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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

11 Louis Vuitton Malletier, S.A.,)
12 Plaintiff,) Case No.: C 07 3952 JW (HRL)
13 v.)
14 Akanoc Solutions, Inc., et al.)
15 Defendants.)
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INTRODUCTION

Defendants' Motion in Limine No. 6 to "Exclude Testimony About Pinging Internet Domains" ("Motion No. 6") should be denied outright under the law of the case doctrine, and additionally because Defendants' arguments under Rule 701 are inapplicable by definition. There is no prejudice to Defendants who have themselves offered and relied on similar testimony during the course of this litigation.

On Defendants' Motion for Summary Judgment, the Court already considered and overruled the Defendants' objection that testimony relating to pinging should be excluded. Defendants' renewal of this argument (without reference to prior rejection of its arguments) is entirely inappropriate and ought to be summarily rejected as a waste of the Court's resources. Ruling on Motion for Summary Judgment ("MSJ Ruling") at 6 fn. 10 citing Chen Declaration in Support of Motion for Summary Judgment ("Chen Decl.") ¶¶ 13-14. As set forth in greater detail below, that ruling was entirely appropriate as further evidenced by the Defendants' own efforts to describe pinging, also by footnote in their moving papers, and having included a ping result as part of the record in support of their Motion for Summary Judgment. Declaration of J. Andrew Coombs ("Coombs Decl.") at ¶¶ 2-3, Ex. A-B, Chen Decl. at ¶¶ 11, 13-14, Ex. 1501, Declaration of Juliana Luk ("Luk Decl.").

A. The Rules of Evidence Favor Admissibility

Motions in limine should be granted sparingly. Alliance Fin. Capital, Inc. v. Herzfeld, 2007 Bankr. LEXIS 4511, at *2 (N.D. Ga. December 17, 2007) citing Sperberg v. Goodyear Tire & Rubber Co., 519 F.2d 708, 712 (6th Cir. 1975); Middleby Corp. v. Hussmann Corp. 1992 U.S. Dist. LEXIS 13138, at *9-10 (N.D. Ill. August 27, 1992). "A pretrial motion in limine forces a court to decide the merits of introducing a piece of evidence without the benefit of the context of trial." CFM Communs., LLC v. Mitts Telecasting Co., 424 F. Supp. 2d 1229, 1233 (E.D. Cal. 2005); *see also* U.S. v. Marino, 200 F.3d 6, 11 (1st Cir. 1999) (recognizing that proffered evidence can be more accurately assessed in the context of other evidence).

1 Evidence should be “excluded on a motion in limine only if the evidence is *clearly*
2 inadmissible for any purpose” (internal quotations omitted, emphasis added). Fresenius Med. Care
3 Holdings, Inc. v. Baxter Int’l, Inc., 2006 U.S. Dist. LEXIS 42159, at *14 (N.D. Cal. June 12,
4 2006). This means Defendants will have to overcome the well established policies favoring
5 admissibility. Daubert v. Merrell Dow Pharms., 509 U.S. 579, 587 (1993) (“The Rules' basic
6 standard of relevance thus is a liberal one.”); U.S. v. Curtin, 489 F.3d 935, 942 (9th Cir. 2007)
7 citing Huddleston v. United States, 485 U.S. 681, 688-89 (1988) (“the version of Rule 404(b)
8 which became law was intended to “plac[e] greater emphasis on admissibility than did the final
9 Court version.”); see also U.S. v. Williams, 445 F.3d 724, 732 (4th Cir. 2006) (relief against
10 admissibility under Rule 403 should be granted sparingly); U.S. v. Fleming, 215 F.3d 930, 939 (9th
11 Cir. 2000) (Rule 403 favors admissibility); U.S. v. Hankey, 203 F.3d 1160, 1172 (9th Cir. 2000)
12 (“the application of Rule 403 must be cautious and sparing”); F.R.E. 102 Adv. Comm. Notes
13 (“rules are to be liberally construed in favor of admissibility” within the bounds of the Rules to
14 achieve goals of “speedy, inexpensive, and fair trials designed to reach the truth”). Defendants fail
15 to meet their burden given their similarly offered evidence, the highly probative value of the
16 evidence, the lack of unfair prejudice, the Rules, sound case law, and in light of these policies.

17 **B. The Law of the Case Precludes Defendants From Revisiting This Issue**

18 The Court’s prior consideration of Defendants’ objection to evidence of “pinging” was
19 overruled and now constitutes “law of the case” which precludes re-litigation of the issue absent
20 very narrow exceptions not applicable here.

21 “The law of the case doctrine provides that ‘a court is generally precluded from
22 reconsidering an issue that has already been decided by the same court...’” U.S. v. Cuddy, 147
23 F.3d 1111, 1114 (9th Cir. 1998) citing U.S. v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997)
24 (internal quotation and citation omitted). Defendants previously objected to Plaintiff’s pinging
25 testimony as “unqualified expert opinion.” See Defendants’ Evidentiary Objection to the Holmes
26 Declaration in Support of Vuitton’s Opposition to Defendants’ Motion for Summary Judgment
27 Filed August 25, 2008.

1 The Court overruled these objections and cited Defendants' own testimony stating pinging
2 was an effective method for identifying a website's IP Address and the Court considered this
3 evidence in partially denying Defendants' Motion for Summary Judgment. MSJ Ruling at 6 fn. 10.
4 None of the exceptions to the doctrine apply to Defendants' renewed objection: 1) the first decision
5 was not *clearly erroneous*; 2) there have been no intervening changes in the law; 3) the evidence is
6 not substantially different; 4) no other changed circumstances exist; and 5) no manifest injustice
7 would otherwise result. Cuddy, 147 F.3d at 1114. Thus, Defendants objection has already been
8 decided and this motion should be summarily denied as barred by the law of the case.

9 Defendants' arguments are similarly contrary to law and practice and Defendants' motion
10 should be denied in its entirety.

11 **C. The Court's Initial Ruling For Admission of Testimony Regarding Pinging Was**
12 **And Remains Correct**

13 **1. Rule 701 Does Not Apply to Plaintiff's Fact Testimony**

14 Rule 701 bars certain types of *opinion testimony*. It has no application to fact testimony of
15 the type described in Defendants' motion.

16 Defendants contend that the testimony of Nikolay Livadkin and Robert Holmes, regarding
17 their acts of pinging and subsequent observations, should be excluded under Rule 701. Rule 701
18 applies only to *opinion* testimony. The act of pinging a website and the results from such an act are
19 facts. They are not at all affected by opinion. The same results occur no matter who is executing
20 the ping and its definition and purpose appear to be agreed upon by the Plaintiff and Defendants
21 herein. A domain name either is or is not at a particular IP Address at any given point. Pinging
22 testimony does not at all implicate any opinions and does not fall under the purview of F.R.E. 701.

23 Though Rule 701 is entitled "Opinion Testimony by Lay Witnesses" and governs a
24 "witness' testimony in the form of opinions or inferences," it does not govern or otherwise limit
25 lay witness testimony regarding facts, no matter the nature of the facts or observations. *See Jerden*
26 *v. Amstutz*, 430 F.3d 1231, 1239-40 (9th Cir. 2005) (Rule 701 covers opinion testimony and not
27 detailed and scientific factual observations); *see also Sitrick v. Dreamworks, LLC*, 2006 U.S. Dist.

1 LEXIS 97312, at *63-65 (C.D. Cal. July 20, 2006). Factual testimony and observation is the
2 traditional function of the lay witness. Cf. Kalina v. Fletcher, 522 U.S. 118, 130 (1997)
3 (“[t]estifying about facts is the function of the witness”); Beech Aircraft Corp. v. Rainey, 488 U.S.
4 153, 168 (1988) (“traditional requirement that lay witnesses give statements of fact rather than
5 opinion”).

6 Mr. Livadkin’s and Mr. Holmes’ respective testimonies regarding pinging concern specific
7 acts taken and observations made. These facts are completely within the realm of non-expert
8 testimony and are not subject to limitation or exclusion by Rule 701.

