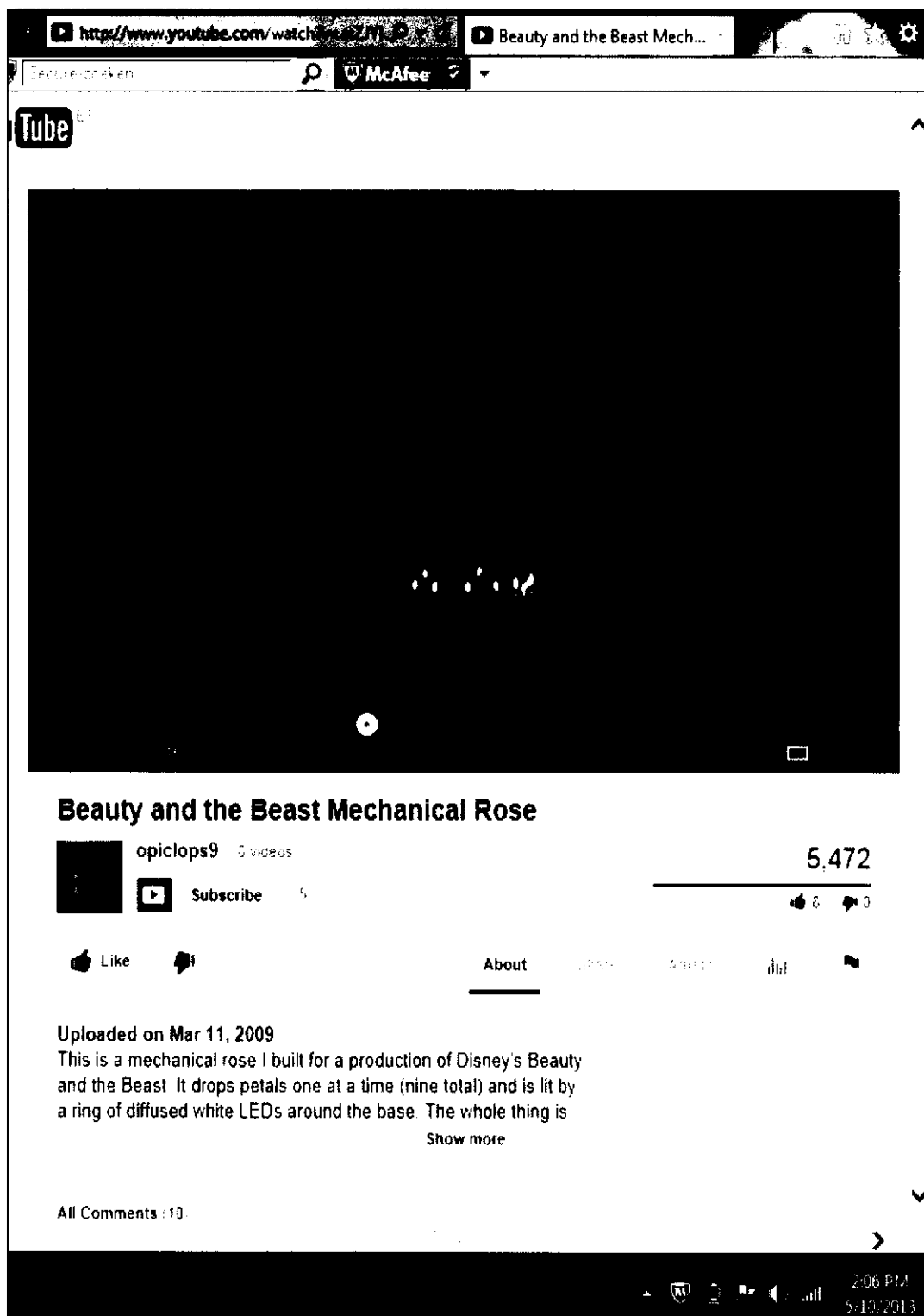
My version is here : http://www.youtube.com/watch?v=Yu_moia-oVl (As you can see there are one or two kinks that need to be ironed out, but I have a couple of ideas)

Talkmagic Forum

<http://www.talkmagic.co.uk/ftopic24465.php?sid=fecfb430236fd10685ba585988bcf167#p235988>

18:37
3/07/2013

EXHIBIT 20f



The screenshot shows a web browser window displaying a YouTube video. The address bar shows the URL <http://www.youtube.com/watch?v=...> and the page title is "Beauty and the Beast Mech...". The browser's search bar contains "Beauty and the Beast". The video player shows a dark scene with a few small white lights. Below the video, the title "Beauty and the Beast Mechanical Rose" is displayed. The channel name is "opiclops9" with 0 videos and 5,472 views. There are buttons for "Like", "Subscribe", "About", "Watch", "Share", and "More". The description states: "Uploaded on Mar 11, 2009. This is a mechanical rose I built for a production of Disney's Beauty and the Beast. It drops petals one at a time (nine total) and is lit by a ring of diffused white LEDs around the base. The whole thing is". A "Show more" link is present. At the bottom, it says "All Comments: 10". The system tray at the bottom right shows the time as 2:06 PM on 5/10/2013.

http://www.youtube.com/watch?v=... Beauty and the Beast Mech...

Beauty and the Beast McAfee

Tube

Beauty and the Beast Mechanical Rose

opiclops9 0 videos 5,472

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Uploaded on Mar 11, 2009

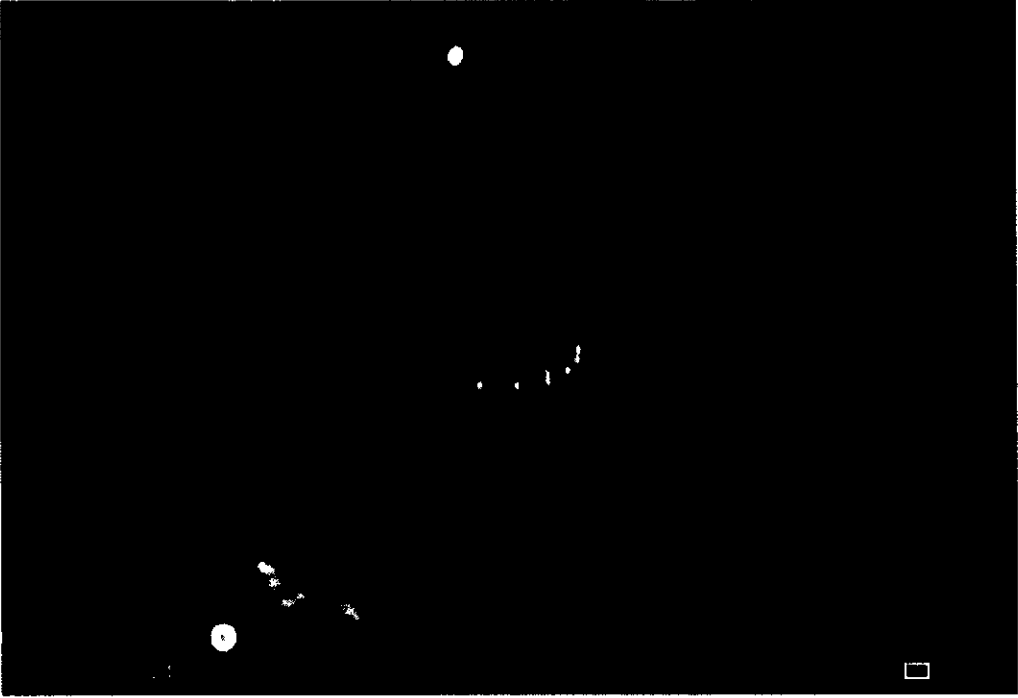
This is a mechanical rose I built for a production of Disney's Beauty and the Beast. It drops petals one at a time (nine total) and is lit by a ring of diffused white LEDs around the base. The whole thing is

Show more

All Comments: 10

2:06 PM 5/10/2013

EXHIBIT 20g






http://www.youtube.com/watch?v=UPp... Beauty and the Beast Mech...








McAfee

Tube beauty and the beast mechanical rose

Beauty and the Beast Mechanical Rose UPDATED

opiclops9 0 videos 243 views

 **Subscribe** 5  0  0

 Like  About     

Uploaded on Apr 1, 2011
This is an updated video of the mechanical rose I built for Beauty and the Beast I have added extra lights and solved a power supply issue since the last upload

[Show more](#)

12:18 PM
7/4/2013

EXHIBIT 20h



EXHIBIT 20i

http://www.rachelgeorge.co.uk/?beauty-the-beast:44

Magic rose for Beauty & th...

models & replicas

« Previous 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 Next »

Magic Rose closeup

Magic rose that drops its petals to order with no visible controls

Electronics by Eagle Designs - see links page

Wireless remote-controlled magnetic petal dropping action -
rose drops 8 petals each triggered by pressing a button on remote control

See a very short video of it in action here

www.youtube.com/watch?v=Pj5d7B_Wqyc

rachelgeorge.co.uk/?models-and-replicas-scotland-6 This rose is now available for hire - email for details

12:09 PM
5/16/2012

EXHIBIT 20j

http://www.youtube.com/watch?v=Pj5d7B_Wqvc

Secure-zoeken McAfee

Magic Rose from "Beauty and the Beast"

setpieces 2 videos 5,015

Subscribe

Like

About

Share

Add to

Uploaded on Feb 21, 2009

This is a Magic Rose prop made for a stage production of "Beauty and the Beast" - it drops 8 petals on cue - each drop is controlled wirelessly using a remote control handset - each time you press the button a petal falls so it can be cued at an exact time in the action onstage. The control unit is practically invisible as you can see from the video. The rose sits in a clear acrylic vase, set in water-effect gel. Created by Rachel George in collaboration with Eagle Designs in Edinburgh.

www.rachelgeorge.co.uk www.eagle-designs.co.uk

NOW AVAILABLE FOR HIRE! contact us through either website for more details.

Category Science & Technology

License Standard YouTube License

Show less

12:26 PM 5/16/2013

EXHIBIT 20k

The screenshot shows a web browser window with the URL http://www.rachelgeorge.co.uk/?propmaking-scenery-uk_3. The browser's address bar also shows the page title "Props and scenery | Rachel ...". The website header includes the name "rachel george" in a large, bold font, followed by the text "propmaker buyer • modelmaker • scenic artist". A navigation menu contains the links "home", "about", "links", "news", and "contact".

On the left side of the page, there is a vertical list of skills: "skills", "props & scenery", "models & replicas", and "scenic art". The "props & scenery" item is highlighted.

The main content area is titled "props & scenery" and "sculpture | mouldmaking and casting". It describes the services as "Bespoke prop making & sculpted scenic pieces for theatre, opera, ballet and TV productions. Often involving polystyrene, Jesmonite or GRP". It also mentions "Previous work has also included a few trick props/SFX - ie :

- A crown of thorns for "Neds" (film, director Peter Mullan, 2009) - made as exact replica of like original spiky crown of thorns, but worn by actor/used in a fight scene and so made in foam & glue to be soft/safe
- A "magic" rose for "Beauty & the Beast" (SECC 2008) which had to drop its petals on cue throughout the performance. (Now available for hire - email for details)
- A sword mould for "Siegfried" (Scottish Opera 2002) which had to be dropped every performance & break open instantly to reveal a sword blade
- A mask for "Pinocchio" (2006) which needed quickly exchangeable noses (a magnet system proved the solution)

At the bottom of the page, there is a logo for "The Eagle". The browser's status bar at the bottom right shows the time "12:21 PM" and the date "5/16/2013".

EXHIBIT 20I

From: Rachel George <racheigeorge@blueyonder.co.uk>

Date: 25 May 2013 11:12

Subject: Re: Beauty and the beast

To: [REDACTED]

Cc: Jonathan Adler <eagle designs@tiscali.co.uk>

Hi [REDACTED]

Thanks for your enquiry.

To be honest, I'm not sure our rose would be suitable for your daughter; I suppose it depends on how old she is, but it is pretty fiddly to reset the petals; and it's really not intended for such use; as you say it's not a toy and I do have reservations about it. The last time we made one for a new client it cost around £1200, including the stand. It's quite a lot of work, and involves very intricate electronics, so again this may well put it out of the question.

I made the rose in collaboration with Jonathan Adler at Eagle Designs (he's the electronics expert) and I've spoken to him about your request, so there's no need to contact Eagle Designs separately.

We do have a second hire rose which we might be able to sell on, but again it would still be very expensive - I'd need to discuss the price with Jonathan if you thought you might be interested.

Best regards

Rachel George

EXHIBIT 20n

From: Rachel George <racheigeorge@blueyonder.co.uk>

Date: 10 June 2013 10:22

Subject: Re: Beauty and the beast

To: [REDACTED]

Cc: Jonathan Adler <eagledesigns@tiscali.co.uk>

Hi [REDACTED]

That explains it - you sounded American in your email! And yes the weather here has been amazing...anyway perhaps you are back here now.

It would be fine to hire the rose in the last week of June; in fact I've spoken to my colleague Jonathan and as you are not putting on a public performance that you will be profiting by, and you are just local, we think it's fine for you to just borrow it for free for a few days - as long as you're happy to come and pick it up & drop it back.

If we suddenly get a request for a hire at the same time (unlikely) we could always let you borrow the second rose instead - the "understudy" if you like - which has a different base; a wooden one which doesn't travel well by courier so is only suitable for local trips. Hope that sounds OK?


And we might be interested in selling the understudy rose if your brother tries & likes it. We did actually make one for a Belgian magician a few years ago, can't remember his name now but he is quite big over there I understand!

Best wishes

Rachel

EXHIBIT 21a

Hector Posted: Apr 15, 2012 3:59pm

 Hello,

First of all, thank you w_s_anderson for your kind words and for defending me before I could know about this thread.

On the other hand, about the rose routine, I bought my prop a few years back second hand (long story that I won't tell here) and my routine was created for a Leonardo Da Vinci show that I had on a theme park a long time ago without knowing about Mr. Teller's believe it or not, as you can tell watching the video (that I have asked to take down) I am not copying the routine at all.

Then some time ago I went to Las Vegas (I am from Spain, Europe) and I could enjoy Penn&Teller's amazing show (I highly recommend you to go if you haven't yet) and then I saw his wonderful rose-shadow routine. And it was THEN when I discovered that he was the creator of the effect. So I contacted him directly to talk about this situation. As Mr. Teller is already fighting against Gerard, I do not find appropriate to keep talking about my routine or my situation with it.

But just for you to know that the last thing I want to do is to copy someone else's creation and I always try to do the correct thing.

If you guys have any other question or comment about me or my routine, I would ask you to contact directly to me on private (hector@stages.com).

EXHIBIT 21b

On Apr 2, 2012, at 10:08 AM, Hector is Magic! wrote:

Hello,

I bought it second hand from an amateur magician, he bought "just because". You what I mean... And he bought it from someone else. I do not know who that first one is. I could try to contact that amateur magician again, but it's been 5 years since that... I am going to try.

I would love yo hear from you, just please let me know your thoughts, I hope you understand the situation.

All the best.

Hector.

El 02/04/2012, a las 13:57, Teller escribió:

Incidentally, thanks so much for contacting me. I'll write more later, but I do appreciate the note.

On Apr 2, 2012, at 9:03 AM, Hector is Magic! wrote:

Hello mr Teller,

Hope everything is going great.

This is Hector (www.hectorismagic.com), an illusionist from Spain, Europe.

I am a friend of Quique Marduk from Buenos Aires, Argentina (Bazar de Magia)

I would like to tell you something in order to hear your thoughts about it.

I am performing on cruise ships and theme parks, for ten years now.

About 5 years ago I bought second hand in Spain an illusion from a magician. It was a rose that falls apart little by little under your total control.

EXHIBIT 22a

121

1 much for your statements. Now, Mr. Tratos, I
2 got to interrupt you. I'm sorry. But you
3 didn't answer to, in the confirmation, when I
4 asked you to be present on this litigation --
5 on this deposition, and I asked you to bring
6 all these documents and you didn't refuse --
7 you didn't -- and said you didn't want to bring
8 these documents. So I was thinking you had
9 these documents with you. It is not my
10 responsibility --

11 MR. TRATOS: Mr. Dogge, it's your
12 responsibility. It's your deposition. It's
13 your obligation, sir.

14 BY MR. DOGGE:

15 Q Okay. I will continue with the -- if you
16 don't want to answer to these simple questions,
17 Mr. Teller you are going to have another chance --

18 A I've answered the question, sir. I've
19 answered the question, Mr. Dogge.

20 Q That you don't see a difference between
21 the items; is that your answer?

22 MR. TRATOS: Objection. Mischaracterizes
23 his prior testimony --

24 MR. DOGGE: Is that --

25 THE WITNESS: I said it is the same trick.

EXHIBIT 22b

122

1 One of the least important props is different.

2 The trick itself, the effect on the audience,
3 what -- everything that is important and
4 identifiable about the trick is the same. And
5 you know that. You confessed that in your
6 advertisements. How could you not know that?

7 BY MR. DOGGE.

8 Q Mr. Teller, you wanted to pay \$15,000 for
9 the difference. You enumerated all the differences
10 in your e-mail. You know that. Let's continue with
11 the questions, Mr. Teller.

12 A Please.

13 Q You stated that the method of the illusion
14 is not important in this litigation. Why did you do
15 that? Why did you say that?

