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No Counsel - PRO - SE

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

**RESPONSE - OPPOSITION
to Plaintiff's motion
for case-dispositive sanctions (#121)**

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**1.Introduction and factual background**

On April 11th, 2012, plaintiff overloaded the internet with one-sided statements that Tellers magic trick 'shadows' was stolen and revealed by a Dutch thief and crook **(Exh.1a,1b)** and that he filed a complaint to prove the alleged infringement in the Nevada Court, demanding a Jury trial.

Now, July 2013, it seems that plaintiff makes a 180° U-turn, no longer interested to prove the alleged infringement, requesting the Court to impose Case terminating sanctions.

It seems that plaintiff realizes that whenever the defendant has the chance to prove that there was no infringement, he will do so, showing and proving that the real facts are completely the opposite from what plaintiff announced in his sympathy seeking and promotional statements on the WWW Internet.

In contrast to the plaintiff, defendant can prove to the Court with multiple exhibits, documents, e-mails, photos and videos that plaintiffs copyright is doubtful and that defendants creation and presentation is different from Tellers.

Fact is, that since the very inception of this lawsuit, up until today, plaintiff did not file a single evidence proving that defendant performed, sold, shipped, exposed, revealed, or 'stole' Tellers work 'shadows'. Plaintiff will NEVER file such evidence, simply, because he can't. Simply because the defendant NEVER committed any infringement.

Plaintiff is mistaken in his first lines of his introduction, blaming the defendant that he does what he wants and when he wants. Defendant does what he needs to do, forced by the plaintiffs hypocritical and decadent complaint: defend himself.

Plaintiffs motion shows that he expected to come in possession of defendants method-prop, by intimidating the defendant, filing an impressive lawsuit but overlooking that defendant could defend himself.

1
2 It is clear that plaintiffs motion to the Court, requesting Case terminating sanctions
3 has two fundamental reasons:

4 1. Plaintiff cannot prove any infringement.

5 2. Plaintiff wants to keep the defendant from proving that plaintiff's complaint is
6 unfounded, hypocritical and based on questionable exhibits, on a questionable
7 copyright, and on doubtful witnesses, and that plaintiff, (to use his own words)
8 " would look very, very bad, whenever this comes out"

9 Obviously, granting plaintiffs motion would be most convenient for the plaintiff,
10 but it would violate the defendant's fundamental rights and not answer the question
11 a) whether a magic trick-illusion is or can be protected by copyright, and b) if so,
12 whether the illusion created by the defendant infringes the copyright on the illusion
13 created by Teller.

14 Most of all, granting plaintiff's motion would not bring up the truth in the actual
15 litigation, and not prove if there was any infringement at all. As a result, plaintiff
16 would present such a court order as the proof that the defendant infringed his
17 copyright, whereas, in reality, plaintiff did not prove any infringement at all.

18
19 Defendant never filed a counter complaint in this Court, but has the fundamental
20 right to a fair trial, assuming that he can convince the Court and Jury from his
21 innocence and that he can clear his name, now worldwide slandered and defamed by
22 plaintiff, suggesting that the defendant is a crook and a thief.

23
24 Although plaintiff accuses the defendant for being disrespectful to the Court, all
25 defendants documents begin with an apology to the Court for the defendants poor
26 vocabulary and for approaching the Court as 'pro-se'.

27 Although defendants is not a USA citizen, he tries his best to fulfill and respect the
28 'Local Rules' and 'Federal Rules of USA'.

Gerard Dogge, the defendant, respectfully requests the Court to deny Tellers motion and to guarantee the defendant his fundamental right to a fair trial.

On trust that the Court and Jury will not convict the defendant for infringement, after all evidence will be presented by the defendant, in absence of any evidence to be produced by plaintiff, defendant insists to inform the Court in a truthful and complete way:

2. Relevant facts.

Plaintiff's view of the 'facts' does not match reality and is no more than a hollow statement, not proven by a single evidence nor exhibit. The 65 years old Famous Las Vegas Magician, Teller, started performing a trick called 'shadows' almost 40 years ago. In those days, some of us were watching black/white television. In the mean time we all watch High Definition Full Color TV in our wireless Smartphone's. Also plaintiff's 40 years old magic trick is, over the years, improved, performed, sold and rented by many.

Plaintiff filed his complaint for Unfair Competition or Copyright infringement much too late, accusing the wrong person.

On the World Wide Internet, anyone can see multiple magicians, performing a trick with a Rose and a shadow, similar to 'shadows' by Teller. Some of them even call their performance 'Shadows'

1. Shadows by Petros **(Exh.2)**, others call it
2. 'Plants and Shadow' (ALS) **(Exh. 3)**
3. Hector, a Spanish magician, is performing a trick similar to Tellers shadows ('voodoo trick' as described by Teller) using exactly the same prop as used in Tellers, on big venues and on cruise ships all over the world. **(Exh.4a,4b,4c)**
4. Ian McCarthy from Ireland performs his version of shadows **(Exh.5)**

6. Bjorn Magic from Sweden performs his own version of shadows, unfortunately the promotion video was removed from the internet before defendant had the chance to download it or to take a screenshot of it.

7. Mike Fallen from the UK performs his version of shadows **(Exh.6)**

8. Alexander Merk from Germany performed a version of shadows **(Exh.7)**

9. On the Internet anyone can watch a YouTube video learning how to built the prop to perform a 'rose falling apart on the magicians command' as used in 'shadows' from Petros, or Teller, or Hector, or ALS, or Ian McCarthy, or Bjorn Magic, or Mike Fallen, or as so many others. So many others... because Tellers trick is since years explained on the internet with an instruction video how to built the 'prop' yourself. **(Exh.8a-d)**

10. Since years anyone can buy or rent the 'prop' to perform the trick. **(Exh.9a-d)**

11. Defendant had the opportunity to buy the 'prop' in a 'dusty' stand on the yearly fair for magicians in England-Blackpool.

12. Hector bought his prop second hand about 7 years ago. Which means that..

13. The prop to perform a magic trick, such as Tellers 'shadows', was sold and performed already years before Hector bought it in 'second hand' **(Exh.10a,b)**.

Teller told to the defendant, that he did not want anyone in the world to perform 'his' trick **(Exh.11a-d)** and that he would not licence anyone, until he retired.

Contrary to what Teller stated, defendant has seen Hector from Spain, ALS from USA, Teller from USA, Petros from USA, Bjorn Magic from Sweden, Ian McCarthy from Ireland, Mike Fallen from UK, Alexander from Germany,, and so many others perform a trick wherein a rose falls apart on the magicians command.

1
2 All of them use a routine or a procedure, in which they act upon one flower
3 (whether 'shadow', painted, or otherwise) to affect the other, using a
4 sympathetic/'voodoo' effect, coupled with the flower, which identifies the central
5 action of Tellers trick, as he stated in his email to the defendant on April 6,2012.

6 **(Exh. 12)**

7 As mentioned before, Tellers complaint is unfounded. The trick wherein a rose falls
8 apart on the magicians command, is a manufactured trick and is a part of the
9 standard repertoire of magicians all over the world, since many years, as stated in the
10 comments by the YouTube video 'plants and shadows' from ALS. **(Exh.3)**

11
12 The 'prop' created by the defendant allows to perform a complete different routine,
13 and surpasses all others. Although the performers mentioned above are performing a
14 very similar trick to Tellers, it is still very doubtful whether plaintiff will ever be able to
15 accuse them for infringement. First of all it would be difficult to trace all the
16 performers in the world and all the manufacturers and the dealers selling this prop.
17 Defendant is not a lawyer and does not know so much about copyright and so, but
18 believes that it is even more doubtful whether someone who abandoned his work and
19 failed to protect or to 'exercise' his (copy)rights can ever exercise his (copy)rights
20 again. Anyhow, it would be impossible to do and this is not the defendants concern
21 since he is the only one with a different 'prop' and as logical result a different routine.

22
23 Nevertheless, defendant wanted to be different and created his own 'prop'
24 which is unique in the world, and completely different to all the versions ever sold,
25 rented or performed in the world. Even Teller admitted and stated in the deposition
26 that he is unaware of any other person in the world, who performs the illusion in the
27 way Bakardy does.

1
2 Plaintiff is aware that Bakardy's trick/prop surpassed Tellers version of
3 shadows, deliberately leaving out the part of the comments among the 'The Rose and
4 her Shadow' YouTube video wherein clearly is stated that Bakardy's presentation is
5 different. **(Exh.13a)**

6 Whenever plaintiff refers to this text, written by Bakardy on the YouTube video
7 as a description of Bakardy's 'trick', plaintiff deliberately conceals the complete text
8 which clearly states: "*.. to share my version in a different and more impossible way...
9 see the stem and vase filled with water are removed from the table...*". Again plaintiff
10 misleads the Honourable Court by not giving, but holding back the **relevant facts**.