9 **2. “Pinging” Is Not a Subject Only Mastered by Experts in the Field and Thus**
10 **Is Not Excludable Under Rule 701(c)**

11 Testimony regarding pinging is not of the type to be excluded under Rule 701(c).
12 Defendants suggest that the act of pinging rises to the level of expert testimony because it exceeds
13 the understanding of the everyday lay person and cite non-binding authority outside of the Ninth
14 Circuit to support this proposition. The rule cited by Defendants appears to require a higher
15 standard of expert knowledge stating that “an expert’s testimony results from a process of
16 reasoning which can be mastered only by specialists in the field.” U.S. v. White, 492 F.3d 380,
17 401 (6th Cir. 2007); U.S. v. Garcia, 413 F.3d 201, 215 (2d Cir. 2005) citing Rule 701 Advisory
18 Committee’s Notes; see also Motion No. 6 at p. 3.

19 Under either definition this argument is contradicted by Defendants’ own part-time
20 employee, not identified as an expert, who testified that she has no technical knowledge or training,
21 and completed high school as her highest level of education, yet she was able to identify a situation
22 which required her to ping a domain name and trace an IP Address using that technique. Coombs
23 Decl. at ¶ 4, Ex. C, Deposition of Juliana Luk (“Luk Depo.”) at pp. 9-10, 14, 30; Luk Decl.
24 Defendant Chen has also attested to pinging by himself and the part-time employee, Ms. Luk, and
25 even attached a pinging result, yet he was not identified as an expert either. Chen Decl. ¶¶ 11, 13-
26 14, Ex. 1501. Defendants required no such expert designation to advance this evidence when in
27 support of their own causes, and this argument fails in light of the record.

1 Further contrary to Defendants' contentions, "pinging" is frequently referred to in court
2 opinions and the term is used as a commonplace, everyday word that requires little to no
3 explanation. See, e.g., A & M Records, Inc. v. Napster, Inc., 114 F. Supp. 2d 896 (N.D. Cal.
4 2000); J.B. Hunt Transport, Inc. v. Adams, 2006 U.S. Dist. LEXIS 27375 (E.D. Mich. May 9,
5 2006); Cyber Promotions, Inc. v. Apex Global Information Servs., Inc., 1997 U.S. Dist. LEXIS
6 15344 (E.D. Penn. September 30, 1997); Northbrook Digital LLC v. Vendio Servs., Inc., 2008 U.S.
7 Dist. LEXIS 54688 (D. Minn. April 4, 2008); U.S. v. Forest, 355 F.3d 942 (6th Cir. 2004); U.S. v.
8 Mathis, 2008 U.S. District LEXIS 37618 (S.D. Ohio May 2, 2008); Export Development Canada v.
9 Electrical Apparatus & Power, LLC, 2008 U.S. District LEXIS 93097 (S.D.N.Y. November 14,
10 2008); In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority,
11 396 F. Supp. 2d 747 (S.D. Tex. 2005); U.S. v. Skinner, 2007 U.S. Dist. LEXIS 97237 (E.D. Tenn.
12 April 26, 2007); In re Application of US for an Order Authorizing the Installation and Use of a Pen
13 Register, 402 F. Supp. 2d 597 (D. Md. 2005).

14 Moreover, the cases Defendants cite are inapposite: they deal with complicated Medicare
15 reimbursement procedures and specialized police investigation skills, neither of which is common
16 information to the everyday person but instead acquired only by specialists in the respective fields.
17 Motion No. 6 at p. 3; see also White, 492 F.3d at 403-404; Garcia, 413 F.3d at 210; U.S. v. Cruz,
18 363 F.3d 187, 191, 193 (2d Cir. 2004). Computers, on the other hand, are used by the vast majority
19 of people, and Defendants' only cited authority on computer-related expert testimony even states as
20 such before rendering inadmissible opinion testimony based on a highly technical computer-
21 generated report. U.S. v. Ganier, 468 F.3d 920, 926 (6th Cir. 2006) ("The average layperson today
22 may be able to interpret the outputs of popular software programs as easily as he or she interprets
23 everyday vernacular, but the interpretation Drueck needed to apply to make sense of the software
24 reports is more similar to the specialized knowledge police officers use to interpret slang and code
25 words used by drug dealers."). Pinging does not rise to this level of complication and thus should
26 not be excluded. Compare Defendants' Ex. 1501 and Coombs Decl. Ex. D with Ganier, 468 F.3d at
27 926, fn. 4 (example of computer printout at issue).

1 Because Defendants have offered evidence of pinging through their own non-expert
2 witnesses, they should also be estopped from complaining about similar evidence offered by
3 Plaintiff as a matter of equity. Their motion should be denied.

4 **D. Plaintiff's Witnesses Have Personal Knowledge**

5 Defendants argue that Mr. Livadkin's and Mr. Holmes' testimony is excluded under Rule
6 701(a). Because Plaintiff's witnesses are still testifying as to factual issues, Rule 701 does not
7 apply. If the Court were to consider this argument, Rule 701(a) states that lay witness opinions
8 must be "rationally based on the perception of the witness." F.R.E. 701(a). This limitation is
9 simply the "familiar requirement of firsthand knowledge or observation," F.R.E. 701, Notes of
10 Advisory Committee, and Plaintiff's witnesses meet this requirement.

11 Mr. Livadkin and Mr. Holmes are testifying as to the process of pinging and the results
12 produced, however, the results also speak for themselves. Both Mr. Livadkin and Mr. Holmes
13 pinged many, if not all, of the websites. They are familiar with and have firsthand knowledge of
14 the pinging process. The websites not personally pinged by them were done so by their employees
15 or others at their direction and instruction. The results from the pings, and the self-authenticating
16 reports produced, were then personally observed by Mr. Livadkin or Mr. Holmes, respectively,
17 thereby satisfying the firsthand knowledge requirement such that their testimony regarding pinging
18 should not be excluded.

19 Because Rule 701 does not apply, and Plaintiff's witnesses have the requisite knowledge in
20 any case, Defendants' motion on this ground should also be denied.

21 **E. Pinging Results are Otherwise Admissible on Their Own**

22 The pinging results themselves are properly authenticated and highly probative as to basic
23 contested issues in the case. Like the document attached by Defendants in support of their Motion
24 for Summary Judgment, a multitude of Plaintiff's exhibits are similar printouts of ping requests and
25 reports for infringing websites hosted by Defendants. See Ex. D to Coombs Decl.; compare Ex.
26 1501 to Chen Decl. Thus, these documents are admissible either by stipulation or as having been
27 offered by a party opponent. "Authentication can be accomplished by judicial admission, such as
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1 stipulation or production of the items at issue in response to a discovery request” and where offered
2 by the party opponent. MGM Studios, Inc. v. Grokster, Ltd., 454 F. Supp. 2d 966, 972 (C.D. Cal.
3 1996); see also Maljack Productions, Inc. v. Goodtimes Home Video Corp., 81 F.3d 881, 889 n.12
4 (9th Cir. 1996). They are also the result of a process attested to by all the parties, and their accuracy
5 has not and can not be reasonably questioned. They are thus properly authenticated under Rule
6 901 as well.

7 This evidence shows that Defendants hosted various infringing websites on a given date, as
8 reflected on the ping results. These documents also support the contention that despite notice,
9 Defendants continued to host certain complained of websites, clearly failing to remedy the
10 infringement. In light of Defendants’ near complete failure to provide any documentation on
11 hosting despite an ability to do so, the probative value of this evidence is further enhanced.

12 **F. Defendants Can Not Meet the High Burden under Rule 403 to Exclude this**
13 **Evidence and Could Not be Prejudiced by Evidence They Themselves Offered**

14 The highly probative nature of the challenged evidence and Defendants’ failure to meet the
15 high burden upon them under F.R.E. 403 warrants denial of this motion on grounds of excess
16 prejudice.

17 Relief against admissibility under Rule 403 should be granted sparingly as Rule 403 favors
18 admissibility. U.S. v. Fleming, 215 F.3d 930, 939 (9th Cir. 2000); see also U.S. v. Hankey, 203
19 F.3d 1160, 1172 (9th Cir. 2000). Some circuits have required that the unfair prejudice be
20 “exceedingly great” while looking at the evidence “most favorable to its proponent, maximizing its
21 probative value and minimizing its prejudicial effect...” U.S. v. Stout, 509 F.3d 796, 806 (6th Cir.
22 2007). Here, the probative value of the hosting information in light of its accepted accuracy,
23 truthfulness, and prior use by the parties is extreme. Defendants can offer no evidence of unfair
24 prejudice when they themselves have relied on such evidence, let alone make the case that is
25 required to substantially outweigh the highly probative evidence at issue. In terms of what is fair
26 and what is unfairly prejudicial, Plaintiff should be able to use the testimony regarding pinging as
27 Defendants have.

