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1 SAN JOSE, CALIFORNIA

AUGUST 18, 2009

2 P R O C E E D I N G S

3
4 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
5 HELD IN THE PRESENCE OF THE JURY:)

6 THE COURT: CALL THE CASE.

7 THE CLERK: CALLING CASE NUMBER 03-7592,
8 LOUIS VUITTON MALLETTIER, S.A. VERSUS AKANOC
9 SOLUTIONS, INC., ET AL.

10 ON FOR JURY SELECTION.

11 COUNSEL, STATE YOUR APPEARANCES.

12 MR. COOMBS: GOOD MORNING, YOUR HONOR.
13 ANDY COOMBS FOR THE PLAINTIFF LOUIS VUITTON
14 MALLETTIER.

15 MS. WANG: GOOD MORNING. ANNIE WANG FOR
16 THE PLAINTIFF.

17 MR. LOWE: GOOD MORNING. JAMES LOW FOR
18 THE DEFENDANTS.

19 MR. LAI: GOOD MORNING, YOUR HONOR.
20 CHRISTOPHER LAI ON BEHALF OF THE DEFENDANTS.

21 (PAUSE IN PROCEEDINGS.)

22 THE COURT: GOOD MORNING, COUNSEL.

23 GOOD MORNING, LADIES AND GENTLEMEN.

24 PROSPECTIVE JURORS: GOOD MORNING, YOUR
25 HONOR.

1 THE COURT: OH, NOT TOO FRIENDLY OUT
2 THERE. I APOLOGIZE THAT WE HAVE KIND OF TAKEN YOU
3 OUT OF YOUR DAILY AFFAIRS AND BROUGHT YOU HERE, BUT
4 YOU ARE HERE FOR A VERY IMPORTANT PURPOSE.

5 AS YOU HEARD FROM THE INTRODUCTION, I'M
6 JAMES WARE AND YOU'VE BEEN SUMMONED TO THIS
7 COURTROOM TO DETERMINE WHETHER OR NOT YOU'RE
8 ELIGIBLE TO SERVE AS TRIAL JURORS IN A CASE.

9 THIS IS A CIVIL CASE. THE PLAINTIFF IS
10 LOUIS VUITTON, A FRENCH COMPANY ACTUALLY, AND IT
11 HAS FILED A LAWSUIT AGAINST AKANOC SOLUTIONS, INC.,
12 MANAGEMENT GROUP INC., AND STEVE CHEN, WHICH WE'LL
13 COME TO KNOW MORE ABOUT, CLAIMING THAT THOSE
14 DEFENDANT COMPANIES HAVE CONTRIBUTED TO THE
15 INFRINGEMENT OF THE LOUIS VUITTON TRADEMARK AND
16 CERTAIN COPYRIGHTS THAT ARE OWNED BY LOUIS VUITTON.

17 I WON'T SAY A LOT ABOUT THE CASE IN MY
18 COMMENTS BECAUSE AS THE JURORS YOUR JOB WILL BE TO
19 DECIDE WHAT HAPPENED HERE, WHAT ARE THE FACTS OF
20 THE CASE?

21 DURING THE COURSE OF THESE PROCEEDINGS
22 I'LL MAKE SOME COMMENTS ABOUT THIS CASE THAT I
23 DON'T THINK ARE CONTROVERSIAL BECAUSE IT MIGHT HELP
24 YOU ANSWER QUESTIONS THAT WE WILL PUT TO YOU TO
25 DECIDE WHETHER OR NOT YOU'RE QUALIFIED TO SERVE AS

1 JURORS IN THE CASE.

2 IN A MOMENT I'M GOING TO ASK THE CLERK OF
3 COURT TO CALL YOUR NAMES ON A RANDOMLY SELECTED
4 BASIS, AND WE'RE GOING TO PUT YOU IN SEATS THAT
5 HAVE BEEN RESERVED UP HERE.

6 THERE ARE ACTUALLY 20 CHAIRS THAT WE SET
7 ASIDE FOR THAT PURPOSE.

8 WE ONLY NEED EIGHT JURORS BUT BECAUSE OF
9 THE NATURE OF THE PROCESS, SOME OF YOU MAY NEED TO
10 BE EXCUSED FOR VARIOUS REASONS AND SO WE PUT 20 OF
11 YOU IN THE CHAIRS AND ASK QUESTIONS AND THEN OF THE
12 28 WHO REMAIN AS JURORS WILL BE THE JURORS IN THE
13 CASE.

14 THERE'S NO SUCH THING AS ALTERNATE JURORS
15 IN OUR PROCESS. IF YOU ARE SEATED AS A JUROR, YOU
16 DELIBERATE AND YOU ARE PART OF THE DECISION MAKING
17 PROCESS.

18 LET ME SAY JUST A WORD ABOUT THE
19 IMPORTANCE OF YOUR ROLE IN THIS PROCESS. AS MANY
20 OF YOU MIGHT KNOW, THE RIGHT TO A JURY TRIAL IS
21 SOMETHING WRITTEN RIGHT INTO OUR UNITED STATES
22 CONSTITUTION.

23 THE FOUNDERS OF OUR COUNTRY WERE SO
24 DYNAMIC IN THEIR ASPECT OF DEMOCRACY THAT THEY
25 WANTED DEMOCRACY TO EXTEND RIGHT INTO THE

1 COURTROOM. AND SO JURORS ARE THE VOICES OF
2 COMMUNITY. AND SO EVEN THE MOST IMPORTANT CASES IN
3 OUR COUNTRY ARE NOT DECIDED BY JUDGES; THEY'RE
4 DECIDED BY JURIES. WE HAVE A JURY SYSTEM.

5 AND A LOT OF PEOPLE AROUND THE WORLD
6 WONDER HOW CAN YOU TRUST THESE IMPORTANT CASES TO
7 ORDINARY PEOPLE? AND THE REASON IS, IS BECAUSE WE
8 BELIEVE IN DEMOCRACY. WE BELIEVE THAT IT'S
9 IMPORTANT FOR ORDINARY PEOPLE TO COME TO THE
10 ASSISTANCE OF THE GOVERNMENT, THAT THE GOVERNMENT
11 IS OF THE PEOPLE, BY THE PEOPLE AND FOR THE PEOPLE.
12 WE REALLY LIVE IT OUT EVERY DAY.

13 AND THE JURY SYSTEM IS A WAY OF ACTUALLY
14 HAVING THE COMMUNITY PARTICIPATE IN THESE
15 DECISIONS.

16 THERE WILL BE QUESTIONS OF LAW THAT I
17 WILL ANSWER AND INSTRUCT YOU ON, BUT WHAT HAPPENED
18 HERE AND WHO IS RESPONSIBLE AND WHAT THEIR CONDUCT
19 WAS AND UNDER VARIOUS CIRCUMSTANCES, THAT'S A
20 MATTER THAT YOU DECIDE FROM LISTENING TO THE
21 WITNESSES AND JUDGING WHETHER OR NOT YOU BELIEVE OR
22 DON'T BELIEVE WHAT THOSE WITNESSES HAVE TO SAY.

23 THERE'S ANOTHER ASPECT TO JURY SERVICE
24 THAT I THINK IS VERY IMPORTANT. IT HAS TO DO WITH
25 THE NATURE OF WHO WE ARE AS A NATION.

1 I'M SURE YOU HAVE WATCHED AS I HAVE THE
2 CHANGES THAT HAVE TAKEN PLACE AROUND THE WORLD AS A
3 RESULT OF OUR ACTUALLY PROMOTING DEMOCRACY.

4 I MEAN, WE HAVE WAGED WARS IN THE NAME OF
5 HELPING OTHER EMERGING DEMOCRACIES.

6 AND ACTUALLY THERE ARE ARMED CONFLICTS
7 GOING ON RIGHT NOW AROUND THE WORLD AND WHETHER YOU
8 AGREE OR DISAGREE WITH THOSE, THEY ARE BEING DONE
9 IN THE NATURE OF DEMOCRACY.

10 AND ALTHOUGH WE DO THAT, IT'S SAD TO
11 REALIZE THAT IN OUR OWN COUNTRY WE SOMETIMES TAKE
12 DEMOCRACY FOR GRANTED.

13 SERVING AS A JUROR AND VOTING ARE TWO NOT
14 ONLY RIGHTS BUT RESPONSIBILITIES OF CITIZENSHIP.

15 AND WHEN ELECTIONS TAKE PLACE IN OUR
16 COUNTRY, I'M SURE YOU HAVE HEARD THE STATISTICS,
17 HALF OF THE PEOPLE WHO ARE ELIGIBLE TO VOTE DON'T
18 EVEN BOTHER TO REGISTER AND SO THEY CAN'T VOTE ON
19 ELECTION DAY. THEY DEPRIVE THEMSELVES OF THE
20 ABILITY TO PARTICIPATE IN THE DEMOCRATIC PROCESS
21 AND SO THEY JUST KIND OF OPTED OUT.

22 AND THEN ON ELECTION DAY THOSE WHO ARE
23 REGISTERED TO VOTE LESS THAN HALF ACTUALLY GO OUT
24 AND CAST A BALLOT.

25 WE HAVE SCHOOL BOARD ELECTIONS AND THE

1 STATISTICS ARE JUST SHOCKING, 12 PERCENT OR 10
2 PERCENT OF THE PEOPLE ACTUALLY VOTE IN ELECTIONS
3 THAT GOVERN IN IMPORTANT THINGS SUCH AS OUR
4 EDUCATION OF OUR YOUNG PEOPLE.

5 I TRAVEL A LOT, AND I WAS IN SOUTH AFRICA
6 ABOUT THREE YEARS AGO AND IN THE APARTHEID MUSEUM
7 YOU WALK INTO THIS MUSEUM AND THERE'S A MURAL THAT
8 GOES THROUGH THE ENTIRE BUILDING, A BUILDING THAT
9 IS PERHAPS AS LARGE AS THIS FLOOR OF THIS
10 COURTHOUSE.

11 AND YOU WALK THROUGH THE EXHIBITS, BUT
12 THE WHOLE TIME YOU SEE THIS WONDERFUL MURAL AND
13 IT'S A PHOTOGRAPH, IT'S A PHOTOGRAPH OF PEOPLE
14 STANDING IN LINE TO VOTE FOR THE FIRST TIME WHEN
15 APARTHEID ENDED. AND THERE WERE PEOPLE IN
16 WHEELCHAIRS, THERE WERE PEOPLE IN CRUTCHES, THERE
17 WERE PEOPLE SITTING ON THE GROUND.

18 THEY ARE SO WILLING TO ENDURE THAT
19 HARDSHIP TO VOTE. WE HAVE ELECTIONS AND PEOPLE
20 TAKE DEMOCRACY FOR GRANTED.

21 AND SO I THINK, QUITE FRANKLY, IF WE EVER
22 LOSE OUR DEMOCRACY, IT WON'T BE BECAUSE WE LOSE IT
23 BY TERRORISTS AND IT'S TAKEN BY FORCE. IT'S
24 BECAUSE AS A NATION WE DECIDE WE DON'T WANT A
25 DEMOCRACY. WE'RE TOO BUSY TO PARTICIPATE IN A

1 GOVERNMENT WHERE WE ACTUALLY HAVE TO PARTICIPATE.
2 LET SOMEONE ELSE DO IT.

3 AND THAT WILL BE A SAD DAY INDEED. IT
4 WILL BE A DAY WHEN WE HAND OVER TO OUR CHILDREN NOT
5 A NATION WHERE DEMOCRACY IS ALIVE AND WELL AND WE
6 ALL SET ASIDE OUR DAILY TASKS TO PARTICIPATE IN IT,
7 BUT IT WILL BE A VERY DIFFERENT SYSTEM INDEED.

8 AS A DISTRICT JUDGE, I TOOK AN OATH TO
9 SUPPORT AND DEFEND THE CONSTITUTION, AND I THINK
10 ONE OF MY JOBS IS TO ENCOURAGE YOU TO NOT ALLOW
11 THAT TO HAPPEN, TO MAKE IT YOUR PERSONAL, YOUR
12 PERSONAL GOING TO SEE THAT DEMOCRACY IS NOT HARMED
13 BY OUR OWN APATHY AND LACK OF INTEREST.

14 I KNOW YOU'RE INTERESTED IN THE LAW.
15 HALF OF THE T.V. SHOWS ARE ABOUT WHAT GOES ON IN
16 THE COURTS, BUT THAT'S VERY PASSIVE. THAT'S NOT
17 PARTICIPATING LIKE YOU WOULD BE IN THIS CASE.

18 YOU WOULD BE THE JUDGES. YOU BECOME THE
19 JUDGES OF THE FACTS OF THE CASE. AND I'LL TELL
20 YOU, YOU'LL FIND IT TO BE THE MOST INTERESTING
21 THING YOU HAVE EVER DONE.

22 IF YOU'VE EVER SERVED ON A JURY BEFORE,
23 YOU KNOW THAT WHAT I'M TALKING ABOUT THAT THE
24 DYNAMIC OF DELIBERATIONS AND OF REACHING CONSENSUS
25 WILL BE SOMETHING THAT STAYS WITH YOU FOR A LONG

1 TIME .

2 AND SO I ASK YOU, IT'S NOT THE SAME KIND
3 OF TASK THAT WE GIVE TO OUR YOUNG PEOPLE WHEN WE
4 ASK THEM TO SERVE IN OUR ARMED FORCES. THAT'S
5 QUITE A SACRIFICE WE ASK OF THEM.

6 BUT I ASK YOU FOR A LESSER SACRIFICE IS
7 TO WHEN YOUR NAME IS CALLED, EVEN IF IT'S
8 INCONVENIENT, TO STEP FORWARD AND SAY, "YES, I'M
9 WILLING TO SET ASIDE BY DAILY AFFAIRS AND SERVE AS
10 A JUROR," BECAUSE ALTHOUGH I'M PLEASED TO SEE THE
11 FLAG FLYING HIGH IN MANY PLACES, ESPECIALLY AFTER
12 9-11, THE REAL TEST OF DEMOCRACY IS TO SEE WHETHER
13 WE DO IT. AND THIS WOULD BE AN OPPORTUNITY TO SEE
14 YOU PARTICIPATE IN DEMOCRACY IN AN IMPORTANT WAY.

15 EVEN AS I SAY THAT I KNOW IN THIS TRIAL
16 THAT YOU'RE BEING SUMMONED HERE COMES AT A TIME
17 WHEN PERHAPS IT'S A HARDSHIP ON YOU OR YOU PLAN TO
18 BE AWAY FROM THE STATE OR YOUR COMMUNITY OR YOU'RE
19 TRAVELLING SOMEPLACE AND YOU JUST DIDN'T GET OUT OF
20 IT.

21 SO I WILL LISTEN TO LEGITIMATE EXCUSES
22 AND READILY EXCUSE YOU IF YOU HAVE THOSE KINDS OF
23 DIFFICULTIES.

24 YOU WILL FIND WHEN YOU'RE CALLED FORWARD
25 A SCHEDULE OF THE CASE. I DECIDED WHEN I BECAME A

1 JUDGE SOME 18 YEARS AGO THAT ONE OF THE REASONS
2 THAT JURORS DON'T LIKE SERVING IS BECAUSE IT'S SORT
3 OF INDEFINITE.

4 WE USED TO SAY, WELL, WE DON'T KNOW HOW
5 LONG A TRIAL IS GOING TO LAST, ABOUT THIS TIME.

6 AND SINCE I HAVE BEEN A JUDGE, WE HAVE
7 NEVER HAD A CASE LIKE THAT. WE HAVE ALWAYS KNOWN
8 EXACTLY WHAT THE SCHEDULE WOULD BE. INDEED, AND
9 IT'S BEEN MY EXPERIENCE THAT THE SCHEDULE I SET UP
10 IS OFTEN LONGER; THAT THE CASES END MUCH SOONER.

11 AND SO WE HAVE A DEFINITE SCHEDULE THAT
12 WE WILL FOLLOW, AND I WOULD ASK YOU TO LOOK AT THAT
13 SCHEDULE AND ONE OF THE FIRST QUESTIONS I'LL ASK
14 YOU IS DOES THAT SCHEDULE POSE A HARDSHIP ON YOU?
15 IS THERE SOMETHING ABOUT BEING HERE ON THE DAYS
16 THAT WE HAVE SET FOR THE TRIAL THAT WOULD POSE A
17 HARDSHIP FOR YOU? AND IF SO, TO TELL ME ABOUT IT
18 SO I CAN EXCUSE YOU.

19 BECAUSE AS I SAID, WE WOULD LIKE TO HAVE
20 20 PEOPLE FOR WHOM THERE IS NO HARDSHIP.

21 AFTER WE GO THROUGH THAT PROCESS, I'LL
22 START TO ASK YOU SOME QUESTIONS THAT ARE PERTINENT
23 TO THE CASE BECAUSE THERE MAY BE SOME OF YOU WHO
24 ARE INVOLVED WITH LOUIS VUITTON OR WITH ONE OF
25 THESE DEFENDANTS OR IN SOME ASSOCIATED WAY. AND SO

1 I WOULD EXCUSE YOU BECAUSE WE WOULD WANT A JURY
2 THAT IS TOTALLY IMPARTIAL TO THE PARTIES AND NOT
3 INVOLVED IN THE CASE. AND YOU WOULD UNDERSTAND
4 THAT.

5 AND THEN THE LAWYERS WILL HAVE A BRIEF
6 OPPORTUNITY TO ASK QUESTIONS OF YOU. THE LAW GIVES
7 THEM THE RIGHT TO EXERCISE WHAT WE CALL PEREMPTORY
8 CHALLENGES, WHERE THEY DON'T HAVE TO GIVE A REASON
9 TO THE COURT FOR THEIR EXCUSING YOU. THAT'S DONE
10 SO THAT THEY HAVE THE RIGHT TO KIND OF MIX YOU UP
11 IN ANY WAY THAT THEY WANT.

12 THEY CAN'T EXCUSE YOU AND VIOLATE YOUR
13 CIVIL RIGHTS. SO THEY CAN'T EXCUSE YOU BECAUSE OF
14 YOUR RACE OR YOUR GENDER OR YOUR NATIONAL ORIGIN,
15 AND THEY WOULDN'T DO THAT, BUT THAT'S -- I WANT YOU
16 TO KNOW THAT YOUR RIGHTS ARE PROTECTED IN THAT
17 PROCESS, BUT OTHERWISE THEY'RE ABLE TO EXERCISE
18 THEIR CHALLENGES IN A FASHION THAT ALLOWS THEM TO
19 HAVE A CROSS-SECTION OF THE COMMUNITY FROM VARIOUS
20 PLACES.

21 YOU VERY HELPFULLY FILLED OUT
22 QUESTIONNAIRES THAT ARE AVAILABLE TO US I TAKE IT,
23 MS. GARCIA?

24 THE CLERK: YES.

25 THE COURT: SO THOSE ARE AVAILABLE TO THE

1 LAWYERS, AND THEY MAY WISH TO ASK FOLLOW-ON
2 QUESTIONS TO THE QUESTIONNAIRES THAT YOU FILLED
3 OUT.

4 VERY WELL. SO I WON'T SAY MORE. YOU'RE
5 FREE TO ASK ME QUESTIONS ONCE YOU GET UP HERE. LET
6 ME ASK MS. GARCIA TO CALL YOUR NAMES, AND THEN
7 WE'LL GIVE YOU AN ASSIGNED SEAT UP HERE IN THE JURY
8 BOX.

9 THE CLERK: JUROR NUMBER 1, LESLIE
10 MACKENZIE.

11 THE COURT: MS. MACKENZIE IS GOING TO BE
12 SEAT NUMBER 1 THERE, AND TAKE THE SEAT RIGHT BACK
13 THERE NEXT TO THE WATER COOLER IN THE BACK.

14 THE CLERK: JUROR NUMBER 2 WILL BE LEHANG
15 TRAN.

16 THE COURT: GO AHEAD WITH THE NEXT ONE.

17 THE CLERK: JUROR NUMBER 3 WILL BE STEVEN
18 LUONG.

19 THE COURT: GO AHEAD.

20 THE CLERK: JUROR NUMBER 4, ADAM TURREY.

21 THE COURT: MR. TURREY, THERE'S A DOOR
22 RIGHT THERE THAT MIGHT HELP YOU SO YOU DON'T HAVE
23 TO STEP OVER. JUST PULL THAT.

24 THE CLERK: JUROR NUMBER 5, TRYPHINE
25 PUCKETTBIER;

1 JUROR NUMBER 6 IS JEFFREY PARSHALL;

2 JUROR NUMBER 7, DOUGLAS HEIRICH;

3 JUROR NUMBER 8, ROBIN SAMUELS.

4 THE COURT: MS. SAMUELS, IF YOU'LL JUST
5 TAKE THAT FIRST SEAT IN THE FRONT ROW IN FRONT OF
6 MS. MACKENZIE.

7 THE CLERK: JUROR NUMBER 9, THOMAS
8 KILSDONG;

9 JUROR NUMBER 10, ORIST POPESCU;

10 JUROR NUMBER 11, ROSA MARIA CHAVEZ;

11 JUROR NUMBER 12, COUPLE TRAN;

12 JUROR NUMBER 13, LEO LEUNG;

13 JUROR NUMBER 14, KYLE NARCISO;

14 JUROR NUMBER 15, GUILLERMINA CEDILLO.

15 THE COURT: GOOD MORNING, MS. CEDILLO,
16 PLEASE TAKE THE FIRST SEAT IN THE FRONT OF THE JURY
17 BOX.

18 THE CLERK: JUROR NUMBER 16, EVELYN
19 DAVIDSON;

20 JUROR NUMBER 17, MARK SCHEITER;

21 JUROR NUMBER 18, MARIALOURDES BILBES;

22 JUROR NUMBER 19, TAWNI RANDALL;

23 JUROR NUMBER 20, JONATHAN RENFRO.

24 THE COURT: VERY WELL. WE HAVE 20
25 PROSPECTIVE JURORS SEATED. AND THOSE DISAPPOINTED

1 BECAUSE YOU'RE NOT CALLED IN THAT FIRST ROUND,
2 DON'T BE. BECAUSE IF, FOR EXAMPLE, I FIND IT
3 NECESSARY TO EXCUSE MS. MACKENZIE, WHO IS IN SEAT
4 NUMBER 1, YOU WILL BE CALLED AND GET TO BE
5 PROSPECTIVE JUROR NUMBER 1. SO YOU GET PROMOTED
6 QUICKLY IN THIS PROCESS.

7 NOW, AS I PROMISED, YOU SHOULD FIND, IN
8 ADDITION TO THE SCHEDULE, A NUMBER CARD. AND SO I
9 WANT YOU TO STUDY THE SCHEDULE AND ALSO GET TO KNOW
10 YOU WITH YOUR NUMBER CARD BECAUSE AS I ASK YOU A
11 SERIES OF QUESTIONS, I WANT YOU TO HOLD IT UP.
12 THAT SPEEDS UP THIS PROCESS. I WON'T HAVE TO CALL
13 YOU BY NAME FOR THESE QUICK SURVEY OF QUESTIONS
14 I'LL ASK.

15 SO LET'S TRY THAT. FIRST OF ALL, RAISE
16 YOUR NUMBER CARD AND MAKE SURE EVERYONE HAS GOT ONE
17 SO I CAN SEE IT. I CAN'T SEE NUMBER 11 YET. AH,
18 THERE WE GO. ALL RIGHT. THANK YOU.

19 SO, FIRST OF ALL, ON THE SCHEDULE YOU
20 WILL SEE THAT WE'LL NOT BE IN SESSION ON MONDAY OF
21 NEXT WEEK AND OUR DAY WILL START EACH DAY AT 9:00
22 O'CLOCK. WE'LL TAKE A BREAK AT NOON FOR LUNCH.
23 WE'LL COME BACK AT 1:00 O'CLOCK, AND WE'LL END EACH
24 TRIAL DAY AT 4:00 O'CLOCK PROMPTLY.

25 YOU WILL SEE ON FRIDAY THE 28TH WE

1 HAVE -- THE NUMBERING CHANGES FROM TRIAL SESSION
2 WITH NUMBERS. WE GO UP TO 13 SESSIONS. AND THEN
3 IT SAYS ARGUE AND SUBMIT.

4 ACTUALLY, WHENEVER THE EVIDENTIARY PART
5 OF THE CASE IS OVER, WE'LL JUST -- THE NEXT SESSION
6 WILL BE TO ALLOW THE LAWYERS TO MAKE ARGUMENT TO
7 YOU ABOUT THE CASE AND THE CASE AT THE END OF THAT
8 AND INSTRUCTIONS FROM THE COURT WILL BE SUBMITTED
9 TO YOU.

10 YOU'LL SEE THAT ON THE WEEK OF AUGUST
11 31ST IT JUST SAYS JURY DELIBERATIONS. WE DON'T
12 KNOW HOW LONG YOUR DELIBERATIONS WILL TAKE. WE
13 JUST DECIDED WE WOULD BLOCK OUT FOUR DAYS AS
14 NEEDED. TWO OF THE DAYS YOU SEE AS NEEDED.

15 BECAUSE GIVEN THE NATURE OF THE CASE, WE
16 DON'T EXPECT IT WILL TAKE MORE THAN TWO DAYS OF
17 DELIBERATIONS, BUT WE WANTED TO BLOCK OUT TWO
18 ADDITIONAL DAYS JUST IN CASE.

19 WE DON'T EXPECT THAT WE WOULD NEED YOUR
20 SERVICES FOR DELIBERATIONS BEYOND THAT, BUT WE
21 DON'T CONTROL THE LENGTH OF DELIBERATIONS. WE HAVE
22 HAD JURORS THAT GO IN, IN A MATTER OF HOURS THAT
23 DECIDE ISSUES THAT ARE BEFORE THEM AND SOMETIMES
24 THEY WILL ASK US CAN WE DELIBERATE YET A LONGER
25 PERIOD OF TIME? AND, OF COURSE, THE ANSWER IS

1 ALWAYS YES TO THAT.

2 BUT I JUST WANTED TO GIVE YOU AN IDEA, WE
3 WILL CONTROL THE TIME OF THE TRIAL. YOU WILL
4 CONTROL THE TIME OF THE DELIBERATIONS.

5 SO AS I WAS STARTING TO ASK, BASED UPON
6 THAT SCHEDULE I WANT YOU TO RAISE YOUR NUMBER CARD
7 IF FOR SOME HARDSHIP REASON YOU'RE NOT ABLE TO
8 SERVE DURING THAT PERIOD OF TIME? SO RAISE YOUR
9 NUMBER CARD AND HOLD IT UP UNTIL I CALL THE NUMBER.

10 PROSPECTIVE JUROR: I HAVE A QUESTION.

11 THE COURT: AH.

12 PROSPECTIVE JUROR: WHAT'S A HARDSHIP?

13 THE COURT: SO A LEGAL HARDSHIP WOULD BE,
14 AS I SAID, IF YOU'RE TRAVELLING OUTSIDE OF OUR
15 AREA. SO YOU CAN'T BE, CAN'T BE HERE BECAUSE YOU
16 HAD PREPLANNED VACATION AND YOU NEED TO TRAVEL
17 BECAUSE OF YOUR EMPLOYMENT.

18 IF YOU'RE CARING FOR A MINOR CHILD AND
19 YOU HAVE NO CHILD CARE ALTERNATIVES OR FOR AN AGED
20 OR INFIRMED PERSON AND YOU NEED TO BE THERE FOR
21 THAT.

22 IF DURING THESE TOUGH ECONOMIC TIMES YOU
23 WORK IN A JOB WHERE YOUR EMPLOYER WILL NOT PAY YOU
24 ON A SALARY, AND IN OTHER WORDS, YOU ARE HOURLY
25 PAID IF YOU'RE NOT THERE FOR THE PURPOSES OF YOUR

1 WORK DURING THE TRIAL OF THE CASE, YOU ARE DOCKED
2 FOR THAT PERIOD OF TIME, AND THAT POSES A HARDSHIP
3 ON YOU, YOU CAN'T USE PERSONAL TIME OR YOU HAVE
4 USED IT ALL UP AND IT POSES AN ECONOMIC HARDSHIP, I
5 WILL EXCUSE YOU BASED UPON ECONOMIC HARDSHIP.

6 I CAN EXCUSE YOU UNDER THE LAW IF YOUR
7 EMPLOYER SAYS, WELL, I PAY YOU A SALARY. YOU WOULD
8 RECEIVE THE SAME SALARY WHETHER YOU'RE HERE OR NOT,
9 BUT YOU'RE THE BEST PERSON FOR THE JOB AND I HATE
10 TO HAVE ANOTHER PERSON DO THE JOB WHILE YOU'RE
11 GONE. THAT'S NOT A HARDSHIP.

12 EMPLOYERS HAVE TO BE GOOD CITIZENS, TOO,
13 AND ONE OF THE RESPONSIBILITIES THEY HAVE IS TO
14 ALLOW YOU TO SERVE YOUR NATION AS A JUROR IF THAT
15 IS REQUIRED.

16 AND ACTUALLY THERE'S A LAW THAT FORBIDS
17 THEM TAKING ANY ADVERSE EMPLOYMENT ACTION AGAINST
18 YOU BECAUSE YOU ARE ON JURY SERVICE OTHER THAN
19 THEIR NORMAL PRACTICE WITH RESPECT TO YOUR PAY.

20 AND WE HAVE ACTUALLY HAD SITUATIONS WHERE
21 THE COURT HAS HAD TO APPOINT A SPECIAL MASTER TO
22 DEAL WITH THE SITUATION WHERE THE EMPLOYER TOOK
23 ADVERSE ACTION AND THE LAW DOES NOT ALLOW IT, BUT
24 IT SELDOM IF IT EVER OCCURS.

25 BUT DOES THAT ANSWER YOUR QUESTION?

1 PROSPECTIVE JUROR: YES.

2 THE COURT: ALL RIGHT. SO RAISE YOUR
3 NUMBER CARD IF SERVICE DURING THAT PERIOD OF TIME
4 POSES A HARDSHIP ON YOU IN ANY WAY?

5 OKAY. NUMBER 1, NUMBER 2, NUMBER 4,
6 NUMBER 12, NUMBER 14. THOSE ARE THE ONLY ONES.

7 SO LET ME KIND OF BRIEFLY INQUIRE.
8 MS. MACKENZIE, WHAT IS THE NATURE OF THE HARDSHIP?

9 PROSPECTIVE JUROR: A 75TH BIRTHDAY FOR
10 MY MOTHER-IN-LAW LEAVING ON THE 28TH TO LONG BEACH.

11 THE COURT: I SEE. YOU WOULD BE GONE ON
12 FRIDAY THE 28TH?

13 THE WITNESS: I LEAVE THURSDAY EVENING.

14 THE COURT: AND YOU WOULD BE GONE ALL DAY
15 ON FRIDAY BUT RETURNING AFTER THAT?

16 PROSPECTIVE JUROR: CORRECT.

17 THE COURT: THANK YOU, MA'AM.

18 MS. TRAN?

19 PROSPECTIVE JUROR: THIS IS AN ECONOMIC
20 HARDSHIP BECAUSE I GET PAID HOURLY.

21 THE COURT: SO YOU'RE EMPLOYED IN AN
22 HOURLY BASIS. SO YOU WOULD BE DOCKED FOR THE
23 PERIOD OF TIME AND SO THAT WOULD BE AN ECONOMIC
24 HARDSHIP?

25 PROSPECTIVE JUROR: YES, SIR.

1 THE COURT: MR. TURREY?

2 PROSPECTIVE JUROR: I HAVE USED MY
3 HOLIDAY TIME AT WORK, AND I HAVE SCHOOL COMING UP.

4 THE COURT: AH. WHERE ARE YOU A STUDENT?

5 PROSPECTIVE JUROR: SAN JOSE STATE.

6 THE COURT: WHAT DO YOU STUDY?

7 PROSPECTIVE JUROR: URBAN STUDIES OR
8 URBAN PLANNING.

9 THE COURT: WHEN DOES SCHOOL START?

10 PROSPECTIVE JUROR: THE 24TH.

11 THE COURT: OF AUGUST?

12 PROSPECTIVE JUROR: YEAH.

13 THE COURT: MS. TRAN?

14 PROSPECTIVE JUROR: I'M OUT ON THE 28TH.

15 THE COURT: BOTH OF YOU ARE GONE. WHERE
16 ARE YOU GOING?

17 PROSPECTIVE JUROR: I'M GOING TO LAKE
18 TAHOE.

19 THE COURT: NUMBER 14, MR. NARCISO?

20 PROSPECTIVE JUROR: I KNOW IT'S AS NEEDED
21 BUT THE 3RD THROUGH THE 7TH I'LL BE GONE. I'M
22 GOING TO RENO FOR THE HOLIDAY WEEKEND.

23 THE COURT: YEAH, I KNEW WE WERE
24 APPROACHING SORT OF THE LABOR DAY WEEKEND, AND I
25 THOUGHT THAT THERE MIGHT BE JURORS WHO HAD

1 PREPLANNED TO LEAVE A LITTLE BIT EARLIER SO YOU ARE
2 AMONG THOSE. YOU WOULD BE LEAVING ON THE 3RD?

3 PROSPECTIVE JUROR: CORRECT.

4 THE COURT: ANYONE ELSE?

5 ALL RIGHT. WELL, THAT'S NOT TOO BAD.
6 LET'S REPLACE MS. MACKENZIE AND CALL A REPLACEMENT.

7 THE CLERK: MIRIAM FELDMAN?

8 THE COURT: MS. TRAN IS EXCUSED FOR
9 HARDSHIP. YOU SHOULD REPORT DOWNSTAIRS THAT YOU
10 WERE EXCUSED FOR THE REASONS I STATED AND THEY WILL
11 GIVE YOU INSTRUCTIONS.

12 CALL A REPLACEMENT FOR MS. TRAN.

13 THE CLERK: JOEY HATHCOCK.

14 THE COURT: WE'LL SEE YOU AFTER
15 GRADUATION, MR. TURREY. YOU'RE EXCUSED.

16 THE CLERK: DAVID DYNAMIC?

17 THE COURT: SO MR. DYNAMIC IS TAKING SEAT
18 NUMBER 4.

19 THE COURT WILL THANK AND EXCUSE MS. TRAN,
20 JUROR NUMBER 12.

21 THE CLERK: DOUG LOFSTROM.

22 THE COURT: AND THE COURT WILL THANK AND
23 EXCUSE MR. NARCISO, NUMBER 14.

24 THE CLERK: VINA PATEL.

25 THE COURT: VERY WELL. AS SOON AS

1 MS. PATEL IS SEATED AND TAKES A LOOK AT OUR
2 SCHEDULE, WHAT I'LL DO IS ASK THOSE NEW JURORS TO
3 LOOK AT THE SCHEDULE AND TELL ME WHETHER THE
4 SCHEDULE POSES A HARDSHIP, JUST THE TIME OF THE
5 CASE.

6 RAISE YOUR NUMBER CARD IF IT DOES.

7 NUMBER 2, NUMBER 4. JUST THOSE TWO.

8 WHAT IS THE NATURE OF THE HARDSHIP?

9 PROSPECTIVE JUROR: JUST AN HOURLY
10 EMPLOYEE, AND I WON'T GET PAID.

11 THE COURT: AND MR. DYNAMIC?

12 PROSPECTIVE JUROR: I'LL BE STARTING
13 SCHOOL ON AUGUST 31ST.

14 THE COURT: AH. WHERE ARE YOU A STUDENT?

15 PROSPECTIVE JUROR: EVERGREEN VALLEY
16 COLLEGE.

17 THE COURT: AND WHAT ARE YOU STUDYING?

18 PROSPECTIVE JUROR: BUSINESS MANAGEMENT.

19 THE COURT: SO JURORS NUMBER 2 AND 4 ARE
20 EXCUSED.

21 MS. GARCIA, REPLACEMENT FOR NUMBER 2.

22 THE CLERK: JUANITA GONZALEZ.

23 THE COURT: AND NUMBER 4.

24 THE CLERK: CHRISTA DRYJANSKI.

25 THE COURT: A QUICK STUDY OF OUR SCHEDULE

1 TO ASK MS. GONZALEZ AND MR. DRYJANSKI WHETHER OR
2 NOT THE SCHEDULE POSES A HARDSHIP AT ALL?

3 NO. MS. GONZALEZ, OKAY?

4 EXCELLENT. OKAY. THERE MAY BE OTHER
5 REASONS WHY YOU MAY BE EXCUSED, BUT I WANTED TO AT
6 LEAST START OUT WITH A PANEL WHERE TIME IS NOT THE
7 PROBLEM.

8 NOW, THE LAWYERS INTRODUCED THEMSELVES TO
9 YOU EARLIER, AND I'D LIKE FOR THEM TO DO THAT AGAIN
10 BECAUSE IT'S IMPORTANT TO KNOW WHETHER YOU KNOW ANY
11 OF THESE LAWYERS OR THEIR LAW FIRMS OR THEIR
12 CLIENTS.

13 SO INTRODUCE YOURSELVES AND SAY A LITTLE
14 BIT ABOUT YOUR FIRMS, NOT AN ADVERTISEMENT BUT A
15 LITTLE BIT ABOUT YOURSELVES TO ACQUAINT THE JURY
16 WITH YOU AND YOUR CLIENTS.

17 MR. COOMBS: GOOD MORNING, THANK YOU. MY
18 NAME IS ANDY COOMBS. I'M AN ATTORNEY IN GLENDALE,
19 CALIFORNIA. I SPECIALIZE IN INTELLECTUAL PROPERTY
20 ENFORCEMENT AND WITH ME FROM MY OFFICE IS MY
21 ASSOCIATE ANNIE WANG; AND PARALEGAL RUTH ADLER; AND
22 MY CLIENT IN THIS MATTER NIKOLAY LIVADKIN.

23 THE COURT: THANK YOU. DEFENSE COUNSEL.

24 MR. LOWE: GOOD MORNING. MY NAME IS JIM
25 LOWE, AND I'M AN ATTORNEY IN SOUTHERN CALIFORNIA

1 AND ALSO SPECIALIZE IN INTELLECTUAL PROPERTY CASES.

2 MY ASSOCIATE IS CHRIS LAI AND THE MANAGER
3 OF AKANOC IS HERE AND HE'S THE MANAGER OF THE
4 MANAGEMENT GROUP AND HE'S ALSO AN INDIVIDUAL
5 DEFENDANT IN THIS CASE.

6 THE COURT: VERY WELL. BASED ON THAT
7 INTRODUCTION, DO ANY OF YOU BELIEVE THAT YOU KNOW
8 ANY OF THESE LAWYERS, THEIR LAW FIRMS, THEIR
9 CLIENTS? IF SO, RAISE YOUR NUMBER CARD.

10 NO CARDS ARE RAISED. YOU DON'T KNOW VERY
11 MUCH ABOUT THE FACTS OF THE CASE, BUT AS I
12 DESCRIBED IT ANY OF YOU EVER HEARD ABOUT LOUIS
13 VUITTON AND THESE WEB SITES AND THESE CLAIMS ABOUT
14 COPYRIGHT OR INFRINGEMENT BEFORE YOU WALKED INTO
15 THIS COURTROOM HERE TODAY? ANYONE? PRIOR
16 KNOWLEDGE OF THE CASE?

17 I DIDN'T EXPECT SO, BUT IT COULD BE THOSE
18 ARE INSTANCES.

19 YOU SHOULD SEE BACK ON THE SCHEDULE A
20 LIST OF POTENTIAL WITNESSES AND SOMETIMES THE NAMES
21 ARE THE SAME, AND SO I WANT TO KNOW WHETHER OR NOT
22 AS YOU LOOK AT THAT LIST OF PEOPLE WHETHER OR NOT
23 ANY OF THOSE NAMES ARE FAMILIAR TO YOU TO THE POINT
24 WHERE YOU WOULD THINK THAT YOU KNOW ANY OF THOSE
25 INDIVIDUALS.

1 NO NUMBER CARDS RAISED WITH RESPECT TO
2 THE WITNESSES.

3 LOUIS VUITTON IS A TRADEMARK AND A TRADE
4 NAME AND A PRODUCT THAT IS SOLD ON THE MARKET. DO
5 ANY OF YOU OWN ANY LOUIS VUITTON PRODUCTS? RAISE
6 YOUR NUMBER CARDS. WE WANT TO KNOW.

7 PROSPECTIVE JUROR: SORRY.

8 THE COURT: SO NUMBER 11 AND NUMBER 81 --
9 18. LET ME KIND OF INQUIRE. IT'S NOT
10 DISQUALIFYING. DON'T BE RELUCTANT BECAUSE YOU OWN
11 A LOUIS VUITTON PRODUCT, BUT I JUST WANT TO KNOW A
12 LITTLE BIT MORE ABOUT THAT.

13 NUMBER 11, MS. CHAVEZ, WHAT IS IT THAT
14 CONNECTS YOU WITH THE LOUIS VUITTON PRODUCT?

15 PROSPECTIVE JUROR: PURSE.

16 THE COURT: AND MS. BILBES IS IT?

17 PROSPECTIVE JUROR: THAT'S CORRECT.

18 THE COURT: HOW DO YOU SAY IT?

19 PROSPECTIVE JUROR: BILBES.

20 THE COURT: AND WHAT IS IT THAT CONNECTS
21 YOU?

22 PROSPECTIVE JUROR: A PURSE.

23 THE COURT: NOW, THE LAWYERS IN THIS CASE
24 YOU WILL HEAR EVIDENCE WITH RESPECT TO HOW YOU TELL
25 LOUIS VUITTON PRODUCTS WITH RESPECT TO OTHERS.

1 WITH RESPECT TO YOUR PURSE, MS. CHAVEZ,
2 DID YOU PURCHASE IT OR WAS IT A GIFT?

3 PROSPECTIVE JUROR: I PURCHASED IT.

4 THE COURT: WHERE?

5 PROSPECTIVE JUROR: CARMEL.

6 THE COURT: YES.

7 PROSPECTIVE JUROR: A LOUIS VUITTON
8 STORE.

9 THE COURT: AND MS. BILBES.

10 PROSPECTIVE JUROR: I PURCHASED IT AT A
11 LOUIS VUITTON STORE.

12 THE COURT: THANK YOU. ALL RIGHT. RAISE
13 YOUR NUMBER CARD IF YOU HAVE NEVER HEARD OF LOUIS
14 VUITTON. OKAY. THAT'S IMPORTANT.

15 NUMBER 9, NUMBER -- SORRY. SOME PEOPLE
16 IN THE BACK. NUMBER 2, NUMBER 3, NUMBER 9, NUMBER
17 12, NUMBER 13. THANK YOU.

18 THE REST I PRESUME HAVE HEARD OF LOUIS
19 VUITTON MALLETIER AND TWO HAVE PURCHASED THEIR
20 PRODUCTS.

21 I WOULD LIKE TO HEAR FROM AMONG YOU
22 WHETHER ANY OF YOU HAVE ANY STRONG REACTION TO
23 LOUIS VUITTON.

24 NOW BY "STRONG REACTION" I MEAN POSITIVE
25 OR NEGATIVE. I DON'T MEAN TO SUGGEST WHAT YOU

1 MIGHT HAVE, BUT, FOR EXAMPLE, MY UNDERSTANDING IS
2 THAT LOUIS VUITTON IS A MARK THAT WENT ON PRODUCTS
3 THEY BECOME MORE COSTLY THAN OTHERS. IT'S A
4 VALUABLE NAME.

