

5th of August 2013.

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2013 AUG -6 P 12:05

No Counsel - PRO - SE

Teller, an individual
Plaintiff.
v.
Gerard Dogge (Gerard Bakardy), an individual
Defendant.

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

CASE N° 2:12-cv-00591-JCM-GWF

**EMERGENCY MOTION
FOR CASE - DISPOSITIVE
SANCTIONS**

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.

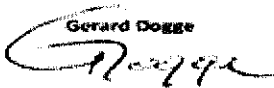
So, forgive me, I don't know the American law. Although plaintiff was so kind to send me a 150 pages with the *Federal Rules of civil procedure* and another 150 pages with the *Local Rules of practice*, it is not realistic to expect that these documents make me a American citizen or lawyer. To translate 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.

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Defendant, undersigned Gerard Dogge, moves this Court for case-terminating sanctions. Defendant's Motion is based upon the pleadings and papers on file herein, the following Memorandum of Points and Authorities, as well as the affidavit and exhibits submitted in support thereof, and any oral argument allowed by this Court at the time of hearing, all of which are incorporated herein by this reference.

DATED this 5th day of August, 2013


Gerard Dogge
Hoevensebaan 2, B2950 Kapellen
Belgium - Europe

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

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

Up until today, plaintiff filed thousands of documents but did not file a single evidence proving that defendant performed, sold, shipped, exposed, revealed, or 'stole' Tellers work 'shadows'. Plaintiff will NEVER file such evidence, simply, because he can't. Simply because the defendant NEVER committed any infringement.

In contrast to the plaintiff, defendant filed already multiple relevant exhibits, documents, e-mails, photos and videos, wherein it came clear to the plaintiff that defendant will prove to the Court that plaintiffs copyright is doubtful and questionable and that defendants creation and presentation is different from Tellers.

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2 Now defendant files this motion informing the Court that plaintiff intentionally and
3 deliberately destroyed important evidence to obstruct and hinder the pro-se defendant
4 in his defense. Spoliation, tampering and destroying evidence as such hinders and
5 impedes the defendant in having a fair trial, where he is legally entitled to and forms a
6 ground for the Court to dismiss plaintiff's claim.

7 Defendant respectfully requests that this Court grants this motion for the same.

8 **II. Factual background**

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

10 Defendant likes to remind the Court that the alleged infringement, if there was
11 any, took place in 'one' (1) week, by defendants uploading of a video on YouTube,
12 wherein according to plaintiff, defendant performed Tellers illusion, shadows. This
13 video was uploaded on March 15, 2012 and taken down, after one week, by the
14 plaintiff's DCMA notice on date of March 22nd 2012 and had only 14 views.

15 In that 'one' week, on date of March 21st 2012, Teller approached Gerard
16 Bakardy. Teller informed Bakardy that he noticed Bakardy's video on YouTube and
17 offered to buy the exclusive rights of the defendants method, which Teller considered
18 as an improvement to his illusion 'shadows'.

19
20 Further plaintiff threatened and extorted the defendant that if he was not
21 willing to sell exclusively to Teller, on the terms proposed by Teller, he would be sued
22 for copyright infringement. Defendant felt blackmailed, because ...he was.

23 Defendant told Teller that he was confused with Tellers contradicting 'proposal'
24 offering the double amount from what Teller usually pays for developing an illusion as
25 such, which was, as Teller stated, in the same time a 'copy' and an infringement.
26 Defendant told Teller that he found this quite unusual, since big brands like Rolex,
27 Cartier, etc... do not offer money to copy pirates, but they usually destroy all the fake
28 copy's with a bulldozer.

1
2 Defendant informed Teller that he doubted if Teller had a copyright since there
3 were many other persons performing this trick, which Teller claims as his own. On
4 Teller's request defendant told him the names of the persons performing this trick,
5 such as Petros, Hector, ALS Magic, and pointed out to him that there were many more
6 to be found on the internet.

7 Apparently, this was the moment that Teller realized that his trick became a
8 manufactured and standard trick years ago and performed by many all over the world.

9
10 Defendant will prove to the Court that plaintiff destroyed important evidence for
11 the defendant before the litigation started. Wilfully, premeditated and with malice
12 intent and aforethought.

13 **2. History during the litigation.**

14 Defendant filed multiple documents to the Court proving that Tellers trick
15 became a manufactured trick and a part of many magicians standard repertoire.

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

- 19 1. Shadows by Petros **(Exh.2)**, others call it
- 20 2. 'Plants and Shadow' (ALS) **(Exh. 3a,b,c,)**
- 21 3. Hector, a Spanish magician, is performing a trick similar to Tellers shadows
22 ('voodoo trick' as described by Teller) using exactly the same prop as used in
23 Tellers, on big venues and on cruise ships all over the world. **(Exh.4a,4b,4c)**
- 24 4. Ian McCarthy from Ireland performs his version of shadows **(Exh.5)**
- 25 5. Bjorn Magic from Sweden performs his own version of shadows, unfortunately
26 the promotion video was removed from the internet before defendant had the
27 chance to download it or to take a screenshot of it.
- 28 6. Mike Fallen from the UK performs his version of shadows **(Exh.6)**

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

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

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

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

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

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

15
16 Teller told the defendant, that he did not want anyone in the world to perform 'his'
17 trick **(Exh.11a-d)** and that he would not licence anyone, until he retired.

18
19 Contrary to what Teller stated, defendant has seen Hector from Spain, ALS from
20 USA, Teller from USA, Petros from USA, Bjorn Magic from Sweden, Ian McCarthy from
21 Ireland, Mike Fallen from UK, Alexander from Germany, and so many others
22 performing a trick wherein a rose falls apart on the magicians command.

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

27 **(Exh. 12)**

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It is a FACT that Tellers trick, 'shadows' is not only performed by many all over the world, but that the 'prop' is sold and rented, and that the 'handy' guys can built their own prop, just watching an instruction video on the internet. **(Exh. 8a-d)**

Teller realized this before he filed his complaint against Gerard Dogge and plaintiff is now fully aware that the facts are what they are. In defendants answer (#39) defendant filed exhibits showing screenshots from YouTube videos wherein 3 magicians performing 'shadows': Petros, Hector and ALS magic.

All videos were uploaded many years ago, having thousands of views. That's how the internet works, fast and multiplying.

3. Plaintiff's multiple motions.

In the last weeks, plaintiff filed multiple motions requesting the Court 'to deem defendants answers in the discovery', or for 'Case terminating sanctions' every time with the same 'goal' in mind, to end the proceedings without advocating the 'ground' of the litigation: did Bakardy commit infringement or not.

Apparently plaintiff's motions had two reasons:

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

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2 **4. Plaintiff acts in bad faith.**

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

- 5 • Plaintiff pretended that he had sent letters to YouTube as the Court ordered,
6 plaintiff stated that he never got an answer, **(Exh. 50,51)** while defendant
7 received three (3) answers **(Exh.52a-d)** the same day that the requests were
8 made. After defendant filed a motion on June 25, (#112) to compel plaintiff
9 because he was not 'honestly' seeking the 'missing' video by YouTube, plaintiff
10 rapidly send the requesting 'letter' to YouTube which was, just like all the
11 answers to defendants requests, answered the same day. Although plaintiff
12 was ordered by the Court, to request YouTube to produce the video at issue,
13 he didn't. Although defendant had informed the plaintiff that he could get the
14 videos from YouTube, by issuing a proper subpoena, plaintiff refused to do so.
- 15 • Up until today plaintiff has not properly issued a subpoena to YouTube to
16 produce his evidence, resulting that the Court ordered an image mirror copy of
17 defendants private hard drive which contains privileged and private information.
- 18 • Defendant was very clear in the deposition where he stated twice:
- 19 *" I don't instruct anyone, Mr. Tratos, because I'm not selling this product. I'm*
20 *not selling the prop. And the manual is not even ready, and the CD is not even*
21 *ready. Because before the first person could ever buy this trick, I got this*
22 *lawsuit filed by Mr. Teller. And I prefer to wait until the Court decides if I'm able*
23 *or allowed to sell my invention." (dep.P.109:12)*
- 24 *" The manual I was working on was still a very rough "draft" and needed to be*
25 *finished. There was a lot of work to do on this manual." (dep.P.181:7)*
- 26 Defendant clearly stated twice in the deposition that he didn't finish the DVD
27 nor Manual and that there was a lot of work to finish them.

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

- 5 • Plaintiff succeeded to persuade the Court to make an order (#135) that
6 defendant has to deliver a copy of his Hard drive if he fails to produce the
7 impossible.

8 Plaintiff is aware and knows that defendant will never hand over his hard drive with
9 privileged information to the plaintiff, plaintiff found a way out by the Courts Order.
10 As a result, plaintiff might present such a court order as the proof that the defendant
11 infringed his copyright, whereas in reality, plaintiff did not prove any infringement at
12 all.

13
14 **5. Plaintiff committed spoliation of evidence BEFORE the litigation**
15 **started.**

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

- 18 • In a phone conversation between the parties on or about 03.21.2012, Teller
19 informed the defendant that Teller did not want anyone else in the world to
20 perform a similar trick to Tellers (shadows). The day after, plaintiff confirmed
21 this in an e-mail. **(Exh.11a)**
22 Defendant was surprised and told Teller that defendants trick was very different
23 from Tellers but that there were other magicians performing a very similar trick
24 as Tellers. Such as ALS – Petros – Hector etc.. all to be seen on YouTube.
25 • After plaintiff realized that these videos were the factual prove that 'shadows'
26 has become a standard manufactured trick and that the illusion became public
27 information, he rapidly contacted HECTOR, on date of April 2nd 2012, requesting
28 to pull off his videos of the YouTube channel video.

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

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

7 About 30 minutes later, Hector answered : "Yes, sure I will pull it off." **(Exh.13-14).**

8 And he did. Spoliation took place on important evidence for the defendant.

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11 **6. Plaintiff committed spoliation of evidence DURING the litigation.**

12 Plaintiff filed his complaint on April 11th, 2012. Plaintiff was fully aware that 'shadows'
13 was performed all over the internet and that this could be a proof for the defendant
14 that 'shadows' is now a standard manufactured trick. After he discovered another
15 video on YouTube, again uploaded many years ago, again with thousands of views, he
16 again contacted Hector, on date of April 15th, 2012, requesting:

17 **"It appears somebody posted your drawing-version of the**
18 **(shadows) routine without your knowledge. Would you be willing to**
19 **ask YouTube to take that down..."** (Exh.15a,b,)

20 Again Hector followed Tellers instructions. Again spoliation took place on important
21 evidence for the defendant. **(Exh. 16)**

22
23 The Court needs to be informed that the plaintiff has deliberately, purposefully and
24 intentionally instructed Hector to destroy or tamper evidence which could prove that
25 defendant didn't infringe on copyright.

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

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

9
10 Defendant was able to take a screenshot before the ALS magician's comment
11 **(Exh.3b)** 'magically' disappeared from the internet and has been changed to 'more
12 Teller friendly' comments, as to be seen in the last lines of the comment, wherein the
13 public is spurred to go see the Penn & Teller show. **(Exh.3c)**

14
15 More than likely on Tellers demand, instructing the magician to 'remove' his
16 comments since they were showing that Tellers trick 'shadows' became public
17 information.

18
19 **7. Plaintiff creates false evidence.**

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

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

1
2 Hector, who was already in contact with Teller for weeks, noticed this and contacted
3 Teller again, on date of April 15th 2012, and wrote:

4 " There is a thread on the magic Café forum about your lawsuit... and some
5 people were attacking me, so I had to clear a bit my situation...I haven't
6 given any information about the situation but I thought I had to say
7 something. I hope it is OK for you, please, let me know if you want me to
8 remove the comment or say something else.. Hector" **(Exh.15b)**

9 On date of April 15th 2012 (4 days after Teller filed the copyright complaint against
10 Dogge) Teller instructed Hector to add the text (hereunder) as reply to the thread on
11 the Magic Café Forum: **(Exh.17)**

12
13 **"When I recently realized what happened, I contacted Mr.**
14 **Teller myself. I told him (and I live by my word) that, as much as I**
15 **love my routine, I will do whatever Mr. Teller deems right in this**
16 **situation. If he asks me to limit its use or even remove it from my**
17 **repertoire, I will do so. I will let you know the outcome of our**
18 **discussions."**

19 On April 16, Hector responded to Teller:

20 *"Hello, I did add that, I hope it's OK now. I wish you the best on all this*
21 *process. Hector."* **(Exh.18,49)**

22
23 It is clear that Hector was doing what he was instructed to do, by Teller, the plaintiff,
24 and sadly writes "and I live by my word" while he actually lives by Tellers words, or
25 even worse, by Tellers instructions to obstruct the defendant in this litigation
26 'process'.