1 Additionally, “[r]elevant evidence is inherently prejudicial; but it is only unfair prejudice,
2 substantially outweighing probative value, which permits exclusion of relevant matter under Rule
3 403. Unless trials are to be conducted as scenarios, or unreal facts tailored and sanitized for the
4 occasion, the application of Rule 403 must be cautious and sparing. Its major function is limited to
5 excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its
6 prejudicial effect.” U.S. v. Hankey, 203 F.3d 1160, 1172 (9th Cir. 2000). The pinging evidence is
7 a basic, factually based function that speaks volumes as to critical issues in the case regarding
8 Defendants’ hosting and continued hosting of infringing websites. The relevancy and probative
9 value of such evidence can not be considered “scant” or “cumulative” but instead, in each instance,
10 Defendants are shown to materially contribute to counterfeiting. Each ping is important not only to
11 show the fact Defendants were hosting a website on a particular date, but when Defendants
12 continued to host such a website, the ping also speaks to issues of willfulness and willful blindness
13 and should be presented to the jury.

14 The evidence is particularly probative to the extent Defendants produced little to no similar
15 hosting information despite an obvious ability to do so. See Defendants’ Ex. 1501. The evidence is
16 thus that much more probative and Defendants should not be rewarded for failing to cooperate in
17 discovery and forcing Plaintiff to independently develop hosting information from reliable,
18 accepted, publicly available means. General Atomic Co. v. Exxon Nuclear Co., 90 F.R.D. 290,
19 1981 U.S. Dist. LEXIS 9374, at *60 (S.D. Cal. April 23, 1981) (“It is fundamental that a party that
20 does not provide discovery cannot profit from its own failure...and may be estopped from
21 ‘supporting or opposing designated claims or defenses.’”) (quoting Dellums v. Powell, 566 F.2d
22 231, 235 (D.C. Cir. 1977)).

23 Prior controlling decisions have acknowledged that “services or products that facilitate
24 access to websites throughout the world can significantly magnify the effects” of infringing
25 conduct and that in certain instances, seeking compliance from providers may be the only
26 meaningful way for copyright holders to protect their rights. Perfect 10, Inc. v. Amazon.com, Inc.,
27 et al., 508 F.3d 1146, 1172 (9th Cir. 2007). The multitude of pinging results that Plaintiff has
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1 amassed will irrefutably show that the policy behind this statement by the Ninth Circuit could not
2 be more applicable to the Defendants in this case.

3 Because Defendants' legal arguments fail and because they can not present any legitimate
4 argument of unfair prejudice to the level required by the Rule, the jury should decide for itself the
5 weight it wishes to afford the evidence and all pinged results and references should be admissible
6 given their highly probative value in this case.

7 For the foregoing reasons, Defendants' Motion No. 6 should be denied.

8 **G. Even Were the Proffered Evidence Considered Opinion Testimony, There Has**
9 **Been Substantial Compliance With Disclosure Requirements and No Prejudice**
10 **to Defendants**

11 Granting Defendants' Motion No. 6 to exclude testimony regarding pinged would elevate
12 form over substance in the determination of this matter. Plaintiff has substantially complied with
13 the requirements for expert opinion disclosure, regardless of its non-designation of Mr. Livadkin
14 and Mr. Holmes as expert witnesses, and there is no prejudice to Defendants to allow the testimony
15 regarding pinged.

16 Failure to disclose under Fed. R. Civ. P. 26 does not preclude admission of the evidence or
17 testimony if the failure was either substantially justified or harmless. Fed. R. Civ. P. 37(c)(1);
18 Dukes v. Wal-Mart, Inc., 222 F.R.D. 189, 199 (N.D. Cal. 2004); *see also* Salgado v. General
19 Motors Corp., 150 F.3d 735, 742 (7th Cir. 1998). The court's determination of admissibility should
20 be guided by "(1) the prejudice or surprise to the party against whom the evidence is offered; (2)
21 the ability of the party to cure the prejudice; (3) the likelihood of disruption to the trial; and (4) the
22 bad faith or willfulness involved in not disclosing the evidence at an earlier date." David v.
23 Caterpillar, Inc., 324 F.3d 851, 857 (7th Cir. 2003). Further, it is Defendants' burden to show
24 sufficient prejudice caused by the failure to disclose. Dukes, 222 F.R.D. at 199.

25 Fed. R. Civ. P. 26 sets a deadline for disclosure of expert witnesses 90 days before trial.
26 Fed. R. Civ. P. 26(a)(2)(C)(ii). This timeframe was instituted in order to provide "sufficiently in
27 advance of trial...a reasonable opportunity to prepare for effective cross examination and perhaps
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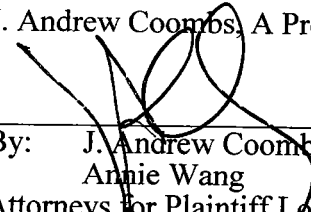
1 arrange for expert testimony from other witnesses.” Fed. R. Civ. P. 26, Notes of Advisory
2 Committee on 1993 amendments. Plaintiff disclosed both witnesses early on in the discovery
3 process, more than 90 days before trial, and Defendants have been sufficiently apprised of the
4 contents of the expected testimony from Mr. Livadkin and Mr. Holmes since that time. In fact,
5 both witnesses have also been fully deposed by Defendants, including regarding their background
6 and experience, including their pinging of the websites at issue in this litigation. See Fed. R. Civ.
7 P. 26(b)(4)(A). Further, Mr. Holmes’ reports have been produced (subject to the Protective Order
8 in this matter) and Mr. Livadkin, as an employee of the Plaintiff, is under no obligation to prepare a
9 written report. See Fed. R. Civ. P. 26(a)(2)(B). Therefore, Defendants have not been prejudiced
10 by the fact that Mr. Livadkin and Mr. Holmes were not specifically labeled as expert witnesses.

11 Moreover, there is no questioning the expert qualification of either witness. Mr. Holmes
12 has been a computer forensics investigator for over 25 years. He is well versed on the process of
13 pinging and does so on an almost daily basis. Mr. Livadkin, too, has extensive experience with
14 pinging as the Anti-Counterfeiting Coordinator of Louis Vuitton, S.A. He is responsible for
15 monitoring the Internet and identifying possible sources of counterfeit product bearing Plaintiff’s
16 copyrights and trademarks. As a part of his job duties, he regularly pings websites to determine the
17 IP address. Witnesses in similar employment positions to him have testified on the issue of
18 pinging in other cases. See J.B. Hunt Transport, Inc. v. Adams, 2006 U.S. Dist. LEXIS 27375, at
19 *10-11 & fn. 7 (E.D. Mich. May 9, 2006) (Director of Litigation testified as to pinging).

20 Defendants have not and cannot point to sufficient prejudice they have suffered due to the
21 mislabeling of Mr. Livadkin and Mr. Holmes. Therefore, their testimony should not be excluded
22 under Rule 37, and Plaintiff should be allowed to correct any discrepancies that may exist.

23 Dated: March 9, 2009

J. Andrew Coombs, A Professional Corp.

24
25
26 By:  J. Andrew Coombs
Annie Wang
27 Attorneys for Plaintiff Louis Vuitton Malletier, S.A.

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DECLARATION OF J. ANDREW COOMBS

I, J. Andrew Coombs, declare as follows:

1. I am an attorney at law duly admitted to practice before the Courts of the State of California and the United States District Court for the Northern District of California. I am counsel of record for Plaintiff Louis Vuitton Malletier, S.A. ("Plaintiff" or "Louis Vuitton") in an action styled Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., et al., Case No. C 07 3952 JW. I submit this declaration in support of Plaintiff's Opposition to Defendants' Motion in Limine No. 6. Except as otherwise stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows.

