

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NASSAU

JACOB SPINNEY,

Plaintiff,

- against -

ANGEL PRODUCTIONS INC. and
ANGEL PRODUCTIONS WORLDWIDE INC.,

Defendants.

Index No.:

COMPLAINT

In support of his complaint, Plaintiff Jacob Spinney alleges as follows:

NATURE OF THE CASE

1. This action arises out of a breach of contract involving certain confidential and proprietary information, namely, methods of staging and performing three specific illusions or magical effects.
2. Plaintiff Jacob Spinney is a 23 year-old illusionist who makes his livelihood by creating, performing, and selling illusions and magical effects.
3. Jacob Spinney is the creator and originator of several illusions or magical effects, including Jacob Spinney's Chair Self-Levitation, Jacob Spinney's Chair Self-Suspension, and Jacob Spinney's Fork Bending Gimmick.
4. Levitation, suspension, and fork bending illusions or magical effects are valuable commodities in the magic industry because they are difficult to create and have significant audience appeal.

5. In late 2004, Christopher Sarantakos, an illusionist who performs under the stage name Criss Angel, contacted then 19-year old Jacob Spinney to inquire whether he was interested in selling one or more of his illusions or magical effects.

6. Following several discussions, Criss Angel's production company, Angel Productions Inc., and Jacob Spinney entered into an agreement in January 2005.

7. According to this agreement, Jacob Spinney assigned the rights in certain of his illusions or magical effects, including Jacob Spinney's Chair Self-Levitation, Jacob Spinney's Chair Self-Suspension, and Jacob Spinney's Fork Bending Gimmick, to Angel Productions Inc. in exchange for 25% of the net profits realized therefrom.

8. Shortly thereafter, Criss Angel performed Jacob Spinney's Chair Self-Levitation on the second episode of his Mindfreak television series. The episode was broadcast on the A&E Network and later included on DVDs sold as "Criss Angel®: Mindfreak: The Complete Season One DVD," "Criss Angel® DVD Gift Set," "Signed Criss Angel® DVD Gift Set," and "DVD and Gothic Idle T-Shirt Bundle."

9. Criss Angel heralded Jacob Spinney's Chair Self-Levitation as "his most talked about demonstration" and featured it on a stand-alone "how to" DVD entitled "Masterminds Volume 2: Self-Levitation." In fact, Jacob Spinney's Chair Self-Levitation was the *only* illusion or magical effect featured on that DVD. This Masterminds DVD retailed for \$100 and sold over 3900 copies in its *first six months* of availability, grossing over \$190,000 in revenue.

10. Angel Productions Inc. did not pay Jacob Spinney any royalties from the profits that it made from the Mindfreak show or DVDs, and only paid a small portion of the promised royalties on the profits that it derived from the Masterminds DVD.

11. Jacob Spinney now comes before this Court to compel Criss Angel's production companies to fulfill their contractual obligations and to restore equity between the parties.

PARTIES

12. Plaintiff Jacob Spinney is an individual who is a resident of the State of Arizona. Jacob Spinney resides at 12726 W. Sharon Dr., El Mirage, Arizona 85335.

13. Upon information and belief, Defendant Angel Productions Inc. (hereinafter, "API") is a corporation organized and existing under the laws of the State of New York, having a principal place of business at 257 Nancy Drive, East Meadow, New York 11554.

14. Upon information and belief, Defendant Angel Productions Worldwide Inc. (hereinafter, "APWI") is a corporation organized and existing under the laws of the State of Nevada, having a principal place of business at 3260 West Sunset Road, Las Vegas, Nevada 89118.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this matter as to Defendant API because Defendant API is a corporation registered under the laws of the State of New York and has its principal place of business in New York State.

16. This Court has jurisdiction over this matter as to Defendant API because Defendant API entered into an agreement with Plaintiff Jacob Spinney that provides that the agreement "shall be construed and enforced in accordance with the laws of the State of New York applicable to agreements of this nature"

17. This Court has jurisdiction over this matter as to Defendant API because Defendant API: (a) marketed, offered for sale, and/or sold in New York State, directly and/or through third parties, a DVD entitled "Masterminds Vol. 2 - Self Levitation"; (b) produced and caused or authorized to be broadcast, on television and over the Internet, in New York State

Episode Two, entitled "Levitation," of Season One of a television series entitled Criss Angel[®] Mindfreak; and (c) marketed, offered for sale, and/or sold in New York State, directly and/or through third parties, DVDs entitled "Criss Angel[®]: Mindfreak: The Complete Season One DVD," "Criss Angel[®] DVD Gift Set," "Signed Criss Angel[®] DVD Gift Set," and "DVD and Gothic Idle T-Shirt Bundle."