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2 On date of May 4th ,2012 Teller wrote: **(Exh. 19)**

3 ***"Dear Hector, Just an update. On the sad side: I'm still unresolved***
4 ***with Gerard Dogge. That law suit against him has been filed and is***
5 ***proceeding. But on the happy side (and please don't share this***
6 ***until we've completed it) I am confident you and I can work out an***
7 ***agreement..."***

8
9 On date of May 4th , 2012 Hector responded to Teller: **(Exh.20)**

10 ***"Hello Teller, Thank you for the update. I feel so happy to read that***
11 ***you give me this privilege, thank you very much for the***
12 ***consideration. I won't say anything, do not worry about that, not***
13 ***even when we agree on something. This is something between you***
14 ***and me. Our life consists on keeping secrets, is not going to be a***
15 ***problem..."***

16 Hector got rewarded for his silence and cooperation with some 'free' tickets for
17 the Penn & Teller shows and... a 'free' license from Teller. Not really free, for a
18 100\$ as Teller wrote in his email from July 23rd ,2012: **(Exh.21)**

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

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

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2 **8. Plaintiff is intentionally obstructing the proceedings - discovery.**

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

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

11
12 Plaintiff knew very well that 'his' trick was performed by Hector and others, for many
13 years and seen by thousands all over the world, and plaintiff knew that exactly this
14 could form the evidence for the defendant proving that plaintiff's copyright is
15 questionable and doubtful. Plaintiff instructed to destroy important evidence for the
16 defendant, evidence not in the 'spoliator's' favor.

17 More than likely, a similar thing happened with 'ALS Magic', another
18 professional magician performing the illusion "plants and 'shadows'", on YouTube.

19 **(Exh.3a)**

20
21 When plaintiff was requested, during the discovery, to produce all correspondence
22 between Teller and ALS regarding ALS performance of his version of shadows, Teller
23 *refused* to reply, since there was no protective order nor confidential agreement.

24
25 **9. Was plaintiff violating the defendants rights by destroying evidence?**

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

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2 It is not the first time that plaintiff is trying to turn the clock backwards by
3 tampering legal evidence, even after it was legally filed in the U.S. Court of Nevada-
4 Las Vegas. On date of April 11th, 2012, plaintiff filed exhibit 3 to his complaint,
5 showing screenshots taken by and on Tellers computer, showing his favourite web
6 links right above the defendants name and picture. Unfortunately five of the web links
7 were gay orientated hard porn sites. ('mantube', 'Corbin', 'CFSelect', '2Long', 'Tyler')
8 Web sites which are absolutely not the defendants favourites, he abhors them.

9 Defendant had to ask Teller 4 (four) times for an explanation regarding the
10 incriminating screenshots before he wanted to answer. Tellers answer (**Exh.22**)
11 shows that he was not intended to replace the incriminating exhibits and does not
12 show any 'courtesy' at all. On the contrary Teller wrote: " *There is no injury to you*
13 *and no actionable bases for objecting to documents filed with the US Federal Court...*

14 ***Stop wasting my time***". Afterwards it turned out that Tellers answer was no
15 more than one of his many hypocritical lies since he re-filed the exhibits at issue after
16 being **tampered that same day (04.25.2012) (Exh.47a,b)**

17 Plaintiff could have redact or seal the incriminating documents. But he didn't.
18 Deliberately, purposefully and intentionally and wilfully he chose to tamper legal
19 evidence after it was filed, without the defendants approval.

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

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

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

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

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

9 Plaintiff's disclosures informed the defendant that Mr. Hector and Mr. Guinee are
10 expected to testify regarding the facts and circumstances concerning the claims
11 alleged in this action.(**Exh.23**)

12
13 1. Regarding Hector, it needs no explanation that his testimony will be doubtful.
14 As the Belgium sentence states, 'wiens brood men eet, wiens taal men spreek'
15 meaning 'whose bread you eat, whose language you speak'.
16 Hector was helping Teller, in all silence, to destroy defendants evidence and got
17 rewarded with a 'free' licence to continue what he was doing already for years.
18 Performing shadows. Obviously Hector is eating out of Tellers hand and will never
19 bite the hand that feeds him, or handed him a 'free' license to continue his earnings
20 with performing shadows.

21
22 2. Regarding Guinee, it needs to be said that Teller approached Gunther Guinee
23 in the beginning of the litigation. Teller requested Guinee to persuade Bakardy, to sell
24 his creation exclusively to Teller and to no one else.
25 As reward Guinee was invited as Tellers guest to come to Las Vegas, and so on.. as
26 stated in (**Exh.24a,b**) his email from April 4th, 2012 :

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

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

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

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

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

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

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11. Tellers deposition.

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

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

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

Coincidence ? Or is there more?

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

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

The video transcript, with the 'missing words' corrected, counts 43.223 words, meaning 3.599 words or 20 pages more than the transcript delivered by the Las Vegas Court reporter.

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

Defendant therefore requested the Court reporter to deliver a complete transcript.

(Exh. 53)

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

4 Defendant experienced during the proceedings that Mr. Teller is an influential
5 and intimidating person, not only regarding the instructed witnesses, but defendant
6 experienced that he had difficulties to serve Teller with the 'summons' for the Antwerp
7 defamation litigation. The official server, working for and presented by The Central
8 Authority, could not locate the most famous celebrity in Las Vegas, Teller.

9 Defendant had to contract another Legal Server to get the job done.

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

14
15 Defendant cannot prove that all this happened due to plaintiff's 'influence', but
16 defendant cannot believe that all this is 'coincidence '. Assuming that plaintiff did
17 'steer' all this, it matches plaintiff's previous behaviour towards other magicians and
18 witnesses , which is proven.

19 **12. Is there any reason to continue the proceedings ?**

20 On the internet, in his pleadings and during the deposition (p21:1-15) Mr. Teller
21 defines 'shadows' as a magic trick or an illusion (**Exh.25**)

22 The litigation is about alleged copyright infringement on a magic trick/illusion.

23 This question is actually answered by The U.S. Government itself.

24 The U.S. Governments Copyright Office in Washington is very clear in this matter.

25 Defendant was informed by these copyright specialists that magic routines are not
26 protected by copyright. (**Exh.26a,b,c**)

27
28 Whenever plaintiff thinks this is unjust, he should first sue the U.S. Government.

1
2 Defendant learns that one can register a magic trick/illusion, but that the
3 registration or copyright is not protecting magic routines.

4 Still defendant can prove that his illusion is different from Tellers.

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

8 Plaintiff recognized this already before the litigation started, as proved by defendants
9 **SEALED EXHIBIT 3 in #39** This evidence is very interesting in many ways and
10 shows the real intentions of the plaintiff. The evidence shows an e-mail from Teller to
11 Bakardy wherein:

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

18 It became clear during the litigation in the discovery and deposition
19 **(Exh.27,28,29,30,31,32,33,34,35,36,)** that:

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

21 **Defendant can.**

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

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

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

27 **Defendant can.**

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

Defendant can.

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

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

Defendant can.

8. Anyone can perform 'shadows', as seen on the internet before plaintiff interfered with several magicians. Plaintiff is unaware of anyone else in the world performing Bakardy's illusion. **Defendant is also unaware.**

Defendants work thus differs so much from the work of plaintiff, that the creation of the work of the defendant is the unique expression of the intellectual creation of its author and of his creative mind.

The result is the intellectual creation/illusion of the defendant, which was recognized and copyrighted on date of April 10, 2012 by the United States Copyright Office Washington- DC , with 10 (ten) different performances. **(Exh.37a-d)**

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

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

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Since plaintiff admits and recognises that defendant is the only one in the world who performs the illusion, using a removable, transparent water filled bottle or vase and a removable and 100% visible rose/flower -- it is contradicting to call defendants work a copy. **(Exh.27,28,29,30,31,32,33,34,35,36)**

Plaintiff's answers shows that defendant was not infringing on Tellers copyright:

Deposition : p92:12-24 (Exh.38)

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

A. *Why would I do that?*

Q. *You did it to me ?*

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

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

First set admissions (Exh.39):

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

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

(second set admissions) (Exh.40):

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

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

The plaintiff's statements that the infringer should pay and not be paid, are in contradiction to what plaintiff did. First offering the defendant \$15.000, then \$40.000. In one of the phone conversations plaintiff considered to pay defendant \$125.000 to assume full ethical and legal possession of the defendants prop or method. Plaintiff is calling the defendant a good man and that he offered money as a courtesy and to defray the defendant's development costs. Plaintiff is betraying himself and it's obvious that defendants method/prop is different and logically results in an illusion different from Tellers.

For these reasons the Court may conclude that there is no further reason to continue the proceedings.

13. Is it possible to continue the proceedings ?

Regarding the law, it is impossible to continue the litigation since it is proven that plaintiff did wrong, by tampering and destroying important evidence. It is proven that the destroyed evidence was not in the spoliator's favour. On top, the person instructed by plaintiff to destroy important evidence, 'Hector', his accomplice, is brought forward by plaintiff as witness to testify.

The wrongdoing, took place before the litigation on April, 2nd 2012 (**Exh.13,14**) and during this litigation on April, 15th 2012 (**Exh.15,16,17,18**).

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The wrongdoing, is committed by Teller and his attorneys.

Tellers attorneys were fully aware of Tellers illegal behaviour, since they approved it and they were a part of it, as proven by Tellers answers in the deposition **(Exh.41a,b)**

(p7:16) Q. *Mr. Teller, did you inform your lawyer, Mr. Tratos from the Greenberg Traurig law firm, completely regarding all the emails and phone conversations that have happened between the two of us ?*

A. Yes.

(p8:4) Q. *Mr. Teller, do you also inform your lawyer about all the communications you've had with all the other persons regarding this litigation, in general?*

A. Yes.

On April 2nd, 2012, 9 days before plaintiff filed his complaint, plaintiff committed spoliation, instructing Hector to take down certain YouTube videos.

Important evidence for the defendant was destroyed. **(Exh.14,15)**

On April 15th 2012, 4 days after plaintiff filed his complaint, under the eyes of his attorneys and their approval, plaintiff instructed others to write comments on the most 'busy' forum of the Magic Cafe, visited by millions, in favour of the plaintiff to obstruct the pro-se defendant in collecting evidence. **(Exh.17,18)**

On April 15th 2012, 4 days after plaintiff filed his complaint, plaintiff and his attorneys discovered more evidence in their detriment and again they instructed others to destroy certain videos, committing spoliation of evidence not in the plaintiff's favour, to obstruct the pro-se defendant in collecting evidence. **(Exh.15,16)**

Noticing that important evidence in defendants favour, disappeared from the internet, defendant had a presumption that plaintiff was approaching and intimidating others to help him in destroying defendants evidence and requested plaintiff to produce all correspondence between Teller and Hector, Petros and ALSmagic. **(Exh.42,43)**

1
2 With a lame excuse, plaintiff and his attorneys refused to produce documents,
3 obviously because these documents would, more than likely, show that ALSmagic
4 was 'approached' by plaintiff in a similar way as plaintiff 'approached' Hector, and
5 that also ALSmagic was instructed to write in his name what Teller wants him to write.

6 **14. Plaintiff's wrongdoing has one reason only.**

7 Plaintiff's actions are well considered. Plaintiff's only intention was and is, to destroy
8 important evidence for the defendant.

9
10 The many YouTube videos showing others performing Tellers act 'shadows' ...
11 ***"... could be used by the current manufacturer (meaning the defendant) to***
12 ***"prove" that this is now a standard, manufactured trick. Thank you, Teller."***
13 **(Exh.13)** as Teller himself wrote in his e-mail to Hector.

14 That's the only reason, but still no excuse for plaintiff's criminal behaviour.

15
16 Noteworthy, Hector was very willing to do all what Teller asked him to do, while
17 Teller was informed by Hector that he has stated on the internet that he bought his
18 prop to perform shadows second hand, now seven years ago. Meaning the 'new' prop
19 was sold more than 7 years ago.