2. Attached Exhibit A is a true and accurate copy of the Declaration of Steve Chen and Exhibit 1501 filed by Defendants May 19, 2008, in support of their Motion for Summary Judgment.

3. Attached Exhibit B is a true and accurate copy of the Declaration of Juliana Luk filed by Defendants May 19, 2008, in support of their Motion for Summary Judgment.

4. Attached Exhibit C is a true and accurate copy of portions of the transcript from the deposition testimony of Juliana Luk which took place on or about April 12, 2008.

5. Attached Exhibit D are true and correct copies of selected exhibits of the type objected to by Defendants by this motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 9th day of March, 2009, at Glendale, California.



J. ANDREW COOMBS

EXHIBIT A

1 **GAUNTLETT & ASSOCIATES**
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2 James A. Lowe (SBN 214383)
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6 bse@gauntlettlaw.com

7 Attorneys for Defendants
8 Akanoc Solutions, Inc.,
Managed Solutions Group, Inc.
9 and Steve Chen

10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**
13

14 LOUIS VUITTON MALLETIER, S.A.,

15
16 Plaintiff,

17 vs.

18
19 AKANOC SOLUTIONS, INC., et al.,

20
21 Defendants.
22

) Case No.: C 07-3952 JW

) Hon. James Ware

) **DECLARATION OF STEVE CHEN IN**
) **SUPPORT OF DEFENDANTS' MOTION**
) **FOR SUMMARY JUDGMENT**

) Date: June 23, 2008

) Time: 9:00 a.m.

) Dept.: Courtroom 8, 4th Floor

) Discov. Cut-off: April 29, 2008

) Pre-Trial Conf: Sept. 8, 2008

) Trial Date: None Set

1 I, STEVE CHEN, declare as follows:

2 I am the President and manager of Managed Solutions Group, Inc. ("MSG") and Akanoc
3 Solutions, Inc. ("Akanoc"). I am also a named Defendant in this action. The facts set forth in this
4 declaration are of my own personal knowledge and I could competently testify to them if called as a
5 witness.

6 1. I am submitting this declaration in support of Defendants' motion for summary
7 judgment with regard to plaintiff Louis Vuitton Malletier, S.A.'s ("Vuitton") complaint in this
8 action.

9 2. MSG and Akanoc do not market or sell services directly to website operators. They
10 are Internet Service Providers ("ISP") who provide unmanaged Internet hosting services to their
11 customers, mainly resellers located in China.¹

12 3. Internet hosts typically provide either "managed" or "unmanaged" services. The
13 basic difference is the level of control over the server on which the data or applications are being
14 hosted. A managed hosting service generally provides complete or nearly complete care of the
15 customers' servers and therefore charges significantly more than for unmanaged hosting. Typical
16 customers of a managed hosting service are individuals or small businesses that are technically
17 unsophisticated or unwilling to expend the effort to control their own servers.

18 4. In contrast, MSG and Akanoc provide unmanaged hosting services to third party
19 resellers. They charge a much lower fee than what is typically charged for managed Internet hosting
20 services. The fee is charged mainly to keep the machine operating and connected to the Internet.
21 Customers maintain operational control over the computer server and restrict access by passwords,
22 so customers must be technologically knowledgeable and experienced so that they can manage their
23 operations remotely with little intervention by the hosting provider. Because the reseller customers
24 have control, MSG and Akanoc have no way of knowing if a particular website hosted on their
25 servers appears to be selling counterfeit goods unless a third-party notifies them.

26 5. MSG and Akanoc typically rent one or more computer servers with the basic

27
28 ¹ MSG provides only unmanaged Internet hosting services, despite the use of the term "managed" in
its name.

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1 operating system(s) requested by their customer together with an Internet router pointing one or
2 more temporarily assigned Internet Protocol ("IP") addresses to a server, together with a good
3 connection to an Internet "pipe" permitting the customer a specified maximum quantity of data
4 ("bandwidth"). MSG and Akanoc turn this system over to the customer who then assigns all
5 passwords to access content on the server. Unless customers happen to reveal that information to
6 them, Akanoc and MSG are not aware of any passwords or what specific use will be made of the
7 Internet access they provide.

8 6. Like other unmanaged Internet hosts, unless the customer chooses to allow them
9 access MSG and Akanoc have no way of accessing the content being hosted on their servers. Access
10 is usually granted, if at all, for limited purposes such as reformatting the hard drive or reinstalling an
11 operating system. This additional maintenance is done only if requested and for an additional fee.
12 MSG and Akanoc receive their modest monthly fee via a credit card or PayPal to keep the hardware
13 running and the Internet communications open and they respond as requested to technical operations
14 problems.

15 7. MSG and Akanoc together own and have available for monthly rental approximately
16 1,400 computer servers, approximately 30,000 IP addresses and approximately 1.2 gigabits of
17 bandwidth of Internet access. These servers are used by numerous resellers and by thousands or
18 potentially even millions of legitimate Website operators, many in China. Chinese companies
19 commonly seek to host their Internet operations in the United States because the speed and quality of
20 Internet transmissions in China is poor and Chinese Internet connections to the rest of the world are
21 heavily restricted by the Chinese government.

22 8. MSG and Akanoc do not do business with any Website operators and, unless given
23 notice by a third party such as Vuitton, are not aware of any infringing conduct potentially occurring
24 on a particular site. This is because the services they provide are unmanaged and the Defendants are
25 prohibited by law from accessing or monitoring the content on their equipment under the Stored
26 Communications Act (18 U.S.C. § 2700, *et al.*). Just as a telephone service provider is prohibited
27 from listening in on or wiretapping its customers' calls, so are Internet Service Providers such as

28 MSG and Akanoc prohibited from examining the customer content of its servers without specific

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1 authorization by the customer or a search warrant. It is the responsibility of a copyright or trademark
2 owner to police infringement and they can then send notices to an ISP like MSG or Akanoc.

3 9. The customer of an unmanaged hosting service typically agrees to an "acceptable use
4 policy" that prohibits illegal use of the server and agrees to respond to and correct unacceptable use
5 when a complaint is made, for example, of spam originating from the IP address or alleged
6 intellectual property infringement. MSG and Akanoc require agreement to such an "acceptable use
7 policy" that, among other things specifies that the services provided are unmanaged but that the
8 customer is responsible for improper use or content.

9 Section I(8) of Akanoc's agreement with customers (**Exhibit "1500"**) provides:

10 Customer will be responsible for all server management and
11 administration related issues.

12 The acceptable use policy also provides that Akanoc and MSG have no access to the content
13 of servers without consent of the customer.

14 Section III(1) of **Exhibit "1500"** provides:

15 [Web Host] will exercise no control whatsoever over the content of the
16 information passing through the network or on the customer's web
17 sites.

18 10. Because of the high number of servers and IP addresses rented out by MSG and
19 Akanoc, and because there is a constant problem with people around the world sending spam or
20 infringing or illegal material, MSG and Akanoc receive thousands of complaints every month and it
21 is impractical for them to investigate or validate all complaints. All complaints concerning domains
22 or websites that are located within MSG or Akanoc's IP ranges are forwarded to their customers for
23 evaluation and action.

24 11. MSG and Akanoc's standard protocol when they receive a complaint is as follows. If
25 notice is received about a Website that is alleged to be using one of the Defendants' IP addresses
26 (and therefore on one of their servers), we do not log on to the Internet to investigate or verify
27 whether the complaint is well founded. Either Juliana Luk or myself will "ping" the domain name
28 about which a complaint is made to determine whether the particular Website is located at an IP

1 address within the range of IP addresses assigned to Akanoc or MSG.

2 12. Assuming the website at issue is functional and located within Akanoc or MSG's IP
3 ranges, all abuse complaints are treated as being justified and sent along to our customer with a "take
4 down" notice. This is the only practical way for an Internet Service Provider to operate. This
5 practical approach is for several reasons: (1) the Defendants regularly receive too many complaints
6 to have time to verify or investigate abuse complaints, (2) the Defendants are unable to determine
7 who has rights in any content on the Internet, (3) the Defendants cannot easily verify complaints, and
8 (4) opening an e-mail containing spam could be dangerous to the MSG or Akanoc servers and their
9 customers because virus, worm, and other malware infections could be spread thereby.