5 SO SOME PEOPLE MIGHT FEEL IT'S TOO
6 EXPENSIVE OR THAT'S A WASTE OF TIME OR MONEY AND
7 OTHERS MIGHT THINK THAT'S A VERY IMPORTANT THING.

8 AND SO I WANT TO KNOW WHETHER YOU HAVE
9 ANY FEELINGS STRONGLY ONE WAY OR THE OTHER ABOUT
10 THE LOUIS VUITTON MARK.

11 SO RAISE YOUR NUMBER CARD IF YOU HAVE ANY
12 STRONG REACTION BEING FAMILIAR WITH IT ONE WAY OR
13 THE OTHER?

14 NO STRONG REACTIONS BY ANYBODY? OKAY.

15 NOW, THIS IS A CASE WHERE THE DEFENDANT
16 OPERATES INTERNET SERVICE SITES WHERE YOU CAN
17 ACTUALLY USE THEIR PRODUCTS TO GAIN ACCESS TO THE
18 INTERNET AND USE IT FOR PURCHASES OF GOODS OR
19 SERVICES OR INFORMATION, I PRESUME. WE'LL LEARN
20 MORE ABOUT THAT. I ACTUALLY WILL BE LEARNING WITH
21 YOU MORE ABOUT WHAT THOSE COMPANIES DOES.

22 SIMILAR TO OTHERS THAT YOU MAY BE
23 FAMILIAR WITH, AND SO I WANT TO ASK WHETHER YOU OR
24 ANYONE IN YOUR HOUSE HOLD WORK FOR COMPANIES THAT
25 ARE IN THE INTERNET SERVICE BUSINESS?

1 FOR EXAMPLE, ANY OF YOU OR MEMBERS OF
2 YOUR HOUSE HOLD WORK FOR GOOGLE?

3 RAISE YOUR NUMBER CARD. NUMBER 20.

4 HOW ABOUT YAHOO? HOW ABOUT E-BAY?

5 SO, MR. RENFRO, YOU'RE THE ONLY ONE WITH
6 THE NUMBER RAISED. SO WHO IS IT THAT YOU KNOW
7 WORKS FOR GOOGLE?

8 PROSPECTIVE JUROR: MY SISTER IS A
9 CONTRACTOR I BELIEVE THROUGH PAMPERED CHEF, I
10 BELIEVE THEM.

11 THE COURT: A CONTRACTOR THROUGH?

12 PROSPECTIVE JUROR: THROUGH PAMPERED
13 CHEF. SHE DOES THE CULINARY SERVICES THERE.

14 THE COURT: AH. SO THAT PROVIDED FOOD
15 SERVICES FOR THE GOOGLE PEOPLE?

16 PROSPECTIVE JUROR: YES, KIND OF GOOGLE.

17 THE COURT: THIS CASE INVOLVES COPYRIGHT,
18 IN THIS CASE COPYRIGHTS AND TRADEMARKS. RAISE YOUR
19 NUMBER CARD IF YOU OR ANY MEMBER OF YOUR FAMILY OWN
20 A COPYRIGHT, A PATENT OR TRADEMARK.

21 NUMBER 7, MR. HEIRICH.

22 PROSPECTIVE JUROR: YES.

23 THE COURT: TELL ME ABOUT THAT.

24 PROSPECTIVE JUROR: I CURRENTLY HAVE 22
25 UTILITY AND DESIGN PATENTS IN MY NAME. I'M

1 CURRENTLY INVOLVED IN STRATEGIZING FOR PROTECTING
2 PATENT, TRADEMARK. I'M ALSO INVOLVED IN TRACING
3 INTELLECTUAL PROPERTY LEAKAGE AND CONTROL AND
4 ADVISING STAFF ON HOW TO DO THAT.

5 THE COURT: THIS IS THE COMPANY THAT YOU
6 WORK FOR?

7 PROSPECTIVE JUROR: YES.

8 THE COURT: AND THIS IS?

9 PROSPECTIVE JUROR: APPLE.

10 THE COURT: APPLE. YOU'RE PROBABLY AN
11 EXPERT, AND SO PROBABLY WHAT WE'LL HEAR IN THIS
12 CASE IS EXPERT TESTIMONY AND IT WILL ALSO INVOLVE
13 EVIDENCE AND TRACING OUT HOW THINGS APPEAR ON THE
14 INTERNET WHERE THEY CAN BE FOUND AND WHAT STEPS
15 SHOULD BE TAKEN ABOUT THAT.

16 AND SO I AM GOING TO EXCUSE YOU BECAUSE I
17 THINK IN THE JURY DELIBERATIONS, ALTHOUGH YOU WOULD
18 BE A GREAT RESOURCE, YOU MAY BE MORE THAN A REGULAR
19 JUROR.

20 SO I WILL EXCUSE YOU FROM THIS CASE.

21 I APOLOGIZE BECAUSE IT HAS NOTHING TO
22 DO -- THAT'S A GREAT BACKGROUND. I HAVE A JUICY
23 PATENT CASE, I MEAN, MAYBE THAT WILL BE THAT, BUT I
24 ALSO HAVE A JUICY BANKRUPTCY CASE COMING UP AND SO
25 I'LL KEEP YOU IN MIND.

1 PROSPECTIVE JUROR: THANK YOU.

2 THE COURT: SO WE'RE EARLY ENOUGH IN THE
3 PROCESS. LET'S SEE IF WE CAN HAVE A SUBSTITUTE FOR
4 MR. HEIRICH.

5 THANK YOU VERY MUCH, SIR.

6 THE CLERK: JACKSON LUNGHIM.

7 THE COURT: MR. LUNGHIM, TAKE SEAT NUMBER
8 7.

9 MR. HIM, I TRUST THAT MR. HEIRICH LEFT
10 THE SCHEDULE THERE. IF YOU WOULD QUICKLY CHECK
11 THAT AND SEE WHETHER THERE'S A PROBLEM FOR YOU
12 SERVING FOR THE PERIOD OF THE CASE.

13 PROSPECTIVE JUROR: I NEED A MEDICAL
14 CHECK.

15 THE COURT: ON WHICH DAY?

16 PROSPECTIVE JUROR: ON WEDNESDAY.

17 THE COURT: ON WEDNESDAY OF THIS WEEK?

18 PROSPECTIVE JUROR: YES.

19 THE COURT: WHEN YOU SAY A PHYSICAL? IS
20 IT A MEDICAL CHECK OR A SCHEDULED DOCTOR'S
21 APPOINTMENT.

22 PROSPECTIVE JUROR: NEXT WEEK. NOT THIS
23 WEEK BUT NEXT WEEK.

24 THE COURT: ON WEDNESDAY OF NEXT WEEK?

25 PROSPECTIVE JUROR: YES.

1 THE COURT: BUT IS IT THE KIND OF
2 APPOINTMENT WHERE YOU COULD RESCHEDULE IT?

3 PROSPECTIVE JUROR: MAYBE.

4 THE COURT: HOW LONG DID IT TAKE FOR YOU
5 TO GET? I KNOW SOMETIMES THEY'RE LONG ENOUGH AND
6 YOU DON'T WANT TO PASS THEM UP.

7 PROSPECTIVE JUROR: OH, IT'S MEDICAL FOR
8 CANCER OR NOT.

9 THE COURT: OH. THAT'S SERIOUS. OKAY.
10 PERHAPS I SHOULD EXCUSE YOU BECAUSE THAT'S
11 IMPORTANT ENOUGH OF A CHECK WOULD HAVE YOU FOCUSSED
12 ON THAT AND NOT THAT THAT WOULDN'T ALLOW YOU TO
13 ALSO FOCUS ON THE CASE AND THEN YOU WOULD BE GONE
14 FOR THE DAY OF THAT, AND I WOULD HATE TO INTERFERE
15 WITH THAT.

16 SO I'LL EXCUSE YOU. SO YOU MAY BE
17 EXCUSED.

18 CALL ANOTHER NAME FOR SEAT NUMBER 7.

19 THE CLERK: ALEXANDER MILLER.

20 THE COURT: OKAY. LET ME ASK MR. MILLER
21 ABOUT OUR SCHEDULE, AND THEN I WILL GIVE YOU A
22 BREAK.

23 HAS MR. MILLER HAD A CHANCE TO LOOK AT
24 OUR SCHEDULE?

25 PROSPECTIVE JUROR: YES.

1 THE COURT: ANY PROBLEM FOR SERVING FOR
2 THAT PERIOD OF TIME?

3 PROSPECTIVE JUROR: I START ON THE 31ST
4 SCHOOL.

5 THE COURT: AND WHAT ARE YOU A STUDENT
6 IN?

7 PROSPECTIVE JUROR: I GO TO WEST VALLEY,
8 AND I TAKE WEB DESIGN.

9 THE COURT: ALL RIGHT. YOU'RE PROBABLY
10 AN EXPERT ANYWAY. WEB DESIGN.

11 ALL RIGHT. MR. MILLER, YOU'RE EXCUSED,
12 AND WE'LL FILL THAT SEAT WHEN WE COME BACK FROM A
13 BREAK.

14 SO COME BACK TO THOSE VERY SEATS, AND
15 I'LL GIVE YOU A BREAK FOR LET'S TAKE ABOUT TEN
16 MINUTES. SO WE'LL COME BACK PROMPTLY AT 10:30.

17 (WHEREUPON, A RECESS WAS TAKEN.)

18 THE COURT: THANK YOU FOR COMING BACK
19 PROMPTLY. WE WERE IN THE BUSINESS OF TRYING TO
20 SEAT A PROSPECTIVE JUROR IN SEAT NUMBER 7.

21 THE CLERK: GRAYSON DERE.

22 THE COURT: ARE WE SAYING YOUR NAME RIGHT
23 DERE OR --

24 PROSPECTIVE JUROR: DERE.

25 THE COURT: THANK YOU, MR. DERE. TAKE A

1 LOOK AT OUR SCHEDULE. ANY HARDSHIP POSED BY
2 SERVING DURING THAT PERIOD OF TIME?

3 PROSPECTIVE JUROR: NO.

4 THE COURT: GOOD. ALL RIGHT. WE'RE BACK
5 TO WHERE WE WERE. MR. DERE, I'M GOING TO REPEAT
6 BRIEFLY SOME OF THE QUESTIONS I ASKED. YOU MIGHT
7 HAVE BEEN ABLE TO HEAR THEM WHEN I WAS ASKING THEM
8 OF OTHER JURORS.

9 DO YOU KNOW ANYTHING ABOUT THE OTHER
10 LAWYERS OR KNOW ANYTHING ABOUT THIS CASE?

11 PROSPECTIVE JUROR: NO.

12 THE COURT: DO YOU OWN ANY LOUIS VUITTON
13 PRODUCTS?

14 PROSPECTIVE JUROR: NO.

15 THE COURT: DO YOU HAVE ANY ASSOCIATION
16 WITH INTERNET SERVICE PROVIDERS SUCH AS YAHOO OR
17 GOOGLE?

18 PROSPECTIVE JUROR: NO.

19 THE COURT: ANY MEMBERS OF YOUR FAMILY
20 HAVE ASSOCIATION WITH THEM?

21 PROSPECTIVE JUROR: I HAVE A COUSIN THAT
22 WORKS FOR THEM.

23 THE COURT: DO YOU KNOW WHAT HE DOES?

24 PROSPECTIVE JUROR: HE'S A SOFTWARE
25 PROGRAMMER.

1 THE COURT: AND HOW OFTEN DO YOU SEE YOUR
2 COUSIN?

3 PROSPECTIVE JUROR: A COUPLE TIMES A
4 MONTH.

5 THE COURT: ANYONE WORK FOR E-BAY?

6 PROSPECTIVE JUROR: NO.

7 THE COURT: DO YOU OWN ANY COPYRIGHTS,
8 TRADEMARKS, OR PATENTS? NO.

9 THERE IS A PEJORATIVE TERM THAT IS OFTEN
10 USED FOR PRODUCTS THAT LOOK LIKE TO SERVE THE SAME
11 PURPOSE AS A COPYRIGHT OR TRADEMARK PRODUCT CALLED
12 A KNOCKOFF. ANY OF YOU EVER HEAR THAT TERM? RAISE
13 YOUR NUMBER CARD IF YOU HAVE.

14 OKAY. WHAT I WANT TO KNOW IS WHETHER YOU
15 HAVE ANY STRONG REACTIONS ONE WAY OR THE OTHER WHEN
16 THE WORD OR PHRASE "KNOCKOFF" IS USED? ANY OF YOU
17 THINK THAT IT'S STRONGLY INAPPROPRIATE OR SOME OF
18 YOU MIGHT HAVE STRONG FEELINGS THERE'S NOTHING
19 WRONG WITH THAT?

20 SO I WANT TO KNOW WHETHER YOU HAVE STRONG
21 FEELINGS ONE WAY OR THE OTHER ABOUT THAT. IT'S A
22 FAMILIAR TERM THAT IS SAID IN COMMON CONVERSATION,
23 BUT I WANT TO KNOW WHETHER YOU HAVE ANY STRONG
24 FEELINGS.

25 NUMBER 11, TELL ME ABOUT YOUR FEELINGS.

1 PROSPECTIVE JUROR: I JUST LIKE IT. I
2 WORK HARD FOR MY PURSE, AND I LIKE THE REAL ONE AND
3 I HATE IT WHEN PEOPLE COME UP WITH KNOCKOFFS. I
4 HATE IT.

5 THE COURT: ALL RIGHT. THANK YOU.
6 ANYONE SHARE THAT VIEW? WHY DON'T WE DO IT THAT
7 WAY. AH, NUMBER 7.

8 ANYONE HAVE AN OPPOSING VIEW? YOU'RE
9 NEUTRAL TO THE WHOLE THING? IT'S A LITTLE CARD IF
10 YOU'RE NEUTRAL. RAISE YOUR NUMBER CARD IF YOU
11 DON'T CARE ONE WAY OR THE OTHER ABOUT KNOCKOFFS, IT
12 DOESN'T BOTHER YOU ONE WAY OR THE OTHER? OKAY.

13 THE COURT: THERE ARE PARTICULAR
14 LOCATIONS THAT MIGHT COME UP, CANAL STREET IN NEW
15 YORK, OR SANTEE STREET IN LOS ANGELES. ANY OF YOU
16 EVER BEEN TO ANY OF THOSE LOCATIONS?

17 WELL, THIS SHOULD GET QUITE A RESPONSE.
18 I WAS TO ASK WHETHER ANY OF YOU SOLD OR BOUGHT
19 ANYTHING ON THE INTERNET.

20 ANYONE SOLD ANYTHING? ALL RIGHT. PUT
21 THEM DOWN.

22 ANYONE NOT PURCHASE ANYTHING ON THE
23 INTERNET? EVERYONE HAS.

24 ANYONE OF YOU EVER SOLD A PRODUCT OR
25 SERVICE USING THE INTERNET? OH. SO LET ME GET

1 THOSE DOWN.

2 NUMBER 1, NUMBER 4, NUMBER 6, NUMBER 7,
3 NUMBER 12, NUMBER 13, NUMBER 8 -- THANK YOU --
4 NUMBER 14, NUMBER 10, NUMBER 19, NUMBER 20.

5 I WANT TO KNOW IF I HAVE ANY ARTISANS
6 AMONG YOU. ANYONE WHO HAS EVER CREATED ANYTHING
7 THAT IS CREATIVE WORK AND SOLD IT COMMERCIALY?
8 ANY OF YOU INVOLVED IN THE ARTS? NUMBER 20. WHAT
9 IS IT THAT YOU CREATED AND SOLD, MR. RENFRO?

10 PROSPECTIVE JUROR: I'M A WEDDING
11 PHOTOGRAPHER.

12 THE COURT: SAY AGAIN.

13 PROSPECTIVE JUROR: A WEDDING
14 PHOTOGRAPHER.

15 THE COURT: YES, NUMBER 7, MR. DERE.

16 PROSPECTIVE JUROR: I'M A PHOTOGRAPHER
17 ALSO.

18 THE COURT: ANY OF YOU TRAINED IN THE
19 LAW, LEGAL TRAINING AS PARALEGALS OR LAW SCHOOL?
20 ANY OF YOU HAVE ANY LEGAL TRAINING AT ALL? NO.

21 OKAY. ANY OF YOU INVOLVED IN THE
22 MANAGEMENT OF SERVERS OR COMPUTERS THAT OPERATE AS
23 SERVERS?

24 PROSPECTIVE JUROR: I HAVE A QUESTION.

25 THE COURT: GIVE ME YOUR NUMBER.

1 PROSPECTIVE JUROR: SORRY, NUMBER 9.

2 I'M A SOFTWARE ENGINEER, AND SO I DO
3 MAINTAIN INTERNAL SERVERS FOR MY COMPANY.

4 THE COURT: ALL RIGHT. SO AS A SOFTWARE
5 ENGINEER YOU ALSO MAINTAIN THE SERVER FOR THE
6 COMPANY?

7 PROSPECTIVE JUROR: PARTIALLY.

8 THE COURT: DO YOU MAINTAIN PARTS ON IT?

9 PROSPECTIVE JUROR: NO, THE SOFTWARE.

10 THE COURT: WHAT COMPANY IS THAT?

11 PROSPECTIVE JUROR: I WORK FOR THE SETI
12 INSTITUTE IN MOUNTAIN VIEW.

13 THE COURT: IS THAT THE ONE FOR LIKE
14 EXTRATERRESTRIALS?

15 PROSPECTIVE JUROR: CORRECT.

16 THE COURT: IS THERE A QUESTION THAT SOME
17 OF YOU THOUGHT I WOULD ASK THAT MIGHT PERTAIN TO
18 YOUR SERVICE?

19 PROSPECTIVE JUROR: I'M A TAX ACCOUNTANT,
20 AND I HAVE CLIENTS THAT WORK FOR GOOGLE.

21 THE COURT: TAX ACCOUNTANT AND CLIENTS
22 THAT WORK FOR GOOGLE. I DON'T FIND THAT TO BE
23 DISQUALIFYING BUT MAYBE THE PARTIES WILL FOLLOW UP.

24 AND THAT'S WHAT I'M GOING TO DO NOW.
25 YES, NUMBER 20.

1 PROSPECTIVE JUROR: I ALSO DO IT'S NOT
2 PAID, IT'S FOR FRIENDS, BUT IT'S LOGO DESIGNS.

3 THE COURT: I THOUGHT I SAW ANOTHER ONE.
4 NUMBER 11.

5 PROSPECTIVE JUROR: I SUPERVISE PEOPLE AT
6 MY WORK.

7 THE COURT: YOU SUPERVISE PEOPLE AT YOUR
8 WORK. IS THAT A PLEASURABLE THING?

9 PROSPECTIVE JUROR: NOT REALLY.

10 THE COURT: AND I SAW A CARD IN THE BACK.
11 NUMBER 5.

12 PROSPECTIVE JUROR: I DO GRAPHIC DESIGNS.

13 THE COURT: ALL RIGHT. SO THAT'S AN
14 ARTISTIC KIND OF THING. YOU DON'T SELL IT, YOU DO
15 GRAPHIC DESIGNS?

16 PROSPECTIVE JUROR: I DO IT PART-TIME
17 LIKE CARS AND POSTERS. YEAH.

18 THE COURT: THANK YOU. IT'S PUCKETTBIER.

19 PROSPECTIVE JUROR: YES, IT IS.

20 THE COURT: THANK YOU. ANYONE ELSE?
21 NUMBER 3.

22 PROSPECTIVE JUROR: YOU MIGHT HAVE MISSED
23 ME EARLIER. I'M A SOFTWARE ENGINEER, AND I HAVE
24 PATENTS ISSUED BY THE PATENT OFFICE THAT ARE ON
25 FILE.

1 THE COURT: YOU HAVE SEVERAL PATENTS ON
2 FILE. I DIDN'T NOTE THAT WHEN I SAID WHO OWNS
3 PATENTS OR COPYRIGHTS. SO I DIDN'T MISS YOU,
4 MR. LUONG.

5 PROSPECTIVE JUROR: FOUR ISSUED AND
6 SEVERAL ON FILE.

7 THE COURT: FOUR ISSUED AND SEVERAL ON
8 FILE.

9 PROSPECTIVE JUROR: YES.

10 THE COURT: AND WHAT FIELD ARE YOUR
11 PATENTS.

12 PROSPECTIVE JUROR: ENGINEERING.

13 THE COURT: SOFTWARE. SO THEY'RE PROCESS
14 PATENTS.

15 PROSPECTIVE JUROR: ALGORITHMS.

16 THE COURT: ANY OF YOUR PATENTS HAVE TO
17 DO WITH THE INTERNET CONTROLS HOW THE SERVICE
18 OPERATES?

19 PROSPECTIVE JUROR: NO.

20 THE COURT: ANYONE ELSE?

21 PROSPECTIVE JUROR: THE INTERNET SERVICE
22 PROVIDER. I'M WORKING FOR AT & T WHICH IS AN
23 INTERNET SERVICE PROVIDER.

24 THE COURT: NUMBER 13. AND WHICH COMPANY
25 IS THAT?

1 PROSPECTIVE JUROR: AT & T.

2 THE COURT: AH, A BIG INTERNET SERVICE
3 PROVIDER. OKAY. I THINK THE LAWYERS MAY COME BACK
4 TO YOU FOR FURTHER QUESTIONS. I ALWAYS ALLOW THE
5 LAWYERS TEN MINUTES EACH TO FOLLOW UP ON MY
6 QUESTIONS BEFORE I DECIDE WHETHER OR NOT ANY OF YOU
7 SHOULD BE EXCUSED, UNLESS IT'S APPARENT.

8 AND AT THIS POINT LET ME CALL ON COUNSEL
9 FOR THE PLAINTIFF FOR ANY SUPPLEMENTAL QUESTIONS OF
10 THE PANEL.

11 MR. COOMBS: THANK YOU, YOUR HONOR. I
12 HEAR A COUPLE OF YOU ARE ENGINEERS AND MAY HAVE
13 FAMILIARITY WITH THE INTERNET. YOU MAY HAVE MORE
14 FAMILIARITY THAN I DO. WILL YOU HAVE THE PATIENCE
15 TO SIT THROUGH AND LISTEN TO THE BACKGROUND THAT
16 SOME OF US WILL BENEFIT FROM?

17 ANY OF YOU HAVE ANY ISSUES WITH THAT?

18 A FEW OF YOU SAID THAT YOU SOLD PRODUCT
19 ON THE INTERNET. CAN YOU PUT YOUR CARDS UP AGAIN
20 SO I CAN SEE WHO YOU ARE.

21 I'D LIKE TO GET AN IDEA. DO ANY OF YOU
22 OPERATE A BUSINESS LIKE THAT SELLING PRODUCT ON A
23 COMMERCIAL BASIS?

24 PROSPECTIVE JUROR: WELL, IT'S HARD TO
25 SAY. THE WEB SITE THAT I HAVE ISN'T MY OWN. IT'S

1 THROUGH A COMPANY THAT IS A HEALTH AND WELLNESS --
2 THEY DON'T DIRECTLY SELL FROM ME BUT PEOPLE CAN GO
3 TO THE WEB SITE THAT YOU PURCHASED FROM THE COMPANY
4 THAT I AM --

5 MR. COOMBS: SOURCING THE PRODUCT FROM?

6 PROSPECTIVE JUROR: EXACTLY.

7 MR. COOMBS: WHAT KIND OF PRODUCT?

8 PROSPECTIVE JUROR: IT'S A HEALTH AND
9 WELLNESS.

10 MR. COOMBS: AND WHERE IS THE COMPANY
11 LOCATED?

12 PROSPECTIVE JUROR: IN LEHI, UTAH.

13 MR. COOMBS: AND IT SOUNDS INTERESTING.

14 PROSPECTIVE JUROR: THEY'RE ABOUT SEVEN
15 YEARS OLD.

16 MR. COOMBS: HOW LONG HAVE YOU BEEN DOING
17 IT?

18 PROSPECTIVE JUROR: I'M AN INDEPENDENT
19 DISTRIBUTOR.

20 MR. COOMBS: WERE YOU WORKING OFF LINE
21 AND IT MORPHED INTO AN ONLINE BUSINESS OR?

22 PROSPECTIVE JUROR: NO, NO. IT'S JUST
23 THE WEB SITE ALLOWS US TO JUST HAVE A PLACE TO SEND
24 PEOPLE. IT'S WORD OF MOUTH ADVERTISING BASICALLY
25 ABOUT THE PRODUCTS, AND I'M JUST TRYING TO BUILD

1 THE BUSINESS.

2 MR. COOMBS: WHO IS YOUR HOSTING
3 PROVIDER?

4 PROSPECTIVE JUROR: WHO IS THE COMPANY?

5 MR. COOMBS: YES.

6 PROSPECTIVE JUROR: IT'S IN SKANGO.
7 THEY'RE IN UTAH.

8 MR. COOMBS: THEY ACTUALLY ACT AS A HOST?

9 PROSPECTIVE JUROR: THE WEB SITE IS I
10 BELIEVE BASED OFF THE INDIVIDUAL BUSINESS
11 DISTRIBUTORS THAT DECIDED TO -- WELL, I BELIEVE
12 THEY HAVE TO HAVE EVERYTHING APPROVED BY THE
13 CORPORATION WHEN THEY DO THAT.

14 I'M NOT QUITE SURE ON THAT. ALL I KNOW
15 IS THAT THEY TAKE \$14.95 OUT OF MY CHECKING
16 ACCOUNT.

17 I DON'T THINK I REALLY HAD ANYTHING
18 HAPPEN WITH THAT. IT'S JUST A PLACE WHERE I CAN
19 SEND PEOPLE WITH INFORMATION IF THEY WANT TO BUY
20 THE PRODUCT, THEY CAN DO IT THAT WAY. I DON'T
21 THINK IT'S REALLY HAPPENED.

22 MR. COOMBS: DOES ANYONE ELSE OPERATE A
23 WEB SITE?

24 NUMBER 14.

25 PROSPECTIVE JUROR: WELL, MY HUSBAND AND

1 I, WE HAVE A HOTEL BUSINESS AND WE JUST HAVE A WEB
2 SITE AND WHERE THEY BOOK ROOMS.

3 MR. COOMBS: SO IT'S A PROMOTIONAL KIND
4 OF THING, BUT IT'S INTERACTIVE WHERE YOU CAN MAKE
5 RESERVATIONS ON LINE OR THAT SORT OF THING. SORT
6 OF AFFILIATED WITH A CHAIN.

7 PROSPECTIVE JUROR: NO. INDEPENDENT.

8 MR. COOMBS: VERY GOOD. ANYONE ELSE SELL
9 PRODUCT ON LINE? NUMBER 13. WHAT KIND OF PRODUCT
10 DO YOU SELL?

11 PROSPECTIVE JUROR: BASICALLY LIKE A
12 CISCO ROUTER, THE SWITCHES THAT I DO BUILD UP MY
13 HOME NETWORK.

14 SO SOMETIMES I FIND ON E-BAY SOME BETTER
15 THINGS THAN I PURCHASE OR I LATER NO LONGER USE
16 THEM AND I SELL THEM.

17 MR. COOMBS: OKAY. THE INTERNET HAS BEEN
18 TERRIBLE FOR ALL OF OUR RETAIL PRACTICES, I KNOW.

19 I MENTIONED EVERYBODY -- WELL, PUT UP
20 YOUR CARDS IF YOU BOUGHT PRODUCT OVER E-BAY? HOW
21 ABOUT AMAZON.COM?

22 WHO HAS BOUGHT PRODUCTS OVER STAND-ALONE
23 WEB SITES, WEB SITES THAT DEAL WITH A PARTICULAR
24 TYPE OF PRODUCT?

25 NUMBER 4, WHAT KIND OF PRODUCT?

1 PROSPECTIVE JUROR: TICKETS, HOTEL ROOMS,
2 KIND OF FUN ACTIVITIES, TICKETS FOR TICKET MASTER A
3 LOT.

4 MR. COOMBS: HOW MANY OF THOSE WHO HAVE
5 BOUGHT PRODUCT ON SPECIFIC WEB SITES WENT OUT AND
6 BOUGHT PRODUCT AS OPPOSED TO TRAVEL RELATED
7 SERVICES AND SO ON?

8 SO IT'S A VERY INTERNET SAVVY AREA
9 OBVIOUSLY.

10 NUMBER 5, WHAT KIND OF PRODUCT DO YOU
11 BUY?

12 PROSPECTIVE JUROR: IT'S CALLED AMWAY
13 QUICK START. WE BUY OUR PRODUCTS THROUGH THE
14 INTERNET. WE ORDER IT THROUGH.

15 MR. COOMBS: HAS ANYONE HAD A BAD
16 EXPERIENCE WITH BUYING SOMETHING ON THE INTERNET,
17 WITH PURCHASING SOMETHING THAT WASN'T DELIVERED, IT
18 WASN'T WHAT IT WAS DESCRIBED AND THE MORE I GO THE
19 MORE CARDS COME UP.

20 NUMBER 7.

21 PROSPECTIVE JUROR: WELL, I PURCHASED
22 SOME PRODUCT ON AMAZON AND THEY ALSO SELL
23 SECOND-HAND PRODUCTS AND WHAT WAS SHOWN AS PICTURED
24 WASN'T WHAT I GOT. IT WAS JUST OF A DIFFERENT
25 QUALITY.

1 MR. COOMBS: DID YOU TRY AND GET
2 REIMBURSEMENT FOR THAT?

3 PROSPECTIVE JUROR: NO. IT WASN'T THAT
4 MUCH MONEY, AND SO I SAID FORGET IT.

5 MR. COOMBS: HAS IT MADE YOU MORE
6 CAUTIOUS OF YOUR ONLINE BUYING?

7 PROSPECTIVE JUROR: YES.

8 MR. COOMBS: NUMBER 13, YOU SAID YOU --

9 PROSPECTIVE JUROR: YES, I THINK A COUPLE
10 YEARS AGO I BOUGHT A SWITCH \$1700 AND THEN THE
11 PERSON ASKED ME TO WIRE HIM MONEY INSTEAD OF LIKE
12 SEND A CHECK OR SOMETHING AND THEN LATER HE DID NOT
13 DELIVER. SO THE MONEY WAS LOST.

14 MR. COOMBS: DID YOU TRY AND GET
15 REIMBURSEMENT?

16 PROSPECTIVE JUROR: I TRIED, BUT IT SEEMS
17 THAT HE PURPOSELY CHEATED.

18 MR. COOMBS: AND NUMBER 20?

19 PROSPECTIVE JUROR: A CASHIER'S CHECK.
20 FRAUD.

21 MR. COOMBS: OKAY. ANYONE BEEN THE
22 VICTIM OF E-MAIL FRAUDS ON LINE, YOU KNOW, PHISHING
23 WHERE SOMEONE IS TRYING TO TAKE YOUR IDENTITY OR
24 OBTAIN CREDIT CARD INFORMATION THROUGH FALSE
25 PRETENSES, THAT KIND OF THING?

1 PROSPECTIVE JUROR: THAT'S HAPPENED.

2 MR. COOMBS: NUMBER 1, CAN YOU JUST --

3 PROSPECTIVE JUROR: YEAH, SOMEBODY USED
4 MY CREDIT CARD TO BUY A THOUSAND DOLLAR CAMERA.
5 HAD IT DELIVERED TO MY FRONT DOOR.

6 MR. COOMBS: WERE YOU SUCCESSFUL IN
7 RETURNING IT TO THE SELLER?

8 PROSPECTIVE JUROR: OH, YEAH, A LOT OF
9 TROUBLE.

10 MR. COOMBS: THEY DIDN'T STEAL THE
11 IDENTITY FOR OTHER PURPOSES?

12 PROSPECTIVE JUROR: NO. WELL, I DON'T
13 KNOW BECAUSE THEY -- YOU KNOW, MY CARD WAS
14 CANCELLED, BUT IT TOOK ME HOURS TO DO ALL OF THE
15 THINGS I NEEDED TO DO AND I GOT IT DONE, BUT I
16 WOULD HAVE RATHER HAVE SPENT MY TIME DOING
17 SOMETHING ELSE.

18 MR. COOMBS: NUMBER 14?

19 PROSPECTIVE JUROR: AND I ONCE RECEIVED A
20 CASHIER'S CHECK FOR BOOKING OF A ROOM, BUT I AM A
21 BANK TELLER SO I KNOW WHAT FRAUDULENT CHECKS LOOK
22 LIKE SO I HANDED IT OVER TO THE POLICE.

23 MR. COOMBS: FOR THOSE OF YOU WHO BUY
24 PRODUCT OVER STANDALONE WEB SITES, DO YOU LOOK TO
25 SEE WHERE THE WEB SITE IS LOCATED, WHETHER IT'S

1 SOMETHING LOCAL OR IN THE UNITED STATES OR THAT
2 KIND OF THING? IS THERE A REASON YOU DO THAT?
3 NUMBER 9.

4 PROSPECTIVE JUROR: MORE RELIABILITY THAT
5 YOU'LL GET YOUR PRODUCT.

6 MR. COOMBS: NUMBER 1?

7 PROSPECTIVE JUROR: YEAH, I WOULD THINK I
8 DO A LOT OF RESEARCH BEFORE I ORDER ANYTHING.

9 MR. COOMBS: NOW, I REPRESENT LOUIS
10 VUITTON, AND I CAN'T AFFORD LOUIS VUITTON. DOES
11 THAT CAUSE ANY OF YOU A PROBLEM TO ADDRESS A CLAIM
12 BY A COMPANY THAT SELLS A PRODUCT THAT IS BEYOND
13 THE REACH OF PEOPLE? NO.

14 I CAN COUNT ON YOU TO BE FAIR AND
15 RELIABLE AND JUDGE IT THE SAME WAY YOU WOULD ANY
16 OTHER TRADEMARK PRODUCT, WHETHER IT'S AN ASPIRIN
17 THAT YOU BUY AT THE SUPERMARKET OR A CAR THAT YOU
18 BUY OVER E-BAY OR ANYTHING ELSE?

19 ALL RIGHT. I THINK I'M DONE. THANK YOU
20 VERY MUCH, YOUR HONOR.

21 THE COURT: ALL RIGHT. I'LL CALL ON
22 DEFENSE COUNSEL FOR ANY SUPPLEMENTAL QUESTIONS OF
23 THE PANEL.

24 MR. LOWE: GOOD MORNING, LADIES AND
25 GENTLEMEN. I HAVE A FEW FOLLOW-UP QUESTIONS.

1 NUMBER 1, I NOTE THAT YOU HAVE HAD SOME
2 JURY EXPERIENCE BEFORE.

3 PROSPECTIVE JUROR: I'M SORRY. SOMEWHAT.

4 MR. LOWE: IT LOOKS LIKE YOU HAVE HAD
5 SOME JURY EXPERIENCE BEFORE? YOU HAVE SERVED ON A
6 JURY BEFORE?

7 PROSPECTIVE JUROR: YES, I HAVE.

8 MR. LOWE: WHAT SORT OF A CASE WAS IT?

9 PROSPECTIVE JUROR: WELL, ONE I WROTE
10 DOWN I WAS ON A CIVIL CASE AND A CRIMINAL CASE,
11 WHICH ONE ARE YOU INTERESTED IN ACTUALLY?

12 MR. LOWE: BOTH ACTUALLY.

13 PROSPECTIVE JUROR: OKAY. I WAS THE
14 FIRST ALTERNATE ON A CIVIL CASE, AND I HAD TO
15 LISTEN TO THE TESTIMONY BUT I WAS THEN EXCUSED WHEN
16 IT WAS TIME FOR DELIBERATION.

17 MR. LOWE: AND WHAT KIND OF CASE WAS
18 THAT?

19 PROSPECTIVE JUROR: IT WAS A HIT AND RUN.
20 NOT A HIT AND RUN. JUST A MINOR CAR ACCIDENT.

21 MR. LOWE: AND THE -- THAT WAS THE CIVIL
22 CASE; RIGHT?

23 PROSPECTIVE JUROR: YES.

24 MR. LOWE: AND THE CRIMINAL CASE, WHAT
25 KIND OF CASE WAS IT?

1 PROSPECTIVE JUROR: THE CRIMINAL CASE WAS
2 ASSAULT AND BATTERY ON A POLICE OFFICER.

3 MR. LOWE: AND THOSE WERE BOTH IN THIS
4 AREA?

5 PROSPECTIVE JUROR: YES.

6 MR. LOWE: SO YOU'VE HAD A LOT OF
7 EXPERIENCE IN THE COURTROOMS.

8 PROSPECTIVE JUROR: LOTS.

9 MR. LOWE: AND YOU'RE A TEACHER.

10 PROSPECTIVE JUROR: YES.

11 MR. LOWE: NUMBER 3, I SEE THAT YOU'RE A
12 COMPUTER SCIENCE PERSON.

13 PROSPECTIVE JUROR: UH-HUH.

14 MR. LOWE: AN ENGINEER. WHAT DO YOU WORK
15 FOR, SIR?

16 PROSPECTIVE JUROR: CISCO.

17 MR. LOWE: WHAT KIND OF WORK DO YOU DO
18 FOR THEM?

19 PROSPECTIVE JUROR: I WRITE SOFTWARE.

20 MR. LOWE: YOU WRITE SOFTWARE?

21 PROSPECTIVE JUROR: YEAH, I DEVELOP THEM.

22 MR. LOWE: FOR THE ROUTER OR OTHER
23 EQUIPMENT OR WHAT?

24 PROSPECTIVE JUROR: ROUTERS AND FOR VIDEO
25 EQUIPMENT.

1 MR. LOWE: FOR VIDEO EQUIPMENT.

2 PROSPECTIVE JUROR: WELL, IN THE PAST IT
3 WAS ROUTER AND THEN I SWITCHED TO VIDEO EQUIPMENT.

4 MR. LOWE: NOW, WE'RE GOING TO HAVE
5 TESTIMONY ABOUT INTERNET ACTIVITY AND EQUIPMENT
6 BEING USED BY VARIOUS PARTIES ON THE INTERNET, AND,
7 FOR EXAMPLE, THAT'S USED BY INTERNET SERVICE
8 PROVIDERS. AND I EXPECT TO HAVE TESTIMONY ABOUT
9 ROUTERS AND SO ON. AND WE EXPECT TO HAVE A COUPLE
10 OF EXPERTS TESTIFY ABOUT THESE THINGS.

11 DO YOU THINK THAT YOU WOULD BE ABLE TO
12 LISTEN TO THE TESTIMONY IN THIS COURT AND BASE YOUR
13 DETERMINATION ON WHAT YOU HEAR HERE AS OPPOSED TO
14 MAYBE YOUR OWN PERSONAL BACKGROUND?

15 PROSPECTIVE JUROR: YES.

16 MR. LOWE: I WOULD TAKE IT THAT YOU
17 PROBABLY THINK THAT YOU KNOW MORE ABOUT INTERNET
18 EQUIPMENT AND ROUTERS AND SO ON THAN MOST PEOPLE;
19 RIGHT?

20 PROSPECTIVE JUROR: I SUPPOSE.

21 MR. LOWE: ALL RIGHT.

22 PROSPECTIVE JUROR: I HAVE BEEN IN THIS
23 BUSINESS FOR MANY YEARS.

24 MR. LOWE: HOW MANY YEARS HAVE YOU DONE
25 THAT?

1 PROSPECTIVE JUROR: FIFTEEN.

2 MR. LOWE: NUMBER 4, CAN YOU TELL ME WHAT
3 SORT OF BUSINESS YOU WORK IN?

4 PROSPECTIVE JUROR: I WORK FOR STRIKER
5 ENDOSCOPY. WE MANUFACTURE MEDICAL DEVICES AND FOR
6 INVASIVE SURGERY.

7 MR. LOWE: OKAY. AND YOU'VE BEEN DOING
8 THAT FOR HOW LONG?

9 PROSPECTIVE JUROR: FOUR YEARS.

10 MR. LOWE: NUMBER 5, COULD YOU TELL ME A
11 LITTLE BIT MORE ABOUT THE GRAPHIC DESIGN WORK THAT
12 YOU DO?

13 PROSPECTIVE JUROR: I WORK FOR LEGAL
14 HOUSING AND I DO FLYERS, POSTERS, AND CARDS, AND
15 NEWSLETTERS. THAT'S MOSTLY WHAT I DO.

16 MR. LOWE: HOW LONG HAVE YOU BEEN DOING
17 THAT SORT OF WORK?

18 PROSPECTIVE JUROR: ABOUT TEN YEARS, TEN
19 PLUS YEARS.

20 MR. LOWE: AND DO YOU EVER GET INVOLVED
21 IN COPYRIGHT ISSUES, FOR EXAMPLE?

22 PROSPECTIVE JUROR: I HAVE MY COPYRIGHT
23 BOOK TO KNOW, YOU KNOW, LIKE GETTING GRAPHICS I
24 MAKE SURE THAT WE GET PERMISSION OR WE DON'T USE
25 ANY COPYRIGHT OR ANYTHING. I HAVE TO -- YOU KNOW,

1 WHEN I DOWNLOAD FOR PHOTOGRAPHS, I HAVE TO MAKE
2 SURE THAT IT'S NOT COPYRIGHTED.

3 MR. LOWE: OKAY. SO THEN IT SOUNDS LIKE
4 YOU USE THE INTERNET REGULARLY IN YOUR WORK?

5 PROSPECTIVE JUROR: YES, YES, I DO.

6 MR. LOWE: DO YOU DISTRIBUTE WORK ON THE
7 INTERNET IN ANY WAY.

8 PROSPECTIVE JUROR: WELL, WHEN I DO THE
9 NEWSLETTER, I SEND A PDF FILE. I USE IT THAT WAY.
10 I USE A PDF.

11 MR. LOWE: HAS YOUR COMPANY EVER BEEN
12 INVOLVED IN ANY LAWSUITS ABOUT COPYRIGHTS OR
13 TRADEMARKS OR ANYTHING OF THAT SORT?

14 PROSPECTIVE JUROR: NO.

15 MR. LOWE: WHAT SORT OF WORK DID YOUR
16 HUSBAND DO BEFORE HE RETIRED?

17 PROSPECTIVE JUROR: SALES.

18 MR. LOWE: FOR WHAT COMPANY?

19 PROSPECTIVE JUROR: MANUFACTURING FOR
20 VARIOUS COMPANIES.

21 MR. LOWE: OKAY. NUMBER 6, WHAT KIND OF
22 WORK DO YOU PRESENTLY DO?

23 PROSPECTIVE JUROR: I'M IN SALES FOR A
24 CISCO PARTNER COMPANY SO CONTACT CENTER SOLUTIONS,
25 WHICH IS A COMBINATION OF SOFTWARE, HARDWARE,

1 PROFESSIONAL SERVICES SUPPORT.

2 MR. LOWE: SO YOU OBVIOUSLY KNOW
3 SOMETHING ABOUT CISCO'S PRODUCTS?

4 PROSPECTIVE JUROR: YES.

5 MR. LOWE: AND WHAT SORT OF PRODUCTS DO
6 YOU SELL TO THEM?

7 PROSPECTIVE JUROR: VOICE GATEWAYS, SOME
8 ROUTING SWITCHING GEAR. I'M NOT AN ENGINEER. I'M
9 THE ACCOUNT MANAGER, BUT, YOU KNOW, I KNOW ENOUGH
10 TO MATCH THE GENERAL SOLUTION AND HAVE SOME
11 ENGINEERS FOLLOW UP ON THE TECHNICAL ASPECTS OF THE
12 COMPATIBILITY, THAT TYPE OF THING.

