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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

LOUIS VUITTON MALLETIER, S.A.,

Plaintiff,

vs.

AKANOC SOLUTIONS, INC., et al.,

Defendants.

) Case No.: C 07-3952 JW

) Hon. James Ware

) **DEFENDANTS' RULE 50(a) MOTION FOR**  
) **JUDGMENT AS A MATTER OF LAW**  
) **REGARDING: CONTRIBUTORY**  
) **COPYRIGHT INFRINGEMENT CLAIM**

) **[Fed. R. Civ. P. 50(a)]**

) Trial Date: August 18, 2009

) Time: 9:00 a.m.

) Dept.: Courtroom 8, 4<sup>th</sup> Floor

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28

1 **I. VUITTON FAILED TO PRESENT EVIDENCE TO SATISFY ELEMENTS OF ITS**  
 2 **CONTRIBUTORY COPYRIGHT INFRINGEMENT CLAIM**

3 **A. Judgment As a Matter of Law Is Appropriate Under FRCP 50(a)**

4 Any time before the case is submitted to the jury, a party can move pursuant to Fed. R. Civ.  
 5 P. 50(a) for judgment as a matter of law as to the entire case, or on particular claims or issues.  
 6 *Golden v. Winjohn Taxi Corp.*, 311 F.3d 513, 516 (2d Cir. 2002).

7 Rule 50(a)(1) provides:

8 If a party has been fully heard on an issue during a jury trial and the court finds that a  
 9 reasonable jury would not have a legally sufficient evidentiary basis to find for the  
 10 party on that issue, the court may (A) resolve the issue against the party; and (B)  
 11 grant a motion for judgment as a matter of law against the party on a claim or defense  
 12 that, under the controlling law, can be maintained or defeated only with a favorable  
 13 finding on that issue.

14 “Judgment as a matter of law is appropriate when the evidence presented at trial permits only  
 15 one reasonable conclusion.” *Santos v. Gates*, 287 F.3d 846, 851 (9th Cir. 2002). In other words, a  
 16 motion for a judgment as a matter of law is properly granted if “no reasonable juror could find in the  
 17 non-moving party's favor.” *El-Hakem v. BJY Inc.*, 415 F.3d 1068, 1072 (9th Cir. 2005). The Ninth  
 18 Circuit will affirm this Court’s granting of a motion for judgment as a matter of law as long as “no  
 19 reasonable inferences could support a verdict for the plaintiff.” *Santos v. Gates*, 287 F.3d at 851.

20 **B. Vuitton Has Not Presented Evidence to Prove Its Contributory Copyright**  
 21 **Infringement Claim**

22 The elements of Vuitton’s contributory copyright infringement claims are (1) direct  
 23 infringement by a primary infringer,<sup>1</sup> (2) knowledge of the direct infringement, and (3) inducing,  
 24 causing or materially contributing to the direct infringement. *Ellison v. Robertson*, 357 F.3d 1072,  
 25 1076 (9th Cir. 2004); *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd.*, 380 F.3d 1154, 1160  
 (9th Cir. 2004); *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264 (9th Cir. 1996) (“[O]ne

26 <sup>1</sup>*A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 n.2 (9th Cir. 2001) (“Secondary liability  
 27 for copyright infringement does not exist in the absence of direct infringement by a third party.  
 28 *Religious Tech. Ctr. v. Netcom On-Line Communication Servs., Inc.*, 907 F.Supp. 1361, 1371  
 (N.D.Cal.1995) (“[T]here can be no contributory infringement by a defendant without direct  
 infringement by another.”).”).

1 who, with knowledge of the infringing activity, induces, causes or materially contributes to the  
2 infringing conduct of another, may be held liable as a “contributory” infringer.’ ”).

3 **1. Element 1 – No Proof of Direct Infringement**

4 Direct copyright infringement requires proof that (1) Vuitton owned the allegedly infringed  
5 copyright and (2) a third party violated an exclusive right granted to copyright holders under 17  
6 U.S.C. § 106. *Ellison v. Robertson*, 357 F.3d at 1076; *Napster, Inc.*, 239 F.3d at 1013.

7 Although Vuitton’s ownership of copyrights is not contested, Vuitton cannot prove violation  
8 of any Section 106 right. Entry of judgment as a matter of law pursuant to Rule 50(a) is appropriate  
9 for the following reasons.

