

AFFIDAVIT OF CHRISTOPHER MCNETT

I, Christopher McNett, declare as follows:

1. I am over the age of 18, have never been convicted of a felony or crime of moral turpitude and am legally competent to make this declaration. I have personal knowledge of the matters stated herein.

2. I am an attorney with McKool Smith, P.C. I am one of the attorneys responsible for representing The Hillman Group, Inc., in its litigation against Hy-Ko Products Company. I am a member of the bar of the District of Columbia, and I am registered to practice with the U.S. Patent and Trademark Office.

3. I am registered as a researcher at the Library of Congress. I first became registered as a researcher at the Library of Congress in June 2012, and since then I have visited the Library of Congress on numerous occasions for a variety of research purposes.

4. In July 2012, when I was working at the U.S. Department of Justice, I attended a detailed presentation for Justice Department personnel at the Library of Congress. This presentation detailed the Library of Congress's collections, standard practices, and the history of both the Library and its collections. After this presentation, Library of Congress librarians took me and my colleagues to the Library of Congress's closed stacks in the sub-basement of the Madison Building, where many of the Library's materials are stored until researchers request their retrieval, to show and explain to us the systems used for long-term archival storage and organization. I observed that for publications like magazines and journals, instead of individual issues on the shelf, multiple consecutive issues of periodicals were typically combined for storage and shelving by the Library of Congress in special "bound volumes" in durable library binding.

5. On other occasions, I have visited the Library of Congress for various academic, personal, and professional research in several of its reading rooms, and reviewed a range of materials, including multiple types of periodical publications, from the Library's collections.

6. I first requested periodicals from the Library of Congress on June 16, 2012. I most recently requested periodicals from the Library of Congress on October 5, 2021. I have not observed any changes to the Library's practices regarding periodicals over this period of time. The

Library's electronic systems and procedures for requesting periodicals appear to be essentially identical today as they were in 2012.

7. At the Library of Congress, I have observed that there is a Newspaper & Current Periodical Reading Room on the first floor of the Madison Building, where unbound periodical issues from the past one to two years are publicly available, and a Main Reading Room on the first floor of the Jefferson Building, where (among other materials) periodicals older than one or two years are publicly available in their bound volumes used for longer term storage. Several librarians at the Library of Congress have told me that the Library's policy is to hold periodical issues in the Newspaper & Current Periodicals collection for one to two years, and then to bind them and move them to the Main Reading Room collection. This is consistent with what I have personally observed in the Library's collections, and I believe this to be the Library's standard policy.

8. I have personally reviewed dozens of bound volumes of periodicals, including The National Locksmith and Locksmith Ledger, in the Main Reading Room.

9. In September, 2021, I reviewed an electronic copy of the July 2000 issue of The National Locksmith, including the SpeedyPik article beginning on page 52, from the Internet Archive at the following URL: https://archive.org/details/NationalLocksmith_2000-07/page/n31/mode/2up

10. On September 29, 2021, I requested that the July 2000 issue of The National Locksmith, call number TS519.N3 A33, be retrieved for my review. Because the July 2000 issue that I had requested was more than two years old, my request specified the Main Reading Room.

11. On September 30, 2021, I received the following email indicating that the item had arrived in the Main Reading Room ("MRR"):

National locksmith.

AutomatedCallSlip@loc.gov <AutomatedCallSlip@loc.gov>
To: mcnett@gmail.com

PLEASE DO NOT REPLY TO THIS MESSAGE.

STATUS: Your requested item has arrived at the delivery location you specified.

REQUEST ID: 636092742

SEND TO: MRR-Jefferson Bldg for Christopner McNett (10/1 morning)

REQUEST RECEIVED: 2021-09-29 15:19:32.0

TITLE: National locksmith.

AUTHOR:

CALL#: TS519.N3 A33

VOL/YEAR/DATE: July 2000

12. On October 1, 2021, I visited the Library of Congress. Upon my arrival to the Main Reading Room, the Library staff handed me a bound volume marked “National Locksmith 71 July-Sept 2000 TS 519.N3 A33.”

13. At the Library of Congress, I observed that the bound volume contained three issues of The National Locksmith, and the first issue was the July 2000 issue. The July 2000 issue included a standard magazine mailing label addressed to the Library of Congress, and a date stamp on the contents page indicating receipt by the Library of Congress on July 24, 2000. The content of the articles, including the SpeedyPik Article beginning on page 52, was identical in the Internet Archive and Library of Congress copies.

14. At the Library of Congress, I electronically scanned the cover and table of contents pages of the magazine, as well as the SpeedyPik article beginning on page 52, true and correct copies of which are attached in their entirety as Exhibit 1023. A digital version of the entire issue is attached as Exhibit 1004.

15. I observed that the table of contents of the magazine contained subscription information, listing the publisher’s mailing address and a phone number for subscription inquiries. The information indicated that annual subscriptions were available for \$41 per year, and single copies available for \$5 each.

16. Based on my observations and understanding of the procedures regarding periodicals at the Library of Congress, and based on my experience requesting various periodical publications from the Library of Congress, I understand that the July 2000 issue of The National Locksmith would have been publicly available in the Newspaper and Current Periodical Reading Room of the Library of Congress from shortly after July 24, 2000, the date that it was stamped as “received,” until 2001 or 2002, and would have been publicly available in the Main Reading Room thereafter. This public availability in the Library of Congress is in addition to the magazine’s public availability from the publisher, as evidenced from the subscription information shown next to the magazine’s table of contents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I am aware that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code. Furthermore, all statements made of my own knowledge are true, and all statements made on information and belief are believed to be true.

/Christopher P. McNett/
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