UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACUSETTS

THOMAS J. MACDONALD, a/k/a "TOMMY MAC," an individual, and TOMMY MAC ENTERPRISES, INC., a successor in interest to THOMAS J. MACDONALD FINE FURNITURE INC., a Massachusetts corporation,

Plaintiffs,

-against-

WGBH EDUCATIONAL FOUNDATION, a charitable non-profit Massachusetts corporation, THE TAUNTON PRESS, INC., and LAURIE DONNELLY, an individual,

Defendants.

Civil No. 1:18-cv-10773-RWZ

SUPPLEMENTAL DECLARATION
OF LAURIE DONNELLY IN
OPPOSITION TO PLAINTIFF
THOMAS J. MACDONALD'S
MOTION FOR PRELIMINARY
INJUNCTION

- I, Laurie Donnelly, under penalty of perjury, declare and state as follows:
- 1. I am the Executive Producer of the national PBS series Rough Cut with Fine Woodworking and the Director, Lifestyle Programming, for WGBH Educational Foundation ("WGBH"). I previously submitted a declaration on behalf of WGBH in opposition to Mr. Thomas J. MacDonald's Motion for Preliminary Injunction. I submit this Supplemental Declaration to address new claims raised by Mr. MacDonald in his reply declaration dated May 15, 2018.
- 2. This Supplemental Declaration and the facts set out below are based on my own personal knowledge, on the books and records of WGBH to which I have access, of which I am a custodian, or which I otherwise maintain. If called upon to do so, I could and would testify competently to the statements set forth below.

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I. PROPOSED REMEDY

- 3. In his initial papers, Mr. MacDonald requested that WGBH stop using the name ROUGH CUT, stop using the name TOMMY MAC, stop using any photograph or image of Mr. MacDonald, stop promoting or otherwise referring to the current season of *Rough Cut with Fine Woodworking* as Season 8, and include a disclaimer at the end of each of the 13 episodes of *Rough Cut with Fine Woodworking*. It now appears that Mr. MacDonald is only seeking a disclaimer which he claims would remedy any likely confusion and would not result in any significant hardship to WGBH. Mr. MacDonald is wrong on both counts.
- 4. As of June 15, 2018, all 13 episodes of the current season of *Rough Cut with Fine Woodworking* have been filmed and edited, packaged, and delivered to American Public Television ("APT"), our series distributor. The first 11 episodes of the current season will have been delivered to public television stations across the country by June 16, 2018, with the final 2 being delivered by June 30, 2018. All of the episodes that have been delivered to date have been or will be made available for streaming on The Taunton Press, Inc.'s dedicated Fine Woodworking website *finewoodworking.tv*. Further, CREATE, a lifestyle multicast digital channel broadcast by many public television stations, will be adding the entire 13 episodes of *Rough Cut with Fine Woodworking* to its programming on June 21 for a six-week run as part of a block of how-to programs that include *This Old House* and *Ask This Old House*. Public television stations would have further rights for repeat broadcasts for twenty weeks.
- 5. To add a disclaimer as has been requested would require WGBH to ask APT and would require APT to alert public television stations nationwide to stop running all episodes of the series distributed to date, to ask that they refrain from airing any episodes until the disclaimer is edited into the program, and to delay sending episodes to our broadcast partners, our digital

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platforms and to the CREATE channel. This will interrupt schedules that already have been announced by these parties, that already have appeared in monthly and weekly public television station print and web program guides for their members, and force these stations and the CREATE channel to scramble to find interim replacement programs at possible additional cost to them and without the benefit of having the time to publicize the new programs through "tune in" spots or local programming guides. This short notice also may preclude platforms such as TiVo and DirecTV from having correct program listings. It also will affect our co-producer The Taunton Press by removing content from its *Fine Woodworking* website.