10 **a. The Copyright Act Does Not Apply Because the Alleged Direct  
11 Infringement Did Not Occur Entirely Within the United States**

12 There can be no violation of any Section 106 right because the alleged *direct* infringement  
13 did not occur entirely within the United States. *Subafilms, Ltd. v. MGM-Pathe Communications Co.*,  
14 24 F.3d 1088, 1094 (9th Cir. 1994) (“**The Copyright laws do not apply extraterritorially**, so each  
15 of the rights conferred under the five section 106 categories must be read as extending ‘no farther  
16 than the [United States’] borders.’ ” (emphasis added)). An infringing act must occur and be  
17 completed entirely within the United States. *Los Angeles News Service v. Reuters Television Int’l*  
18 *(USA) Ltd.*, 340 F.3d 926, 928 (9th Cir. 2003) (“[A]lthough the district court was correct to hold that  
19 **the Copyright Act does not apply extraterritorially**, an exception may apply where an act of  
20 infringement is **completed entirely within the United States** and that such infringing act enabled  
21 further exploitation abroad.” (emphasis added)).

22 The only evidence presented at trial shows that any alleged infringement of Vuitton’s work  
23 was completed entirely *outside* the United States. Vuitton offers allegedly counterfeit bags, belts,  
24 etc. that Vuitton purchased from China. The orders were made by e-mail and payment was sent by  
25 Vuitton through a money transfer agent, e.g., Western Union, to addresses in China. Vuitton then  
26 requested and authorized the Chinese sellers ship the merchandise to them in the United States,  
27 presumably to create evidence for this lawsuit. But the alleged infringement and counterfeiting was  
28 entirely completed in China and then shipped to the United States with the express authorization of

1 Vuitton, the copyright owner. This evidence of copying in China was completed entirely outside the  
2 U.S.

3 **b. Jurisdiction Over Alleged Direct Infringers Is Lacking**

4 Vuitton also cannot prove a direct infringement cognizable under the Copyright Act because  
5 personal jurisdiction over the direct infringers does not exist. Because there is no direct  
6 infringement, the Defendants cannot be held liable for contributing to that infringement. *Subafilms,*  
7 *Ltd*, 24 F.3d at 1092 (“ ‘There can, by definition, be no contributory liability if that conduct which is  
8 aided by the putative contributory infringer is not itself infringing.’ ”).

9 Personal jurisdiction over an Internet company (such as the unidentified operators of accused  
10 websites) is only appropriate if (1) business contacts with the forum state are substantial and  
11 continuous or systematic [*Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1077 (9th Cir. 2003)]  
12 or (2) the Internet company has purposefully availed itself of the privileges of conducting activities  
13 in the forum, the claim arises out of or results from the defendant's forum-related activities, and the  
14 exercise of jurisdiction is reasonable. [*Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007,  
15 1019 (9th Cir. 2002), citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 85  
16 L.Ed.2d 528 (1985)].

17 Vuitton presented no evidence of “substantial” or “continuous and systematic” contacts with  
18 California or the U.S. The only evidence of effects in the United States are a few items Vuitton  
19 itself purchased from different sources and had shipped here in an attempt to create jurisdiction.  
20 These effects are not substantial, and were created by Vuitton itself, not the direct infringers.  
21 *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958) (“The unilateral  
22 activity of those who claim some relationship with a nonresident defendant cannot satisfy the  
23 requirement of contact with the forum State.”).

24 Furthermore, Vuitton has not and cannot identify *anyone* with whom it did business in  
25 purchasing any products. Vuitton admits that the Chinese sellers probably used false names and  
26 addresses. There is no way to even tie the purchases (let alone multiple purchases) to any website.  
27 Instead, the Vuitton investigator in Texas sent merchandise requests to a variety of e-mail addresses,  
28 not necessarily connected with any websites, sent payment to a second person, and received the

1 merchandise from a third person.

2       There are no “substantial” and certainly no “continuous and systematic” contacts with  
3 California or the U.S. by anyone according to Vuitton’s evidence. Vuitton’s argument apparently  
4 assumes that all Chinese counterfeiters are somehow connected. But there is no shred of evidence to  
5 support that speculation. In truth, Vuitton has no idea who they have dealt with and no evidence to  
6 support U.S. jurisdiction over these myriad counterfeiters.

