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 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**
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14 LOUIS VUITTON MALLETIER, S.A.,)	Case No.: C 07-3952 JW (HRL)
)	
15 Plaintiff,)	
)	DEFENDANTS' REPLY IN SUPPORT OF
16 vs.)	MOTION IN LIMINE #8 TO REDACT
)	ALL EXHIBIT REFERENCES TO
)	IPCYBERCRIME.COM
)	
18 AKANOC SOLUTIONS, INC., et al.,)	
)	
19 Defendants.)	
)	
20)	

1 **I. REFERENCES TO IPCYBERCRIME SHOULD BE EXCLUDED PURSUANT TO**
2 **FED. R. CIV. P. 403**

3 **A. Vuitton Admits That “Ipcybercrime.com” Has No Probative Value and**
4 **Implicates Criminal Conduct on Defendants’ Part**

5 In its opposition, Vuitton readily admits that references to “ipcybercrime” and
6 “ipcybercrime.com” are not probative of any element of any of Vuitton’s claims and are highly
7 prejudicial. Vuitton goes so far as to admit that **“the name [ipcybercrime.com] implicates**
8 **criminal conduct on the part of those website hosts [Akanoc and MSG].”** (Opp. p. 3:10-11)¹
9 Exclusion pursuant to Rule 403 is appropriate because references to “ipcybercrime” at trial would
10 not be probative of any issue in the case. The complete lack of probative value would be
11 substantially outweighed by the danger of unfair prejudice (the implication that Akanoc and MSG
12 are involved in criminal conduct). The prejudice is “unfair” not only because they are not involved
13 in criminal conduct, but also because prohibiting Vuitton from referencing to “ipcybercrime” at trial
14 would have no impact on Vuitton’s ability to authenticate its exhibits or otherwise prove its case.
15 Vuitton’s opposition does not dispute (or even address) this important point.

16 **B. Exclusion is Proper Under Federal Rules of Evidence, Rule 403**

17 Exclusion is proper under Federal Rules of Evidence, Rule 403 where, as here, the probative
18 value clearly outweighs the danger of unfair prejudice. See *Walker v. NationsBank of Florida N.A.*
19 *53 F3d 1548, 1553 (11th Cir. 1995)* (In a Title VII action, an EEOC determination letter was
20 excluded as unduly prejudicial.) See also *Douglass v. Hustler Magazine, Inc.* 769 F2d 1128, 1135–
21 1136 (7th Cir. 1985) (Vile, offensive or gory photographs excluded where the prejudicial effect
22 would clearly outweigh its probative value); *Grimes v. Employers Mutual Liab. Ins. Co.* 73 FRD
23 607, 610 (D AK 1977) (Films showing plaintiff with daughter and quadriplegic brother served little
24 purpose other than to create sympathy for plaintiff and thus were excludible as unduly prejudicial).

25 Vuitton cites *U.S. v. Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000), but that case simply holds

26 ¹ Vuitton suggests that “Ipcybercrime” is not an inaccurate moniker (and therefore not prejudicial)
27 “insofar as trafficking in counterfeit and piratical goods does constitute a criminal offense.” (Opp. p.
28 3:11-13) But this assumes without any basis that Defendants are guilty of “trafficking in counterfeit
and piratical goods” in this case. It is obviously unfairly prejudicial to proffer evidence that
implicates your opponent is involved in criminal conduct without any basis.

1 that Rule 403 excludes “matter[s] of scant or cumulative probative force, dragged in by the heels for
2 the sake of its prejudicial effect.” That standard is easily met here, where the probative value is non-
3 existent, and the danger of unfair prejudice is extremely high.

4 **II. CONCLUSION**

5 For the foregoing reasons, and those set forth in Defendants’ original brief, the Defendants
6 move the Court to redact any reference to ipcybercrime and ipcybercrime.com on all of Vuitton’s
7 exhibits and in all testimony because the name is unduly prejudicial to Defendants and redaction of
8 this name will not harm Vuitton in any way.

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10 Dated: March 16, 2009

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