18. This Court has jurisdiction over this matter as to Defendant APWI because, upon information and belief, Defendant APWI does business in New York State and engages in commercial activities in New York State on a regular, systematic, and continuous basis.

19. This Court has jurisdiction over this matter as to Defendant APWI because, upon information and belief, Defendant APWI assumed the obligations of and/or performed the duties of Defendant API under API's agreement with Jacob Spinney.

20. This Court has jurisdiction over this matter as to Defendant APWI because Defendant APWI: (a) markets, offers for sale, and/or sells in New York State, directly and/or through third parties, a DVD entitled "Masterminds Vol. 2 - Self Levitation"; (b) caused or authorized to be broadcast, on television and over the Internet, in New York State Episode Two, entitled "Levitation," of Season One of a television series entitled Criss Angel[®] Mindfreak; and (c) markets, offers for sale, and/or sells in New York State, directly and/or through third parties, DVDs entitled "Criss Angel[®]: Mindfreak: The Complete Season One DVD," "Criss Angel[®] DVD Gift Set," and "DVD and Gothic Idle T-Shirt Bundle."

21. Venue is proper in this Court because Defendant API's principal place of business is located in Nassau County, New York.

FACTUAL ALLEGATIONS

22. Jacob Spinney originated, designed, and tested the method of performing an illusion or magical effect called Jacob Spinney's Chair Self-Levitation, wherein the performer appears to rise and hover above the ground.

23. Jacob Spinney originated, designed, and tested the method of performing an illusion or magical effect called Jacob Spinney's Chair Self-Suspension, wherein the performer appears to be suspended above the ground.

24. Jacob Spinney originated, designed, and tested the method of performing an illusion or magical effect called Jacob Spinney's Fork Bending Gimmick, wherein the performer appears to bend a fork without exerting any physical pressure upon it.

25. In early 2003, Jacob Spinney began contacting distributors in the magic industry, including Tim Trono of Murphy's Magic Supplies, a magic supplies wholesaler, to market his illusions or magical effects.

26. Upon information and belief, around November 10, 2004, Christopher Sarantakos (hereinafter, "Criss Angel") approached Tim Trono looking for illusions or magical effects to perform on his upcoming television series Criss Angel[®] Mindfreak.

27. In response to Criss Angel's inquiry, Tim Trono recommended Jacob Spinney's Chair Self-Levitation and provided Jacob Spinney's telephone number to Criss Angel.

28. On or around November 10, 2004, Criss Angel telephoned Jacob Spinney and inquired about Jacob Spinney's Chair Self-Levitation.

29. Between November 10 and December 17, 2004, Criss Angel and Jacob Spinney communicated through emails, by telephone and in person. During one or more of these communications, Criss Angel offered Jacob Spinney a position as a consultant on the Criss Angel[®] Mindfreak television series.

30. Criss Angel sought to procure the rights to Jacob Spinney's Chair Self-Levitation, Jacob Spinney's Chair Self-Suspension, and Jacob Spinney's Fork Bending Gimmick illusions or magical effects.

31. On January 12, 2005, Wendy Metzger, acting on behalf of Criss Angel's production company, API, sent Jacob Spinney an agreement entitled "Consulting Services for API/Criss Angel's 'MINDFREAK'" (hereinafter, "the Agreement"). A copy of the Agreement is attached hereto as Exhibit 1.

32. The Agreement did not refer to any specific illusions or magical effects.

33. On January 20, 2005, Ms. Metzger sent Jacob Spinney an email that stated: "in addition to any consulting work performed once the agreement is signed, this agreement will be deemed to include the following effects: (1) Chair Self-Levitation; (2) Chair Self-Suspension; (3) Fork Bending Gimmick."

