

The Illustrated Press

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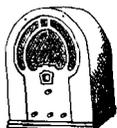
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## War in the Oxide Trenches

By Bob Proctor

Collecting old time radio programs is now assuming all the appearances of trench warfare—all over *The Shadow*, a classic old time radio series which many collectors have held for years.

Premier Electronics Laboratories of Sandy Hook, CT is lobbing legal mortar shells at nine veteran collector/dealers (and two small other companies) saying they infringed upon Premier's license from Conde Nast Publications of New York, the major conglomerate controlling *The Shadow* and its related properties.

Premier filed suit on March 16, 1989, in U.S. District Court, District of Connecticut...only 136 days after signing its *Shadow* agreement with Conde Nast to manufacture and distribute home-usage recordings. Premier demanded damages of \$100,000 from each defendant. Several *Shadow* defendants say that even one such damage demand exceeds the total gross OTR-sales income from all defendants.

Until *The Shadow* lawsuit, selling old time radio shows was one of the most specialized "niche markets" of all commercial ventures...barely more than a handful of hobbyists helping other hobbyists. About 20 known collector/dealers serve about one U.S. resident in every 24,000—a fairly constant ratio since U.S. program collecting began on a widespread basis in the middle to late 1960s. The typical OTR vendor used standard domestic-style tape recorders, with sales profits usually barely enough to offset the vendor's own program trading costs. Many vendors lasted a year or less, while only a handful continued their businesses for more than a decade...many branching out into non-related fields but continuing their OTR sales in what many veteran collectors recognize as a genuine love of *The Hobby*.

Most of these "survivor vendors" are now *Shadow* defendants: Don Aston, Rex Bills, Hal Brenner, Bob Burnham, Carl Froelich Jr., Charlie Garant, Dick Judge,

Larry Kiner, and Pat McCoy. Named in separate Premier lawsuits were Stephen and Sharon Ferrante (Radio's Past) and Gary Rost (Wireless and Rivertown Trading, Inc., both loosely affiliated with Minnesota Public Radio).

To simplify matters, the U.S. District Court combined these lawsuits under a single docket number (Aston's which was the first filed by Premier). What was not simple to understand was why an essentially "mystery plaintiff" had brought suit against these defendants, without first sending a "cease and desist" letter in an effort to halt their sale of contested material.

To understand the importance of the "cease and desist" issue takes us to the man most collectors have long associated with *The Shadow*...Charles Michelson of Los Angeles, probably the senior rebroadcast syndicator in America. As events unfolded in court, it became known that Michelson no longer held the license to distribute *The Shadow*—and here the real story behind the *Shadow* lawsuits began to take shape.

Original *Shadow* owners were pulp-magazines giant Street & Smith Publishers. Michelson (now age 84) held a truly genteel, Old School gentleman's handshake agreement with them. Michelson helped distribute *The Shadow* to subscribing stations, and after the series stopped production in 1954, Michelson entered the rebroadcast market, with an umbrella agreement allowing him to license individual radio stations, LP recordings and home-enjoyment tapes. Other powerhouse radio series he managed included *The Green Hornet*, *The Lone Ranger*, and *Gangbusters*.

Michelson said Street & Smith gradually shrank in size as its owners grew older, and in 1961, S & S was finally sold to Conde Nast Publications, one of the more widely distributed magazine firms. Conde Nast publications include *Vogue*, *House & Garden*, *Self*, *Bride's*, *Glamour*, *Mademoiselle*, *Gentlemen's Quarterly*, *Vanity Fair*, *Gourmet* and the subscriptions-only *Conde Nast Traveler*. Conde Nast is at 350 Madison Ave., New York, NY 10017.

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As for Street & Smith, Michelson says, "Conde Nast swallowed them whole."

Until the S & S sale went through, he added, rebroadcast royalties from *The Shadow* went into an escrow account. And then his nearly fifty years' close association with *The Shadow* crumbled overnight. "Conde Nast told me my licensing arrangement had expired, and I was out the door." Even more amazing to outside observers, Michelson says Conde Nast requested and received a list of all his *Shadow* franchisees, and in 1988 announced a bidding war among those former clients.

Michelson's franchisees included *The Mind's Eye*, *Metacom*, and *Radio Yesteryear*. "Metacom was prepared to bid more for the series," Michelson said, "but they never got the chance. Conde Nast sold the rights to *Radio Yesteryear*."

The CNP/*Radio Yesteryear* agreement was signed November 1, 1988, allowing *Radio Yesteryear* a five-year exclusive license to manufacture and distribute home-use recordings, ending December 31, 1993.

### Issues and Players

Probably no other company has caused greater controversy within hobbyist circles than *Radio Yesteryear* and its album subsidiary, *Radiola*. Founded by former collector J. David Goldin, *Radio Yesteryear* and *Radiola* were the first truly aggressively-marketed old time radio products. Goldin (a former engineer at CBS, NBC, and Mutual) relentlessly criss-crossed the U.S. in a grueling number of guest appearances on radio stations large and small. Off-the-air tape recordings of many such "guest shots" were later offered for sale in the *Radio Yesteryear* catalog. Goldin also was interviewed (with photo) in *The National Enquirer*.

