

14th of August, 2013.

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No Counsel - PRO - SE

BY _____ DEPOSITED

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 unfair competition claim
(#123)**

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**I. Introduction.**

The Court will notice that plaintiff's motion is based on thousands of newspaper articles, to prove that Teller is a 'celebrity', and on a one sided 'expertise' report from Jim Steynmeyer. Plaintiff refers to parts of the discovery and the deposition, dating from more than a year after the facts, showing defendant answers to cunning and crafty questions from plaintiff's attorney, pulled out of their context by plaintiff's attorney.

Further plaintiff refers wrongly to a draft of an advertisement which never was going to be published. Plaintiff does not file one single proof of an advertisement. Simply because he can't. Simply because there was never an advertisement published. Even the draft **(Exh.1a)** plaintiff is referring to, is different from the cancelled advertisement which mentions a different price from the draft.**(Exh.1b)**

The Court should deny plaintiff's exhibit, because it isn't evidence anyhow. It's no more than a draft and a never published document.

The only factual evidence plaintiff can refer to is a screenshot taken in Tellers computer, showing Bakardy's illustration video on YouTube.

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

Plaintiff's motion is overloaded with ego boosting statements that Teller is a famous celebrity and that 'shadows' is so much exclusively (?) related with him, that it has become his trademark work. Defendant does not argue that Teller is famous, and that he wrote some books, and that he is one of many, performing 'shadows'.

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2 **II. Statement of the real facts.**

3 As the Court could read in defendants previous filings, most of plaintiff's statements
4 are not matching the real facts.

5
6 In reply to plaintiff's statement,

7 (C) "Shadows" is so Unique and Strongly Associated with Teller that It has Taken on
8 the Status of a Signature Piece, Representing Teller's Trademark.

9 Defendant believes that this is no more than a big ego tripping statement, which is
10 absolutely not proven. On the contrary.

11 In Europe, 99% of the people do not know Teller. Europeans associate
12 'Shadows' with the celebrity and singer Cliff Richard. his band was called ...
13 'Shadows'.

14
15 Further plaintiff states There is No Work of Magic Matching Teller's "Shadows" Illusion.

16 Plaintiff statement is wishful thinking. Defendant prefers to stay with the facts.

17
18 **Fact** is that on the World Wide Internet, anyone could or can see multiple magicians,
19 performing a trick with a Rose and a shadow, similar to 'shadows' by Teller. Some of
20 them even call their performance 'Shadows':

- 21
22 1. Shadows by Petros **(Exh.2)**, others call it
23 2. 'Plants and Shadow' (ALS) **(Exh. 3a,b)**
24 3. Hector, a Spanish magician, is performing a trick similar to Tellers shadows
25 ('voodoo trick' as described by Teller) using exactly the same prop as used in
26 Tellers, on big venues and on cruise ships all over the world. **(Exh.4a,4b,4c)**
27 4. Ian McCarthy from Ireland performs his version of shadows **(Exh.5)**

1
2 5. Bjorn Magic from Sweden performs his own version of shadows, unfortunately
3 the promotion video was removed from the internet before defendant had the
4 chance to download it or to take a screenshot of it.

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

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

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

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

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

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

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

19
20 All of them use a routine or a procedure, in which they act upon one flower (whether
21 'shadow', painted, or otherwise) to affect the other, using a sympathetic/'voodoo'
22 effect, coupled with the flower, which identifies the central action of Tellers trick, as
23 he stated in his email to the defendant on April 6, 2012. **(Exh. 11)**

24 Plaintiff's statement is not proven, on the contrary.

25 It seems that plaintiff filed his complaint for Unfair Competition or Copyright
26 infringement much too late, accusing the wrong person.

27 Further plaintiff, Teller, states that he did not want anyone in the world to perform
28 'his' trick **(Exh.12)** and that he would not licence anyone, until he retired.

1
2 Contrary to what Teller states, defendant has seen Hector from Spain, ALS from
3 USA, Teller from USA, Petros from USA, Bjorn Magic from Sweden, Ian McCarthy from
4 Ireland, Mike Fallen from UK, Alexander from Germany,, and so many others
5 perform a trick wherein a rose falls apart on the magicians command.

6
7 Apparently, the trick wherein a rose falls apart on the magicians command, is a
8 manufactured trick and is part of the standard repertoire of magicians all over the
9 world, since many years, as stated in the comments by the YouTube video 'plants and
10 shadows' from ALS. **(Exh.3a)**

11
12 At this point Teller has three options:

- 13 1. He can sue all infringers, which would be impossible.
14 2. He can give them all a license before he retires.
15 3. He can ask the infringers to cooperate and to help him in this litigation.

16
17 Apparently, plaintiff chose for the last two options.

18
19 Plaintiff started to licence the infringers, **(Exh. 13c-g)** with as first HECTOR.
20 A Spanish magician who bought his prop, second hand, 7 years ago to perform the
21 'shadows' illusion worldwide, for big crowds, on big theatre settings on Cruise ships
22 and so on.

23
24 To help him in this litigation, plaintiff instructed Hector what to write on Magic
25 Internet Forums and to delete multiple videos on YouTube, not in Tellers favour.
26 Hector got rewarded with a license for \$100 and continues with his shadows
27 performances. **(Exh.14h)**

1
2 **Fact** is that plaintiff committed spoliation of evidence before the litigation started.

3 Deliberately. Purposefully and intentionally, as proved in the following:

- 4
- 5 • In a phone conversation between the parties on or about 03.21.2012, Teller
6 informed the defendant that Teller did not want anyone else in the world to
7 perform a similar trick to Tellers (shadows). The day after, plaintiff confirmed
8 this in an e-mail. **(Exh.12)**

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

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

16
17 On April 2nd, 2012, Plaintiff sent an E-mail to Hector, stating:

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

22 About 30 minutes later, Hector answered : "Yes, sure I will pull it off." **(Exh.13a,b)**

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

24
25 **Fact** is that plaintiff also 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.

1
2 After he discovered another video on YouTube, again uploaded many years ago, again
3 with thousands of views, he again contacted Hector, on date of April 15th, 2012,
4 requesting:

5 ***"It appears somebody posted your drawing-version of the***
6 ***(shadows) routine without your knowledge. Would you be willing to***
7 ***ask YouTube to take that down..."*** (Exh.14a,b,c)

8 Again Hector followed Tellers instructions. Again spoliation took place on important
9 evidence for the defendant. (Exh. 14b)

10 Conclusion: the internet is swarming with magicians performing 'shadows', and
11 plaintiff has deliberately, purposefully and intentionally instructed third parties to
12 destroy or tamper these performances which could prove that defendant didn't
13 infringe on copyright.

14 *****

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

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

22 Defendant was able to take a screenshot before the ALS magician's comment
23 (Exh.3a) 'magically' disappeared from the internet and has been changed to 'more
24 Teller friendly' comments, as to be seen in the last lines of the comment, wherein the
25 public is spurred to go see the Penn & Teller show. (Exh.3b)

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

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Fact is that 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.14c)**

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: **(Exh.14d)**

"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 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."

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On April 16, Hector responded to Teller:

"Hello, I did add that, I hope it's OK now. I wish you the best on all this process. Hector." (Exh.14e)

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

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

"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. 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..."

On date of May 4th , 2012 Hector responded to Teller: (Exh.14g)

"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..."

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2 **Fact** is that Hector got rewarded for his silence and cooperation with some 'free'
3 tickets for the Penn & Teller shows and... a 'free' license from Teller. Not really free,
4 for a 100\$ as Teller wrote in his email from July 23rd ,2012: **(Exh.14h)**

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

8
9 **Fact** is that Hector from Spain, ALS from USA, Teller from USA, Petros from USA,
10 Bjorn Magic from Sweden, Ian McCarthy from Ireland, Mike Fallen from UK, Alexander
11 from Germany,, and so many others perform a trick wherein a rose falls apart
12 on the magicians command.

13 Plaintiff refers to the 'one sided' expertise report of Jim Steynmeyer:

14
15 In addition, the ability and right to control one's trademark is critical.
16 Significantly, it has been noted that "if a version of 'Shadows' fell into the hands
17 of a less professional or more careless performer, its performance would be
18 detrimental to Teller's success. It would cease being special and unique in his
19 show, and would lose its value." (Id. at 11). Moreover, "if a version of 'Shadows'
20 was marketed to the magic community, it would impact Teller's opportunity to
21 profit from the sale of this routine, in the future, to other professionals." (Id.).

22
23 Defendant notice that plaintiff gives the impression that he is in possession of a
24 registered 'trademark' or a patent. If so, plaintiff never filed a document to prove so.
25 More than likely is plaintiff mistaken, or does he wants to confuse the defendant and
26 mislead the Court.

27
28 Apparently, the 'unfair competition' started years ago, not due Bakardy, but due to
29 Teller himself. Teller was simply not interested or able to control his 'trademark'. He
30 lost control years ago, when 'shadows' became a standard and manufactured illusion.
31 Long before defendant ever created his prop.

1
2 Teller should realize that, although he can intimidate some magicians to make them
3 do what 'he' wants them to do, he cannot control the internet, he cannot turn the
4 clock backwards, making all 'evidence' disappear, evidence for the defendant that
5 Tellers 'shadows' is a manufactured standard illusion performed by many, since many
6 years all over the world.

7
8 **Fact** is that Bakardy is not to blame for unfair competition to Teller.

9 On the contrary, defendant is the only one with an illusion not competitive with Tellers
10 and all others. The 'prop' created by the defendant allows to perform a complete
11 different routine, and surpasses all others, including Tellers.

12 Plaintiff is aware that Bakardy's trick/prop surpassed Tellers version of
13 shadows, deliberately leaving out the part of the comments among the 'The Rose and
14 her Shadow' YouTube video wherein clearly is stated that Bakardy's presentation is
15 different. **(Exh.15)**

16
17 **Fact** is that whenever plaintiff refers to this text, written by Bakardy on the YouTube
18 video as a description of Bakardy's 'trick', plaintiff deliberately conceals the complete
19 text which clearly states: ***"..I've seen the great Penn & Teller performing a
20 similar trick and now I'm very happy to share my version in a different
21 and more impossible way... see the stem and vase filled with water are
22 removed from the table..."***. **(Exh.15)** Again plaintiff misleads the Honourable
23 Court by holding back the **relevant facts**.

24
25 Further, plaintiff refers in his motion, (#123- p15:14) to a video which he never
26 filed as an exhibit, stating that defendant offers a copy of Tellers 'shadows' illusion
27 and instructions for performing the illusion for \$ 2.450. Plaintiff does not prove his
28 allegations, although it is plaintiff's obligation to do so.

1
2 Defendant, who recorded the video, remembers that the video shows a
3 complete different performance from Tellers, and does not mention any price 'for
4 sale', nor any instruction 'how to' perform the illusion. Defendants video shows clearly
5 that Bakardy's prop, and all the surpassing actions going along with it, are unique in
6 the world. Further the video states 'easy to perform'.

7
8 Defendant is the first and only one in the world who uploaded a video on YouTube,
9 showing that he is the only one who is able to 'control' a rose falling apart, in a
10 removable, water filled, transparent, ordinary Coca Cola bottle, with the removable
11 stem of the flower completely visible, as Teller admits. **(Exh.16)**

12
13 Plaintiff admit that both tricks are different from each other, as proven in the exhibits:
14 **(Exh.16,17,18,19,20,21,22,23,24,25,26)**

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

16 **Defendant can.**

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

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

21 4. Plaintiff never performed 'shadows' with the stem of the rose completely visible.
22 **Defendant can.**

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.**

26 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.**

1
2 6. 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.**

5 7. Anyone can perform 'shadows', as seen on the internet Plaintiff is unaware of
6 anyone else in the world performing Bakardy's illusion.