34. Jacob Spinney executed the Agreement on January 21, 2005, and transmitted a signed copy of the Agreement via facsimile to Ms. Metzger.

35. On the same day, Ms. Metzger acknowledged receipt of the executed Agreement in an email to Jacob Spinney.

36. In consideration for Jacob Spinney's confidential and proprietary information regarding methods of staging and performing illusions or magical effects that he originated, the Agreement provided that "if API chooses in its sole discretion to market any particular illusion or magical effect that originated with Consultant [Jacob Spinney] in the form of a consumer product, then API shall pay Consultant [Jacob Spinney] Twenty-Five Percent (25%) of API's net profits (after deductions for any expenses allocable to such product)" Exhibit 1 at § 1(b).

37. The Agreement states: "[I]n the field of magic, a magician's success depends upon the secrecy of the methods, apparatus, and workings of magical effects and illusions; and . . . a magician creates and establishes his reputation based upon the originality and novelty of the various magical illusions which are proprietary information, intellectual property and proprietary technologies, and constitute a trade secret." Exhibit 1 at Ex. A, § 1.

38. Upon information and belief, beginning on or around July 20, 2005, API produced and caused or authorized to be broadcast, on television and over the Internet, Episode Two, entitled "Levitation," of Season One of the Criss Angel® Mindfreak television series (hereinafter, "the Levitation Episode").

39. Upon information and belief, APWI caused or authorized to be broadcast the Levitation Episode on television and over the Internet.

40. In the Levitation Episode, Criss Angel performed Jacob Spinney's Chair Self-Levitation illusion or magical effect.

41. Upon information and belief, the episode was broadcast several additional times and continues to be broadcast on television and over the Internet.

42. Upon information and belief, API derived and continues to derive profits from the broadcasts of the Levitation Episode.

43. Upon information and belief, APWI derived and continues to derive profits from the broadcasts of the Levitation Episode.

44. API and APWI did not pay Jacob Spinney any royalties on the profits from any broadcast of the Levitation Episode.

45. Upon information and belief, API marketed, offered for sale, and/or sold, directly and/or through third parties, DVDs entitled "Criss Angel®: Mindfreak: The Complete Season

One DVD," "Criss Angel[®] DVD Gift Set," "Signed Criss Angel[®] DVD Gift Set," and "DVD and Gothic Idle T-Shirt Bundle" (collectively, "the Mindfreak DVDs") that include the Levitation Episode.

46. Upon information and belief, APWI markets, offers for sale, and/or sells, directly and through third parties, the Mindfreak DVDs that include Jacob Spinney's Chair Self-Levitation illusion or magical effect.

47. API and APWI did not pay Jacob Spinney any royalties on the profits from the sales of the Mindfreak DVDs.

48. API and APWI featured Jacob Spinney's Chair Self-Levitation on another DVD entitled "Masterminds Volume 2: Self-Levitation" (hereinafter, "the Masterminds DVD"), and advertised Jacob Spinney's Chair Self-Levitation on the DVD's packaging as Criss Angel's "most talked about demonstration."

49. The packaging of the Masterminds DVD further advertised that "Criss teaches everything you need to know about this modern day miracle; step-by-step instructions on the method, how to construct it . . . and how to perform it."

50. Jacob Spinney's Chair-Self Levitation was the only illusion or magical effect featured on the Masterminds DVD.

51. Upon information and belief, on or around July 20, 2005 API began marketing, offering for sale, and selling the Masterminds DVD directly and through third parties.

52. The retail price for the Masterminds DVD is \$100.

53. Upon information and belief, the Masterminds DVD sold over 3900 copies in its first six months of availability.

54. Upon information and belief, API's gross revenue from the Masterminds DVD in its first six months of availability exceeded \$190,000.

55. In an email sent to Criss Angel on January 22, 2006, Jacob Spinney inquired about the sales of and expenses associated with the Masterminds DVD.

56. In response, in an email dated January 23, 2006, Criss Angel represented that Jacob Spinney would receive a statement from API's attorney, Susan Myerberg, every six months.

57. On April 5, 2006, API's accountants, Wild, Maney & Camera, LLP, mailed Jacob Spinney the first statement reporting sales of the Masterminds DVD for the period from July 20, 2005 through January 19, 2006 (hereinafter, "the First Statement").

