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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. 8**

JURY INSTRUCTION No. _____

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

You may not find that a defendant materially contributes to infringing conduct if a particular website at issue could continue to operate effectively by moving to a different IP address after a defendant's Internet hosting services are terminated or a website's infringing conduct could occur without using a defendant's services.

1 *Perfect 10, Inc. v. Visa Intern. Service Ass'n*, 494 F.3d 788, 797-798 (9th Cir.2007) (“We
2 acknowledge that Defendants' payment systems make it easier for such an infringement to be
3 profitable, and that they therefore have the effect of increasing such infringement, but **because**
4 **infringement of Perfect 10's copyrights can occur without using Defendants' payment system**,
we hold that payment processing . . . **does not constitute a “material contribution”** under the test
for contributory infringement of copyrights.”)

5 *Perfect 10, Inc. v. Visa Intern. Service Ass'n*, 2004 WL 1773349, *4 (N.D.Cal.2004) (“Plaintiff
6 alleges that because Defendants provide essential financial services to the alleged infringers, they are
7 materially contributing. There are two flaws with this argument. **The first flaw is the assumption**
8 **that the services Defendants provide are essential to the functioning of the allegedly infringing**
9 **websites.** Plaintiff asserts, “acceptance of MasterCard and Visa is necessary to an Internet
10 merchant's commercial viability.” This statement is belied by facts from the Plaintiff's own
11 complaint. **Plaintiff itself was blacklisted by Visa and had its merchant account revoked, yet it**
12 **still continues to operate its website and accept Visa and Mastercard as payment through an**
13 **intermediate payment service.** The allegedly infringing websites could employ intermediate
14 payment services if Defendants terminated their merchant accounts. The websites could also use
15 alternate forms of payment such as personal checks, money orders, debit cards, or other credit card
16 providers. **There is no reason to believe that the allegedly infringing websites could not continue**
17 **to infringe and operate effectively if Visa and Mastercard were to terminate their financial**
18 **services.”)**
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