16 A Because that is what I believe.

17 Q Because what?

18 A That is what I believe. That it is the
19 effect --

20 Q Okay --

21 A What we're talking about is the effect.

22 The effect. The dramatic --

23 Q Okay.

24 A -- effect.

25 Q Okay. Mr. Teller, now simple question:

EXHIBIT 22c

80

1 Q He magically disappeared from YouTube.

2 A Im sorry.

3 Q But he didn't order any -- no. No. No.

4 Don't be sorry.

5 A No. I just don't -- I just don't --

6 Q I --

7 A I don't -- I don't really scan YouTube

8 for copies. Once in a while, when someone call my

9 attention to something that I think is -- is not

10 properly being done. I try in a very gentlemanly way

11 to contact the person, as I did with you, sir.

12 Q Okay. Did you ever offer money.

13 Mr. Teller, to people who are infringing on your

14 copyrighted tricks?

15 A Why would I do that?

16 Q You did it to me.

17 A No, sir. I -- I -- if someone were

18 infringing on my copyright, I would expect them to

19 offer me money. Not the other way around. In your

20 case, I have explained exactly why it was that I

21 offered you, as a courtesy to you, on an assumption

22 that you were a good man, something to defray your

23 development costs.

24 Q Okay. Very kind of you, Mr. Teller.

25 A Thank you.

EXHIBIT 23

1 spoke on the phone several times in an effort to resolve and settle this matter out of court.

2 **REQUEST NO. 9:**

3 Admit that in one of the negotiation calls you offered defendant \$40,000 as this would
4 have cost you as much as starting a litigation against defendant.

5 **RESPONSE**

6 Objection. This request is vague and ambiguous with respect to timing of any such
7 phone conversation. This request is also outside of the scope of discovery as it is not
8 reasonably calculated to lead to admissible evidence, as settlement negotiations are not
9 admissible pursuant to Federal Rule of Evidence 408. Notwithstanding these objections,
10 Teller admits that he attempted to settle and resolve the dispute by acquiring the infringing
11 illusion's prop for \$40,000.

12 **REQUEST NO. 10:**

13 Admit that this offer was turned down by defendant.

14 **RESPONSE**

15 Objection. This request is vague and ambiguous with respect to timing of any such
16 conversation and to the term "that this offer." This request is also outside of the scope of
17 discovery as it is not reasonably calculated to lead to admissible evidence, as settlement
18 negotiations are not admissible pursuant to Federal Rule of Evidence 408. Notwithstanding
19 these objections, Teller admits that during the last telephone call between the parties the
20 defendant refused to settle and resolve the dispute and demanded more than \$125,000 USD.

21 **REQUEST NO. 11:**

22 Admit that in one of the negotiation calls the defendant proposed an alternative
23 mentioning to forget about exclusive deals and to present his method or prop in a different
24 way, such as a presentation without the use of a rose, shadow or knife.

25 **RESPONSE:**

26 Objection. This request is vague and ambiguous with respect to the phone call at issue.
27 This request is also outside of the scope of discovery as it is not reasonably calculated to lead
28 to admissible evidence, as settlement negotiations are not admissible pursuant to Federal

EXHIBIT 24

1 admitted.

2 **REQUEST NO. 2:**

3 Admit that you've wrote to defendant in that same email from 03.27.2012.that you
4 would like to offer \$15,000 to the defendant to "assume full ethical and legal possession of
5 your method".

6 **RESPONSE:**

7 Objection. This request is vague and ambiguous with respect to the phrase "that same
8 email from 03.27.2012." and the email in in question. Notwithstanding this objection, to the
9 extent that the Defendant has changed the meaning of the communication by shortening the
10 actual sentence which Plaintiff wrote. Teller denies the admission. To the extent that the
11 request indicates that Teller attempted to resolve the potential difficulty by offering the sum
12 quoted in the request, the answer is admitted. Moreover, the Plaintiff offered even larger
13 amounts of money to avoid the Defendant's threat to sell the illusion to the Chinese.

14 **REQUEST NO. 3:**

15 Admit that you've wrote to defendant in that same email from 03.27.2012. "I would
16 also expect you would agree to keep this arrangement absolutely confidential. If this were to
17 get out in the magic community, I believe it would make both of us look very, very bad..."

18 **RESPONSE:**

19 Objection. This request is vague and ambiguous with respect to the phrase "that same
20 email from 03.27.2012." and the email in in question. Notwithstanding this objection, Teller
21 did send at least one email in which he tried to settle the dispute over the threatened sale of
22 the infringing illusion and Teller responds that the email speaks for itself.

23 **REQUEST NO. 4:**

24 Admit that you've filed in Court on date 08.06.2012 a document 8-1, containing a letter
25 from Tratos dated May 23, 2012 to Bakardy stating: " We (Teller) will pay you his standard
26 prop development fee of no more that \$15,000. We will absorb the cost of shipping the device
27 to Teller in the US."

28 ///

1000 North Main Street, Suite 400
170 North Main Street, Suite 400
170 North Main Street, Suite 400
170 North Main Street, Suite 400
170 North Main Street, Suite 400

EXHIBIT 25a

Op 4-apr.-2012, om 08:52 heeft Teller het volgende geschreven:

Kind Gunther,

I'd be grateful if you would try communicating with Gerard. Clearly he respects you. He needs to know that I'm not the lone voice saying what he's doing is morally wrong.

I get the sense that he's very new in our world. He needs to be aware that Rafael recently won the case against Hans Klock for an infringement of something much less original and distinctive than my "Shadows." Manufacturing the item multiplies the damage many times.

I hate lawsuits. No one benefits except the attorneys. But if Gerard compels me to go the legal route, I would enforce based on Copyright (I registered the effect in 1983), Unfair Competition, Trademark Infringement (it has been my signature piece since 1975), and Droit Moral in the US

TELLER000059

EXHIBIT 25b

and EU. If I prevail, he'll be stuck with all my legal costs. It would be dreadful for him and a waste of both our time.

The problem in coming to an agreement is that he imagines this trick will bring him \$4-5,000,000. That's insane, especially when one considers the difficulty of advertising and selling an item that is under legal dispute.

Now, all this said, I would rather make a friend of Gerard and have another clever person in my employ. If we could agree on a realistic fee, I would consider hiring him as consultant to try and improve my trick, provided of course, he takes it off the market and sells to nobody but me. I think his notion of seeing the stem in water might have value to me, if he could achieve the kind of slow, mysterious movement my method involves; his is more abrupt and mechanical looking.

But he is, I think, expecting a hundred thousand dollars for such a consultation, and that's completely irrational and out of line with anything I've ever paid for such thing.

There, I think that about sums it up.

You may find that it would take less time and be more productive just to talk with him on the phone (+34.606356504). Sometimes when people talk on the phone in a language that they are comfortable in, it's easier to resolve problems than it is in writing (which can be rigid and forbidding).

Thanks so much for your kindness. Know that regardless of the outcome, you now have a new friend in the U.S. When you come to Vegas you will be most cordially received as my guest, and if there are any Penn & Teller materials (e.g. my David Abbott book) that interest you, they will be on their way to you with my gratitude.

TELLER

P.S. Many famous magicians around the world agree with us on this issue, and if you know of someone whose opinions might impress and influence Gerard (Lance Burton, Copperfield, Tamariz, Johnny Thompson, Derren Brown, etc.) let me know and I'll ask if they'd be willing to call and talk with him. It would be so much better to settle all of this like gentlemen.

EXHIBIT 26a

121

1 much for your statements. Now, Mr. Tratos, I
2 got to interrupt you. I'm sorry. But you
3 didn't answer to, in the confirmation, when I
4 asked you to be present on this litigation --
5 on this deposition, and I asked you to bring
6 all these documents and you didn't refuse --
7 you didn't -- and said you didn't want to bring
8 these documents. So I was thinking you had
9 these documents with you. It is not my
10 responsibility --

11 MR. TRATOS: Mr. Dogge, it's your
12 responsibility. It's your deposition. It's
13 your obligation, sir.

14 BY MR. DOGGE:

15 Q Okay. I will continue with the -- if you
16 don't want to answer to these simple questions,
17 Mr. Teller you are going to have another chance --

18 A I've answered the question, sir. I've
19 answered the question, Mr. Dogge.

20 Q That you don't see a difference between
21 the items; is that your answer?

22 MR. TRATOS: Objection. Mischaracterizes
23 his prior testimony --

24 MR. DOGGE: Is that --

25 THE WITNESS: I said it is the same trick.

EXHIBIT 26b

122

1 One of the least important props is different.

2 The trick itself, the effect on the audience,

3 what -- everything that is important and

4 identifiable about the trick is the same. And

5 you know that. You confessed that in your

6 advertisements. How could you not know that?

7 BY MR. DOGGE.

8 Q Mr. Teller, you wanted to pay \$15,000 for

9 the difference. You enumerated all the differences

10 in your e-mail. You know that. Let's continue with

11 the questions, Mr. Teller.

12 A Please.

13 Q You stated that the method of the illusion

14 is not important in this litigation. Why did you do

15 that? Why did you say that?

16 A Because that is what I believe.

17 Q Because what?

18 A That is what I believe. That it is the

19 effect --

20 Q Okay --

21 A What we're talking about is the effect.

22 The effect. The dramatic --

23 Q Okay.

24 A -- effect.

25 Q Okay. Mr. Teller, now simple question:

EXHIBIT 27a

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-783-708

Effective date of registration:
April 10, 2012

Title _____

Title of Work: The Mysterious Rose

Completion/Publication _____

Year of Completion: 2012

Date of 1st Publication: April 10, 2012

Nation of 1st Publication: Belgium

Author _____

▪ **Author:** Gerard Bakardy

Author Created: magic routine performance

Work made for hire: No

Citizen of: Netherlands

Domiciled in: Belgium

Copyright claimant _____

Copyright Claimant: Gerard Robert

Brussels, Belgium, Belgium

Certification _____

Name: Gerard Bakardy

Date: April 10, 2012

Copyright Office notes: Regarding author information: text only deposited.

EXHIBIT 27b

The Mysterious Rose

On stage stands a table with a clear transparent vase/bottle, filled with water containing a rose or other flower. The magician has in each of the 5 routines control over the flower that dies on his 'command' by dropping the petals one by one.

The five routines:

1. The magician reads a love letter that put an end to his love affair and on every sad passage the rose dies bit by bit and let the petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours out the water.
- 2.
3. The magician sees a healthy rose in a vase and next to it, a 'bald dead' rose in a vase with the fallen off leaves, next to the vase. Each time he tries to put the petals back on the stem, also the healthy rose starts to die and let the petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.
4. The magician sees 2 healthy roses, each one in his own vase, on 2 separate tables. He starts to pluck the petals from one of the roses, one by one. At the same moment the other rose seems to respond by letting her petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.
5. The magician walks around with a drawing board and sees the rose. With some simple lines he draws the rose and the vase, after this he wants to draw something new and start wiping of the drawing. Every time he erases a part of the rose in the drawing, the real rose starts to die and let the petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.
6. The magician performs a 'mentalist' act by using his strong 'power of mind' and is able to move various objects as well as the rose. On his 'command' the rose dies and let the petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.

It is remarkable that all this happens without any use of light effects such as shadow or any other film projection. None of the routines are done with the use of scissors or knife.

The strongest points in this illusion:

- From the first second the entire flower is visible, including the stem which is in full view because of the clear transparent vase/bottle, which merely contains flower and water.
- At the end of the illusion the stem is taken out of the vase.
- At the end of the illusion the vase/bottle is lifted from the table. This to prove that the vase is not connected with the table and becomes a portable unit on its own.
- Completely at the end water is poured out of the vase/bottle as proof that it is not 'fake' water or 'fake' bottle/vase.

By Gerard Bakardy – March 21st – 2012

EXHIBIT 27c

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-790-683

Effective date of registration:
May 23, 2012

Title _____

Title of Work: The Mysterious Rose Part 2

Completion/Publication _____

Year of Completion: 2012

Date of 1st Publication: May 9, 2012

Nation of 1st Publication: Belgium

Author _____

▪ Author: Gerard Robert

Author Created: magic routine

Citizen of: Netherlands

Domiciled in: Belgium

Copyright claimant _____

Copyright Claimant: Gerard Robert

Brussels, Antwerp, Belgium

Limitation of copyright claim _____

Material excluded from this claim: magic routine

Previous registration and year: 1-750826221 2012

New material included in claim: magic routine

Rights and Permissions _____

Name: Gerard Robert

Email: gerard-bakardy@hotmail.com

Address: Postbus 1

Stabroek, 2940 Belgium

Certification _____

Name: Gerard Robert

Date: May 23, 2012

EXHIBIT 27d

The Mysterious Rose Part 2.

On stage stands a table with a clear transparent vase/bottle, filled with water containing a rose or other flower. The magician has in each of all the routines control over the flower that dies on his 'command' by dropping the petals one by one. Five more routines.

1. The magician takes a paper napkin, folds a paper rose, than he makes a 'magic move' and starts tearing the paper rose in small parts. By each tearing, the mysterious flower let the corresponding part / petal fall, one by one. The magician takes e 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.
2. The magician places a mirror behind the table and flower in a way that the flower is reflecting in the mirror. With a cleaning tissue he wipes in the mirror over the petals and erases the petals one by one. . Every time he erases a part of the flower in the mirror, the real flower starts to die and let the petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.
3. The magician places a with board behind the table and flower. In front of the flower is a spotlight which creates a shadow from the flower on the white board. Then with a knife or scissors he cuts petals from the flower, one by one, in her shadow. At the same moment the real flower starts to die and let the petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.
4. The magician places a with board behind the table and the flower. In front of the flower is a spotlight which creates a shadow on the white board from the flower. Then with a laser light he cuts the petals from the flower, one by one, in her shadow. At the same moment the real flower starts to die and let the petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.
5. The magician places a with board behind the table with the flower. In this way the flower is not disturbed by other items behind the rose and very visible in front of the white board. Then with a laser light he cuts the petals from the mysterious flower, one by one. At the same moment this flower starts to die and let the petals fall, one by one. The magician takes the 'bare' stem from the vase/bottle, takes the vase/bottle from the table and pours the water out.

The strongest points in this illusion:

- From the first second the entire flower is visible, including the stem which is in full view because of the clear transparent vase/bottle, which merely contains flower and water.
- At the end of the illusion the stem is taken out of the vase.
- At the end of the illusion the vase/bottle is lifted from the table. This to prove that the vase is not connected with the table and becomes a portable unit on its own.
- Completely at the end water is poured out of the vase/bottle as proof that it is not 'fake' water or 'fake' bottle/vase.

EXHIBIT 27e

CERTIFICATE OF COPYRIGHT REGISTRATION



This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

Paul Reed
 REGISTER OF COPYRIGHTS
 United States of America

FORM PA
 UNITED STATES COPYRIGHT OFFICE
 REGISTRATION NUMBER
 PAU 469-609
 PA
 EFFECTIVE DATE OF REGISTRATION
 Jan. 6, 1983

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ∇
 Shadows
 ALTERNATE OR ALTERNATIVE TITLES ∇

NATURE OF THIS WORK ∇
 pantomime drama

2 NAME OF AUTHOR ∇ a Teller (pseudonym for Raymond Teller)
 DATE OF BIRTH AND DEATH
 Year Born ∇ Year Died ∇
 1948
 Was this contribution to the work a "work made for hire"? Yes No
 AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country: U.S.A.
 Citizen of: U.S.A.
 Domiciled in: ∇
 HAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No

NOTE
 Under the law, the "author" of a "work made for hire" is generally the employer, not the individual creator. For copyright purposes, the employer is the author. If you are the employer, you must give the copyright to your partner for whom the work was prepared or "Author" of the work, and retain the right to make or have made other such work.

NATURE OF AUTHORSHIP ∇ all stage directions and actions part

b NAME OF AUTHOR ∇
 DATE OF BIRTH AND DEATH
 Year Born ∇ Year Died ∇
 Was this contribution to the work a "work made for hire"? Yes No
 AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country: ∇
 Citizen of: ∇
 Domiciled in: ∇
 HAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No

NATURE OF AUTHORSHIP ∇

c NAME OF AUTHOR ∇
 DATE OF BIRTH AND DEATH
 Year Born ∇ Year Died ∇
 Was this contribution to the work a "work made for hire"? Yes No
 AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country: ∇
 Citizen of: ∇
 Domiciled in: ∇
 HAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No

NATURE OF AUTHORSHIP ∇

3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED ∇ 1976
 DATE AND MEDIUM OF FIRST PUBLICATION OF THIS PARTICULAR WORK
 Date: ∇ Medium: ∇

4 COPYRIGHT CLAIMANT'S Name and address must be given even if the claimant is the same as the author given in space 2. ∇
 Teller
 c/o J. Teller
 2032 Cherry Street, Philadelphia, PA 19103
 If the claimant named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant obtained ownership of the copyright. ∇

APPLICATION RECEIVED
 06 JAN 1983
 TWO DEPOSITS RECEIVED
 06 JAN 1983
 REFERENCE NUMBER AND DATE
 94115 JAN 683

EXHIBIT 28a



Copyright

United States Copyright Office

Copyright Basics

What is Copyright?

Copyright is a form of protection provided by the laws of the United States (title 17, *U.S. Code*) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- reproduce the work in copies or phonorecords
- prepare derivative works based upon the work
- distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works
- display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work
- perform the work publicly (in the case of sound recordings*) by means of a digital audio transmission

In addition, certain authors of works of visual art have the rights of attribution and integrity as described in section 106A of the 1976 Copyright Act. For further information, see Circular 40, *Copyright Registration for Works of the Visual Arts*.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 122 of the 1976 Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the 1976 Copyright Act. In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions. For further information about the limitations of any of these rights, consult the copyright law or write to the Copyright Office.

*NOTE: Sound recordings are defined in the law as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work." Common

EXHIBIT 28b

Copyright Basics - 1

Examples include recordings of music, drama, or lectures. A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. The word "phonorecord" includes cassette tapes, CDs, and vinyl disks as well as other formats.