11
12 Further, plaintiff refers in his motion, (*#121- p3:7*) to a video which he never
13 filed as an exhibit, stating that defendant offers a copy of Tellers 'shadows' illusion
14 and instructions for performing the illusion for \$ 2.450. Plaintiff does not prove his
15 allegations, although it is plaintiff's obligation to do so.

16 Defendant, who recorded the video, remembers that the video shows a
17 complete different performance from Tellers, and does not mention any price 'for
18 sale', nor any instruction 'how to' perform the illusion. Defendant's video shows clearly
19 that Bakardy's prop, and all the surpassing actions going along with it, are unique in
20 the world. Further the video states 'easy to perform'.

21
22 Defendant is the first and only one in the world who uploaded a video on YouTube,
23 showing that he is the only one who is able to 'control' a rose falling apart, in a
24 removable, water filled, transparent, ordinary Coca Cola bottle, with the removable
25 stem of the flower completely visible, as Teller admits. **(Exh.13b)**

26
27 Long before the discovery ever started, plaintiff noticed Bakardy's YouTube
28 video and realized that his 40 years old 'shadows' trick was surpassed.

1
2 Plaintiff is aware that all those differences are clearly to be seen on Bakardy's
3 video. Showing or filing this video, would be an evidence to the contrary what Teller
4 wants to prove. More than likely, is this the reason why plaintiff NEVER filed the
5 video as an exhibit, since it's in the plaintiffs interest to not file ANTI evidence.
6 Plaintiff is again not giving, but holding back the relevant facts in the evidence.

7 Plaintiff recognizes and admits that defendants 'prop' and, as logical result, the
8 performance wherein the performer is using Bakardy's prop, is totally different from
9 Tellers and all others.

10 It became clear during discovery and deposition that:

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

12 **Defendant can.**

- 13 2. Plaintiff never performed 'shadows' in a transparent vase or bottle, filled with
14 water. **Defendant can.**

- 15 3. Plaintiff never performed 'shadows' in a non transparent vase or bottle, filled
16 with water. **Defendant can.**

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

18 **Defendant can.**

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

21 **Defendant can.**

- 22 6. Plaintiff never performed 'shadows' removing a transparent vase or bottle from
23 the table showing that the vase or bottle was removable. **Defendant can.**

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

26 **Defendant can.**

- 27 8. Plaintiff is unaware of anyone else in the world performing Bakardy's illusion.

28 **Defendant is also unaware.**

1
2 Defendants work thus differs so much from the work of plaintiff, that the creation of
3 the work of the defendant is the expression of the intellectual creation of its author
4 and of his creative mind. The result is the intellectual creation/illusion of the
5 defendant, which was recognized and copyrighted on date of April 10, 2012 by the
6 United States Copyright Office Washington- DC , with 10 (ten) different
7 performances. **(Exh.14a-d)**

8
9 Teller tries, with his claim, to convince the Court that he has the copyright on the
10 work of the defendant, while it is clear that it was not possible for Teller to perform
11 Bakardy's work.

12 Impossible indeed, precisely because Teller does not master the original
13 intellectual creation of the defendant. In other words, Teller, who recognizes that the
14 creation of the defendant differs from his own work, claims the copyright on a work
15 that is different from his own, due to the intellectual creation of the defendant.

16
17 Plaintiff is fully aware that performing magical illusions become more interesting for
18 spectators when the illusions are performed in transparent cups, boxes etc.

- 19 • That's why Teller performs the 'cups and balls' (a magical illusion wherein balls
20 magically appear and disappear under copper cups) in transparent cups.
- 21 • That's why Teller performs 'Blastoff-trapdoor' (a magical illusion wherein a
22 person in a box is divided and restored in three) in a transparent box.

23
24 Unfortunately, all those parody's, performed by Teller, reveal valuable secrets
25 behind those beautiful magic tricks, stealing the magic dream of many spectators and
26 ruining the earnings of many magicians.

1
2 In contrast to the plaintiff, Bakardy's prop allows to perform an illusion wherein a
3 flower falls apart, in a transparent vase or bottle, without revealing the secret.
4 Without stealing the spectators dream. Without ruining magicians earnings.
5

6 Bakardy's creation is more magical for the spectator than Tellers 'shadows' ever was.
7

8 **The start of the litigation.**

9 As explained above, plaintiff noticed the differences between his almost 40 years old
10 version of 'shadows' and Bakardy's more magical illusion showed on YouTube, and
11 contacted Bakardy. Plaintiff describes in his motion that Teller was optimistic that the
12 matter could be resolved without litigation. Indeed, defendant experienced that
13 before Teller started this litigation, he tried intimidation.

14 At first Teller explained to the defendant what happened in a previous dispute
15 with a Swedish magician, who copied 'Silver Fish', another trick performed by Teller,
16 who 'spontaneously' boxed up his props in a crate and shipped them to Las Vegas, to
17 Teller, after he was 'contacted' by Teller. **(Exh.15a)**

18 The discovery brought to light that Tellers intimidation was not justified and
19 purely based on egocentric behaviour. When plaintiff was asked to list all his
20 copyrighted tricks, he did not list Silver Fish. **(Exh.15b)**

21 Defendant did research and found out that this trick is an old trick, invented by
22 another magician, meaning that Teller did not have the (copy) right to 'ask' the
23 Swedish magician to stop performing 'Silver Fish'. Tellers intimidation was successful
24 on the Swedish magician.

25 Also the defendant felt extorted and blackmailed when Teller threatened to ruin
26 defendants life, and that defendant would end up poorer and bitterly, due to the long,
27 unpleasant and protracted lawsuits in the US and Europe, etc.. – unless defendant
28 was willing to send and sell his prop/creation exclusively to Teller, on his terms.

1
2 On date of March 27th, Teller confirmed his threats by an intimidating e-mail
3 offering a ridiculous amount to come in exclusive possession of Bakardy's creation.
4 This e-mail is one of defendants 'key' exhibits, filed as exhibit 3 in his answer (#39)
5 on 10.24.2012. Obviously, plaintiff wanted this e-mail to be sealed.

6
7 Defendant did not understand the legal meaning of 'sealing' exhibits, and filed an
8 opposition if sealing meant that he could not use his exhibits 3&4 in the pleadings.
9 (#42) The Court ordered that defendant could use his exhibits and explained that
10 sealing meant that the exhibits were not published on Pacer (#46).

11 Until now, plaintiff succeeded in 'holding back' the relevant facts from the
12 internet, but is fully aware that the pleadings will soon bring up the truth regarding
13 this legal evidence. Whether defendants 'key' evidence is published on the internet is
14 not important to the defendant, as long as defendant is able to show his evidence to
15 the Honourable Court and Jury. Therefore defendant again respectfully requests the
16 Court to continue with the proceedings and to deny plaintiffs case dispositive motion.

17
18 Defendant was instructed by the Honourable Judge Foley in the hearing that he
19 could not re-file 'sealed' exhibits, therefore defendant respectfully requests the Court
20 to find and see the 'sealed' (**EXHIBIT 3 in #39**) as prove for the following:

21 This evidence is very interesting in many ways and shows the real intentions of
22 the plaintiff. The evidence shows an e-mail from Teller to Bakardy wherein:

- 23 • plaintiff is extorting the defendant to sell exclusively to Teller,
- 24 • plaintiff admits that Bakardy's illusion/prop/method is different from Tellers,
- 25 • plaintiff offers the double amount from what he usually offers for developing
26 illusions as such,
- 27 • plaintiff calls Bakardy's illusion an 'improvement',
- 28 • plaintiff offers money to come in possession of Bakardy's method.

1
2 Tellers e-mail proves that the defendants creation is different from Tellers and all
3 other similar illusions on the market. Therefore, defendant chose not to be intimidated
4 by Teller threats, but informed Teller that he was willing to change his performance in
5 order to respect Tellers routine, therefore Bakardy asked Teller to send him the details
6 of his copyright, which Teller refused **(Exh. 16)**.

