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

11	Louis Vuitton Malletier, S.A.,)	Case No. C 07 3952 JW
)	
12	Plaintiff,)	PLAINTIFF'S OPPOSITION TO
)	DEFENDANTS' MOTION IN LIMINE
13	v.)	No. 9 TO EXCLUDE TESTIMONY
)	ABOUT THE GENUINENESS OF
14	Akanoc Solutions, Inc., et al.)	GOODS; DECLARATION OF J.
)	ANDREW COOMBS, EXHIBIT IN
15	Defendants.)	SUPPORT

16 **INTRODUCTION**

17 Plaintiff Louis Vuitton Malletier, S.A. ("Plaintiff") files this Opposition to Defendants'
18 Motion in Limine No. 9 to Exclude Testimony About the Genuineness of Goods ("Motion No. 9").
19 Plaintiff moves for an order denying Defendants' motion on the grounds that motions in limine
20 should be granted sparingly, Rule 701 does not exclude the evidence, and there is no prejudice to
21 Defendants.

22 **A. The Rules of Evidence Favor Admissibility**

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

1 also U.S. v. Marino, 200 F.3d 6, 11 (1st Cir. 1999) (recognizing that proffered evidence can be
2 more accurately assessed in the context of other evidence).

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

19 **B. The Testimony Regarding Genuine Goods is Admissible**

20 Defendants point to Rule 701 of the Federal Rules of Evidence as a basis for the exclusion
21 of testimony regarding ping. Rule 701 states as follows:

22 If the witness is not testifying as an expert, the witness’ testimony in the form of
23 opinions or inferences is limited to those opinions or inferences which are (a)
24 rationally based on the perception of the witness, and (b) helpful to a clear
25 understanding of the witness’ testimony or the determination of a fact in issue,
26 and (c) not based on scientific, technical, or other specialized knowledge within
27 the scope of Rule 702.

28 Fed. R. Civ. Evid. 701.

1 The testimony Plaintiff seeks to introduce regarding genuine goods, however, does not
2 consist of lay witness opinion testimony but rather covers factual matters traditionally within the
3 scope of lay witness testimony. Even applying Rule 701, the testimony in question cannot be
4 excluded on the basis of section (c), as Defendants argue, due to the fact that the distinction
5 between counterfeit and genuine goods is something that arises from the witnesses' personal
6 familiarity with this type of product. Therefore, Defendants' Motion No. 9 should be denied.

7 **1. Rule 701 Does Not Apply to the Testimony Regarding Genuine Goods**

8 Defendants contend that the testimony of two of Plaintiff's witnesses, Nikolay Livadkin
9 and Robert Holmes, regarding the genuineness of goods sought to be introduced by Plaintiff,
10 should be excluded under Rule 701.¹ This argument is without merit as Rule 701 does not apply to
11 non-*opinion* testimony.

12 Federal Rule of Evidence, Rule 701 is entitled "Opinion Testimony by Lay Witnesses" and
13 governs a "witness' testimony in the form of opinions or inferences." Fed. R. Evid. 701. Rule 701
14 does not govern or otherwise limit lay witness testimony regarding facts, no matter the nature of
15 the facts or observations. *See Jerden v. Amstutz*, 430 F.3d 1231, 1239-1240 (9th Cir. 2005) (Rule
16 701 covers opinion testimony and not detailed and scientific factual observations); *see also Sitrick*
17 *v. Dreamworks, LLC*, 2006 U.S. Dist. LEXIS 97312, at *63-65 (C.D. Cal. July 20, 2006). In fact,
18 factual testimony is the traditional function of the lay witness. *Cf. Kalina v. Fletcher*, 522 U.S.
19 118, 130 (1997) ("[t]estifying about facts is the function of the witness"); *Beech Aircraft Corp. v.*
20 *Rainey*, 488 U.S. 153, 168 (1988) ("traditional requirement that lay witnesses give statements of
21 fact rather than opinion").

22 Mr. Livadkin's testimony regarding the genuineness of certain goods concern factual
23 distinctions between the two types of product – distinctions personally observed by the witness.

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25
26 ¹ At no time has Plaintiff suggested that Robert Holmes will testify concerning the genuineness of
27 product. To the contrary, Holmes repeatedly disclaimed any intention to so testify during his
28 deposition. *See* Declaration of J. Andrew Coombs ("Coombs Decl."), at Ex. A, Deposition of
Robert Holmes p. 132-134. Insofar as Defendants' motion addresses Mr. Holmes' testimony in
this regard, the motion is properly denied as moot.

1 These facts are completely within the realm of non-expert testimony and are not subject to
2 limitation or exclusion by Rule 701.

3 **2. Testimony Regarding the Genuineness of Goods Falls Under the**
4 **Particularized Knowledge Exception**

5 Moreover, the testimony regarding the genuineness of goods is not of the type to be
6 excluded under Rule 701(c). Defendants argue that the distinction between counterfeit and genuine
7 product is specialized knowledge and cite non-binding authority outside of the Ninth Circuit to
8 support this proposition.