Who Can Claim Copyright?

Copyright protection subsists from the time the work is created in fixed form. The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is considered to be the author. Section 101 of the copyright law defines a "work made for hire" as:

- 1. a work prepared by an employee within the scope of his or her employment; or
- 2. a work specially ordered or commissioned for use as:
 - a contribution to a collective work
 - a part of a motion picture or other audiovisual work
 - a translation
 - a supplementary work
 - a compilation
 - an instructional text
 - a test
 - answer material for a test
 - an atlas

if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

Two General Principles

- Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.

- Minors may claim copyright, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

Copyright and National Origin of the Work

Copyright protection is available for all unpublished works, regardless of the nationality or domicile of the author.

Published works are eligible for copyright protection in the United States if any one of the following conditions is met:

- On the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party,* or is a stateless person wherever that person may be domiciled; or
 - The work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party. For purposes of this condition, a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be; or
 - The work is a sound recording that was first fixed in a treaty party; or
 - The work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or
 - The work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or
 - The work is a foreign work that was in the public domain in the United States prior to 1996 and its copyright was restored under the Uruguay Round Agreements Act (URAA). See Circular 48n, *Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA-GATT)*, for further information.
 - The work comes within the scope of a presidential proclamation.
- *A treaty party is a country or intergovernmental organization other than the United States that is a party to an international agreement.

EXHIBIT 28c

Copyright Basics 3

What Works Are Protected?

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

1. literary works
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works

These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works."

What Is Not Protected by Copyright?

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- works consisting entirely of information that is common property and containing no original authorship (for example, standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

How to Secure a Copyright**Copyright Secured Automatically upon Creation**

The way in which copyright protection is secured is frequently misunderstood. No publication or registration or other action

in the Copyright Office is required to secure copyright. See the following note. There are, however, certain definite advantages to registration. See *Copyright Registration* on page 7.

Copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or vinyl disks. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both. If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

Publication

Publication is no longer the key to obtaining federal copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners.

The 1976 Copyright Act defines publication as follows:

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.

works: Before 1978, federal copyright was generally secured by the act of publication with notice of copyright, assuming compliance with all other relevant statutory conditions. U.S. works in the public domain on January 1, 1978, (for example, works published without satisfying all conditions for securing federal copyright under the Copyright Act of 1909) remain in the public domain under the 1976 Copyright Act.

Certain foreign works originally published without notice had their copyrights restored under the Uruguay Round Agreements Act (URAA). See Circular 338 and see *Notice of Copyright* section on page 4 for further information.

Federal copyright could also be secured before 1978 by the act of registration in the case of certain unpublished works and works eligible for ad interim copyright. The 1976 Copyright Act automatically extended copyright protection to full term for all works that, as of January 1, 1978, were subject to statutory protection.

EXHIBIT 28d

Copyright Basics 4

A further discussion of the definition of "publication" can be found in the legislative history of the 1976 Copyright Act. The legislative reports define "to the public" as distribution to persons under no explicit or implicit restrictions with respect to disclosure of the contents. The reports state that the definition makes it clear that the sale of phonorecords constitutes publication of the underlying work, for example, the musical, dramatic, or literary work embodied in a phonorecord. The reports also state that it is clear that any form of dissemination in which the material object does not change hands, for example, performances or displays on television, is not a publication no matter how many people are exposed to the work. However, when copies or phonorecords are offered for sale or lease to a group of wholesalers, broadcasters, or motion picture theaters, publication does take place if the purpose is further distribution, public performance, or public display.

Publication is an important concept in the copyright law for several reasons:

- Works that are published in the United States are subject to mandatory deposit with the Library of Congress. See discussion on "Mandatory Deposit for Works Published in the United States" on page 10.
- Publication of a work can affect the limitations on the exclusive rights of the copyright owner that are set forth in sections 107 through 122 of the law.
- The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author's identity is not revealed in the records of the Copyright Office) and for works made for hire.
- Deposit requirements for registration of published works differ from those for registration of unpublished works. See discussion on "Registration Procedures" on page 7.
- When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Copies of works published before March 1, 1989, must bear the notice or risk loss of copyright protection. See discussion on "Notice of Copyright" below.

Notice of Copyright

The use of a copyright notice is no longer required under U.S. law, although it is often beneficial. Because prior law did

contain such a requirement, however, the use of notice is still relevant to the copyright status of older works.

Notice was required under the 1909 Copyright Act. This requirement was eliminated when the United States adhered to the Berne Convention, effective March 1, 1989. Although works published without notice before that date could have entered the public domain in the United States, the Uruguay Round Agreements Act (URAA) restores copyright in certain foreign works originally published without notice. For further information about copyright amendments in the URAA, see Circular 48a.

The Copyright Office does not take a position on whether copies of works first published with notice before March 1, 1989, which are distributed on or after March 1, 1989, must bear the copyright notice.

Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in section 504(c)(2) of the copyright law. Innocent infringement occurs when the infringer did not realize that the work was protected.

The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.

Form of Notice for Visually Perceptible Copies

The notice for visually perceptible copies should contain all the following three elements:

1. The symbol (©) (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.," and
2. The year of first publication of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and
3. The name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 2011 John Doe

EXHIBIT 28e



United States Copyright Office

Library of Congress • 101 Independence Avenue SE • Washington DC 20559-6000 • www.copyright.gov

January 29, 2013

Gerard Robert
Postbus 1
Stabroek,
Belgium 2940

Correspondence ID: 1-EMHYHP

RE: Two mysterious routines

Dear Gerard Robert:

Your application seeks an original registration for a work that was initially published on 7/15/1961. Unfortunately, we cannot issue an original registration because the 28 years allowed for requesting it passed in 1989. Additionally, copyright does not protect magic routines.

Copyright protects original works of authorship that are fixed in some physical form. See 17 U.S.C. §102(a). As used in the copyright context, the term "original" means that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least a minimal degree of creativity. See *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

To satisfy these requirements, a work of the visual arts must contain a minimum amount of pictorial, graphic or sculptural authorship. Copyright does not protect familiar symbols or designs; basic geometric shapes; words and short phrases such as names, titles, and slogans; or mere variations of typographic ornamentation, lettering or coloring. See 37 C.F.R. §202.1. Further, copyright does not extend to any idea, concept, system, or process which may be embodied in a work. 17 U.S.C. §102(b).

Under the governing copyright statute that was in effect when this work was initially published, copyright began on the date of first publication and lasted for 28 calendar years after that date. If a copyright registration for a published work was not made sometime during these 28 years, the copyright expired, was lost forever, and could not be restored.

If the publication date that you have given is correct, then application to register this original 28-year term should have been filed in the Copyright Office no later than the end of the 28th year after the publication date that you gave. Because the application for this work was filed after 28 years from first publication we cannot issue a registration for this original copyright term.

In addition, it is too late to file to renew the original copyright term. The governing law allowed a renewal of the original 28-year term, if a registration was made any time within the initial 28-year term

EXHIBIT 28f

Gerard Robert

- 2 -


I-EMHYHP

and a renewal application was filed within the 28th year of that term. In your case, both the original and renewal copyright terms had expired before you filed to make a registration for the original term.

This letter is for your information only; no response is necessary.

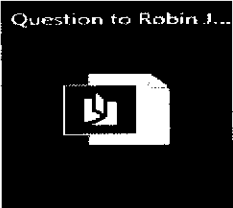
Sincerely,
Robin Jones
Registration Specialist
Visual Arts Division
U.S. Copyright Office

EXHIBIT 28g

 **gerard bakardy** @ 4/04/2013
Aan: Copyright Information ▼

1 bijlage (175.8 kB) Outlook Interactive weergave ▲

Question to Robin J...



Downloaden als zip

Dear copyright specialist,

Please find in attachment my letter.
Thanks for your quick reply.

Kind regards,
Gerard Robert.

Correspondence ID: 1-EMHYHP

Dear Robin Jones,

Thank you for your letter from 01.29.2013.

First I need to apologize for my bad English, what probably also forms the reason for my next questions.

I've filed an application for copyright on two mysterious routines:

1. The Mysterious Card.

In this application I made a mistake by typing the wrong date. Instead of 1991, I've typed 1961. This is obviously wrong, at that time I was only 4 years old and not able to perform this routine. The correct date is 1/15/1991.

2. The Mysterious Heads

This application mentions the (correct) date 12/31/1999.

The date in the application did not passed the maximum of 28 years ago.

Can you please advise me what I need to do to get this 2 magical performances copyrighted.

Thanks in advance for your answer.

Best regards,

Gerard.

(mobile: +34.606.35.65.04.)

EXHIBIT 28h



Copyright Information (copyinfo@loc.gov) Toevoegen aan contactpersonen 10/04

Aan: gerard.bakarcy

CC: Copyright Information

Dear Gerald Robert,

Unfortunately, you are not able to reply to the letter from Ms. Jones by email. One of the reasons that we did not make a registration for your work is because "magic routines" are not protected by copyright. It was not solely based on the year of publication. Copyright protects your written, artistic or musical expression in a tangible form. On the application, you should state what you are protecting. (i.e. text, illustrations, performance, artwork, etc.)

If you wish to have the Copyright Office reconsider the application, please follow the instructions on the page entitled "Return this sheet if you request reconsideration."

If you have additional questions or need further assistance, our contact information is listed below.

Sincerely,

EXHIBIT 29

Case 2:12-cv-00591-JCM-GWF Document 123-17 Filed 07/08/13 Page 8 of 91

As noted, there are a number of "sympathetic" effects, and this is listed as one of the basic nineteen effects in magic. I am not focusing on all sympathetic magic effects, as many have no similarity to Teller's effect. But if I focus on the earliest effects that utilized a shadow in sympathy with the destruction of an object, I note that an early precedent involved the destruction and death of an animal.¹

The earliest example of this is from the first English published book on magic, *Keybold Scot's 1584 The Discoverie of Witchcraft*, which makes a discussion of superstitions and witchcraft with an exposure of conjurer's tricks. In the book, Scot explains a trick performed by a juggler (a term for a magician) named Brandon in a performance before a king:

"He hanged on a wall the picture of a dove, and seeing a pigeon sitting on top of a house, said to the king, for now you, Grace shall see what juggler can do. It be his craft's mystery, and then picked the picture with a knife so hard and so often, and with so effectual words, as the pigeon fell down from the top of the house, was dead."²

Brandon's pigeon trick continued to inspire magicians. In 1770, a British magician named Jonas performed his pigeon trick, described in advertisements as:

"It is a secret to any gentleman to hang a live pigeon on a string, and Mr. Jonas will cut the bird off by cutting on the shadow, so that the body shall fall on the ground, and the head shall remain on the string. Mr. Jonas will stand at a distance from the live pigeon, as a surprise to the spectators."³

When a similar trick was performed by the Italian magician, Pirrotti, a description of the secret appeared in the book, *The Magic of the Devils*, by Decamps. Notice that, by the time of Pirrotti's performances, circa 1784, the magic ritual incorporated a shadow, not a drawing of the bird:

"The two ribbons . . . [are] . . . the blade of very sharp steel bent like a sickle, this blade fastened to a silk cord which, passing between the two ribbons and into one of the columns, goes off in the hands of an assistant. The neck of the pigeon should be fastened by these cords or to a knot of ring of silk so that it can move neither forward nor back. A single light is placed in front of the pigeon in such a way that its shadow will appear on a screen stretched 12 or 13 inches behind it. If it is full daylight, then it is a pigeon painted on cardboard, which is attached to the screen. . . . [The magician] first strikes with a sword or a little dagger the shadow of the pigeon on its picture. The assistant who sees the movement, at this moment cuts the pigeon out. The body falls upon the plate."⁴

EXHIBIT 30

21

1 Q Yes. Would you call shadows an illusion
2 or a magic trick?

3 A In magic the term illusion is often used
4 as a pretentious way of naming the word trick. I
5 prefer the simple word trick, but it -- it's both.
6 It's -- these are just two words for the same kind
7 of operation. In magic, actually, generally the
8 term illusion is confined to large pieces of stage
9 equipment, but -- but it certainly is an illusion.
10 There's -- this is quibbling over language.

11 Q So. Okay. It is an illusion and a magic
12 trick, let's say it like that.

13 A I think that would be fair to say, yes.

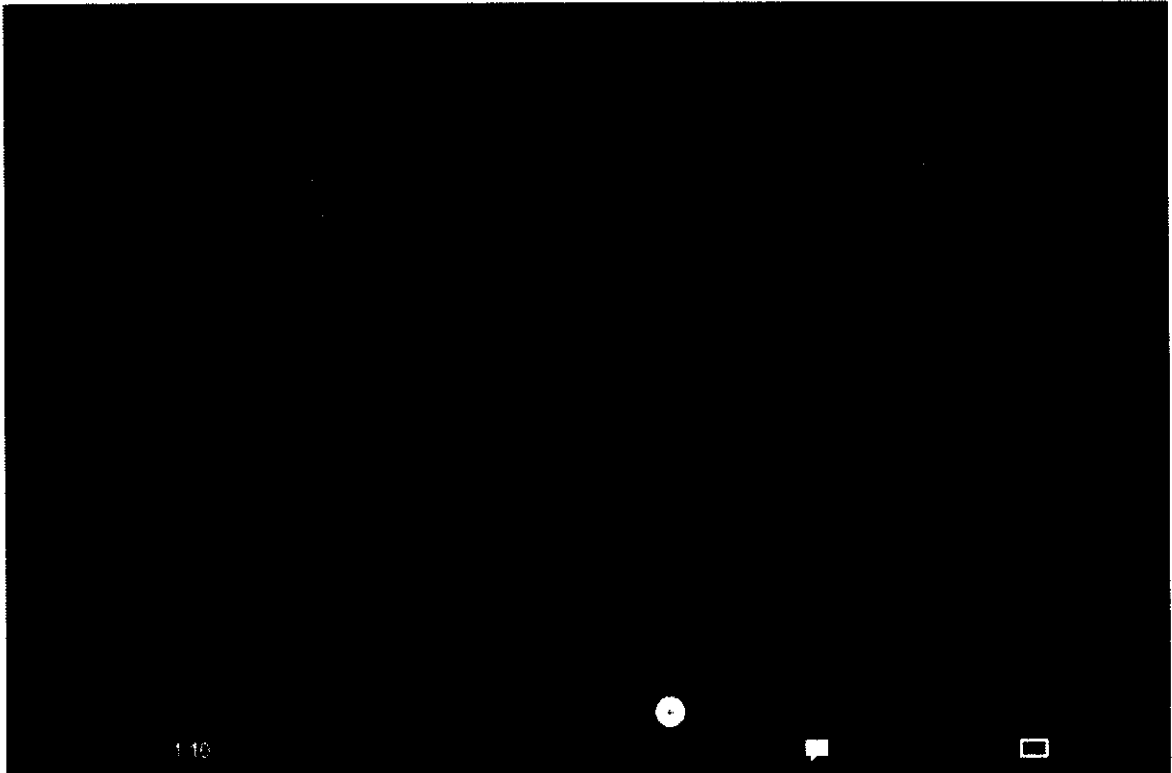
14 Q Yeah. Mr. Teller?

15 A Yes.

16 Q I don't want to go into the methods.
17 Absolutely not. I think it's your secret, and it
18 should stay your secret. But is there any slight of
19 hand involved to perform shadows?

20 A I -- I believe that we have not entered
21 into a protective agreement to talk about things
22 like method. And that's what you're asking me.
23 You're asking me about things that -- when you say,
24 is there any slight of hand, you're asking me about

EXHIBIT 31a



Penn Teller Shadows



magichacker929 5 videos

 **Subscribe**

87

7,783

 18  0



EXHIBIT 31b

101

1 minutes?

2 MR. DOGGE: Twenty minutes?

3 MR. TRATOS: Yeah.

4 MR. DOGGE: Okay. We come back in 20
5 minutes.

6 THE WITNESS: Excellent.

7 MR. DOGGE: Enjoy your snack, Mr. Teller.

8 THE WITNESS: Thank you very much.

9 MR. TRATOS: Thank you.

10 THE VIDEOGRAPHER: The time is
11 approximately 1:26 p.m. We are going off the
12 record.

13 (Off the record.)

14 THE VIDEOGRAPHER: The time is
15 approximately 1:50 p.m. We are back on the
16 record. Please begin, sir.

17 BY MR. DOGGE:

18 Q Okay. I pick up from where we were,
19 Mr. Teller --

20 A Yes, sir.

21 Q I have to go back from a long time, more
22 than a year ago. I asked you several times by
23 e-mail to get a detail of your copyright, but you
24 never -- you always refused to give me the details.
25 You only gave me those by complaint.

EXHIBIT 31c

102

1 A Yes.

2 Q So why -- why didn't you want to give me
3 the details, Mr. Teller?

4 A Mr. Dogge, I was under no obligation to
5 provide you with information to help you avoid my
6 copyright. My copyright is perfectly accessible on
7 the U.S. government website. That's your job.

8 Q Okay. All right. I have another
9 question. I think a famous brand such as Coca-Cola,
10 they show everywhere in the world on all their
11 products the symbol of their copyright.
12 Unnecessarily because everybody knows that Coca Cola
13 is a registered product, but still everywhere you
14 see the copyright symbol on the product.

15 Mr. Teller, you are also a very famous person, but
16 why don't you show a published anywhere which tricks
17 are copyrighted by you?

18 MR. TRATOS: Objection. Assumes facts not
19 in evidence. And I think you are
20 mischaracterizing the difference between a
21 copyright notice and a trademark notice. The
22 circle R registration is a trademark notice for
23 Coca-Cola. It is not a copyright notice. And
24 you're confusing two separate intellectual
25 properties.

