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

11 Louis Vuitton Malletier, S.A., )  
12 ) Case No. C 07 3952 JW (HRLx)  
13 Plaintiff, )  
14 v. ) NOTICE AND MOTION FOR  
15 ) MODIFICATION OF ORDER FOR  
16 ) INSPECTION AND SANCTIONS  
Akanoc Solutions, Inc., et al. )  
17 ) Date: May 26, 2009  
18 ) Time: 10:00 a.m.  
19 ) Court: Mag. Judge Howard R. Lloyd  
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TO THE COURT AND TO THE DEFENDANTS:

PLEASE TAKE NOTICE that on May 26, 2009 at 10:00 a.m., or as soon thereafter as the matter may be heard in the Courtroom of the Hon. Howard R. Lloyd, Magistrate Judge for the United States District Court located at the United States District Courthouse, 280 South 1<sup>st</sup> Street, 5<sup>th</sup> Floor, San Jose, California 95113, Plaintiff Louis Vuitton Malletier, S.A. (“Plaintiff” or “Louis Vuitton”) will and hereby does move the Court for an order modifying the Order for Inspection entered March 10, 2009 (“Inspection Protocol”) and for sanctions pursuant to Fed. R. Civ. P. 37.

This motion is based on this Notice of Motion and accompanying Memorandum of Points and Authorities, the Declarations and exhibits filed concurrently herewith, the pleadings, records



1 **INTRODUCTION**

2 **A. Summary of Dispute.**

3 Plaintiff Louis Vuitton Malletier, S.A. (“Louis Vuitton”) brings this Action against  
4 Defendants Akanoc Solutions, Inc., Managed Solutions Group, Inc. and their principal Steven  
5 Chen (collectively “Defendants”) for contributory and vicarious liability for copyright and  
6 trademark infringement. Louis Vuitton alleges Defendants aided counterfeiting of Louis Vuitton  
7 copyrights and trademarks through the provision of Internet website hosting services and the  
8 routing of Internet traffic to third party websites hosted on servers owned, controlled and  
9 maintained by Defendants and despite notice to Defendants of the infringing activity occurring on  
10 those Websites.

11 Defendants have produced no documents evidencing their systematic, willful and ongoing  
12 hosting services for websites offering counterfeit Louis Vuitton merchandise despite the recent  
13 confirmation that they have always had the ability to do so. This is now Louis Vuitton’s third  
14 motion to the Court on Defendants’ (a) initial failure to produce any relevant documents and (b)  
15 refusal to cooperate in the inspection of its own servers on which such infringing activity occurs.  
16 Louis Vuitton requests monetary sanctions in the form of its attorneys’ fees incurred in connection  
17 with these efforts and the expert fees incurred in connection with the inspection made necessary by  
18 Defendants’ obstructionist discovery strategy.

19 **B. Statement of Relevant Facts.**

20 On or about January 3, 2008, Louis Vuitton propounded separate sets of document  
21 production requests to each defendant. Not one printout, traffic log, page of information or bit of  
22 data from any of the servers operated by Defendants was produced in response to Louis Vuitton’s  
23 demands. Although such data may still exist (or be recoverable) Defendants have made no  
24 discernable effort to produce such data. For these reasons, Louis Vuitton filed its motion on March  
25 25, 2008, seeking an order to compel production or, in the alternative, to permit forensic inspection  
26 of a sampling of the servers. Declaration of J. Andrew Coombs (“Coombs Decl.”) at ¶¶ 2-3.

27 In Opposition to the Motion, Defendants asserted (i) that they have no control over the  
28 servers once “leased” to an account; (ii) even where they may have such control where a re-seller

1 ceases to use a particular server, they have no obligation to preserve such data despite this litigation  
2 or to produce it, and (iii) production of the requested material would violate federal privacy  
3 legislation.

4 After oral argument, the Court entered its ruling on July 15, 2008, which read in part:

5 “Based on the foregoing, IT IS ORDERED THAT plaintiff’s motion to  
6 compel is GRANTED as follows:

7 **No later than July 31, 2008**, defendants shall either (1) produce all  
8 responsive publicly posted Internet content evidencing offers made of  
9 counterfeit Louis Vuitton merchandise and traffic logs evidencing the  
10 volume of underlying counterfeit activity, or (2) permit inspection of their  
11 servers to allow plaintiff an opportunity to ascertain the same. The  
12 discovery shall be limited to the 67 allegedly infringing websites identified  
13 by plaintiff. In the event an inspection is held, it shall be conducted  
14 pursuant to an appropriate protocol. The court trusts that the parties  
15 should be able to agree upon a suitable protocol between themselves.  
16 However, if they are not, each side shall submit its proposed protocol for  
17 this court’s consideration and the court shall decide upon the protocol to  
18 be followed.”

19 Defendants produced no documents by the July 31, 2008, deadline specified in the Court’s  
20 Order. At no time have the Defendants identified what, if any steps were taken before that  
21 deadline to comply with that part of the Court’s order.

22 Defendants did file objections to the Court’s order on July 25, 2008. By order dated August  
23 7, 2008, Judge Ware overruled the Defendants’ objections. In so doing, the Judge Ware stated,  
24 among other things:

25 “The Court OVERRULES Defendants’ objection to the Order to Compel.  
26 As directed by Judge Lloyd, the parties shall meet and confer to determine  
27 an appropriate protocol for obtaining the discovery at issue.”

28 Between August 4, 2008 and October 24, 2008, through discussions with Defendants’  
counsel and technical experts, Louis Vuitton attempted to structure a protocol to accomplish the  
inspection ordered by the Court. On or about October 14, 2008, as a result of those efforts, Louis  
Vuitton transmitted a working draft proposed protocol, a copy of which is attached hereto as  
Exhibit D. Thereafter, on October 24, 2008, Defendants objected to the proposed protocol,  
proposed no changes, and despite requests, submitted no “counter” protocol. Coombs Decl. at ¶¶  
5-6.

1 On November 10, 2008, Louis Vuitton filed its administrative motion asking the Court to  
2 order a protocol for inspection of the Defendants’ servers. On March 10, 2009, the Court entered  
3 its Order re Discovery Protocol (“Protocol”) which provides, among other things that an Inspection  
4 shall proceed on the following basis:

- 5 • Plaintiff will initially isolate 5 servers for inspection and will stagger additional  
6 inspections pursuant to the orders of the court.
- 7 • The parties can agree that documents produced will be covered under the  
8 protective order and each party will have 20 days to designate materials as  
9 confidential.
- 10 • Plaintiff’s forensic expert shall make best efforts by whatever means necessary  
11 to extract the discovery authorized by this court – namely, publicly posted  
12 Internet content evidencing offers made of counterfeit Louis Vuitton  
13 merchandise and traffic logs evidencing the volume of underlying counterfeit  
14 activity pertaining the 67 websites identified by plaintiff.

15 Prior to the inspection, Louis Vuitton provided Defendants with a list of problem IP  
16 Addresses to isolate the five servers to be inspected. Coombs Decl. at ¶ 7. To Louis Vuitton’s  
17 surprise, additional IP Addresses were needed because multiple IP Addresses provided initially,  
18 appeared to be contained on the same servers. Id. Apparently multiple problem IP Addresses  
19 belonged to the same “customer.” Furthermore, on March 25, 2009, while isolating the five  
20 servers on site, it appeared that Defendants’ personnel was able to search and identify the IP  
21 Addresses at issue very quickly and it was observed that the same individuals identified in  
22 connection with prior complaints, including those identified in connection with the 67 websites  
23 under the Court’s Order to Compel, were the customers to which at least four of the servers  
24 belonged. Id. at ¶ 8. The updated and user friendly information easily accessed by Defendants’  
25 personnel and observed during the inspection, particularly regarding the histories of the servers,  
26 frustratingly, was never produced by Defendants despite a demonstrated ability to do so. Id.;  
27 Declaration of Joseph T. Murin (“Murin Decl.”) at ¶ 5, Ex. A.

1           The inspection was completed on the morning of March 26, 2009, and copies of data  
2 contained on those servers is currently in possession of forensic experts retained on behalf of Louis  
3 Vuitton. Murin Decl. at ¶¶ 2, 5. It appears from information gathered at the time of the inspection,  
4 in addition to other things, that the servers may contain data pertaining to publicly accessible  
5 website offers of counterfeit Louis Vuitton merchandise located on many more websites than the  
6 67 identified by Louis Vuitton when it filed the underlying motion to compel in March, 2008. *Id.*  
7 at ¶ 7; Coombs Decl. at ¶ 8. This is due, in part, to ongoing hosting activities engaged in by  
8 Defendants to the same individuals responsible for the infringing conduct after the underlying  
9 motion was filed, and, due to incomplete information available to Louis Vuitton based on  
10 Defendants’ systematic and ongoing discovery defaults. Coombs Decl. at ¶¶ 7-8; Murin Decl. at ¶  
11 4, Ex. A. Additional websites have been brought to Defendants’ attention since March 2008, and it  
12 is likely the problems have continued because the “customers” who were the subject of prior  
13 demands have since started to use additional domain names<sup>1</sup>. Coombs Decl. at ¶ 9. Thus, the  
14 underlying scope of the order was inadvertently limited and is properly expanded to include all  
15 traffic logs and publicly available documents concerning all counterfeiting websites engaged in the  
16 infringement of Louis Vuitton’s copyrights and trademarks.

17           Louis Vuitton is informed that the most efficient way to extract the material ordered by the  
18 Court is to conduct a search for Louis Vuitton trademarks and other commonly used words on  
19 counterfeit sites such as “monogram”. Murin Decl. at ¶ 7. However, Defendants object to  
20 production regarding websites beyond those identified by Louis Vuitton when it filed the  
21 underlying motion to compel in March of 2008, over twelve long months ago, thus necessitating  
22 this motion.