Clearly, there is nothing shy about J. David Goldin.

His handsomely-produced 1971 *Radio Yesteryear* catalog listed ten *Shadow* programs for sale (with "many others available"). But in 1973, a rubber-stamped message was added to these catalogs, saying *Radio Yesteryear* no longer sold copies of that series. Goldin denied in a 1973 letter that Michelson "had anything to do with this," but did not elaborate.

Later, however, *Radio Yesteryear* did acquire (non-exclusive) Michelson licensing to sell *The Shadow*...while meanwhile, Charles Michelson himself was quietly helping to reverse some long-held bitter feelings in hobbyist circles toward "the merchandising of OTR."

Hello Again (the longest surviving hobby newsletter), reported Michelson came to an October 1973 hobbyist convention and spoke to a reportedly angry crowd of collectors. Hello Again said Michelson took the position that he had no objection to collectors who sell shows to other collectors. "His one objection is against those who sell his copyrighted material to radio stations for commercial broadcast."

This was, Michelson recalled in 1990, a "live-and-let-live" approach to marketing old time radio programs. He recognized that within the relatively small world of *The Hobby*, such sales were by "the converted" to "the converted" and the area in which his own business interest lay were rebroadcasting of programs to the "civilian" ("unconverted") general radio listener.

Michelson's live-and-let-live approach also extended to vendors who took *Radio Yesteryear*'s example by advertising outside more traditional "in-Hobby" publications.

One *Shadow* defendant said, "I got a letter from Charlie that was a cease-and-desist letter over shows he thought I was selling to radio stations. I wrote back and assured him I was selling only to other collectors. That's the last I heard of it from him."

Meanwhile, *Radio Yesteryear* continued to market its products exclusively "outside the Hobby," at prices substantially higher than collector/dealers. A typical hour of *Radio Yesteryear* material sold for \$10 to \$12 (depending upon the intended marketing group), while collector/dealers charged the same prices for six hours of shows, on 1800-foot tape.

*Radio Yesteryear*'s pricing strategies incensed so-called "purist" OTR collectors who insisted that no collector had the "right" to sell programs...much less at *Radio Yesteryear*'s going \$10-\$12/hour rates. Beginning collectors were among the staunchest defenders of "mainstream" collector/

dealers, saying that without these vendors, the novice collector could not cheaply acquire programs at all. Hobbyist vendors in turn contended (and often proved) their sales were barely enough to underwrite their personal trading costs...and unlike any other area of "memorabilia" collecting and selling, these same hobbyist vendors were cheerfully steering their customers to Hello Again and similar Hobby magazines, even if it meant that a former client would stop buying material from them, as they got into their own trading activities.

The issue of selling old time radio programs became a form of "tribal warfare" among hobbyists, and it affected almost no one...except "civilians," people who bought LPs and tapes from nationally-advertised vendors...until they learned of lower-priced material within The Hobby. Later, in turn, many became avid traders, dropping their purchases of any kind.

Then the mid 1980s arrived, and with it a noticeable decline in what for years had been a "live and let live" attitude.

Radiola issued a double album, **The Story of the Shadow**, featuring interviews with surviving key cast and crew members...as well as Michelson himself.

The 1985 album-interview provided lengthy information of Michelson's long association with the series. In 1988, this former Michelson licensee assumed total control over home-usage recordings, and 136 days later fired off its first salvo of federal lawsuits.

Charlie Garant says, "I got the summons on a Friday night. The following Monday I shipped them my Shadow tapes and sent a money order for the full amount of the money involved—\$64.50." Nevertheless, Premier continued its demands for \$100,000 from Garant, and the others.

The lawsuit have targeted only those collector/dealers who had advertised outside of hobbyist publications. In stark contrast to Charles Michelson's approach, none of the Shadow defendants was first sent a cease-and-desist letter. This single issue continues to be the central source of puzzlement to all defendants contacted for this article. They repeatedly stress they would never knowingly violate anyone's legal rights to a given item. A simple cease-and-desist letter by

any copyright holder would have led to immediate withdrawal of contested material.

Larry Kiner, for example, withdrew **The Cinnamon Bear**, **The Saint**, and **The Hall of Fantasy**. Based on rumors alone that someone might object—also withdrew **Abbott & Costello**. "The same for any Arch Oboler material," Kiner said. "I do not want to offend any legitimate owner. Obviously, I would have done the same regarding **The Shadow**, had anyone had the courtesy to ask!"

Co-defendant Bob Burnham agreed, in his article, "A New Legal Problem for the OTR Dealer," in **The Illustrated Press**. Burnham said the collector/dealers would have immediately retreated on sales of any contested material—with Burnham adding he would have even surrendered his master tapes, if necessary.

