

1 A P P E A R A N C E S: (CONT'D)

2 ALSO PRESENT:

3 LAW OFFICES OF J. ANDREW
4 COOMBS
5 BY: RUTH ADLER, PARALEGAL
6 517 E. WILSON AVENUE
7 SUITE 202
8 GLENDALE, CALIFORNIA 91206

9 LVMH FASHION GROUP
10 BY: NIKOLAY LIVADKIN
11 2 RUE DU PONT-NEUF 75001
12 PARIS, FRANCE

13 AKANOC SOLUTIONS, INC.
14 BY: STEVE CHEN, PRESIDENT
15 45535 NORTH PORT LOOP EAST
16 FREMONT, CALIFORNIA 94538

INDEX OF PROCEEDINGS

NIKOLAY LIVADKIN DIRECT EXAMINATION P. 4
(RESUMED)
CROSS-EXAMINATION P. 103
REDIRECT EXAMINATION P. 173
RECROSS-EXAMINATION P. 179
FURTHER REDIRECT P. 182

DEPOSITION READ OF JULIANA LUK P. 186

INDEX OF EXHIBITS

FOR THE PLAINTIFF'S:	MARKED	ADMITTED
75.1		29

1 SAN JOSE, CALIFORNIA

AUGUST 19, 2009

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

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

6 THE COURT: VERY WELL. ARE YOU READY TO
7 PROCEED?

8 MR. COOMBS: YES, YOUR HONOR.

9 THE COURT: SUMMON THE JURY.

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

12 THE COURT: VERY WELL. YOU MAY RESUME
13 YOUR EXAMINATION.

14 **NIKOLAY LIVADKIN,**

15 BEING RECALLED AS A WITNESS ON BEHALF OF THE
16 PLAINTIFF, HAVING BEEN PREVIOUSLY SWORN, WAS FURTHER
17 EXAMINED AND TESTIFIED AS FOLLOWS:

18 MR. COOMBS: THANK YOU, YOUR HONOR.

19 **DIRECT EXAMINATION (RESUMED)**

20 BY MR. COOMBS:

21 Q GOOD MORNING. YESTERDAY AFTERNOON WHEN WE
22 BROKE FOR THE EVENING WE WERE TALKING ABOUT THE WAY
23 IN WHICH YOU AND YOUR OFFICE DOCUMENT THE HOSTING
24 STATUS OF WEB SITES THAT WERE THE SUBJECT OF
25 INVESTIGATION AND WE WERE LOOKING AT EXHIBIT 76.1

1 AS AN EXAMPLE AND I'D ASK THAT THAT BE PULLED UP AT
2 THE MOMENT TO ASSIST US IN GOING THROUGH WHAT THIS
3 MEANS.

4 AS I UNDERSTOOD YOUR TESTIMONY IN LOOKING
5 AT THE HOSTING STATUS YOU'RE LOOKING AT TWO THINGS,
6 THE IP ADDRESS, WHICH IS A SERIES OF NUMBERS, AND
7 WHO HAS BEEN ASSIGNED THAT IP ADDRESS; IS THAT
8 CORRECT?

9 A CORRECT.

10 Q AND THAT INFORMATION COMES FROM TWO DIFFERENT
11 PLACES; IS THAT ALSO CORRECT?

12 A YES. ACTUALLY EVEN FROM SEVERAL.

13 Q OKAY. LOOKING AT THE SERVER DATA ON EXHIBIT
14 76.1, CAN YOU IDENTIFY FOR THE JURY WHICH PORTION
15 OF THAT IS THE IP ADDRESS IDENTIFIED FOR
16 ESHOES99.COM ON THE DATE THAT THAT REPORT WAS RUN
17 AND PRINTED?

18 YOU SHOULD BE LOOKING AT A PRINTOUT DATED
19 OCTOBER 23, 2006.

20 A YES. THE PORTION CALLED THE SERVER DATA GIVES
21 US AN IP ADDRESS 204.16.197.26, AND IT SAYS THAT
22 THIS IP ADDRESS HAS BEEN ASSIGNED TO AKANOC
23 SOLUTIONS, INC.

24 Q NOW, YOU SAID THAT'S ONE SOURCE FOR
25 IDENTIFYING AN IP ADDRESS. CAN YOU IDENTIFY WHAT

1 YOU MEAN BY IDENTIFYING ONE SOURCE FOR AN IP
2 ADDRESS?

3 A WELL, AS I EXPLAINED YESTERDAY, WE CAN GET THE
4 SAME IP ADDRESS FROM A DOS PROMPT BEING A WAY TO
5 ESTABLISHING A DIRECT CONNECTION BETWEEN MY
6 COMPUTER AND THE TARGET COMPUTER.

7 WE CAN ALSO USE ANOTHER TOOL CALLED
8 NETSCAN TOOLS.

9 Q THE DOS PROMPT IS THE DIRECT PINGING THAT YOU
10 TALKED ABOUT YESTERDAY?

11 A YES.

12 Q AND WHAT IS NETSCAN TOOLS?

13 A NETSCAN TOOLS IS ACTUALLY A SOFTWARE THAT
14 NEEDS TO BE INSTALLED ON MY COMPUTER AND THIS
15 SOFTWARE PERFORMS THE SAME OPERATION AS THE DOS
16 PROMPT.

17 Q SO IT PINGS THROUGH THE NETSCAN SOFTWARE?

18 A YES.

19 Q AND HOW DID YOU FIRST LEARN OF THE NETSCAN
20 SOFTWARE?

21 A I WAS ADVISED TO USE NETSCAN TOOLS DURING A
22 VISIT THAT I DID AT THE CYBER CRIME UNIT OF THE
23 F.B.I.

24 Q AND WAS THAT A TRAINING SESSION THAT YOU WERE
25 ATTENDING?

1 A THAT WAS JUST A MEETING TO DISCUSS ABOUT
2 CASES.

3 Q SO THE FIRST STEP WHETHER IT'S PINGING, OR
4 WHETHER IT'S IDENTIFYING TO PINGING ARE THE SERIES
5 OF NUMBERS THAT ARE IDENTIFIED THERE. BESIDES
6 THOSE FOUR NUMBERS THERE'S INITIAL BOXES THAT HAS
7 LETTERS IN THERE. I THINK IT'S W, P, D, T. CAN
8 YOU TELL US WHAT THOSE INITIALS REFER TO?

9 A W, IF YOU THINK OF W, THAT WOULD SEARCH ON THE
10 ARIN DATABASE WHO THIS IP ADDRESS 204.16.197.26
11 WOULD BE ASSIGNED.

12 P WOULD BE PERFORM THE PINGING SO IT WILL
13 TELL US, FOR EXAMPLE --

14 THE COURT: CAN YOU PUT THE CURSOR WHERE
15 HE'S REFERRING TO ON THE DOCUMENT SO WE CAN SEE
16 WHAT HE'S REFERRING TO.

17 THE WITNESS: THAT WILL ACTUALLY GIVE US,
18 FOR EXAMPLE, THE NUMBER OF SECONDS THAT IT'S TAKING
19 FROM THE SIGNAL TO GO FROM ACTUALLY THE DOMAIN
20 TOOLS COMPUTER TO THE TARGET COMPUTER.

21 D WOULD BE THE DNS LOOKUP.

22 AND T WOULD BE THE TRACE WORD.

23 BY MR. COOMBS:

24 Q AND WHAT IS THE TRACE WORD?

25 A THE TRACE WORD WOULD ACTUALLY TELL US WHAT THE

1 THE ROUTE THAT THE INFORMATION TAKES BETWEEN THE
2 DOMAIN TOOLS COMPUTER AND THE TARGET COMPUTER. IT
3 WILL SHOW US THE VARIOUS KNOTS WE NEED IN THE
4 WORLDWIDE WEB ON WHICH THE INFORMATION GOES
5 THROUGH.

6 Q AND THE NEXT LINE BELOW THAT IS IP LOCATION OR
7 IN THIS CASE READS CALIFORNIA, FREMONT, AKANOC
8 SOLUTIONS, INC.

9 AND THAT'S THE IDENTIFICATION OF THE HOST
10 TO WHICH THE NUMBER ABOVE WAS ASSIGNED ACCORDING TO
11 THIS RECORD?

12 A YES.

13 Q AND THEY -- AND WHAT IS YOUR UNDERSTANDING AS
14 TO THE SOURCE OF THAT INFORMATION?

15 A THIS -- THE SOURCE OF THIS INFORMATION IS THE
16 ARIN, THE DATABASE OF ARIN, A-R-I-N.

17 Q AND ARIN IS ONE OF THE FIVE REGIONAL INTERNET
18 REGISTRIES?

19 A CORRECT.

20 Q AND THERE'S A DIFFERENT REGISTRY FOR DIFFERENT
21 PARTS OF THE WORLD ESSENTIALLY. ONE FOR EUROPE.
22 ONE FOR ASIA PACIFIC?

23 THE COURT: THIS IS YOUR CLIENT. I'LL
24 ALLOW YOU TO LEAD ON SOME AREAS, BUT YOU SHOULD ASK
25 QUESTIONS THAT ARE DIRECT.

1 BY MR. COOMBS:

2 Q CAN YOU DESCRIBE FOR THE JURY WHAT THE
3 REGIONAL INTERNET REGISTRIES ARE AND WHAT THEY DO?

4 A EACH REGIONAL INTERNET REGISTRY ASSIGNS IP
5 ADDRESSES FOR THE REGION IT HAS AUTHORITY ON.

6 AND FOR THE CASE OF THE UNITED STATES
7 IT'S ARIN. AND THE REASON WHY I SAY THIS
8 INFORMATION COMES PRECISELY FROM THIS REGION IS
9 BECAUSE IT'S CALIFORNIA.

10 Q IS THERE ANY INFORMATION ON THE 76.1 PRINTOUT
11 THAT ASSISTS YOU IN IDENTIFYING THE HOST OF THE WEB
12 SITE THAT IS THE SUBJECT OF THE COMPLAINT THAT
13 WE'RE INVESTIGATING?

14 A ON THIS PARTICULAR SHEET?

15 Q CORRECT.

16 A NO.

17 Q AND FOR THE BENEFIT OF THE JURY, CAN YOU
18 BRIEFLY DESCRIBE WHAT THE OTHER PORTIONS OF THE
19 PRINTOUT ARE AND WHAT INFORMATION THAT THEY ARE
20 RELATING?

21 MR. LOWE: YOUR HONOR, WE WOULD OBJECT
22 UNLESS THE WITNESS HAS A PROPER FOUNDATION BASED ON
23 HIS PERSONAL KNOWLEDGE. I THINK IT MAY BE GETTING
24 FURTHER THAN --

25 THE COURT: THE OBJECTION IS SUSTAINED.

1 I HAVE ALLOWED THIS DOCUMENT TO BE USED BECAUSE OF
2 THE PERSONAL PINGING AS WE DISCUSSED IT AT THE END
3 OF THE DAY YESTERDAY.

4 BUT TO THE EXTENT THAT YOU'RE ASKING THAT
5 IT GO BEYOND THAT AS CORROBORATION AND SHOWING WHAT
6 HE DISCOVERED IN HIS OWN INVESTIGATION AND TO THE
7 EXTENT THAT THIS IS A DOCUMENT GENERATED BY SOMEONE
8 ELSE, YOU NEED TO LAY A FOUNDATION THAT HE HAS A
9 BASIS FOR KNOWING WHAT THOSE OTHER PORTIONS ARE.

10 IT ALSO SEEMS TO ME TO BE IRRELEVANT IF
11 HE SAYS TO THE COURT OR THAT HE'S TESTIFIED TO WHAT
12 HE HAS USED. THE OTHER PART IS IRRELEVANT.
13 BY MR. COOMBS:

14 Q IS THERE ANOTHER PORTION OF THIS RECORD THAT
15 YOU USED FOR ANY OTHER PURPOSE IN CONNECTION WITH
16 YOUR ENFORCEMENT ACTIVITIES?

17 A YES.

18 Q AND CAN YOU IDENTIFY IT FOR US, PLEASE?

19 A THAT IS THE LAST PART WHOIS RECORD.

20 Q W-H-O-I-S REPORT?

21 A AS I PREVIOUSLY MENTIONED, WHEN WE OPEN A NEW
22 FILE, WE WOULD SEND A WARNING LETTER TO THE WEB
23 SITE OPERATOR AND TO THE HOSTING COMPANY.

24 SO THIS LAST CONNECTION CALLED WHOIS
25 RECORD, WE WOULD USE IT TO SEND A WARNING LETTER TO

1 THE OPERATOR OF THE WEB SITE.

2 Q AND IS THERE ANY SPECIFIC PORTION OF THE
3 CONTACT INFORMATION THAT YOU'RE RELYING ON AS
4 OPPOSED TO OTHERS?

5 A I PRIMARILY RELY ON THE REGISTRANT E-MAIL
6 ADDRESS WHICH IN THIS CASE IS YUZDREAM@163.COM.

7 Q AND WHY IS IT THAT YOU RELY SPECIFICALLY ON
8 THAT PORTION OF THE WHOIS DATA AND NOT OTHERS TO
9 CONTACT THE WEB SITE OPERATOR?

10 A WELL, USUALLY WEB SITES DEALING WITH ILLEGAL
11 ACTIVITY DO NOT DISCLOSE THEIR CONTACT INFORMATION
12 WITHIN THE WHOIS RECORD PORTION OF THE DOMAIN NAME.

13 AS YOU CAN SEE HERE, THE INFORMATION IS
14 INCOMPLETE SO I PRESUME IT'S A FAKE.

15 SO I WOULD USE ONLY THE E-MAIL ADDRESS,
16 WHICH IS THE ONLY INFORMATION THAT IS USUALLY
17 CORRECT BECAUSE THIS E-MAIL ADDRESS IS USED BY THE
18 DOMAIN NAME REGISTRANT TO COMMUNICATE WITH THE
19 DOMAIN NAME REGISTRAR FOR THE PURPOSE OF RENEWING
20 THE DOMAIN NAME.

21 Q SO THE REGISTRANT IN THIS CASE, THE INDIVIDUAL
22 IDENTIFIED AS BINGYAN WANG WOULD USE THAT E-MAIL
23 ADDRESS TO COMMUNICATE WITH THE ENTITY WHO IS
24 RESPONSIBLE FOR MAINTAINING THE DOMAIN NAME
25 REGISTRATION?

1 A ABSOLUTELY.

2 Q HAS YOUR PRACTICE OF DOCUMENTING THE HOSTING
3 STATUS OF MATTERS BY YOUR OFFICE CHANGED DURING THE
4 COURSE OF THIS LITIGATION?

5 A I'M SORRY?

6 Q HAS THE WAY IN WHICH YOU DOCUMENT THE HOSTING
7 STATUS SUCH AS WHAT WAS REFLECTED EARLIER CHANGED
8 DURING THE COURSE OF THIS LITIGATION?

9 A YES.

10 Q AND CAN YOU SAY HOW THAT HAS CHANGED?

11 A UNTIL THE WAY THAT WE ARE LOOKING AT IN OUR
12 EVIDENCE WAS CHALLENGED BY DEFENDANTS, WE WOULD
13 SIMPLY PRINT OUT THE DOMAIN TOOLS REPORT, SUCH AS
14 THE ONE THAT IS CURRENTLY BEING DISPLAYED, AND WE
15 WOULD DOUBLE-CHECK THE INFORMATION THROUGH THE
16 OTHER MEANS THAT I DESCRIBED, BUT WE WOULDN'T
17 NECESSARILY DOCUMENT THIS DOUBLE-CHECK AS WELL.

18 SO SINCE THIS WAS CHALLENGED WE STARTED
19 DOCUMENTING OUR DOUBLE AND TRIPLE VERIFICATION OF
20 THE HOSTING STATUS.

21 Q I'D ASK THE WITNESS TO TURN TO EXHIBIT 76.7
22 AND ASK HIM TO IDENTIFY IT.

23 A THIS REPORT FROM DOMAIN TOOLS SHOWS US THE
24 HOSTING HISTORY OF THE WEB SITE ESHOES99.COM.

25 IT TELLS US AND GIVES US SEVERAL DATES

1 STARTING OCTOBER 20 -- OCTOBER 2005 UNTIL MARCH
2 2008 WITH THE VARIOUS IP ADDRESSES ON WHICH THE
3 CONTENT OF THESE DOMAIN -- THIS WEB SITE HAS
4 RESIDED.

5 Q AND WHAT DATE WAS THAT REPORT PRINTED OUT AND
6 WAS IT PRINTED OUT BY YOUR OFFICE?

7 A THIS REPORT HAS BEEN PRINTED ON JULY 24TH,
8 2008. AND IT HAS BEEN PRINTED OUT IN MY OFFICE.

9 Q AND THIS REPORT, AS I UNDERSTAND IT, THEN
10 TELLS YOU THE DIFFERENT IP ADDRESSES AT WHICH THE
11 DOMAIN NAME ISSUED WAS LOCATED AT VARIOUS TIMES AS
12 REFLECTED ON EXHIBIT 76.7?

13 A CORRECT.

14 Q NOW, YOU MENTIONED THAT ALL OF THIS IS
15 PRELIMINARY TO THE TRANSMISSION OF DEMANDS, ONE TO
16 THE OPERATOR AND ONE TO THE HOSTING COMPANY; IS
17 THAT CORRECT?

18 A YES.

19 Q AND HAS THAT BEEN YOUR PRACTICE MORE OR LESS
20 SINCE THE TIME THAT YOU HAVE HAD YOUR
21 RESPONSIBILITY AT LOUIS VUITTON?

22 A YES.

23 Q AND WHAT IS -- WELL, FIRST, YOU HAVE ALREADY
24 IDENTIFIED WHO YOU SEND THE WEB SITE HOSTING
25 INFORMATION TO. THAT'S THE E-MAIL ADDRESS

1 REFLECTED IN THE WHOIS RECORD; IS THAT CORRECT?

2 A YES.

3 Q IS THERE ANY OTHER ADDRESS TO WHICH YOU SEND
4 THE INITIAL DEMAND TO THE OPERATOR?

5 A THE INITIAL WARNING LETTER WHICH IS E-MAILED,
6 WE WOULD USE THEM, AS I SAID, THE E-MAIL ADDRESS
7 FROM THE WHOIS RECORD. WE WOULD ALSO COPY THE
8 CONTACT E-MAIL ADDRESS FROM THE WEB SITE ITSELF.

9 USUALLY WEB SITES HAVE A PORTION UNDER
10 "CONTACT US" WHICH IN MOST CASES PROVIDES AN E-MAIL
11 ADDRESS.

12 Q AND CAN YOU TELL US TO WHOM YOU ADDRESS THE
13 DEMANDS TO THE HOSTING COMPANY THAT YOU HAVE
14 IDENTIFIED AS A RESULT OF THIS INVESTIGATION AND
15 WHAT ADDRESS YOU USE?

16 A ONCE WE HAVE IDENTIFIED THE COMPANY THAT HOSTS
17 THE WEB SITE, IF THIS COMPANY IS LOCATED IN THE
18 UNITED STATES, WE WOULD VERIFY THE DATABASE OF THE
19 CORPORATION WHERE EVERY WEB HOST IS SUPPOSED TO
20 PROVIDE INFORMATION ABOUT AN AGENT THAT HE HAS
21 DESIGNATED TO RECEIVING -- FOR RECEIVING SUCH
22 NOTIFICATIONS.

23 Q CAN YOU EXPLAIN A LITTLE BIT MORE ABOUT THIS
24 DESIGNATION WITH THE COPYRIGHT ADMINISTRATION? ARE
25 YOU REFERRING TO THE COPYRIGHT OFFICE OF THE UNITED

1 STATES?

2 A YES.

3 Q AND DO YOU HAVE AN UNDERSTANDING AS TO WHY
4 HOSTING AGENTS HAVE A DESIGNATION WITH THE
5 COPYRIGHT?

6 A DIGITAL MILLENNIUM COPYRIGHT ACT.

7 Q AND IN YOUR EXPERIENCE DO MOST OF THE ISP'S TO
8 WHICH YOU TRANSMIT DEMANDS, MOST OF THESE ISP'S IN
9 THE UNITED STATES HAVE AN AGENT ON FILE WITH THE
10 COPYRIGHT OFFICE?

11 A YES.

12 Q AND AT THE TIME THAT YOU WERE LOOKING AT
13 ESHOES99 AND IN THE FALL OF 2006, DID THE DEFENDANT
14 AKANOC SOLUTIONS HAVE SUCH AN AGENT DESIGNATED WITH
15 THE COPYRIGHT OFFICE?

16 A AT WHAT DATE?

17 Q IN OCTOBER OF 2006.

18 A NO.

19 Q DO YOU HAVE ANY UNDERSTANDING OF WHETHER THEY
20 EVER HAD AN AGENT DESIGNATED WITH THE COPYRIGHT
21 OFFICE?

22 A I BELIEVE THEY DESIGNATED ONE AFTER WE FILED
23 THE LAWSUIT.

24 Q IN THIS CASE WHERE YOU COULD NOT FIND AN AGENT
25 DESIGNATED WITH THE COPYRIGHT OFFICE, WHAT DID YOU

1 DO TO IDENTIFY AN ADDRESS TO WHICH -- ADDRESS TO
2 AKANOC SOLUTIONS?

3 A FOR AKANOC SOLUTIONS SPECIFICALLY I REVIEWED
4 CONTACT INFORMATION FROM ARIN. ACCORDING TO THE --
5 AS I SAID, WE WOULD VERIFY TO WHO A PARTICULAR IP
6 ADDRESS HAS BEEN ASSIGNED BY ARIN AND THE WHOIS OF
7 THE IP ADDRESS PROVIDES USUALLY SOME CONTACT
8 INFORMATION.

9 Q DO YOU LOOK AT THE WEB SITE FOR THE HOSTING
10 COMPANY AS WELL?

11 A YES.

12 Q AND WHERE ON THE -- WHAT KIND OF THE
13 INFORMATION ARE YOU LOOKING FOR IN THAT CONNECTION?

14 A MOST OF THE TIMES WEB HOSTING COMPANIES
15 PROVIDE INFORMATION ABOUT MORE SPECIFIC INFORMATION
16 ABOUT HOW TO CONTACT THEM IN REGARDS TO
17 NOTIFICATIONS.

18 Q AND IS THAT SOMETHING THAT YOU ROUTINELY DO
19 EVEN IF THERE IS AN AGENT DESIGNATED WITH THE
20 COPYRIGHT OFFICE?

21 A YES, BECAUSE SOME HOSTING COMPANIES ACTUALLY
22 COULD PROVIDE MORE SPECIFIC DIRECTIONS AS PER
23 SIGNING OF THE NOTIFICATIONS.

24 Q I WOULD ASK THE WITNESS TO PICK UP VOLUME 1
25 WHICH IS IN FRONT OF YOU AND LOOK AT EXHIBIT 58.

1 AND I WOULD ASK THE WITNESS TO DESCRIBE THAT
2 DOCUMENT, PLEASE?

3 A THIS IS A WARNING -- NOTIFICATION WARNING
4 LETTER I HAVE SENT ON OCTOBER 23RD, 2006 TO AKANOC
5 SOLUTIONS, INC., REGARDING THE ESHOES99.COM.

6 Q AND THAT WAS TRANSMITTED BY E-MAIL TO AKANOC?

7 A THIS FIRST PAGE IS THE ATTACHMENT OF AN
8 E-MAIL.

9 Q OKAY. COULD YOU SCROLL DOWN ONE MORE PAGE. I
10 THINK WE'RE LOOKING AT THE THIRD PAGE OF THE
11 EXHIBIT. IS THAT THE E-MAIL TO WHICH YOU'RE
12 REFERRING?

13 A YES, THAT'S THE E-MAIL. WE TYPICALLY BASED
14 THE TEXT OF THE NOTIFICATION WITHIN THE E-MAIL BODY
15 AND WE WOULD ATTACH THE ACTUAL LETTER AS AN
16 ATTACHMENT. THE ATTACHMENT HAS OUR LETTERHEAD AND
17 MY SIGNATURE.

18 Q AND THIS IS THE STANDARD FORM OF DEMAND THAT
19 IS USED TO SEND TO ANY HOSTING COMPANY THAT YOU HAD
20 FOUND HOSTING SITES THAT HOSTED COUNTERFEIT
21 PRODUCTS?

22 A YES.

23 Q AND THIS IS THE LETTER THAT YOU SENT ON OR
24 ABOUT OCTOBER 23RD, 2006 TO AKANOC?

25 A YES.

1 MR. LOWE: YOUR HONOR, I THINK THAT
2 COUNSEL IS TRYING TO MOVE THIS ALONG, BUT I OBJECT
3 AS LEADING.

4 THE COURT: LEADING.

5 BY MR. COOMBS:

6 Q DID YOU SEND THIS LETTER?

7 A YES.

8 Q AND TO WHOM DID YOU SEND IT?

9 A I SENT IT TO ABUSE@AKANOC.COM.

10 Q AND WHERE DID YOU GET THE ADDRESS OF
11 ABUSE@AKANOC.COM?

12 A THIS ADDRESS I GOT FROM THE IP ADDRESS WHOIS
13 INFORMATION.

14 Q AND THE LETTER SEEMS TO BE INFORMAL, AND I
15 THINK IT FINISHES UNDER PENALTY OF PERJURY. CAN
16 YOU EXPLAIN THE FORMAT OF THIS LETTER?

17 A THIS LETTER IS FOLLOWING THE FORMAT REQUIRED
18 BY THE DIGITAL MILLENNIUM COPYRIGHT ACT.

19 Q AND THIS IS A STANDARD FORM IN CONNECTION WITH
20 CLAIMS WHETHER COPYRIGHT OR TRADEMARK?

21 A WELL, THIS IS REQUIRED BY THE DIGITAL
22 MILLENNIUM COPYRIGHT ACT. I WOULD REFER TO IT AS
23 DNCA IF YOU DON'T MIND.

24 SO THIS FORMAT IS REQUIRED SPECIFICALLY
25 FOR CORPORATE -- I'M SORRY -- FOR THE NOTIFICATION

1 OF COPYRIGHT INFRINGEMENTS.

2 HOWEVEr, IN PRACTICE IT'S ALSO USED FOR
3 THE IDENTIFICATION OF TRADEMARK IDENTIFICATIONS.

4 Q AND APPROXIMATELY HOW MANY OF THESE LETTERS
5 GET SENT OUT ON A MONTHLY BASIS?

6 A A HUNDRED PLUS.

7 Q AND CAN YOU ESTIMATE FOR US THE RATE OF
8 RESPONSE THAT YOU RECEIVED FOR THESE LETTERS IN
9 TERMS OF SUCCESSFULLY REMOVING THE OFFERING THAT
10 ARE THE SUBJECT OF THE LETTERS?

11 A FOR LETTERS SENT TO U.S. BASED WEB HOSTS THIS
12 RATE IS ALMOST 100 PERCENT. SOMETIMES IT DOESN'T
13 WORK FOR THE FIRST -- AT THE FIRST ATTEMPT, BUT IT
14 USUALLY WORKS WITH A FOLLOW-UP LETTER.

15 Q AND DO YOU HAVE EXPERIENCE TRANSMITTING
16 SIMILAR DEMANDS TO WHOLESALERS OF INTERNET CAPACITY
17 SUCH AS DEFENDANTS CLAIM TO BE HERE?

18 A I HAVE INDEED EXPERIENCE WITH NOTIFYING
19 COMPETITORS TO DEFENDANTS, A COMPANY THAT HAS QUITE
20 SIMILAR ACTIVITY.

21 Q AND DO YOU HAVE A SIMILAR RESPONSE TO THOSE AS
22 YOU HAVE HAD WITH DEFENDANTS, OR IS IT MORE GENERAL
23 CONSISTENT PRACTICE THAT YOU HAVE HAD WITH
24 DEFENDANTS?

25 A WELL, IN THE BEGINNING WE HAVE HAD TROUBLE

1 OBTAINING ANY RESPONSE. IT WAS A SIMILAR
2 EXPERIENCE TO THE ONE WE HAD WITH DEFENDANTS,
3 HOWEVER, AFTER A FEW THREATENING LETTERS THEY
4 STARTED COOPERATING WITH US.

5 Q AND CAN YOU DESCRIBE THE NATURE OF THAT
6 COOPERATION?

7 A WELL, THIS COMPANY HAS RESELLERS SUCH AS THE
8 ONES THAT THE DEFENDANTS HAVE SO WE WERE REFERRED
9 TO THE RESELLERS DIRECTLY. WE OBTAINED THE CONTACT
10 INFORMATION OF THE RESELLERS AND WE SENT OUR
11 NOTIFICATION DIRECTLY TO THEM.

12 IN A FEW CASES, WE DID NOT RECEIVE ANY
13 COOPERATION FROM THE RESELLERS AND WE ASKED THIS
14 COMPANY TO DO SOMETHING ABOUT IT, AND THEY ACTUALLY
15 HELPED US. THEY COOPERATED AND THEY -- I IMAGINE
16 THEY FORCED THEIR RESELLER TO COMPLY.

17 MR. LOWE: EXCUSE ME. EXCUSE ME. IT
18 SOUNDS LIKE THE WITNESS IS ABOUT TO SPECULATE.

19 THE COURT: SUSTAINED. THE JURY WILL
20 DISREGARD THE ANSWER AFTER "I SUSPECT." IT WAS
21 INTERRUPTED BY THE OBJECTION, BUT THERE WERE WORDS
22 SAID ABOUT THE SUSPICIONS ABOUT WHAT OCCURRED, AND
23 YOU SHOULD DISREGARD THAT.

24 GO AHEAD AND REASK ANOTHER QUESTION.
25 BY MR. COOMBS:

1 Q THE WEB SITES THAT WERE THE SUBJECT OF THE
2 COMPLAINTS WERE ULTIMATELY MOVED FROM THE
3 SERVERS --

4 THE COURT: ASK A DIRECT QUESTION. WHO,
5 WHAT, WHERE, WHEN, WHY.

6 BY MR. COOMBS:

7 Q WHAT HAPPENED TO THE COMPLAINTS THAT WERE THE
8 SUBJECT OF THE LETTERS?

9 A ONCE WE COMPLAINED TO THE COMPANY THAT THE
10 RESELLER DOES NOT COOPERATE, THE WEB SITES WERE
11 INDEED REMOVED.

12 Q NOW, YOU SAID THAT SOMETIMES YOU DO NOT GET A
13 SATISFACTORY RESPONSE TO THE INITIAL LETTER. WHAT
14 IS YOUR PRACTICE IN CONNECTION WITH THOSE HOSTING
15 COMPANIES WHERE THE ACTIVITY DOES NOT STOP IN
16 RESPONSE TO THE INITIAL DEMAND?

17 A WE WOULD SEND A FOLLOW-UP LETTER THROUGH
18 REGISTERED MAIL OR BY EXPRESS MAIL.

19 Q AND I'VE ASKED THE WITNESS TO TAKE A LOOK AT
20 EXHIBIT 61.

21 MR. LOWE: YOUR HONOR, I WOULD APPRECIATE
22 IT IF COUNSEL WOULD NOT FLASH IT ON THE SCREEN
23 UNTIL I SEE WHAT IT IS.

24 THE COURT: CERTAINLY. I WOULD ASK YOU
25 ALL TO DO THAT, THAT WAY IF YOU HAVE CONCERNS

1 COUNSEL CAN GO THROUGH QUICKLY THROUGH THE ONES
2 THAT YOU HAVE NO OBJECTION. OTHERWISE I'LL PERMIT
3 HIM TO PUT ON THE SCREEN ANY EXHIBIT THAT HE'S
4 LISTED THAT HE'S GOING TO USE. SO THAT PUTS THE
5 BURDEN ON YOU TO NOTIFY HIM THAT YOU HAVE AN
6 OBJECTION.

7 I PRESUME THAT ALL OF THE DOCUMENTS HAVE
8 BEEN SHARED BETWEEN THE TWO SIDES AND YOU KNOW WHAT
9 DOCUMENT HE'S GOING TO USE AND SO IT'S NO BURDEN ON
10 YOU TO NOTIFY HIM, "DON'T SHOW THESE UNTIL I HAVE
11 HAD AN OPPORTUNITY TO SATISFY MYSELF THAT YOU'VE
12 LAID A FOUNDATION FOR."

13 MR. LOWE: YOUR HONOR, WE CERTAINLY HAVE
14 AND MAINLY WE HAVE SO MANY OF THEM IT'S JUST A
15 QUESTION OF MAKING SURE I KNOW WHICH ONE IT IS
16 BEFORE WE FLASH IT ON THE SCREEN. JUST A MOMENT TO
17 DOUBLE-CHECK.

18 THE COURT: CONVENIENTLY HE'S PROVIDED US
19 WITH A LIST OF THE NAMES AND NUMBERS AND SO I'LL
20 PRESUME -- AT THE BREAK MAYBE THE TWO OF YOU CAN
21 SPEAK ABOUT THIS. THIS CAME UP YESTERDAY.

22 MR. COOMBS: SURE. WE'LL WORK OUT A
23 PROCEDURE TO DEAL WITH IT.

24 Q CAN YOU DESCRIBE FOR US WHAT EXHIBIT 61 IS?

25 A THIS IS A FOLLOW-UP.

1 THE COURT: JUST A MOMENT. IS THIS ONE
2 THAT YOU HAVE CONCERN ABOUT?

3 MR. LOWE: NO.

4 THE COURT: NO?

5 MR. LOWE: NO.

6 THE WITNESS: THIS IS A FOLLOW-UP LETTER
7 SENT TO AKANOC SOLUTIONS, INC., ON FEBRUARY 6TH,
8 2007. AND WE'RE ASKING DEFENDANTS TO RESPOND TO
9 OUR LETTER OF OCTOBER 23RD, 2006, WHICH IS ENCLOSED
10 TO THE FOLLOW-UP LETTER.

11 BY MR. COOMBS:

12 Q THAT'S MORE THAN TEN DAYS AFTER THE INITIAL
13 DEMAND; ISN'T THAT CORRECT?

14 A IT IS.

15 Q AND WHY IS THAT?

16 A WELL, OUR PRACTICE IS TO SEND A FOLLOW-UP
17 LETTER APPROXIMATELY TEN BUSINESS DAYS AFTER THE
18 FIRST LETTER, HOWEVER, UNFORTUNATELY IT'S NOT
19 ALWAYS POSSIBLE TO FOLLOW THESE DEADLINES DUE TO
20 OTHER URGENT MATTERS LIKE VACATION OR COLLEAGUES
21 BEING SICK.