10 13. "Pinging" a domain name on a computer's DOS prompt sends a request to Internet
11 name translation servers to return the IP address that is being used by that domain name. This is
12 done by typing in the command "ping [domain name]", which instructs a computer to send test
13 packets of information to that domain. When the computer receives the test packets back, it
14 confirms the IP address that the domain is using. Attached as **Exhibit "1501"** is a screen printout of
15 a DOS prompt showing the pinging of the domain www.cand.uscourts.gov.

16 14. By pinging a Website it is possible to identify a domain's IP address and whether it is
17 located within the range of IP addresses assigned to a customer. If it is, Juliana Luk or I
18 immediately send the complaint on to the reseller with a demand that the offending Website be taken
19 down.

20 15. Often "pinging" the Website will reveal that it is not located within MSG's or
21 Akanoc's IP range (the website is located within another Web hosts' range) or that the domain is
22 non-functioning. In that situation, no further action is required. As an unmanaged Internet host who
23 is not able to monitor the content of the domain data on its servers, this protocol is the only method
24 available to assist third parties to combat infringement, spamming, etc.

25 16. Repeat complaints can result in MSG or Akanoc unplugging a server accused of
26 infringing conduct. If a complaint about the same domain is repeated within a short time (and it is
27 confirmed to be located at the same IP address within Akanoc or MSG's IP range) or there are other
28 reasons to believe the customer is not responding to the complaint notice, MSG or Akanoc can only

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DECLARATION OF STEVE CHEN IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
- C 07-3952 JW

1 unplug the server from the Internet or otherwise disable the customer's access. Unplugging the
2 server from the Internet or otherwise disabling the customer's access is an extreme action, taken only
3 when necessary, because there may be numerous compliant customers using the same server while
4 perhaps one customer of a reseller with whom Akanoc and MSG deal has allowed a single IP
5 address to be misused. Unplugging a server will potentially harm dozens or even hundreds of
6 ultimate users of the same server so this action is a last resort to enforce the acceptable use policy.

7 17. Vuitton's complaint in this case was served on or about August 22, 2007. Promptly
8 thereafter I "pinged" the five websites listed in the complaint (atozbrand.com, bag925.com,
9 ape168.com, wendy929.net and eshoes99.com). I discovered that four of the five domains were not
10 located at IP addresses within the range of IP addresses assigned to MSG or Akanoc, meaning they
11 were either never within Akanoc or MSG's IP range or were no longer within range. The only other
12 website named in the complaint, wendy929.net, was not functional at that time and could not be
13 accessed using the Internet.

14 18. Because the five sites were out of the Defendants range of IP addresses and therefore
15 hosted by a different ISP or were not functioning, MSG and Akanoc were not able to contact the
16 Websites or take any further action. At the time the complaint was served, only one of the five
17 websites listed in Vuitton's complaint were located on either MSG's or Akanoc's servers but that
18 website was not functioning.

19 19. In approximately June 2007 MSG's and Akanoc's email server hard drive "crashed"
20 and data was lost. As a result Defendants have incomplete evidence of email complaints before that
21 time. However, the fact that these five websites were not located within MSG's or Akanoc's IP
22 range or were non-functioning at the time the complaint was served indicates that they were either
23 never within MSG's or Akanoc's IP range or were taken down as a consequence of the standard
24 warning protocol described above.

25 20. In the course of their business MSG and Akanoc have never used Vuitton's
26 trademarks or copied any of Vuitton's works in any way. Defendants do not advertise or sell
27 merchandise. Their business activities do not involve any infringement of trademark or copyrights,
28 or inducing others to infringe trademarks or copyrights.

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1 21. Defendants have never controlled or monitored the data on MSG or Akanoc's servers.
2 Defendants' do not monitor or have control over the content of websites being hosted on their
3 servers.

4 22. Defendants' operations have always been entirely separate from the websites being
5 hosted on their servers. They have never had any partnership with any party allegedly or actually
6 infringing Vuitton's trademarks or copyrights.

7 23. There has never been any connection whatsoever between any Defendant and any
8 operator of any Website being hosted on their servers.

9 24. There has never been any partnership between any Defendant and any operator of any
10 Website being hosted on their servers.

11 25. Defendants have never known any operators of Websites alleged to infringe
12 copyrights or trademarks being hosted on their servers because they do not deal directly with those
13 Website operators, do not receive money from them, and have no connection to them whatsoever.

14 26. Defendants have never had any authority to bind the operators of Websites located on
15 their servers or exercise joint control over any operations at their sites.

16 27. The Defendants have never done any business with and have never received any
17 money from any website operator alleged to have infringed any copyrights or trademarks.

18 28. Defendants have never intentionally induced copyright infringement in the course of
19 their business.

20 29. Defendants have never had the right to supervise or control conduct or content on
21 their servers, aside from prohibiting abuse in their User Agreement.

22 30. There is no practical or lawful way for Defendants to monitor information transmitted
23 through or stored on the servers they rent to resellers, prior to receiving a notice of copyright
24 infringement.

25 31. With 30,000 IP addresses accessing 1,400 Internet servers constantly, there is no
26 practical means to wiretap communication or monitor content in such a way that can prevent or
27 identify every appearance of a copyrighted work or a trademark appearing on the servers.

28 32. Defendants have no direct financial interest in infringing activity or infringing

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1 persons. They have always derived their income solely from the unmanaged Internet hosting services.
2 that they market to resellers.

3 33. The fixed monthly service fees MSG and Akanoc charge are not based on sales or
4 activity of any Website doing business with any of the resellers any more than a telephone company
5 makes any profit on sales made by its customers.

6 34. Defendants do not create, design, operate, manage, or have any information about any
7 Website using its servers and IP addresses.

8 35. Akanoc and MSG do not know who their customers deal with and have no knowledge
9 as to what particular use is made of the Internet hosting services provided.

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct.

12 Executed at Fremont, California on this 19th day of May, 2008.

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15 STEVE CHEN
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EXHIBIT 1501