23           **C.     Argument.**

24           **a.     The Underlying Order to Compel was Inadvertently Limited Due to**  
25           **Information Louis Vuitton Was Previously Unaware; Its Modification is**  
26           **Proper In Light of New Facts.**

27 \_\_\_\_\_  
28 <sup>1</sup> See Exhibit A filed under seal, and particularly entries dated July 30, 2008, and February 2, 2009,  
within Exhibit A. The information appeared to relate to the same server and the entries  
corresponded to the dates of cease and desist letters from Louis Vuitton. Coombs Decl. at ¶ 9.

1 Louis Vuitton should not be constrained by the limits to discovery identified during oral  
2 argument on its motion to compel one year ago. All traffic logs and publicly accessible data  
3 evidencing offers of counterfeit Louis Vuitton merchandise are relevant, discoverable and  
4 appropriately inspected as part of this case. The underlying order to compel was inadvertently  
5 limited. Louis Vuitton could not have known at the time of the filing of the underlying motion, or  
6 during the oral argument on the motion, that this discovery issue would still exist today, or that the  
7 same kinds of problems would persist with the same “customers” of Defendants. Because  
8 Defendants have continued their claims of feigned impossibility and have done so inappropriately  
9 for the past year, Louis Vuitton seeks modification of the Court’s order as well as monetary  
10 sanctions.

11 During oral argument on April 29, 2008, the Court asked counsel for Louis Vuitton about  
12 the scope of the dispute before it – including whether the production sought was limited to the  
13 websites identified in the discovery propounded. In the interest of facilitating resolution of the  
14 dispute, because this was the scope of the infringing activity then known to Louis Vuitton and,  
15 most significantly, because the proceeding was for a motion to compel production of documents by  
16 Defendants, Louis Vuitton agreed to limit the relief sought to those websites previously identified.  
17 Coombs Decl. at ¶ 3.

18 As noted above, however, Defendants produced no documents notwithstanding the Court’s  
19 order compelling production by not later than July 31. Significantly, Defendants have made no  
20 pretense of their utter failure to even attempt to make such a production, persisting in their  
21 misguided and repeatedly rejected assertion of inapplicable statutory protections under the Stored  
22 Communications Act. There did not appear to be any barrier to the production of information on  
23 Defendants’ servers, or, of Defendants’ own records regarding the complained of material, even if  
24 only in the form of Defendants’ internal database entries reflecting counterfeiting activity on the  
25 servers and IP Addresses at issue. Coombs Decl. at ¶¶ 7-8; Murin Decl. at ¶¶ 3-4.

26 Louis Vuitton has, since the hearing on its motion, identified additional sites hosted by  
27 Defendants which have been the subject of demands to Defendants. There is, accordingly, no  
28 surprise – to Louis Vuitton nor to Defendants – that the servers employed for past illegal infringing

1 activity continued to be used for such activity after the hearing, order, subsequent notifications and,  
2 apparently, even at the time of the long-postponed inspection on March 25, 2009. Coombs Decl. at  
3 ¶¶ 7-8. Moreover, evidence generated at the time to insure the inspection proceeded in a manner  
4 consistent with the Protocol provided further evidence of infringement. Murin Decl. at Ex. A (see  
5 photograph indicating Defendants' own personnel input data apparently acknowledging the server  
6 continued to host more than forty sites after follow up notices to Defendants and more than a year  
7 after this action was filed.).

8 Even though Rule 37 also provides for the ultimate sanction of an entry of default judgment  
9 for willful disregard of court orders or discovery failures, the less harsh modification order  
10 requested by Louis Vuitton is fully supported by the facts of this case, the Court's inherent  
11 sanctioning power, and case law. Chambers v. Nasco, Inc., 501 U.S. 32, 43-44 (1991) (going  
12 further stating "...it is firmly established that "the power to punish for contempts is inherent in all  
13 courts." citing Ex Parte Robinson, 86 U.S. 505, 510 (1873)); NHL Hockey League, et al. v.  
14 Metropolitan Hockey Club, Inc., et al., 427 U.S. 639, 640-43 (1976) (affirming dismissal of case  
15 under Rule 37 when discovery responses not timely filed despite opportunity, and when finally  
16 filed, "grossly inadequate"); U.S. v. Sumitomo Marine & Fire Insurance Company, 617 F.2d 1365,  
17 1370 (9<sup>th</sup> Cir. 1980) (preclusion order even appropriate if "understaffing" was cause of non-  
18 production due to prejudice to other side). An order modifying the Court's inspection protocol to  
19 allow for the discovery of all traffic logs and publicly available information pertaining to websites  
20 counterfeiting Louis Vuitton's intellectual properties is proper in light of Defendants' deliberate  
21 bad faith dealings in the discovery process and purely imagined obstacles that have delayed not  
22 only their production of this highly relevant information, but also the discontinuation of infringing  
23 sales of counterfeit Louis Vuitton product.

24 Defendants understandably seek to prevent discovery of this incriminating evidence that  
25 will show that not only is the material still existing on their servers, but that even one year later,  
26 they are continuing to do business with known infringers. They understand that, in the absence of  
27 any defenses and in view of their ongoing willful conduct aiding and abetting the infringement of  
28 Louis Vuitton's rights, they have no alternative but to continue to obstruct Louis Vuitton's efforts

1 to obtain that evidence which ought, properly, to have been produced by them over one year ago in  
2 response to Louis Vuitton's proper discovery requests. Thus, the Court should grant Louis  
3 Vuitton's request for a modification of the underlying order.

4 **b. Defendants' Conduct is Sanctionable.**

5 Based upon the ease by which Louis Vuitton's retained forensics examiner was able to copy  
6 the information and the observed convenience at which other relevant, previously undisclosed  
7 information was accessed by Defendants' personnel, Louis Vuitton seeks monetary sanctions for  
8 Defendants willful withholding of evidence and fabricated obstacles despite Court orders.  
9 Additionally, Defendants' responses through counsel contradicted what appeared to be more  
10 truthful statements in Defendants' internal database entries regarding continuing infringements.  
11 Compare February 10, 2009, letter in Ex. F with Ex. A. For these reasons, Defendants are properly  
12 sanctioned for the added fees and costs which Louis Vuitton has been obliged to incur  
13 unnecessarily.

14 Fed. R. Civ. P. 37(b) lists appropriate sanctions for a party in noncompliance with a court  
15 order compelling discovery. Defendants have delayed and obstructed the development of relevant  
16 evidence as provided for by a series of orders by this Court, and the requested relief is proper given  
17 that even when a failure to provide discovery is seemingly "innocent...it is fundamental that a  
18 party that does not provide discovery cannot profit from its own failure." Dellums v. Powell, 566  
19 F.2d 231, 235 (D.C. Cir. 1977); see also Sumitomo Marine & Fire Insurance Company, 617 F.2d at  
20 1369 (quoting Dellums). Given the shocking simplicity of the access and review of relevant data  
21 that was observed at Defendants' data center just identifying the servers for inspection, there is no  
22 doubt that Defendants' willfully withheld pertinent information to this litigation in contempt of the  
23 Court's orders and their discovery obligations.

24 The Court's inherent power to sanction also supports an award of fees and costs as this  
25 power is "vested in courts to manage their own affairs as to achieve the orderly and expeditious  
26 disposition of cases." Chambers, 501 U.S. at 43 citing Link v. Wabash R. Co., 370 U.S. 626, 630-  
27 631 (1962). Even though "inherent powers must be exercised with restraint and discretion," a  
28 court is entirely within reason to assess fees when a party has "acted in bad faith, vexatiously,



**DECLARATION OF JOSEPH T. MURIN**

I, Joseph T. Murin, declare as follows:

1. I am currently employed by Guidance Software, Inc. ("Guidance") as a Senior eDiscovery Consultant in the Professional Services Division. I have been employed in this position for the past seven months but have been a forensic consultant with Guidance for over two years. Throughout my tenure at Guidance, I regularly conduct forensic retrieval and examinations of computer hard drives of various sizes and configurations and other data for both criminal and civil matters. In the past year, I have conducted approximately 25 such examinations. Prior to joining Guidance, I was a forensic examiner and investigator for the New Jersey Division of Criminal Justice with the Computer Analysis and Technology Unit for approximately three years. I have multiple certifications from the Federal Bureau of Investigation ("FBI"), have obtained TOP SECRET security clearance, and have previously worked as a task force member in FBI funded and managed digital forensics labs. I hold a Bachelors of Science in Information Technology and am frequently invited to speak and retained to instruct courses on forensic data retrieval and processing all over the world. 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. On or about March 25, 2009, at approximately 10:00 a.m., pursuant to the instruction of Louis Vuitton, I travelled to 55 S. Market Street, San Jose, CA 95113, to copy five servers with two of my colleagues and Ms. Annie Wang, counsel for Louis Vuitton.

3. Once escorted into the data center by an onsite technician who I am informed and believe was named "Srash," I soon learned that the five servers that were the subject of the examination were not set aside. I was informed that a previously agreed upon list of IP Addresses was used to identify the five servers prior to my arrival, so I consulted with Srash and watched him isolate the servers at issue by IP Address using what appeared to be a Windows based internal computer database. Four of the five servers were relatively quickly located and found to be active,

1 or online, using the database. It was later discovered that the fifth server was already offline but  
2 was put aside in another office.

