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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' OPPOSITION TO**
) **VUITTON'S REQUEST FOR LEAVE TO**
) **FILE MOTION FOR RECONSIDERATION**
) **OF JULY 9, 2009 ORDER RE: MOTIONS**
) **IN LIMINE**

1 Defendants Akanoc Solutions, Inc., Managed Solutions Group, Inc. and Steve Chen
 2 (“Defendants”) oppose plaintiff Louis Vuitton Malletier, S.A.’s (“Vuitton”) request for leave to file a
 3 motion for reconsideration of the Court’s July 9, 2009 order re: motions in limine.

4 **I. LEAVE TO FILE A MOTION FOR RECONSIDERATION SHOULD BE DENIED**

5 **A. Background**

6 On July 9, 2009 the Court issued its Order re: Motions in Limine [Doc. 183] wherein it ruled
 7 on fifteen motions in limine filed by Defendants. Specifically, that Order granted Defendants’
 8 Motion in Limine No. 15 and precluded Vuitton’s expert Michael Wilson from providing additional
 9 testimony about actions and opinions not disclosed prior to his deposition. The July 9, 2009 Order
 10 states in pertinent part:

11 Defendants’ Motion *in Limine* ... is GRANTED to the extent Plaintiff
 12 attempts to introduce testimony by Mr. Wilson regarding the results of
 13 experiments or investigations, and any opinions that were not
 14 disclosed prior to Mr. Wilson’s deposition. This is without prejudice
 15 to Plaintiff to demonstrate to the Court that these were previously
 16 disclosed.

17 The Court’s Order regarding motion in limine #15 is consistent with its November 15, 2007
 18 Scheduling Order in this case. That Order requires all tests and reports be completed prior to the
 19 expert deposition, and precludes an expert from testifying as to opinions not disclosed prior to the
 20 expert’s deposition.

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

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

28 **B. Mr. Wilson’s Deposition Date Set On a Mutually Agreeable Date**

Mr. Wilson’s deposition date was a mutually convenient date agreed to by counsel for both
 parties. Mr. Wilson’s initial report was dated May 20, 2009. On May 22, 2009, Defendants’
 counsel sent Vuitton’s counsel an email asking “how soon your expert witness [Mr. Wilson] will be
 available for deposition and provide us with some dates so that we can schedule his deposition in

1 short order.” [Dec. of Lowe, ¶ 5] The parties eventually agreed that Mr. Wilson’s deposition would
2 take place on June 16, 2009. [Dec. of Lowe, ¶ 5] The parties thereafter mutually agreed Mr.
3 Wilson’s deposition would be reset to June 26, 2009. [Dec. of Lowe, ¶ 6]

4 During his deposition Mr. Wilson said that he expects to testify about additional matters
5 beyond his reports and testimony at some time in the future regarding investigation and opinions.
6 Defendants thereafter filed Motion in Limine #15 to bar such testimony. [Doc. 181]

7 **C. Vuitton Failed to Comply With Civil L.R. 7-9(b)**

8 Civil L.R. 7-9(b) provides that a motion for leave to file a motion for reconsideration of the
9 decision on any motion may be made *only* on the grounds of: (1) existence of a material difference
10 in fact or law from that presented to the court; (2) emergence of new material facts or a change in
11 law occurring after the time of such order; or (3) a manifest failure to consider material facts or
12 dispositive legal arguments presented to the Court before the interlocutory order. Civil L.R. 7-9(b)
13 “No motion for leave to file a motion for reconsideration shall repeat any oral or written argument
14 made by the applying party in support of or in opposition to the interlocutory order which the party
15 now seeks to have reconsidered.” Civil L.R. 7-9(c)

16 Contrary to Vuitton’s assertion, no material facts were omitted from Defendants Motion in
17 Limine #15. Defendants timely served a supplemental report of their own expert, Robert Gralnik,
18 four days before Mr. Gralnik’s expert deposition and one day before Mr. Wilson’s expert deposition.
19 But this fact is not material because Mr. Gralnik’s supplemental report is unrelated to Mr. Wilson’s
20 additional opinions. At his deposition on June 26 Mr. Wilson indicated that he planned to testify
21 about the results of his ongoing efforts to “rebuild” websites stored on Defendants’ Internet servers.
22 Vuitton does not suggest the “emergence of new material facts or a change in the law” or any
23 “manifest failure to consider material facts or dispositive legal arguments.”

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1 **II. CONCLUSION**

2 The requirements of Civil L.R. 7-2 have not been met. Defendants respectfully request that
3 the Court deny Vuitton's request for leave to file a motion for reconsideration.

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5 Dated: July 10, 2009

GAUNTLETT & ASSOCIATES

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7 By: /s/James A. Lowe

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15 and Steve Chen