9 Rule 701 states that opinion testimony by lay witnesses must not be “based on scientific,
10 technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701(c).
11 However, *particularized* knowledge does not fall under this limitation – that is, knowledge gained
12 due to one’s personal familiarity with a subject, even knowledge relating to one’s own business or
13 occupation. U.S. v. Durham, 464 F.3d 976, 982 (9th Cir. 2006) (allowed lay witness opinion
14 testimony on the identification of narcotics due to witness’ familiarity with the substance); Hynix
15 Semiconductor, Inc. v. Rambus, Inc., 2008 U.S. Dist. LEXIS 16716, at *35-36 (N.D. Cal. Feb. 19,
16 2008) (allowed lay witness opinion testimony on the witness’ own business); *see also* Fed. R. Evid.
17 701, Notes of Advisory Committee; U.S. v. Munoz-Franco, 487 F.3d 25 (1st Cir. 2007) (allowed
18 lay witness opinion testimony regarding a bank’s banking procedures, knowledge which was
19 acquired by the witness while he was an employee at the bank).

20 Mr. Livadkin has been an employee of Plaintiff’s company, which manufactures clothing,
21 handbags and other personal accessories, since 2002. As a result of his occupation, he has been
22 exposed to both counterfeit goods and Plaintiff’s genuine goods on a daily basis, allowing him to
23 distinguish between the two types of product. See Coombs Decl. Ex. B, Declaration of Nikolay
24 Livadkin in Support of Opposition to Defendants’ Motion for Summary Judgment (“Livadkin
25 Decl.”), ¶¶ 1, 5, 6. Thus, Mr. Livadkin’s testimony regarding the genuineness of goods is not
26 specialized knowledge to be excluded under Rule 701(c).

1 **C. Defendants Have Waived Their Objection to This Proposed Testimony.**

2 Plaintiff offered testimony from Nikolay Livadkin regarding his knowledge of identifying
3 counterfeit products in support of its opposition to Defendants’ motion for summary judgment.
4 Defendants objected only narrowly to such information and testimony which was overruled by the
5 Court. Ruling on Motion for Summary Judgment p. 6, fn. 8 (“MSJ Ruling”). Any other objections
6 to this testimony were not raised and should be deemed waived, thus, this motion should be denied.

7 **D. The Law of the Case Precludes Defendants From Revisiting This Issue**

8 The Court’s overruling of Defendants’ limited objections to the evidence regarding Mr.
9 Livadkin’s testimony on the counterfeit nature of products from the websites at issue now
10 constitutes “law of the case” which precludes re-litigation of the issue absent very narrow
11 exceptions not applicable here.

12 “The law of the case doctrine provides that ‘a court is generally precluded from
13 reconsidering an issue that has already been decided by the same court...’” U.S. v. Cuddy, 147
14 F.3d 1111, 1114 (9th Cir. 1998) citing U.S. v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997)
15 (internal quotation and citation omitted).

16 The Court cited Mr. Livadkin’s testimony and the Court considered this evidence in
17 partially denying Defendants’ Motion for Summary Judgment. MSJ Ruling at pp. 5-6. None of
18 the exceptions to the doctrine apply to Defendants’ renewed objection: 1) the first decision was not
19 *clearly erroneous*; 2) there have been no intervening changes in the law; 3) the evidence is not
20 substantially different; 4) no other changed circumstances exist; and 5) no manifest injustice would
21 otherwise result. Cuddy, 147 F.3d at 1114. Thus, Defendants objection has already been decided
22 and this motion should be summarily denied as barred by the law of the case.

23 Defendants’ arguments are similarly contrary to law and practice and Defendants’ motion
24 should be denied in its entirety.

1 **E. There Would Be No Prejudice To Defendants To Afford Plaintiff An Opportunity**
2 **To Lay The Missing Pieces Of The Requisite Expert Foundation**

3 Granting Defendants' Motion No. 9 to exclude testimony regarding the genuineness of
4 goods would elevate form over substance in the determination of this matter. Plaintiff has
5 substantially complied with the requirements for expert opinion disclosure, regardless of its non-
6 designation of Mr. Livadkin as expert witness, and there is no prejudice to Defendants to allow the
7 testimony identifying counterfeit merchandise offered on websites hosted by Defendants.

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

17 Fed. R. Civ. P. 26 sets a deadline for disclosure of expert witnesses 90 days before trial.
18 Fed. R. Civ. P. 26(a)(2)(C)(ii). This timeframe was instituted in order to provide "sufficiently in
19 advance of trial...a reasonable opportunity to prepare for effective cross examination and perhaps
20 arrange for expert testimony from other witnesses." Fed. R. Civ. P. 26, Notes of Advisory
21 Committee on 1993 amendments. Plaintiff disclosed its witnesses early on in the discovery
22 process, more than 90 days before trial, and Defendants have been sufficiently apprised of the
23 contents of the expected testimony from Mr. Livadkin since that time. In fact, Mr. Livadkin was
24 fully deposed by Defendants, including regarding his background and experience and the issues
25 concerning distinguishing genuine goods from counterfeit goods. *See* Fed. R. Civ. P. 26(b)(4)(A).
26 Defendants have not been prejudiced by the fact that Mr. Livadkin was not specifically identified
27 as an expert witness.

