Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc. et al.   Doc. 184

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1   J. Andrew Coombs (SBN 123881)
    andy@coombspc.com
2   Annie S. Wang (SBN 243027)
    annie@coombspc.com
3   J. Andrew Coombs, A Prof. Corp.
    517 E. Wilson Ave., Suite 202
4   Glendale, California 91206
    Telephone: (818) 500-3200
5   Facsimile: (818) 500-3201

6   Attorneys for Plaintiff Louis
    Vuitton Malletier, S.A.
7

8
                        UNITED STATES DISTRICT COURT
9
               NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)
10

11   Louis Vuitton Malletier, S.A.,   )   Case No. C 07 3952 JW (HRLx)
)
12   Plaintiff,   )   REQUEST FOR LEAVE TO FILE
           v.   )   MOTION FOR RECONSIDERATION
13   )   OF ORDER RE: MOTIONS IN LIMINE;
     Akanoc Solutions, Inc., et al.   )   DECLARATION IN SUPPORT
14   )
                            Defendants.   )
15

16   Pursuant to Local Rule 7-9, Plaintiff Louis Vuitton Malletier, S.A. ("Plaintiff" or "Louis

17   Vuitton") moves the Court for leave to file a "Motion for Reconsideration of Order Re: Motions in

18   Limine" to address only the Court's ruling on Defendants' Motion in Limine No. 15 ("Defendants'

19   Motion"). Docket No. 183.

20   This request is based on the fact the same order granted Defendants' leave to file their

21   untimely motions in limine and Plaintiff was provided no opportunity to supplement the record or

22   to dispute the positions adopted on behalf of Defendants. (Defendants' motion for leave, along

23   with the putative Defendants' Motion was filed on Monday, the 6th and the order granting leave

24   and simultaneously granting Defendants' Motion was filed Thursday, the 9th.).

25   Although Defendants' Motion was granted without prejudice, Plaintiff seeks clarification

26   that opinions upon which the Plaintiff's expert was examined at deposition will be admitted..

27   Moreover, Defendants' Motion is predicated upon an incomplete account of the pertinent record,

28   creating a misleading basis in support of their position.

Louis Vuitton v. Akanoc, et al.: Request for Leave to File Motion   - 1 -
for Reconsideration

Plaintiff easily meets its burden under Local Rule 7-9 and the Court's Order. At the time of this request, a material difference in the facts exists based upon Defendants' omission of several key facts, the Court did not consider material facts because they were purposefully omitted by Defendants, and Plaintiff was not given an opportunity to oppose Defendants' Motion at all.

I.   **Defendants Fail to Note They Were Given An Opportunity to Examine Plaintiff's Expert on All Relevant Opinions At His Deposition.**

Plaintiff's expert, Michael Wilson ("Wilson") was examined at length on June 26, 2009. Among other things, Wilson was examined on documents produced to Defendants as part of Wilson's production pursuant to Defendants' deposition subpoena. These documents elaborated upon the opinion Wilson expressed in his initial report dated May 20, 2009, in which Wilson stated that he expected "to verify and authenticate the relevant portions of the ESI [Electronically Stored Information] collected by Mr. Murin." The documents produced before Wilson's deposition elaborated upon the contents of the ESI obtained as a result of the Court-ordered inspection first made available after Magistrate Judge Lloyd's order of May 12, 2009.

The Court will recall that the ESI was obtained after extensive objection, obstruction and motion practice dating back to Plaintiff's first request for production of documents propounded in November, 2007. When no documents were produced in response to Plaintiff's requests, the Court, after motion and objection by Defendants, ordered an inspection. Further motion practice was required to determine the protocol for inspection, a protocol that was not established until Magistrate Judge Lloyd's order of May 12, 2009. Plaintiff's expert accordingly had but eight days before the expert discovery cutoff to serve his report. This report was to address ESI evidencing staggering amounts of infringing material on but five of the servers maintained by Defendants, evidence which Defendants' themselves asserted was too voluminous in their Motion in Limine No. 12.

Notwithstanding this burden, an expert report was timely produced and supplemented, albeit just before Wilson's deposition was scheduled to begin. As no additional opinions have been

1 expressed by Wilson following the deposition, Plaintiff concludes that it is opinions included in the

2 deposition should be admitted.

3   Moreover, Defendants did examine Wilson on the subject matter of those additional

4 opinions. There is therefore no prejudice and exclusion of such evidence would be inappropriate.

5 **II.**   **Key Facts Were Omitted From Defendants' Moving Papers Resulting in a**

6 **Materially, Misleading Timeline not Considered by the Court.**

7   While Defendants' contend that they are prejudiced by Plaintiff's expert's testimony of

8 which they were made aware prior to Plaintiff's expert's deposition and concerning which they

9 deposed Plaintiff's expert, they do not mention in their papers that they produced their expert's

10 supplemental report by email, at 6:02 p.m. the day before Plaintiff's expert's deposition.

11 Declaration of J. Andrew Coombs ("Coombs Decl.") at ¶ 3. Plaintiff's expert could not have been

12 expected to rebut those statements and provide his finalized supplemental report given only the

13 night before his deposition.

14 **III.**   **Admission of the Opinions Will Expedite and Facilitate Resolution of the**

15 **Issues Before the Court.**

16   As noted above, the relevant ESI collected from Defendants' servers is massive. It

17 evidences hundreds of websites incorporating offers of counterfeit merchandise infringing

18 Plaintiff's intellectual properties as well as traffic logs indicating when these sites were active.

19 Wilson's opinions will merely explain that data in a manner more readily understood by the jury,

20 including presenting the data in the format in which it appeared when it was online, summarizing

21 when the websites were active and Louis Vuitton offers were being accessed and otherwise

22 providing a useful mechanism to understand the scope of the direct infringements abetted by

23 Defendants on a mere handful of servers operated by them.

24   It is in the Court's own interest and considerably more efficient to permit introduction of

25 the evidence in this format.

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For these reasons, the Court should grant Plaintiff an opportunity to respond to Defendants'

Motion through a Motion for Reconsideration in light of the incomplete representations and to

prevent Defendants from gaining an unfair advantage at trial.

Dated: July 10, 2009   J. Andrew Coombs, A Professional Corp.

                                                         ____/s/ J. Andrew Coombs_____
                                                         By: J. Andrew Coombs
                                                                 Annie S. Wang
                                                         Attorneys for Plaintiff Louis Vuitton Malletier, S.A.

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DECLARATION OF J. ANDREW COOMBS

2

I, J. Andrew Coombs, declare as follows:

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1.   I am an attorney at law, duly admitted to practice before the Courts of the State of

4

California and the United States District Court for the Northern District of California. I am counsel

5

of record for Plaintiff, Louis Vuitton Malletier, S.A. ("Louis Vuitton") in an action styled *Louis*

6

Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., *et al.*, and, except as otherwise expressly noted to

7

the contrary, I have personal knowledge of the following facts.