Like Garant, however, the other Shadow defendants all contend their actual sales have been minimal. The best reason offered: **The Shadow** was "traded out," much too widely-distributed among general hobbyists. "The 43 Shadow shows I copied during the [136 days] were more than I usually did in a year," Garant recalls. "In fact, when I was rounding up the tapes to send to Premier, I found some that had been packed away for several years. **The Shadow** was not a hot item."

Then the mystery behind Premier Electronics' demand for \$100,000 for each defendant began to clear up, once its ties to Radio Yesteryear became known. Then, as it became known that Premier Electronics now owned Radio Yesteryear, a few of the missing pieces in the Shadow defendants' puzzle began to fall into place.

## A Case of Trademarks

Premier's Shadow lawsuit complaint states one of its attorneys had been admitted to the U.S. District Court in connection with Premier's 1985 suit in the California District, against Donald L. Aston and Aston's Adventures.

Aston's main catalog bore the title "Yesterday's Radio on Tape," which Premier alleged Aston had infringed upon its Radio Yesteryear trademark. In 1987, the California District federal judge ruled there

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had been no infringement.

It is at that juncture (several observers say) that Premier Electronics Laboratories declared war on Don Aston.

First came an appeal of the 1987 California ruling. Then Premier slid past its former franchisor, Charles Michelson for rights to *The Shadow*. Then, using intermediaries, Premier ordered and received copies of *The Shadow* from the defendants...and Premier filed its lawsuits.

According to a letter written by a Los Angeles attorney who handled Aston's trademark case, behind-the-scenes maneuvering came from a woman attorney who was later to file her appearance as counsel to Premier. She called Aston's trademark-case attorney, and

*said that [J. David Goldin] had demanded that the California [trademark] case "be resolved" before there can be any settlement of the Connecticut [Shadow] action. I advised her that [trademark case] was resolved and we had won and there was a reported decision. She said that it was up on appeal. I advised her that in my opinion the appeal would be unsuccessful. She nevertheless repeated her statement that [Goldin] demanded that the action in California "be resolved," which was clearly an indication that we should grant them the rights which the court has so far found that they are not entitled to and then, and only then, would they discuss the settlement of the California action.*

*...In my opinion, this Connecticut action was not brought for any legitimate purpose to solve any legitimate grievance or prospective grievance by Premier against Aston. Rather, it was brought solely for the malicious purpose of harassing Aston and forcing him to give up what he has already won. As you well remember, when [Goldin] met with Mr. Aston a few months ago [1988] he opened the conversation by telling the Astons that he was there*

*to talk them out of what they had won in court.*

One unmistakable feature of the letter above (and all other sources for this article) is that Premier's sole stockholder (according to the trademark-case complaint) is Jon Sonneborn...yet it is J. David Goldin whose name is almost invariably used. Goldin is believed to have sold his interest in Radio Yesteryear and Radiola, but an effort to confirm this from Sonneborn has gone unanswered.

Don Aston flatly states *The Shadow* lawsuit is Premier's "retribution" for losing the first round in the trademark litigation. The behind-the-scenes effort to "resolve" this case, before settling *The Shadow* lawsuit, tends to support this. Other *Shadow* defendants say that another probable cause of the suit is to utterly crush the same hobbyist vendors with whom J. David Goldin had either traded or competed, in his earliest years of OTR program sales.

Defendants (and, as events were to later show, Conde Nast) saw agreement in another area: despite offers of out-of-court settlement and even Conde Nast's offer to mediate the dispute, Premier had steadfastly refused to accept an end to its lawsuit. Aston says this was to keep the legal heat turn up on high, to force a trademark case "resolution," while others saw it as skillful legal maneuvering to delay a final trial date being set...and whopping legal defense fees would do the rest.

One such Premier maneuver required "pro se" (without attorney) answers from *Shadow* defendants, but once these were given, Premier refused to accept them...claimed the defendants were in default...obtained default judgements against them...and the defendants were forced to bear all costs in making a motion to vacate those default judgements.

One defendant learned to his horror, that his personal attorney had been disbarred and had not filed a "pro se" answer at all. The defendants' group-attorney managed to get this default judgement vacated, too—but this was conditioned upon that same defendant paying Premier over \$11,000 in legal fees.

Another maneuver: Charlie Garant

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had immediately surrendered his Shadow master tapes and the \$64.50 made during that contested period, and "while I was waiting for a reply, the lawyers filed a motion for default."

Several Shadow defendants have tried to settle out of court with Premier, for real or imaginary damages, but Premier has refused. Meanwhile, \$200/hour defense fees continue to mount. In Don Aston's words, "Whoever has the most money wins."

In fairness, however, Shadow defense has a proven track record in old time radio lawsuits: the same counsel which had successfully represented the late Arch Oboler and others, against J. David Goldin and Radio Yesteryear. The U.S. District Court now involved with The Shadow case had ruled against Goldin over *Lights Out*, according to *The Federal Reporter, Second Series*, August 1, 1983.

