



1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 Defendants Akanoc Solutions, Inc., Managed Solutions Group, Inc. and Steve Chen  
3 (“Defendants”) move for an order, in limine, precluding Plaintiff Louis Vuitton Malletier from  
4 introducing any evidence or testimony regarding Defendants’ liability insurance. The motion will be  
5 heard on July 6, 2009 at 3:00 p.m. in Courtroom 8, Fourth Floor of the U.S. Courthouse, 280 South  
6 1st Street, San Jose, California.

7 **I. AN ORDER IN LIMINE IS PROPER TO EXCLUDE INADMISSIBLE TESTIMONY**

8 A motion in limine is “any motion whether made before or during trial to exclude anticipated  
9 prejudicial evidence before the evidence is actually offered.”<sup>1</sup> Obtaining a discretionary advance  
10 ruling on the admission of specific evidence or resolving critical evidentiary issues at the outset  
11 enhances the efficiency of the trial process.<sup>2</sup> Authority is also implied from “the district court’s  
12 inherent authority to manage the course of trials.”<sup>3</sup>

13 Defendants move for this order in limine because it is anticipated that Vuitton may attempt to  
14 elicit testimony and introduce evidence of Defendants’ liability insurance.<sup>4</sup> The Court should  
15 exclude such evidence and testimony because it is inadmissible under Fed.R.Evid. 411, not relevant  
16 under Fed.R.Evid. 402, and its probative value is substantially outweighed by its prejudicial effect.  
17 Fed.R.Evid. 403

18 **II. TESTIMONY ABOUT AND EVIDENCE OF LIABILITY INSURANCE IS**  
19 **INADMISSIBLE**

20 Federal Rules of Evidence, Rule 402 plainly provides that “[e]vidence which is not relevant  
21 is not admissible.” According to Fed.R.Evid. 401:

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23 <sup>1</sup>*Luce v. United States*, 469 U.S. 38, 40 (1984).

24 <sup>2</sup>*In re Japanese Electronic Products Antitrust Litig.*, 723 F.2d 238, 260 (3d Cir. 1983), *rev’d on*  
*other grounds*, 475 U.S. 574 (1986).

25 <sup>3</sup>*Luce*, 469 U.S. at 41 n.4; *United States v. Holmquist*, 36 F.3d 154, 163 (1st Cir. 1994).

26 <sup>4</sup>In opposition to Defendants’ motion to compel Vuitton’s deposition Vuitton argued that the  
27 deposition of Vuitton’s Rule 30(b)(6) witness would not burden Defendants and should therefore  
28 take place in France because Defendants have liability insurance. That ploy was unsuccessful, but it  
is anticipated Vuitton will attempt similar tactics to prejudice the jury against Defendants at trial.  
[See Doc. 32, 6:6-8: **“Further, insurance is in play and Defendants will likely be looking to the  
insurance to assist in the costs associated with this litigation.”**]

1 “Relevant evidence” means evidence having any tendency to make the  
2 existence of any fact that is of consequence to the determination of the  
3 action more probable or less probable than it would be without the  
4 evidence.

4 Vuitton has claims against Defendants for contributory copyright infringement and for  
5 contributory trademark infringement. Defendants’ liability insurance does not make the existence of  
6 any fact of consequence more or less probable. Evidence of Defendants’ insurance is therefore not  
7 relevant and should be excluded at trial.

8 Evidence of liability insurance is highly prejudicial. Federal Rules of Evidence, Rule 403  
9 allows the exclusion of relevant evidence if the probative value is substantially outweighed by its  
10 prejudicial effect. Although the probative value is minimal or non-existent, the prejudicial effect of  
11 admitting evidence of liability insurance would be substantial.

12 Federal Rules of Evidence, Rule 411 provides:

13 Evidence that a person was or was not insured against liability is not  
14 admissible upon the issue of whether the person acted negligently or  
15 otherwise wrongfully.

15 The Supreme Court has recognized that evidence of a party’s insurance coverage is likely to  
16 prejudice a jury. *Eichel v. New York Cent.R.Co.*, 375 U.S. 253, 255 (1963) (“We have recently had  
17 occasion to be reminded that evidence of collateral benefits is readily subject to misuse by a jury. It  
18 has long been recognized that evidence showing that the defendant is insured creates a substantial  
19 likelihood of misuse.”)

20 No evidence of liability insurance is should be allowed.

21 **III. CONCLUSION**

22 For the foregoing reasons, Defendants respectfully request that the Court enter an order  
23 precluding Louis Vuitton from eliciting or presenting any evidence, testimony or otherwise  
24 mentioning Defendants’ liability insurance.

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1 Dated: June 4, 2009

**GAUNTLETT & ASSOCIATES**

2  
3 By: /s/James A. Lowe

4 David A. Gauntlett  
5 James A. Lowe  
6 Brian S. Edwards  
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9 Akanoc Solutions, Inc.,  
10 Managed Solutions Group, Inc.,  
11 and Steve Chen  
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