EXHIBIT 31d

103

1 To that extent, Teller, you can answer the
2 question.

3 THE WITNESS: When you go to --

4 MR. DOGGE: Okay --

5 THE WITNESS: -- when you go to a play,
6 they don't put the copyright symbol on stage.
7 They just don't. And I felt under no
8 obligation to either. If you have any doubt --

9 MR. DOGGE: Mm-hmm.

10 THE WITNESS: -- about whether the
11 material that you're dealing with is
12 copyrighted or not, the burden is on you to
13 find that out. Also, I didn't, you know --

14 MR. DOGGE: Mm-hmm --

15 THE WITNESS: -- you mentioned at one
16 point that we -- that I -- that on the
17 internet, any representations of shadows didn't
18 contain my copyright notice, and I didn't post
19 any of these. So I don't -- I really don't
20 know what you would expect me to do.

21 BY MR. DOGGE:

22 Q No. But you didn't give any comments on
23 these videos on You Tube that -- to warn -- to warn
24 me or to warn anyone else that these videos or these
25 act of videos were copyrighted. And you mentioned

EXHIBIT 31e

104

1 this on your website when the shadows or other
2 things are copyrighted. Do you mention it anywhere
3 on the internet, actually?

4 A Mr. Dogge, the very first conversation I
5 had with you, I made this perfectly clear. So I --
6 I -- I don't -- if you're expecting me to anticipate
7 that you're going to copy my trick and that I should
8 put a notice out there to avoid you misunderstanding
9 that, it seems unreasonable.

10 Q I know, but my question is simple.
11 Mr. Teller. Do you, anywhere, on the internet, do
12 you anywhere, show which tricks are copyrighted by
13 you?

14 A No.

15 Q Do you mention this on your website?

16 A No. I've explained this -- I have
17 answered --

18 Q Okay. Thank you --

19 A -- this twice question twice before Mr.
20 Dogge.

21 Q Okay. But now it's very clear,
22 Mr. Teller. Thank you very much for answering this
23 question. Thank you.

24 A It is however, completely available --

25 Q Next question --

EXHIBIT 32a

NEWS ABOUT: GERARD BAKARDY

Like Tweet 0



1 STORY

More About: Gerard Dogge · magician · Penn and Teller · magic · lawsuit



Penn and Teller Suit: Magician Stole Our Trick

Apr 21, 2012 12:30 PM CDT

Penn and Teller Suit: Magician Stole Our Trick

DUTCH ILLUSIONIST TRIES TO SELL SHADOW TRICK'S EXPLANATION

(NEWSER) - Half of Penn and Teller is suing a fellow magician who he says ripped off a classic trick. Dutch illusionist Gerard Bakardy reportedly posted a YouTube video of "Rose and Her Shadow," a trick at the heart of the duo's repertoire, and Bakardy said he'd reveal . More »

Teller of Penn and Teller magic act sues over trick theft - TODAY.co

<http://www.today.com/entertainment/teller-penn-teller-magic-act-sues-over-trick-theft-718108>

in and Teller magic a...

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Penn-And-Teller
Teller of Penn and Teller magic act sues over trick theft

Penn-And-Teller

Teller of Penn and Teller magic act sues over trick theft

Gael Fashingbauer Cooper
TODAY

April 16, 2012 at 8:31 AM ET



TV
'Dexter' stars bid emotional farewell at Comic-Con

Performances
Fall Out Boy burn up the TODAY plaza amid record NYC temperatures

Celebs
Michael Moore, wife of 21 years file for divorce

TV
Violence? Racism? Lies?



EXHIBIT 32b

CELEBRITY JUSTICE

4/12/2012 12:58 PM PDT BY TMZ STAFF

**PENN & TELLER
Rogue Magician Is
EXPOSING
Our Secrets!!!**



It's the greatest crime in the magic community -- revealing the secret behind another magician's illusion -- and now, Teller (from **Penn & Teller**) is suing ... claiming he's a victim of the malfeasance.

EXHIBIT 33a

Gerard Dogge
June 18, 2013
Page 2

interrogatories you could ask and therefore we will not be supplementing or responding to any interrogatories that exceed the original 25 permitted under the rule.

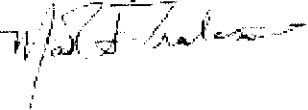
Finally, we spoke about the production of your computer for mirroring of its hard drive and you reiterated the position you took in your deposition which was to say that you hoped YouTube had the videos because you did not want to produce your computer for mirroring and would only consider doing so after we learned the status of the potential videos at YouTube.

You said previously in your deposition you would only do so if ordered to do so by a Belgian court. It is our position that that is not consistent with what Judge Foley has ordered and that you are therefore not following Judge Foley's directives. I advised you that we have requested the videos from YouTube but have not yet had a response from them. I further advised you that we would only follow up with YouTube after a week had passed so that we could give them a commercially reasonable period of time to find the videos if they still exist. I believe that technically you are violating Judge Foley's order. Nevertheless, I do not want to spend my client's funds filing yet further motions for sanctions if it's unnecessary. However, I reserve the right to do so on behalf of my client as I believe you are technically not complying with the Court's order.

Finally, I can confirm for you that the deposition date for Mr. Teller will be Monday, July 1st beginning at 11:00 a.m. Las Vegas time.

Should you have any questions, please do not hesitate to call.

Sincerely,



Mark G. Tratos

MGT:jtm
Attachment

EXHIBIT 33c

RE: [8-6662000001172] Urgent question



google-legal-support@google.com (google-legal-support@google.com) Toevoegen aan contactpersonen 15/06/2013

Aan gerard-bakardyl@hotmail.com



Video van YouTube

Outlook Interactieve weergave ^

Er kan geen verbinding worden gemaakt met YouTube. Het kan zijn dat deze video niet bestaat of alleen op YouTube kan worden afgespeeld. Ga naar de website van de eigenaar: <http://www.youtube.com/watch?v=BYmt7NtO85Y>

Helio,

The information you are requesting is subject to state and federal laws. In accordance with those laws, it is Google's policy to only provide subscriber information pursuant to a valid third party subpoena or other appropriate legal process.

Section 2702(a) of the federal Stored Communications Act prohibits Google from disclosing the content of electronic communications pursuant to a subpoena. 18 U.S.C. § 2702(a) see e.g., *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011); *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004); *Mintz v. Mark Bartelstein & Assocs., Inc.*, --- F.Supp.2d ---, 2012 WL 3553351 at *5 (C.D. Cal. Aug. 14, 2012); *In re Subpoena Duces Tecum to AOL, LLC.*, 550 F.Supp.2d 606, 611 (E.D. Va. 2008); *Flagg v. City of Detroit*, 252 F.R.D. 346, 366 (E.D. Mich. 2008); *Viacom Int'l Inc. v. YouTube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008); *O'Grady v. Superior Court of Santa Clara*, 139 Cal. App. 4th 1423, 1441-43 (2006). The appropriate way to seek such content is to direct your request to the account holder who has custody and control of the data in the account. *Suzlon*, 671 F.3d 726, 730-31; *Mintz*, 2012 WL 3553351 at *5; *O'Grady*, 139 Cal. App. 4th at 1446-47. If the account holder is a party to the underlying litigation, you may serve a document request on the account holder for the content sought. See *Mintz*, 2012 WL 3553351 at *5; *O'Grady*, 13 Cal. App. 4th at 1446-67; see also *Flagg*, 252 F.R.D. at 348, 366-67.

We accept civil subpoenas by personal service. We are unable to accept service by mail or any form of electronic service at this time. Google accepts subpoenas issued from Santa Clara Superior Court or the U.S. District Court for the Northern District of California via personal service on the Google Custodian of Records for Google, Inc. at 1600 Amphitheatre Parkway, Mountain View, California, 94043.

Regards,

Legal Investigations Support

EXHIBIT 33d

Date: Tue, 25 Jun 2013 21:42:16 +0000

Subject: RE: [1-535900001136] RE: Your letter dated June 11, 2013

From: googie-legal-support@google.com

To: gerard-bakardy@hotmail.com

Helio,

The information you are requesting is subject to state and federal laws. In accordance with those laws, it is Google's policy to only provide subscriber information pursuant to a valid third party subpoena or other appropriate legal process.

We accept civil subpoenas by personal service. We are unable to accept service by mail or any form of electronic service at this time.

Civil subpoenas may be served at the following address:

Attention: Custodian of Records

Google Inc.

1600 Amphitheatre Parkway

Mountain View, CA 94043

Regards,

Legal Investigations Support

EXHIBIT 33e

Urgent question



G R 8/07/2013

Aan google-legal-support@google.com



Video van YouTube

Outlook Interactieve weergave

Er kan geen verbinding worden gemaakt met YouTube. Het kan zijn dat deze video niet bestaat of alleen op YouTube kan worden afgespeeld. Ga naar de website van de eigenaar: www.youtube.com/watch?v=BYmt7NtO85Y

Legal Investigations Support Team

YouTube, LLC
901 Cherry Ave.
San Bruno, CA 9406
USLawEnforcement@google.com

Re: Request to produce Videos Subject to Litigation –
Teller V. Dogge (p/k/a Gerard Bakardy)
U.S. District Court of Nevada, Case N° 2:12-cv-00591-JCM-GWF

Dear Legal Investigation Support team,

My apologies for my bad english, I am from Europe Belgium and my name is Gerard Dogge, my accountname or username is 'Gerarreke' at the Youtube channel.

On March, 15th 2012, I posted two videos entitled "The Rose and her Shadow" on YouTube.
The URLs previously referencing these videos are as follows:

<http://www.youtube.com/watch?v=VGK9PFzuL0>
<http://www.youtube.com/watch?v=BYmt7NtO85Y>

These videos were taken down from Youtube on demand of Greenberg- Traurig lawfirm representing Mr. Teller, claiming copyright infringement (Case N° 2:12-cv-00591-JCM-GWF) in Las vegas - Nevada.

Although I am convinced that there is no infringement at all and although Youtube has given me the chance to upload these videos again, I didn't and preferred to wait for the Court's judgement. Half a year ago, I accidently lost the videos on my computer.

Apparently the Greenberg-Traurig lawfirm who is suing me, say they have no copy of the alleged infringing videos. These videos are very essential and needed to bring up the truth in the lawsuit.

Can I please ask you kindly if these videos are still available in the YouTube's database and if you so, if you please can send me these video's by email to my email address.

I've read in your previous answer Google's policies concerning the third party but since I am not a third party but the accountholder who has uploaded the videos at issue I kindly ask you if you can send me the video's by email.

This would be a great help to me since I can not afford expensive attorney's and I'm defending myself in this case as a Belgian citizen who has no knowlegde of the US law and rules.

Since my account 'Gerarreke' has my email address as username fuertebel@hotmail.com, you can send the video's to this address.

Thank you for your anticipated cooperation and assistance in this regard.

Respectfully,

Gerard Dogge

EXHIBIT 33f

RE: [7-4134000001302] Urgent question



google-legal-support@google.com (google-legal-support@google.com) Toevoegen aan contactpersonen 8/07/2013
Aan f.ertibe@hotmail.com



Video van YouTube

Outlook Interactieve weergave ^

Er kan geen verbinding worden gemaakt met YouTube. Het kan zijn dat deze video niet bestaat of alleen op YouTube kan worden afgespeeld. Ga naar de website van de eigenaar: <http://www.youtube.com/watch?v=BYmt7NtO85Y>

Helio,

The information you are requesting is subject to state and federal laws. In accordance with those laws, it is Google's policy to only provide subscriber information pursuant to a valid third party subpoena or other appropriate legal process.

Section 2702(a) of the federal Stored Communications Act prohibits Google from disclosing the content of electronic communications pursuant to a subpoena. 18 U.S.C. § 2702(a) see e.g., *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011); *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004); *Mintz v. Mark Barteisstein & Assocs., Inc.*, --- F.Supp.2d ---, 2012 WL 3553351 at *5 (C.D. Cal. Aug. 14, 2012); *In re Subpoena Duces Tecum to AOL, LLC.*, 550 F.Supp.2d 606, 611 (E.D. Va. 2008); *Flagg v. City of Detroit*, 252 F.R.D. 346, 366 (E.D. Mich. 2008); *Viacom Int'l Inc. v. YouTube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008); *O'Grady v. Superior Court of Santa Clara*, 139 Cal. App. 4th 1423, 1441-43 (2006). The appropriate way to seek such content is to direct your request to the account holder who has custody and control of the data in the account. *Suzlon*, 671 F.3d 726, 730-31; *Mintz*, 2012 WL 3553351 at *5; *O'Grady*, 139 Cal. App. 4th at 1446-47. If the account holder is a party to the underlying litigation, you may serve a document request on the account holder for the content sought. See *Mintz*, 2012 WL 3553351 at *5; *O'Grady*, 13 Cal. App. 4th at 1446-67; see also *Flagg*, 252 F.R.D. at 348, 366-67.

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Regards,

Legal Investigations Support

EXHIBIT 34a

109

12:58:50 1 tell you that, at the end of the deposition, we will
 12:58:53 2 not conclude your deposition. We will suspend your
 12:58:56 3 deposition until you produce the relevant documents
 12:59:00 4 that should have been produced in the case thus far,
 12:59:04 5 including this manual. I will ask the court for an
 12:59:10 6 instruction to that effect.

12:59:11 7 Let me move on.

12:59:13 8 Specifically, in the materials that you
 12:59:22 9 prepared, do you instruct someone on how far the rose
 12:59:32 10 should be placed away from the easel in order to cast
 12:59:39 11 the proper shadow?

12:59:44 12 A. I don't instruct anyone, Mr. Teller -
 12:59:46 13 Mr. Tratos, because I'm not selling this product.
 12:59:50 14 I'm not selling the prop. And the manual is not
 12:59:54 15 even ready, and the CD is not even ready.

12:59:57 16 Because before the first person could
 13:00:00 17 ever order this trick, I got this lawsuit filed by
 13:00:06 18 Mr. Teller. And I prefer to wait until the court
 13:00:11 19 decides if I'm able or allowed to sell my invention.
 13:00:16 20 So at this time, I'm not selling. I'm not showing.

13:00:19 21 I'm not instructing anyone. And I'm not revealing
 13:00:22 22 my secret to anyone, Mr. Tratos.

13:00:25 23 Q. All right. Calling your attention to the
 13:00:28 24 Exhibit 3 before you, in the box on the upper right-hand
 13:00:35 25 corner of that exhibit, does the Dutch language say:

EXHIBIT 34b

181

5:06:44 1 if you could cover and not produce the portion of the
5:06:49 2 manual that talks about your mechanism?

5:06:54 3 A. I don't know, sir, if I - if I'm able to
5:06:57 4 produce a manual - a manual as such because I deleted
5:07:04 5 so many files in my laptop, as I explained you in the
5:07:08 6 last hearing. And I don't know if I still have this
5:07:10 7 manual on this computer. The manual I was working
5:07:13 8 on was actually still a very rough

5:07:16 9 How you say?

5:07:17 10 (Comment in Dutch by the witness.)

5:07:18 11 THE INTERPRETER: "Draft."

5:07:19 12 THE WITNESS: -- draft, a very rough draft
5:07:21 13 and needed to be finished. There was a lot of work
5:07:28 14 to do on this manual. But I don't know if I still
5:07:31 15 have it.

5:07:32 16 Q. BY MR. TRATOG: Okay. Let -- let's direct
5:07:34 17 your attention now to a new line of questions. I want
5:07:38 18 to direct your attention to when you discovered that
5:07:44 19 the videos were no longer on your computer.

5:07:49 20 When did that occur, when you learned that
5:07:51 21 the videos were no longer on your computer?

5:07:56 22 A. I think it was in the moment when I was asked
5:07:59 23 to produce them again.

5:08:02 24 Q. That is when we

5:08:05 25 A. In discovery.

EXHIBIT 35a

Penn & Teller: Fool Us

From Wikipedia, the free encyclopedia

Penn & Teller: Fool Us was a British entertainment comedy television programme. Hosted by Jonathan Ross, *Fool Us* is a magic competition show, which challenges magicians to perform in front of American magician/comedian duo Penn & Teller. If they can fool Penn and Teller, they win a five-star trip to Las Vegas to perform as the opening act in Penn & Teller's world famous show at the Rio Hotel & Casino. It was announced on June 28 2012 that ITV has cancelled the show.^[2]

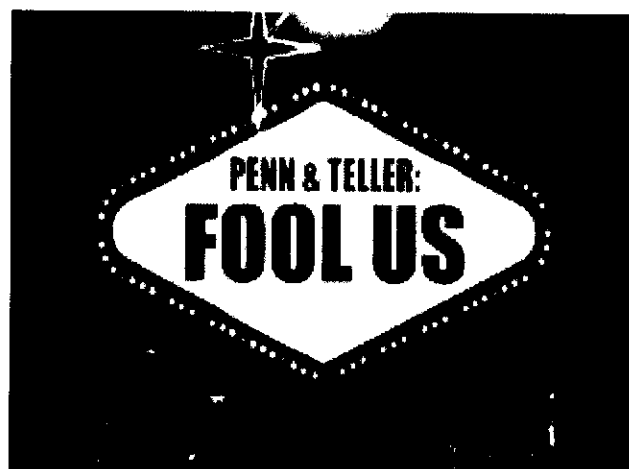
Contents [hide]

- 1 Production
- 2 Episode List
- 3 International Broadcast
- 4 International Versions
- 5 References
- 6 External links

Production [edit]

The pilot of *Fool Us* was first commissioned by John Kaye Cooper, the controller of entertainment for ITV.^[4] The pilot aired on 7

Penn & Teller: Fool Us



Title Card

Also known as	Fool Us
Genre	Entertainment comedy
Format	Magic competition with live audience
Created by	Penn Jillette Teller Peter Adam Golden Andrew Golder
Presented by	Jonathan Ross
Starring	Penn Jillette Teller
Judges	Penn Jillette Teller

EXHIBIT 35b

14

1 another magician. This kind of things. You heard of
2 it, no?

