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and Steve Chen

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

LOUIS VUITTON MALLETTIER, S.A.,

Plaintiff,

vs.

AKANOC SOLUTIONS, INC., et al.,

Defendants.

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

) **DEFENDANTS' MOTION IN LIMINE #15**
) **TO PRECLUDE VUITTON'S EXPERT**
) **WITNESS FROM PROVIDING**
) **ADDITIONAL TESTIMONY ABOUT**
) **ACTIONS OR OPINIONS NOT**
) **DISCLOSED PRIOR TO HIS DEPOSITION**

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’s
4 (“Vuitton”) expert witness, Michael Wilson, from providing additional testimony about actions or
5 opinions not disclosed prior to his deposition.

6 The motion will be heard on July 6, 2009 at 3:00 p.m. in Courtroom 8, Fourth Floor of the
7 U.S. Courthouse, 280 South 1st Street, San Jose, California.

8 **I. AN ORDER IN LIMINE IS PROPER TO EXCLUDE ANTICIPATED EVIDENCE**
9 **AT TRIAL**

10 A motion in limine is “any motion whether made before or during trial to exclude anticipated
11 prejudicial evidence before the evidence is actually offered.” *Luce v. United States*, 469 U.S. 38, 40
12 (1984). Obtaining a discretionary advance ruling on the admission of specific evidence or resolving
13 critical evidentiary issues at the outset enhances the efficiency of the trial process. *In re Japanese*
14 *Electronic Products Antitrust Litig.*, 723 F.2d 238, 260 (3d Cir. 1983), *rev’d on other grounds*, 475
15 U.S. 574 (1986). Authority is also implied from “the district court’s inherent authority to manage
16 the course of trials.” *Luce*, 469 U.S. at 41 n.4; *United States v. Holmquist*, 36 F.3d 154, 163 (1st Cir.
17 1994)

18 **II. THE COURT’S OWN ORDER PRECLUDES EXPERT WITNESS MICHAEL**
19 **WILSON FROM PROVIDING FURTHER TESTIMONY AFTER HIS DEPOSITION**
20 **IS TAKEN**

21 At his deposition on June 27, 2009, Vuitton’s sole expert witness, Michael Wilson, said that
22 he expects to testify about additional matters beyond his reports and testimony at some time in the
23 future regarding investigation and opinions.¹ Defendants move the Court for an order preventing
24 Wilson from providing any testimony after his deposition that was not provided before his
deposition.

25 Vuitton served its expert designation of Michael Wilson and Wilson’s expert report on May
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27

28 ¹Declaration of James A. Lowe (“Lowe Decl.”), ¶7.

1 20, 2009.² Vuitton’s counsel hand-delivered a supplemental expert report to Defendants’ counsel
 2 on the morning of June 27, 2009,³ at the time of Wilson’s deposition.⁴

3 At his deposition, Wilson testified that he intends to provide further testimony about
 4 investigations, actions or opinions not disclosed prior to his deposition.⁵ For instance, Wilson
 5 indicated that, at the time of deposition, he was currently attempting to “rebuild” a website that was
 6 allegedly stored on Defendants’ Internet servers, and that he planned to testify about the results of
 7 his efforts.⁶ But the Court’s own order precludes such testimony:

8 Unless the parties enter into a written stipulation otherwise, upon
 9 timely objection, an expert witness shall be precluded from testifying
 10 about **any actions or opinions not disclosed prior to the expert’s**
 11 **deposition.** This is to ensure that all factual material upon which
 expert witness opinion may be based and **all tests and reports are**
 12 **completed prior to the expert deposition.**

12 [Court’s November 15, 2007 Scheduling Order ¶8, Docket No. 23] (emphasis added).

13 By indicating his intention to testify about further actions and opinions after his deposition,
 14 Wilson has essentially indicated Vuitton’s intent to disregard the Court’s order. The Court’s order is
 15 meant to ensure that all factual material upon which expert witness opinion may be based and **all**
 16 **tests and reports are completed prior to the expert deposition.**

17 Vuitton cannot argue that Wilson may circumvent the Court’s rule because he has testified
 18 generally about “rebuilding” websites. Wilson should be excluded from providing *any* additional
 19 testimony now that his deposition has been taken. It is especially important for the Court to enforce
 20 its order on this issue because, with about a month remaining before the trial, allowing Wilson to
 21 provide additional testimony will unduly prejudice the Defendants who will have no effective means
 22 of discovering, preparing for or rebutting any additional opinions and actions.

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 25 ²Lowe Decl. ¶4.

26 ³Lowe Decl. ¶5.

27 ⁴Lowe Decl. ¶6.

28 ⁵Lowe Decl. ¶7.

⁶*Id.*

1 **III. CONCLUSION**

2 Defendants respectfully request that the Court enter an order that Vuitton's expert witness,
3 Michael Wilson cannot testify about any actions performed or opinions reached except those
4 disclosed to the Defendants prior to the deposition of Mr. Wilson.

5
6 Dated: July 2, 2009

GAUNTLETT & ASSOCIATES

7
8 By: /s/James A. Lowe

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16 and Steve Chen
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