### An OTR Groundswell

Soon after Burnham's *Illustrated Press* article, the Shadow case turned into an OTR groundswell.

Carolyn and Joel Senter formed what is now believed to be the first-ever appeal among general hobbyists, for legal-defense contributions to aid collector/dealers. The OTR Defense Fund (4003 Clifton Ave., Cincinnati, OH 45220) issued a Hobby-wide history-making appeal for money to defend the same OTR collector/dealers some hobbyists continue to deprecate even today...against another commercial program vendor.

The Senters said—in effect—that only a court could decide who was right or wrong in this issue. But the defendants deserved to be heard in court.

"Unfortunately, the price tag on "due process" can become very high!"

More help came from the 1990 Friends of Old Time Radio convention in Newark—also breaking new ground by donating \$500 to the OTR Defense Fund which came directly from the convention fund. An additional \$300 was collected from collectors attending the convention. Awarding the \$500 was FOTR mainstay Jay Hickerson (*Hello Again* editor/publisher).

Only days after FOTR '90, events

jolted into high gear, when the OTR Defense Fund learned of the newest wrinkle in the ongoing Shadow battle...the corporate reaction by the all-but-forgotten new owner of The Shadow property, Conde Nast Publications.

One of the first steps for Premier to prove its case against the Shadow defendants required a "document inspection," wherein attorneys for Premier, the defendants and Conde Nast met to examine copyright certificates Conde Nast holds for *The Shadow*. At that meeting, a Conde Nast attorney expressed "concern about possible adverse publicity as a result of this case going against 'mom and pop' operations." (Emphasis added.)

This, indeed, was the raw meat which the OTR collectors had been clamoring for.

The OTR Defense Fund swiftly contacted its network of benefactors, urging them to write Conde Nast board chairman Samuel L. Newhouse Jr., and company president Bernard Leser. The Senters asked writers to object to Premier having filed suit without first issuing a cease and desist letter to defendants, and to object to damage-demands amounting to 27 times "any real damages which could have ensued from any infringements the defendants might have committed."

Initially, more radical hobbyists were howling for an all-out boycott against Conde Nast Publications.

One plan called for picketing publicity-shy franchise bookstores, local news media coverage, and then parlaying this into national publishing and advertising media trade publications.

More direct pressure on CNP would come (others said) by simply not buying any of the company's magazines. Not including subscriptions-only Conde Nast *Traveler*, combined retail cover price of remaining CNP magazines sell for \$24.40. Of this, some 40% is written off in trade discounts to entice retailers to stock the magazines, for an adjusted one-month total of \$14.64. Multiplying by even half the 10,000 names on old time radio dealers' mailing lists, this totals \$73,200 for one month and \$878,400 for one year...not wildly different from what Premier wants from all Shadow defendants.

The boycott fever against Conde Nast

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noticeably lessened in late December 1990, when Conde Nast brought out its own artillery (see "CNP Steps In," below). Meanwhile, the more bloodthirsty OTR fans continued individual all-out boycott assaults against Radio Yesteryear, in a form of "name brand recognition" which the California trademark case had not had in mind.

Also in late December, explosive new documentation and corroboration surfaced, on another Premier subsidiary, and its own heretofore unsung role in the war in the oxide trenches.

### The Sandy Hook Connection

Sandy Hook Records, a second album subsidiary to Premier Electronics, has released dozens of LPs related to nostalgic music, radio broadcasts or movie soundtracks. Among them is Sandy Hook SH-#2110, entitled Connee Boswell & the Boswell Sisters. SH-#2110 states it is copyrighted in Sandy Hook Records' name. A convincing argument to the contrary is U.S. Copyright Office Form N-48483, registered in 1977, showing Connee Boswell and the Boswell Sisters "On the Air" was registered to Totem Records, one of three small-run LP labels operated by Shadow co-defendant, Larry F. Kiner.

Sandy Hook Records also claimed copyright for its SH-#2021 as well: Jack Teagarden "On the Air" 1936-1938. On May 13, 1980, the U.S. Library of Congress Reference and Bibliography section for Copyright Office records searches said this album was registered under SR-12-958, in 1978...to another Kiner LP label, Aircheck records.

Other Sandy Hook titles claiming copyrights were:

- #2002 Bing Crosby "On the Air"
- #2003 Al Jolson "On the Air"
- #2016 Artie Shaw "On the Air"  
1939-1940
- #2020 Alice Faye "On the Air"  
1932-2934
- #2027 The Thirties Girls

Bibliographer William A. Moore said a records search from 1978-1980 "failed to disclose any separate registration for works identifiable as relating to Sandy Hook label under specific titles."

Kiner claims ownership to all these albums and has produced a list of some 68 Sandy Hook titles (#2001-#2110 inclusive) showing 51 albums are identical in content to LPs issued by other small-run LP companies, including Hollywood Sound Stage, Sunbeam, Sountrak, Joyce, Take Two, Giants of Jazz, Pelican, and StarTone. Kiner's own Totem, Aircheck, and Spokane labels account for 14 of the 51 titles in dispute.