7 **Defendant is also unaware.**

8
9 In reply to plaintiff's statement:

10 **D. Dogge has Misappropriated Teller's Personal and Signature Illusion to Sell Mail-**
11 **Order Props and DVDs**

12 Defendant regrets to read plaintiffs loftily and humiliating statements regarding the
13 defendants employment history and the defendants health situation, to finally end his
14 paragraph, again referring to a draft, irrelevant to the litigation, since it was never
15 published and was never going to be published.

16 Defendant prefers to stay with the facts, relevant to the litigation.

17
18 In contrast to all plaintiffs statements in the discovery and deposition, plaintiff
19 pretends in his motion that both illusions are similar, and that Bakardy is copying.

20
21 Usually, whenever 'copy pirates' are discovered on the market, the original
22 manufacturer destroys all copies in a demonstrative way, mostly with a bulldozer.
23 (Rolex, Cartier, Nike, Lacoste, etc..)

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

25 In contrast to what big brands do, Teller offered money to Bakardy what clearly
26 indicates that Bakardy's prop/illusion is better than Tellers and not just a 'copy' he
27 wanted to destroy, on the contrary Teller wanted the exclusive rights on it.

28 **(Exh.30a,b & 32)**

1
2 **Fact** is that, even before the litigation started, Teller was willing to pay the defendant
3 for –and the defendant quotes Teller- “*the thought and work you have put into*
4 *developing the alternate method*” (Exh.3). Teller recognizes that the method used by
5 the defendant is different from the method used in Teller’s performance of ‘shadows’.

6
7 **Fact** is that Teller offered money to come in exclusive possession of Bakardy’s
8 invention. Deposition : p92:12-24 (Exh.27)

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

11 **A.** *Why would I do that?*

12 **Q.** *You did it to me ?*

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

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

18 The plaintiff’s statements that the infringer should pay and not be paid, are in
19 contradiction to what plaintiff did, before the litigation started. First offering the
20 defendant \$15.000, then \$40.000. In one of the phone conversations plaintiff
21 considered to pay defendant \$125.000 to assume full ethical and legal possession of
22 the defendants prop or method, different from Teller’s.

23
24 First set admissions (Exh.28):

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

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

1
2 Second set admissions (Exh.29):

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 is significant different since Teller was requesting others to approach
10 Bakardy. In the beginning of the litigation Teller requested Guinee to persuade
11 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.30a,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 Defendant never misappropriated Teller's persona and signature illusion to sell mail-
25 order props and DVDs. Simply defendant never sold a single prop or whatsoever. The
26 first person who had interest to buy Bakardy's prop was Teller. He wanted exclusivity.

27 **(Exh. 30a,b & 32)**

28

1
2 **Fact** is that Teller was offering money, before the litigation started, at that time there
3 was no dispute to 'settle'. Teller just wanted to buy exclusivity on Bakardy's prop.
4 Plaintiff is betraying himself and it's obvious that defendants method/prop is different,
5 which logically results in an illusion, different from Tellers.

6 In reply to plaintiff's paragraph:

7 E. Defendant's Unauthorized Use of Teller's Trademark to Sell His Own Mail-Order
8 DVDs and Props Damages Teller's Mark and Confuses the Public.

9 *"Like a few famous magicians of the past, after he retires Teller may license the*
10 *performance of "Shadows" to only a highly gifted and truly extraordinary magician*
11 *who would use it in a market that in no way overlaps Teller's. (See Exhibit 1,*
12 *Teller Decl., ¶ 22). The "Shadows" illusion is Teller's trademark magic trick, and*
13 *very special to him. He would not allow just anyone to perform it and possibly ruin*
14 *its significance."*

15
16 Plaintiff's statements are not only worthless and outdated, but contradict what plaintiff
17 does. The prop to perform 'Shadows' is manufactured, can be sold and even rented,
18 **(Exh. 8a-9e)** and the illusion is part of many magicians standard repertoire.
19 **(Exh.2-9e)** Above all, Teller 'gave' Hector (and who else ?) a licence, not after, but
20 before Teller's retirement. **(Exh.13c-13g & 14h)**

21 Further, defendant does not need Tellers 'authorization' to perform, sell or rent his
22 own creation. Defendants is holder of a registered copyright on his creation, and it's
23 not called 'shadows' but 'The Mysterious Rose', by Gerard Bakardy.

24
25 **III. Legal Argument.**

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

1
2 A. Is Teller is entitled to summary judgment on his unfair competition claim ?

3 Absolutely not. If there was any unfair competition than it was certainly not due to the
4 defendants work. There is no competition at all.

5 1st. According plaintiff's statement (p7:20): "*Defendant Gerard Dogge has never*
6 *been a professional magician. The only trick he has ever performed was a*
7 *vanishing silk trick that he learned in four minutes and some simple card tricks*
8 *while wandering table to table in bars and cafes. Over the years, he has made a*
9 *living performing musical acts in small restaurants and cafes. Unable to*
10 *command much pay as a performer, he has often supplemented his income by*
11 *selling a random variety of household products, such as car polish and vacuum*
12 *cleaners. Although he has sold several CDs of his music at the cafes and bars*
13 *where he has performed, his music recordings have never been released to the*
14 *wider public or sold in stores. All the songs he has ever performed were covers*
15 *of other musician's songs because, as Dogge admitted, "Never in my life I was*
16 *able to write a song."*

17 **On the contrary :** Plaintiff is a famous magician, a celebrity.

18
19 2nd. Defendant was planning to sell his creation or 'prop', together with an
20 instruction Manual and DVD, how to assemble the 'prop'.

21 **On the contrary :** Plaintiff exposed many of magicians valuable illusions and
22 magic tricks but never sold or explained props created by himself.

23
24 3rd. Defendant intended to perform a 'transparent' sympathetic/voodoo illusion.

25 **On the contrary :** Plaintiff NEVER performed a 'transparent' sympathetic or
26 voodoo illusion.

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In reply to plaintiff's paragraph,

B. Background of an unfair competition claim as it applies to a celebrity's persona and trademark.

Defendant notices that plaintiff gives the impression that he is in possession of a registered 'trademark' or a patent. If so, plaintiff never filed a document to prove so. More than likely is plaintiff mistaken or he wants to confuse the defendant and mislead the Court.

Whether plaintiff can prove his statements or not, defendants work does not apply to Tellers trademark or whatsoever. Defendant uploaded a video, clearly showing all the differences between all the 'shadows' versions on the market, and his 'new' creation. Defendant's video must be seen as a comparative advertisement, clearly to be seen in the text under the video, defendant described that his version was '*different and in a more impossible way*' than Tellers. **(Exh.15)** In the cancelled advertisement, defendant mentioned 'Better than in Las Vegas'. **(Exh.1b)**

According the European and U.S. law, comparative advertising benefits consumers.:

The U.S. FTC and the National Advertising Division of the Council of Better Business Bureaus, Inc. (NAD), govern the laws of comparative advertising in the United States including the treatment of comparative advertising claims FTC stated that comparative advertising could benefit consumers and encourages comparative advertising, provided that the comparisons are "clearly identified, truthful, and non-deceptive" Although comparative advertising is encouraged, NAD has stated "claims that expressly or implicitly disparage a competing product should be held to the highest level of scrutiny in order to ensure that they are truthful, accurate, and narrowly drawn."

1
2 Another major law is the Trademark Lanham Act, which states that one could
3 incur liability when the message of the comparative advertisement is untrue or
4 uncertain, but has the intention to deceive consumers through the implied message
5 conveyed.

6 Defendant couldn't be more clear, stating that his creation was different from all
7 others, as he explicitly wrote it in the description under the YouTube video, and as he
8 showed his performance on the video which was never showed before. As Teller
9 admits. **(Exh.23)**

10
11 Whether Teller is famous, very famous, or not, does not change the fact that Teller
12 never performed an illusion in a water filled, transparent and removable vase with
13 the rose stem 100% visible and removable.

14 In Europe all civilians have the same legal rights, famous or not.

15
16 Further, defendant notices that 99% of plaintiff's arguments in plaintiff's motion and
17 also in paragraph (B) are based on Jim Steynmeyer one sided 'expertise' report.
18 Defendant recognizes the expert skills and admires his creations. On the other hand,
19 defendant could learn that Teller wrote and published a 'nice and friendly' review on a
20 book written by Jim Steynmeyer. **(Exh.31a-d)**

21
22 The expert will never bite the hand that feeds him, or writes positive comments on
23 his books. The one-sided 'expertise' report shows clearly that Mr. Steynmeyer isn't an
24 impartial witness. By the way, the expert never saw defendants work, and obviously,
25 does not mention a single word regarding Bakardy's performance or prop.

26 Further, plaintiff refers to 8 factors, in a 'slightly modified' version of the
27 traditional *Sleekcraft*, that Courts may consider in determining whether there is the
28 requisite showing of likelihood of confusion..

1
2 Factor #1: Teller Has an Extremely High Level of Recognition Among the Group that
3 Dogge Targeted to Sell his Mail-Order Illusion DVDs and Props.

4 Defendant does not know whether Teller has an extremely high level of recognition
5 recognised out of Las Vegas. Defendant could learn on the internet that professional
6 magicians consider Teller as one of 'the Bad Boys' due to their multiple exposures of
7 many magician valuable illusions.

8 Plaintiff does not know which groups defendant wanted as target to sell his creation.
9 Plaintiff's statements are not proven.

10 Further plaintiff states (p15:3):

11 *"Shadows" is Teller's signature trick and so closely associated with him that no*
12 *other professional magician has performed it on stage as part of their regular*
13 *routine without Teller's permission. (See Exhibit 3, Steinmeyer Rpt., at 8-10).*

14 It seems that expert Steynmeyer did not research the internet and blindly believes
15 what Teller told him, otherwise the expert would have discovered 'Shadows by
16 Petros', 'Plants and Shadows by ALS', Hector, Ian McCarthy, Alexander, etc...
17 **(Exh. 2-10a)** It's noteworthy that Jim Steinmeyer is aware who is permitted or
18 licensed by Teller, to perform 'Shadows' on stage.

19
20 The tags plaintiff is referring to, were mostly suggested by YouTube. Defendant
21 does not know how YouTube selects the suggested tags and presumes that this is a
22 service for the YouTube visitor to help them in their search.

23
24 Plaintiff does not prove that a google/YouTube search 'Shadows by Teller' will lead to
25 defendants YouTube video 'The Rose and her Shadow by Gerard Bakardy'.

1
2 Plaintiff's statements are easily refuted by doing a google search as test:

- 3 • A google search for images of Gerard Bakardy results in 3 pictures of Gerard
4 Bakardy and hundreds of Teller.
5 • A google search for images of Teller, shows hundreds of Tellers images, but
6 does not show a single image/picture of Gerard Bakardy.

7
8 Further, plaintiff refers again to an advertisement on Bakardy's YouTube video, which
9 never mentioned and never will mention any price for sale! **(Exh.14b)**

10 Plaintiff statements are not proven and make no sense.

11
12 Factor #2: Teller and Dogge's Goods are Closely Related

13 In this chapter plaintiff argues that Dogge and Teller's goods are closely related.

14 This is absolutely unjust. They are the same related as a black and white TV is related
15 to a HD Full Colour TV. Tellers 40 years old illusion is even surpassed by others than
16 Bakardy's.

17 Bakardy is the only and first one in the world who can perform the illusion in a
18 water filled, removable transparent Coca Cola bottle with a 100% and complete visible
19 and removable rose stem.

20
21 The 'customers' would see the difference, and when the 2 props would be on the shelf
22 in the magic store, without mentioning the name of the creator, but by mentioning
23 the restrictions, limits and possibilities of both props, the 'customer' will chose for
24 Bakardy's prop, obviously, because Bakardy's prop surpasses Teller's.