20
21 Plaintiff might argue that he was not aware of all infringers in the world and
22 therefore contacted Hector trying to protect his copyright etc.,
23 Plaintiff is famous and has many fans and friends to inform him about YouTube videos
24 as such, as they did with Bakardy's video. Teller became aware of Bakardy's YouTube
25 Video the day that it was posted. Bakardy's video had 14 views and was taken down
26 on Tellers demand after one week.

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It is unbelievable that Teller is not aware of the multiple YouTube videos, uploaded many, many years ago, having millions of views, showing others performing 'shadows'. Magicians are performing 'shadows' all over the world, for many, many years, seen by hundreds of thousands on big venues such as theatres on worldwide cruise ships.

Anyhow, plaintiff cannot deny what he wrote, plaintiff's statement speaks for itself. Apparently plaintiff's only concern was to make it impossible for the defendant to prove that 'shadows' was a standard manufactured trick.

15. Teller commits perjury.

Teller testifies falsely in the deposition stating:

1. that he was never interested to buy Bakardy's invention/method. It is a fact that Teller instructed Mr. Guinee to persuade the defendant to 'sell' to no one else, but exclusively to Teller (p109:23) **(Exh 44 & 24b)**
2. that he redacted screenshots. It is a fact that they were never 'redacted' but tampered instead. (p153:8) **(Exh. 46a,b, & 47a,b)**
3. that he removed the incriminating screenshots instantly after defendant called it to his attention and that they were only available for viewing during 2 days. It is a fact that the defendant requested 4 times for an explanation, while the tampered screenshots were re-filed only after 14 days. (p40:3,23,24) **(Exh.46 a,b & 47a,b)**
4. that Hector contacted him saying that he had seen Tellers show years ago, had purchased a prop not realizing that it was not made with Tellers permission,.. and that he was willing to take this trick out of his show, etc..". It is a fact that Hector was just repeating an orchestrated story since in reality Hector was instructed by Teller to write these particular text on the internet forums. (p30:7-18) **(Exh.17 & 45d,48)**

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It is clear (see par. 4 above) that Teller and Hector created and agreed on a 'version of the story' in a manner that Teller could declare the same orchestrated 'version of the story' in the deposition.

Teller commits perjury, since he falsely testifies in the deposition, similarly as Hector, who commits subornation of perjury, because Teller convinces Hector to testify in such a manner. According to the US Law, if you are convicted for subornation of perjury, you will be prosecuted and punished as if you were the one who personally committed the perjury.

Plaintiff identified exhibit 3, filed in his complaint as screenshots, both taken on 03.30.2012, the originals filed on 04.11.2012 and the ones re- filed on 04.25.2012. Because it is impossible to take screenshots from a YouTube video on the 30th of March, which was taken down on the 22nd of March, defendant confronted plaintiff with his untruthful answer. Plaintiff called his lie a 'clerical error ' and changed his answer.

All contradicting answers of plaintiff, regarding the identity of the screenshots, show that plaintiff wants to hide that they were tampered. Even when plaintiff was asked to clear up this mist of lies and to produce the screenshots in original format, plaintiff refused. **(Exh. 49)** Obvious, since the original 'formats' will prove that plaintiff was tampering legal evidence after it was filed in the US Court.

Defendant filed a motion (#88,89) on 05.25.2013 requesting the Court to reject plaintiff's tampered exhibits, and to use the originals with the sensitive parts redacted. The Court denied defendants request.(#109)

Defendant's motion (#113) filed on 06.24.2013 requesting the Court to compel the plaintiff to produce the requested items, is still pending.

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Defendant filed those motions in order to get a fair trial, defendant has the right to question the originality and integrity of plaintiff's exhibits, especially since it is proven that plaintiff does not recoil to 'buy' or bribe witnesses, to instruct others to write what he wants them to write, and to instruct others to destroy or tamper important evidence for the defendant.

III. LEGAL ARGUMENTS

Sanctions are warranted where Teller and his attorneys have committed tampering and destroying important evidence and have repeatedly acted in bad faith throughout this litigation.

It is proven that Teller and his attorneys committed perjury, tampering and spoliation, before the litigation started and during the litigation.

Defendant states that proceeding the litigation will violate the defendant's rights to a fair trial, as stipulated in art. 6, 1. of the European Treaty of Human Rights. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Defendant could learn on the internet that the US Law is not that different from the European law regarding spoliation of evidence which happens when a document or information that is required for discovery is destroyed or altered significantly.

When a crucial document is lost by spoliation, the courts may try to infer the original information by applying spoliation inference rule.

Spoliation inference rule is a negative evidentiary inference. When applying the rule, courts will review the altered document with inference against the spoliator and in favor of the opposing party.

1
2 The theory behind spoliation inference is that when a party has destroyed
3 evidence, it shows that the party had consciousness of guilt or other reasons to avoid
4 evidence. Hence, the court will conclude that the evidence was not in spoliator's favor.
5 This was clearly the case, since Teller has instructed others to destroy videos who
6 were absolutely not in plaintiff's favor.

7 The YouTube videos, now magically disappeared, were showing magicians
8 other than Teller performing Teller's so-called exclusive copyrighted illusion,
9 'shadows', forming a proof in defendants favor, since they prove that shadows is a
10 manufactured trick and a part of the standard repertoire of many magicians. Clearly
11 not in favor of the plaintiff, that's why plaintiff committed spoliation, to destroy
12 evidence not in his favor.

13 Defendant could learn on the internet that spoliation of evidence is an act that
14 is prohibited by American Bar Association's Model Rules of Professional Conduct, Rule
15 37 of Federal Rules of Civil Procedure, and Title 18 United States Code. And that
16 Sanctions for spoliation are preventative, punitive and remedial in nature. And that
17 separate tort actions are also permitted.

18
19 Defendant could also learn that the American Bar Association Rule 3.4 prohibits
20 a lawyer from destroying or assisting another in destroying evidence pertaining to a
21 case. Likewise Title 18 of United States Code Sections 1503, 1510, 1512 and 1519
22 prohibits a party from destroying or assisting another in destroying evidence, and
23 provides for criminal prosecution against the wrongdoer.

24
25 And that under Title 18 United States Code Section 1519, a wrongdoer can be fined
26 in huge amounts and imprisoned up to 20 years.

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Under Federal Rules of Civil Procedure, Rule 37 states possible sanctions as follows:

- dismissal of the wrongdoer's claim;
- entering judgment against the wrongdoer;
- excluding expert testimony;
- and application of adverse inference rule.
- Additionally, Rule 37 imposes fines on the wrongdoer.

Further, defendant has learned that a person is guilty of tampering with physical evidence when:

1. With intent that it be used or introduced in an official proceeding or a prospective official proceeding, he (a) knowingly makes, devises or prepares false physical evidence, or (b) produces or offers such evidence at such a proceeding knowing it to be false; or
 2. Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.
- Tampering with physical evidence is a third degree class E felony and is punishable by up to 36 months in prison.

1
2 **IV. CONCLUSION.**

3 Defendant's rights are violated in several ways due to plaintiff's acts.

- 4 **1.** Plaintiff abuses the US Court proceedings to intimidate Bakardy and to come in
5 posse of defendants copyrighted invention and creation, which he couldn't buy
6 on the terms he proposed, to be able to perform defendant's illusion.
- 7 **2.** Plaintiff filed a complaint without any key evidence, counting on the fact that
8 plaintiff's intimidations usually are successful. Plaintiff was asked in the
9 deposition if he really filed his complaint without having the video to prove the
10 alleged infringement, he answered: "*Yes, we did because I thought that you*
11 *and I were going to come to wonderful terms.*" (**Exh.54**) Clearly a reckless
12 and vexatious action.
- 13 **3.** Plaintiff tampered screenshots after they were filed as legal exhibits, without
14 the defendants approval.
- 15 **4.** Plaintiff instructed other persons, multiple times, to destroy multiple important
16 evidences for the defendant.
- 17 **5.** Plaintiff instructed others what he wants them to write in their name, carefully
18 hiding that plaintiff is actually the one who writes misleading comments on the
19 Internet, to obstruct the defendant in collecting evidence.
- 20 **6.** Plaintiff was lying 'under oath', stating that he does not know Hector, while he
21 not only successfully instructs Hector to destroy important evidence for the
22 defendant, but also instructs Hector what to write as if it was written by Hector,
23 while he 'rewards' Hector for his corporation with, probably amongst other
24 benefits, a 'free' license.
- 25 **7.** Plaintiff was lying 'under oath' stating on March 13th 2013, that he knows of no
26 professional magicians performing the 'shadows' illusion, while he gave a 'free'
27 license to Hector, on July 23rd 2012.
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8. Plaintiff refused to produce all correspondence between ALSmagic and Teller, regarding ALSmagic performance of 'shadows' containing important information for the defendant, to prove that plaintiff approached and instructed ALSmagic to change his comments and to write what Teller wants him to write on the internet.

9. Plaintiff presents Mr. Hector as witness to testify in Court, while it is proven that the witness writes what Teller wants him to write. Hector was already rewarded for his cooperation, since the witness is already paid for.

10. Plaintiff presents Guinee as witness to testify in Court, while it is proven that also this witness meekly follows Tellers instructions. As Hector, Guinee was already rewarded for his cooperation, and paid for.

11. Plaintiff commits perjury, since he falsely testifies in the deposition, similarly as Hector, who commits subornation of perjury, because Teller convinces Hector to testify in such a manner.

Defendant questions the integrity of all other possible witnesses selected by Teller or his attorneys.

In contrast to the defendant, -- who was not aware that he had to provide plaintiff's key evidence, since this is not the way how proceedings are done in his continent, who accidently lost his video in his computer, but still can be retrieved by YouTube-Google, -- plaintiff's actions show that he was (not accidently but) willfully and deliberately tampering and destroying important multiple evidence for the defendant, that he 'approached' multiple persons to write what he wants them to write and that he pays multiple persons to testify what he wants them to testify as a legal witness.

Plaintiff's acts should be considered as an obstruction to Justice in general.

1
2 Obstructing Justice, committing perjury, tampering and destroying or instructing
3 others to destroy important evidence needed by the pro-se defendant to prove that
4 plaintiff's copyright is doubtful and questionable and that he did not infringe on a
5 copyright or whatsoever, is doing wrong, and affects the defendant's right to a fair
6 trial fundamentally.

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10 **It does not make any sense to continue the proceedings**

11 It does not make any sense to continue the proceedings since :

- 12 • Teller admit that Bakardy's performance is different anyhow.
- 13 • Shadows is a manufactured trick, performed all over the world.
- 14 • The secret behind the shadows illusion is revealed on the internet, years ago,
15 'nota bene' ..not by the defendant.
- 16 • The United States Government - Copyright Office specialists informed the
17 defendant on date of January 29, 2013 in an official letter that: "Copyright does
18 not protect magic routines", confirming their statement on April 10, 2013,
19 **(Exh.36a,b,c).**
- 20 • But most of all, it would be wrong to proceed the litigation, with bribed
21 witnesses, tampered evidence, knowing that the plaintiff did spoliation and
22 destroyed important evidence for the defendant.