3 4. To ensure that all of the servers are traced, it is my standard protocol to take photos  
4 of the machines and their original locations so that they can be returned to the proper location once  
5 the retrieval is completed. Because the fifth server was brought in from a separate room, I asked  
6 Srash how he knew this last server, that was labeled with a different IP Address, was the last one  
7 on the previously agreed upon list. In response, Srash again conducted a search of the internal  
8 database and found the IP Address on the agreed upon list as an "additional" IP Address to the  
9 listed "Main" IP Address on the physical server. Because this server was unique compared to the  
10 other servers i.e offline, not on a rack, and Srash apparently had trouble locating it, pursuant to my  
11 standard protocol and without prompting from anyone else, I took a series of photographs of the  
12 screen where this information was stated. Attached hereto as Exhibit A are true and correct copies  
13 of the photographs I took of data appearing on the internal database concerning this fifth server.

14 5. The inspection took most of March 25, 2009, and a few hours on March 26, 2009, to  
15 complete. However, all five servers were copied and the copies are currently in the possession of  
16 Guidance.

17 6. I am informed and believe that this inspection is restricted by Court Order to the  
18 production of information of traffic logs as well as publicly available information for 67 specified  
19 websites that were allegedly selling counterfeit Louis Vuitton merchandise.

20 7. Guidance forensic examination software uses a system of keywords or search terms  
21 to automatically search through data file names as well as data itself for relevant information. In  
22 complying with the protocol, the most efficient method, and the method that in my opinion will  
23 yield the highest likelihood of success, is to search keywords such as "LV", "Vuitton" and  
24 additional words that are commonly associated with websites selling counterfeit Louis Vuitton.  
25 Executing this search has a near certainty that additional publicly available information outside of  
26 the 67 specified websites, will be considered a positive result or "hit" by the software. These "hits"  
27 may otherwise be relevant. The software will produce the results of the keyword search by  
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1 location on the drive in list form before any of the underlying data is actually produced or needs to  
2 be reviewed. I anticipate reviewing the search results for this search for "LV", "Vuitton" and  
3 others, and then narrowing the data actually produced to the 67 specified websites in the Court's  
4 Order.

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

7 Executed this 13 day of April, 2009, at Emeryville, California.

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12 JOSEPH T. MURIN  
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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. (“Louis Vuitton”) in an action styled *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., et al.*, and, except as otherwise expressly noted to the contrary, I have personal knowledge of the following facts.

2. On or about January 3, 2008, Louis Vuitton propounded separate sets of document production requests to each defendant. Not one printout, traffic log, page of information or bit of data from any of the servers operated by Defendants was produced in response to Louis Vuitton’s demands. Although such data may still exist (or be recoverable) Defendants have made no discernable effort to produce such data.

3. On March 25, 2008 I caused to be filed Louis Vuitton’s motion to compel production and, in the alternative, to permit inspection of servers operated by Defendants in this matter. On April 29, 2008 I attended the hearing before Magistrate Judge Lloyd on Louis Vuitton’s motion. In the interest of facilitating resolution of the dispute, because this was the scope of the infringing activity then known to Louis Vuitton and, most significantly, because the proceeding was for a motion to compel production of documents by Defendants, Louis Vuitton agreed to limit the relief sought to those websites previously identified. On July 15, 2008, the Court entered its Order compelling production and, in the alternative, ordering inspection of the Defendants’ servers. A copy of that Order is attached hereto as Exhibit B.

4. Defendants produced no documents on or before July 31, 2008. Defendants did file objections to the Exhibit B order. Those objections were overruled by Judge Ware on August 7, 2008. A copy of the Court’s order overruling Defendants’ objections is attached hereto as Exhibit C.

5. On August 4, 2008, having received no documents pursuant to the Exhibit B Order and no order staying its effect, I wrote to Defendants’ counsel of record confirming that no documents were produced and proposing that we move forward in establishing the protocol

1 ordered by the Court. After further correspondence, I met telephonically with Defendants' counsel  
2 and we agreed to involve our respective experts in the process of seeking to establish a protocol in  
3 accordance with the Courts order. An initial conference call was held on August 27, 2008.

4 6. Between August 27, 2008 and September 29, 2008, the Parties continued to  
5 exchange information in an effort to establish the protocol ordered by the Court. On October 14,  
6 2008, I caused to be transmitted a working draft proposed protocol based on the discussion which  
7 had occurred. By letter dated October 24, 2008, Defendants rejected the proposed protocol,  
8 asserted that any proposed inspection was unworkable (apparently on the same grounds rejected by  
9 the Court) and submitted no alternative proposal. By letter dated November 3, 2008, I caused to be  
10 transmitted a follow up, expressly requesting Defendants' proposed protocol but was met with  
11 more claims of impossibility.

12 7. On or about March 10, 2009, the court issued its order on the protocol attached  
13 hereto as Exhibit D, after Plaintiff's request for intervention. Prior to the inspection, my office  
14 provided Defendants' counsel with a list of IP Addresses to isolate the five servers to be inspected  
15 pursuant to the Court's orders. My office was required to supplement that initial list because  
16 multiple IP Addresses initially identified were in fact hosted on the same servers. Attached hereto  
17 as Exhibit E are true and correct copies of the correspondence between counsel regarding the  
18 servers to be inspected.

19 8. I am informed and believe that, on March 25, 2009, while isolating the five servers  
20 on site, Defendants' personnel was able to search and identify the IP Addresses at issue quickly  
21 and the same individuals identified in connection with prior complaints, including those identified  
22 in connection with the 67 websites under the Court's Order to Compel, were the customers to  
23 which at least four of the five servers belonged. This updated hosting data has not been produced  
24 by Defendants despite an apparent ability to do.

25 9. Numerous additional infringing websites outside of the 67 listed in the attachment to  
26 Louis Vuitton's initial request have been the subject of subsequent cease and desist requests to  
27 counsel. Among those include but are not limited to correspondence dated March 31, 2008, April  
28 7, 2008, June 2, 2008, June 20, 2008, June 24, 2008, July 25, 2008, September 19, 2008, January



EXHIBIT A

FILED UNDER SEAL IN ACCORDANCE WITH LOCAL RULE 79-5

**EXHIBIT A**

1 J. Andrew Coombs (SBN 123881)  
2 Annie S. Wang (SBN 243027)  
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10 Attorneys for Plaintiff Louis  
11 Vuitton Malletier, S.A.

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

14	Louis Vuitton Malletier, S.A.,	)	Case No. C 07 3952 JW
15		)	
16	Plaintiff,	)	<b>EXHIBIT A TO PLAINTIFF'S</b>
17		)	<b>NOTICE AND MOTION FOR</b>
18	v.	)	<b>MODIFICATION OF ORDER FOR</b>
19		)	<b>INSPECTION AND SANCTIONS</b>
20	Akanoc Solutions, Inc., et al.	)	
21		)	
22	Defendants.	)	
23	<hr/>		

24 MANUAL FILING NOTIFICATION

25 Regarding: EXHIBIT A to PLAINTIFF'S NOTICE AND MOTION FOR  
26 MODIFICATION OF ORDER FOR INSPECTION AND SANCTIONS.

27 This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's  
28 office.

If you are a participant in this case, this filing will be served in hard-copy shortly.

For information on retrieving this filing directly from the court, please see the court's main web site  
at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

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Item Under Seal

Conformance with the Judicial Conference Privacy Policy (General Order 53).

Other (description): \_\_\_\_\_

\_\_\_\_\_

Dated: April 14, 2009

J. Andrew Coombs, A Professional Corp.

          /s/ J. Andrew Coombs            
By: J. Andrew Coombs  
      Annie S. Wang  
Attorneys for Plaintiff Louis Vuitton Malletier, S.A.

# **EXHIBIT B**

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**\*E-FILED 7/15/2008\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LOUIS VUITTON MALLETIER, S.A.,

No. C07-03952 JW (HRL)

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION TO COMPEL DOCUMENTS**

v.

AKANOC SOLUTIONS, INC., MANAGED  
SOLUTIONS GROUP, INC. STEVEN CHEN  
and DOES 1 THROUGH 10,

**[Re: Docket No. 30]**

Defendants.

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Plaintiff Louis Vuitton Malletier, S.A. moves for an order compelling defendants to produce documents, or alternatively, permitting plaintiff to conduct a forensic examination of a sampling of defendants' servers. Defendants oppose the motion. Upon consideration of the moving and responding papers,<sup>1</sup> as well as the arguments presented, this court grants the motion.

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<sup>1</sup> Defendants object to plaintiff's reply brief and to certain portions of the supporting declaration of plaintiff's counsel, Andrew Coombs. The stated objections are based on one or more of the grounds of relevance, lacking in foundation or personal knowledge, speculation, or hearsay. Defendants argue that plaintiff's reply brief and Coombs' declaration contain new facts and arguments that were not raised in the initial moving papers. However, the court finds that the challenged statements were properly raised in response to arguments that defendants made (apparently for the first time) in their opposition. Moreover, the court finds that defendants had sufficient opportunity to respond to those arguments at the motion hearing. The court appreciated what was relevant and what was not and considered the declaration for what it was worth.

1 Plaintiff sues for alleged trademark and copyright infringement. It claims that  
2 defendants are secondarily liable for infringement because they provide Internet hosting  
3 services for a number of websites that sell counterfeit Louis Vuitton merchandise. Defendants  
4 say that they simply provide access to the Internet by renting Internet Protocol (“IP”) addresses  
5 and Internet bandwidth to third-party resellers and other Internet hosting companies who, in  
6 turn, host individual websites. Defendants further contend that, unless a specific complaint is  
7 brought to their attention, they have no knowledge or control over the contents of websites  
8 hosted on their servers.

9 Plaintiff moves to compel two categories of documents concerning the websites<sup>2</sup> –  
10 namely: (1) publicly posted Internet content evidencing offers made of counterfeit Louis  
11 Vuitton merchandise on the websites; and (2) traffic logs that evidence the volume of  
12 underlying counterfeit activity. Plaintiff says that these documents are called for by Request  
13 Nos. 1, 5, 7, 12, 13, 21, 22, 24 and 25.