13 MR. LOWE: AND WHAT SORT OF CUSTOMERS DO
14 YOU SELL TO?

15 PROSPECTIVE JUROR: I SELL TO SERVICE
16 BUREAUS THAT SUPPORT A LOT OF THE MOBILE CARRIERS.
17 WE HAVE SOME INSURANCE COMPANIES, BANKS. ANY
18 COMPANY THAT HAS GOT A LOT CALL CENTER WHERE THEY
19 HAVE AGENTS TAKING CALLS, WE SUPPORT THAT
20 ENVIRONMENT.

21 MR. LOWE: AND WHAT DO YOU MEAN BY
22 "SERVICE BUREAU"?

23 PROSPECTIVE JUROR: SOMEONE THAT DOES
24 WORK ON BEHALF OF ANOTHER CUSTOMER THAT TAKES
25 CUSTOMER SERVICE CALLS, SALES COMPANIES, MANY

1 COMPANIES OUTSOURCE SUPPORT FUNCTIONS OR SALES
2 RELATED.

3 FOR INSTANCE, IF YOU'RE CALLING YOUR
4 CABLE COMPANY, THEY MAY HAVE A COMPANY THAT TAKES
5 THOSE CALLS FOR TECHNICAL SUPPORT, AND WE PROVIDE
6 THE SOLUTIONS FOR THOSE SERVICE PROVIDERS OR
7 SERVICE BUREAUS THAT SUPPORT THE SERVICE PROVIDERS.

8 MR. LOWE: FORGIVE ME FOR ASKING WHAT
9 MIGHT BE A DUMB QUESTION, BUT WHEN YOU SAY "PROVIDE
10 SOLUTIONS," WHAT ARE YOU TALKING ABOUT?

11 PROSPECTIVE JUROR: WELL, SOLUTIONS WOULD
12 ENCOMPASS CISCO SOFTWARE COMPONENTS, THEIR SERVERS
13 ALSO AND THE ROUTING AND SWITCHING TO SUPPORT THE
14 INCOMING TELEPHONE CALLS.

15 MR. LOWE: KIND OF THE NETWORK
16 INFRASTRUCTURE FOR THAT COMMUNICATION?

17 PROSPECTIVE JUROR: THE CORE
18 INFRASTRUCTURE, THE SOFTWARE APPLICATIONS AND THE
19 TECHNICAL EXPERTISE TO DEPLOY THE SOLUTION AND TO
20 PROVIDE FOLLOW-ON SUPPORT.

21 MR. LOWE: AND HOW LONG HAVE YOU BEEN
22 DOING THAT?

23 PROSPECTIVE JUROR: ABOUT 15 YEARS.

24 MR. LOWE: HUH. I NOTE THAT YOU WERE AN
25 OFFICER IN THE MARINE CORPS.

1 PROSPECTIVE JUROR: STILL AM, IN THE
2 RESERVES.

3 MR. LOWE: IN THE RESERVES. AND WHAT
4 SORT OF WORK DO YOU DO FOR THE MARINES?

5 PROSPECTIVE JUROR: WELL, RIGHT NOW I AM
6 IN THE READY RESERVES. SO I'M NOT IN AN ACTIVE
7 DRILLING UNIT, BUT I'M LOOKING FOR ANOTHER POSITION
8 TO SERVE IN.

9 MR. LOWE: WHAT HAVE YOU DONE IN THE
10 PAST? I MEAN, JUST TO GET A GENERAL IDEA OF WHAT
11 TYPE OF MILITARY EXPERIENCE YOU HAVE HAD.

12 PROSPECTIVE JUROR: WELL, ACTIVE DUTY 4
13 AND A HALF YEARS AFTER COLLEGE, 16 YEARS OF
14 RESERVES AND 6 YEARS OF MOBILIZED '02 TO '03 AND
15 UPON MY RETURN IN 2006 I STARTED RIGHT BACK UP IN
16 THE INDUSTRY AND HERE I AM TODAY.

17 MR. LOWE: DID YOU DO ANY TECHNOLOGY WORK
18 IN THE MARINE CORPS.

19 PROSPECTIVE JUROR: NO. I'M AN OFFICER
20 BUT NOT TECHNOLOGY BY TRADE.

21 MR. LOWE: THANK YOU. LET ME TELL YOU
22 ABOUT THE EVIDENCE WE EXPECT TO HEAR IN THIS CASE.

23 WE EXPECT TO HEAR EVIDENCE ABOUT
24 TECHNICAL ISSUES AND THE INFORMATION ABOUT IFP'S
25 AND SERVERS AND ROUTERS AND THINGS OF THAT SORT.

1 DO YOU THINK THAT YOU WOULD BE ABLE TO
2 LISTEN TO THE TESTIMONY AND APPLY THE LAW AS THE
3 JUDGE GIVES IT TO YOU? YOU OBVIOUSLY HAVE A WEALTH
4 OF EXPERIENCE IN THIS FIELD. DO YOU THINK THAT
5 MIGHT INTERFERE WITH YOUR ABILITY TO DO IT?

6 PROSPECTIVE JUROR: NO, I DON'T.

7 MR. LOWE: JUROR NUMBER 7, I BELIEVE YOU
8 SAID YOU'RE NOT TOO HAPPY WITH KNOCKOFFS?

9 PROSPECTIVE JUROR: YES.

10 MR. LOWE: CAN YOU EXPLAIN.

11 PROSPECTIVE JUROR: I BELIEVE IF THERE'S
12 A PRODUCT THAT IS A KNOCKOFF -- I MEAN, I JUST
13 DON'T THINK PEOPLE SHOULD BE -- HOW DO I SAY IT?
14 -- FOOLED INTO THINKING YOU'RE BUYING A PRODUCT
15 THAT RESEMBLES AN AUTHENTIC PRODUCT BY BUYING A
16 KNOCKOFF.

17 AND I KNOW A LOT OF PEOPLE BUY KNOCKOFFS
18 TO KIND OF SAY SOMETHING ABOUT LIKE I HAVE A
19 PRODUCT AND IT DOESN'T REALLY COST AS MUCH AS THE
20 MORE EXPENSIVE PRODUCT, BUT IN A SENSE IT'S ALSO
21 KIND OF DEGRADING TO THE ACTUAL COMPANY THAT IS
22 PRODUCING THE AUTHENTIC PRODUCT AND ALSO NOT
23 DEGRADING THE PERSON THAT PURCHASED THE KNOCKOFF,
24 IT'S UP TO THEM WHAT THEY THINK, BUT I THINK THAT
25 IT JUST SHOULDN'T BE -- IT'S NOT A RIGHT THING THAT

1 SHOULD BE SOLD.

2 MR. LOWE: OKAY.

3 PROSPECTIVE JUROR: JUST BECAUSE.

4 MR. LOWE: DO YOU KNOW PEOPLE WHO HAVE
5 BOUGHT KNOCKOFFS.

6 PROSPECTIVE JUROR: OH, YES.

7 MR. LOWE: DO YOU EVER KNOW PEOPLE WHO
8 BOUGHT KNOCKOFF LOUIS VUITTON PRODUCTS?

9 PROSPECTIVE JUROR: YES.

10 MR. LOWE: AND WHAT DID THAT MAKE YOU
11 THINK?

12 PROSPECTIVE JUROR: IT'S NOT RIGHT. I
13 MEAN, IT'S LIKE WHY BUY A KNOCKOFF WHEN YOU KNOW
14 IT'S NOT EVEN THE REAL THING.

15 MAYBE IF IT JUST RESEMBLES THE LOOK THEN
16 THEY CAN PURCHASE IT BUT IT'S ILLEGAL AND IT'S
17 WRONG.

18 MR. LOWE: OKAY. NOW, YOU'RE IN THE
19 PHOTOGRAPHY BUSINESS AS I UNDERSTAND IT?

20 PROSPECTIVE JUROR: RIGHT.

21 MR. LOWE: AND SO YOU SELL YOUR OWN WORK?

22 PROSPECTIVE JUROR: YEAH.

23 MR. LOWE: DO YOU HAVE A COPYRIGHT?

24 PROSPECTIVE JUROR: YES.

25 MR. LOWE: AND DO YOU REGISTER A

1 COPYRIGHT?

2 PROSPECTIVE JUROR: YES.

3 MR. LOWE: OKAY. JUROR NUMBER 8, COULD
4 YOU TELL US WHAT KIND OF ADVERTISING YOU DO?

5 PROSPECTIVE JUROR: SURE. I SELL
6 ADVERTISING FOR A RADIO COMPANY.

7 MR. LOWE: AND HOW LONG HAVE YOU BEEN
8 DOING THAT?

9 PROSPECTIVE JUROR: ABOUT A YEAR AND A
10 HALF.

11 MR. LOWE: AND WHAT WERE YOU DOING BEFORE
12 THAT?

13 PROSPECTIVE JUROR: SALES FOR SEAGATE,
14 BUT I WAS NOT INVOLVED IN TECHNOLOGY.

15 MR. LOWE: YOU WERE INVOLVED IN SALES?

16 PROSPECTIVE JUROR: NO, I WAS A
17 RECEPTIONIST.

18 MR. LOWE: SO WORKING FOR SEAGATE, YOU
19 DON'T THEY THINK IT HAS ANYTHING TO DO WITH THE
20 ISSUES THAT YOU HAVE HEARD SO FAR?

21 PROSPECTIVE JUROR: NO, SIR.

22 MR. LOWE: AND YOUR HUSBAND IS A MANAGER
23 FOR WHOM?

24 PROSPECTIVE JUROR: FOR A COMPANY CALLED
25 FIRST ALARM. IT'S AN ALARM AND SECURITY COMPANY.

1 MR. LOWE: AND WHAT SORT OF WORK DOES HE
2 DO? DOES HE MANAGE SALESPEOPLE?

3 PROSPECTIVE JUROR: HE MANAGES THE
4 DISPATCH CENTER WHERE THE ALARMS COME IN, THE
5 COMPUTER CENTER.

6 MR. LOWE: AND DOES THAT OPERATE OVER THE
7 INTERNET DO YOU KNOW? THE DISPATCH.

8 PROSPECTIVE JUROR: I THINK MOST ALARMS
9 COME OVER TELEPHONE LINES.

10 MR. LOWE: OKAY. DO YOU KNOW MUCH ABOUT
11 THE TECHNICAL SIDE OF WHAT HE DOES?

12 PROSPECTIVE JUROR: NO.

13 MR. LOWE: AND YOU ALSO SERVED ON A
14 CRIMINAL JURY APPARENTLY?

15 PROSPECTIVE JUROR: YES.

16 MR. LOWE: WHAT SORT OF CASE?

17 PROSPECTIVE JUROR: IT WAS IN SANTA CRUZ
18 COUNTY NEXT DOOR, AND IT WAS A DRUNK DRIVING TRIAL,
19 AND WE DID REACH A VERDICT.

20 MR. LOWE: OKAY. AND HOW LONG AGO WAS
21 THAT?

22 PROSPECTIVE JUROR: ABOUT SEVEN OR EIGHT
23 YEARS AGO.

24 MR. LOWE: ALL RIGHT.

25 THE COURT: YOU HAVE ABOUT TWO MINUTES.

1 MR. LOWE: THANK YOU. JUROR NUMBER 9,
2 YOU'RE ALSO A SOFTWARE ENGINEER?

3 PROSPECTIVE JUROR: CORRECT.

4 MR. LOWE: AND DO YOU THINK THAT THAT IS
5 GOING TO POSE A PROBLEM WHEN YOU'RE SERVING HERE?

6 PROSPECTIVE JUROR: I DON'T THINK IT WILL
7 BE A PROBLEM.

8 MR. LOWE: AND NUMBER 10, YOU'RE ALSO IN
9 THE -- YOU'RE A COMPUTER ENGINEER. WHAT DO YOU DO
10 EXACTLY?

11 PROSPECTIVE JUROR: I'M WRITING RIGHT NOW
12 SOFTWARE BETWEEN HARDWARE OPERATING AND -- BETWEEN
13 THE HARDWARE AND THE OPERATING SYSTEM EXACTLY.

14 MR. LOWE: WHO DO YOU WORK FOR?

15 PROSPECTIVE JUROR: RIGHT NOW A CANADIAN
16 COMPANY, PRMCCR.

17 MR. LOWE: OKAY. JUROR NUMBER 11, WHAT
18 TYPE OF WORK DO YOU DO?

19 PROSPECTIVE JUROR: I WORK FOR TURNING
20 POINT, AN AGENCY FOR EX-OFFENDERS.

21 MR. LOWE: NUMBER 13, YOU'RE ALSO AN
22 ENGINEER?

23 PROSPECTIVE JUROR: YES.

24 MR. LOWE: AND YOU WORK FOR WHOM?

25 PROSPECTIVE JUROR: AT & T.

1 MR. LOWE: THAT'S RIGHT. I'M SORRY. AND
2 WHAT EXACTLY DO YOU DO FOR THEM?

3 PROSPECTIVE JUROR: I ACTUALLY AM CISCO
4 CERTIFIED INTERNET WORK EXPERT AND I'M WORKING FOR
5 THEM CURRENTLY FOR THE VIDEO, VIDEO PRODUCT AND
6 OPERATION AND SUPPORT.

7 MR. LOWE: HOW LONG HAVE YOU BEEN WITH
8 THEM.

9 PROSPECTIVE JUROR: I HAVE BEEN WITH THEM
10 FOR FIVE YEARS.

11 MR. LOWE: OKAY. NUMBER 19, CAN YOU TELL
12 ME WHAT SORT OF WORK YOUR HUSBAND DOES?

13 PROSPECTIVE JUROR: OH, I'M NOT MARRIED.

14 MR. LOWE: OH, I'M SORRY. I HAD THE
15 WRONG CARD HERE. PARDON ME.

16 THE COURT: THIS IS THE POINT WHERE HE
17 WAS SUPPOSED TO ASK IF YOU WERE TO MARRY, WHAT KIND
18 OF WORK WOULD HE DO?

19 MR. LOWE: I DON'T THINK I HAVE ANY
20 FURTHER QUESTIONS. THANK YOU VERY MUCH.

21 THE COURT: VERY WELL. YOU CAN
22 APPRECIATE THAT YOUR RESPONSES TO THE QUESTIONS MAY
23 GIVE RISE TO SOME CONCERNS BY THE LAWYERS SO I'M
24 GOING TO HAVE A BRIEF SIDE-BAR WITH THEM, AND I'LL
25 BE RIGHT BACK WITH YOU.

1 COUNSEL APPROACH.

2 (SIDE-BAR CONFERENCE.)

3 THE COURT: VERY WELL. LET ME EXPLAIN
4 THE NEXT PART OF THE PROCESS, AND THAT IS TO ALLOW
5 THE LAWYERS TO EXERCISE THEIR CHALLENGES.

6 AND IN ORDER TO DO THAT, RATHER THAN HAVE
7 THEM DO IT ON THE RECORD, MS. GARCIA WILL PASS A
8 LIST OF YOUR NAMES AS WE COME THROUGH IT BACK AND
9 FORTH BETWEEN THE LAWYERS AND THEY GET A CERTAIN
10 NUMBER OF THOSE CHALLENGES AND WHEN THE LAWYERS
11 SAY, NO, WE'RE DONE WITH OUR CHALLENGES, THEN WE'LL
12 EXCUSE THOSE OF YOU WHO HAVE NOT BEEN -- THOSE OF
13 YOU HAVE WHO HAVE BEEN CHALLENGED.

14 THE REMAINING FIRST EIGHT JURORS THAT
15 HAVE NOT BEEN CHALLENGED WILL BE THE JURY.

16 SO YOU CAN SEE THAT THERE'S A LIKELIHOOD
17 THAT WITH 20 OF YOU THAT EVEN THOSE OF YOU WHO ARE
18 IN THE FRONT ROW COULD END UP BEING THOSE 8 JURORS,
19 DEPENDING ON HOW MANY OF THEIR CHALLENGES THAT THEY
20 EXERCISE.

21 SO I'LL ASK YOU TO BE PATIENT DURING THAT
22 PROCESS. IT SHOULDN'T TAKE VERY LONG. IT USUALLY
23 TAKES ABOUT 10 TO 15 MINUTES. I'LL ASK YOU TO TAKE
24 A BREAK IN PLACE BECAUSE IT HELPS THE LAWYERS TO
25 SEE YOUR SMILING FACES TO RECALL YOUR ANSWERS TO

1 SOME OF THEIR QUESTIONS TO REMIND THEM AS TO WHAT
2 THEY WOULD WISH OR NOT TO EXERCISE A CHALLENGE.

3 SO YOU CAN START THAT PROCESS NOW. I'LL
4 LEAVE THE BENCH, AND I'LL COME BACK IN ABOUT FIVE
5 MINUTES OR SO UNLESS I'M SUMMONED THAT THE WHOLE
6 PROCESS HAS GONE MORE QUICKLY.

7 IF YOU DO NEED TO GO TO THE RESTROOM,
8 SIMPLY DO THAT AND COME BACK.

9 (WHEREUPON, A RECESS WAS TAKEN.)

10 THE COURT: VERY WELL. I THINK PROBABLY
11 THE EASIEST WAY TO DO THIS LOGISTICALLY WOULD BE TO
12 HAVE YOU LEAVE THE PAPERS YOU HAVE NOW ON YOUR
13 CHAIRS AND HAVE YOU ALL TAKE A SEAT IN THE AUDIENCE
14 AND THEN I'LL CALL FORWARD THE EIGHT THAT HAVE NOT
15 BEEN CHALLENGED.

16 AND BEFORE I LET YOU ALL GO, THOSE EIGHT
17 WILL HAVE TO TAKE THE OATH AS JURORS AND EVERYBODY
18 IS STILL ELIGIBLE UNTIL THAT TAKES PLACE.

19 VERY WELL. MS. GARCIA, CALL THE EIGHT
20 UNCHALLENGED PROSPECTIVE JURORS.

21 THE CLERK: JUROR NUMBER 1, CHRISTA
22 DRYJANSKI;

23 JUROR NUMBER 2, TRYPHINE PUCKETTBIER;

24 JUROR NUMBER 3, JEFFREY PARSHALL;

25 JUROR NUMBER 4, ROBIN SAMUELS;

1 JUROR NUMBER 5, THOMAS KILSDONK.

2 THE COURT: JUST TO GIVE ALL OUR JURORS
3 THE BEST SEATS, MR. KILSDONK, WOULD YOU TAKE THE
4 FIRST SEAT IN FRONT OF MS. DRYJANSKI.

5 THE CLERK: JUROR NUMBER 6, ORIST
6 POPESCU;

7 JUROR NUMBER 7, DOUG LOFSTROM;

8 JUROR NUMBER 8, LEO LEONG.

9 THE COURT: VERY WELL. IT HAS BEEN THE
10 OCCASION THAT AFTER THE WHOLE PROCESS IS OVER AND
11 WE HAVE SUMMONED IN THOSE EIGHT JURORS WHO ARE TO
12 BE SWORN, WE SOMETIMES LEARN FOR THE FIRST TIME
13 THAT THERE ARE DIFFICULTIES EVEN AMONG YOU AND SO
14 THAT'S WHY I TOLD EVERYBODY THEY'RE STILL ELIGIBLE
15 UNTIL YOU TAKE THE OATH.

16 THE OATH THAT YOU TAKE IS QUITE
17 STRAIGHTFORWARD. IT'S AN OATH WHERE YOU PROMISE TO
18 TRY THE CASE AND IT MEANS TO GIVE YOUR ATTENTION TO
19 THE CASE DURING OUR SCHEDULE, AND WE'LL TRY TO BE
20 ON TIME AND NOT TO DELAY YOU BEYOND THE SCHEDULE
21 THAT WE HAVE.

22 IF ANY OF YOU KNOW OF ANY REASON WHY YOU
23 WOULD NOT BE A FAIR AND IMPARTIAL JUROR AND TRY
24 THIS CASE STRICTLY ACCORDING TO THE LAW AND THE
25 EVIDENCE, IT'S YOUR DUTY TO LET ME KNOW AT THIS

1 TIME .

2 IF FOR SOME REASON -- SOMETIMES PEOPLE
3 ARE SURPRISED THAT THEY ARE PICKED AND ALL OF A
4 SUDDEN THEY START TO REALIZE THAT IT IS -- THEY
5 HAVE SOME PROBLEM WITH THE SCHEDULE. LET ME KNOW
6 THAT AS WELL BEFORE I CALL ON MS. GARCIA TO
7 ADMINISTER THE OATH TO YOU.

8 ANYONE?

9 VERY WELL. SWEAR THE JURY.

10 THE CLERK: AND RAISE YOUR RIGHT HANDS.
11 PLEASE RESPOND BY "I DO."

12 (WHEREUPON, THE SELECTED JURORS WERE
13 GIVEN THE OATH.)

14 JURORS: I DO.

15 THE CLERK: PLEASE BE SEATED.

16 THE COURT: AND IT'S MY PLEASURE TO
17 EXCUSE THOSE OF YOU WHO WERE NOT CALLED UPON TO
18 SERVE.

19 I REALLY APPRECIATE YOUR ATTENTION TO THE
20 PROCESS. I APPRECIATE YOUR WILLINGNESS TO SERVE,
21 AND I HOPE YOU TAKE TO HEART THE ADMONITIONS I GAVE
22 YOU SHOULD YOU BE CALLED IN THE FUTURE TO A
23 COURTROOM TO TAKE SERIOUSLY THE OPPORTUNITY AND THE
24 RESPONSIBILITY THAT IT HAS FOR OUR COUNTRY TO HAVE
25 YOU SERVE.

1 YOU'RE NOW MEMBERS OF THE PUBLIC. YOU
2 CAN STAY AND REMAIN AND WATCH THIS OR BE ON YOUR
3 WAY.

4 I WOULD ADVISE YOU TO GO AND REPORT DOWN
5 TO THE SECOND FLOOR WHERE YOU CHECKED IN FOR ANY
6 INSTRUCTIONS HAVING TO DO WITH PARKING AND THOSE
7 KINDS OF MATTERS.

8 BUT THANK YOU VERY MUCH FOR YOUR
9 ATTENTION.

10 FOR THOSE OF YOU WHO HAVE BEEN SELECTED,
11 I HAVE SOME VERY BRIEF OPENING INSTRUCTIONS THAT
12 HAVE TO DO WITH YOUR CONDUCT AS JURORS, AND I SAVE
13 INSTRUCTIONS HAVING TO DO WITH THE MERITS OF THE
14 CASE AND THOSE SORTS OF THINGS UNTIL LATER ON.

15 SOMETIMES I'LL GIVE THEM DURING THE
16 COURSE OF THE TRIAL, BUT I'M GOING TO ASK MY LAW
17 CLERK, OR MS. GARCIA, WHOEVER HAS A COPY OF THOSE
18 TO HAND THOSE OPENING INSTRUCTIONS TO YOU BECAUSE
19 IT IS MY PRACTICE TO GIVE THOSE TO YOU IN WRITING
20 SO YOU CAN FOLLOW ALONG WITH THEM.

21 LADIES AND GENTLEMEN, YOU'RE NOW THE JURY
22 IN THIS CASE, AND I WANT TO TAKE A FEW MINUTES TO
23 TELL YOU SOMETHING ABOUT YOUR DUTIES AS JURORS AND
24 TO GIVE YOU SOME INSTRUCTIONS.

25 AT THE END OF THE TRIAL, I WILL GIVE YOU

1 MORE INSTRUCTIONS. DURING VARIOUS POINTS IN THE
2 TRIAL WHEN I FIND IT APPROPRIATE, I WILL GIVE YOU
3 ADDITIONAL INSTRUCTIONS. ALL OF THE INSTRUCTIONS
4 WHICH I GIVE TO YOU ARE IMPORTANT. YOU MUST FOLLOW
5 ALL OF THEM.

6 AS YOU MENTIONED TO YOU DURING JURY
7 SELECTION, THIS IS A CONTRIBUTORY COPYRIGHTS AND
8 TRADEMARK INFRINGEMENT CASE.

9 PLAINTIFF LOUIS VUITTON MALLETTIER, S.A.,
10 IS A MANUFACTURER AND DISTRIBUTOR OF LUXURY GOODS
11 AND HAS REGISTERED ITS TRADEMARKS AND COPYRIGHTS IN
12 THE UNITED STATES.

13 DEFENDANTS AKANOC SOLUTIONS, INC., AND
14 MANAGED SOLUTIONS GROUP, INC., COMMONLY WE'LL REFER
15 TO AS MSGI, OPERATE SERVERS HOSING WEB SITES AND
16 ARE BOTH OWNED AND MANAGED BY DEFENDANT STEVEN
17 CHEN.

18 PLAINTIFF CLAIMS THAT ITS TRADEMARKS AND
19 COPYRIGHTS HAVE BEEN USED TO DISPLAY, MARKET,
20 DISTRIBUTE, AND SELL COUNTERFEIT AND UNAUTHORIZED
21 MERCHANDISE ON NUMEROUS WEB SITES HOSTED BY
22 DEFENDANTS AND THAT THE GOODS AND SERVICES PROVIDED
23 BY THE DEFENDANTS WERE PROVIDED DESPITE NOTICE
24 CONCERNING THE UNDERLYING COUNTERFEITING ACTIVITY.

25 PLAINTIFF SEEKS DAMAGES AGAINST

1 DEFENDANTS FOR CONTRIBUTORY INFRINGEMENT OF
2 PLAINTIFF'S REGISTERED TRADEMARKS AND COPYRIGHTS.

3 IN EVERY LEGAL DISPUTE, THERE ARE TWO
4 KINDS OF QUESTIONS. THE FIRST KINDS OF QUESTIONS
5 ARE QUESTIONS OF FACT.

6 FOR EXAMPLE, IN MANY LAWSUITS THERE'S A
7 DISPUTE BETWEEN THE PARTIES OVER WHETHER OR NOT A
8 PARTICULAR EVENT ACTUALLY TOOK PLACE AND IF IT DID
9 TAKE PLACE, WHETHER OR NOT IT CAUSED ECONOMIC OR
10 OTHER TYPES OF HARM, AND IF SO, HOW MUCH HARM WAS
11 CAUSED.

12 UNDER OUR SYSTEM, A JURY IS IMPANELLED TO
13 LISTEN TO THE EVIDENCE AND BASED ON THAT EVIDENCE
14 THE JURY DECIDES WHETHER OR NOT THE DISPUTED EVENT
15 TOOK PLACE OR NOT AND THE AMOUNT OF DAMAGES, IF
16 ANY, WHICH SHOULD BE AWARDED.

17 AS JURORS IN THIS CASE, YOUR FIRST DUTY
18 IS TO LISTEN TO THE EVIDENCE AND MAKE A DECISION
19 ABOUT WHAT HAPPENED. THERE MIGHT BE INSTANCES WHEN
20 WHAT THE PLAINTIFF CLAIMS TOOK PLACE WILL BE
21 DIFFERENT FROM WHAT THE DEFENDANTS CLAIM TOOK
22 PLACE. YOU MUST LISTEN TO THE EVIDENCE AND BASED
23 ON THAT EVIDENCE MAKE YOUR DECISION ABOUT WHAT TOOK
24 PLACE.

25 IN OTHER WORDS, YOU MUST DECIDE THE FACTS

1 OF THE CASE. YOU AND YOU ALONE ARE THE JUDGES OF
2 THE FACTS. I WILL GIVE YOU A SERIES OF QUESTIONS
3 WHICH WILL ALLOW YOU TO INDICATE YOUR FACTUAL
4 FINDINGS.

5 THE SECOND KIND OF QUESTIONS INVOLVED IN
6 LEGAL DISPUTES ARE CALLED QUESTIONS OF LAW. AS AN
7 EXAMPLE OF A QUESTION OF LAW IS: WHAT MUST THE
8 PLAINTIFF PROVE IN ORDER TO BE ENTITLED TO A
9 VERDICT IN FAVOR OF THE PLAINTIFF?

10 IN OUR LEGAL SYSTEM, THE JUDGE IS
11 RESPONSIBLE FOR DECIDING QUESTIONS OF LAW. AND IN
12 WHAT WE CALL JURY INSTRUCTIONS, I WILL TELL YOU THE
13 LAW WHICH APPLIES TO THIS CASE. THE STATEMENTS I
14 AM MAKING TO YOU BEFORE YOU BEGIN TO RECEIVE
15 EVIDENCE ARE JURY INSTRUCTIONS.

16 THE FINAL STEP IN THE PROCESS IS CALLED
17 THE VERDICT. BASED ON YOUR DECISION ON THE FACTS,
18 AND APPLYING THE LAW WHICH I WILL GIVE TO YOU, YOU
19 WILL BE ASKED TO DECIDE IN FAVOR OF THE PLAINTIFF
20 OR THE DEFENDANTS.

21 THEREFORE, YOU WILL HEAR THE EVIDENCE,
22 DECIDE WHAT THE FACTS ARE AND THEN APPLY THOSE
23 FACTS TO THE LAW WHICH I WILL GIVE TO YOU. THAT IS
24 HOW YOU WILL REACH YOUR VERDICT. IN DOING SO YOU
25 MUST FOLLOW THAT LAW WHETHER YOU AGREE WITH IT OR

1 NOT.

2 THE EVIDENCE WILL CONSIST OF THE
3 TESTIMONY OF WITNESSES, DOCUMENTS AND OTHER THINGS
4 RECEIVED INTO EVIDENCE AS EXHIBITS AND ANY FACTS ON
5 WHICH THE LAWYERS AGREE OR WHICH I INSTRUCT YOU TO
6 ACCEPT.

7 IN A LAWSUIT SUCH AS THIS, THE LAW
8 PROVIDES THAT A PARTY IS ENTITLED TO A VERDICT IN
9 ITS FAVOR ONLY IF THAT PARTY PRESENTS A SUFFICIENT
10 AMOUNT OF EVIDENCE. WE CALL THIS THE BURDEN OF
11 PROOF. IN THIS CASE YOU WILL HEAR ABOUT
12 PREPONDERANCE OF THE EVIDENCE.

13 WHEN A PARTY HAS THE BURDEN OF PROVING A
14 CLAIM BY A PREPONDERANCE OF THE EVIDENCE, THAT
15 MEANS THAT THE PARTY HAS TO PRODUCE EVIDENCE WHICH,
16 CONSIDERED IN LIGHT OF ALL OF THE FACTS, LEADS YOU
17 TO BELIEVE THAT WHAT THAT PARTY CLAIMS IS MORE
18 LIKELY TRUE THAN NOT.

19 DURING THE TRIAL YOU'LL HEAR EVIDENCE
20 FROM BOTH SIDES. IF YOU WERE TO PUT THE EVIDENCE
21 ON OPPOSITE SIDES OF THE SCALES, THE PARTY WITH THE
22 BURDEN TO PROVE A MATTER BY A PREPONDERANCE OF THE
23 EVIDENCE WOULD HAVE TO MAKE THE SCALES TIP SLIGHTLY
24 ON THAT PARTY'S SIDE. IF THAT PARTY FAILS TO MEET
25 THIS BURDEN, THE VERDICT MUST BE FOR THE OPPOSING

1 PARTY.

2 NOW, SOME OF YOU MIGHT HAVE HEARD OF THE
3 TERM PROOF BEYOND A REASONABLE DOUBT. THAT IS A
4 STRICTER STANDARD, THAT IS, IT REQUIRES -- IT ONLY
5 APPLIES TO A CRIMINAL CASE AND IT REQUIRES MORE
6 PROOF THAN A PREPONDERANCE OF THE EVIDENCE. THE
7 REASONABLE DOUBT STANDARD DOES NOT APPLY TO A CIVIL
8 CASE AND YOU SHOULD, THEREFORE, PUT IT OUT OF YOUR
9 MINDS.

10 THE EVIDENCE FROM WHICH YOU ARE TO DECIDE
11 WHAT THE FACTS ARE CONSISTS OF, ONE, THE SWORN
12 TESTIMONY OF WITNESSES, BOTH ON DIRECT AND
13 CROSS-EXAMINATION, REGARDLESS OF WHO CALLED THE
14 WITNESS; TWO, THE EXHIBITS THAT HAVE BEEN RECEIVED
15 INTO EVIDENCE; AND, THREE, ANY FACTS TO WHICH ALL
16 OF THE LAWYERS AGREE OR STIPULATE.

17 THE FOLLOWING THINGS ARE NOT EVIDENCE,
18 AND YOU MUST NOT CONSIDER THEM AS EVIDENCE IN
19 DECIDING THE FACTS OF THIS CASE:

20 NUMBER 1. STATEMENTS AND ARGUMENTS OF
21 THE ATTORNEYS;

22 2. QUESTIONS AND OBJECTIONS OF THE
23 ATTORNEYS;

24 3. TESTIMONY THAT I INSTRUCT YOU TO
25 DISREGARD; AND,

1 4. ANYTHING THAT YOU MAY HAVE SEEN OR
2 HEARD WHEN COURT IS NOT IN SESSION, EVEN IF WHAT
3 YOU SEE OR HEAR IS DONE OR SAID BY ONE OF THE
4 PARTIES OR BY ONE OF THE WITNESSES.

5 EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL.
6 DIRECT EVIDENCE IS TESTIMONY BY A WITNESS ABOUT
7 WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID.

8 CIRCUMSTANTIAL EVIDENCE IS INDIRECT
9 EVIDENCE, THAT IS, IT IS PROOF OF ONE OR MORE FACTS
10 FROM WHICH ONE CAN FIND ANOTHER FACT.

11 FOR EXAMPLE, IF THE QUESTION OF FACT IN A
12 GIVEN CASE IS WHETHER OR NOT JOHNNY ATE THE CHERRY
13 PIE, TESTIMONY BY A WITNESS THAT HE SAW JOHNNY PUT
14 THE PIE IN HIS MOUTH AND EAT IT WOULD BE DIRECT
15 EVIDENCE OF THAT FACT.

16 HOWEVER, IF THE BEING QUESTION OF FACT IN
17 ANOTHER CASE WAS WHETHER JANE ATE THE CHERRY PIE
18 AND IN THAT CASE NO ONE SAW HER EATING IT BUT IN
19 THAT CASE SOMEONE TESTIFIED THAT THEY WALKED INTO
20 THE KITCHEN AND SAW JANE SITTING WITH THE EMPTY PIE
21 TIN IN HER HANDS AND CHERRY PIE ON HER FACE, THIS
22 WOULD BE ONLY DIRECT EVIDENCE THAT SHE WAS IN THE
23 KITCHEN AND HAD PIE ON HER FACE. BUT IT WOULD BE
24 CIRCUMSTANTIAL EVIDENCE FROM WHICH A PERSON COULD
25 FIND THAT JANE ATE THE PIE.

1 HOWEVER, THERE COULD BE OTHER
2 CIRCUMSTANCES THAT COULD EXPLAIN WHY SHE HAD THE
3 TIN IN HER HANDS AND PIE ON HER FACE.

4 YOU MUST LISTEN TO ALL OF THE FACTS AND
5 DRAW REASONABLE CONCLUSIONS FROM THOSE FACTS.
6 FACTS MAY BE PROVED BY EITHER DIRECT OR
7 CIRCUMSTANTIAL EVIDENCE.

8 YOU ARE TO CONSIDER BOTH TYPES OF
9 EVIDENCE. THE LAW PERMITS YOU TO GIVE EQUAL WEIGHT
10 TO BOTH, BUT IT IS FOR YOU TO DECIDE HOW MUCH
11 WEIGHT TO GIVE TO ANY EVIDENCE.

12 THERE ARE RULES OF EVIDENCE WHICH CONTROL
13 WHAT MAY BE RECEIVED INTO EVIDENCE. WHEN A LAWYER
14 ASKS A QUESTION OR OFFERS AN EXHIBIT INTO EVIDENCE,
15 AND THE LAWYER ON THE OTHER SIDE THINKS THAT IT'S
16 NOT PERMITTED BY THE RULES OF EVIDENCE, THAT LAWYER
17 MAY OBJECT.

18 IF I OVERRULE THE OBJECTION, THE QUESTION
19 MAY BE ANSWERED OR THE EXHIBIT RECEIVED.

20 IF I SUSTAIN THE OBJECTION, THE QUESTION
21 CANNOT BE ANSWERED AND THE EXHIBIT CANNOT BE
22 RECEIVED. AND WHENEVER I SUSTAIN AN OBJECTION TO A
23 QUESTION, YOU MUST IGNORE THE QUESTION AND MUST NOT
24 GUESS WHAT THE ANSWER WOULD HAVE BEEN.

25 SOMETIMES I MAY ORDER THAT EVIDENCE BE

1 STRICKEN FROM THE RECORD AND THAT YOU DISREGARD OR
2 IGNORE THE EVIDENCE. THAT MEANS THAT WHEN YOU ARE
3 DECIDING THE CASE, YOU MUST NOT CONSIDER EVIDENCE
4 WHICH I TOLD YOU TO DISREGARD.

5 IN DECIDING THE FACTS IN THIS CASE, YOU
6 MAY HAVE TO DECIDE WHICH WITNESSES TO BELIEVE AND
7 WHICH WITNESSES NOT TO BELIEVE. YOU MAY BELIEVE
8 EVERYTHING A WITNESS SAYS OR ONLY PART OF IT OR
9 NONE OF IT.

10 IN DECIDING WHAT TO BELIEVE, YOU MAY
11 CONSIDER A NUMBER OF FACTORS, INCLUDING THE
12 FOLLOWING:

13 1. IS THE WITNESS ABLE TO SEE OR HEAR OR
14 KNOW THE THINGS THE WITNESS TESTIFIES TO?

15 NUMBER 2. WHAT IS THE QUALITY OF THE
16 WITNESS'S MEMORY?

17 3. WHAT IS THE WITNESS'S MANNER WHILE
18 TESTIFYING?

19 4. DOES THE WITNESS HAVE AN INTEREST IN
20 THE OUTCOME OF THE CASE OR ANY MOTIVE, BIAS OR
21 PREJUDICE?

22 5. IS THE TESTIMONY OF THE WITNESS
23 CONTRADICTED BY ANYTHING THAT THE WITNESS SAID OR
24 WROTE BEFORE TRIAL OR BY OTHER EVIDENCE?

25 6. HOW REASONABLE IS THE WITNESS'S

1 TESTIMONY WHEN CONSIDERED IN THE LIGHT OF OTHER
2 EVIDENCE WHICH YOU BELIEVE?

3 NOW, IF YOU WISH, YOU MAY TAKE NOTES TO
4 HELP YOU REMEMBER WHAT WITNESSES SAY. MS. GARCIA
5 WILL PROVIDE YOU WITH NOTE PADS. IF YOU DO TAKE
6 NOTES, PLEASE KEEP THEM TO YOURSELF UNTIL YOU AND
7 YOUR FELLOW JURORS GO TO THE JURY ROOM TO DECIDE
8 THE CASE. AND DO NOT LET NOTE-TAKING DISTRACT YOU
9 SO THAT YOU DO NOT HEAR OTHER ANSWERS BY A WITNESS.
10 WHEN YOU LEAVE AT NIGHT, YOUR NOTES SHOULD BE LEFT
11 IN THE JURY ROOM.

12 IF YOU DO NOT TAKE NOTES, YOU SHOULD RELY
13 UPON YOUR OWN MEMORY OF WHAT WAS SAID AND NOT BE
14 OVERLY INFLUENCED BY THE NOTES OF OTHER JURORS.

15 IF YOU NEED TO SPEAK WITH ME ABOUT
16 ANYTHING, SIMPLY USE YOUR NOTE PADS TO GIVE A NOTE
17 TO THE CLERK OF COURT, THE COURT REPORTER OR TO ME.

18 YOU MAY ALSO USE YOUR NOTES TO LET US
19 KNOW IF YOU ARE HAVING DIFFICULTY HEARING OR
20 UNDERSTANDING A PARTICULAR PART OF THE CASE.

21 IT IS THE POLICY OF THE COURT NOT TO
22 PERMIT JURORS TO WRITE QUESTIONS FOR THE WITNESSES.
23 HOWEVER, IF THERE IS SOME ASPECT OF THE CASE WHICH
24 YOU FIND CONFUSING, PLEASE WRITE A NOTE TO ME AND I
25 WILL BRING IT TO THE ATTENTION OF THE ATTORNEYS.

1 ORDINARILY WE WILL TAKE A BREAK IN THE
2 MIDDLE OF OUR SESSIONS. HOWEVER, IF ANY ONE OF YOU
3 SHOULD NEED A BREAK BEFORE THE SCHEDULED TIME,
4 SIMPLY RAISE YOUR HAND AND GET MY ATTENTION AND ASK
5 FOR A SHORT RECESS, AND WE WILL TAKE ONE. FEEL
6 FREE TO STAND IF YOU NEED TO STRETCH. ALSO FREE
7 FEEL AT ANY TIME TO GO OVER TO THE WATER COOLER IN
8 THE COURTROOM AND HAVE YOURSELF A REFRESHING DRINK.

9 I WILL NOW SAY A FEW WORDS ABOUT YOUR
10 CONDUCT AS JURORS. FIRST, DO NOT TALK TO EACH
11 OTHER OR WITH ANYONE ELSE ABOUT THIS CASE OR ABOUT
12 ANYONE WHO HAS ANYTHING TO DO WITH IT UNTIL THE END
13 OF THE CASE WHEN YOU GO TO THE JURY ROOM TO DECIDE
14 ON YOUR VERDICT.

15 ANYONE ELSE INCLUDES MEMBERS OF YOUR
16 FAMILY AND YOUR FRIENDS. YOU MAY TELL THEM THAT
17 YOU ARE A JUROR BUT DON'T TELL THEM ANYTHING ABOUT
18 THE CASE UNTIL AFTER YOU HAVE BEEN DISCHARGED BY
19 ME.

20 TALKING INCLUDES SENDING E-MAILS, POSTING
21 ON MESSAGE BOARDS OR SOCIAL NETWORKING SITES SUCH
22 AS FACEBOOK, MY SPACE OR TWITTER, BLOGGING, INSTANT
23 OR TEXTING MESSAGING, SENDING MESSAGES ON TWITTER
24 OR MAKING ANY OTHER FORM OF WRITTEN COMMUNICATION,
25 WHETHER PUBLIC OR PRIVATE. THIS INSTRUCTION IS

1 GETTING LONGER AS THE NUMBER OF TECHNOLOGIES GO.

2 SECOND, DO NOT LET ANYONE TALK TO YOU
3 ABOUT THE CASE OR ANYONE WHO HAS ANYTHING TO DO
4 WITH IT. IF SOMEONE SHOULD TRY TO TALK TO YOU,
5 PLEASE REPORT IT TO ME IMMEDIATELY;

6 THIRD, DO NOT READ ANY NEWS ARTICLES
7 ABOUT THE CASE OR LISTEN TO ANY RADIO OR TELEVISION
8 REPORTS ABOUT THE CASE;

9 FOURTH, DO NOT DO ANY RESEARCH SUCH AS
10 CONSULTING DICTIONARIES OR OTHER REFERENCE
11 MATERIALS OR PERFORMING INTERNET SEARCHES, WHETHER
12 ON YOUR OWN COMPUTER OR CELL PHONE AND DO NOT MAKE
13 ANY INVESTIGATION ABOUT THE CASE ON YOUR OWN.