7       There is also no evidence that any direct infringers purposefully availed themselves of the  
8 privileges of conducting business in California or the U.S. It is undisputed that all of the accused  
9 websites were operated from inside China. The accused sites could be accessed from the entire  
10 world by anyone having access to the Internet – California and/or the United States were not  
11 specifically targeted. Indeed the Texas investigator made the offer to buy. Purchases were set up  
12 via email from outside of California, and completed using Western Union money transfer. The sales  
13 took place entirely outside California, with Vuitton ordering the products from France or Texas and  
14 then requesting that they be shipped into California.<sup>2</sup>

15       Vuitton’s claims are also not related to, and did not arise “but for,” any contacts with  
16 California or the U.S. *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995) (relying on a “but for”  
17 test to determine whether a particular claim arises out of or is related to forum-related activities).  
18 Vuitton could have just as easily had the products shipped to France, some other country, or not  
19 shipped at all.

20 ///

21 ///

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22  
23 <sup>2</sup>Vuitton cannot create jurisdiction by having products shipped to California. *World-Wide*  
24 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) (The mere  
25 “ ‘unilateral activity of those who claim some relationship with a nonresident defendant cannot  
26 satisfy the requirement of contact with the forum State.’ ”); *Ricoh Co., Ltd, v. Asustek Computer,*  
27 *Inc.* 481 F. Supp. 2d 954, 959 (W.D. Wis. 2007) (“It is undisputed that plaintiff purchased  
28 defendant’s products for the sole purpose of providing a basis for personal jurisdiction. ...  
[C]ommon sense requires a conclusion that such a forced and artificial exercise cannot provide the  
basis for personal jurisdiction. Economic harm to plaintiffs does not ‘aris[e] out of’ defendants’  
actions when no sale would have been made but for plaintiff’s choice to make a purchase.  
Alternatively, a strong argument exists that a self inflicted wound is not an ‘injury’ at all within the  
meaning of the statute.”).





1 purposes of the Copyright Act.... Instead of communicating a copy of the image,  
 2 Google provides HTML instructions that direct a user's browser to a website  
 3 publisher's computer that stores the full-size photographic image. **Providing these  
 HTML instructions is not equivalent to showing a copy. First, the HTML  
 4 instructions are lines of text, not a photographic image. Second, HTML  
 5 instructions do not themselves cause infringing images to appear on the user's  
 computer screen. The HTML merely gives the address of the image to the user's  
 browser. The browser then interacts with the computer that stores the infringing  
 6 image. It is this interaction that causes an infringing image to appear on the  
 user's computer screen.**

7 *Id.* at 717 (emphasis added).

8 Like Google's HTML instructions, the computer code on defendants' servers is not a copy of  
 9 anything. It is a series of zeroes and ones (e.g. 1110010101000); not photographic images. Similar  
 10 to Google, the computer code on Defendants' servers does not itself cause an infringing image to  
 11 appear – a copy of an infringing image cannot appear **without the assistance of the computer  
 12 user's web browser.**

13 (2) **A Computer User Viewing Content On His or Her  
 14 Computer Screen Is Not Liable for Copyright  
 Infringement**

15 Computer users in the United States who may view a picture created in China are not direct  
 16 infringers. The fair use defense shields persons who access infringing images on Internet servers  
 17 from liability as direct copyright infringers. Even if Vuitton had presented evidence that computer  
 18 users in the U.S. accessed accused websites (it did not), that would still not establish direct  
 19 infringement within the U.S. borders.

20 “Fair use is a privilege against a direct infringement claim [citing 17 U.S.C. § 107] and is a  
 21 privilege held in the first instance by the alleged direct infringer.” *Lewis Galoob Toys, Inc. v.*  
 22 *Nintendo of America, Inc.* 780 F. Supp. 1283, 1292 (N.D. Cal. 1991). Courts consider four non-  
 23 exclusive factors in assessing fair use: (1) the purpose and character of the use including whether the  
 24 use is of a commercial nature (2) the nature of the copyrighted work (3) the amount of and  
 25 substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of  
 26 the use upon the potential market for or value of the copyrighted work. 17 U.S.C. § 107(1)-(4).

27 All four of these factors support a finding of fair use in this case. No one would suggest that  
 28 someone viewing pictures from the Internet is infringing a copyright.

1           **Factor one: purpose and character of the use:** a presumption of fair use exists if the work  
2 is being used in a non-commercial manner and not to make a profit. *Lewis Galoob Toys*, 780 F.  
3 Supp. at 1293. The presumption of fair use applies even if only one of several potential uses is non-  
4 commercial. *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 449, 104 S.Ct. 774, 792  
5 (1984) (“The ... presumption [of fair use] is appropriate here, however, because ... time-shifting for  
6 private home use [one of several uses of the VCR] must be characterized as non-commercial, non-  
7 profit activity.”).