7 Nevertheless, defendant was inventive and discussed several other routines over
8 the phone with Teller. On April 5, & April 6, 2012 Teller sent e-mails to Bakardy
9 wherein he approves several of the routines proposed by the defendant, stating that
10 his attorney will prepare an agreement, that after being signed will allow the
11 defendant to sell his 'apparatus', without danger of infringement on Tellers authorship
12 or performance rights. **(Exh.12, 17)**

13
14 Apparently, this were all hollow words and promises, since defendant never
15 received the agreement as promised by Teller. In the discovery/deposition it came to
16 light that 3 days earlier, on April 2, 2012 **(Exh.18a)** Teller was trying to 'track down'
17 the defendant to file a lawsuit and to ruin his life. **(Exh. 18b)**

18 On April 11, 2012 , Bakardy regrets not to receive any news from Teller and that,
19 although Teller refused to inform the defendant regarding Tellers copyright details,
20 defendant would nevertheless respect Tellers routine by using a different one, without
21 the use of a shadow and a knife. Bakardy informed Teller that potential buyers of
22 Bakardy's creation were happy to perform or to use the Bakardy's 'prop' or apparatus,
23 in a different way from Tellers routine.

24 Since defendant never intended, nor really was interested, to sell his creation
25 'exclusively' to anyone, defendant ended his e-mail stating that, in case he did not
26 hear any news from Teller before April 13, defendant might conclude that Teller had
27 no further interest to the exclusive rights of Bakardy's illusion/apparatus, and that
28 defendant would start selling to the public. **(Exh.19)**

1
2 That same day, April 11, 2012 plaintiff filed his complaint.

3 **Dogge files his own suit and evades service.**

4 Plaintiff's motion states that '*Teller was hopeful that the matter could be dealt with*
5 *efficiently and in a cost-effective manner*'. It shows that Teller was counting on, or
6 hoping that filing a lawsuit, would work as intimidation. Apparently, Teller overlooked
7 that Dogge became the defendant in the procedure, meaning that he refused to be
8 intimidated and that he chose to defend himself.

9
10 Further, plaintiff is writing two full pages in his motion for the US Court,
11 referring to the Belgium lawsuit. (p4&5) Irrelevant and superfluous in this litigation.
12 On date of 08.30.2012 plaintiff filed an Emergency motion for Anti-Suit Injunction
13 (#11) which was DENIED by the Honourable Courts Order from 10.09.2012, (#28).
14 On date of 10.18.2012 plaintiff filed a motion to reconsider the Courts judgement
15 (#31) which was DENIED by the Honourable Courts Order from 08.02.2013, (#56).

16 Both times the Honourable Court ordered that the defendant has the right to
17 file a complaint in his country Belgium "*because the foreign litigation does not*
18 *threaten this court in rem or quasi in rem jurisdiction, nor are any other equitable*
19 *considerations prejudiced*" as stated in the Courts order(#28-p6:22)

20
21 To answer to plaintiffs allegations in his motion it need to be said that, in contrast
22 to plaintiff's complaint, the Antwerp lawsuit was not filed with the intention to
23 intimidate Teller. In contrast to plaintiff's complaint lacking evidence in general, the
24 Antwerp defamation suit is based on facts such as:

- 25
- Fact that Dogge's name is slandered and defamed all over the world.
 - Fact that the original screenshots, filed as exhibit 3 in plaintiff's complaint do
26 show, 'MANTUBE', 'Corbin', 'CFSelect', '2Long', 'Tyler', all gay orientated hard
27 porn sites, as Teller admitted in the deposition, calling them sites for adults.
- 28

- Fact is that some of the 'adult' sites do suggest that the actors are 'young boys', showing some of the childish actors in front of a blackboard in school.
- Fact is that Teller admits that he took the screenshots in his computer.
- Fact is that the screenshots do not mention that they were taken by Teller or his attorney, suggesting that Dogge/Bakardy is the one who took the screenshots, on his computer showing his favourite web links.

In contrast to plaintiffs definition, in Europe-Belgium lawsuits based on facts as such are not called frivolous nor vexatious, but rather taken seriously.

Defendant prefers not to go deeper into the Belgian lawsuit in this Court and awaits the pleadings in Antwerp. Defendant doubts very much whether the Belgian Court would minimize all these facts, like plaintiff loves to do.

Plaintiff's untruthful and unfounded statements in his motion are forcing the defendant to oppose.

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

Defendant 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, 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.

- Plaintiff states that *"Teller redacted and replaced the exhibit 'shortly' after receiving Dogge's concerns"* (p4:21-23)

Fact is that Dogge had to request Teller 4 (four) times for an explanation regarding the incriminating screenshots before plaintiff wanted to answer. Tellers answer **(Exh.20)** 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.

- Now, for the first time in the litigation, plaintiff calls the tampered legal evidence ... 'redacted' evidence. (p4:21-23)

This is again a sneaky technique of the plaintiff to deal with his reckless filings, violations and statements. Fact is that plaintiff's re-filed exhibit 3, NEVER carried the title 'REDACTED'.

This is not the first time that plaintiff is disrespecting the Court. A few weeks ago when plaintiff was confronted with his lies and untruthful answers in the discovery, he unscrupulously changed his untruthful answers, stating that his first answers were 'CLERICAL ERRORS' . Now he unscrupulously states that his tampered Legal evidence is 'REDACTED' evidence.

In the discovery requests for admission Teller admits that he could have redacted or sealed exhibit 3, filed on 04.11.2012. **(Exh.21)** But he didn't. On the contrary, Teller was fully aware that the original exhibits, before being tampered, were going to be published on the internet. In the discovery requests for admission Teller admits and states: *"to the extent that all federal pleadings are public documents and are accessible over the internet."* **(Exh.22)**

1
2 Defendant is not impressed by Tellers 'courtesy', and can only recognize bad faith
3 and evasive hypocritical behaviour.

4 Plaintiff's accusations that defendant was evading service are false and
5 unfounded. Apparently plaintiff also overlooked that when filing a complaint against a
6 non US citizen, in this case a Belgian citizen, service needs to be done effectively and
7 according the Belgian Law and the Central Authority of Den Hague. Teller, having
8 attorneys in Belgium, was fully aware, in order to serve Dogge in a Legal way, Dogge
9 could not be served by publication. This is not the Legal way in Europe - Belgium.
10

11 Nevertheless, Teller filed a motion, which was granted, (#10) to serve Dogge
12 by publication in a newspaper in Antwerp-Belgium, the place where defendant resides
13 and in a newspaper in Fuerteventura-Spain, a place where defendant has worked.
14 Teller did not respect the US Courts Order, which stipulated clearly the region where
15 to publish the 'wanted' adds. Disrespecting the Courts order Teller published NATION
16 WIDE in a NATIONAL newspaper in Belgium and a NATIONAL newspaper in Spain.
17

18 The text in the adds mentioned that defendant was accused for criminal facts and
19 therefore wanted to appear in the Las Vegas Court to defend himself. **(Exh.23a,b)**
20 Even if defendant did infringe on copyright on a 40 years old magic trick wherein a
21 tiny rose falls apart, it would be a civil violation and not a criminal fact. Again,
22 plaintiff demonstrates his intentions to ruin defendants life and acts in bad faith.
23

24 **Early filings, including this Court's order directing Dogge not to file pornography.**

25 Defendant is confused with the plaintiffs 'title' since it is the plaintiff who defamed
26 Dogge, filing exhibits showing Tellers favourite web links referring to gay orientated
27 hard porn for adults. Defendant never visits, nor listed them as his favourites in his
28 bookmark bar, but despises, detests and abhors web sites as such.

1
2 Defendant's motion to file a sealed exhibit to show the Court in what a
3 disgusting way the defendant was defamed by the plaintiff was denied. Defendant
4 respected the Courts order and never filed any exhibit as such.

5
6 **Dogge deletes key ESI after stating he will produce it.**

7 Defendant notices and recognizes plaintiff's cunning and tricky way to 'steer' this
8 litigation in plaintiff's favourite direction. Misleadingly he tries to convince the Court
9 that defendant is unwilling to produce evidence, while it is the plaintiff who destroyed
10 multiple key evidence during and even before the litigation started.

11
12 It is the plaintiff and not the defendant who ordered a DCMA takedown of
13 defendants YouTube videos, without informing the defendant, without given any
14 chance to the defendant to download an extra copy from YouTube.

15 Plaintiff could have asked Dogge to deactivate his videos on YouTube by making
16 them invisible for the public, until the dispute between the parties was settled or
17 discussed and judged in Court. But he didn't. Instead he destroyed key evidence
18 ordering the DCMA takedown.

19 Apparently, this seems to be the plaintiffs strategy from the beginning of the
20 litigation. Plaintiff was aware from the beginning that Bakardy's video clearly
21 demonstrates all the differences between Bakardy's and Tellers illusion and that the
22 video is an evidence to the contrary for the plaintiff. For the same reason plaintiff is
23 not willing to accept Bakardy's other video on YouTube, which shows the differences
24 even more in close up, as an alternative solution to demonstrate the Court where the
25 differences between the illusions are.