22 BETWEEN OCTOBER AND FEBRUARY THERE WAS A
23 HOLIDAY PERIOD.

24 MR. COOMBS: YOUR HONOR, I'D LIKE TO GIVE
25 THE WITNESS EXHIBIT 1598, DEFENDANTS' EXHIBIT,

1 WHICH IS IN BY STIPULATION. I DON'T KNOW IF YOU
2 HAVE A COPY UP THERE. I DO HAVE AN EXTRA COPY FOR
3 YOU.

4 THE COURT: GO AHEAD.

5 BY MR. COOMBS:

6 Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

7 A YES.

8 Q AND CAN YOU DESCRIBE WHAT IT IS?

9 A IT SAYS, "THE SUMMARY OF MSG/AKANOC RESPONSES
10 TO COMPLAINTS."

11 AND IT'S A LIST OF THE COUNTERFEIT WEB
12 SITES THAT WE HAVE EXPLAINED ABOUT TO DEFENDANTS.

13 Q HOW MANY PAGES IS THE DOCUMENT?

14 A THE DOCUMENT IS 20 PAGES.

15 Q AND IS IT ACCURATE?

16 A NOT REALLY.

17 Q LOOKING AT ONLY THE FIRST PAGE FOR THE MOMENT,
18 CAN YOU SAY WHY YOU BELIEVE IT'S INACCURATE?

19 A WELL, THE FIRST FIVE WEB SITES IT SAYS NOTICE
20 DATE AUGUST 20TH, 2007. THESE ARE THE FIVE WEB
21 SITES THAT WE HAVE BEEN COMPLAINING ABOUT SINCE
22 2006 AND BEGINNING OF 2007.

23 SO DEFENDANTS HAVE NOT RECEIVED THE
24 NOTICE ON AUGUST 20TH.

25 Q SO, FOR EXAMPLE, THE FOURTH ONE ON THE LIST IS

1 ESHOES99.COM?

2 A YES.

3 Q AND THAT'S THE WEB SITE THAT WE HAVE BEEN
4 TALKING ABOUT THIS MORNING?

5 A CORRECT.

6 Q AND THAT WAS THE WEB SITE THAT WAS THE SUBJECT
7 OF THE NOTICES THAT YOU WERE JUST LOOKING AT BEFORE
8 I PRESENTED YOU WITH THIS EXHIBIT?

9 A YES.

10 Q AND BY THE WAY, WE TALKED ABOUT HOW YOU
11 OBTAINED THE E-MAIL ADDRESS TO WHICH YOU SENT THE
12 INITIAL DEMAND. CAN YOU DESCRIBE HOW YOU OBTAINED
13 THE MAILING ADDRESS TO WHICH YOU SENT THE HARD COPY
14 FOLLOW UP?

15 A FOR WHICH ONE OF THE DEFENDANTS.

16 Q FOR EXHIBIT 66.1.

17 A THIS IS SPECIFICALLY FOR AKANOC SOLUTIONS,
18 INC., I OBTAINED FROM THEIR WEB SITE.

19 Q SO IT WOULD BE ON THE CONTACT LIST PAGE OR
20 SOME OTHER PART OF THE WEB SITE?

21 A YES.

22 Q I'M SORRY. WHICH PART OF THE WEB SITE DID YOU
23 OBTAIN IT FROM?

24 A FROM THE "CONTACT US" SECTION.

25 Q I'D ASK THE WITNESS NOW TO TURN TO EXHIBIT

1 75.1 WHICH IS INVOLVING 240.

2 MR. LOWE: YOUR HONOR, WE HAVE BRIEFLY
3 OBJECTED TO THIS SORT OF EXHIBIT. WE WOULD ASK
4 THEM TO LAY A FOUNDATION FOR THIS TESTIMONY.

5 THE COURT: 75.1. I HAD 175.1 BUT DO YOU
6 SEE 75.1 --

7 MR. COOMBS: I BELIEVE 75.1 WAS ONE WE
8 LOOKED AT WHICH WAS A PRINTOUT OF THE WEB SITE ON A
9 DIFFERENT DATE.

10 THE COURT: SO 75.1 HAS NOT BEEN THE
11 SUBJECT OF A PREVIOUS OBJECTION.

12 ARE YOU OBJECTING TO IT?

13 MR. LOWE: I AM OBJECTING FOR LACK OF
14 FOUNDATION, YOUR HONOR.

15 THE COURT: ALL RIGHT. SO IT WON'T -- WE
16 WON'T DISPLAY IT UNTIL YOU LAY A FOUNDATION TO
17 IDENTIFY TO SHOW US THAT IT'S AN AUTHENTIC
18 DOCUMENT.

19 BY MR. COOMBS:

20 Q YESTERDAY YOU TESTIFIED THAT IT WAS YOUR
21 OFFICE PRACTICE TO EITHER REVIEW COUNTERFEIT OFFERS
22 BEING INVESTIGATED BY YOUR OFFICE OR TO VERIFY
23 THOSE THAT WERE PRINTED UP BY YOUR STAFF; IS THAT
24 CORRECT?

25 A YES.

1 Q AND DID YOU DO SO WITH RESPECT TO THIS
2 PRINTOUT?

3 A I DID.

4 Q AND SO THEREFORE YOU INSPECTED IT ON OR
5 ABOUT --

6 MR. LOWE: YOUR HONOR, I OBJECT TO THE
7 LEADING QUESTION.

8 THE COURT: SUSTAINED.

9 BY MR. COOMBS:

10 Q DID YOU PRINT OUT THIS WEB SITE?

11 A I DID.

12 Q ON OR ABOUT THE DATE IT BEARS?

13 A YES, ON OCTOBER 23RD, 2006.

14 Q AND YOU REVIEWED THE CONTENT OF THAT WEB SITE
15 AT THE TIME YOU MADE THE PRINTOUT?

16 A YES, I DID.

17 Q AND THE PRINTOUT BROADLY CONFORMS WITH THE
18 CONTENT THAT YOU'RE LOOKING AT --

19 MR. LOWE: OBJECTION, YOUR HONOR. STILL
20 LEADING.

21 THE COURT: SUSTAINED.

22 BY MR. COOMBS:

23 Q IS THE CONTENT WHAT YOU SAW ON THE 23RD OF
24 OCTOBER?

25 A YES.

1 Q AND IS IT A DOCUMENT THAT YOU PRINTED OUT ON
2 OR ABOUT THE DATE IT BEARS?

3 A YES.

4 Q AND THAT YOU MAINTAINED SINCE THAT TIME?

5 A YES.

6 MR. COOMBS: I WOULD MOVE EXHIBIT 75.1
7 INTO EVIDENCE.

8 THE COURT: HEARING NO OBJECTION, IT'S IN
9 EVIDENCE.

10 MR. LOWE: YOUR HONOR, I BELIEVE WE WOULD
11 LIKE TO HAVE THE RECORD REFLECT THAT WE HAVE
12 OBJECTED TO THIS ENTIRE STRING OF DOCUMENTS.

13 I UNDERSTAND THE COURT'S RULING ON THIS,
14 BUT IF THE RECORD COULD REFLECT THAT WE HAVE
15 OBJECTED.

16 THE COURT: VERY WELL. THAT'S WHY I'M
17 INVITING YOU TO SPEAK TO EACH OTHER.

18 TO THE EXTENT THAT YOU'RE OBJECTING, IT
19 SEEMS TO ME THAT WHAT THE WITNESS HAS TESTIFIED
20 WITH RESPECT TO THIS IS THAT THIS IS A PRINTOUT OF
21 SOMETHING THAT HE ACTUALLY SAW ON HIS COMPUTER
22 SCREEN.

23 AND TO THE EXTENT IN THE FUTURE YOU WOULD
24 WISH TO LAY THAT AS THE FOUNDATION, "I'M GOING TO
25 SHOW YOU ANOTHER DOCUMENT WHICH I UNDERSTAND YOU

1 PRINTED OUT FROM WHAT YOU PERSONALLY VIEWED ON YOUR
2 SCREEN," I UNDERSTAND THAT YOU HAVE AN OBJECTION TO
3 THAT, BUT I'LL PERMIT YOU TO MOVE SPEEDILY TO
4 DISPLAY THAT TO THE JURY.

5 IF IT'S NOT A DOCUMENT OF THAT KIND AND
6 HE GOT IT FROM SOME OTHER PLACE, THEN YOU NEED TO
7 LAY A FOUNDATION AND DON'T DISPLAY IT UNTIL YOU
8 HAVE.

9 AND THE WAY THAT IT WOULD HELP US IS TO
10 SAY TO YOUR TECHNICIAN, "DON'T DISPLAY THIS YET,"
11 OR SAY TO THE WITNESS "I WANT YOU TO LOOK AT A
12 PAPER COPY," BEFORE YOU DISPLAY IT LAY A FOUNDATION
13 AND THEN WE CAN DISPLAY IT.

14 MR. COOMBS: THANK YOU, YOUR HONOR.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
16 75.1, HAVING BEEN PREVIOUSLY MARKED FOR
17 IDENTIFICATION, WAS ADMITTED INTO
18 EVIDENCE.)

19 BY MR. COOMBS:

20 Q SO WHEN WAS EXHIBIT 75.1 PRINTED OUT?

21 THE COURT: YOU DID THAT IN THE
22 FOUNDATION. DON'T BACK UP. LET'S MOVE FORWARD.

23 BY MR. COOMBS:

24 Q AND DOES -- CAN YOU DESCRIBE WHAT THE CONTENT
25 OF EXHIBIT 75.1 IS?

1 A THE FIRST PAGE SHOWS A CERTAIN NUMBER OF SHOES
2 BEARING THE LOUIS VUITTON TRADEMARKS. THOSE SHOES
3 ARE NOT GENUINE.

4 THE SECOND PAGE DISPLAYS A CERTAIN NUMBER
5 OF BAGS BEARING THE LOUIS VUITTON TRADEMARKS.
6 THOSE BAGS ARE NOT GENUINE.

7 SAME FOR THE FOLLOWING PAGE. SAME FOR
8 THE FOLLOWING PAGE. SAME FOR THE FOLLOWING PAGE.

9 I'M SORRY. COULD YOU GO BACK TO THE
10 PREVIOUS PAGE?

11 YES. ON THIS PAGE IT DISPLAYS A NUMBER
12 OF BELTS BEARING THE LOUIS VUITTON TRADEMARKS.
13 THOSE BELTS ARE NOT GENUINE.

14 ON THE NEXT PAGE YOU CAN SEE A CERTAIN
15 NUMBER OF SUNGLASSES BEARING THE LOUIS VUITTON
16 TRADEMARKS. THOSE SUNGLASSES ARE NONGENUINE.

17 THE FOLLOWING PAGE DISPLAYS A WAY TO
18 COMMUNICATE WITH THE WEB SITE OPERATOR. IT SAYS
19 "ORDER ON LINE."

20 THE COURT: WE CAN SEE THAT. YOU DON'T
21 HAVE TO DESCRIBE IT.

22 THE WITNESS: RIGHT. THE NEXT PAGE
23 PROVIDES CONTACT E-MAIL ADDRESSES FOR THE E-MAIL
24 OPERATORS AS WELL AS TELEPHONE NUMBERS.

25 THE PAGE CURRENTLY DISPLAYED PROVIDES

1 INFORMATION ABOUT HOW TO PAY FOR GOODS THAT ARE ON
2 THIS WEB SITE. THAT'S THE END.

3 BY MR. COOMBS:

4 Q AND YOU SAID THAT THE OFFERS WERE NONGENUINE.
5 HOW WAS IT THAT YOU COULD TELL THAT FROM REVIEWING
6 THE WEB SITE?

7 A FROM REVIEWING THE PICTURES.

8 Q AND WHAT WAS IT ABOUT THE PICTURES THAT TOLD
9 YOU THAT THEY WERE NONGENUINE?

10 A WELL, IF WE GO BACK TO THE SUNGLASSES, FOR
11 EXAMPLE, WE DO NOT MANUFACTURE SUCH CASES. THERE
12 IS SOME SORT OF TISSUE TO CLEAN THE SUNGLASSES
13 DISPLAYING THE LV LOGO AND THE LOUIS VUITTON
14 TRADEMARK. WE DO NOT SELL SUCH PIECES.

15 I ALSO DO NOT RECOGNIZE THE MODEL
16 SUNGLASSES DISPLAYED.

17 AS FOR THE BELTS, THE LAST TWO BELTS I DO
18 NOT RECOGNIZE AS MODELS.

19 SHOULD I GO FURTHER?

20 Q NO. I THINK THAT'S SUFFICIENT.

21 I ASK THE WITNESS TO TURN TO EXHIBIT 16
22 OR TURN TO AND DISPLAY A COPY. IT SHOULD BE IN
23 VOLUME 1 FOR YOU.

24 A ALL RIGHT.

25 Q AND CAN YOU DESCRIBE WHAT EXHIBIT 16 IS?

1 A THIS IS A NOTIFICATION SENT FROM MY OFFICE ON
2 FEBRUARY 14TH, 2007 TO DEFENDANT MANAGED SOLUTIONS
3 GROUP, INC., REGARDING THE ESHOES99.COM.

4 Q AND THAT WAS AN E-MAIL?

5 A THAT WAS INDEED AN E-MAIL.

6 Q AND THAT WAS SENT TO -- WHERE DID YOU FIND THE
7 ADDRESS TO WHICH YOU SENT THAT E-MAIL?

8 A I --

9 THE COURT: IS THE ADDRESS CONTROVERSIAL?
10 IS THIS SOMETHING THAT WE NEED TO GO INTO?

11 MR. COOMBS: WELL, THESE HAVEN'T BEEN
12 ADMITTED BY THE DEFENDANT OR ADMITTED TO.

13 THE COURT: I UNDERSTAND. IS HOW HE
14 FOUND THE ADDRESS IMPORTANT?

15 MR. COOMBS: WELL, MAYBE IF I COULD
16 JUST --

17 Q DID YOU FIND THIS BY USING THE COPYRIGHT
18 OFFICE WEB SITE?

19 A NO.

20 Q AND DID YOU FIND IT ON WEB SITE?

21 A I FOUND IT ON THE WEB SITE.

22 Q AND WHAT -- TO YOUR KNOWLEDGE DID THE
23 DEFENDANT MANAGED SOLUTIONS GROUP HAVE AN AGENT FOR
24 THE COPYRIGHT OFFICE AT OR ABOUT THE TIME THAT YOU
25 PREPARED THE LETTER THAT IS REFLECTED IN EXHIBIT

1 16?

2 A NO, IT DIDN'T.

3 Q I WOULD ASK THE WITNESS TO LOOK IN VOLUME 2 AT
4 THE PAPER COPY OF EXHIBIT 76.2 AND ASK THE WITNESS
5 IF THAT IS AN ACCURATE PRINTOUT OF A WEB SITE THAT
6 HE REVIEWED ON OR ABOUT THAT DAY?

7 A I'M SORRY. WHICH EXHIBIT?

8 Q 76.2.

9 A OKAY.

10 Q AND CAN YOU DESCRIBE FOR THE JURY WHAT 76.2
11 IS?

12 A THAT'S A PRINTOUT OF DOMAIN TOOLS OF A
13 REQUIREMENT FOR ESHOES99.COM. IT'S BEEN PRINTED
14 OUT BY MY OFFICE IN OCTOBER OF 2007.

15 Q AND YOU USED THAT TO CONFIRM THE HOST ON THAT
16 DATE?

17 A YES, ON THE SERVER IT DISPLAYS AN IP ADDRESS
18 205.209.172.165.

19 THIS IP ADDRESS HAS BEEN ASSIGNED TO
20 MANAGED SOLUTIONS GROUPING.

21 Q AND DID YOU RECEIVE ANY RESPONSE TO THE LETTER
22 THAT YOU WERE JUST LOOKING AT A MOMENT AGO, EXHIBIT
23 16?

24 A NO.

25 Q AND SO IN RESPONSE TO YOUR LETTER YOU DID A

1 FOLLOW-UP LETTER?

2 A I DID.

3 Q I'LL ASK THE WITNESS TO LOOK AT EXHIBIT 18.
4 AND THAT'S WHAT YOU SENT ON OR THE DATE IT BEARS?

5 A YES.

6 Q AND THAT'S A FOLLOW-UP LETTER?

7 A THAT'S A FOLLOW-UP LETTER OF OUR FEBRUARY
8 14TH, 2007 LETTER.

9 Q AND DID YOU RECEIVE ANY RESPONSE TO THAT
10 LETTER?

11 A NO.

12 Q AND DO YOU KNOW WHETHER THE ACTIVITY THAT WAS
13 THE SUBJECT OF THAT LETTER WAS THE RESULT OF YOUR
14 LETTER?

15 A NO.

16 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
17 76.3 ON THE PAPER COPY.

18 MR. LOWE: I'M SORRY. WHICH?

19 MR. COOMBS: 76.3.

20 THE WITNESS: OKAY.

21 BY MR. COOMBS:

22 Q CAN YOU DESCRIBE THAT FOR US?

23 A THAT'S DOMAIN TOOLS REPORT FOR ESHOES99.COM
24 PRINTED OUT ON MARCH 14TH, 2007.

25 IT SAYS THAT THE DOMAIN NAME, THE WEB

1 SITE ESHOES99.COM IS HOSTED ON 205 --

2 MR. LOWE: EXCUSE ME. YOUR HONOR, I
3 WOULD OBJECT TO THIS UNLESS A PROPER FOUNDATION HAS
4 BEEN LAID.

5 THE COURT: MAYBE I SHOULD SOLVE THIS
6 PROBLEM ONCE AND FOR ALL, BUT I WOULD WISH TO HAVE
7 A PERIOD OF TIME TO SPEAK WITH COUNSEL OUT OF THE
8 PRESENCE OF THE JURY.

9 MEMBERS OF THE JURY, WE HAVE JUST GOTTEN
10 STARTED, BUT I'M GOING TO INTERRUPT THESE
11 PROCEEDINGS BECAUSE I THINK IF I SOLVE THIS PROBLEM
12 IT WILL MOVE US ALONG.

13 SO LET ME ASK YOU TO STEP OUTSIDE FOR
14 ABOUT TEN MINUTES. THIS IS NOT YOUR NORMAL BREAK
15 BECAUSE WE WILL STILL BE HERE WORKING. SO I'LL
16 CALL YOU BACK IN A MOMENT.

17 (WHEREUPON, THE FOLLOWING PROCEEDINGS
18 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

19 THE COURT: IT IS APPARENT FROM THE COURT
20 THAT THE PROCESS OF INVESTIGATION INVOLVED USING
21 THIS SEARCH TOOL IN COMING UP WITH A SERIES OF
22 REPORTS.

23 AND THE OBJECTIONS, AS I UNDERSTAND IT,
24 IS THAT THE REPORTS THEMSELVES CONTAIN INFORMATION
25 WHICH CANNOT BE EXAMINED WITH THE WITNESS BECAUSE

1 THE WITNESS IS NOT THE SOURCE OF THE INFORMATION.
2 SO IT'S A HEARSAY OBJECTION AS I UNDERSTAND IT?

3 MR. LOWE: YES.

4 THE COURT: IT OCCURS TO ME THAT PART OF
5 THE PROBLEM THAT WE'RE GOING TO ENCOUNTER IS THAT
6 THIS IS NOT INFORMATION WHICH THE WITNESS CAN VOUCH
7 FOR THE TRUTH OF IT, HOWEVER, HE CAN VOUCH FOR HIS
8 RELIANCE ON IT AND HIS TAKING ACTION BASED UPON IT.

9 SO I PROPOSE TO ALLOW THESE MATERIALS TO
10 BE USED SUBJECT TO GIVING THE JURY A LIMITED
11 INSTRUCTION. THE LIMITING INSTRUCTION BEING: IT'S
12 NOT BEING OFFERED FOR THE TRUTH OF WHAT IS IN THE
13 REPORT BUT IT'S BEING OFFERED TO SHOW WHY HE TOOK
14 CERTAIN ACTIONS.

15 NOW, IT COULD BE THAT HE TOOK ERRONEOUS
16 ACTIONS BASED ON ERRONEOUS INFORMATION, BUT IT DOES
17 EXPLAIN WHY HE TOOK THE ACTION OF WRITING LETTERS
18 OR WHO HE WROTE TO, WHY HE WROTE TO THOSE PEOPLE AT
19 THOSE TIMES AND PLACES.

20 AND AMONG THE PEOPLE HE WROTE TO ARE
21 ADDRESSES THAT ARE ADDRESSES TO THE DEFENDANT SO
22 THAT IF THE DEFENDANT RECEIVED A LETTER ACCUSING IT
23 OR OWNING AN IP ADDRESS AT OR ABOUT THE TIME WITH
24 THESE VARIOUS NAMES ON IT, IT WOULD BE IN A
25 POSITION TO MAKE ITS OWN INVESTIGATION TO RESPOND

1 TO IT TO TAKE CERTAIN ACTIONS SO THAT THE -- IT IS
2 NOT BEING DEPRIVED OF AN OPPORTUNITY TO RESPOND.
3 IT MAY CHOOSE NOT TO RESPOND.

4 NOW, IF A PROFFER IS THAT THE LETTERS
5 ADDRESSED TO AKANOC OR MANAGED SOLUTIONS WERE NOT
6 TO OFFICE ADDRESSES WHERE THEY WOULD HAVE RECEIVED
7 THESE CORRESPONDENCES OR THEY WOULD HAVE NOT HAVE
8 RECEIVED THESE E-MAILS, I WOULD BE CONCERNED, AS
9 LONG AS -- THAT'S WHY I WAS ASKING WHETHER OR NOT
10 THERE WAS SOME CONTROVERSY WITH RESPECT TO THE
11 ADDRESS.

12 AND SO IT DOES APPEAR TO ME THAT IT'S
13 GOING TO BE UNDULY CONSUMPTIVE OF THE JURY'S TIME.
14 THIS IS THE KIND OF THING THAT WE SHOULD HAVE
15 SOLVED IN PRETRIAL PROCEEDINGS IF THERE WAS GOING
16 TO BE AN AUTHENTICATION OBJECTION THAT THE WEB SITE
17 IP ADDRESSES USED BY THESE VARIOUS COMPANIES HAVE
18 NO RELATIONSHIP TO THE DEFENDANT AT OR ABOUT THE
19 TIME THAT HE WAS DOING THE INVESTIGATION.

20 THAT WOULD HAVE BEEN A -- AND I BELIEVE
21 THERE WERE SOME MOTIONS IN LIMINE ADDRESSING THOSE
22 MATTERS AND THE COURT RESOLVED THEM FAVORABLY TO
23 ALLOWING THIS PART OF THE INFORMATION TO COME IN.

24 LET ME GET COUNSEL'S -- YOUR RESPONSE TO
25 THE COURT'S PROPOSAL TO ALLOW THESE MATTERS IN

1 SUBJECT TO A LIMITING OBJECTION, AND I WILL GIVE
2 YOU AN OPPORTUNITY TO SPEAK TO WHETHER OR NOT YOU
3 WOULD WISH TO CALL AS A WITNESS SOMEONE FROM THESE
4 VARIOUS COMPANIES THAT PRODUCE THESE REPORTS TO
5 AUTHENTICATE THE INFORMATION IN THE REPORT ITSELF.

6 IT DOES SEEM TO ME, LIKE I SAID
7 YESTERDAY, THAT THIS IS LIKE USING A COMPUTER TO
8 LOOK UP A STREET ADDRESS. AND IF YOU FIND A STREET
9 ADDRESS, YOU TAKE ACTION BY GOING TO THAT ADDRESS
10 AND TAKING CERTAIN ACTION.

11 AND IT'S PERMISSIBLE FOR THE JURY TO
12 UNDERSTAND AND SEE WHAT INFORMATION THE
13 INVESTIGATOR HAD AND WHY HE TOOK CERTAIN ACTIONS
14 SUBJECT TO THEIR UNDERSTANDING THAT IT COULD BE
15 THAT THE INFORMATION WAS BAD. THAT'S UP TO THE
16 DEFENSE TO CROSS-EXAMINE.

17 MR. LOWE: YOUR HONOR, THERE ARE 70 OR 80
18 DIFFERENT WEB SITES THAT THE PLAINTIFFS HAVE
19 COMPLAINED ABOUT THAT ARE AT ISSUE IN THIS CASE AND
20 A VARIETY OF COMMUNICATIONS WERE SENT. SOME WERE
21 RECEIVED AND SOME WERE NOT RECEIVED. THE ADDRESSES
22 SOMETIMES WERE WRONG.

23 THERE WILL BE EVIDENCE THAT ON SEVERAL
24 OCCASIONS THE ADDRESS THAT MR. LIVADKIN SENT
25 LETTERS TO WERE INCORRECT OR THEY SENT THEM TO THE

1 WRONG COMPANY, FOR EXAMPLE. SO THAT'S OUR ISSUE.

2 OUR CONCERN ABOUT THE DOMAIN TOOLS
3 PRINTOUT IS THAT THEY CONTAIN A LOT OF INFORMATION.
4 THEY LOOK SOMEWHAT OFFICIAL AND A JURY IS LIKELY TO
5 BE MISLED TO THINK THAT THIS IS ACTUALLY VERIFIED,
6 ACCURATE INFORMATION AND WHEN, IN FACT, THEY HAVE
7 NO ONE WHO CAN TESTIFY TO THAT FACT.

8 NOW, IT MAY BE THAT THIS WITNESS CAN SAY
9 THAT I SENT A LETTER BECAUSE I SAW A LETTER IN SUCH
10 AND SUCH A PLACE AND -- BUT WHEN WE START GOING
11 THROUGH THE ENTIRE DOMAIN TOOLS REPORT, THERE'S
12 JUST A LOT OF EXTRANEOUS INFORMATION THERE AND WHAT
13 I HAVE BEEN HEARING IS QUESTIONS AND ANSWERS THAT
14 SUGGEST THAT THIS IS ACCURATE INFORMATION.

15 AND WE THINK THAT THAT IS UNDULY
16 PREJUDICIAL.

17 I THINK THIS WITNESS MIGHT BE ABLE TO
18 TESTIFY AS TO WHY HE TOOK CERTAIN ACTIONS WITHOUT
19 RELYING UPON ALL OF THESE DOCUMENTS THAT ARE OF
20 DUBIOUS SOURCES.

21 IN FACT, I THINK THE EXHIBITS THEMSELVES
22 EVEN HAVE A DISCLAIMER SAYING THAT WHOIS
23 INFORMATION MAY BE INACCURATE BECAUSE THEY'RE NOT
24 GETTING CORRECT INFORMATION.

25 THE COURT: I ASKED THIS YESTERDAY, BUT

1 IT IS THE CASE THAT THERE IS NO WAY TO GO BACK IN
2 THE RECORDS OF THESE COMPANIES THAT PRODUCED THESE
3 REPORTS AND DETERMINE WHETHER OR NOT IT IS A REPORT
4 WHICH THEY INDEED PRODUCED.

5 IN OTHER WORDS, YOU'RE NOT QUESTIONING
6 THAT THESE ARE MADE-UP DOCUMENTS?

7 MR. LOWE: NO.

8 THE COURT: YOUR QUESTION IS THAT WHETHER
9 OR NOT THE INFORMATION UPON WHICH DOMAIN DOT COM,
10 OR WHATEVER THE NAME IS, RELIED UPON IS ACCURATE
11 INFORMATION.

12 IT SEEMS TO ME THAT THAT CAN GO TO THE
13 WEIGHT OF THE EVIDENCE.

14 NOW, ANOTHER SOLUTION THAT I MIGHT HAVE
15 IS TO NOT ALLOW THESE VARIOUS REPORTS TO GO INTO
16 EVIDENCE BUT TO BE DISPLAYED AND USED BY THE
17 WITNESS TO ELUCIDATE THE INVESTIGATION.

18 AT SOME POINT HE CAME TO WRITE A LETTER.
19 THE LETTER IS THE IMPORTANT PART BECAUSE THAT GOES
20 TO THE DEFENDANT AND IT CHARGES THE DEFENDANT WITH
21 RESPONSIBILITY FOR OWNING CERTAIN WEB SITES AT
22 CERTAIN PERIODS OF TIME.

23 I HEARD YESTERDAY WHAT I UNDERSTOOD TO BE
24 A PROFFER FROM THE DEFENDANT THAT IT HAS NO RECORD
25 OF WHETHER OR NOT THESE VARIOUS COMPANIES WERE

1 INDEED THE COMPANIES USING ITS IP ADDRESSES AT A
2 PARTICULAR TIME BECAUSE THEY WERE BEING ISSUED BY
3 RESELLERS AND OTHERS WHO WOULD NOT NECESSARILY
4 REPORT TO THEM WHOIS USING THOSE ADDRESSES, AND I
5 UNDERSTAND THE CONCERN.

6 MR. LOWE: RIGHT.

7 THE COURT: AND THAT MAY INDEED BE A
8 MATTER THAT YOU WOULD WANT TO BRING TO THE
9 ATTENTION OF THE JURY.

10 HOWEVER, THE POINT OF THE PLAINTIFF IS
11 THAT ONCE THE LETTER IS SENT, NOTICE IS BEING
12 GIVEN. NOW, THAT NOTICE COULD BE RESPONDED TO BY
13 SAYING, "THAT'S NOT OUR ADDRESS," OR I CAN'T INFORM
14 THESE PEOPLE BUT AT LEAST THE NOTICE GETS THERE.

15 THE CONSEQUENCE OF THE NOTICE AND THE
16 LEGAL CONSEQUENCE OF ACTUALLY HAVING THE WEB SITE
17 WHERE A COUNTERFEIT GOOD, NONGENUINE GOOD IS BEING
18 DISPLAYED ARE DIFFERENT.

19 AND SO IT DOES SEEM TO ME THAT IT WILL
20 SPEED US ALONG TO GET THE FACT OF HOW HE CONDUCTED
21 HIS INVESTIGATION, WHAT HE WAS LOOKING AT, LEAVING
22 FOR THE JURY TO DECIDE THE CONSEQUENCE OF THAT.

23 IT'S NONCONTROVERSIAL THAT'S WHAT HE DID,
24 UNLESS YOU TELL ME THAT THESE ARE MADE-UP
25 DOCUMENTS. IT'S NONCONTROVERSIAL WHAT HE RELIED

1 UPON. THERE'S NO EVIDENCE THAT HE DIDN'T RELY UPON
2 THIS INFORMATION, AND I WOULD PERMIT YOU TO TAKE
3 HIM ON IF YOU WISH TO TRY AND ESTABLISH THAT THIS
4 WAS NOT INFORMATION THAT HE USED TO PROVIDE THE
5 ADDRESSES AND WHY HE TOOK CERTAIN ACTIONS.

6 ABSENT THAT, I'M INCLINED TO GIVE THE
7 JURY A LIMITING INSTRUCTION AND MOVE US ALONG
8 BECAUSE THIS IS TAKING FAR TOO MUCH TIME TO GET THE
9 FOUNDATIONAL FACT OF WHY HE MADE A CLAIM TO THE
10 DEFENDANT THAT IT WAS USING -- ITS SITES WERE BEING
11 USED IMPROPERLY.

12 MR. LOWE: I APPRECIATE THAT, YOUR HONOR.
13 THERE IS NO SUGGESTION THAT THESE ARE MADE-UP
14 DOCUMENTS. IT'S JUST THAT THEY ARE OFTEN
15 UNRELIABLE DOCUMENTS AND YET THEY APPEAR TO BE SOME
16 KIND OF OFFICIAL REPORT THAT WE'RE CONCERNED WOULD
17 UNDULY PREJUDICE THE DEFENDANTS AND MISLEAD THE
18 JURY.

19 AND THE COURT'S SUGGESTION THAT IT MIGHT
20 ALLOW THE WITNESS TO SAY "I SENT A LETTER OR E-MAIL
21 BECAUSE I FOUND THIS INFORMATION ON DOMAIN TOOLS,"
22 WE WOULD NOT OBJECT TO. CERTAINLY WHAT HE DID, HE
23 DID.

24 WE INTEND TO PRESENT EVIDENCE THAT ON
25 MANY OCCASIONS THESE NOTICES WERE SENT AND THE

1 DOMAIN NAMES WERE NOT USING THE IP ADDRESS THAT WE
2 THOUGHT THAT THEY WERE USING.

3 THE COURT: WELL, LET ME TERMINATE THIS.

4 DO YOU WANT TO SPEAK TO THIS GIVEN THE
5 COURT'S INDICATION THAT WHAT IT WOULD ALLOW YOU TO
6 DO IS DISPLAY THESE MATERIALS -- I'LL RESERVE
7 WHETHER OR NOT THE ACTUAL REPORTS OF THESE
8 COMPANIES COME INTO EVIDENCE BECAUSE THEY ARE --
9 THEY CONTAIN INFORMATION THAT IS NOT GENERATED BY A
10 WITNESS BUT HE CAN DISPLAY THEM AND SAY HOW DID YOU
11 GET THE ADDRESS? I FOUND IT HERE. SHOW IT TO THE
12 JURY.

13 AND THEN I'LL GIVE A LIMITING INSTRUCTION
14 THAT THIS IS BEING RECEIVED FOR THE LIMITED PURPOSE
15 OF ALLOWING YOU TO UNDERSTAND WHERE HE GOT THE
16 ADDRESS, WHAT HIS INVESTIGATION SHOWED. THE
17 LETTERS, OF COURSE, DO COME IN BECAUSE THEY WERE
18 GENERATED BY HIM.

19 THIS IS ONLY AS TO THAT INVESTIGATORY
20 PART. IT'S NOT AS TO ANY SCREEN THAT HE PRINTED
21 OUT FOR PURPOSES OF SEEING THE COUNTERFEIT GOODS.

22 MR. COOMBS: UNDERSTOOD.

23 THE COURT: WHAT IS YOUR RESPONSE, IF
24 ANY?

25 MR. COOMBS: WELL, MY RESPONSE, I THINK,

1 TRACKS WHAT I SAID YESTERDAY AFTERNOON, YOUR HONOR,
2 WHICH IS THAT I THINK THIS IS CORRECTLY ADMISSIBLE
3 UNDER AN EXCEPTION TO THE HEARSAY RULE.