25
26 The goods are therefore absolutely not inextricably related.

27 Plaintiff statements are not proven.

28

1
2 Factor #3: The Marks Are Nearly Identical

3 In this paragraph plaintiff argues that the staging looks similar. Apparently, to create
4 a shadow the stage has to be dark and a spotlight and white board is needed. The
5 shadow will obviously reflect the items placed in the spotlight. In plaintiff statements
6 he crafty conceals the facts.

7
8 **Fact** is that in Bakardy's video the shadow does not reflect a non-transparent, white
9 bud vase with half of the rose stem hidden. **(Exh.1a,b)**

10
11 **Fact** is that a thousand shadows will not change Tellers 40 years old illusion to a
12 water filled, transparent and removable coca cola bottle, with a 100% complete visible
13 and removable stem. **(Exh.1a,b)**

14 Factor #4: Consumer Confusion May Be Presumed Due to Dogge's Intentional Use of
15 Teller's Mark.

16 Plaintiff does not prove a single statement in this paragraph, and refers to the one
17 sided expert's report, and states further: "*Because Dogge has presented no evidence*
18 *or expert report to contradict Jim Steinmeyer's expert opinion, this factor must weigh*
19 *in Teller's favour*". Jim Steinmeyer has never seen the work of the defendant, and his
20 opinion is therefore not expertly.

21 Defendant is looking forward to meet and to contradict the expert in Court.

22
23 Factor #5: Dogge Used Marketing Channels that Would Cause Consumer Confusion

24 In this paragraph plaintiff refers to Bakardy's instructional DVD, which does not even
25 exist, and to a draft that never was going to be published.

26 The DVD and manual, which would come along with the 'prop' whenever
27 Bakardy would sell his 'prop', would instruct the customer how to assemble and how
28 to use the prop.

1
2 Presuming that the customer or the spectator is aware that there are other magicians
3 performing shadows, such as Petros, Hector, Alexander, Ian, McCarthy, ALSmagic or
4 even Teller, they would immediately recognize that the illusion based on Bakardy's
5 prop, surpasses all the others. Without being confused. Plaintiff's statements are not
6 proven.

7
8 Factor #6: Degree of Care Likely to Be Used by Purchaser Is Low

9 In this paragraph plaintiff states: "*a consumer would exert any special care in*
10 *determining actual endorsement before deciding to purchase*".

11 Plaintiff statement is pure hypothetical and based upon assumptions. Plaintiff
12 statements are confusing, are not proven and make no sense at all.

13
14 Factor #7: Dogge Intentionally Associated Teller with his Product to Increase His Sales

15 Plaintiff states: "*The relevant question under this factor is "whether the defendants*
16 *intended to profit by confusing consumers."*

17 Defendant never sold, shipped, performed, exposed, advertised or promoted his prop
18 for sale. Never and nowhere was there a price publicly advertised.

19 Defendant would be stupid to associate his brand new creation with a 40 years old
20 illusion. The only association ever made by defendant was merely in a comparative
21 way. Such as 'different from Teller' and 'Better than in Las Vegas'. **(Exh.1a,b & 15)**

22
23 Defendant could have uploaded a 'parody' video instead, performing his illusion
24 in a way as Penn & Teller do with many illusions, ridiculing others by revealing their
25 methods. Defendant could have done the same, ridiculing Teller's performance with
26 revealing the method to perform Tellers 'shadows' illusion, and then afterwards show
27 the defendant's surpassing version. Defendant didn't.

28 Defendant does not want to be disrespectful to other magicians.

1
2 Defendant intended to sell his invention/prop in a honest way. Confusing customers
3 will never help to sell any product. Defendant was not confusing any one and states
4 clear that his prop was different from Teller's and 'Better than in Las Vegas' .

5 **(Exh.1a,b & 15)**

6 By the way, Teller does not sell his prop, how can a customer be confused ?

7 Plaintiff statements are not proven.

8
9 Factor #8: Dogge Targeted a Market that Is the Natural Extension of Teller's Product

10 Line

11 Plaintiff states: "*As previously mentioned, once he retires from performing, Teller*
12 *could license the performance of "Shadows" to a highly gifted magician and/or market*
13 *and sell the prop he uses in his performances. Licensing signature performances and*
14 *selling props relating to the same is the natural progression for the careers of many*
15 *magicians. As explained by expert witness, Jim Steinmeyer, a magician's trademark*
16 *illusion can be a significant source of income and avenue to continue his legendary*
17 *status. However, this expansion into the natural trajectory of Teller's product line will*
18 *be unfairly foreclosed if Dogge is allowed to continue his infringing use of Teller's*
19 *persona and signature illusion."*

20
21 Defendant is not to blame for foreclosing the expansion of Teller's product line.

22 It seems that expert Steynmeyer did not research the internet and blindly believes
23 what Teller told him, otherwise the expert would have discovered 'Shadows by Petros,
24 'Plants and Shadows by ALS', Hector, Ian McCarthy, Alexander, etc... and that the
25 prop to perform Shadows is manufactured, that it is sold and for rent, and that the
26 illusion is a part of many magicians standard repertoire, already for many years.

27 **(Exh.2-10e)**

1
2 Plaintiff's statements are worthless and outdated and contradicting to what plaintiff
3 does, since he 'gave' a licence to Hector (and who knows, who else more ?),
4 **(Exh.13c-13g & 14h)** not after, but even before Teller's retirement.

5
6 Teller himself is already foreclosing the expansion of his product line before he retires.
7 **(Exh.13c-13g & 14h)**

8
9 Furthermore, Teller can't sell the prop he uses in his performance of 'shadows'
10 exclusively, since third parties have manufactured the same prop. **(Exh.8a-10b)**

11
12 **IV. Conclusion.**

13 Plaintiff fails to justify his complaint.

14 Since plaintiff does not prove:

- 15 • that the illusions are similar
16 • that defendant committed unfair competition
17 • that he had any damage at all
18 • that he was behaving responsible regarding the ©

19
20 Since defendant proves:

- 21 • that both illusions are significant different,
22 • that plaintiff NEVER performed Bakardy's illusion,
23 • that defendant's prop is the first and only one in the world to allow a person to
24 perform the illusion with all items 100% visible,
25 • that plaintiff's copyright is invalid or at least questionable,
26 • that plaintiff was irresponsible and provoking,
27 • that plaintiff had no damage, but publicity instead,
28 • that plaintiff acts in bad faith,

- that plaintiff committed tampering and spoliation on important evidence for the defendant,
- that plaintiff instructed others what to write in their name on internet forums to obstruct the defendant in his research for evidence,
- that plaintiff rewarded others for doing and writing what he instructed them to do or write,
- that plaintiff bribed his witnesses,
- that the prop he uses to perform his illusion, is free to buy on the market, and in the public domain

defendant can only conclude that he was wrongly brought in Court, and that Teller's claim 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 Court,

- **to DENY plaintiff's motion and**
- **to render a Judgement, acquitting the defendant.**

With the deepest respect,



Hoevensebaan 2, B2950 Kapellen
Belgium - Europe

See next page for Inventory list - 32 exhibits, 61 pages

Inventory list – 32 Exhibits in support of opposition 8.14.2013**UNFAIR COMPETITION**

Exh. Nr.	Description
1a	Plaintiff's Exhibit
1b	Cancelled Advertisement
2	Screenshot 'Shadows' by Petros
3a,b	Screenshots - Plants and shadows ALS Magic
4a-4c	Screenshots Hector
5	Screenshot – Ian McCarthy - Shadows
6	Screenshot – Mike Fallen - Shadows
7	Screenshot – Alexander Merk
8c-d	Screenshots - how to built prop
9a-e	Screenshots - prop for sale/rent
10a,b	Hector bought prop 7 years ago
11	E-mail from Teller to Bakardy April 6, 2012
12	E-mail from Teller to Bakardy March 22 ,2012
13a,b	E-mails between Hector and Teller April 2, 2012
13c	License Hector
14a,c	E-mails between Hector and Teller April 15, 2012
14b	Screenshot YouTube
14d-h	Screenshot Magic cafe forum & E-mails between Teller & Hector
15	Plaintiff's exhibit N°3
16-20	Discovery answers plaintiff
21-27	Deposition answers plaintiff
28-29	Discovery answers plaintiff
30a,b	E-mail from Teller to Gunther Guinee
31c-d	Deposition answers plaintiff
32	E-mail from Teller to Bakardy March 27, 2012 – TO BE SEALED!

32 EXHIBITS – 61 pages
in support of opposition 8.14.2013
CASE Nº 2:12-cv-00591-JCM-GWF
Teller v Bakardy

EXHIBIT 1a

Wereld Primeur-Eerst in België

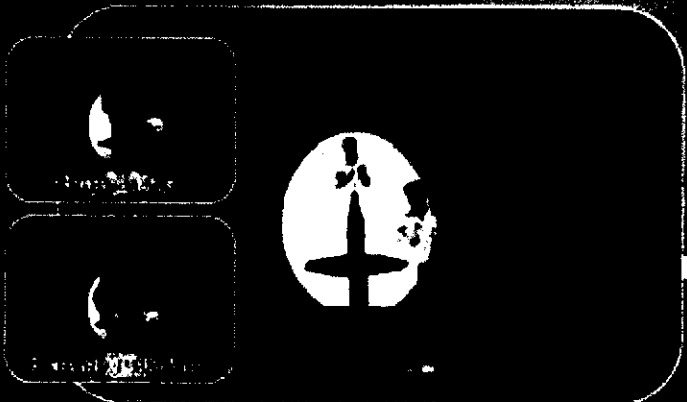


Hoe is het mogelijk?

Op het podium staat een tafeltje met daarin een met water gevuld flesje met daarin een roos. Ongeveer 1,5 meter daarachter staat een wit bord of witte muur waarop de schaduw te zien is van deze roos. Afkomstig van een bureauprojector die enkele meters voor de roos staat. Een kort de goochelaar beltje natig de hese situatie benadrukt de schaduw door er een beweging in te maken. Helemaal een met of schaar en begint stuk voor stuk de blaadjes van de bloem te ruimen. Maar niet van de echte bloem... Het doet of in de schaduw bloem... Maar toch vlam de blaadjes van de echte bloem en uiteindelijk ook in de schaduw... Het is niet... Om de toeschouwer duidelijk te maken dat er geen onzichtbare draadjes stroom tussen de echte roos en de schaduw roos loopt de goochelaar enkele malen tussen deze twee in en trekt er een touw tussentijdens voorbij.

De toeschouwers die denken een vertaling te kunnen worden eens te meer overtuigd of moet ik zeggen bevestigd op de goochelaar de stem uit het naderen flesje neemt, vervolgens het flesje van de tafel neemt en... leeg gel. want er is nog water in ook !!

Uitdraken als met verbazing vragen:
"Hoe is het mogelijk?"



2 Vragen in één stap !!
"The Rose & Her Shadow"
"Zwevende Tafelje Illusie"
Mits een kleine voorbereiding kun je twee illusies vertonen met één investering.

Kies zelf je uitvoering :
Dubbele illusie – De Roos met Zwevende Tafel : 2.450€
Enkel de Roos met gewone tafel : 2.299€
komt in een kofferke met volledige handleiding & DVD

Een onversijtbare truc !!
Deze heb je voor het leven en zal de parel zijn in je optreden!