- 6. In order to include the disclaimer, we would have to re-edit all 13 episodes. This could take several days leaving our distribution platforms without the promised content and would require editing, technical evaluation (quality control for audio and video), and fixing the caption file (the closed captioning subtitles required by the FCC would need to be re-timed and re-attached to the program master to adjust for the new timing of the re-edited episode). All of the episodes would then need to be sent to APT and re-distributed to the public television stations. The combined costs of this would be in excess of \$13,000. Of greater concern is that once the series is "pulled" and schedules are changed, there is no guarantee that stations will resume carrying the series which will harm not just WGBH but also our production partners and corporate underwriters.
- 7. Leaving aside the logistical difficulties of adding a disclaimer, requiring a disclaimer forces WGBH to include content in its programming that is not of its choosing. Further, there is no evidence that a disclaimer is necessary.

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8. The current season of Rough Cut with Fine Woodworking has been available since April 7, 2018 when the first episode ran. According to TRAC Media, as of the date of this

declaration the show has aired on over two hundred public television stations reaching over 77 million households nationally. As of June 19, the series will have had 2,057 telecasts nationally. We are not aware of a single instance in which anybody who saw the show believed that it was associated with or sponsored by Mr. MacDonald. We have not received a single comment from any viewers regarding confusion or from WGBH audience services, and no such concerns or comments have been forwarded to us from either our co-producer The Taunton Press or from American Public Television, the series distributor. Further, Mr. MacDonald has provided no such evidence of confusion. This is not surprising. There is little possibility that any viewer would be confused given that our current host Tom McLaughlin is clearly identified as the host and there is no reference to Mr. MacDonald in the show title or in the show itself. Since there has been no confusion caused by the show title or by the show, there is no need for a disclaimer.

- 9. Further, adding a disclaimer of the type that Mr. MacDonald proposes could actually create an association between the current season of *Rough Cut* and Mr. MacDonald that does not presently exist.
- 10. In addition, the disclaimer language being proposed is erroneous. Mr. MacDonald would have WGBH state that Rough Cut with Fine Woodworking is "different" from Rough Cut Woodworking with Tommy Mac. But it is in fact a continuation of the Rough Cut series that WGBH has been producing since 2010. It has a different host but the gist of the program remains the same.
- 11. Finally, on the issue of a disclaimer, Mr. MacDonald claims that WGBH does not want to include a disclaimer because it would result in our program being rejected by distributors or funders. WGBH has never made that assertion. We raised a concern that if the show could not be called *Rough Cut*, that could affect the participation of distributors or funders because

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they would not understand what our program was or that it was a continuation of our longestablished series. The concerns raised about a disclaimer are those set forth above, namely that it would create financial hardship, it would interfere with the scheduling of programming, and it likely would create more confusion.

II. ADVERTISING AND PROMOTION OF ROUGH CUT WITH FINE WOODWORKING

- 12. As I stated in my earlier declaration, WGBH has never used Mr. MacDonald's name or image to promote the current season of *Rough Cut with Fine Woodworking*. While Mr. MacDonald states in his declaration that he does not believe my statement, he offers no facts or evidence to the contrary.
- 13. As a preliminary matter, it would not be in WGBH's interests or in the interests of our co-producer The Taunton Press to engage in any type of advertising that did not clearly identify the show title, our collaboration with the publication *Fine Woodworking*, and our new host.
- WGBH sent to third parties in connection with advertising and promoting *Rough Cut with Fine Woodworking* because they use his name or likeness. He is wrong. None of our promotional and marketing materials use or refer to him. And it would make no sense to do so. For the most part, the communications to the public television stations are sent by our series distributor American Public Television. Attached as **Exhibit 17** is the communication that our distributor made available to the stations. This was made available in February, 2018. The material does not refer to Mr. MacDonald or include his picture.
- 15. In terms of how listing services such as TV Guide, DirecTV and others get information about show times and show names, this information is provided by third parties such

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as TiVo and Nielsen who acquired Gracenote. Gracenote provides reference information for millions of movie and television listings. These third parties base their information on listings provided by our distributor APT. We have been assured that our distributor sent the correct information. Listings are generated through the third party's automatic content recognition technology. The employees of these entities then revise the listings as they see fit but do so independently of us. WGBH has no control over this technology or the content that is examined. Mr. MacDonald suggests that WGBH should have sent out a list of promotional restrictions related to the new season to third parties such as DirecTV. But WGBH has no such obligations to or agreements with listing companies and it is not a regular part of our business practice. Indeed, I am not aware of WGBH ever providing third party listing agents with information for any of our shows. In addition, given that our show for 2018 was entitled *Rough Cut with Fine Woodworking* and featured Tom McLaughlin, there was no reason to tell third parties who listed our program that they should not use a title that was not being used and that they should not depict Mr. MacDonald who was not part of the show.