Independent corroboration of Kiner's listing comes from Sunbeam/Sountrak founder Alan A. Roberts of Van Nuys, CA (12 albums) and Hollywood Sound Stage founder Howard Goldberg of Flushing, NY (8 albums).

All 34 albums these three sources say were first issued by themselves, turned up in Sandy Hook Records catalogs, and in album jackets bearing Sandy Hook copyright notices. Kiner writes,

*Most, if not all, of the Sandy Hook products were originated by someone else! Often, they even duplicate the artwork, simply removing logos, addresses, etc., and replacing with their own. In all cases the Sandy Hook records claimed a 'copyright,' and my research indicates that in all cases, none were issued.*

Both Roberts and Goldberg concur, with Roberts adding: "It would be an easy matter to prove who brought them out first, and my editing was unique and [J. David Goldin] didn't bother to change any of that."

Kiner adds he has tried for several years to force Sandy Hook Records to withdraw albums replicating his own, without success. At one point, he says, a lawyer for Sandy Hook Records told him that if he did not stop "harassing" Sandy Hook over what they termed his "unfounded claims," that Sandy Hook would sue him.

*How come Premier/Sandy Hook/J. David Goldin/Jon Sonneborn group continue to sell and to list and to offer for sale my LPs that I have been complaining about? They've made no attempt to withdraw those LPs and apparently do not recognize my complaints or copyrights. What is the difference between the two?*

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Kiner has now filed a copyright infringement suit of his own, against Premier Electronics and Jon Sonneborn.

This countersuit was discussed years ago, Roberts said, between himself, Kiner, and Jim Bedoyan of Take Two records (whose Al Jolson album shows up as Sandy Hook SH-#2107 in Sandy Hook Records' list). Multiple sources for this article say this countersuit is not only "long overdue," but also that Kiner's countersuit is now expected to be among the strongest Shadow defendants' group defense weapons.

Even more devastating to Premier Electronics than allegations it too has infringed on copyrighted material (while refusing to settle its own case aimed at other "infringers") is the real impact of the newest wrinkle in this Shadow battle. Conde Nast Publications is also taking legal action against its own licensee.

### CNP Steps In

Conde Nast filed an amended complaint and cross-claim on December 14, 1990 in U.S. District Court, District of Connecticut, seeking to become the sole plaintiff in Civil Case 89-135-WWE, the formal docket number for Donald L. Aston and now also the master docket number for all Shadow defendants

Conde Nast Publications alleges that Premier Electronics Laboratories breached its Shadow licensing agreement, by failing to allow CNP to pursue any infringement claims on its own, before Premier brought its own legal guns out against the present defendants.

This one almost seems like CNP was reading the OTR Defense Fund's letter before it was ever written. The November 1, 1988 agreement stipulated CNP had the "exclusive right but not the obligation" to sue infringers, for a 60 day period following the later of: (1) CNP's receipt of a notice from Radiola or from another source regarding any infringement or continuing infringement, or (2) CNP's sending a "cease and desist" letter.

If CNP failed to take action, then Premier was allowed "the right but not the obligation" to commence its own legal action.

The reason that Conde Nast had not sent cease and desist letters, CNP's complain says, is because

*Premier specifically instructed CNP not to send cease and desist letters to Aston's Adventures, The Golden Radio Library, Bob Burnham, Dick Judge, Carl Froelich Jr., Redmond Nostalgia Company, Radio's Past, Charlie Garant, Golden Age Radio, Stoneground Features and McCoy's Recording, Inc. ... In accordance with Premier's instructions, CNP did not send cease and desist letters to these persons. Thereafter, Premier commenced the subject litigation [against these defendants]. Not only did CNP not consent to this breach of the terms of paragraph 10 of the agreement, it vigorously protested Premier's action, but Premier has refused to cure its breach of the agreement.*

CNP's complaint added they were therefore denied "the opportunity to amicably resolve all claims of alleged infringement of the licensed rights." (Emphasis added.)

Conde Nast acknowledged that most of the defendants "have made only limited sales of the infringing products at issue and have offered settlements including consent to injunctive relief and payment of damages."

*Although CNP believes these settlement offers are a reasonable basis upon which a negotiated amicable settlement could have been reached long ago, Premier characterizes the offers as grossly inadequate and has failed to negotiate reasonably. Premier has even refused CNP's counsel's offer to act as an intermediary in settling the actions.*

Conde Nast asked the court to first add CNP as plaintiff in this case, to protect its Shadow property in a more direct manner; to have Premier found to have breached its licensing agreement; then to be permanently enjoined from commencing litigation against any unauthorized persons selling The

Shadow recordings or using the CNP-trademarked character likeness in any manner.

Best of all: CNP asks that Premier be dismissed as a party from this lawsuit and that CNP be substituted as sole plaintiff herein.