14 FIFTH, AS I SAID, IF YOU NEED TO
15 COMMUNICATE WITH ME, SIMPLY GIVE A NOTE TO
16 MS. GARCIA OUR COURTROOM DEPUTY OR TO MS. RODRIGUEZ
17 OUR COURT REPORTER, OR TO ME.

18 AND FINALLY, AND SIX, DO NOT MAKE UP YOUR
19 MIND ABOUT WHAT THE VERDICT SHOULD BE UNTIL AFTER
20 YOU HAVE GONE TO THE JURY ROOM TO DECIDE THE CASE
21 AND YOU AND YOUR FELLOW JURORS HAVE DISCUSSED THE
22 EVIDENCE. KEEP AN OPEN MIND UNTIL THEN.

23 I HAVE ORDERED THE PARTIES TO SCHEDULE
24 ANY MEETING WITH ME AT TIMES OTHER THAN THOSE
25 RESERVED FOR TRIAL. SOMETIMES IT MIGHT BE

1 NECESSARY TO MEET DURING THE TIMES RESERVED FOR
2 TRIAL, BUT IF SO, I WILL BE DOING MY BEST TO ENSURE
3 THAT THE PURPOSE OF THE MEETING IS TO ADVANCE THE
4 GOAL OF PROMPT AND EFFICIENT PROCEEDINGS.

5 AFTER WE COME BACK FROM OUR LUNCH BREAK,
6 THE TRIAL WILL BEGIN, AND I'LL GIVE EACH SIDE AN
7 OPPORTUNITY TO MAKE AN OPENING STATEMENT. I'LL SAY
8 MORE ABOUT THAT WHEN WE COME BACK.

9 NOW, WHAT I WOULD ASK, SINCE WE'RE
10 QUITTING JUST A LITTLE EARLY, IS TO HAVE YOU
11 ACCOMPANY MS. GARCIA INTO THE JURY ROOM. SHE WANTS
12 TO SHOW YOU THE JURY ROOM AND ALSO THERE'S A BACK
13 CORRIDOR THAT YOU CAN USE TO COME AND GO WHILE
14 YOU'RE THE JURY IN THE CASE.

15 ONE OF THE REASONS TO DO THAT IS THAT THE
16 LAWYERS PERHAPS WILL BE TALKING WITH EACH OTHER OR
17 WITH WITNESSES IN THE CORRIDOR OUTSIDE OF THE
18 COURTROOM AND WE WOULDN'T WANT YOU TO INADVERTENTLY
19 OVERHEAR THOSE CONVERSATIONS BECAUSE YOU HAVE WOULD
20 HAVE TO, AS I SAID, MAKE YOUR DECISION ONLY ON THE
21 EVIDENCE IN THE CASE.

22 AND IF YOU HAPPEN TO SEE THE LAWYERS IN
23 AN ELEVATOR AND YOU NOTICE THAT THEY'RE TURNING
24 AROUND AND GOING THE OTHER WAY, IT'S NOT OUT OF
25 DISRESPECT, IT'S OUT OF RESPECT FOR YOUR JOB AS

1 JURORS THAT THEY WOULD WANT TO AVOID ANY OTHER
2 CONTACT WITH YOU OTHER THAN IN THE COURTROOM.

3 WITH THAT I'LL PUT YOU IN CHARGE OF
4 MS. GARCIA TO CONDUCT YOU INTO THE JURY ROOM TO
5 GIVE YOU LOGISTICAL INSTRUCTIONS AND AFTER THAT
6 YOU'LL TAKE YOUR LUNCH BREAK AND AFTER THAT WE'LL
7 COME BACK PROMPTLY AT 1:00 O'CLOCK TO START OUR
8 AFTERNOON SESSION.

9 (WHEREUPON, THE PROCEEDINGS IN THIS
10 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

11 THE COURT: VERY WELL. WE'RE ON THE
12 RECORD OUT OF THE PRESENCE OF THE JURY. I JUST
13 WANTED TO SEE IF THE PARTIES HAD ANY MATTER THAT
14 THEY WANTED TO BRING UP.

15 MR. COOMBS: NOT FROM THE PLAINTIFF, YOUR
16 HONOR.

17 MR. LOWE: NOT AT THIS TIME, YOUR HONOR.

18 THE COURT: VERY WELL. SO THE CLOCK WILL
19 START WITH YOUR OPENING STATEMENTS. WE'LL START
20 PROMPTLY AT 1:00 O'CLOCK.

21 MR. COOMBS: THANK YOU, YOUR HONOR.

22 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)
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1 **AFTERNOON SESSION**

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3 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
4 HELD IN THE PRESENCE OF THE JURY:)

5 THE COURT: READY TO PROCEED?

6 MR. COOMBS: YES, YOUR HONOR. THANK YOU.

7 MR. LOWE: YES, YOUR HONOR.

8 THE COURT: VERY WELL. SUMMON THE JURY.

9 (WHEREUPON, THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THE PRESENCE OF THE JURY:)

11 THE COURT: VERY WELL. WE'RE READY TO
12 COMMENCE OUR TRIAL AND WE START WITH ALLOWING THE
13 PARTIES TO MAKE OPENING STATEMENTS.

14 AS I TOLD YOU BEFORE WE TOOK A BREAK,
15 STATEMENTS MADE BY THE LAWYERS ARE NOT EVIDENCE BUT
16 IT GIVES THEM AN OPPORTUNITY TO REMIND YOU ABOUT
17 THE CASE AND TELL YOU WHAT THEY EXPECT THE EVIDENCE
18 WILL SHOW.

19 AND AT THIS POINT I'LL CALL ON COUNSEL
20 FOR PLAINTIFFS FOR OPENING STATEMENT.

21 **(WHEREUPON, COUNSEL FOR THE PLAINTIFF**
22 **GAVE HIS OPENING STATEMENT.)**

23 MR. COOMBS: THANK YOU, YOUR HONOR. AND
24 THANK YOU FOR THE TIME AND ATTENTION THAT YOU'RE
25 GOING TO OFFER TO THIS CASE AND TO THE PLAINTIFF'S

1 CLAIMS OVER THE NEXT FEW DAYS.

2 THIS CASE RAISES SOME IMPORTANT ISSUES
3 WHICH MAY HAVE RAMIFICATIONS BEYOND THIS COURTROOM,
4 AND WE APPRECIATE THE ATTENTION AND ANALYSIS THAT
5 YOU'LL APPLY TO THE EVIDENCE THAT YOU'LL HEAR.

6 THIS CASE AT ITS ROOT IS ABOUT THE
7 COUNTERFEITING OF LOUIS VUITTON'S TRADEMARKS AND
8 THE THEFT OF ITS COPYRIGHTS.

9 THOSE INTELLECTUAL PROPERTY RIGHTS MAY BE
10 INTANGIBLE RIGHTS, BUT THEY HAVE MANY OF THE SAME
11 LEGAL CONSEQUENCES AS TANGIBLE PROPERTY AND THE
12 TAKING OF SUCH PROPERTY WITHOUT THE PERMISSION OF
13 THE OWNER IS WRONG AND IT'S AGAINST THE LAW. AND
14 IF IT'S DONE IN SUFFICIENT QUANTITY WITH SUFFICIENT
15 INTENT, IT CAN BE A CRIME.

16 WE'RE NOT HERE BECAUSE THE DEFENDANTS ARE
17 THEMSELVES COUNTERFEITERS.

18 WE'RE HERE BECAUSE THEY DO SOMETHING THAT
19 ENABLES THE COUNTERFEITERS TO TRANSACT THEIR
20 BUSINESS AND THEY DO IT DESPITE THE FACT THAT THEY
21 HAVE BEEN GIVEN REPEATED NOTICES BY LOUIS VUITTON
22 IN AN EFFORT TO CURTAIL THAT ACTIVITY.

23 THE CASE AT ITS ROOT, I WOULD LIKE TO
24 THINK OF IT AS COULD HAVE, SHOULD HAVE, DIDN'T.
25 THERE ARE A NUMBER OF THINGS HERE THAT THE

1 DEFENDANTS COULD HAVE DONE, A NUMBER OF THINGS THEY
2 SHOULD HAVE DONE, AND A NUMBER OF THINGS THEY
3 DIDN'T DO, AT LEAST NOT FOR LOUIS VUITTON.

4 THE DEFENDANTS WILL TRY TO MAKE IT SOUND
5 COMPLICATED AT TIMES BUT TO OUR WAY OF THINKING,
6 THE ONLY THING COMPLICATED ABOUT THIS IS WHICH OF
7 THE MANY TOOLS AT THEIR DISPOSAL THEY SHOULD HAVE
8 EMPLOYED TO RESPOND TO LOUIS VUITTON'S COMPLAINTS
9 AND TO END THE RAMPANT SALE OF ILLEGAL MERCHANDISE
10 ON SERVERS WHICH THEY CONTROL.

11 WHAT IS IT THEY SHOULD HAVE COULD HAVE
12 DONE. THEY COULD HAVE DONE PHYSICAL THINGS. THEY
13 COULD HAVE UNPLUGGED THE SERVER. THE DATA ON THE
14 SERVER IS NOT ACCESSIBLE IF THERE'S NO ELECTRICITY
15 ALLOWING IT TO PROCESS THAT INFORMATION.

16 THEY COULD HAVE USED LOGICAL MEANS. THEY
17 COULD HAVE PROGRAMMED THE ROUTERS THAT DIRECTED
18 TRAFFIC TO THOSE SERVERS.

19 THEY COULD HAVE USED CONTRACTUAL MEANS.
20 THEY HAVE TERMS OF SERVICE. THEY HAVE AN
21 ACCEPTABLE USE POLICY AND IN MANY RESPECTS THEY
22 LOOK LIKE THE TERMS OF SERVICE AND ACCEPTABLE
23 POLICIES OF ISP'S THROUGHOUT THE COUNTRY AND THEY
24 ALLOW THE DEFENDANTS TO FIND USERS WHO VIOLATE
25 THOSE ACCEPTABLE USE POLICIES.

1 IT ALLOWS THEM TO SUSPEND CUSTOMERS WHO
2 VIOLATE THOSE POLICIES, AND IT ALLOWS THEM TO
3 TERMINATE THOSE CUSTOMERS.

4 AND THOUGH POLICIES PROHIBIT THE VERY
5 CONDUCT THAT LOUIS VUITTON WAS COMPLAINING ABOUT
6 AND YET NONE OF THOSE THINGS WERE DONE BY THE
7 DEFENDANTS IN RESPONSE TO FORTUNATELY A LOT OF
8 NOTICES THAT YOU'RE GOING TO HEAR A LOT OF DETAIL
9 ABOUT OVER THE NEXT FEW DAYS.

10 NOW, I ALREADY USED SOME TERMS, AND I
11 WANT TO SPEND A MOMENT TO SORT OF DEFINE THEM. AND
12 AGAIN, AS I MENTIONED IN VOIR DIRE THIS MORNING, I
13 APOLOGIZE IF SOME OF THIS IS BASIC FOR SOME OF YOU,
14 BUT I THINK IT'S IMPORTANT THAT WE ALL OPERATE FOR
15 SOMETHING OF THE SAME UNDERSTANDING ABOUT WHAT SOME
16 OF THESE TERMS MEAN.

17 AND, YOUR HONOR, I HAVE AN AGREEMENT WITH
18 DEFENSE COUNSEL THAT THE ONE PAGE CHART THAT WE
19 DISCUSSED COULD BE DISTRIBUTED TO THE JURY TO
20 ASSIST THEM IN REVIEWING THIS INFORMATION.

21 I HAVE A COPY.

22 THE COURT: WOULD YOU GIVE ME A COPY?

23 MR. COOMBS: IT'S EXHIBIT 597. I HAVE AN
24 ADDITION AL COPY. I THINK THE ONE THERE MAY BE
25 BLACK AND WHITE. I HAVE A COLOR ONE.

1 THE COURT: CERTAINLY. I'LL TAKE IT.
2 597.

3 OCCASIONALLY I HAVE ASKED THE PARTIES TO
4 HELP US FOLLOW THE CASE BY GIVING US DEMONSTRATIVE
5 EXHIBITS. THIS WAS NOT A DOCUMENT THAT WAS
6 PRODUCED AT THE TIME IN QUESTION SO IT'S NOT
7 EVIDENCE CONCERNING THE EVENTS, BUT IT'S A
8 DEMONSTRATIVE EXHIBIT TO HELP YOU UNDERSTAND THE
9 OPENING STATEMENT, MAYBE HELP YOU UNDERSTAND THE
10 EVIDENCE. AND I HAVE GIVEN THE PARTIES PERMISSION
11 TO SHARE THOSE KINDS OF DOCUMENTS.

12 SO YOU MAY GIVE A COPY TO THE JURY.

13 MR. COOMBS: THE CHART THAT YOU'RE
14 LOOKING AT IS A BASIC SUMMARY OF THE OPERATION OF
15 THE HOSTING OF THE WEB SITE AND THE HOST OF THE WEB
16 SITE THAT IS REFERENCED ON THAT CHART IS
17 BIGWORLD SHOES.COM WHICH IS A WEB SITE ABOUT WHICH
18 YOU'LL HEAR MORE DURING THE COURSE OF THE
19 LITIGATION.

20 THAT SITE SELLS COUNTERFEIT LOUIS VUITTON
21 MERCHANDISE. THIS IS AN EXAMPLE OF THE MERCHANDISE
22 THAT YOU'LL HEAR MORE ABOUT AND WHY IT'S
23 COUNTERFEIT.

24 NOW, BIGWORLD SHOES.COM IS A DOMAIN NAME.
25 SOMETHING CONVENIENT AND EASY TO TYPE INTO YOUR

1 BROWSER AND PUT IT INTO YOUR FAVORITES MENU.
2 WHATEVER YOU WANT TO DO. BUT THE DOMAIN NAME IS
3 REALLY ONLY THE FIRST STEP IN REACHING THIS SHOE,
4 WHICH ONE MAY NOT REACH.

5 IN ORDER FOR YOUR COMPUTER TO REACH THE
6 SERVER WHERE THE CONTENT AT BIGWORLD SHOES.COM IS
7 LOCATED, THE DOMAIN NAME HAS TO BE CONVERTED INTO
8 WHAT IS CALLED AN IP ADDRESS, WHICH IS SHORT FOR
9 INTERNET PROTOCOL ADDRESS.

10 IT'S BASICALLY A SET OF NUMBERS. IT'S
11 USUALLY A SET OF FOUR NUMBERS, UP TO THREE DIGITS
12 EACH.

13 SO IN THIS CASE I THINK THE NUMBERS
14 INDICATED ON THE CHART AS NUMBER 208.77.46.40.
15 THAT IS ONE OF A SERIES OF A BLOCK OF NUMBERS THAT
16 IS ASSIGNED TO SEPARATE ISP'S OR WEB HOSTS, WHICH
17 THE DEFENDANTS ARE.

18 BY IDENTIFYING THE IP ADDRESS, YOUR
19 COMPUTER KNOWS WHERE TO GO TO ONE OF THE
20 DEFENDANTS' SERVERS TO FIND BIG WORLD SHOES, AND WE
21 KNOW WHERE THAT CONTENT IS LOCATED.

22 THE SERVER IS A COMPUTER MUCH LIKE THE
23 ONE THAT YOU HAVE AT HOME. IT'S A HARD DRIVE. IT
24 HAS AN OPERATING SYSTEM. IT HOSTS A LOT OF CONTENT
25 AND IN SOME RESPECTS IT'S A LOT SIMPLER THAN YOUR

1 COMPUTER AT HOME WHICH YOU PROBABLY USE FOR A LOT
2 MORE THAN JUST VIEWING WEB CONTENT. IT'S A MORE
3 BASIC KIND OF FUNCTIONALITY, BUT IT TYPICALLY
4 OPERATES VERY QUICKLY AND IT TYPICALLY HAS A
5 CAPACITY OF HOLDING A GREAT AMOUNT OF DATA.

6 IN THIS CASE IT COULD HOST ONE WEB SITE.
7 IT COULD HOST TEN WEB SITES. IT COULD DO WEB SITES
8 AND OTHER THINGS AS WELL. BUT FOR PURPOSES OF THIS
9 CASE WE'RE CONCERNED ABOUT THE WEB HOSTING
10 FUNCTIONALITY OF THOSE SERVERS.

11 IN ORDER FOR MY REQUEST FOR INFORMATION
12 FROM BIGWORLDSHOES.COM TO GET THROUGH TO THE
13 CORRECT SERVER, THE WEB HOST, THE DEFENDANTS IN
14 THIS CASE NEED TO KNOW WHICH OF THEIR SERVERS HAS
15 THE INFORMATION THAT IS BEING REQUESTED. AND THAT
16 IS PROCESSED THROUGH SOMETHING CALLED A ROUTER.

17 AND THE WAY I LIKE TO THINK OF THE ROUTER
18 IS LIKE THE FUZE BOX IN YOUR HOME. YOU HAVE ONE
19 LINE OF ELECTRICITY COMING INTO YOUR FUZE BOX, AND
20 THE FUZE BOX THEN DISTRIBUTES THAT POWER TO THE
21 DIFFERENT OUTLETS AROUND YOUR HOUSE, KNOWS THAT
22 YOUR REFRIGERATOR NEEDS MORE THAN YOUR RADIO, AND
23 THE LIGHTS IN YOUR LIVING ROOM SHOULD BE CONNECTED
24 UP WITH THE ONES IN THE DINING ROOM, THAT KIND OF
25 THING.

1 IF YOU THINK OF DATA, THE REQUEST FOR
2 INFORMATION FROM BIGWORLDSHOES.COM, THE OFFERS
3 HOSTED ON BIGWORLD.COM, EVEN E-MAIL, ANY OF THOSE
4 THINGS BASICALLY THE ROUTER IS WHAT DIRECTS IT TO
5 THE CORRECT COMPUTER ON A PARTICULAR NETWORK.

6 THE DEFENDANTS OPERATE AROUND 1400
7 SERVERS SO THEY HAVE A LOT OF SERVERS DOING A LOT
8 OF DIFFERENT THINGS, A LOT OF THEM HOST WEB SITES
9 AND A LOT OF THEM HOST COUNTERFEIT WEB SITES BUT
10 THE ROUTER IS WHAT TELLS YOU WHICH SERVER YOU NEED
11 TO GO TO, TO FIND THE SPECIFIC OFFER FOR THIS
12 SPECIFIC PAIR OF SHOES.

13 NOW, I HAVE SAID THAT THEY COULD HAVE
14 DONE A BUNCH OF THINGS AND THEY SHOULD HAVE DONE A
15 BUNCH OF THINGS, BUT THEY DIDN'T DO THEM FOR LOUIS
16 VUITTON.

17 AND HOW IS IT THAT WE KNOW THAT THEY
18 COULD DO THESE THINGS? WE KNOW THAT THEY COULD DO
19 THESE THINGS BECAUSE IN RESPONSE TO COMPLAINTS MADE
20 AFTER THE LITIGATION, THEY HAVE DONE SOMETHING. WE
21 KNOW THIS BECAUSE EVEN BEFORE THE LITIGATION, THEY
22 DID SOME OF THEM FOR PEOPLE OTHER THAN LOUIS
23 VUITTON.

24 WHY THEY DIDN'T DO IT FOR LOUIS VUITTON
25 IS NOT NECESSARILY SOMETHING YOU NEED TO WORRY

1 ABOUT. MAYBE WE'LL GET THE ANSWER TO THAT
2 QUESTION, MAYBE WE WON'T. BUT THE POINT IS THAT UP
3 UNTIL THE FILING OF THIS LITIGATION THE LOUIS
4 VUITTON OFFERS WERE ALLOWED TO REMAIN UP AND
5 ALLOWED TO CONTINUE DESPITE REPEATED REQUESTS TO
6 ASK THAT INFORMATION TO BE TAKEN DOWN.

7 AND SINCE THAT LITIGATION, EVEN SINCE THE
8 PARTICULAR IP ADDRESS OF WHICH A PARTICULAR OFFER
9 IS TAKEN DOWN, IT SIMPLY MOVES TO A DIFFERENT
10 LOCATION IN THE DEFENDANTS' NETWORKS.

11 AND SO THE CUSTOMERS ARE USING THE FACT
12 THAT THEY HAVE MULTIPLE SERVERS WITHIN THE
13 DEFENDANTS' NETWORKS TO SIMPLY BOUNCE THESE OFFERS
14 AROUND.

15 AND DESPITE THIS, THE DEFENDANTS HAVE
16 NEVER DONE ANYTHING MORE DRAMATIC THAN GO TO THE
17 CUSTOMER AND SAY YOU SHOULDN'T DO THAT AND ASK THEM
18 TO TAKE CARE OF IT.

19 ALTHOUGH OCCASIONALLY THEY HAVE UNPLUGGED
20 OR DISABLED AN IP, BUT THEY NEVER SUSPENDED OR
21 TERMINATED ANYONE. THEY NEVER HAVE TAKEN ANY MORE
22 DRASTIC ACTION THAT IS AVAILABLE TO THEM UNDER THE
23 TERMS OF SERVICE AND THE ACCEPTABLE USE POLICIES.

24 WHY DID THEY DO THIS? THEY DO IT BECAUSE
25 THEY'RE BULLETPROOF POSTS. THEY REALIZE THAT

1 THERE'S AN ADDED VALUE THAT THEY CAN OFFER TO THEIR
2 CUSTOMERS BY ACTING AS A SHIELD AGAINST THESE KINDS
3 OF ABUSE COMPLAINTS.

4 YOU'LL HEAR TESTIMONY ABOUT OTHER ISP'S
5 IN THIS COUNTRY, OF WHICH THERE ARE PLENTY. BUT
6 ONE WAY TO DIFFERENTIATE YOUR SERVICE FROM OTHERS
7 MAY BE TO PROVIDE A LEVEL OF SERVICE OR TO DO
8 THINGS THAT OTHER ISP'S DON'T DO.

9 WHAT THIS ISP DOES IS FAIL TO TAKE THE
10 ACTIONS AT ITS DISPOSAL TO ADDRESS THE ABUSIVE
11 COMPLAINTS THAT IT GETS.

12 NOW, LOUIS VUITTON OVER THE NEXT COUPLE
13 OF DAYS WILL PRESENT TESTIMONY BOTH THROUGH LIVE
14 WITNESSES AND THROUGH DEPOSITION TRANSCRIPTS.

15 DURING THE COURSE OF THE LITIGATION
16 DEPOSITIONS WERE TAKEN, AND WE'LL READ QUESTIONS
17 AND ANSWERS THAT WERE DONE DURING THE DEPOSITION.

18 THE CASE THAT LOUIS VUITTON WILL PRESENT
19 WILL START WITH MR. LIVADKIN HERE WHO IS AN
20 IN-HOUSE COUNSEL WITH LOUIS VUITTON. AND MUCH OF
21 WHAT HE WILL TELL YOU IS BASICALLY UNDISPUTED.

22 LOUIS VUITTON IS A LONGSTANDING COMPANY.
23 IT'S WELL-KNOWN. IT'S ESTABLISHED WITH REGISTERED
24 COPYRIGHTS AND TRADEMARKS THAT HAVE BEEN VALID AND
25 EFFECTIVE IN THIS COUNTRY FOR DECADES BASICALLY;

1 THAT THESE INTELLECTUAL PROPERTIES HAVE ACQUIRED
2 TREMENDOUS VALUE OVER TIME, SUCH THAT THEY COMMAND
3 A PREMIUM IN THE MARKETPLACE THAT WE HAVE HEARD
4 ABOUT A LITTLE BIT ALREADY.

5 HE WILL TALK ABOUT THE RAMPANT
6 COUNTERFEITING OF THESE TRADEMARKS, THE VALUE THAT
7 THEY HAVE IS SUCH THAT THE BIGWORLDSHOES.COMS OF
8 THIS WORLD SEE AN OPPORTUNITY FOR A FAST BUCK, AND
9 THEY DON'T CARE THAT IT'S ILLEGAL, THEY JUST WANT
10 TO GET IN THERE AND MAKE THE MONEY.

11 NONE OF THIS IS REALLY DISPUTED IN THIS
12 CASE. BUT MR. LIVADKIN WILL ALSO TESTIFY TO THE
13 SERIES OF NOTICES CONCERNING A SERIES OF WEB SITES
14 THAT FIRST CAME TO HIS ATTENTION IN 2006 AND THE
15 NOTICES CONTINUING INTO 2007 BEFORE THIS LAWSUIT
16 WAS FILED.

17 AND EVEN MUCH OF THAT IS EFFECTIVELY NOT
18 DISPUTED BECAUSE THE DEFENDANTS DON'T REALLY HAVE
19 ANY INFORMATION ABOUT WHAT THEY DID IN RESPONSE TO
20 THESE COMPLAINTS. ALL WE KNOW IS THAT THE OFFERS
21 REMAINED IN PLACE.

22 YOU'LL HEAR FROM A PRIVATE INVESTIGATOR
23 RETAINED BY LOUIS VUITTON, MR. ROB HOLMES FROM
24 TEXAS. MR. HOLMES WAS INSTRUCTED BY LOUIS VUITTON
25 TO CONDUCT A MORE IN-DEPTH INVESTIGATION OF SOME OF

1 THESE WEB SITES AND TO MAKE SOME PURCHASERS SUCH AS
2 THESE SHOES FROM BIGWORLDSHOES.COM.

3 SO HE WILL TELL YOU IN MORE DETAIL ABOUT
4 SOME OF THESE WEB SITES AND ESTABLISH THE FACT THAT
5 THESE WEB SITES WERE SELLING THE COUNTERFEIT
6 MERCHANDISE IN QUESTION.

7 YOU WILL HEAR TESTIMONY FROM MS. LUK WHO
8 IS A PART-TIME EMPLOYEE OF THE DEFENDANTS. SHE
9 WORKS IN LOS ANGELES FOR ABOUT TWO HOURS A DAY IN
10 RESPONDING TO THEIR ABUSE AND SECURITY COMPLAINTS.

11 AND SHE HAD BASICALLY NO TECHNICAL
12 TRAINING. SHE HAD BASICALLY NO TECHNICAL
13 BACKGROUND. SHE HAD BASICALLY NO SUPERVISION. SHE
14 BASICALLY DIDN'T DO MUCH BECAUSE SHE DIDN'T KNOW
15 WHAT TO DO.

16 SHE WOULD RECEIVE A COMPLAINT AND SHE
17 WOULD FORWARD IT TO THE CUSTOMER. SHE WOULDN'T
18 RESPOND TO THE COMPLAINANT AND SAY WE'VE GOT IT,
19 WE'RE HANDLING IT. SHE WOULDN'T VERIFY THE
20 COMPLAINT EXCEPT TO SEE WHETHER OR NOT IT WAS IN
21 THEIR SERVERS. SHE WOULDN'T DO ANYTHING TO FOLLOW
22 UP TO SEE IF, IN FACT, THE COMPLAINT HAD BEEN
23 ADDRESSED.

24 AND, IN FACT, WHEN SHE GOT REPEATED
25 COMPLAINTS SHE HAD NO MECHANISM TO DETERMINE

1 WHETHER OR NOT IT WAS A REPEAT. SO SHE WOULD
2 REPEAT THE SAME BASIC RESPONSE THAT DID NOTHING TO
3 ADDRESS THE UNDERLYING PROBLEM.

4 MR. CHEN, WHO YOU HAVE ALREADY MET, WILL
5 ALSO TESTIFY. AND HE'S THE GENERAL MANAGER OF THE
6 COMPANY; HE'S THE FOUNDER; HE'S THE OWNER.

7 HE'S THE ONLY OTHER PERSON WITHIN THESE
8 COMPANIES THAT HANDLES ANY OF THESE ABUSE AND
9 SECURITY ISSUES.

10 AND HE WILL, AS I SAID, NOT REALLY BE
11 ABLE TO RESPOND TO LOUIS VUITTON'S PRELITIGATION
12 COMPLAINTS. HE WON'T BECAUSE THERE WAS AN E-MAIL
13 SERVER CRASHER AROUND THE TIME WE FILED THE
14 LAWSUIT.

15 SO THEY DON'T REALLY HAVE ANY E-MAIL
16 TRAFFIC THAT LOUIS VUITTON WILL BE TESTIFYING TO,
17 AND THEY WILL HAVE NO RECORD OF ANY RESPONSE,
18 ASSUMING THERE WAS A RESPONSE TO ANY OF THAT E-MAIL
19 TRAFFIC.

20 AND TO THE EXTENT THAT LOUIS VUITTON, IN
21 AN EXCESS OF CAUTION, DID LIKE MESSENGER DELIVERY
22 OR FOLLOW-UPS TO AKANOC AND MANAGED SOLUTIONS
23 SAYING "WHAT'S UP? WE SENT YOU THIS INFORMATION,
24 HERE'S A COPY OF IT, WHAT HAVE YOU DONE WITH IT?"

25 YOU WILL LEARN THAT MR. CHEN RECEIVED

1 THIS AND SHUCKED IT INTO A CORNER OF THE OFFICE AND
2 LEFT IT THERE FOR ABOUT HALF A YEAR WITHOUT DOING
3 ANYTHING IN RESPONSE TO THOSE COMPLAINTS.

4 WE WILL ALSO HEAR FROM A MR. MIKE WILSON.
5 MR. WILSON IS A RETAINED EXPERT. HE IS WITH A
6 COMPANY CALLED GUIDANCE SOFTWARE, AND HIS COMPANY
7 ON A COURT ORDER WENT IN AND MADE AN IMAGE COPY OF
8 5 SERVERS OUT OF THE 1400 THAT THE DEFENDANTS HAVE
9 WHICH ARE SORT OF A REPRESENTATIVE SAMPLING OF THE
10 KIND OF WEB SITE INFRINGEMENTS THAT WERE GOING ON,
11 ON THE DEFENDANTS' SERVERS.

12 AND HE WILL TESTIFY ABOUT THE RESULTS OF
13 THAT INSPECTION WHICH REVEAL THAT AT THE TIME,
14 WHICH WAS IN MARCH OF THIS YEAR, THERE WERE
15 HUNDREDS OF WEB SITES THAT HAD LOUIS VUITTON
16 OFFERS, COUNTERFEIT OFFERS, COUNTERFEIT OFFERS THAT
17 WERE IN MANY CASES RUNNING WHEN THE SERVERS WERE
18 TAKEN OFF LINE TO BE COPIED, MANY OF WHICH HAD BEEN
19 THE SUBJECT OF PRIOR NOTICES BY LOUIS VUITTON.

20 NOW, MAYBE IT WASN'T THE SAME IP ADDRESS
21 THAT HAD BEEN THE SUBJECT OF THE PRIOR NOTICES, BUT
22 CLEARLY THESE IP ADDRESSES HAD BEEN THE SUBJECT OF
23 PRIOR PROBLEMS.

24 AND WHAT HAVE THE DEFENDANTS DONE WITH
25 THIS? THE DEFENDANTS HAVE DONE NOTHING SUCH THAT

1 THESE OFFERS ARE CONTINUING AND PROLIFERATING
2 BECAUSE OF THE BULLETPROOF ENVIRONMENT THAT THE
3 DEFENDANTS OFFER.

4 THE DEFENDANTS WILL PRESENT ITS CASE
5 AFTER LOUIS VUITTON WE PRESENT OUR CASE. AND THEY
6 WILL ATTEMPT TO SAY THAT IT'S COMPLICATED AND THERE
7 REALLY ISN'T A TECHNICAL SOLUTION ALTHOUGH THERE
8 ARE SOLUTIONS THAT ARE NONTECHNICAL, IN ADDITION TO
9 THE SOLUTIONS THAT DON'T SEEM TO BE OVERWHELMING
10 FOR REGULAR ISP'S THAT LOUIS VUITTON DEALS WITH ON
11 A REGULAR BASIS.

12 THEY'LL SAY WE'RE BETTER. WE DO NOW
13 UNPLUG SOME OF THESE SERVERS AND WE DO NOW DISABLE
14 SOME OF THE IP ADDRESSES IF THE CUSTOMERS DON'T
15 RESPOND. AND WE APPLAUD THEM FOR THAT.

16 UNFORTUNATELY ANYTHING IS BETTER THAN
17 NOTHING WHICH WAS WHAT WAS HAPPENING BEFORE AND
18 EVEN THAT ANYTHING IS STILL NOT STOPPING THIS
19 ILLEGAL, RAMPANT ILLEGAL ACTIVITY THAT IS OCCURRING
20 ON THEIR SERVERS.

21 THEY'LL ALSO ASSERT THE PRIVILEGE AND SAY
22 THEY CAN'T LOOK AT THIS, BUT WE CAN LOOK AT IT.
23 THESE ARE OFFERS ON THE WEB SITES ON THE INTERNET,
24 AND IF WE CAN LOOK AT IT, I'M MYSTIFIED FOR THEM TO
25 SUGGEST THAT THEY CAN'T WHEN IT'S ON THEIR OWN

1 SERVERS AND, IN FACT, OTHER ISP'S ROUTINELY DO AND
2 AS MR. LIVADKIN WILL TESTIFY ROUTINELY TAKE
3 PRODUCTIVE ACTION AGAINST THIS KIND OF ILLEGAL
4 ACTIVITY.

5 WE KNOW THAT THE DEFENDANTS COULD HAVE,
6 WE KNOW THEY SHOULD HAVE. THEY DIDN'T. AND THE
7 ONLY REASON WE ARE HERE IS BECAUSE THE DEFENDANTS
8 REFUSED TO DO WHAT THE LAW REQUIRES THEM TO DO.

9 WE'RE NOT HERE BECAUSE LOUIS VUITTON
10 WANTS TO BE IN LITIGATION. WE'RE NOT HERE BECAUSE
11 OF ANY HIDDEN AGENDA.

12 WE'RE HERE BECAUSE IT'S BEEN -- IT'S THE
13 LAST RESORT TO ACHIEVE THOSE THINGS THAT SHOULD
14 HAVE HAPPENED A LONG TIME AGO.

15 THANK YOU VERY MUCH.

16 THE COURT: THE COURT WILL CALL ON
17 COUNSEL FOR THE DEFENSE FOR ANY OPENING STATEMENT.

18 **(WHEREUPON, COUNSEL FOR DEFENDANTS GAVE**
19 **HIS OPENING STATEMENT.)**

20 MR. LOWE: THANK YOU, YOUR HONOR.

21 LADIES AND GENTLEMEN, I APPRECIATE YOUR
22 ATTENTION FOR THIS TRIAL, AND I APPRECIATE THE TIME
23 YOU'RE GOING TO DEVOTE TO IT.

24 THIS IS OBVIOUSLY AN IMPORTANT MATTER.
25 AS I INDICATED THIS MORNING AND AS THE JUDGE

1 INDICATED, I REPRESENT THREE DEFENDANTS IN THIS
2 CASE. THEY ARE: AKANOC SOLUTIONS, MANAGED
3 SOLUTIONS GROUP, INC., AND STEVE CHEN,
4 INDIVIDUALLY.

5 AND I WANT TO TALK ABOUT WHAT THE
6 EVIDENCE IS GOING TO SHOW IN THIS CASE AND HOW IT
7 RELATES TO THESE PARTICULAR DEFENDANTS AND HOW IT
8 RELATES IN PARTICULAR TO THE CLAIMS MADE BY LOUIS
9 VUITTON.

10 AND AS I BELIEVE YOU MAY HAVE HEARD ME
11 EARLIER, THIS IS MY COCOUNSEL CHRIS LAI WHO IS
12 GOING TO BE HELPING ME DURING THE CASE. AND
13 MR. CHEN IS GOING TO BE HERE DURING THE ENTIRE
14 TRIAL AND HE'S GOING TO BE TESTIFYING AT A LATER
15 TIME.

16 LOUIS VUITTON HAS A PROBLEM. THEY HAVE A
17 GOOD PROBLEM AND A BAD PROBLEM. THE GOOD PROBLEM
18 IS THAT THEY ARE ABLE TO SELL A LOT OF VERY
19 EXPENSIVE BAGS AND BELTS AND WATCHES AND SHOES AND
20 WHATNOT AT VERY HIGH PRICES TO PEOPLE WHO WANT
21 LUXURY GOODS.

22 NOW, THESE GOOD PEOPLE HAVE BEEN IN
23 BUSINESS FOR OVER 100 YEARS. IT'S A GOOD COMPANY.
24 THEY MAKE GREAT PRODUCTS, NOT PRODUCTS I COULD EVER
25 AFFORD, BUT THEY MAKE GOOD PRODUCTS.

1 THE BAD NEWS ABOUT THAT IS THAT BECAUSE
2 THERE IS SUCH A HIGH MARKUP FOR THEIR PRODUCTS,
3 THERE ARE PEOPLE ALL OVER THE WORLD WHO ARE MORE
4 THAN HAPPY TO TRY TO SELL KNOCKOFFS OF THOSE
5 PRODUCTS BECAUSE THEY CAN MAKE IT FAIRLY CHEAP AND
6 THEY ARE ABLE TO SELL IT FOR MUCH LESS THAN LOUIS
7 VUITTON SELLS IT.

8 FOR EXAMPLE, MANY HANDBAGS FOR LOUIS
9 VUITTON GO FOR THOUSANDS OF DOLLARS EACH, AND
10 FORTUNATELY MY WIFE DOESN'T WANT ANY.

11 ON THE OTHER HAND THERE ARE KNOCKOFFS
12 THAT ARE SOLD FOR \$50 OR \$100 OR \$250 THAT LOOK A
13 LOT LIKE THE ORIGINAL GENUINE LOUIS VUITTON BAGS.

14 SO IT IS NATURAL THAT THEY WOULD LIKE TO
15 STOP PEOPLE FROM SELLING THOSE BAGS BECAUSE MAYBE
16 THEY WOULD LIKE TO HAVE THOSE SALES AND ALTHOUGH
17 MAYBE THEY THINK IT'S GOING TO HURT THEM IN SOME
18 FASHION -- ALTHOUGH THEIR SALES HAVE NOT BEEN
19 DAMAGED OVER THE YEARS. IT'S ONLY BEEN GOING UP.

20 MR. COOMBS: OBJECTION, YOUR HONOR.

21 THE COURT: WELL, LATER IN THE CASE WE
22 WILL TAKE UP THE ISSUE OF SALES AND HOW IT RELATES
23 TO THAT. THE OBJECTION TO THAT IS NOTED.

24 MR. LOWE: IN ANY EVENT, THEY CERTAINLY
25 HAD A RIGHT TO STOP THE COUNTERFEITERS, AND WE

1 DON'T OBJECT TO THAT AND WE'RE NOT ARGUING WITH
2 THAT POINT.

3 BUT THEY'RE MISTAKEN IN THIS PARTICULAR
4 CASE BECAUSE MY CLIENTS ARE NOT THE PROBLEM. THEY
5 ARE DOING EVERYTHING THAT THEY POSSIBLY CAN TO TRY
6 TO HELP LOUIS VUITTON AND OTHER PEOPLE IN SIMILAR
7 BUSINESSES TO AVOID THE SALES OF KNOCKOFFS ON THE
8 INTERNET, BUT THEY CAN'T DO, APPARENTLY, ENOUGH TO
9 SATISFY LOUIS VUITTON.

10 AND THE -- APPARENTLY LOUIS VUITTON WANTS
11 TO PROVE ONCE AND FOR ALL THAT AN ISP CAN BE
12 PUNISHED FOR ALLOWING THESE KNOCKOFFS TO BE SOLD ON
13 THE INTERNET.

14 AND WE'RE GOING TO ESTABLISH EVIDENCE TO
15 SHOW YOU THAT THEY ARE DOING EVERYTHING THEY CAN
16 PHYSICALLY AND LEGALLY AND RATIONALLY AND THEY'RE
17 ACTING COMPLETELY REASONABLY AND THEY HAVE SPENT A
18 LOT OF TIME TRYING TO AVOID PROBLEMS THAT COME UP
19 BECAUSE OF THE SERVERS THAT THEY USE.

20 COUNSEL SUGGESTED THAT THIS IS REALLY
21 SIMPLE. ACTUALLY IT'S A FAIRLY COMPLICATED MATTER
22 AND SOME OF YOU HAVE A TECHNICAL BACKGROUND AND I
23 TRUST YOU'LL BEAR WITH US AS WE GO THROUGH THIS,
24 BUT WE'RE GOING TO HAVE TO DISCUSS HOW THE INTERNET
25 WORKS. WE'RE GOING TO HAVE TO DISCUSS HOW THE

1 INTERNET SERVICE PROVIDERS WORK. WE'RE GOING TO
2 HAVE TO TALK ABOUT HOW WEB SITES ARE ESTABLISHED
3 AND HOW THEY OPERATE.

4 ALL OF THAT IS NECESSARY SO THAT YOU
5 UNDERSTAND HOW THE COUNTERFEITERS ARE USING THE
6 INTERNET TO SELL THEIR STUFF AND HOW THEY SOMETIMES
7 ARE USING OUR CLIENT'S EQUIPMENT TO GET OUT ON THE
8 INTERNET.

9 BUT AS YOU WILL SEE I THINK FROM THE
10 EVIDENCE, THIS HAS NOTHING TO DO WITH THEIR -- WITH
11 OUR CLIENT'S OPERATIONS AT ALL.

12 I WANT TO TALK FOR A MOMENT ABOUT THE
13 ISP'S AND SOME OF YOU MAY KNOW WHAT THAT TERM MEANS
14 BECAUSE I BELIEVE THE COURT MAY LATER GIVE YOU A
15 GLOSSARY OF TERMS FOR YOU TO REFER TO.

16 BUT WE'RE GOING TO BE TALKING ABOUT A LOT
17 OF TECHNICAL TERMS, AND I WANT TO SHOW YOU A CHART,
18 ACTUALLY, ABOUT HOW THE INTERNET WORKS AND HOW THE
19 ISP'S FIT INTO THIS WORLD OF THE INTERNET.

20 YOUR HONOR, IF I MAY?

21 THE COURT: CERTAINLY. PERHAPS YOUR
22 ASSOCIATE CAN HELP YOU. YOU MIGHT SET IT UP IN
23 FRONT OF THIS PAINTING THAT IS THERE AND THAT WAY
24 THE JURY CAN SEE IT AND I CAN SEE IT AND YOUR
25 OPPONENT CAN SEE IT.

1 YOU CAN USE THE WITNESS STAND HERE.

2 MR. LOWE: NOW, WHAT WE HAVE HERE IS A
3 VERY SIMILAR PREVIEW OF HOW THE INTERNET WORKS.
4 AND THE EXAMPLE WE'RE USING IS AN END USER, AN
5 INDIVIDUAL RELAXING IN HER CHAIR WANTING TO FIND
6 SOMETHING ON GOOGLE. LET'S USE GOOGLE AS AN
7 EXAMPLE OF HOW THE INTERNET WIRING SO TO SPEAK
8 WORKS.

9 SO SHE TYPES IN GOOGLE.COM, FOR EXAMPLE,
10 ON HER LAP TOP.

11 NOW, THAT DOESN'T GO DIRECTLY TO THE
12 GOOGLE WEB SITE. IT ACTUALLY HAS TO GO THROUGH A
13 LOT OF CONNECTIONS AROUND THE WORLD.