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3• For these reasons defendant respectfully requests the Honourable Court,

- 4 • **to dismiss plaintiff's complaint,**
- 5 • **to award the defendant maximum damages due to the plaintiff's**
- 6 **blatant disregard for defendant's rights and the plaintiff's vexatious**
- 7 **and reckless proceedings.**

9 With the deepest respect,

10 

11 Hoevensebaan 2, B2950 Kapellen
12 Belgium - Europe

23 Ps. Inventory list of exhibits on next page.
24 In Support of defendants Motion
25 for case-dispositive sanctions.
26

Inventory List – 54 Exhibits

EXH. N°	DISCRIBTION	CASE N° 2:12-cv-00591-JCM-GWF
1.a-b	Screenshot from internet comments	
2.	Screenshot YouTube - Shadows by Petros	
3.a-c	Screenshot YouTube – plants and Shadows	
4.a-c	Screenshot YouTube – Hector performing Rose trick	
5.	Screenshot Ian McCarthy performing Rose trick	
6.	Screenshot Mike Fallen performing Rose trick	
7.	Screenshot Alexander Merk & Magic forum	
8.a-d	Screenshots YouTube video & comments 'how to built Rose trick'	
9.a-d	Screenshots /Emails where to rent Rose trick	
10.a-b	Screenshot forum/email – trick is sold since years	
11.a-d	Emails/discovery – Teller wants no one else to perform Rose trick	
12.	Email from Teller to Bakardy – regarding different routine proposal	
13.	Email from Teller to Hector – April, 2, 2012	
14.	Email from Hector to Teller – April, 2,2012	
15a.	Email from Teller to Hector – April, 15,2012	
15b	Email from Hector to Teller – April 15,2012	
16	Screenshot YouTube	
17.	Email from Teller to Hector – April,15,2012	
18.	Emails from between Teller & Hector April,16,2012	
19.	Email from Teller to Hector – May,4,2012	
20.	Email from Hector to Teller – May,4,2012	
21.	Email from Teller to Hector – July, 23,2012	
22.	Email from Teller to Bakardy – April,24,2012	
23.	Plaintiff's disclosure	
24.a,b	Email from Teller to Gunther – April,4,2012	
25.	Tellers deposition	
26.	Documents Copyright Office USA	
27-30.	Discovery	
31-36.	Tellers deposition	
37.a-c	Documents Copyright Office USA	
38.	Tellers deposition	
39-40.	Discovery	
41.a,b	Tellers deposition	
42-43.	Discovery	
44-45b.	Tellers deposition	
46a,b.	Plaintiff's exhibit 3 filed on 04.11.2012	
47a,b.	Plaintiff's exhibit 3 re-filed on 04.25.2012	
48.	Screenshot forum Magic Cafe	
49.	Discovery.	
50.	Letter from Tratos	
51.	Tellers deposition	
52a-d	Answers from Google-YouTube	
53.	Letter to Court reporter – re. Transcript deposition	
54.	Tellers deposition.	

EXHIBIT 1 (a)

NEWS ABOUT: GERARD BAKARDY

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1 STORY



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

IN CASE YOU MISSED IT

Penn and Teller Suit: Magician Stole Our Trick

Apr 21, 2012 12:30 PM CDT

Penn and Teller Suit: Magician Stole Our Trick

DUTCH ILLUSIONIST TRIES TO SELL SHADOW TRICK'S EXPLANATION

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

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

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

in and Teller magic a...

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

Penn-And-Teller

Teller of Penn and Teller magic act sues over trick theft

Gael Fashingbauer Cooper
TODAY

April 16, 2012 at 8:31 AM ET

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

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

Celebs
Michael Moore, wife of 21 years file for divorce

TV
Violence? Reelers? Live?



EXHIBIT 1 (b)

CELEBRITY JUSTICE

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

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



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

The Magic Cafe Forums - Idiot Trying To Sell Teller's "Shadows" Secret

www.themagiccafe.com › ... › Did you hear the latest? ▾ Vertaal deze pagina

12 apr. 2012 - 30 berichten - 19 auteurs

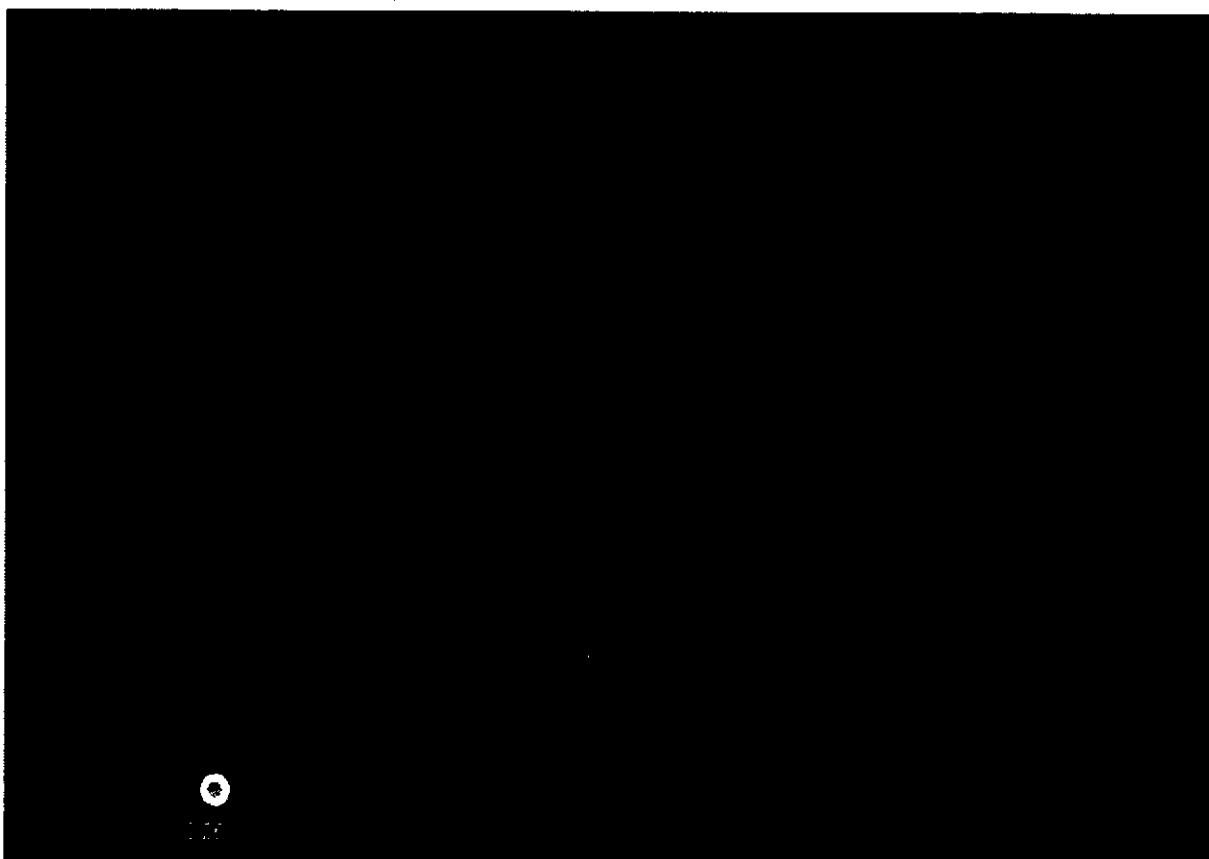
In the trick, **Bakardy** uses a spotlight to cast a shadow of a rose onto a screen -- and then proceeds to ... Teller isn't suing for exposure, he's suing for **theft**. <http://www.youtube.com/watch?v=8osRaFTtgHo&feature=related>

EXHIBIT 2



"shadows" by petros

xana2226 Subscribe 3 videos ▾



Like Share

5,000

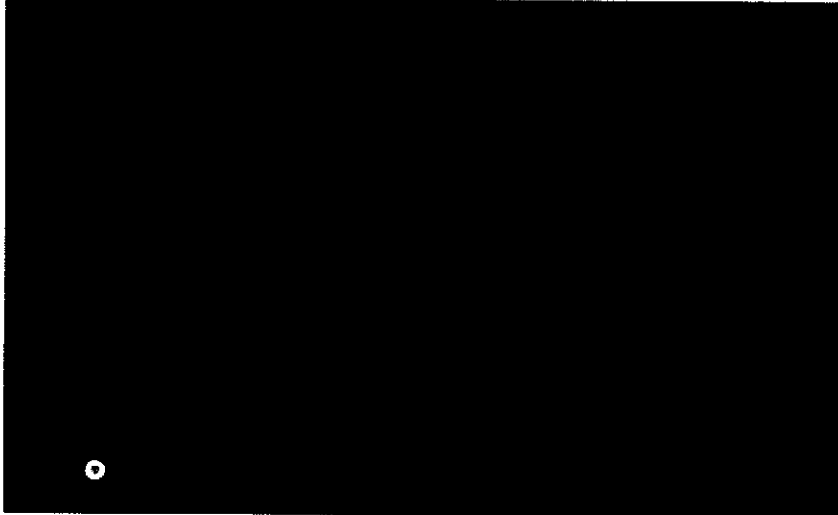
Uploaded by xana2226 on Aug 25, 2009

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

16 likes. 3 dislikes

EXHIBIT 3a

Home
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va vanish wmv 132

by AlSmagic2008 1 year ago

Uploaded videos 1/10 of 11 ▶ Play All

About Magic Presents
street, stage, and awesome upclose illusions

Post a channel comment

Post

by AlSmagic2008 ▼

Latest Activity Mar 1 2012

Date Joined Jun 13 2008

About this user
<http://www.myspace.com/live4magicdotcom>
<http://www.facebook.com/papmosaic>

William is a professional "upclose illusionist" with a new style of performing in your face slight of hand, and classic parlor magic. His street routines are Amazing and can be viewed as strolling magic, or in a more private party setting. The show is packed with spectacular upclose tricks. Good for all ages, and fantastic for adults! William is a master of his field and has been practicing his craft for years. He will astonish you with his act, and charm you with his personality.

Hometown Atlanta

Country United States

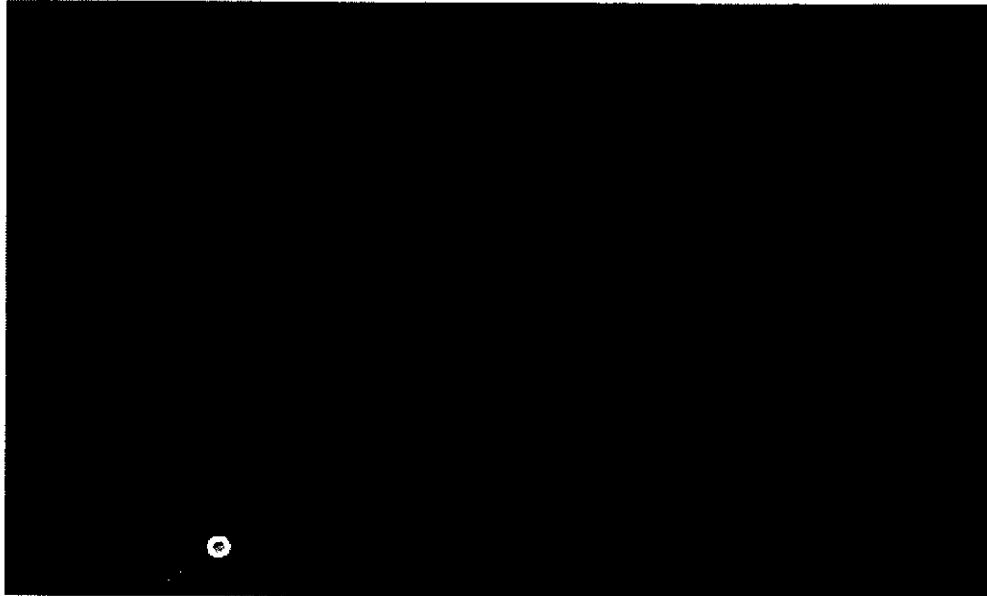
EXHIBIT 3b



Q 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

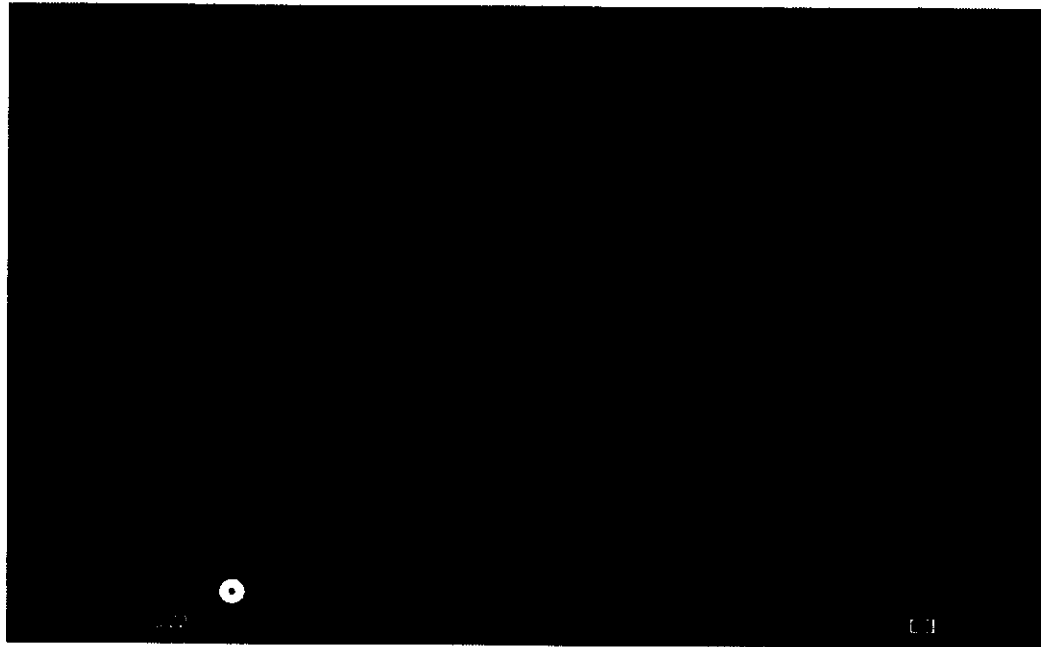
y even comment? I use diffrent methods and props my ilusion is much more complex its like asking copperfield to get permission from walter blaney to do a levitation (its not needed) 2nd I dont need his permission because this was exposed some years back by multiple magicians so his methods are now public 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 3c