4 THE WITNESS HAS TESTIFIED TO THE STEPS
5 THAT HE TOOK TO VERIFY THE ACCURACY. HE HAS
6 TESTIFIED TO THE RELIANCE UPON THESE DOCUMENTS IN
7 THE INDUSTRY AND THAT THEY DO PROPERLY COME IN AS
8 COMPILATIONS.

9 NOW, OPPOSING COUNSEL HAS RAISED A COUPLE
10 OF ISSUES FOR THE FIRST TIME THIS MORNING THAT I
11 THINK THAT THEY COULD ACTUALLY BE ADDRESSES AND
12 THAT IS, FOR EXAMPLE, HE SAYS THAT THERE'S A LOT OF
13 INFORMATION THERE THAT IS EXTRANEIOUS.

14 AND WE AGREE, WE DON'T, AS YOU HEARD
15 EARLIER THIS MORNING, THE VERY NARROW SLIVER OF
16 OTHER INFORMATION WHICH FRANKLY IS NOT RELEVANT TO
17 THIS LAWSUIT THAT IS RELIED UPON BY US, IT'S REALLY
18 A SMALL PART OF THESE DOCUMENTS.

19 IF THE QUESTION IS JUST REDACTING THESE
20 DOCUMENTS TO SHOW THE SERVER INFORMATION THAT WAS
21 RELIED ON AND VERIFIED AT THE TIME BY THIS WITNESS
22 THROUGH OTHER MEANS, WE CAN LOOK AT REDACTING THESE
23 REPORTS.

24 THE COURT: WE'RE IN THE MIDDLE OF TRIAL.
25 THAT'S AGAIN SOMETHING THAT SHOULD HAVE BEEN TAKEN

1 CARE OF.

2 WELL, I TAKE IT YOU DON'T OBJECT TO THE
3 COURT'S LIMITING INSTRUCTION?

4 MR. COOMBS: WELL, MY CONCERN IS THAT
5 THIS IS EVIDENCE THAT THESE SITES WERE HOSTED. AND
6 THE PROBLEM IS THAT WHILE THEY ADMIT THE HOSTING OF
7 MANY OF THESE SITES THAT COME UP, AS YOU SAW IN
8 1598, THE FIVE LISTED IN THE COMPLAINT THEY HAVE NO
9 INFORMATION ABOUT BECAUSE THEIR SERVER CRASHED AND
10 THERE'S NO RECORD OF THE NOTICES THAT WERE EVEN
11 SENT TO THEM OR ANY ACTION TAKEN IN RESPONSE TO
12 THEM.

13 SO THE ONLY WAY THAT WE CAN, IN FACT,
14 SHOW THAT THESE SITES WERE HOSTED IN THE FIVE
15 REGIONS, EITHER THROUGH THE WITNESS WHO WILL READ
16 THE DOCUMENT AND SAY "I SAW THIS AT THE TIME, THIS
17 IS THE ADDRESS THAT WAS REFLECTED ON THE RECORDS
18 AND SO FORTH OR AS COMPILATIONS," WHICH IS WHAT I
19 THINK THE TENURE OF YOUR HONOR'S RULING WAS
20 YESTERDAY AFTERNOON.

21 THE COURT: WELL, NO, THEY DON'T COME IN
22 AS COMPILATIONS. THIS IS NOT A SUMMARY OF A
23 VOLUMINOUS DOCUMENT.

24 IT DOES APPEAR TO ME THAT THERE IS AN
25 EXCEPTION BECAUSE IT'S NOT HEARSAY. INFORMATION IS

1 NOT HEARSAY UNLESS IT'S OFFERED TO PROVE THE TRUTH
2 OF IT.

3 NOW, IF YOU'RE OFFERING THESE DOCUMENTS
4 TO PROVE THAT INDEED THESE COMPANIES WERE USING WEB
5 SITES ASSOCIATED WITH THE DEFENDANT, THAT IS BEING
6 OFFERED FOR THE TRUTH.

7 BUT YOU DON'T HAVE A WAY OF
8 AUTHENTICATING THAT THROUGH ANY WITNESS WHO KNOWS
9 HOW THESE RECORDS WERE PUT TOGETHER, THEREFORE, I
10 THINK IT'S A WELL-MADE OBJECTION.

11 HOWEVER -- AND YOU CAN BRING IT IN LATER
12 ON BUT YOU CAN'T DO IT THROUGH THIS WITNESS. ALL
13 THIS WITNESS CAN SAY IS SOMEBODY PUT THIS
14 INFORMATION TOGETHER AND I SAW IT.

15 AND HE'S REPEATING IN COURT AN
16 OUT-OF-COURT STATEMENT. AND HE'S NOT THE PERSON
17 WHO ACTUALLY PUT THE INFORMATION TOGETHER, NOR IS
18 IT AN ORDINARY BUSINESS RECORD OF THIS WITNESS OR
19 ANYONE THAT HE CAN CONTROL.

20 SO I WILL GIVE A LIMITING INSTRUCTION.

21 I WILL PERMIT YOU TO USE THEM TO EXPLAIN
22 HOW HE CAME TO WRITE THE LETTER TO TRACE BACK HIS
23 INVESTIGATION.

24 TO THE EXTENT THAT YOU NEED TO PROVE THAT
25 THESE COMPANIES WERE USING THOSE ADDRESSES, THEN

1 YOU NEED TO GO TO THE TASK OF FINDING OUT HOW
2 DOMAIN SOLUTIONS OR WHOEVER MADE THAT ASSOCIATION
3 DID IT OR SOME OTHER METHOD OF SHOWING THAT THEY
4 WERE INDEED ASSOCIATED.

5 MR. COOMBS: WELL, YOUR HONOR, THE
6 WITNESS HAS TESTIFIED THAT BEFORE THE DOMAIN TOOLS
7 PRINTOUT GOT INTO HIS FILE, HE SEPARATELY CHECKED.

8 THE COURT: HE CAN TESTIFY TO THAT.
9 THAT'S NOT THE SUBJECT OF THE PROCEEDINGS AT THIS
10 POINT.

11 MR. COOMBS: AND HE CAN BE REFRESHED
12 ABOUT THE INFORMATION AT THE TIME BY LOOKING AT THE
13 INFORMATION THAT HE PRINTED OUT AT THE TIME.

14 THE COURT: BUT THE RECORD DOESN'T COME
15 INTO EVIDENCE.

16 MR. COOMBS: I UNDERSTAND.

17 THE COURT: HE CAN REFRESH HIS
18 RECOLLECTION ABOUT ANY MATTER THAT HE CAN COME TO
19 THE PAST RECOLLECTION AS RECORDED OR OTHER
20 EXCEPTIONS TO THE HEARSAY RULE.

21 SUMMON THE JURY.

22 MR. LOWE: YOUR HONOR, AT A LATER TIME
23 MAY WE HAVE A FEW MINUTES OF THE COURT'S TIME TO
24 TALK ABOUT THE GLOSSARY.

25 THE COURT: CERTAINLY. I WAS EXPECTING

1 THAT WE WOULD HAVE IT BY NOW BECAUSE I HAVE HEARD
2 TERMS BEING USED WITH THE JURY WITH THIS WITNESS
3 THAT IS PART OF WHAT I HAD HOPED THAT YOU WOULD
4 HAVE COME TOGETHER ON.

5 SUMMON THE JURY.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS
7 WERE HELD IN THE PRESENCE OF THE JURY:)

8 THE COURT: THANK YOU VERY MUCH FOR YOUR
9 PATIENCE. AS I SAID TO YOU, I ALWAYS TRY AND DEAL
10 WITH SOME OF THESE PROBLEMS OUT OF YOUR PRESENCE,
11 BUT OCCASIONALLY IT HAPPENS THAT I NEED TO TAKE
12 TIME AWAY FROM YOU.

13 I HAVE DECIDED ON A PROCEDURE WHICH I
14 THINK WILL SPEED US UP AND THAT'S AS FOLLOWS: I AM
15 GOING TO PERMIT EITHER COUNSEL, BECAUSE THIS WORKS
16 BOTH WAYS, TO USE THESE VARIOUS DOCUMENTS THAT ARE
17 PART OF THEIR INVESTIGATION AS TO HOW THEY CAME TO
18 WRITE A LETTER OR SENT NOTICE TO THE DEFENDANT OR
19 FROM THAT LETTER FROM THE PLAINTIFF TO THE
20 DEFENDANT.

21 BUT THESE ARE DOCUMENTS, SEARCH DOCUMENTS
22 SUCH AS THE ONE THAT IS ACTUALLY -- LET ME PUT IT
23 ON THE SCREEN -- BEING DISPLAYED TO YOU. BACK OUT
24 A LITTLE BIT.

25 THOSE ARE DOCUMENTS WHICH CONTAIN

1 INFORMATION WHICH WAS PUT TOGETHER BY A DIFFERENT
2 COMPANY. IN THIS CASE IT'S DOMAIN TOOLS. THEY PUT
3 TOGETHER THE INFORMATION.

4 THE IMPORTANT PART OF THE INFORMATION,
5 THOUGH, IS THAT THE WITNESS RELIED UPON IT TO DO AN
6 INVESTIGATION TO FIGURE OUT TO WHOM TO SEND A
7 LETTER.

8 WHETHER OR NOT THIS IS TRUE INFORMATION
9 OR NOT IS NOT THE IMPORTANT ISSUE. IT'S BEING
10 OFFERED FOR THE LIMITED PURPOSE OF EXPLAINING TO
11 YOU HOW HE CAME AT SOME POINT TO WRITE A LETTER TO
12 THE DEFENDANT.

13 IT COULD BE THAT THIS INFORMATION WAS
14 WRONG AND THAT THE DEFENDANT WOULD RESPOND THIS IS
15 WRONG INFORMATION AND THAT THE DOMAIN TOOLS GOT IT
16 WRONG OR IT COULD BE THAT IT'S ACCURATE
17 INFORMATION.

18 THAT'S NOT WHY IT'S OFFERED TO PROVE THE
19 TRUTH OF IT. IT'S OFFERED TO EXPLAIN HIS CONDUCT,
20 WHY HE WROTE THE LETTER.

21 AND SO ALTHOUGH I WILL ALLOW THEM TO BE
22 DISPLAYED, I HAVE RESERVED WHETHER OR NOT TO ALLOW
23 THAT DOCUMENT TO GO INTO THE JURY ROOM. HIS
24 LETTERS AND THE VARIOUS THINGS THAT HE WROTE WILL
25 BE IN EVIDENCE AND YOU CAN SEE THOSE. AND THIS

1 APPLIES TO BOTH SIDES.

2 NOW, IT ALSO COULD BE THE CASE THAT THERE
3 ARE OTHER CONDUCTS THAT THE WITNESS DID TO
4 DETERMINE WHOM TO WRITE A LETTER AND THAT'S NOT
5 AFFECTED BY THIS RULING. THIS IS ONLY AS TO THESE
6 WEB SITES THAT WERE USED TO CONDUCT THE
7 INVESTIGATION.

8 I THINK IT'S HELPFUL TO YOU TO SEE THE
9 DOCUMENT TO MOVE OUR CASE ALONG, AND SO I WILL
10 PERMIT THEM TO BE SEEN EVEN THOUGH THEY'RE NOT
11 ALLOWED INTO EVIDENCE.

12 NOW, JUST AS A PROTOCOL, I NOTICE SEVERAL
13 TIMES THE LAWYERS HAVE ASKED THE WITNESS TO FIND A
14 THE PAPER DOCUMENT.

15 THE REASON WE HAVE THIS MARVELOUS
16 TECHNOLOGY IS THAT THE WITNESS CAN READ THE SCREEN
17 AS WELL AS THE REST OF US AND SO I'LL ASK THAT IF
18 YOU HAVE AN EXHIBIT THAT IS OF THIS KIND AND
19 CHARACTER, YOU JUST PUT IT ON THE SCREEN.

20 IF THE WITNESS HAS TROUBLE READING IT,
21 WE'LL SAY WE'LL GET THE PAPER COPY AND THEY HAVE TO
22 STOP AND GO THROUGH THESE VOLUMINOUS NOTEBOOKS TO
23 FIND PAPER AND WHERE INSTANTANEOUS YOUR TECHNICIAN
24 CAN BRING INFORMATION UP AND HIGHLIGHT IT ON THE
25 SCREEN SO THE WITNESS CAN SEE IT AND USE IT AND

1 MOVE ALONG.

2 ALL RIGHT. PROCEED.

3 MR. COOMBS: THANK YOU VERY MUCH, YOUR
4 HONOR.

5 Q DID YOU CONDUCT AN ADDITIONAL INVESTIGATION AS
6 TO THE INFRINGEMENT OCCURRING ON ESHOES99.COM IN
7 2007?

8 A ABOUT THE HOSTING STATUS?

9 Q SPECIFICALLY ABOUT THE HOSTING STATUS?

10 A WELL, REGULARLY WE ARE CHECKING WHAT IS THE
11 WEB HOSTING STATUS IN ORDER TO SEE THE DEFENDANTS
12 TO WHOM WE ADDRESS SEVERAL NOTIFICATIONS DID COMPLY
13 OR NOT.

14 Q OKAY. AND DID YOU DO SO WITH RESPECT TO
15 ESHOES99.COM?

16 A YES.

17 Q AND IN ORDER TO OBTAIN THE HOSTING STATUS AT
18 THAT TIME, WHAT DID YOU DO?

19 A I CHECKED THE DOMAIN TOOLS. I CHECKED THE IP
20 ADDRESSES ASSOCIATED WITH THE DOMAIN NAME BY
21 PINGING IT VIA DOS PROMPT.

22 Q AND THESE DIFFERENT TECHNIQUES RESULTED IN THE
23 SAME RESULT REGARDING THE IP ADDRESS?

24 A YES.

25 Q AND THAT WAS AN IP ADDRESS THAT YOU FOUND WAS

1 ASSIGNED TO MANAGED SOLUTIONS GROUP AT THAT TIME?

2 THE COURT: WELL, DON'T ASK IT AS
3 LEADING.

4 BY MR. COOMBS:

5 Q WHO WAS THE IP ADDRESSED TO AT THAT TIME?

6 A IT WAS TO MANAGED SOLUTIONS GROUP AT THAT
7 TIME.

8 Q I WOULD ASK THE WITNESS TO TURN TO EXHIBIT 37.

9 THE COURT: AGAIN, RATHER THAN -- JUST
10 DISPLAY IT RATHER THAN HAVE HIM FIND IT AND WE CAN
11 MOVE ON.

12 BY MR. COOMBS:

13 Q AND CAN YOU DESCRIBE WHAT THAT IS?

14 A THIS IS A LETTER SENT TO MANAGED SOLUTIONS
15 GROUP, INC., ON MARCH 30TH, 2007 BY MY OFFICE. IT
16 HAS BEEN SENT BY EXPRESS MAIL TO NOTIFY THEM ABOUT
17 THE INFRINGING ACTIVITY GOING ON ON ESHOES99.COM
18 AND THAT THEY ARE HOSTING THIS WEB SITE.

19 Q DID YOU RECEIVE ANY RESPONSE TO THE EXHIBIT 37
20 LETTER?

21 A NO.

22 Q DID YOU CONDUCT FURTHER INVESTIGATION AS A
23 RESULT OF THAT?

24 A WELL, I WAS FOLLOWING THIS LETTER. I WAS
25 CHECKING WHAT IS THE HOSTING STATUS.

1 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
2 76.4. WAS THAT DONE IN CONNECTION WITH THE FURTHER
3 INVESTIGATION THAT YOU DID?

4 A YES, THAT'S A PRINTOUT OF DOMAIN TOOLS REPORT
5 ON ESHOES99.COM, AND IT WAS PRINTED OUT BY MY
6 OFFICE ON APRIL 10TH, 2007.

7 Q AND YOU DID ADDITIONAL INVESTIGATION TO FIND
8 OUT THE HOSTING STATUS AT THAT TIME?

9 A YES, IT WAS DONE BY PINGING VIA DOS PROMPT.

10 Q AND WHAT WAS THE HOST THAT WAS IDENTIFIED?

11 A THE HOST THAT WAS IDENTIFIED WAS MANAGED
12 SOLUTIONS GROUP, INC.

13 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT 6.

14 MR. LOWE: YOUR HONOR, WE WOULD OBJECT TO
15 THIS. THIS DOES NOT APPEAR TO BE SENT BY THE
16 WITNESS BUT BY COUNSEL.

17 THE COURT: OVERRULED.

18 BY MR. COOMBS:

19 Q DID YOU RECEIVE THIS ON OR ABOUT THE DATE THAT
20 IT BEARS?

21 A YES. AFTER SO MANY UNSUCCESSFUL ATTEMPTS TO
22 GET IN TOUCH WITH DEFENDANTS REGARDING ESHOES99, I
23 CONTACTED YOUR OFFICE WITH THE REQUEST TO FOLLOW UP
24 ON THE NOTIFICATIONS WITH THE DEFENDANTS AND THIS
25 LETTER HAS BEEN SENT BY YOUR OFFICE ON APRIL 20TH

1 TO TRY TO SOLVE THE --

2 THE COURT: WAIT. IT WAS SENT ON THAT
3 DATE. SEE IF WE HAVE OTHER QUESTIONS ABOUT IT.

4 BY MR. COOMBS:

5 Q ARE YOU AWARE OF WHETHER LOUIS VUITTON OR
6 ANYONE ELSE RECEIVED A RESPONSE TO THE EXHIBIT 6
7 LETTER?

8 A TO THIS LETTER?

9 Q YES.

10 A NO.

11 Q I'D ASK THE WITNESS TO LOOK AT EXHIBIT 76.5.
12 DID YOU CONDUCT FURTHER INVESTIGATION OF THE DOMAIN
13 TOOLS ESHOES99.COM?

14 A YES, THAT'S DOMAIN TOOLS PRINTOUT OF
15 ESHOES99.COM ON SEPTEMBER 19, 2007.

16 Q AND THE HOSTING STATUS WAS VERIFIED?

17 A THE HOSTING STATUS SECTION IT SHOWS THAT ON
18 THIS DATE ESHOES99 HAS BEEN HOSTED ON AN IP ADDRESS
19 ASSIGNED TO THE DEFENDANT MANAGED SOLUTIONS GROUP,
20 INC.

21 Q TURNING TO A DIFFERENT WEB SITE. WOULD YOU
22 TAKE A LOOK AT EXHIBIT 63.1.

23 A OKAY.

24 Q DID YOU CONDUCT AN INVESTIGATION OF
25 WENDY929.NET?

1 A YES, I DID.

2 Q AND WHEN DID YOU DO THAT?

3 A THIS HAS BEEN PRINTED OUT IN MY OFFICE ON
4 OCTOBER 11, 2006.

5 Q AND WHAT IS THIS?

6 A THIS IS A PAGE FROM THE WEB SITE -- I'M
7 SORRY -- WENDY929.NET SHOWING VARIOUS HANDBAGS FOR
8 SALE, FOR INSTANCE MARC JACOBS BAGS.

9 Q AND CAN YOU TELL WHETHER THEY'RE GENUINE OR
10 NOT?

11 THE COURT: WELL, ONLY -- NOT AS TO MARC
12 JACOBS BUT AS TO HIS PRODUCT YOU MIGHT ASK THAT
13 QUESTION.

14 BY MR. COOMBS:

15 Q IS THERE ANY -- CAN YOU TELL WHETHER ANY OF
16 THE LOUIS VUITTON PRODUCTS ARE GENUINE OR NOT?

17 A UM, OKAY. CAN WE GO ON THE PAGE WHERE THEY
18 HAVE LOUIS VUITTON BAGS.

19 THE COURT: IS THIS A DIFFERENT EXHIBIT?

20 MR. COOMBS: NO, I'M SORRY. I DIDN'T
21 MEAN TO PULL UP A DIFFERENT EXHIBIT, YOUR HONOR.

22 Q ACTUALLY, LET'S PULL UP EXHIBIT 63.

23 A OKAY. THIS EXHIBIT HAS BEEN PRINTED OUT IN MY
24 OFFICE ON AUGUST 11, 2006 AND THIS IS FOR
25 WENDY929.NET.

1 Q CAN YOU TELL US WHAT WE'RE LOOKING AT?

2 A THE NEXT PAGE IS ALSO FROM THE SAME WEB SITE.
3 IT DISPLAYS A NUMBER OF HANDBAGS DISPLAYING OUR
4 TRADEMARKS.

5 Q CAN YOU TELL WHETHER THEY'RE GENUINE OR
6 NONGENUINE?

7 A THEY'RE NONGENUINE.

8 Q AND HOW IS IT THAT YOU CAN TELL THAT BY
9 REVIEWING THESE OFFERS?

10 A I CAN'T TELL VERY WELL FROM THE SCREEN SO.

11 Q THE PAPER COPY SHOULD BE IN VOLUME 1 IN FRONT
12 OF YOU IF IT MAKES IT EASIER.

13 THE COURT: I PRESUME HE'S DONE THIS
14 BEFORE.

15 MR. COOMBS: THAT WAS GOOD ENOUGH?

16 THE COURT: HE'S SUBJECT TO
17 CROSS-EXAMINATION. IF THERE'S SOMETHING ABOUT
18 THESE PRODUCTS THAT ARE GENUINE, I'M SURE THAT WILL
19 BE, BUT I DON'T WANT TO DELAY AND EVERY TIME HE
20 SAYS IT'S A NONGENUINE PRODUCT AND HAVE HIM VERIFY
21 UNLESS THERE'S SOME CHALLENGE TO THAT. LET'S MOVE
22 AHEAD.

23 BY MR. COOMBS:

24 Q DID YOU CONDUCT AN INVESTIGATION OF THE
25 HOSTING STATUS OF WENDY929.NET AT THAT TIME?

1 A YES.

2 Q AND I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
3 64.

4 A THIS IS A DOMAIN TOOLS REPORT PRINTED OUT IN
5 MY OFFICE ON OCTOBER 16, 2006 REGARDING THE WEB
6 SITE WENDY929.NET. AND IT SAYS IT RESIDES ON AN IP
7 ADDRESS 205.209.163.83 AND THAT IT'S ASSIGNED TO
8 MANAGED SOLUTIONS GROUP, INC.

9 Q AND DID YOU CONDUCT AN INVESTIGATION OF THE
10 HOSTING STATUS OF WENDY929 AT THAT TIME?

11 A YES. AS I SAID, THIS INFORMATION IS
12 SYSTEMATICALLY DOUBLE-CHECKED.

13 Q AND AS A RESULT OF THE INFORMATION, DID YOU
14 SEND A LETTER TO THE HOST AS INDICATED ON THE
15 PRINTOUT?

16 A YES.

17 Q AND LET'S TAKE A LOOK AND ASK THE WITNESS TO
18 LOOK AT EXHIBIT 36 AND ASK HIM IF THAT'S A COPY OF
19 THE LETTER THAT HE SENT?

20 A YES.

21 Q AND THE LETTER IS ADDRESSED TO
22 ABUSE@WEBHOSTPLUS.COM AND IT HAS A PHYSICAL ADDRESS
23 IN NEW JERSEY ALTHOUGH AS I UNDERSTAND THE PHYSICAL
24 LETTERS ARE NOT SENT TO THE ADDRESS AT THAT TIME;
25 IS THAT CORRECT?

1 A YES.

2 Q AND HOW IS IT THAT YOU FOUND THE E-MAIL
3 ADDRESS LOCATED ON EXHIBIT 36?

4 A WELL, AT THAT TIME I WAS -- THE MICROPHONE --
5 I WAS IN GREAT TROUBLE FINDING ANY CONTACT DATA FOR
6 THE DEFENDANT MANAGED SOLUTIONS GROUP, INC. I EVEN
7 HAD TROUBLE FINDING THEIR WEB SITE.

8 SO THAT IS THE FIRST INFORMATION THAT WE
9 FOUND, AND I CAN EXPLAIN HOW IT HAPPENED.

10 Q PLEASE DO SO.

11 A WE GOOGLED MANAGED SOLUTIONS, INC., AND WE
12 FOUND SEVERAL WEB SITES TALKING ABOUT MANAGED
13 SOLUTIONS GROUP AND THEY WERE REFERRING TO THEIR
14 WEB SITE MANAGED.COM.

15 MR. LOWE: EXCUSE ME. YOUR HONOR, I
16 WOULD OBJECT TO TESTIMONY ABOUT HEARSAY FROM SOME
17 UNIDENTIFIED GOOGLE SOURCE.

18 THE COURT: WELL, HE'S ACTUALLY TALKING
19 ABOUT THE INVESTIGATION THAT HE CONDUCTED AND
20 DESCRIBING THE STEPS THAT HE TOOK.

21 SO THE OBJECTION IS OVERRULED TO HIS
22 TESTIFYING AS TO THE STEPS THAT HE TOOK AND WHAT HE
23 FOUND AS A RESULT OF THAT. IT IS MERELY EXPLAINING
24 TO THE JURY THE STEPS THAT HE WENT THROUGH TO COME
25 TO WRITE THE LETTER THAT IS BEING OFFERED INTO

1 EVIDENCE.

2 GO AHEAD.

3 THE WITNESS: SO CONSULTING VARIOUS WEB
4 SITES, SOME OF WHICH WERE ACTUAL POSTINGS OF
5 MANAGED SOLUTION GROUP ON THE MESSAGE BOARDS, WE
6 REFERRED TO A WEB SITE MANAGED.COM AND ON THIS WEB
7 SITE MANAGED.COM THAT WE FOUND THE MAILING ADDRESS
8 AND THE E-MAIL ADDRESS.

9 FURTHER INVESTIGATION I CONDUCTED SHOWED
10 THAT DEFENDANT MANAGED SOLUTIONS GROUP HAD PREVIOUS
11 BUSINESS DEALINGS WITH THIS COMPANY LOCATED IN NEW
12 JERSEY WITH AN E-MAIL ADDRESS
13 ABUSE@WEBHOSTPLUS.COM.

14 BY MR. COOMBS:

15 Q SO TO BE CLEAR, IN ACCORDANCE WITH YOUR USUAL
16 PRACTICE WHEN YOU WOULD LOOK FOR A HOSTING COMPANY
17 YOU WOULD FIRST LOOK AT THE COPYRIGHT OFFICE
18 DESIGNEE FOR SERVICE?

19 A YES, AND IN THIS CASE THERE WAS NOTHING ABOUT
20 MANAGED SOLUTIONS GROUP.

21 Q AND THE NEXT STEP WOULD BE TO GO TO THE WEB
22 SITE FOR THE COMPANY?

23 A ABSOLUTELY. AND THE BEST THING I COULD FIND
24 IS MANAGED.COM.

25 Q AND ONE OF THE REASONS THIS NAME APPEARED TO

1 BE CONNECTED WAS BECAUSE --

2 MR. LOWE: OBJECTION. LEADING, YOUR
3 HONOR.

4 THE COURT: SUSTAINED.

5 BY MR. COOMBS:

6 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
7 64.1.

8 A MAYBE I CAN BRING ANOTHER --

9 THE COURT: LET THE LAWYER CONTROL IT.
10 WE'LL TAKE A BREAK SHORTLY.

11 BY MR. COOMBS:

12 Q DID YOU RECEIVE ANY RESPONSE TO YOUR EXHIBIT
13 36 DEMAND?

14 A NO.

15 Q SO IN THE COURSE OF YOUR INVESTIGATION
16 PRACTICE YOU CONDUCTED FURTHER FOLLOW UP?

17 A WE CONDUCTED FURTHER FOLLOW UP, YES.

18 Q AND COULD YOU TELL US WHAT EXHIBIT 64.1 IS?

19 A THIS IS A DOMAIN TOOLS PRINTOUT FOR
20 WENDY929.NET. IT SAYS THE WEB SITE IS ADDRESSED TO
21 A WEB SITE ON MANAGED SOLUTIONS GROUP, INC.

22 Q AND IN THE COURSE OF YOUR PRACTICE YOU
23 VERIFIED THAT USING ON LINE --

24 MR. LOWE: OBJECTION. LEADING.

25 THE COURT: SUSTAINED.

1 BY MR. COOMBS:

2 Q DID YOU DO ANYTHING ELSE TO CONFIRM THE
3 HOSTING STATUS?

4 A YES, I DOUBLE-CHECKED THE INFORMATION.

5 Q AND WHAT DID YOU DO NEXT?

6 A A FOLLOW-UP LETTER HAS BEEN SENT -- WELL,
7 ACTUALLY WE CONDUCTED FURTHER RESEARCH TO VERIFY
8 THE CONTACT INFORMATION FOR MANAGED SOLUTIONS
9 GROUP.

10 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT 59.
11 CAN YOU DESCRIBE WHAT THAT IS?

12 A THAT'S A FOLLOW-UP LETTER BY E-MAIL. AS I
13 SAID, WE WEREN'T SURE -- WELL, THE ADDRESS WE FOUND
14 TO CONTACT MANAGED SOLUTIONS GROUP. SO WE
15 REFRAINED FROM SENDING A FORMAL LETTER BY
16 REGISTERED MAIL AND WE SENT A FRIENDLY REMINDER BY
17 E-MAIL AND WE WERE HOPING THAT WE WOULD HEAR FROM
18 THE DEFENDANTS.

19 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
20 63.2. YOU RECEIVED NO RESPONSE TO THAT EITHER?

21 A NO.

22 THE COURT: WE ARE MOVING TO ANOTHER
23 EXHIBIT. IT'S ABOUT 10:30. LET'S TAKE A BREAK AT
24 THIS POINT. YOU HAD A LITTLE BIT OF A BREAK, BUT
25 MY COURT REPORTER AND ALL OF US WERE WORKING.

1 WE'LL COME BACK IN ABOUT TEN MINUTES.

2 COUNSEL REMAIN BRIEFLY.

3 (WHEREUPON, A RECESS WAS TAKEN.)

4 THE COURT: I JUST WANTED TO TRY AND HELP
5 THE PROCESS OF USING THE TECHNOLOGY OUT OF THE
6 PRESENCE OF THE JURY. AND YOU'RE DOING A VERY GOOD
7 JOB, OR WHOEVER IS CONTROLLING IT. I CAN'T TELL
8 HERE.

9 BUT ONE SUGGESTION THAT I MAKE IS THAT
10 YOU ACTUALLY PUT UP THE LETTERS OR WHATEVER AND
11 THEN GO AND FROM THE VIEWPOINT OF THE JURY BOX AND
12 SEE WHETHER IT COULD BE READ BECAUSE WE HAVE THE
13 ADVANTAGE OF A SMALL SCREEN AND IT'S CLOSE TO US,
14 BUT THE JURY IS VERY FAR AWAY AND THEN FIGURE OUT
15 HOW MUCH MAGNIFICATION YOU NEED TO GET IT TO THAT
16 SO IT'S NOT CONSTANTLY MOVING.

17 IT'S VERY DISTRACTING OF HAVING IT MOVING
18 AROUND IF I CAN TELL YOU, AND SO ONCE YOU ESTABLISH
19 THAT 75 PERCENT OR 78 PERCENT MAGNIFICATION IS WHAT
20 YOU WANT, JUST GO TO THAT MAGNIFICATION.

21 I PRESUME YOU'RE NOT USING TRIAL
22 DIRECTORY. YOU'RE USING SOME OTHER PROGRAM FOR
23 BRINGING THIS UP. THERE ARE PROGRAMS THAT WILL
24 ALLOW YOU TO BLOCK OUT THE DOCUMENT AND ZOOM INTO
25 IT AND THAT YOU MIGHT INVESTIGATE FOR THE NEXT

1 TRIAL.

2 AND THEN AS TO THESE OTHER MATERIALS, I
3 PRESUME THAT YOU ALL KNOW EXACTLY WHAT PART OF THAT
4 PAGE THAT WE'RE INTERESTED IN. IT'S THE NAME AND
5 THE IP ADDRESS AND THAT SORT OF STUFF AND SEEING
6 THE WHOLE PAGE OR MAYBE SEEING PICTURES OF OTHER
7 BAGS ARE NOT IMPORTANT.

8 BRING TO THE JURY THOSE MATTERS THAT
9 THEY'RE BEING ASKED TO PAY ATTENTION TO AND JUST
10 KIND OF ZOOM IN ON THAT AND BRING IT UP AND LEAVE
11 IT THERE DURING THE EXAMINATION OF THE DOCUMENT AND
12 THAT WILL AVOID THE KIND OF THE SCREENING THAT
13 TAKES PLACE AS ITS MOVING AROUND.

14 IT CAN BE TRICKY ON THE EYE, AND IT CAN
15 ACTUALLY CAUSE PEOPLE TO BE DIZZY AS THEY'RE MOVING
16 AROUND CONSTANTLY.

17 I JUST HAD YEARS OF WORKING WITH THIS AND
18 SO I CAN TELL YOU NOW THAT THAT WILL HELP US ALL.

19 ANY OTHER MATTER OUT OF THE PRESENCE OF
20 THE JURY?

21 MR. LOWE: YOUR HONOR, THE MATTER OF THE
22 GLOSSARY WE WOULD LIKE TO DEAL WITH. WE HAVE BEEN
23 ATTEMPTING TO WORK OUT WITH PLAINTIFF'S COUNSEL ON
24 THE TERMS.

25 THE COURT: CAN I HAVE THEM? SO I HAVE

1 TWO VERSIONS?

2 MR. COOMBS: YES, YOUR HONOR.

3 MR. LOWE: AND ON THE VERSION WE GAVE
4 YOU, WE MARKED THOSE DEFINITIONS THAT PLAINTIFFS
5 DISAGREE WITH. AND AS I UNDERSTAND IT THEY DON'T
6 DISAGREE WITH THE DEFINITION PARTICULARLY BUT THEY
7 DISAGREE WITH HAVING A DEFINITION OF THAT, FOR
8 EXAMPLE, SUCH AS INTERNET OR INTERNET PROVIDER.

9 AND THEN ON PAGE 2 REGISTRANT, REGISTRAR
10 AND REGISTRY, AS I UNDERSTAND THEY WANT ONE
11 DEFINITION THAT COMBINES ALL OF THEM, AND WE
12 THOUGHT IT WAS APPROPRIATE TO SPLIT THEM OUT. BUT
13 BASICALLY WE HAVE TOO MANY DEFINITIONS AS I
14 UNDERSTAND IT.

15 THE COURT: WELL, THERE'S A SIMPLE
16 SOLUTION. THESE ARE OBVIOUSLY ON WORD PERFECT OR
17 SOME KIND OF WORD PROCESSOR. TO THE EXTENT THAT
18 YOU CAN'T AGREE ON A DEFINITION, JUST LABEL IT
19 "DEFENSE VERSION" AND "PLAINTIFF'S VERSION" AND PUT
20 BOTH IN SO THE JURY HAS THE BENEFIT OF SEEING IT.