14 SPECIFICALLY WHAT INITIALLY HAPPENS IS IT
15 GOES THROUGH HER ROUTER AND SHE HAPPENS TO HAVE ONE
16 IN HER HOME, AS MANY OF US DO, AND IT'S GOING TO GO
17 TO HER INTERNET SERVICE PROVIDER LIKE COMCAST, FOR
18 EXAMPLE, OR SOMEONE ELSE WHO IS PROVIDING HER
19 INTERNET CONNECTION.

20 AND THE INTERNET SERVICE PROVIDERS THAT
21 DEAL WITH PEOPLE AT THE HOME AND THERE ARE INTERNET
22 SERVICE PROVIDERS THAT DEAL WITH COMMERCIAL
23 BUSINESSES SUCH AS PEOPLE SELLING GOODS OR RUNNING
24 PHONE COMPANIES OR WHATEVER.

25 BUT IT GOES FROM HER SERVICE PROVIDER,

1 THIS INQUIRY SAYING GOOGLE.COM, TO A DOMAIN NAME
2 RESOLVER.

3 NOW, THIS IS A SYSTEM OF VERY LARGE
4 COMPUTERS ALL OVER THE WORLD THAT ARE OPERATED
5 THROUGH SOME INTERNATIONAL ORGANIZATIONS, AND THEY
6 KEEP TRACK ON THESE SERVERS OF THE SORT OF THE
7 CROSS-REFERENCE BETWEEN THE DOMAIN NAME AND AN IP
8 ADDRESS, AN INTERNET PROTOCOL ADDRESS.

9 AN IP ADDRESS YOU'LL HEAR IS AN ADDRESS
10 COMPOSED OF THE NUMBERS THAT COUNSEL MENTIONED A
11 MOMENT AGO THAT IS LIKE THE STREET ADDRESS FOR SOME
12 BUILDING BUT IN THIS PARTICULAR -- BUT IN THIS
13 INTERNET WORLD AN IP ADDRESS IS SOMETHING THAT IS
14 TEMPORARILY USED BY A PARTICULAR LOCATION SOMEWHERE
15 ON THE INTERNET.

16 AND THIS SERVER HERE, THIS DOMAIN NAME
17 RESOLVER GETS ITS INFORMATION FROM THE MAIN
18 REGISTRARS WHICH ARE OTHER ORGANIZATIONS WHICH WILL
19 ASSIGN A DOMAIN NAME.

20 IF I WANTED, FOR EXAMPLE, TO GET TO THE
21 DOMAIN NAME JIMLOWE.COM, THEN I WOULD HAVE TO APPLY
22 TO ONE OF THESE ORGANIZATIONS AND GET THAT NAME
23 ASSIGNED TO ME.

24 AND THEN THE DOMAIN NAME REGISTRARS
25 UPLOAD THAT INFORMATION TO THESE DOMAIN NAME

1 RESOLVER SERVERS AND THAT THEN IS TRANSMITTED BACK
2 THROUGH THE INTERNET BACKBONE THROUGH ALL OF THE
3 WORLDWIDE WIRING AND COMPUTER SYSTEMS AROUND THE
4 WORLD BACK TO THE USER.

5 AND THAT THEN TELLS THE USER'S COMPUTER,
6 THIS NAME IS ACTUALLY AN IP ADDRESS OF SO AND SO,
7 AND I THINK YOU'LL SEE IT ON THE CHART AND THEN
8 THAT SIGNAL IS SENT OUT AGAIN BACK THROUGH THE
9 INTERNET TO FIND THAT PARTICULAR SERVER WHERE THAT
10 IP ADDRESS IS LOCATED.

11 SO THIS IS WHAT THEY CALL THE INTERNET
12 BACKBONE, AND YOU HAVE HUGE QUANTITIES OF SERVERS
13 AND CABLES, SATELLITES AND WHATNOT THAT ROUTE THIS
14 TRAFFIC.

15 EVENTUALLY IT CAN FIND ITS WAY TO AN
16 INTERNET SERVICE PROVIDER HERE WHO HAS ASSIGNED TO
17 IT THAT PARTICULAR IP ADDRESS. THAT ASSIGNMENT OF
18 AN IP ADDRESS IS GIVEN BY ANOTHER ORGANIZATION,
19 ANOTHER INTERNATIONAL ORGANIZATION THAT IS IN
20 CHARGE OF ASSIGNING ADDRESSES.

21 THERE ARE ACTUALLY FIVE SUCH
22 ORGANIZATIONS, REGIONAL REGISTRARS, FIVE OF THEM IN
23 THE WORLD AND ONE OF THEM SERVE NORTH AMERICA.
24 IT'S ARIN, A-R-I-N. YOU'LL HEAR ABOUT THAT.

25 SO ARIN HAS ASSIGNED TEMPORARILY IP

1 ADDRESSES TO A PARTICULAR INTERNET SERVICE PROVIDER
2 AND THEY HAVE TO -- AND THEY HAVE TO APPLY FOR THAT
3 AND JUSTIFY THE NEED FOR THAT AND SO ON. AND THERE
4 ARE A NUMBER OF ADDRESSES AVAILABLE.

5 BUT IN THIS PARTICULAR CASE, LET'S ASSUME
6 THAT THIS ISP IS AKANOC MANAGEMENT SOLUTIONS. SO
7 THEY HAVE 1500 SERVERS APPROXIMATELY. THEY HAVE
8 40,000 IP ADDRESSES THAT HAVE BEEN ASSIGNED TO THEM
9 THAT THEY ARE THEN ABLE TO REASSIGN OR LEASE OUT TO
10 OTHER PEOPLE.

11 SO IT FINDS THIS PARTICULAR ISP AND
12 BECAUSE OF THE ADDRESS IS POINTED FROM HERE TO
13 HERE. THAT'S REALLY WHAT IS JUST GOING ON. IT'S A
14 POINTER IN A SENSE.

15 AND THEN IT GOES FROM THE SERVERS HERE
16 AND THEN FROM THE ROUTERS USED BY THE ISP, THE
17 ROUTERS AT THIS LOCATION THEN REDIRECT THE TRAFFIC
18 TO SOME OTHER PLACE.

19 FOR EXAMPLE, IN THIS PLACE WE'RE
20 DEPICTING GOOGLE BEING DOWN HERE (INDICATING).

21 SO THIS MESSAGE IS ROUTED FROM HERE TO
22 THE APPROPRIATE SERVER AND DOWN TO THE WEB SITE
23 THAT IS OPERATED BY GOOGLE.

24 GOOGLE MAY HAVE ITS WEB SITE ON ONE OF
25 THESE SERVERS OR THEY MAY HAVE IT ON SEVERAL OTHER

1 PLACES AROUND THE WORLD AS GOOGLE DOES. IT'S A
2 DEMONSTRABLE ORGANIZATION, OF COURSE, OR PERHAPS
3 IT'S A SMALLER ENTITY.

4 IF YOU WERE NOT LOOKING FOR GOOGLE
5 SPECIFICALLY, IT MIGHT DIRECT YOU HERE AND THEN
6 SEND YOU SOMEWHERE ELSE.

7 SO THE DEFENDANTS IN THIS CASE DON'T
8 ACTUALLY PROVIDE INTERNET SERVICES TO ANY
9 INDIVIDUAL OR TO ANY WEB SITE. THEY DO NOT HOST
10 WEB SITES. THEY'RE NOT A HOST IN THE SENSE OF
11 OPERATING WEB SITES AT ALL.

12 THEY'RE A COMMUNICATIONS COMPANY. THEY
13 SIMPLY TRANSMIT INFORMATION ALONG THE INTERNET, AND
14 THEY DEAL PRIMARILY WITH WHAT THEY CALL
15 "RESELLERS." THEIR CUSTOMERS ARE ESSENTIALLY
16 RETAILERS OF COMMUNICATION SERVICES ON THE
17 INTERNET.

18 SO MY CLIENTS ARE WHOLESALERS OF
19 COMMUNICATIONS, AND LET'S SAY THESE ARE RETAILERS.
20 AND THOSE RETAILERS MAY LEAST ON A MONTHLY BASIS 1
21 SERVER OR MAYBE 50 SERVERS OR MAYBE 250 SERVERS AND
22 THEN THEY RELEASE THOSE TO OTHER CUSTOMERS UP THE
23 LINE OR DOWN THE LINE SO TO SPEAK.

24 AND WHAT ONE OF THEIR CUSTOMERS DOES IS
25 TO OBTAIN ONE OR MORE SERVERS, SOME IP ADDRESSES,

1 USUALLY AT LEAST IN GROUPS OF TEN, AND A CERTAIN
2 AMOUNT OF BANDWIDTH OR COMMUNICATION SPACE THAT CAN
3 BE USED TO GET ONTO THE INTERNET.

4 SO THESE PEOPLE WANT TO GET ONTO THE
5 INTERNET OR THEIR CUSTOMERS WANT TO GET ONTO THE
6 INTERNET OR THEY GO THROUGH THIS RESELLER WHO THEN
7 GOES THROUGH THESE SERVERS AND WHO GOES BACK TO THE
8 IP OR THE INTERNET BACKBONE.

9 NOW, MY CLIENTS ARE LOCATED HERE IN SAN
10 JOSE, JUST A FEW BLOCKS FROM HERE IN A DATA CENTER
11 AND THEY'RE COTENANTS OR PEOPLE LIKE AT & T AND
12 SINGAPORE TELEPHONE AND OTHER LARGE COMMUNICATIONS
13 AND OTHER IP'S IN THE LOCATION.

14 IT JUST HAPPENS THAT SAN JOSE IS ONE OF
15 THE PRINCIPAL CONNECTIONS TO THE INTERNET IN THE
16 UNITED STATES. THIS BUILDING, IN FACT, IS CALLED
17 MAY WEST. THERE'S A MAY EAST ON THE EAST COAST.
18 BUT THIS IS ONE OF THE LARGEST CONNECTING POINTS TO
19 THE WORLD.

20 AND SO THIS BUILDING DOWN THE STREET
21 WHERE MY CLIENTS ARE LOCATED IS THEN HOOKED UP TO
22 TWO LARGE COMMUNICATIONS COMPANIES.

23 ONE OF THEM IS GLOBAL CROSSING AND THEIR
24 BUSINESS IS JUST OPERATING THIS HUGE TRUNK LINE OR
25 PART OF THE TRUNK LINE THAT IS CALLED THE INTERNET

1 BACKBONE.

2 SO THEY HAVE, YOU KNOW, VERY LARGE
3 FIBER-OPTIC CABLES GOING OUT OF THAT BUILDING TO
4 THE COMMUNICATIONS COMPANIES.

5 NOW, GLOBAL CROSSING DOESN'T DEAL WITH
6 THESE FOLKS. THEY DEAL WITH THE ISP'S HERE. AND
7 THIS ISP IN THIS CASE DEALS WITH A BUNCH OF
8 RESELLERS IN THE U.S., IN CANADA, AND IN ASIA.

9 AND THOSE RESELLERS IN TURN DO BUSINESS
10 WITH OTHER PEOPLE AND THESE PEOPLE ARE DOING THINGS
11 SUCH AS OPERATING TELEPHONE COMPANIES, VOICE OVER
12 THE INTERNET PROTOCOL OPERATIONS, E-MAIL SERVERS,
13 WEB HOSTING IF THEY WANT, DATA STORAGE, GAMING, A
14 LOT OF INTERNET GAMING OPERATIONS ARE RUN WITH.

15 AND PEOPLE LIKE TO GO TO SAN JOSE BECAUSE
16 THE CONNECTIONS HERE WAS REALLY, REALLY GOOD. THIS
17 WAS ONE OF THE FOUNDING PARTS OF THE INTERNET,
18 SINCE IT WAS DEVELOPED A RELATIVELY SHORT TIME AGO
19 AND IT WAS ONLY COMMERCIALIZED 14 YEARS AGO.

20 BUT FOR SOMEONE HERE THEY DON'T NORMALLY
21 DEAL WITH THESE PEOPLE AT ALL. THEY DEAL WITH A
22 RESELLER OR SOMEONE WHO SELLS THEM A PIECE OF A
23 SERVER OR A VIRTUAL MACHINE OR ONE IP ADDRESS THAT
24 THEY CAN USE AND SO ON.

25 AND THEN THEY MAY ACTUALLY, THESE PEOPLE

1 MAY ACTUALLY RESELL DOWN THE LINE. OUR CLIENTS
2 DON'T EVEN KNOW WHAT IS GOING ON DOWN HERE BECAUSE
3 THEY DON'T KNOW WHO THESE CUSTOMERS ARE OR THE
4 NAMES OF THESE PEOPLE, NECESSARILY, UNLESS SOMEONE
5 HAPPENS TO TELL THEM EVEN THOUGH THE PHONE COMPANY
6 KNOWS SOMEBODY IN THE OFFICE BUILDING IS USING THE
7 PHONE SYSTEMS.

8 BUT THIS IS SLICED AND BROKEN UP INTO A
9 LOT OF PIECES TO DO WHATEVER PEOPLE WANT TO DO.

10 NOW, IN THE INTERNET PROTOCOL AREA, THIS
11 INTERNET ADDRESS THING, WHAT YOU HAVE IS THE
12 ABILITY TO OPERATE ACTUALLY A NUMBER OF THINGS ON
13 ONE IP ADDRESS. IT'S NOT AS IF THERE IS ONE WEB
14 SITE THAT HAS ONE IP ADDRESS AND THAT'S ALL THERE
15 IS ON THAT ADDRESS. THERE ACTUALLY COULD BE
16 HUNDREDS, THERE COULD BE THOUSANDS OF INDIVIDUALS
17 CUSTOMERS OR USERS ON THAT SAME IP ADDRESS.

18 SO THE PEOPLE HERE MAY KNOW WHO THE FOLKS
19 ARE. THE PEOPLE HERE DON'T KNOW WHO THEY ARE. AND
20 THEY DON'T KNOW, FOR EXAMPLE, WHAT USE IS BEING
21 MADE OF A PARTICULAR IP ADDRESS DOWN HERE AND
22 PROBABLY THESE PEOPLE AREN'T SURE WHAT USE IS BEING
23 MADE OF IT BUT THERE IS FROM MY CLIENT'S STANDPOINT
24 NO CONNECTION BETWEEN THIS GROUP, THIS ISP HERE AND
25 THE USERS THAT ARE CUSTOMERS OF THEIR RESELLERS,

1 THE RETAIL CUSTOMERS SO TO SPEAK.

2 THIS IS, AS YOU'LL HEAR TESTIMONY, THIS
3 BUSINESS IS A VERY COMMON BUSINESS. THERE ARE A
4 NUMBER OF THESE IN THIS AREA AND IN OTHER PLACES
5 AROUND THE COUNTRY. THE BUSINESS MODEL IS REFERRED
6 TO AS AN UNMANAGED INTERNET SERVICE PROVIDER.

7 AND BY THAT, THE TERM MEANS THAT THEY
8 DON'T DO ANYTHING EXCEPT KEEP THE MACHINES RUNNING
9 AND KEEP THE CONNECTION CONNECTED. THEY DON'T
10 INSTALL ANY SOFTWARE OTHER THAN AN OPERATING
11 SYSTEM. THEY DON'T OPERATE THE SYSTEM. THEY DON'T
12 SELL ANY MERCHANDISE. THEY DON'T DO ANYTHING.

13 AND IF SOMEONE HAS A TECHNICAL PROBLEM,
14 ONE THE CUSTOMERS DOWN THE LINE HAS A TECHNICAL
15 PROBLEM, THEY REALLY HAVE TO FIX IT THEMSELVES.

16 AND ABOUT THE ONLY THING THAT CAN BE DONE
17 IS IF SOMEONE DOWN HERE GETS IN TROUBLE, AND THIS
18 RESELLER CAN'T HELP THEM WITH IT, IT MAY BE
19 NECESSARY TO REBOOT THE SYSTEM HERE BUT THAT'S
20 ABOUT AS FAR AS IT GOES.

21 BUT THE STAFF AT MAY WEST DOESN'T HAVE
22 ANY KNOWLEDGE OF WHAT OPERATING -- WHAT IS
23 OPERATING ON THE SYSTEM OR WHAT THEY'RE DOING, BUT
24 THEY JUST KEEP THE MACHINES RUNNING.

25 NOW, APPARENTLY LOUIS VUITTON HAS SUED

1 THESE DEFENDANTS BECAUSE THEY ARE LOCATED HERE.
2 THEY'RE A HIGH PROFILE IN THE SENSE THAT THEY'RE IN
3 A GOOD PLACE. AND LOUIS VUITTON HAS TRIED PURSUING
4 COUNTERFEITERS, THE PEOPLE MAKING AND SELLING THESE
5 BAGS AROUND THE WORLD. AND THEY HAVE DONE THAT IN
6 CHINA. YOU'LL HEAR TESTIMONY ABOUT THAT, THAT THEY
7 TRIED TO SUE THESE PEOPLE IN CHINA AND TO SOME
8 DEGREE THEY WERE SUCCESSFUL THERE.

9 BUT WHAT THEY WOULD REALLY LIKE IS TO
10 STOP THE INTERNET PROVIDER IN AMERICA DEALING WITH
11 SOMEBODY IN CHINA. SO IF THEY PUT THEM OUT OF
12 BUSINESS OR PUNISH THEM IN THIS LAWSUIT
13 SUFFICIENTLY, MAYBE THE CHINESE WON'T BE ABLE TO
14 GET ON THE INTERNET AS EASILY OR THEY WON'T BE ABLE
15 TO SELL THEIR BAGS AS EASILY.

16 BUT THE FACT IS THAT THERE ARE A LOT OF
17 OTHER ISP'S AND NO MATTER WHAT HAPPENS TO MY
18 CLIENTS IN THIS TRIAL, THE PEOPLE SELLING INTERNET
19 OR SELLING COUNTERFEIT BAGS ON THE INTERNET WILL
20 FIND OTHER ISP'S AND SO THEY'LL FIND OTHER WAYS TO
21 GET ON THE INTERNET.

22 ONE OF THE THINGS YOU'RE GOING TO HEAR IS
23 TESTIMONY ABOUT HOW THESE COMPLAINTS ARE RECEIVED
24 AND HOW THEY ARE RESPONDED TO AND WHAT THE
25 RESPONSE -- WHAT THE REACTION IS SO TO SPEAK BY THE

1 ALLEGED COUNTERFEITERS.

2 AKANOC AND MANAGED SOLUTIONS DO WHAT
3 EVERYBODY IN THE BUSINESS DOES AS FAR AS WE KNOW.
4 THEY DON'T HAVE THE ABILITY, PHYSICALLY OR
5 OTHERWISE, TO MONITOR EVERYTHING ON THE INTERNET.
6 IT WOULD BE UNREASONABLE TO ASK ANYBODY IN THE
7 BUSINESS TO DO THAT BECAUSE AS I SAID THEY HAVE
8 40,000 IP ADDRESSES THAT THEY'RE RESPONSIBLE FOR.
9 THEY HAVE 1500 SERVERS AND THERE COULD BE HUNDREDS
10 OR THOUSANDS OF USERS ON THEIR SYSTEM.

11 THERE ARE OVER A HUNDRED MILLION WEB
12 SITES IN THE WORLD. THEY DON'T KNOW WHAT
13 BIGWORLDSHOES.COM IS DOING.

14 THEY DON'T KNOW WHAT IP ADDRESS
15 BIGWORLDSHOES.COM IS USING UNLESS THEY WERE
16 MONITORING IT OR WATCHING IT.

17 NOW, ON THE OTHER HAND, SOMEONE LIKE
18 LOUIS VUITTON GOES ON THE INTERNET AND THEY LOOK
19 FOR PEOPLE SELLING LOUIS VUITTON PRODUCTS THAT THEY
20 HAVEN'T AUTHORIZED.

21 THEY THEN FIGURE OUT WHAT THE IP ADDRESS
22 IS OR WHAT THEY THINK IT IS, ALTHOUGH SOMETIMES
23 THEY HAVE PROBLEMS WITH THAT. AND THEN THEY WILL
24 CONTACT THE ISP THAT HAS THE ASSIGNMENT FROM AN
25 ARIN IP ADDRESS OR WHOMEVER FROM THAT PARTICULAR IP

1 ADDRESS. AND THEN THEY THEN ASK THAT ISP TO DO
2 SOMETHING ABOUT THIS PARTICULAR PROBLEM THAT THEY
3 HAVE.

4 BASICALLY WHAT THEY USUALLY DO IS SEND AN
5 E-MAIL SAYING "HI, WE'RE LOUIS VUITTON. WE OWN
6 TRADEMARKS AND COPYRIGHTS. WE THINK THAT
7 BIGWORLDSHOES.COM, OR WHOEVER, IS INFRINGING OUR
8 RIGHTS. PLEASE DO SOMETHING ABOUT IT."

9 WELL, OUR CLIENTS HAVE NO WAY OF KNOWING
10 WHETHER THAT'S TRUE OR NOT TRUE AND THEY'RE NOT
11 INTERESTED IN ARGUING ABOUT IT.

12 ALL THEY KNOW IS THAT THEY HAVE A
13 COMPLAINT AND THEY'RE GOING TO ASSUME THAT IT'S AN
14 ACCURATE COMPLAINT. THEY DON'T KNOW ANYTHING ABOUT
15 THE RELATIONSHIP BETWEEN BIG WORLD SHOES AND LOUIS
16 VUITTON, AND THEY DON'T HAVE TIME OR A METHOD TO
17 LOOK INTO THAT.

18 SO THEY SIMPLY ASSUME THAT THERE'S A
19 PROBLEM. THEY THEN NOTIFY THEIR CUSTOMER, THE
20 RESELLER, THE ONLY ONE THAT THEY DO KNOW. THEY
21 NOTIFY THE CUSTOMER, THIS IP ADDRESS IS ACCUSED OF
22 SELLING SOMETHING ON A WEB SITE THAT IS UPSETTING
23 LOUIS VUITTON OR SOMEBODY ELSE. PLEASE DO
24 SOMETHING ABOUT IT.

25 THAT CUSTOMER THEN HAS TO TALK TO THEIR

1 CUSTOMER AND TRY TO STOP THE PROBLEM, WHATEVER IT
2 IS.

3 IF IT DOESN'T WORK, IF THIS RESELLER
4 DOESN'T DO ANYTHING ABOUT IT, AND THE WEB SITE IS
5 STILL ACTIVE AFTER A DAY OR SO, OR IF THEY GET
6 ANOTHER COMPLAINT FROM LOUIS VUITTON SAYING THIS IS
7 STILL ACTIVE, YOU KNOW, WHAT HAVE YOU DONE ABOUT
8 IT, THEN THEY WILL TAKE SOME FURTHER ACTION.

9 AND THERE ARE ONLY A COUPLE OF ACTIONS
10 THAT THEY CAN TAKE. ONE IS TO DISABLE THE IP
11 ADDRESS. BUT AS YOU CAN SEE, BECAUSE SO MANY USERS
12 ARE ON A SINGLE IP ADDRESS, THERE WOULD BE
13 THOUSANDS OF USERS ON ONE IP ADDRESS, MAYBE SOME
14 ARE DOING E-MAILS OR GAMES OR WEB SITES AND SOME
15 ARE STORING DATA. IT'S AN EXTREME MEASURE TO
16 DISABLE THAT IP ADDRESS BECAUSE YOU WANT TO HAVE A
17 LOT OF INNOCENT PEOPLE WHO HAVE BEEN HURT BY THAT
18 DISCONNECTION FROM THE INTERNET.

19 BUT IF THEY HAVE TO, THEY'LL DO THAT AND
20 FORCE ESSENTIALLY THEIR CUSTOMER TO GO TO THEIR
21 CUSTOMERS DOWN THE LINE AND DEAL WITH ALL OF THE
22 FALLOUT FROM THAT, BUT THEY TRY NOT TO DISRUPT
23 SERVICE THAT OFTEN UNLESS IT'S ABSOLUTELY
24 NECESSARY.

25 THE ONLY OTHER THING THEY CAN DO IS TO

1 UNPLUG THE SERVER AS COUNSEL SUGGESTED. BUT
2 BECAUSE YOU HAVE MULTIPLE IP ADDRESS IS RUNNING ON
3 A GIVEN SERVER, THAT JUST MULTIPLIES A NUMBER OF
4 OTHER CUSTOMERS THAT ARE ULTIMATELY GOING TO BE
5 HURT.

6 THE TESTIMONY YOU'LL HEAR IS THAT THEY DO
7 GET COMPLAINTS ABOUT SOME OF THESE ULTIMATE
8 CUSTOMERS AND THEY TAKE ACTION ON IT ON A REGULAR
9 BASIS, AND THEY DO IT CONSISTENTLY. AND SOMETIMES
10 THEY GET REPEAT OFFENDERS IN A SENSE THAT THEY GET
11 A COMPLAINT ABOUT BIGWORLDSHOES.COM THREE OR FOUR
12 TIMES.

13 WELL, BIG WORLD SHOES MAY HAVE CHANGED IP
14 ADDRESSES, THEY MAY HAVE CHANGED TO USING A
15 DIFFERENT ISP ENTIRELY. THEY MOVE AROUND.

16 AND SOMETIMES IT LOOKS LIKE THEY MOVE
17 AROUND PERIODICALLY JUST SO THEY CAN STAY AHEAD OF
18 PEOPLE LIKE LOUIS VUITTON. THEY DON'T DO IT
19 BECAUSE THEY'RE BEING NECESSARILY CHANGED BUT --
20 WELL, IT'S TIME TO MOVE.

21 AND IT ALSO APPEARS THAT THESE FOLKS --
22 NOT THESE, ACTUALLY, I'M SORRY -- BUT THE
23 COUNTERFEITERS ACTUALLY SET UP IN ADVANCE
24 INFORMATION ON SERVERS ALL OVER THE WORLD AND IF
25 THEY GET CHASED OFF ONE THEY CAN MOVE TO ANOTHER

1 ONE VERY QUICKLY.

2 HOW DO THEY DO THAT? ALL THEY HAVE TO DO
3 IS TO NOTIFY THE MAIN REGISTRAR WHERE THEY GOT THAT
4 IP OR THAT DOMAIN NAME AND ASK THEM TO CHANGE THE
5 SETTING ON THIS DOMAIN NAME RESOLVER. THAT MIGHT
6 TAKE THEM TEN MINUTES. IT MIGHT TAKE THEM HALF AN
7 HOUR IF THINGS ARE REALLY SLOW.

8 BUT THEY DON'T HAVE TO UPLOAD A NEW BATCH
9 OF INFORMATION BECAUSE IT'S ALREADY LOADED ALL OVER
10 THE PLACE. WE DON'T KNOW WHERE IT IS, BUT THEY
11 MOVE AROUND.

12 AND SO IF YOU GET CHASED, AS ONE OF THESE
13 COUNTERFEITERS IS CHASED OFF OF ONE IP ADDRESS
14 BECAUSE OF THE COMPLAINT FROM LOUIS VUITTON, YOU
15 CAN ACTIVATE ANOTHER ADDRESS SUCH AS MAYBE IT'S
16 GOING TO BE ON, YOU KNOW, THIS RESELLER'S SERVERS
17 OR MAYBE IT WILL BE A DIFFERENT ISP SOMEWHERE IN
18 THE WORLD.

19 SOMETIMES BECAUSE THEY'RE CHASED AROUND
20 THEY'RE GOING TO COME BACK TO ONE OF THESE PEOPLE
21 AND OUR CLIENT IS GOING TO GET COMPLAINTS ABOUT
22 BIGWORLDSHOES.COM AGAIN.

23 BUT WHAT THE EVIDENCE SHOWS IS THAT THEY
24 FOLLOW UP ON THESE COMPLAINTS AND TRY TO GET THESE
25 THINGS SHUT DOWN, AND THEY TAKE A SERIES OF ACTIONS

1 TO DO THAT. AND SOMETIMES THEY HAVE TO UNPLUG
2 SERVERS. SOMETIMES THEY WILL DISABLE AN IP ADDRESS
3 AND YET BIG WORLD SHOES AND OTHERS KEEP COMING
4 BACK.

5 NOW, DO THEY WANT THIS TO HAPPEN? NO.
6 THE EVIDENCE IS GOING TO BE THEY HAVE NO REASON TO
7 DO THIS WHATSOEVER. THEY ARE NOT A BULLETPROOF
8 HOST. I HAVE NO IDEA WHAT THAT MEANS COUNSEL
9 SUGGESTS.

10 IT'S HARD WORK. MR. CHEN SPENDS A GOOD
11 PERIOD OF HIS TIME DEALING WITH THIS, AND HE HAS
12 JULIANA LUK HELPING HIM TO DO THAT. AND THERE ARE
13 A LOT OF OTHER COMPANIES THAT SEND COMPLAINTS IN.

14 IN ADDITION TO THE COMPLAINTS ABOUT
15 COPYRIGHT AND TRADEMARK INFRINGEMENTS, THEY GET
16 COMPLAINTS ABOUT SPAM, THEY GET COMPLAINTS ABOUT
17 PORNOGRAPHY, THEY GET COMPLAINTS ABOUT BOT NETS.
18 YOU'LL HEAR ABOUT THAT. THERE ARE DDOS ATTACKS.

19 THERE ARE ALL KINDS OF THINGS THAT ARE
20 GOING ON IN THE INTERNET THAT AFFECT ISP, AND THEY
21 WOULD PREFER JUST TO TAKE THEIR SMALL MONTHLY
22 PAYMENT. FOR EXAMPLE, THEY CHARGE BETWEEN \$15 AND
23 \$16 A MONTH FOR A PACKAGE FOR IP ADDRESSES PLUS
24 SERVERS PLUS BANDWIDTH. IT'S EASIER TO TAKE THAT
25 AND KEEP THE MACHINES PLUGGED IN, AND THEY DON'T

1 HAVE TO DO ANY WORK.

2 THEY DON'T GET ANY MONEY FOR SELLING TO
3 PEOPLE WHO ARE COUNTERFEITERS. THEY DON'T KNOW ANY
4 COUNTERFEITERS. THEY DON'T KNOW ANYBODY IN THAT
5 BUSINESS WHATSOEVER. AND THEY GET NOTHING OUT OF
6 THAT TRADE AT ALL.

7 ALL THEY KNOW IS THAT THEY GET A BIG
8 HEADACHE FROM THIS AND FROM THE COMPLAINTS THEY GET
9 ON A DAILY BASIS LITERALLY AND THEN THIS LAWSUIT
10 EVEN.

11 NOW, THE WEB SITE OPERATORS ARE NOT KNOWN
12 TO THESE PEOPLE. THEY DON'T GIVE THEM A CUT OF
13 THEIR SALES OR INCOME. AND THEY AREN'T REALLY ABLE
14 TO DO ANYTHING MORE TO DEAL WITH THIS EVEN THOUGH
15 COUNSEL SUGGESTS THAT THERE'S SOMETHING THEY'RE NOT
16 DOING.

17 COUNSEL SUGGESTS THAT THEY HAVEN'T DONE
18 ANYTHING, BUT I BELIEVE THE EVIDENCE IS GOING TO
19 SHOW A SIGNIFICANT AMOUNT OF WORK THAT THE
20 DEFENDANTS HAVE DONE. YOU'RE GOING TO SEE THAT
21 LOUIS VUITTON HAS COMPLAINED ABOUT 70 OR 80
22 DIFFERENT WEB SITES OVER THE LAST COUPLE OF YEARS
23 TO THE DEFENDANTS.

24 AND YOU'RE GOING TO SEE THAT THE
25 DEFENDANTS HAVE TAKEN ACTION ON EVERY SINGLE ONE OF

1 THESE, AND THEY HAVE OFTEN TAKEN ACTION REPEATEDLY.

2 FOR EXAMPLE, THEY WILL GET A COMPLAINT
3 AND A TAKEDOWN AS THEY CALL IT, A LETTER OR E-MAIL
4 FROM THE RESELLERS. AND IF THEY DO IT AGAIN
5 THEY'RE DISABLED, THE IP ADDRESS. AND IF IT OCCURS
6 AGAIN, THEY'LL UNPLUG THE SERVER AND SO ON.

7 BUT THE SAME FOLKS KEEP COMING BACK IT
8 APPEARS, BIG WORLD SHOES AND MANY OTHERS THAT ARE
9 IN THE BUSINESS OF SELLING COUNTERFEITERS.

10 BUT THEY CAN'T STOP THEM FROM COMING
11 BACK. THEY'RE NOT DOING BUSINESS WITH THESE
12 PEOPLE. AND THEIR CUSTOMERS ARE NOT DOING BUSINESS
13 WITH THESE PEOPLE EITHER. IT'S JUST FURTHER DOWN
14 THE LINE.

15 SO WE'RE GOING TO SHOW YOU A SUMMARY OF
16 ALL OF THE ACTIONS THAT HAVE BEEN TAKEN ABOUT ALL
17 OF THE COMPLAINTS FROM LOUIS VUITTON.

18 COUNSEL SUGGESTED THAT THERE WAS A --
19 THAT NOTHING HAPPENED UNTIL THIS LAWSUIT WAS FILED,
20 BUT I THINK THE EVIDENCE WILL SHOW OTHERWISE
21 BECAUSE WHEN THIS LAWSUIT WAS FILED, THEY ACTUALLY
22 WERE COMPLAINING ABOUT ONLY FIVE IP OR DOMAINS.

23 AT THE TIME THE CASE WAS FILED, FOUR OF
24 THOSE DOMAINS WERE NO LONGER ON THEIR IP ADDRESSES.
25 AND THE FIFTH ONE WASN'T OPERATING AT ALL ON

1 ANYBODY'S SYSTEM.

2 SO WHAT THAT SHOWS IS THAT THE PREVIOUS
3 ACTION THAT THEY HAVE TAKEN, OBVIOUSLY HAD BEEN
4 EFFECTIVE BECAUSE IF THEY HAD BEEN THERE BEFORE,
5 NOW THEY'RE NOT THERE.

6 SO YOU'RE GOING TO SEE WHAT HAPPENED AND
7 THAT THEY WERE TAKING REASONABLE STEPS TO PREVENT
8 THIS.

9 YOUR HONOR, IF I MAY, THERE IS ALSO THIS
10 CHART. I HAVE SOME SMALLER COPIES FOR THE JURY IF
11 WE MAY DISTRIBUTE THEM AS WELL.

12 THE COURT: OH, PLEASE.

13 MR. LOWE: THIS IS EXHIBIT 1610. ONE OF
14 THE OTHER THINGS THAT WE NEED TO TALK ABOUT IS HOW
15 WEB SITES WORK IN A SENSE.

16 AND I HAVE ANOTHER CHART HERE TO
17 ILLUSTRATE THAT.

18 THE COURT: AND DO YOU HAVE A SMALLER
19 VERSION OF THAT AS WELL?

20 MR. COOMBS: I DO, YOUR HONOR. THIS IS
21 1611.

22 THE COURT: AGAIN, THESE ARE
23 DEMONSTRATIVE EXHIBITS HELPING YOU TO FOLLOW WHAT
24 COUNSEL IS CARRYING US THROUGH IN HIS OPENING
25 STATEMENT.

1 MR. LOWE: AND LOUIS VUITTON MALLETTIER IS
2 ACCUSING THE DEFENDANTS OF BEING A WEB HOST AND
3 THEY WANT TO SUGGEST, APPARENTLY, THAT THE
4 DEFENDANTS ARE RESPONSIBLE FOR THESE WEB SITES THAT
5 ARE SELLING COUNTERFEIT BAGS.

6 WHAT THIS EXHIBIT, THIS DEMONSTRATIVE
7 EXHIBIT ILLUSTRATES IS HOW -- THE PROCESS THAT YOU
8 HAVE TO GO THROUGH FOR SETTING UP A WEB SITE.

9 IF YOU WERE IN A BUSINESS OF NEEDING TO
10 SELL THINGS ON THE INTERNET, OBVIOUSLY THERE ARE
11 MANY, MANY LEGITIMATE WEB SITES AROUND THE WORLD.

12 AS I SAID, THERE ARE A HUNDRED MILLION OF
13 THEM ACTIVE AT THE PRESENT TIME AND ABOUT HALF A
14 BILLION WEB SITES HAVE BEEN SET UP OVER THE LAST 14
15 OR 15 YEARS. SOME OF THEM OR MANY OF THEM NOW ARE
16 INACTIVE.

17 SO IN ORDER TO SET UP A WEB SITE YOU HAVE
18 TO INSTALL SPECIAL SOFTWARE ON A SERVER. THIS IS
19 NOT SOFTWARE THAT THE DEFENDANTS PROVIDE.

20 THESE ARE ACTUALLY SPECIALIZED PACKAGES
21 OR MANY OF THEM, BUT THESE ARE PROVIDED BY SOMEONE
22 WHO IS WANTING TO SET UP A WEB SITE. YOU HAVE TO
23 GET THE SERVER AND THEN YOU HAVE TO INSTALL THIS
24 PACKAGE OVER AND ABOVE THE OPERATING SYSTEM.

25 AND THEN YOU HAVE TO GO TO A DOMAIN NAME

1 REGISTRAR AND YOU HAVE TO PAY AN ANNUAL FEE IN
2 ORDER TO HAVE THAT NAME REGISTERED.

3 AND THE DOMAIN NAME REGISTRAR IS THEN
4 GOING TO PASS THAT INFORMATION UP THE LINE THROUGH
5 THE INTERNET TO WHAT THEY CALL THE TOP LEVEL DOMAIN
6 REGISTRY.

7 AND ULTIMATELY THAT GOES TO THE GLOBAL
8 AUTHORITY WHICH HAPPENS TO BE ICANN WHICH IS
9 HEADQUARTERED IN SANTA MONICA. BUT THESE ARE THE
10 ORGANIZATIONS THAT ARE ASSIGNED DOMAIN NAMES. SO
11 IF YOU ARE GOING TO HAVE A WEB SITE, YOU HAVE TO
12 HAVE A DOMAIN NAME.

13 THIS HAS NOTHING TO DO WITH THE
14 DEFENDANTS WHATSOEVER. IN FACT, THE EVIDENCE WILL
15 SUGGEST THAT IF LOUIS VUITTON REALLY WANTED TO STOP
16 PROBLEMS WITH THESE PEOPLE BIGWORLDSHOES.COM, THEY
17 REALLY OUGHT TO PROBABLY TALK TO THE FOLKS WHO
18 REGISTERED THE DOMAIN NAME OR ONE OF THE OTHER
19 ORGANIZATIONS TO TERMINATE THE DOMAIN NAME.

20 BUT THE DEFENDANTS HAVE NOTHING TO DO
21 WITH ANY OF THIS OTHER THAN THEY HAVE A MACHINE.

22 NOW, THE THIRD THING YOU HAVE TO DO IF
23 YOU'RE GOING TO HAVE A WEB SITE, YOU HAVE TO
24 ACTUALLY PAY SOMEBODY FOR SEVERAL DIFFERENT THINGS.

25 THIS ILLUSTRATES, THIS PIECE RIGHT HERE,

1 THIS ILLUSTRATES STEP THREE, THE DEFENDANTS'
2 OPERATION.

3 THEY BUY MACHINES FROM MANUFACTURERS.
4 THEY GET ASSIGNED IP ADDRESSES FROM ARIN, AND THEY
5 HAVE TO BUY UPSTREAM PROVIDER BANDWIDTH. THEY THEN
6 COMBINE THIS AND THEN THEY SELL THAT OR LEASE IT OR
7 RENT IT, IF YOU WILL, ON A MONTHLY BASIS TO WHOEVER
8 IS OPERATING THE WEB SITE.

9 THEN THE WEB SITE OPERATOR HAS TO
10 REGISTER THE IP ADDRESS THAT IT GETS FROM THESE
11 FOLKS WITH A DOMAIN NAME REGISTRAR WHO THEN UPDATES
12 THE DOMAIN NAME RESOLVERS.

13 THEN THE WEB SITE SERVER UPLOADS THE
14 CONTENT TO THE ISP. THEN THEY CAN GET ON THE
15 INTERNET. BUT ALL SIX OF THESE STEPS ARE NECESSARY
16 IN ORDER TO OPERATE A WEB SITE.

17 AND THE ONLY THING THAT THE DEFENDANTS DO
18 IS SELL PACKAGES OF ACCESS HERE. THEY DON'T SELL
19 ANYTHING ELSE.

20 AND THE DEFENDANTS CANNOT, AS YOU'LL HEAR
21 THE EVIDENCE, STOP ANYBODY FROM HAVING THE WEB
22 SITE. THEY DON'T HOST THE WEB SITE. THEY DON'T
23 DEAL WITH THE PEOPLE WHO HAVE THE WEB SITE. THEY
24 JUST KEEP THE COMMUNICATIONS OPEN MUCH LIKE THE
25 TELEPHONE COMPANY DOES BUT AT A HIGHER TECH LEVEL.

1 SO YOU'RE GOING TO HEAR TESTIMONY IN THIS
2 CASE NOT ONLY FROM THE WITNESSES THAT PLAINTIFF'S
3 COUNSEL MENTIONED. BUT YOU'RE GOING TO HEAR FROM
4 MR. CHEN.

5 YOU'RE GOING TO HEAR FROM ANDREW CHENG
6 WHO WORKS FOR THE DEFENDANTS WHO WILL TALK ABOUT
7 HOW THESE SYSTEMS WORK IN THE COMPANY AND, FOR
8 EXAMPLE, IS THE AUTOMATED ORDER PROCESS HOW IT
9 WORKS IN THE COMPANY AND ROUTINELY HOW THIS HAPPENS
10 AND ROUTINELY THEY KEEP THIS AND SO ON.

11 YOU'RE GOING TO HEAR FROM A RETAINED
12 EXPERT FROM THE DEFENDANTS, RICHARD GRALNIK, WHO IS
13 GOING TO TESTIFY ABOUT HOW THE INTERNET WORKS AND
14 GO INTO WHAT I JUST TALKED ABOUT BECAUSE HE KNOWS A
15 LOT MORE ABOUT IT THAN I DO.

16 AND HE'S GOING TO TALK ABOUT THE METHODS
17 AND THINGS THAT ARE DONE BY THE DEFENDANTS TO DEAL
18 WITH COUNTERFEIT WEB SITE OPERATORS.

19 AT THE END OF THE TRIAL I THINK YOU'RE
20 GOING TO FIND THAT SEVERAL THINGS YOU LEARNED ABOUT
21 THE INTERNET, PERHAPS YOU DIDN'T KNOW BEFORE, AND
22 MORE THAN YOU WANTED TO KNOW PROBABLY.

23 BUT YOU'RE GOING TO FIND A LACK OF
24 EVIDENCE TO PROVE ELEMENTS NECESSARY TO PROVE THE
25 PLAINTIFF'S CASE. YOU'RE GOING TO FIND THERE'S NO

1 CONNECTION BETWEEN THE DEFENDANTS AND THE ALLEGED
2 INFRINGERS WHATSOEVER. YOU'RE GOING TO FIND THAT
3 THE DEFENDANTS DON'T KNOW WHO THE ALLEGED
4 INFRINGERS ARE AND CAN'T IDENTIFY THEM. THEY USE
5 FALSE NAMES AND WHATNOT.