plants and shadows



plants and shadows.wmv



AISmagic2008 6 videos

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4,595



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About

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Published on Sep 16, 2010

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

Buy "Halo" on



Google Play
iTunes

Artist

Beyoncé

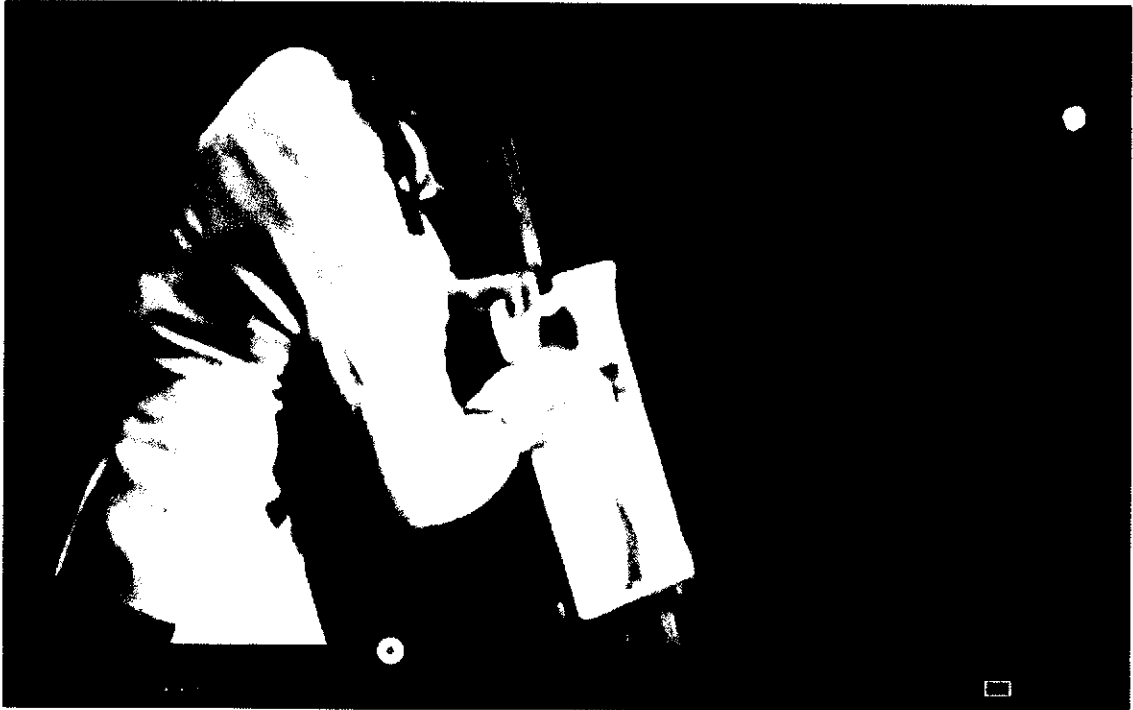
Category Comedy

License Standard YouTube License

EXHIBIT 4 (a)

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 displayed with a plus sign icon, followed by "Abonneren" and "13 video's". The video player itself shows a man in a white suit pointing towards a stage. On the stage, there is a white easel, a large glowing orb, and a white bottle on a stand. The text "hectormagic.com" is visible in the top right of the video frame, and "Hector IS MAGIC!" is in the bottom right. Below the video player, there are interaction buttons: "Leuk" (thumbs up), "Delen" (share), and a flag icon. To the right of these buttons, it says "653 aantal keren bekeken". Below that, it says "Geüpload door hectormagic op 4 okt 2011" and "www.hectormagic.com". There are also icons for "4 keer gemarkeerd als leuk" and "keer oemarkeerd als niet leuk". The video player controls show "4 / 13" and "Geüploadde video's" with a dropdown arrow. The video title "Hector is Magic! illusion Show" is also visible in the player's title bar. At the bottom right of the screenshot, the system clock shows "11:10 AM 6/11/2012".

EXHIBIT 4 (b)



The screenshot shows a web browser window with a YouTube video player. The video title is "Hector Is Magic! - Vision of the seas Show". The channel name is "hectormagia2008" with 19 videos. The video has 4,395 views, 15 likes, and 1 comment. The upload date is "Geupload op 9 jan 2011" and the website "www.hectormagic.com" is listed. The browser's address bar shows "Hector is Magic! - Vision of ...". The system tray at the bottom right shows the time "7:01 PM" and the date "3/26/2013".

Secure-zoeken McAfee

YouTube hector is magic

Hector Is Magic! - Vision of the seas Show

hectormagia2008 19 video's 4.395

Abonneren 118 15 1

Leuk Over Details Meer weergeven

Geupload op 9 jan 2011
www.hectormagic.com

Meer weergeven

7:01 PM
3/26/2013

HIBIT 4 (c)

The screenshot shows a web browser window displaying a YouTube video. The browser's address bar shows the URL: <http://www.youtube.com/watch?v=GYC...>. The browser's search bar contains the text "secure-soeken" and the McAfee logo is visible. The YouTube logo is in the top left corner of the page. The video player shows a dark scene with a person in a white outfit on a stage. The name "F.Hector" is overlaid in the bottom right of the video frame. Below the video, the title "FansdeHector EIMago os desea un Feliz año 2012" is displayed. The channel name "FansHectorelMago" is shown with a profile picture, 21 videos, and 114 views. There is a button to "Abonneren" (Subscribe) and icons for likes and dislikes. Below the video, it says "Geupload op 31 dec 2011" and "Geen beschrijving beschikbaar". A product recommendation for "Yeha-Noha (Wishes Of Happiness And Prosperity)" is shown with a small image of the product and the text "kopen op". The system tray at the bottom right shows the time as 2:58 PM on 4/3/2013.

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/ftopic24465.php

My impromptu(ish) version of... X

Bestand Bewerken Beeld Favorieten Extra Help

X Google Ian McCarthy Shadows Zoeken Delen Vertalen Meer Aanmelden

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

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

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

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)

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

Talkmagic Forum

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

18:37 3/07/2013

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/forums/2445/...
My impromptu(ish) version of...

Bestand Bewerken Beeld Favorieten Extra Help

X Google Ian McCarthy Shadows Zoeken Delen Vertalen Meer Aankleden

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

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

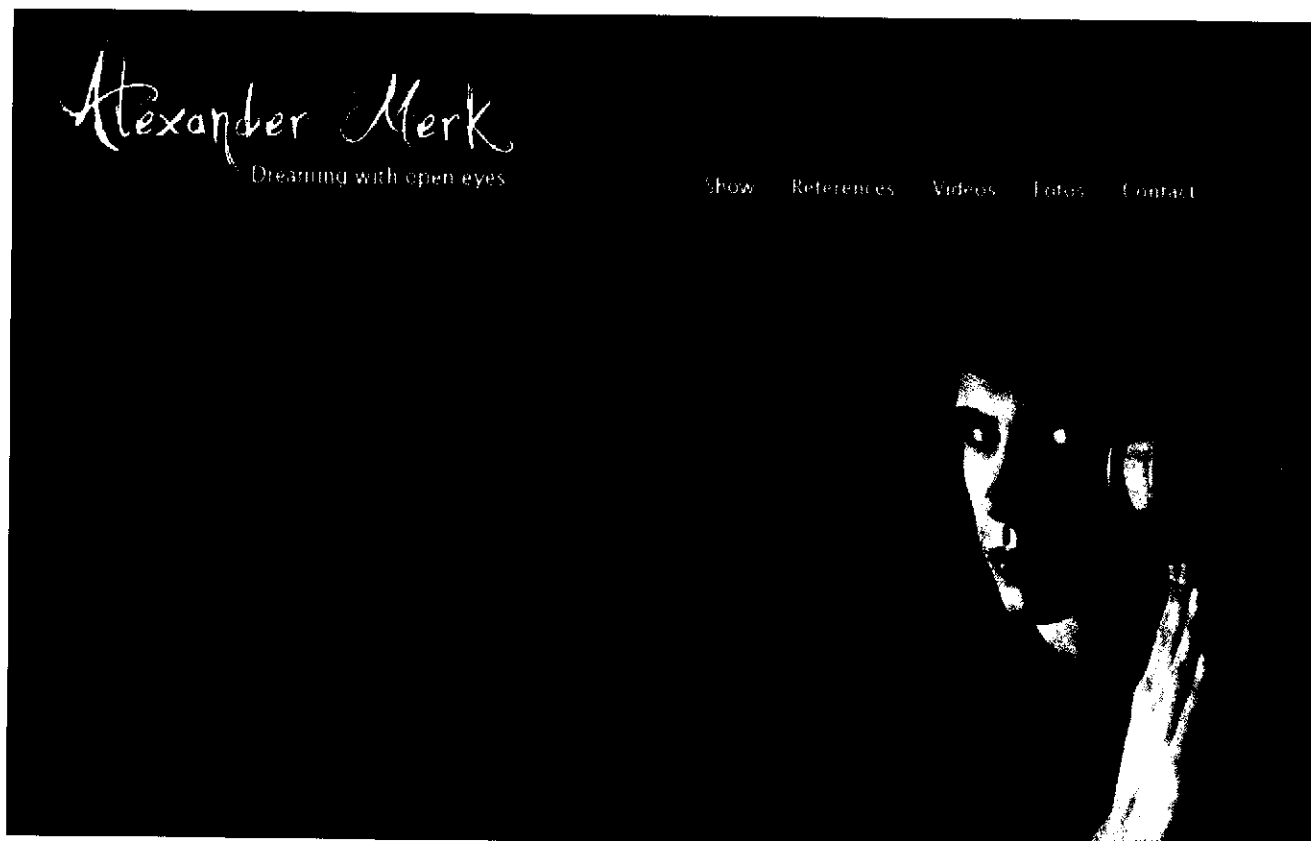
mikefallen
New User

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

Hello Ian, i saw the topic on talk magic and i would love to discuss about the shadow illusion that teller performs. I do not copy the act but i study magic history... I have created a method of my own that works, but i am always ready 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 Kam 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
14,000 posts
111 posts

EXHIBIT 8 (a)

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

Secure-zoeken McAfee

Tube



Building the Rose for Beauty and The Beast

 **yourbeekeeper** 363 videos 4,055

 **Subscribe** 2,988 👍 24 🗨️ 2

 Like  About Share Add to   

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

[Show more](#)

Uploader Comments (yourbeekeeper)

7:26 PM
5-10-2012

EXHIBIT 8 (b)

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

Secure-zoeken McAfee

YouTube building the rose for the beauty and the beast



Building the Rose for Beauty and The Beast

 **yourbeekeeper** 387 videos 4,4

 **Subscribe** 2 294 26

 Like  About Share Add to  

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

EXHIBIT 8 (c)

YouTube building the rose for the beauty and the beast



Building the Rose for Beauty and The Beast

 **yourbeekeeper** 367 videos 4,4

 **Subscribe** 2,294 26

 Like  **About**  Share  Add to  

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

[Show more](#)

EXHIBIT 8 (d)


The screenshot shows a YouTube video player interface. At the top, the browser address bar displays "http://www.youtube.com/watch?v=SCMq...". The video title is "Building the Rose for Beaut...". The video is marked as "Uploaded on Mar 13, 2011" and has a description: "With 90% of construction completed... now it's the fun details like the wilting rose...". Below the video, there are several comments and replies. The first comment is from Liz Berliant, a middle school music teacher, asking about selling products. The second comment is from the uploader, yourbeekeeper, who explains their time constraints. The third comment is from Bobby Hall, who reports technical issues with the video's wiring. The final comment is a reply from yourbeekeeper providing troubleshooting advice for Bobby Hall's problem.