Meer info ? **Bestellen:** Tel.: 0034.606.35.65.04.
Email: gerard-bakardy@hotmail.com
Youtube : Gerard Bakardy -The Rose & Her Shadow

EXHIBIT 1b

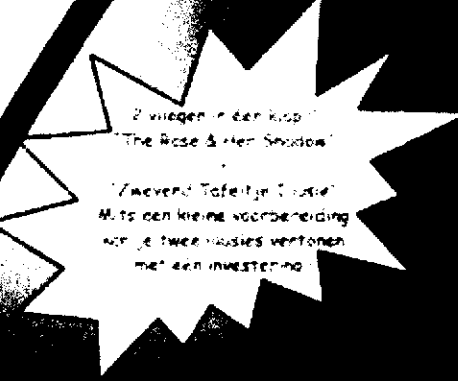
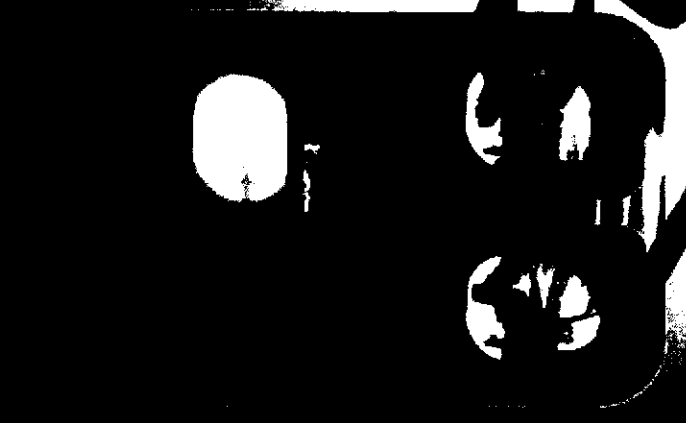
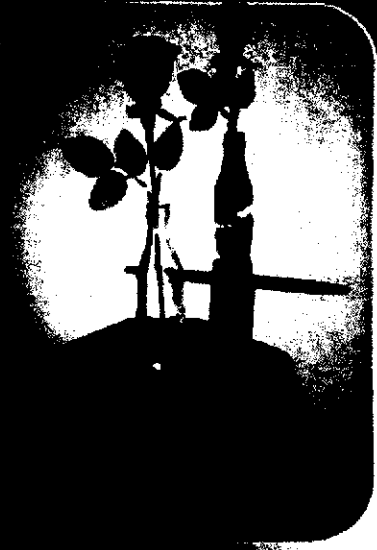
Wereld Primeur-Eerst in België

The Rose

Her Shadow I

Made in Belgium !!!
Klein verpakt - Groot effect
Volledig zelfwerkend
Geen slecht of hand

Beter dan in
Las Vegas



Klein verpakking uitvoering :
1000 stuks met Zwevend Tafeltje 1.850€
1000 stuks met Her Shadow I 4.00€

Een universiteit heeft deze
producten uitvonden en nu
worden ze wereldwijd verkocht

Meer info?

Bestellen:

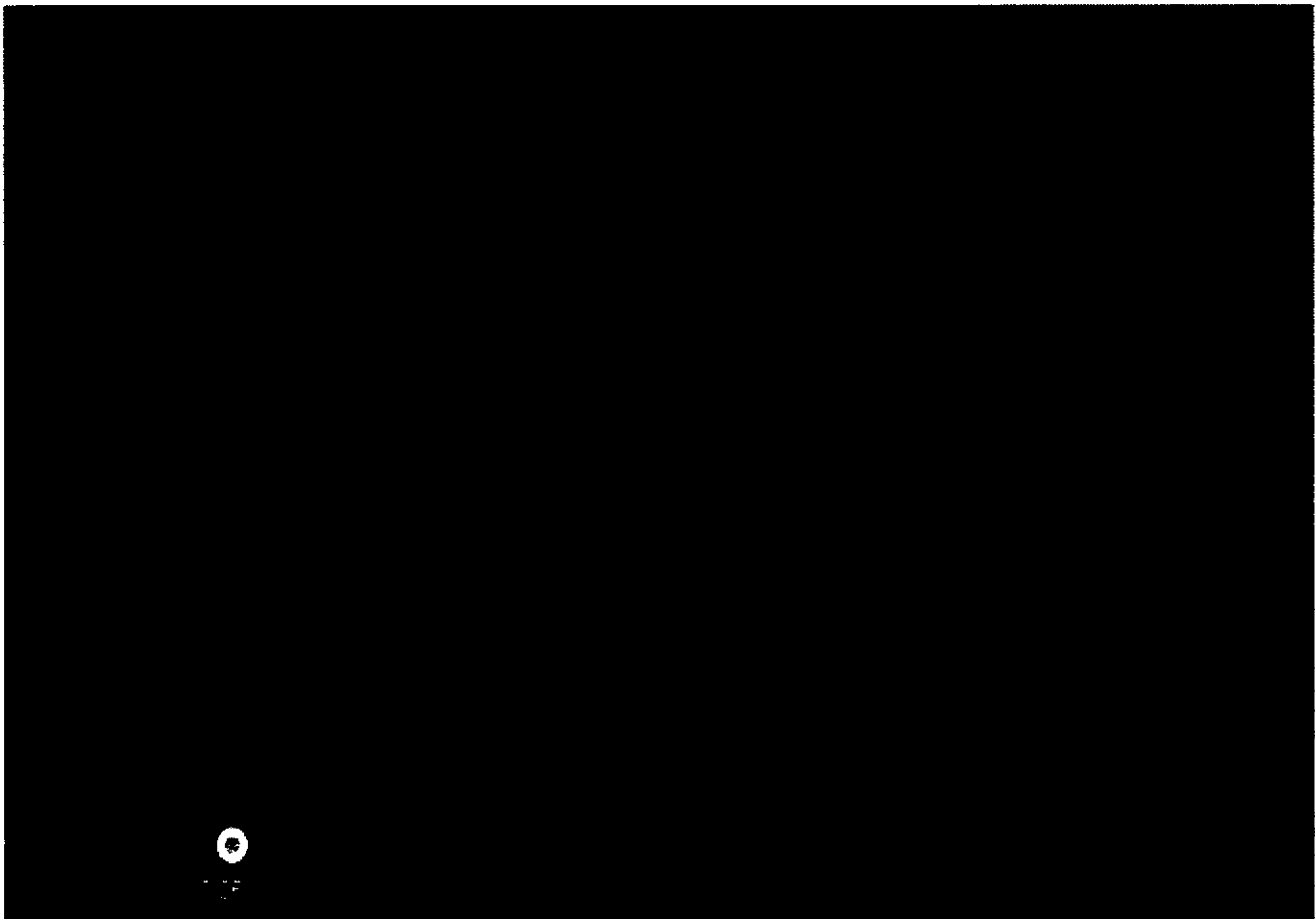
Tel.: 0034.606.35.65.04.
Email: gerard-bakardy@hotmail.com
Youtube : The Rose & Her Shadow

EXHIBIT 2



"shadows" by petros

xana2226 [Subscribe](#) 3 videos ▾



Like Share

5,000

Uploaded by xana2226 on Aug 25, 2009

16 likes 3 dislikes

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 magicans work and i will perform it in public as per tellers approval. thank you for your ideas

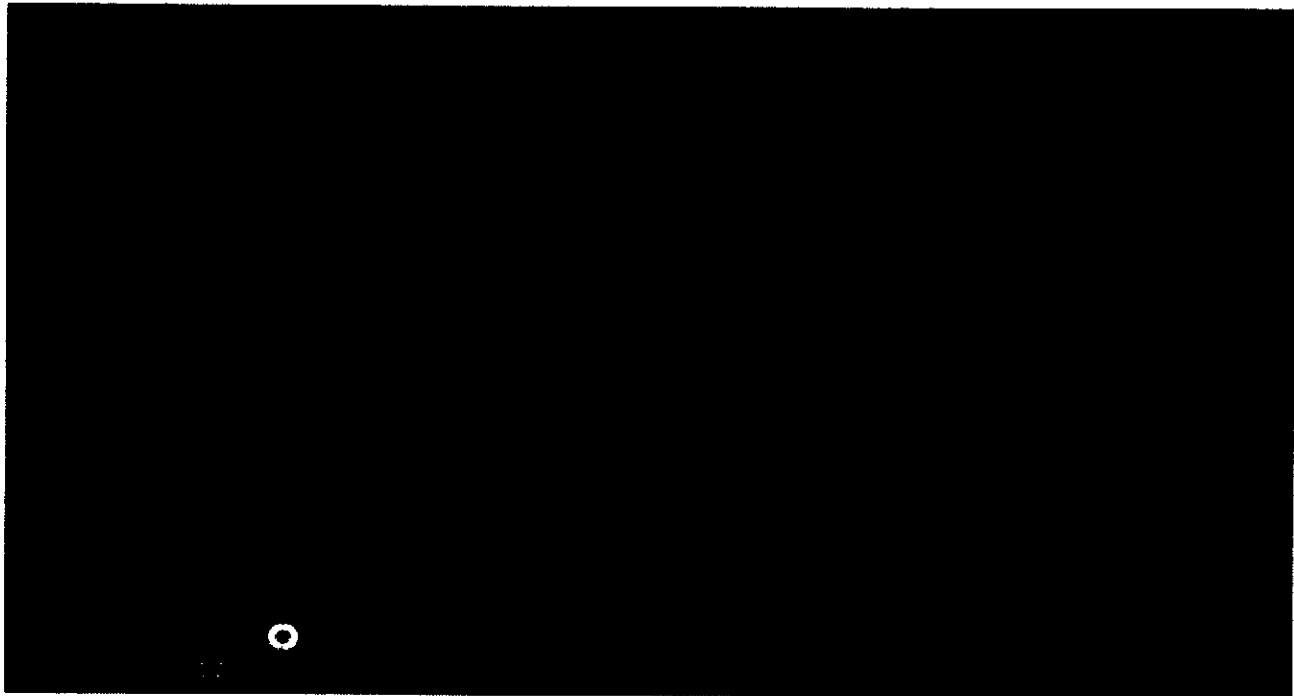
EXHIBIT 3a



Search Brc

plants and shadows.wmv

AlSmagic2008 Subscribe 5 videos



Like Share

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 diffrent 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 3b