58. The First Statement was titled "API/Fulfillment House/ Sales Report #1."

59. The First Statement reported: (a) gross sales of the Masterminds DVD in the amount of \$192,800; (b) "Total Deductions" of \$37,459.04; (c) total "Spinney Share 25%" equal to \$38,855.24; and (d) an "API Creative/Production Recoupable" charge of \$25,000.

60. The amount paid to Jacob Spinney under the First Statement was equal to total "Spinney Share 25%" (\$38,855.24) less the "API Creative/Production Recoupable" charge (\$25,000).

61. The First Statement included a check for \$13,855.24 issued by API to Jacob Spinney.

62. The Agreement does not refer to, include, or define an "API Creative/Production Recoupable" charge.

63. On April 28, 2006, Jacob Spinney received a telephone call from Susan Myerberg in which she stated that the \$25,000 "API Creative/Production Recoupable" charge was Criss Angel's "performance fee."

64. The Agreement does not refer to, include, or define a "performance fee."

65. During the April 28, 2006 phone call with Susan Myerberg, and also in April 28 and 29, 2006 emails to her, Jacob Spinney disputed the \$25,000 "API Creative/Production Recoupable" charge contained in the First Statement.

66. On October 13, 2006, Susan Myerberg requested via email that Jacob Spinney waive any dispute as to the amount paid under the First Statement, stating that "[w]e reviewed this [first] statement and confirmed [its] contents. If you accept this [first] statement, print, sign where indicated and return to me at the address below."

67. Jacob Spinney did not sign or otherwise acquiesce to the First Statement.

68. On October 14, 2006, Susan Myerberg emailed Jacob Spinney a second statement reporting sales of the Masterminds DVD for the period from January 20, 2006 through July 19, 2006 (hereinafter, "the Second Statement").

69. The Second Statement was titled "API/Fulfillment House/ Sales Report #2."

70. The Second Statement reported: (a) gross sales of the Masterminds DVD in the amount of \$36,100; (b) "Total Deductions" of \$11,422.04; and (c) total "Spinney Share 25%" equal to \$6,169.49.

71. The Second Statement did not contain an "API Creative/Production Recoupable" charge.

72. Jacob Spinney received a check for \$6,169.49 issued to him by API.

73. Upon information and belief, Defendant APWI assumed the obligations of and/or performed the duties of Defendant API under the Agreement.

74. Upon information and belief, at some time between January 2006 and July 2006, APWI, in addition to or instead of API, began marketing, offering for sale, and selling the Masterminds DVD, directly and through third parties.

75. On May 10, 2007, Susan Myerberg mailed Jacob Spinney a third statement reporting sales of the Masterminds DVD for the period from July 20, 2006 through December 31, 2006 (hereinafter, "the Third Statement").

76. The Third Statement was titled "APWI and Fulfillment House/ Sales Report #3."

77. The Third Statement reported: (a) gross sales of the Masterminds DVD in the amount of \$38,549.95; (b) "Total Deductions" of \$10,559.12; and (c) total "Spinney Share 25%" equal to \$6,997.71.

78. The Third Statement did not contain an "API Creative/Production Recoupable" charge.

79. The Third Statement included a check for \$6,997.71 issued by APWI to Jacob Spinney.

80. The Third Statement was the last statement and included the last royalty payment received by Jacob Spinney from Defendants.

81. In a December 12, 2007 email to Susan Myerberg, Jacob Spinney inquired as to the status of the royalty payments due to him.

82. In an email dated December 27, 2007, Susan Myerberg stated that Jacob Spinney was not entitled to further royalties on the Masterminds DVD.

83. Upon information and belief, Defendants marketed, offered for sale, and sold the Masterminds DVD, directly and through third parties, for the time period from January 1, 2007 through present.

84. Upon information and belief, Defendants continue to market, offer for sale, and sell the Masterminds DVD, directly and through third parties.

85. Jacob Spinney has not received any statements or royalty payments from neither API nor APWI for any period from January 1, 2007 through present.

86. Upon information and belief, neither API nor APWI has made any efforts to market or sell, either directly or through third parties, Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusions or magical effects.