26 This explains also why plaintiff pretends not to have received any answer from
27 Google-YouTube, while defendant received 3 answers, each one within 24 hours,
28 each time YouTube has been requested to produce the videos. **(Exh. 24a,b,c,d,e)**

1
2 Indeed, defendant did mention that he intended to provide a copy of the video
3 at issue, but never listed the video as an exhibit in his initial disclosures. **(Exh.25)**
4 Defendant realizes that he was already searching for the video at the time he filed his
5 initial disclosures on 12.25.2012, therefore he did not list nor assigned the video with
6 an exhibit number, since he couldn't find the video in his computer. Defendant kept
7 on searching for the video, hoping to retrieve it.

8 In contrast to the plaintiff, who deliberately ordered a 'takedown' of the videos,
9 defendant did not deliberately but accidentally lost or deleted his own videos.
10 According to the Federal Rules (37e) the Court may not impose sanctions since
11 defendant did not deliberately commit spoliation of evidence.

12 **Dogge refuses to obey two court orders mirror imaging.**

13 Defendant already explained to the Court why he cannot obey the Courts order.
14 Plaintiff's intentions became more than clear in the phone conference of 06.18.2013
15 wherein Tratos stated, that he would organize what's needed to take a copy of
16 defendants hard drive, that he would arrange the transport, that he would bring the
17 hard disk to the Court in a sealed envelope. Defendant is not naive and understood,
18 between the lines, that he, the plaintiff is desperate to get a hold of defendants
19 privileged information. **(Exh.26)**

20 Reading the plaintiffs multiple motions to order mirror imaging of the
21 defendants private hard drive, defendant can only conclude that plaintiff is eager to go
22 on a 'fishing expedition' in defendants hard drive, in a last desperate attempt to find
23 some incriminating evidence to add to his pleadings, which until now, is based on
24 hollow words and not on a single shred of evidence.

25
26 Defendant is not a US attorney and defends himself as 'pro-se' but could read
27 the Fifth Amendment to the United States Constitution on the internet, regarding self-
28 incrimination:

1
2 *"The Fifth Amendment protects witnesses from being forced to*
3 *incriminate themselves. ...The privilege against compelled self-*
4 *incrimination is defined as "the constitutional right of a person to*
5 *refuse to answer questions or otherwise give testimony against himself*
6 *or herself."*

7 Defendant concludes that he never can be asked to prove his own guilt. The
8 defendants only concern is to prove to the Court that he did not infringe whatsoever.

9
10 Since the Court's Order has to be executed on European territory and needs to be
11 ratified by a Belgian Court, defendant wanted to be sure what his rights are when it
12 comes to Human Rights and European law concerning evidence and discovery,
13 therefore defendant answered in the deposition to the plaintiff that he first wanted to
14 talk to a Belgian attorney.

15 Now plaintiff is sarcastically stating that this was *"a startling request from a*
16 *defendant who claims to be acting pro se"*. Defendant prefers not to reply on the
17 immature and sarcastic statements coming from the world famous law firm Greenberg
18 Treurig representing Teller with an army of attorneys.

19
20 According to art. 8 of the Treaty of November, 4th 1950, the defendant has the
21 right to respect for his private and family life, his home and his correspondence, and
22 there shall be no interference by a public authority with the exercise of this right,
23 except such as is in accordance with the law and is necessary in a democratic society
24 in the interests of national security, public safety or the economic well-being of the
25 country, for the prevention of disorder or crime, for the protection of health or morals,
26 or for the protection of the rights and freedoms of others.

27 Handing over the mirror of defendants hard disk to the counsel of the plaintiff,
28 without any adequate guarantee against abuses, violates the abovementioned treaty.

1
2 **Dogge refuses to produce other evidence.**

3 Plaintiffs statement is based on a draft of an advertisement that never was published
4 nor intended to be published. Plaintiff's statement that "*The print advertisement had*
5 *been sent to the magic magazine and accepted for publication...*" is absolutely false.

6 The document plaintiff refers to is no more than a draft, that came in
7 possession of Teller when it was e-mailed by the defendant to Teller before the
8 litigation ever started.

9 The draft was never sent to, nor accepted for publication by any publisher at all.
10 It NEVER was the defendants intention to publish the draft plaintiff is referring to.
11 Unfortunately, due to plaintiff's reckless filings, the draft is now downloadable and
12 published all over the internet, without the defendants approval.

13
14 Plaintiff is aiming to a instructional DVD and manual which would come along by
15 purchasing Bakardy's 'prop' as mentioned on the draft. With the deepest respect for
16 the US Court, defendant chooses to wait for the Courts Judgement before selling or
17 shipping his product.

18
19 Not one prop is ever sold. Not one prop is ever shipped nor delivered. Not one
20 prop is ever ordered. Not one prop is ever explained. Not one prop is ever used in a
21 performance in front of a life audience. Therefore defendant answered in the
22 deposition to Tratos: **(Exh. 27a,b)**

23 "*This manual makes a part of the product, what I wanted to sell. I understand*
24 *Mr. Teller is very eager to know my secret, how my prop is working. But I will*
25 *not reveal this secret to anyone, not at this moment.*"..."*I don't instruct*
26 *anyone, Mr. Teller, Mr. Tratos, because I'm not selling this product. I'm not*
27 *selling the prop. And the manual is not even ready, and the CD is not even*
28 *ready.*

1
2 *Because before the first person could ever order this trick, I got this lawsuit*
3 *filed by Teller. And I prefer to wait until the court decides if I'm able or allowed*
4 *to sell my invention. So at this time, I'm not selling. I'm not showing. I'm not*
5 *instructing anyone. And I'm not revealing my secret to anyone."*
6

7 Plaintiff is well aware that defendant does not have a finished manual nor DVD, but is
8 desperately hoping to convince the Court, now with another reason, to copy and
9 investigate defendants privileged information, on the defendants hard drive.

10 The Court cannot force the defendant to reveal the secret behind his
11 copyrighted prop. Especially not to the person who makes a living out of exposing and
12 revealing valuable magical tricks and illusions, destroying and limiting the earnings of
13 many magicians. A simple google search "magic tricks revealed by Penn & Teller"
14 shows a result of 45.900. (Exh.28a,b) Defendant does not want to see his invention
15 or 'prop' to be added to this enormous number of revealing, done by plaintiff.
16

17 **Dogge refuses to obey the court's order regarding a protective order.**

18 As stated earlier, defendant will respect the US Court orders as long as they're not in
19 conflict with the defendants rights, being European.

20 Defendant was advised in regards to the Belgian litigation filed against Teller for
21 defamation, NOT to sign any documents with plaintiff, certainly NO documents where
22 both parties would step into an agreement with each other in regards to confidential
23 documents.
24

25 For the defendant it is new and most unusual to be asked to sign a confidential
26 agreement with the person who declares that it is his intention to ruin the defendants
27 life. **(Exh.18b)**
28

1
2 With all due respect for the Court and Court's Order, defendant cannot sign any
3 agreements with a person who has defamed and slandered the defendant. Defendant
4 cannot sign a confidential agreement with the plaintiff who is subject and defendant in
5 the Belgian pending lawsuit.

6 Signing an agreement, as proposed by the plaintiff, will not protect the
7 defendant at all, but will only help the plaintiff to hide the truth in this litigation and
8 the defamation litigation in Antwerp.

9 Defendant cannot be ordered to sign a 'cart blanche' allowing the plaintiff to
10 use or abuse the agreement whenever it suits him, since plaintiff does not stipulate
11 which documents he wants to be considered as confidential.

12
13 **Dogge refuses to communicate in English in the weeks before his deposition,**

14 **Causing delay and increased cost.**

15 Plaintiff is moaning about a problem caused by himself. Although plaintiff and the
16 Court are aware that defendants English vocabulary is very basic, defendant believes
17 that the Court recognizes the defendants efforts to communicate.

18
19 On the other side, It seems that plaintiffs efforts to communicate with the defendant
20 are not consistent, and only exercised whenever convenient for the plaintiff.

- 21
- 22 • Plaintiff was unwilling to understand defendant's questions and requests in the
23 discovery.
 - 24 • Plaintiff was unwilling to understand defendant's answer and admissions in the
25 discovery and asked defendant if he would consider changing his answers and
26 admissions given under oath to the discovery requests from plaintiff. See
27 transcript phone conference 04.09.2013 **(Exh.29a,b)**
 - 28 • Plaintiff was, whether or not deliberately, taking defendant's words out of the
context.