1 Moreover, there is no questioning the expert qualification of Mr. Livadkin, if necessary,
2 regarding the identification of counterfeit Louis Vuitton product. As the Court agreed, Mr.
3 Livadkin has extensive experience with Plaintiff's genuine goods and detecting counterfeit goods
4 purporting to be Plaintiff's goods. See Livadkin Decl. He is the Anti-Counterfeiting Coordinator
5 of Louis Vuitton, S.A. and has held this position since 2002, and has never been wrong when
6 having made an initial determination that a website is selling counterfeits.² Id.

7 Defendants, therefore, have not and cannot point to sufficient prejudice they have suffered.
8 Mr. Livadkin's testimony should not be excluded under Rule 37, and Plaintiff should be allowed to
9 correct any discrepancies that may exist.

10 Plaintiff disclosed to Defendants well before trial the identities and subject matter,
11 including genuineness of product, on which Mr. Livadkin would testify. Defendants' Motion No. 9
12 is properly denied on the basis that Rule 701 does not exclude the testimony regarding factual
13 determinations of the legitimacy of one's own products, or, in the alternative, that Defendants have
14 not shown sufficient prejudice by Plaintiff's harmless error in designation.

15
16 Dated: March 9, 2009

J. Andrew Coombs, A Professional Corp.



By: J. Andrew Coombs
Annie Wang

Attorneys for Plaintiff Louis Vuitton Malletier, S.A.

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² These facts were cited by the Court in its Ruling on Defendants' Motion for Summary Judgment pp. 5-6 ("Livadkin has experience in identifying counterfeit products and in this case, has purchased products he testifies are counterfeit.").

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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. 9. 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 portions of the transcript from the deposition testimony of Robert L. Holmes, which took place on or about April 1, 2008.

3. Attached Exhibit B is a true and accurate copy of the Declaration of Nikolay Livadkin in Support of Opposition to Defendants' Motion for Summary Judgment, without exhibits, filed on or about August 18, 2008.

4. Attached Exhibit C is a true and accurate copy of the Defendants' Evidentiary Objection to the Livadkin Declaration in Support of Vuitton's Opposition to Defendants' Motion for Summary Judgment filed on or about August 25, 2008.

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

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LOUIS VUITTON MALLETTIER, S.A.,)	
)	
)	
PLAINTIFF)	
VS)	C.A. NO. C 07 3952 JW
)	
AKANOC SOLUTIONS, INC., MANAGED)	
SOLUTIONS GROUP, INC., STEVEN)	
CHEN AND DOES 1 THROUGH 10,)	
INCLUSIVE,)	
)	
DEFENDANTS)	
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ORAL DEPOSITION OF ROBERT L. HOLMES,
produced as a witness at the instance of the Defendants,
and duly sworn, was taken in the above-styled
and -numbered cause on the 1st day of April, 2008, from
9:31 AM to 6:22 PM, before Ronald R. Cope, a CSR in and
for the State of Texas, Registered Professional Reporter
and Certified Realtime Reporter, reported by machine
shorthand at the offices of U.S. Legal
Support/MillerParker, Inc., 5910 North Central
Expressway, 100 Premier Place, Dallas, Texas, 75206,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

ROBERT L. HOLMES

1 Q. Now, do you have any means of knowing whether
2 this was authentic?

3 A. Yes.

4 Q. How?

5 A. By contacting the client and asking them, if I
6 wished to do so.

7 Q. I'm not asking about contacting the client.

8 A. You're asking about means.

9 Q. I'm asking you: Let's say you have this bag in
10 your possession you just purchased. How can you tell
11 whether it's authentic or not?

12 A. You're assuming that's my job.

13 Q. No. I'm just asking if you have the ability to
14 do that.

15 A. You asked if I had the means.

16 Q. Well, tell me if you have the ability to do it.

17 A. Depending on the product. Everything is
18 different.

19 Q. Well, this is a bag I would like you to look
20 at. It's apparently a Louis Vuitton bag. Can you tell
21 if it's authentic or not?

22 A. From this photo?

23 Q. No. I believe you testified you physically had
24 it in your possession.

25 A. Yes, sir. I did not testify that I

ROBERT L. HOLMES

1 authenticated the product, though.

2 Q. I didn't ask you that.

3 A. Asked me a hypothetical.

4 Q. If you had wanted to determine if it was
5 authentic or not, could you have done so?

6 A. It depends on the product. Some --

7 Q. This particular bag. This bag, could you have
8 done so?

9 A. You're asking me to go back in time.

10 Q. I'm asking you to tell me if you could have
11 authenticated this bag or one like it.

12 A. I may or may not have been able to.

13 Q. And if you had been able to, how would you do
14 that?

15 MR. COOMBS: Calls for speculation.

16 A. Honestly, sir, that is not my job, and I don't
17 do that on a regular basis. It's not job. You're
18 asking me to do something that's not my job for some
19 whimsy. It's not my job, sir.