8

2.   On or about June 23, 2009, prior to the deposition of Mr. Michael Wilson,

9

Plaintiff's designated expert, I sent correspondence to Mr. James Lowe, counsel for Defendants

10

regarding Mr. Wilson's attempts to "rebuild" certain of the websites hosted on Defendants' servers.

11

I received a response from Mr. Christopher Lai on that same date acknowledging my

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correspondence, and sent to Defendants' expert, a copy of the raw data from the servers that was

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delivered on June 24, 2009, pursuant to Defendants' counsel's instruction.   Attached collectively

14

as Exhibit A are true and correct copies of my correspondence to Mr. Lowe as well as the exchange

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between myself and Mr. Lai.

16

3.   On or about June 25, 2009, Defendants submitted its expert's supplemental report

17

by email at 6:02 p.m., which was also the day before Mr. Wilson's deposition. Attached hereto as

18

Exhibit B is a true and correct copy of the email sent by Defendants' counsel after business hours

19

on June 25, 2009.

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4.   On June 26, 2009, before the deposition of Mr. Wilson began, Mr. Wilson provided

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to Mr. Lowe additional documents and findings, including printouts from at least one "rebuild" as

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well as a draft of findings that were to be incorporated in his supplemental report, among other

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things. Mr. Lowe reviewed Mr. Wilson's documents and questioned him regarding those

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documents in great detail. Attached hereto as Exhibit C are true and correct sample excerpts from

25

the working draft of the transcript of Mr. Wilson's deposition.

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Louis Vuitton v. Akanoc, et al.: Request for Leave to File Motion   - 5 -
for Reconsideration

1   I declare under penalty of perjury that the foregoing is true and correct and this declaration

2   was executed the 10th day of July, 2009 at Glendale, California.

3   _____/s/ J. Andrew Coombs_____
                                                                    J. ANDREW COOMBS
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EXHIBIT A

From: Andy Coombs [andy@coombspc.com]

Sent: Tuesday, June 23, 2009 3:14 PM

To: 'Lowe, James A.'

Cc: 'Annie Wang'

Subject: Akanoc Server Data

Jim

I understand that our expert, Mike Wilson is working with raw data copied from the servers at Defendants' location in order to attempt to "rebuild" certain of the websites hosted on those servers. In view of this, it may be that – as suggested by you during oral argument on Louis Vuitton's motion to modify the protocol – your expert will require access to the same raw data relied upon by Mr. Wilson. In anticipation of this, I have asked Guidance to make duplicate copy of the raw data. Please confirm that you do want this copy to be provided to Mr. Gralnik and, if so, how you would prefer the copy be delivered.

Andy Coombs

J. Andrew Coombs, A P.C.

517 East Wilson Ave., Suite 202

Glendale, CA 91206

Telephone: (818) 500-3200

Facsimile: (818) 500-3201

From: Andy Coombs [andy@coombspc.com]
Sent: Wednesday, June 24, 2009 10:13 AM
To: 'Christopher Lai'; 'Annie Wang'
Cc: 'Lowe, James A.'; 'Murray, Peggy A.'
Subject: RE: Managed Solutions adv. Vuitton, 10562.002, Akanoc Server Data

The hard drive will be sent out today.

Andy Coombs
J. Andrew Coombs, A P.C.
517 East Wilson Ave., Suite 202
Glendale, CA 91206
Telephone: (818) 500-3200
Facsimile: (818) 500-3201

From: Christopher Lai [mailto:CL@gauntlettlaw.com]
Sent: Wednesday, June 24, 2009 9:45 AM
To: Andy Coombs; Annie Wang
Cc: Lowe, James A.; Murray, Peggy A.
Subject: RE: Managed Solutions adv. Vuitton, 10562.002, Akanoc Server Data

Andy,

Yes, our expert wishes to receive a copy of the underlying data in the format in which it was obtained. Our expert would like the data to be produced on a hard drive similar to the hard drive that your expert produced to us earlier. The hard drive(s) can be sent to Richard Gralnik directly via whichever mail/logistics carrier that you prefer. His address is as follows:

Online Security, Inc.
5870 West Jefferson Boulevard, Suite A
Los Angeles, CA 90016

Chris

Christopher Lai, Esq.
Gauntlett & Associates
Tel: (949) 553-1010 ext. 256
Fax: (949) 553-2050
Email: CL@gauntlettlaw.com
Web: www.gauntlettlaw.com

From: Andy Coombs [mailto:andy@coombspc.com]
Sent: Wednesday, June 24, 2009 8:07 AM
To: Christopher Lai; 'Annie Wang'
Cc: Lowe, James A.; Murray, Peggy A.
Subject: RE: Managed Solutions adv. Vuitton, 10562.002, Akanoc Server Data

Your email does not appear to respond to our underlying question. Does your expert wish to receive a copy of the underlying data in the format in which it was obtained? If so, how would you like to have it delivered?

Andy Coombs
J. Andrew Coombs, A P.C.
517 East Wilson Ave., Suite 202
Glendale, CA 91206
Telephone: (818) 500-3200
Facsimile: (818) 500-3201

From: Christopher Lai [mailto:CL@gauntlettlaw.com]
Sent: Tuesday, June 23, 2009 6:40 PM
To: Andy Coombs; Annie Wang
Cc: Lowe, James A.; Murray, Peggy A.
Subject: Managed Solutions adv. Vuitton, 10562.002, Akanoc Server Data
Importance: High

Andy,

I am responding to your email to Jim regarding the method of producing, to our expert, the raw data that Mr. Wilson is relying upon in his attempt to "rebuild" websites.

(1) For data from Windows servers, our expert would like the data to be provided on hard drives with a Windows file hierarchy structure.

(2) For data from Linux servers, our expert would like both the data to be provided on hard drives and the actual version of Linux used by Mr. Wilson in attempting to perform his "rebuild."

(3) In addition, our expert would need to be provided with any extraneous tools, in installable versions, that Mr. Wilson uses or relies upon in performing his attempted "rebuild." Such items may include, but are not limited to, web server operating systems, programming languages used, webpage developer tools and programming language interpreters.

Chris

Christopher Lai, Esq.
Gauntlett & Associates
Tel: (949) 553-1010 ext. 256
Fax: (949) 553-2050
Email: CL@gauntlettlaw.com
Web: www.gauntlettlaw.com

Akanoc Server Data

EXHIBIT B

From:	Murray, Peggy A. [PAM@gauntlettlaw.com]
Sent:	Thursday, June 25, 2009 6:02 PM
To:	andy@coombspc.com; annie@coombspc.com
Cc:	Lowe, James A.; Brian S. Edwards; Christopher Lai
Subject:	Managed Solutions adv. Vuitton (10562-002) - Supplemental Expert Report of Richard Gralnik
Attachments:	Supplemental Expert Report of Richard Gralnik.PDF

Dear Counsel,

Please see attached Supplemental Expert Report of Richard Gralnik. Hard copy will follow via U.S. Mail.