1
2 Apparently, plaintiff had difficulties understanding defendant's English and therefore
3 defendant advised plaintiff to make his requests in Dutch, so defendant could reply
4 spontaneously and directly into his native language Dutch/Flemish, making it easier
5 for plaintiff to understand the defendant when translated by a legal interpreter.
6

7 Plaintiff's allegations about causing delay and increased costs are impertinent
8 and untrue, since the Court ordered plaintiff to do the defendants deposition in
9 presence of a legal interpreter to ensure the communication between the parties.
10

11 Regarding plaintiff's allegations that defendant refused to answer the 3rd and
12 4th round in the discovery in English to win extra time to answer plaintiffs requests is
13 again based on plaintiffs provocative fantasy and not on serious facts.

14 Defendant did respond to the third and fourth rounds of discovery as agreed in
15 the presence of Honourable Judge Foley in the hearing from June 7th, 2013, wherein
16 defendant stated: **(Exh.30)**

17 *"... I'm working very hard to answer those questions and to understand the*
18 *English questions and I think I'm ready with these answers in the middle*
19 *of next week. So Mr. Tratos will get the answers to all his requests, no*
20 *problem."*
21

22 As agreed and ordered, the answer to the 3rd and 4th rounds of discovery were sent to
23 Mr. Tratos on date of Wednesday, June 12th , at night 1:11am Belgium time.

24 Meaning that Tratos has received the answers, a day earlier as agreed upon, on
25 Tuesday June 11th, at 04:11 pm Vegas time !! **(Exh. 31)**
26
27
28
29

1
2 Although plaintiff was insured during the Courts hearing that defendant would
3 answer to the plaintiffs discovery requests and although plaintiff was insured by the
4 defendant during the deposition on June 11th, that defendant would send his answers
5 the next day as agreed upon in the Courts hearing,... nevertheless plaintiff filed a
6 motion to deem the 3rd and 4th round of discovery, (#105) knowing that defendant
7 was going to answer the next day.

8 Although defendant assured plaintiff that the answers were going to be sent the
9 day after the deposition in Antwerp, nevertheless plaintiff filed **that same day**, when
10 the 7 hours deposition ended at 5 pm Belgian time, while it was still morning in Las
11 Vegas, a superfluous motion to deem the 3rd and 4th round of discovery requests.

12
13 Knowing that during the discovery most of plaintiff's answers came late,
14 knowing that plaintiff refused to answer defendants entire 3rd set, defendant can only
15 conclude that plaintiffs allegations are unworthy but most of all hypocrite, now
16 insincerely blaming the defendant for increasing the litigation cost for his client Teller.

17
18 Defendant cannot be blamed for defending himself and for filing an opposition against
19 plaintiffs harassing and violating motion to deem. On date of 07.23.2013, the
20 Honourable Court DENIED plaintiff's motion.(#132)

21
22 This embarrassing but truthful story does not only show the bad intentions of
23 plaintiff, but clearly proves that plaintiff is aware that he is unable to prove his
24 complaint, and that he therefore desperately files multiple motions, this time
25 requesting the Court to deem defendants answers, hoping to win the litigation,
26 without proving any infringement.

1
2 The manner on which Teller proceeds in the litigation violates the defendant's
3 rights to a fair trial, as stipulated in art. 6, 1. of the European Treaty of Human Rights.
4 In the determination of his civil rights and obligations or of any criminal charge
5 against him, everyone is entitled to a fair and public hearing within a reasonable time
6 by an independent and impartial tribunal established by law.

7 The appropriateness of art. 6, § 1 in deciding on civil rights and obligations
8 supposes a litigation about the existence, the scale and the stipulations of the exercise
9 of a right. This litigation can relate on factual or legal matters: in any case the
10 litigation must be real and seriously, and the result must be deciding for the contested
11 right. The motion requesting Case terminating sanctions denies the defendant of his
12 right to a fair trial, as a Court order would do.

13 **Dogge repeatedly files proprietary information.**

14 Again plaintiff is moaning about a problem caused by himself. Plaintiff is referring to
15 two letters from Teller to Dogge, which were sealed on plaintiff's request.
16 (#121, p12:21) It must be said that plaintiff filed one of these letters as an exhibit
17 which was published and downloadable on the Pacer web site for weeks. This letter is
18 more than likely, still downloadable on one of the many parallel websites offering
19 Court documents of all Court cases in the USA.

20 The other letter plaintiff refers to, was sent to publishers of newspapers all over
21 the world by the plaintiff himself. NOT by the defendant.

22 Still, plaintiff blames the pro-se defendant for re-filing key evidence, which
23 was sealed earlier, but he conceals that the 'seal' was broken from the moment these
24 letters were sent to publishers of newspapers/magic magazines all over the world.
25 Nota bene, by plaintiff himself, and NOT by defendant.

26 During the Court's hearing on June 7th, the Honourable Judge Foley explained to
27 defendant the issue of filing and sealing documents and having to address the same
28 matter.

1
2 Defendant understood the Honourable Judge's advice and has since then never
3 filed any documents containing proprietary information anymore.

4 Defendant takes notice from plaintiff's statements regarding these letters in his
5 motion (p12:22):

6 *"These letters contain information regarding the financial amounts Teller*
7 *pays for research and development into new magic tricks, information*
8 *regarding the Shadows illusion, and the monetary amounts of Teller's offers*
9 *to Dogge (based on research and development costs)."*

10
11 Therefore, plaintiff admits that the monetary amounts were offered for research and
12 development of a new magic trick, invented by the defendant, as the result of his
13 intellectual creation and creative mind, apparently that much innovative that Teller
14 offered the double amount of what he usually pays to develop illusions as such (**see**
15 **sealed exhibit 3 in defendants answer #39**).

16 In fact, the defendant realised timely that Teller tried to buy his magic trick,
17 and by buying the exclusive rights of this trick, obtaining the copyright of the
18 defendant's new creation. Obviously, the defendant could and would not agree.

19
20 **Dogge's scandalous and inflammatory filings.**

21 Defendant wonders if plaintiff is having 'black outs' or if plaintiff is really in full
22 consciousness when he states: *"Dogge has taken a screenshot with nineteen*
23 *completely irrelevant abbreviations on a bookmark bar and focused on four terms that*
24 *could be related to adult websites"* (# 121-p13:25) !?!

25
26 It was not the defendant who took the incriminating screenshots, but Teller who also
27 admitted that the screenshots with the book mark bar and favourite porn web links
28 were taken by him, in his computer.

1
2 It is very obvious that Mr. Teller doesn't want to be confronted with his actions
3 in a public USA Court in Las Vegas, and it is obvious that plaintiff's own legal exhibits,
4 tampered or not, is forming one of the reasons to file the present vexatious motion
5 requesting Case Terminating Sanctions.
6

7 Regarding plaintiff's statement in his motion that defendant is harassing:

8 *"This harassment reached a crescendo when Dogge filed his motion to*
9 *investigate the plaintiff's hard drive and said he was filing the same with the*
10 *FBI and Interpol (Doc. No. 85)".*

11 It is disrespectful to call the defendant 'harassing' while he only did his duty like any
12 other decent human being would and should do.

13 Defendant just did what the USA - FBI instructs him to do.
14

15 In answer to plaintiff's allegations in his motion defendant feels obligated to explain
16 that he filed the motion plaintiff is referring to, for two reasons (#85) :

- 17 1. Out of a humane and righteous point of view and because it is his duty as a
18 human being to report suspicious behaviour. Defendant's sole intention was to
19 exclude alleged criminal activities.
- 20 2. To compel the plaintiff to produce the video at issue since the discovery brought
21 to light that plaintiff is in possession of the video at issue. The plaintiff's
22 contradicting answers and admissions speak for themselves.

23 (see #112 p7:13 - p11:13)
24

25 Unfortunately the Court has stricken defendant's motion (#100) without further notice
26 or clarification regarding the missing videos, which can be retrieved from plaintiff's
27 computer.
28

1
2 On date of June 24, 2013, the defendant requested for clarification or reconsideration
3 of the Court's Order (#112), which was again denied in the Court's Order stating that
4 (#115-p2:4-6):

5 " At the time defendant filed his motion, he had not requested
6 production of plaintiff's hard drive or attempted to meet and confer
7 regarding whether Plaintiff has possession of the video "

8 The Honourable Court was mistaking by presuming that defendant had not requested
9 the plaintiff to produce the video at issue. Defendant requested the plaintiff on date of
10 June 4th to produce the video in the 3rd round of discovery. **(Exh.32)**

11 Unfortunately, defendant and the Honourable Court were fooled by the
12 plaintiff's refusal to answer the entire 3rd round of the defendants requests which
13 forced the defendant to file a (still pending #113) motion to compel.

14 The defendant requested the plaintiff to produce the video at issue before the
15 discovery ended, on top, the Court extended the discovery as long as needed.
16 The timing of requesting to produce 'key' evidence should not be the reason for the
17 plaintiff to 'hold back' key evidence, unfortunately plaintiff uses this as an excuse for
18 not filing 'key' evidence, which is to be found in his computer.