14 Defendants agreed to produce correspondence and emails sent to them concerning the  
15 websites and any subsequent “take down” notices sent to re-sellers. However, defendants assert  
16 that responsive documents otherwise never existed or are not in their possession, custody or  
17 control. (*See* Lowe Decl., Exs. 1501 and 1502). Apparently for the first time in their  
18 opposition brief, defendants also contend that their production of the requested information  
19 would violate the federal Wiretap Act (18 U.S.C. § 2510, *et seq.*) and the Stored  
20 Communications Act (18 U.S.C. § 2702).

21 **A. Defendants’ General Objections**

22 Preliminarily, plaintiff argues that defendants did not object to any of the specific  
23 requests at issue. Defendants maintain that they properly objected by asserting General  
24 Objections on several grounds, including that the information is protected by the attorney-client  
25

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26  
27 <sup>2</sup> Plaintiff’s requests reportedly defined “website” or “websites” as terms  
28 “refer[ring] to all Internet content hosted by YOU at each of the Interest websites located  
within uniform resource locators or domain names including but not limited to those listed in  
Exhibit A attached hereto.” (Reply at 2 n.1).

1 privilege and the attorney work product doctrine, and that the requests are vague, ambiguous,  
2 overbroad and unduly burdensome. (Lowe Decl., Exs. 1501 and 1502).

3 Grounds for objection to discovery requests must be stated with specificity as to each  
4 request. *See* FED.R.CIV.P. 34(b)(2). This is particularly true with respect to claims of privilege.  
5 *See* FED.R.CIV.P. 26(b)(5)(A). Here, defendants merely asserted a number of boilerplate,  
6 blanket General Objections at the outset of their responses. This practice obscures the extent to  
7 which defendants may be withholding information in response to each request and does not  
8 satisfy the requirement for specificity under Fed. R. Civ. P. 34. Accordingly, this court  
9 concludes that, except as to any objections asserted in response to specific requests, defendants  
10 did not properly object to the requests in question.

#### 11 **B. Publicly Posted Internet Content and Traffic Logs**

12 Defendants initially took the position that they do not deal directly with individual  
13 websites and are therefore unable to produce the requested data. However, they acknowledge  
14 that they own the servers on which the requested information resides; and, Federal Rule of Civil  
15 Procedure 34 requires a party to produce not only documents in its control, but also those in its  
16 possession or custody. FED.R.CIV.P. 34(a)(1).

17 Nonetheless, defendants now contend that, even if they could be said to possess the  
18 requested information, they are prohibited from disclosing it to plaintiff by the federal Wiretap  
19 Act, 18 U.S.C. § 2510, *et seq.*, and the Stored Communications Act, 18 U.S.C. § 2702.

20 Congress passed the Electronic Communications Privacy Act (ECPA) in 1986 to protect  
21 the privacy of electronic communications. *See Konop v. Hawaiian Airlines, Inc.*, 302 F.3d 868,  
22 874 (9th Cir. 2002). “Title I of the ECPA amended the federal Wiretap Act, which previously  
23 addressed only wire and oral communications, to ‘address[] the interception of . . . electronic  
24 communications.’” *Id.* (quoting S. Rep. No. 99-541, at 3 (1986)). “Title II of the ECPA created  
25 the Stored Communications Act (SCA), which was designed to ‘address[] access to stored wire  
26 and electronic communications and transactional records.’” *Id.* (quoting S. Rep. No. 99-541, at  
27 3 (1986)).

28

1 Louis Vuitton’s requested production is not prohibited by the federal Wiretap Act. “The  
2 Wiretap Act makes it an offense to ‘intentionally intercept [] . . . any wire, oral, or electronic  
3 communication.’” *Konop*, 302 F.3d at 876 (quoting 18 U.S.C. § 2511(1)(a)). The Ninth Circuit  
4 has held that, in order for information to be “intercepted” within the meaning of the Wiretap  
5 Act, “it must be acquired during transmission, not while it is in electronic storage.” *Id.* at 878.  
6 Here, plaintiff says that it is not seeking information during transmission and agrees to exclude  
7 any such communications from its requests.

8 Defendants nonetheless maintain that the requested production will cause them to  
9 violate the SCA. “Generally, the SCA prevents ‘providers’ of communication services from  
10 divulging private communications to certain entities and/or individuals.” *Quon v. Arch*  
11 *Wireless Operating Co.*, \_\_\_ F.3d \_\_\_, 2008 WL 2440559 at \*5 (9th Cir., June 18, 2008).  
12 Defendants say that they are prohibited from producing the requested information by SCA  
13 Section 2702(a)(1), which makes it unlawful for a person or entity providing an “electronic  
14 communication service” to the public to “knowingly divulge to any person or entity the contents  
15 of a communication while in electronic storage by that service.” 18 U.S.C. § 2702(a)(1).  
16 Defendants have provided few details about how their business operates or the nature of their  
17 relationship with their customers; and, the little information that has been is very generalized.

18 However, the cases cited by defendants concern the disclosure of the contents of email  
19 messages, personal text messages, private messages posted for a limited number of subscribers  
20 on a secure website, and the like. Here, by contrast, plaintiff seeks information – publicly  
21 posted content evidencing offers of counterfeit Louis Vuitton merchandise – that was broadcast  
22 on publicly accessible websites to the public at large. “The legislative history and the statutory  
23 structure [of the ECPA] clearly show that Congress did not intend to criminalize or create civil  
24 liability for acts of individuals who ‘intercept’ or ‘access’ communications that are otherwise  
25 readily accessible by the general public.” *Snow v. Directv, Inc.*, 450 F.3d 1314, 1320-21 (11th  
26 Cir. 2006). Nor is there anything in the record presented to indicate that the requested server  
27 logs, which reflect the volume of traffic to the allegedly infringing websites, contain the  
28

1 contents of any communications. Even if they did, plaintiff indicates that it is willing to accept  
2 a redacted production that excludes such communications.

3 Although defendants assert that they have no ability to access the content on their own  
4 servers, they acknowledged at oral argument that such access is technologically feasible.<sup>3</sup> It  
5 was further suggested at the hearing that defendants control the router that directs traffic to the  
6 assigned IP addresses – an assertion which defendants did not deny. And, the record presented  
7 suggests that they have the ability to conduct searches of some kind. (*See* Coombs Suppl.  
8 Decl., ¶¶ 5-6, Exs. A and B).<sup>4</sup>

9 Defendants argue that the requested discovery is unduly burdensome because they claim  
10 that the requests, as drafted, call for information from potentially thousands of websites. (*Opp.*  
11 at p. 2, n.2). However, plaintiff indicates that it is willing to limit the discovery to 67 websites  
12 that it has identified as selling allegedly counterfeit Louis Vuitton merchandise. (*See* Reply,  
13 Ex. B). As such, this court finds that the discovery is reasonably tailored and that any burden  
14 that may be imposed is not undue.

15 Based on the foregoing, IT IS ORDERED THAT plaintiff’s motion to compel is  
16 GRANTED as follows:

17 **No later than July 31, 2008**, defendants shall either (1) produce all responsive publicly  
18 posted Internet content evidencing offers made of counterfeit Louis Vuitton merchandise and  
19 traffic logs evidencing the volume of underlying counterfeit activity, or (2) permit inspection of  
20 their servers to allow plaintiff an opportunity to ascertain the same. The discovery shall be  
21 limited to the 67 allegedly infringing websites identified by plaintiff. In the event an inspection

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22 <sup>3</sup> Defendants say that they give password control to their customers.  
23 Nevertheless, at the motion hearing, defendants also confirmed that their servers rotate in and  
24 out of use, that defendants initially assign passwords to their clients, and that defendants also  
re-set passwords when servers have been “returned” or “abandoned.”

25 <sup>4</sup> Plaintiff acknowledges that Mr. Coombs’ supplemental declaration was not  
26 submitted in compliance with the court’s Civil Local Rules. *See* Civ. L.R. 7-3(d).  
27 Nevertheless, the key issues in dispute were only raised by defendants for the first time in  
28 their opposition brief; and, given the nature of the parties’ dispute, this court found that  
resolution of the instant dispute was aided by more information, not less. Moreover, at the  
motion hearing, each side had ample opportunity to address all issues raised in the papers.  
Accordingly, this court has exercised its discretion and considered the belated declaration.  
However, plaintiff is admonished to comply with the court’s rules on all future filings.

1 is held, it shall be conducted pursuant to an appropriate protocol. The court trusts that the  
2 parties should be able to agree upon a suitable protocol between themselves. However, if they  
3 are not, each side shall submit its proposed protocol for this court's consideration and the court  
4 shall decide upon the protocol to be followed.

5 Dated: July 15, 2008

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8 HOWARD R. LLOYD  
9 UNITED STATES MAGISTRATE JUDGE  
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1 **5:07-cv-3952 Notice has been electronically mailed to:**

2 J. Andrew Coombs andy@coombsp.com, jeremy@coombsp.com

3 James A. Lowe info@gauntlettlaw.com, arm@gauntlettlaw.com, bse@gauntlettlaw.com,  
4 jal@gauntlettlaw.com, pam@gauntlettlaw.com

5 Annie S Wang annie@coombsp.com, andy@coombsp.com

6 **Counsel are responsible for distributing copies of this document to co-counsel who have**  
7 **not registered for e-filing under the court's CM/ECF program.**

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# **EXHIBIT C**

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

Louis Vuitton Malletier, S.A.,  
Plaintiff,  
v.  
Akanoc Solutions, Inc., et al.,  
Defendants.