Peggy A. Murray
Assistant to James A. Lowe, Esq.
Brian S. Edwards, Esq.
and Christopher Lai, Esq.
Gauntlett & Associates
Tel: (949) 553-1010
Fax: (949) 553-2050
Email: pam@gauntlettlaw.com

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EXHIBIT C

WILSON.TXT

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 1              UNITED STATES DISTRICT COURT

 2     NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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 4
       LOUIS VUITTON MALLETIER, S.A.,  )
 5                                     )
                   Plaintiff,          )
 6                                     )
            vs.                        )
 7                                     ) No. C 07-3952 JW (HRL)
       AKANOC SOLUTIONS, INC.,         )
 8     et al.,                         )
                                       )
 9             Defendants.             )
       _____)
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16              Deposition of MICHAEL WILSON,

17        taken on behalf of Defendants at 517 E. Wilson

18        Avenue, Suite 202, Glendale, California 91206,

19        commencing at 10:00 a.m., Friday, June 26, 2009,

20        before Mitch Genser, CSR No. 4239.

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 1    PERSONS PRESENT:
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                                Page 1

EXHIBIT C   Page 12

WILSON.TXT

1   A   Correct.

2   I also have the declaration of Joseph Murin

3   and a screen shot that was taken by him of the CPRO

4   database.

5   Then I have seven verification reports that

6   show the evidence was acquired and verified correctly

7   after acquisition.

8   And then I have the published paper that I

9   wrote in order to get one of the certifications that I

10   have.

11   And I have my CV. And I have this piece

12   of paper which allows me to read off all that

13   information.

14   Q   So you're reading from a page that's been

15   prepared that just lists what you've testified to?

16   A   Correct.

17   And I also have what is effectively a rough

18   draft for the supplementary report that I'll be writing

19   concerning the information that I've been able to

20   analyze so far. It's three pages of notes concerning

21   what I found and basically how I found them.

22   Q   What opinions do you intend to testify about

23   at the trial of this case?

24   A   I can't answer that fully because I don't

25   know whether or not I will be asked to talk about more.

                            13

1   But at this point, my opinions will be the fact that the

2   websites that I analyzed were online and accessible to

                        Page 11

EXHIBIT C   Page 13

WILSON.TXT
3   the outside world.

4   Q   All of them?

5   A   No, the websites that I analyzed.

6   Q   I see.

7   A   The servers were collected correctly.
8   All of the images were fair and accurate representations
9   of the servers on the day that they were collected.
10   To the best of my knowledge, proper chain of custody and
11   proper procedures were used during the imaging process.
12   And then I'll also be talking about what a
13   normal hosting facility should be able to do in order to
14   block website traffic.
15   I will also most likely talk about the fact
16   that the websites for Akanoc and DEDI Web Host, which I
17   believe are related, have a posted acceptable use
18   policy, and I can go over what that acceptable use
19   policy was according to their website.
20   I'll also talk a little bit about the
21   screen shot that Joe Murin took during the imaging
22   process that shows a number of instances where,
23   according to the CPRO database, Akanoc, or Managed
24   Solutions, took down websites because of counterfeit
25   product-related activity.

                              14

1   Q   Anything else?

2   A   That's all I can think of at this time.

3   Q   Are the opinions that you have just listed

4   all indicated in your expert report and your rebuttal

5   report?

                         Page 12

EXHIBIT C   Page 14

WILSON.TXT

23   A   Sure. But one thing that I definitely want

24   to clarify here is that whois query is a generic term

25   that has become used for any sort of search that

                                  115

⊡

1   involves retrieving information about a domain name

2   or an IP address. It's more than one type of query.

3   So saying that I did a whois query on "X"

4   doesn't necessarily mean the same thing as saying I did

5   a whois query on "Y." That's the important distinction

6   here.

7   Q   But you don't disagree with Mr. Gralnik

8   that whois information about a domain name can contain

9   inaccurate information?

10   A   Correct.

11   Q   Is that partly because the information

12   itself comes from a variety of sources and without

13   necessarily the ability to confirm information?

14   A   I wouldn't be able to tell you why it is.

15   I can tell you that the information that you get when

16   you do a domain name query isn't always correct.

17   Q   It's been your experience?

18   A   Yes.

19   Q   I want to mark this three-page supplement,

20   or whatever it is, as Exhibit 1558.

21   (Defendants' Exhibit 1558 was marked for

22   identification by the Deposition Officer

23   and is attached hereto.)

24   (Discussion held off the record.)

25   MR. LOWE: Back on the record.
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EXHIBIT C   Page 15

WILSON.TXT

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1   Q   Exhibit 1558 is what, please?

2   A   It's basically a rough draft of the findings

3 of my current analysis of the forensic images that were

4 taken by Joseph Murin.

5   Q   And those images are listed in the first

6 section list right under the first paragraph?

7   A   No. I did a cursory exam of all of the

8 systems in all of the hard drives. So there are more

9 than just what was listed here.

10   Q   You said there were five systems, I thought.

11 Did I misunderstand you?

12   A   There are five systems. So yes, the five

13 systems that I examined were these five.

14   Q   That's what that list is?

15   A   Yes.

16   And I examined the hard drives that came

17 from those five systems. But I never actually saw those

18 systems.

19   Q   Those numbers beside the word "system" refer

20 to what, as you understand it?

21   A   The serial number.

22   Q   Then the next part of this document says

23 that you discovered a number of sites listed on the

24 original 67 on the servers. And then you list some

25 names that were either very similar or exact matches.

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WILSON.TXT

1   Then you have a list of several here.

2   Can you explain what that list is?

3   A   Sure.

4   Of the original 67, I basically did a very

5   simple search to get -- the easiest term to use is

6   "low hanging fruit"; things that are very easy to spot

7   and things that don't require a whole lot of effort to

8   go find.

9   The results of that search were these

10 websites.

11   Q   What sort of search did you do for this

12 initially?

13   A   In this particular case, all I did was a

14 keyword search on the directory names for the websites

15 that were on the particular servers. It was very

16 simple.

17   Q   So you were looking for the names, for

18 example, that are listed here by doing a key word search

19 in the directory of the serves?

20   A   Correct. I would look for Bag925, or

21 Eshoes99, or Bigworld Shoes.

22   Q   Okay.

23   A   Of all of the systems that I looked at and

24 all of the servers that I looked at and websites, these

25 are the ones that popped up quickly and easily with no

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☐

1   effort on my part to find. It has nothing to do with

2   whether or not the other 67 aren't there, it just has

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3   to do with the fact that these were easy to spot.

4   Q   So there are nine of them on this list;

5   is that right?

6   A   Yes.

7   Q   Then you indicate further on that you then

8   focused the rest of your time on bigworldshoes.com.

9   A   Correct.

10   Q   And the hard drive with the particular

11   number, I'm trying to --

12   MR. COOMBS: I think it's the last four

13   digits of the serial number.

14   THE DEPONENT: Correct.

15   Q   BY MR. LOWE: That refers back up to this

16   first list of things?

17   A   No. It refers to the serial number of the

18   hard drive itself. Well, you're right. It refers to

19   that one, but not to the system.

20   Q   So to back up to the top of this page,

21   you have serial numbers of hard drives and the serial

22   number of a system next to it?