Like About Share Add to


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

Show more


Uploader Comments (yourbeekeeper)

 Liz Berliant 7 months ago
Wow! That's amazing. I am a middle school music teacher putting on a production of Beauty and the Beast right now - this looks perfect. Do you ever sell any of your products? We would love to have something like this for our production!


Reply in reply to Beauty and the Beast

 yourbeekeeper 3 months ago
Honestly I don't have the extra time to make and sell the stuff I build for the shows. I Tech three performances a school for them and basically as one show closes I am right on the next. Good luck in your performance, and if I can advise you in any way. please feel free to ask.

Reply in reply to Liz Berliant

 Bobby Hall 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.

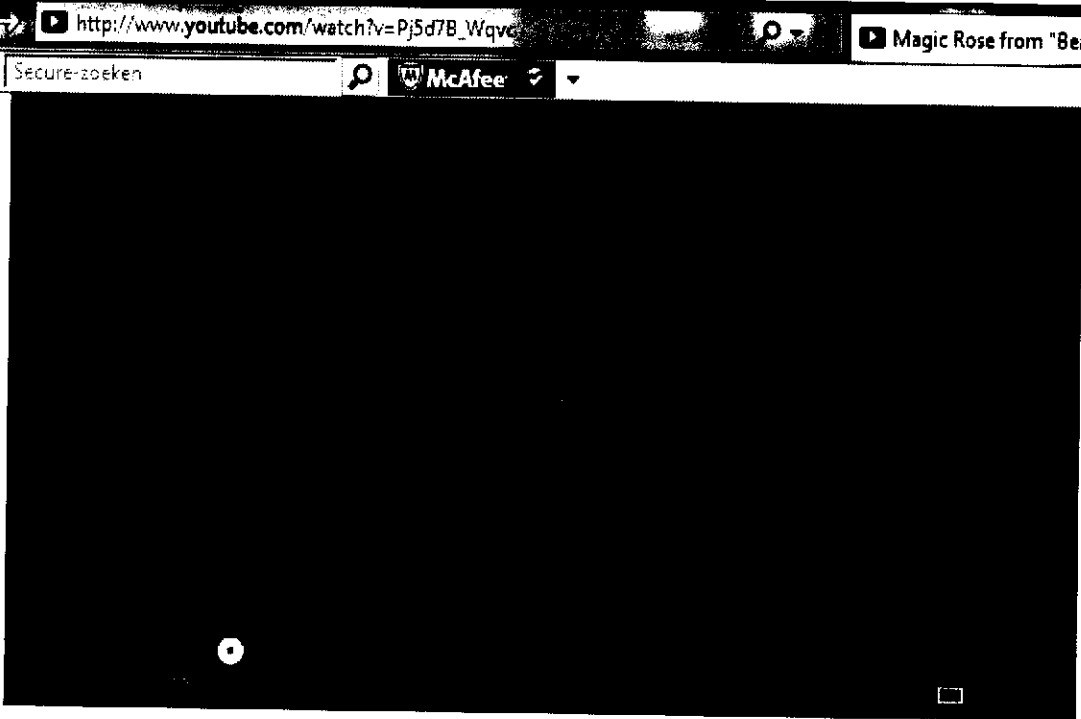
Reply in reply to Bobby Hall

 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

7:24 PM
5-10-2013

XHIBIT 9 (a)



Secure-zoeken McAfee

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

Magic Rose from "Beauty and the Beast"

setpieces · 2 videos

5,015

Subscribe 1

Like

About Share Add to

Uploaded on Feb 21, 2009

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

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

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

Category Science & Technology

License Standard YouTube License

Show less

12:26 PM 5/16/2013

EXHIBIT 9 (b)

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

Secure socket McAfee

Tube

Beauty and the Beast Mechanical Rose

opiclops9 · 6 videos 5,472

Subscribe 5 6 0

Like About Library History Settings Help

Uploaded on Mar 11, 2009
This is a mechanical rose I built for a production of Disney's Beauty and the Beast. It drops petals one at a time (nine total) and is lit by a ring of diffused white LEDs around the base. The whole thing is

[Show more](#)

All Comments (10)

2:06 PM
5/19/2013

EXHIBIT 9 (c)

REDACTED

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

Date: 25 May 2013 11:12

Subject: Re: Beauty and the beast

To: [REDACTED]

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

Hi [REDACTED]

Thanks for your enquiry.

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

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

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

Best regards

Rachel George

EXHIBIT 9 (d)

REDACTED

From: Rachel George <racheigeorge@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 10(a)

Hector

Posted: Apr 15, 2012 3:58pm



Hello,

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

On the other hand, about the rose routine.

Loyal user

255 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 (hector@smag.com).

EXHIBIT 10(b)

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(a)

REDACTED

From: t [REDACTED]

Subject: Re: Shadows

Date: Thu, 22 Mar 2012 15:58:46 -0700

To: f [REDACTED]

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 11(b)

GRUENBERG TRAVEL, LLP
1777 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Tel: (702) 732-3777
Facsimile: (702) 732-9992

1 **REQUEST NO. 5:**

2 Admit that, in that same phone conversation, you asked the defendant to cancel the
3 planned advertisement to sell his invention.

4 **RESPONSE:**

5 Objection. This request is vague and ambiguous with respect to the phrases "that
6 same phone conversation" and "planned advertisement." Notwithstanding this objection,
7 Teller denies he asked the defendant not to continue to advertise the infringing illusion. The
8 defendant instead offered to withhold the ad.

9 **REQUEST NO. 6:**

10 Admit that you received a draft of the advertisement, cancelled by the defendant.

11 **RESPONSE:**

12 Objection. This request is vague and ambiguous. Notwithstanding this objection,
13 Teller admits that he received a copy of an advertisement via email from Dogge on March 23,
14 2012, and that the email contained representations by Dogge that Dogge had stopped the
15 advertisement from being published.

16 **REQUEST NO. 7:**

17 Admit that, in that same phone conversation, you told the defendant that you did not
18 want any other magicians in the world to do defendants [sic] trick.

19 **RESPONSE:**

20 Objection. This request is vague and ambiguous with respect to the phrase "that same
21 phone conversation." Notwithstanding this objection, Teller admits that he indicated the
22 illusion was his exclusive creation and he did not want the illusion to be performed by others.

23 **REQUEST NO. 8:**

24 Admit that you called the defendant several times to negotiate and discuss the terms of
25 this matter.

26 **RESPONSE:**

27 Objection. This request is vague and ambiguous, specifically with respect to the terms
28 "negotiate and discuss." Notwithstanding this objection, Teller admits that he and Dogge

EXHIBIT 11(c)

Case 2:12-cv-00591-JCM-GWF Document 123 Filed 07/08/13 Page 9 of 23

1 end of Dogge's video, the words: "A double illusion for the price of one" appeared on the
 2 screen. (Id. at 77:14-22; see YouTube screenshot of Dogge, pka Gerard Bakardy,
 3 attached hereto as **Exhibit 6**, at TELLER000071²). Dogge then posted his video to
 4 YouTube and tagged it with the keyword - "Teller." (See id. at TELLER000069; Dogge's
 5 answer to plaintiff's second set of requests for admissions, dated March 28, 2013, at
 6 response to request no. 31, at 6, attached hereto as **Exhibit 7**).

7 Dogge informed viewers that his prop was for sale by pasting a textual narrative
 8 below the video stating, "It could be a wonderful and refreshing addition to all your coin or
 9 card tricks." (See **Exhibit 6** at TELLER000069.). Dogge also created a print
 10 advertisement for his mail-order prop, explaining that the prop came with an instructional
 11 DVD and manual and that the price for all three items was 2,229€, the equivalent to about
 12 \$3,000.00. (See **Exhibit 4**, at 105:19-106:5; Dogge Dutch advertisement and English
 13 translation, attached hereto as **Exhibit 8**). Dogge claims that he priced his prop at this
 14 amount because it was the price he had seen other, unrelated magic props sold for on the
 15 internet. (**Exhibit 4**, at 106:3-21).

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

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

23 As explained by expert witness, Jim Steinmeyer, a magician's trademark illusion can
 24 be a significant source of income and avenue to continue his legendary status. Mr.
 25 Steinmeyer refers to the legendary Harry Blackstone, Sr. as a prime example – "Harry
 26

27 _____
 28 ² This appears to reference the table which Dogge proposes to sell which bears a striking similarity to the table by the
 Magician Losander.

EXHIBIT 11(d)

Case 2:12-cv-00591-JCM-GWF Document 123-2 Filed 07/08/13 Page 6 of 6

1 site. I asked Dogge to cease all use and offers to sell his infringing work "The Rose & Her
2 Shadow." I also offered to reimburse Dogge for his development costs, if he would be
3 willing to abandon this project. I offered to pay Dogge for his work because I thought it
4 would probably be more efficient than filing a lawsuit.

5 18. Defendant did not accept my offer, but instead demanded a much higher sum
6 for him to cease the use and sale of the infringing work "The Rose & Her Shadow."

7 19. Unfortunately, this higher payment demanded by Defendant is excessively
8 high and unfair to me. Defendant has refused to permanently cease use and sale of the
9 infringing work "The Rose & Her Shadow."

10 20. On April 11, 2012, Dogge emailed me to state that if we did not come to an
11 agreement before April 13, 2012, he would begin "selling to the public." Accordingly, I have
12 been forced to retain counsel to remedy Defendant's infringement.

13 21. During our discussions, Defendant Dogge and I exchanged numerous emails.
14 True and correct copies of several of those emails are attached to the Motion as Exhibits
15 5, 9 and 10.

16 22. In the future, perhaps after I retire, I hope to license "Shadows" to a very
17 small number of carefully selected and talented performers in magic or pantomime, who will
18 pay me for its use, credit it to me properly, and do justice to what I consider my most
19 personal and distinctive creation.

20 I declare under penalty of perjury and under the laws of the State of Nevada that the
21 foregoing is true and correct.

22 Executed this 8th day of July, 2013 at Las Vegas, Nevada.

23
24
25 /s/ Teller
Teller

26
27
28

EXHIBIT 12



Teller Penn & Teller 6/04/2012

Aan gerard bakardy *

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 13

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.

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.

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:

EXHIBIT 14

On Apr 2, 2012, at 10:31 AM, Hector is Magicl wrote:

Teller,

Yes, sure I will pull it off. I did upload it just to show it to you, to prove that is nothing trying to copy your act.

I haven't heard before about that Gerard. I am sorry. If you need me to upload a video from 5 years ago to show it to you I could do that. I haven't heard about anyone selling the illusion in Spain. I am out of the country most of the time tho.

I absolutely understand your feelings about your wonderful creation since I am also in love with my routine.

I will do what ever you ask me to do.

I really respect your act. I could promise not to show videos or perform it on TV nor magic festivals. Just keep performing it on my show on cruise ships, theme parks and those kind of venues.

Of course I let you think about the situation.

Feel free to contact me whenever you feel it is the right moment.

Thank you for you understanding and your time.

All the best.

Hector.

El 02/04/2012, a las 14:17, Teller escribió:

Hector,

I greatly appreciate your note, and your honesty in approaching me about this.

I do understand your situation and you'll need to let me think a bit.

I did not know someone had started manufacturing the effect without my permission more than five years ago. I was aware only of someone in Spain, Gerard Bakardy, who has recently tried to advertise a version of the trick. I've been in consultation with my lawyer for two weeks to deal with that case.

As you might imagine, it's no fun. I conceived the effect and first executed it in 1975. It is my heart, my soul, my signature piece. When I think of magicians around the world doing this while I'm still active in my career, I am a bit heartbroken.

Please be patient for a few days and allow me to sort this out.

EXHIBIT 15a

----- Original Message -----

From: [REDACTED]
To: info@hectorismagic.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

EXHIBIT15b

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. I will let you know as soon as I get news about it.

All the best.

Hector.

| --- Original Message ---

EXHIBIT 16



EXHIBIT 17

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.

EXHIBIT 18

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

[REDACTED]

I did add that.

I hope it is OK now

I wish you the best on all this process.

Hector.