87. In an email dated July 16, 2005, Criss Angel informed Jacob Spinney that Jacob Spinney was not permitted to market or sell Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusions or magical effects because API had all the rights thereto.

88. In that July 16, 2005 email, Criss Angel promised Jacob Spinney that he would market both Jacob Spinney's Chair Self-Suspension and Jacob Spinney's Fork Bending Gimmick.

89. Upon information and belief, Criss Angel is the founder, sole officer, and sole capital stock owner of API.

90. Upon information and belief, Criss Angel is the founder, sole officer, and sole capital stock owner of APWI.

91. Upon information and belief, Criss Angel made the July 16, 2005 promise to market Jacob Spinney's Chair Self-Suspension and Jacob Spinney's Fork Bending Gimmick

while acting in his capacity as the founder, sole officer, and sole capital stock owner of API or as an agent thereof.

**COUNT I: BREACH OF CONTRACT — FAILURE TO PAY
OBLIGATIONS UNDER THE AGREEMENT**

92. Jacob Spinney realleges as if fully set forth herein each allegation contained in the preceding paragraphs.

93. Jacob Spinney satisfactorily performed all obligations required of him under the Agreement.

94. Defendants have not made any payments to Jacob Spinney for royalties on the profits derived from the broadcasts of the Levitation Episode of the Criss Angel[®] Mindfreak Show.

95. Defendants' failure to pay royalties constitutes a breach of the Agreement.

96. As a direct result of Defendants' breach of the Agreement, Jacob Spinney has suffered damages in the amount of 25% of Defendants' net profits derived from the broadcasts of the Levitation Episode of Criss Angel[®] Mindfreak Show, plus applicable interest.

97. For these reasons, Jacob Spinney is entitled to judgment against Defendants on his first breach of contract claim.

**COUNT II: BREACH OF CONTRACT — FAILURE TO PAY
OBLIGATIONS UNDER THE AGREEMENT**

98. Jacob Spinney realleges as if fully set forth herein each allegation contained in the preceding paragraphs.

99. Jacob Spinney satisfactorily performed all obligations required of him under the Agreement.

100. Defendants have not made any payments to Jacob Spinney for royalties on the profits obtained from the sales of the Mindfreak DVDs.

101. Defendants' failure to pay royalties constitutes a breach of the Agreement.

102. As a direct result of Defendants' breach of the Agreement, Jacob Spinney has suffered damages in the amount of 25% of Defendants' net profits obtained from the sales of the Mindfreak DVDs, plus applicable interest.

103. For these reasons, Jacob Spinney is entitled to judgment against Defendants on his second breach of contract claim.

**COUNT III: BREACH OF CONTRACT — FAILURE TO PAY
OBLIGATIONS UNDER THE AGREEMENT**

104. Jacob Spinney realleges as if fully set forth herein each allegation contained in the preceding paragraphs.

105. Jacob Spinney satisfactorily performed all obligations required of him under the Agreement.

106. Defendants have not made any payments to Jacob Spinney for royalties on the profits obtained from the sales of the Masterminds DVD since January 1, 2007.

107. Defendants' failure to pay such royalties constitutes a breach of the Agreement.

108. As a direct result of Defendants' breach of the Agreement, Jacob Spinney has suffered damages in the amount of 25% of Defendants' net profits obtained from the sales of the Masterminds DVD since January 1, 2007, plus applicable interest.

109. For these reasons, Jacob Spinney is entitled to judgment against Defendants on his third breach of contract claim.

**COUNT IV: BREACH OF CONTRACT — FAILURE TO PAY
OBLIGATIONS UNDER THE AGREEMENT**

110. Jacob Spinney realleges as if fully set forth herein each allegation contained in the preceding paragraphs.

111. For the period commencing on July 20, 2005 and lasting through January 19, 2006, as set forth in the First Statement, Defendants paid Jacob Spinney less than the agreed-upon amount of 25% of net profits in royalties from the Masterminds DVD.

112. In particular, in calculating the amount paid to Jacob Spinney, Defendants improperly deducted an "API Creative/Production Recoupable" charge of \$25,000.

113. Defendants' failure to pay the entire 25% of net profits in royalties due to Jacob Spinney for the period of July 20, 2005 through January 19, 2006 constitutes a breach of the Agreement.