23   A   Correct. Well, actually, I have an EIN

24   followed by a serial number of a hard drive and then

25   the system that it was attached to. The EIN is the

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1   evidence inventory number that Guidance assigns to it.

2   Q   So the number 5924 is your shorthand for

3   what's on the second line of this group up at the top of

4   the page?

5   A   Correct. It's just a way for me to figure

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EXHIBIT C   Page 18

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6   out which computer it originally came from.

7   Q   And you used this last four digit process

8   for all of them that you list here for the hit location?

9   A   Correct.

10   Q   So if I'm looking at this correctly, you

11   found these particular nine hits on three different hard

12   drives?

13   A   Correct.

14   Q   Now, where you're talking about focusing

15   the rest of your time on bigworldshoes.com, you said

16   that the website was running at the time the system

17   image was taken. It had web logs to show access in

18   general and to LV portions of the website.

19   Can you explain what you mean by that?

20   A   Sure.

21   The system itself, when it was imaged,

22   basically, for my forensic examination, I could

23   determine that the website, bigworldshoes.com, was up

24   and running at the time the system was imaged.

25   Q   You could tell that how?

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1   A   We can get to that in a second, or it's up

2   to you.

3   Q   We'll wait.

4   A   Okay.

5   And after getting some identifying

6   information about the particular website, I found out

7   where the web logs were. And I analyzed the web logs

8   and found out that the website had been accessed up

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9   until the time the system was shut down to be imaged.

10   And the potentially LV portions of the website had also

11   been accessed up until the time that the system was

12   imaged.

13   Q   What do you mean by "potentially LV

14   portions"?

15   A   I mean the portions that are listed on the

16   website as being Luis Vuitton products. That's all.

17   Q   Now, we're talking only about this one

18   website; right?

19   A   Correct.

20   Q   So there were web logs that specifically

21   related to LV products?

22   A   For this particular website, there were

23   web logs for the entire site. And then as it happened,

24   portions of those web logs were easily identifiable as

25   being from the LV portion. That's all. We'll get into

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1   more detail if we go on.

2   Q   Just for the record, what is a web log?

3   A   A web log is a -- it would be a log that

4   is created by the web server itself that tracks the

5   connections made to a particular website. It tracks a

6   number of different information points, but the major

7   points would be the time that the access occurred,

8   where it occurred from, and what it was accessing.

9   There are other things in there, too, but those are the

10   big ones.

11   Q   So the next paragraph says that you used

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EXHIBIT C   Page 20

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12   LiveView .07b to create a virtual machine image of the

13   forensic image previously collected.

14   Can you explain what that means?

15   A   Sure.

16   First off, do you know what a virtual

17   machine is compared to a physical machine?

18   Q   Why don't you explain it for the record.

19   A   When everybody thinks about a computer,

20   they think about a physical system. They think about a

21   box with a CPU in it and a hard drive and some sort of

22   graphics card, et cetera. That is a physical computer.

23   The hardware can be different from computer

24   to computer, but the process involved in using the

25   computer is still generally the same.

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1   The operating system interacts with the

2   hardware at a level that is below where a normal end

3   user is concerned and presents some sort of interface

4   for the user to see and accomplish whatever tasks

5   they're trying to accomplish.

6   The key part of this is that the operating

7   system is what is concerned with paying attention to the

8   hardware. The end user doesn't care at all what the

9   hardware is. The only difference between the hardware

10   is whether or not their game runs faster or slower or

11   whether or not their picture loads quickly or slowly.

12   Things like that.

13   A virtual machine is effectively the same

14   thing, but there is one extra layer of abstraction.

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WILSON.TXT
15   The virtual machine application in this
16 case, the program is called VMware. This program
17 creates an abstraction layer between the physical
18 hardware and the operating system. What this allows
19 to happen is, the operating system can go on running and
20 thinking that it's a full computer with its own CPU and
21 its own hard drive and its own network card, et cetera,
22 et cetera. But in reality, it's actually running on top
23 of a base operating system on top of some sort of
24 hardware.
25   What this allows the system administrator

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1   or the end user to do is to take this particular virtual
2   machine and move it from place to place without any
3. concern at all about what sort of hardware it's running
4   on, except for the minimal, the faster the hardware, the
5   faster it runs type of deal.
6   So again, the reason why a VM machine is
7   used or created is to allow portability.
8   In this particular instance, I didn't have
9   access to that physical hardware that was running the
10 image or running operating system that we took an image
11 of. All I had access to was the operating system.
12   So what I did was, I used this program
13 called LiveView to convert the forensic image -- or
14 to convert a copy of the forensic image. The forensic
15 image is still preserved without being modified in any
16 way. It converts a copy of the forensic image into a
17 virtual machine.

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18   This allows me to pull up the virtual

19 machine, to start the virtual machine as if it were

20 an actual computer. I can start it in a window on my

21 forensic system.

22   What this allows me to do is see the imaged

23 system in the same way that an end user would have seen

24 the original computer.

25   Q   What do you mean by "end user"?

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1   A   In this case, an end user is literally

2 whoever is using the computer in this case. So the end

3 user would be whoever was sitting on the console, the

4 end user would be whoever was logging in and looking at

5 the website, anything.

6   In this case, I actually ended up -- once I

7 converted the system to a virtual machine, I started up

8 the system, changed a few network settings on my

9 forensic system, and that allowed the virtual machine to

10 act as if it were the actual web server that was imaged,

11 including hosting all of the websites.

12   So by the time I was finished with this

13 process, I was actually able to connect to the VM image

14 and actually browse the websites that were running on

15 the VM image at the time that the forensic copy was

16 made.

17   Q   To get back to my question, an end user

18 would be someone who was actually viewing a website in

19 your situation.

20   Is that right?

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☐

1   So no matter what, if you have physical
2   access to a system, you can be the administrator of that
3   system.
4   Q   What extra work would that require?
5   A   Well, the same amount of work that I needed
6   to do in order to get administrative level access to the
7   VM systems, which is, I needed to use a third-party
8   application in order to reset the password for the
9   administrator.
10   Q   On the hard drives that you looked at,
11   the systems that you were considering, was there a
12   VM software on any of those, as far as you could see?
13   A   I'm sorry. What do you mean?
14   Q   Was there any virtual machine software
15   available on those hard drives?
16   A   You mean the virtual machine application,
17   the thing that runs VM images?
18   Q   Yes.
19   A   No, not that I saw.
20   Q   So of the five hard drives you looked at,
21   there was no virtual machine software that would allow
22   what you're talking about?
23   MR. COOMBS: Objection. Misstates prior
24   testimony; vague and ambiguous.
25   THE DEPONENT: I'm sorry. I don't

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☐

1   understand that one.
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2   MR. LOWE: I'll try it again.

3   I'm just trying to clarify what's there and

4   what isn't there.

5   Q   In order for you to do what you did, you had

6   to attach the hard drive to another computer, your own

7   forensic computer, I believe you called it.

8   Is that right?

9   A   I didn't have to attach the hard drive,

10   I needed to have the forensic image of the hard drive.

11   Q   And was that a hard drive, or was it in some

12   other physical form?