plants and shadows



plants and shadows.wmv



AISmagic2008 6 videos

Subscribe

4,595

Like



About

Share

Add to



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

Buy "Halo" on



Google Play
iTunes

Artist

Beyoncé

Category Comedy

License Standard YouTube License

EXHIBIT 4a

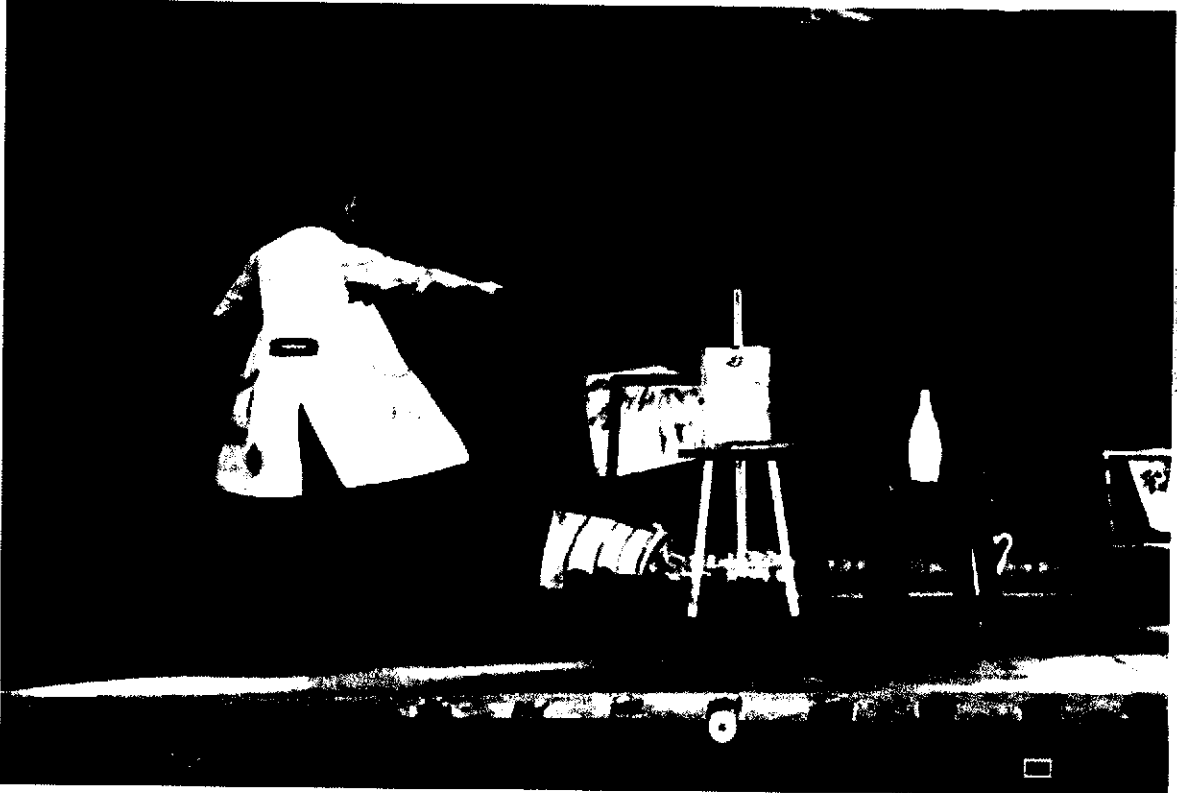
The image is a screenshot of a YouTube video player. At the top, the browser address bar shows the URL <http://www.youtube.com/wa>. The YouTube logo is in the top left corner. The video title is "Hector is Magic! - illusion Show". Below the title, the channel name "hectormagic" is shown with a plus sign, 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. The text "hectormagic.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 a flag icon. To the right, it says "653 aantal keren bekeken". Below that, it indicates "4 keer gemarkeerd als leuk" and "3 keer oemarkeerd als niet leuk". The video player controls show "4 / 13" and "Geplaatste video's" for the channel "hectormagic". At the bottom of the screenshot, the system tray shows the time "11:10 AM" and the date "6/11/2012".

EXHIBIT 4b


http://www.youtube.com/watch?v=vN42... Hector el mago, Da Vinci La...


Secure-soeken McAfee



You Tube ES




Hector el mago, Da Vinci La Magia - Isla Magica

 **hectormagia2008** 19 videos 2,300

 **Subscribe** 131 6 0

 Like 

About [Share](#) [Print](#) [List](#) 

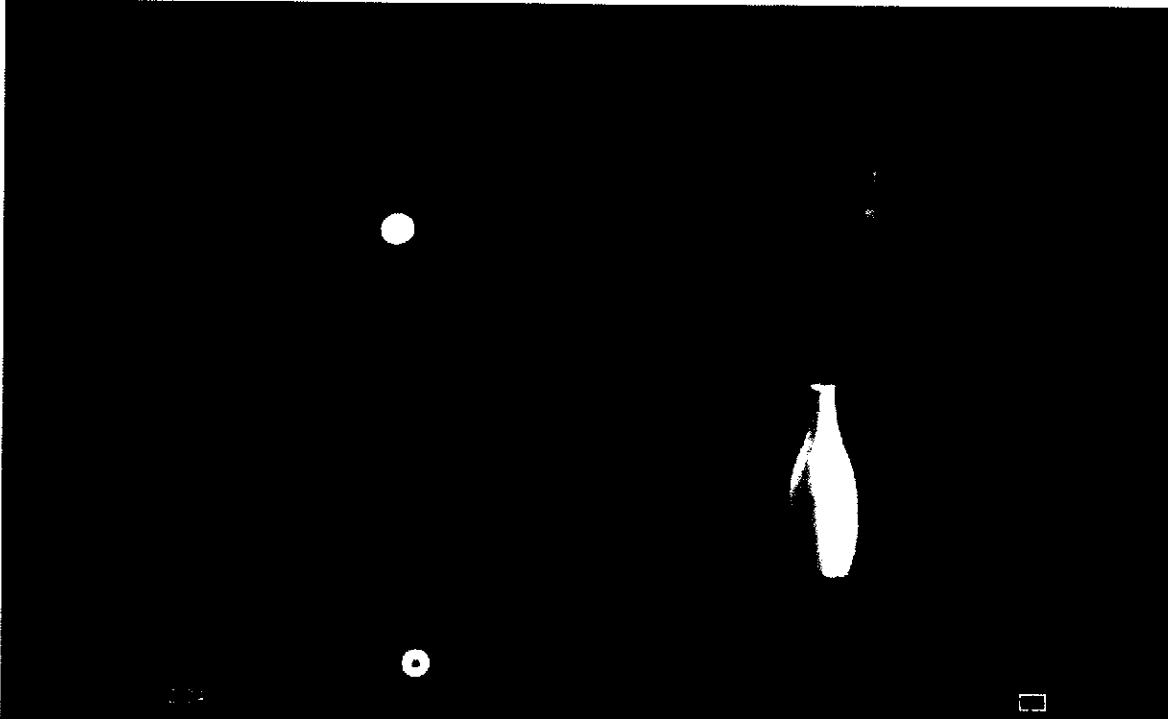
Uploaded on Aug 18, 2010
A magic show based on Leonardo Da Vinci

www.hectorismagic.com

Show more

3:41 AM
7/6/2013

EXHIBIT 4c



The screenshot shows a web browser window with a YouTube video player. The video content is a dark scene with a single white vase in the center. The browser's address bar shows 'Secure-zoeken' and 'McAfee'. The YouTube interface includes the logo, the channel name 'hector is magic', and video controls. Below the video, the title 'Hector Is Magic! - Vision of the seas Show' is displayed, along with the channel name 'hectormagia2008' and its statistics: 19 videos, 110 subscribers, and 4,395 views. There are also like and dislike buttons, a 'Leuk' button, and a 'Meer weergeven' link. The bottom of the browser shows the system tray with the time '7:02 PM' and date '3-26-2013'.

Secure-zoeken McAfee Hector is Magic! - Vision of ... x

YouTube hector is magic

Hector Is Magic! - Vision of the seas Show

hectormagia2008 19 video's 4.395

Abonneren 110 15 1

Leuk Over 15 weergegeven

Geupload op 9 jan 2011
www.hectorismagic.com

Meer weergeven

7:02 PM
3-26-2013

EXHIBIT 5

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

http://www.talkmagic.co.uk/topic24465.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 • 1 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:AH

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-oVI (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/topic24465.php?sid=fecfb430236fd10685ba585988bcf167#p235988>

18:37 3/8/2013

EXHIBIT 6

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/24465.php?id=fe6b49c336fd106859a5594550c7167&start=15

My impromptu(ish) version of...

Bestand Bewerken Beeld Favorieten Extra Help

Google Lam McCarthy Shadows

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

by **mikefallen** New User

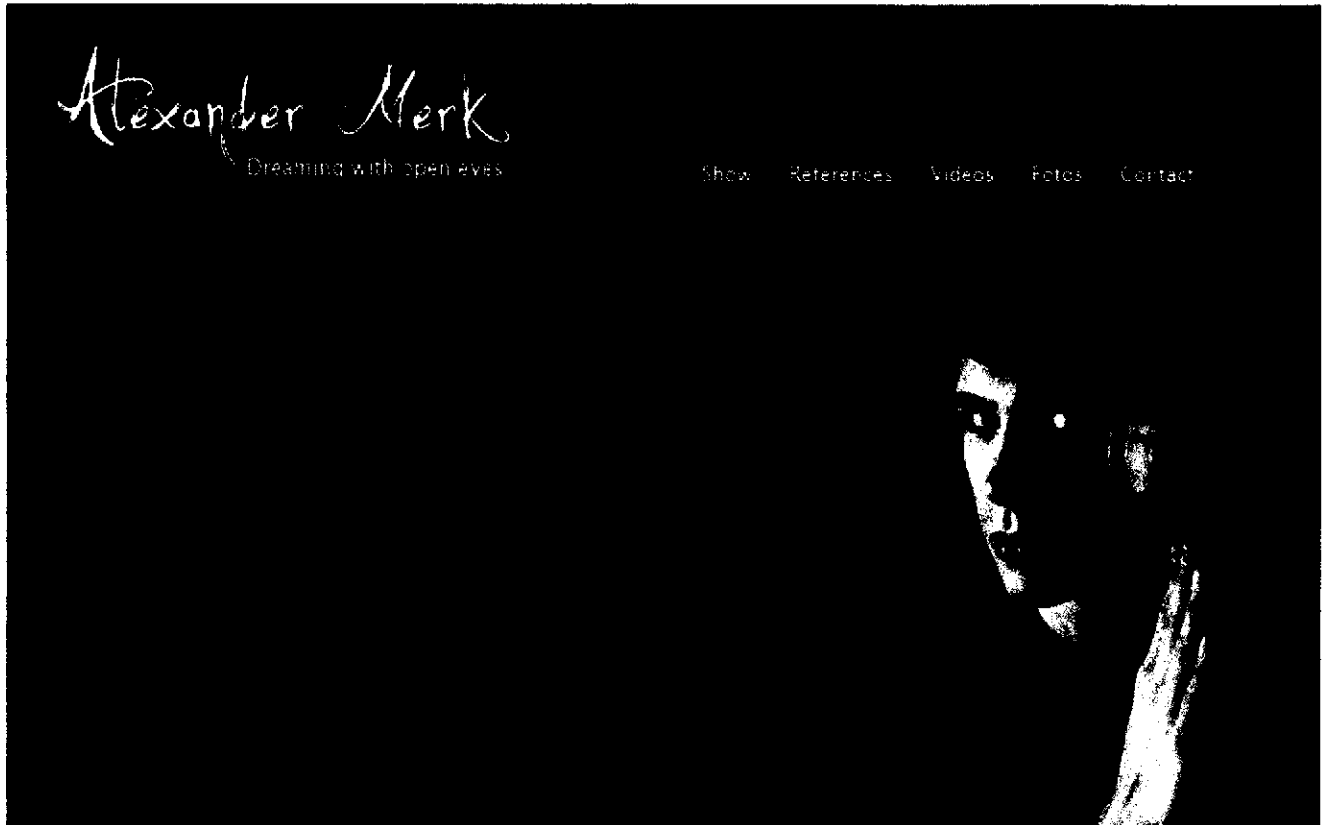
by **mikefallen** » Sat May 04, 2013 2:18 pm

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 7



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

oyal user
Joined 12/11/07
120 Posts

EXHIBIT 8a

http://www.youtube.com/watch?v=SCMq... Building the Rose for Beaut...