16. Once we became aware of an initial listing error by TiVo, we made the decision to contact all entities to whom APT provided listing information (regardless of whether there were errors in the listings) to remind them that the listings for the new season of *Rough Cut* should not include any image, photo, likeness of or reference to Mr. MacDonald and should not be promoted under any name other than *Rough Cut with Fine Woodworking*. This included Comcast, Gracenote, FYItelevision, Tribune and CBS Interactive. We cannot guarantee compliance with our requests as we have no partnership with any of the listing entities, we cannot control their activities, and we exercise no control or ownership over any of the materials they publish. The listing services provide information independently and without our sign off.

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17. As of the date of this declaration, WGBH has been advised that: (a) DirecTV is displaying the proper title name and image in connection with the promotion of our show (see **Exhibit 18**); (b) TiVo has been using the proper title since March 2018 and has now further confirmed that it has made corrections to the imagery that it provides with the title for all of the seasons (see **Exhibit 19**); and (c) *TV Guide*, which takes its information from TiVo, has assured us that it will correct its data.

III. USE OF ROUGH CUT

- 18. With respect to Mr. MacDonald's claims about his use of *The Rough Cut Show*, he notes in his reply declaration at Paragraph 3 that he used the name for video blogs from 2006-2009. However, according to a post he made in December 2009, he was rebranding and presumably moving away from "the old Rough Cut show." *See Exhibit 20*. From what we can see on his current *tommymac.us* website, he seems to be moving to a new subscription service and is using names including *How 2 Build It All*, *How 2* and/or *T Home Improvement*. *See Exhibit 21*.
- 19. During the negotiations that led to the entry into the Project Participation

 Agreement nobody raised with me that Mr. MacDonald was suggesting that he owned the

 ROUGH CUT name or that WGBH did not own the title. As far as I am aware, Mr. MacDonald raised this in 2018, and only after he was replaced as the host.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Supplemental Declaration was executed this 15 T day of June 2018 in Boston, Massachusetts.

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Laurie Donnelly

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EXHIBIT 17



ROUGH CUT WITH FINE WOODWORKING Season 8



How To\Home Improvement (https://aptonline.org/aptweb.nsf/StationsProgramsDisplay? ReadForm&Flag=CatalogGenre&Index=How To\Home Improvement) | TV-G

The Emmy-nominated series ROUGH CUT returns for season eight with new host Tom McLaughlin, who has been making and designing commissioned, custom furniture since 1990. In each half-hour episode,

design inspiration is turned into easy-to-follow projects for woodworkers at every skill level. Tom teaches the latest wood crafting techniques, as well as tips and instruction for how to create projects that can be passed down for generations. Projects this season include: a craftsman-style dining chair in white oak; a Shaker-style hall table in cherry; a hanging bow front cabinet in American ash; a tilt-top round breakfast table in curly maple; a live-edge coffee table made from New England walnut; and much more.

American Public Television Distributor **RCFW** NOLA Exchange **APT Program** Service **WGBH** Presenter **Episodes/Length** 13/30 04/07/2018 - 04/06/2021 **Rights Period TV Listings Broadcast Rights** () **Episodes** () Contacts () Flags ()

EXHIBIT 18

Frances O'Keeffe

Subject:

FW: URGENT: Please correct listing for Rough Cut with Fine Woodworking

From: Christine Phillips < christine.phillips@nielsen.com

Date: June 12, 2018 at 8:24:28 AM EDT

To: Laurie Donnelly < laurie donnelly@wgbh.org>

Subject: Re: URGENT: Please correct listing for Rough Cut with Fine Woodworking

How is this:



Christine L. Phillips

PBS Network Editor

Gracenote, A Nielsen Company

Office: 1-800-424-4747 x4138

Email: Christine.Phillips@nielsen.com

http://www.gracenote.com/



On Jun 11, 2018, at 3:35 PM, Christine Phillips christine.phillips@nielsen.com> wrote:

Hi Laurie - I've been told DirecTV is now displaying the correct image:

https://mail.google.com/mail/?ui=2&ik=6cd4617896&view=att &th=163f0526cafd5761&attid=0.1&disp=safe&realattid=f_jiang uao0&zw

Christine L. Phillips
PBS Network Editor
Gracenote, A Nielsen Company
Office: 1-800-424-4747 x4138
Email: Christine.Phillips@nielsen.com
http://www.gracenote.com/
On Wed, May 2, 2018 at 9:02 AM, Laurie Donnelly laurie_donnelly@wgbh.org wrote: Thanks Chris-We need to correct as quickly as possible.
Greatly appreciate Your help with this!

On May 2, 2018, at 8:59 AM, Christine Phillips christine.phillips@nielsen.com> wrote:

Sent from my iPhone

Hi Suzy and Laurie -- the info is correct in our database, but there is an issue with DirecTV when there is a title change for a new season of an established show.

I'm told our reps are addressing this with DirecTV. I will let you know as soon as I have more information.

Can you please pass this along to Jay Fialkov? He left me a message earlier.

Thank you for your patience! Chris

Christine L. Phillips

PBS Network Editor

Gracenote, A Nielsen Company

Office: 1-800-424-4747 x4138

Email: Christine.Phillips@nielsen.com

http://www.gracenote.com/

On Tue, May 1, 2018 at 4:50 PM, Suzy Carrington < suzannah carrington@wgbh.org > wrote:

Chris -

Apologies for the barrage of emails – we are just trying to get clarity on the issue and hopefully provide you with all the info you may need. I have attached a pdf of screenshots that were given to WGBH, but unfortunately we have no idea what date it was taken. All except one screenshot include the correct photo, but the wrong series name and the wrong host name for the blurb (it should be *Rough Cut with Fine Woodworking* and the current host is Tom McLaughlin). Perhaps this has already been addressed – can you let us know your thoughts? Thanks so much for your assistance.

Suzy Carrington

Contracts Manager

WGBH

617-300-4281

From: Laurie Donnelly

< laurie_donnelly@wgbh.org>

Date: Tuesday, May 1, 2018 at 4:35 PM

To: Christine Phillips

<christine.phillips@nielsen.com>

Subject: Re: URGENT: Please correct listing for Rough Cut with Fine Woodworking

Christine:

Thanks for getting back to you and for verifying that the you have the correct host, Tom McLaughin and the correct photos in the data base for Rough cut with Fine woodworking. We saw the incorrect listing information in a DIRECT TV listing.

Can you please confirm that DIRECT TV has the correct photo and host info for season 8?

L

From: Christine Phillips

<christine.phillips@nielsen.com>

Date: Wednesday, April 25, 2018 at 9:29 AM

To: Laurie Donnelly

<laurie donnelly@wgbh.org>

Subject: Re: URGENT: Please correct listing for Rough Cut with Fine Woodworking

Hi Laurie - I have verified with our Images team that we do have the correct host and photos for season 8 in our database. Could you please tell me where you are seeing the incorrect listing info?

Thank You,

Chris

Christine L. Phillips

PBS Network Editor

Gracenote, A Nielsen Company

Office: 1-800-424-4747 x4138

Email: Christine.Phillips@nielsen.com

http://www.gracenote.com/



On Tue, Apr 24, 2018 at 5:39 PM, Laurie Donnelly < laurie donnelly@wgbh.org > wrote:

Dear Chris:

I am the Executive producer of the national PBS series, *Rough Cut with Fine Woodworking*.

This season we have a new host and a new name for the show. The title of the show is now *Rough Cut with Fine Woodworking*, featuring host Tom

McLaughlin. The listings for this new season should not be used with an image/photo or likeness of the former host Tommy MacDonald. (Tommy Mac)— he is no longer the host. Please find below a link to multiple photos of

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our host Tom McLaughlin, and the NEW logo for Rough Cut with Fine Woodworking is attached.

https://wgbh.box.com/s/zqks9v6u0ui54i 7irm3uvho0ySue13wv

<u>Please update your materials ASAP to</u> include the correct host, and title.

