

**GAUNTLETT & ASSOCIATES**

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Managed Solutions Group, Inc.  
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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

LOUIS VUITTON MALLETIER, S.A.,

Plaintiff,

vs.

AKANOC SOLUTIONS, INC., et al.,

Defendants.

) Case No.: C 07-3952 JW (HRL)  
)  
) Hon. James Ware  
)  
) **DEFENDANTS' OBJECTIONS TO**  
) **VUITTON'S PROPOSED JURY**  
) **INSTRUCTIONS**  
)  
) **Final Pretrial Conference**  
)  
) **Date: March 23, 2009**  
) **Time: 3:00 p.m.**  
) **Ctrm: 8, 4<sup>th</sup> Floor**  
)  
)

1 Defendants hereby object to the following proposed jury instructions filed by Plaintiff Louis  
2 Vuitton Malletier (“Vuitton”).

3 Jury Instruction 20: Trademark Counterfeiting Elements and Burdens of Proof

4 Defendants object to this jury instruction to the extent that it is not within any Ninth Circuit  
5 Model Jury Instruction and because Vuitton misstates the law. Vuitton lists four elements of *direct*  
6 trademark infringement and erroneously instructs the jury to find a verdict for the plaintiff if each  
7 element of direct trademark infringement is proven. But Vuitton is not alleging that Defendants are  
8 liable for direct trademark infringement; Vuitton is alleging *contributory* trademark infringement.  
9 Defendants refer the Court to their proposed supplemental jury instruction number 1 that discusses  
10 the applicable elements of contributory trademark infringement.

11 Jury Instruction 22: Presumption of Likelihood of Confusion When Dealing with Counterfeit  
12 Merchandise

13 Defendants object to this jury instruction to the extent that it is not within any Ninth Circuit  
14 Model Jury Instruction. This proposed instruction is improper because whether such a presumption  
15 of confusion exists is dependent on fact issues to be determined at trial. Defendants refer the Court  
16 to their proposed supplemental jury instruction number 1 that discusses the applicable *Sleekcraft*  
17 factors that apply to this case.

18 Jury Instruction 23: Contributory Trademark Counterfeiting

19 Defendants object to this jury instruction to the extent that it is not within any Ninth Circuit  
20 Model Jury Instruction and because Vuitton misstates the law especially as it pertains to a computer  
21 system operator and an Internet service provider. Defendants refer the Court to their proposed  
22 supplemental jury instruction number 1, which discusses the applicable elements of Vuitton’s  
23 asserted claim for contributory trademark infringement.

24 Jury Instruction 24: Contributory Trademark Counterfeiting: Knowledge

25 Defendants object to this jury instruction to the extent that it is not within any Ninth Circuit  
26 Model Jury Instruction. Defendants refer the Court to their proposed supplemental jury instruction  
27 number 1, which discusses the knowledge element of contributory trademark infringement.

28 Jury Instruction 25: Contributory Trademark Counterfeiting: Control

1 Defendants object to this jury instruction because none of this instruction is within any Ninth  
2 Circuit Model Jury Instruction. Defendants refer the Court to their proposed supplemental jury  
3 instruction numbers 1, 9 and 11 which discuss the control element of contributory trademark  
4 infringement.

5 Jury Instruction 27: Purpose of Trademark Statutory Damages – Factors to Consider

6 Defendants object to this jury instruction because none of this instruction is within any Ninth  
7 Circuit Model Jury Instruction, and because this is not a proper legal instruction.

8 Jury Instruction 30: Derivative Liability – Contributory Copyright Infringement Elements  
9 and Burdens of Proof

10 Defendants object to lines 21-23 of Vuitton’s proposed jury instruction on the grounds that  
11 this portion of the proposed instruction is not within any Ninth Circuit Model Jury Instruction.  
12 Defendants refer the Court to their proposed supplemental jury instruction numbers 2 and 7, which  
13 discuss the elements of contributory copyright infringement.

14 Jury Instruction 31: Copyright – Knowledge

15 Defendants object to this jury instruction because none of this instruction is within any Ninth  
16 Circuit Model Jury Instruction. Defendants refer the Court to their proposed supplemental jury  
17 instruction numbers 2 and 7, which discuss the knowledge element of contributory copyright  
18 infringement.

19 Jury Instruction 36: Purposes and Functions of Copyright and Statutory Damages

20 Defendants object to this jury instruction on the basis that this is not a legal instruction and is  
21 not within any Ninth Circuit model jury instruction.

22 Jury Instruction 37: The Compensation Purpose of Statutory Damages

23 Defendants object to this jury instruction on the basis that this is not a legal instruction and is  
24 not within any Ninth Circuit model jury instruction.

25 Jury Instruction 38: The Deterrence Purpose of Statutory Damages

26 Defendants object to this jury instruction on the basis that this is not a legal instruction and is  
27 not within any Ninth Circuit model jury instruction.

28 Jury Instruction 39: The Punishment Purpose of Statutory Damages

1 Defendants object to this jury instruction on the basis that this is not a legal instruction and is  
2 not within any Ninth Circuit model jury instruction.

3 Jury Instruction 42: Domain Names/IP Addresses Defined

4 Defendants object to this jury instruction because the definitions of “domain names” and “IP  
5 addresses” are not matters of law and are not within any Ninth Circuit Model Jury Instruction.  
6 Defendants also object because Vuitton has based this instruction on unverified entries from the  
7 Internet website Wikipedia.com that have no recognized reliability and are of no legal significance.

8 Jury Instruction 43: Pinging Defined

9 Defendants object to this jury instruction because the definition of “pinging” is not a matter  
10 of law and is not within any Ninth Circuit Model Jury Instruction. Defendants also object because  
11 Vuitton has based this instruction on unverified entries from the Internet website Wikipedia.com that  
12 have no recognized reliability and are of no legal significance.

13  
14 Dated: March 2, , 2008

**GAUNTLETT & ASSOCIATES**

15  
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