Secure-zoeken McAfee

uTube ES



Building the Rose for Beauty and The Beast

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

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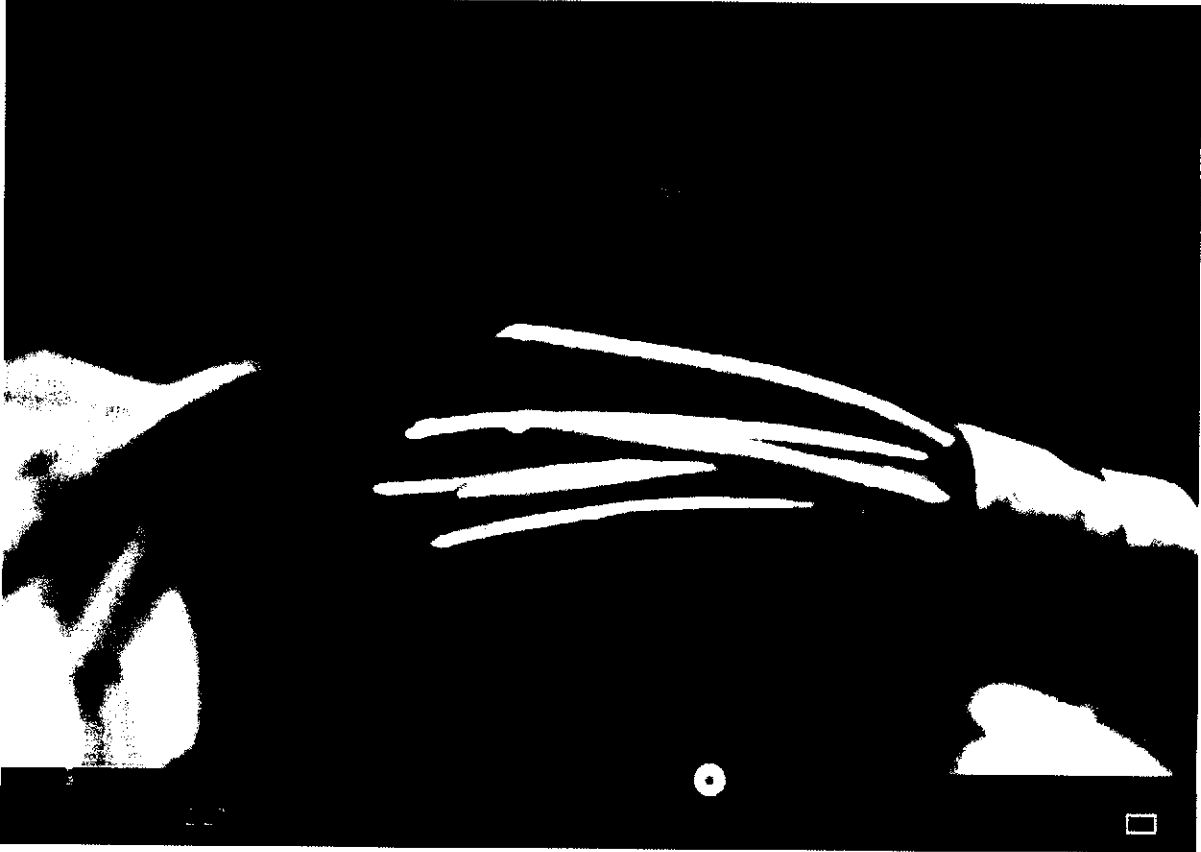
7:26 PM
5-10-2013

EXHIBIT 8b


http://www.youtube.com/watch?v=... Building the Rose for Beaut...


Secure-zoeken McAfee





YouTube ES building the rose for the beauty and the beast



Building the Rose for Beauty and The Beast

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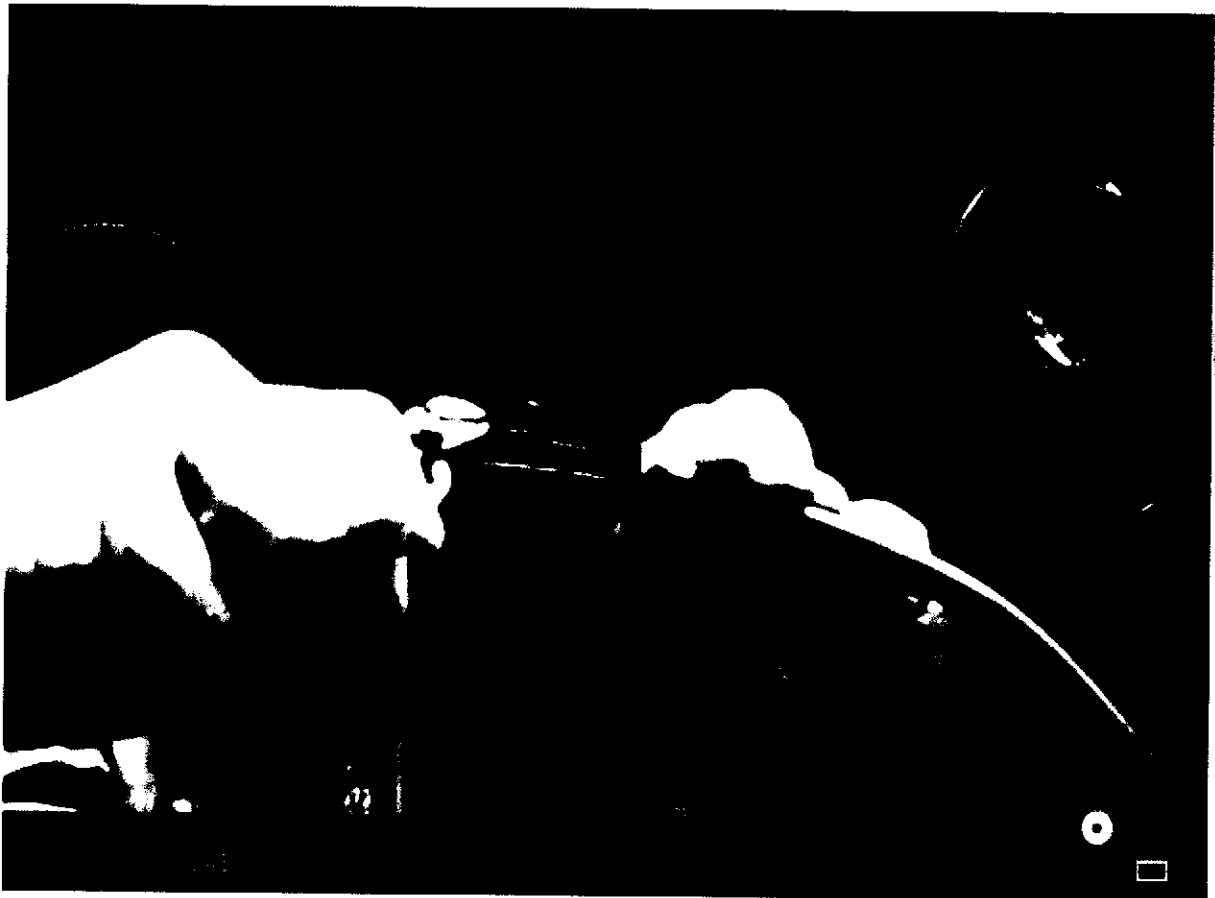
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EXHIBIT 8c



building the rose for the beauty and the beast



Building the Rose for Beauty and The Beast



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EXHIBIT 8d

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Uploader Comments (yourbeekeeper)

 **Liz Berliant** 3 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 playlist 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** 6 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

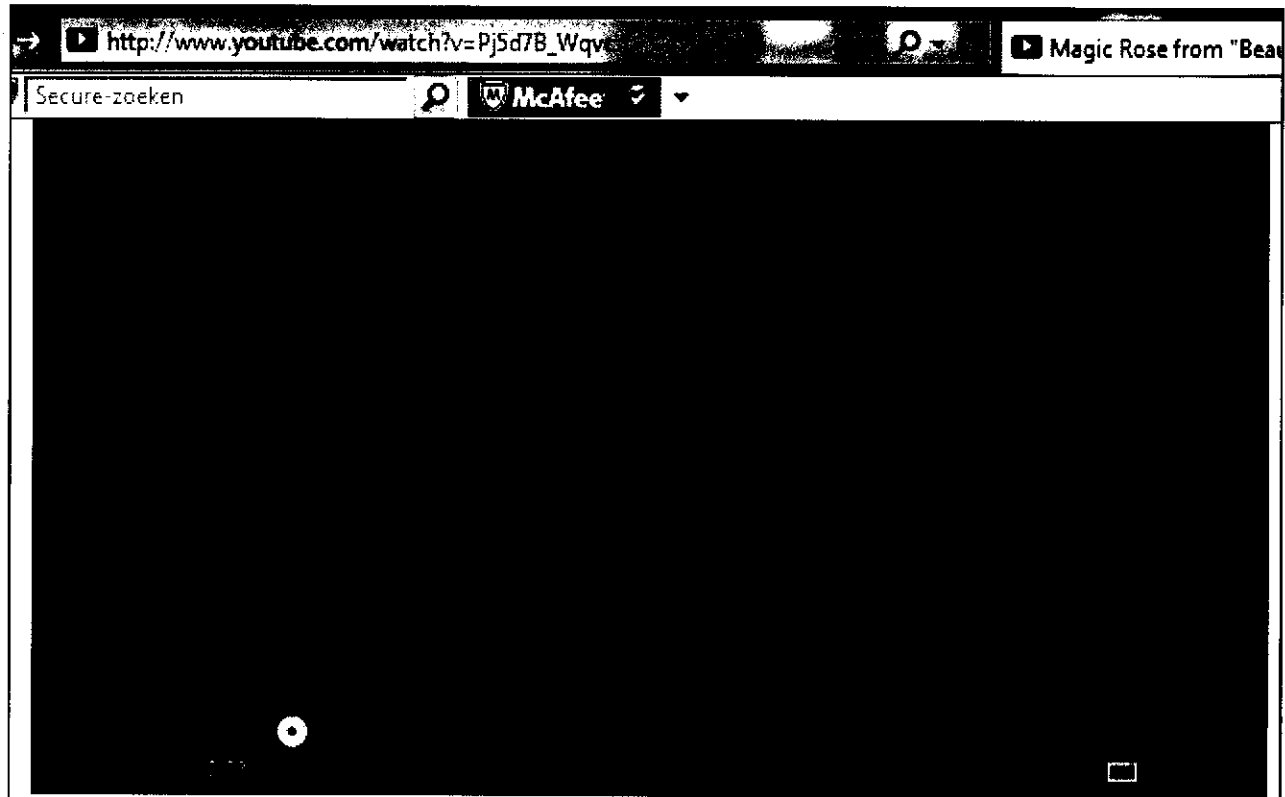
 **yourbeekeeper** 3 months ago
If you are having issues with multiple wires pulling at once try spraying a silicone spray or comparable lube in the entire tube. that should solve that problem. The #12 wire was cut about 2" long. Remember to stick about 3/4" of the solid copper wire back into the insulation 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.

in reply to Bobby Hall

www.youtube.com/user/eizzadify

7:24 PM 5/10/2013

EXHIBIT 9a



Magic Rose from "Beauty and the Beast"



setpieces 2 videos

Subscribe 1

5,015

7 1

Like



About

Share

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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 9b

The screenshot shows a web browser window with the URL <http://www.rachelgeorge.co.uk/?propmaking-scenery-uk3>. The browser's address bar also shows a search engine (cure-zoeken) and a McAfee security icon. The website header features the name "rachel george" in a large, bold, lowercase font, followed by the text "propmaker · buyer · modelmaker · scenic artist". A navigation menu includes links for "home", "about", "links", "news", and "contact".

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

The main content area is titled "props & scenery" and includes the following text:

sculpture | mouldmaking and casting

Bespoke prop making & sculpted scenic pieces for theatre, opera, ballet and TV productions.
Often involving polystyrene, Jesmonite or GRP

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 "Siegrind" (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" and a footer containing a film reel icon, a McAfee icon, and the date and time "12:21 PM 5/16/2013".

EXHIBIT 9c

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

Date: 25 May 2013 11:12

Subject: Re: Beauty and the beast

To: [REDACTED]

Cc: Jonathan Adler <eagledesigns@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 9d

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

Date: 4 June 2013 08:02

Subject: Re: Beauty and the beast

To: [REDACTED]

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

Hi again [REDACTED]

Hope you got my previous email? Assuming you are in the UK, the rose is available for hire at £150 for a one week minimum hire period; plus a £30 delivery charge (this covers uplift too)

If you are interested can you get back to me ASAP with your dates? I have just had another enquiry from someone putting on a performance in mid July, so I really need to let him know whether it will be available or not, and I don't know your dates.