21 IF THERE IS SOMETHING ON IT THAT YOU
22 BELIEVE IS PREJUDICIAL THAT IT'S NOT AN OFFICIAL
23 DEFINITION, MAYBE HIGHLIGHT THAT FOR ME AND I CAN
24 LOOK AT THAT AND YOU CAN ISSUE A SECOND VERSION.

25 THE PROBLEM WITH GIVING VERSIONS IS THAT

1 JURORS WHEN THEY GET THESE THINGS THEY WILL START
2 TO WRITE ON THEM AND MAKE NOTES AND USE THEM AND SO
3 THAT I WANT TO SEE THAT I CAN GET QUICKLY TO THEM.

4 BUT IT IS GOING TO BE EXTREMELY HELPFUL
5 GIVEN THE JARGON THAT HAS DEVELOPED AROUND THIS TO
6 HAVE A GLOSSARY AND ACTUALLY USE IT AND DURING THE
7 COURSE OF TRIAL AND SAY LET ME ASK YOU ABOUT
8 PINGING. THERE'S A DEFINITION ON THE SHEET THAT WE
9 HAVE GIVEN THE JURY BUT EXPLAIN MORE ABOUT THAT.

10 MR. COOMBS: MAY I MAKE A SUGGESTION? I
11 THINK THE DIFFERENCE BETWEEN US ON MOST OF THE
12 DEFINITIONS WE AGREE WITH IS MINOR. WE CAN
13 PROBABLY AGREE ON A JOINT LIST. AND THEN THE
14 QUESTION IS WHETHER THE COURT WISHES TO SUPPLEMENT
15 THAT WITH DEFENDANTS' ADDITIONAL DEFINITIONS.

16 THE COURT: I'M WILLING TO JUST GIVE THE
17 JURY THE INFORMATION THAT THEY NEED. IF YOU
18 BELIEVE YOU CAN COME UP WITH ONE, COME UP WITH ONE.

19 MR. COOMBS: OKAY.

20 THE COURT: IT JUST SEEMS TO ME THAT THE
21 MORE THE BETTER. IF THERE IS SOME CONTROVERSY
22 ABOUT IT, THAT'S WHAT I WANT YOU TO MARK IS THAT
23 THERE IS SOME CONTROVERSY ABOUT THIS DEFINITION SO
24 THAT THE JURY -- YOU CAN MAKE THAT KNOWN TO THE
25 JURY AND ADDRESS IT.

1 THIS IS PURELY FOR PURPOSES OF THEIR USE
2 AND YOU CAN ACTUALLY PUT ON THIS GLOSSARY SO FAR AS
3 THE COURT IS CONCERNED ANY CONCERNS THAT YOU HAVE
4 THAT THERE MAY BE EVIDENCE THAT THIS DEFINITION IS
5 TOO BROAD OR TOO NARROW OR WORDS TO THAT EFFECT.

6 MR. COOMBS: I THINK THE ONLY ONE WE'RE
7 REALLY CONCERNED ABOUT IS THE DEFINITION OF
8 RESELLER BECAUSE WE'RE NOT CONCEDING THAT THE
9 DEFENDANTS ARE RESELLERS YET. THOSE ARE GOING TO
10 BE USED THROUGHOUT THIS CASE.

11 THE COURT: WELL, IT DOES SEEM TO ME THAT
12 SOME LABEL OUGHT TO RECOGNIZE -- AND AGAIN, I
13 HAVEN'T SEEN THE FLOW CHART. THAT WAS SHOWN BUT IT
14 WASN'T -- DID THE JURY GET A SMALL VERSION OF THAT?

15 MR. LOWE: THEY DID, YOUR HONOR.

16 THE COURT: BUT IT SEEMS TO ME THAT THE
17 PROCESS THAT WE HAVE BEEN GOING THROUGH HASN'T BEEN
18 IDENTIFIED TO ANY CHART IN ANY WAY AND SO THESE
19 DEFINITIONS ARE GOOD BUT WE'RE WORKING IN TWO
20 DIFFERENT WORLDS.

21 MAYBE THAT IS WHERE YOU FLAG RESELLER AND
22 JUST SAY WHETHER OR NOT THIS DEFINITION APPLIES OR
23 IN THIS CASE IS A MATTER THAT YOU WILL BE ASKED TO
24 DECIDE OR SOMETHING LIKE THAT.

25 AND THAT'S VERY EASY TO PUT THAT ON

1 THERE. AND IF YOU HAVE AN AGREED LANGUAGE AND YOU
2 HAVE THESE IN A FORM THAT I CAN PRINT THEM OUT AS A
3 COURTESY TO YOU I WOULD BE HAPPY TO DO THAT SO THAT
4 WE HAVE THEM RIGHT HERE AND NOW.

5 MR. COOMBS: WE DO HAVE THEM NOW.

6 THE COURT: WELL, SEE IF YOU CAN WORK IT
7 OUT AND GIVE US THE FLASH DRIVE VERSION AND THEN
8 WE'LL BE HAPPY TO HAVE THE COURT STAFF PRINT IT OUT
9 AND PROVIDE IT TO THE JURY.

10 MR. COOMBS: THANK YOU, YOUR HONOR.

11 MR. LOWE: THANK YOU, YOUR HONOR.

12 THE COURT: LET'S GIVE OURSELVES ABOUT
13 TEN MINUTES THEN AND SO WE'LL COME BACK AT ABOUT
14 TEN TO THE HOUR OR A QUARTER TO THE HOUR.

15 (WHEREUPON, THE FOLLOWING PROCEEDINGS
16 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

17 THE COURT: READY TO RESUME?

18 MR. COOMBS: YES, YOUR HONOR.

19 THE COURT: SUMMON THE JURY.

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

22 THE COURT: VERY WELL. YOU MAY RESUME
23 YOUR EXAMINATION.

24 MR. COOMBS: THANK YOU, YOUR HONOR.

25 Q NOW, WE WERE LOOKING AT EXHIBIT -- I'M

1 SORRY -- IS IT 63.2 OR 64.2?

2 THE COURT: 63.2 IS WHAT I HAVE.

3 MR. COOMBS: THANK YOU, YOUR HONOR.

4 63.2.

5 Q CAN YOU DESCRIBE WHAT 63.2 IS?

6 A THAT'S A PRINTOUT OF THE PAGE WENDY929.NET
7 DONE ON OCTOBER 30TH, 2006 AND THAT'S BEEN PRINTED
8 OUT IN MY OFFICE.

9 Q AND CAN WE SCROLL DOWN AND LOOK AT THE
10 FOLLOWING PAGES.

11 CAN YOU DESCRIBE WHAT YOU'RE SEEING ON
12 THE SUBSEQUENT PAGES? IF YOU NEED TO LOOK AT THE
13 PAPER COPY, IT SHOULD BE IN THE FIRST BINDER.

14 A YEAH, THAT'S ANOTHER PRINTOUT OF WENDY929
15 SHOWING PRODUCTS BEARING LOUIS VUITTON TRADEMARKS.

16 Q AND CAN YOU TELL WHETHER OR NOT THEY'RE
17 GENUINE?

18 A NOT FROM THIS PARTICULAR --

19 Q -- PAGE.

20 A BUT I VERIFIED THE WEB SITE, AND I KNOW IT HAS
21 CONSISTENTLY OFFERED COUNTERFEIT PRODUCTS.

22 MR. LOWE: YOUR HONOR, I WOULD MOVE TO
23 STRIKE THAT ANSWER AS NONRESPONSIVE.

24 THE COURT: OVERRULED.

25 BY MR. COOMBS:

1 Q COULD YOU SCROLL DOWN. AND WHAT NEXT DID YOU
2 DO IN CONNECTION WITH WENDY929?

3 A I'M SORRY. I CANNOT SEE. I WOULD HAVE TO
4 REFER TO THE --

5 Q HAVING DETERMINED THAT THE OFFERS WERE
6 COUNTERFEIT OR UNAUTHORIZED, WHAT DID YOU DO NEXT
7 WITH 929?

8 A WELL, THE USUAL PROCEDURE WAS NOTIFY THE
9 OPERATOR AND THE WEB HOST.

10 Q COULD YOU PULL UP EXHIBIT 63.2 AND ADVISE
11 WHETHER THAT WAS PART OF YOUR FURTHER
12 INVESTIGATION? I'M SORRY. 64.2.

13 A THIS IS A DOMAIN TOOLS PRINTOUT OF OCTOBER
14 30TH, 2006 SHOWING THAT THE WEB SITE WENDY929.NET
15 AND IT IS IDENTIFIED WITH DEFENDANTS AND FOR AKANOC
16 SOLUTIONS.

17 Q AND YOU VERIFIED THE IP ADDRESS USING THE
18 ALTERNATIVE MECHANISMS THAT YOU DESCRIBED EARLIER?

19 A THAT HAS BEEN DONE AND DOUBLE-CHECKED.

20 Q AND WHAT DID YOU DO NEXT IN CONNECTION WITH
21 WENDY929?

22 A I SENT NOTIFICATION TO THE WEB HOST.

23 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT 60
24 AND TELL US WHAT THAT IS?

25 A THIS IS A NOTIFICATION SENT TO MANAGED

1 SOLUTIONS GROUP, INC., ON FEBRUARY 14TH, 2007.

2 IT HAS BEEN E-MAILED AND THE SUBJECT OF
3 THIS LETTER IS THE WEB SITE
4 ABUSE@MANAGEDSG-INC.COM.

5 Q I'M SORRY. EXHIBIT 60.

6 A THIS IS A NOTIFICATION SENT TO AKANOC
7 SOLUTIONS, INC., BY E-MAIL OCTOBER 30TH, 2006 AND
8 THE SUBJECT IS THE NOTIFICATION OF WENDY929.NET.

9 Q DID YOU RECEIVE ANY RESPONSE TO THE
10 NOTIFICATION REFLECTED IN EXHIBIT 60?

11 A NO, I HADN'T.

12 Q AND THAT E-MAIL NOTIFICATION COMPLIED WITH THE
13 STANDARD FORM THAT YOU TESTIFIED TO HERE?

14 A YES, IT COMPLIES WITH THE STANDARD OF THE
15 DIGITAL MILLENNIUM COPYRIGHT ACT.

16 Q AND DID YOU RECEIVE ANY RESPONSE TO THAT
17 COMMUNICATION?

18 A NO, I HADN'T.

19 Q AND I WOULD ASK THE WITNESS -- WHAT WAS YOUR
20 STEP IN CONNECTION WITH SUCH AN INVESTIGATION?

21 A WELL, THAT'S -- THAT'S THE STANDARD LETTER
22 THAT WE SENT FOR FIRST NOTIFICATION. SO THE NEXT
23 STEP WOULD BE SENDING A FOLLOW-UP LETTER TEN
24 BUSINESS DAYS LATER.

25 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT

1 NUMBER 1. COULD YOU TELL US WHAT THAT IS?

2 A YEAH, THAT'S WHAT I EXPLAINED PREVIOUSLY,
3 THAT'S A FRIENDLY REMINDER. THE SAME E-MAIL WE
4 SENT ON OCTOBER 30TH, WE HAVE FORWARDED ON JANUARY
5 17TH AS A FRIENDLY REMINDER INSTEAD OF SENDING A
6 FORMAL FOLLOW-UP LETTER BY REGISTERED E-MAIL.

7 Q AND DID YOU RECEIVE ANY RESPONSE TO THE
8 FRIENDLY REMINDER?

9 A NO.

10 Q AND WHAT DID YOU DO NEXT?

11 A I DOUBLE-CHECKED AGAIN THE HOSTING
12 INFORMATION, WHETHER THE WEB SITE IS ON LINE,
13 WHETHER ANYTHING HAS CHANGED ACTUALLY AND WE TRIED
14 TO FOLLOW UP LATER ON THIS WEB SITE.

15 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT 61.

16 A THIS IS A FORMAL FOLLOW-UP LETTER SENT TO
17 AKANOC SOLUTIONS, INC., ON FEBRUARY 6TH, 2007 AND
18 WE ASKED THEM TO RESPOND TO OUR OCTOBER 23RD, 2006
19 LETTER WHICH IS ENCLOSED.

20 Q AND DID YOU RECEIVE ANY RESPONSE TO THIS
21 COMMUNICATION?

22 A NO.

23 Q AND YOUR NEXT STEP IN CONNECTION WITH SUCH A
24 FILE?

25 A WELL, AGAIN, WE WOULD CHECK THE HOSTING STATUS

1 AS WELL AS WHETHER THE WEB SITE IS STILL ON LINE.

2 Q SO EVEN THOUGH YOU RECEIVED NO --

3 A AND WE WOULD TRY TO FIND A WAY TO DEAL WITH
4 THE SITUATION. SO TYPICALLY WHEN WE DO NOT RECEIVE
5 AN ANSWER TO A FORMAL REMINDER, WE WOULD CONTACT AN
6 INVESTIGATOR TO BUILD EVIDENCE TO BE USED IN COURT.

7 Q AND WHAT IF THE HOSTING STATUS HAD CHANGED?
8 WHAT IF THE SITE WAS STILL UP BUT IT WAS NO LONGER
9 THE SAME WEB HOST?

10 THE COURT: IS THIS A HYPOTHETICAL
11 QUESTION?

12 THE WITNESS: WELL, IF THE WEB SITE HAS
13 MOVED TO ANOTHER IP ADDRESS WE WOULD SEND ANOTHER
14 LETTER TO THE NEW HOST AND IF THIS IS DONE
15 REPEATEDLY BY THE WEB SITE OPERATOR, THEN WE WOULD
16 PROCEED WITH THE FURTHER INVESTIGATION BY AN
17 OUTSIDE SERVICE PROVIDER AND WE WILL CONDUCT A
18 CIVIL OR CRIMINAL ENFORCEMENT ACTION.

19 BY MR. COOMBS:

20 Q I'D ASK THE WITNESS TO LOOK AT EXHIBIT 76.2.

21 A THIS IS A DOMAIN TOOLS REPORT PRINTED OUT ON
22 FEBRUARY 23RD, 2007 REGARDING MANAGEDSOLUTIONS.COM.
23 IT SHOWS THAT THE WEB SITE IS MANAGED BY MANAGED
24 SOLUTIONS GROUP, INC.

25 Q I'M SORRY. THAT WAS MY MISTAKE. WOULD YOU

1 LOOK AT 64.3.

2 A THAT'S A DOMAIN TOOLS REPORT ON WENDY929.NET
3 PRINTED OUT ON -- I'M SORRY, I DIDN'T SEE THE DATE.
4 APRIL 17, 2007.

5 Q AND WHAT DOES IT TELL YOU -- I'M SORRY. DID
6 YOU CONDUCT AN INVESTIGATION OF THE HOSTING STATUS
7 AT THAT TIME?

8 A YES. IT SHOWS THAT THE WEB SITE IS HOSTED ON
9 THE IP ADDRESS OF AKANOC SOLUTIONS AND THIS
10 INFORMATION HAS BEEN DOUBLE-CHECKED.

11 Q I THINK EARLIER YOU TESTIFIED THAT YOUR
12 PRACTICE WOULD BE TO SEND THIS TO FURTHER
13 INVESTIGATION. DID YOU CONDUCT ANY FURTHER
14 INVESTIGATION WITH WENDY929?

15 A YES. I CONTACTED OUR INVESTIGATOR ROB HOLMES
16 ASKING HIM FOR HELP TO FIND ANY CONTACT OR DETAILS
17 FOR MANAGED SOLUTIONS GROUP, INC. I TOLD HIM THAT
18 I HAD TROUBLE -- I WASN'T SURE ABOUT THE CONTACT
19 ADDRESS IN CONNECTION WITH THE TWO WEB SITES
20 ATOZBRAND, ESHOES99.

21 Q AND DID YOU INSTRUCT THIS INVESTIGATION
22 SPECIFICALLY AS TO WENDY929 DOT?

23 A YES.

24 Q AND IN -- DID YOU MAKE A SPECIFIC REQUEST WHEN
25 INSTRUCTING SUCH AN INVESTIGATION?

1 A I ACTUALLY ASKED ROB HOLMES TO PROVIDE ME WITH
2 CONTACT INFORMATION ABOUT THE HOST, AND I TOLD HIM
3 THAT I HAD SENT A LETTER BY REGISTERED E-MAIL TO
4 ONE ADDRESS IN FREMONT AND THAT THIS LETTER HAS
5 COME BACK UNDELIVERED BY DHL. AND SO I ASKED HIM
6 TO FIND A NEW ONE WHERE I CAN DELIVER MY FOLLOW-UP
7 LETTER.

8 AND HE CAME BACK TO ME WITH AN ADDRESS --
9 THE COURT: JUST A MOMENT. LET'S SEE IF
10 THERE'S A QUESTION ABOUT THAT.

11 BY MR. COOMBS:

12 Q I'D LIKE TO SHOW THE WITNESS A BAG THAT WAS
13 MARKED AND WE LOOKED AT YESTERDAY EXHIBIT 67.

14 A UM --

15 THE COURT: JUST A MOMENT. WHAT'S THE
16 QUESTION?

17 BY MR. COOMBS:

18 Q YOU'VE SEEN THIS BAG BEFORE?

19 A YES.

20 Q AND IT WAS DELIVERED -- WELL, WHAT'S YOUR
21 UNDERSTANDING OF THE ORIGIN OF THE BAG?

22 A THIS IS A BAG THAT HAS BEEN PURCHASED BY ROB
23 HOLMES FROM THE WEB SITE WENDY929.NET.

24 Q AND DO YOU HAVE AN UNDERSTANDING OF WHEN THAT
25 PURCHASE WAS MADE?

1 A YES.

2 Q AND WHEN?

3 A IN -- THE PRODUCT HAS BEEN DELIVERED TO ROB
4 HOLMES ON JUNE 26TH, 2007.

5 Q AND THIS WAS AFTER THE VARIOUS NOTICES
6 CONCERNING WENDY929 ABOUT WHAT YOU JUST TESTIFIED?

7 A YES. AS I PREVIOUSLY MENTIONED FOLLOWING
8 SEVERAL UNSUCCESSFUL NOTIFICATIONS AND TO
9 DEFENDANTS, THE NEXT STEP WOULD BE TO SECURE
10 EVIDENCE FOR LEGAL ACTION AND THIS PURCHASE WAS
11 DONE WITH THIS GOAL.

12 Q NOW, YOU MENTIONED WEB SITE ATOZBRAND. IS
13 THAT A WEB SITE WHICH YOUR OFFICE HAS INVESTIGATED?

14 A YES.

15 Q AND YOU INVESTIGATED IT USING THE STEPS THAT
16 YOU DESCRIBED EARLIER?

17 A YES, ALL OF THEM FIND WEB SITES THAT WERE
18 SUBJECT TO INITIAL COMPLAINTS. WE HAVE ORDERED
19 PURCHASES FROM THESE WEB SITES THROUGH ROB HOLMES.

20 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT 70?

21 A 17 OR 70?

22 Q 70. I GUESS TODAY IT'S MY PROBLEM HAVING TO
23 ARTICULATE.

24 THE COURT: WHAT IS YOUR QUESTION?

25 BY MR. COOMBS:

1 Q DO YOU RECOGNIZE THAT, MR. LIVADKIN?

2 A I CANNOT READ AT THE BOTTOM OF THE PAGE. CAN
3 YOU?

4 Q PERHAPS IT WOULD BE BETTER IF YOU TOOK THE
5 PAPER COPY.

6 A YEAH, THAT'S A PRINTOUT FROM THE WEB SITE
7 ATOZBRAND.

8 Q AND IS IT PRINTED IN YOUR OFFICE BASED ON THE
9 INFORMATION THAT YOU VIEWED AT THAT TIME?

10 A THIS PARTICULAR ONE HAS NOT BEEN PRINTED OUT
11 IN MY OFFICE.

12 Q LET'S SKIP TO EXHIBIT 70.1.

13 A YES, THIS ONE IS ANOTHER PRINTOUT OF
14 ATOZBRAND.COM. IT'S BEEN PRINTED OUT IN MY OFFICE.

15 Q AND THAT'S INFORMATION THAT YOU VIEWED ON OR
16 ABOUT THAT DATE?

17 A YES, ON JANUARY 31ST, 2007.

18 Q AND CAN YOU DESCRIBE THE NATURE OF THE PRODUCT
19 OFFERED ON THAT EXHIBIT?

20 A THERE ARE VARIOUS BRANDS FOR SELL, INCLUDING
21 LOUIS VUITTON. AND THE WEB SITE FROM THE TEXT I
22 CAN READ THE WEB SITE I MADE THE CONCLUSION THAT
23 THE PRODUCTS ARE COUNTERFEIT BECAUSE THE WEB SITE
24 SAYS THAT THEY OWN A FACTORY IN WHICH THEY PRODUCE
25 THE PRODUCTS SOLD ON THEIR WEB SITE.

1 Q WHILE WE'RE IN THIS SEQUENCE, CAN YOU TAKE A
2 LOOK AT EXHIBIT 70.2. IT SHOULD BE RIGHT AFTER
3 THAT.

4 A THAT'S ANOTHER PRINTOUT OF THE WEB SITE
5 ATOZBRAND.COM DONE ON MARCH 19, 2007. IT SHOWS
6 VARIOUS OFFERS OF NONGENUINE LOUIS VUITTON
7 SNEAKERS.

8 Q AND THAT WAS PART OF AN INVESTIGATION BEING
9 DONE IN YOUR OFFICE IN MARCH OF '07?

10 A THAT'S PART OF -- WE HAVE BEEN DOCUMENTING OUR
11 WORD FILE ON THE ATOZBRAND.

12 Q AND AS PART OF THAT YOU WOULD DETERMINE THE
13 HOSTING STATUS AS WELL; IS THAT CORRECT?

14 A YES.

15 Q AND WOULD YOU TAKE A LOOK AT 71.1.

16 A OKAY.

17 Q AND THAT WAS DONE IN CONNECTION WITH YOUR
18 INVESTIGATION OF A HOST OF A TO Z BRAND AT OR ABOUT
19 JANUARY 31, '07?

20 A THIS PARTICULAR PRINTOUT WAS NOT DONE IN OUR
21 OFFICE.

22 Q I'M SORRY. YOU'RE LOOKING AT -- 71.2?

23 A YES, THIS ONE HAS BEEN DONE IN MY OFFICE ON
24 JANUARY 31ST, 2007. IT'S A DOMAIN TOOLS REPORT FOR
25 ATOZBRAND.COM. IT SHOWS THE WEB SITE IS MANAGED BY

1 MANAGED SOLUTIONS GROUP, INC.

2 Q AND THAT'S AS OF JANUARY 31ST, '07?

3 A YES.

4 Q AND COULD YOU TURN TO THE NEXT EXHIBIT 71.3.

5 THE COURT: WHAT IS YOUR QUESTION?

6 BY MR. COOMBS:

7 Q WAS THAT PART OF YOUR INVESTIGATION OF THE
8 HOSTING STATUS?

9 A YES, THIS IS ANOTHER PRINTOUT DONE IN MY
10 OFFICE ON DOMAINTOOLS.COM REGARDING THE WEB SITE
11 ATOZBRAND.COM. ON APRIL 10, 2007. IT SHOWS THAT
12 THE HOSTING STATUS WAS AKANOC SOLUTIONS, INC.

13 Q AND THAT VERIFIED YOUR INVESTIGATION?

14 A YES.

15 Q AND WOULD YOU TURN TO EXHIBIT 71.4. AND IS
16 THAT FURTHER INVESTIGATION BY YOUR OFFICE OF THE
17 HOSTING STATUS?

18 A YES. THIS IS A PRINTOUT FROM DOMAIN TOOLS
19 SHOWING THE HOSTING HISTORY FOR ATOZBRAND.COM.

20 IT HAS BEEN DONE ON JULY 24TH, 2007.

21 Q AND IN CONNECTION WITH THESE INVESTIGATIONS
22 YOU SENT DEMAND LETTERS ALONG THE LINES OF WHAT YOU
23 DID ALREADY?

24 MR. LOWE: EXCUSE ME. OBJECTION.

25 LEADING.

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THE COURT: SUSTAINED.

BY MR. COOMBS:

Q WHAT INVESTIGATION DID YOU DO IN RESPONSE TO THE INFRINGEMENTS THAT YOU DETERMINED EXISTED ON ATOZBRAND.COM?

A WELL, I TRIED TO NOTIFY THE -- I HAD NOTIFIED THE OPERATOR AND I TRIED ON SEVERAL OCCASIONS TO NOTIFY THE WEB HOST MANAGED SOLUTIONS GROUP AND AKANOC AS THE WEB SITE WAS MOVING FROM A SERVER ASSIGNED TO MANAGED SOLUTIONS GROUP TO ITS SERVER ASSIGNED TO AKANOC, VICE VERSA.

AND AS THERE WAS NO REACTION, I ASKED YOUR OFFICE TO FILE A COMPLAINT AGAINST DEFENDANTS MANAGED SOLUTIONS GROUP AND AKANOC.

Q I WOULD ASK YOU TO TAKE A LOOK AT EXHIBIT 15 AND ASK YOU IF THAT IS PART OF THE DEMAND CORRESPONDENCE THAT YOU JUST DESCRIBED?

A YES.

Q AND DID YOU RECEIVE ANY RESPONSE TO THAT COMMUNICATION?

A NO.

Q AND SO YOU SENT A FOLLOW-UP LETTER THEREAFTER?

A YES.

Q AND I WOULD ASK YOU TO LOOK AT EXHIBIT 17. AND IS THAT A COPY OF THE FOLLOW-UP THAT WAS

1 TRANSMITTED CONCERNING THE ATOZBRAND?

2 A YES, THAT'S A COPY OF THE FOLLOW UP
3 TRANSMITTED BY EXPRESS MAIL ON FEBRUARY 21ST, 2007
4 TO MANAGED SOLUTIONS GROUP, INC., ASKING THEM TO
5 RESPOND TO OUR LETTER OF FEBRUARY -- CAN YOU MOVE
6 ON THE RIGHT, PLEASE? -- FEBRUARY 7, 2007.

7 Q DID YOU RECEIVE ANY RESPONSE TO THE EXHIBIT 17
8 LETTER?

9 A NO.

10 Q AND I WOULD ASK YOU TO TURN TO EXHIBIT 19 AND
11 REVIEW THAT AS PART OF YOUR FOLLOW UP.

12 A THIS IS A -- THIS IS ACTUALLY A FIRST
13 NOTIFICATION FORMAT THAT WE'RE USING SENT BY
14 EXPRESS MAIL ON MARCH 30TH, 2007.

15 CAN YOU MOVE IT UP, PLEASE.

16 IT'S BEEN SENT TO MANAGED SOLUTIONS
17 GROUP, INC., ATTENTION TO STEVE CHEN AT NORTHPORT
18 LOOP EAST, FREMONT, CALIFORNIA.

19 Q AND DO YOU RECALL THAT -- I'M SORRY.

20 A THIS WAS THE CONTACT ADDRESS GIVEN TO US BY
21 ROB HOLMES TO CONTACT MANAGED SOLUTIONS GROUP.

22 Q AND DID YOU RECEIVE ANY RESPONSE TO THAT
23 COMMUNICATION?

24 A NO.

25 Q TURNING TO THE WEB SITE CALLED BAG925.COM. I

1 THINK YOU MENTIONED EARLIER THAT YOU RECEIVED A
2 REPORT CONCERNING INFRINGEMENT AT THAT SITE.

3 A I'M SORRY.

4 Q ARE YOU FAMILIAR WITH THE WEB SITE BAG925.COM?

5 A YES.

6 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
7 72.1. IS THAT A WEB SITE PRINTED ON OR ABOUT THE
8 DATE INDICATED?

9 A IT HAS BEEN PRINTED OUT ON OCTOBER 9TH, 2006
10 IN MY OFFICE. IT'S A PRINTOUT OF THE WEB SITE
11 BAG925.COM.

12 Q AND WERE YOU ABLE TO DETERMINE WHETHER THE
13 PRODUCTS OFFERED WERE GENUINE?

14 A THE PRODUCTS ARE NONGENUINE.

15 Q I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
16 73.2.

17 A THIS IS A DOMAIN TOOLS PRINTOUT ON THE QUERY
18 FOR THE BAG925.COM PRINTED OUT ON OCTOBER 9TH,
19 2006.

20 IT TELLS US THAT THE WEB SITE HAS BEEN
21 POSTED BY AKANOC SOLUTIONS, INC.

22 Q AND YOU SEPARATELY VERIFIED THE IP ADDRESS
23 INDICATED IN THE --

24 MR. LOWE: OBJECTION, LEADING.

25 THE COURT: SUSTAINED.

1 BY MR. COOMBS:

2 Q DID YOU DO ANYTHING FURTHER TO VERIFY HOSTING
3 INFORMATION?

4 A I DOUBLE-CHECKED THIS INFORMATION BY NETSCAN
5 TOOLS.

6 Q NETSCAN TOOLS.

7 I WOULD ASK THE WITNESS TO LOOK AT
8 EXHIBIT 73.1?

9 A THIS IS A DOMAIN TOOLS PRINTOUT OF A
10 HISTORICAL CHECK FOR THE HOSTING OF BAG925.COM
11 PRINTED OUT ON OCTOBER 3RD, 2008.

12 Q AND I WOULD ASK THE WITNESS TO LOOK AT 73.3.
13 THAT IS ANOTHER PRINTOUT?

14 A THAT'S ANOTHER PRINTOUT SHOWING THE HOSTING
15 HISTORY FOR BAG925.COM. IT HAS BEEN PRINTED OUT IN
16 MY OFFICE ON JULY 24TH, 2008.

17 Q AND IN RESPONSE TO YOUR INVESTIGATION, WHAT
18 DID YOU DO NEXT IN TERMS OF ADDRESSING THE SALE OF
19 NONGENUINE MERCHANDISE? I DON'T MEAN AFTER THE
20 73.3, BUT AFTER YOU DETERMINED THAT THERE WAS
21 NONGENUINE MERCHANDISE, WHAT ACTION DID YOUR OFFICE
22 TAKE?

23 A I CONTACTED THE WEB OPERATOR AND THE HOST.

24 Q AND I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
25 2. IS THAT A COPY OF THE FOLLOW UP OF THE HOST FOR

1 BAG925?

2 A THAT'S NOTIFICATION SENT ON FEBRUARY 9TH, 2007
3 TO AKANOC SOLUTIONS, INC., REGARDING THE WEB SITE
4 BAG925.COM.

5 Q DID YOU RECEIVE ANY RESPONSE TO THAT
6 NOTIFICATION?

7 A NO, I HADN'T.

8 Q AND I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
9 3. WHAT IS THAT?

10 A THAT'S A FOLLOW-UP LETTER SENT ON FEBRUARY
11 19TH, 2007 BY EXPRESS MAIL TO AKANOC SOLUTIONS,
12 INC., ASKING THEM TO RESPOND TO OUR FEBRUARY 9TH,
13 2007 LETTER ENCLOSED.

14 Q AND DID YOU RECEIVE ANY RESPONSE TO THAT
15 COMMUNICATION?

16 A NO, I DID NOT.

17 Q TURNING TO THE FIFTH WEB SITE LISTED ON
18 EXHIBIT 15, APE168. IS THAT A WEB SITE THAT YOUR
19 OFFICE INVESTIGATED?

20 A I'M SORRY?

21 Q APE168. IS THAT A WEB SITE THAT YOUR OFFICE
22 INVESTIGATED?

23 A CAN YOU REPEAT?

24 Q CAN YOUR OFFICE INVESTIGATE REPORTS ON A WEB
25 SITE NAMED APE168?

1 A YES.

2 Q AND I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
3 16?

4 THE COURT: RATHER THAN CARRY US THROUGH
5 THAT, LET'S MOVE ON. I'M GOING TO PRESUME THAT
6 THIS IS SOMETHING THAT COULD HAVE BEEN TAKEN CARE
7 OF IN A COMPILATION OR SUMMARY AND UNLESS THERE'S
8 SOME CROSS-EXAMINATION THAT BRINGS US -- AND I'LL
9 LET YOU GO BACK LATER. LET'S MOVE ON. I THINK
10 IT'S BECOME UNDULY CONSUMPTIVE OF TIME TO GO
11 THROUGH EACH ONE OF THESE.

12 I'LL LET YOU PUT THE LETTERS IN TO
13 CLARIFY THAT BUT LET'S NOT GO THROUGH THE
14 INVESTIGATION.

15 MR. COOMBS: ALL RIGHT.

16 Q WOULD YOU TAKE A LOOK AT EXHIBIT 4, PLEASE.

17 A THAT'S FEBRUARY 21ST, 2007 LETTER SENT TO
18 AKANOC SOLUTIONS, INC.

19 Q AND THIS WAS DONE IN CONNECTION WITH THE
20 INVESTIGATION OF APE168.COM?

21 A YES.

22 Q AND IT FOLLOWED THE SAME PATH AND SOURCING OF
23 INFORMATION THAT YOU HAVE ALREADY TESTIFIED TO?

24 A YES, IT HAS BEEN -- WE HAVE NOTIFIED THE HOST
25 VIA E-MAIL, WE DIDN'T RECEIVE A RESPONSE AND THEN

1 WE FOLLOWED UP WITH A MORE FORMAL LETTER AND NO
2 RESPONSE.

3 THIS WEB SITE HAS ALSO MOVED SEVERAL
4 TIMES AND HAS CHANGED SEVERAL TIMES AND THE RANGE
5 ASSIGNED TO THE DEFENDANTS.

6 Q AND I WOULD ASK THE WITNESS TO LOOK AT EXHIBIT
7 5 THAT HAS BEEN IDENTIFIED.

8 A THIS IS A FOLLOW-UP LETTER SENT ON MARCH 19TH,
9 2007 SENT TO AKANOC SOLUTIONS, INC., ASKING THEM TO
10 RESPOND TO OUR FEBRUARY 21ST, 2007 LETTER.