114. As a direct result of Defendants' breach of the Agreement, Jacob Spinney has suffered damages in the amount of \$25,000, plus applicable interest.

115. For these reasons, Jacob Spinney is entitled to judgment against Defendants on his fourth breach of contract claim.

**COUNT V: UNJUST ENRICHMENT —
PROFITS DERIVED FROM JACOB SPINNEY'S CHAIR SELF-LEVITATION
ILLUSION OR MAGICAL EFFECT**

116. Jacob Spinney realleges as if fully set forth herein each allegation contained in the preceding paragraphs.

117. In the alternative, Jacob Spinney states a claim for unjust enrichment.

118. "[I]n the field of magic, a magician's success depends upon the secrecy of the methods, apparatus, and workings of magical effects and illusions; and . . . a magician creates and establishes his reputation based upon the originality and novelty of the various magical illusions which are proprietary information, intellectual property and proprietary technologies, and constitute a trade secret." Exhibit 1 at Ex. A, § 1.

119. Jacob Spinney's Chair Self-Levitation is proprietary information, intellectual property and proprietary technology, and constitutes a trade secret.

120. Jacob Spinney conferred a benefit on Defendants by disclosing the confidential and proprietary methods of performing Jacob Spinney's Chair Self-Levitation illusion or magical effect.

121. Defendants benefited from learning the confidential and proprietary methods of performing Jacob Spinney's Chair Self-Levitation illusion or magical effect at least through the profits derived from the broadcasts of the Levitation Episode of Criss Angel® Mindfreak Show, the sales of the Mindfreak DVDs, and the sales of the Masterminds DVD.

122. Defendants benefited from learning the confidential and proprietary methods of performing Jacob Spinney's Chair Self-Levitation illusions or magical effects at least by excluding others from marketing or selling this illusion or magical effect.

123. Defendants voluntarily accepted these benefits.

124. Jacob Spinney suffered a detriment in that he was not adequately compensated for the benefits he conferred on Defendants.

125. Jacob Spinney suffered a detriment in that he was, and continues to be, precluded by Defendants from marketing or selling Jacob Spinney's Chair Self-Levitation illusion or magical effect on his own or through alternative means.

126. It would be unjust and unfair to allow Defendants to retain thousands of dollars now due and owed to Jacob Spinney given that Defendants have derived hundreds of thousands of dollars in profits from the broadcasts of the Levitation Episode of Criss Angel® Mindfreak Show, the sales of the Mindfreak DVDs, and the sales of the Masterminds DVD.

127. For these reasons, Jacob Spinney is entitled to judgment against Defendants on his unjust enrichment claim in an amount to be determined by the trier of fact.

**COUNT VI: BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND REASONABLE EFFORTS TO MARKET —
FAILURE TO MARKET ALL ILLUSIONS OR MAGICAL EFFECTS
INCLUDED IN THE AGREEMENT**

128. Jacob Spinney realleges as if fully set forth herein each allegation contained in the preceding paragraphs.

129. The Agreement covers three illusions or magical effects: (1) Jacob Spinney's Chair Self-Levitation; (2) Jacob Spinney's Chair Self-Suspension; and (3) Jacob Spinney's Fork Bending Gimmick.

130. Defendants have an implied duty to exercise good faith and make reasonable efforts to market each and every illusion or magical effect covered by the Agreement.

131. Defendants failed to sell or market or make reasonable efforts to sell or market either Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusion or magical effect.

132. As a direct result of Defendants' failure to sell or market or make reasonable efforts to sell or market either Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusion or magical effect, Jacob Spinney has suffered damages in the amount of lost profits he would have derived under the Agreement or otherwise if the above illusions or magical effects were marketed and sold.

133. For these reasons, Jacob Spinney is entitled to judgment against Defendants on his claim of breach of implied covenant of good faith and reasonable efforts to market all of the illusions or magical effects covered by the Agreement.