The operation of the rose is explained in the PDF brochure which I have attached; it's quite fiddly but once you have practised a few times you should manage OK; if you're doing a singing routine at the same time you might find it easier to have someone else actually use the remote control - they could be hidden round a corner as the device will work through curtains & windows etc - we tested it from across the street originally! We are based in Edinburgh so unless you are very local it's not really going to be possible to come and set it up for you I'm afraid. But I think you will manage as long as you allow time to practice; it goes out to lots of different theatre companies, professional and amateur, and we don't have problems with people saying they can't work it!

Best wishes

Rachel

EXHIBIT 9e

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

Date: 10 June 2013 10:22

Subject: Re: Beauty and the beast

To: [REDACTED]

Cc: Jonathan Adler <eagle designs@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 10a

Hector

Posted: Apr 15, 2012 3:58pm



Hello,



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

On the other hand, about the rose routine,

Loyal user

100 posts

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 (mailto:hector.magic@icloud.com).

EXHIBIT 10b

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 11



Teller Penn & Teller 6/04/2012

Am gerard bakatoy #

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 12

From: teller@robamir.com
Subject: Re: Shadows
Date: Thu, 22 Mar 2012 15:58:46 -0700
To: fuerlebel@hotmail.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 13a

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 13b

On Apr 2, 2012, at 10:31 AM, Hector is Magic! 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 13c

NONEXCLUSIVE LICENSE AGREEMENT

This NONEXCLUSIVE LICENSE AGREEMENT (hereinafter "Agreement") is made as of this 22nd day of July, 2012, by and between Teller (hereinafter "Licensor"), and Hector is Magic (hereinafter "Licensee") (hereinafter all collectively referred to as the "Parties").

RECITALS

WHEREAS, the Licensor owns and controls the rights in the dramatic/pantomime/illusion work titled "Shadows" that is the subject of this Agreement; and

WHEREAS, the Licensor desires to grant Licensee a nonexclusive license to perform a derivative work based upon "Shadows," and to perform said derivative work as part of Licensee's live theatrical magic show upon the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged by each Party hereto, the Parties agree as follows:

TERMS

1. Ownership. Licensee agrees and acknowledges Licensor is the owner of all rights in the dramatic work titled "Shadows," including but not limited to the exclusive right to create derivative works, and has obtained a Certificate of Registration from the United States Copyright Office for said dramatic work, Registration No. PAu-469-609 (hereinafter referred to as "Shadows"). To the extent that the Licensee's performance results in the creation of a derivative work, the Licensee agrees and acknowledges that the rights in the derivative work will be owned by and belong to the Licensor subject to Licensee's right to perform same during the term of this license.

2. Nonexclusive License. Licensor hereby grants to the Licensee a nonexclusive, nontransferable, non-assignable and non-sublicensable license to perform a derivative work based on "Shadows" (hereinafter said derivative work performed by Licensee shall be referred to as the "Work"), and to perform the Work live as part of Licensee's theatrical magic show. No other rights are herein granted, and Licensor reserves any and all other rights in Shadows, whether such rights are now known or shall hereafter come into existence. The reserved rights shall include, without limiting the generality of the foregoing, all motion picture rights, television and cable rights, radio rights, stage rights other than those licensed hereunder, electronic and digital rights, mechanical rights, recording rights and the publication rights of all kinds.

3. Term. The license granted herein shall be for an indefinite period of up to ten (10) years from the date hereof (the "Term"), unless terminated sooner in accordance with the Termination provisions set forth in this Agreement. Licensor shall have the sole option to renew said Term upon its expiration.

EXHIBIT 13d

4. Warranties.

4.1. Licenser Warranties. Licenser hereby warrants to Licensee that he is the sole author of Shadows, that he has the right to enter into this Agreement, that he is entitled to grant to Licensee the rights herein granted.

4.2. Licensee Warranties. Licensee represents, warrants and covenants that he will perform the Work subject to Licenser's express approval, and the Work will be presented in such a derivative form as specifically authorized by Licenser and based upon the underlying work Shadows, and that Licenser's intent regarding the original work Shadows will be respected in Licensee's production and performance of the Work. No further changes, interpolations, additions, or deletions will be made in the Work for the purpose of Licensee's production or otherwise, except such changes that are authorized by Licenser.

5. Performance Restrictions. Licensed productions of the Work are to be performed in front of a live audience only and may not be broadcast or posted on the Internet at any time, in any manner or for any purpose. These restrictions apply to both audio-only and audio-visual recordings, broadcasts and posting. By way of example only, no posting of audio or audio-visual recordings to YouTube, social networking sites, or any other websites is permitted, nor shall the performance of the Work be presented hereunder, in whole or part, by film, video, television or radio. Any such recording, broadcasting, posting or other use of a performance of the Work is a copyright infringement and will expose the Licensee to serious legal consequences. Further, Licensee shall not perform the Work at any "Magic Convention," as that term is known in the relevant industry.

6. Credits.

6.1. Licenser Credit. All programs, publicity, and advertising in connection with performances of the Work, in all media (including print and electronic), shall carry a program note clearly indicating that the Work is based on Shadows and is presented by special arrangement with Teller.

6.2. Author's Credit. Teller will be credited as author of Shadows, and it will be acknowledged that the Work is based upon the underlying work Shadows, in all instances in which the title of the Work appears, including all programs, house boards, and publicity and advertising in all media (including all print and electronic media) within the control of the Licensee. Teller's name will appear as author of Shadows, and it will shown in connection with the title of the Work in such as way that it is clear Teller is the author of Shadows, and the Work is based on Shadows.

6.3. Program Note. All programs shall carry the following note: "The video and/or audio recording of this performance by any means whosesoever is strictly prohibited."

EXHIBIT 13e

7. **Merchandise.** Licensee may not create merchandise of any kind based on the Work, whether for sale, promotional use, or free distribution, without prior written permission from Licensor.

8. **Consideration.** In consideration for this license, Licensee will pay the Licensor [REDACTED] Further consideration for this Agreement is Licensee's promise to assist Licensor in the enforcement of Licensor's rights in and to the Work and/or Shadows as against any potential third-party infringers, as set forth in this Agreement in Paragraph 11 below.

9. **Injunctive Relief.** A breach by either Party of any of the provisions hereof will cause the other permanent and irreparable injury and damage. Each Party expressly agrees that the other shall be entitled to specific performance, injunctive and other equitable relief in the event of, or to prevent, a breach of any term of this Agreement. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies which either Party may have for damages or otherwise.

10. **Acknowledgment of Rights.** The Parties acknowledge that the Licensor is the sole owner of all intellectual property rights and any goodwill regarding the Licensor and Shadows. During the term of this Agreement and at all times thereafter Licensee acknowledges and agrees not to challenge or contest, or assist or induce others to challenge or contest, the Licensor's rights in and to Shadows and that the Work is a derivative work based upon the underlying work Shadows. All use of the Work by Licensee, as well as the accompanying goodwill created there from, shall inure to the benefit of Licensor.

11. **Third Party Infringement.** Licensee will promptly call to the attention of Licensor the use of the Work, names, trademarks or phrases by any third party which Licensee considers to be an infringement, passing off or unfair competition of such licensed rights and/or Licensor's rights in Shadows. Licensor and Licensee shall consult one another as to whether proceedings shall be brought against such third parties. In the event that Licensor and Licensee decide that action should be taken against such third parties, Licensor may take such action in its own name or, alternatively, Licensor may authorize Licensee to initiate such action in Licensee's name. In either event, Licensee and Licensor agree to cooperate fully with one another to whatever extent it is necessary to prosecute such action, all expenses being borne by Licensor and all damages which may be recovered being solely for the account of Licensor.

12. **Termination.**

12.1. This license and all rights granted under or through this Agreement shall terminate automatically upon the expiration of the Term, unless, at Licensor's sole option, Licensor opts to renew this Agreement for an additional term.

12.2. This Agreement shall terminate forthwith in the event of bankruptcy or judicial or administrative declaration of insolvency of Licensor or Licensee which relate to either Licensor's or Licensee's activities as contemplated by the present Agreement.

EXHIBIT 13f

12.3. This Agreement shall terminate in the event Licensee breaches or defaults in the performance of any of its material obligations if substantial steps to cure said breach or default are not initiated within fifteen (15) days after notice of the breach of default from Licensor.

12.4. Upon termination of this Agreement, Licensee shall discontinue use of the Work and Shadows in any manner whatsoever, for a period of six months or more, including its performance, and any advertising and promotional materials bearing the Work and/or Shadows which are in Licensee's possession, custody and control.

13. **Confidentiality.** The Licensor and Licensee each agree that it shall keep confidential the terms and conditions of this Agreement and any confidential information relating to the affairs or business of either Party which comes into the possession of the other (the "Recipient") in connection with the performance of this Agreement and the Recipient shall not use any such information except for the performance of this Agreement nor shall it disclose such confidential information to any third party except in the reasonable execution of its obligations under this Agreement. The obligations contained in this provision shall expressly survive the termination, expiration or assignment of this Agreement.

14. **Attorneys' Fees.** In any proceeding to enforce any part of this Agreement, the reasonable attorneys' fees and expenses of the prevailing Party shall be paid by the other Party.

15. **Miscellaneous.**

15.1. **Waiver.** Any waiver by Licensor or Licensee of a breach of any term or condition of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any condition hereof.

15.2. **Severability.** If any provision of this Agreement is declared void or unenforceable by any judicial or administrative authority, this shall not, in and of itself, nullify the remaining provisions of this Agreement.

15.3. **Relationship of the Parties.** This Agreement shall not create or be construed to create a partnership, joint venture, agency, association or any type of combination between the Parties. No Party shall have the power or authority to act as the agent of the other or to authorize or incur obligations on behalf of the other or to make on behalf of the other Party any promises, warranties or representations.

15.4. **Choice of Law.** The Parties expressly consent to jurisdiction and venue of the federal and state courts of the State of Nevada with respect to any suit, claim or dispute arising out of, or relating to, this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada applicable to contracts made and entirely performed therein.


EXHIBIT 13g

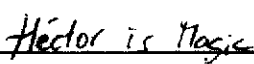
15.5. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns, parents, subsidiaries or otherwise related or affiliated companies.

15.6. Modification. This Agreement, including this paragraph, may be modified or amended only by a writing signed by all Parties to this Agreement.

15.7. Merger. This Agreement represents the entire agreement of the Parties, and all prior assertions, understandings, warranties and representations are merged herein. It is a final integrated Agreement which embodies all the terms, conditions, and representations between the Parties, and the Parties make no warranties, covenants or agreements, express or implied, except as expressly set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

LICENSOR:
By: 
Name: Teller
Title: LICENSOR

LICENSEE:
By: 
Name: Hector Ruiz
Title: Performer



22nd July 2012

EXHIBIT 14a

— 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>

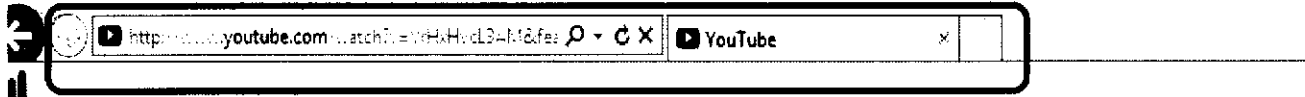
Incidentally, erasing-the-drawing is one version of the routine that our copyright-infringing magic-manufacturer proposed putting out and collecting profits on!