20 Q. (BY MR. LOWE) So it is not your job to
21 determine whether a product that you purchase is
22 authentic or counterfeit?

23 A. I leave that to Louis Vuitton.

24 Q. The answer is yes, it is not your job to
25 authenticate whether it is authentic or counterfeit?

ROBERT L. HOLMES

1 A. Yes, it is not my job.

2 Q. And you have never done that for any Louis
3 Vuitton merchandise that you purchased on their behalf?

4 MR. COOMBS: Vague.

5 A. I didn't say that. 25 years.

6 Q. (BY MR. LOWE) Well, can you tell me if you
7 have ever?

8 A. It is not my job. I can tell you that for
9 sure.

10 Q. All right. Have you ever, to your
11 recollection, authenticated the authenticity or
12 counterfeit nature of any product that you purchased on
13 behalf of Louis Vuitton?

14 A. I cannot recall.

15 Q. You have no recollection of ever doing so?

16 MR. COOMBS: Are you asking if he's
17 testified to that effect or . . .

18 A. Not my job.

19 MR. COOMBS: Not sure I understand the
20 scope either.


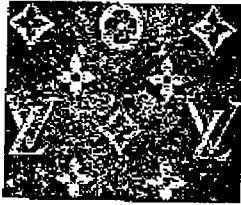


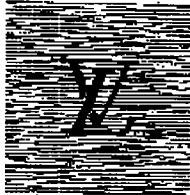
21 MR. LOWE: I'm asking him if he has some
22 recollection that he has ever done that on behalf of
23 Louis Vuitton?

24 A. I receive training occasionally by brand
25 owners.

ROBERT L. HOLMES



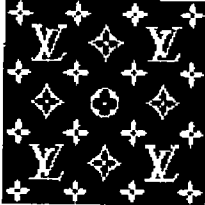


EXHIBIT B


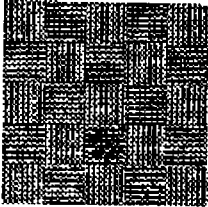
2. Louis Vuitton has duly registered and renewed the following trademarks and copyrights with the United States Patent and Trademark Office and the United States Copyright Office, respectively:

TRADEMARK	REGISTRATION NUMBER	TRADEMARK PICTURE	CLASS OF GOODS
Louis Vuitton (Interlocked Letters) in a Circle Design	286,345		18
Louis Vuitton (Interlocked Letters) and Monogram Canvas Design	297,594		18
LOUIS VUITTON	1,045,932	LOUIS VUITTON	18
Louis Vuitton (Interlocked Letters) Design	1,519,828		18
LOUIS VUITTON MALLETIER A PARIS in Rectangle	1,615,681		16, 18
Louis Vuitton (Interlocked Letters) on Epi Leather Design	1,655,564		18

Louis Vuitton v Akanoc, et al.: Livadkin Declaration in Opposition to Motion for Summary Judgment

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TRADEMARK	REGISTRATION NUMBER	TRADEMARK PICTURE	CLASS OF GOODS
Louis Vuitton (Interlocked Letters) and Monogram Canvas Pattern Design	1,770,131		25
Louis Vuitton (Interlocked Letters) Design	1,794,905		16, 25
Louis Vuitton (Interlocked Letters) and Monogram Canvas Design	1,875,198		16
Louis Vuitton (Interlocked Letters)	1,938,808		14, 24
LOUIS VUITTON World Mark	1,990,760	LOUIS VUITTON	16, 18, 24, 25
Louis Vuitton (Interlocked Letters) Design	2,291,907		34
LOUIS VUITTON	2,303,212	LOUIS VUITTON	34

TRADEMARK	REGISTRATION NUMBER	TRADEMARK PICTURE	CLASS OF GOODS
Louis Vuitton (Interlocked Letters) Design	2,361,695		25
LOUIS VUITTON PARIS and Damier (pattern design)	2,378,388		18

<u>Copyright</u>	<u>Reg. No.</u>	<u>Date Published</u>	<u>Date Registered</u>
Multicolor Monogram – Black Print	VA 1-250-121	12/18/02	06/24/04
Multicolor Monogram – White Print	VA 1-250-120	12/18/02	06/24/04

3. True and correct copies or proof of registration of all of the aforementioned properties are collectively attached hereto as Exhibit A.

4. Counterfeiting of Louis Vuitton brands online is widespread. A significant percentage of the overall online counterfeiting activity as it relates to the Louis Vuitton brand originates in the People’s Republic of China. In view of various practical and legal impediments to efficient and effective enforcement of trademark rights in the People’s Republic of China, a significant part of Louis Vuitton’s online enforcement efforts occur in end user markets, specifically including the United States.