8           The section 107(1) presumption of fair use applies in the instant case because a person  
9 viewing an image of a Vuitton copyrighted work on the Internet is doing so for personal enjoyment,  
10 not for a commercial purpose or to make a profit. *Lewis Galoob*, 780 F. Supp. at 1293 (“Likewise, a  
11 family's use of a Game Genie for private home enjoyment must be characterized as a non-  
12 commercial, nonprofit activity.”).

13           **Factor two: the nature of the copyrighted work:** If a work has been published by its owner,  
14 that supports a finding of fair use. *Id.* (“Nintendo has already published millions of copies of its  
15 games ... The works’ published nature supports the fairness of use.”); see *Harper & Row Publishers*  
16 *v. Nation Enterprises*, 471 U.S. 539, 560, 105 S.Ct. 2218, 2230 (1985) (“The fact that a work is  
17 unpublished is a critical element of its ‘nature’ ” suggesting that prepublication exploitation of the  
18 work would be unfair.). Vuitton has, of course, published many times all of the copyrighted works  
19 at issue in this case.

20           **Factor three: the amount of and substantiality of the portion used in relation to the**  
21 **copyrighted work as a whole:** In *Sony*, because the VCR owner “had been invited to witness [the  
22 television program] in its entirety free of charge, the fact that the entire work is reproduced ... does  
23 not have its ordinary effect of militating against a finding of fair use.” *Sony*, 464 U.S. at 449, 104  
24 S.Ct. at 792. Likewise, Vuitton invites computer users to view numerous images of its copyrighted  
25 works at authorized websites such as *www.LuisVuitton.com*. Because Vuitton allows computer users  
26 to view the works free of charge, even if the same works are viewed at accused websites, that does  
27 not militate against a finding of fair use.

28           **Factor four: the effect of the use upon the potential market for or value of the copyrighted**

1 **work:** This factor also supports a finding of fair use. To defeat fair use under this factor “requires  
 2 proof either that the particular use is harmful, or that if it should become widespread, it would  
 3 adversely affect the potential market for the copyrighted work.” *Sony*, 464 U.S. at 451, 104 S.Ct. at  
 4 793. Vuitton has not met this burden. There is no evidence that allowing individuals to view copies  
 5 of Vuitton’s works at websites would be harmful to Vuitton even if the practice became widespread.  
 6 Despite the availability of images of Vuitton’s copyrighted works at numerous websites on the  
 7 Internet, Vuitton has experienced “double digit” revenue growth from 2006 to 2009; even during a  
 8 recession. [See Def. Exhibit 1600]. *Lewis Galoob*, 780 F. Supp. at 1294 (“A fair use will frequently  
 9 suppress demand for a work, but as long as it does so without supplanting demand, the indirect  
 10 detrimental effect on the market is not the subject of copyright protection.”).

11 Any claim Vuitton might have that it has or will suffer harm because the value or “goodwill”  
 12 associated with its works suffer when they are viewed at accused websites should be rejected:

13 The Copyright Act was not designed to prevent such indirect negative effects of  
 14 copying. The fourth factor is aimed at the copier who attempts to usurp the demand  
 15 for the original work. **The copyright laws are intended to prevent copiers from  
 taking the owner's intellectual property**, and are not aimed at recompensing  
 damages which may flow indirectly from copying.

16 *Consumers Union of United States, Inc. v. General Signal Corp.*, 724 F.2d 1044, 1050 (2d Cir.  
 17 1983), *cert. denied*, 469 U.S. 823, 105 S.Ct. 100, 83 L.Ed.2d 45 (1984) (emphasis added; citations  
 18 omitted).

19 As demonstrated by application of the foregoing four-part test, computer users do not directly  
 20 infringe Vuitton’s copyrighted works when they view images at accused websites. The Copyright  
 21 Act does not apply because the direct infringement in this case, if any, did not occur entirely within  
 22 the boundaries of the United States. It occurred and was completed in China.

## 23 2. Element 2 - No Evidence Defendants Had Knowledge of Specific 24 Infringing Conduct at Any Website

25 Vuitton failed to present evidence that any defendant was aware of specific *infringing*  
 26 *conduct* at specific websites located on their servers. *Tiffany, Inc. v. Ebay, Inc.*, 576 F. Supp. 2d 463,  
 27 508, 510 n.37 (S.D.N.Y. 2008) (“Under copyright law, generalized knowledge that copyright  
 28 infringement may take place in an Internet venue is insufficient to impose contributory liability.”)