11 Q AND YOU RECEIVED NO RESPONSE TO THAT
12 COMMUNICATION?

13 A NO, I DIDN'T.

14 Q I WOULD ASK THE WITNESS -- DO YOU STILL HAVE
15 EXHIBIT 1598?

16 A YES.

17 Q THOSE ARE THE FIVE -- WE JUST TALKED ABOUT THE
18 FIVE WEB SITES THAT ARE INDICATED AT THE TOP;
19 CORRECT?

20 A YES.

21 Q DID LOUIS VUITTON CONTINUE TO IDENTIFY WEB
22 SITES INFRINGING LOUIS VUITTON INTELLECTUAL
23 PROPERTIES ON SERVERS THAT YOU DETERMINED WERE
24 OWNED BY THE DEFENDANTS?

25 A YES.

1 Q AND ARE THOSE REPORTS REFLECTED IN EXHIBIT
2 1598?

3 A YES.

4 Q YOU HAVE NO KNOWLEDGE OF THE SPECIFIC ACTION,
5 IF ANY, WAS TAKEN IN RESPONSE TO THE NOTICES THAT
6 WERE TRANSMITTED --

7 MR. LOWE: EXCUSE ME. OBJECTION.
8 LEADING.

9 THE COURT: SUSTAINED.

10 BY MR. COOMBS:

11 Q IS THIS -- YOU MENTIONED EARLIER THIS DOCUMENT
12 WAS INACCURATE IN RESPECT TO THE FIRST FIVE WEB
13 SITES LISTED ON THE EXHIBIT. IS IT INACCURATE IN
14 ANY OTHER RESPECTS?

15 A YES, IT'S -- IT GIVES US A LIST OF DOMAIN
16 NAMES AND A DATE ON WHICH THE DEFENDANTS HAVE
17 RECEIVED THEIR NOTIFICATION FROM OUR PART, HOWEVER,
18 TWO OF THE DATES DID NOT CORRESPOND TO ACTUAL
19 NOTIFICATION.

20 Q WHICH DATES WERE THOSE?

21 A MARCH 1ST, 2008 WAS A REQUEST FOR PRODUCTION.

22 Q ACTUALLY THERE IS NO MARCH 1ST. DO YOU MEAN
23 JANUARY 1ST?

24 A OR JANUARY 3RD, 2008.

25 Q THIS DOCUMENT WAS NOT PREPARED BY YOU; IS THAT

1 CORRECT?

2 A THIS DOCUMENT WAS NOT PREPARED BY ME.

3 Q DO YOU HAVE AN UNDERSTANDING OF WHO PREPARED
4 IT?

5 A IT WAS PREPARED BY DEFENDANTS.

6 Q AND I THINK YOU SAID THERE WAS A SECOND DATE
7 THAT WAS INCORRECT?

8 A YEAH. JULY 5TH, 2008. THAT'S THE DATE OF THE
9 FIRST AMENDED COMPLAINT.

10 Q NOW, DO YOU HAVE ANY UNDERSTANDING AS TO WHY
11 YOU MIGHT SEND AN ADDRESS WITH A WEB SITE BUT
12 HOWEVER THE WEB SITE YOU IDENTIFIED IS NOT LOCATED
13 AT THE IP ADDRESS LOCATED IN YOUR RECORDS?

14 THE COURT: I DON'T UNDERSTAND THAT
15 QUESTION AND YOU ASK IT AS A MIGHT WHICH MEANS IT
16 DIDN'T HAPPEN. IT'S KIND OF A HYPOTHETICAL SO
17 REPHRASE YOUR QUESTION.

18 BY MR. COOMBS:

19 Q HAD THERE BEEN ANY OCCASIONS WHERE YOU HAVE
20 LEARNED THAT THE IP ADDRESS THAT IS THE RESULT OF
21 YOUR INVESTIGATION WAS INACCURATE?

22 A NO.

23 Q HAVE YOU FOUND AN OCCASION WHERE THE IP
24 ADDRESS HAD CHANGED FROM THE TIME THAT YOU DID YOUR
25 INVESTIGATION?

1 A WHAT HAS HAPPENED ON A FEW OCCASIONS IS THAT
2 AT THE TIME WHEN THE WEB HOSTS RECEIVE OUR
3 NOTIFICATION AND ACTUALLY VERIFIES THE INFORMATION
4 IN OUR LETTER, THE WEB SITE IS NOT HOSTED ANYMORE
5 ON THIS IP ADDRESS BECAUSE IT HAS CHANGED, EITHER
6 HOSTING HAS CHANGED OR THE WEB SITE OPERATOR HAS
7 TAKEN THE WEB SITE DOWN FOLLOWING OUR NOTIFICATION
8 WHICH DOES NOT MEAN THAT THE INFORMATION CONTAINING
9 MY LETTER WAS WRONG.

10 Q IS THE DOMAIN NAME BIGWORLDSHOES.COM ONE OF
11 THE MAIN NAMES THAT HAVE BEEN THE SUBJECT OF
12 NOTIFICATIONS BY LOUIS VUITTON?

13 A YES.

14 Q LET ME SHOW YOU EXHIBIT 589.

15 THE COURT: WHAT IS YOUR QUESTION?

16 BY MR. COOMBS:

17 Q CAN YOU TELL US WHETHER THOSE ARE AUTHENTIC
18 LOUIS VUITTON MERCHANDISE?

19 A THESE SNEAKERS ARE NONGENUINE.

20 Q AND CAN YOU TELL US WHY?

21 A BECAUSE THEY DO NOT -- OR WE HAVEN'T
22 MANUFACTURED THIS PARTICULAR MODEL. ALSO THE -- WE
23 DO NOT USE SHOE BOXES.

24 Q AND I'D ASK THE WITNESS TO TURN TO EXHIBIT 7.
25 HAVE YOU SEEN THIS LETTER BEFORE?

1 A YES.

2 Q AND WHAT IS IT?

3 A THIS IS -- IN NOVEMBER 2007 WE IDENTIFIED
4 SEVERAL ADDITIONAL WEB SITES SELLING COUNTERFEIT
5 GOODS AND RESIDING ON SERVERS OWNED BY DEFENDANTS,
6 AND WE ASKED YOUR OFFICE TO NOTIFY DEFENDANTS ABOUT
7 THESE NEW WEB SITES.

8 Q AND HAVE YOU CONDUCTED FURTHER INVESTIGATION
9 ON THE STATUS OF BIGWORLD SHOES.COM?

10 A THE HOSTING STATUS OF BIGWORLD SHOES.COM AS
11 WELL AS THE HOSTING STATUS OF ALL OF THE OTHER WEB
12 SITES CONTAINED IN THIS LETTER HAVE BEEN
13 PERIODICALLY CHECKED IN MY OFFICE.

14 Q AND HAVE YOU MADE ANY CONCLUSIONS CONCERNING
15 THE HOSTING STATUS OF THOSE WEB SITES AS A RESULT
16 OF THAT FURTHER INVESTIGATION?

17 A AS FAR AS I CAN REMEMBER MOST OF THE WEB SITES
18 EITHER REMAIN ON THE SERVERS BY THE DEFENDANTS OR
19 MOVE TO OTHER SERVICE ALSO OWNED BY THE DEFENDANTS.

20 Q I WOULD ASK THE WITNESS TO TAKE A LOOK AT
21 EXHIBIT 85.2.

22 A CAN YOU ZOOM IN THIS? THAT'S WHAT I WAS
23 REFERRING TO PREVIOUSLY AS A DOS PROMPT. THIS IS A
24 WINDOW, A DOS WINDOW SHOWING THAT WE HAVE PINGED
25 WWW.BIGWORLD SHOES.COM.

1 THE RESULT OF THE PINGING IS THAT THE WEB
2 SITE WWW.BIGWORLDSHOES.COM IS POSTED ON THE IP
3 ADDRESS 205.209.161.34.

4 THE COURT: WHAT IS YOUR QUESTION?

5 BY MR. COOMBS:

6 Q COULD YOU TURN TO THE NEXT PAGE.

7 THE COURT: WHAT IS YOUR QUESTION?

8 BY MR. COOMBS:

9 Q CAN YOU DESCRIBE WHAT THE NEXT PAGE IS?

10 A THIS IS A PINGING REQUEST DONE ON
11 DOMAINTOOLS.COM ON --

12 MR. LOWE: I WOULD OBJECT TO THIS. THIS
13 DOES NOT APPEAR THAT THIS WAS DONE BY HIM.

14 THE COURT: WELL, IT IS OF THE CHARACTER
15 OF THE MATERIAL I GAVE YOU INSTRUCTION. IF THIS IS
16 WHY HE TOOK FURTHER ACTION, I'LL PERMIT IT. WE
17 HAVEN'T HEARD THAT HE TOOK ANY FURTHER ACTION
18 BEYOND WHAT HE HAS ALREADY TESTIFIED TO WITH
19 RESPECT TO THIS BIGWORLDSHOES.COM.

20 SO I'LL SUSTAIN THE OBJECTION, BUT IT'S
21 SUBJECT TO MY LIMITING INSTRUCTION. YOU MAY USE IT
22 IF YOU ESTABLISH THAT THIS WAS PART OF HIS
23 INVESTIGATION.

24 BY MR. COOMBS:

25 Q AND ARE WE LOOKING AT MATERIAL GENERATED IN

1 CONNECTION WITH YOUR INVESTIGATION OF THE WEB SITE
2 BIGWORLD SHOES.COM?

3 A THIS ACTUALLY HAS BEEN GENERATED BY OUR
4 INVESTIGATOR.

5 Q AND THAT'S MR. HOLMES?

6 A YES.

7 THE COURT: IS HE SCHEDULED AS A WITNESS?

8 MR. COOMBS: YES, HE IS.

9 THE COURT: LET'S GO BACK TO IT WHEN HE'S
10 HERE AND MOVE TO ANY NEW AREA THAT YOU HAVE WITH
11 THIS WITNESS.

12 MR. COOMBS: OKAY. THANK YOU, YOUR
13 HONOR.

14 Q I'D LIKE TO SHOW THE WITNESS EXHIBIT 117. AND
15 CAN YOU TELL US WHETHER THAT'S AN AUTHENTIC LOUIS
16 VUITTON MERCHANDISE?

17 A THIS IS A NONGENUINE MERCHANDISE. IT HAS BEEN
18 PURCHASED BY OUR INVESTIGATOR ROB HOLMES ON THE WEB
19 SITE GUCCIFENDI.COM.

20 Q I'M GOING TO SHOW THE WITNESS EXHIBIT 129.
21 CAN YOU TELL US IF THAT IS GENUINE LOUIS VUITTON
22 MERCHANDISE?

23 A NO, THIS IS NOT GENUINE MERCHANDISE. IT HAS
24 BEEN PURCHASED BY OUR INVESTIGATOR ROB HOLMES ON
25 THE WEB SITE INNIKE.COM.

1 Q I'M GOING TO SHOW THE WITNESS EXHIBIT 192 AND
2 ASK HIM IF THIS IS COUNTERFEIT?

3 A THIS IS A NONGENUINE ITEM. BOTH OUR
4 INVESTIGATOR ROB HOLMES ON THE WEB SITE
5 SOAPPAREL.COM, SOAPPAREL.COM, S-O-A-P-P-A-R-E-L,
6 DOT COM.

7 Q I'M GOING TO SHOW THE EXHIBIT 591 AND ASK HIM
8 TO IDENTIFY IT AND TELL US WHETHER IT'S A GENUINE
9 ITEM?

10 A THIS IS A NONGENUINE ITEM BY ROB HOLMES, OUR
11 INVESTIGATOR, ON THE WEB SITE BAPESKY.COM,
12 B-A-P-E-S-K-Y, DOT COM.

13 Q I'LL SHOW THE WITNESS EXHIBIT 186 AND ASK THE
14 WITNESS TO IDENTIFY IT FOR US AND LET US KNOW IF
15 IT'S AN AUTHENTIC ITEM?

16 A THIS IS A NONGENUINE ITEM BOUGHT BY OUR
17 INVESTIGATOR ON THE WEB SITE RRGNL.COM.

18 Q I'LL ASK THE WITNESS TO LOOK AT EXHIBIT 142
19 AND IDENTIFY IT AND LET US KNOW WHETHER IT'S
20 AUTHENTIC MERCHANDISE?

21 A THIS IS A NONGENUINE ITEM BOUGHT BY OUR
22 INVESTIGATOR ROB HOLMES ON THE WEB SITE
23 LUXURY2US.COM, L-U-X-U-R-Y, THE DIGIT 2, U-S, DOT
24 COM.

25 Q I WILL ASK THE WITNESS TO LOOK AT EXHIBIT 211

1 AND IDENTIFY IT AND LET US KNOW WHETHER IT'S
2 AUTHENTIC?

3 A THIS IS A NONGENUINE WATCH PURCHASED BY OUR
4 INVESTIGATOR ON THE WEB SITE WATCHNREPLICA.NET AND
5 WATCHNREPLICA.NET, W-A-T-C-H-N-R-E-P-L-I-C-A, DOT
6 NET.

7 Q I'D ASK THE WITNESS TO LOOK AT EXHIBIT 587 AND
8 IDENTIFY IT AND LET US KNOW WHETHER IT'S
9 COUNTERFEIT.

10 A THAT'S A NONGENUINE ITEM BOUGHT BY OUR
11 INVESTIGATOR ON THE ESHOES99.NET.

12 Q AND I'LL ASK YOU TO LOOK AT EXHIBIT 82 AND
13 IDENTIFY IT AND LET US KNOW WHETHER IT'S AUTHENTIC?

14 A THAT'S A NONGENUINE ITEM BOUGHT BY OUR
15 INVESTIGATOR ROB HOLMES ON THE WEB SITE
16 BAG4SELL.COM, SPELLED B-A-G-4-S-E-L-L, DOT COM.
17 DIGIT 4.

18 Q AND THE SAME QUESTIONS WITH RESPECT TO 196,
19 IDENTIFY AND LET US KNOW WHETHER IT'S AUTHENTIC.

20 A THAT'S A NONGENUINE ITEM BOUGHT BY OUR
21 INVESTIGATOR ON THE WEB SITE SUNNY7SHOES.COM,
22 S-U-N-N-Y, THE DIGIT 7, S-H-O-E-S, DOT COM.

23 Q ALMOST DONE. EXHIBIT 175, WHAT IS IT AND IS
24 IT A LEGITIMATE PRODUCT?

25 A IT'S A NONGENUINE PRODUCT BOUGHT BY OUR

1 INVESTIGATOR ROB HOLMES ON THE WEB SITE
2 PICKYOURGOODS.COM, P-I-C-K-Y-O-U-R-G-O-O-D-S, DOT
3 COM.

4 Q AND FINALLY EXHIBIT 585.

5 A THAT'S A NONGENUINE ITEM BOUGHT BY OUR
6 INVESTIGATOR ROB HOLMES ON THE WEB SITE
7 SUNNY7SHOES.COM.

8 Q HAVE YOU AT ANY TIME AS PART OF THE
9 INVESTIGATION OF THE DEFENDANTS INSTRUCTED A
10 PURCHASE OF LOUIS VUITTON PRODUCT FROM A WEB SITE
11 WHICH PROVED NOT TO BE AN AUTHORIZED -- I'M
12 SORRY -- NOT TO BE INAUTHENTIC?

13 A CAN YOU REPEAT YOUR QUESTION?

14 Q YOU'VE INSTRUCTED SEVERAL PURCHASES IN
15 CONNECTION WITH YOUR INVESTIGATION OF THE
16 DEFENDANTS; IS THAT CORRECT?

17 A YES.

18 Q HAVE ANY OF THEM PROVED TO BE LEGITIMATE LOUIS
19 VUITTON MERCHANDISE?

20 A NO, NONE OF THEM.

21 Q NOW, YOU'VE MENTIONED 77 SHOES. WAS IT A
22 SUBJECT OF A DEMAND TO THE DEFENDANTS?

23 A YES, IT'S A WEB SITE THAT HAS BEEN HOSTED BY
24 THE DEFENDANTS. THIS WEB SITE WAS SUBJECT TO THE
25 LETTER SENT FROM YOUR OFFICE ON NOVEMBER 26, 2007.

1 Q TURN TO PAGE 5 OF THE EXHIBIT 1598. DO YOU
2 SEE IT INDICATED THERE?

3 A YES.

4 Q AND DO YOU SEE IT'S THE SUBJECT OF FOLLOW-UPS
5 ON JANUARY 3, 2008, JANUARY 30, '09?

6 A YES, FOLLOW-UP NOTICES SENT ON JANUARY 3RD,
7 2008; JANUARY 30TH, 2009; AND APRIL 2ND, 2009. I'M
8 SORRY, FEBRUARY 4TH, 2009.

9 Q I THINK YOU ALREADY TESTIFIED THAT THE JANUARY
10 3RD DATE WAS THE DATE FOR OUR REQUEST FOR
11 PRODUCTION IN THIS MATTER?

12 A YES.

13 Q IN CONNECTION WITH THE VARIOUS WEB SITES
14 LISTED ON EXHIBIT 1598, DID YOU CONDUCT -- DID YOU
15 OR YOUR OFFICE CONDUCT AN INVESTIGATION COMPARABLE
16 TO THE ONES THAT YOU TESTIFIED TO EARLIER THIS
17 MORNING?

18 A YES.

19 Q YOU REVIEWED THE WEB SITE BEFORE SENDING A
20 DEMAND TO THE OPERATOR OF THE WEB SITE HOST?

21 A YES.

22 Q AND YOU CONDUCTED A SEARCH FOR THE HOSTING
23 STATUS OF THE WEB SITES?

24 A YES, THAT'S OUR USUAL PROCEDURE.

25 Q AND YOU DO THAT THROUGH MULTIPLE TECHNIQUES?

1 A YES.

2 Q YOU PING THAT AND YOU DO IT ON MORE THAN
3 ONE --

4 THE COURT: SUSTAINED.

5 MR. LOWE: LEADING, YOUR HONOR.

6 THE WITNESS: I PRINT OUT MY REPORT. I
7 PING. AND SINCE OUR EVIDENCE WAS CHALLENGED BY
8 DEFENDANTS, I PRINTED OUT ALL ADDITIONAL CHECKS.
9 BY MR. COOMBS:

10 Q NOW, THERE CAME A TIME WHERE A -- STRIKE THAT.

11 DID YOU HAVE AN OPPORTUNITY TO REVIEW
12 COPIES OF DATA OBTAINED FROM SERVERS OPERATED BY
13 THE DEFENDANTS?

14 HAVE YOU REVIEWED DATA THAT WAS COPIED
15 FROM THE DEFENDANT SERVERS IN THE COURSE OF THIS
16 LITIGATION?

17 A YOU MEAN THE WEB SITES?

18 Q NOT THE WEB SITES, THE DATA?

19 A OH, YES. OUR DESIGNATED EXPERT HAS COPIED A
20 CERTAIN NUMBER OF SERVERS OWNED BY DEFENDANTS, AND
21 I HAVE REVIEWED THE DATA THAT HAS BEEN COLLECTED.

22 Q DO WE HAVE EXHIBIT 593 PULLED UP OR?

23 AND IN REVIEWING THE DATA, DID YOU
24 DETERMINE WHETHER ANY OF THE OFFERS INDICATED BY
25 THAT DATA WERE AUTHENTIC OR COUNTERFEIT?

1 A WELL, I RECOGNIZED ON THIS DATA, I RECOGNIZED
2 MANY WEB SITES THAT ARE SUBJECT TO THE PRESENT
3 ACTION. I ALSO REVIEWED ADDITIONAL DATA WHICH
4 ALLOWED ME TO COMPUTE THAT ON THIS SERVER WHERE
5 THERE ARE ADDITIONAL WEB SITES SELLING COUNTERFEIT
6 LOUIS VUITTON MERCHANDISE.

7 Q DID YOU FIND ANY OFFERS OF AUTHENTIC LOUIS
8 VUITTON MERCHANDISE?

9 A I DIDN'T.

10 Q DID YOU REVIEW THE OFFERS OF
11 BIGWORLDSHOES.COM -- YOU'VE REVIEWED OFFERS OF
12 BIGWORLDSHOES.COM?

13 A YES.

14 Q AND ARE ANY OF THEIR OFFERS AUTHENTIC?

15 A NO.

16 Q HOW DOES YOUR EXPERIENCE WITH THE DEFENDANTS
17 COMPARE WITH THE EXPERIENCE TO OTHERS WHO YOU HAVE
18 DEMANDS OF WEB HOSTS ALONG THE LINES YOU TESTIFIED
19 THIS MORNING?

20 A WELL, WE NEVER HAD A PROGRAM WITH -- WE HAVE
21 NEVER HAD SUCH A PROBLEM WITH ANOTHER WEB HOST
22 BASED IN THE UNITED STATES.

23 Q DESPITE THE DEMANDS THAT WE HAVE SENT TO -- OR
24 THAT LOUIS VUITTON HAS SENT TO THE DEFENDANTS --

25 THE COURT: THAT'S STARTING OUT LEADING.

1 MR. COOMBS: SORRY.

2 Q ARE YOU AWARE OF ANY INFRINGING WEB SITES
3 HOSTED BY THE DEFENDANTS AS OF THIS WEEK?

4 A YES, I AM. I VERIFY AMONG THEM THERE IS ONE
5 WEB SITE THAT WAS SUBJECT TO THE INITIAL COMPLAINT
6 THAT IS STILL -- WAS STILL ON THE SERVER OWNED BY
7 THE DEFENDANTS ON MONDAY, LAST MONDAY.

8 I ALSO FOUND 34 -- WELL, 33 OTHER WEB
9 SITES THAT HAVE BEEN BROUGHT TO THE DEFENDANTS'
10 ATTENTION AND THEY ARE CURRENTLY ON-LINE SERVERS
11 OWNED BY THEM.

12 MR. COOMBS: YOUR HONOR, WOULD IT BE
13 POSSIBLE TO BREAK FOR LUNCH?

14 THE COURT: WELL, I WAS HOPING TO HAVE
15 YOU FINISH WITH THE WITNESS SO THAT WHEN WE COME
16 BACK FOR LUNCH WE WOULD BE AT A POINT OF
17 CROSS-EXAMINATION.

18 DO YOU REQUIRE FURTHER TIME FOR THIS
19 WITNESS?

20 MR. COOMBS: I THINK I'M PRETTY MUCH
21 DONE. I WANTED TO REVIEW THE EXHIBITS THAT I WAS
22 HOPING TO HAVE HIM AUTHENTIC.

23 THE COURT: WELL, WE'LL PRESUME THAT
24 YOU'LL QUICKLY FINISH WHEN YOU COME BACK. IT'S
25 ABOUT NOON. WE'LL TAKE A BREAK AND COME BACK AT

1 1:00.

2 MEMBERS OF THE JURY, REMEMBER MY
3 ADMONITIONS.

4 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)

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1 **AFTERNOON SESSION**

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

4 THE COURT: READY TO RESUME?

5 MR. COOMBS: YES, YOUR HONOR.

6 THE COURT: SUMMON THE JURY.

7 (WHEREUPON, THE FOLLOWING PROCEEDINGS
8 WERE HELD IN THE PRESENCE OF THE JURY:)

9 MR. COOMBS: COULD YOU PULL UP EXHIBIT
10 51.

11 THE COURT: VERY WELL. YOU MAY RESUME
12 YOUR EXAMINATION.

13 MR. COOMBS: THANK YOU, YOUR HONOR.

14 Q I WOULD LIKE THE WITNESS TO TAKE A LOOK AT
15 EXHIBIT 51. HAVE YOU SEEN IT BEFORE?

16 A YES.

17 Q AND CAN YOU DESCRIBE IT?

18 A THIS IS A LETTER SENT FROM YOUR OFFICE AT MY
19 DIRECTION ON JANUARY 30TH, 2009 TO DEFENDANTS BY
20 THEIR COUNSEL.

21 Q AND --

22 A THE PURPOSE OF THIS LETTER IS TO BRING TO
23 THEIR ATTENTION A LIST OF WEB SITES SELLING
24 COUNTERFEITS OF OUR TRADEMARKS.

25 Q AND THE LIST OF WEB SITES INDICATED ON EXHIBIT

1 51 CORRESPONDS WITH THOSE THAT ARE INDICATED IN
2 EXHIBIT 1598?

3 A YES.

4 Q I WOULD ASK THE WITNESS TO TAKE A LOOK AT
5 EXHIBIT 52.

6 A THIS IS ANOTHER LETTER SENT FROM YOUR OFFICE
7 AT MY DIRECTION TO DEFENDANTS VIA THEIR COUNSEL.
8 IT CONTAINS A LIST OF WEB SITES WHERE COUNTERFEITS
9 OF OUR GOODS ARE SOLD OR TRADEMARKS.

10 Q I WOULD ASK THE WITNESS TO TAKE A LOOK AT
11 EXHIBIT 608. AND CAN YOU DESCRIBE THAT FOR US?

12 A THIS IS A LETTER RECEIVED FROM DEFENDANTS'
13 COUNSEL AT YOUR OFFICE IN RESPONSE TO YOUR JANUARY
14 30TH, 2009 AND FEBRUARY 4TH, 2009 LETTERS.

15 Q NOW, DID YOU RECEIVE A RESPONSE TO ANY OF THE
16 VARIOUS NOTICES THAT YOU TESTIFIED TO THIS MORNING
17 FROM THE DEFENDANTS BETWEEN OCTOBER IN 2006 AND
18 WHEN THE LAWSUIT WAS FILED?

19 A NO.

20 Q AND WHAT WAS LOUIS VUITTON SEEKING IN
21 CONNECTION WITH THOSE LETTERS?

22 A WE WERE SEEKING SIMPLY THE DEFENDANTS REMOVE
23 THE INFRINGING CONTENT FROM THEIR SERVERS.

24 Q AND THAT IS CONSISTENT WITH WHAT LOUIS VUITTON
25 RECEIVES IN RESPONSE TO SIMILAR DEMANDS TO ISP'S?

1 A THAT WHAT WE WOULD ASK OF ALL ISP'S.

2 MR. COOMBS: THANK YOU, YOUR HONOR. I
3 HAVE NO FURTHER QUESTIONS.

4 THE COURT: VERY WELL. YOU MAY
5 CROSS-EXAMINE.

6 MR. LOWE: YOUR HONOR, WOULD IT BE
7 POSSIBLE TO DISTRIBUTE THE GLOSSARY TO THE JURY AT
8 THIS TIME?

9 THE COURT: CERTAINLY, IF YOU HAVE THAT.

10 MEMBERS OF THE JURY, YOU'RE RECEIVING A
11 GLOSSARY OF INTERNET TERMS. I THOUGHT IT WOULD BE
12 HELPFUL TO GIVE YOU A COPY OF THESE TERMS AS WE'RE
13 GOING THROUGH THIS. SO AS YOU MIGHT UNDERSTAND
14 PEOPLE DESCRIBE THESE IN VARIOUS WAYS AND IT'S JUST
15 AN AID TO FOLLOW YOU AND THERE MIGHT BE A WORD OR
16 PHRASES THAT YOU HEAR IN THE COURSE OF TESTIMONY,
17 BUT THE PARTIES STIPULATED TO SOME OF THESE
18 DEFINITIONS.

19 THERE MIGHT BE PLACES IN HERE WHERE IT'S
20 ACTUALLY NOTED ON THE DOCUMENT THAT THERE MIGHT BE
21 SOME CONTROVERSY ABOUT THE DEFINITION BUT THAT WILL
22 BE BROUGHT TO YOUR ATTENTION IN DUE COURSE.

23 YOU MAY PROCEED WITH YOUR EXAMINATION.

24 MR. LOWE: THANK YOU, YOUR HONOR.

25 / / / /

1 **CROSS-EXAMINATION**

2 BY MR. LOWE:

3 Q GOOD AFTERNOON, MR. LIVADKIN.

4 A GOOD AFTERNOON.

5 Q ISN'T IT TRUE THAT YOU DO NOT REQUIRE THAT AN
6 ISP SEND YOU A COMMUNICATION IN RESPONSE TO A
7 COMPLAINT OF ALLEGED COPYRIGHT OR TRADEMARK
8 INFRINGEMENT?

9 A THAT I NOT REQUIRE?

10 Q YOU DON'T EXPECT THAT THE ISP THAT YOU SEND
11 THESE NOTICES TO, TO GIVE YOU A RESPONSE
12 NECESSARILY; IS THAT RIGHT?

13 A WELL, I EXPECT THE ISP TO COMPLY WITH WHAT I'M
14 REQUESTING IN THE LETTER.

15 Q TO TAKE SOME ACTION WITH RESPECT TO THE
16 COMPLAINT?

17 A USUALLY WHAT IS THAT PRACTICE WHEN A COMPLAINT
18 IS SENT TO AN ISP, WE RECEIVE AT LEAST AN E-MAIL
19 SAYING THAT OUR NOTIFICATION HAS BEEN RECEIVED.

20 MOST OF THE TIMES WE ARE ASSIGNED A
21 TICKET, WHICH ALLOWS US TO, IN CASE OF FURTHER
22 DEALINGS WITH THE ISP, TO REFER TO THE PARTICULAR
23 MATTER THAT HAS BEEN BROUGHT TO THEIR ATTENTION.

24 Q ARE YOU SAYING THAT YOU DO REQUIRE OR YOU DO
25 NOT REQUIRE A COMMUNICATION CONFIRMING THAT THE ISP

1 HAS DONE SOMETHING?

2 A YES, WE REQUIRE.

3 Q YOU DO REQUIRE?

4 A YES.

5 Q WOULD YOU HAND MR. LIVADKIN THE ORIGINAL OF
6 HIS DEPOSITION, PLEASE.

7 DO YOU RECALL BEING DEPOSED IN THIS CASE
8 ON APRIL 23RD, 2008?

9 A YES.

10 Q BY ME?

11 A YES.

12 Q AND YOU WERE TESTIFYING UNDER OATH AT THAT
13 TIME?

14 A YES.

15 Q THANK YOU.

16 THE COURT: LET ME INTERRUPT. THIS IS
17 THE FIRST TIME THAT WE HAVE HAD REFERENCE TO A
18 DEPOSITION. I SHOULD INSTRUCT YOU THAT A
19 DEPOSITION IS A PRETRIAL PROCEEDING. ANY PERSON, A
20 PARTY OR A WITNESS CAN BE SUMMONED TO GIVE A
21 DEPOSITION.

22 A DEPOSITION IS GIVEN UNDER OATH BEFORE A
23 SWORN -- A PERSON WHO IS AUTHORIZED BY THE COURTS
24 TO ADMINISTER THE OATH. THE TESTIMONY GIVEN HAS
25 THE SAME FORCE AND EFFECT AS TESTIMONY GIVEN HERE

1 DURING THE COURSE OF THE TRIAL.

2 AFTER A DEPOSITION IS COMPLETED, A
3 TRANSCRIPT OF THE QUESTIONS AND ANSWERS ARE
4 PREPARED, WITNESSES ARE GIVEN AN OPPORTUNITY, IF
5 THEY WISH, TO READ THROUGH IT AND MAKE CORRECTIONS
6 AND CHANGES. AND THEY'RE FREE TO DO THAT OR THEY
7 MAY ALLOW IT TO STAND WITHOUT FURTHER CHANGES.

8 WITH RESPECT TO A PARTY, THAT DEPOSITION
9 CAN SIMPLY BE READ TO YOU.

10 WITH RESPECT TO OTHERS, COUNSEL HAS TO
11 ALLOW THE PARTY TO READ THE DEPOSITION AND BEFORE
12 IT IS USED FOR IMPEACHMENT PURPOSES.

13 SO WHAT YOU'RE GOING TO HAVE REFERENCE TO
14 IS TO PERHAPS PAGE AND LINE NUMBERS AND THAT'S IN
15 THIS DEPOSITION TRANSCRIPT.

16 YOU MAY PROCEED.

17 MR. LOWE: THANK YOU, YOUR HONOR.

18 Q MR. LIVADKIN, I DIRECT YOUR ATTENTION TO PAGE
19 53 OF THIS TRANSCRIPT. AND BETWEEN LINES 6 AND 20
20 WERE THE FOLLOWING QUESTIONS AND ANSWERS ASKED AND
21 GIVEN: "DON'T YOU MEAN THAT YOU NECESSARILY EXPECT
22 THE ISP TO SEND YOU SOME SORT OF COMMUNICATION
23 ABOUT WHAT THEY HAVE DONE?

24 "ANSWER: IF THEY DO NOT SEND SUCH
25 COMMUNICATION THEN WE NOTICE THAT THE WEB SITE HAS

1 DISCONTINUED THE OFFER OR GONE OFFLINE. WE DO NOT
2 PURSUE FURTHER IF THAT'S SATISFACTORY TO US.

3 "QUESTION: SO YOU DON'T REQUIRE A
4 COMMUNICATION CONFIRMING THAT THEY HAVE DONE
5 SOMETHING?

6 "ANSWER: NOT NECESSARILY."

7 WERE THOSE QUESTIONS ASKED AND THOSE
8 ANSWERS GIVEN.

9 A OKAY.

10 THE COURT: THAT'S THE QUESTION PUT TO
11 YOU NOW, DID HE READ THE QUESTIONS AND ANSWERS?

12 THE WITNESS: YES. I CAN EXPLAIN.

13 BY MR. LOWE:

14 Q THANK YOU. WE'LL WAIT TO ALLOW COUNSEL TO
15 FOLLOW UP IF HE PLEASES.

16 MR. LIVADKIN, ISN'T IT TRUE THAT IN YOUR
17 EXPERIENCE WHOIS INFORMATION, FOR EXAMPLE, THE
18 INFORMATION YOU GET FROM THE DOMAIN TOOLS, IS NOT
19 ALWAYS RELIABLE?

20 A I'M SORRY?

21 Q ISN'T IT TRUE THAT WHOIS INFORMATION THAT YOU
22 GET, FOR EXAMPLE, FROM THE DOMAIN TOOLS, RATHER,
23 SOURCES ON THE INTERNET IS NOT ALWAYS RELIABLE?

24 A CAN YOU BE PRECISE WHOIS INFORMATION?

25 Q DOES IT MATTER?

1 A YES, IT DOES.

2 Q I MEAN, IF YOU HAVE A DIFFERENT EXPERIENCE
3 WITH DIFFERENT SOURCE?

4 A WELL, THERE IS WHOIS INFORMATION FOR THE
5 DOMAIN NAME AND THERE'S WHOIS INFORMATION FOR AN IP
6 ADDRESS.

7 Q ALL RIGHT. IS IT TRUE THAT THE INFORMATION
8 ABOUT WHO HAS THE DOMAIN NAME OR WHO THE REGISTRAR
9 IS OR WHAT THE IP ADDRESS IS MAY NOT BE RELIABLE?