[REDACTED]

EXHIBIT 19

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 20

From: Hector is Magic! <info@hectormagic.com>

Subject: Re: the rose

Date: May 4, 2012 5:21:21 PM PDT

To: Teller [REDACTED]

Hello Teller.

Thank you for the update. I feel so happy to read that you give me this privilege, thank you very much for the consideration.

I won't say anything, do not worry about that, not even when we agree on something. This is something between you and me. Our life consists on keeping secrets, is not going to be a problem.

Please, let me know your thoughts about the agreement when you have it ready.

Thank you very much once again, it is a honor for me to read such a great news.

All the best from Spain (I just finished my contract in Brazil... finally! hehe)

Hector.

EXHIBIT 21

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 22

Re: Quick question



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



Teller Penn & Teller 24/04/2012

Aan Gerard bakardoy ▾

Dear Gerard,

There is no injury to you and no actionable bases for objecting to documents filed with the United States Federal Court.

The screen shot was not made by you. It cannot be reasonably inferred that the sites you allude to are sites associated with you.

With all due respect, Gerard, you seem to be groping desperately for some shred of defense to your infringement and threat of future infringement.

If you have realistic, good-faith proposals to offer for settling this matter out of court, please make them.

Otherwise, please stop wasting my time.

Respectfully,

TELLER

EXHIBIT 23

4. Gunther Guinee
Address Unknown

Mr. Guinee is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

5. Jim Steinmeyer
c/o Greenberg Traurig
3773 Howard Hughes Pkwy., Suite 400N
Las Vegas, Nevada 89128

Mr. Steinmeyer is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

6. Glenn Alai
Rio All-Suite Hotel & Casino
Las Vegas, Nevada

Mr. Alai is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

7. Penn Jillette
Rio All-Suite Hotel & Casino
Las Vegas, Nevada

Mr. Jillette is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

8. Hector (is Magic!)
Seville - Spain

Hector is expected to testify regarding the facts and circumstances concerning the claims alleged in this action.

B. Rule 26(a)(1)(B) - Documents

Based on the information reasonably available, the following documents may be used by Plaintiff to support his claims or defenses. The documents listed in bold below are attached hereto:

DESCRIPTION	BATE-NUMBER
Certificate of Copyright Registration, Registration Number Pau 469-609, effective January 6, 1983 for Shadows	TELLER000001-TELLER000005
Emails between Teller and Gerard Dogge	TELLER000006-TELLER000026
Screenshots of Gerard Bakardy performing "The Rose & Her Shadow"	TELLER000027-TELLER000029
Email between <u>jack@splitup.com</u> and Gerard Bakardy regarding Jack's request to purchase "Rose and Her Shadow"	TELLER000030

COURTESY TELLER LLP
 3773 Howard Hughes Parkway, Suite 400N
 Las Vegas, Nevada 89128
 Telephone (702) 730-1775
 Fax (702) 730-1882

EXHIBIT 24a

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 24b

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 25

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

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

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

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

14 Q Yeah. Mr. Teller?

15 A Yes.

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

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

EXHIBIT 26a



United States Copyright Office

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

January 29, 2013

Gerard Robert
Postbus 1
Stabroek,
Belgium 2940

Correspondence ID: 1-EMHYHP

RE: Two mysterious routines

Dear Gerard Robert:

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

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

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

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

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

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

EXHIBIT 26b

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

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

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

EXHIBIT 26c



Van: Copyright Information (copyinfo@loc.gov).
Verzonden: woensdag 10 april 2013 14:49:47
Aan: 'gerard bakardy' (gerard-bakardy@hotmail.com)
CC: Copyright Information (copyinfo@loc.gov)

Dear Gerald Robert,

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

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

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

Sincerely,

RyB

U.S. Copyright Office
Attn: Public Information Office-LM401
101 Independence Avenue, S.E.
Washington, DC 20559-6000
Email: copyinfo@loc.gov
Phone: 877-476-0778 (toll free) or 202-707-5959
Fax: 202-252-2041
Website: www.copyright.gov

EXHIBIT 27

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 | ///

1001 Hill Top Drive, Suite 100, Las Vegas, NV 89101
702.735.1111
1001 Hill Top Drive, Suite 100, Las Vegas, NV 89101
702.735.1111

EXHIBIT 28

17 **REQUEST NO. 31:**

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

20 **RESPONSE:**

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

24 **REQUEST NO. 32:**

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

27 ///

28 ///

LV 419972119v1

Page 12 of 18

1 **RESPONSE:**

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

EXHIBIT 29

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 30

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 31

25

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

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

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

16 BY MR. DOGGE:

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

21 A No.

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

25 A I don't know, sir.

EXHIBIT 32

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 33

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 34

009

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 35

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 36

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 37a

Certificate of Registration



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

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-783-708

Effective date of registration:
April 10, 2012

Title _____

Title of Work: The Mysterious Rose

Completion/Publication _____

Year of Completion: 2012

Date of 1st Publication: April 10, 2012

Nation of 1st Publication: Belgium

Author _____

▪ Author: Gerard Bakardy

Author Created: magic routine performance

Work made for hire: No

Citizen of: Netherlands

Domiciled in: Belgium

Copyright claimant _____

Copyright Claimant: Gerard Robert

Brussels, Belgium, Belgium

Certification _____

Name: Gerard Bakardy

Date: April 10, 2012

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

EXHIBIT 37(b)

The Mysterious Rose

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

The five routines:

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

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

The strongest points in this illusion:

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

EXHIBIT 37(c)

Certificate of Registration



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

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-790-683

Effective date of registration:
May 23, 2012

Title _____

Title of Work: The Mysterious Rose Part 2

Completion/Publication _____

Year of Completion: 2012

Date of 1st Publication: May 9, 2012

Nation of 1st Publication: Belgium

Author _____

▪ **Author:** Gerard Robert

Author Created: magic routine

Citizen of: Netherlands

Domiciled in: Belgium

Copyright claimant _____

Copyright Claimant: Gerard Robert

Brussels, Antwerp, Belgium

Limitation of copyright claim _____

Material excluded from this claim: magic routine

Previous registration and year: 1-750826221 2012

New material included in claim: magic routine

Rights and Permissions _____

Name: Gerard Robert

Email: gerard-bakardy@hotmail.com

Address: Postbus 1

Stabroek, 2940 Belgium

Certification _____

Name: Gerard Robert

Date: May 23, 2012

EXHIBIT 37(d)

The Mysterious Rose Part 2.

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

Five more routines.

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

The strongest points in this illusion:

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

EXHIBIT 38

30

1 Q He magically disappeared from YouTube.

2 A Im sorry.

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

4 Don't be sorry.

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

6 Q I --

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

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

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

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

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

12 Q Okay. Did you ever offer money.

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

14 copyrighted tricks?

15 A Why would I do that?

16 Q You did it to me.

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

18 infringing on my copyright, I would expect them to

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

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

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

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

23 development costs.

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

25 A Thank you.

EXHIBIT 39

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

2 **REQUEST NO. 9:**

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

5 **RESPONSE**

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

12 **REQUEST NO. 10:**

13 Admit that this offer was turned down by defendant.

14 **RESPONSE**

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

21 **REQUEST NO. 11:**

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

25 **RESPONSE:**

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

EXHIBIT 40

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 ///

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EXHIBIT 41a

1 learned. Mr. Teller, is there any reason that you
2 cannot fulfill your obligations as a witness in this
3 deposition, such as a medical reason, diverse range,
4 or another?

5 A No.

6 Q So that's good. Sorry for asking you
7 this, but --

8 A No, No.

9 Q But do --

10 A Of course.

11 Q -- do you take any drugs -- do you take
12 any drugs, alcohol, or medicine that can affect your
13 ability to answer my question?

14 A No, sir.

15 Q Okay. Mr. Teller, I want to start with
16 the most important question. Did you inform your
17 lawyer, Mr. Tratos, from the Greenburg Taurig law
18 firm completely regarding all the emails that have
19 been phone conversations that have happened between
20 the two of us?

21 A Yes. To the best of my ability, yes, sir.

22 Q Okay. And do you receive a copy from all
23 communications, all documents, emails, letters,
24 phone conversation between your attorneys and me?

25 A I believe I am updated on that, yes.

EXHIBIT 41b

1 Q Okay. So you have had an opportunity to
2 see and to read all the documents?

3 A So far as I know, yes, sir.

4 Q Okay. Okay. Mr. Teller, do you also
5 inform your lawyer about all the communications you
6 had with all of the other persons regarding this
7 litigation, in general? For instance, as for
8 example, Mr. Gunther ~~Gunter~~?

9 A Yes.

10 Q Yes. Okay. I think I need to ask you
11 this in a legal way. Can you please state your full
12 name and address for the record?

13 A Yes. My full name is Teller. My home
14 address is 7570 Gary Avenue, Las Vegas, Nevada
15 89178. My office address is care of Penn & Teller
16 at 3555 West Reno, Unit L, Las Vegas, Nevada 89118.
17 Sorry.

18 Q Thank you much. Thank you very much.
19 Mr. Teller. Since when do you live there.
20 Mr. Teller, in Las Vegas?

21 A I've been in Las Vegas, I -- I -- forgive
22 me. It's -- I've lived in my current house about
23 for about fifteen years. And I think I have been in
24 Las Vegas for about 20.

25 Q Yeah. Okay. Impolite question, but how

EXHIBIT 42

1 **REQUEST NO. 2:**

2 Produce complete and accurate copies of any and all documents, correspondence,
3 email, phone conversations between plaintiff and Hector.

4 **RESPONSE:**

5 Objection. This request is overbroad, as it is not limited to time or in scope, and
6 encompasses documents well outside the realm of reasonable discovery. This request
7 additionally demands documents that are proprietary or confidential. Notwithstanding said
8 objections, upon entry of a protective order, Teller will produce any and all responsive, non-
9 privileged documents. As discovery is ongoing, Teller reserves the right to supplement this
10 response.

11 **REQUEST NO. 3:**

12 Produce complete and accurate copies of any and all documents, correspondence,
13 email, phone conversations between plaintiff and Petros.

14 **RESPONSE:**

15 Objection. This request is overbroad, as it is not limited to time or in scope, and
16 encompasses documents well outside the realm of reasonable discovery. This request
17 additionally demands documents that are proprietary or confidential. Notwithstanding said
18 objections, upon entry of a protective order, Teller will produce any and all responsive, non-
19 privileged documents. As discovery is ongoing, Teller reserves the right to supplement this
20 response.

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EXHIBIT 43

21 **REQUEST NO. 4:**

22 Produce complete and accurate copies of any and all documents, correspondence,
23 email, phone conversations between plaintiff and ALS magic

24 **RESPONSE:**

25 Objection. This request is overbroad, as it is not limited to time or in scope, and
26 encompasses documents well outside the realm of reasonable discovery. This request
27 additionally demands documents that are proprietary or confidential. Notwithstanding said
28 objections, upon entry of a protective order, Teller will produce any and all responsive, non-

1 privileged documents. As discovery is ongoing, Teller reserves the right to supplement this
2 response.

3 **REQUEST NO. 5:**

4 Produce the original digital screenshots, in original format e.g. pdf, jpeg, etc., filed in
5 the plaintiff's exhibit 3 filed on 04.11.2012.

6 **RESPONSE:**

7 Objection. This request is not relevant to the pending copyright action, nor is it
8 reasonably calculated to lead to the discovery of admissible evidence in the same. Instead,
9 this request seeks information you presumably believe is related to the claims in the Belgium
10 defamation litigation, and is accordingly outside the scope of the Federal Rules. Accordingly,
11 no further response is required.

EXHIBIT 44

103

1 statement made by you, so I-- how do you make
2 a statement if you can't prove your statement?

3 MR. TRATOS: Mr. Dogge, you're engaged --

4 MR. DOGGE: I --

5 MR. TRATOS: -- you're engaged in conduct
6 that is not a deposition. You're engaged in
7 argumentative conduct. If you want to ask him
8 a question, identify the question you asked and
9 full response that was given, and he can
10 respond. Otherwise, you're taking it out of
11 context and making it impossible for him to
12 understand what the question is.

13 MR. DOGGE: Okay. I will look this up in
14 our next break when we are going to have a
15 coffee again. I will look it up and then we
16 can speak further about this question.