6 YOU'RE GOING TO FIND THAT THERE'S NO
7 KNOWLEDGE ON THE PART OF THE DEFENDANTS ABOUT THIS
8 ACTIVITY UNTIL AND UNLESS LOUIS VUITTON MAKES A
9 SPECIFIC COMPLAINT THAT ON THIS, ON THIS DATE AND
10 ON THIS PARTICULAR ADDRESS, SOMEBODY IS SELLING A
11 BAG THAT WE DIDN'T AUTHORIZE.

12 ONE OF THE INTERESTING THINGS THAT YOU'RE
13 GOING TO FIND IS THAT THE PURCHASES THAT THEIR
14 INVESTIGATOR MADE OF FAKE BAGS, ET CETERA, WERE NOT
15 MADE THROUGH THE SERVERS OPERATED BY THE
16 DEFENDANTS.

17 YOU'RE PROBABLY ALL FAMILIAR WITH
18 ORDERING THINGS ON AMAZON OR THROUGH E-BAY OR
19 WHATEVER AND YOU'LL DECIDE WHAT YOU WANT, AND IT
20 PUTS IT INTO A SHOPPING CART. YOU HAVE YOUR CREDIT
21 CARD AND YOU MAKE A PURCHASE. AND THEN IT GETS
22 SHIPPED TO YOU. AND ALL OF THAT RUNS THROUGH THE
23 SERVER'S OPERATED BY AMAZON OR E-BAY OR ONE OF
24 THESE OTHER COMPANIES.

25 BUT THE COUNTERFEITERS DON'T WORK THAT

1 WAY. AND ONE OF THE REASONS THAT THEY DON'T WORK
2 THAT WAY IS I THINK THE EVIDENCE WILL SHOW IS THAT
3 THEY CAN'T BECAUSE THEY'RE ALWAYS MOVING AROUND.

4 IN ORDER TO HAVE A COMMERCE SITE, YOU
5 HAVE TO HAVE A SECURE WEB SITE AND YOU HAVE TO GET
6 A SECURITY CERTIFICATE FROM ANOTHER ORGANIZATION.

7 AND IF YOU'RE CONSTANTLY CHANGING YOUR IP
8 ADDRESSES AND YOU'RE MOVING AROUND EVERY FEW DAYS
9 OR EVERY WEEK OR TWO FROM ONE PLACE TO ANOTHER, YOU
10 CAN'T PHYSICALLY HAVE A SECURED WEB SITE SO YOU
11 CAN'T HAVE A COMMERCE SITE.

12 SO THEIR INVESTIGATOR, I BELIEVE, IS
13 GOING TO BE TESTIFYING THAT WHEN HE HAS MADE A BUY
14 AT THE REQUEST OF LOUIS VUITTON, HE JUST SEES SOME
15 PICTURES ON A WEB SITE AND DECIDES I WANT TO ORDER
16 SUCH AND SUCH A PRODUCT.

17 HE ESSENTIALLY JUST SENDS AN E-MAIL TO
18 SOMEBODY. WELL, IT'S NOT THE WEB SITE. HE DOESN'T
19 ACTUALLY SEND IT TO THE WEB SITE. HE SENDS IT TO
20 SOMEBODY ELSE, AN MSN OR A GMAIL OR SOMETHING LIKE
21 THAT. THERE'S A WEB SITE BEING USED BY THESE
22 OPERATORS JUST FOR THEIR E-MAIL.

23 THE COUNTERFEITERS THEN SEND A MESSAGE
24 BACK TO MR. HOLMES SAYING, "THANK YOU FOR YOUR
25 INTEREST. PLEASE SEND MONEY BY WESTERN UNION TO

1 SUCH AND SUCH AN ADDRESS IN CHINA." SOMEBODY HE
2 HAS NEVER HEARD OF AND NOT THE PEOPLE LISTED ON THE
3 WEB SITE BY THE WAY.

4 SO HE SENDS IT BY WESTERN UNION AND
5 EVENTUALLY YET A DIFFERENT PERSON IN CHINA SHIPS
6 HIM A PRODUCT VIA UPS OR SOME OTHER WAY. SO THIS
7 IS NOT THE TYPICAL ARRANGEMENT FOR SELLING
8 PRODUCTS. THIS IS ALL OUTSIDE OF THE ACTIVITIES OF
9 THESE DEFENDANTS.

10 THEY DON'T HAVE ANYTHING TO DO WITH
11 SELLING ANY OF THESE PRODUCTS. THEY DON'T MAKE ANY
12 MONEY ON IT. THEY DON'T MAKE THE PRODUCTS. THEY
13 DON'T ADVERTISE THE PRODUCTS. THEY DON'T DO
14 ANYTHING.

15 SO YOU'RE GOING TO FIND BASED UPON THE
16 EVIDENCE THAT YOU HEAR AND THE INSTRUCTIONS THAT
17 THE COURT WILL GIVE YOU THAT THERE'S NO EVIDENCE TO
18 SHOW THAT THE DEFENDANTS INDUCED OR CAUSED OR
19 CONTRIBUTED TO OR HELPED THE INFRINGEMENT OF ANY
20 COPYRIGHT OR TRADEMARK BY ANY OF THESE PEOPLE THAT
21 LOUIS VUITTON IS CONCERNED WITH.

22 AND THERE'S CERTAINLY NO REASON TO PUT
23 THEM OUT OF BUSINESS BECAUSE THEY HAPPEN TO BE
24 CONVENIENTLY LOCATED IN A PLACE HERE IN SAN JOSE
25 WITH HIGH TECH ABILITY TO GET PEOPLE ON THE

1 INTERNET.

2 SO AT THE END OF THE CASE WE WILL BE
3 ASKING FOR A VERDICT IN FAVOR OF THE DEFENDANTS.

4 THANK YOU.

5 THE COURT: WELL, WE'VE BEEN GOING NOW
6 FOR A BIT. WHY DON'T WE TAKE A BREAK BEFORE WE
7 CALL OUR FIRST WITNESS. IT'S ABOUT 2:15. WELL,
8 THESE CLOCKS ARE A LITTLE BIT DIFFERENT SO ABOUT
9 2:10. TAKE A TEN-MINUTE BREAK AND COME BACK AT
10 2:20 AND START WITH OUR FIRST WITNESS.

11 (WHEREUPON, A RECESS WAS TAKEN.)

12 (WHEREUPON, THE PROCEEDINGS IN THIS
13 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

14 MR. COOMBS: I HAVE ONE QUESTION. I WAS
15 PROPOSING TO QUESTION ABOUT THE HANDBAGS, BUT WE
16 WILL CONNECT UP WHEN MR. HOLMES TESTIFIED.

17 THE COURT: YOU CAN IDENTIFY IT AND GIVE
18 IT THE SAME NUMBER YOU USED WHEN YOU OFFER IT FOR
19 PURPOSES OF IDENTIFICATION, BUT, OF COURSE, ANY
20 WITNESS CAN, IF THEY HAVE KNOWLEDGE, TESTIFY ABOUT
21 ANY EVIDENCE, INCLUDING TANGIBLE EVIDENCE.

22 MR. COOMBS: THANK YOU, YOUR HONOR.

23 MR. LOWE: YOUR HONOR, IN THAT REGARD, IF
24 I MAY, AS YOU KNOW WE FILED A MOTION IN LIMINE
25 CONCERNING MR. LIVADKIN'S DESIGNATION FOR

1 COUNTERFEIT PRODUCTS WHICH REQUIRES TESTIMONY THAT
2 HE PROBABLY HAS EXPERTISE BUT HASN'T BEEN DISCLOSED
3 AS AN EXPERT UNDER RULE 26. AND HE PROPOSES TO
4 TESTIFY UNDER RULE 702 AS A LAY WITNESS, BUT I'D
5 LIKE AN OPPORTUNITY TO RAISE THAT ISSUE OR PERHAPS
6 VOIR DIRE MR. LIVADKIN ON THAT ISSUE.

7 THE COURT: AS TO WHETHER OR NOT HE CAN
8 IDENTIFY A PRODUCT AS BEING A GENUINE PRODUCT?

9 MR. LOWE: WELL, HOW HE WOULD IDENTIFY A
10 COUNTERFEIT PRODUCT MORE SPECIFICALLY.

11 THE COURT: WELL, I GUESS IF IT'S NOT
12 GENUINE THEN HE WOULD IDENTIFY IT AS NOT GENUINE.
13 SO PERHAPS RATHER THAN USING THE TERM "COUNTERFEIT"
14 WHICH HAS TO DO WITH THE DELIBERATE EFFORT FOR
15 CREATING FOR PASSING IT OFF, HE CAN SAY THAT THIS
16 IS NOT A GENUINE, ANY OWNER CAN IDENTIFY HIS OR HER
17 OWN PROPERTY AND IF HE'S AUTHENTICATED AS SOMEONE
18 WHO IS KNOWLEDGEABLE ABOUT LOUIS VUITTON PRODUCTS
19 CAN SAY THAT THIS IS NOT A GENUINE LOUIS VUITTON
20 PRODUCT.

21 MR. LOWE: YOUR HONOR, I APPRECIATE THAT.
22 MY POINT, HOWEVER, IS THAT THE BASIS OF HIS
23 TESTIMONY IS GOING TO BE SOME EXTREMELY DETAILED
24 KNOWLEDGE THAT HE HAS THAT IS NOT GENERALLY KNOWN
25 AND NOT SOMETHING THAT THE JURY WOULD UNDERSTAND

1 AND THEY'RE GOING TO REALLY HAVE TO TAKE HIS WORD
2 FOR THE FACT THAT THIS IS NOT A GENUINE PRODUCT.

3 IT'S REALLY IN THE NATURE OF EXPERT
4 TESTIMONY BASED UPON VERY SPECIALIZED KNOWLEDGE,
5 BASED UPON HIS WORK IN THE FIELD, BUT THERE ARE
6 VERY TINY DIFFERENCES, FOR EXAMPLE, IN MANY OF
7 THESE PRODUCTS.

8 IT MAY BE AN ISSUE OF JUST ONE STITCH IN
9 THE WRONG PLACE THAT ARE NOT OBVIOUS AND I THINK --

10 THE COURT: I'LL ALLOW YOU TO DO THAT ON
11 CROSS-EXAMINATION, BUT I WON'T REQUIRE THAT HE BE
12 VOIR DIRE ON THAT AS A FOUNDATION FOR HIS
13 IDENTIFYING WHETHER OR NOT IT'S A GENUINE PRODUCT
14 AS LONG AS THE FOUNDATION IS LAID THAT HE'S
15 KNOWLEDGEABLE ABOUT LOUIS VUITTON GENUINE PRODUCTS.

16 MR. COOMBS: UNDERSTOOD, YOUR HONOR.
17 THANK YOU.

18 THE COURT: SUMMON THE JURY.

19 (WHEREUPON, THE FOLLOWING PROCEEDINGS
20 WERE HELD IN THE PRESENCE OF THE JURY:)

21 THE COURT: VERY WELL. THE JURY HAS
22 RETURNED. THE PLAINTIFF MAY CALL THEIR FIRST
23 WITNESS.

24 MR. COOMBS: VERY WELL. THE PLAINTIFF
25 CALLS NIKOLAY LIVADKIN.

1 THE CLERK: WOULD YOU PLEASE RAISE YOUR
2 RIGHT HAND.

3 NIKOLAY LIVADKIN,
4 BEING CALLED AS A WITNESS ON BEHALF OF THE
5 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED
6 AND TESTIFIED AS FOLLOWS:

7 THE WITNESS: YES.

8 THE CLERK: WOULD YOU PLEASE STATE YOUR
9 FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

10 THE WITNESS: NIKOLAY LIVADKIN,
11 L-I-V-A-D-K-I-N.

12 THE COURT: WE'RE GOING TO ADJUST THE
13 VOLUME ON YOUR MICROPHONE SO WE CAN HEAR YOU
14 BETTER, BUT LET'S GO AHEAD AND WE CAN DO IT AS WE
15 GO.

16 **DIRECT EXAMINATION**

17 BY MR. COOMBS:

18 Q MR. LIVADKIN, BY WHOM ARE YOU EMPLOYED?

19 A I'M EMPLOYED BY LOUIS VUITTON IN JUST A FEW
20 WORDS. I APOLOGIZE FOR MY ACCENT AND PLEASE DO
21 INTERRUPT ME IF YOU DON'T UNDERSTAND WHAT I'M
22 SAYING.

23 Q FOR HOW LONG HAVE YOU BEEN EMPLOYED BY LOUIS
24 VUITTON?

25 A I HAVE BEEN EMPLOYED BY LOUIS VUITTON SINCE

1 NOVEMBER 2002.

2 Q AND WHERE DO YOU WORK?

3 A AND I WORK IN PARIS.

4 Q SO ENGLISH IS YOUR SECOND LANGUAGE?

5 A WELL, ACTUALLY ENGLISH IS MY THIRD LANGUAGE.

6 Q EXCUSE ME. WHAT IS YOUR POSITION WITH LOUIS
7 VUITTON?

8 A I'M IN-HOUSE COUNSEL. I WORK IN THE
9 INTELLECTUAL PROPERTY DEPARTMENT OF LOUIS VUITTON.

10 NOW, WHAT IS THIS INTELLECTUAL PROPERTY
11 DEPARTMENT?

12 THE COURT: WELL, YOU WEREN'T ASKED THAT
13 QUESTION. LET HIM ASK THE QUESTIONS.

14 BY MR. COOMBS:

15 Q AND IS THAT THE POSITION THAT YOU HAVE HAD
16 SINCE YOU OCCUPIED THE POSITION WITH LOUIS VUITTON
17 SINCE 2002?

18 A YES.

19 Q AND CAN YOU PLEASE DESCRIBE YOUR
20 RESPONSIBILITY AS IN-HOUSE COUNSEL FOR
21 RESPONSIBILITY FOR INTELLECTUAL PROPERTY?

22 A SO I WORK THE INTELLECTUAL PROPERTY DEPARTMENT
23 WHO REGISTERS AND MAINTAINS VARIOUS RIGHTS SUCH AS
24 TRADEMARKS AND COPYRIGHTS AND WITHIN THIS
25 DEPARTMENT I HAD A TEAM OF FOUR PEOPLE, THREE

1 LAWYERS AND ONE ATTORNEY INCLUDING MYSELF DEALING
2 SPECIFICALLY WITH INTERNET ISSUES.

3 Q AND CAN YOU DESCRIBE THE KIND OF INTERNET
4 ISSUES WITH WHICH YOU DEAL?

5 A THE AREAS WHERE WE INTERVENE ARE SEVERAL.
6 FIRST WE WOULD DO AN ENFORCEMENT ACTIONS ON
7 STAND-ALONE WEB SITES, WEB SITES DEDICATED TO THE
8 SELL OF COUNTERFEIT LOUIS VUITTON MERCHANDISE.

9 WE WOULD ALSO IN THE SAME RECORDS TO
10 E-COMMERCE PLATFORMS WHERE COUNTERFEITS ARE SOLD.

11 WE ALSO MANAGE A LARGE PORTFOLIO OF
12 DOMAIN NAMES, AROUND 800.

13 WE ALSO DEAL WITH GOVERNMENT RELATIONS
14 AND LOBBYING.

15 AND LAST BUT NOT LEAST, WE WOULD ADVISE
16 INTERNAL CLIENTS WITHIN THE COMPANY SUCH AS THE
17 E-COMMERCE DEPARTMENT.

18 Q YOU USED THE TERM E-COMMERCE PLATFORMS IN YOUR
19 ANSWER. COULD YOU DEFINE FOR THE JURY WHAT YOU'RE
20 REFERRING TO?

21 A E-COMMERCE PLATFORMS WOULD BE A KNOWN LIKE
22 VENUE WHERE SELLERS AND BUYERS CAN MEET AND
23 TRANSACT WITH THE PURPOSE OF SELLING GOODS OR EVEN
24 SERVICES.

25 Q AND CAN YOU IDENTIFY A COUPLE BY WAY OF

1 EXAMPLES?

2 A E-BAY AS THE FIRST PLACE SPECIALIZING IN
3 AUCTIONS. THERE WOULD ALSO BE AMAZON WHERE GOODS
4 ARE SOLD AT FIXED PRICES.

5 Q AND FOCUSING ONLY ON YOUR ENFORCEMENT
6 RESPONSIBILITIES AS IT RELATES TO STAND-ALONE WEB
7 SITES AND E-COMMERCE PLATFORMS, CAN YOU GIVE US AN
8 IDEA OF HOW MANY NEW FILES A MONTH YOUR OFFICE
9 OPENS TO ADDRESS SUCH ISSUES?

10 A WE DEAL WITH SEVERAL HUNDREDS OF NEW MATTERS
11 EVERY MONTH.

12 Q AND CAN YOU IDENTIFY OUT OF THOSE SEVERAL
13 HUNDRED, APPROXIMATELY HOW MANY INVOLVE STAND-ALONE
14 WEB SITES?

15 A AROUND 100 PLUS OF THESE NEW MATTERS ARE NEAR
16 STAND-ALONE WEB SITES DEDICATED TO COUNTERFEIT
17 SALES.

18 Q AND WHEN YOU REFER TO STAND-ALONE WEB SITES
19 YOU'RE TALKING ABOUT DISTINCT TO DOMAIN NAMES?

20 A I WOULD SAY THAT THEY WERE MR. COOMBS
21 MENTIONED THAT WOULD BE WEB SITES THAT WE WOULD
22 TYPICALLY DEAL WITH.

23 Q AND HOW HAS YOUR ENFORCEMENT WITH THE INTERNET
24 CONNECTION CHANGED SINCE YOU WERE HIRED IN 2002?

25 A WHEN I WAS HIRED IN 2002 I WAS DEALING WITH

1 THESE ISSUES ALONE. UNFORTUNATELY THE AMOUNT OF
2 ISSUES THAT COMPANIES WERE FACING IN REGARDS TO
3 VIOLATION OF ITS INTELLECTUAL PROPERTIES IS GROWING
4 TREMENDOUSLY. SO WE SIZE UP THE TEAM AND CURRENTLY
5 WE ARE FOUR PEOPLE FULLY DEDICATED ON THAT, AND I'M
6 HEADING THIS TEAM.

7 Q AND HAS THE VOLUME OF ENFORCEMENT ACTIVITY
8 THAT YOUR OFFICE HANDLED CHANGED DURING THAT TIME?

9 A YES.

10 Q AND CAN YOU DESCRIBE IN THE WAY IN WHICH THAT
11 HAS CHANGED?

12 A WELL, WE ARE SENDING -- WE ARE OPENING MORE
13 AND MORE FILES EVERY MONTH. WE ARE SENDING MORE
14 AND MORE WARNING LETTERS, AND WE NEED TO DEAL WITH
15 MORE AND MORE SOPHISTICATED ISSUES WITH THE
16 DEVELOPMENT OF THE TECHNOLOGY, WITH THE NEW WAYS TO
17 DISTRIBUTE THE NEW COUNTERFEIT PRODUCTS AND MORE
18 AND MORE SOPHISTICATED ISSUES.

19 Q IS THERE A DEVELOPMENT IN THE AMOUNT OF
20 E-COMMERCE ISSUES THAT YOUR OFFICE DEALS WITH
21 SPECIFICALLY, E-COMMERCE PLATFORM ISSUES LIKE E-BAY
22 AND AMAZON?

23 A YES. WELL, CONCERNING E-BAY SPECIFICALLY UP
24 TO 2006 THE AMOUNT OF AUCTIONS THAT WE HAD TO
25 MONITOR AND SEND AND TAKE DOWN NOTICES TO E-BAY TO

1 REMOVE COUNTERFEIT GOODS, THE NUMBER OF THESE
2 AUCTIONS BECAME SO IMPORTANT AND IT WAS SO
3 UNBEARABLE TO US THAT WE WERE FORCED TO FILE A
4 LAWSUIT AGAINST E-BAY AND --

5 MR. LOWE: EXCUSE ME. EXCUSE ME. YOUR
6 HONOR, I WOULD OBJECT. THIS IS NOT RELEVANT AND
7 POTENTIALLY IT'S PREJUDICIAL.

8 THE COURT: SUSTAINED.

9 BY MR. COOMBS:

10 Q DOES LOUIS VUITTON COOPERATE WITH OTHER LUXURY
11 BRANDS IN CONNECTION WITH ITS ONLINE ENFORCEMENT
12 EFFORTS?

13 A YES, IT DOES.

14 Q CAN YOU IDENTIFY SOME OF THEM FOR US?

15 A LOUIS VUITTON COOPERATES WITH MOST OF THE
16 OTHER BRANDS OF THE LUXURY INDUSTRY WITH COMPANIES
17 SUCH AS CHANNEL, CHRISTIAN DIOR, BURBERRY, PRADA,
18 GUICCI.

19 Q AND WHY DOES IT COOPERATE WITH THOSE COMPETING
20 BRANDS IN THE ENFORCEMENT ARENA?

21 A WELL, COUNTERFEITING IS A GLOBAL ISSUE. ALL
22 OF THESE COMPANIES ARE FACING THE SAME ISSUES AS WE
23 DO AND ALSO NOT ONLY FROM THE LUXURY INDUSTRY BUT
24 FROM OTHER INDUSTRIES. WE ALSO COOPERATE WITH SUCH
25 BRANDS SUCH AS NIKE AND ALSO WITH BRANDS FROM THE

1 CORPORATE INDUSTRY WHICH IS MICROSOFT.

2 IT'S A GLOBAL PHENOMENON, AND IT REQUIRES
3 GLOBAL ACTION. OBVIOUSLY WORKING TOGETHER IT ALSO
4 SAVES US COST BUT MORE COMPETITION.

5 Q DOES LOUIS VUITTON TAKE ANY INTERNET -- STRIKE
6 THAT.

7 DOES LOUIS VUITTON PARTICIPATE IN ANY
8 TRADE ASSOCIATIONS THAT ARE ALSO CONCERNED WITH
9 ONLINE ENFORCEMENT?

10 A LOUIS VUITTON DOES. WE ARE A MEMBER OF THE
11 INTERNATIONAL TRADEMARK ASSOCIATION WHICH IS ONE OF
12 THE, I THINK IT'S THE LARGEST, WITH THE
13 INTERNATIONAL ANTI-COUNTERFEITING COALITION; THE
14 EUROPEAN BRUSSELS BASED ASSOCIATION; DENMARK; AIM;
15 WITH THE FRENCH UNION; WITH THE CHINESE QUALITY
16 BRAND PROTECTION COALITION AND MANY OTHERS.

17 Q NOW, YOU MENTIONED EARLIER THAT YOU WERE
18 ENGAGED IN SOME LOBBYING EFFORTS. COULD YOU
19 BRIEFLY DESCRIBE THOSE LOBBYING EFFORTS FOR US?

20 MR. LOWE: YOUR HONOR, I'M GOING TO
21 OBJECT TO THIS. I THINK THIS HAS NO RELEVANCE
22 EITHER.

23 THE COURT: SUSTAINED.

24 BY MR. COOMBS:

25 Q DURING THE COURSE OF YOUR EMPLOYMENT WITH

1 LOUIS VUITTON HAVE YOU RECEIVED TRAINING THAT
2 ASSISTS YOU IN THE IDENTIFICATION OF NONGENUINE
3 MERCHANDISE?

4 A I HAVE. AT THE TIME WHEN I JOINED THE COMPANY
5 I WENT THROUGH A VERY EXPENSIVE TRAINING PROGRAM.
6 THIS TRAINING IS UPDATED REGULARLY WITH THE RELEASE
7 OF NEW LINES AND NEW PRODUCTS.

8 Q AND WHO IS IT THAT PROVIDES THAT ADDITIONAL
9 TRAINING AND INFORMATION?

10 A THE INITIAL TRAINING WAS PROVIDED BY PEOPLE
11 WITHIN MY DEPARTMENT AND THE UPDATES ARE MOST OF
12 THE TIMES PROVIDED BY OUR MARKET.

13 Q AND DO YOU PROVIDE DISTRIBUTION OF ANY WRITTEN
14 MATERIAL REGARDING THE AUTHENTIC MERCHANDISE OR
15 ANYTHING THAT ASSISTS YOU IN THE RECOGNIZING
16 NONAUTHENTIC MERCHANDISE?

17 A YES.

18 Q AND COULD YOU TELL US ABOUT THAT?

19 A AND WE RECEIVED THAT INFORMATION THAT WAS
20 RELEASED.

21 Q AND WHERE DOES THAT COME FROM?

22 A FROM THE MARKETING DEPARTMENT.

23 Q AND HAVE YOU EVER VISITED LOUIS VUITTON'S
24 MANUFACTURING FACILITY?

25 A YES, I HAVE.

1 Q AND HOW MANY TIMES?

2 A SEVERAL TIMES.

3 Q AND YOU OBSERVED THE PRODUCTION OF THE
4 MERCHANDISE AT THE FACILITIES?

5 A YES.

6 Q AND HAVE YOU VISITED THE DISTRIBUTION CENTER
7 OF THE DISTRIBUTION FACILITY?

8 A YES.

9 Q AND YOU DEALT WITH THE PEOPLE AT THE
10 DISTRIBUTION CENTER?

11 A YES.

12 Q AND AS A RESULT YOU HAVE DEALT WITH THE PEOPLE
13 AT THE DISTRIBUTION CENTER?

14 A ABSOLUTELY.

15 Q DO YOU RECEIVE ADVERTISING AND MARKETING
16 MATERIAL PUBLISHED BY LOUIS VUITTON?

17 A YES, WE -- OUR DEPARTMENT ACTUALLY EVEN
18 PARTICIPATES INTO THE CREATION OF THESE DOCUMENTS.

19 WE WOULD -- FOR EXAMPLE, WORK ON THE
20 CONTRACT WITH THE -- IF THE ADVERTISING MATERIAL IS
21 WITH SOME ARTIST OR A MODEL, WE WOULD DEAL WITH THE
22 CONTRACT.

23 Q WHEN DID LOUIS VUITTON START DOING BUSINESS?

24 A LOUIS VUITTON STARTED DOING BUSINESS IN 1854,
25 MORE THAN 150 YEARS AGO.

1 Q AND WHAT WAS THE NATURE OF HIS BUSINESS WHEN
2 IT FIRST STARTED?

3 A WHEN IT STARTED, IT STARTED AS A FAMILY
4 BUSINESS, THE FOUNDER OF THE COMPANY LOUIS VUITTON
5 WAS IN THE BUSINESS OF MANUFACTURING TRUNKS AND
6 MANY OTHER TRAVEL RELATED ACCESSORIES.

7 Q AND HOW HAS THE BUSINESS LINE OF LOUIS VUITTON
8 CHANGED OR AT ALL SINCE IT WAS FIRST FORMED IN
9 1854?

10 A WELL, THE DEVELOPMENT OF LOUIS VUITTON AT THE
11 TIME OF ITS COMPANY AT THE TIME WAS A FAVORITE BY
12 THE DEVELOPMENT OF MODERN TRANSPORTATION MEANS. IN
13 THE SECOND HALF OF THE 19TH CENTURY ALREADY TRAIN
14 LIGHTS WERE CROSSING EUROPE LINKING PARIS TO
15 ISTANBUL TO MOSCOW AND EVEN THE FAR EAST.

16 THE FIRST HALF OF THE 20TH CENTURY WAS
17 THE BEGINNING OF THE GOLDEN AGE OF STEAMBOAT
18 CRUISES AND MANY PEOPLE WERE TAKING BOATS FROM
19 FRANCE OR FROM ENGLISH TO REACH NEW YORK, BUENOS
20 AIRES, RIO DE JANEIRO. THAT'S WHERE LONG TRIPS THAT
21 WOULD LAST SEVERAL DAYS AND SEVERAL WEEKS EVEN FOR
22 THE BOAT TRIPS.

23 THE '30S -- IN THE '30S THERE WERE
24 ALREADY PEOPLE TRAVELLING BY PLANES AND, OF COURSE,
25 CARS.

1 ALL OF THIS REQUIRED VERY HIGH QUALITY
2 ACCESSORIES ALLOWING THESE PEOPLE TO TRANSPORT
3 THEIR BELONGINGS AND FOR PEOPLE WHO ARE CROSSING
4 THE OCEAN FOR SEVERAL WEEKS SOME OF THEM WERE
5 TRAVELLING WITH MOST OF THEIR BELONGINGS.

6 SO LOUIS VUITTON WOULD OFFER THOSE PEOPLE
7 VERY HIGH QUALITY TRUNKS AND LUGGAGE TO TRANSPORT
8 THEIR BELONGINGS.

9 THEY HAD TO BE RESISTANT TO HUMIDITY, TO
10 SHOCKS AND --

11 Q AND HAS THE BUSINESS GROWN BEYOND THE TRAVEL
12 RELATED ACCESSORIES THAT YOU HAVE DESCRIBED?

13 A YES, IT HAS ACTUALLY. TODAY LOUIS VUITTON IS
14 KNOWN MORE AS A FASHION, A GLOBAL FASHION BRAND.
15 IN THE LATE '90S LOUIS VUITTON HIRED THE VERY
16 WELL-KNOWN AMERICAN DESIGNER MARC JACOBS WHO
17 INTRODUCED NEW LINES OF WOMEN'S CLOTHING AND LATER
18 IN 2000 MEN'S CLOTHING BUT ALSO SHOES, JEWELRY,
19 WATCHES.

20 Q AND WHEN DID LOUIS VUITTON FIRST RUN INTO AN
21 ISSUE WITH THE COUNTERFEITING OF ITS MARKS?

22 A WELL, DUE TO THE SUCCESSFUL NATURE OF THE
23 BUSINESS AND THE SUCCESS OF LOUIS VUITTON'S
24 PRODUCTS, THEY WERE ALREADY AT THE END OF THE 19TH
25 CENTURY, THERE WERE PEOPLE TRYING TO IMITATE THOSE

1 PRODUCTS AND SELLING COMPETING COUNTERFEITS.

2 FOR THIS REASON THE SON OF THE FOUNDER OF
3 THE COMPANY MR. GEORGE PITTON CREATED THE FAMOUS
4 MONOGRAM CANVASS, AND IT'S A CANVASS COMPRISED BY
5 THE INITIALS OF LOUIS VUITTON, THE INTERLOCKING
6 LETTERS L AND V AND AS WELL AS THREE FLOWER
7 DEVICES.

8 THE PURPOSE OF THIS MONOGRAM CANVASS WAS
9 TO DIFFERENTIATE LOUIS VUITTON'S PRODUCTS FROM
10 OTHER PRODUCTS THAT WERE TRYING TO IMITATE THEM.

11 Q I'D LIKE TO SHOW THE WITNESS EXHIBIT 175.1 AND
12 ASK HIM TO TELL US WHAT IT IS AND WHETHER IT'S THE
13 MONOGRAM DEVICE HE JUST DESCRIBED TO US.

14 THE COURT: DID YOU SAY 175.1? SO WE'RE
15 GOING TO HAVE A FEW DECIMALS?

16 MR. COOMBS: YES, YOUR HONOR.

17 THE COURT: VERY WELL. AS LONG AS WE'RE
18 CLEAR ABOUT IT.

19 THE WITNESS: THIS IS A BUM BAG. IT'S
20 MADE OF MONOGRAMMED CANVASS. AS YOU CAN SEE IT HAS
21 THE INTERLOCKING L AND V AS WELL AS THE THREE
22 FLOWER DEVICES. THIS ONE CANVASS WAS FIRST
23 REGISTERED AS A TRADEMARK IN 1905.

24 AND THREE YEARS LATER IN 1908 IT WAS
25 CONDUCTED THE FIRST LEGAL ACTION AGAINST THE

1 COUNTERFEITER WHICH LED ULTIMATELY TO SENTENCING
2 THIS COUNTERFEITER.

3 BY MR. COOMBS:

4 Q AND THE MONOGRAMMED DEVICES IS TYPICALLY THE
5 SAME COLOR DEVICES AS INDICATED ON EXHIBIT 175.1?

6 A YES.

7 Q AND HAS LOUIS VUITTON REGISTERED FOR TRADEMARK
8 PROTECTION FOR THAT DEVICE IN THE UNITED STATES?

9 A YES, IT HAS.

10 Q HAS IT REGISTERED FOR THAT PROTECTION IN ONE
11 CLASS OF GOODS OR MULTIPLE CLASS OF GOODS?

12 A THE TRADEMARK IS REGISTERED IN MOST OF THE
13 CLASSES OF GOODS WHICH LOUIS VUITTON SELLS GOODS.

14 Q AND WHICH ARE THE MOST CLASSES THAT LOUIS
15 VUITTON SELLS?

16 A THAT WOULD BE LOUIS VUITTON SUITCASES, BAGS,
17 CLOTHING, SHOES, JEWELRY, WATCHES.

18 Q DOES LOUIS VUITTON HAVE OTHER TRADEMARKS IN
19 ITS PORTFOLIO?

20 A IT HAS.

21 Q AND CAN YOU DESCRIBE THOSE FOR US?

22 A THE MAIN TRADEMARK. THE DAMIER PATTERN
23 DESIGN. IT IS THE INTERLOCKING L AND V. EACH
24 INDIVIDUAL ONE OF THE THREE FLORAL DEVICES FROM THE
25 MONOGRAM CANVASS THAT ARE THE LV AND TRADEMARK.

1 THE COURT: IT'S PROBABLY GOING TO BE
2 MORE PRODUCTIVE TO DO THIS WHEN WE HAVE THE
3 TRADEMARKS HERE RATHER THAN TO REPEAT THIS WITH THE
4 TESTIMONY.

5 MR. COOMBS: YOUR HONOR -- ACTUALLY IF
6 YOU COULD PULL UP THE EXHIBIT 451 AND I'LL ASK THE
7 WITNESS -- OH, I'LL ASK THE WITNESS TO TAKE A LOOK.

8 Q LOUIS VUITTON HAS REGISTERED FOR TRADEMARK
9 PROTECTION IN EACH OF THESE EXHIBITS THAT YOU HAVE
10 DESCRIBED?

11 A YES.

12 Q AND YOU'RE LOOKING AT EXHIBIT 451 ON THE
13 SCREEN NOW. WELL, WHILE WE'RE PULLING THAT UP, LET
14 ME SHOW YOU EXHIBIT 175.

15 THE COURT: IT LOOKS LIKE YOU HAVE 451
16 BEING DISPLAYED NOW TO THE JURY.

17 MR. COOMBS: OKAY. I'LL TURN TO 451
18 FIRST THEN, YOUR HONOR.

19 Q CAN YOU TELL US FIRST WHAT 451 IS?

20 A THIS WOULD BE A TRADEMARK REGISTRATION, U.S.
21 TRADEMARK REGISTRATION.

22 Q FOR WHAT TRADEMARK?

23 A CAN YOU -- YES. THAT WOULD BE THE TRADEMARK
24 REGISTRATION FOR THE CANVASS.

25 Q AND SO THE INTERLOCKING LV AND THE FLORAL IS

1 THE MONOGRAM?

2 A YES.

3 Q AND THAT IS REGISTERED WHICH TRADEMARK
4 ACCORDING TO THIS CERTIFICATE?

5 A FOR CLOTHING FOR MEN AND WOMEN, NAMELY,
6 SHAWLS, SCARVES, SASHAYS, HEADGEAR.

7 MR. COOMBS: I WOULD LIKE TO MOVE THIS
8 451 INTO EVIDENCE.

9 THE COURT: SURE. I ASSUME ANY DOCUMENT
10 YOU SHOW IS IN BY STIPULATION, AND YOU SHOULD MEET
11 AND CONFER BECAUSE ONCE THE JURY SEES IT, IT WOULD
12 BE HARD FOR THE JURY TO IGNORE IT.

13 SO ANYTHING YOU SHOW AS YOU PROPOSE TO
14 SHOW IT YOU'RE ALERTED TO MAKE AN OBJECTION AS HE
15 CALLS OUT THE EXHIBIT NUMBER IF THERE'S ANY PROBLEM
16 WITH IT COMING IN AND I'LL CONSIDER ANYTHING THAT
17 YOU HAVE SHOWN AS BEING IN EVIDENCE UNLESS THERE IS
18 AN OBJECTION.

19 SO 451 IS IN EVIDENCE.

20 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 451,
21 HAVING BEEN PREVIOUSLY MARKED FOR
22 IDENTIFICATION, WAS ADMITTED INTO
23 EVIDENCE.)

24 MR. COOMBS: THANK YOU, YOUR HONOR. DOES
25 THAT MEAN THAT I DO NOT NEED TO MAKE THE MOTION?

1 THE COURT: THAT'S CORRECT. WE WILL
2 CONSIDER THAT ANY DOCUMENTS THAT EITHER SIDE SIMPLY
3 HAS PROFFERED TO EACH OTHER AS BEING AUTHENTICATED
4 AND IN EVIDENCE ONCE DISPLAYED TO THE JURY IS IN
5 EVIDENCE AS LONG AS THERE'S A WITNESS WHO SAYS,
6 YES, THAT'S EXHIBIT 451 AND DESCRIBE WHAT IT IS.

7 MR. COOMBS: THANK YOU, YOUR HONOR.

8 THE COURT: AND THERE IS A REGISTRATION
9 NUMBER WHICH I TAKE THE LAST THREE DIGITS TO BE 131
10 IN CASE THERE ARE OTHERS BECAUSE WE MAY NEED TO
11 DIFFERENTIATE.

12 MR. COOMBS: I GUESS WHILE WE'RE ON THE
13 CERTIFICATES, LET'S PULL UP EXHIBIT 452.

14 Q AND I'LL ASK THE WITNESS TO IDENTIFY IT.

15 A THIS IS A TRADEMARK REGISTRATION FOR THE LV
16 LOGO TRADEMARK ISSUED BY THE U.S. PATENT OFFICE IN
17 INTERNATIONAL CLASSES 16 AND 25.

18 Q AND CLASS 25 IS FOR CLOTHING AND HEADGEAR.

19 THE COURT: I WOULD HAVE YOU GO TO WHAT
20 HAS THE TRADEMARK ON IT AS OPPOSED TO THE -- I WAS
21 ASKING THE TECHNICIAN TO FLIP THROUGH THE PAGE.

22 AS YOU'RE SEEING, MEMBERS OF THE JURY,
23 THESE ARE MATTERS THAT COME INTO EVIDENCE BECAUSE
24 THEY ARE OFFICIAL DOCUMENTS WHICH HAS A BASIS FOR
25 COMING INTO EVIDENCE.

1 AND IN EACH CASE YOU'LL SEE A CERTIFICATE
2 PAGE WHICH IS A COVER TO THE REGISTRATION AND THEN
3 THERE'S A SECOND PAGE WHICH WILL HAVE THE ACTUAL
4 TRADEMARK OR TRADE NAME OR OTHER MATTER THAT IS THE
5 SUBJECT OF THE CERTIFICATES.

6 SO WHAT I'M ASKING IS THAT ALTHOUGH
7 BRIEFLY YOU CAN DISPLAY THE FIRST PAGE, THAT WON'T
8 BE AS INFORMATIVE TO US AS THE SECOND. SO WE
9 SHOULD QUICKLY GO TO THE SECOND JUST TO MOVE US
10 ALONG.

11 MR. COOMBS: IN THE INTEREST OF TIME,
12 YOUR HONOR, I'M GOING TO PRESENT THE WITNESS WITH
13 EXHIBITS 453 THROUGH 465. I'LL GIVE HIM THE
14 CERTIFICATES THEMSELVES AND IT MAY SPEED THINGS UP.

15 THE COURT: VERY WELL.

16 THE WITNESS: EXHIBIT.

17 BY MR. COOMBS:

18 Q NO. IN THE INTEREST OF TIME IF YOU WOULD
19 JUST, WHAT YOU STARTED TO DO IS TO INDICATE THE
20 EXHIBIT NUMBER, DESCRIBE WHAT TRADEMARK IT RELATES
21 TO AND WHAT CLASSES OF GOODS ARE REFERENCED IN THE
22 REGISTRATION.

23 A EXHIBIT --

24 THE COURT: AND I WILL ASK, SO THE JURY
25 AND I CAN APPRECIATE WHAT HE'S DOING, IS AS HE

1 CALLS THE NUMBER YOU SIMPLY DISPLAY IT ON THE
2 SCREEN, AND WE'LL PROCEED THAT WAY AND THAT WAY WE
3 CAN SEE WHAT HE'S REFERRING TO.

4 BY MR. COOMBS:

5 Q SO TAKE IT SLOWLY.

6 THE COURT: NO, I'M TRYING TO SPEED IT
7 UP.

8 THE WITNESS: ALL RIGHT. I'LL BE QUICK.
9 EXHIBIT 453 IS A TRADEMARK REGISTRATION CERTIFICATE
10 FOR THE LOUIS VUITTON WORD MARK IN INTERNATIONAL
11 CLASSES 16 AND 18.

12 AND CLASS 18 BEING THE MOST IMPORTANT FOR
13 THE CORE BUSINESS OF LOUIS VUITTON WHICH IS THE
14 TRAVELLING BAGS, TRUNKS, SUITCASES.

15 BY MR. COOMBS:

16 Q AND ESSENTIALLY LEATHER GOODS; CORRECT?

17 A PARDON?

18 Q ESSENTIALLY LEATHER GOODS?

19 A YES. EXHIBIT 454 IS A TRADEMARK REGISTRATION
20 CERTIFICATE FOR THE LOUIS VUITTON WORD MARK IN
21 CLASSES 14, 16, 18, 24, AND 25.

22 EXHIBIT 455 IS A TRADEMARK REGISTRATION
23 FOR THE LV LOGO IN INTERNATIONAL CLASSES 34.

24 EXHIBIT 456 IS A U.S. TRADEMARK
25 REGISTRATION CERTIFICATE FOR THE LOUIS VUITTON WORD

1 MARK IN CLASS 34.

2 Q I'M SORRY. AND CLASS 34 IS WHICH TYPE OF
3 MERCHANDISE? I THINK IT'S THE FIRST TIME YOU
4 MENTIONED.

5 A WELL, THE LIST OF GOODS IS QUITE LONG. I CAN
6 READ IT.

7 Q I DON'T NEED YOU TO READ THE LIST. IF YOU
8 COULD CHARACTERIZE IT BRIEFLY.

9 A CIGAR CASES AND PRECIOUS METAL, CIGAR CUTTERS
10 AND CIGARETTE AND CIGARETTE HOLDERS NOT OF PRECIOUS
11 METAL.

12 NEXT EXHIBIT 457 IS A U.S. TRADEMARK
13 REGISTRATION CERTIFICATE FOR THE LV LOGO TRADEMARK
14 IN INTERNATIONAL CLASS 18 FOR TRUNKS, SUITCASES,
15 TRAVELLING BAGS, HAT BOXES, SHOE BOXES, USED FOR
16 LUGGAGE, HANDBAGS, POCKET BOOKS.

17 NEXT EXHIBIT 458 IS A U.S. TRADEMARK
18 REGISTRATION CERTIFICATE FOR THE MONOGRAM CANVASS
19 TRADEMARK IN CLASS 16. THAT WOULD BE FOR PAPER AND
20 CARDBOARD ARTICLES, OFFICE REQUISITES IN THE NATURE
21 OF WRITING PENS.