Thank you for your attention to this matter.

Laurie Donnelly

Executive Producer/Rough Cut with Fine Woodworking

Director, Lifestyle Programming

WGBH Educational Foundation

One Guest Street

Boston, MA 02135

617-300-2688

EXHIBIT 19

Frances O'Keeffe

Subject:

Re: TV Guide

From: Anne Adams <anne adams@wgbh.org>
Date: Tuesday, March 27, 2018 at 9:00 AM
To: Mark Miller Mark Miller Mark Miller@tivo.com
Cc: Dylan Leavitt Mark.Miller@tivo.com>

Subject: Re: TV Guide

Thank you.

I am happy to follow up with them if that is helpful.

Please let me know when the revisions are complete.

Thanks very much.

Anne

From: Mark Miller < Mark.Miller@tivo.com > Date: Tuesday, March 27, 2018 at 8:21 AM
To: Anne Adams < anne adams@wgbh.org > Cc: Dylan Leavitt < dylan leavitt@wgbh.org >

Subject: RE: TV Guide

Hi, Anne -

Thank you for the updated info.

I have passed this along to our Logos/Images team - they will be making these revisions shortly.

From: Anne Adams [mailto:anne adams@wgbh.org]

Sent: Monday, March 26, 2018 5:59 PM
To: Mark Miller < Mark.Miller@tivo.com >
Cc: Dylan Leavitt < dylan leavitt@wgbh.org >

Subject: TV Guide

Mark,

I am the producer of Rough Cut with Fine Woodworking, on public television.

This season we have a new host and a new name for the show.

I saw your recent listings...

http://www.tvguide.com/tvshows/rough-cut-woodworking-with-tommy-mac/episodes/340835/

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And though you have the episode descriptions correct, we should not be using Tommy Mac's photo or likeness in association with the show – he is no longer the host. And the title of the show is now Rough Cut with Fine Woodworking. Attached please find the new logo as well as a link to photos of our host.

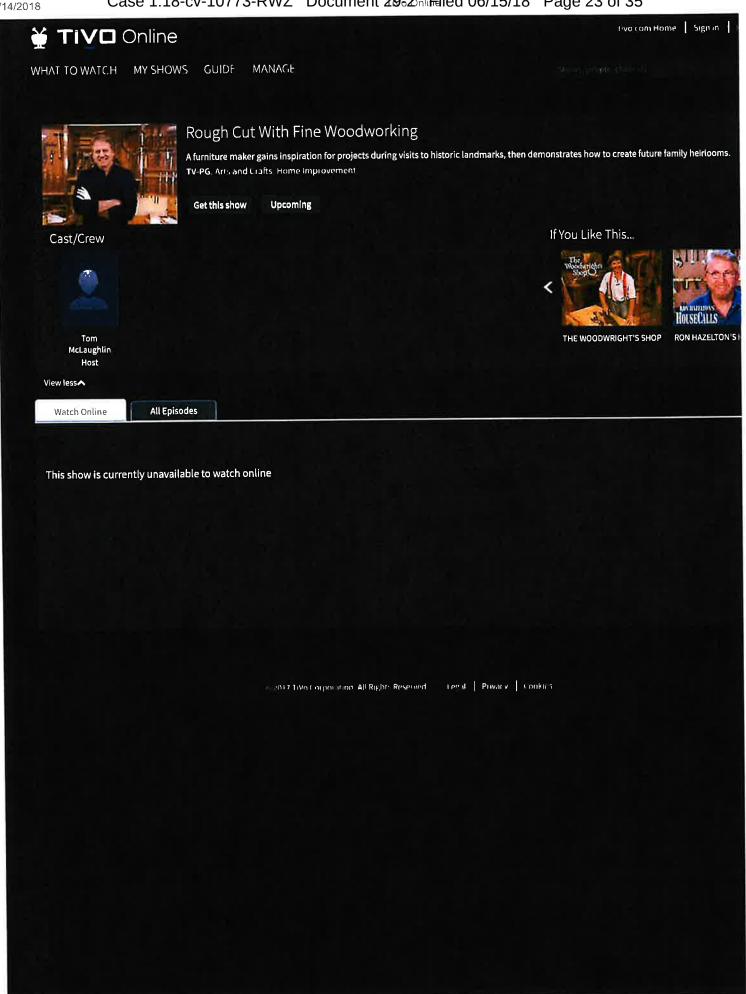
https://wgbh.box.com/s/zqks9v6u0ui54i7irm3uvho0y5ue13wv

