

GAUNTLETT & ASSOCIATES

David A. Gauntlett (SBN 96399)

James A. Lowe (SBN 214383)

Brian S. Edwards (SBN 166258)

Christopher Lai (SBN 249425)

18400 Von Karman, Suite 300

Irvine, California 92612

Telephone: (949) 553-1010

Facsimile: (949) 553-2050

info@gauntlettlaw.comjal@gauntlettlaw.combse@gauntlettlaw.com

Attorneys for Defendants

Akanoc Solutions, Inc.,

Managed Solutions Group, Inc.

and Steve Chen

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

LOUIS VUITTON MALLETTIER, S.A.,

Plaintiff,

vs.

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

Defendants.

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

**SUPPLEMENTAL JURY
INSTRUCTION NO. 3**

JURY INSTRUCTION No. _____

**CONTRIBUTORY COPYRIGHT INFRINGEMENT –
INDUCED, CAUSED OR MATERIALLY CONTRIBUTED TO DIRECT INFRINGEMENT**

You may find that a defendant induced, caused or materially contributed to infringing conduct at a particular website if you find that the individual defendant actively strived to provide the environment and market for counterfeiting sales to thrive, such that the defendant and the operator(s) of a particular website were engaged in a mutual enterprise of infringement. A defendant must be directly and substantially involved in the businesses of the infringing website operator(s), and cannot be liable unless the defendant acted in concert with the direct infringer to sell items that infringed plaintiff's copyrights.

1 *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264 (9th Cir. 1996) (flea market proprietor liable
2 as a contributory [copyright] infringer when it **“actively strives to provide the environment and
market for counterfeit recording sales to thrive.”**)

3 *Perfect 10, Inc. v. Visa International Service Association*, 494 F.3d 788, 798 (9th Cir.2007) (“In
4 *Fonovisa*, we held a flea market proprietor liable as a contributory infringer when it provided the
5 facilities for and benefitted from the sale of pirated works. The court found that **the primary
infringers and the swap meet were engaged in a mutual enterprise of infringement** and
6 observed that it would be difficult for the infringing activity to take place in the massive quantities
7 alleged without the support services provided by the swap meet. . . The *Fonovisa* court found
liability because the swap meet operator knowingly provided the “site and facilities” for the
infringing activity.”)

8 *Nimmer on Copyright*, § 12.04[A][3][a]: “In order to deemed a contributory infringer, the
9 authorization or assistance must bear some direct relationship to the infringing acts, **and the person
rendering such assistance or giving such authorization must be acting in concert with the
10 infringer.**”

11 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 985 F.Supp. 949, 962 (C.D.Cal.1997) *affd.*
12 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980 (9th Cir.1999) (“In *Fonovisa*, the
13 Ninth Circuit adopted *Hard Rock's* analogy between landlord/tenant vicarious liability and
trademark law contributory liability in order to extend the *Inwood* standard to the flea market
14 context. *Fonovisa*, 76 F.3d at 265. **There, too, the court found that the flea market operator
provided more than space, and was directly and substantially involved in the businesses of the
15 infringing vendors. Id. at 264.”**)

16 *Perfect 10, Inc. v. Visa Intern. Service Ass'n*, 2004 WL 1773349, *3 (N.D.Cal.2004) (“**Examples of
material contribution** from recent Internet case law **include providing an online index of
17 copyrighted songs to facilitate their transfer between software users, A & M Records v. Napster**,
239 F.3d 1004, 1021 (9th Cir.2001), and **providing a bulletin board system allowing Internet
18 users to upload and download copyrighted video games, Sega Enters. v. MAPHIA**, 948 F.Supp.
923, 933 (N.D.Cal.1996). In non-Internet cases, contributory infringement has traditionally been
19 found where defendant **swap-meet owners provided infringing vendors at the swap-meet with
“space, utilities, parking, advertising, plumbing, and customers.” UMG Recordings, Inc. v.**
20 **Sinnott**, 300 F.Supp.2d 993, 1001 (E.D.Cal.2004) (citing *Fonovisa, Inc. v. Cherry Auction. Inc.*, 76
21 F.3d 259, 264 (9th Cir.1996)). **All of these acts were directly tied to not only the business
operations of the infringers, but specifically to their infringing conduct.”**)

22 *Perfect 10, Inc. v. Visa Intern. Service Ass'n*, 2004 WL 1773349, *4 (N.D.Cal.2004) (“Defendants'
23 conduct does not begin to approach the level of involvement that existed in the cases enumerated
24 above, where material contribution was found. **In each of those cases, the defendants' conduct
specifically assisted the infringing activity itself.** Here, the websites would be every bit as capable
25 of copying and distributing Plaintiff's copyrighted works regardless of whether they employed
26 Defendants' services. As a result, Plaintiff has not adequately pled a claim for contributory copyright
infringement.”)