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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

LOUIS VUITTON MALLETIER, S.A.,

Plaintiff,

vs.

AKANOC SOLUTIONS, INC., et al.,

Defendants.

) Case No.: C 07-3952 JW (HRL)

)
)
) **DEFENDANTS' REPLY TO VUITTON'S**
) **OPPOSITION TO MOTION IN LIMINE #1**
) **TO EXCLUDE TESTIMONY OF J.**
) **ANDREW COOMBS**
)
)
)

1 **I. COOMBS' LETTERS SHOULD BE EXCLUDED IF COOMBS DOES NOT TESTIFY**

2 Now that Vuitton has agreed that J. Andrew Coombs, Vuitton's lead counsel, will not testify
3 at trial, the Court should exclude all of the letters sent by Coombs in this case because they are
4 inadmissible. This is because the admission of evidence at trial requires authentication under Fed. R.
5 Evid. 901. As the party offering the evidence, Vuitton has the burden of satisfying this
6 authentication requirement. But Vuitton cannot satisfy this burden without Coombs' testimony.

7 Fed. R. Evid. 901(a) requires that Vuitton lay the proper foundation for Coombs' letters
8 before such letters are admitted. ("The requirement of authentication or identification as a condition
9 precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in
10 question is what its proponent claims.")

11 Vuitton attempts to duck the requirement of Rule 901(a) by claiming that Coombs' testimony
12 is not required because "what is relevant is the notice those letters provided." Vuitton has its logic in
13 reverse. In order for these letters to demonstrate notice, they must first be admitted. In order for
14 these letters to be admitted, Vuitton must lay the proper foundation for them. Because Coombs, the
15 only person who can lay the proper foundation, will not testify, any letters that he sent are entirely
16 inadmissible and therefore cannot be used to prove anything.

17 Vuitton's argument that Defendants are somehow estopped from requesting the exclusion of
18 these letters is irrelevant. The identity of the recipient does not change Vuitton's requirements under
19 Fed. R. Evid. 901(a). Simply put, Vuitton cannot lay a proper foundation for Coombs' letters
20 without his testimony.

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1 **II. CONCLUSION**

2 Defendants move the Court to exclude the letters sent by J. Andrew Coombs based on
3 Vuitton's inability to lay the proper foundation for these letters as required by Fed. R. Evid. 901(a).

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5 Dated: March 16, 2009

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