19
20 More than likely for two reasons as explained earlier: **1.** Because it will show that
21 defendants illusion is different from Tellers and not infringing, meaning that the 'key'
22 evidence is 'ANTI' evidence. **2.** Because in this way plaintiff can blame the defendant
23 for spoliation, hoping for the Court to grant his motion for 'Case terminating sanction'.
24

25 Plaintiff further accuses Dogge for filing a pornographic thumbnail image as a part of
26 his exhibits in violation of the Court's prior order not to file such pornography.
27 Defendant is not aware of any pornographic thumbnail filed as such!!
28

Dogge's conduct overall has been vexatious and in bad faith.

Plaintiff states in his motion (p14:16-27):

" Dogge has sought to avoid the legal merits of this lawsuit by driving up the cost of litigation and harassing Teller. This is not an especially complex case: there is one individual plaintiff and one individual defendant, and only two causes of action. Nevertheless, Dogge's conduct has necessitated an unusually high number of motions and responses for what should have been a very straightforward intellectual property litigation. "

Again, it seems that plaintiff was counting on his intimidation techniques, as they were successful in previous disputes between the plaintiff and other magicians.

Plaintiff overlooked the possibility that defendant would not be intimidated and that defendant chose for a fair trial, defending himself as 'pro-se'.

Defendant cannot be held responsible,

1. for the reckless filing of plaintiff in regards to exhibit 3 in his complaint filed on 04/11/2012.
2. for the filing of tampered evidence in regards to exhibit 3 filed on 04/25/2012.
3. for the defamation, slander and libel caused by plaintiff due to his reckless filings in this litigation, which enforced the defendant to file a lawsuit against Mr. Teller in Belgium.
4. for the multiple motions for 'Anti-suit injunctions' and Replies and motions to Reconsider/Clarification filed by Plaintiff **(doc: #11,#13,#16,#17,#19,#23, #31,#32)**
5. for the evasive answers given by Plaintiff during the Discovery, which enforced defendant to file motions to compel.
6. for the high expenses and costs that plaintiff's counsel Greenberg Treurig charges to his client for conducting this litigation.

1
2 7. for errors made by plaintiff's counsel as stated by Teller in the deposition held
3 on July, 1st 2013, plaintiff admitted that his counsel has made mistakes and
4 errors during this litigation.

5 8. for unforeseen factors such as motions and replies, while pursuing a novel claim
6 in litigation will logically encounter unforeseen factors during the litigation
7 process.

8
9 Plaintiff and his counsel were very aware at the beginning of this litigation that it
10 would not be 'a very straightforward intellectual property litigation'.

11 Also the Court considered plaintiff's complaint as a 'novel claim' and was willing to
12 provide a forum for the plaintiff to litigate.

13 The Court ordered/stated (#28 p6:17):

14 *"The crucial forum policy of upholding forum selection clauses doesn't*
15 *apply in this case. Obviously, there was never any business agreement*
16 *between plaintiff and defendant so they could not have contracted to*
17 *litigate in a particular forum in the event of a dispute. The most important*
18 *policy of the forum in this case is providing a forum for plaintiff to litigate*
19 *his novel claims of whether a person may copyright a magic trick or*
20 *illusion. "*

21
22 Filing motions, requesting the Court to deem defendants answers, or requesting the
23 Court for Case Terminating sanctions entering default on ground of a high number of
24 Motions and Responses/Replies filed by both parties in this litigation is unfounded,
25 lacks merit and would never answer to the Courts last line above: "whether a person
26 may copyright a magic trick or illusion". By doing so, Teller violates the defendant's
27 rights to a fair trial, as stipulated in art. 6, 1. of the European Treaty of Human Rights.

3. LEGAL ARGUMENTS

Case-Terminating Sanctions are Warranted Where Dogge has Disobeyed Several Court Orders and has Repeatedly Acted in Bad Faith Throughout This Litigation.

By ordering the defendant to deliver a mirror imaging of the hard disk of the computer of the defendant to the plaintiff, the right of the defendant to respect his private life, his home and correspondence, without any adequate or solid guarantee against abuses, is violated.

The third factor : PREJUDICE TO THE PARTY SEEKING SANCTIONS.

Plaintiff's pleadings look as if they were conducted by a magician, misdirecting the 'spectator' away from the real facts. Teller masters this technique as the best.

Misleadingly he wants the Court to focus on defendants disobeying and spoliation of 'key' evidence, while plaintiff himself was the first who destroyed and did multiple spoliation on 'key' evidence.

It is the plaintiff and not the defendant who ordered a DCMA takedown of defendants YouTube videos, without informing the defendant, without given any chance to the defendant to download an extra copy from YouTube.

Plaintiff could have asked Dogge to deactivate his videos on YouTube by making them invisible for the public, until the dispute between the parties was settled or discussed and judged in Court. But he didn't. Instead he destroyed key evidence ordering the DCMA takedown. Deliberately. Purposefully. Intentionally. This seems to be the plaintiffs strategy from the beginning of the litigation.

Defendant explained already that he accidentally deleted or lost his video in his laptop. Defendant did not commit spoliation of evidence, did not intentionally or deliberately deleted or lost the video at issue since it was his intention to file this video as evidence in Court.

1
2 Defendant realizes that he was already searching for the video at the time he filed his
3 initial disclosures on 12.25.2012, therefore he did not list nor assigned the video with
4 an exhibit number, since he couldn't find the video in his computer. Defendant kept
5 on searching for the video, hoping to retrieve it.

6 Defendant could learn according the Federal Rules, a Court might consider that
7 defendant did not, in contrast to the plaintiff, intentionally or deliberately lost the
8 video.

9 **Federal Rule 37 (e)**

10 ***Failure to Provide Electronically Stored Information. Absent***
11 ***exceptional circumstances, a court may not impose sanctions***
12 ***under these rules on a party for failing to provide electronically***
13 ***stored information lost as a result of the routine, good-faith***
14 ***operation of an electronic information system.***

15
16 Replying to plaintiffs motion, defendant feels obligated to inform the Honourable Court
17 regarding spoliation of evidence committed by the plaintiff.

18 Defendant experienced plaintiff's evasive behaviour during the discovery , especially
19 when plaintiff was requested to identify his exhibits, or to produce certain documents
20 regarding other persons performing a similar illusion to Tellers illusion shadows.

21
22 **Plaintiff committed spoliation of evidence.**

23 Unfortunately, it came to light that plaintiff committed spoliation of evidence.
24 Deliberately. Purposefully and intentionally, as proved in the following:

- 25
- 26 • In a phone conversation between the parties on or about 03.21.2012, Teller
27 informed the defendant that Teller did not want anyone else in the world to
28 perform a similar trick to Tellers (shadows). The day after, plaintiff confirmed
this in an e-mail. **(Exh.11a)**

1
2 Defendant was surprised and told Teller that defendants trick was very different
3 from Tellers but that there were other magicians performing a very similar trick
4 as Tellers. Such as ALS – Petros – Hector etc.. all to be seen on YouTube.

- 5 • After plaintiff realized that these videos were the factual prove that 'shadows'
6 has become a standard manufactured trick and that the illusion became
7 public information, he rapidly contacted HECTOR, requesting to pull off his
8 videos of the YouTube channel video. **(Exh.33,34,35,36)**

9
10 The Court needs to be informed that the plaintiff has deliberately, purposefully and
11 intentionally instructed Hector to destroy or tamper evidence which could prove that
12 defendant didn't infringe on copyright.

13
14 Plaintiff sent Hector an E-mail on April 2, 2012, stating:

15 ***"... to assist me in my current thinking, would you mind pulling the***
16 ***video off of YouTube? It could be used by the current manufacturer***
17 (meaning the defendant) ***to "prove" that this is now a standard,***
18 ***manufactured trick. Thank you, Teller."***

19 About 30 minutes later, Hector answered : "Yes, sure I will pull it off." **(Exh.33-36)**

20 *****

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

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

1
2 Defendant was able to take a screenshot before the ALS magician comments
3 'magically' disappeared from the internet. **(Exh.3)** More than likely on Tellers
4 demand, instructing the magician to 'remove' his comments since they were showing
5 that Tellers trick 'shadows' became public information.

6 When plaintiff was requested during the discovery to produce all correspondence
7 between Teller and ALS regarding ALS performance of his version of shadows, Teller
8 refused to reply, since there was no protective order nor confidential agreement.