1 [citing *Napster, Inc.*, 239 F.3d at 1027 (“The mere existence of the Napster system, absent actual  
 2 notice and Napster's demonstrated failure to remove the offending material, is insufficient to impose  
 3 contributory liability.”); *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1088-90 (C.D. Cal. 2001)  
 4 (holding that generalized notice of copyright infringements was insufficient to establish knowledge  
 5 for the purpose of contributory liability)]. No evidence was presented that websites listed in  
 6 Vuitton’s notice emails or other correspondence ever displayed infringing content with the specific  
 7 knowledge of any defendant. The defendants only learned after the fact.

8 The fact that Vuitton purchased products from an unidentified third party (who may or may  
 9 not have been the website operator) and the packages indicated Chinese return addresses does not  
 10 prove any defendant was aware of infringement at any website.

11 **3. Element 3 - No Evidence Defendants Induced, Caused or Materially**  
 12 **Contributed to Infringement at Websites**

13 **a. No Evidence of Inducement**

14 Vuitton has no evidence that defendants induced direct infringement. No evidence was  
 15 presented that any of the defendants took “ ‘active steps ... to encourage direct infringement,’ ”  
 16 *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 936, 125 S.Ct. 2764, 162  
 17 L.Ed.2d 781 (2005), or “actively strive[d] to provide the environment and the market for counterfeit  
 18 recording sales to thrive.” *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264 (9th Cir. 1996).  
 19 Other courts define the inducement standard as “actively and knowingly aid[ing] and abet[ting]  
 20 another's direct infringement.” *Water Technologies Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed.  
 21 Cir. 1988). *See also Fromberg, Inc. v. Thornhill*, 315 F.2d 407, 412-13 (5th Cir. 1963)  
 22 (demonstrations by sales staff of infringing uses supported inducement liability); *Haworth Inc. v.*  
 23 *Herman Miller Inc.*, 37 U.S.P.Q.2d 1080, 1090, 1994 WL 875931 (W.D. Mich. 1994) (evidence that  
 24 defendant “demonstrate[d] and recommend[ed] infringing configurations” of its product supported  
 25 inducement liability).

26 **b. No Evidence of Material Contribution**

27 No evidence was presented that defendants materially contributed to direct infringement.  
 28 Defendants were not “engaged in a mutual enterprise of infringement” with direct infringers.

1 *Perfect 10, Inc. v. Visa Int'l Service Association*, 494 F.3d 788, 798 (9th Cir. 2007). Akanoc's or  
2 MSG's servers were not "engineered, disseminated, and promoted explicitly for the purpose of  
3 facilitating piracy." *Id.* at 801. Their systems were not "engineered for infringement" such that the  
4 "sole purpose" of their business was to "provide a forum for easy copyright infringement." *Id.* at  
5 799 n.10 ("Perfect 10 does not contend that Defendants' payment systems were engineered for  
6 infringement in this way, and we decline to radically expand *Napster's* cursory treatment of  
7 "material contribution" to cover a credit card payment system that was not so designed."). *Id.* The  
8 defendants' servers are content-neutral communication devices to facilitate broad Internet use.

9 **c. Evidence of Generalized Knowledge of Infringement Insufficient**  
10 **to Impose Liability**

11 Vuitton presented evidence that MSG and Akanoc, like every other Internet Service Provider,  
12 are generally aware that infringement can occur using their servers. But this type of general  
13 knowledge is not sufficient, as a matter of law, to impose liability. *Grokster, Ltd.*, 545 U.S. at 936-  
14 37 ("[J]ust as *Sony* did not find intentional inducement despite the knowledge of the VCR  
15 manufacturer that its device could be used to infringe, **mere knowledge of infringing potential or**  
16 **of actual infringing uses would not be enough here to subject a distributor to liability.** Nor  
17 would ordinary acts incident to product distribution, such as offering customers technical support or  
18 product updates, support liability in themselves. **The inducement rule, instead, premises liability**  
19 **on purposeful, culpable expression and conduct, and thus does nothing to compromise**  
20 **legitimate commerce or discourage innovation having a lawful promise.**" (emphasis added;  
21 citations omitted)).