### Not-So-Hasty Conclusions

At stake here now is Premier Electronics Laboratories' own credibility, considering PEL's ongoing trademark battle with Don Aston (and the telephone call to "resolve" a trademark decision PEL had lost in court to Aston). Also at issue are 34 out of 51 disputed albums in Sandy Hook Records' listings for its SH-#2001 through #2110...some 14 albums having been issued by another Shadow co-defendant, Larry Kiner.

Taken alone, Kiner's claim to copy-right infringement might seem fairly weak. Confirmation from two other LP producers...and from the U.S. Copyright Office...bring an entirely new and stronger emphasis to this claim. In that context, new meaning can be read into a memorandum of law filed by Conde Nast in conjunction with its amended complaint and cross-claim:

*Based on what has transpired to date, it appears that Premier may not be pursuing the readily available settlements for reasons unrelated to the protection of CNP's copyright and trademark rights or the vindication of Premier's exclusive rights under the License Agreement.*

The memorandum of law does not mention the 1987 trademark case against Don Aston, or Larry Kiner's counterclaim against Sandy Hook's use of his LPs...but Conde Nast does mention how Premier has consistently refused to accept mediation—and its two 1989 letters asking that CNP not send cease and desist letters, according to paragraph 10 of the agreement.

In a sworn affidavit accompanying CNP's amended complaint, and its memorandum of law, CNP Editorial Business Manager William P. Rayner mentioned the background on why Conde Nast had complied with those two letters:

*CNP was given no warning as to what Premier's plans were; it was entirely possible Premier planned to sub-license these infringers or to suggest they be left alone because of the minimal extent of their infringement. Instead, Premier commenced litigation...*

It does not require a *juris doctorate* to see a measure of disgust held by Conde Nast Publications over the actions taken by its licensee. The evidence now in hand shows that CNP simply got sick and tired of all the legal delays in "minimal cases" which CNP felt could have been settled by simple cease and desist letters—had Premier not asked them to refrain, and then filed its Shadow lawsuits. Throughout all documents filed, the phrase "amicable settlement" recurs so often that its serves as Conde Nast's litany of its own philosophy toward infringements.

Another litany, this time from Shadow defendants: The Shadow radio series itself has been so widely traded that in-Hobby demand for that series has reached nearly rock-bottom levels. Yet Premier held fast to its demands for huge settlement figures from each defendant...even saying one defendant was "in default," after sending them his total sales for that series during their licensing period, and his master tapes.

Don Aston and Larry Kiner have presented credible reasons to show that Premier's Shadow lawsuit may well indeed have unseen motives—particularly the effort to "resolve" Premier's trademark case, and Kiner's 14 albums issued by Sandy Hook Records.

It does not help Premier's credibility when the U.S. Copyright Office cannot find Sandy Hook Records copyrights for the titles its album jackets stated were copyrighted in Sandy Hook's name. Nor can it help Premier's credibility when Jon Sonneborn won't even confirm J. David Goldin had sold Radio Yesteryear, Radiola, and/or any other former Goldin company to Premier.

Conde Nast in turn displayed its own credibility by producing the copyright certificates for **The Shadow**, at the document inspection meeting which Premier had brought about by its lawsuits.

It seems reasonable after Larry

9

Kiner's claim—and other statements made by veteran collector/dealers—that Premier Electronics should now show copyright certificates of their own, for SH #2001 through #2110 inclusive. Premier should also explain the motives for that refusal to settle *The Shadow* suit against Aston's Adventures, until the trademark suit is "resolved."

Premier should also explain how the prompt submission of *Shadow* master tapes and total proceeds of *Shadow* program sales during the contested period can constitute being "in default."

Possibly most importantly, Premier can gain maximum credibility by fully explaining the nature of its relationship to J. David Goldin. If Goldin did in fact sell *Radio Yesterday* and *Radio*, then why was his name specified by the Aston trademark-case attorney when she called Aston's attorney? What had Goldin gone to California, to pursue this issue in 1988...three years after Premier filed the trademark suit? Why has Goldin's name (and not Jon Sonneborn's or Premier's) name been used by more than two dozen sources contacted for this article? Would Premier have filed its 1985 California lawsuit, had it not owned Goldin's former companies? Why then would Goldin show such interest in these lawsuits...unless he had an active role in helping to orchestrate them?

Should that last part prove to be provably true, then we can further believe the collector/dealers are correct: that Goldin is going after those OTR vendors with whom

he competed in his earliest days of selling programs...back in those days when Goldin himself withdrew *The Shadow* from his own catalog.

Finally, the credibility of Premier's claim (through its Sandy Hook Records subsidiary) that SH #2001 through #2110 inclusive are copyrighted in Sandy Hook's name...while the U.S. Copyright Office states otherwise.