Louis Vuitton v Akanoc, et al.: Livadkin Declaration in Opposition to Motion for Summary Judgment

1 5. Louis Vuitton is well-positioned to identify counterfeit sales online for several
2 reasons. Among the more important factors is the fact that Louis Vuitton has a strictly controlled
3 distribution network such that the only online sites which sell new authentic Louis Vuitton
4 merchandise in the United States are eluxury.com and louisvuitton.com, controlled by Plaintiff.
5 Samples of offers for Louis Vuitton merchandise from those authorized sites are attached as
6 Exhibit B and C, respectively. Although there is a secondary market for legitimate used Louis
7 Vuitton merchandise, in most cases counterfeit sites are easily distinguished. First, many sites
8 specifically self-identify their sites as offerors of “replica” merchandise. Second, many sites offer
9 a range of merchandise inconsistent with the more limited range of product offered by sellers in the
10 secondary market. Third, counterfeiters identify products in ways which distinguish their product
11 from legitimate merchandise. Finally, the price point of legitimate Louis Vuitton merchandise,
12 combined with strict control over distribution which effectively eliminates any significant
13 discounting of legitimate merchandise all aid me in confirming counterfeit offers online.

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16 6. Over my years of managing Louis Vuitton’s online enforcement efforts, during
17 which time I have analyzed product purchased from several hundred websites each year, I have
18 never obtained legitimate product from a website where my initial determination was that the
19 offered product was counterfeit.

20
21 7. As a general rule, Louis Vuitton strives to secure voluntary compliance with its
22 trademarks rights and the trademark laws through the service of cease and desist letters. In every
23 case, before a demand letter is transmitted, I insure that Louis Vuitton’s file includes evidence of
24 the infringing offer, specifically including contemporaneous printouts from the website evidencing
25 at least some of the offers which are the subject of Louis Vuitton’s demands.

26 8. Each cease and desist letter is followed by a letter to the internet service provider
27 (“ISP”) which acts as host of the website offering counterfeit Louis Vuitton merchandise. In most
28

1 cases, demand letters sent to ISPs are sent to enforce both Louis Vuitton's trademark rights and
2 copyrights. In few cases, where only Louis Vuitton's trademark rights are concerned, I transmit
3 such letters in the form of notices called for under the Digital Millennium Copyright Act
4 ("DMCA"). In my experience, responsible ISPs are familiar with the standards and requirements
5 imposed by the DMCA and are more likely to remove infringing offers where Louis Vuitton's
6 demand addressed to the ISP are framed in the familiar format of a DMCA notice. Before sending
7 a demand to an ISP, I ping the website to confirm the Internet Protocol ("IP") address of the
8 website and I research the Internet, using widely accessible online records to identify the ISP to
9 which the IP address was assigned. I insure that Louis Vuitton's files include records of those
10 additional investigative steps before sending a demand to an ISP.
11

12
13 9. The initial demand to an ISP is transmitted usually by email and, if Louis Vuitton
14 does not receive a satisfactory response within a one to two week time frame or confirm that the
15 counterfeit offers have been deleted, a follow up is sent. The follow up refers to the initial demand,
16 includes a copy of the initial demand and is transmitted by messenger service or by some method
17 intended to confirm receipt of the demand at the address to which the demand has been sent. I rely
18 upon online records to find the address to which demands are sent, specifically including "Contact
19 Me" pages for the ISP and, more importantly, the agent for service filing under the DMCA with the
20 United States Copyright Office.
21

22 10. My office sends hundreds of DMCA notices to ISPs based in the United States each
23 year and the vast majority of these notices result in an immediate disabling of the counterfeit offers
24 which the subject of the DMCA notice.

25 11. During the second half of 2006, I began to notice a pattern where counterfeit offers
26 were not removed, even in response to follow up demands. Upon closer examination it appeared
27 that most of these demands were addressed to the Defendants. In connection with that examination
28

1 I noted that (a) neither of the ISP Defendants had filed a notice with the Copyright Office
2 designated an agent for service of DMCA notices, and (b) that one of the ISP Defendants, Managed
3 Solutions Group, Inc. did not maintain a webpage which posted terms of service, acceptable use
4 policy or other document listing policies for handling notices of infringement as required by the
5 DMCA or a "Contact Us" page with appropriate contact information. Consequently, I researched
6 the World Wide Web and noticed several postings of commercial offers by Managed Solutions
7 Group, Inc. designating www.managed.com as the corporate website for Managed Solutions
8 Group, Inc. I then visited the website located at www.managed.com and noted under "Contact Us",
9 that the "corporate offices" were located at 2115 Linwood Avenue 5th Floor, Fort Lee, NJ 07024,
10 while for network administration issues the contact electronic mail address was
11 abuse@webhostplus.com. As a result of (b) I was later informed from discovery in this action, that
12 the New Jersey address to which two demands were sent as detailed below, actually belonged to a
13 different company, Managed, Inc., which was a company "spun" out of Managed Solutions Group,
14 Inc., a defendant in this case, and that the website www.managed.com was simply not updated to
15 reflect the change in corporate structure.