9
10 **Was plaintiff violating the defendants rights by destroying evidence?**

11 Yes he was, no doubt. Defendant has not filed a motion yet requesting the
12 Court for sanctions against the plaintiff for deliberately, purposefully and intentionally
13 tampering or destroying evidence that proves that Tellers copyright is questionable
14 and that proves the defendants did not infringe on whatsoever.

15 To defendants opinion The Honourable Court shouldn't tolerate the plaintiff's
16 illegal behaviour, instructing 'Hector' (a witness brought forward by plaintiff), to
17 destroy, tamper or commit spoliation on multiple important evidence for the
18 defendant before the litigation on April, 2nd 2012 **(Exh.33)** and during this litigation
19 on April, 15th 2012 **(Exh.35)**

20
21 Regarding the defendant disobeying the Courts Order for copying defendants hard
22 drive. Defendant cannot obey to the Courts Order because:

- 23 1. The Court cannot and did not guarantee that nothing will go wrong with the
24 defendants privileged information during the taking of the mirror imaging copy.
- 25 2. The Court cannot and did not guarantee that nothing will go wrong with the
26 defendants privileged information during the transport from the defendants
27 hard drive to the US – Las Vegas.

3. The Courts order instructed the defendant to hand over a copy of his hard drive to the plaintiff, who would bring it in a sealed envelope to the Court.
4. The Court cannot and did not guarantee that plaintiff has no access to the defendants privileged information, such as all documents, exhibits, etc.. to be used in the proceedings between the plaintiff and the defendant, both in Las Vegas and Antwerp. Defendant has plenty of reasons to believe that a sealed envelope will not stop the plaintiff's eager for a 'fishing expedition' since it is clear that plaintiff has bad intentions, as explained hereunder.
5. There is a conflict of interests in the Court's Order for mirror imaging the defendant's hard drive since plaintiff Teller is the defendant in the Antwerp defamation litigation.
6. The problem can easily be solved by ordering YouTube to produce the missing video.

The fifth factor : the availability of less drastic sanctions

Plaintiff's motion is in contradiction to his statement : " *Although this warnings relate to other aspects of the case...*" (see P18:7). Plaintiff invalidates his arguments.

It is not righteous and misleading the Court to collect warning's or sanctions and throw them all in a heap.

Hypocritically plaintiff is insisting and focussing on the missing videos,

- while they are to be found in plaintiffs computer - since he could take screenshots of the videos, played in his computer on a moment that they were no longer to be seen on the internet and - since plaintiff clearly stated that he never produced the videos because he was never requested to produce them !?
- while he pretends to not have received any answer from YouTube, while the defendant received 3 answers, within 24 hours the requests were made.

(Exh.24a-e)

1
2 Further defendant did what the Court ordered in its order (#62) stating:

3 *"The Court will afford Defendant the opportunity to produce the videos*
4 *requested by Plaintiff in Request NO.4. If defendant is, in fact, unable to*
5 *produce the video, he must provide a reasonable detailed explanation*
6 *regarding the erasure or destruction of the video."*

7
8 Defendant's explanation was given multiple times in his replies, to the plaintiff in
9 multiple phone conferences, and in the Court hearings.

10 Further, the defendant has complied with all the Court's Orders as long as they were
11 not violating the defendant's rights as European citizen.

12 **Wilfulness, Bad Faith or Fault of the Party**

13 Plaintiff is endlessly repeating himself. Insisting on the defendants disobeying to
14 hand over a copy of his privileged information on defendants hard drive.

15 Plaintiff seems to forget that defendants privileged information was also the Courts
16 concern, and therefore ordered to retrieve the videos from Google-YouTube.

17
18 Plaintiff should realize that by handing over a copy of the defendants hard drive to the
19 plaintiff will cause severe harm for the defendant in the Belgian litigation.

20
21 Plaintiff is further provoking the defendant to respond to immature statements
22 attempting to 'prove' that defendant acts in bad faith.

23 In his motion (p19:6) he states:

24 *"One must look no farther than Dogge's motion to mirror image Teller's*
25 *hard drive, where Dogge accuses Teller of all manner of criminal sexual*
26 *conduct and "suspicious" behaviour (such as changing his name from*
27 *Raymond Teller to simply "Teller," or not speaking on stage) to realize*
28 *Dogge's true intentions."*

1
2 Again, plaintiff is leaving out the 'relevant facts', or is taking words out of the context
3 whenever it is convenient. Defendant did what every decent and dignified person is
4 obliged to do whenever he notices 'suspicious behaviour'. And there was.

5 When plaintiff was asked to explain why he published screenshots as legal
6 evidence against the defendant, showing the defendants picture, face and name right
7 under pervert web links such as 'MANTUBE', 'Corbin', 'CFSelect', '2Long', 'Tyler',
8 showing gay orientated hard porn videos wherein some of the actors look very
9 childishly young, the plaintiff responded very suspicious:

- 10
- 11 • First the attorney Greenberg Traurig law-firm stated that the screenshots were
12 taken in their office.
 - 13 • Then plaintiff stated that this were no more than ' groups of letters' .
 - 14 • Then plaintiff stated that the web links refer to race games on the internet.
 - 15 • Then plaintiff stated that the web links refer to manufacturers of seats for
16 motorbikes, and so on
 - 17 • Then plaintiff tampered the legal exhibits, while he could have sealed or
18 redacted the original legal evidence.
- 19

20 Afterwards, in the discovery and deposition Teller admitted that he took the
21 screenshots in his computer and that the web links refer to 'adult sites'.

22 Teller further stated that the web links as such were published 'accidently' and
23 that he was not advised by his counsel to not file exhibits as such.

24 Unbelievable, but according to Teller, not one of the (twelve) attorneys working for
25 the Greenberg Traurig law firm and representing Teller, advised Teller to not file
26 screenshots as legal evidence in a copyright litigation, showing shortcuts to gay
27 orientated hard porn web links for adults above the defendants name and picture.

28 This all happened 'accidently'... as Teller declares.

1
2 Again a contradicting statement, since Teller stated in his email from 04.24.2012:

3 *"There is no injury to you and no actionable base for objecting to*
4 *documents filed with the US Federal Court... stop wasting my time"*

5 On that same day, plaintiff re-filed the tampered exhibits.

6
7 Unfortunately tampering evidence could not avoid that the original exhibits - before
8 tampered, were spread all over the internet. Tampering legal evidence is a crime
9 anyhow, as pro-se defendant could learn on the internet.

10 The plaintiffs statement: *"There can be no question that Dogge has acted wilfully and*
11 *dishonestly in disobeying this Court's orders, and in bad faith throughout this*
12 *litigation"* (p19:10) is hypocritical since:

- 13
- 14 • It is not the defendant but the plaintiff who's obstructing the Court proceedings
 - 15 filing incriminating exhibits as legal evidence,
 - 16 • it is the plaintiff who chose to tamper the evidence in his exhibit 3.
 - 17 • It is the plaintiff who asked Hector several times to tamper or destroy multiple
 - 18 important evidence.
 - 19 • it is the plaintiff who's calling his lying answers in the discovery 'clerical errors'.
 - 20 • it is the plaintiff who could not wait for a Judgement before calling the
 - 21 defendant a crook and a thief for stealing Tellers illusion,
 - 22 • it is not the defendant but the plaintiff who published the incriminating
 - 23 screenshots showing the name and picture of the defendant right under Tellers
 - 24 favourites or bookmark bar, showing adult porn web links for gays such as
 - 25 'MANTUBE', 'CFSelect', 'CORBIN', '2Long', 'Tyler' resulting that defendant is now
 - 26 associated with web links the defendant never visits but despises and abhors.
 - 27 • Plaintiff did not respect the Courts order regarding 'serving' the defendant by
 - 28 publishing in 'local' newspapers, but published NATIONWIDE instead.

1
2 Defendant will not further reply to the plaintiff's provoking allegations.

3 Defendant cannot be sanctioned for doing what the FBI instructs to do, to
4 report 'suspicious behaviour'. Defendant did his duty as a decent person, informed
5 the Court and reported the issues to the FBI.

6
7 **Due Process Concerns are Not Implicated Here Because Dogge's Misconduct**
8 **Threatens to Interfere With the Rightful Determination of the Case**

9 Defendant is partly agreeing with plaintiff's statement:

10 *"As the Ninth Circuit has stated, there is no point in applying the law*
11 *to lies; going to trial without the key evidence... "(p20:3)*

12 Defendant does not know what is the 'Ninth Circuit' but presumes that it is a wise
13 rule or law. It cannot be the law's intention, not in these days, to bring someone in
14 Court, going to trial without the key evidence, assuming or hoping that you'll find
15 some key evidence during the litigation.

16 That's exactly what plaintiff did. Without having any evidence he brought the
17 defendant in Court, accusing the defendant for stealing, selling, revealing, performing,
18 the plaintiffs illusion, shadows.