3 A I don't -- I know that there is a certain
4 confusion among magicians between legal correctness
5 and artistic correctness, where magicians often
6 forget that the reason that we rarely explain magic
7 tricks to the audience is because it decreases their
8 enjoyment. It's not -- it's nothing beyond that.
9 It's an artistic role.

10 Q Yeah. But you never swore -- swore on --
11 you never --

12 A Absolutely not.

13 MR. TRATOS: Objection. Asked and
14 answered twice now.

15 MR. DOGGE: Sorry.

16 MR. TRATOS: Objection. You've asked and
17 the question has been answered twice now.

18 MR. DOGGE: Oh, I didn't hear the answer.
19 Sorry for that.

20 THE WITNESS: The answer is no, sir.

21 MR. DOGGE: Okay.

22 BY MR. DOGGE:

23 Q Okay. Mr. Teller, let's speak about the
24 show of pen and Teller Fool Us.

25 A Yes.

EXHIBIT 35c

13

1 Q I have seen this show on the internet.

2 Can you please describe this show for me.

3 Mr. Teller.

4 A Yes. It was a competition show in which
5 we challenged magicians to come on and fool Penn &
6 Teller.

7 Q Okay. So I understood that it was a
8 challenge for them to do a trick which you couldn't
9 explain how it was done; is this right? Do I
10 understand this right?

11 A A trick in which we could not understand
12 how it was done, correct.

13 Q Yeah. So I am sorry, I have to do my
14 paperwork now.

15 A Sure. Sure.

16 Q In other words -- in other words, it was
17 actually a double challenge. It was a challenge
18 from Penn & Teller to the magicians, like, try to
19 fool us, if you can. And the other challenge was
20 from the magicians or the performers to Penn &
21 Teller, like, we will do a trick on you and you
22 can't figure it out, how it goes. Is this was a
23 challenge for you then?

24 A Yes.

25 Q Is this right --

EXHIBIT 36

Referencing Penn and Teller burning the flag on the West Wing. The Supreme Court also says that burning the flag has a tendency to incite violence, thus, justifying the use of violence against those who burn the flag. Burning the flag is an act of violence. They have no idea the pain they inflict on America's veterans when they burn the flag. If I ever meet Penn and Teller I am going to obscenely smash their heads in. Some say violence is obscene, actions that provoke obscenity are obscene. This is the second obscene act I have witnessed

Catholic League: Penn and Teller Must Go

online (www.catholic.org)

To send Penn & Teller's message and let them know that they have crossed the line for



NEW YORK, NY (Catholic League) - Catholic League president Bill Donohue announced on Tuesday he would be sending out letters to members of the Vatican.

Teller's act of burning the American flag is a direct response to the American people's speech by Penn & Teller against Catholics.

Bill Penn & Teller and Showtime, owned by CBS, are flagging the Catholic Church for its role in the assassination of Dr. Martin Luther King Jr.

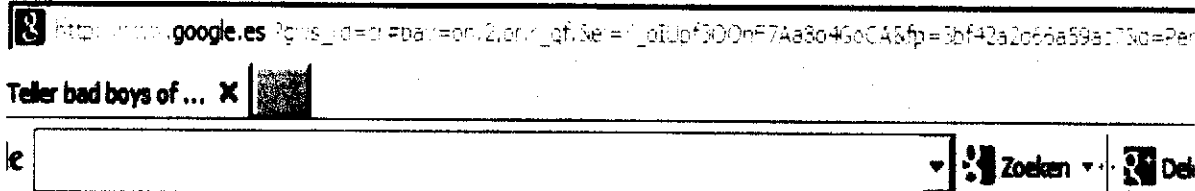


THIS IS THE FINAL STRAW:SHOWTIME SHOULD NOT RENEW PENN & TELLER
On August 27, Showtime, owned by CBS, will feature a vicious assault on Catholics. In the season finale of Penn & Teller's show, they "take on the secretive inner world of The Vatican, the holy city of Catholicism and home of the Pope." How do we know it will defame Catholics? Because on the show's website, it says so: There is a Showtime Advisory for "Graphic Language, Adult Content."
If Showtime posted that warning about a show on Islam, Muslims would brace for the worst (and so might CBS). But Muslims need not worry: it's not all religions that Showtime likes to trash -- just Catholicism. Indeed, Showtime is currently working on a show, "Revelation," that promises to be at least somewhat respectful of Protestantism.
What will the upcoming show be like? On his Twitter page, Penn Jillette brags how he rips a Catholic encyclical on sexuality: "I'm dressed as Darth with a condom c--k light sabat." He even boasts that the show is "hardcore," admitting that "we attack the Vatican." From trashing The Last Supper to mocking Catholic prayers, anti-Catholic bigots who feed on this kind of stuff will have a stomach full.
This is not the first time Showtime has featured a vile Penn & Teller show. In 2005, Mother Teresa was called "Mother F---ing Teresa," and her order of nuns were branded "f---ing c--ts." The year after, Jillette said on his CBS radio show that Mother Teresa "got her (sexual) kicks watching people suffer and die."
Just recently, Jillette took after me again in his usual foul way. That doesn't matter, but what matters greatly is his pathological obsession with bashing Catholics and their religion. There is no legitimate place for this kind of frontal assault on any demographic group.
CBS/Showtime needs to send Penn & Teller a message and let them know that they have crossed the line for the last time. This should be their final season. We know that they've been told before to drop the Catholic bashing, and yet they persist. By doing so, Penn & Teller have effectively stuck their middle finger right in the eye of CBS.

BY BARRY DUKE - AUGUST 15, 2008
SUBJECT: CATHOLIC CHURCH - FREEDOM OF EXPRESSION - HUMOUR - UNUS POPE - THE PRESTHINKER
THE Catholic League has just spent big bucks on an ad in *Versity* magazine lambasting an upcoming episode of Penn & Teller on *Scatterbrains* - and has told CBS
To send Penn & Teller's message and let them know that they have crossed the line for the last time

Stormed Donahue, "In the 12 years that I have been president of the Catholic League, I have never witnessed a more vicious attack on Catholicism than what appeared this week on the Showtime program, 'Penn and Teller.' The episode, 'Holier Than Thou,' was a frontal assault on Mother Teresa and her order of nuns, Missionaries of Charity (as well as Gandhi and the Dalai Lama).
"Like most Americans, I like parodies and have no problem, per se, with irreverent humor. But when humor becomes insult, that is a different story. And that is what happens here: comedy quickly morphs to vitriol. Indeed, as the show progresses, the level of anger becomes palpable and the degree of distortion becomes mindboggling. This is no comedy—it is Nazi propaganda right out of the Leni Riefenstahl school of filmmaking.
"The Mother Teresa that the world has come to love and revere is made to look like a cruel, exploitative, self-serving nun who ripped off the poor. We are told that Mother Teresa intentionally let the poor suffer, providing neither beds nor bathroom facilities. 'She had the f---ing coin and pissed it away on nunneries,' says Penn. As for the nuns who worked with Mother Teresa, they are referred to as 'f---ing c---s.'
"It does not bother me when they call me 'Catholic Boy' on the show (though the term 'Jew Boy' would never cross their lips), nor does it concern me when they talk about 'f---ers like Bill Donohue (who) only see good in her.' But when they mock the Catholic Church's teaching on the meaning of suffering, and when they say of the poor that 'They had to suffer so that Mother F---ing Teresa could be enlightened,' then they are behaving like monsters.

EXHIBIT 37

 http://www.google.es/?q=penn&rlz=c1#bar=on:2,or:_qf:Ser=1_oIUpf300nF7Aa3o4GcCA&fp=3bf42a2c66a59a173d=Per
Teller bad boys of ... X
le Zoeken Del

2013 Frequently Asked Questions About the Bad Boys of Magic ...

Penn & Teller: Bullshit! TV Show Showtime | Penn ... - TVRage Com
www.tvrage.com/Penn_And_Teller_Bullshit ▾ Vertaal deze pagina
TV Show Online on Showtime. episode synopses. cast bios. photo galleries. video ...
Penn & Teller. the 'bad boys of magic' known for exposing exactly how ...

Penn & Teller
www.pennandteller.com/ ▾ Vertaal deze pagina
Penn & Teller are eccentric magicians with a psychotic twist. Their stage show, which has played Broadway and toured the country to sold-out houses, now has ...

Penn & Teller – The Bad Boys of Magic Popular Culture Families.com
www.families.com/.../penn-amp-teller-the-bad-boys-... ▾ Vertaal deze pagina
3 jun. 2006 - Penn & Teller – The Bad Boys of Magic ... the audience know their tricks are just illusions and sometimes even show them how they are done.

Tickets. Penn & Teller at Rio Las Vegas, \$45 -- 'Bad Boys of Magic ...
www.travelzoo.com > Entertainment Deals > Las Vegas ▾ Vertaal deze pagina
14 dec. 2011 - Penn & Teller's hilarious magic show has been called "the most creative. ... Known as the "Bad Boys of Magic" for revealing the secrets to their ...

Penn & Teller's Double Bullet Catch
www.donath.org/Rants/PennTellerBulletTrick/ ▾ Vertaal deze pagina
I just got back from Penn & Teller's touring magic show. These "bad boys of magic" put on a pretty entertaining show, ranging from cheesy card tricks to moving ...

Penn and Teller | VEGAS.com
www.vegas.com/shows/magic/penn-and-teller-las-ve ▾ Vertaal deze pagina
Penn & Teller. Penn & Teller's edgy show is unlike any other magic production in Las Vegas with magic tricks, laughs and gags. Show Type: Comedy; Location: ...



EXHIBIT 38

REDACTED

From: teller@tellermagic.com
Subject: Re: Shadows
Date: Thu, 22 Mar 2012 15:58:46 -0700
To: frank@tellermagic.com

Dear Gerard,

I'm so glad we spoke today. You seem like a very good man, talented, charming, and very clever indeed.

I appreciate your passion for my signature trick, "Shadows."

And I thank you for understanding why -- since I created and have been identified with this effect since 1975 -- I do not want it to become part of the common repertoire of magicians at this time. Very possibly at some point in my career, I'll license it to someone or release it as a product, but not now. I am still using it to earn my living.

Thank you for withdrawing your advertisement from the magic magazine. It's a gracious and wise choice that will avoid conflict and expense for both of us.

Give me just a few days to talk over with my team what you and I discussed today. I'm optimistic that we can work out a happy ending for all of us.

Cordially,

TELLER

EXHIBIT 39a

EI 02/04/2012, a las 14:17, Teller escribió:

Hector,

I greatly appreciate your note, and your honesty in approaching me about this.

I do understand your situation and you'll need to let me think a bit.

I did not know someone had started manufacturing the effect without my permission more than five years ago. I was aware only of someone in Spain, Gerard Bakardy, who has recently tried to advertise a version of the trick. I've been in consultation with my lawyer for two weeks to deal with that case.

As you might imagine, it's no fun. I conceived the effect and first executed it in 1975. It is my heart, my soul, my signature piece. When I think of magicians around the world doing this while I'm still active in my career, I am a bit heartbroken.

Please be patient for a few days and allow me to sort this out.

And for the moment, to assist me in my current thinking, would you mind pulling the video off of YouTube? It could be used by the current manufacturer to "prove" that this is now a standard, manufactured trick.

Thank you,

TELLER

On Apr 2, 2012, at 10:08 AM, Hector is Magic! wrote:

Hello,

I bought it second hand from an amateur magician, he bought "just because". You what I mean... And he bought it from someone else. I do not know who that first one is. I could try to contact that amateur magician again, but it's been 5 years since that... I am going to try.

I would love yo hear from you, just please let me know your thoughts. I hope you understand the situation.

All the best.

Hector.

EI 02/04/2012, a las 13:57, Teller escribió:

Incidentally, thanks so much for contacting me. I'll write more later, but I do appreciate the note.

On Apr 2, 2012, at 9:03 AM, Hector is Magic! wrote:

EXHIBIT 39b

On Apr 2, 2012, at 10:31 AM, Hector is Magicl wrote:

Teller,

Yes, sure I will pull it off, I did upload it just to show it to you, to prove that is nothing trying to copy your act.

I haven't heard before about that Gerard. I am sorry. If you need me to upload a video from 5 years ago to show it to you I could do that. I haven't heard about anyone selling the illusion in Spain. I am out of the country most of the time tho.

I absolutely understand your feelings about your wonderful creation since I am also in love with my routine.

I will do what ever you ask me to do.

I really respect your act. I could promise not to show videos or perform it on TV nor magic festivals. Just keep performing it on my show on cruise ships, theme parks and those kind of venues.

Of course I let you think about the situation.

Feel free to contact me whenever you feel it is the right moment.

Thank you for you understanding and your time.

All the best.

Hector.

El 02/04/2012, a las 14:17, Teller escribió:

Hector,

I greatly appreciate your note, and your honesty in approaching me about this.

I do understand your situation and you'll need to let me think a bit.

I did not know someone had started manufacturing the effect without my permission more than five years ago. I was aware only of someone in Spain, Gerard Bakardy, who has recently tried to advertise a version of the trick. I've been in consultation with my lawyer for two weeks to deal with that case.

As you might imagine, it's no fun. I conceived the effect and first executed it in 1975. It is my heart, my soul, my signature piece. When I think of magicians around the world doing this while I'm still active in my career, I am a bit heartbroken.

Please be patient for a few days and allow me to sort this out.

EXHIBIT 39c

----- Original Message -----

From: [REDACTED]
To: info@hectorsmagic.com
Sent: Sun, 15 Apr 2012 08:37:30 -0700
Subject: Re: the rose

Hector,

Again, thanks for your patience. I do appreciate it so much and am striving to figure out a way to make a happy ending for both of us.

Meanwhile, though, I'm still pressing my legal case against the pirate magic-manufacturer, and would like to ask your help. It appears somebody posted your drawing-version of the routine without your knowledge. Would you be willing to ask YouTube to take that down, at least till I settle my copyright case?

It's at:

<http://www.youtube.com/watch?v=VrHxHvcl3AM&feature=related>

Incidentally, erasing-the-drawing is one version of the routine that our copyright-infringing magic-manufacturer proposed putting out and collecting profits on!

Thanks,

TELLER

EXHIBIT 39d

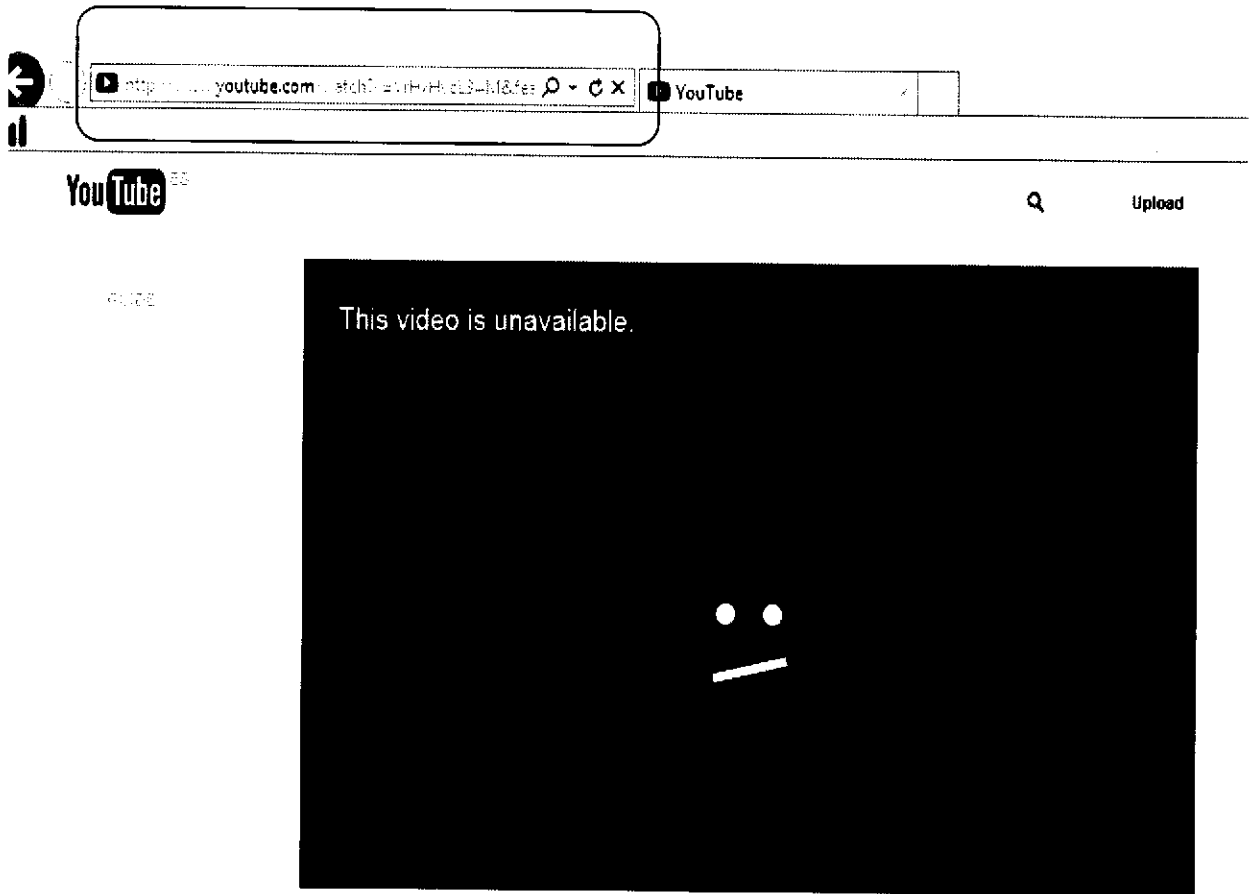


EXHIBIT 39e

Begin forwarded message:

From: <info@hectormagic.com>
Subject: Re: the rose
Date: April 15, 2012 3:06:25 PM PDT
To: [REDACTED]
Reply-To: <info@hectormagic.com>

Hello,

I am sorry for bothering you again.