13   A   It was the forensic image. Remember the

14   EnCase evidence files that we were talking about

15   earlier?

16   Q   Okay.

17   A   All I needed in order to do this was the

18   EnCase evidence file.

19   Q   So you didn't actually plug in the hard

20   drive to the computer you were using?

21   A   Correct; I had the forensic image of the

22   hard drive.

23   Q   So you were running it through the EnCase

24   system on your machine?

25   A   Correct.

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☐

1   Q   But also on your machine you had a virtual

2   machine or VMware installed?

3   A   Correct.

4   Q   So my question is, did you see any evidence
                         Page 116

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5   that VMware was installed on the hard drives that you

6   were examining?

7   A   No. But it doesn't need to be.

8   Q   Why doesn't it? Where else would it be if

9   it's not on the hard drives?

10   A   The VM application, which is called VMware,

11   VMware Work Station 5.55, I believe. That's the

12   application that is actually used in order to run

13   virtual machines. That application reads a number of

14   files that effectively is the virtual machine, or the

15   virtual machines, plural. And it uses those files to

16   recreate the operating system and to recreate the

17   virtual computer.

18   Q   But my question is, where is that

19   application, VMware; where is it installed?

20   A   That's what I'm trying to get to.

21   I have my forensic system, which is a

22   physical computer. On my forensic system, the VMware

23   work Station application is running. And inside that

24   VMware Work Station application is the virtual machine

25   that was created out of the hard drive from the web

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□

1   server that was imaged at Akanoc. So that's the layers

2   that we're talking about here.

3   So there was no VM-related software

4   installed on the VM system itself. The VM system is,

5   for all regular purposes, exactly the same as it was

6   when it was running on the systems at Akanoc.

7   Q   But my question is, the VM software is
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8 something you were actually using for your analysis?

9   A   Yes.

10   Q   Where was that VM software installed?

11   A   On my forensic system.

12   Q   Okay.

13   Was VM software installed on the hard drives

14 that were taken from the copies of which were taken from

15 Akanoc and Managed Solutions?

16   A   I didn't actually check, but no, not that I

17 could see.

18   Q   You have no evidence that that would be on

19 there?

20   A   No.

21   Q   But you would need to have VM software in

22 order to do the kind of analysis and viewing of the

23 system that you did without administrator passwords?

24   MR. COOMBS: I think he was fine until you

25 added the "without administrative passwords."

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□

1   THE DEPONENT: Right.

2   Q   BY MR. LOWE: Does the VM software allow you

3 to get around any password protection on the hard drive?

4   A   No, it does not.

5   Q   So how did you get around passwords?

6   A   There are a number of applications that are

7 designed for resetting administrative passwords. There

8 are lots of different uses for them. Predominantly,

9 the uses are because you administer a system and you

10 forgot what the administrator password is.

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14   A   You would have some sort of management
15 console at the firmware level of the system itself that
16 would allow you to reset the passwords remotely through
17 some sort of console access.
18   Q   How do you know that?
19   A   Because I've done it in the past.
20   Q   You've done that with your own systems?
21   A   Yes.
22   Q   Do you know if that facility was installed
23 on any of the systems at Akanoc or Managed Solutions?
24   A   No, not without looking over the testimony
25 again. I believe that that's what he was talking about,

                            133

1 but I don't remember.
2   Q   You also talked about LiveView .07b?
3   A   Yes.
4   Q   What is that?
5   A   LiveView is the application that you use to
6 convert an image of a system, or a hard drive, if you
7 happen to have a physical hard drive, to create a VM,
8 a virtual machine image, of that physical image.
9   So LiveView does is change the -- or adds
10 some extra information to allow you to boot up the
11 system as a VM system. That's all it does.
12   Q   Once again, LiveView was not installed
13 on any of the hard drives or systems that you were
14 inspecting?
15   A   Right, nor did it need to be.
16   Q   It was needed, however, for you to do what
                        Page 120

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17   you were doing?

18   A   Correct.

19   Q   Correct me if I'm wrong, but I think your

20   testimony is that in order to do what you did to look at

21   the directory of these hard drives, you had to have the

22   EnCase software with the data from the hard drives on

23   it; you had to have VMware; you had to have LiveView;

24   and you had to have a password resetting program.

25   Is that correct?

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1   A   In order to view the information in the

2   forensic image as if it were a live system, I needed

3   all of those things. In order to view the information,

4   all I need is an application that will read an EnCase

5   evidence file.

6   So the data is still available off the

7   forensic image in a pristine and unchangeable state.

8   But in order to see it in the same format that a user

9   would see it, you need all of these other things.

10   Q   And I presume that you didn't find EnCase

11   installed on any of these systems?

12   A   I would hope not, no.

13   Q   That's a specialized piece of software that

14   forensic examiners use?

15   A   Correct.

16   Q   I guess it's also kind of expensive?

17   A   Relatively, yes.

18   Q   How much, just roughly speaking?

19   A   I believe it's around $5,000 for a single

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3   Q   So under those circumstances, you would

4   essentially have to have the consent of the customer

5   to do the sort of viewing that you're talking about?

6   A   No. "Consent" implies that you need their

7   permission ahead of time, and you certainly don't.

8   Q   What do you mean, "you certainly don't"?

9   A   I mean, you don't need the permission of the

10   person who is controlling the system in order to reset

11   the password.

12   Q   Okay.

13   A   It may irritate them, but you don't need

14   their permission ahead of time. You do not need their

15   consent to do any of these steps.

16   Q   But they would obviously know about it if

17   you did some of these things?

18   A   Most likely.

19   Q   Down at the bottom of the first page on

20   Exhibit 1558, you have a series of things that are

21   called "server stats." Are we talking here about

22   the server concerning bigworldshoes.com?

23   A   Yes, we are.

24   Q   And only that?

25   A   Correct.

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1   Q   So you list the operating system, the

2   physical components of the system, the hard drives,

3   and so on; right?

4   A   Yes. It lists the operating system and the

5   fact that there were two hard drives in the system.

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6   Q   Are we talking about two physical hard

7 drives or two logical drives?

8   A   Two physical hard drives.

9   Q   And which one was imaged?

10   A   Both were imaged.

11   Q   Is that reflected anywhere in the notes

12 that were taken by Mr. Murin?

13   A   Yes.

14   Q   One of the hard drives you indicate hadn't

15 been running as a primary operating system since

16 January 15, 2009; correct?

17   A   Correct.

18   Q   And what does that mean, if anything?

19   A   That means that the operating system on the

20 hard drive with the last four digits of 4830 showed

21 indications, after a short forensic analysis, that it

22 had been a primary operating system on or around

23 January 15th. There was access to the hard drive after

24 that, but there wasn't access to the hard drive in such

25 a way that would indicate that it was actually running

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1 as an operating system. So it was probably in the

2 system as a secondary drive.

3   Q   Item 3 at the top of the second page says,

4 "328 running IIS v6 websites."