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(C) Copyright 1985-2001 Microsoft Corp.  
H:\>ping www.cand.uscourts.gov  
Pinging www.cand.uscourts.gov [207.41.19.17] with 32 bytes of data:  
Reply from 207.41.19.17: bytes=32 time=107ms TTL=112  
Reply from 207.41.19.17: bytes=32 time=121ms TTL=112  
Reply from 207.41.19.17: bytes=32 time=117ms TTL=112  
Reply from 207.41.19.17: bytes=32 time=106ms TTL=112  
Ping statistics for 207.41.19.17:  
    Packets: Sent = 4, Received = 4, Lost = 0 (0% loss),  
    Approximate round trip times in milli-seconds:  
        Minimum = 106ms, Maximum = 121ms, Average = 112ms  
H:\>
```



EXHIBIT B

1 **GAUNTLETT & ASSOCIATES**

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2 James A. Lowe (SBN 214383)

3 Brian S. Edwards (SBN 166258)

18400 Von Karman, Suite 300

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Telephone: (949) 553-1010

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jal@gauntlettlaw.com

6 bse@gauntlettlaw.com

7 Attorneys for Defendants

8 Akanoc Solutions, Inc.,

Managed Solutions Group, Inc.

9 and Steve Chen

10
11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

14 LOUIS VUITTON MALLETTIER, S.A.,

15
16 Plaintiff,

17 vs.

18
19 AKANOC SOLUTIONS, INC., et al.,

20
21 Defendants.

) Case No.: C 07-3952 JW

) Hon. James Ware

) **DECLARATION OF JULIANA LUK IN**
) **SUPPORT OF DEFENDANTS' MOTION**
) **FOR SUMMARY JUDGMENT**

) Date: June 23, 2008

) Time: 9:00 a.m.

) Dept.: Courtroom 8, 4th Floor

) Discov. Cut-off: April 29, 2008

) Last Day to Hear

) Dispositive Motions: June 30, 2008

) Pre-Trial Conf: Sept. 8, 2008

) Trial Date: None Set

1 I, JULIANA LUK, declare as follows:

2 I am an employee of Defendant Akanoc Solutions, Inc. ("Akanoc"). The facts set forth in
3 this declaration are of my own personal knowledge, and I could competently testify to them if called
4 as a witness.

5 1. I am submitting this declaration in support of Defendants' motion for summary
6 judgment

7 2. My sole responsibility as an employee of Defendant is to respond to all types of
8 Internet abuse issues, including complaint notices that a domain or website is allegedly using
9 infringing or counterfeit content (normally received via email).

10 3. Upon receipt of complaint notices, I ping the allegedly infringing domain name to
11 determine the IP address of the domain.

12 4. I then compare the IP address to the list of 30,000 IP addresses assigned to
13 Defendants Akanoc Solutions, Inc. and Managed Solutions Group, Inc. in order to determine if the
14 IP address is within their IP range.

15 5. If I find that the domain is within the IP range assigned to Defendants Akanoc
16 Solutions, Inc. and Managed Solutions Group, Inc., I send the customer assigned that IP address a
17 "takedown" email warning them that they must remove the infringing content.

18 6. If I receive a further complaint about an IP address and I recall having already sent a
19 takedown email to the customer assigned that IP address, I will request a technician to unplug the
20 server using that customer's IP address, thus making that domain nonfunctional.

21 7. Managed Solutions Group and Akanoc Solutions' regular practice is to send "take
22 down" notices to their customers if there is any complaint of activity from an IP address that violates
23 the "acceptable use policy."

24 8. Whenever the defendant companies receive complaints of trademark or copyright
25 infringement, they immediately forward the complaint to their customer about the complaint with
26 instructions that the customer "take down" the offending material.

27 9. The customer is warned that violation of the acceptable use policy can result in
28 termination of service.

10562-002-5/19/2008-161234.1

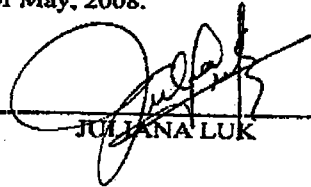
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DECLARATION OF JULIANA LUK IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
- C 07-3952 JW

1 10. As an employee of Defendant, my entire job is to send out such complaint notices
2 daily.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct.

5 Executed at Chino Hills, California on this 19th day of May, 2008.

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8 JULIANA LUK

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10562-002-5/19/2008-161234.1

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DECLARATION OF JULIANA LUK IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
- C 07-3952 JW

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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LOUIS VUITTON MALLETIER, S.A.,)
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Plaintiff,)
)
vs.)
)
AKANOC SOLUTIONS, INC., MANAGED)
SOLUTIONS GROUP, INC., STEVEN)
CHEN and DOES 1 through 10,)
inclusive,)
)
Defendants.)

Case No. C073952JW

DEPOSITION OF JULIANA LUK
VOLUME I
Glendale, California
Saturday, April 12, 2008

Reported by: Janalee Whitacre
CSR No. 12223
NDS Job No.: 128150

1 MR. EDWARDS: Other than counsel.

2 MS. WANG: Okay.

3 THE WITNESS: Oh.

4 MR. EDWARDS: I just want to make the record
5 clear that she discussed coming here today with myself.

6 BY MS. WANG:

7 Q. Was there anyone else that you talked to?

8 A. No.

9 Q. Okay. Have you ever gone by any other names?

10 A. No.

11 Q. What is your current address?

12 A. 4125 Stone Mountain Drive, two words,
13 Chino Hills, California, 91709.

14 Q. How long have you lived there?

15 A. Ten years.

16 Q. Have you ever been a party to a lawsuit before,
17 other than the one you mentioned 20 years ago?

18 A. No.

19 Q. And the next question is not to insult or
20 embarrassed you but it's just a question we have to ask.
21 Have you ever been convicted of a felony?

22 A. No.

23 Q. And what is the highest level of education that
24 you have completed?

25 A. High school.

1 Q. And where was that?

2 A. In Hong Kong.

3 Q. Have you ever attended any trade schools?

4 A. No.

5 Q. Do you have any certifications?

6 A. You mean -- certification on what?

7 Q. Anything that you took a class for to get
8 certified.

9 A. Oh, I just finished my GED at Mt. SAC college.
10 That is a high school as well. It's only high school.

11 Q. And you mentioned Mt. SAC. Do you mean
12 Mt. San Antonio College?

13 A. Yeah, uh-huh.

14 Q. And when was that?

15 A. Last November.

16 Q. Have you had any technical training?

17 A. No.

18 Q. Are you currently employed?

19 A. Yes.

20 Q. By whom?

21 A. BTG Apparel.

22 Q. Anyone else?

23 A. Oh, Akanoc. It's part time.

24 Q. You mean Akanoc Solutions Inc.?

25 A. Yes.

1 BY MS. WANG:

2 Q. That's all right. You work out of your home?

3 A. Yeah, at Chino Hills.

4 Q. In Chino Hills. So have you ever been to the
5 business office, home office of Akanoc --

6 A. No.

7 Q. -- Solutions?

8 Do you ever travel to any offices of Akanoc?

9 A. No.

10 Q. In your job at Akanoc, do you report to anyone?

11 A. To Steve Chen.

12 Q. Anyone else?

13 A. No.

14 Q. Do you ever communicate with anyone else at
15 Akanoc?

16 A. To the support department.

17 Q. And this is in regards to the job that you are
18 doing for Akanoc?

19 A. Yes.

20 Q. And what do you communicate with the support
21 department?

22 A. To unplug the customer's IP.

23 Q. Do you have any technical knowledge that's
24 required for the job that you do?

25 A. No.

1 A. I only know how to do it with inputting the IP
2 address. The others I don't understand and I don't want
3 to touch it.

4 Q. So there are other boxes on that page, but you
5 don't --

6 A. Yes.

7 Q. But there are other boxes on that page?

8 A. Yes.

9 Q. Okay. What if a complaint that you receive
10 doesn't have an IP address but just a domain name, how
11 do you handle that kind of situation?

12 A. I -- I ping on the -- what do you call that? A
13 CMD. I only know how to do it. I can't explain it.

14 Q. So when you don't have an IP address but you
15 have a domain name, you ping the domain name?

16 A. Yes.

17 Q. On -- is this an Internet program?

18 A. Yes.

19 Q. Do you remember which one that is?

20 A. I just know how to click to it.

21 Q. Is it an Akanoc program?

22 A. No.

23 Q. It's a program that is available publicly?

24 A. Yes.

25 Q. Do you do any follow-up after forwarding any of

EXHIBIT D

```
C:\Command Prompt]
C:\>ping www.bigworldshoes.com

Pinging www.bigworldshoes.com [205.209.161.43] with 32 bytes of data:
Reply from 205.209.161.43: bytes=32 time=72ms TTL=114
Reply from 205.209.161.43: bytes=32 time=71ms TTL=114
Reply from 205.209.161.43: bytes=32 time=71ms TTL=114
Reply from 205.209.161.43: bytes=32 time=72ms TTL=114

Ping statistics for 205.209.161.43:
    Packets: Sent = 4, Received = 4, Lost = 0 (0% loss),
    Approximate round trip times in milli-seconds:
        Minimum = 71ms, Maximum = 72ms, Average = 71ms

C:\>_
```

PLAINTIFF'S
EXHIBIT
05.2

bigworldshoes.com - Home Page - Mozilla Firefox

Éditer Édition Affichage Historique Marque-pages Outils ?

http://www.bigworldshoes.com/

Le rubric visible Annuaire Tendre White Outils linéaires 115 Connexion Office 1 Livraison anglaise fran

C:\Program Files\Microsoft Office\OFFICE11\EXCEL.EXE

```

C:\Fichiers>date /t & time /t
27/01/2009
18:06

C:\Fichiers>ping www.bigworldshoes.com

Envoi d'une requête 'ping' sur www.bigworldshoes.com [205.209.161.43] avec 32 octets de données :

Réponse de 205.209.161.43 : octets=32 temps=199 ms TTL=109
Réponse de 205.209.161.43 : octets=32 temps=197 ms TTL=109
Réponse de 205.209.161.43 : octets=32 temps=207 ms TTL=109
Réponse de 205.209.161.43 : octets=32 temps=204 ms TTL=109

Statistiques Ping pour 205.209.161.43:
Paquets : envoyés = 4, reçus = 4, perdus = 0 (perte 0%),
Durée approximative des boucles en millisecondes :
Minimum = 197ms, Maximum = 207ms, Moyenne = 201ms