18 12. On or about October 16, 2006, I sent a letter via electronic mail to Managed
19 Solutions Group, Inc., 2115 Linwood Ave 5th Floor, Fort Lee NJ 07024, USA at
20 abuse@webhostplus.com regarding wendy929.net, hosted on IP address 205.209.163.83 registered
21 to Managed Solutions Group, Inc. After receiving no response and confirming that the
22 objectionable material was still viewable, I sent a "reminder" or follow up electronic mail to
23 abuse@webhostplus.com on or about October 25, 2006. In the absence of any kind of response, I
24 noticed that the wendy929.net was moved to a different server with IP address 204.13.69.140,
25 registered to Akanoc Solutions, Inc. I then sent another letter and email on or about October 30,
26 2006, to Akanoc Solutions, Inc. at 45535 Northport loop East, Fremont, CA 94538, USA and
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28

1 abuse@akanoc.com. I never received a response to any of these letters or emails. Two reminder
2 letters were sent, by electronic mail on or about January 17, 2007 to abuse@akanoc.com and by
3 express mail, on January 23, 2007. Again, no response to these letters or emails was received and
4 wendy929.net remained on Akanoc Solutions, Inc.'s server 204.13.69.140 until approximately
5 mid-December 2007.

6
7 13. On or about February 7, 2007, I sent a letter via electronic mail to Managed
8 Solutions Group, Inc., 2115 Linwood Ave 5th Floor, Fort Lee, New Jersey 07024, USA on
9 abuse@webhostplus.com regarding atozbrand.com, hosted on IP address 205.209.140.10 registered
10 to Managed Solutions Group, Inc. After receiving no response and confirming that the
11 objectionable material was still viewable, I sent a follow up "reminder" letter by express mail to
12 Managed Solutions Group Inc at 46750 Fremont Blvd, Fremont, CA 94538, USA on or about
13 February 21, 2007. I never received a response to any of these letters or email. On or about March
14 22, 2007, the express mail carrier DHL returned the February 21, 2007 follow up letter and
15 explained that the package could not be delivered at that location. On or about March 30, 2007, I
16 drafted a new cease and desist letter and sent it by DHL express mail to Managed Solutions Group,
17 Inc., attn: Steve Chen, 45535 Northport Loop East, Fremont, CA 94538. DHL confirmed delivery
18 of the letter on April 4, 2007. I received no response whatsoever to this letter but noticed on or
19 about April 7, 2007 that atozbrand.com was moved to a different server with IP address
20 204.16.195.49, registered to Akanoc Solutions, Inc. on which atozbrand.com remained until
21 approximately mid-June 2007.

22
23
24 14. On or about February 9, 2007, I sent a letter via electronic mail to Akanoc Solutions
25 Inc., 45535 Northport Loop East, Fremont, CA 95538, USA on abuse@akanoc.com regarding
26 bag925.com, hosted on IP address 204.16.195.46, registered to Akanoc Solutions, Inc.. After
27 receiving no response and confirming that the objectionable material was still viewable, I sent a
28

1 follow up "reminder" letter by express mail carrier DHL to Akanoc Solutions Inc. 45535 Northport
2 Loop East, Fremont, CA 95538, USA on or about February 19, 2007 (DHL confirmed delivery on
3 March 5, 2007). I never received a response to any of these letter or email, while bag925.com
4 remained on various servers registered to Akanoc Solutions, Inc. until approximately mid-June
5 2007.
6

7 15. On or about October 23, 2006, I sent a letter via electronic mail to Akanoc
8 Solutions, Inc., 45535 Northport Loop East, Fremont, CA 95538 at abuse@akanoc.com regarding
9 eshoes99.com, hosted on IP address 204.16.197.26 , registered to Akanoc Solutions, Inc. After
10 receiving no response and confirming that the objectionable material was still viewable, I sent a
11 follow up email on or about January 17, 2007 to abuse@akanoc.com and a follow up letter on
12 February 6, 2007 by express mail carrier Fedex to Akanoc Solutions, Inc., 45535 Northport Loop
13 East, Fremont, CA 95538. Fedex confirmed delivery on February 8, 2007. On or about February
14 14, 2007, I realized that eshoes99.com had been actually moved to another server with IP address
15 205.209.172.165, registered to Managed Solutions Group, Inc. and decided to send a new cease
16 and desist letter that same day via email to Managed Solutions Group, Inc., 46750 Fremont Blvd.
17 #107, Fremont, CA 94538 at abuse@managedsg-inc.com. After receiving no response and
18 confirming that the objectionable material was still viewable, I sent a follow up letter by express
19 mail carrier DHL to Managed Solutions Group, Inc. at 46750 Fremont Blvd. #107, Fremont, CA
20 94538, USA on or about February 23, 2007. Still without a response or evidence of action, I
21 contacted DHL and was informed by DHL on March 20, 2007 that the package could not be
22 delivered at that location and the follow up letter was returned to me on or about March 23, 2007. I
23 then sent a new cease and desist letter to Managed Solutions Group, Inc., Steve Chen, 45535
24 Northport Loop East, Fremont, CA 94538 via express mail carrier DHL on or about March 30,
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1 2007, delivery of which DHL confirmed on April 3, 2007. I never received a response to any of
2 these letters or email.