17 Mr. Teller.

18 THE WITNESS: Thank you.

19 BY MR. DOGGE

20 Q Just a question in between, Mr. Teller,
21 are you still interested to buy the exclusive rights
22 of my invention, the roes and the shadow?

23 A I was never interested to buy it. I am
24 interested in seeing that it is not disseminated --
25 remember, Mr. Dogge, you threatened to sell it to

EXHIBIT 45a

182

1 pertinent question to this case.

2 MR. DOGGE: Okay, Mr. Tratos.

3 BY MR. DOGGE:

4 Q Mr. Teller, I just need you to ask these
5 questions, because you have changed your answer so
6 many times, and you call it clerical errors, and I
7 get confused by that. So I want to clear it up.
8 Let me ask you this simple question.

9 When you state that you took the
10 screen shot ~~from~~ the 30th of March, and afterwards
11 changed your answer, stating that you took the
12 screen shot at the 15th of March, meaning two weeks
13 earlier, being a teacher, Mr. Teller, would you call
14 this answer a clerical error or would you call this
15 an untruthful answer?

16 A I don't know what documents you're
17 referring to. I don't know the background to what
18 you're referring to. It sound like a simple
19 mistake. And a mistake in this case is not the same
20 thing as answering a question in a -- in a school.
21 I -- I really -- I don't get your point --

22 Q Okay.

23 A I don't know what you're really asking me.
24 If at one point we -- clearly, we made one large
25 mistake, which was to include the bookmark bar on

EXHIBIT 45b

155

1 that first -- on that first screen shot of you. It
2 was a mistake. It was absolutely a mistake. And
3 because it's -- it obviously offended you, which we
4 had no reason to do. We had no interest in. All we
5 had the interest in was identifying the fact that
6 you were selling my trick on the internet. And it
7 pertains -- there is no pertinence at all to that
8 bookmark bar. That's why we redacted it.

9 Q Okay --

10 A It ~~has~~ has no relation to this case. And I
11 think you're desperate. You know, I think you're
12 desperately clutching at any straw that would give
13 you any leg up on this, and you're failing. I--
14 I-- this would have been so easily to resolve if
15 you hadn't done this.

16 Q You're free, Mr. Teller, to think what you
17 want to think.

18 A Thank you.

19 Q When I ask you in -- when I asked you in
20 discovery, Mr. Teller, to prove me some documents
21 the damage you had had -- you have had because of
22 me, caused by Bakardy and his creation, you stated
23 you answered later. Can you tell me now what the
24 damage is that you have had because of my invention,
25 alleged invention?

EXHIBIT 45c

1 with this piece. That is what was important.

2 It was an oversight and it was corrected two

3 days later. The moment you called it to our

4 attention and said that you were offended, we

5 instantly removed it because it's irrelevant to

6 the case.

7 BY MR. DOGGE:

8 Q You call it irrelevant--

9 A Yes, sir.

10 Q -- yet it was one of my -- now, okay. But

11 again, Mr. Teller, I need to ask you again because

12 there is legal evidence and how these documents, my

13 name and my picture is under these words. And I

14 would like to know what these words are spelling

15 for. So it's not a compound question. But can you

16 tell me what are the shortcuts to web links is for?

17 A That's called a bookmark bar. And it

18 indicates sites that the -- the person who owns the

19 computer has retained to return to investigate out

20 of curiosity or out of regular visits.

21 What was -- what was included there

22 was also, there were no live links. That is to say,

23 if you happen to look, in the two days that -- that

24 was -- that was available for viewing, in those two

25 days, if you happen to look at that document, there

EXHIBIT 45d

50

1 the person is going to sell their prop of my trick

2 do I become concerned.

3 Q Mm-hmm. Okay. Again about this Hector.

4 Mr. Teller. When is the first time that you

5 discovered this Hector doing your shadows ~~mimicry~~

6 or copy of Teller's?

7 A To the best of my recollection it was when

8 Hector contacted me, saying that he had seen my show

9 years ago, had -- had purchased a prop, not

10 realizing that that it was not -- that it was not

11 made with my permission and -- and that he had been

12 inspired by it to it -- around a different routine.

13 That's the same routine that you claimed to have

14 invented. And -- and he said to me, I will take

15 this out of my show. It is wrong of me to be doing

16 this, but if you would consider permitting me to do

17 this with some sort of formal agreement, I would be

18 very grateful. That's how he approached me.

19 Q Okay. I think you forgot my question.

20 The question was, When, Mr. Teller? When did he

21 inform you of that?


22 A I -- I don't recall. About, you have been

23 delivered all of Hector's correspondence, to my

24 recollection. So you should be able to confirm

25 that.

EXHIBIT 48



Loyal user

 274 posts

First of all, thank you w.s. anderson for your kind words and for defending me before I could know about this thread.
 On the other hand, about the rose routine.
 I bought my prop a few years back second hand (long story that I won't tell here) and my routine was created for a Leonardo Da Vinci show that I had in 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 of a T.
 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 there 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 (I'll be glad to answer).
 All the best.
 Hector.

Blair Marshall

 Posted: Apr 15, 2012 4:10pm

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

Hector

 Posted: Apr 16, 2012 9:51am

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 love 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 49

1 | privileged documents. As discovery is ongoing, Teller reserves the right to supplement this
2 | response.

3 | **REQUEST NO. 5:**

4 | Produce the original digital screenshots, in original format e.g. pdf, jpeg, etc., filed in
5 | the plaintiff's exhibit 3 filed on 04.11.2012.

6 | **RESPONSE:**

7 | Objection. This request is not relevant to the pending copyright action, nor is it
8 | reasonably calculated to lead to the discovery of admissible evidence in the same. Instead,
9 | this request seeks information you presumably believe is related to the claims in the Belgium
10 | defamation litigation, and is accordingly outside the scope of the Federal Rules. Accordingly,
11 | no further response is required.

12 | **REQUEST NO. 6:**

13 | Produce the original digital screenshots, in original format e.g. pdf, jpeg, etc., filed in
14 | the plaintiff's exhibit 3 re-filed on 04.25.2012.

15 | **RESPONSE:**

16 | Objection. This request is not relevant to the pending copyright action, nor is it
17 | reasonably calculated to lead to the discovery of admissible evidence in the same. Instead,
18 | this request seeks information you presumably believe is related to the claims in the Belgium
19 | defamation litigation, and is accordingly outside the scope of the Federal Rules. Accordingly,
20 | no further response is required.

21 | **REQUEST NO. 7:**

22 | Produce complete and accurate copies of any and all documents, correspondence
23 | email, phone conversations etc. proving Teller's damages caused by or due to Gerard
24 | Bakardy's invention and method 'The Rose'.

25 | **RESPONSE:**

26 | Objection. This request is overbroad, as it is not limited to time or in scope, and
27 | demands documents that are proprietary or confidential. Notwithstanding said objections,
28 | upon entry of a protective order, Teller will produce any and all responsive, non-privileged

EXHIBIT 50

Gerard Dogge
June 18, 2013
Page 2

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

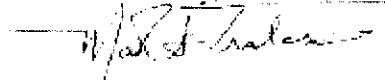
Finally, we spoke about the production of your computer for mirroring of its hard drive and you reiterated the position you took in your deposition which was to say that you hoped YouTube had the videos because you did not want to produce your computer for mirroring and would only consider doing so after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

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

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

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

Sincerely,



Mark G. Tratos

MGT/jtm
Attachment

EXHIBIT 51

158

1 are making statements. You are not asking
2 questions. This is improper.

3 MR. DOGGE Mm-hmm.

4 MR. TRATOS You know that you have
5 said --

6 MR. DOGGE Okay.

7 MR. TRATOS -- repeatedly -- you know
8 you've said repeatedly through this litigation
9 that you were going to produce the videos, that
10 you were going to show them to the jury.

11 That's what you said. And then surprisingly,
12 you destroyed the videos on your computer.

13 Now it's inappropriate for you to be
14 making these kind of arguments simply ask
15 questions or we will suspend this deposition.

16 Thank you.

17 BY MR. DOGGE:

18 Q Okay. So let's speak -- one more question
19 about this missing video. Did you get any answer
20 from YouTube. Mr. Teller? We are requesting these

21 videos now from YouTube. Did you get any answer?

22 A I don't believe we've received any answer
23 yet.

24 Q Okay. We are still waiting --

25 A We're making our best efforts -- we're

EXHIBIT 52a

RE: [8-6662000001172] Urgent question



google-legal-support@google.com (google-legal-support@google.com) Toevoegen aan contactpersonen 15/06/2015

Aan gerard-oakard@notmail.com



Video van YouTube

Outlook Interactieve weergave

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

Hello,

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

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

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

Regards,

Legal Investigations Support

EXHIBIT 52b

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

Subject: RE: [1-5359000001136] RE: Your letter dated June 11, 2013

From: google-legal-support@google.com

To: gerard-bakardy@hotmail.com

Hello,

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

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

Civil subpoenas may be served at the following address:

Attention: Custodian of Records

Google Inc.

1600 Amphitheatre Parkway

Mountain View, CA 94043

Regards,

Legal Investigations Support

EXHIBIT 52c

Urgent question

↑ ↓ × ↶



GR 8/07/2013

Aan: google-legal-support@google.com



Video van YouTube

Outlook Interactieve weergave ↕

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

Legal Investigations Support Team

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

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

Dear Legal Investigation Support team,

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

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

<http://www.youtube.com/watch?v=VGK9PFZuL0>

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

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

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

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

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

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

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

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

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

Respectfully,

Gerard Dogge

Gerarreke at YouTube

EXHIBIT 52d

RE: [7-413-000001502] Urgent question

↑ ↓ ×



google-legal-support@google.com (google-legal-support@google.com) Toevoegen aan contactpersonen 8/6/2013
Aan fuerteb@hotma.com ✕



Video van YouTube

Outlook interactieve weergave ^

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

Hello,

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

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

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

Regards,

Legal Investigations Support

EXHIBIT 53

August 6, 2013

Gerard Dogge
Hoevensebaan 2 – 2950 Kapellen
Belgium – Europe
Gerard-dogge@hotmail.com
Cell: 011-34-606.35.85.04.

Lawyers Solutions Group,
900 South Fourth Street, Suite 100,
Las Vegas,

Att.: Mr. Humberto Rodriguez
 Ms. Yvette Rodriguez
Re.: Deposition on Teller – July 1st 2013,

Dear Sir, Madam,

I like to inform you that I received the transcript on July 25th, and the video send by UPS on date of August 2nd.

Reading the transcript I noticed that there were many errors, mistakes and that there were several parts missing.

I compared the transcript with the video, both coming from your office.

The transcript delivered counts 39,624 words. After completing the 'missing parts' and after correcting the errors, the 'corrected' transcript counts 43,223 words.

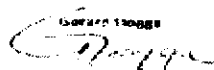
A difference of about 3,599 words. (+/- 20 pages)

The court reporter interrupted me only once, to avoid a misunderstanding in the word 'can' or 'can't', which I corrected with cannot. (p186:25)

It seems to me that there were a lot more misunderstandings or that the court reporter did not pay enough attention.

Needless to say, the impossibility to refer to a proper and complete transcript is harming me in my defense, whilst I need to refer to this transcript, to defend myself in Court.

Therefore, I request you to deliver to me urgently the correct and complete transcript of the deposition, within 48 hours after reception of this letter.



Hoevensebaan 2, 82950 Kapellen
Belgium - Europe

EXHIBIT 54

LEO

1 conversation. I-- you don't need to keep
2 asking me the same questions. It's all going
3 to be on record.

4 MR. DOGGE: Okay --

5 THE WITNESS: You can go back and reread
6 what I said the last time. I am not going to
7 change my answer.

8 BY MR. DOGGE

9 Q That's fine. I will compare your answers
10 with your answers given in the discovery. Thank you
11 very much, Mr. Teller. I just have one more

12 question regarding the evidence. Did you really
13 file this complaint without having the video to
14 prove the alleged --

15 A Yes, we did because -- Mr. Dogge, I
16 thought that you and I were going to come to
17 wonderful terms. That you would end up happy. That

18 I would end up happy. I had no -- when I asked for
19 that video to be taken down initially, it was -- it
20 was simply to start this discussion with you. It
21 was not, with any idea, that you would ever, ever go
22 so far as to -- as to insist, essentially, insist
23 that I sue you.

24 Q Mm-hmm. But you were asking for my
25 address on the 3rd of April?