Please update your materials ASAP to include the correct host and title.

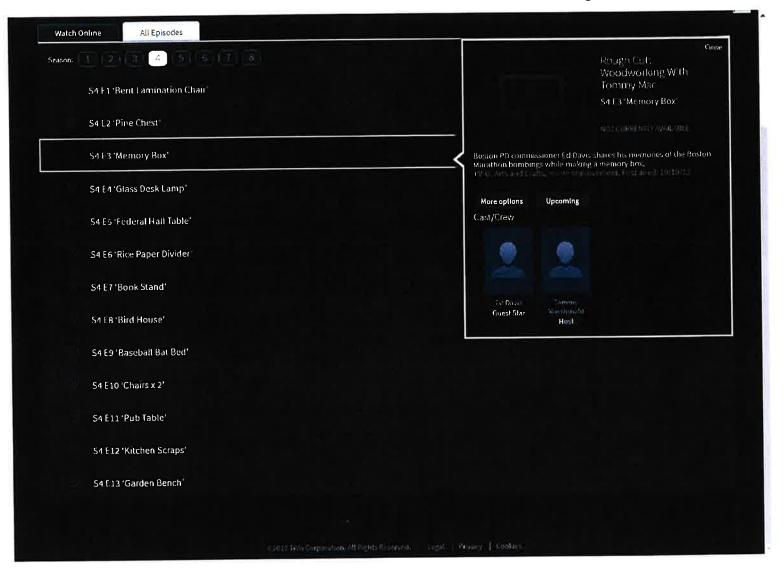
Thank you.

Anne Adams
Senior Program Producer/Rough Cut with Fine Woodworking
WGBH Educational Foundation
One Guest Street
Boston, MA 02135
617-300-3838

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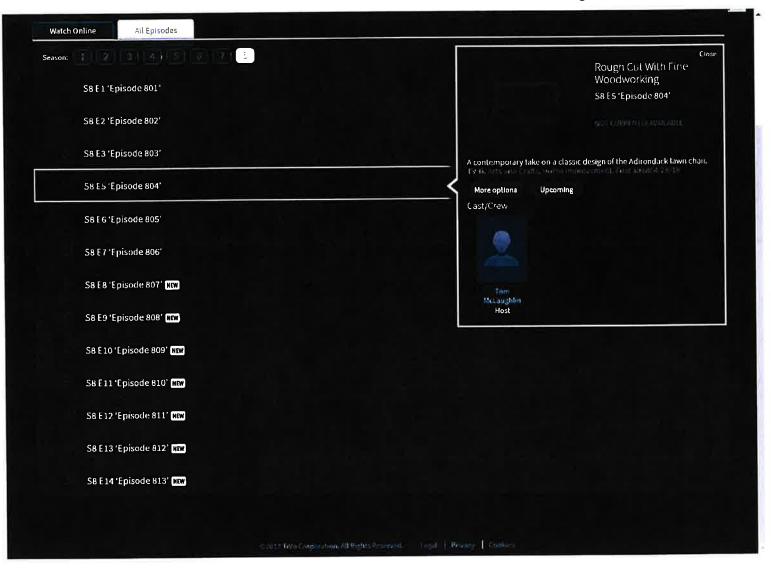


EXHIBIT 20

(a) newtopic (b) postreply) Page 1 of 1 [6 posts]