C:\Fichiers>tracert www.bigworldshoes.com

Détermination de l'itinéraire vers www.bigworldshoes.com [205.209.161.43]
avec un maximum de 30 sauts :

  1  1 ms      1 ms      1 ms      Speedtouch.local.net [10.0.0.130]
  2  *         *         *         Délai d'attente de la demande dépassé.
  3  40 ms     40 ms     41 ms     10.224.1.20
  4  41 ms     40 ms     41 ms     tengigeb-13-0-1.ntstcal02.Paris.francetelecom.net [193.251.126.222]
  5  42 ms     43 ms     42 ms     tengigeb-13-0-0.aveutrl.huberwilbers.opentransit.net [193.251.132.29]
  6  49 ms     50 ms     50 ms     tengigeb0-9-4-0.ftttr1.FrankfurtMain.opentransit.net [193.251.132.30]
  7  50 ms     50 ms     50 ms     64.208.110.225
  8  194 ms    193 ms    193 ms    WBS-CONNECT.pol.410.av1.sno2.gblx.net [208.170.60.82]
  9  207 ms    *         205 ms    205.209.190.146
 10  208 ms    208 ms    211 ms    172.16.0.22
 11  198 ms    199 ms    198 ms    205.209.161.43

Itinéraire déterminé.

```

Microsoft... OLV... C:\Progr... bigworlds

205.209.161.43 18:07

SiteMap

RDANS
DUN-HERE
SAFE
SECURE
SPEEDY
RDERS?
DY TO

```
Command Prompt
Microsoft Windows XP [Version 5.1.2600]
(C) Copyright 1985-2001 Microsoft Corp.
C:\Documents and Settings\HP_Owner>cd\
C:\>ping cn-nike.us

Pinging cn-nike.us [205.209.165.65] with 32 bytes of data:
Reply from 205.209.165.65: bytes=32 time=72ms TTL=115
Reply from 205.209.165.65: bytes=32 time=72ms TTL=115
Reply from 205.209.165.65: bytes=32 time=70ms TTL=115
Reply from 205.209.165.65: bytes=32 time=72ms TTL=115

Ping statistics for 205.209.165.65:
    Packets: Sent = 4, Received = 4, Lost = 0 (0% loss),
    Approximate round trip times in milli-seconds:
        Minimum = 70ms, Maximum = 72ms, Average = 71ms

C:\>
```

PLAINTIFF'S
EXHIBIT
95.3

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Network Lookup

cn-nike.us

[Convert Base-10 to IP](#)

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- [Privacy.net Browser Test](#)

Ping 205.209.165.65

[cn-nike.us]

Round trip time to 205.209.165.65: 55 ms
 Round trip time to 205.209.165.65: 52 ms
 Round trip time to 205.209.165.65: 52 ms
 Round trip time to 205.209.165.65: 55 ms
 Round trip time to 205.209.165.65: 55 ms
 Round trip time to 205.209.165.65: 54 ms
 Round trip time to 205.209.165.65: 52 ms
 Round trip time to 205.209.165.65: 52 ms
 Round trip time to 205.209.165.65: 61 ms
 Round trip time to 205.209.165.65: 55 ms

Average time over 10 pings: 54.3 ms

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cn-nike.us ping

Ping Cn-nike.us

Ping Type:

| | Host | IP Address | Ping Time |
|----|------------|----------------|-----------|
| 1. | cn-nike.us | 205.209.165.65 | 21.82ms |
| 2. | cn-nike.us | 205.209.165.65 | 22.12ms |
| 3. | cn-nike.us | | Timed Out |
| 4. | cn-nike.us | 205.209.165.65 | 21.76ms |
| 5. | cn-nike.us | 205.209.165.65 | 21.75ms |
| 6. | cn-nike.us | 205.209.165.65 | 21.79ms |
| 7. | cn-nike.us | 205.209.165.65 | 21.81ms |

Total Duration: 131.05 ms
Average Ping: 18.72 ms

Tools

Ping Traceroute DNS

Your IP Information

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IP Information in XML

We also offer your IP information as an XML API. [My IP XML](#)



5/13/2008 11:34 AM

Jordan@nikedrink:adidas>ping www.mercedes-benz.com [208.77.46.190] : 32 octets de données [193.251.241.253] 11:59
 Echer Edition Affichage Historique Marque-pages Outils 2
 http://www.cr-nike.us/

```

C:\Documents and Settings\Administrator\Desktop>Excel1nk
C:\Documents and Settings\Administrator\Desktop>date /t & time /t
11:59

C:\Documents and Settings\Administrator\Desktop>ping www.cr-nike.us
Envoi d'une requête 'ping' sur cn-nike.zyweb317.idscn.com [208.77.46.190] avec 32 octets de données :
Réponse de 208.77.46.190 : octets=32 temps=207 ms TTL=111
Réponse de 208.77.46.190 : octets=32 temps=207 ms TTL=111
Réponse de 208.77.46.190 : octets=32 temps=207 ms TTL=111
Réponse de 208.77.46.190 : octets=32 temps=206 ms TTL=111

Statistiques Ping pour 208.77.46.190:
Paquets : envoyés = 4, perdus = 0 (perte 0%),
Durée approximative des boucles en millisecondes :
Minimum = 206ms, Maximum = 207ms, Moyenne = 206ms

C:\Documents and Settings\Administrator\Desktop>tracert www.cr-nike.us
Détermination de l'itinéraire vers cn-nike.zyweb317.idscn.com [208.77.46.190]
avec un maximum de 30 sauts :

  1  1 ms          1 ms          1 ms          SpeedTorch.Local.net [10.0.0.138]
  2  *            *            *            Délai d'attente de la demande dépassé.
  3  46 ms        43 ms        43 ms        10.224.1.52
  4  43 ms        40 ms        43 ms        81.253.129.86
  5  42 ms        41 ms        43 ms        tengige0-3-0-3.aoutxl.Rubeyu111ieps.opentransit.net [193.251.241.253]
  6  52 ms        50 ms        51 ms        tengige0-3-0-1.ffttvl.FrankfurtHhkhain.opentransit.net [193.251.241.254]
  7  51 ms        62 ms        51 ms        64.208.110.229
  8  197 ms       194 ms       193 ms       WPS-CONNECT.p01.410.arl.suv2.gblx.net [208.170.60.82]
  9  198 ms       200 ms       202 ms
 10  207 ms       207 ms       211 ms
 11  209 ms       209 ms       208 ms

Itinéraire déterminé.
  
```

Démarrer

```
C:\>ping www.dreamyshoes.com
Pinging www.dreamyshoes.com [204.16.198.150] with 32 bytes of data:
Reply from 204.16.198.150: bytes=32 time=73ms TTL=114
Reply from 204.16.198.150: bytes=32 time=75ms TTL=114
Reply from 204.16.198.150: bytes=32 time=74ms TTL=114
Reply from 204.16.198.150: bytes=32 time=78ms TTL=114
Ping statistics for 204.16.198.150:
    Packets: Sent = 4, Received = 4, Lost = 0 (0% loss),
    Approximate round trip times in milli-seconds:
        Minimum = 73ms, Maximum = 78ms, Average = 75ms
C:\>
```

PLAINTIFF'S
EXHIBIT
97.2



dreamyshoes.com ping

Ping Dreamyshoes.com

Ping Type:

| Host | IP Address | Ping Time |
|--------------------|----------------|-----------|
| 1. dreamyshoes.com | 204.16.198.150 | 24.00ms |
| 2. dreamyshoes.com | 204.16.198.150 | 23.33ms |
| 3. dreamyshoes.com | 204.16.198.150 | 23.93ms |
| 4. dreamyshoes.com | 204.16.198.150 | 22.94ms |
| 5. dreamyshoes.com | 204.16.198.150 | 23.95ms |
| 6. dreamyshoes.com | 204.16.198.150 | 22.96ms |
| 7. dreamyshoes.com | 204.16.198.150 | 23.01ms |

Total Duration: 164.12 ms
Average Ping: 23.45 ms

Tools

Ping Traceroute DNS

Your IP Information

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IP Information in XML

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71.97.62.215 recent request count: 3

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Ping 204.16.198.150

[dreamyshoes.com]

Round trip time to 204.16.198.150: 60 ms
 Round trip time to 204.16.198.150: 52 ms
 Round trip time to 204.16.198.150: 59 ms
 Round trip time to 204.16.198.150: 63 ms
 Round trip time to 204.16.198.150: 53 ms
 Round trip time to 204.16.198.150: 56 ms
 Round trip time to 204.16.198.150: 56 ms
 Round trip time to 204.16.198.150: 60 ms
 Round trip time to 204.16.198.150: 52 ms
 Round trip time to 204.16.198.150: 53 ms

Average time over 10 pings: 56.4 ms

Fichier Edition Affichage Historique Marque-pages Outils 2
 Les riles vistes Domaines Traces WebSite C:\file\local\win... 11 5 Connuicht Office 1 levilinos amilac-fran
 http://www.dreamyshoes.com/