10 A WHICH ONE OF THE TWO EXAMPLES ARE YOU ASKING
11 ME ABOUT?

12 Q WELL, HAVE YOU EXPERIENCED ANY INACCURATE
13 INFORMATION -- HAVE YOU DISCOVERED ANY INACCURATE
14 INFORMATION THAT YOU HAVE OBTAINED FROM DOMAIN
15 TOOLS?

16 A AS I WILL REFER YOU TO A PREVIOUS THING I
17 EXPLAINED THIS MORNING.

18 THE COURT: THIS CALLS FOR A YES OR NO
19 ANSWER. HAVE YOU DISCOVERED ANY INACCURATE
20 INFORMATION?

21 THE WITNESS: YES, I HAVE DISCOVERED
22 INACCURATE INFORMATION FOR THE PART OF THE DOMAIN
23 NAME WHOIS RECORD.

24 BY MR. LOWE:

25 Q AND IS SOME OF THAT INACCURATE INFORMATION

1 RELATED TO THE IDENTITY OF THE ISP, THE INTERNET
2 SERVICE PROVIDER?

3 A NO.

4 Q HAVE YOU EVER HAD INACCURATE INFORMATION
5 PROVIDED TO YOU ABOUT THE ADDRESS OR CONTACT
6 INFORMATION OF THE INTERNET SERVICE PROVIDER?

7 A YES.

8 Q WHAT SORT OF INACCURACIES HAVE YOU EXPERIENCED
9 IN THIS CASE?

10 A WHICH CASE?

11 Q IN THIS CASE, IN THE INVESTIGATIONS THAT YOU
12 HAVE BEEN TESTIFYING ABOUT HERE TODAY AND
13 YESTERDAY?

14 A WELL, AS FAR AS DEFENDANT MANAGED SOLUTIONS
15 GROUP WAS CONCERNED THERE WAS NO CORRECT INDICATION
16 OF CONTACT DETAILS FOR THIS COMPANY.

17 Q WHERE, ON THE DOMAIN TOOLS?

18 A ON THE WEB SITE OF MANAGED SOLUTIONS GROUP.
19 THERE WAS NO FILING WITH THE CORPORATE OFFICE AND
20 THE DOMAIN NAME WHOIS INFORMATION, DOMAIN NAME
21 WHOIS INFORMATION FOR THE DOMAIN NAME
22 MANAGEDSG-INC.COM WAS APPARENTLY OUTDATED.

23 Q HAVE YOU HAD EXPERIENCE IN THIS CASE OF
24 OBTAINING INACCURATE INFORMATION ABOUT THE
25 ADMINISTRATIVE CONTACT OF A DOMAIN?

1 A I HAVE ENCOUNTERED INDEED INACCURATE
2 INFORMATION ABOUT THE ADMINISTRATIVE CONTACT EXCEPT
3 THE E-MAIL ADDRESS.

4 Q HAVE YOU BEEN UNABLE TO RELY UPON THE
5 INFORMATION THAT YOU HAVE RECEIVED FROM SUCH
6 DATABASES AS DOMAIN TOOLS?

7 A AGAIN, DOMAIN TOOLS PROVIDES SEVERAL --
8 COMPILES SEVERAL DIFFERENT SOURCES.

9 AS FAR AS THE IP ADDRESS IS CONCERNED,
10 THE SERVER DOES THAT PART. I HAVEN'T EXPERIENCED
11 ANY INACCURACY.

12 Q NOW, LOUIS VUITTON HAS NO WAY OF KNOWING, DOES
13 IT, ABOUT THE ACCURACY OF THE INFORMATION OBTAINED
14 FROM DOMAIN TOOLS? IT DOESN'T HAVE ANY -- YOU
15 DON'T HAVE ANY PERSONAL INFORMATION? YOU DON'T
16 HAVE ANY RECORDS IN YOUR COMPANY TO BE ABLE TO
17 DETERMINE WHETHER THAT INFORMATION IS CORRECT OR
18 NOT?

19 A WELL, MR. LOWE, I'VE BEEN SENDING HUNDREDS OR
20 EVEN THOUSANDS OF NOTIFICATIONS IN MY PRACTICE AND
21 I HAVE NEVER EXPERIENCED SUCH A SITUATION SUCH AS
22 THE ONE THAT I HAVE EXPERIENCED WITH THE
23 DEFENDANTS.

24 THE COURT: THAT'S NOT RESPONSIVE TO HIS
25 QUESTION.

1 THE WITNESS: OKAY. I HAVE --

2 THE COURT: THE JURY WILL DISREGARD THE
3 WITNESS'S ANSWER.

4 DO YOU WANT TO RESTATE YOUR QUESTION?

5 THE WITNESS: IN MY --

6 BY MR. LOWE:

7 Q EXCUSE ME, MR. LIVADKIN. LET ME REASK THE
8 QUESTION AND MAYBE WE CAN GET STARTED FRESH HERE.

9 A ALL RIGHT.

10 Q ISN'T IT TRUE THAT LOUIS VUITTON DOES NOT
11 MAINTAIN A DATABASE ABOUT IP ADDRESSES OR SUCH
12 THINGS THAT YOU HAVE BEEN TESTIFYING ABOUT BUT YOU
13 HAVE TO RELY ON THIRD PARTY REPORTS SUCH AS DOMAIN
14 TOOLS?

15 A YES.

16 Q THE ANSWER WAS?

17 A THIS IS CORRECT.

18 Q THANK YOU. AND HAVE YOU RELIED UPON INCORRECT
19 WHOIS INFORMATION PREVIOUSLY IN THIS CASE?

20 A COULD YOU BE PRECISE AS TO WHAT WHOIS
21 INFORMATION ARE YOU REFERRING TO? AS --

22 THE COURT: JUST A MOMENT. YOU'VE ASKED
23 CLARIFICATION WHICH IS PERFECTLY PROPER.

24 MR. LOWE: YES.

25 Q FOR EXAMPLE, IF YOU OBTAIN INFORMATION ABOUT

1 AN ADDRESS TO SEND A NOTICE TO, HAVE YOU EVER
2 EXPERIENCED A SITUATION WHERE THAT INFORMATION WAS
3 INACCURATE, AND, THEREFORE, YOU SENT THE NOTICE TO
4 THE WRONG PLACE, THE WRONG E-MAIL ADDRESS, TO THE
5 WRONG PHYSICAL ADDRESS?

6 A I HAVE.

7 Q YOU HAVE?

8 A I HAVE EXPERIENCED SENDING, FOR EXAMPLE,
9 SENDING A LETTER TO A WEB SITE OPERATOR AT THE
10 WRONG ADDRESS BECAUSE THE DOMAIN NAME WHOIS
11 INFORMATION FOR THE DOMAIN NAME REGISTRANT WAS NOT
12 CORRECTLY PROVIDED BY THE DOMAIN NAME REGISTRANT.

13 Q I'D LIKE YOU TO LOOK AT EXHIBIT 15, PLEASE.
14 IT SHOULD COME UP ON THE MONITOR SHORTLY. DO YOU
15 HAVE THAT IN FRONT OF YOU?

16 A YES.

17 Q THANK YOU. ISN'T IT TRUE THAT EXHIBIT 15 IS
18 AN EXAMPLE OF YOU SENDING A LETTER TO A WRONG
19 ADDRESS BASED UPON INCORRECT INFORMATION?

20 A YES.

21 Q THIS WAS SENT TO -- THIS LETTER WAS INTENDED
22 TO BE SENT TO MANAGED SOLUTIONS GROUP, INC., BUT IT
23 WAS SENT TO AN ADDRESS IN FORT LEE, NEW JERSEY; IS
24 THAT RIGHT?

25 A YES.

1 Q AND IT TURNED OUT THAT WAS AN INACCURATE
2 ADDRESS?

3 A YES.

4 Q WOULD YOU LOOK AT EXHIBIT 36, PLEASE. IS
5 EXHIBIT 36 ALSO AN EXHIBIT OF YOU SENDING IN THIS
6 CASE AN E-MAIL TO THE WRONG LOCATION OR ADDRESS
7 BASED UPON INCORRECT INFORMATION?

8 A YES.

9 Q AND THIS WAS SENT TO -- INTENDED TO BE SENT TO
10 MANAGED SOLUTIONS GROUP, BUT IT WAS E-MAILED TO
11 WEBHOSTPLUS.COM?

12 A YES.

13 Q AND YOU HAVE SINCE LEARNED THAT
14 WEBHOSTPLUS.COM IS NOT THE E-MAIL ADDRESS OF
15 MANAGED SOLUTIONS GROUP?

16 A AT THAT TIME I DIDN'T KNOW BECAUSE THEIR
17 COMPANY MANAGED SOLUTIONS GROUP DID NOT INDICATE IN
18 THE USUAL BASIS WHAT IS THEIR CONTACT INFORMATION.

19 Q ALL RIGHT. BUT SINCE THIS DATE YOU HAVE
20 DISCOVERED THIS WAS MISTAKEN INFORMATION?

21 A WELL, I STRUGGLED FOR SEVERAL MONTHS TO FIND
22 THE CORRECT ONE AND EVENTUALLY I DID IN APRIL OF
23 2007.

24 Q ALL RIGHT. BUT WHEN YOU SENT THIS ON OCTOBER
25 16, 2006, YOU WERE RELYING ON INACCURATE

1 INFORMATION FROM ONE OF YOUR SOURCES?

2 A INACCURATE INFORMATION PROVIDED BY DEFENDANTS
3 THEMSELVES.

4 Q AND THE DEFENDANTS PROVIDED THE FORT LEE
5 INFORMATION OR THE DOMAIN TOOLS WEBHOSTPLUS.COM
6 INFORMATION?

7 A WELL, THE DEFENDANTS DID NOT PROVIDE ANY
8 CONTACT INFORMATION.

9 Q SO THEY DIDN'T PROVIDE THIS INCORRECT?

10 A WELL --

11 THE COURT: JUST A MOMENT.

12 BY MR. LOWE:

13 Q THEY DIDN'T PROVIDE THIS INCORRECT
14 INFORMATION, DID THEY, SIR?

15 A I BELIEVE THIS IS A CONTACT INFORMATION THAT
16 THEY WERE PREVIOUSLY USING IN A WAY THAT IS NOT
17 CLEAR TO ME. I BELIEVE THAT THIS COMPANY
18 WEBHOSTPLUS WAS PREVIOUSLY OWNED BY DEFENDANTS.

19 Q YOU'RE JUST SPECULATING ABOUT THAT, SIR,
20 AREN'T YOU? YOU DON'T HAVE ANY INFORMATION TO
21 PROVE THAT THERE IS OWNERSHIP CONNECTION HERE?

22 A I BELIEVE THIS INFORMATION CAME IN THE COURSE
23 OF MY DEPOSITION FROM YOUR SIDE.

24 Q PLEASE LOOK AT EXHIBIT 18. IS THIS ALSO SOME
25 INACCURATE INFORMATION AS TO ADDRESSES, AN ADDRESS

1 OF MANAGED SOLUTIONS THAT YOU SENT?

2 A THIS ADDRESS THAT'S FREMONT BOULEVARD,
3 FREMONT, CALIFORNIA WAS PROVIDED BY DEFENDANTS
4 THEMSELVES IN THE WHOIS OF THE DOMAIN NAME
5 MANAGEDSG-INC.COM.

6 Q AND THIS WAS OUTDATED INFORMATION AT THE TIME
7 IT WAS SENT THOUGH, WASN'T IT, SIR?

8 A WELL, DEFENDANTS ARE SUPPOSED TO MAINTAIN THE
9 CONTACT INFORMATION ON THEIR DOMAIN NAME WHOIS
10 ACCURATE AT ANY TIME. THIS IS A CONTRACTUAL
11 OBLIGATION THAT THEY HAVE VIS-À-VIS THEIR DOMAIN
12 NAME REGISTRAR.

13 Q THERE WAS NO DIRECT CONTACT BETWEEN THE
14 DEFENDANTS AND THE WHOIS SOURCE THAT YOU LOOKED AT
15 DOMAIN TOOLS, IS THERE, SIR?

16 A YOUR QUESTION?

17 Q THERE IS NO REQUIREMENT OR ANY CONTACT BETWEEN
18 THE DEFENDANTS DIRECTLY AND DOMAIN TOOLS AND THE
19 DATA THAT DOMAIN TOOLS PUBLISHES; IS THAT RIGHT?

20 A THIS WHOIS INFORMATION COMES FROM THE
21 REGISTRAR OF THE DOMAIN NAME MANAGEDSG-INC.COM.

22 Q AND UPON WHAT IS THE BASIS FOR YOUR THINKING
23 THAT IS TRUE?

24 A WELL, I HAVE ACQUIRED WHOIS DATABASES TO FIND
25 OUT WHO HAS CONTACT INFORMATION FOR THEIR DOMAIN

1 NAME .

2 Q AND YOU DID NOT CONTACT THEIR REGISTRAR, THE
3 DEFENDANTS' REGISTRAR? YOU ONLY WERE RELYING ON,
4 FOR EXAMPLE, DOMAIN TOOLS, ISN'T THAT TRUE?

5 A I RELY ON DOMAIN TOOLS AS WELL AS I CAN RELY
6 ON ANY OTHER WAY TO QUERY OTHERS DATABASES.

7 Q I APPRECIATE THAT BUT IF YOU GET INACCURATE
8 INFORMATION, IT'S INACCURATE; IS THAT RIGHT?

9 A YES.

10 Q THANK YOU. YOU HAVE TESTIFIED HERE TODAY
11 PRIMARILY AND TO SOME EXTENT YESTERDAY ABOUT HOW
12 YOU WOULD ATTEMPT TO VERIFY INFORMATION THAT YOU
13 SAW ON DOMAIN TOOLS, OR SOME OTHER SOURCE, AND I
14 BELIEVE YOU TESTIFIED THAT YOU HAVE REPEATEDLY
15 PINGED THOSE SITES; IS THAT RIGHT?

16 A YES.

17 Q ISN'T IT TRUE THAT IT WAS NOT YOUR NORMAL
18 PRACTICE IN INVESTIGATING POTENTIAL INFRINGEMENTS
19 TO ACTUALLY PING A SITE, A DOMAIN NAME YOURSELF,
20 AND YOU HAVE ONLY DONE THAT A COUPLE OF TIMES?

21 A WELL, THERE MUST BE SOME MISUNDERSTANDING ON
22 YOUR PART FROM THAT ONE.

23 WHAT CHANGED IN THE COURSE OF OUR
24 PRACTICE IS THE DOCUMENTATION OF THE ADDITIONAL
25 CHECKS BEING PRINTED OUT THE RESULT OF OUR

1 ADDITIONAL RESEARCH.

2 Q EXCUSE ME. THE QUESTION IS WHETHER YOU HAVE
3 PINGED THEM YOURSELF?

4 A YES.

5 Q ISN'T IT TRUE THAT YOU HAVE NOT PINGED THE
6 DOMAIN NAMES YOURSELF EXCEPT ON A COUPLE OF
7 OCCASIONS?

8 A WELL, I -- AT THAT TIME I WAS NOT PINGING
9 THROUGH THE DOS PROMPT SYSTEMATICALLY. THIS
10 PINGING WAS DONE THROUGH NETSCAN TOOLS.

11 Q WOULD YOU PLEASE LOOK AT EXHIBIT 71.1. I
12 BELIEVE YOU TESTIFIED ABOUT THIS YESTERDAY; IS THAT
13 CORRECT?

14 A I BELIEVE SO.

15 Q DID YOU, YES?

16 A I BELIEVE SO, YES.

17 Q ISN'T IT TRUE THAT THIS PARTICULAR DOCUMENT
18 WAS NOT PRINTED AT YOUR OFFICE BY YOU OR YOUR
19 STAFF?

20 A NO, THIS ONE WASN'T.

21 Q I'M SORRY?

22 A THIS ONE WAS NOT PRINTED IN MY OFFICE.

23 Q AND HOW DO YOU KNOW THAT? HOW ARE YOU ABLE TO
24 TELL THAT?

25 A BECAUSE FOR MORE SOPHISTICATED SEARCHING ON

1 DOMAIN TOOLS YOU NEED TO REGISTER TO CREATE AN
2 ACCOUNT WITH DOMAIN TOOLS AND THIS PRINTOUT SHOWS
3 THAT HERE THE PERSON THAT HAS LOGGED IN HAS NOT --
4 THE NICKNAME USED FOR THE LOG IN IS NOT THE ONE
5 THAT WE WERE USING IN OUR OFFICE.

6 Q THE LOG-IN INFORMATION AT THE TOP OF THIS PAGE
7 INDICATES JACKIE 92136 OR SOMETHING LIKE THAT?

8 A YES.

9 Q AND THAT'S NOT ANYBODY IN YOUR OFFICE?

10 A THAT'S THE OFFICE OF OUR COUNSEL.

11 Q OKAY. AND YOU DIDN'T -- SO YOU -- IN RELYING
12 ON THIS, YOU DIDN'T PRINT THIS YOURSELF AS YOU
13 TESTIFIED?

14 A NO, I DID NOT PRINT THIS.

15 Q THANK YOU. ON THE DOCUMENTS THAT YOU DO
16 PRINT, WHEN YOU HAVE GONE INTO DOMAIN TOOLS THAT WE
17 HAVE SEEN EXAMPLES OF, IS THERE SOMETHING ABOUT THE
18 HEADER THAT WOULD INDICATE THAT IT WAS LIKELY
19 PRINTED IN YOUR OFFICE?

20 A YES, THE FACT THAT THE DATE IS IN FRENCH
21 FORMAT AND AS WELL AS THE PAGE NUMBER, WHICH IS IN
22 FRENCH.

23 Q AND HOW IS THAT PAGE NUMBER IN FRENCH
24 DIFFERENT FROM WHAT WE MIGHT EXPECT IN AMERICA FROM
25 SOMETHING THAT WE HAVE BROUGHT ON THE COMPUTER

1 HERE?

2 A WELL, FOR EXAMPLE, IT WOULD BE ONE OF TWO OR
3 ONE OF THREE.

4 AND IN FRENCH IT WOULD BE ONE, SUR,
5 S-U-R, TWO OR THREE. OF WOULD BE TRANSLATED IN
6 FRENCH.

7 Q S-U-R IS FRENCH FOR OF?

8 A YES.

9 Q SO IF WE'RE LOOKING AT THE DOMAIN TOOLS
10 PRINTOUT THAT DOESN'T HAVE THAT INFORMATION, IT
11 PROBABLY WASN'T PRINTED IN YOUR OFFICE; IS THAT
12 RIGHT?

13 A THIS OR PROBABLY THE INFORMATION WAS NOT
14 PRINTED OUT CORRECTLY BECAUSE IT HAS BEEN CUT. IT
15 HAPPENS. NOT ALL OF THE PRINTOUTS WERE DONE OF
16 GREAT QUALITY, ESPECIALLY THE FIRST ONES.

17 Q WOULD YOU LOOK AT EXHIBIT 69.1, PLEASE. THIS
18 IS ANOTHER DOMAIN TOOLS PRINTOUT THAT I BELIEVE YOU
19 TALKED ABOUT EARLIER; IS THAT RIGHT?

20 A YOU KNOW, I DO NOT REMEMBER WHICH PRINTOUTS
21 EXACTLY I SPOKE ABOUT BECAUSE SINCE YESTERDAY I
22 HAVE PROBABLY SEEN 100.

23 Q ALL RIGHT. THIS ONE ALSO WAS NOT PRINTED BY
24 YOU; IS THAT RIGHT?

25 A NO.

1 Q ALSO BY THIS JACKIE PERSON?

2 A YES.

3 Q ALL RIGHT.

4 A JACKIE IS NOT A PERSON. IT'S A NICKNAME THAT
5 HAS BEEN USED IN MY COUNSEL'S OFFICE.

6 Q I SEE. PLEASE LOOK AT EXHIBIT 73, PLEASE.
7 THIS IS ANOTHER DOMAIN TOOLS PRINTOUT ALSO BY
8 SOMEONE OTHER THAN YOUR OFFICE?

9 A YES.

10 Q YOU TESTIFIED TO A NUMBER OF BAGS AND SHOES
11 AND OTHER THINGS AND YOU HAVE TESTIFIED TO -- ABOUT
12 CERTAIN PRODUCTS THAT YOU HAVE SEEN PICTURES OF
13 HERE TODAY PARTICULARLY?

14 A YES.

15 Q AND YOU HAVE INDICATED THAT YOU ARE ABLE TO
16 IDENTIFY WHETHER THESE PRODUCTS OR THESE PICTURES
17 SHOWING THESE PRODUCTS SHOW GENUINE PRODUCT OR NOT;
18 IS THAT RIGHT?

19 A YES.

20 Q ISN'T IT TRUE THAT THE AVERAGE PERSON, A
21 PERSON LIKE ME, FOR EXAMPLE, WOULD NOT BE ABLE TO
22 NECESSARILY KNOW THE DIFFERENCES BETWEEN A GENUINE
23 PRODUCT AND A COUNTERFEIT PRODUCT WITHOUT SPECIAL
24 TRAINING AND EXPERIENCE?

25 A YES.

1 Q IN FACT, IT TAKES --

2 A UNLESS THE WEB SITE INDICATES ITSELF THAT
3 DEALS WITH REPLICA PRODUCTS.

4 Q SO THERE MIGHT BE A WEB SITE THAT SAYS, "WE
5 SELL REPLICAS," FOR EXAMPLE, AND IF YOU TAKE THEM
6 AT THEIR WORD, THEY'RE NOT SELLING GENUINE
7 PRODUCTS; IS THAT RIGHT?

8 A YES.

9 Q AND SO YOU'VE TESTIFIED INITIALLY HERE ABOUT
10 SOME PARTICULAR PRODUCTS THAT WERE PURCHASED FOR
11 YOU, SAY, BY MR. HOLMES.

12 AND YOU DIDN'T GO INTO THE DETAILS OF THE
13 DIFFERENCES BETWEEN ALL OF THOSE PRODUCTS AND THE
14 GENUINE PRODUCTS, BUT I'D LIKE TO ASK YOU ABOUT
15 SOME OF THE THINGS THAT YOU WOULD HAVE TO LOOK AT
16 IN ORDER TO TELL WHEN YOU'RE PHYSICALLY EXAMINING
17 SOMETHING WHETHER THESE BAGS OR SHOES OR SOMETHING
18 WHETHER IT'S A GENUINE LOUIS VUITTON PRODUCT OR
19 IT'S NOT, IT'S A COUNTERFEIT.

20 TELL ME SOME OF THE THINGS YOU LOOK FOR?

21 A WHILE I'M INSPECTING COUNTERFEIT GOODS?

22 Q YES.

23 A WELL, FOR EXAMPLE, THE MULTICOLOR MONOGRAM, WE
24 WOULD TYPICALLY CHECK THE SEQUENCE OF COLORS.

25 Q WHAT DO YOU MEAN BY "THE SEQUENCE OF COLORS"?

1 A WELL, THERE ARE 36 COLORS USED, AND WE KNOW
2 EXACTLY WHERE SHOULD EACH COLOR BE PLACED.

3 Q YOU NEED TO HELP ME OUT HERE. PLACED WHERE?
4 ON THE BAG ITSELF?

5 A ON THE CANVASS.

6 Q DO YOU HAVE THE EXHIBIT HERE?

7 MR. COOMBS: THE BLACK BAG.

8 MR. LOWE: THIS?

9 Q IS THIS THE ONE YOU'RE TALKING ABOUT?

10 A YOU CAN TAKE THAT ONE.

11 Q SO THIS IS EXHIBIT 67.1. CAN YOU ILLUSTRATE
12 FOR US OR TELL US WHAT YOU MEAN BY "SEQUENCE OF
13 COLORS"?

14 A FOR EXAMPLE, YOU WOULD KNOW THAT --

15 THE COURT: NO, NO. THE JURY IS
16 IMPORTANT.

17 THE WITNESS: CLOSE TO THIS PINK LV LOGO
18 THERE WILL ALWAYS BE A BROWN STAR. THE NEXT FLOWER
19 WOULD ALWAYS BE IN THIS KIND OF A BLUE. THE
20 NEXT --

21 BY MR. LOWE:

22 Q SO THE LV AND OTHER DESIGNS HAVE A PARTICULAR
23 SEQUENCE OF COLOR IN THE GENUINE BAGS; IS THAT
24 RIGHT?

25 A YES, THEY HAVE A PARTICULAR SEQUENCE, YES.

1 Q ALL RIGHT. SO THIS BAG DOESN'T HAVE THAT --
2 THE CORRECT SEQUENCE?

3 A NO, THIS IS AN AUTHENTIC PRODUCT.

4 Q THIS IS AUTHENTIC?

5 A YES.

6 Q OKAY. DO WE HAVE ONE HERE THAT IS NOT
7 AUTHENTIC? WHAT IS THE NUMBER OF THAT EXHIBIT,
8 PLEASE, SIR?

9 A THAT'S EXHIBIT 67.

10 Q THANK YOU.

11 A CAN I HAVE MY MONOGRAM, PLEASE, TO COMPARE?

12 Q AND PLEASE IDENTIFY THAT FOR THE RECORD.

13 A THIS IS EXHIBIT 117.1.

14 Q ALL RIGHT.

15 THE COURT: AND 117.1 IS WHAT YOU WOULD
16 RECOGNIZE AS A GENUINE PRODUCT?

17 THE WITNESS: CORRECT. THIS ONE
18 TYPICALLY HAS A DIRECT SEQUENCE OF COLORS.

19 BY MR. LOWE:

20 Q THAT'S 67; IS THAT RIGHT?

21 A 67, YES.

22 Q WHAT WAS THAT NUMBER?

23 A YES.

24 Q SO EXHIBIT 67?

25 A SO --

1 Q THAT PARTICULAR ONE HAPPENS TO HAVE THE RIGHT
2 SEQUENCE OF COLORS?

3 A YES.

4 Q SO WHAT OTHER THINGS DO YOU LOOK AT ON THAT
5 BAG, EXHIBIT 67, TO BE ABLE TO TELL THAT IT IS NOT
6 AUTHENTIC?

7 A WELL, UM, THIS PLASTIC PROTECTION OF THE
8 METALLIC PARTS INDICATE THAT THE PRODUCT IS
9 COUNTERFEIT.

10 Q SO YOU -- EXCUSE ME. BEFORE YOU GO ON, YOU
11 HAVE A PHYSICAL PRODUCT IN YOUR HAND AND SO IF YOU
12 SEE THAT IT IS WRAPPED IN THIS PLASTIC OR PAPER --

13 A YES.

14 Q -- AND THE LOUIS VUITTON DOESN'T USE THAT
15 METHOD FOR WRAPPING --

16 A YES.

17 Q -- THEN YOU PROBABLY KNOW IT'S NOT A GENUINE
18 ARTICLE OR PROBABLY NOT A GENUINE ARTICLE?

19 A THAT'S ONE OF THE ELEMENTS THAT INDEED BUILD
20 THE COUNTERFEIT NATURE OF THE PRODUCT.

21 Q BEFORE YOU GO ON?

22 THE COURT: JUST A MOMENT.

23 BY MR. LOWE:

24 Q BEFORE YOU GO ON. I WANT TO GO THROUGH THESE
25 ONE AT A TIME IF I MAY. BUT IF YOU'RE LOOKING AT A

1 PICTURE ON THE INTERNET, IT WOULDN'T NECESSARILY
2 SHOW THE PAPER WRAPPING; IS THAT RIGHT?

3 A NO, THAT'S NOT CORRECT.

4 Q IT DOES SHOW IT IN YOUR EXPERIENCE?

5 A MOST OF THEM IN MY EXPERIENCE.

6 Q OKAY. GO AHEAD. WHAT ELSE DO YOU LOOK FOR?

7 A WELL, THE BUCKLE AS I EXPLAINED YESTERDAY --
8 SORRY, THE LOCK --

9 Q IS NOT GOOD?

10 A IT'S FAKE. IT'S A DECORATIVE LOCK.

11 Q AND YOU WOULD HAVE TO LOOK AT THAT IN PERSON
12 TO BE ABLE TO TELL THAT FACT?

13 A YES.

14 Q ALL RIGHT. WHAT ELSE DO YOU LOOK FOR?

15 A THIS PLASTIC PROTECTIONS, THE TRANSPARENT
16 PLASTIC IS SOMETHING THAT ALSO INDICATES THE
17 COUNTERFEIT NATURE OF THE PRODUCT.

18 Q IS THAT BECAUSE LOUIS VUITTON DOES NOT USE
19 THAT TO WRAP THE HANDLES?

20 A THIS PLASTIC IS SYSTEMATICALLY REMOVED BY
21 LOUIS VUITTON AT THE POINT OF SALE OF THE PRODUCTS.

22 Q OKAY. SO IT MAY USE IT INTERNALLY TO SHIP THE
23 PRODUCT, BUT IF IT WAS SOLD IN A LOUIS VUITTON
24 STORE, IT WOULD NOT HAVE THAT ON THE PRODUCT?

25 A YES. BEFORE THIS IS TRANSFERRED TO THE

1 CUSTOMER, THESE TRANSPARENT PLASTIC IS REMOVED.

2 Q WHAT ELSE DO YOU LOOK AT TO DETERMINE IT'S A
3 COUNTERFEIT?

4 A WELL, MOST OF THE COUNTERFEIT PRODUCTS ALSO
5 HAVE A SPECIFIC TAG IN THE FORM OF AN ANIMAL SKIN
6 WHICH VERY OFTEN IS DISPLAYED ON COUNTERFEIT
7 PRODUCTS. WE DO NOT, WE DO NOT ATTACH THESE TO OUR
8 GENUINE PRODUCTS.

9 Q ALL RIGHT.

10 A AND ALSO THERE ARE OTHER PAPER TAGS DISPLAYED
11 ON THE PICTURE ALONG WITH THE PRODUCT WHICH
12 INDICATES THE COUNTERFEIT NATURE OF THE PRODUCT.

13 AND ALSO IT HAPPENS THAT MODELS JUST DO
14 NOT CORRESPOND TO AUTHENTIC MODELS THAT WE
15 MANUFACTURE.

16 Q SO THEY LOOK SORT OF LIKE A LOUIS VUITTON
17 PRODUCT, BUT THEY'RE NOT ONE THAT LOUIS VUITTON HAS
18 ACTUALLY MADE?

19 A YES. WE HAVE AN EXAMPLE BY THE WAY I CAN SHOW
20 YOU.

21 Q WHICH ONE IS THAT? PLEASE TELL US WHAT
22 EXHIBIT YOU'RE LOOKING AT?

23 A THIS IS EXHIBIT 129.

24 Q AND THIS IS SOMETHING THAT MR. HOLMES
25 PURCHASED FOR LOUIS VUITTON?

1 A YES.

2 Q ALL RIGHT. AND WHAT --

3 A THIS IS THE ANIMAL SKIN TYPE OF TAG THAT I WAS
4 REFERRING TO PREVIOUSLY.

5 Q THE HANG TAG ON THE BAG?

6 A YES.

7 Q ALL RIGHT. SO YOU DON'T USE THAT. WHAT ELSE
8 BESIDES USING THAT EXHIBIT AS A MEANS OF TELLING
9 THAT IT'S NOT AUTHENTIC?

10 A THE SEQUENCE OF THE COLORS IS NOT CORRECT.

11 BUT SPECIFICALLY FOR THIS TYPE OF PRODUCT
12 I WOULDN'T EVEN BOTHER TO VERIFY THE SEQUENCE OF
13 THE COLORS BECAUSE WE HAVE NOT MANUFACTURED THIS
14 MODEL. THE CLOSEST EQUIVALENT THAT WE HAVE
15 MANUFACTURED IS THIS ONE (INDICATING). THANK YOU.

16 Q AND THAT'S EXHIBIT WHAT?

17 A THIS IS EXHIBIT 129.1.

18 Q ALL RIGHT. SO WHAT IS IT THAT -- YOU KNOW, I
19 DON'T KNOW ANYTHING ABOUT PURSES AT ALL, BUT WHAT
20 IS DIFFERENCE ABOUT THEM OTHER THAN THE DESIGN?

21 A WELL, THIS SHAPE IS CALLED A PAPIILLION, THE
22 FRENCH WORD FOR BUTTERFLY. THE PAPIILLION BAG COMES
23 ONLY WITH THIS CANVASS.

24 Q WITH THAT KIND OF COLOR AND DESIGN ON IT?

25 A THIS DESIGN WITH THIS CANVASS, WHICH IS CALLED

1 CHERRY BLOSSOM, AND I BELIEVE IT HAS ALSO BEEN MADE
2 IN THE CLASSIC MONOGRAM CANVASS.

3 Q ALL RIGHT.

4 A WITHOUT THIS PART (INDICATING).

5 Q BUT IT DOESN'T COME IN A MULTICOLOR VERSION
6 LIKE YOU'RE HOLDING IN YOUR HAND THERE?

7 A NO.

8 Q THE COUNTERFEIT BAG. ALL RIGHT.

9 I BELIEVE YOU MENTIONED SOMETHING ABOUT
10 STITCHING ON THE PRODUCTS THAT CAN TELL YOU WHETHER
11 THEY CAN BE AUTHENTIC OR NOT. IS THAT TRUE?

12 A YES.

13 Q ALL RIGHT. HOW IS THAT?

14 A WELL, THE STITCHING NEEDS TO BE VERY REGULAR.
15 SOMETIMES -- WELL, VERY OFTEN ON COUNTERFEITS, THE
16 STITCHING IS ZIGZAGGING.

17 Q AND YOU NEVER USE ZIGZAGGING?

18 A NO.

19 Q OKAY.

20 A IT'S VERY --

21 Q I'M SORRY?

22 A REGARDING THE STITCHING, OUR QUALITY
23 PROCEDURES ARE VERY STRICT AND IF THE STITCHING IS
24 NOT CORRECT, THE PRODUCT WILL NOT PASS QUALITY
25 CONTROL.

1 Q AND DOES LOUIS VUITTON, FOR EXAMPLE, IN ITS
2 GENUINE PRODUCTS MAKE SURE THAT THE NUMBER OF
3 STITCHES ON CERTAIN PARTS OF THE BAG ARE EXACTLY
4 ALWAYS THE SAME?