5   What does that mean?

6   A   There were 328 IIS Version 6 websites

7 running on that system at the time that it was imaged.

8   Q   And IIS Version 6 is what?

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9   A   Version 6 is the version of internet

10   information server service, the web server.

11   Q   So this is your term for -- or maybe it's

12   the official name -- of a program of a web server

13   that you've talked about before?

14   A   Correct.

15   Q   Do you know who installed that system on

16   there? Is there any way of telling?

17   A   There is a way. Well, there is not a way of

18   telling the physical person who installed it, but there

19   was a way of telling when it was installed.

20   Q   Did you determine that?

21   A   No.

22   Q   But some kind of a program like that would

23   be necessary to operate a computer as a web server?

24   A   Correct.

25   Q   Then the next portion of this information

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1   talks about what you call "Findings concerning the

2   website itself." And once again, we're talking about

3   bigworldshoes.com?

4   A   Yes.

5   Q   Can you go through what you listed here.

6   It appears to be written in language other than English.

7   Perhaps you can help us understand what you're saying.

8   A   Certainly.

9   Again, these are rough draft notes for the

10   report, so it's written in what would be easiest to say

11   as technical shorthand.

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12   So what I found about the particular website

13   itself was, it was running as of the date that the

14   system was actually imaged, which was March 25th, 2009.

15   The logs for this particular web server are

16   kept at that location listed ending in w3svc16.

17   The home directory was at that location

18   listed, which has "bigworldshoes_com" in the name.

19   It was running on that particular IP. I can

20   read it if you need me to.

21   Q   No.

22   A   The web logs show that the website was being

23   accessed up to the date that it was imaged, which was

24   March 25th.

25   Also, after examining the website itself and

143

1   the logs, a large portion of the Luis Vuitton-related

2   products appeared to have had pictures that were located

3   in a directory with that designation, "THY=."

4   So basically, the pictures were in a

5   subdirectory somewhere after that point.

6   Q   Okay.

7   A   Also, the main page for the LV products

8   had a URL that ended in "pcid=16." So what I did was,

9   I analyzed the web logs for the entire website as it

10   stood and specifically just for those two items.

11   And again, what I was able to determine was, the website

12   was running, accessible, and accessed at least between

13   January 31st and March 25th of 2009.

14   Q   Okay.

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15   A   The only other part is Number 8. The

16   LV-related pages on the website were accessed at least

17   between February 27th and March 25th of 2009.

18   Q   Okay.

19   The web logs that you looked at, are they

20   publicly available to the user?

21   A   No. They shouldn't be.

22   Q   Typically, web logs are not available to

23   someone viewing a website?

24   A   Not unless the website is configured

25   incorrectly, yes.

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1   Q   By that you mean that someone who is running

2   a website does not want someone to look at the web logs

3   normally?

4   MR. COOMBS: Calls for speculation.

5   THE DEPONENT: I'm not sure that they would

6   care one way or another, but it is usually extraneous

7   data that doesn't matter. It's usually back-end

8   tracking sort of data that wouldn't be publicly

9   available.

10   Q   BY MR. LOWE: And if you did see it on a

11   website, you would think, as you said, that someone had

12   configured things incorrectly?

13   A   Yes, I would.

14   Q   You then accessed some images or something

15   from this directory THY=.

16   Is that right?

17   A   Which one are we talking about?

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18   Q   For example, Number 6.   You said, "I noticed
19 that a large portion of the LV-related products had
20 pictures in the directory 'THY=.'"
21   A   Yes.
22   Q   It says, "So I extracted hits with text
23 'THY=' in them."
24   What do you mean by that, "extracting hits"?
25   A   I mean that the web logs were certainly over

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1 100 megs' worth of text data, so screens and screens and
2 screens of information. Within all of that information,
3 there were hits that specifically dealt with pictures
4 within the THY directory.
5   So what I did was, I basically filtered for
6 only those hits and put those into a separate file and
7 then analyzed just those hits.
8   Q   And you were not viewing those files through
9 the website main page, for example?
10   MR. COOMBS: Objection; ambiguous.
11   THE DEPONENT: Actually, yes, I was, at
12 least at one point. By the time I had the whole thing
13 rebuilt and visible, yes, I could actually access the
14 website as it had been visible at the time the system
15 was imaged. So I could access all of that information
16 to verify that they all came from roughly the THY
17 directory.
18   MR. LOWE: Well, I guess I'm just not clear
19 as to what you were doing here.
20   You say you extracted hits with this text in

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21   them.

22   Q   What do you mean by that? You said, if I

23   remember correctly, that you looked for those file

24   extensions, or something in that directory, and you put

25   that in a separate file.

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1   Is that right?

2   A   The easiest way to describe it would be --

3   well, let's take the expert report from Richard Gralnik

4   as an example.

5   If you wanted to only find lines in it that

6   had the word "domain" in them, you would do a search for

7   the word "domain." And every line that had "domain" in

8   it, you would then extract or set aside or move or copy,

9   or whatever, and put all of those into a smaller,

10   preferably less than 48-page document that just has

11   "domain" in them. And then you could analyze each line

12   that had the word "domain" in it.

13   That's the same thing that I did with these

14   particular web logs, so any web log line, any entry that

15   actually had "THY=" or "pcid=16" in it.

16   And I extracted those out of the larger set

17   of data and put that in one file, a significantly

18   smaller file, so that I could then analyze just that

19   information.

20   Q   And how large was the file that you were

21   searching, or the files?

22   A   That's the web logs that I provided on the

23   CD that would have been voluminous. Like I said, they

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24 had web hits from January 31st to March 25th on the

25 order of thousands.

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1   Q   Thousands of hits?

2   A   Many more than thousands of hits, thousands

3 of pages. You're getting into an area that I can very

4 easily describe for a very long period of time, but you

5 don't want me to.

6   Q   I'm just trying to get an understanding

7 of the size of the data that you were searching.

8   A   Honestly, the easiest way to do that would

9 be to either wait for my final report or take a quick

10 look at the CD and see how big it is; it's very large.

11   Q   Did you measure it? Do you have any

12 estimate in terms of megabytes, gigabytes, terabytes,

13 whatever?

14   A   It would be multiple megabytes, but probably

15 not gigabytes worth of data.

16   MR. COOMBS: Just for the one website?

17   THE DEPONENT: Yes, just for the one

18 website.

19   Q   BY MR. LOWE: So the hits you're talking

20 about came from the web logs?

21   A   Correct.

22   Q   The images came from where?

23   A   The images came from the home directory or

24 came from a subdirectory of "bigworldshoes_com/htdocs,"

25 which is basically the website location.