22 **II. RECOVERY OF DAMAGES IS BARRED AND INJUNCTIVE RELIEF LIMITED**  
23 **BECAUSE ISP DEFENDANTS QUALIFY FOR SAFE HARBOR PROVISIONS OF**  
24 **DMCA**

25 The evidence at trial established that on November 26, 2007 MSG's and Akanoc's Interim  
26 Designations of Agent to Receive Notification of Claimed Infringement, were received by the U.S.  
27 Copyright Office. At that time MSG and Akanoc became eligible to receive the protections afforded  
28

1 by the DMCA.<sup>3</sup> The protections include immunity from any copyright damage award and  
2 limitations on injunctions.<sup>4</sup>

3 Vuitton can block application of the ‘safe harbor’ *only* if it complies with section  
4 512(c)(3)(A) of the DMCA (17 U.S.C. § 512(c)(3)(A)), entitled “Elements of Notification,” provide  
5 the following specific requirements for proper notification of possible copyright infringements to  
6 ISPs:

7 Elements of notification

8 (A) To be effective under this subsection, a notification of claimed  
9 infringement must be a written communication provided to the designated agent of a  
10 service provider that includes substantially the following:

11 (i) A physical or electronic signature of a person authorized to act on  
12 behalf of the owner of an exclusive right that is allegedly infringed.

13 (ii) Identification of the copyrighted work claimed to have been infringed,  
14 or, if multiple copyrighted works at a single online site are covered by a single  
15 notification, a representative list of such works at that site.

16 (iii) Identification of the material that is claimed to be infringing or to be  
17 the subject of infringing activity and that is to be removed or access to which is to be

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17 <sup>3</sup>See 17 U.S.C. § 512(c)(2): **Designated agent.** – The limitations on liability established in this  
18 subsection apply to a service provider only if the service provider has designated an agent to receive  
19 notifications of claimed infringement described in paragraph (3), by making available through its  
20 service, including on its website in a location accessible to the public, and by providing to the  
21 Copyright Office, substantially the following information:

22 (A) the name, address, phone number, and electronic mail address of the agent.

23 (B) other contact information which the Register of Copyrights may deem appropriate.

24 The Register of Copyrights shall maintain a current directory of agents available to the public for  
25 inspection, including through the Internet, in both electronic and hard copy formats, and may require  
26 payment of a fee by service providers to cover the costs of maintaining the directory.

27 <sup>4</sup>*Viacom Int’l Inc. v. Youtube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008) (“Among other defenses,  
28 YouTube and Google claim the protection afforded by the Digital Millennium Copyright Act of  
1998 (‘DMCA’) (17 U.S.C. §§ 512(c)-(d), (i)-(j)), which among other things limits the terms of  
injunctions, and bars copyright-damage awards, against an online service provider who:  
(1) performs a qualified storage or search function for internet users; (2) lacks actual or imputed  
knowledge of the infringing activity; (3) receives no financial benefit directly from such activity in a  
case where he has the right and ability to control it; (4) acts promptly to remove or disable access to  
the material when his designated agent is notified that it is infringing; (5) adopts, reasonably  
implements and publicizes a policy of terminating repeat infringers; and (6) accommodates and does  
not interfere with standard technical measures used by copyright owners to identify or protect  
copyrighted works.”).

1 disabled, and information reasonably sufficient to permit the service provider to  
2 locate the material.

3 (iv) Information reasonably sufficient to permit the service provider to  
4 contact the complaining party, such as an address, telephone number, and, if  
5 available, an electronic mail address at which the complaining party may be  
6 contacted.

7 (v) A statement that the complaining party has a good faith belief that use  
8 of the material in the manner complained of is not authorized by the copyright owner,  
9 its agent, or the law.

10 (vi) A statement that the information in the notification is accurate, and  
11 under penalty of perjury, that the complaining party is authorized to act on behalf of  
12 the owner of an exclusive right that is allegedly infringed.

13 The evidence at trial established that the safe harbor applies because Vuitton failed to comply  
14 with the notice requirements set forth at clauses (ii), (iii), (v) and (vi) of 17 U.S.C. § 512(c)(3)(A).  
15 Other than the November 26, 2007 notice, **all of Vuitton’s post-complaint notices were sent at a  
16 time after MSG and Akanoc had designated an agent and Vuitton was required to comply with  
17 the notification requirements of the DMCA** as described above. Vuitton failed to comply.

18 **III. CONCLUSION**

19 As set forth above, Vuitton failed to present evidence sufficient to permit a legally correct  
20 jury verdict in its favor on its contributory copyright infringement claim. Defendants respectfully  
21 request judgment be entered in their favor as a matter of law on that claim pursuant to Fed. R. Civ. P.  
22 50(a).

23 Dated: August 20, 2009

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