3 16. On or about February 21, 2007, I sent a letter via electronic mail to Akanoc
4 Solutions Inc., 45535 Northport Loop East, Fremont, CA 94538, USA at info@akanoc.com
5 regarding ape168.com, hosted on 204.16.197.27 registered to Akanoc Solutions, Inc.. After
6 receiving no response and confirming that the objectionable material was still viewable, I sent a
7 follow up or "reminder" letter by express mail carrier DHL to Akanoc Solutions Inc. at 45535
8 Northport Loop East, Fremont, CA 94538, USA on or about March 19, 2007. DHL confirmed
9 delivery of the letter on March 23, 2007. I never received a response to any of these letter or email.

10 17. I caused further investigation to be made concerning each of the websites which was
11 the subject of the DMCA notices sent to the ISP Defendants, as well as other websites hosted by
12 Defendants in this action and evidentiary purchases were made on behalf of Louis Vuitton by an
13 investigator acting under Louis Vuitton's direction. Each of the purchases was reviewed by me
14 and I have confirmed that each is counterfeit. Pursuant to that investigation and analysis we
15 determined that the ISP defendants operated out of the same premises and that they appeared to be
16 owned and operated by the same individual, the individual defendant Steven Chen. I caused a
17 further written demand to be transmitted to Mr. Chen's attention on or about April 20, 2007, and
18 when that, also, did not result in a disabling of the counterfeit offers, Louis Vuitton filed the
19 present action.

20 18. During the course of the litigation, Louis Vuitton has identified numerous additional
21 websites which now total more than eighty (80) which were hosted by servers controlled by the ISP
22 Defendants and which have each been the subject of subsequent demands to disable the infringing
23 offers. Follow up investigation concerning those demands reveal that, notwithstanding the present
24 litigation, in many cases the infringing offers which were the subject of Louis Vuitton's demands

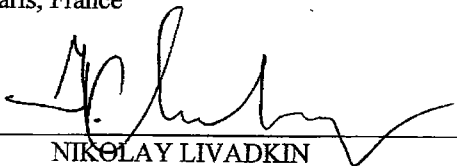
1 remained accessible through the ISP Defendants' servers for several weeks after the initial demand
2 was transmitted.

3 19. Additionally, while investigating the infringing websites, I conducted Reverse IP
4 Searches to determine other websites hosted at the same IP Address of an identified infringing
5 website. Through this process, I reviewed hundreds of websites which also sold counterfeit Louis
6 Vuitton product while hosted by one or another of the Defendants.
7

8 20. All of the counterfeiting activities that Defendants support and allow to continue
9 damage Louis Vuitton's goodwill, undermine the value of its intellectual properties, and affect
10 sales of legitimate product. However, in this instance, and given the difficulty associated with
11 Defendants' lack of information due to "crash", erasure or otherwise, Louis Vuitton seeks to
12 recover statutory damages.
13

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

16 Executed this 30 day of July, 2008, at Paris, France

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NIKOLAY LIVADKIN

EXHIBIT C

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

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**
12

13 LOUIS VUITTON MALLETIER, S.A.,

14
15 Plaintiff,

16 vs.

17
18 AKANOC SOLUTIONS, INC., et al.,

19
20 Defendants.
21

) Case No.: C 07-3952 JW

) Hon. James Ware

) **DEFENDANTS' EVIDENTIARY**
) **OBJECTION TO THE LIVADKIN**
) **DECLARATION IN SUPPORT OF**
) **VUITTON'S OPPOSITION TO**
) **DEFENDANTS' MOTION FOR**
) **SUMMARY JUDGMENT**

) Date: September 8, 2008

) Time: 9:00 a.m.

) Dept.: Courtroom 8, 4th Floor
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1 Plaintiff hereby objects to the Declaration of Nikolay Livadkin (“Livadkin Declaration”)
2 filed in support of Vuitton’s Opposition to Defendants’ Motion for Summary Judgment.

3 Paragraph 2: The statement that “a significant percentage of the overall online counterfeiting
4 activity as it relates to the Louis Vuitton brand originates in the People’s Republic of China” is not
5 relevant to this matter under Fed. R. Evid. 401. This statement must be excluded under Fed. R.
6 Evid. 403 because the minimal probative value of the statement is substantially outweighed by the
7 danger of unfair prejudice.