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1   Q   Is there a file in that system that just had
2   pictures in it?
3   A   There are multiple pictures. There are
4   actually very many directories that just have pictures
5   in them. One of those directories has primarily
6   pictures of LV-related products in it.
7   Q   One of roughly how many directories?
8   A   I actually cannot tell you at this point.
9   Q   Thousands?
10   A   Hundreds.
11   Q   You were starting to say earlier, I think,
12   that you rebuilt the system somehow. I'm not sure I
13   understood what you were talking about.
14   A   That would be the LiveView thing where I
15   converted a copy of the forensic image into a VM so
16   that I could boot up the system as it would be a normal
17   computer.
18   Q   So is that the way you then access these
19   pictures, or not?
20   A   I access the pictures both through the
21   VM image and through the forensic image itself.
22   Q   I'm not sure I understand the distinction
23   you're making.
24   A   The major distinction here is that the
25   forensic image itself is "read only." So any of the

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1   data in the forensic image is pristine, is not touched,
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2   is not changed in any way. So if I want to do any sort

3   of comparison for file access times or any sort of

4   MetaData, I have to do that through the forensic image.

5   Q   That's not quite what I was trying to focus

6   on.

7   When you were looking at or determining the

8   content of the pictures, the photographs, were you doing

9   that as if you were viewing the website as an end user,

10 or were you doing it in some other fashion?

11   MR. COOMBS: Asked and answered.

12   THE DEPONENT: I was doing it both ways.

13 I was doing it as I was viewing the website, and I also

14 viewed them through the forensic image.

15   MR. LOWE: I guess I don't understand what

16 you're saying by you "viewed them through the forensic

17 image."

18   You identified certain directories because

19 of information you got from the web logs that had,

20 for example, LV images in them, I think you called them.

21   Q   Is that right?

22   A   Yes.

23   Q   And then did you directly access those

24 images in some fashion other than looking at it through

25 a web page?

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1   A   Yes, I did.

2   Q   And how did you do that?

3   A   That was directly through EnCase and looking

4   at the forensic image that was originally acquired.

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5   So what I'm trying to say is, I did both.

6   I didn't just rely on the rebuilt VM system. I looked

7   at the data as it would have been visible by a normal

8   user through the VM system, and then I verified the

9   data's location and content and made sure that

10 everything was exactly where I expected it to be on the

11 "read only" forensic image that is an exact duplicate of

12 the system that was imaged by Joe.

13   Q   So when you were looking at it through the

14 forensic image, as you've called it --

15   A   Yes.

16   Q   -- you accessed the directory specifically;

17 is that right?

18   A   Yes.

19   Q   Were all of the LV images, as you've

20 characterized them, available through a web page of

21 bigworldshoes.com, as you had reconstructed it?

22   A   I wouldn't be able to tell you if all of

23 them were visible or not. All I saw was a sampling of

24 the files.

25   Q   So you saw some that way?

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1   A   Yes.

2   Q   And then you just went directly to the

3   directory to look at more?

4   A   Correct.

5   Q   Still on page 2 of Exhibit 1558, item 9

6   says, "I processed the logs using Webalizer."

7   What is that?

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8   A   Webalizer is a free tool used for processing

9 web logs to give a graphic representation of access to a

10 website.

11   Q   Is Webalizer something that is typically

12 installed on a website, or is it used by an

13 administrator or somebody?

14   A   It's used by an administrator. And

15 actually, it's a relatively common program because it's

16 free.

17   Q   Well, there are a lot of free programs.

18   A   It's a relatively common program because

19 it's free, and it actually does a decent job at what it

20 says it's doing.

21   Q   Tell me more about Webalizer and what that

22 process is that you did.

23   A   Webalizer is, as I mentioned before, an

24 application used for processing web logs to give the

25 user some sort of graphical or statistical information

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1 as to traffic to a particular website.

2   It can be used for all sorts of different

3 reasons, sometimes just for curiosity and sometimes for

4 billing purposes; it really kind of depends. But the

5 bottom line is, it will take web logs and parse through

6 them in some sort of reasonably intelligent manner, and

7 then compile that information into a human readable and

8 understandable form.

9   Q   Generate some reports?

10   A   Yes.

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11   Q   And you generated some reports for yourself?

12   A   I did.

13   Q   And you have them there in front of you?

14   A   I do.

15   Q   Might I see them?

16   A   Yes.

17   Q   You were about to say that they're on this

18   disk?

19   A   Yes, they're on a disk. And they're

20   actually easier to read on that disk than they are on

21   the printouts.

22   Q   For the deposition, we need paper.

23   (Discussion held off the record.)

24   MR. LOWE: Back on the record.

25   Let me ask you a couple other questions

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1   while we're waiting for the copies.

2   Q   A little further down, about the middle of

3   the second page, you indicate, "There is an extremely

4   similar website currently online," and you have the

5   particular IP address.

6   A   Yes.

7   Q   It's a different IP address than had been

8   running previously; is that right?

9   A   That is correct.

10   Q   So what you mean to say is that you found

11   bigworldshoes.com at another IP address?

12   A   Correct.

13   Q   And when was that?

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14   A   Yesterday.

15   Q   And what does that mean to you, if anything?

16   A   It just means that the website that is

17   currently on the forensic image is effectively the same

18   website with updates as the one that's running somewhere

19   else right now. That's all.

20   Q   Do you know where it's running?

21   A   I know that it's not running at

22   Managed Solutions, but I don't remember where.

23   Q   So this IP address is not one assigned to

24   Managed Solutions or Akanoc?

25   A   Correct.

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1   Q   Then the next sentence says, "After

2   'slurping' the online website using HTTrack, I did a

3   comparison," et cetera.

4   What is "slurping"?

5   A   "Slurping" is kind of an industry slang.

6   And effectively what it means is downloading a website

7   in its entirety through the actual user interface.

8   So HTTrack is a program that just automatically does

9   that. So what it does is, it "slurps" all of the

10   available links and all of the available pictures and

11   all of the code that it can actually see and pulls it

12   all down and does its best estimate in recreating the

13   actual directory structure and puts it all on your

14   system so that you can browse a website offline.

15   In this case, I used it to grab as much of

16   the website as I could in the time that I had just to

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17   compare the two sites together.

18   Q   Does it grab only publicly available

19   information?

20   A   Yes.

21   Q   So it doesn't grab, for example, web logs?

22   A   No, not unless it's publicly available.

23   Q   So if I understand the rest of this

24   paragraph, you said that it was substantially similar to

25   what you saw on the collected hard drive image?

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1   A   Correct.

2   MR. LOWE: I'm going to mark a copy of this

3   as Exhibit 1559.

4   (Defendants' Exhibit 1559 was marked for

5   identification by the Deposition Officer

6   and is attached hereto.)

7   Q   BY MR. LOWE: Exhibit 1559 is what, this

8   group of documents?

9   A   Exhibit 1559 is the printed out PDF'd

10   Webalizer web pages. So it is the result of the web log

11   analysis that is exported by Webalizer.

12   Q   Would you agree that it's far more

13   information than anyone really wants to read?

14   MR. COOMBS: Calls for a speculation.

15   Speak for yourself.

16   THE DEPONENT: In my opinion, there is

17   significantly more information than is readily usable to

18   a layman.

19   Q   BY MR. LOWE: We'll try a few pieces of it

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20   here?

21   A   Okay.

22   Q   The first page looks like a summary of hits

23   from February 2009. You mean people actually visiting

24   the website. Is that it?