Print view

Previous topic I Next topic

Author

TOMMY MAC

D Posted: Thu Dec 17, 09 8:21 am

Dr. Bombe

Joined: Fri Jun 13, 08 12:01 pm Location: Canton, MA 02021 Posts: 967

Message

out in 2 weeks, projects 3,4, &5 before april.. and we are about to venture into with me, eli,al or special guests or among yourselves...we are working on a "rough cut show" but live!! this is going to be available through the forum to access this thread... all you gotta do is register for the site....we hope to do installed 4 cameras around the shop with mics, josh and david are working hi every one...i know its been forever since we posted a podcast...this has been a crazy year all the way from bobvila,t chisel and now MLW ...i have feed!!with a mulit screen/camview, with a real time new chat dedicated to out all the logistics for the web and our site so we can provide a daily live have made...the new tool box video is doing well,#2 the step stool will be another way of showing my shops day to day grind and antics ...we have schedule for daily airing times and weekly Q&A with live demonstrations been all over trying to rebuild and rebrand what i do...i think MLW is the result from almost 3 years of grinding ..i love this forum and the friends i he feed which will make this totally interactive with our members either: weekly give aways for the question "or answer" of the week...so i look directly from the Q&A ..this is going to be a ton of fun..just like the old signed up members only..so all you "lurkers" @ will have to sign in to forward to getting this off the ground and seeing you in my shop.....

hetwire ¬

Bermuda 3 Star Hotel

\$361

4 Star Hotel

Bermuda

\$373

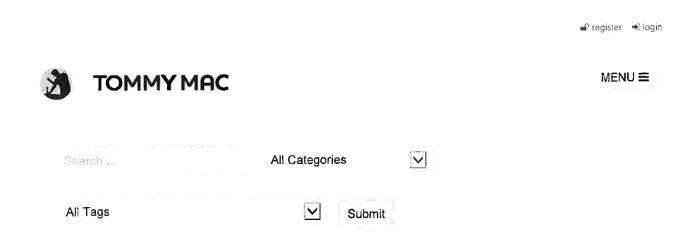
4 Star Hotel

Bermuda

\$457

EXHIBIT 21

Home - Tommy Mac Page 1 of 9





HEY, WELCOME TO MY SITE!

This is the home of all things Tommy Mac! We have classes at Tommy's shop, community discussions, galleries of images and much more. Have a look around and leave us a note!

INSTRUCTIONAL SERIES FOR MEMBERS

Here is a sneak peak at some video shot in the old shop. It is for a new video subscription series I'm putting together. I had tons of requests for more instructional videos and felt it was time to take a deep dive. Thanks for all of your comments and support! Have a look and let me know what you think! More info to come as we roll this out.

http://tommymac.us/

Step by Step - Tommy Mac

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HOW2





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The mortise and tenon is an essential joint in woodworking. It enjoys numerous variations and can be completed using a variety of techniques. The application of the mortise and tenon ...

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Projects - Tommy Mac





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Woodworking 101 - Tommy Mac

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Home Improvement - Tommy Mac

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HOU2



It's a little know fact that Tommy was first a contractor before he became a fine woodworker and TV personality. He has built and remodeled many homes including his own. In this section you can follow along as Tommy does real world remodels, additions, repairs and new construction. It's entertaining and wicked informative!

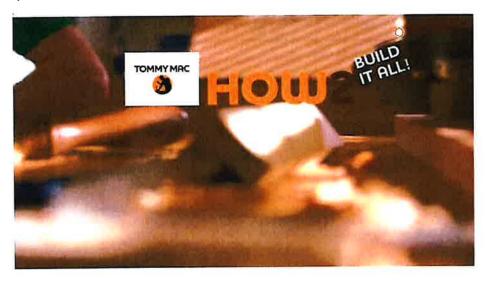


HOW2 - TOMMY NOW - FORU

FLATTENING A BOARD WITH A HAND PLANE

The Anatomy of a Hand Plane

By Salus Washer On December 7 2016 15 Comments. In videos





HOW2 V TOMMY NOW V FORU

< NATURAL VENTILATION

THE ANATOMY OF A HAND PLANE >

Flattening a Board with a Hand Plane

By the in Casar On December 7, 2016