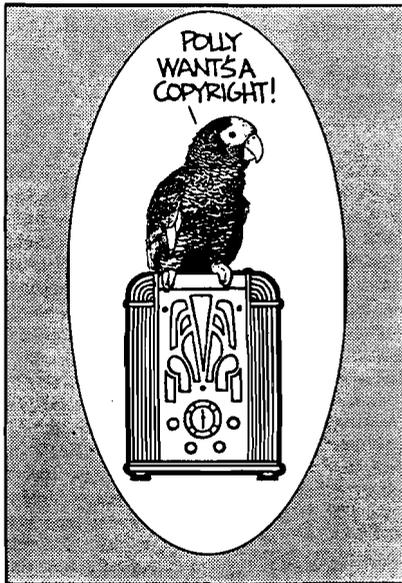
The Library of Congress (which oversees copyrights) has a staff known inter-

nationally for their great pains to provide accurate, unbiased information in their reports. So if there are to be any money bets placed on this entire copyright discussion, the odds on Sandy Hook actually holding copyrights for its SH #2001-#2110 inclusive are precisely the same as the likelihood that a shimmering silver flying saucer will land in CNP president Bernard H. Leser's backyard birdbath...where upon little green men

will disembark and request in flawless Queen's English that they be allowed the honour of marrying Mr. Leser's pet canary.

Who will reply: "Aaawwwwp! Polly wants a copyright!"

Conde Nast, after all, has shown its copyrights...all over a legal battle that might never have arisen, if not for Premier...a company Larry Kiner, Alan Roberts, Howard Goldberg, and the U.S. Copyright Office all say lack copyrights of its own. So now (at long and expensive last) isn't turnabout for Premier indeed fair play?



# THE SHADOW

COPYRIGHT:  
STREET & SMITH

by WALTER GIBSON

## THE HAND SMASHING MYSTERY NOVEL

Chapter One:  
Crime Foretold

The man on the corner looked like a Bowery bum. He was bent-shouldered, droopy-faced, with a bleary gaze that seemed to have two purposes. The first was to find prosperous-looking passers-by who could be touched for a dime; the other, to avoid any patrolman who might come along.

The panhandler had chosen a place frequented by those of his ilk. He was beneath the high-built elevated structure at Chatham Square, near the outskirts of New York's Chinatown. Many visitors, who scorned the Chinatown busses, came to the Oriental quarter by the elevated. It was easy to halt them and make the old plea for a cup of coffee.

The one trouble was that too many other bums had the same idea. There was a horde of them about-furtive, vulture-eyed, all hoping to gain their quota of small change.

A squatty hard-faced man came down the steps from the elevated. He gave a contemptuous glance that took in the array of panhandlers. Most of them shifted away. This guy wasn't the sort who would fall for the old flimflam. But the bent-shouldered man thought differently.

He shambled toward the squatty arrival. Plucking a cigarette stump from the pocket of his ragged coat, he raised it toward his pasty lips, while he whined the query:

"Got a match, bud?"

"On your way, bum," growled the squatty man. "Here comes a harness bull. Want me to turn you over?"

"All I asked for was a match!"

"Yeah! The old build-up! That stall don't work around here. I got you labeled: you're one of them mission stiffies that tries to find a few dimes before crawling in to beg for an overnight bunk."

The squatty man turned away, only to twist angrily when he felt the panhandler's fingers pluck his sleeve. Again, the whine:

"Honest, bud-all I'm lookin' for is some guy to give me a hand."

There was a hard look in the squatty man's eyes. He saw a slow grin on the pasty lips of that face above bent shoulders. In lower tone, the panhandler reminded:

"And all I asked for was a match."

From his vest pocket, the squatty man drew a pack of paper matches, thrust them into the bum's fist.

"There's some matches," he guffawed. "You wanted 'em, so keep 'em!"

He strode away, while watching bums grinned at the sour look displayed by the stoopy panhandler. Evidently that episode was enough to settle the unsuccessful fellow.

Hunching his bent shoulders, the droopy-faced man shambled toward Doyers Street, taking the route to the old Bowery Mission, where bunks awaited those of his breed.

Out of sight along the curving street, the shambling bum didn't stop at that logical destination. Instead he shuffled onward, through Chinatown and out again, to the gloom of a street where many cars were parked. Some of those automobiles were pretentious, for they were owned by persons visiting Chinatown.

The bum picked the best car in the line—a huge, imported limousine, in which a uniformed chauffeur sat drowsing at the wheel. Opening the rear door softly, the stoopy bum shifted inside. As soon as he had closed the door, he lifted a speaking tube. His voice awoke the chauffeur.

"Very well, Stanley." An even tone had replaced the whine. "Drive uptown."

The big car started. Crouched in the rear seat, the ex-bum flicked a tiny flashlight. Its gleam showed the match pack that the squatty man had given him. That

pack was open; on the inside flap, keen eyes saw markings made with a rubber stamp.

One token was a clock dial, with an indicator pointing to the hour of nine. Beneath it was another stamped design, that served as signature. It was crudely shaped, badly stamped, but easily recognized.

That emblem represented a human hand; fingers and thumb were close together, but extended.

A whispered laugh filled the confines of the soundproof limousine. That mirth, too, was a token.

It was the laugh of The Shadow!