NO. C 07-03952 JW

**ORDER OVERRULING DEFENDANTS’  
OBJECTION TO THE MAGISTRATE  
JUDGE’S ORDER COMPELLING  
PRODUCTION OF DOCUMENTS**

**I. INTRODUCTION**

Luis Vuitton Malletier, S.A. (“Plaintiff”) brings this action against Akonoc Solutions, Managed Solutions Group, and Steven Chen (collectively, “Defendants”), alleging contributory and vicarious trademark and copyright infringement. Defendants are internet service providers who host third-party websites on their servers. Plaintiff alleges that Defendants have knowingly facilitated the sale of counterfeit products through their hosting of web sites that sell such goods. (See Amended Complaint for Contributory and Vicarious Trademark Infringement, Docket Item No. 71.)

A discovery dispute arose concerning Plaintiff’s request for information stored on Defendants’ servers. On July 15, 2008, Magistrate Judge Lloyd granted Plaintiff’s motion to compel. (hereafter, “Order to Compel,” Docket Item No. 65.) Judge Lloyd ordered Defendants to “produce all responsive publicly posted Internet content evidencing offers made of counterfeit Louis Vuitton merchandise and traffic logs evidencing the volume of underlying counterfeit activity....The discovery shall be limited to the 67 allegedly infringing websites identified by plaintiff.” (Id. at 5.)

1 Presently before the Court is Defendants’ objection to the order to compel. (hereafter,  
2 “Objection,” Docket Item No. 69.)

3 **II. DISCUSSION**

4 Defendants object to the order on the grounds that: (1) disclosing information stored by  
5 third-parties would violate the Stored Communications Act (“SCA”) 18, U.S.C. § 2702; and (2)  
6 producing the contents requested is impossible. (Objection at 1, 9.)

7 A district court reviews a magistrate judge’s ruling under the “clearly erroneous” or  
8 “contrary to law” standard. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Bahn v. NME  
9 Hospitals, Inc., 929 F.2d 1404, 1414 (9th Cir. 1991).

10 The Court considers each issue in turn.

11 **A. Stored Communications Act**

12 Defendants contend that Judge Lloyd erred by ordering discovery that would require them to  
13 violate the SCA. (Objection at 1.)

14 The SCA “prevents ‘providers’ of communication services from divulging private  
15 communication to certain entities and/or individuals.” Quon v. Arch Wireless Operating Co.,  
16 —F.3d—, 2008 WL 2440559 at \*5 (9th Cir., June 18, 2008). However, the SCA does not  
17 “criminalize or create civil liability for acts of individuals who ‘intercept’ or ‘access’  
18 communications that are otherwise readily accessible by the general public.” Snow v. Directv, Inc.,  
19 450 F.3d 1314, 1320-21 (11th Cir. 2006).

20 Defendants contend that the discovery sought violates the SCA because it requires them to  
21 disclose private information belonging to third-parties. (Objection at 3.) Defendants’ contention  
22 blatantly misrepresents Judge Lloyd’s order. Judge Lloyd specifically limited his order to all  
23 “publicly posted Internet content.” (Order to Compel at 5.) Defendants are not required to disclose  
24 private information stored on their computers; they are only required to disclose information that the  
25 third-parties have made available to the public. Accordingly, the Court finds that the Order to  
26 Compel does not violate the SCA.

1 **B. Compliance**

2 Defendants contend that they cannot comply with the Order to Compel because (1) they do  
3 not have access to the password protected content and (2) they have approximately 1500 servers,  
4 which make any search unduly burdensome. (Objection at 9.)

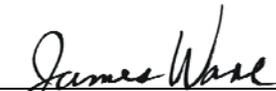
5 First, as discussed above, the discovery is limited to publicly available contents. Defendants  
6 have offered no evidence to suggest that they cannot produce publicly available contents without  
7 accessing password protected contents. Second, although Defendants claim they have more than  
8 1500 servers, discovery is limited to 67 specific web sites. (Order to Compel at 5.) Defendants have  
9 offered no evidence to suggest that they cannot narrow the number of servers on which responsive  
10 contents might exist based on these 67 specific web sites and their own business records.

11 Accordingly, the Court finds Defendants have not shown that the discovery sought is unduly  
12 burdensome.

13 **III. CONCLUSION**

14 The Court OVERRULES Defendants' objection to the Order to Compel. As directed by  
15 Judge Lloyd, the parties shall meet and confer to determine an appropriate protocol for obtaining the  
16 discovery at issue. All other discovery disputes are referred to Judge Lloyd.

17  
18 Dated: August 7, 2008

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Annie S Wang annie@coombspc.com  
3 Brian S. Edwards bse@gauntlettlaw.com  
4 David A. Gauntlett info@gauntlettlaw.com  
5 J. Andrew Coombs andy@coombspc.com  
6 James A. Lowe info@gauntlettlaw.com

7

8 **Dated: August 7, 2008**

**Richard W. Wieking, Clerk**

9

**By: /s/ JW Chambers**  
**Elizabeth Garcia**  
**Courtroom Deputy**

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# **EXHIBIT D**

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**\*E-FILED 3/10/2009\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LOUIS VUITTON MALLETIER, S.A.,

No. C07-03952 JW (HRL)

Plaintiff,

**ORDER RE DISCOVERY PROTOCOL**

v.

AKANOC SOLUTIONS, INC., MANAGED  
SOLUTIONS GROUP, INC. STEVEN CHEN  
and DOES 1 THROUGH 10,

**[Re: Docket No. 94]**

Defendants.

\_\_\_\_\_ /

This is an action for alleged trademark and copyright infringement. Plaintiff claims that defendants are secondarily liable for infringement because they provide Internet hosting services for a number of websites that sell counterfeit Louis Vuitton merchandise. Defendants say that they simply provide access to the Internet by renting Internet Protocol (“IP”) addresses and Internet bandwidth to third-party resellers and other Internet hosting companies who, in turn, host individual websites. Defendants further contend that, unless a specific complaint is brought to their attention, they have no knowledge or control over the contents of websites hosted on their servers.

This court previously granted plaintiff’s motion to compel and ordered defendants to “(1) produce all responsive publicly posted Internet content evidencing offers made of counterfeit Louis Vuitton merchandise and traffic logs evidencing the volume of underlying

1 counterfeit activity, or (2) permit inspection of their servers to allow plaintiff an opportunity to  
2 ascertain the same.” (Order, Docket No. 65 at 5). Discovery was limited to the 67 allegedly  
3 infringing websites identified by plaintiff. (Id.). In the event plaintiff proceeded with an  
4 inspection, the parties were directed to meet-and-confer to agree upon an appropriate protocol.  
5 (Id. at 5-6). Defendants’ objections to that discovery order were overruled by the presiding  
6 judge. (Order, Docket No. 76).

7 Plaintiff says that defendants have produced no documents, and the parties advise that  
8 they have not been able to agree on a protocol for an inspection of defendants’ servers. Now  
9 before this court is plaintiff’s “Administrative Motion re Discovery Orders.”<sup>1</sup> Plaintiff advises  
10 that the parties have resolved the dispute over payment of Mr. Livadkin’s travel expenses, and  
11 that portion of plaintiff’s motion has been withdrawn. Thus, the only remaining issues in  
12 dispute are an appropriate protocol for the inspection of defendants’ servers and whether  
13 discovery sanctions should be imposed. Specifically, the parties seek this court’s guidance on  
14 two issues:

- 15 (1) the amount and nature of the advance notice (if any) to be given to defendants’  
16 customers re the inspection; and
- 17 (2) how to search for and produce publicly posted Internet content evidencing offers  
18 made of counterfeit Louis Vuitton merchandise.<sup>2</sup>

19 Plaintiff requests that, if the court concludes that data cannot be made available as a result of  
20 defendants’ conduct in discovery, then the court should impose sanctions – i.e., either by  
21 deeming facts admitted or admitting alternate forms of evidence in support of plaintiff’s  
22 allegations.

23

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25 <sup>1</sup> Defendants contend that plaintiff’s motion was improperly brought as one  
26 seeking “administrative” relief. Indeed, plaintiff’s motion seeks relief well beyond  
administrative matters falling within the ambit of Civil Local Rule 7-11.

27 <sup>2</sup> This court does not understand the portion of its July 15, 2008 discovery order  
28 requiring the production of traffic logs to be cabined by the phrase “publicly available.” As  
such, it assumes that ordered production of traffic logs is not implicated in the instant  
dispute.

1           Upon consideration of the moving and responding papers, and after weighing competing  
2 legitimate interests and possible prejudice, this court rules as follows:

3           The primary issue in dispute is whether plaintiff's proposed protocol properly can  
4 accomplish what the court has ordered – i.e., production of publicly posted Internet content  
5 evidencing offers made of counterfeit Louis Vuitton merchandise (as opposed to contents of  
6 non-public communications). Apparently, the current (and ongoing) stumbling block to this  
7 discovery is that defendants continue to insist that producing the ordered material is impossible.  
8 Defense counsel says that he spoke to various forensic experts who reportedly told him that they  
9 did not know of a way to conduct a server search that “distinguishes between private  
10 information and publically [sic] available contents stored on Defendants' Internet servers.” (Lai  
11 Decl., ¶ 6). Defendant, however, has not provided this court with any expert declarations to aid  
12 in the determination of this motion, and defense counsel's hearsay pronouncements about the  
13 opinions of unnamed individuals ring hollow. Also, defendants have provided precious little  
14 information about their systems, how they work, or what an inspection of their servers would  
15 entail. Instead, defendants simply maintain (without proof) that any proposed inspection will be  
16 unworkable and offer no alternative – except to say that this court should conduct an *in camera*  
17 review of any server contents extracted by a forensic expert to figure it out – without indicating  
18 what this court would look for or how it would even make the determination. Plaintiff has not  
19 said that its forensic expert cannot conduct the inspection so as to distinguish between what is  
20 public and what is not; and, this court believes that an expert is in the best position to locate and  
21 identify public information.