Thanks,

TELLER

TELLER000454

EXHIBIT 14b



YouTube ^{ES}



Upload

GUIDE

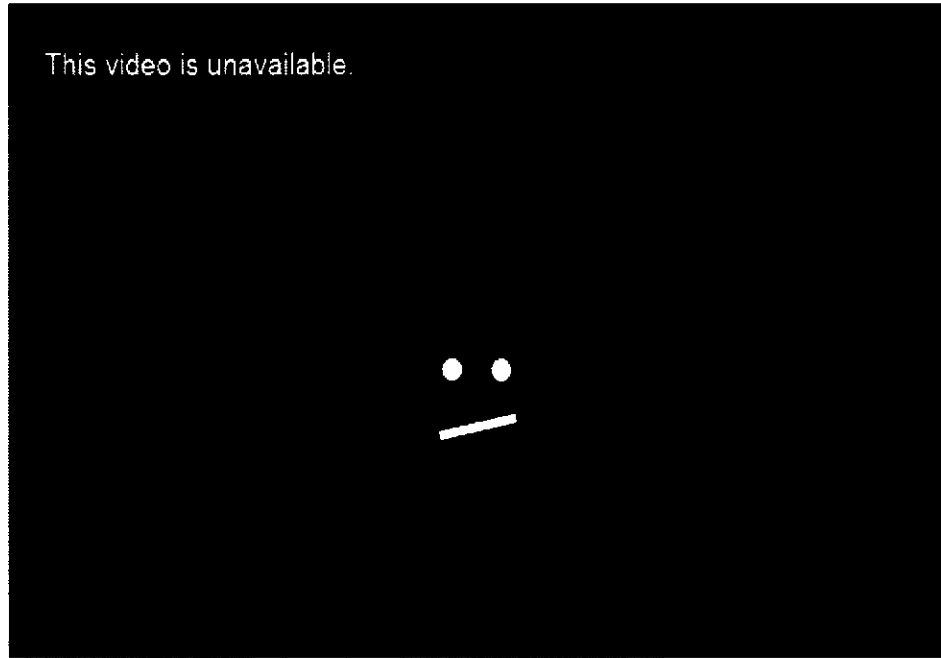


EXHIBIT 14c

Begin forwarded message:

From: <info@hectorismagic.com>

Subject: Re: the rose

Date: April 15, 2012 3:06:25 PM PDT

To: [REDACTED]

Reply-To: <info@hectorismagic.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. [REDACTED] will let you know as soon as I get news about it.

All the best.

Hector.

| — Original Message —

EXHIBIT 14d

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.

First of all, thank you wjs_jamerson for your kind words and for defending me before I got. I 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 reacted -naturally- 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 (blair@blairmarshall.com).

All the best,

Hector.

Blair Marshall

 Inner circle
 Member since 2004


Posted: Apr 15, 2012 4:30pm

Thanks Hector,

I knew you would be on. So it would seem 'The Truth', with only one post was here for only one reason! And that's no lie! LOL

Blair

View Blair Marshall's profile page on Facebook

Hector


Posted: Apr 15, 2012 9:54am

Well, sometimes some people appear just for these kind of things... You know how it is.

I would like to add that 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.

All the best

EXHIBIT 14e

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,

29

TELLER000452

I did add that.

I hope it is OK now.

I wish you the best on all this process.

Hector.

EXHIBIT 14f

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 14g

From: Hector is Magic! <info@hectorismagic.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 14h

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 15 REDACTED by Defendant

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http://www.youtube.com/watch?v=BYnd7NcQ85Y

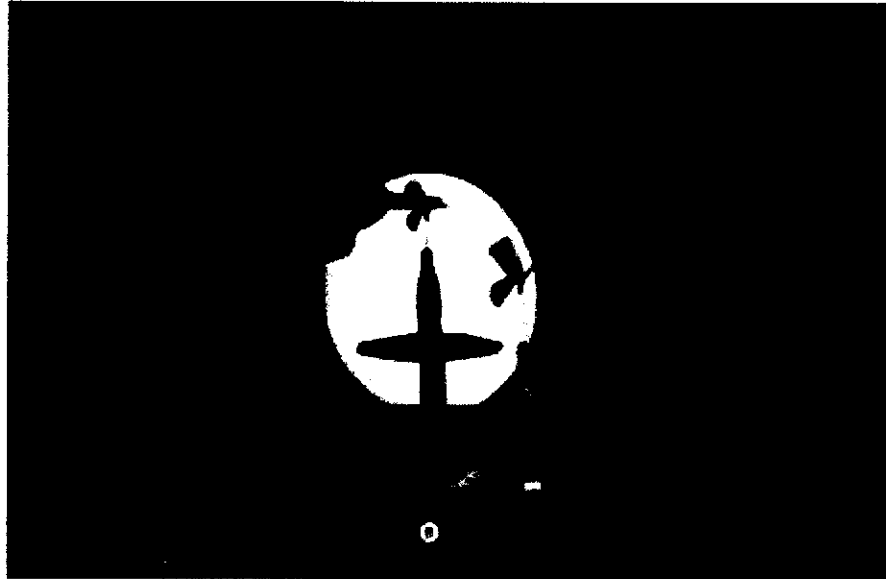
★ Live now! Cults performing at the SXSW festival in Austin



Q Browse Movies

The Rose & her Shadow in Close up I - Gerard Bakardy

Generate Subscribe 0 videos



Like Add to Share

14 views

Uploaded by GerardBakardy on Mar 15, 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 coin or card tricks on show!

Thanks for watching my movie

Category

Tags

The rose her shadow Magic trick Magic Floating table Gerard Bakardy Penn Teller Magic illusion card tricks Amazing close up card Magic Trick card David Blaine Magic card Amazing Trick Magic Trick

License:

Standard YouTube License

Show less

All Comments (0)

see all

EXHIBIT 16

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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 ///

1 **RESPONSE:**

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

Case 1:12-cv-00591-JCM-GWF Document 150-1 Filed 08/15/13 Page 69 of 91

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.

EXHIBIT 10 17

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 | ///

0811 NBI REGISTRATION, LLP
1771 Broadway, Suite 1000
New York, NY 10019
Tel: (212) 213-2121
Fax: (212) 213-2002

EXHIBIT 18

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 ///

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 19

CALLER: ROBERTA A. ELLIOTT
3701 Hillside Highway, Suite 200, Northridge, CA 91321
Tel: (818) 708-4410 Fax: (818) 708-4411
E-mail: roberta@teller.com

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 ///



1 **RESPONSE:**
2 Objection. This request is vague and ambiguous with respect to the terms "revealed"
3 and "method." Notwithstanding this objection, admit.



EXHIBIT 20

(b)(1)
Produced
in
accordance
with
protective
order

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 21

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 superfluid 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 22

24

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 23

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 24

109

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 25

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 26

182

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 27

92

1 Q He magically disappeared from YouTube.

2 A I'm 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 28

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

10/11/2013 10:58:11 AM
C:\Users\jcm\Documents\Case 2:12-cv-00591-JCM-GWF\Exhibits\Exhibit 28.docx
Printed on 8/15/13 10:58:11 AM
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EXHIBIT 29

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 ///

LU 419872119v1
175 Street of Virginia Parkway, Suite 400 North
Las Vegas, Nevada 89118
Telephone (702) 792-3773
Facsimile (702) 792-4001

EXHIBIT 30a

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 30b

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 31a

140

1 Q More or less, Mr. Teller. It's not so

2 important. More or less.

3 A Somewhere around ten, I think. I -- I --

4 you know, it could --

5 Q Okay.

6 A I guess you could say the person who sells
7 merchandise at the show is an employee. So eight,

8 ten, something like that. Again, I don't run the

9 business part of my company. I run the artistic

10 part of my company. You know, I -- that's the --

11 that's the part -- that's where I am concerned --

12 Q Okay. But you own the business?

13 A I do.

14 Q Okay. Mr. Teller, how are you related

15 with James Steinmyer?

16 A I know of James Steinmyer. I've known

17 James Steinmyer for some time. He's a very famous

18 magic historian. I've attended his -- I've attended

19 his magic history conference a couple of times.

20 James Steinmyer -- let me think -- oh, James

21 Steinmyer wrote a book called *Hiding the Elephant*,

22 which the *New York Times* engaged me to review at one

23 point. That is my relationship with him.

24 Q Okay. Is he from -- does he live in Las

25 Vegas? Work in Las Vegas?

EXHIBIT 31b

141

1 A I believe -- no, I think he lives in Los

2 Angeles.

3 Q Los Angeles, okay.

4 A Yeah.

5 Q How long -- how long do you know James

6 Steinmyer, more or less? Many years? 20 years? 50

7 years?

8 A Let me think. I've known of him for a

9 long time. And because we both move in the magic

10 circles, I am sure I must have run into him some

11 time in the last ten years. I've never been friends

12 with him.

13 Q That was my next question. Are you a

14 friend or just a business relation?

15 A I am -- I am a fan of his work, because

16 he's written so many fine books. And he's done --

17 he's designed magic for very -- for wonderful

18 magicians, like, David Copperfield and Doug Henning.

19 If I walked into a room, I would greet him and shake

20 his hand. We don't hang out. We don't visit. I've

21 never been to his home. He's never been to my home.

22 I don't know if we have ever had dinner together,

23 but I doubt. So that's -- it's a -- I think it's a --

24 I think it's a -- I am a fan of his.

25 Q Yeah. Did he ever give advise to you and

EXHIBIT 31c

142

1 Penn & Teller regarding your tricks and shows?

2 A At one point, we tried to see whether he
3 could come up with a piece of magic for us since he
4 was inventing magic for other people, but we never
5 succeeded because the kind of thing he designs is
6 not the kind of thing that we use.

7 Q Okay. And okay -- yeah.

8 A It's very hard to be --

9 Q So. You never worked --

10 A Sorry. It's very hard to be an American
11 magician and not know of James Steinmyer. He is
12 really one of the world's great authority on magic.

13 Q Yeah. You can see that on the internet,
14 he's a very famous man.

15 A Yes, he is.

16 Q But did you ever work together with James
17 Steinmyer on the same project?

18 MR. TRATOS: Objection. Asked and
19 answered.

20 MR. DOGGE: I didn't ask you this
21 question.

22 MR. TRATOS: He has just testified that
23 they asked Mr. Steinmyer to work, to develop a
24 illusion, but it didn't develop. It didn't
25 work.

EXHIBIT 31d

143

1 THE WITNESS. Let me be very, very clear
2 about this.

3 MR. DOGGE: Okay.

4 THE WITNESS: We did a television show
5 called Off the Deep End, and we endeavored to
6 have Jim Steinmyer design something for that
7 show, and it never worked out.

8 BY MR. DOGGE:

9 Q Now, okay. Mr. Teller, in answer to my --
10 one of my discovery requests, to identify all your
11 copyrighted magic tricks, identify you, and you have
12 a copyright of, you listed Hiding the Elephant. Is
13 this a trick you performed?

14 A No. I'm sorry. I -- I -- Jim Steinmyer
15 wrote a famous magic book called Hiding the
16 Elephant. And I was engaged by the New York Times
17 to review this book when the book was published.
18 Hiding the Elephant is not a trick.

19 Q Oh, okay. I understand it.

20 A Okay.

21 Q Just a second, where we go now. Oh, yeah.
22 It's again, a shame you didn't bring the documents I
23 ask you to bring but otherwise I would call your
24 attention to Bates No -- maybe you can write it
25 down, Mr. Tratos, so you can check it in your

EXHIBIT 32
TO BE SEALED
CASE N° 2:12-cv-00591-JCM-GWF

EXHIBIT 32

TO BE SEALED

J Teller Penn & Teller
Aan Gerard Bakardy

27/03/2012
Seantwoorden

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

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 #123 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