19 Up until today, more than a year after plaintiff filed his complaint, plaintiff did
20 not file a single evidence proving that defendant committed infringement on Tellers
21 questionable copyright, plaintiff only filed thousands of documents stating that he's a
22 famous magician, which is obviously not relevant.

23 Further plaintiff blames the defendant for refusing to sign a protective order
24 and that this '*impact Tellers ability to present his full case*' .

25 Plaintiff does not define a single fact, event, document, exhibit, letter, e-mail, video,
26 photo, contract, agreement, etc... he wants to file that could possibly help him to
27 prove the alleged infringement, but that he is unable to file unless a protective order
28 is signed. Plaintiff statements are not proven.

1
2 Plaintiff tries desperately to convince the Court that defendants actions are the reason
3 that there is "*no reasonable assurance that the truth would be available*".

4 The Court could notice that defendant does all what's possible to bring up the truth in
5 this litigation. This cannot be said from the plaintiff.

6
7 It was not the defendant but the plaintiff:

- 8 • Who exchanged legal evidence with 'tampered' documents after it was filed in
9 the US Court, to hide the real and 'truthful' image of the 'screenshot'.
- 10 • Who, after he was confronted with his lies, changed his answers while they
11 were given 'under oath', to call his lies 'clerical errors'
- 12 • Who, never identified the document, re-filed as exhibit 3 on 4.25.2012, which
13 seems to be the only 'key' evidence that plaintiff has.
- 14 • Who, instructed other persons to tamper or destroy multiple evidence that
15 certainly would prove that plaintiff copyrights is questionable and that
16 defendant did no infringement at all.
- 17 • Who is now filing multiple motions requesting the Court for case terminating
18 sanctions because plaintiff realizes that in the coming pleadings it will come out
19 that he cannot prove his complaint and that the real and truthful facts will
20 prove that plaintiffs allegations, statements and complaint are unfounded.

21
22 In contrast to the plaintiff, all defendants replies, answers, motions and oppositions
23 ever filed in Court, were stating that defendant is looking forward to the pleadings in
24 Court. This time, defendants reply is no different.

25
26 Defendant ensures the Honourable Court that he will do all possible to show the Court
27 and Jury the real story and the truthful facts in this litigation, if the Court allows him
28 to do so.

CONCLUSION.

Plaintiff does not prove that his illusion 'shadows', can be subject to copyright, nor that the illusion created by the defendant infringes the questionable, alleged copyright on the illusion created by Teller.

Plaintiff's copyright is doubtful and questionable for several reasons :

1. It is not proven that sympathetic/voodoo' magic, like 'shadows' is Tellers creation, on the contrary, plaintiff's 'expert witness' Jim Steynmeyer explains in his expertise report that these kind of illusions were performed hundreds of years ago. (1584- English book, The discovery of witchcraft by Reginald Scot) (1770- British magician Jonas) (1784- Italian magician Pinetti)
2. Plaintiff has abandoned his 'work', years ago.
3. The 'sympathetic' or 'voodoo' effect as performed in 'shadows' became a standard illusion, and performed, sold second hand and new, rented, and constructed by many, all over the world, for many years.
4. Plaintiff is fully aware that 'Shadows' became a standard manufactured trick sold new and second hand, rented and performed all over the world by multiple magicians. Desperately he tries to conceal this fact for the Honorable Court.
(Exh.33,34,35,36)
5. On January 29, 2013 The United States Copyright Office – Registration Specialists informed the defendant in an official letter that: "Copyright does not protect magic routines". On April 10, 2013 they confirmed their statement.
(Exh.37a,b,c)

Teller admits that the illusion created by the defendant differs from the illusion created by Teller, and therefore Teller has tried to buy the "prop" from the defendant, in order to obtain the copyright on the illusion created by the defendant.

1
2 The motion to the Court, requesting case terminating sanctions, denies the right of
3 the defendant to a fair trial, as a Court order would do.
4

5 1. Plaintiff's requests for case terminating sanctions in regards to obtaining the
6 video as key evidence in this litigation, are excessive and disproportionate since
7 plaintiff stated that the video is to be found in his computer and since the video
8 is at the plaintiffs disposal and can be retrieved from YouTube, which is less
9 invasive than infringing the defendants private life demanding a mirror imaging
10 of his hard drive. The request of the plaintiff denies the right of the defendant
11 to a fair trial, as a Court order would do.
12

13 2. Plaintiff's requests for case terminating sanctions regarding to defendants
14 refusal to sign a protective order are excessive and disproportionate.

15 Signing a confidential agreement will not protect the defendant, on the
16 contrary, it will only provide an unfair and 'one-sided' protection to the plaintiff
17 limiting or blocking the defendant to bring up the truth in the litigation in Las
18 Vegas and in Antwerp.

19 On top, a protective order cannot turn the clock backwards, in a litigation
20 now pending for one and a half year.

21 Many documents were published on the WWW Internet and send to REUTERS
22 and to other publishers of newspapers/magazines all over the world, 'nota
23 bene'... by the plaintiff.

24 The Court and plaintiff must realize that nothing can be kept 'confidential'
25 from the moment the 'fast' WWW Internet is involved.

26 Again, the request of the plaintiff denies the right of the defendant to a fair
27 trial, as a Court order would do.
28

3. Plaintiff's requests for case terminating sanctions regarding defendants refusal to hand over the DVD or MANUAL are excessive and disproportionate.

The DVD and MANUAL, when completed, would explain the secrets behind defendants unique magical creation.

Defendant cannot be forced to reveal or to expose the secrets behind his copyrighted illusion.

The request of the plaintiff denies the right of the defendant to respect his private life, his home and correspondence, without any adequate or solid guarantee against abuses, as a Court order would do. (with or without protective order).

Therefore defendant respectfully requests the Honourable Court,

- **to deny plaintiffs motion for case-terminating sanctions,**
- **to continue with the proceedings and to find the truth in this litigation.**

Looking forward to the pleadings in Court.

With the deepest respect,



Hoefensebaan 2, B2950 Kapellen
Belgium - Europe

Ps. Inventory list of exhibits on next page.

Inventory List – 37 Exhibits

In RESPONSE - OPPOSITION
to Plaintiff's motion for case-dispositive sanctions (#121)

EXH. N°	DISCRIBTION	CASE N° 2:12-cv-00591-JCM-GWF
1.a-b	Screenshot from internet comments	
2.	Screenshot YouTube - Shadows by Petros	
3.	Screenshot YouTube – plants and Shadows	
4.a-c	Screenshot YouTube – Hector performing Rose trick	
5.	Screenshot Ian McCarthy performing Rose trick	
6.	Screenshot Mike Fallen performing Rose trick	
7.	Screenshot Alexander Merk & Magic forum	
8.a-d	Screenshots YouTube video & comments 'how to built Rose trick'	
9.a-d	Screenshots /Emails where to rent Rose trick	
10.a-b	Screenshot forum/email – trick is sold since years	
11.a-d	Emails/discovery – Teller wants no one else to perform Rose trick	
12.	Email from Teller to Bakardy – regarding different routine proposal	
13.a	Screenshot YouTube – The Rose and her shadow – Close up – Bakardy	
13.b	Discovery – Teller admits Bakardy is unique	
14.a-d	Bakardy's Copyright	
15.a	Article Tellers interview in Esquire – regarding Swedish magician	
15.b	Discovery – Teller has no copyright on 'Silver Fish' magic trick	
16.	Email from Bakardy to Teller – regarding respect for Tellers routine	
17.	Email from Teller to Bakardy – regarding approval different routine	
18.a-b	Emails from Teller to Gunther Guinee	
19.	Email from Bakardy to Teller - regretting no news from Teller	
20.	Email from Teller to Bakardy – regarding no objection to exhibit 3	
21.	Discovery – Teller admit exhibit 3 could have been sealed	
22.	Discovery - Teller is aware that exhibits are published on the internet	
23.a-b	Newspaper ads – to serve Bakardy – Dogge Gerard	
24.a-e	Emails between Bakardy and YouTube - Google	
25.	Defendants list of exhibits	
26.	Transcript of phone conversation between Dogge and Tratos	
27.a-b	Transcript of deposition Dogge	
28.a-b	Screenshot 'google search – magic tricks revealed by Penn & Teller'	
29.a-b	Transcript of phone conversation between Dogge and Tratos	
30.	Transcript of Court hearing.	
31.	Email Tratos to Bakardy – Motion to deem June 12,2013.	
32.	Discovery – Defendant request plaintiff to produce evidence	
33 – 36.	Emails between Teller and Hector	
37.a-c	Documents Copyright Office USA	