22           As for the dispute over the advance notice to be given to defendants' customers, plaintiff  
23 shall give 24-hours notice. However, this court is unpersuaded that defendants' desire to inform  
24 their customers of the reason for the inspection outweighs plaintiff's interest in obtaining any  
25 evidence of counterfeiting activity.

26           Accordingly, this court adopts plaintiff's proposed protocol, with some modification:

- 27           1.       Plaintiff shall provide 24-hours notice as to the servers to be inspected.  
28

- 1           2.       Defendants may not “tip off” or otherwise suggest to their customers the purpose
- 2                   of the inspection other than to state, after plaintiff has provided notice
- 3                   identifying a specific server, that “service may be disrupted on [a specified
- 4                   date]” as to the identified server only.
- 5           3.       Plaintiff will initially isolate 5 servers for inspection and will stagger additional
- 6                   inspections pursuant to the orders of the court.
- 7           4.       Plaintiff’s forensic expert (and its personnel) shall sign Exhibit A to the
- 8                   Protective Order as necessary.
- 9           5.       The parties can agree that documents produced will be covered under the
- 10                  protective order and each party will have 20 days to designate material as
- 11                  confidential.
- 12           6.       Plaintiff’s forensic expert will go to defendants’ premises where at least one
- 13                  technical person on defendants’ side will be present should any questions arise.
- 14           7.       Plaintiff’s forensic expert shall make best efforts by whatever means necessary
- 15                  to extract the discovery authorized by this court – namely, publicly posted
- 16                  Internet content evidencing offers made of counterfeit Louis Vuitton
- 17                  merchandise and traffic logs evidencing the volume of underlying counterfeit
- 18                  activity pertaining to the 67 websites identified by plaintiff.
- 19           8.       Plaintiff’s forensic expert will provide copies of results to plaintiff.
- 20           9.       Plaintiff’s counsel will send digital copies to defense counsel.
- 21           10.      The inspection shall take place without delay.
- 22           11.      The parties will cooperate with each other in this process.

23           On the record presented, this court cannot determine whether evidentiary sanctions  
24 properly may be imposed. Accordingly, that portion of plaintiff’s motion is denied without  
25 prejudice.

1 SO ORDERED.

2 Dated: March 10, 2009

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5 HOWARD R. LLOYD  
6 UNITED STATES MAGISTRATE JUDGE  
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1 **5:07-cv-3952 Notice has been electronically mailed to:**

2 Annie S Wang annie@coombsp.com, andy@coombsp.com

3 Brian S. Edwards bse@gauntletlaw.com

4 David A. Gauntlett info@gauntletlaw.com

5 J. Andrew Coombs andy@coombsp.com, jeremy@coombsp.com, katrina@coombsp.com

6 James A. Lowe info@gauntletlaw.com, ams@gauntletlaw.com, arm@gauntletlaw.com,  
7 bse@gauntletlaw.com, jal@gauntletlaw.com, pam@gauntletlaw.com

8 **Counsel are responsible for distributing copies of this document to co-counsel who have**  
9 **not registered for e-filing under the court's CM/ECF program.**

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# **EXHIBIT E**

**Annie Wang**

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**From:** Christopher Lai [CL@gauntlettlaw.com]  
**Sent:** Tuesday, March 24, 2009 12:38 PM  
**To:** Annie Wang  
**Cc:** Lowe, James A.; Murray, Peggy A.; Andy Coombs  
**Subject:** RE: LV v. Akanoc- Inspection, 10562.002

Annie,

The fifth server (205.209.177.131) will be available for inspection tomorrow.

Chris

---

**From:** Annie Wang [mailto:annie@coombsp.com]  
**Sent:** Tuesday, March 24, 2009 11:15 AM  
**To:** Christopher Lai  
**Cc:** Lowe, James A.; Murray, Peggy A.; 'Andy Coombs'  
**Subject:** RE: LV v. Akanoc- Inspection, 10562.002

Chris,

Thanks for your email. I trust we should be able to start on time for those 4 at least tomorrow morning.

Re the fifth server, can we look at the server for 205.209.177.131 from January 2009? Let me know.

Thanks,  
Annie

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**From:** Christopher Lai [mailto:CL@gauntlettlaw.com]  
**Sent:** Tuesday, March 24, 2009 10:59 AM  
**To:** Annie Wang  
**Cc:** Lowe, James A.; Murray, Peggy A.; Andy Coombs  
**Subject:** RE: LV v. Akanoc- Inspection, 10562.002

Annie,

The IP addresses noticed encompass 4 servers as follows:

- (1) 208.77.46.40 and 208.77.46.42 are all on the same server
- (2) 205.209.136.83
- (3) 205.209.139.107 and 205.209.137.51 and 205.209.137.52 and 205.209.137.55 are all on the same server
- (4) 205.209.164.69

Christopher Lai, Esq.  
Gauntlett & Associates  
Tel: (949) 553-1010 ext. 256  
Fax: (949) 553-2050  
Email: [CL@gauntlettlaw.com](mailto:CL@gauntlettlaw.com)  
Web: [www.gauntlettlaw.com](http://www.gauntlettlaw.com)

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**From:** Annie Wang [mailto:annie@coombspc.com]  
**Sent:** Tuesday, March 24, 2009 9:35 AM  
**To:** Christopher Lai  
**Cc:** Lowe, James A.; Murray, Peggy A.; 'Andy Coombs'  
**Subject:** LV v. Akanoc- Inspection

Chris,

Please see the below list of IP Addresses. We would expect to inspect the servers that are currently using these IP Addresses. If the ones listed in 5) are not on the same server, please use 6) as our fifth server. If any of these are on the same server so that we actually have less than 5 servers identified, please let us know ASAP.

- 1) 208.77.46.40
- 2) 208.77.46.42
- 3) 205.209.136.83
- 4) 205.209.139.107
- 5) 205.209.137.51/205.209.137.52/205.209.137.55 (only if on the same server)
- 6) 205.209.164.69

If there are any issues, let me know as soon as possible in light of the 24 hour generic notice contemplated in Magistrate Judge Lloyd's order.

Thanks,  
Annie

**Annie S. Wang**  
Law Offices of J. Andrew Coombs, A P.C.  
517 East Wilson Avenue, Suite 202  
Glendale, California 91206  
Telephone: (818) 500-3200  
Facsimile: (818) 500-3201  
Email: [annie@coombspc.com](mailto:annie@coombspc.com)

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# **EXHIBIT F**

LAW OFFICES  
**J. ANDREW COOMBS**  
A PROFESSIONAL CORPORATION  
517 EAST WILSON AVENUE, SUITE 202  
GLENDALE, CALIFORNIA 91206-5902  
TELEPHONE (818) 500-3200  
FACSIMILE (818) 500-3201

January 30, 2009

**Via E-Mail and**  
**First Class Mail**

*jal@gauntlettlaw.com*

James A. Lowe, Esq.  
Gauntlett & Associates  
18400 Von Karman, Suite 300  
Irvine, California 92612

**Re: Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., et al. –  
Additional and Recidivist Infringing Sites**

Dear Mr. Lowe:

I write regarding the continuing infringement of intellectual property rights owned by Louis Vuitton Malletier, S.A. (“Louis Vuitton”) using servers and routing services supplied by your clients, Akanoc Solutions, Inc. and/or Managed Solutions Group, Inc. (“Defendants”). In keeping with your past statements on behalf of Defendants, we are sending this request to your attention. In view of your recent comments stating a preference that these notifications be made in the form specified in the Digital Millennium Copyright Act, we request that Defendants take immediate action to disable access to the below websites (collectively the “Websites”) hosted at the referenced IP addresses.

I certify under penalty of perjury that I am authorized to act on behalf of Louis Vuitton, the owner of exclusive rights that have been infringed on pages appearing on the Websites identified below. I am sending this notification on the basis of a good faith belief that the Websites are involved in the distribution of infringing material that is not authorized by Louis Vuitton, its agents or the law, which specifically infringes the properties specifically listed in the First Amended Complaint.

Please act expeditiously to remove or disable access to the infringing materials which can be found at the following links, among others:

66773388.com	205.209.136.234
2008allshoes.com	205.209.177.131

Mr. James A Lowe, Esq.  
January 30, 2009  
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aileapparelonline.com	205.209.177.131
alijordan.com	205.209.177.131
bapedirect.com	204.13.64.179
bapesky.com	204.13.64.179
bestgoods4u.com	205.209.177.131
bigworldshoes.com	205.209.161.43
bizwto.com	205.209.177.131
chinabizshop.com	205.209.177.131
cicitrade.com	208.77.46.190
cn2009.com	205.209.157.159
cnlv.us	205.209.177.131
cn-nike.us	208.77.46.190
cocotrade.com	205.209.177.131
copy-offer.com	205.209.177.131
copytransfer.com	205.209.177.131
cxdtrade.com	205.209.177.131
dadidatrade.com	208.77.47.171
dreamyshoes.com	204.16.198.150
ebaytra.com	205.209.177.131
ec21china.com	205.209.177.131
ec21copy.com	205.209.177.131
ecvvcn.com	205.209.177.131
electricvip.com	205.209.177.131
equaldeal.com	204.13.64.130
eshoes99.net	204.16.192.77
eshoesbiz.com	205.209.177.131
fashionholland.com	205.209.172.211
gift-pop.com	208.77.46.190
globwholesale.com	208.77.47.173
guangruntrade.com	204.13.67.152
itemscatalog.com	208.77.46.195
joinustrade.com	204.13.67.152
jordanaf1.com	205.209.177.131
kickaaa.com	205.209.177.131
kneagle.com	205.209.177.131
lg668.com	204.13.67.152
look9good.com	204.13.67.152

maike998.com	205.209.177.131
nikejordan.us	205.209.149.14
nikeme.com	208.77.43.165
nikeseller.com	208.77.43.165
nikeshoes888.com	208.77.47.171
nikeshoeshua.com	204.13.67.152
nikeshoesshopping.com	204.13.67.152
niketrading.com	205.209.177.131
nikewto.com	205.209.177.131
popularkicks8.com	205.209.177.131
pro-jordan.com	205.209.136.234
realfashion.us	205.209.177.131
replicabc.com	204.13.67.208
ruimachina.com	205.209.177.131
sellcnshoes.com	205.209.177.131
shoestrade.biz	205.209.137.51
shopping-key.com	204.13.67.152
sndress-trade.com	205.209.177.131
sneaker123.com	205.209.177.131
sportshoesshow.com	205.209.177.131
sportsvendor.biz	205.209.142.218
sunny7shoes.com	208.77.46.190
super99nike.com	205.209.177.131
supplyingshoes.com	205.209.137.52
tophopworld.com	205.209.137.55
trade31.com	205.209.177.131
trade789.com	205.209.177.131
tradeelectron.com	205.209.177.131
tradekey1.com	205.209.177.131
tradewto.com	205.209.177.131
trapkicks.com	205.209.139.107
viciper.com	205.209.177.131
vow-nike.com	205.209.177.131
well-telecom.com	205.209.177.131
wholesale-bn.com	205.209.177.131
wholesaleprice.us	66.79.172.74
wholesalerelectron.com	205.209.177.131

Mr. James A Lowe, Esq.  
January 30, 2009  
Page 4 of 4

xinda-trade.com	204.13.67.152
xinteshoes.com	205.209.177.131
xqmade.com	205.209.177.131
yabertrade.com	205.209.177.131
yournikeshop.com	205.209.177.131

I may be contacted at:

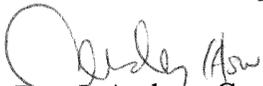
J. Andrew Coombs, A Prof. Corp.  
517 East Wilson Avenue, Suite 202  
Glendale, California 91206  
Telephone: (818) 500-3200  
Facsimile: (818) 500-3201

The foregoing is sent to you as the Internet Service Provider and in the form provided by the Digital Millennium Copyright Act, 17 U.S.C. § 512.

Please provide immediate written confirmation that the Defendants will take immediate steps to disable access to these wholesale offers of counterfeit products using the Defendants' goods and services. The foregoing is without prejudice to Louis Vuitton's rights all of which are expressly reserved.

Very Truly Yours,

J. Andrew Coombs,  
A Professional Corporation



By: J. Andrew Coombs  
Attorney for Louis Vuitton Malletier, S.A.

JAC:bm

LAW OFFICES  
**J. ANDREW COOMBS**  
A PROFESSIONAL CORPORATION  
517 EAST WILSON AVENUE, SUITE 202  
GLENDALE, CALIFORNIA 91206-5902  
TELEPHONE (818) 500-3200  
FACSIMILE (818) 500-3201

February 4, 2009

**Via E-Mail and  
First Class Mail**  
*jal@gauntlettlaw.com*

James A. Lowe, Esq.  
Gauntlett & Associates  
18400 Von Karman, Suite 300  
Irvine, California 92612

**Re: Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., et al. –  
Recidivist Infringing Sites**

Dear Mr. Lowe:

I follow up on my letter dated January 30, 2009. Plaintiff Louis Vuitton Malletier, S.A. (“Louis Vuitton”) is shocked to discover that two years after first providing Defendants Managed Solutions Group, Inc., Akanoc Solutions, Inc. and Steven Chen (collectively “Defendants”) with notice of infringing websites and 18 months after filing suit, websites which have been the subject of prior notifications continue to be the beneficiary of Defendants’ goods and services.

As set forth in greater detail below, seventy-three websites listed in our letter of January 30, 2009 were the subject of prior notifications and, despite such notifications, as of January continued to benefit from Defendants’ routing of Internet traffic and hosting services.

	<b>SITE</b>	<b>URL</b>	<b>IP ADDRESS</b>	<b>NOTIFIED</b>	<b>NOTIFIED</b>
1.	aileapparelonline.com	http://www.aileapparelonline.com	205.209.177.131	1-30-09	7-25-08
2.	alijordan.com	http://www.alijordan.com	205.209.177.131	1-30-09	7-25-08
3.	bapedirect.com	http://www.bapedirect.com	204.13.64.179	1-30-09	9-19-08
4.	bapesky.com	http://www.bapesky.com	204.13.64.179	1-30-09	9-19-08
5.	bestgoods4u.com	http://www.bestgoods4u.com	205.209.177.131	1-30-09	7-25-08
6.	bigworldshoes.com	http://www.bigworldshoes.com	205.209.161.43	1-30-09	11-26-07
7.	bizwto.com	http://www.bizwto.com	205.209.177.131	1-30-09	7-25-08
8.	chinabizshop.com	http://www.chinabizshop.com	205.209.177.131	1-30-09	7-25-08
9.	cicitrade.com	http://www.cicitrade.com	208.77.46.190	1-30-09	7-25-08

10.	cn2009.com	http://www.cn2009.com	205.209.157.159	1-30-09	7-25-08
11.	cnlv.us	http://www.cnlv.us	205.209.177.131	1-30-09	7-25-08
12.	cn-nike.us	http://www.cn-nike.us	208.77.46.190	1-30-09	6-2-2008
13.	cocotrade.com	http://www.cocotrade.com	205.209.177.131	1-30-09	7-25-08
14.	copy-offer.com	http://www.copy-offer.com	205.209.177.131	1-30-09	7-25-08
15.	copytransfer.com	http://www.copytransfer.com	205.209.177.131	1-30-09	7-25-08
16.	cxtrade.com	http://www.cxtrade.com	205.209.177.131	1-30-09	7-25-08
17.	dadidatrade.com	http://www.dadidatrade.com	208.77.47.171	1-30-09	7-25-08
18.	dreamyshoes.com	http://www.dreamyshoes.com	204.16.198.150	1-30-09	11-26-07
19.	ebaytra.com	http://www.ebaytra.com	205.209.177.131	1-30-09	7-25-08
20.	ec2lchina.com	http://www.ec2lchina.com	205.209.177.131	1-30-09	7-25-08
21.	ec2lcopy.com	http://www.ec2lcopy.com	205.209.177.131	1-30-09	7-25-08
22.	ecvvcn.com	http://www.ecvvcn.com	205.209.177.131	1-30-09	7-25-08
23.	electricvip.com	http://www.electricvip.com	205.209.177.131	1-30-09	7-25-08
24.	eshoes99.net	http://www.eshoes99.net	204.16.192.77	1-30-09	4-7-08 / 3-31-08
25.	eshoesbiz.com	http://www.eshoesbiz.com	205.209.177.131	1-30-09	7-25-08
26.	fashionholland.com	http://www.fashionholland.com	205.209.172.211	1-30-09	7-25-08
27.	gift-pop.com	http://www.gift-pop.com	208.77.46.190	1-30-09	7-25-08
28.	guangruntrade.com	http://www.guangruntrade.com	204.13.67.152	1-30-09	7-25-08
29.	joinustrade.com	http://www.joinustrade.com	204.13.67.152	1-30-09	7-25-08
30.	jordanaf1.com	http://www.jordanaf1.com	205.209.177.131	1-30-09	7-25-08
31.	kickaaa.com	http://www.kickaaa.com	205.209.177.131	1-30-09	7-25-08
32.	kneagle.com	http://www.kneagle.com	205.209.177.131	1-30-09	7-25-08
33.	lg668.com	http://www.lg668.com	204.13.67.152	1-30-09	7-25-08
34.	look9good.com	http://www.look9good.com	204.13.67.152	1-30-09	7-25-08
35.	maike998.com	http://www.maike998.com	205.209.177.131	1-30-09	7-25-08
36.	nikejordan.us	http://www.nikejordan.us	205.209.149.14	1-30-09	7-25-08
37.	nikeme.com	http://www.nikeme.com	208.77.43.165	1-30-09	7-25-08
38.	nikeseller.com	http://www.nikeseller.com	208.77.43.165	1-30-09	7-25-08
39.	nikeshoes888.com	http://www.nikeshoes888.com	208.77.47.171	1-30-09	7-25-08
40.	nikeshoeshua.com	http://www.nikeshoeshua.com	204.13.67.152	1-30-09	7-25-08