25   A   Yes. Well, there is a difference between

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1   people visiting a website and hits, unfortunately.

2   Back when websites were first made, it was one static

3   HTML page. And pretty much every time there was access

4   to that one web page, it was one person clicking on it.

5   Unfortunately -- or fortunately, depending

6   on your point of view -- nowadays websites and web

7   pages have significantly more than one item on them.

8   What that means is, a web page that looks like

9   bigworldshoes.com could have 5 or 6 or 10 or 20

10   different items available on it. That means that every

11   time somebody looks at it, it could be 5 or 6 or 10 or

12   20 hits. So it's not necessarily a one-to-one ratio

13   between hits and pages or hits and visits, or things

14   like that.

15   So what I can tell you is, the total number

16   of hits is the total number of items that were touched

17   during this time frame.

18   Q   On this first page, during February of 2009,

19   it looks like the total visits were four, and the total

20   hits were 63.

21   Is that correct?

22   A   That is what Webalizer thinks, yes.

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23   Q   Do you think that's correct, or is there

24   some reason to doubt it?

25   A   I think that the total hits is correct.

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1   I happen to not necessarily agree with Webalizer's idea

2   of visits. But I'm also generally not concerned with

3   visits.

4   Q   What is your understanding of the phrase

5   "Total Unique URLs"?

6   A   "Total Unique URLs" should be the -- it

7   should be how many unique URLs were actually touched

8   during that time frame.

9   Q   URLs within the website?

10   A   Yes, URLs in general, but URLs within the

11   web logs.

12   Q   The next page shows a couple of graphs.

13   What roughly do they show?

14   A   Basically, they show a graphical

15   representation of the information on the first page,

16   which is that there were 63 hits during February.

17   Q   And the dates when those happened?

18   A   Exactly.

19   Q   It looks like it only had a couple of days

20   of activity.

21   Am I reading that right?

22   A   Yes.

23   Q   I'd like to move to a page that's marked as

24   "6 of 6," but it has a pie chart on it.

25   A   Yes.

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1   Q   And it looks like this is entitled "Usage by
2 Country for February 2009."
3   A   Yes.
4   Q   And do I understand that 97 percent of the --
5 is that visits or hits? It looks like hits.
6   A   I believe this is hits, yes.
7   Q   -- were unresolved or unknown; is that
8 right?
9   A   Yes.
10   Q   What does that mean?
11   A   Well, this just means that my computer that
12 isn't connected to the Internet couldn't do any sort of
13 resolution on the IP addresses that hit the -- the IP
14 addresses that were responsible for these particular
15 hits. It doesn't necessarily mean that they all
16 wouldn't be resolved on a system that could actually
17 go out and look. But for security purposes and for the
18 preservation of evidence and all that, my system doesn't
19 have direct Internet access. So it couldn't go and try
20 and resolve any of these things.
21   Q   So it had to look only at the data that you
22 had been able to pull off the hard drive?
23   A   Correct. And some sort of internal cache.
24 And probably the internal cache is where it got the fact
25 that some of these were from France.

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1   Q   So 3 percent of the hits were from France
2   in February of '09?
3   A   Correct.
4   Q   And the others you don't know?
5   A   Right.
6   Q   Then it looks like the next page goes on to
7   the last 12 months.
8   A   Yes.
9   Q   So I guess we're talking from June 2008
10 through June 2009?
11   A   I believe we're actually talking about
12 April 2008 through March 31st of 2009.
13   Q   Once again, it's showing hits and visits;
14 right?
15   A   Yes. It's showing 79 hits in March and
16 31 hits in February. Actually, I'm wrong. That was the
17 daily average.
18   It's showing 1,903 hits in March and 63 hits
19 in February. So significantly more in March.
20   Q   The next page shows just March hits, or hits
21 and visits; right, March 2009?
22   A   Correct.
23   Q   The next page after this and some others
24 in here have a set of information called "Daily
25 Statistics." And it lists things by day. And many of

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1   these are expressed in percentages. That's a percentage
2   of what; do you know?

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3   A   It would be a percentage of the total in

4   that particular column.

5   Q   A few pages further along, it looks like

6   there is a pie chart for March of 2009, Usage by

7   Country.

8   A   Correct.

9   Q   And aside from the unresolved and unknowns,

10   it looks like the hits came from Canada, France, China,

11   Switzerland, Germany, India, and Hong Kong.

12   Is that right?

13   A   Correct.

14   Q   The next page is -- I'm not sure how this

15   differs from the first page we looked at; it looks like

16   February of '09.

17   A   The first section was just the LV-related

18   hits.

19   Q   Okay.

20   A   The second section is the entire website.

21   Q   So starting at this page, about halfway

22   through, is everything?

23   A   Correct.

24   Q   Going back to the first page, is that what

25   the "THY" and the "pcid=16" refers to?

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1   A   Correct.

2   I was in a hurry. Probably it would be

3   better to have them switched.

4   Q   Going on to the next pie chart. It looks

5   like February of 2009 again. Most of them, 92 percent,

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6   are unresolved, but Canada and China are listed as

7   sources of hits; right?

8   A   Right.

9   Q   Actually, there are a couple of others:

10   Netherlands, Antilles, and Great Britain.

11   A   Correct.

12   The next chunk of data is for the 12-month

13   period.

14   Q   Starting where? Is it headed, "Statistics

15   for bigworldshoes.com"?

16   A   Yes. And then the next line says,

17   "Summary Period: Last 12 Months."

18   Q   Maybe I'm on the wrong page. Okay.

19   And the page after that looks like

20   "Summary Period: January 2009."

21   Is that right?

22   A   Correct.

23   Q   And the next page has to do with

24   January '09?

25   A   Yes.

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1   Q   And the next pie chart is January '09;

2   is that correct?

3   A   Correct. That's January of '09 for the

4   entire website, bigworldshoes.com.

5   Q   So it looks like 31 percent are unresolved

6   and other countries are listed: Netherlands, Great

7   Britain, Belgium, Brazil, Italy, and China; correct?

8   A   Correct.

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9   Q   And then the last page is yet another pie

10   chart.

11   A   Yes.

12   Q   For March of '09?

13   A   Correct.

14   Q   And this is, once again, for all of the

15   website, bigworldshoes.com?

16   A   Correct.

17   Q   And it reflects that 70 percent are

18   unresolved sources of hits, and the others that were

19   reflected are China, Canada, and France?

20   A   Correct.

21   Q   So at this point in time, you have only

22   reviewed information for this one website,

23   bigworldshoes.com?

24   A   Not quite. At this point in time, I have

25   done what I would consider to be a relatively in-depth

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1   analysis of this one website. I've done cursory

2   examinations of a number of different websites.

3   Q   But you don't have the same amount of

4   information on those others?

5   A   Correct. I can get it, though.

6   Q   What do you have in hand today?

7   A   Just for this website.

8   Q   In the middle of page 2 of Exhibit 1558,

9   under your "Collection Findings," Number 2, perhaps you

10   could interpret that for us, "TTBOMK."

11   A   "To the best of my knowledge."

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