There is a thread on the magic cafe forum about your lawsuit. I do not know if you knew about it.

And some people were attacking me, so I had to clear a bit my situation.

I haven't given any information about the situation, but I thought I had to say something. I hope it is OK for you, please, let me know if you want me to remove the comment or say something else.

<http://www.themagiccafe.com/forums/viewtopic.php?topic=462255&forum=7&9>

I have already asked the user to remove the video. I will let you know as soon as I get news about it.

All the best.

Hector.

| --- Original Message ---

EXHIBIT 39f

El 15/04/2012, a las 20:04, Teller escribió:

Thanks, again, Hector. I think your answer is good, but would you consider adding:

"When I recently realized what had happened, I contacted Mr. Teller myself. I told him (and I live by my word) that, as much as I love the routine, I will do whatever Mr. Teller deems right in this situation. If he asks me to limit its use or even remove it from my repertoire, I will do so. I will let you know the outcome of our discussions."

I think this makes it clear that you are approaching the question in an entirely honest, ethical way, exactly the way artistes should treat each other.

El 16/04/2012, a las 14:00, Teller [REDACTED] escribió:

Thank you, Hector. I really appreciate the way you've handled this. When you come to Vegas next, you and I must spend some time getting to know each other.

On Apr 16, 2012, at 7:00 AM, Hector is Magic! wrote:

Hello,

EXHIBIT 39g

El 04/05/2012, a las 02:03, Teller escribió:

Dear Hector,

Just an update.

On the sad side: I'm still unresolved with Gerard Dogge. That law suit against him has been filed and is proceeding.

35

TELLER000458

But on the happy side (and please don't share this until we've completed it) I am confident you and I can work out an agreement that will enable you to continue to use the piece in a way that will satisfy and protect both of us. You yourself suggested some good ideas in your earlier email, and I will try and incorporate those into a proposal within a few weeks, so that we can sign, shake hands, and sleep easily.

Life can be so easy and good when people treat each other in a gentle, friendly, honest way.

Best wishes and thanks for being a good man.

TELLER

EXHIBIT 39h

From: Hector is Magic! <info@hectormagic.com>

Subject: Re: the rose

Date: May 4, 2012 5:21:21 PM PDT

To: Teller [REDACTED]

Hello Teller.

Thank you for the update. I feel so happy to read that you give me this privilege. thank you very much for the consideration.

I won't say anything. do not worry about that. not even when we agree on something. This is something between you and me. Our life consists on keeping secrets. is not going to be a problem.

Please. let me know your thoughts about the agreement when you have it ready.

Thank you very much once again. it is a honor for me to read such a great news.

All the best from Spain (I just finished my contract in Brazil... finally! hehe)

Hector.

EXHIBIT 39i

El 23/07/2012, a las 01:38, Teller [REDACTED] escribió:

Hector,

I understand now. Please print out two copies and on both, fill in the column labeled "Licensee."

By: (sign your name)

Name: (print your name and write the date)

Title: Performer

Send both copies to me. I'll sign both and return one to you. And the hundred dollars makes the transaction official (and helps to pay the cost of my attorney drawing up the agreement).

Thanks again,

TELLER

P.S. Which day shall I set your friends up for? Any day is fine with me. To avoid mixup, please write the date as well as the day of the week.

EXHIBIT 40a

1 delation litigation, and is accordingly outside the scope of the Federal Rules.
2 Notwithstanding the objection, Teller denies the request as many exhibits in this matter have
3 been filed by the defendant.

4 **REQUEST NO. 38:**

5 Admit that you're aware that there are more magicians performing the act 'Shadows'.

6 **RESPONSE:**

7 Objection. The request is vague and ambiguous with respect to the phrase 'more
8 magicians.' Notwithstanding this objection, Teller denies the request as he knows of no
9 professional magicians performing the Shadows illusion. Teller admits that there have been
10 Teller Tributes which attempt to reproduce some aspect of Shadows.

11 **REQUEST NO. 39:**

12 Admit that Gerard Bakardy is the only person you've seen on YouTube controlling a
13 flower/rose in a with water filled, removable transparent bottle/vase, with the stem of the
14 flower completely visible.

15 **RESPONSE:**

16 Objection. The request is vague and ambiguous with respect to the phrase the 'only
17 person you've seen on YouTube controlling.' This request for admission is not reasonably
18 calculated to lead to this discovery of admissible evidence, as minor variations in method or
19 presentation have no bearing upon copyright infringement liability. Notwithstanding this
20 objection, Teller admits the request.

21 **REQUEST NO. 40:**

22 Admit that Gerard Bakardy never revealed his method to you.

23 **RESPONSE:**

24 Objection. This request is vague and ambiguous with respect to the terms 'revealed'
25 and 'method.' Notwithstanding this objection, admit.

26 **REQUEST NO. 41:**

27 Admit that you don't know anyone who [sic] Gerard Bakardy revealed his method to.

28 / / /

EXHIBIT 40b

11 **REQUEST NO. 3:**

12 Produce complete and accurate copies of any and all documents, correspondence,
13 email, phone conversations between plaintiff and Petros.

14 **RESPONSE:**

15 Objection. This request is overbroad, as it is not limited to time or in scope, and
16 encompasses documents well outside the realm of reasonable discovery. This request
17 additionally demands documents that are proprietary or confidential. Notwithstanding said
18 objections, upon entry of a protective order, Teller will produce any and all responsive, non-
19 privileged documents. As discovery is ongoing, Teller reserves the right to supplement this
20 response.

21 **REQUEST NO. 4:**

22 Produce complete and accurate copies of any and all documents, correspondence,
23 email, phone conversations between plaintiff and ALS magic.

24 **RESPONSE**

25 Objection. This request is overbroad, as it is not limited to time or in scope, and
26 encompasses documents well outside the realm of reasonable discovery. This request
27 additionally demands documents that are proprietary or confidential. Notwithstanding said
28 objections, upon entry of a protective order, Teller will produce any and all responsive, non-

1 privileged documents. As discovery is ongoing, Teller reserves the right to supplement this
2 response

3 **REQUEST NO. 5:**

EXHIBIT 41

Re: Quick question



Groeppeer berichten op discussie om berichten te zien die bij dit bericht horen.



Teller Penn & Teller 24/04/2012

Aan Gerard Bakardoy ▾

Dear Gerard,

There is no injury to you and no actionable bases for objecting to documents filed with the United States Federal Court.

The screen shot was not made by you. It cannot be reasonably inferred that the sites you allude to are sites associated with you.

With all due respect, Gerard, you seem to be groping desperately for some shred of defense to your infringement and threat of future infringement.

If you have realistic, good-faith proposals to offer for settling this matter out of court, please make them.

Otherwise, please stop wasting my time.

Respectfully,

TELLER

EXHIBIT 42a

REDACTED BY DEFENDANT

Case 2:12-cv-00591-JCM -GWF Document 1-3 -- Filed 04/11/12 Page 2 of 4

http://www.youtube.com/watch?v=BYm67N1Q85Y

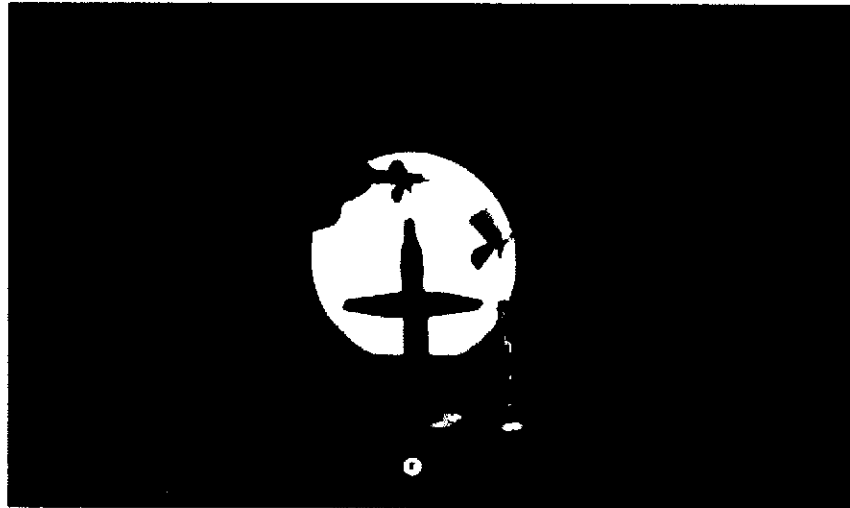
Live now: Cuts performing at the SXSW festival in Austin



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The Rose & her Shadow in Close up I - Gerard Bakardy

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14 views

The magician cuts one by one the leaves from a rose in her shadow! But it happens in reality on the real rose which is standing 2 meters away from her shadow. Everything is separate and loose from each other so how is this possible? This is the most magical, romantic and beautiful illusion I know. I've seen the great Penn & Teller performing a similar trick and now I'm very happy to share my version in a different and more impossible way with you. It is so magical to manipulate a shadow! The audience is so surprised especially when they see that the stem and vase filled with water are removed from the table! In combination with the floating table effect, these are for sure the eye catchers in my show. It could be a wonderful and refreshing addition to all your coin or card tricks on show. Thanks for watching my movie.

Category

Entertainment

Tags

The Rose, the shadow, Magic, trick, Austin, Florida, table, floating, illusion, magic, Penn & Teller, Magic, illusion, card, tricks, Hermann, coin, magic, Magic, Trick, David, Blaine, Magician, card, floating, table, Magic, Trick

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All Comments (0)

000 21

EXHIBIT 42b

Case 2:12-cv-00591-JCM -GWF Document 5-3 --Filed 04/25/12-- Page 2 of 4

http://www.youtube.com/watch?v=6Ym7NR06SY

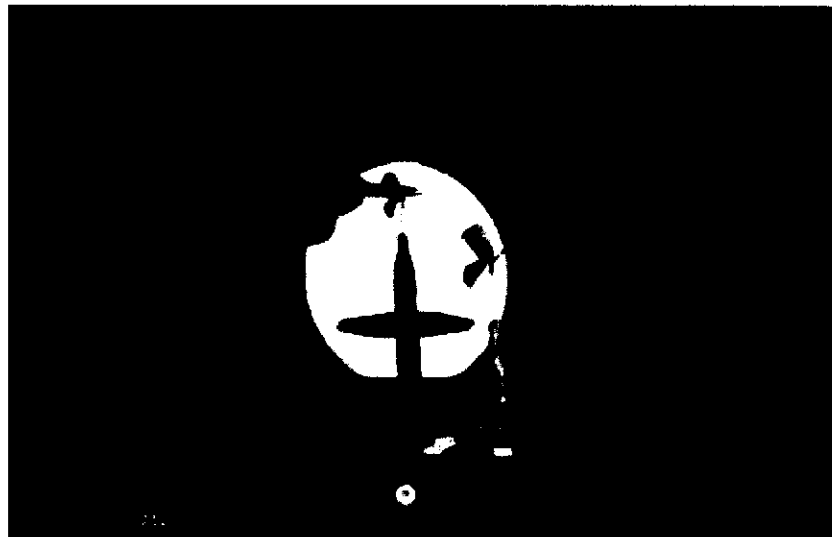
Live near: Cults performing at the SXSW festival in Austin.



Q Browse More

The Rose & her Shadow in Close up ! - Gerard Bakardy

Gerard + Subscribes 6 videos



Like Add to Share

14 views

Created: 04/10/2012

The magician cuts one by one the leaves from a rose in her shadow ! But it happens in reality on the real rose which is standing 2 meters away from her shadow. Everything is separate and loose from each other, so how is this possible? This is the most Magical, romantic and beautiful illusion I know. I've seen the great Penn & Teller performing a similar trick and now I'm very happy to share my version in a different and more impossible way with you. It is so magical to manipulate a shadow! The audience is so surprised especially when they see that the stem and vase filled with water are removed from the table ! In combination with the floating table effect, these are for sure the 'eye catchers' in my show. It could be a wonderful and refreshing addition to all your con or card tricks on show!

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Entertainment

Tags

the rose, her shadow, Magic, trick, illusion, Penn & Teller, Penn Teller, Magic, Penn Teller, Magic, (Acting), Card, Tricks, Penn & Teller, Penn Teller, Magic, Trick, Card, Card, Bank, Magic, Card, Action, Tutorial, Magic, Trick

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All Comments (0)

see all

EXHIBIT 42c

REDACTED BY DEFENDANT

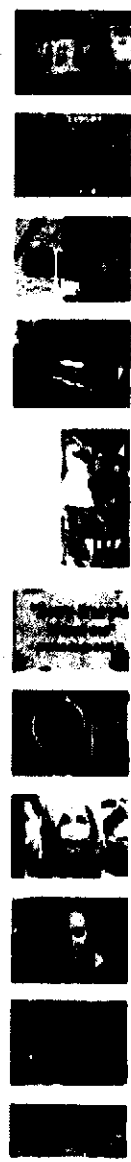
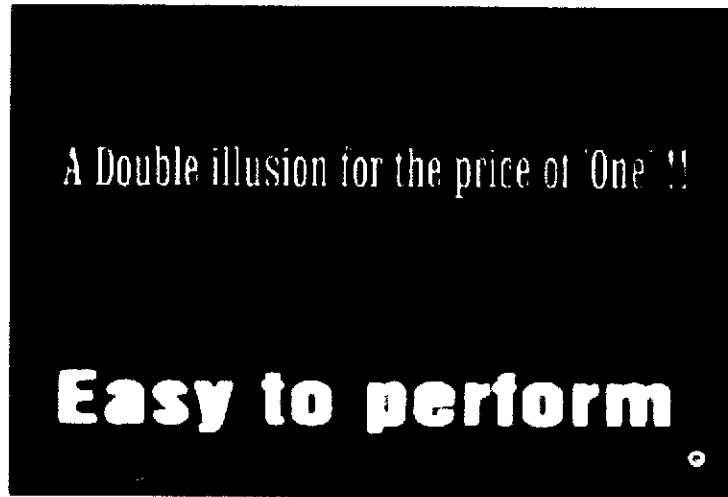
Case 2:12-cv-00591-JCM -GWF Document 1-3 Filed 04/11/12 Page 4 of 4



Q Browse Music Upload

The Rose & her Shadow in Close up ! - Gerard Bakardy

3:47:56 0 Subscribers 1 video



Like Dislike 14 views

The magician cuts one by one the leaves from a rose - as her shadow (but it happens in reality on the real rose which is standing 2 meters away from her shadow). Everything is separate and knows from each other, so how is this possible? This is the most magical, romantic and beautiful illusion I have ever seen: the great Penn & Teller performing a similar trick and how they were happy to share my version in a different and more responsible way with you. It is so magical to manipulate a shadow! The audience is so surprised especially when they see that the stem and vase filled with water are removed from the table. In combination with the floating table effect: these will be sure the eye witnesses in my show. It could be a wonderful and refreshing addition to all your card and table magic.

Thanks for watching my video.

Category: Magicians

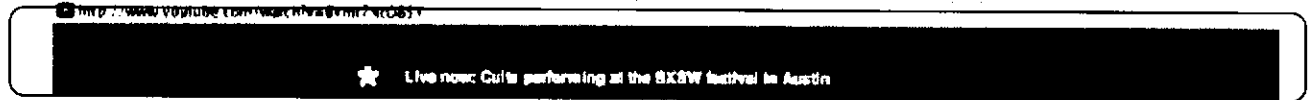
Tags: The Rose and her Shadow, Magic, Penn Teller, Floating table, Card tricks, Rose, Magic, Penn Teller, Floating table, Card tricks, Rose, Magic, Penn Teller

License: Standard YouTube License

43 Comments 0

EXHIBIT 42d

Case 2:12-cv-00591-JCM -GWF Document 5-3 Filed 04/25/12 Page 4 of 4



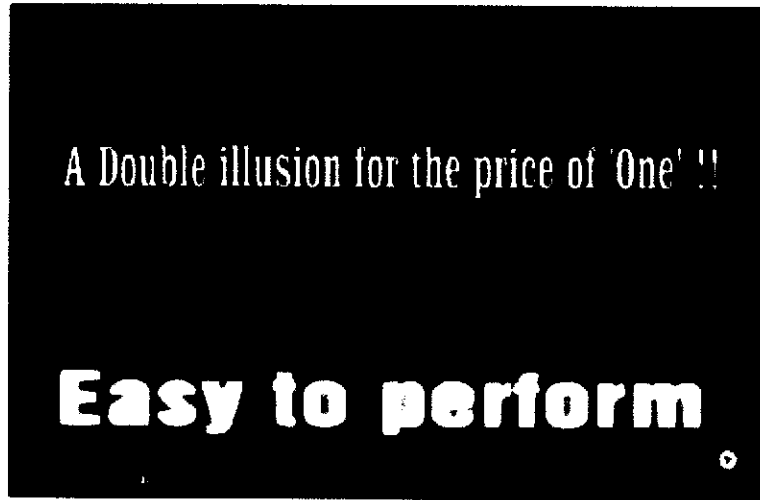
★ Live now! Cui's performing at the SXSW festival in Austin



Q Browse Movies Upload

The Rose & her Shadow in Close up ! - Gerard Bakardy

Gerard - Subscribe Videos



Like Add to Share

14 views

Can anybody see shadow in the video?