41.	nikeshoesshopping.com	http://www.nikeshoesshopping.com	204.13.67.152	1-30-09	7-25-08
42.	niketrading.com	http://www.niketrading.com	205.209.177.131	1-30-09	7-25-08
43.	nikewto.com	http://www.nikewto.com	205.209.177.131	1-30-09	3-3-08 / 11-26-07
44.	popularkicks8.com	http://www.popularkicks8.com	205.209.177.131	1-30-09	7-25-08
45.	pro-jordan.com	http://www.pro-jordan.com	205.209.136.234	1-30-09	3-3-08 / 11-26-08
46.	realfashion.us	http://www.realfashion.us	205.209.177.131	1-30-09	7-25-08
47.	replicabc.com	http://www.replicabc.com	204.13.67.208	1-30-09	6-2-2008
48.	ruimachina.com	http://www.ruimachina.com	205.209.177.131	1-30-09	7-25-08
49.	sellcnshoes.com	http://www.sellcnshoes.com	205.209.177.131	1-30-09	7-25-08
50.	shoestrade.biz	http://www.shoestrade.biz	205.209.137.51	1-30-09	7-25-08
51.	shopping-key.com	http://www.shopping-key.com	204.13.67.152	1-30-09	7-25-08
52.	sndress-trade.com	http://www.sndress-trade.com	205.209.177.131	1-30-09	7-25-08
53.	sneaker123.com	http://www.sneaker123.com	205.209.177.131	1-30-09	7-25-08
54.	sportshoesshow.com	http://www.sportshoesshow.com	205.209.177.131	1-30-09	7-25-08
55.	sportsvendor.biz	http://www.sportsvendor.biz	205.209.142.218	1-30-09	6-20-08
56.	sunny7shoes.com	http://www.sunny7shoes.com	208.77.46.190	1-30-09	11-26-07
57.	super99nike.com	http://www.super99nike.com	205.209.177.131	1-30-09	7-25-08
58.	tophopworld.com	http://www.tophopworld.com	205.209.137.55	1-30-09	7-25-08
59.	trade31.com	http://www.trade31.com	205.209.177.131	1-30-09	7-25-08
60.	trade789.com	http://www.trade789.com	205.209.177.131	1-30-09	7-25-08
61.	tradekey1.com	http://www.tradekey1.com	205.209.177.131	1-30-09	7-25-08
62.	tradewto.com	http://www.tradewto.com	205.209.177.131	1-30-09	7-25-08
63.	trapkicks.com	http://www.trapkicks.com	205.209.139.107	1-30-09	7-25-08
64.	viciper.com	http://www.viciper.com	205.209.177.131	1-30-09	7-25-08
65.	vow-nike.com	http://www.vow-nike.com	205.209.177.131	1-30-09	7-25-08
66.	well-telecom.com	http://www.well-telecom.com	205.209.177.131	1-30-09	7-25-08
67.	wholesale-bn.com	http://www.wholesale-bn.com	205.209.177.131	1-30-09	7-25-08
68.	wholesalerelectron.com	http://www.wholesalerelectron.com	205.209.177.131	1-30-09	7-25-08
69.	xinda-trade.com	http://www.xinda-trade.com	204.13.67.152	1-30-09	7-25-08
70.	xinteshoes.com	http://www.xinteshoes.com	205.209.177.131	1-30-09	7-25-08

Mr. James A Lowe, Esq.  
February 4, 2009  
Page 4 of 4

71.	xqmade.com	http://www.xqmade.com	205.209.177.131	1-30-09	7-25-08
72.	yabertrade.com	http://www.yabertrade.com	205.209.177.131	1-30-09	7-25-08
73.	yournikeshop.com	http://www.yournikeshop.com	205.209.177.131	1-30-09	7-25-08

The recurring intentional contribution to the wholesale infringement of Louis Vuitton's rights outlined above must stop (not just interrupt) immediately. If we do not promptly receive Defendants' written assurance to this effect, Louis Vuitton sees no alternative but to seek appropriate injunctive relief. Defendants must act expeditiously to remove the infringing material and, with respect to websites the subject of previous notifications, those websites and corresponding accounts should be permanently banned.

Please insure that the Defendants take all appropriate steps to preserve any and all evidence regarding the websites identified in our letter and the location of those websites using Defendants' servers and services.

The foregoing is without prejudice to Louis Vuitton's rights all of which are expressly reserved.

Very Truly Yours,

J. Andrew Coombs,  
A Professional Corporation

By: J. Andrew Coombs  
Attorney for Louis Vuitton Malletier, S.A.

JAC:bm

**G GAUNTLETT &  
ASSOCIATES**  
ATTORNEYS AT LAW

18400 Von Karman, Suite 300  
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Email: [info@gauntlettlaw.com](mailto:info@gauntlettlaw.com)  
Website: [www.gauntlettlaw.com](http://www.gauntlettlaw.com)

Our File Number:  
10562-002

February 10, 2009

**VIA E-MAIL & U.S. Mail**  
[andy@coombspc.com](mailto:andy@coombspc.com)

J. Andrew Coombs, Esq.  
LAW OFFICES J. ANDREW COOMBS, APC  
517 E. Wilson Avenue, Suite 202  
Glendale, CA 91206-5902

**Re: *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., et al.***  
**U.S.D.C., Northern District of CA, Case No. C07 3952-JW**

- **Response to Your Letters of January 30, 2009 and February 4, 2009**

Dear Mr. Coombs:

We are responding to your letters dated January 30, 2009 and February 4, 2009.

Your January 30, 2009 letter referenced the following 81 websites:

66773388.com	eshoesbiz.com	shopping-key.com
2008allshoes.com	fashionholland.com	sndress-trade.com
aileapparelonline.com	gift-pop.com	sneaker123.com
alijordan.com	globwholesale.com	Sportshoesshow.com
bapedirect.com	guangruntrade.com	sportvendor.biz
bapesky.com	itemscatalog.com	sunny7shoes.com
bestgoods4u.com	joinustrade.com	super99nike.com
bigworldshoes.com	jordanafl	Supplyingshoes.com
bizwto.com	kickaaa.com	tophopworld.com
chinabizshop.com	kneagle.com	trade31.com
cicitrade.com	lg668.com	trade789.com
cn2009.com	look9good.com	tradeelectron.com

cnlv.us	maike998.com	Shoestrade.biz
cn-nike.us	nikejordan.us	tradekey1.com
cocotrade.com	nikeme.com	tradewto.com
copy-offer.com	nikeseller.com	trapkicks.com
copytransfer.com	nikeshoes888.com	viciper.com
cxtrade.com	nikeshoeshua.com	vow-nike.com
dadidatrade.com	nikeshoesshopping.com	well-telecom.com
dreamyshoes.com	niketrading.com	Wholesale-bn.com
Ebaytra.com	nikewto.com	Wholesaleprice.us
ec21china.com	popularkicks8.com	wholesalerelectron.com
ec21copy.com	pro-jordan.com	xinda-trade.com
Ecvvcn.com	reafashion.us	Xinteshoes.com
Electricvip.com	replicabc.com	xqmade.com
equaldeal.com	ruimachina.com	Yabertrade.com
eshoes99.net	sellcnshoes.com	yournikeshop.com

As of February 9, 2009 our clients have not been able to identify any of these websites as using an IP address assigned to Managed Solutions Group, Inc. or Akanoc Solutions, Inc. These websites are either inaccessible or appear to be using IP addresses that are assigned to other unknown parties.

Your February 4, 2009 letter listed 73 websites, all of which were also listed in your January 30, 2009 letter. As of February 9, 2009 all 73 websites are either inaccessible or appear to be using IP addresses that are assigned to other unknown parties.

We also need to correct some comments in your February 4, 2009 letter.

**First**, you characterize the 73 websites listed as “recidivist” because you say they had been the subject of prior notices. But the term “recidivist” implies that these allegedly infringing domains listed in the February 4, 2009 letter are hosted on the same IP addresses as they were at the time of prior notices. This is not true.

Our clients responded quickly to prior complaints and the websites were either made inaccessible or had moved to IP addresses that were assigned to other unknown parties. While Vuitton’s February 4, 2009 letter lists domains that may have been listed on previous complaint letters, Vuitton’s most recent letter alleges *different IP addresses*. We have explained to you on numerous occasions that MSG and Akanoc provide unmanaged Internet services to Internet resellers and do not provide any services to website operators.

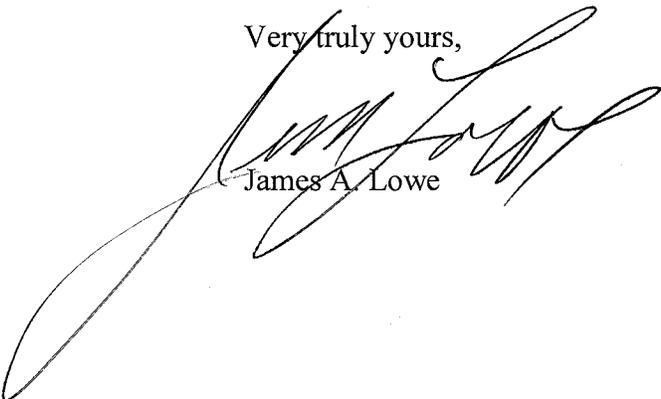
Additionally, our clients do not and cannot control when domains are hosted on their IP addresses because such retail listings are controlled by our clients’ wholesale customers. Even though our clients’ contracts with their wholesale customers prohibit using our services for any improper purpose, it is difficult to prevent the occasional website operator, with whom we have

no contact, from selling products to which your client objects. Further, our clients have no means of knowing if your complaints accurately accuse websites of offering infringing Louis Vuitton merchandise, our clients try to accommodate you and Louis Vuitton by simply requesting the termination of any website usage about which you complain. But this hardly means that our clients know what merchandise is being sold and whether it is really infringing.

Further, because large numbers of websites can be use a single IP address and can move around among different IP addresses provided by many different ISPs, tens of thousands or millions of websites can use some of the approximately 40,000 IP addresses assigned to our clients. Our clients cannot know in advance who may be using their Internet services for improper purposes. MSG and Akanoc, however, act expeditiously to request that allegedly infringing websites be removed by their customers when they receive complaints. We have repeatedly informed you of our clients' regular successful efforts to stop such Internet Service usage.

**Second**, your February 4, 2009 letter lists 41 domains allegedly hosted on IP address 205.209.177.131. That IP address had previously been completely disabled on February 2, 2009. Contrary to your allegations in your February 4, 2009 letter, it was impossible that these websites were then hosted on IP address 205.209.177.131. You and your client seem to be complaining based on unreliable information.

Very truly yours,



James A. Lowe

JAL:pam  
cc: Clients (via email)