Master investigator who battled men of crime, The Shadow had gotten information that he wanted. One hour's pose as a Bowery bum had proven highly profitable. His next step was to link his findings with those of workers who served The Shadow as his agents.

Earphones came from a hidden space in front of the limousine's folding seats. A buzzing announced a short-wave contact. The Shadow heard a voice from the ether:

"Burbank speaking."

"Report!"

The Shadow's whisper was all that Burbank needed. The contact man gave news from The Shadow's agents. When the reports were finished, The Shadow spoke instructions.

Replacing the earphones, The Shadow gave Stanley a new destination, using the quiet, even tone that suited Lamont Cranston, the wealthy owner of this limousine and the man whose identity, at times, The Shadow adopted. As the big car wheeled into a side street, The Shadow drew a hidden drawer from beneath the rear seat.

In the next few minutes, the guise of the bum was obliterated. The Shadow didn't bother to alter his facial make-up; he merely smothered it. A black cloak slid over his shoulders, its upturned collar hiding The Shadow's disguised lips. Long hands clamped a slouch hat on the head above; the hat brim obscured The Shadow's upper features.

When the limousine halted beside a darkened curb, a shrouded figure glided from the door. Patiently, Stanley sat at the wheel, supposing that his master was still within the car.

The Shadow had chosen a hidden pathway through the night.

Soon, a bluish light flooded the corner of a black-walled room. The Shadow was in his sanctum--secret abode in the heart of New York City. Long-fingered hands moved above the surface of a polished table. Into view came newspaper clippings, mostly from tabloid journals. All told the same story.

After months of comparative quiet, following the smashing of Manhattan's racket rings, crime had again reared itself. It was crime with a sensational touch, although it hadn't brought big monetary results. The main feature was the chief criminal involved. He, at least, was picturesque, although his ways were foolhardy.

The newspapers called him the "Masked Playboy."

Heading a small band of marauders, their faces covered like his own, the Masked Playboy had entered night clubs and small hotels. In every case, he had forced some one to open the safe and hand over its contents.

Staring through a slitted bandanna handkerchief, holding a .38 revolver in his fist, the Masked Playboy had meant business. When he dropped his Harvard accent to suggest that victims "fork over," they invariably forked.

The Playboy's constant mistake had been his picking of the wrong places. True, he had chosen spots where the police were not around; but real money had been as absent as the law. In four of these surprise raids, the Masked Playboy had netted a total that scarcely exceeded a thousand dollars.

That made it seem a sure conclusion that he and his crew would soon be on the move again. The law wanted to know when and where. So did The Shadow. He, himself, had found out "when"--from the message that he had picked up in Chatham Square.

Through reports from agents, The Shadow hoped to find out where the Masked Playboy intended to appear.

Weeding through the typewritten information, The Shadow added further data, obtained verbally from Burbank. His whispered laugh toned the darkness beyond the sphere of the shaded lamp. This present run of crime had become the talk of the underworld. As a result, many tips had leaked out.

By the weeding process, The Shadow found the tip that looked best. The clock on his table showed twenty-two minutes past eight. There was time, plenty of it, for The Shadow to be on hand at the place where he expected the Masked Playboy to arrive at nine o'clock.

The bluish light went out. From then, The Shadow's paths were covered until eighteen minutes before nine o'clock, when a tiny flashlight flickered along a low roof that wedged between two squatty, old-fashioned office buildings near Twenty-third Street.

The Shadow reached the window of a darkened office. He forced it, silently; crept through the office to a corner door. Opening that barrier, he stepped into another office, where he gleamed the flashlight on the front of an old safe.

The strong-box bore the lettering, in faded gilt: "Nu-Way Loan Company." The safe was as antiquated as the office. Five minutes was all that The Shadow required to handle the tumblers, taking his time in the process. When he opened the safe door, The Shadow whispered another laugh.

There was nothing of value in the safe. All that it contained were stacks of old papers: bundles of closed accounts that had been stowed here in case of fire. That explained why the offices of the Nu-Way Loan Company lacked protection in the way of burglar alarms.

The Shadow closed the safe door, gave the dial a twist. He retired to the adjoining office, but went no farther. He was waiting, on the hunch that he had found the right place: that the Masked Playboy, always a poor picker, would be running true to form.

There was another reason why The Shadow lingered. Behind this chain of profitless crime, he could discern a hidden purpose. So far, The Shadow had no clue to the underlying reason; but in assuming that one existed, he was far ahead of the law.

To-night, The Shadow intended to learn the real motive that concerned the Masked Playboy. This would be the ideal spot to gain the required facts. The Shadow would be looking over crime from the inside.

Such measures, with The Shadow, usually brought complete success, unless an unexpected element entered.

This night was to provide the unexpected.

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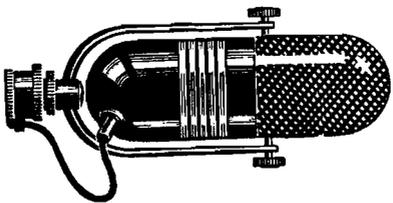
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