The magician cuts one by one the leaves from a rose in her shadow ! But it happens in reality on the real rose which is standing 2 meters away from her shadow. Everything is separate and loose from each other, so how is this possible? This is the most Magical, romantic and beautiful illusion I know. I've seen the great Penn & Teller performing a similar trick and now I'm very happy to share my version in a different and more impossible way with you. It is so magical to manipulate a shadow! The audience is so surprised especially when they see that the stem and vase filled with water are removed from the table ! in combination with the floating table effect, those are for sure The eye catchers in my show. It could be a wonderful and refreshing addition to all your coin or card tricks on show !

Thanks for watching my movie.

Category: Entertainment
Tags:

Trick, Illusion, Magic, Close up, Close up, Floating table, Gerard Bakardy, Penn & Teller, Magic, Amazing, Card Tricks, Disappeared, Vanishing, Magic Trick, Close up, Close up, Magic, Close up, Amazing, Card Tricks, Magic Trick

License: Standard YouTube License

Show more

All Comments (0)

See all

EXHIBIT 43a

78

1 exhibit without the bookmark?

2 MR. TRATOS: Objection --

3 BY MR. DOGGE.

4 Q Is it an accident?

5 MR. TRATOS: Objection. Asked and
6 answered as to the question of it being an
7 accident several times. It's a compound
8 question. So the objection is compounded
9 question. Second, he has asked and answered
10 that it was an accident. And, third, if you
11 want to ask a question about the Greenburg
12 Taung Law Firm, please do so. But as it is
13 now, it is unclear what you're asking.

14 MR. DOGGE: Okay. I will make the
15 question a little bit more clearer.

16 BY MR. DOGGE:

17 Q Did not one of the twelve lawyers at
18 Taung who are appearing in this case, did not one
19 of them tell you, Mr. Teller that it could be better
20 to file this exhibits without the bookmark bar?

21 A It was an inadvertent filing. Evidently,
22 it got by my law firm as well. And I am not happy
23 about that. So it was -- it was --

24 Q So it was an accident --

25 A Even law firms make mistakes from time to

EXHIBIT 43b

79

1 time, which is why we were so quick to correct it.

2 Q Yes, I noticed that. I noticed that even
3 twelve lawyers who accidentally file such a document.

4 Okay.

5 A Yes.

6 Q Okay. Mr. Teller --

7 A You actually have any questions in the
8 copyright case, Mr. Dogge?

9 Q Yes. Yes. Yes. I promise, they will
10 come.

11 A Good.

12 Q So as we discussed, if this was all
13 accidentally, I never hear one apologize?

14 A May I, Mr. Dogge?

15 Q Why not.

16 A I sincerely apologize for that oversight.

17 That's -- we corrected it as soon as you called it

18 to our attention. I am very sorry for it. I -- I

19 know that you are -- you objected to it strongly.

20 And I'm sorry that that happened. It is, however,

21 not relevant to this case.

22 Q For me, it is, Mr. Teller, because it's
23 ruined my life. I don't do any statements further.

24 I go to the next question --

25 MR. TRATOS: Mr. Dogge, we are going to

EXHIBIT 44

4. Gunther Guinee
Address Unknown

Mr. Guinee is expected to testify regarding the facts and circumstances concerning the claims

alleged in this action.

5. Jim Steinmeyer
c/o Greenberg Traurig
3773 Howard Hughes Pkwy., Suite 400N
Las Vegas, Nevada 89128

Mr. Steinmeyer is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

6. Glenn Alai
Rio All-Suite Hotel & Casino
Las Vegas, Nevada

Mr. Alai is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

7. Penn Jillette
Rio All-Suite Hotel & Casino
Las Vegas, Nevada

Mr. Jillette is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

8. Hector (is Magic!)
Seville - Spain

Hector is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

B. Rule 26(a)(1)(B) – Documents

Based on the information reasonably available, the following documents may be used by Plaintiff to support his claims or defenses. The documents listed in bold below are attached hereto:

DESCRIPTION	BATE-NUMBER
Certificate of Copyright Registration, Registration Number Pau 469-609, effective January 6, 1983 for Shadows	TELLER000001-TELLER000005
Emails between Teller and Gerard Dogge	TELLER000006-TELLER000026
Screenshots of Gerard Bakardy performing "The Rose & Her Shadow"	TELLER000027-TELLER000029
Email between <u>jack@splurp.com</u> and Gerard Bakardy regarding Jack's request to purchase "Rose and Her Shadow"	TELLER000030

3773 Howard Hughes Avenue, Suite 400N
 Las Vegas, Nevada 89169
 Telephone (702) 790-3773
 Facsimile (702) 790-3772

EXHIBIT 45a

Op 4-apr.-2012, om 08:52 heeft Teller het volgende geschreven:

Kind Gunther,

I'd be grateful if you would try communicating with Gerard. Clearly he respects you. He needs to know that I'm not the lone voice saying what he's doing is morally wrong.

I get the sense that he's very new in our world. He needs to be aware that Rafael recently won the case against Hans Klock for an infringement of something much less original and distinctive than my "Shadows." Manufacturing the item multiplies the damage many times.

I hate lawsuits. No one benefits except the attorneys. But if Gerard compels me to go the legal route, I would enforce based on Copyright (I registered the effect in 1983), Unfair Competition, Trademark Infringement (it has been my signature piece since 1975), and Droit Moral in the US

TELLER000059

EXHIBIT 45b

and EU. If I prevail, he'll be stuck with all my legal costs. It would be dreadful for him and a waste of both our time.

The problem in coming to an agreement is that he imagines this trick will bring him \$4-5,000,000. That's insane, especially when one considers the difficulty of advertising and selling an item that is under legal dispute.

Now, all this said, I would rather make a friend of Gerard and have another clever person in my employ. If we could agree on a realistic fee, I would consider hiring him as consultant to try and improve my trick, provided of course, he takes it off the market and sells to nobody but me. I think his notion of seeing the stem in water might have value to me, if he could achieve the kind of slow, mysterious movement my method involves; his is more abrupt and mechanical looking.

But he is, I think, expecting a hundred thousand dollars for such a consultation, and that's completely irrational and out of line with anything I've ever paid for such thing.

There, I think that about sums it up.

You may find that it would take less time and be more productive just to talk with him on the phone (+34.606356504). Sometimes when people talk on the phone in a language that they are comfortable in, it's easier to resolve problems than it is in writing (which can be rigid and forbidding).

Thanks so much for your kindness. Know that regardless of the outcome, you now have a new friend in the U.S. When you come to Vegas you will be most cordially received as my guest, and if there are any Penn & Teller materials (e.g. my David Abbott book) that interest you, they will be on their way to you with my gratitude.

TELLER

P.S. Many famous magicians around the world agree with us on this issue, and if you know of someone whose opinions might impress and influence Gerard (Lance Burton, Copperfield, Tamariz, Johnny Thompson, Derren Brown, etc.) let me know and I'll ask if they'd be willing to call and talk with him. It would be so much better to settle all of this like gentlemen.

EXHIBIT 46a

August 6, 2013

Gerard Dogge
Hoevensebaan 2 - 2930 Kapellen
Belgium - Europe
Gerard.Bakardz@hotmail.com
Cell: 011.34.606.33.63.04

Lawyers Solutions Group,
900 South Fourth Street, Suite 100,
Las Vegas.

Att.: Mr. Humberto Rodriguez
 Mss. Yvette Rodriguez
Re.: Deposition on Teller - July 1st 2013,

Dear Sir, Madam,

I like to inform you that I received the transcript on July 25th, and the video send by UPS on date of August 2nd.

Reading the transcript I noticed that there were many errors, mistakes and that there were several parts missing.

I compared the transcript with the video, both coming from your office.

The transcript delivered counts 39,624 words. After completing the 'missing parts' and after correcting the errors, the 'corrected' transcript counts 43,223 words.

A difference of about 3,599 words. (+/- 20 pages)

The court reporter interrupted me only once, to avoid a misunderstanding in the word 'can' or 'can't', which I corrected with cannot. (p186:25)

It seems to me that there were a lot more misunderstandings or that the court reporter did not pay enough attention.

Needless to say, the impossibility to refer to a proper and complete transcript is harming me in my defense, whilst I need to refer to this transcript, to defend myself in Court.

Therefore, I request you to deliver to me urgently the correct and complete transcript of the deposition, within 48 hours after reception of this letter.

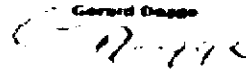
Gerard Dogge

Hoevensebaan 2 - 2930 Kapellen
Belgium - Europe

EXHIBIT 46b

August 12, 2013

Gerard Dogge
Hoevensebaan 2 - 2950 Kapellen
Belgium - Europe
Gerard-Bakardogge@hotmail.com
Cell: 011 34 606 35 63 04

Lawyers Solutions Group,
900 South Fourth Street, Suite 100,
Las Vegas,

Att.: Mr. Humberto Rodriguez
 Mss. Yvette Rodriguez
Re.: Deposition on Teller - July 1st 2013,

Dear Sir, Madam,

You advised me to download the 'corrected' transcript on your website which I did on August 9, 2013.

By comparing this transcript with the video, both coming from your office, again I noticed that there are many errors and many important fragments missing.

Needless to say, the impossibility to refer to a proper and complete transcript is harming me in my defense, whilst I need to refer to this transcript, to defend myself in Court.

Therefore, I again request you urgently to deliver the correct and complete transcript of the deposition, within 24 hours after reception of this letter.

In case I do not receive a proper transcript that reflects the reality of the deposition and in line with the video/audio, within 24 hours, you force me to protect my rights and to inform the Court that I'm not able to use the deposition transcript as legal evidence since it is incomplete and not correct.

Gerard Dogge

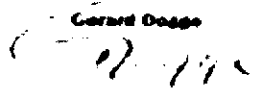

Hoevensebaan 2 - 2950 Kapellen
Belgium - Europe

EXHIBIT 47



633 Yecker Way Seattle, WA 98104 www.pfiserves.com
800 232-8854 206 521-9000 fax: 800 734-6859

STATUS REPORT

Return to Client:

**ERIC LIBBRECHT, BAILIFF
KIOSKPLAATS 24 B-2660 ANTWERPEN
BELGIUM,**

**Attention:
Account #: 102135**

Date: Aug 21 2012
Dispatcher: Rick H.
RickH@abolegal.com
800-331-3087
fax: 800-734-6859

Client Ref: A2081-12
Tracking #: 7487702



Case Name: GERARD DOGGE vs. RAYMOND TELLER
Court: COURT OF ANTWERP BELGIUM
Case Number: A2081-12
Documents: SEE ATTACHED DOCUMENTS
Service: RAYMOND TELLER
Served:
Service Address: RIO ALL SUITE HOTEL AND CASINO LAS VEGAS, NV
Alt. Address:
Mailing Address:
Special Handling:

Service History:

08/20/2012 08/17/12 09:00 (B/A PRI) Per uman Resources, The Rio will not confirm or deny employment. Affiant cannot locate subject without hotel assistance.
08/13/2012

Service Note:

08/17/2012 09:00: Per uman Resources, The Rio will not confirm or deny employment. Affiant cannot locate subject without hotel assistance.

Bad Address List:

EXHIBIT 48a

ERRATA SHEET – 4 Pages

Case: Raymond Joseph Teller vs. Gerard Dogge

Date: June 11th, 2013.

Witness: Gerard Dogge(defendant)

Page 55:10 Change: " I cannot answer the question."

Reason: I did not understand the question, as clearly stated the lines before and after, Tratos did not gave me the chance to ask for the interpreters help.(L12-14)

Page 67:17 Change: I was referring to the 'town' Las Vegas, which is the magical center of the world, with many magicians and many magic shows, such as Chris Angel, David Copperfield, Lance Burton, P& Teller, and many more, but with not one single magician performing a trick similar to Bakardy's 'The rose and her Shadow', in a water filled, transparent and removable bottle, and a removable and 100% visible rose- rose stem.

Reason: To complete my answer.

Page 69:4 Change: I placed the knife on the shadow of the 100% visible and removable rose where the leaves were connected to the left side of the stem first, standing in a water filled, removable and transparent Coca Cola bottle.

Reason: To complete my answer and to inform the Court and Jury that the movements, objects and their shadows are different as the ones as used in 'shadows'.

Page 69:18 Change. I remember that I placed the knife on the shadow of the 100% visible and removable rose where the leaves were connected to the right side of the stem, standing in a water filled, removable and transparent Coca Cola bottle.

Reason: To complete my answer and to inform the Court and Jury that the movements, objects and their shadows are different as the ones as used in 'shadows'.

Page 69:21 Change: Yes, that causes the appearance that those leaves were falling from the 100% visible and removable rose, standing in a water filled, removable and transparent Coca Cola bottle. And that's what you could see in the shadow as well. Yes.

Reason: To complete my answer and to inform the Court and Jury that the objects and their shadows are different as the ones as used in 'shadows'.

EXHIBIT 48b

Page 70:2 Change: I remember that I placed the knife on the shadow of the 100% visible and removable rose where the petals were connected to the complete visible stem, standing in a water filled, removable and transparent Coca Cola bottle.

Reason: To complete my answer and to inform the Court and Jury that the objects and their shadows are different as the ones as used in 'shadows'.

Page 70:5 Change: No Mr. Tratos, I did not make a 'cut' on the shadow, since there was no paper to be cut on the 'easel' used in my illusion.

Reason: To complete my answer and to inform the Court and Jury that the objects and their shadows are different as the ones as used in 'shadows'.

Page 70:8 Change: I remember that I've never 'cut' on the shadow, since there was no paper to be cut on the 'easel' used in my illusion.

Reason: To complete my answer and to inform the Court and Jury that the objects and their shadows are different as the ones as used in 'shadows'.

Page 70:16 Change: I remember that in order to make the last petal fall, I did a 'sawing' movement on the removable and 100% complete visible rose stem, standing in a water filled, removable and transparent Coca Cola bottle.

Reason: To complete my answer and to inform the Court and Jury that the movements, objects and their shadows are different as the ones as used in 'shadows'.

Page 71:12 Change: There was no paper on the easel used in my illusion, but I did put the knife on the easel, where the shadow is located.

Reason: To complete my answer and to inform the Court and Jury that the objects and their shadows are different as the ones as used in 'shadows'.

Page 71:18 Change: There was no paper on the easel.

Reason: To supplement my answer, since I did not remember, I verified and checked out the easel.

Page 77:18 Change. The editing was done by putting some text over the video and adding electronic laughs and applause as if there was an audience.

Reason: To complete my answer.

EXHIBIT 48c

Page 82:13 Change: I think it is a manipulated document, which was originally filed as a screenshot, taken by Mr. Teller in his computer, showing his favorite web links in the bookmark bar, but was tampered after it was filed as legal evidence, without my knowledge or approval.

Reason: To complete my answer, and to inform the Court and Jury that plaintiff is asking me questions regarding tampered evidence.

Page 82:19 Change: NO sir, I did not cause those words to appear on that tampered document.

Reason: I was trapped in plaintiff's (mis)leading question. The answer is a clerical error.

Page 105:5 Change: No Mr. Tratos, I don't know how much illusion or prop builders get paid. What I know is that Teller offered me 15,000. to come in exclusive possession of my method and for developing my prop.

Reason: To complete my answer.

Page 108:1 Change: Because the manual and DVD, when ready, would describes the 'method' and secret of my trick, and I don't want to 'give' that away.

Reason: To complete my answer.

Page 135:19 Change: There was never a single add on the internet, YouTube nor any magazine mentioning a 'price'.

Reason: To complete my answer.

Page 135:23-25 Change: I posted the YouTube video to find out if there was interest in my creation. No price was mentioned.

Reason: To complete my answer.

Page 153:22 Change: an "improvement to his trick"

Reason: this was a clerical error from the Court Reporter, probably caused by my bad pronunciation. No blame to the Court reporter.

Page 165:6 Change: made by Mr. Teller.

Reason: I meant Teller. (a slip of the tongue)

EXHIBIT 48d

Page 179:17 Change: I use this term to refute Teller's term kidnapping. Kidnapping usually means that the person who is kidnapped is no longer together with his friends or family, which is not the case in 'cloning'. Teller has still his 40 years old version in his possession, can still perform and show it to anyone, so it's not 'kidnapped'. Therefore I used the term 'cloning', but as usually analogies do not work.

Reason : To complete my answer. I don't want an 'analogy' to be an important statement which can be pulled out of context by anyone.

Page 182:19 Change: No, sir. Once again you are putting words in my mouth, when you say that I've 'listed' them in my initial disclosures. This is not true. I've never listed the videos in my initial disclosures, because I could not find them at that time.

Reason : To complete my answer.

Page 251:13 Change: If this person performs this illusion in a removable transparent, water filled vase or bottle and with a removable, 100% visible rose or flower, I would believe so, I think so yes, Mr. Tratos.

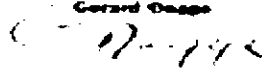
Reason: To complete my answer.

CERTIFICATE OF WITNESS/DEPONENT

I, Gerard Dogge, witness herein, do hereby certify and declare the within and foregoing transcription to be my examination under oath in said action on June 11, 2013, with the exception of the changes listed on the errata sheet.

That I have read, corrected and do hereby affix my signature under penalty of perjury to said examination under oath.