22 NEXT IS EXHIBIT 459 IS A U.S. TRADEMARK
23 REGISTRATION CERTIFICATE FOR THE LV LOGO IN THE
24 CIRCLE.

25 SORRY. THAT WOULD BE IN CLASS 18. I

1 ALREADY DESCRIBED THE TYPE OF GOODS THAT ARE IN
2 CLASS 18. I DON'T NEED TO REPEAT UNLESS YOU WANT
3 ME TO.

4 Q NO. THAT'S OKAY.

5 A NEXT EXHIBIT 460 IS A U.S. TRADEMARK
6 REGISTRATION CERTIFICATE FOR THE LV LOGO IN CLASSES
7 14 AND 24. THAT WILL BE FOR JEWELRY WATCHES AND
8 STRAPS FOR WRISTWATCHES, TRAVEL BLANKETS MADE OF
9 TEXTILE IN CLASS 24.

10 NEXT IS EXHIBIT 461 IS A U.S. TRADEMARK
11 CERTIFICATE FOR THE LOUIS VUITTON TRADEMARK IN
12 CLASS 18.

13 NEXT EXHIBIT 462 IS A U.S. TRADEMARK
14 REGISTRATION CERTIFICATE FOR THE MONOGRAMMED
15 CANVASS.

16 Q THIS LOOKS LIKE A FAIRLY EARLIER REGISTRATION?

17 A YEAH, IT'S AN OLD CERTIFICATE.

18 Q AND TELL THE JURY WHEN IT WAS FIRST REGISTERED
19 IN THE UNITED STATES?

20 A APRIL 29TH, 1931. AND THAT'S CLASS 18.

21 NEXT IS EXHIBIT 463, A U.S. TRADEMARK
22 REGISTRATION CERTIFICATE FOR THE IP LETTER
23 TRADEMARK WITH THE LV LOGO IN CLASS OF GOODS 18.

24 Q IS THAT A PARTICULAR PATTERN TRADEMARK AS
25 WELL?

1 A YES.

2 Q AND WHAT PATTERN IS IT?

3 A IT'S LV.

4 Q AND NEXT IS EXHIBIT?

5 A 464 AND IT'S A U.S. TRADEMARK CERTIFICATE FOR
6 THE LV LOGO AGAIN IN CLASS 25 FOR CLOTHING,
7 SWEATERS, SHIRTS, SWEATSHIRTS, POLO SHIRTS,
8 T-SHIRTS, ET CETERA.

9 AND LAST IS EXHIBIT 465 THE U.S.
10 TRADEMARK REGISTRATION CERTIFICATE FOR THE DAMIER
11 PATTERN TRADEMARK IN CLASS 18.

12 Q AND JUST FOR THOSE WHO CAN'T SEE THE IMAGE,
13 CAN YOU BRIEFLY DESCRIBE THE DAMIER PATTERN FOR US?
14 THIS IS THE FIRST TIME THAT WE HAVE LOOKED AT IT.

15 A YES, THAT'S A DESIGN WHICH REMINDS OF A
16 CHECKER -- I DON'T KNOW THE RIGHT WORD.

17 Q CHECKBOARD?

18 A CHECKBOARD.

19 Q AND IS THERE A PARTICULAR COLOR COMBINATION
20 THAT TYPICALLY APPEARS IN?

21 A WELL, THIS PARTICULAR CERTIFICATE IS
22 REGISTERED IN BLACK AND WHITE BUT THE ACTUAL
23 PRODUCT IS -- WOULD BE BROWN AND BEIGE.

24 Q AND WHEN DID THE LOUIS VUITTON FIRST START
25 MARKETING PRODUCT USING THE DAMIER PATTERN?

1 A OH, THAT WAS -- THE DAMIER PATTERN WAS USED
2 FIRST IN 1888.

3 Q SO IT PREDATES THE MONOGRAM PATTERN?

4 A YES.

5 Q OKAY. AND THE TRADEMARKS I'VE SHOWN YOU,
6 THEY'RE ALL CURRENT AND VALID EFFECTIVE TRADEMARK?

7 A YES.

8 Q AND YOU HAVE SEEN THEM ENFORCED IN THE UNITED
9 STATES?

10 A YES, I DO.

11 Q AND THEY'RE AMONG THE ONES YOU ENFORCE IN THE
12 UNITED STATES?

13 A YES.

14 Q AND THE REASON THERE ARE MULTIPLE
15 REGISTRATIONS FOR THE SAME DEVICE IS BECAUSE
16 THEY'RE REGISTERED IN DIFFERENT CLASSES AS THEY'RE
17 USED IN DIFFERENT PRODUCT LINES?

18 A YES.

19 Q AND I'LL SHOW THE WITNESS EXHIBITS 449 AND 450
20 AND THIS SHOULD BE A LITTLE FASTER BECAUSE THERE
21 ARE FEWER.

22 A EXHIBIT 449 AND 450.

23 Q MR. NIKOLAY, IF YOU WOULDN'T MIND TAKING THEM
24 SERIALY SO WE CAN LOOK AT THEM ON THE SCREEN AS
25 YOU REVIEW THEM.

1 A EXHIBIT 449 IS A REGISTRATION CERTIFICATE
2 ISSUED BY THE U.S. COPYRIGHT OFFICE FOR THE MULTI
3 COLOR MONOGRAM IN WHITE PRINT, WHITE BACKGROUND.

4 EXHIBIT 450 IS AGAIN A REGISTRATION
5 CERTIFICATE ISSUED BY THE COPYRIGHT OFFICE OF THE
6 UNITED STATES FOR THE MULTI-COLORED MONOGRAM ON
7 BLACK PRINT, ON THE BLACK BACKGROUND.

8 Q AND I'M NOT SURE THE JURY GOT TO SEE BUT IT'S
9 A MULTI-PATTERN WITH THE BLACK BACKGROUND AND THE
10 OTHER IS THE WHITE BACKGROUND. AM I CORRECT?

11 A MAYBE WE CAN SHOW THE PRODUCTS.

12 Q WE WILL.

13 A YES.

14 Q ALL RIGHT. I THINK YOU SHOULD HAVE IN FRONT
15 OF YOU NOW EXHIBIT 175 AS WELL AS EXHIBIT 175.1?

16 A YES.

17 Q AND CAN YOU IDENTIFY FOR US WHAT EXHIBIT 175
18 IS?

19 A THIS IS A PRODUCT BEARING THE LOUIS VUITTON
20 TRADEMARKS WHICH DOES NOT ORIGINATE FROM OUR
21 COMPANY.

22 Q IT'S NOT A GENUINE LOUIS VUITTON ARTICLE?

23 A IT'S NOT A GENUINE.

24 Q IS THERE A NAME OR TAG ON IT THAT INDICATES
25 WHERE THAT PRODUCT CAME FROM?

1 A THIS PRODUCT HAS BEEN PURCHASED BY OUR
2 INVESTIGATOR ON THE WEB SITE BIGWORLDSHOES.COM.

3 Q AND TELL US IS THAT BROADLY COMPARABLE TO THE
4 EXHIBIT 175.1 GENUINE ARTICLE THAT YOU LOOKED AT A
5 MOMENT AGO? THERE ARE SIMILAR PRODUCTS, ARE THEY
6 NOT, 175.1 AND 175?

7 A YEAH, THIS WOULD BE THE CLOSEST IMITATION TO
8 THE GENUINE PRODUCT THAT I PREVIOUSLY MENTIONED BUM
9 BAG.

10 Q AND CAN YOU DESCRIBE FOR US HOW THE NONGENUINE
11 ARTICLE CAN BE DESCRIBED SUCH BY YOU AND IF
12 NECESSARY BY COMPARING IT WITH THE 175 EXHIBIT?

13 A WELL, THE QUALITIES OF THE NONGENUINE PRODUCT
14 ARE UNCOMPARABLE TO THE GENUINE.

15 THERE ARE SEVERAL, SEVERAL DETAILS SOME
16 OF WHICH ARE BIGGER THAN OTHERS.

17 FIRST THE WAY THE PRODUCT CLOSES. ON THE
18 GENUINE PRODUCT THERE'S A MAGNET WHICH ALLOWS THIS
19 PART OF THE PRODUCT TO STAY CLOSED.

20 HERE THERE'S NOTHING. THERE'S A TAG
21 WHICH WE NEVER ATTACH. WE DO NOT ATTACH THESE
22 TAGS.

23 Q SHOW THE JURY SO THEY CAN SEE WHAT YOU'RE
24 REFERRING TO?

25 A THE STITCHING IS FAR FROM BEING GOOD QUALITY

1 AND ACTUALLY ON THE LETTER YOU CAN SEE MARKS ON THE
2 SEWING MACHINE ON THIS SIDE (INDICATING).

3 Q YOU MEAN THAT THERE ARE ERRORS OR THERE'S
4 SCRATCHES ON THE SURFACE?

5 A THE LETTER IS SCRATCHED BY THE SEWING MACHINE
6 THAT HAS BEEN USED FOR THIS PRODUCT AND THIS IS
7 SOMETHING THAT COULD NEVER PASS THE QUALITY
8 CONTROLS AT LOUIS VUITTON. THAT'S ENOUGH.

9 Q I'LL SHOW THE WITNESS EXHIBIT 67 AND 67.1.

10 THE COURT: WHY DON'T YOU PASS THE ONES
11 TO THE JURY THAT YOU SHOWED.

12 MR. COOMBS: THANK YOU, YOUR HONOR.

13 THE COURT: I DON'T MEAN TO DISTRACT YOU,
14 BUT I'M SURE THAT TESTIMONY HAD TO DO WITH DETAILS
15 THAT I'M SURE YOU COULDN'T SEE FROM THE JURY BOX.

16 MR. LOWE: YOUR HONOR, WE WOULD LIKE TO
17 OBSERVE AN OBJECTION TO THE NONGENUINE BAGS THAT
18 THE TESTIMONY IS ABOUT AND OBVIOUSLY COUNSEL HAS
19 INDICATED THAT THEY'RE GOING TO HAVE SOMEONE ELSE
20 TESTIFY ABOUT THE FOUNDATION, ET CETERA.

21 THE COURT: YES, I'VE ALLOWED THIS --
22 THIS CAME TO MY ATTENTION EARLIER, MEMBERS OF THE
23 JURY. THEY WON'T COME OFFICIALLY INTO EVIDENCE SO
24 THEY CAN BE TAKEN WITH YOU INTO YOUR DELIBERATIONS
25 UNTIL THERE HAS BEEN FURTHER TESTIMONY WITH RESPECT

1 TO HOW THEY WERE OBTAINED, BUT THIS WITNESS HAS
2 IDENTIFIED A GENUINE PRODUCT BUT HE STATES TO BE A
3 NONGENUINE PRODUCT SUBJECT TO CROSS-EXAMINATION, OF
4 COURSE.

5 SO I'M ALLOWING YOU TO EXAMINE THEM, BUT
6 THERE MAY BE FURTHER EVIDENCE BEFORE THEY COME INTO
7 EVIDENCE FOR PURPOSES OF YOUR TAKING THEM IN.

8 I JUST THOUGHT THAT THE DETAIL THAT HE
9 WAS REFERRING TO IS SOMETHING THAT IT WOULD BE
10 HELPFUL FOR YOU TO EXAMINE SO THAT YOU GET A BETTER
11 LOOK AT IT TO UNDERSTAND HIS TESTIMONY.

12 MR. COOMBS: THANK YOU, YOUR HONOR.

13 THE COURT: YOU MAY PROCEED.

14 BY MR. COOMBS:

15 Q I HAVE JUST PLACED IN FRONT OF YOU TWO BAGS
16 MARKED EXHIBIT 67 AND 67.1.

17 FIRST, ARE THOSE THE MULTI COLOR PATTERN
18 THAT YOU WERE REFERRING TO EARLIER?

19 A YES.

20 Q AND 67.1, IS THAT A GENUINE LOUIS VUITTON
21 ARTICLE?

22 A 67.1 IS A GENUINE ARTICLE.

23 Q AND HOW DO YOU REFER TO THAT?

24 A KEEPALL.

25 Q AND CAN YOU IDENTIFY FOR US EXHIBIT 67 IF YOU

1 CAN TAKE IT OUT OF THE BAG.

2 A EXHIBIT 67 IS THE EQUIVALENT OF THE
3 MULTI-COLOR KEEPALL. UNFORTUNATELY WE WEREN'T ABLE
4 TO SOURCE THE WHITE MONOGRAM BECAUSE THIS IS A
5 PRODUCT THAT WE DO NOT MANUFACTURE ANYMORE AND THE
6 ONLY ONE THAT I COULD FIND IN ACTUALLY.

7 I'M GOING TO USE THIS. IT'S WORKING.

8 SO WE COULDN'T SOURCE THE BLACK MONOGRAM
9 KEEPALL-- SORRY, THE WHITE MONOGRAM KEEPALL TO SHOW
10 THIS COURT BECAUSE THIS IS A PRODUCT THAT WE DON'T
11 MANUFACTURE ANYMORE.

12 Q SO WHERE DID YOU OBTAIN THE GENUINE SAMPLE OR
13 THE OTHER ONES IF THEY CAME FROM THE SAME PLACE?

14 A THIS SAMPLE COMES FROM THE MUSEUM OF THE
15 COMPANY.

16 Q AND CAN YOU DESCRIBE TO THE JURY HOW IT IS
17 THAT YOU CAN IDENTIFY EXHIBIT 67 AS A NONGENUINE
18 LOUIS VUITTON IMITATION?

19 A WELL, FIRST OF ALL IT REALLY SMELLS BAD. I
20 MEAN, I DON'T EVEN WANT TO TOUCH IT BECAUSE I KNOW
21 HOW THESE PRODUCTS ARE MANUFACTURED FOR HAVING
22 VISITED SEVERAL MANUFACTURING FACILITIES, AND I
23 KNOW WHICH KIND OF PRODUCTS ARE USED FOR THEIR
24 COMPOSITION. SO HONESTLY I DON'T EVEN WANT TO
25 TOUCH THEM, BUT IT REALLY SMELLS BAD. THE SEQUENCE

1 OF THE COLORS IS WRONG.

2 IN THE GENUINE PRODUCT WE ARE USING 36
3 DIFFERENT COLORS AND EACH COLOR IS PLACED ON A
4 PARTICULAR PLACE WHICH DOES NOT CORRESPOND TO WHAT
5 HAS BEEN DONE ON THIS ONE.

6 THE BUCKLE HERE WHICH IS SUPPOSED TO
7 CLOSE THE BAG ON THIS ONE BY MIRACLE WORKS, BUT
8 IT'S A FAKE BUCKLE AND YOU CANNOT CLOSE IT.

9 ON THE GENUINE PRODUCT THERE IS A SET OF
10 KEYS THAT YOU CAN USE TO CLOSE HERE THE BUCKLE.

11 THE COURT: YOU MEAN THE LOCK?

12 THE WITNESS: THE LOCK. SORRY.

13 BY MR. COOMBS:

14 Q SO WHEN YOU SAY YOU CAN'T CLOSE IT, YOU CAN'T
15 LOCK THE IMITATION?

16 THE WITNESS: YOU CANNOT LOCK. THANK
17 YOU. THE METALLIC PART ON THIS IS VERY POOR AS
18 WELL AS THE LEATHER.

19 AND WE DO NOT SELL OUR PRODUCTS WITH THIS
20 PLASTIC PROTECTION FOR THE METALLIC PARTS, AND I
21 CAN TELL YOU WHY THIS HAS BEEN PLACED HERE, IT'S
22 BECAUSE THESE BAGS SPEND A LOT OF TIME TRAVELLING
23 IN BOATS AND WITH THE HUMIDITY, THESE METALLIC
24 PARTS START RUSTING ONLY DURING THE SHIPMENT SO
25 THEY'RE PROTECTED BY THIS PLASTIC.

1 Q WHEN YOU SAY THAT YOU VISITED SOME OF THE
2 FACTORIES WHERE THE NONGENUINE PRODUCTS ARE
3 MANUFACTURED, CAN YOU DESCRIBE THEM AS COMPARED
4 WITH THE FACTORIES WHERE GENUINE LOUIS VUITTON
5 PRODUCTS ARE MANUFACTURED THAT YOU'VE ALSO VISITED?

6 THE COURT: PUT IT ON YOUR TIE.

7 THE WITNESS: I'VE HAD THE EXPERIENCE OF
8 VISITING SEVERAL MANUFACTURING FACILITIES WAS VERY
9 TRAUMATIZING. I HAVE SEEN ENTIRE FAMILIES AND EVEN
10 UNDERAGED EMPLOYEES BEING LOCKED IN SWEAT SHOPS
11 WORKING, EVEN BABIES WERE THERE. I HAVE TO SAY MY
12 HEAD WAS SPINNING WITH THE SMELL OF CHEMICAL
13 PRODUCTS THAT WERE USED. IT WAS QUITE
14 TRAUMATIZING.

15 BY MR. COOMBS:

16 Q BY THE WAY, IN THE MULTI-COLORED DEVICE THAT
17 WE'RE LOOKING AT THE PRODUCT THAT HAS THE COPYRIGHT
18 WE WERE TALKING ABOUT BUT IT ALSO HAS SOME OF THE
19 TRADEMARKS; IS THAT RIGHT?

20 A YES, MULTI-COLOR MONOGRAM BLACK AND WHITE IS
21 THE SUBJECT OF THE COPYRIGHT REGISTRATION
22 CERTIFICATES 450 AND 449.

23 Q I WILL SHOW THE WITNESS EXHIBIT 82 AND 82.1.

24 A EXHIBIT 82.1, THIS IS A TIKAL BAG, A PRODUCT
25 BY LOUIS VUITTON. EXHIBIT 82 IS A NONGENUINE

1 PRODUCT BEARING LOUIS VUITTON TRADEMARKS.

2 I BROUGHT THIS EXHIBIT 82.1 TO COMPARE TO
3 THE NONGENUINE. THIS IS THE CLOSEST I COULD FIND
4 BECAUSE AGAIN IT'S A PRODUCT THAT WE DO NOT
5 MANUFACTURE ANYMORE.

6 BY MR. COOMBS:

7 Q AND CAN YOU DESCRIBE FOR US HOW YOU CAN
8 IDENTIFY THE NONGENUINE ARTICLE AS NONGENUINE?

9 A WELL, AGAIN, QUITE EASY. THIS PLASTIC
10 PROTECTION OF THE METALLIC PARTS THAT I JUST
11 MENTIONED, THE BUCKLE HERE IS QUITE DIFFICULT TO
12 TURN AND TO CLOSE COMPARED TO THE GENUINE WHICH
13 WORKS VERY SMOOTHLY.

14 THE INTERIOR IS NOT THE SAME. YOU WILL
15 SEE THE LINING IS NOT THE SAME.

16 Q THE LINING.

17 A THE LINING, SORRY. THE QUALITY OF THE
18 METALLIC PARTS IS QUITE POOR. THESE CARDS WHICH
19 PROBABLY ARE MADE TO LURE THE CUSTOMER THAT IT'S
20 NOT AN AUTHENTICITY CARD, WE DO NOT DO THESE CARDS.

21 THERE'S A LITTLE BOOKLET INSIDE WHICH IS
22 PRINTED NOT IN THE RIGHT WAY. PART OF THE TEXT IS
23 ACTUALLY CUT SO THAT'S AN EASY WAY TO SEE THAT IT
24 DOESN'T COME FROM OUR COMPANY.

25 Q I'LL GIVE YOU A SHORT BREAK FROM PRODUCT

1 IDENTIFICATION AND MOVE TO -- AND ASK YOU A LITTLE
2 MORE ABOUT THE MANUFACTURING DISTRIBUTION OF
3 GENUINE LOUIS VUITTON. WHERE IS GENUINE LOUIS
4 VUITTON MADE?

5 A LOUIS VUITTON PRODUCTS ARE MADE IN LOUIS
6 VUITTON'S OWN MANUFACTURING FACILITIES. THERE ARE
7 14: 11 IN FRANCE, 2 IN SPAIN, AND 1 IN SAN DIMAS
8 IN CALIFORNIA. THAT'S FOR LEATHER GOODS.

9 THERE'S ONE MANUFACTURING FACILITY IN
10 ITALY FOR SHOES AND IN SWITZERLAND FOR WATCHES.

11 Q AND HOW MANY PEOPLE DOES LOUIS VUITTON EMPLOY
12 IN THE UNITED STATES.

13 A IN THE UNITED STATES LOUIS VUITTON EMPLOYS
14 MORE THAN 1,300 PEOPLE AND MANY IN THE HEADQUARTERS
15 IN THE LOCAL COMPANY OF NEW YORK.

16 IN THE STORE CHAIN THERE ARE AROUND 100
17 STORES ACROSS THE UNITED STATES. WE EMPLOY A
18 LITTLE BIT MORE THAN 300 PEOPLE IN THE WORKSHOP
19 PRODUCTION IN SAN DIMAS, CALIFORNIA, AND WE
20 EMPLOYED I THINK 30 PEOPLE I THINK IN THE CUSTOMER
21 SERVICE DEPARTMENT IN SAN FRANCISCO.

22 Q AND ONCE LOUIS VUITTON PRODUCT IS
23 MANUFACTURED, HOW IS IT DISTRIBUTED?

24 A ONCE LOUIS VUITTON PRODUCTS ARE MANUFACTURED,
25 THEY'RE DISTRIBUTED THROUGH ONE MAIN LOGISTICS

1 CENTER LOCATED IN THE SUBURBS OF PARIS AND FOR
2 THESE PRODUCTS MANUFACTURED IN CALIFORNIA, THEY'RE
3 DISTRIBUTED THROUGH THE LOGISTICS CENTER BASED IN
4 MEMPHIS.

5 Q AND ARE THOSE LOGISTIC CENTERS OWNED BY LOUIS
6 VUITTON?

7 A YES, THEY ARE.

8 Q AND THEY'RE OPERATED BY THEM?

9 A YES, THEY ARE.

10 Q AND ARE THERE ANY OTHER LOGISTIC CENTERS FOR
11 LOUIS VUITTON PRODUCTS?

12 A WELL, THERE ARE LOCAL REGIONAL STORAGE
13 FACILITIES, BUT I WOULDN'T CALL THEM LOGISTICS
14 CENTER.

15 Q THE STORAGE CENTERS ARE OPERATED AND
16 MAINTAINED BY LOUIS VUITTON?

17 A BY LOUIS VUITTON.

18 Q SO ARE THERE ANY LICENSEES FOR LOUIS VUITTON
19 MERCHANDISE?

20 A NO, THERE ARE NO LICENSEES.

21 Q AND DOES LOUIS VUITTON USE WHOLESALERS TO
22 DISTRIBUTE ANY OF ITS MERCHANDISE?

23 A NO.

24 Q ARE THERE ANY INTERVENING THIRD PARTIES
25 BETWEEN THE LOUIS VUITTON OWNED PRODUCTION

1 FACILITIES THAT YOU DESCRIBED AND THE CONSUMER
2 OTHER THAN LOUIS VUITTON ITSELF?

3 A NO. LOUIS VUITTON PRODUCTS ARE PRODUCED IN
4 OUR OWN MANUFACTURING FACILITIES AND ARE
5 DISTRIBUTED THROUGH A WHOLLY OWNED AND CONTROLLED
6 STORE CHAIN.

7 Q AND CAN YOU DESCRIBE HOW THE STORE CHAIN IS
8 STRUCTURED?

9 A THERE ARE AROUND 450 STORES AROUND THE WORLD
10 AND IN MOST OF THE CONTINENTS.

11 Q AND HOW ABOUT DEPARTMENT STORES?

12 A THERE ARE INDEED ALSO CORNERS IN HIGH-END
13 DEPARTMENT STORES. THESE CORNERS ARE STAFFED BY
14 LOUIS VUITTON PERSONNEL.

15 Q IS ANY FINISHED LOUIS VUITTON PRODUCT MADE IN
16 ASIA?

17 A NO.

18 Q DOES LOUIS VUITTON ASSIGN ITS TRADEMARKS TO
19 ANYONE ELSE?

20 A NO.

21 Q AND DOES IT SELL PRODUCT ON LINE?

22 A YES, IT DOES BUT IN JUNE OF 2009 LOUIS VUITTON
23 PRODUCTS WERE SOLD ON TWO WEB SITES, ELUXURY.COM,
24 WHICH IS A WEB SITE BELONGING TO LOUIS VUITTON AND
25 LOUIS VUITTON'S OWN WEB SITE LOUISVUITTON.COM AND

1 CURRENTLY LOUIS VUITTON IS SELLING OUR PRODUCTS.

2 Q LOUIS VUITTON PRODUCTS ARE EXPENSIVE, ISN'T
3 IT?

4 A YES, THEY ARE.

5 Q AND WHY IS THAT?

6 A WELL, LOUIS VUITTON'S PRODUCTS ARE, IF I CAN
7 SAY, A SYMBOL OF LUXURY. WE -- OUR CUSTOMERS DREAM
8 ABOUT THE BEST PRODUCT, THE PERFECT PRODUCT, AND
9 THIS IS COSTLY.

10 LOUIS VUITTON, ONE OF THE KEYS TO LOUIS
11 VUITTON'S SUCCESS IS THE QUALITY, AND WE REQUIRE
12 THE HIGH QUALITY STANDARDS AT ANY LEVEL FROM THE
13 HEAD OFFICES THROUGH THE STORES AND MANUFACTURING
14 FACILITIES.

15 THERE ARE QUALITY CHECKS AND AT ALL
16 LEVELS OF THE PRODUCTION AND THEY'RE SUPPLEMENTED
17 BY SELF-CHECKS BY THE OPERATOR DURING THE VARIOUS
18 OPERATIONS THAT HE PERFORMS WHEN THE PRODUCTS HE'S
19 MADE.

20 THIS REQUIRES, OF COURSE, VERY CAREFUL
21 SELECTION OF RAW MATERIALS WHICH COST -- WHICH ARE
22 COSTLY. SOME OF THE RAW MATERIALS SUCH AS THE
23 EXOTIC AND SOME EXOTIC LETTERS ARE EVEN SO RARE AND
24 SO DIFFICULT TO SOURCE THAT WHEN A CUSTOMER MAKES
25 AN ORDER FOR SUCH PRODUCT, HE NEEDS TO WAIT UNTIL

1 THE PARTICULAR OR PIECE OF EXOTIC LEATHER IS
2 AVAILABLE COULD COME FROM -- IT'S DIFFICULT TO
3 SOURCE.

4 Q SO IF LOUIS VUITTON CAN COMMAND SUCH A PRICE
5 FOR ITS PRODUCT WHY DOES IT CARE ABOUT THE
6 NONGENUINE PRODUCT THAT WE HAVE BEEN LOOKING AT?

7 A WELL, I WASN'T --

8 Q I'M SORRY. DID I INTERRUPT?

9 A WE ALSO MANUFACTURE IN COUNTRIES WITH HIGH
10 LABOR COSTS. WE SHOULD BE PARTICULARLY IN EUROPE.
11 WE'RE PROBABLY AMONGST THE LAST COMPANIES THAT DO
12 NOT OUTSOURCE PRODUCTION IN LOW COST PRODUCTION
13 COUNTRIES PRECISELY BECAUSE WE NEED TO SOURCE THE
14 BEST QUALITY PRODUCT.

15 Q SO --

16 A ALSO THE SALE OF LUXURY GOODS REQUIRES QUITE
17 EXPENSIVE COMMUNICATION AND ADVERTISING CAMPAIGNS
18 WHICH IS THIS ADDITIONAL COST GOES TO THE END PRICE
19 OF THE PRODUCT.

20 Q SO A CONSIDERABLE EXPENSE ON MARKETING?

21 A YES.

22 Q SO IF LOUIS VUITTON CAN COMMAND A PREMIUM
23 PRICE FOR ITS PRODUCT, THEN WHY DOES IT CARE ABOUT
24 THE NONGENUINE PRODUCT THAT YOU'VE BEEN LOOKING AT?

25 A WELL, IT'S A BIG PROBLEM FOR US. NOT ONLY

1 BECAUSE IT'S A CUSTOMER WHO PURCHASES A NONGENUINE
2 PRODUCT WILL PROBABLY NOT BUY OUR PRODUCT, BUT ALSO
3 BECAUSE PEOPLE WHO HAVE -- WHO LOVE OUR PRODUCT SO
4 MUCH THAT THEY WOULD SAVE MONEY FOR A LONG TIME TO
5 BUY A BAG THAT THEY DREAMED FOR A LONG TIME, THEY
6 ARE GENUINELY DISGUSTED WHEN THEY SEE A CHEAP
7 IMITATIONS OF THIS BAG ALL OVER THE PLACE.

8 WE RECEIVE MANY, MANY COMPLAINTS OF SUCH
9 PEOPLE.

10 Q SO HOW IS IT THAT LOUIS VUITTON IS HARMED BY
11 THESE NONGENUINE PRODUCTS.

12 A THE IMAGE OF THE COMPANY AS A LUXURY BRAND
13 SUFFERS FROM THESE PRODUCTS.

14 Q SO GIVEN THAT, WHAT DOES LOUIS VUITTON DO TO
15 ADDRESS THE PROBLEM -- WHEN WE TALK ABOUT
16 "NONGENUINE SALES" WE'RE TALKING ABOUT MERCHANDISE
17 THAT LOUIS VUITTON HAS NOT MADE; IS THAT CORRECT?

18 A YES.

19 Q AND SO WHAT DOES LOUIS VUITTON DO TO TRY TO
20 CURTAIL THE SALE OF SUCH MERCHANDISE?

21 A LOUIS VUITTON EMPLOYS WITHIN THE INTELLECTUAL
22 PROPERTY DEPARTMENT 40 PEOPLE FULLY DEDICATED ON
23 THIS KIND OF ISSUES MAINTAINING OUR RIGHTS AND
24 ENFORCING THEM.

25 THIS TEAM OF 40 PEOPLE IS MAINLY BASED IN

1 PARIS WITH LOCAL OFFICERS AROUND THE WORLD IN NEW
2 YORK, BUENOS AIRES, MULAN, DUBAI, HONG KONG, AND
3 TOKYO.

4 Q AND WHAT KIND OF BUDGET DOES LOUIS VUITTON
5 ALLOCATE TO DEALING WITH THIS ISSUE ON AN ANNUAL
6 BASIS?

7 A AROUND 15 MILLION EUROS PER YEAR WHICH WOULD
8 BE MORE THAN \$20 MILLION.

9 Q TURNING TO YOUR OFFICES AND HOW DID YOU LEARN
10 ABOUT LOUIS VUITTON DISTRIBUTION OF COUNTERFEITS?

11 A THERE ARE SEVERAL INFORMATION ABOUT LOUIS
12 VUITTON DISTRIBUTION OF COUNTERFEITS. THE ONE
13 SOURCE WE GET IS BY OUR CUSTOMERS. OUR CUSTOMERS
14 CAN REACH OUR CUSTOMER SERVICE DEPARTMENTS BY PHONE
15 CALL OR AN E-MAIL AND THEY ACTUALLY DO SO VERY
16 OFTEN AND REPORT COUNTERFEIT SALES TO US.

17 WE ALSO EMPLOY AN EXTERNAL SERVICE
18 PROVIDER SPECIFICALLY FOR ONLINE DISTRIBUTION OF
19 COUNTERFEITS. THIS COMPANY MAINTAINS THE DATABASE
20 FOR US OF COUNTERFEIT WEB SITES AND THIS DATABASE
21 IS UPDATED TWICE A MONTH WHERE NEW COUNTERFEIT WEB
22 SITES ARE ADDED.

23 Q AND HOW DO CUSTOMERS COMPLAINTS ABOUT ONLINE
24 INFORMATION REACH YOUR OFFICE?

25 A THEY REACH OUR OFFICE VIA OUR CUSTOMER SERVICE

1 DEPARTMENT.

2 FOR EXAMPLE, WHEN AN E-MAIL IS RECEIVED
3 BY THE CSD, THE CSD WILL REPLY TO THE CUSTOMER AND
4 WILL COPY OUR INTELLECTUAL PROPERTY DEPARTMENT TO
5 THE E-MAIL. RESPONSE TO THE CUSTOMER.

6 Q SO YOUR OFFICE WOULD RECEIVE A COPY OF THE
7 RESPONSE BEING SENT TO THE CONSUMER?

8 A YES.

9 Q AND DOES YOUR OFFICE RETAIN THOSE REPORTS IN
10 THE NORMAL COURSE?

11 A YES.

12 Q DID YOU TAKE --

13 A WE ALSO -- THERE ARE ALSO MANY CUSTOMERS WHO
14 COME TO THE STORES AND COMPLAIN ABOUT IT, IN THIS
15 CASE THE STORES THAT WOULD TRANSFER INFORMATION TO
16 US.

17 WE ALSO RECEIVE INFORMATION FROM A WIDE
18 NETWORK OF AGENTS AND INVESTIGATORS AND LAWYERS
19 AROUND THE WORLD WHO WORK WITH US.

20 Q AND WHY DO CUSTOMERS COME INTO THE LOUIS
21 VUITTON STORES TO COMPLAIN ABOUT NONGENUINE
22 MERCHANDISE?

23 A WELL, THAT HAS HAPPENED ON SEVERAL OCCASIONS
24 AND IT'S BECOMING A REAL PROBLEM FOR LOUIS VUITTON
25 BECAUSE IT ACTUALLY DIVERTS OUR STAFF FROM SELLING

1 PRODUCTS TO AUTHENTICATING GOODS.

2 PEOPLE COME AND MAKE PURCHASES ON THE
3 INTERNET AND THINKING THAT THEY HAVE PURCHASED AN
4 AUTHENTIC LOUIS VUITTON ITEM AND ACTUALLY THEY
5 RECEIVE A FAKE SO THEY COME IN THE STORE AND THEY
6 ASK OUR STAFF TO AUTHENTICATE THE PRODUCT.

7 VERY OFTEN THE GOAL OF THIS
8 AUTHENTICATION IS TO ASK LOUIS VUITTON TO PROVIDE A
9 CERTIFICATE SO THAT THE CUSTOMER -- SO THAT THESE
10 PEOPLE GET A REFUND FROM THEIR CREDIT CARD OR FROM
11 COMPANIES SUCH AS PAY PAL.

12 Q I THINK BY YOUR FEET THERE SHOULD BE A BINDER
13 OF VOLUME 1 AND IN IT EXHIBIT 74. IF YOU COULD
14 TAKE A LOOK AT IT AND IDENTIFY IT FOR US.

15 A EXHIBIT 74 IS A RESPONSE VIA E-MAIL BY OUR
16 CUSTOMER SERVICE DEPARTMENT TO A LOUIS VUITTON
17 CUSTOMER, AND WE HAVE BEEN BLIND COPIED ON THIS
18 E-MAIL.

19 IN THE HISTORY OF THE E-MAIL WE ACTUALLY
20 SEE THE ACTUAL COMPLAINT RECEIVED BY THE LOUIS
21 VUITTON CUSTOMER.

22 Q AND THIS IS THE TYPE OF CUSTOMER COMPLAINT
23 THAT YOU WERE DESCRIBING EARLIER THAT IS ROUTINELY
24 COPIED, THE RESPONSE IS ROUTINELY COPIED TO YOUR
25 OFFICE?

1 A YES.

2 Q AND IT'S A DOCUMENT THAT IS RETAINED IN THE
3 NORMAL COURSE OF YOUR --

4 A YES.

5 MR. COOMBS: I WOULD MOVE EXHIBIT 74 INTO
6 EVIDENCE.

7 THE COURT: AGAIN, IT'S NOT NECESSARY TO
8 FORMALLY MOVE AS LONG AS THERE'S NO OBJECTION. IF
9 YOU KNOW THERE'S A TENDERED OBJECTION -- BUT
10 OTHERWISE 74 IS IN EVIDENCE AND WILL BE
11 DISPLAYED.

12 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 74,
13 HAVING BEEN PREVIOUSLY MARKED FOR
14 IDENTIFICATION, WAS ADMITTED INTO
15 EVIDENCE.)

16 MR. COOMBS: I APOLOGIZE. CAN YOU READ
17 THE CONSUMER COMPLAINT THAT IS REFLECTED IN EXHIBIT
18 74?

19 THE WITNESS: THIS CUSTOMER REPORTS THE
20 WEB SITE ATOZBRAND, AND IT'S ONE OF THE WEB SITES
21 POSTED BY THE DEFENDANTS FOR WHICH THEY HAVE BEEN
22 NOTIFIED. AND IT READS, "I AM SICK AND TIRED OF
23 COPIES OF YOUR PRODUCTS."

24 THE COURT: LET ME INTERRUPT YOU BEFORE
25 YOU KEEP GOING. IS THERE A WAY TO ZOOM IN ON THAT

1 EXHIBIT SO WE CAN SEE WHAT IS BEING READ?

2 MR. COOMBS: IF YOU WOULD WAIT JUST A
3 MOMENT, SIR.

4 THE COURT: ALL RIGHT. GO AHEAD. GO
5 AHEAD.

6 THE WITNESS: "I'M SICK AND TIRED OF
7 COPIES OF YOUR PRODUCTS. IT'S DESTROYED YOUR BRAND
8 WHICH MY WIFE AND I LIKE A LOT. I DID FIND A BIG
9 PRODUCER AND SELLER IN CHINA. IT LOOKS LIKE FAKES,
10 AND I HEREBY GIVE YOU THE WEB PAGE WHICH I FOUND
11 THROUGH ALIBABA.COM."

12 Q HAVE YOU FOLLOWED THAT WEB SITE?

13 A YES.

14 Q AND WHAT DO YOU KNOW ABOUT THAT WEB SITE?

15 A THIS IS ONE OF THE WEB SITES ORIGINALLY BEFORE
16 THE COMPLAINT THAT WE ORIGINALLY COMPLAINED ABOUT
17 TO DEFENDANTS.

18 Q WHAT IS THE OTHER REASONS THAT YOU DESCRIBE
19 REPORTS FROM YOUR OFFICE OF THE REPORTS OF ONLINE
20 MONITORING? COULD YOU DESCRIBE FOR THE JURY HOW
21 THAT WORKS?

22 A AS I SAID, LOUIS VUITTON IT HAS ITS OWN ONLINE
23 OFFER OF GOODS THROUGH THE WEB SITE
24 LOUISVUITTON.COM. IT'S VERY IMPORTANT FOR US THAT
25 THIS WEB SITE HAVE A GOOD RANKING ON SEARCH ENGINES

1 AND THAT ITS POSITIONS ON SEARCH ENGINES SUCH AS
2 YAHOO, GOOGLE, AND TWITTER IS NOT POLLUTED BY THE
3 COUNTERFEIT MERCHANDISE.

4 SO WE WOULD REGULARLY MONITOR SEARCH
5 ENGINES BY ACQUIRING THEM, SEARCH ENGINES OR SEARCH
6 TERMS SUCH AS LOUIS VUITTON AND MAKE SURE THAT NEXT
7 TO OUR WEB SITE THAT USUALLY APPEARS AT THE FIRST
8 POSITION THERE ARE NO OTHER OFFERS FOR COUNTERFEIT
9 GOODS.

10 IF THERE ARE SUCH, WE WOULD ACT AGAINST
11 THEM AS A PRIORITY.

12 Q YOU MENTIONED THAT YOU RECEIVE REPORTS FROM
13 OUTSIDE VENDORS, INVESTIGATORS AND SO FORTH. WHY
14 IS THAT? DO YOU HAVE ANY UNDERSTANDING AS TO WHY
15 THEY BRING THOSE REPORTS TO YOUR ATTENTION?

16 A WELL, AS I SAID, THEY ARE SERVICE PROVIDERS SO
17 SOME OF THEM WANT TO DO BUSINESS WITH US, AND,
18 THEREFORE, THEY TRY TO BE NICE BY SENDING US
19 INFORMATION.

20 Q AND IS ROB HOLMES AN INVESTIGATIVE AGENCY ONE
21 OF THOSE VENDORS THAT YOU DEAL?

22 A YES.

23 Q AND HOW LONG HAVE YOU BEEN WORKING WITH
24 MR. HOLMES ON THE INVESTIGATION WITH ONLINE
25 INFRINGEMENT OF LOUIS VUITTON'S PROPERTIES?

1 A I HAVE BEEN WORKING WITH MR. HOLMES SINCE
2 2003.

3 Q COULD YOU ESTIMATE HOW MANY CASES HAVE YOU
4 WORKED ON WITH MR. HOLMES?

5 A HUNDREDS.

6 Q AND HAVE YOU EVER HAD THE OCCASION TO USE
7 MR. HOLMES' REPORTS IN THE RESULT OF A CRIMINAL
8 INVESTIGATION?

9 MR. LOWE: I'M GOING TO OBJECT. THAT'S
10 LEADING.

11 THE COURT: SUSTAINED.

12 BY MR. COOMBS:

13 Q WHAT DOES YOUR OFFICE DO UPON RECEIPT OF ONE
14 OF THE KINDS OF COMPLAINTS THAT YOU JUST DESCRIBED?

15 A WE WOULD -- AS A FIRST STEP WE WOULD CHECK THE
16 INFORMATION. WE WOULD VERIFY IF THE GOODS ARE
17 INDEED NONGENUINE AND IF THIS IS THE CASE, WE WOULD
18 PROCEED FURTHER BY CREATING A FILE.

19 WE WOULD CAREFULLY DOCUMENT THE CONTENT
20 OF THE WEB SITE ITSELF BY EITHER PRINTING OUT THE
21 CONTENT OR SAVING AN ADDITIONAL COPY, BUT I WOULD
22 SAY MOST OF THE TIMES PRINTING OUT EVERYTHING.

23 WE WOULD SECURE EVIDENCE ABOUT HOSTING.

24 Q WHEN YOU SAY THAT YOU REVIEW THE SITE TO
25 DETERMINE WHETHER OR NOT THE OFFERS ARE INFRINGING,

1 HOW IS IT THAT YOU CAN TELL FROM LOOKING AT A WEB
2 SITE ONLINE WHETHER OR NOT THE OFFERS ARE VIOLATING
3 LOUIS VUITTON'S INTELLECTUAL PROPERTY RIGHTS?

4 A WELL, IT'S QUITE EASY. ACTUALLY WITH THIS
5 SPECIFICITY OF OUR PRODUCTS, AS YOU CAN SEE MOST OF
6 OUR PRODUCTS BEAR OUR TRADEMARKS. THEY'RE VISIBLE.

7 AND THESE COMBINED WITH THE FACT THAT WE
8 HAVE GONE THROUGH EXTENSIVE TRAINING, WE'RE ABLE TO
9 RECOGNIZE MOST OF THE TIMES FROM LOOKING AT THE
10 PICTURE, BUT THERE ARE SEVERAL OTHER ELEMENTS THAT
11 INDICATE THAT WE'RE IN THE PRESENCE OF COUNTERFEIT
12 GOODS. THAT WOULD BE THE PRICE. THAT WOULD ALSO
13 BE THE QUANTITIES OFFERED FOR SALE.

14 BECAUSE OF THE TIGHT CONTROL THAT LOUIS
15 VUITTON EXERCISES ON THE DISTRIBUTION OF ITS
16 PRODUCTS, IT'S VIRTUALLY IMPOSSIBLE THAT A WEB SITE
17 WOULD HAVE THE POSSIBILITY OF OFFERING HIGH VOLUMES
18 OF AUTHENTIC GOODS.