8 Paragraph 8: Defendants object to statements about undefined “widely accessible online
9 records” as being vague and irrelevant. Defendants object to the extent the statement that Livadkin
10 himself pings the websites conflicts with his prior testimony. Livadkin has previously testified that
11 numerous employees in his office perform such activities (Livadkin Deposition 54:3-5, 71:9-14,
12 101:12-25).

13 Paragraph 12: Statements that wendy929.net was hosted on a particular IP address, moved to
14 a particular IP address, or that wendy929.net remained on a particular IP address for any period of
15 time are inadmissible hearsay under Fed. R. Evid. 801. Any characterization of the website material
16 being “objectionable” is vague and is hearsay because (1) Vuitton has offered no evidence to support
17 this assertion and (2) only someone with knowledge of the accuracy of the contents of a website may
18 authenticate its contents. *See Internet Specialties West, Inc. v. ISPWest*, No. CV 05-3296 FMC
19 AJWX, 2006 WL 4568796, at *2 (C.D. Cal. Sept. 19, 2006).

20 Paragraph 13: Statements that atozbrand.com was hosted on a particular IP address, moved
21 to a particular IP address, or that atozbrand.com remained on a particular IP address for any period
22 of time are inadmissible hearsay under Fed. R. Evid. 801. Any characterization of the website
23 material being “objectionable” is vague and is hearsay because (1) Vuitton has offered no evidence
24 to support this assertion and (2) only someone with knowledge of the accuracy of the contents of a
25 website may authenticate its contents. *See Internet Specialties West, Inc. v. ISPWest*, No. CV 05-
26 3296 FMC AJWX, 2006 WL 4568796, at *2 (C.D. Cal. Sept. 19, 2006).

27 Paragraph 14: Statements that bag925.com was hosted on a particular IP address, moved to a
28 particular IP address, or that bag925.com remained on a particular IP address for any period of time

1 are inadmissible hearsay under Fed. R. Evid. 801. Any characterization of the website material
2 being “objectionable” is vague and is hearsay because (1) Vuitton has offered no evidence to support
3 this assertion and (2) only someone with knowledge of the accuracy of the contents of a website may
4 authenticate its contents. See *Internet Specialties West, Inc. v. ISPWest*, No. CV 05-3296 FMC
5 AJWX, 2006 WL 4568796, at *2 (C.D. Cal. Sept. 19, 2006).

6 Paragraph 15: Statements that eshoes99.com was hosted on a particular IP address, moved to
7 a particular IP address, or that eshoes99.com remained on a particular IP address for any period of
8 time are inadmissible hearsay under Fed. R. Evid. 801. Any characterization of the website material
9 being “objectionable” is vague and is hearsay because (1) Vuitton has offered no evidence to support
10 this assertion and (2) only someone with knowledge of the accuracy of the contents of a website may
11 authenticate its contents. See *Internet Specialties West, Inc. v. ISPWest*, No. CV 05-3296 FMC
12 AJWX, 2006 WL 4568796, at *2 (C.D. Cal. Sept. 19, 2006).

13 Paragraph 16: The statement that ape168.com was hosted on a particular IP address is
14 inadmissible hearsay under Fed. R. Evid. 801. Any characterization of the website material being
15 “objectionable” is vague and is hearsay because (1) Vuitton has offered no evidence to support this
16 assertion and (2) only someone with knowledge of the accuracy of the contents of a website may
17 authenticate its contents. See *Internet Specialties West, Inc. v. ISPWest*, No. CV 05-3296 FMC
18 AJWX, 2006 WL 4568796, at *2 (C.D. Cal. Sept. 19, 2006).

19 Paragraph 17: The statement referencing “websites hosted by Defendants” is a legal
20 conclusion and hearsay under Fed. R. Evid. 801. The reference to “an investigator acting under
21 Louis Vuitton’s direction” is vague and irrelevant because it does not identify the investigator. Any
22 statements referring to what “we” did are vague because “we” is not defined and is hearsay. Any
23 characterization of the website material being “counterfeit” is vague and is hearsay because Vuitton
24 has offered no facts to support this assertion and no evidence this is within the personal knowledge
25 of the witness.

26 Paragraph 18: Any reference to websites “hosted by servers controlled by the ISP
27 defendants” and the statement that offers “remained accessible through the ISP defendants’ servers”
28 are inadmissible hearsay under Fed. R. Evid. 801 and unfounded conclusions.

1 Paragraph 19: Livadkin does not explain what constitutes “Reverse IP Searches” and any
2 references to such searches are hearsay under Fed. R. Evid. 801. The statement that Livadkin
3 “reviewed hundreds of websites which also sold counterfeit Louis Vuitton product while hosted by
4 one or another of Defendants” is an unsubstantiated and improper legal conclusion apparently based
5 on hearsay.

6
7 Dated: August 25, 2008

GAUNTLETT & ASSOCIATES

8
9 By: /s/ James A. Lowe

10 David A. Gauntlett
11 James A. Lowe
12 Brian S. Edwards

13 Attorneys for Defendants Akanoc Solutions,
14 Inc., Managed Solutions Group, Inc., and Steve
15 Chen