```

G:\Fichiers>date /t & time /t
27/01/2009
18:11

G:\Fichiers>ping www.dreamyshoes.com

Envoi d'une requête 'ping' sur www.dreamyshoes.com [204.16.198.150] avec 32 octets de données :

Réponse de 204.16.198.150 : octets=32 temps=204 ms TTL=111
Réponse de 204.16.198.150 : octets=32 temps=198 ms TTL=111
Réponse de 204.16.198.150 : octets=32 temps=197 ms TTL=111
Réponse de 204.16.198.150 : octets=32 temps=238 ms TTL=111

Statistiques Ping pour 204.16.198.150:
Paquets : envoyés = 4, reçus = 4, perdus = 0 (perte 0%),
Durée approximative des boucles en millisecondes :
Minimum = 197ms, Maximum = 238ms, Moyenne = 209ms

G:\Fichiers>tracert www.dreamyshoes.com

Détermination de l'itinéraire vers www.dreamyshoes.com [204.16.198.150]
avec un maximum de 30 sauts :

  1  10 ms      *      23 ms      18 ms      *      SpeedTorch, local-net [10.0.0.138]
  2  *          *          *          *          *      Délai d'attente de la demande dépassé.
  3  41 ms      42 ms      41 ms      41 ms      10.224.1.52
  4  41 ms      44 ms      44 ms      44 ms      81.253.131.118
  5  44 ms      44 ms      44 ms      44 ms      pos0-6-0-0-autent1.Rubervilliers.opentransit.net [193.251.242.149]
  6  52 ms      52 ms      53 ms      53 ms      pos0-11-1-0-fttrr1.FrankfurtFinhan.opentransit.net [193.251.242.150]
  7  52 ms      51 ms      57 ms      57 ms      64.200.110.229
  8  192 ms     193 ms     192 ms     192 ms     WIS-CORNECT-p01-410-avl.sno2.gblx.net [200.128.60.82]
  9  197 ms     198 ms     198 ms     198 ms     205.209.190.146
 10  207 ms     215 ms     207 ms     207 ms     172.16.0.22
 11  199 ms     199 ms     200 ms     200 ms     204.16.198.150

Itinéraire déterminé.
  
```

```
Command Prompt
C:\>ping eastarbiz.com

Pinging eastarbiz.com [205.209.164.101] with 32 bytes of data:
Reply from 205.209.164.101: bytes=32 time=72ms TTL=115
Reply from 205.209.164.101: bytes=32 time=73ms TTL=115
Reply from 205.209.164.101: bytes=32 time=72ms TTL=115
Reply from 205.209.164.101: bytes=32 time=72ms TTL=115

Ping statistics for 205.209.164.101:
    Packets: Sent = 4, Received = 4, Lost = 0 (0% loss),
    Approximate round trip times in milli-seconds:
        Minimum = 72ms, Maximum = 73ms, Average = 72ms

C:\>
```

PLAINTIFF'S
EXHIBIT
99.3

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Ping 205.209.164.101

[eastarbiz.com]

Round trip time to 205.209.164.101: 55 ms
 Round trip time to 205.209.164.101: 52 ms
 Round trip time to 205.209.164.101: 52 ms
 Round trip time to 205.209.164.101: 54 ms
 Round trip time to 205.209.164.101: 55 ms
 Round trip time to 205.209.164.101: 52 ms
 Round trip time to 205.209.164.101: 52 ms
 Round trip time to 205.209.164.101: 54 ms
 Round trip time to 205.209.164.101: 55 ms
 Round trip time to 205.209.164.101: 52 ms

Average time over 10 pings: 53.3 ms



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eastarbiz.com ping

Ping Eastarbiz.com

Ping Type:

Tools

Ping Traceroute DNS

| | Host | IP Address | Ping Time |
|----|---------------|-----------------|-----------|
| 1. | eastarbiz.com | 205.209.164.101 | 20.21ms |
| 2. | eastarbiz.com | 205.209.164.101 | 20.11ms |
| 3. | eastarbiz.com | 205.209.164.101 | 20.08ms |
| 4. | eastarbiz.com | 205.209.164.101 | 20.60ms |
| 5. | eastarbiz.com | 205.209.164.101 | 20.06ms |
| 6. | eastarbiz.com | | Timed Out |
| 7. | eastarbiz.com | 205.209.164.101 | 20.46ms |

Total Duration: 121.52 ms
Average Ping: 17.36 ms

Your IP Information

View information about your IP address using [My IP Address](#)

IP Information in XML

We also offer your IP information as an XML API. [My IP XML](#)



```
C:\>ping www.eshoes99.net
Pinging www.eshoes99.net [204.16.192.77] with 32 bytes of data:
Reply from 204.16.192.77: bytes=32 time=73ms TTL=114
Reply from 204.16.192.77: bytes=32 time=73ms TTL=114
Reply from 204.16.192.77: bytes=32 time=73ms TTL=114
Reply from 204.16.192.77: bytes=32 time=72ms TTL=114
Ping statistics for 204.16.192.77:
    Packets: Sent = 4, Received = 4, Lost = 0 (0% loss),
    Approximate round trip times in milli-seconds:
        Minimum = 72ms, Maximum = 73ms, Average = 72ms
C:\>
```

PLAINTIFF'S
EXHIBIT
109



www.eshoes99.net ping

Ping WwW.eshoes99.net

Ping Type: ICMP Update

| | Host | IP Address | Ping Time |
|----|------------------|---------------|-----------|
| 1. | www.eshoes99.net | 204.16.192.77 | 19.98ms |
| 2. | www.eshoes99.net | 204.16.192.77 | 20.87ms |
| 3. | www.eshoes99.net | 204.16.192.77 | 21.00ms |
| 4. | www.eshoes99.net | 204.16.192.77 | 20.42ms |
| 5. | www.eshoes99.net | 204.16.192.77 | 20.38ms |
| 6. | www.eshoes99.net | 204.16.192.77 | 20.44ms |
| 7. | www.eshoes99.net | 204.16.192.77 | 20.38ms |

Total Duration: 143.47 ms
Average Ping: 20.50 ms

Tools

www.eshoes99.net Go
Ping Traceroute DNS

Your IP Information

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IP Information in XML

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| <input type="radio"/> Lookup | <input type="radio"/> DNS Records Click here for advanced NSLookup DNS tool | <input type="radio"/> URL Encode |
| <input type="radio"/> Trace | <input type="radio"/> Network Lookup | <input type="radio"/> HTTP Headers <input type="checkbox"/> SSL |
| <input type="radio"/> Whois | | <input type="radio"/> E-mail Validation |
| <input type="radio"/> IDN Conversion | | |

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Submit

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Ping 204.16.192.77

[www.eshoes99.net]

Round trip time to 204.16.192.77: 65 ms
Round trip time to 204.16.192.77: 53 ms
Round trip time to 204.16.192.77: 52 ms
Round trip time to 204.16.192.77: 53 ms
Round trip time to 204.16.192.77: 53 ms
Round trip time to 204.16.192.77: 51 ms
Round trip time to 204.16.192.77: 57 ms
Round trip time to 204.16.192.77: 54 ms
Round trip time to 204.16.192.77: 59 ms
Round trip time to 204.16.192.77: 56 ms

Average time over 10 pings: 55.3 ms

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