Witness,

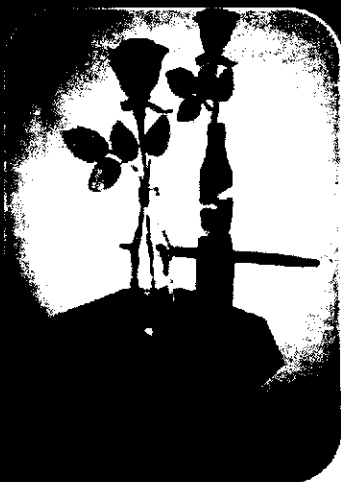
Gerard Dogge

Hoevensteaan 2 82950 Kapellek
Telgoutse Oude

07.30.2013.

EXHIBIT 49a

Wereld Primeur-Eérsst in Belgie

The Rose & Her Shadow



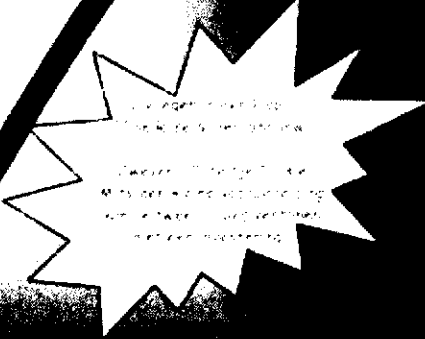
Her Shadow !

Made in Belgium !!!
Klein verpakt - Groot effect
Volledig zelfwerkend
Geen 'sleutels' of handen

*Beter dan in
Las Vegas*



Op het podium staat er
een roos in een vaas
die met een draadje
aan een lamp is vastgemaakt.
De roos is zo klein dat
men haar niet kan zien.
Maar de schaduw van de
roos is zo groot dat men
haar wel kan zien.
De schaduw van de roos
is zo groot dat men haar
wel kan zien.
De schaduw van de roos
is zo groot dat men haar
wel kan zien.
De schaduw van de roos
is zo groot dat men haar
wel kan zien.



Kie... **Uitvoering :**
De Rose & Her Shadow met Zwevende Tafel 1.850€
Enkel de Rose & Her Shadow op gewone tafel 499€

*Een onvervalst maar toch
Deze heb je voor het eerst in België
Zie de foto's van de illusie op
www.gerardbakardy.com*

Meer info?

Bestellen:

Tel.: 0034.606.35.65.04.
Email: gerard-bakardy@hotmail.com
Youtube: The Rose & Her Shadow

EXHIBIT 50a

Shacows



Groeppeer berichten op discussie om berichten te zien die bij dit bericht horen.



Teller Penn & Teller 20/03/2012

Aan gerard-bakardy@hotmail.com ✉

Gerard,

Before you start selling this item, may we talk? Where can I reach you, please?

Teller

Penn & Teller

Las Vegas

EXHIBIT 50b

REDACTED BY DEFENDANT

On Mar 21, 2012, at 5:20 PM, G R wrote:

Good'night' Teller,

Since there is a time difference from about 6 hours, please call me between 10:00 and 20:00 (Spanish time).

Hope to hear you tomorrow,

Kind regards,

Gerard.

This email is sent at 0:19 (am) Spanish time.

Subject: Re: Shadows

From: [REDACTED]

Date: Wed, 21 Mar 2012 15:27:03 -0700

To: [REDACTED]

What times of day are best for you.

On Mar 21, 2012, at 6:23 AM, G R <[REDACTED]> wrote:

Goodmorning Teller,



I love to talk, you can reach me at:

+34 606.35.65.04.

Kind regards,

Gerard,

EXHIBIT 50c

 **The Rose & her Shadow in Close up ! - Gerard Bakardy** HD
March 15, 2012 4:17 PM
1:51  Removed (copyright strike expired): [Submit Counter-Notification](#)



 **The Rose & Her Shadow - Gerard Bakardy** HD
March 15, 2012 1:30 PM
6:27  Removed (copyright strike expired): [Submit Counter-Notification](#)

EXHIBIT 51a

Re: Gerard Bakaroy



Groeppeer berichten op discussie om berichten te zien die bij dit bericht horen.



Teller Penn & Teller 5/04/2012

Aan gerard bakaroy ✉

Dear Gerard,

Thanks for the conversation yesterday, as well as your note and apology. I now have some hope we can come to terms that are acceptable to both of us.

I'll meet this afternoon with my attorneys to come up with a proposal that would allow you to produce and sell your flower apparatus without violating the elements that define my presentation. Several of the presentations you described yesterday might, indeed, be workable.

I'll email you the terms under which I propose we proceed, then follow up with a phone call where we can clarify and discuss. If we agree, my attorneys will then put the agreement into writing, and after signing and completion of the agreement, you will be able to sell your apparatus without danger of infringement on my authorship or performance rights.

I am as eager as you are to put this matter to rest quickly, but let's do it carefully and thoroughly, so there is no chance of any misunderstanding and we can move on with our careers as friends and without problems.

Cordially,

TELLER

EXHIBIT 51b



Teller Penn & Teller 8/14/2013

Ask Gerard Biskamp ✉

Dear Gerard,

Thanks for phoning back. I apologize for not getting your call. My best friend had to have emergency eye surgery, could not drive, and called on me to help at the clinic. His surgery went fine, but by the time I got home, it was too late to reach you.

When I called this afternoon I had realized that I hadn't answered the most urgent of your questions: As you are working to come up with a new effect using your flower apparatus -- what you should avoid in order to respect my copyright?

As you said in your email, of course you would avoid anything with shadows and knives. You also mentioned using a flower different from the rose (you mentioned the tulip of your native Holland) and that would keep the distinction clear. Finally, it's important to avoid a procedure in which you act upon on one flower (whether shadow, painted, or otherwise) to affect the other. That "voodoo" idea, coupled with the flower, is identifying, central action of my trick.

I like very much the direction you proposed when we talked on the phone. You suggested centering the magic on a love poem or a letter about a broken heart. That is a rich, romantic idea, very fitting to the poetic image of the dying flower, and would be very different from mine.

I've looked at your website, and both you and your wife seem to be very talented and versatile musical performers. Perhaps there is a way to use a sad song of lost love to weave the spell that makes the flower die.

I think you and I are on the right path toward resolving this as colleagues, and saving hundreds of thousands of dollars that would otherwise be wasted in conflict. Let's keep moving forward.

Best wishes from windy Las Vegas. I will try calling in the morning (my time) or you may call me, and we can keep working this out together.

Teller

EXHIBIT 51c



gerard bakardy 11/04/2012

Aan Teller Penn & Teller ✕

Hello Mr. Teller,

I hope everything is good with you.

I regret not receiving any news from you, especially since you told me in the last phone conversation, on April 6th, that you would like to end this situation and would decide whit in a couple of days which way you want to go.

It is actually very simple, or I sell my apparatus exclusively to you, or I sell my apparatus to the whole world.

In the last case of course I will inform the buyer NOT to use the Teller Routine.

Since you don't send me the exact detail from your 'copyrights' (I asked all ready four times) I conclude that you are scared to send me these. However, I tell you once again I will do respect your routine and use a different one, where I don't use any shadow or knife.

People are calling me every day, asking me when they can expect delivery and telling me that they are happy to use the apparatus in a different way from the Teller Routine. I promised them to answer on the end of this week.

Mr. Teller, I think it's fair to say that if I don't receive any news from you before April 13th, I may conclude that you're not interested in the apparatus, and that you're aware that I will start selling to public.

Respectfully,

Gerard Bakardy.

EXHIBIT 52

Correction

↑ ↓ ×



Teller (teller@nobunnies.com) Toevoegen aan contactpersonen 29/03-2012
Aan Gerard Bakardy ✉

Dear Gerard,

My attorney noticed today that the wide shot 6-minute version of "Shadows" was mistakenly left posted on YouTube. He informed YouTube of the copyright violation and the video has now been taken down.

I hope to hear from you soon and to resolve this all in an amiable manner.

Cordially,

TELLER

EXHIBIT 53a

sacramento

Posted: Apr 22, 2012 11:21am

Given that he has hardly any chance of winning such a copyright case, one has to consider that when instigating such (which news reports around the world say he has) a major expense is incurred..

New user
Apr 22
11:21am

This is a gamble in any legal proceedings, but here the considered opinion of many legal experts and barristers with copyright experience (simply search google for their comments on this) indicate they pretty much think he is fighting a losing battle?

So why would anyone throw good money at a losing battle??

Well all I would say is look at all the PUBLICITY that doing such has already got for him (and Penn and Tellers show as a result) and work out how much that kind of exposure would cost to buy..

most likely far more than instigating some court papers for something you know deep down you have next to no chance of winning anyway..

You may well find that this falls into the category of make the best of every opportunity available and get the maximum media exposure at lowest cost possible...

EXHIBIT 53b

www.esquire.com/features/teller-honor-system-101

Deze pagina is geschreve...
 Engels ▾
Vertalen
Nee
Opties ▾

On April 11 of this year — that date is precisely known — Teller did something it seems no magician has done in decades: He became the plaintiff in a lawsuit in United States District Court to protect one of his magic tricks against theft. The defendant is Gerard Bakardy. "This is an action for copyright infringement and unfair competition under federal statutes," the Nature of Action reads. "Plaintiff seeks damages, attorneys' fees, and costs."

When Teller filed his lawsuit, it made news: **ROGUE MAGICIAN IS EXPOSING OUR SECRETS!!!** read the TMZ headline. Teller did not like the coverage. The publicity might have sold more tickets to the show, but it misunderstood his purpose. Most of the stories suggested that he was suing Bakardy to protect the secret of his trick, the method. "The method doesn't matter," Teller says. He has performed Shadows over the years with three different methods, seeking perfection. The first involved a web of fishing line that took a painfully long time to set up; the second version required rigid, uncomfortable choreography; the third, today's version, he has never revealed. Bakardy, who said that he had seen Penn & Teller's show, almost certainly didn't use Teller's present method. He knew only the idea and the effect it had on the audience. He felt the crackle that runs through the otherwise silent theater when Teller wields his knife; he saw that some people start to cry, little soft sobs in the dark; he heard that some people make strange noises and other people try to make noises and fail. What Bakardy stole from Teller wasn't a secret. Bakardy stole something that everybody who has ever seen Shadows already knows.

"It's a particularly great trick," Steinmeyer says. "It's beautiful and elegant. It needs no stupid patter. It needs no stupid presentation. Every one of its little surprises makes perfect sense. It has some feeling that it's bigger; it hints at things that are bigger and more interesting than the trick itself. It's three minutes long, and it's just perfect."

"It's so beautiful, I have tears in my eyes when he's finished, I really do," says the Amazing Randi. "The hush in the audience, my God, nobody breathes. I swear they're turning blue. You hardly blink. That's what makes it a very brave trick."

"Teller tapped into this idea of magical thinking," Penn says. "I see it as a reminder that this isn't the way the world works. I see it as a cautionary tale. To me, Shadows is a reminder of how happy we are that the world is the way it is."

+1 2

EXHIBIT 53c

21 **REQUEST NO. 7:**

22 Produce complete and accurate copies of any and all documents, correspondence,
23 email, phone conversations etc. proving Teller's damages caused by or due to Gerard
24 Bakardy's invention and method 'The Rose'.

25 **RESPONSE:**

26 Objection. This request is overbroad, as it is not limited to time or in scope, and
27 demands documents that are proprietary or confidential. Notwithstanding said objections,
28 upon entry of a protective order, Teller will produce any and all responsive, non-privileged

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1 documents. As discovery is ongoing, Teller reserves the right to supplement this response.

2 **REQUEST NO. 8:**

3 Produce complete and accurate copies of any and all documents, correspondence,
4 email, phone conversations ect. proving that you, Teller, did all what's possible or proving
5 that you did anything to limit or stop the defamation, cause by the exhibits filed on
6 04.11 2012 in this litigation, containing screenshots showing web links such as 'mantube',
7 'CFSelect', 'Corbin Fisher', '2long' above the name and picture from the defendant.

8 **RESPONSE:**

9 Objection. This request is not relevant to the pending copyright action, nor is it
10 reasonably calculated to lead to the discovery of admissible evidence in the same. Instead,
11 this request seeks information you presumably believe is related to the claims in the Belgian
12 defamation litigation, and is accordingly outside the scope of the Federal Rules. Accordingly,
13 no further response is required.

EXHIBIT 53d

153

1 that first -- on that first screen shot of you. It
2 was a mistake. It was absolutely a mistake. And
3 because it's -- it obviously offended you, which we
4 had no reason to do. We had no interest in. All we
5 had the interest in was identifying the fact that
6 you were selling my trick on the internet. And it
7 pertains -- there is no pertinence at all to that
8 bookmark bar. That's why we redacted it.

9 Q Okay --

10 A It bares no relation to this case. And I
11 think you're desperate. You know, I think you're
12 desperately clutching at any straw that would give
13 you any leg up on this, and you're failing. I --
14 I -- this would have been so easily to resolve if
15 you hadn't done this.

16 Q You're free, Mr. Teller, to think what you
17 want to think.

18 A Thank you.

19 Q When I ask you in -- when I asked you in
20 discovery, Mr. Teller, to prove me some documents
21 the damage you had had -- you have had because of
22 me, caused by Bakardy and his creation, you stated
23 you answered later. Can you tell me now what the
24 damage is that you have had because of my invention,
25 alleged invention?

EXHIBIT 53e

154

1 A You have ripped my heart out Mr. Bakardy.
2 You have ruined my faith in humanity. You have
3 ruined my faith in the ethics of magic. I don't
4 mean to sound angry, but you really have done
5 serious, personal damage to me. You have taken
6 amounts of time that I would have devoted to
7 building my career, and instead have them wasted
8 on -- on this -- on this deposition, on all of
9 this -- on all of this work, which I had to do to
10 protect my own interest against you.

11 You have also cost me hundreds of
12 thousands of dollars just to resolve something that
13 should have been resolved in a simple and
14 gentlemanly manner. Is that clear?

15 Q You want a drink, Mr. Teller?

16 A I don't drink.

17 Q What do you like, Mr. Teller --

18 A I don't drink, Mr. Bakardy -- or Mr.
19 Dogge, pardon me.

20 Q Try to stay calm, Mr. Teller. This is the
21 second time you lose your temper. It's not good
22 for your heart.

23 A Thank you. I appreciate your concern. I
24 appreciate your concern. I -- I, as you know --

25 Q I --

EXHIBIT 53f

157

1 A May I make a correction, sir? May I make
2 a correction, sir?

3 Q If you -- if you can't prove your
4 statement, don't make any further statement, if you
5 can't prove it.

6 A Let me make a correction, sir. Your
7 description --

8 Q Okay.

9 A -- of your idea was exactly the same as
10 another magician's performance. I believe that that
11 coincidence is so unlikely as to justify my belief
12 that you had lifted that. You also indicated your
13 awareness of Hector before that. So it seems to me
14 that Hector certainly didn't lift it from you now;
15 did he?

16 Q No, he can't. His prop is similar to
17 yours; not to mine, Mr. Teller. So let's speak
18 about your damage again. You do a lot of statement
19 that your heart is with -- but for me you seem very
20 alive.

21 Mr. Teller, do you think that you
22 expect of this report will show that there were less
23 tickets show in the Penn & Teller shows during the
24 period of a year, from March 2012 to March 2013
25 compared with the previous year, March 2011 to

EXHIBIT 53g

158

1 March 2012? Meaning, during the period that we are
2 in this litigation, did you sell less tickets to
3 your show?

4 A I did not.

5 Q Did you sell less tickets to your show,
6 Mr. Teller, in that one week that my video was on
7 YouTube with the alleged infringement video?

8 A I have no way of knowing that.

9 Q Oh, but that's -- maybe you can prove it.
10 Mr. Teller, in one of your emails you wrote to me
11 that you're a clever businessman. And a good
12 businessman they usual do -- they stay alert. And
13 now my question: Do you watch or check daily what
14 happens on this magic market regularly?

15 A No.

16 Q What happens on this magic market?

17 A No. I also don't know what statement
18 you're referring to. You said, we are both
19 businessmen. And at one point, repeated that back
20 to you by way of telling you that I was taking the
21 business threat that you were presenting me with
22 seriously.

23 Q I never threatened, Mr. Teller. Never. I
24 have never demanded 125,000 like you just said. Can
25 you prove that I demanded 125,000?

14th of August, 2013.

1 Gerard Dogge
2 Hoevensebaan 2 – 2950 Kapellen
3 Belgium – Europe
4 Gerard-Bakardy@hotmail.com
5 Cell: 011.34.606.35.65.04.

6 **No Counsel - PRO - SE**

7 Teller, an individual
8
9 Plaintiff.
10
11 v.
12 Gerard Dogge (Gerard Bakardy),
13 an individual
14
15 Defendant.

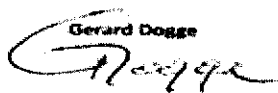
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

CASE N° 2:12-cv-00591-JCM-GWF

**DECLARATION FROM
Gerard Dogge
PRO-SE**

- 14 1. I, Gerard Dogge, defend myself, and stopped school at the age of 14.
- 15 2. I make this declaration based upon my personal knowledge.
- 16 3. I have reviewed the exhibits attached to the defendants opposition to plaintiff's
17 motion #122 and aver that they are true and correct copies of the originals.
- 18 4. I have send a copy of the Opposition to Tratos, Tellers attorney.
- 19 5. I declare under penalty of perjury under the law of the United States of America
20 that the foregoing is true and correct.

21 Executed this 14th day of August, 2013 at Antwerpen, Belgium - Europe.

22 

23 Hoevensebaan 2, B2950 Kapellen
Belgium - Europe