5 A IT HAPPENS, YES.

6 Q FOR EXAMPLE, YOU'RE FAMILIAR WITH THE SPEEDY
7 BAG, ARE YOU?

8 A YES.

9 Q AND IS IT TRUE THAT ON THE HANDLE ATTACHMENT
10 ALONG THE TOP OF THE BAG, FOR EXAMPLE, THE SPEEDY
11 BAG ALWAYS HAS FIVE REGULAR EVEN STITCHES?

12 A THIS PARTICULAR DETAIL I AM NOT ABLE TO
13 COMMENT ON.

14 Q WHAT ABOUT THE PLACEMENT ON THE MONOGRAM, THE
15 LV MONOGRAM. DOES THAT MAKE A DIFFERENCE IN
16 DETERMINING GENUINE OR COUNTERFEIT PRODUCT?

17 A IN MOST OF OUR GENUINE PRODUCTS THE MONOGRAM
18 IS PLACED IN A SPECIFIC WAY AND IF ON A COUNTERFEIT
19 EQUIVALENT, ON THE COUNTERFEIT EQUIVALENCE THE
20 MONOGRAM IS NOT NECESSARILY PLACED THE SAME WAY.
21 SO THAT WOULD BE A WAY TO RECOGNIZE IT.

22 Q DO -- SO -- I'M SORRY. COUNTERFEITS OFTEN
23 HAVE THE WRONG MONOGRAMS IN THE WRONG PLACE OR THE
24 WRONG KIND OF MONOGRAM OR SOMETHING?

25 A YES.

1 Q OKAY. WHAT ABOUT THE ORIENTATION OF THE LV'S.
2 DO WE EVER SEE UPSIDE-DOWN LV'S ON THE GENUINE
3 BAGS?

4 A THEY COULD BE UPSIDE-DOWN.

5 Q OKAY. CAN YOU USE THAT PARTICULAR DETAIL TO
6 DETERMINE WHETHER IT'S GENUINE OR NOT?

7 A NO.

8 Q DO YOU USE PATCHES ON THE BAGS?

9 A PATCHES?

10 Q PATCHES? DO LOUIS VUITTON BAGS THESE DAYS
11 HAVE PATCHES, LIKE A PATCH ON THE BAG THAT SAYS
12 LOUIS VUITTON OR LV, OR SOMETHING LIKE THAT?

13 A I'M NOT SURE I UNDERSTAND WHAT YOU'RE
14 REFERRING TO.

15 Q SO YOU'RE NOT FAMILIAR WITH PATCHES ON BAGS ON
16 GENUINE PRODUCTS?

17 THE COURT: THAT'S THE PROBLEM. YOU HAVE
18 TO FIGURE OUT WHAT YOU MEAN BY "PATCHES" SO HE CAN
19 TELL US --

20 BY MR. LOWE:

21 Q OKAY. LET ME MAKE THIS CLEAR. LET'S SAY A
22 PATCH BEING SOWN ON THE OUTSIDE OF THE BAG OR MAKE
23 SOMETHING ON THE INTERIOR OF THE BAG THAT SAYS
24 LOUIS VUITTON ON IT. DO YOU EVER DO THAT?

25 A YES.

1 Q YOU DO?

2 A YES.

3 Q IS IT TRUE THAT THE PLACEMENT OF THOSE KINDS
4 OF FEATURES, THOSE PATCHES MAY BE WRONG ON A
5 COUNTERFEIT PRODUCT?

6 A YES.

7 Q SO IF YOU SEE THEM IN THE WRONG PLACE OR THE
8 WRONG KIND OF PATCH, THAT WOULD BE AN INDICATION
9 THAT IT'S NOT A GENUINE BAG?

10 A YES.

11 Q IS THAT RIGHT?

12 NOW, DO YOU -- DOES LOUIS VUITTON USE A
13 PARTICULAR STYLE OF PRINTING ON ITS LABELS OR
14 ANYTHING ON THE BAG THAT SAYS LOUIS VUITTON OR
15 SOMETHING LIKE THAT? IS THERE A SPECIAL FONT THAT
16 IS USED BY YOUR COMPANY?

17 A YES.

18 Q AND DO THOSE -- THE CORRECT FONTS GIVE AWAY,
19 OR THE INCORRECT FONTS I SUPPOSE I SHOULD SAY,
20 PERHAPS GIVE AWAY A FAKE BAG?

21 A YEAH.

22 Q HOW LONG HAS IT TAKEN YOU TO LEARN ALL OF
23 THESE DIFFERENCES BETWEEN GENUINE AND FAKE BAGS?

24 A I WOULD SAY AFTER MY INITIAL TRAINING I WAS
25 ABLE TO -- MY SKILLS WERE AT THAT LEVEL OF DETAILS,

1 YES.

2 Q OKAY.

3 A I WOULD GIVE YOU THE EXAMPLE OF OUR SERVICE,
4 OUR DEPARTMENT HIRING INTERNS. USUALLY AN INTERN
5 IS OPERATIONAL IN DISTINGUISHING COUNTERFEITS FROM
6 AUTHENTIC WITHIN A MONTH MAXIMUM.

7 Q SO IT WOULD TAKE ABOUT A MONTH OF TRAINING FOR
8 ONE OF YOUR INTERNS TO KNOW THE DIFFERENCE BETWEEN
9 GENUINE AND COUNTERFEIT BAGS?

10 A WELL, YES, A MONTH BUT NOT EVERY DAY DURING
11 ONE MONTH. IT TAKES --

12 Q OKAY.

13 A -- UP TO ONE MONTH TO BE COMFORTABLE
14 RECOGNIZING.

15 Q AND DO YOU REGARD YOURSELF AS AN EXPERT ON
16 IDENTIFYING COUNTERFEIT BAGS?

17 A YES.

18 Q YOU TESTIFIED WHERE CERTAIN BAGS -- WHERE
19 LOUIS VUITTON HAS MANUFACTURED BAGS. IN THE PAST
20 THE COMPANY HAS MANUFACTURED THEM IN OTHER PLACES
21 THAN YOU INDICATED YESTERDAY, DIDN'T YOU?

22 A YES.

23 Q AND WHAT IS THE FRENCH COMPANY?

24 A THAT WAS A LONG TIME AGO THE U.S. LICENSEE OF
25 LOUIS VUITTON.

1 Q SO FOR A PERIOD OF TIME UNTIL HOW LONG AGO WAS
2 THE FRENCH COMPANY AUTHORIZED TO MANUFACTURE BAGS
3 FOR LOUIS VUITTON?

4 A I BELIEVE THE FRENCH COMPANY LICENSE WAS TAKEN
5 BACK DURING THE 80'S, 1980'S.

6 Q IS IT TRUE THAT LOUIS VUITTON BAGS GENERALLY
7 DON'T LOSE THEIR VALUE, EVEN IF THEY'RE OLD.

8 A WELL, IT DEPENDS ON WHAT IS THE MISTAKE OF THE
9 BAG. IF IT'S BEEN DAMAGED THEN ITS VALUE WOULD BE
10 DIMINISHED.

11 Q BUT IF IT'S BEEN CARED FOR, AN OLDER BAG IS AS
12 VALUABLE AS A NEW BAG?

13 A IT DEPENDS ON THE MODEL. CERTAIN --

14 MR. COOMBS: OBJECTION. LACKS
15 FOUNDATION, YOUR HONOR.

16 THE COURT: I'M NOT SURE I UNDERSTAND THE
17 RELEVANCE OF THIS. THERE'S NO SECONDARY MARKET
18 THAT WE'RE WORRIED ABOUT HERE.

19 MR. LOWE: WELL, ACTUALLY I WAS GOING TO
20 ASK THAT VERY QUESTION.

21 Q IS THERE A SECONDARY MARKET IN LOUIS VUITTON
22 BAGS? IN OTHER WORDS, DO PEOPLE SELL OLDER BAGS TO
23 PEOPLE?

24 A ABSOLUTELY. THERE ARE -- SOME OF OUR BAGS
25 HAVE HAD TREMENDOUS SUCCESS AND THEY HAVE BEEN

1 PRODUCED IN LIMITED EDITIONS SO A MODEL THAT IS NOT
2 PRODUCED ANYMORE COULD MAINTAIN ITS HIGH VALUE FOR
3 A LONG TIME.

4 Q NOW, WHEN YOU'RE LOOKING AT BAGS SOLD BY WEB
5 SITES THAT YOU HAVE TESTIFIED ABOUT, I BELIEVE YOU
6 POINTED TO A NUMBER OF WEB SITES THAT YOU HAVE
7 SHOWN PICTURES HERE OF AND THOSE FOR THE MOST PART
8 HAVE THUMBNAIL PHOTOGRAPHS OF THESE BAGS OR SHOES
9 OR WHATEVER?

10 A YES.

11 Q ISN'T IT DIFFICULT TO TELL WHETHER THEY'RE
12 GENUINE OR NOT BY LOOKING AT THAT SMALL PICTURE?

13 A WELL, IF YOU CLICK ON THE PICTURE, USUALLY YOU
14 CAN ENLARGE IT AND SEE BETTER, BUT IT'S ENOUGH FOR
15 ME TO RECOGNIZE ONE PARTICULAR ELEMENT THAT IS
16 DETERMINANT WITHIN INSIDE OF THIS SMALL THUMBNAIL
17 TO PRONOUNCE MYSELF ON THE NATURE OF THE PRODUCT.

18 Q BASED UPON YOUR SPECIALIZED SKILL IN
19 IDENTIFYING THESE THINGS; IS THAT RIGHT?

20 A YES.

21 Q WOULD IT BE HELPFUL TO SEE MAYBE A BIGGER
22 PICTURE OR SEVERAL PICTURES OF THE SAME BAGS AS TO
23 WHETHER IT'S GENUINE OR NOT?

24 A IT REALLY DEPENDS ON THE CASE. I'M NOT ABLE
25 TO GENERALIZE.

1 Q ALL RIGHT. NOW, YOU'VE BEEN TESTIFYING ABOUT
2 ALL OF THE EFFORTS THAT YOU HAVE MADE AND YOUR
3 STAFF HAS MADE TO TRY TO CHASE DOWN INFRINGERS OR
4 STOP PEOPLE FROM MAKING COUNTER -- OR MAKING OR
5 SELLING COUNTERFEIT PRODUCTS.

6 IS IT -- HAS IT BEEN YOUR EXPERIENCE THAT
7 EVEN IF AN ISP, AN INTERNET SERVICE PROVIDER, SHUTS
8 DOWN A WEB SITE THAT YOU'RE COMPLAINING ABOUT, THAT
9 THE WEB SITE CAN JUMP TO ANOTHER ISP?

10 A THAT HAPPENS.

11 Q IT HAPPENS FREQUENTLY IN YOUR EXPERIENCE,
12 DOESN'T IT?

13 A IT REALLY DEPENDS WHAT KIND OF WEB SITE
14 OPERATOR WE'RE FACING. I WOULD SAY THAT SOMETIMES
15 WE ENCOUNTER MORE INNOCENT OPERATORS WHO ARE NOT
16 NECESSARILY AWARE OF THE FACT THAT WHAT YOU'RE --
17 WHAT THEY'RE DOING IS ILLEGAL. THOSE PEOPLE
18 USUALLY INTERRUPT INFRINGING ACTIVITY AS SOON AS
19 THEY RECEIVE OUR NOTIFICATION.

20 THE PROFESSIONAL COUNTERFEITERS, SOME OF
21 THEM ARE REALLY DETERMINED PEOPLE AND THOSE ONES
22 INDEED, THEY CAN MAKE THEIR WEB SITE JUMP FROM ONE
23 SERVER TO ANOTHER OFTEN.

24 NOW, IF WE SEE THIS HAPPENING, WE'RE NOT
25 GOING TO TOLERATE THIS AND SO WE WOULD SEEK FURTHER

1 ACTION BY IDENTIFYING THE OPERATOR AND FILING A
2 LAWSUIT AGAINST THEM.

3 AND IF ITS WEB HOST WAS UNCOOPERATIVE
4 THEN OF COURSE WE WOULD FILE A LAWSUIT AGAINST
5 THEM.

6 Q BUT IT'S BEEN LOUIS VUITTON'S EXPERIENCE THAT
7 THESE PROFESSIONAL COUNTERFEITERS WILL OFTEN JUMP
8 FROM ONE ISP TO ANOTHER IN A MATTER OF HOURS AFTER
9 AN ISP SHUTS THEM DOWN; ISN'T THAT TRUE?

10 A NOT NECESSARILY, BUT IT COULD HAPPEN, YES.

11 Q AND IT OFTEN HAPPENS?

12 A IT DOES HAPPEN, YES.

13 Q SO EVEN IF AN ISP DOES EVERYBODY, IT POSSIBLY
14 CAN TO SHUT DOWN A WEB SITE THAT YOU'RE COMPLAINING
15 ABOUT, WITHIN A FEW HOURS IT COULD BE OPERATING
16 SOMEWHERE ELSE?

17 A WELL, YOU KNOW, THERE'S A LIMITED NUMBER OF
18 ISP'S SO IF ALL OF THE ISP'S WERE COOPERATING, THEY
19 WILL END UP WITH HAVING NO ONE TO HOST THEM.

20 Q AND HOW MANY IPS'S ARE THERE IN AMERICA?

21 A MORE THAN 100.

22 Q YOU DON'T REALLY KNOW HOW MANY THERE ARE, DO
23 YOU, SIR?

24 A I DON'T KNOW EXACTLY.

25 Q OKAY.

1 A I WOULD SAY THAT WE DEAL WITH AROUND 20 ON A
2 REGULAR BASIS.

3 Q SOME OF THE LARGER ONES; IS THAT RIGHT? IS
4 THAT WHAT YOU'RE MEANING?

5 A THERE COULD BE LARGER BUT USUALLY WE'RE
6 DEALING WITH AROUND 20 WEB HOSTS APPROXIMATELY.

7 Q WELL, WHAT IS THE DIFFERENCE IN YOUR MIND
8 BETWEEN A WEB HOST AND A WEB SERVICE PROVIDER?

9 A A WEB SERVICE PROVIDER IS A MUCH LARGER
10 DEFINITION. WEB HOST IS MORE SPECIFIC.

11 Q SO A WEB HOST IS A COMPANY OR PERSON THAT
12 ACTUALLY HOSTS WEB SITES AND CREATE AND OPERATE WEB
13 SITES; IS THAT CORRECT?

14 A YES.

15 Q THEY DON'T OPERATE WEB SITES? THEY DON'T
16 OPERATE WEB SITES?

17 A THEY HOST WEB SITES.

18 Q THEY HOST THEM. I GUESS I'M CONFUSED THEN
19 ABOUT WHAT THE DIFFERENCE IS BETWEEN THAT AND AN
20 ISP. CAN YOU EXPLAIN THAT A LITTLE FURTHER IN THE
21 WAY THAT YOU UNDERSTAND IT?

22 A WELL, A WEB HOST IS AN ISP. WITHIN THE
23 DEFINITION OF ISP THERE COULD BE SEVERAL TYPES OF
24 ACTIVITIES. A WEB HOST IS AN ISP. AN E-COMMERCE
25 PLATFORM IS AN ISP. A REGISTRAR IS AN ISP.

1 Q AN ISP MAY OPERATE OR PROVIDE INTERNET
2 COMMUNICATION SERVICES FOR MANY THINGS; ISN'T THAT
3 TRUE?

4 A AN ISP MEANS INTERNET SERVICE PROVIDER SO ANY
5 SERVICE PROVIDER WHO COOPERATES ON THE INTERNET IS
6 AT ISP.

7 Q SO THAT SERVICE PROVIDER MAY PROVIDE E-MAIL
8 SERVICES OR TELEPHONE SERVICES OR STORAGE OF DATA
9 OR GAMES OR ANY NUMBER OF OTHER THINGS; ISN'T THAT
10 TRUE?

11 A YES.

12 Q AND ONE OF THE THINGS THAT THEY MIGHT DO IS,
13 IS PROVIDE SERVICES FOR WEB SITES; IS THAT RIGHT?

14 A WELL, MOST OF THE SERVICES THAT YOU JUST
15 DESCRIBED ARE SERVICES FOR WEB SITES.

16 Q WELL, FOR EXAMPLE, ARE YOU FAMILIAR WITH VOICE
17 OVER INTERNET TELEPHONE?

18 A VOICE MEANS VOICE OVER IP.

19 Q OKAY. IT'S AN INTERNET TELEPHONE SERVICE;
20 ISN'T THAT TRUE?

21 A YES.

22 Q ALL RIGHT. AND THAT SORT OF THING IS PROVIDED
23 BY ISP'S OR THROUGH ISP'S; IS THAT TRUE?

24 A YES.

25 Q AND YOU'RE FAMILIAR WITH INTERNET GAME PLAY,

1 AREN'T YOU?

2 A YES.

3 Q AND ISP'S PROVIDE THE SERVICES FOR THAT, DON'T
4 THEY?

5 A YES.

6 Q AND ISP'S PROVIDE SERVICE FOR STORING DATA FOR
7 BACKUPS OR DOWNLOADING PROGRAMS THAT PEOPLE WANT TO
8 PURCHASE OR WHATEVER; IS THAT RIGHT?

9 A YES.

10 Q SO THERE ARE MANY DIFFERENT THINGS THAT AN
11 IS -- DIFFERENT SERVICES THAT AN ISP HELPS PEOPLE
12 WITH; IS THAT TRUE?

13 A YES.

14 Q AND PROVIDING COMMUNICATION SERVICES FOR WEB
15 SITES IS JUST ONE OF THE SERVICES THAT THEY MAY
16 PROVIDE; IS THAT RIGHT?

17 A PROVIDING HOSTING SERVICES TO WEB SITES IS ONE
18 OF THE SERVICES, YES.

19 Q NOW, YOU WOULD AGREE, WOULDN'T YOU, THAT THE
20 DEFENDANTS ARE NOT INTERNET DOMAIN REGISTRARS,
21 AREN'T YOU, WOULDN'T YOU AGREE WITH THAT?

22 A NOT TO MY KNOWLEDGE.

23 Q ALL RIGHT. YOU HAVE TESTIFIED TO HERE TODAY
24 ABOUT COMPLAINING TO A WEB SITE ON WHATEVER CONTACT
25 INFORMATION THEY HAVE AND COMPLAINING TO AN ISP

1 THAT THEIR -- WHOSE IP ADDRESS THAT THEY'RE USING?

2 A YES.

3 Q IS THAT CORRECT?

4 HAVE YOU EVER COMPLAINED CONCERNING THESE
5 COUNTERFEITERS, HAVE YOU EVER COMPLAINED TO THE
6 DOMAIN REGISTRAR?

7 A YES, WE HAVE.

8 Q HAS IT BEEN ANY GOOD?

9 A WELL, IT DEPENDS IF THE DOMAIN NAME IS
10 INFRINGING OUR TRADEMARKS OR NOT.

11 Q HAVE YOU EVER COMPLAINED TO A DOMAIN REGISTRAR
12 THAT, FOR EXAMPLE, ESHOES99 IS SELLING COUNTERFEIT
13 PRODUCTS AND WE WISH YOU WOULD CANCEL THEIR
14 REGISTRATION? HAVE YOU EVER MADE THAT KIND OF A
15 REQUEST?

16 A NO.

17 Q WHY NOT?

18 A BECAUSE IT WOULD NOT WORK.

19 Q WHY WOULD IT NOT WORK AS FAR AS YOU
20 UNDERSTAND?

21 A BECAUSE ESHOES99 DOES NOT INTEGRATE OUR
22 TRADEMARKS.

23 Q ALL RIGHT. SO IT WOULD HAVE TO BE -- THEY
24 WOULD ONLY DO SOMETHING FOR YOU IF THEY WERE
25 INFRINGING YOUR TRADEMARK IN THEIR NAME, THE DOMAIN

1 NAME; IS THAT RIGHT?

2 A IF THE DOMAIN NAME IS INFRINGING OUR
3 TRADEMARK, WE WOULD USUALLY FILE A UDRP, UNIFORM
4 DOMAIN RESOLUTION PROCEDURE.

5 Q BUT OTHERWISE YOUR EXPERIENCE HAS BEEN THAT IT
6 WOULDN'T DO ANY GOOD TO COMPLAIN TO THEM?

7 A NO.

8 Q AND YOU SAY YOU HAVE TRIED?

9 A HUH --

10 Q OR HAVE YOU?

11 A CANCELLING THE DOMAIN NAME?

12 Q YES. YOU NEVER ASKED THEM TO CANCEL THE
13 DOMAIN NAME?

14 A WELL, FOR ESHOES99 I HAVE NO BASIS TO ASK FOR
15 THE DOMAIN NAME TO BE CANCELLED.

16 Q AND WHY IS THAT? CAN'T YOU COMPLAIN THAT
17 THEY'RE SELLING COUNTERFEIT PRODUCTS?

18 A WELL, THE DOMAIN NAME COULD BE USED FOR OTHER
19 TYPE OF CONTENT THAT IS NOT INFRINGING.

20 Q OKAY.

21 A I HAVE -- WE ARE FOCUSING ON THE WEB HOST
22 BECAUSE WITHOUT THE HOSTING THERE'S NO WAY THAT THE
23 WEB SITE IS ON LINE. IT'S -- THIS IS THE MOST
24 IMPORTANT SERVICE PROVIDER FOR A WEB SITE IS THE
25 WEB HOST.

1 Q BUT IF THE ISP SIMPLY ALLOWS SOMEONE TO USE AN
2 IP ADDRESS THAT HAPPENS TO BE ASSIGNED TO THEM,
3 TEMPORARILY ALLOWS SOMEONE TO USE IT, AND THOSE
4 PERSONS USING IT ARE SELLING COUNTERFEIT PRODUCTS,
5 AND THE ISP COMPLAINS TO THAT PERSON, ISN'T IT TRUE
6 THAT ALL THEY HAVE TO DO IS TO MOVE TO ANOTHER ISP
7 AND GET A DIFFERENT IP ADDRESS AND THEY'RE BACK IN
8 BUSINESS IN MINUTES? IN HOURS AT THE MOST?

9 A THAT COULD HAPPEN, YES.

10 Q AND SO NO MATTER WHAT THE ISP DOES, IT MAY NOT
11 DO WHAT YOU WANT IT TO DO TO STOP THE SALE OF THE
12 COUNTERFEIT PRODUCTS?

13 A THIS IS NOT TRUE.

14 Q WHY IS IT NOT TRUE?

15 A BECAUSE, FIRST OF ALL, IF WE'RE FACING A MORE
16 INNOCENT INFRINGER, AFTER HIS WEB SITE HAS BEEN
17 TAKEN DOWN, HE WOULD UNDERSTAND THAT WHAT HE'S
18 DOING IS WRONG AND HE WOULDN'T NECESSARILY CONTINUE
19 DOING IT.

20 Q WE'RE TALKING ABOUT -- I'D LIKE TO DIRECT YOUR
21 ATTENTION PARTICULARLY TO THE PROFESSIONAL
22 COUNTERFEITER THAT YOU MENTIONED EARLIER.

23 A WELL, AS I PREVIOUSLY MENTIONED IF WE NOTICE
24 THAT THE WEB SITE KEEPS MOVING FROM ONE SERVER TO
25 ANOTHER, WE WOULD STOP NOTIFYING THE SUBSEQUENT WEB

1 HOST AND WE WOULD FOCUS ON A MORE DETERRENT ACTION.

2 Q AND WHAT MIGHT THAT BE?

3 A THAT MIGHT BE A CRIMINAL OR CIVIL PROSECUTION
4 AGAINST THE OPERATOR OF THE WEB SITE.

5 Q AND IN THE UNITED STATES OR SOMEWHERE ELSE?

6 A IT DEPENDS ON WHERE HE'S LOCATED.

7 Q ALL OF THE WEB SITES THAT YOU HAVE TESTIFIED
8 ABOUT IN THE LAST TWO DAYS HAVE BEEN LOCATED IN
9 CHINA; IS THAT RIGHT?

10 A I THINK SO. I THINK THAT ALL OF THEM HAVE
11 BEEN LOCATED IN CHINA, YES.

12 Q SO AS FAR AS YOU KNOW BASED ON YOUR
13 INVESTIGATION ALL OF THE MANUFACTURING AND ALL OF
14 THE SALES OCCUR IN CHINA?

15 A MOST OF THE COUNTERFEIT PRODUCTS INDEED ARE
16 PRODUCED IN CHINA. THE SALES -- THESE WEB SITES
17 STARTED TO THE U.S. MARKET AND THE REASON WHY THESE
18 WEB SITES ARE HOSTED HERE IN CALIFORNIA IS BECAUSE
19 THE CHINESE OPERATORS OF THESE WEB SITES REQUIRE
20 HIGH QUALITY INFRASTRUCTURE BASED HERE IN THE
21 UNITED STATES TO TARGET AMERICAN CUSTOMERS.

22 THE PROBLEM IS THAT THEIR WEB SITES ARE
23 HOSTED IN CHINA IS THAT THE CONNECTION TIME IS TOO
24 LONG; THE RESPONSE TIME IS TOO LONG; AND USUALLY
25 THEIR AMERICAN CUSTOMERS GIVE UP BECAUSE THE WEB

1 SITE ULTIMATELY DOESN'T WORK WELL.

2 AND BY THE WAY, THIS IS AN ARGUMENT USED
3 BY DEFENDANTS ON THEIR WEB SITES TO MARKET THEIR
4 PRODUCTS.

5 Q ALL RIGHT. NOW -- SO YOU AGREE THAT THE
6 MANUFACTURING OF ALL OF THESE COUNTERFEITS THAT
7 YOU'RE TALKING ABOUT OCCURRED IN CHINA.

8 ARE THE PEOPLE SELLING THE PRODUCTS IN
9 CHINA AS FAR AS YOU KNOW?

10 A AS FAR AS I KNOW THE SELLER IS LOCATED IN
11 CHINA AND THE CUSTOMERS ARE LOCATED IN THE UNITED
12 STATES.

13 Q ALL RIGHT. WELL, THEY'RE LOCATED ALL OVER THE
14 WORLD, AREN'T THEY?

15 A OF COURSE.

16 Q WELL, NOW, ISN'T IT ALSO TRUE THAT YOU DON'T
17 KNOW THE IDENTITY OF ANY OF THE PEOPLE SELLING
18 THESE PRODUCTS THAT YOU HAVE TALKED ABOUT HERE IN
19 THE LAST TWO DAYS? YOU DON'T KNOW WHO THE PEOPLE
20 ARE THAT ARE BEHIND ESHOES99, FOR EXAMPLE?

21 A WELL, THERE ARE MANY WEB SITES. THERE ARE
22 MORE THAN 100. SOME OF THEM WE HAVE BEEN
23 SUCCESSFUL TO IDENTIFY THE OPERATOR AND SOME OF
24 THEM NOT.

25 Q OFTEN YOU CANNOT?

1 A I'M SORRY?

2 Q YOU OFTEN CANNOT IDENTIFY THE OPERATOR OF THE
3 WEB SITE; IS THAT RIGHT?

4 A FOR CHINESE OPERATORS, I HAVE TO SAY IT'S NOT
5 EASY TO IDENTIFY.

6 Q WHY IS IT NOT EASY?

7 A IT'S NOT EASY TO -- THE WEB SITES TARGET
8 AMERICAN CUSTOMERS OR IN MANY CASES ENGLISH
9 SPEAKING CUSTOMERS. SO IF AN INVESTIGATOR
10 APPROACHES THEM IN ANOTHER LANGUAGE THAN CHINESE,
11 IF A LAWFUL INVESTIGATOR IS USED, FOR EXAMPLE, THE
12 WEB SITE OPERATORS BECOME SUSPICIOUS AND IT'S VERY
13 DIFFICULT TO ESTABLISH A PRETEXT COMMUNICATION
14 WHICH WOULD ALLOW THE INVESTIGATOR TO IDENTIFY WHO
15 IS BEHIND THE WEB SITE.

16 Q DO THE WEB -- DO THE OPERATORS OF THIEVES WEB
17 SITES THAT YOU COMPLAIN ABOUT OFTEN GIVE FALSE
18 INFORMATION ABOUT THEIR IDENTITY IN YOUR
19 EXPERIENCE?

20 A WELL, THEY JUST DON'T PROVIDE IDENTIFICATION
21 INFORMATION.

22 Q DO YOU GET FALSE INFORMATION ABOUT THE
23 ADDRESSES THAT THEY'RE USING FROM THE LOCATIONS
24 FROM WHICH THEY OPERATE?

25 A VERY OFTEN THEY WILL PROVIDE INFORMATION ABOUT

1 A BOOTH WITHIN THE LEATHER MARKET IN GUANG ZOU IN
2 CHINA AND ON THIS MARKET THERE ARE HUNDREDS OF
3 BOOTHS.

4 Q SO A BOOTH IDENTIFICATION REALLY DOESN'T DO
5 YOU ANY GOOD?

6 A NOT NECESSARILY. AGAIN, YOU'RE ASKING ME TO
7 RESPOND WITH A GENERAL ANSWER TO HUNDREDS OF
8 PARTICULAR SITUATIONS.

9 Q WELL, DO YOU EVER TAKE ACTION AGAINST THESE
10 COUNTERFEITERS IN CHINA?

11 A YES, WE DO.

12 Q IN FACT, YOU TESTIFIED THAT LOUIS VUITTON HAS
13 AN OFFICE IN HONG KONG?

14 A YES.

15 Q AND WHAT SORT OF ACTIONS DO YOU TAKE THERE IN
16 ORDER TO STOP THIS COUNTERFEIT?

17 A WELL, FIRST OF ALL, WE COOPERATE WITH LOCAL
18 CUSTOMS BOTH IN MAINLAND, CHINA AND IN HONG KONG TO
19 ATTEMPT TO STOP THE COUNTERFEIT GOODS FROM LEAVING
20 THESE TERRITORIES.

21 WE ALSO ORGANIZE SEVERAL RAIDS EVERY
22 MONTHS AGAINST PRODUCTION FACILITIES. AND WHEN WE
23 SUCCEED IN IDENTIFYING SPECIFICALLY A WEB SITE
24 OPERATOR, WE TRY TO GET PROSECUTION IN CHINA.

25 Q DO YOU, IN FACT, PROSECUTE OR FILE LAWSUITS OR

1 CRIMINAL CHARGES IN CHINA AGAINST THESE
2 COUNTERFEITERS?

3 A YES, WE DO.

4 Q IS THAT EFFECTIVE?

5 A SOMETIMES IT IS. SOMETIMES WE CANNOT OBTAIN
6 COOPERATION FROM LOCAL AUTHORITIES.

7 I MEAN, WORKING IN ENFORCEMENT IN CHINA
8 IS VERY, VERY DIFFICULT.

9 Q CHINA IS ACTUALLY A MAJOR MARKET FOR THE SALE
10 OF GENUINE LOUIS VUITTON PRODUCT, IS IT NOT?

11 A YES.

12 Q AND ISN'T IT INCREASING THERE -- YOUR SALES
13 THERE ARE EVEN INCREASING DESPITE ALL OF THE
14 COUNTERFEITING?

15 MR. COOMBS: OBJECTION, YOUR HONOR.

16 THE COURT: SUSTAINED.

17 BY MR. LOWE:

18 Q HAS LOUIS VUITTON BEEN DAMAGED BY THE
19 COUNTERFEITING THAT YOU HAVE TALKED ABOUT IN ANY
20 MEASURABLE DOLLAR WAY?

21 A IT'S VERY DIFFICULT TO PUT A DOLLAR AMOUNT BUT
22 LOUIS VUITTON HAS BEEN DAMAGED, YES.

23 Q AND HAVE YOU LOST ANY SALES BECAUSE OF THE
24 COUNTERFEITING?

25 A CERTAINLY.

1 Q HOW DO YOU KNOW?

2 A I PRESUME.

3 Q YOU PRESUME IT. YOU DON'T REALLY HAVE ANY
4 EVIDENCE TO SHOW THAT, DO YOU?

5 A NO.

6 Q NOW, YESTERDAY YOU TALKED A BIT ABOUT THE COST
7 OF THESE BAGS.

8 ISN'T IT TRUE THAT MANY OF THESE BAGS
9 THAT WE HAVE BEEN TALKING ABOUT COST, OH, \$2,000 OR
10 \$3,000 TO GET A GENUINE BAG?

11 A SOME OF THEM, YES.

12 Q AND IN YOUR EXPERIENCE WHAT IS THE USUAL COST
13 OF A KNOCKOFF OF THE SAME BAG?

14 A IT DEPENDS WHERE YOU BUY IT. IF YOU BUY IT
15 DIRECTLY IN CHINA ON THE MARKET IT'S PROBABLY
16 AROUND \$20 TO \$50.

17 Q AND IF YOU BUY IT THROUGH SOME INTERNET SITE,
18 HOW MUCH WOULD IT COST?

19 A BETWEEN \$100 AND \$200.

20 Q OKAY. WOULD YOU AGREE THAT THE PEOPLE WHO
21 THINK THAT IT'S A GOOD THING TO BUY A COUNTERFEIT
22 BAG OR A KNOCKOFF ARE NOT LIKELY TO BUY A GENUINE
23 PRODUCT?

24 MR. COOMBS: OBJECTION, YOUR HONOR.

25 THE COURT: SUSTAINED.

1 BY MR. LOWE:

2 Q WOULD YOU AGREE THERE'S DIFFERENT MARKETS FOR
3 THE GENUINE BAGS AND THE KNOCKOFF BAGS, DIFFERENT
4 GROUPS OF PEOPLE?

5 MR. COOMBS: OBJECTION, YOUR HONOR.

6 THE COURT: WELL, GIVEN HIS POSITION, I
7 THINK HE MIGHT BE ABLE TO ANSWER THE QUESTION AS TO
8 WHETHER THE MARKET IS DIFFERENT.

9 ALTHOUGH THIS DOES CARRY HIM INTO AN
10 EXPERTISE THAT PERHAPS YOU HAVEN'T LAID A
11 FOUNDATION THAT HE'S IN, BUT I THINK BASED UPON
12 WHAT WE HAVE HEARD THAT'S A GENERAL QUESTION THAT I
13 WOULD PERMIT THE WITNESS TO ANSWER AS TO WHETHER
14 IT'S A DIFFERENT MARKET.

15 YOU MIGHT WANT TO DEFINE WHAT YOU MEAN BY
16 "MARKET," BECAUSE MARKET COULD MEAN USING THE
17 INTERNET OR RETAIL STORES.