**COUNT VII: PROMISSORY ESTOPPEL —
FAILURE TO MARKET ILLUSIONS OR MAGICAL EFFECTS AS PROMISED**

134. Jacob Spinney realleges as if fully set forth herein each allegation contained in the preceding paragraphs.

135. In the alternative, Jacob Spinney states a claim for promissory estoppel.

136. At least in an email dated July 16, 2005, Criss Angel informed Jacob Spinney that Jacob Spinney was not permitted to market or sell Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusions or magical effects because API had all the rights thereto. In that same email, Criss Angel promised Jacob Spinney that he would market both Jacob Spinney's Chair Self-Suspension and Jacob Spinney's Fork Bending Gimmick.

137. Upon information and belief, Criss Angel made the above promise while acting in his capacity as the founder, sole officer, and sole capital stock owner of API or as an agent thereof.

138. In reliance on the aforementioned promise, Jacob Spinney made no efforts to market or sell either Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusions or magical effects on his own or through alternative means.

139. Defendants failed to sell or market, or make any attempt to sell or market, either Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusions or magical effects.

140. As a direct result of Defendants' failure to sell or market either Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusions or magical effects, Jacob Spinney has suffered damages in the amount of lost profits he would have derived under the Agreement or otherwise if the above illusions or magical effects were marketed and sold.

141. For these reasons, Jacob Spinney is entitled to judgment against Defendants on his claim of promissory estoppel.

**COUNT VIII: UNJUST ENRICHMENT —
RIGHTS RETAINED IN JACOB SPINNEY'S CHAIR SELF-SUSPENSION AND
JACOB SPINNEY'S FORK BENDING GIMMICK ILLUSIONS OR MAGICAL
EFFECTS**

142. Jacob Spinney realleges as if fully set forth herein each allegation contained in the preceding paragraphs.

143. In the alternative, Jacob Spinney states a claim for unjust enrichment.

144. Jacob Spinney conferred a benefit on Defendants by disclosing the confidential and proprietary methods of performing Jacob Spinney's Chair Self-Suspension and Jacob Spinney's Fork Bending Gimmick illusions or magical effects.

145. Defendants benefited from learning the confidential and proprietary methods of performing Jacob Spinney's Chair Self-Suspension and Jacob Spinney's Fork Bending Gimmick illusions or magical effects at least by excluding others from marketing or selling these illusions or magical effects.

146. Defendants voluntarily accepted these benefits.

147. Jacob Spinney suffered a detriment in that he was not adequately compensated for the benefit he conferred on Defendants.

148. Jacob Spinney suffered a detriment in that he was, and continues to be, precluded by Defendants from marketing or selling either Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusions or magical effects on his own or through alternative means.

149. It would be unjust and unfair to allow Defendants to retain any rights in either Jacob Spinney's Chair Self-Suspension or Jacob Spinney's Fork Bending Gimmick illusions or magical effects given that Defendants failed to market or sell or take any steps to attempt to

market or sell these illusions or magical effects or otherwise compensate Jacob Spinney for retaining the rights therein.

150. For these reasons, Jacob Spinney is entitled to a judgment against Defendants on his unjust enrichment claim in an amount equal to the fair market value of Jacob Spinney's Chair Self-Suspension and Jacob Spinney's Fork Bending Gimmick illusions or magical effects.

Alternatively, Jacob Spinney is entitled to a judgment returning to him all rights in both Jacob Spinney's Chair Self-Suspension and Jacob Spinney's Fork Bending Gimmick illusions or magical effects.

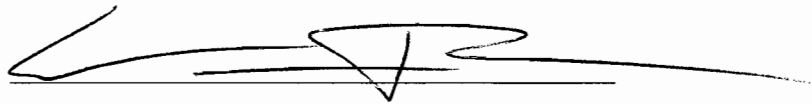
PRAYER FOR RELIEF

WHEREFORE, Jacob Spinney prays for judgment as follows:

- a. that Jacob Spinney be awarded monetary damages against each individual Defendant in amounts to be determined at trial;
- b. that Jacob Spinney be awarded pre-judgment and post-judgment interest on any monetary damages awarded to him;
- c. that all rights in Jacob Spinney's Chair Self-Suspension and Jacob Spinney's Fork Bending Gimmick illusions or magical effects be returned to him;
- d. that Jacob Spinney be awarded the attorneys' fees, costs, and expenses incurred in prosecuting this action; and
- e. that Jacob Spinney be awarded such other and further relief as this Court deems just and proper.

June 8, 2009

Respectfully submitted,



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