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

17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

19 LOUIS VUITTON MALLETIER, S.A.,	)	Case No.: C 07-3952 JW (HRL)
	)	
20 Plaintiff,	)	
	)	<b>SUPPLEMENTAL JURY</b>
21 vs.	)	<b>INSTRUCTION NO. 14</b>
	)	
	)	
22 AKANOC SOLUTIONS, INC., MANAGED	)	
23 SOLUTIONS GROUP, INC., STEVEN CHEN	)	
24 AND DOES 1 THROUGH 10, INCLUSIVE,	)	
	)	
25 Defendants.	)	
	)	

**JURY INSTRUCTION No. \_\_\_\_**

**CONTRIBUTORY TRADEMARK INFRINGEMENT  
DIRECT CONTROL AND MONITORING**

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4 You may find defendants liable for contributory trademark infringement if you find that a  
5 defendant (1) had knowledge of websites directly infringing plaintiff's trademarks, and (2) directly  
6 controlled and monitored those websites.

7 As to (1) above, you may not infer knowledge of direct infringement simply because a  
8 defendant was notified of potential infringement occurring at particular websites.

9 As to (2) above, direct control and monitoring means more than a relatively passive degree of  
10 control and monitoring. It refers to actual control over operations at infringing websites including  
11 advertising and promoting infringing businesses and providing customers to infringing websites.  
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1 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 983, 985 (9th Cir. 1999)  
2 (“Contributory infringement occurs when the defendant either intentionally induces a third party to  
3 infringe the plaintiff’s mark or supplies a product to a third party with actual or constructive  
4 knowledge that the product is being used to infringe the service mark. Lockheed alleges only the  
5 latter basis for contributory infringement liability **and therefore must prove that NSI supplies a  
product to third parties with actual or constructive knowledge that its product is being used to  
infringe “Skunk Works.”** . . . **Direct control and monitoring of the instrumentality used by a  
third party to infringe the plaintiff’s mark permits the expansion of *Inwood Lab’s* “supplies a  
product” requirement for contributory infringement.**”)  
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7 *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, WL 5383905, \*9 (N.D. Cal. Dec. 23, 2008)  
8 (“The Court first addresses contributory trademark liability under the “extent of control” theory.  
9 Under that framework, a plaintiff must prove that the defendant had **knowledge** and “[d]irect  
control and monitoring of the instrumentality used by the third party to infringe the plaintiff’s  
mark.” [citing to *Lockheed*, 194 F.3d at 984].

10 *Perfect 10, Inc. v. Visa International Service Association*, 494 F.3d 788, 799 (9<sup>th</sup> Cir.2007) (“The  
11 actual display, location, and distribution of infringing images in this case occurs on websites that  
12 organize, display, and transmit information over the wires and wireless instruments that make up the  
Internet. The *websites* are the “site” of the infringement, not Defendants’ payment networks.”)

13 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 985 (9th Cir.1999) (“Where  
14 domain names are used to infringe, the infringement does not result from NSI’s publication of the  
15 domain name list, but from the registrant’s use of the name on a web site or other Internet form of  
communication in connection with goods and services.”)

16 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 985 F. Supp. 949, 964 (C.D.Cal.1997), *affd.*  
17 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980 (9th Cir.1999) (“In holding that the  
18 degree of uncertainty over infringing uses of domain names makes it inappropriate to impose  
19 contributory liability on NSI, the Court is not making new trademark rules for the Internet.  
20 **Contributory infringement doctrine has always treated uncertainty of infringement as relevant  
to the question of an alleged contributory infringer’s knowledge.** See *Mini Maid*, 967 F.2d at  
21 1521 (instructing district court to consider extent and nature of alleged infringement in determining  
22 whether to impute knowledge to alleged contributory infringer); Restatement (Third) of Unfair  
23 Competition § 26 cmt. a (1993) (noting that a person’s liability for contributory infringement  
“depends upon the nature of the business relationship between the person and the direct infringer and  
the knowledge attributable to the person on the basis of that relationship”). *A trademark owner’s  
demand letter is insufficient to resolve this inherent uncertainty.* [citing *Coca-Cola Co. v. Snow  
Crest Beverages*, 64 F.Supp. 980 (D.Mass.1946), *aff’d*, 162 F.2d 280 (1st Cir.1947)].”

24 *Fare Deals Ltd. v. World Choice Travel.Com, Inc.*, 180 F.Supp.2d 678, 689-690 (D.Md.2001)  
25 (“Moreover, liability in the flea-market cases rested on more than the relatively passive degree of  
26 control and monitoring usually exercised by a landlord. **The flea-market operators not only  
exercised considerable actual control over the operations of their vendors; they also actively  
supported the infringing businesses of their vendors-by advertising and promoting the flea  
27 markets and by providing the vendors their customers.** See *Hard Rock Cafe Licensing Corp.*,  
28 955 F.2d at 1148; *Fonovisa, Inc.*, 76 F.3d at 264).