19 Q ANYTHING ELSE ABOUT THE CONTENT OF THE WEB
20 SITE THAT HELPS YOU DETERMINE WHETHER OR NOT THE
21 OFFERS ARE FOR GENUINE MERCHANDISE OR NOT?

22 A MOST OF THOSE WEB SITES ACTUALLY DISCLOSE THAT
23 THEY DEAL WITH FAKES.

24 Q AND HOW DO THEY DO THAT?

25 A THEY EITHER REFER TO THE PRODUCTS AS A REPLICAS

1 OR MIRROR IMAGE OR FAKE OR THEY CLAIM THEY'RE NOT
2 AFFILIATED IN ANY WAY WITH THE TRADEMARK OWNER.

3 Q AND YOU THEN SAID THAT YOU WENT ON TO DOCUMENT
4 OR BUILD A FILE BY DOCUMENTING THE INFRINGEMENT.

5 CAN YOU DESCRIBE WHAT DOCUMENTING THE
6 INFRINGEMENT INVOLVES?

7 A WE WOULD PRINT OUT ALL OF THE RELEVANT PAGES
8 OF THE WEB SITE.

9 Q IS THIS SOMETHING THAT YOU DO OR SOMETHING
10 THAT YOUR STAFF DOES?

11 A IN THE BEGINNING WHEN I WAS HIRED, AS I SAID,
12 I WAS ALONE SO I WAS DOING IT MYSELF.

13 CURRENTLY MY ASSISTANTS ARE DOING THAT
14 AND EVERYTHING IS VERIFIED BY ME IN THE END.

15 Q AND IF YOU WOULD TAKE A -- I THINK THERE'S A
16 BINDER UP THERE MARKED 2 THAT AS AN EXHIBIT 75, AND
17 I WOULD ASK THE WITNESS TO TAKE A LOOK AT THAT.

18 A I'M SORRY, THE NUMBER AGAIN?

19 Q 75. I THINK IT'S NEAR THE FRONT OF THE
20 BINDER.

21 MR. LOWE: YOUR HONOR, BEFORE COUNSEL
22 SHOWS THIS TO THE JURY, WE DO HAVE AN OBJECTION TO
23 THIS.

24 THE WITNESS: THAT'S A PRINTOUT OF THE
25 WEB SITE ESHOES99.COM.

1 BY MR. COOMBS:

2 Q AND WHAT DATE WAS THAT PRINTOUT DONE?

3 A IT HAS BEEN PRINTED OUT IN SEPTEMBER -- ON
4 SEPTEMBER 19TH, 2007.

5 Q AND IS THAT A -- DOES THAT REFLECT THE
6 PRACTICE THAT YOU DESCRIBED EARLIER OF PRINTING OUT
7 THE INFRINGING OFFERS UPON RECEIPT OF A COMPLAINT?

8 A YES, ABSOLUTELY.

9 Q AND IT'S YOUR OFFICE PRACTICE TO MAINTAIN
10 COPIES OF THOSE OFFERS IN THE FILE PERTAINING TO
11 THE REPORTS; IS THAT CORRECT?

12 A YES.

13 MR. COOMBS: I WOULD MOVE EXHIBIT 75 INTO
14 EVIDENCE, YOUR HONOR.

15 THE COURT: WHAT IS YOUR OBJECTION?

16 MR. LOWE: YOUR HONOR, THIS IS, FIRST OF
17 ALL, HEARSAY AND THERE'S NO FOUNDATION FOR THE
18 CONTENT OF THIS. IT'S OBVIOUSLY BEING OFFERED TO
19 SHOW WHAT SOMEBODY ELSE ON THE INTERNET HAS DONE,
20 AND THIS WITNESS HAS NO PERSONAL KNOWLEDGE WHAT WAS
21 PUT ON THE INTERNET AND IS NOT A RELIABLE MEANS OF
22 ESTABLISHING. SO THIS IS HEARSAY, DOUBLE, TRIPLE
23 HEARSAY, AND THERE'S NO FOUNDATION.

24 THE COURT: WELL, I MAY HAVE
25 MISUNDERSTOOD HIS TESTIMONY. DID I UNDERSTAND YOUR

1 TESTIMONY TO BE THAT YOU ACTUALLY FOUND THIS BY
2 GOING TO AN INTERNET SITE AND YOU PRINTED FROM WHAT
3 YOU SAW ON YOUR COMPUTER THE DOCUMENT THAT IS BEING
4 OFFERED?

5 THE WITNESS: YES.

6 THE COURT: WELL, THE OBJECTION IS
7 OVERRULED. YOU HAVE TO APPRECIATE, MEMBERS OF THE
8 JURY, THAT THESE ARE NOT BEING OFFER TO PROVE THAT
9 THE DEFENDANT DID ANY PARTICULAR CONDUCT AT THIS
10 POINT. THERE HASN'T BEEN A TIE TO THE DEFENDANT,
11 BUT THERE HAS BEEN A TIE THAT ON THE INTERNET THIS
12 SITE WAS FOUND BY THIS WITNESS, SEEN BY THIS
13 WITNESS AND HE'S SIMPLY ASKING HIS PRINTER TO PRINT
14 THE SITE, WHICH IS A COMMON EXPERIENCE THAT WE
15 HAVE. IT'S THE SAME AS TAKING A PHOTOGRAPH
16 ESSENTIALLY OF A SCENE AND SAYING THIS ACCURATELY
17 DEPICTS WHAT I SAW AT THE TIME BY TAKING A
18 PHOTOGRAPH.

19 AND SO THE EXHIBIT 75 IS IN EVIDENCE OVER
20 THE OBJECTION. THE OBJECTION IS OVERRULED.

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 75,
22 HAVING BEEN PREVIOUSLY MARKED FOR
23 IDENTIFICATION, WAS ADMITTED INTO
24 EVIDENCE.)

25 MR. COOMBS: THANK YOU, YOUR HONOR.

1 Q SO EXHIBIT 75 ESSENTIALLY REPRESENTS THE OFFER
2 OF NONGENUINE LOUIS VUITTON MERCHANDISE?

3 A YES.

4 Q AND IT'S NOT LIMITED TO LOUIS VUITTON
5 MERCHANDISE; IS THAT CORRECT? IT OFFERS A PRODUCT
6 THAT IS NOT LOUIS VUITTON INFRINGING. IT MAY
7 INFRINGE OTHER COMPANIES?

8 A YES, ABSOLUTELY. THERE'S A LIST OF OTHER
9 TRADEMARKS THAT ARE DEALT WITH, WITH THIS WEB SITE.

10 Q AND YOU KNOW THE DATE AT WHICH IT WAS PRINTED
11 AT BECAUSE OF THE INFORMATION THAT APPEARS ON THE
12 PRINTOUT?

13 A YES, THE PRINTOUT IS IN THE RIGHT SIDE IN THE
14 BOTTOM OF THE RIGHT SAID IT SAYS SEPTEMBER 17TH,
15 2007.

16 Q AND YOU ALSO NOTE THAT THIS WAS A DOCUMENT
17 PRINTED OUT IN YOUR OFFICE; CORRECT?

18 A YES, IT WAS PRINTED IN MY OFFICE.

19 Q AND I THINK YOU ALSO INDICATED THAT YOU
20 PRINTED THE DOCUMENT REGARDING THE HOSTING STATUS
21 OF THE WEB SITE; IS THAT CORRECT?

22 A YES.

23 Q AND COULD YOU TELL US HOW YOU DOCUMENTED THE
24 HOSTING STATUS AND DOCUMENTED THE STATUS?

25 A WELL, FIRST OF ALL, WE USED THE

1 DOMAINTOOLS.COM. IT'S A COMPANY THAT PROVIDES A
2 VERY USER FRIENDLY AND EASY TO READ RECORDS ABOUT A
3 WEB SITE. SEVERAL.

4 WHEN SOMEONE ACQUIRES A DOMAIN NAME ON
5 THE WEB SITE, VARIOUS PUBLIC DATABASES ARE
6 ACQUIRED, AND THE INFORMATION IS COMPILED IN A
7 DOMAIN TOOLS REPORT. THAT'S THE FIRST WAY WE USED
8 TO DOCUMENT EVIDENCE ABOUT HOSTING, BUT NOT ONLY
9 HOSTING, OTHER THINGS AS WELL THAT WE WILL SPEAK
10 ABOUT.

11 Q OKAY. AND DO YOU DO ANYTHING TO VERIFY THE
12 ACCURACY OF THE DOMAIN TOOLS HOSTING INFORMATION?

13 A YES, WE DO. WE ALSO PING THE DOMAIN NAME,
14 P-I-N-G.

15 Q COULD YOU DESCRIBE WHAT PINGING ENTAILS?

16 A PINGING IS A -- IS ACTUALLY ESTABLISHING A
17 CONNECTION, A DIRECT CONNECTION BETWEEN MY COMPUTER
18 AND THE COMPUTER ON WHICH THE CONTENT OF THE WEB
19 SITE IS LOCATED.

20 Q AND DO YOU DO ANYTHING OTHER THAN PING THE
21 DOMAIN TOOLS AND THE HOST STATUS OF THE PARTICULAR
22 WEB SITE YOUR PINGING?

23 A YES. THE PINGING THROUGH WHAT WE CALL A DOS
24 PROMPT. WITHIN THE DOS PROMPT WE ALSO DO A TRACE
25 ROUTE AND THE DATABASE LOOKUP.

1 WE ALSO ACQUIRE ADDITIONAL DATABASES SUCH
2 AS ARIN. IT'S A DATABASE SHOWING TO WHO A
3 PARTICULAR DATABASE HAS BEEN ASSIGNED.

4 WE ALSO, WE USED TO IN THE PAST NETSCAN,
5 N-E-T-S-C-A-N, TOOLS, NETSCAN TOOLS.

6 WE ALSO USED ANOTHER WEB SITE NETWORK
7 SOLUTIONS, SIMILAR TO ALTHOUGH MORE BASIC TO THE
8 DOMAIN TOOLS.

9 Q I WOULD ASK YOU TO LOOK AT 76.1 IN THE SAME
10 BINDER THAT YOU HAVE IN FRONT OF YOU.

11 A 75.1?

12 Q 76.1.

13 A SORRY.

14 Q CAN YOU DESCRIBE FOR US WHAT YOU'RE LOOKING
15 AT?

16 MR. LOWE: YOUR HONOR, ONCE AGAIN I WOULD
17 OBJECT TO THE ADMISSION OF THIS EXHIBIT. THIS IS A
18 HEARSAY REPORT FROM A THIRD PARTY THAT IS YET
19 COMPILED FROM ADDITIONAL THIRD PARTIES.

20 THE COURT: WELL, HE HASN'T TESTIFIED
21 ABOUT IT YET SO I'VE TAKEN IT OFF THE SCREEN SO
22 THAT YOU CAN TRY AND AUTHENTICATE 76.1.

23 MR. COOMBS: THANK YOU, YOUR HONOR.

24 Q CAN YOU DESCRIBE FOR US WHAT 76.1 IS?

25 A THIS IS AN INQUIRY PERFORMED ON DOMAIN TOOLS.

1 WE HAVE BEEN --

2 MR. LOWE: EXCUSE ME, YOUR HONOR. IT'S
3 BACK ON THE SCREEN.

4 THE COURT: I'VE TAKEN IT OFF THE SCREEN.
5 YOU CAN SEE IT, BUT THEY CAN'T.

6 MR. COOMBS: I'M SORRY.

7 Q WERE YOU FINISHED, MR. LIVADKIN?

8 A I'M SORRY?

9 Q WERE YOU FINISHED?

10 A NO.

11 Q THIS IS WHOIS REPORT DONE ON DOMAINTOOLS.COM
12 AND REGARDING ESHOES99 AND THIS IS ONE OF THE WEB
13 SITES THAT WE COMPLAINED ABOUT.

14 IT SAYS THERE'S A SECTION CALLED
15 SERVER.COM WHICH SAYS THAT THE DOMAIN NAME IS
16 HOSTED ON THE IP ADDRESS OF 205, 209, 172, 165 AND
17 IT SAYS THAT THE IP ADDRESS HAS BEEN ASSIGNED TO
18 AND IT HAS, IT HAS BEEN ASSIGNED TO ONE OF THE
19 MANAGEMENT GROUPS.INC.

20 THE COURT: JUST A MOMENT. LET ME
21 UNDERSTAND. THE SOFTWARE YOU WERE OPERATING
22 DOMAINTOOLS.COM, IS THAT A SOFTWARE THAT YOU ARE
23 USING IN YOUR OFFICE ON YOUR COMPUTER?

24 THE WITNESS: IT'S ACTUALLY AVAILABLE FOR
25 EVERYBODY ON THE INTERNET.

1 THE COURT: AH. SO YOU GO TO THE SITE
2 DOMAINTOOLS.COM?

3 THE WITNESS: YES.

4 THE COURT: AND DO YOU PAY FOR THAT
5 SERVICE?

6 PROSPECTIVE JUROR: IT'S ACTUALLY BECAUSE
7 SEVERAL LABELS HAVE SUBSCRIPTION, THERE'S A FREE
8 USE WHICH IS QUITE LIMITED AND YOU CAN DO A LIMITED
9 NUMBER OF QUERIES PER DAY, AND AFTER THAT YOU'RE
10 BLOCKED.

11 THERE'S THE PAID SUBSCRIPTION WHICH WE
12 USE WHICH ALLOWS YOU TO PERFORM MORE QUERIES AND
13 ACTUALLY GET SOME INFORMATION WHICH IS NOT
14 AVAILABLE TO A FREE SUBSCRIPTION.

15 BY MR. COOMBS:

16 Q SO THERE ARE LEVELS OF SUBSCRIPTION FOR WHICH
17 YOU MAY PAY BUT THERE'S ALSO A FREE SERVICE?

18 A YES, YES.

19 Q THANK YOU.

20 A AND I WOULD SAY THAT DOMAIN TOOLS IT'S AN
21 INDUSTRY STANDARD. EVERYONE USES IT.

22 THE COURT: WELL, LET ME EXCUSE YOU,
23 MEMBERS OF THE JURY. IT'S RIGHT AT 4:00 O'CLOCK
24 AND THERE HAVE BEEN A SERIES OF THESE THAT I WANT
25 TO TAKE UP TO GET A BETTER UNDERSTANDING OF HOW

1 WE'RE GOING TO HANDLE OBJECTIONS TO THESE, USE OF
2 THESE SOFTWARES FOR THIS INFORMATION.

3 SO I WILL SEE YOU TOMORROW MORNING AT
4 9:00 O'CLOCK.

5 REMEMBER MY ADMONITIONS. MS. GARCIA WILL
6 SHOW YOU WHERE TO LEAVE YOUR MATERIALS.

7 (WHEREUPON, THE PROCEEDINGS IN THIS
8 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

9 THE COURT: VERY WELL. WE'RE MEETING OUT
10 OF THE PRESENCE OF THE JURY.

11 AS I UNDERSTAND IT THE OBJECTION TO THE
12 REPORT IS THAT IT'S NOT A DOCUMENT THAT IS PRODUCED
13 IN THE ORDINARY COURSE OF BUSINESS BY PLAINTIFF BUT
14 IS SOMETHING THAT IS PURCHASED BY THE PLAINTIFF AS
15 A RESULT OF ITS SUBSCRIPTION TO THIS COMPANY.

16 AND THE QUESTION THAT THE COURT WOULD
17 HAVE BEFORE IT ON ANY HEARSAY OBJECTION IS WHETHER
18 IT'S A TRUST DOCUMENT, AS TO WHETHER OR NOT SOMEONE
19 MAKES A DECISION HOW TO PUT THE INFORMATION IN THE
20 DOCUMENT OR IN RESPONSE TO WHETHER OR NOT THE
21 STANDARD INQUIRY SOMEBODY WOULD MAKE, THE RESPONSE
22 TO SOMEBODY WITH THE SAME INQUIRY.

23 AND WHAT HE SAID TO ME WAS THAT IF YOU
24 PUT IN THE NAME ETOOLS OR ESHOES99.COM, THAT THE
25 DOMAINTOOLS.COM SITE WILL PRODUCE FROM A PUBLICLY

1 AVAILABLE DATABASE A REPORT WHICH WILL SHOW THE
2 RELATIONSHIP BETWEEN ESHOES99.COM AND THE IP
3 ADDRESS AND TO WHOM THAT IP ADDRESS WAS ASSIGNED.

4 NOW, THAT WAS MY TAKE ON HIS TESTIMONY.

5 DO YOU AGREE THAT I HAVE CHARACTERIZED
6 HIS TESTIMONY CORRECTLY?

7 MR. LOWE: I THINK THAT'S APPROXIMATELY
8 CORRECT, YOUR HONOR. I THINK THAT MAYBE HE DIDN'T
9 GO QUITE THAT FAR, BUT I THINK THAT THE COURT HAS
10 REASONABLE UNDERSTANDING OF WHAT HE WAS GETTING AT.

11 THE COURT: WELL, I LIKEN IT TO THE WHITE
12 PAGES. SOMEBODY PUTS TOGETHER A PHONEBOOK. IF YOU
13 SUBSCRIBE TO THE WHITE PAGES YOU CAN SAY THAT I
14 WOULD LIKE TO OPEN UP THE WHITE PAGES AND SEE WHO
15 HAS A PARTICULAR TELEPHONE NUMBER IF YOU CAN DO IT
16 IN A REVERSE WAY OR IF YOU CAN GIVE ME A NAME AND I
17 CAN FIND THE TELEPHONE NUMBER OF THAT PERSON.

18 NOW, IT DOES APPEAR THAT THAT IS NOT A
19 BOOK THAT IS KEPT BY THIS COMPANY, THE WHITE PAGES
20 ARE NOT KEPT BY THE COMPANY, BUT THEY'RE KEPT TO
21 WHOM THE TELEPHONE PAGES HAVE BEEN ASSIGNED. WHAT
22 IS THE DIFFERENCE ABOUT THIS?

23 MR. LOWE: WELL, IN THE TYPICAL CASE OF
24 THE WHITE PAGES, OF COURSE, THE TELEPHONE COMPANY
25 THAT ACTUALLY ASSIGNED TELEPHONE NUMBERS PRODUCES

1 THEIR OWN LIST OF TELEPHONE NUMBERS FROM THEIR OWN
2 RECORDS AND SO THEY CAN SAY, WE KNOW THIS IS
3 CORRECT BECAUSE, NUMBER ONE, WE PRODUCED IT, WE
4 ASSIGNED THIS NUMBER TO THIS PERSON;

5 SECONDLY, OUR SERVICES, OUR TELEPHONE
6 OPERATION SERVICES ARE BASED UPON THIS INFORMATION,
7 AND IF THERE WAS SOMETHING WRONG WITH IT, THE
8 SYSTEM WOULDN'T WORK. SO THAT'S A GUARANTEE OF
9 ACCURACY, ALTHOUGH THERE MIGHT BE SOME OCCASIONAL
10 ERRORS.

11 ON THE OTHER HAND, WHAT DOMAIN TOOLS IS
12 DOING IS AGGREGATING INFORMATION FROM A VARIETY OF
13 SOURCES NONE OF WHICH HAVE REALLY BEEN IDENTIFIED
14 BY THIS WITNESS AND PROBABLY THINGS THIS WITNESS
15 WOULDN'T BE ABLE TO IDENTIFY.

16 HE SAID THAT THEY ARE PUBLICLY AVAILABLE
17 DATABASES, BUT WE DON'T KNOW WHICH ONES THERE ARE.

18 MY UNDERSTANDING IS THAT, FOR EXAMPLE, IF
19 SOMEONE REGISTERS A DOMAIN NAME WITH SOMEBODY, THE
20 PARTY REGISTERING THE DOMAIN NAME ITSELF MAKES A
21 REPORT TO SOME REGISTRAR AND THAT INFORMATION MAY
22 OR MAY NOT BE ACCURATE.

23 THEY MAY FALSIFY THE INFORMATION OR THEY
24 MAY MAKE ERRORS.

25 THAT INFORMATION IS THEN SENT ON TO

1 ANOTHER ENTITY WHO THEN PACKAGES IT AND SENDS IT TO
2 ANOTHER ENTITY, MAYBE SEVERAL TIMES THIS GOES ON
3 BEFORE DOMAIN TOOLS GETS IT AND ALL OF IT IS NOT
4 REALLY TOUCHED BY HUMAN HANDS. IT'S JUST A
5 COLLECTION OF DATA THAT IS OUT THERE ON THE
6 INTERNET.

7 AND DOMAIN TOOLS WILL SELL WHATEVER THEY
8 HAVE BEEN ABLE TO PUT TOGETHER. THEY DON'T VERIFY
9 IT. THEY DON'T HAVE ANY MEANS OF VERIFYING IT.
10 THEY DON'T KNOW IF IT'S TRUE OR NOT.

11 AND THIS WITNESS WILL TESTIFY THAT DOMAIN
12 TOOLS MAY MAKE ERRONEOUS REPORTS, OFTEN WE'LL HAVE
13 TESTIMONY THAT THERE ARE REPORTS ON DOMAIN TOOLS OF
14 AN IP ADDRESS THAT IS BEING USED BY A DOMAIN THAT
15 IS NOT ACCURATE, IT'S ACTUALLY SOMEPLACE ELSE OR A
16 DIFFERENT IP ADDRESS ENTIRELY.

17 SOMETIMES THE REGISTRAR, THE REGISTRATION
18 DOESN'T POINT DIRECTLY TO THE RIGHT PARTY THAT HAS
19 THE IP ADDRESS ASSIGNED. THOSE PIECES OF
20 INFORMATION COME FROM VARIOUS PLACES.

21 IF, FOR EXAMPLE, HE LOOKED AT A DATABASE
22 MANAGED FOR ARIN, AT LEAST WE WOULD KNOW THAT A
23 QUASI GOVERNMENT AGENCY WAS KEEPING TRACK OF WHO
24 THEY ASSIGNED A PARTICULAR IP ADDRESS TO, BUT THIS
25 IS SEVERAL STEPS REMOVED FROM THAT.

1 THE COURT: WELL, LET ME, LET ME
2 INTERRUPT. IT DOES SEEM THAT YOU HAVE RAISED A
3 QUESTION THAT MIGHT HAVE SOME CONTROVERSY AND MIGHT
4 NOT.

5 IT -- BEFORE THE DOCUMENT COMES IN, I
6 WOULD WISH TO MAKE SURE THAT IT HAS AN INDICIA OF
7 AUTHENTICITY.

8 YOU CAN CROSS-EXAMINE THE WITNESS AND TRY
9 AND ESTABLISH THAT IT SHOULD NOT BE BELIEVED THAT
10 ESHOES99.COM IS SOMEHOW ASSOCIATED WITH A
11 DEFENDANT, BUT I DON'T EVEN WANT IT TO COME INTO
12 EVIDENCE IF THERE IS SOME REASON THAT WOULD
13 INTERFERE WITH THE DEFENDANTS' ABILITY TO
14 CROSS-EXAMINE THAT EVIDENCE. THAT'S THE POINT OF
15 THE HEARSAY RULE BECAUSE YOU CAN'T CROSS-EXAMINE
16 IT.

17 FOR EXAMPLE, IS IT YOUR PROFFER THAT
18 THERE'S NO WAY FOR THE DEFENDANT TO KNOW ONE WAY OR
19 THE OTHER AS TO WHETHER OR NOT ESHOES99.COM WAS
20 INDEED USING AN IP ADDRESS WHICH WAS ASSIGNED TO
21 THE DEFENDANT?

22 MR. LOWE: WELL, THE PROBLEM
23 FUNDAMENTALLY COMES IN THAT ON A PARTICULAR DATE
24 THIS REPORT SAYS THAT THIS WAS THE ADDRESS AND
25 THAT'S APPARENTLY WHAT LOUIS VUITTON'S ARGUMENT IS

1 BASED UPON.

2 AND THERE IS -- BECAUSE OF THE DELAY IN
3 OBTAINING THE INFORMATION FROM LOUIS VUITTON, OR
4 WHOEVER, THE DEFENDANTS HAVE ONLY BEEN ABLE TO LOOK
5 AT THAT INFORMATION OCCASIONALLY AND VERY
6 FREQUENTLY THEY HAVE FOUND THAT IT'S INDIRECT, THAT
7 IT INDIRECTLY REPORTS.

8 THE COURT: YOU'RE NOT ANSWERING MY
9 QUESTION.

10 MR. LOWE: WELL, I'M SORRY, YOUR HONOR.
11 THAT THEY CAN'T ALWAYS CHALLENGE IT BECAUSE THIS IS
12 THE --

13 THE COURT: NO, NO. IF YOU WERE TO LOOK
14 AND SEE THE DOCUMENT TO SEE WHAT WAS BEING OFFERED
15 AND TO SEE WHETHER OR NOT ON OCTOBER 23RD, 2006
16 ESHOES99.COM WAS USING AN IP ADDRESS WHICH WAS
17 ASSIGNED TO YOUR CLIENT, WOULD YOU SAY, NO, THERE
18 IS NO WAY FOR ME TO KNOW THAT THE ACCURACY OF THAT
19 INFORMATION BECAUSE IT'S TOO DATED? I DON'T HAVE A
20 RECORD WHICH WILL SHOW WHICH IP ADDRESS WAS
21 ASSIGNED TO MY CLIENT ON THAT DATE AND WHETHER
22 ESHOES99.COM WAS USING IT ON THAT DATE OR BOTH?

23 MR. LOWE: THE LATTER. WE KNOW WHICH IP
24 ADDRESSES ARE ASSIGNED TO THE DEFENDANTS. THAT'S
25 NOT AN ISSUE.

1 BUT WE DON'T KNOW WHICH DOMAINS ARE USING
2 WHICH ISP'S UNLESS SOMEONE CHECKS IT AT THAT TIME
3 AND, FOR EXAMPLE, THE BEST WAY THAT WE KNOW OF TO
4 CHECK IT WOULD BE TO PING IT.

5 NOW, THE WITNESS TESTIFIED ABOUT THIS
6 PINGING PROCESS BECAUSE THAT'S SORT OF A REALTIME
7 TEST AS OPPOSED TO SOME HISTORICAL RECORD SOLD BY
8 SOME COMPANY THAT HAS GOTTEN FROM VARIOUS AND
9 SUNDRY SOURCES.

10 THE COURT: ALL RIGHT. LET ME INTERRUPT
11 YOUR ARGUMENT AND HEAR YOUR RESPONSE.

12 MR. COOMBS: YOUR HONOR, I THINK YOU HIT
13 THE NAIL ON THE HEAD WITH RESPECT TO THE
14 COMPILATION COMPARISON, THAT THIS IS LIKE THE WHITE
15 PAGES AND IT'S LIKE A VARIETY OF COMPILATIONS THAT
16 ARE ROUTINELY ADMITTED AS AN EXCEPTION TO THE
17 HEARSAY RULE, AND YOU'RE RIGHT TO FOCUS ON THE
18 RELIABILITY ISSUE.

19 AND I THINK WHAT YOU WILL HEAR IS THAT,
20 YOU KNOW, THE WITNESS HAS CONDUCTED LITERALLY
21 THOUSANDS OF INVESTIGATIONS OVER THE YEARS. HE
22 ROUTINELY CONFIRMS THE INFORMATION AS ACCURATE AT
23 THE TIME THAT HE PRINTS OUT THE DOMAIN TOOLS RECORD
24 AND THAT THE DOMAIN TOOLS RECORD HAS TWO COMPONENTS
25 WHICH HE HAS NEVER FOUND INACCURATE.

1 IN FACT, THE DEFENDANTS THEMSELVES IN
2 THEIR INITIAL DISCLOSURES WERE CITING THE DOMAIN
3 TOOLS RECORDS WHICH CORROBORATES MR. LIVADKIN'S
4 TESTIMONY THAT THIS IS SOMETHING ROUTINELY USED IN
5 THE INDUSTRY.

6 THERE ARE TWO POINTS HERE AND AGAIN WHICH
7 I THINK YOUR HONOR TOUCHED ON. ONE IS WAS THIS AN
8 IP ADDRESS THAT WAS ASSIGNED TO THE DEFENDANTS?

9 AND, TWO, WAS THIS A SITE THAT WAS
10 LOCATED AT THAT IP ADDRESS ON THE DATE SPECIFIED?

11 I DON'T THINK BASED ON WHAT I JUST HEARD
12 THAT THERE'S ANY DISPUTE ABOUT THE FIRST PART.
13 THAT IF THERE'S AN IP ADDRESS INDICATED, THOSE IP
14 ADDRESSES ARE, IN FACT, AMONG THE BLOCKS OF IP
15 ADDRESSES ALLOCATED TO THE DEFENDANT.

16 SO THE REAL QUESTION IS, IS THIS THE IP
17 ADDRESS TO WHICH THIS DOMAIN NAME WAS LOCATED AT
18 THE TIME THE SEARCH WAS CONDUCTED?

19 AND YOUR INDICIA OF RELIABILITY HERE IS
20 THAT THE WITNESS HIMSELF EITHER CONDUCTED A SECOND
21 CHECK BY PINGING THE NAME WHICH IS THE ULTIMATELY,
22 I THINK THE DEFENDANTS AGREE, THE MOST RELIABLE WAY
23 OF CHECKING THAT INFORMATION, AND TO CONFIRM THAT
24 IT, IN FACT, MATCHED THE INFORMATION BEFORE PUTTING
25 IT IN HIS FILE IN THE FIRST PLACE.

1 THE COURT: LET'S GO TO THE
2 DOMAINTOOLS.COM PROCESS.

3 WHAT I UNDERSTOOD FROM YOUR OPPONENT IS
4 THAT IT GETS ITS INFORMATION INITIALLY BY THE OWNER
5 OF THE DOMAIN NAME REPORTING WHAT IP ADDRESS IT
6 USES AND THAT'S A SELF-REPORTING PROCESS.

7 MR. COOMBS: YOUR HONOR, THAT'S A
8 DIVERSION.

9 WE ARE NOT TALKING ABOUT THE DOMAIN NAME
10 WHOIS INFORMATION. RIGHT NOW WE'RE TALKING ABOUT
11 THE SERVER DATA WHICH IS TWO PIECES OF INFORMATION,
12 THE IP ADDRESS AND WHO OWNED IT.

13 THE COURT: I UNDERSTAND.

14 MR. COOMBS: AND THEY'RE NOT OBJECTING TO
15 THAT. THEY'RE ONLY OBJECTING TO THE IP ADDRESS.
16 THE OTHER INFORMATION ABOUT REGISTRAR CONTACT
17 INFORMATION AND ALL OF THAT IS NOT WHAT WE'RE
18 TALKING ABOUT RIGHT NOW.

19 AND ALTHOUGH THAT'S DRAWN FROM OTHER
20 SOURCES ON THE INTERNET, THE IP -- THE INFORMATION
21 THAT THEY ARE DISPUTING IS THE IP ADDRESS. HOW
22 DOES DOMAIN TOOLS GET IT? IT PINGS IT. SAME WAY
23 WE DO. SAME WAY MR. LOWE DOES AND MR. LAI DOES AND
24 MR. LIVADKIN CAN PUT IT IN HIS FILE. HE SECOND
25 CHECKS IT TO MAKE SURE IT IS ACCURATE.

1 SO EVEN IF HE COULDN'T --

2 THE COURT: ALL RIGHT. STAY WITH ME.

3 MR. COOMBS: I'M SORRY.

4 THE COURT: THERE ARE TWO PARTS TO THIS
5 AND THE PART THAT I'M NOW CONCERNED WITH IS WHETHER
6 OR NOT THE RECORD THAT SHOWS ETOOLS BEING
7 ASSOCIATED WITH THE IP ADDRESS WHICH IN TURN IS
8 ASSOCIATED WITH THE DEFENDANT, WHETHER OR NOT THE
9 ASSOCIATION OF ETOOLS WITH THE IP ADDRESS IS
10 AUTHENTICATED.

11 WHO IS IT THAT MAKES THAT ASSOCIATION OF
12 ETOOLS WITH A PARTICULAR INTERNET IP ADDRESS?

13 MR. COOMBS: THE DOMAIN TOOLS DOES.

14 THE COURT: ALL RIGHT. AND WHAT DOES IT
15 USE TO MAKE THAT ASSOCIATION?

16 MR. COOMBS: IT PINGS THE NAME. SO IT
17 DOES ESSENTIALLY WHAT NIKOLAY LIVADKIN CAN TESTIFY
18 TO.

19 THE COURT: ALL RIGHT. IS THERE AN
20 OBJECTION THAT THERE'S NO EVIDENCE THAT HAS BEEN
21 PRESENTED THAT THAT IS HOW DOMAINTOOLS.COM OBTAINS
22 THE ASSOCIATION BETWEEN THE DOMAIN NAME AND THE IP
23 ADDRESS?

24 MR. LOWE: YES, YOUR HONOR, WE DO
25 CHALLENGE THAT, AND I HAVE NEVER HEARD OF THAT

1 SUGGESTION BEFORE. THAT'S CERTAINLY NOT THE WAY
2 IT'S DONE TO MY KNOWLEDGE.

3 PINGING IS A SOMEWHAT LABOR INTENSIVE
4 PROCESS, AND MY UNDERSTANDING IS THAT DOMAIN TOOLS
5 OBTAINS THEIR INFORMATION FROM VARIOUS THIRD PARTY
6 SOURCES, NOT SOMETHING THAT THEY COLLECT
7 THEMSELVES. THEY JUST AGGREGATE INFORMATION AND
8 PUBLISH IT IN ORDER TO MAKE SOME MONEY.

9 THE COURT: NOW, LET'S GO TO PINGING. IT
10 SOUNDS LIKE BOTH PARTIES AGREE THAT THIS PINGING
11 PROCESS IS RELIABLE.

12 MR. LOWE: AS FAR AS WE KNOW.

13 THE COURT: WHAT IS PINGING?

14 MR. COOMBS: PINGING IS IT'S A THING OF
15 RADAR OR SONAR. IT BASICALLY SENDS A SIGNAL OUT TO
16 THE RECIPIENT BUT IN DOING THAT IT HAS TO GO
17 THROUGH THE PROCESS WE TALKED ABOUT IN OPENING
18 STATEMENT.

19 IT HAS TO CONVERT THE DOMAIN NAME INTO AN
20 IP ADDRESS AND THEN IT BASICALLY TESTS HOW LONG IT
21 TAKES TO GET A RESPONSE FROM THE TARGET DOMAIN
22 NAME.

23 BUT AS I SAY, THE RELEVANT PART FOR OUR
24 PURPOSES IS THAT IN DOING SO IT GIVES US THE IP
25 NUMBER, THE IP ADDRESS AT WHICH THAT DOMAIN NAME IS

1 LOCATED.

2 SO EVEN THOUGH --

3 THE COURT: SLOW DOWN. AND MY CRITICISM
4 IS THAT ALTHOUGH YOU ALL PROMISED YOU WOULD GIVE US
5 A VOCABULARY LIST, YOU HAVEN'T DONE IT YET. AND
6 YOU'RE BOTH SOPHISTICATED IN THIS, AND YOU SHOULD
7 TREAT THE JURY LIKE A GROUP OF FIFTH GRADERS OR ARE
8 EIGHTH GRADES ARE TO UNDERSTAND THIS. AND YOU USE
9 PINGING LIKE IT'S SOMETHING WE DO ALL OF THE TIME,
10 AND WE DON'T.

11 SO WHEN USING THE SIGNAL, IT'S SENT OUT
12 AND THAT'S SOMETHING THAT MR. LIVADKIN CAN DO
13 HIMSELF?

14 MR. COOMBS: CORRECT, YOUR HONOR.

15 THE COURT: SO WHAT DOES HE SEND OUT AS A
16 SIGNAL?

17 MR. COOMBS: HE BASICALLY SENDS OUT A
18 DEMAND PING AND THEN A DOMAIN NAME.

19 THE COURT: SO HE SAYS PING ESHOES99, AND
20 THEN WHAT COMES BACK?

21 MR. COOMBS: WHAT COMES BACK IS AN IP
22 ADDRESS AND A NAME AND WHICH TELLS HIM HOW LONG IT
23 TOOK TO GET A RESPONSE FROM THE DOMAIN NAME.

24 THE COURT: SO ONCE HE GETS THE DOMAIN
25 NAME HE HAS NOW ASSOCIATED ESHOES99 WITH THE IP

1 ADDRESS?

2 MR. COOMBS: CORRECT.

3 THE COURT: AND WHAT IS IT USEFUL FOR?

4 MR. COOMBS: THAT'S WHAT PINGING IS, IT
5 DOESN'T MATTER.

6 THE COURT: BUT HE DIDN'T PRODUCE A
7 REPORT OF THE RESULT OF HIS PINGING?

8 MR. COOMBS: WELL, HE DOES NOW. HE
9 DIDN'T AT THE BEGINNING WHEN HE WAS LOOKING AT
10 ESHOES, FOR EXAMPLE. AND IT'S ONLY A DOCUMENTATION
11 ISSUE, NOT A PRACTICE ISSUE.

12 MR. LOWE: YOUR HONOR, IF I MAY, MY
13 RECOLLECTION OF MR. LIVADKIN'S DEPOSITION TESTIMONY
14 WAS THAT HE ONLY OCCASIONALLY USED PINGING. HE
15 MIGHT BE DOING IT NOW BUT AS TO THE EARLIER SITES
16 HE WASN'T DOING THAT.

17 IF HE COULD TESTIFY AS TO PINGING, THAT'S
18 FINE, BUT I WOULD SUGGEST THAT HE WOULDN'T BE ABLE
19 TO AS TO EACH OF THESE SITES.

20 THE COURT: WELL, HERE'S MY CONCERN AND
21 GIVEN THE IMPORTANCE OF TYING THE WEB SITE OF THE
22 DOMAIN NAME TO COUNTERFEIT INFORMATION AND TYING
23 THAT TO THE DEFENDANT UNDER THE THEORY THAT THE
24 PLAINTIFF IS BRINGING IS VERY IMPORTANT THAT THE
25 PLAINTIFF PROVE TO THE JURY THAT A NAME LIKE

1 ESHOES99.COM THAT IS ACTUALLY SELLING COUNTERFEIT
2 GOODS ARE BEING -- ARE USING AN IP ADDRESS THAT IS
3 ASSIGNED TO THE COMPANY, AND THAT'S WHAT I'M
4 LISTENING FOR.

5 THE FACT THAT THEY USE A SECONDARY SOURCE
6 TO VERIFY THAT I WOULD ALLOW AFTER I HEAR EVIDENCE
7 THAT INDEED THAT HAS HAPPENED PERSONALLY.

8 NOW, IT COULD BE THAT YOU'RE GOING TO
9 HAVE TO CALL IN SOMEONE WHO IS AN EXPERT OR SOMEONE
10 WHO CAN AUTHENTICATE HOW DOMAINTOOLS.COM WORKS TO
11 CREATE THE INDICIA OF RELIABILITY THAT WILL GIVE IT
12 THE SAME CHARACTER AS PERSONAL PINGING BECAUSE IT
13 DOES SEEM TO ME THAT IF YOU CAN GO ONTO THE
14 INTERNET AND ASK IT TO SHOW ME WHERE A PARTICULAR
15 DOMAIN NAME RESIDES IN TERMS OF ITS IP ADDRESS AND
16 THAT'S DONE FREQUENTLY AND RELIABLY BY COMPANIES,
17 THAT MIGHT GO TO THE WEIGHT OF THE EVIDENCE.

18 YOU MIGHT CHALLENGE IT AND SAY THEY MAKE
19 MISTAKES, BUT MAKING MISTAKES DOESN'T DEPRIVE THE
20 PLAINTIFF OF THE RIGHT TO PUT IN EVIDENCE THAT
21 DOMAINTOOLS.COM IS AN INTERNET DEVICE THAT PEOPLE
22 CAN REGULARLY USE TO LOOK UP IP ADDRESSES AND IN
23 THIS CASE WE USED IT UNDER A SUBSCRIPTION, WE PAID
24 FOR IT, IT'S RELIABLE.

25 AND I PRESUME THAT THE DEFENSE CAN COME

1 ALONG AND TRY AND CHALLENGE THAT RELIABILITY AND
2 SHOW THAT IT ISN'T NECESSARILY ASSOCIATED WITH IT.

3 FROM THE DEFENSE STANDPOINT I UNDERSTAND
4 THE CONCERN THAT THIS IS TIME SENSITIVE BECAUSE AS
5 I UNDERSTAND IT NOW, THERE IS NO WAY TO GO BACK AND
6 DUPLICATE THAT PROCESS TO WHAT WAS THE STATUS OF
7 AFFAIRS BACK ON OCTOBER 23RD, 2006 AND SEE WHAT
8 WOULD OCCUR.

9 ONE OF THE THINGS THAT WOULD HELP THE
10 COURT IS THAT IF THERE IS ANY OTHER INDICIA OF
11 RELIABILITY THAT INDEED ESHOES99.COM WAS USING AN
12 IP ADDRESS ASSIGNED TO THE COMPANY AND THE
13 TESTIMONY BY THE WITNESS THAT HE DIRECTLY PINGED IT
14 SATISFIES THE COURT THAT THERE IS THAT ASSOCIATION.

15 AND SO IT SEEMS TO ME THAT THE DOMAIN
16 TOOLS IS CORROBORATING OF HIS OWN PINGING SINCE HE
17 DIDN'T RECORD IT AND IS TYPICALLY IS ADDITIONAL
18 EVIDENCE. SO I'M INCLINED TO ALLOW IT IN SUBJECT
19 TO CROSS-EXAMINATION.

20 IT WOULD HELP IF YOU HAVE OTHER AREAS
21 LIKE THIS WHERE YOU'RE USING SOME THIRD PARTY
22 DATABASE TO PUT INTO EVIDENCE TO THE COURT'S
23 SATISFACTION AND YOU AREN'T USING THE PROCESS OF A
24 WITNESS WHO HAS ACTUALLY PINGED THE SITE A
25 FOUNDATION FOR THE RELIABILITY OF THAT, ESPECIALLY

1 IF IT'S BASED UPON THIRD PARTY REPORTING OR
2 SELF-REPORTING BUT BASED UPON HIS TESTIMONY THAT HE
3 HIMSELF PINGED IT, AND HE CAME BACK WITH THE SAME
4 ADDRESS THAT THE DOMAIN TOOLS REPORTED ON THE
5 PARTICULAR DATE IN QUESTION.

6 I'LL OVERRULE THE OBJECTION WITH RESPECT
7 TO ESHOES99.COM ON OCTOBER 23RD, 2006 BUT INVITE
8 THE PARTIES TO HAVE THIS OBJECTION IN MIND AS YOU
9 PREPARE TO RESPOND TO OTHER EFFORTS ON THE PART OF
10 THE PLAINTIFF TO VERIFY THAT A PARTICULAR SUSPECTED
11 COUNTERFEIT WEB SITE WAS TIED TO AN IP ADDRESS THAT
12 WAS TIED TO THE DEFENDANTS.

13 MR. COOMBS: THANK YOU VERY MUCH, YOUR
14 HONOR.

15 THE COURT: I'LL SEE YOU TOMORROW MORNING
16 AT 9:00 O'CLOCK.

17 MR. LOWE: THANK YOU.

18 (WHEREUPON, THE PROCEEDINGS IN THIS MATTER
19 WERE CONCLUDED.)
20
21
22
23
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25