18 BY MR. LOWE:

19 Q BY MARKET, MR. LIVADKIN, I MEAN A GROUP OF
20 PEOPLE WHO HAVE AN INTEREST IN BUYING CERTAIN
21 PRODUCTS AND PERHAPS WHAT I'M SUGGESTING BY MY
22 QUESTION IS THAT THERE MIGHT BE MORE THAN ONE
23 MARKET FOR LOUIS VUITTON PRODUCTS OR KNOCKOFF
24 PRODUCTS. WOULD YOU AGREE THAT THERE MIGHT BE
25 DIFFERENT MARKETS FOR THE GENUINE VERSUS THE

1 KNOCKOFF PRODUCTS?

2 A WELL, A PERSON WILLING TO PURCHASE A LOUIS
3 VUITTON BAG, A GENUINE LOUIS VUITTON BAG COULD BE
4 TEMPTED TO BUY A CHEAPER FAKE. SO THAT WOULD BE
5 THE SAME MARKET.

6 Q WOULD YOU BELIEVE THAT POTENTIAL BUYERS OF
7 LOUIS VUITTON PRODUCTS KNOW THAT THEY'RE EXPENSIVE
8 PRODUCTS BECAUSE THEY'RE LUXURY PRODUCTS?

9 A IT'S NOT THE GENERAL RULE.

10 Q PEOPLE WHO BUY LOUIS VUITTON PRODUCTS DON'T
11 KNOW THAT THEY'RE EXPENSIVE?

12 A YES, PEOPLE WHO BUY LOUIS VUITTON. OTHERS
13 WOULD KNOW, I GUESS, THAT WHAT IS THE GENERATED
14 PRICE, THE PRICE LEVEL UNDER WHICH OUR PRODUCTS ARE
15 OFFERED.

16 Q SO IF THEY EVER WENT INTO A LOUIS VUITTON
17 STORE, THEY CERTAINLY HAVE SEEN THE HIGH PRICES,
18 HAVEN'T THEY?

19 A YES.

20 Q AND YOUR ADVERTISING OF LOUIS VUITTON PRODUCTS
21 DOESN'T SUGGEST THAT YOU SELL THEM CHEAPLY, DOES
22 IT?

23 A NO.

24 Q IN FACT, DIDN'T YOU TESTIFY YESTERDAY THAT
25 LOUIS VUITTON WANTS ITS PRODUCTS TO BE THE SYMBOL

1 OF LUXURY IN THE WORLD?

2 A YES.

3 Q AND SO BUYING A LUXURY PRODUCT COSTS MORE
4 MONEY THAN A NONLUXURY PRODUCT, WOULDN'T YOU AGREE?

5 A YES.

6 Q SO IF A PERSON ENCOUNTERS AN ADVERTISEMENT,
7 FOR EXAMPLE, ON THE INTERNET FOR A LOUIS VUITTON
8 BAG FOR \$50 OR \$100 OR \$200, WOULD YOU AGREE THAT
9 THEY PROBABLY KNOW IT'S NOT A GENUINE PRODUCT?

10 A NO, BECAUSE THERE ARE CERTAIN WEB SITES
11 SELLING COUNTERFEITS PRETENDING THEY'RE SELLING
12 GENUINE PRODUCTS. AND THEY JUSTIFY BY EXPLAINING
13 TO A POTENTIAL CUSTOMERS THAT THEY'RE WHOLESALERS
14 OR THEY HAVE A VERY SECRET SOURCE OBTAINING VERY
15 GOOD DEALS AND PEOPLE BELIEVE THAT.

16 Q DO YOU THINK THAT SOMEONE WHO IS WILLING TO
17 SPEND \$2,000 OR \$3,000 FOR A HANDBAG WOULD ACTUALLY
18 BE DECEIVED BY THAT SORT OF ADVERTISING?

19 A YES.

20 Q YESTERDAY YOU TESTIFIED ABOUT THE LOCATION OF
21 PRODUCTION OF THE BAGS, AND I BELIEVE THAT YOU SAID
22 THAT NO COMPLETED BAG OR LOUIS VUITTON PRODUCT WAS
23 MADE IN ASIA.

24 DID I UNDERSTAND THAT CORRECTLY?

25 A COULD YOU REPEAT YOUR QUESTION, PLEASE.

1 Q DID YOU -- I BELIEVE I UNDERSTOOD YOU TO SAY
2 YESTERDAY THAT NO COMPLETED LOUIS VUITTON WAS
3 MANUFACTURED IN ASIA; IS THAT CORRECT?

4 A YES.

5 Q ARE ANY PARTS MANUFACTURED IN ASIA?

6 A VERY SMALL PARTS COULD BE INDEED SOURCED FROM
7 ASIA.

8 Q IS IT POSSIBLE IF THERE IS ANY LEAKAGE OF
9 THOSE OR THEFT OF THOSE PARTS THAT IT MIGHT GET
10 ONTO, LET'S SAY, THE BLACK MARKET OR THE
11 COUNTERFEIT MARKET?

12 A WELL, WE'RE SPEAKING ABOUT, FOR EXAMPLE,
13 WHEELS OF A TRAVEL SUITCASE. SO IF THERE IS AN
14 INVENTOR OF THESE WHEELS THAT HAS BEEN INSTALLED, I
15 BELIEVE THERE COULD BE POTENTIALLY A LEAKAGE BUT
16 NOT --

17 Q SO JUST SMALL PARTS YOU THINK?

18 A YES.

19 Q OKAY. SO THAT SUPPORTS YOUR VIEW THAT IT'S
20 UNLIKELY THAT ANY SIGNIFICANT QUANTITY OF GENUINE
21 PRODUCTS COULD ACTUALLY COME OUT OF ASIA?

22 A THERE ARE NO FINISHED PRODUCTS COMING FROM
23 ASIA UNLESS SOMEONE HAS ROBBED A CONTAINER SENT
24 FROM OUR LOGISTICS CENTER TO ONE OF THE STORES BUT
25 THAT HASN'T HAPPENED FOR YEARS.

1 Q ALL RIGHT. YESTERDAY YOU WERE TALKING ABOUT
2 HOW LOUIS VUITTON, AND MAYBE YOUR DEPARTMENT IN
3 PARTICULAR, LEARNS ABOUT COUNTERFEITERS. AND YOU
4 TALKED ABOUT YOUR CUSTOMER SERVICE DEPARTMENT AND
5 YOU ALSO SAID THAT YOU HAD SERVICE PROVIDERS FOR
6 ON-LINE DISTRIBUTION, IF I UNDERSTOOD YOU
7 CORRECTLY, THAT MAY PROVIDE INFORMATION TO YOU.

8 IS THAT -- DID I UNDERSTAND THAT
9 CORRECTLY?

10 A NO. I SAID THAT INFORMATION ABOUT SALES OF
11 COUNTERFEITS COULD COME FROM OUR -- FROM VARIOUS
12 SERVICE PROVIDERS SUCH AS TRADEMARK AGENTS, LAWYERS
13 OR INVESTIGATORS.

14 Q WERE THOSE THE SERVICE PROVIDERS THAT YOU WERE
15 TALKING ABOUT?

16 A YES.

17 Q OKAY. I BELIEVE THAT YOU MENTIONED THAT LOUIS
18 VUITTON ALSO MONITORS SEARCH ENGINES LOOKING FOR
19 COUNTERFEIT PRODUCTS?

20 A YES.

21 Q AND WHO DOES THAT?

22 A I DO AND AS WELL AS MY TEAM.

23 Q ALL RIGHT. SO ARE YOU TALKING ABOUT GOOGLE
24 AND YAHOO AND ALL OF THE OTHER SEARCH ENGINES OUT
25 THERE?

1 A YES.

2 Q AND DO YOU FIND THAT THEY ROUTINELY BRING YOU
3 LOTS OF RESULTS OF POTENTIALLY COUNTERFEIT
4 PRODUCTS?

5 A YES.

6 Q ARE THEY IN THE HUNDREDS OR THOUSANDS WHEN YOU
7 MAKE A SEARCH OF LOUIS VUITTON BAGS OR SOMETHING?

8 A WELL, WE WOULD USUALLY -- AS I SAID, WE WOULD
9 GIVE PRIORITY TO THE WEB SITES THAT WE FIND ON THE
10 FIRST TO SECOND PAGES OF RESULTS ON SEARCH ENGINES.

11 ANYTHING THAT IS BEYOND THE SECOND PAGE
12 USUALLY WE DO NOT LOOK AT.

13 Q WHY IS THAT?

14 A THEY JUST DON'T BOTHER GOING ON THE FURTHER
15 PAGES. AND FOR US IF A COUNTERFEIT OFFER IS NOT
16 VISIBLE OR HAS LOW VISIBILITY ON THE INTERNET, THAT
17 MAKES IT LESS OF A PROBLEM.

18 Q ISN'T IT TRUE YOU HAVE NO EVIDENCE OF THE
19 PARTNERSHIP BETWEEN THE DEFENDANTS AND THEIR
20 RESELLERS?

21 A I HAVE NO INFORMATION ABOUT THAT.

22 Q ISN'T IT TRUE THAT YOU HAVE NO EVIDENCE OF ANY
23 PARTNERSHIP BETWEEN ANY OF THE DEFENDANTS AND ANY
24 WEB SITE OR COUNTERFEIT?

25 A I HAVE NO INFORMATION ABOUT THAT. AS FAR AS

1 RESELLERS ARE CONCERNED, WE CAN CONDUCT BUSINESS
2 DEALINGS FROM THE FACT THAT RECENTLY RESELLERS
3 STARTED APPEARING ON THE IP HOST. SO IF DEFENDANTS
4 AS AN UPSWING PROVIDER HAS DESIGNATED THEIR
5 RESELLERS AS A DOWNSTREAM PROVIDER, IT MEANS FOR US
6 THAT THERE ARE SOME BUSINESS DEALINGS BETWEEN THEM.

7 Q I'M SORRY. HOW DOES IT SHOW THAT THERE'S A
8 BUSINESS DEALING OTHER THAN RENTING SPACE TO THE
9 RESELLER?

10 A WELL, RENTING SPACE IS THE BUSINESS IT IS IN.

11 Q WELL, IT'S RENTING SPACE AND AN IP ADDRESS,
12 BUT IS THERE ANY OTHER EVIDENCE OF ANY OTHER
13 BUSINESS DEALINGS?

14 A UNLESS I DON'T UNDERSTAND WHAT YOU'RE TELLING
15 ME, FOR ME RENTING SPACE TO SOMEONE IS A BUSINESS
16 DEALING.

17 Q MY QUESTION, SIR, DO YOU HAVE ANY EVIDENCE OF
18 ANY OTHER BUSINESS DEALING BETWEEN ANY OTHER
19 RESELLER AND ANY OTHER DEFENDANT OTHER THAN RENTING
20 A SERVER AND AN IP ADDRESS AND SOME BANDWIDTH?

21 A I HAVEN'T SEARCHED FOR THEM BECAUSE IT'S NOT
22 REALLY MY BUSINESS.

23 Q WELL, THEN YOU HAVE NO INFORMATION ABOUT THAT,
24 NO EVIDENCE; RIGHT?

25 A YES.

1 Q AND DO YOU KNOW WHAT THE DEFENDANTS AKANOC
2 SOLUTIONS AND MANAGED SOLUTIONS, INC., CHARGE FOR
3 SERVERS AND IP ADDRESSES AND BANDWIDTH ON A MONTHLY
4 BASIS?

5 A I DON'T.

6 Q AND DO YOU KNOW WHETHER IT'S BETWEEN \$55 TO
7 \$70 TO \$80 A MONTH?

8 A NO.

9 Q AND YOU HAVE NO INFORMATION OR EVIDENCE THAT
10 THE DEFENDANTS GET ANY PART OF THE PROFIT FROM ANY
11 SALE OF ANY COUNTERFEIT BAG; ISN'T THAT TRUE?

12 A NO, I DON'T.

13 Q DO YOU HAVE ANY EVIDENCE OF ANY DIRECT
14 CONNECTION WITH ANY -- BETWEEN ANY DEFENDANT AND
15 ANYBODY SELLING COUNTERFEIT PRODUCTS?

16 A NO.

17 Q DO YOU HAVE ANY EVIDENCE THAT ANY DEFENDANT
18 CREATED ANY WEB SITE THAT IS USED BY ANY
19 COUNTERFEITER?

20 A NO, I DON'T.

21 Q DO YOU HAVE ANY EVIDENCE THAT ANY DEFENDANT
22 OPERATED OR ADVERTISED OR PROMOTED ANY WEB SITE
23 SELLING COUNTERFEIT PRODUCTS?

24 A NO.

25 Q DO YOU HAVE ANY EVIDENCE THAT ANY OF THE

1 DEFENDANTS ADVERTISED ANY INFRINGING USE OF THE
2 SERVERS SUCH AS "COME HERE AND WE'LL HELP YOU SELL
3 COUNTERFEIT PRODUCTS"? HAVE YOU SEEN ANY
4 ADVERTISEMENT LIKE THAT?

5 A NO.

6 Q THANK YOU. DO YOU HAVE ANY EVIDENCE THAT THE
7 DEFENDANTS EVER INSTRUCTED ANY OUTSIDE OPERATOR OF
8 HOW TO ENGAGE IN THE INFRINGING USE OF ITS SERVERS?

9 A CAN YOU REPEAT, PLEASE.

10 Q DO YOU HAVE ANY EVIDENCE THAT ANY OF THE
11 DEFENDANTS HAVE EVER INSTRUCTED ANY WEB SITE
12 OPERATOR HOW TO USE THEIR SERVERS FOR INFRINGEMENT?

13 A WELL, I BELIEVE I HAVE CIRCUMSTANTIAL EVIDENCE
14 OF ALL OF THIS. I DON'T HAVE DIRECT EVIDENCE. I
15 HAVE CIRCUMSTANTIAL EVIDENCE, EVEN THE PATTERN OF
16 CONDUCT OF THE DEFENDANTS, THAT'S WHAT I CAN
17 DEDUCT.

18 Q WOULD YOU PLEASE TAKE A LOOK AT YOUR
19 DEPOSITION. I WOULD DIRECT YOUR ATTENTION TO PAGE
20 159. IN PARTICULAR LINES 18 TO 22. DURING YOUR
21 DEPOSITION ON APRIL 23RD, 2008 --

22 A I'M SORRY. WHAT PAGE?

23 Q I'M SORRY. 159.

24 A 159?

25 Q YES. HAVE YOU FOUND IT?

1 A YES.

2 Q LINES 18 TO 22 IS WHAT I'M DIRECTING YOUR
3 ATTENTION TO.

4 IN THAT DEPOSITION WAS THIS QUESTION
5 ASKED AND THIS ANSWER GIVEN: "WHAT EVIDENCE DOES
6 LOUIS VUITTON HAVE THAT ANY OF THE DEFENDANTS
7 ADVERTISED AN INFRINGING USE OF ITS SERVERS OR
8 INSTRUCTED ANY WEB SITE OPERATORS HOW TO ENGAGE IN
9 ANY INFRINGING USE OF ITS SERVER?

10 "ANSWER: I DON'T THINK WE HAVE ANY."

11 WAS THAT QUESTION ASKED AND THAT ANSWER
12 GIVEN?

13 A YES.

14 Q THANK YOU. ISN'T IT TRUE THAT YOU HAVE NO
15 EVIDENCE THAT THE DEFENDANTS HAD ANY AFFIRMATIVE
16 INTENT THAT THEIR INTERNET HOSTING SERVICES WERE
17 USED TO -- WOULD BE USED TO INFRINGE ANY RIGHTS OF
18 LOUIS VUITTON?

19 A NO.

20 Q NO YOU DON'T HAVE ANY EVIDENCE? IS THAT WHAT
21 YOU'RE SAYING?

22 A YES.

23 Q THANK YOU. ISN'T IT TRUE THAT YOU HAVE NO
24 EVIDENCE THAT THE DEFENDANTS RECEIVED ANY MONEY
25 FROM THE SALE OF INFRINGING PRODUCTS THAT MAY HAVE

1 BEEN HOSTED ON THEIR SERVERS?

2 A NO, I DON'T.

3 Q ISN'T IT TRUE THAT YOU HAVE NO EVIDENCE THAT
4 THE DEFENDANTS RECEIVED ANY COMMISSION OR
5 PERCENTAGE OF SALES OR ANY EXTRA MONEY, EXCEPT FOR
6 THE HOSTING FEE FROM ANY WEB SITE SELLING
7 INFRINGING PRODUCTS?

8 A I DON'T HAVE SUCH EVIDENCE.

9 Q ISN'T IT TRUE THAT YOU HAVE NO EVIDENCE THAT
10 THE DEFENDANTS, ANY OF THEM, INTENTIONALLY INDUCED
11 OR CAUSED ANY WEB SITE OPERATORS TO INTENTIONALLY
12 INFRINGE THE RIGHTS OF LOUIS VUITTON?

13 A AGAIN, CIRCUMSTANTIAL EVIDENCE WE HAVE.
14 DIRECT EVIDENCE, NO.

15 Q DIRECTING YOUR ATTENTION TO PAGE 171 OF YOUR
16 DEPOSITION, AND PARTICULARLY LINES 21 TO 24.

17 DURING THAT DEPOSITION WAS THIS QUESTION
18 ASKED AND THIS ANSWER GIVEN: WHAT EVIDENCE DOES
19 LOUIS VUITTON HAVE THAT ANY OF THE DEFENDANTS
20 INTENTIONALLY INDUCED OR CAUSED THE THIRD PARTY WEB
21 SITE OPERATORS TO INFRINGE ANY RIGHTS OF LOUIS
22 VUITTON?

23 A I'M SORRY. WHAT PAGE WAS THAT?

24 Q 171, LINES 21 TO 24.

25 WAS THIS QUESTION ASKED AND THIS ANSWER

1 GIVEN: "WHAT EVIDENCE DOES LOUIS VUITTON HAVE THAT
2 ANY OF THE DEFENDANTS INTENTIONALLY INDUCED OR
3 CAUSED THE THIRD PARTY WEB SITE OPERATORS TO
4 INFRINGE ANY RIGHTS OF LOUIS VUITTON?

5 "ANSWER: I DON'T."

6 A THE QUESTION THAT YOU'RE ASKING ME TODAY IS
7 DOES IT REFER TO THE ACTUAL MOMENT OR ARE YOU
8 PLACING YOURSELF IN THE TIME WHEN I WAS DEPOSED?

9 Q IS IT TRUE THAT AT THE TIME THAT YOU WERE
10 DISPOSED YOU SAID YOU HAD NO EVIDENCE?

11 A AT THE TIME I WAS DEPOSED, NO.

12 Q THANK YOU.

13 A YES, IT WAS TRUE.

14 Q WHAT EVIDENCE DO YOU HAVE TODAY, IF ANY, THAT
15 IS DIFFERENT THAN THE TESTIMONY AT YOUR DEPOSITION
16 THAT THERE IS ANY INTENTIONAL INDUCEMENT BY THE
17 DEFENDANTS TO CAUSE ANY WEB SITE OPERATOR TO
18 INFRINGE ANY RIGHT OF LOUIS VUITTON?

19 A I BELIEVE WE HAVE CIRCUMSTANTIAL EVIDENCE.

20 Q WELL, WHAT IS THAT?

21 A WE -- FROM THE PATTERN OF CONDUCT OF THE
22 DEFENDANTS WHICH HAVE BEEN TO SYSTEMATICALLY ALLOW
23 ALL OF THESE DOZENS OF COUNTERFEIT WEB SITES TO
24 PERSISTENTLY COME ON THEIR SERVICE, WE HAVE
25 DEDUCTED THAT IN A CERTAIN, IN A CERTAIN WAY

1 DEFENDANTS ARE ENCOURAGING THIS INFRINGING
2 ACTIVITY.

3 Q ISN'T THAT JUST SPECULATION?

4 A NO.

5 Q YOU HAVE NO EVIDENCE OF ANY DIRECT CONNECTION
6 BETWEEN ANY OF THE INFRINGEMENTS AND THE
7 DEFENDANTS; ISN'T THAT TRUE?

8 A BETWEEN WHAT? I'M SORRY.

9 Q YOU HAVE NO DIRECT EVIDENCE OF ANY CONNECTION
10 BETWEEN ANY INFRINGEMENTS AND THE DEFENDANTS; ISN'T
11 THAT TRUE?

12 A CAN YOU DEFINE "INFRINGEMENTS"?

13 Q WHAT YOU SUED THESE DEFENDANTS FOR, THE DIRECT
14 INFRINGEMENTS YOU'RE SAYING THAT THEY CONTRIBUTED
15 TO, THAT INFRINGEMENT OF COUNTERFEIT -- OF
16 TRADEMARK AND COPYRIGHTS OF LOUIS VUITTON THAT YOU
17 TESTIFIED TO THE LAST TWO DAYS?

18 A NO.

19 Q YOU HAVE NO EVIDENCE OF THAT; IS THAT RIGHT?

20 A YES.

21 Q ISN'T IT TRUE THAT YOU HAVE NO EVIDENCE THAT
22 THE DEFENDANTS PROVIDED ANY WEB HOSTING SERVICES
23 WITH THE OBJECT OR INTENT OF PROMOTING ITS USE TO
24 INFRINGE LOUIS VUITTON'S TRADEMARKS OR THE
25 TRADEMARKS OF ANYONE?

1 A I DO NOT HAVE DIRECT EVIDENCE.

2 Q ISN'T IT TRUE THAT YOU HAVE NO ACTUAL EVIDENCE
3 THAT THE DEFENDANTS ENGAGED IN ANY PURPOSEFUL
4 CULPABLE EXPRESSION OR CONDUCT AS OPPOSED TO ANY
5 MERE KNOWLEDGE WITH REGARD TO ANY MERE INFRINGEMENT
6 BY ALLEGED WEB SITES USING ITS SERVERS?

7 A NO.

8 Q ISN'T IT TRUE THAT YOU HAVE NO ACTUAL EVIDENCE
9 THAT THE DEFENDANTS ACTUALLY CONTROLLED ANY WEB
10 SITES, SUCH AS OPERATING THEMSELVES OR CAUSING
11 SOMEONE ELSE TO OPERATE THEM OR MANIFESTING ANY
12 CONTROL OVER THOSE WEB SITES?

13 A WE HAVE EVIDENCE THAT THEY HAVE CONTROL.

14 Q WHAT EVIDENCE DO YOU HAVE OF CONTROL?

15 A WELL, WE HAVE TESTIMONY OF OUR EXPERT.

16 THE COURT: LET'S USE THIS SUBJECT MATTER
17 CHANGE CONTROL, IF YOU'RE GOING TO PURSUE THAT, AS
18 AN OPPORTUNITY TO TAKE A MID-AFTERNOON BREAK. IT'S
19 ABOUT 2:30. WE'LL COME BACK IN ABOUT TEN MINUTES.

20 MR. LOWE: THANK YOU.

21 (WHEREUPON, A RECESS WAS TAKEN.)

22 THE COURT: VERY WELL. YOU MAY RESUME
23 YOUR EXAMINATION.

24 MR. LOWE: MAY IT PLEASE THE COURT.

25 Q MR. LIVADKIN, IN YOUR TESTIMONY EARLIER TODAY

1 YOU TALKED ABOUT THE EXPERIENCE THAT YOU HAVE HAD
2 OR LOUIS VUITTON HAD HAD WITH COMPETITORS OF THE
3 DEFENDANTS THAT YOU INDICATED WERE MORE
4 COOPERATIVE.

5 COULD YOU TELL US WHO THOSE COMPETITORS
6 ARE WHO YOU WERE REFERRING TO?

7 A I WAS REFERRING TO A COMPANY CALLED SOFT
8 LAYER.

9 Q SOFT LAYER?

10 A YES.

11 Q AND WAS THERE ANOTHER ONE.

12 A NO. I WAS TALKING ABOUT THEM.

13 Q AND DO YOU KNOW WHETHER SOFT LAYER IS A DOMAIN
14 REGISTRAR AS WELL AS AN ISP?

15 A I DON'T HAVE THIS INFORMATION. I BELIEVE THAT
16 THEY ARE ONLY A WEB HOST.

17 Q ONLY A WEB HOST. SO THEY'RE ONLY IN THE WEB
18 HOSTING BUSINESS AS FAR AS YOU KNOW?

19 A YES.

20 Q AND THEY HAD RESELLERS AS FAR AS YOU
21 UNDERSTOOD?

22 A I UNDERSTOOD THEY HAD RESELLERS.

23 Q YOU ASSUMED THAT?

24 A I VERIFIED THIS INFORMATION AND ACTUALLY AND
25 THIS IS WHAT THEY INFORMED US ABOUT.

1 Q I SEE. MR. LIVADKIN, ISN'T IT TRUE THAT YOU
2 HAVE NO EVIDENCE THAT THE DEFENDANTS HAVE ANY
3 AGENCY OR PARTNERSHIP WITH ANY OF THE WEB SITES
4 INVOLVED IN THIS CASE?

5 THE COURT: YOU'VE ASKED ABOUT
6 PARTNERSHIPS BEFORE. YOU'VE NOW USED "AGENCY" BUT
7 I'LL PERMIT THAT.

8 THE WITNESS: AND WHAT IS THE DIFFERENCE?
9 BY MR. LOWE:

10 Q I'LL TRY TO GIVE A BRIEF ANSWER. AN AGENT HAS
11 THE POWER TO ACT ON BEHALF OF SOMEONE ELSE. SO DO
12 YOU HAVE ANY EVIDENCE THAT ANY OF THE DEFENDANTS
13 HAVE THE POWER TO ACT AND LEGALLY BIND SOMEONE
14 ELSE, ONE OF THE WEB SITES OR THE OPERATORS OF
15 THESE WEB SITES?

16 A PERSONALLY I DON'T.

17 Q AND DOES THE COMPANY, DOES LOUIS VUITTON HAVE
18 ANY SUCH EVIDENCE?

19 A NOT TO MY KNOWLEDGE.

20 Q THANK YOU. ISN'T IT TRUE THAT YOU HAVE NO
21 EVIDENCE THAT THE DEFENDANTS, ANY OF THE DEFENDANTS
22 DIRECTLY CONTROLLED ANY WEB SITES OR OPERATED ANY
23 WEB SITES OR CAUSED SOMEONE ELSE TO OPERATE THESE
24 WEB SITES THAT'S SELLING COUNTERFEITING PRODUCTS?

25 MR. COOMBS: OBJECTION.

1 THE COURT: WELL -- TRY A NEW QUESTION.

2 BY MR. LOWE:

3 Q WELL, I THOUGHT I WAS IN THE MIDDLE OF ASKING
4 THIS WHEN WE BROKE, AND I DON'T BELIEVE I HAD AN
5 ANSWER TO THIS QUESTION.

6 THE COURT: HE ANSWERED BEFORE THAT HE
7 HAD NO INFORMATION THAT THEY OPERATED THE WEB
8 SITES. HE SAID THERE'S A CONTRACT WITH THE RENTING
9 SPACE, AND THAT'S AS FAR AS IT'S GONE.

10 I PERMITTED YOU TO ASK QUESTIONS ABOUT
11 WHAT THEY DON'T DO WHICH ARE NEGATIVES WHICH ARE
12 IMPORTANT, BUT I THINK IT'S BECOMING UNDULY
13 CONSUMPTIVE TO ASK ABOUT THE NEGATIVES WHEN HE'S
14 TESTIFIED ABOUT HIS KNOWLEDGE OF ONLY ONE POSITIVE
15 RELATIONSHIP WITH SOME EDIFICATION IN HIS TESTIMONY
16 ABOUT CIRCUMSTANTIAL EVIDENCE OF OTHER THINGS WHICH
17 YOU HAVE ASKED HIM ABOUT.

18 BUT I'LL ALLOW YOU TO PROCEED. THIS IS
19 CROSS-EXAMINATION, BUT AT SOME POINT I WILL FIND
20 THAT IT'S NOT PRODUCTIVE OF NEW INFORMATION.

21 MR. LOWE: ACTUALLY I JUST HAVE A COUPLE
22 OF QUESTIONS.

23 THE COURT: VERY WELL.

24 BY MR. LOWE:

25 Q I JUST WANT TO CLARIFY, MR. LIVADKIN, AND I

1 APOLOGIZE IF I'VE ASKED THIS BEFORE. BUT DO YOU
2 HAVE ANY EVIDENCE THAT THERE IS ANY DIRECT CONTROL
3 BY THE DEFENDANTS OF ANY OF THE WEB SITES?

4 A YES, THE DEFENDANTS HAVE THE POSSIBILITY TO
5 INTERRUPT AT ANY MOMENT THOSE INFRINGING WEB SITES.

6 Q COULD YOU TAKE A LOOK, PLEASE, AT YOUR
7 DEPOSITION PAGE 174, LINE 23 TO 175, LINE 10.

8 HAVE YOU FOUND THE PLACE?

9 A SO WHAT LINE DO YOU WANT ME TO LOOK AT?

10 Q PAGE 173, LINE 23 BEGINNING THERE.

11 THE COURT: 173 OR 174?

12 MR. LOWE: I BELIEVE IT'S 174. I'M
13 SORRY. 23 -- LINE 23 TO 175, LINE 10. THANK YOU,
14 YOUR HONOR.

15 THE WITNESS: 173, LINE 24?

16 BY MR. LOWE:

17 Q NO, NO. I'M SORRY, I'VE CONFUSED YOU. PAGE
18 174, LINE 23. HAVE YOU FOUND THAT?

19 A YES.

20 Q DURING THAT DEPOSITION OF YOURS WERE THESE
21 QUESTIONS ASKED AND THESE ANSWERS GIVEN:

22 "QUESTION: WHAT EVIDENCE DOES LOUIS
23 VUITTON HAVE THAT ANY OF THE DEFENDANTS DIRECTLY
24 CONTROL ANY OF THE WEB SITES LISTED ON THE
25 COMPLAINT OR ON EXHIBIT A TO THE COMPLAINT EXHIBIT

1 1468-B?

2 "ANSWER: CAN YOU DEFINE 'DIRECT
3 CONTROL'?

4 "QUESTION: WELL, YOU CAN DEFINE IT ANY
5 WAY YOU WOULD LIKE. DO YOU HAVE ANY EVIDENCE OF
6 ANY DIRECT CONTROL?

7 "ANSWER: I, I CANNOT ANSWER THIS
8 QUESTION. I DON'T KNOW WHAT IT'S ABOUT.

9 "QUESTION: WELL, IF THEY OPERATED THE
10 WEB SITES OR THAT THEY CAUSED SOMEONE ELSE TO
11 OPERATE THE WEB SITES OR THEY SOMEHOW MANIFESTED
12 CONTROL OF THE WEB SITES?

13 "ANSWER: I HAVE NO EVIDENCE THAT THEY
14 DIRECTLY OPERATED."

15 WERE THOSE QUESTIONS ASKED AND THOSE
16 ANSWERS GIVEN?

17 MR. COOMBS: OBJECTION, YOUR HONOR, IT'S
18 NOT IMPEACHING.

19 THE COURT: SUSTAINED.

20 BY MR. LOWE:

21 Q DOES LOUIS VUITTON REGULARLY MONITOR THE WEB
22 SITES THAT YOU HAVE ACCUSED OF INFRINGING YOUR
23 PRODUCTS OR YOUR RIGHTS I SHOULD SAY?

24 A COULD YOU REPEAT, PLEASE.

25 Q DOES LOUIS VUITTON REGULARLY MONITOR THE WEB

1 SITES THAT YOU BELIEVE ARE SELLING PRODUCTS THAT
2 INFRINGE THE TRADEMARKS OR COPYRIGHTS OF THE
3 COMPANY?

4 A WHICH WEB SITES ARE YOU REFERRING TO?

5 Q ANY OF THEM? ALL OF THEM? I'M ASKING IF
6 THERE IS ANY MONITORING GOING ON?

7 A DO WE MONITOR THE INTERNET TO FIND NEW WEB
8 SITES OR DO WE MONITOR THOSE THAT ARE ALREADY IN
9 OUR DATABASE?

10 Q WELL, EITHER -- I GUESS I WOULD LIKE TO HAVE
11 YOU ANSWER BOTH OF THOSE QUESTIONS.

12 A WELL --

13 Q WHAT MONITORING?

14 A WELL, OF COURSE WE MONITOR ON A REGULAR BASIS.
15 I ALREADY TESTIFIED ON HOW WE RECEIVE INFORMATION
16 ABOUT NEW INFRINGING WEB SITES.

17 Q AND HOW DOES IT -- HOW DO YOU DO THAT EXACTLY?
18 WHO DOES IT?

19 A WELL, AS I PREVIOUSLY EXPLAINED, WE RECEIVE
20 INFORMATION FROM OUR CUSTOMERS. WE ALSO HAVE A
21 SERVICE PROVIDER WHO GIVES US INFORMATION ABOUT NEW
22 WEB SITES, AND WE ALSO RECEIVE INFORMATION ON A
23 VOLUNTARY BASIS FROM OUR AGENTS, LAWYERS OR
24 INVESTIGATORS.

25 WE ALSO MONITOR SEARCH ENGINES. I

1 BELIEVE YOU ASKED ME A QUESTION, A FOLLOW-UP
2 QUESTION ON THAT A FEW MINUTES AGO.

3 DOES THAT ANSWER YOUR QUESTION?

4 Q YES, IT DOES. WHO IS THE SERVICE PROVIDER
5 THAT YOU'RE REFERRING TO? OR WHAT SORT OF SERVICE
6 PROVIDER IS IT?

7 A IT'S A COMPANY CALLED CSC.

8 Q AND WHAT EXACTLY DO THEY DO FOR YOU?

9 A THEY SCAN THE WEB. THEY MAINTAIN A DATABASE
10 WHICH THEY UPDATE TWICE PER MONTH BY ADDING NEW
11 REFERENCES THAT THEY HAVE FOUND DURING THE
12 SCANNING.

13 Q DO YOU KNOW WHAT THE INITIALS CSC STAND FOR?

14 A CORPORATE -- I FORGET.

15 Q AND WHAT DO YOU DO WITH THE INFORMATION THAT
16 THEY PROVIDE YOU?

17 A WELL, WE DOUBLE-CHECK THE INFORMATION TO
18 CONFIRM THAT THE OFFERS OF PRODUCTS ARE
19 COUNTERFEITS AND THEN WE CREATE A FILE. WE SEND
20 WARNING LETTERS.

21 IF THIS IS UNSUCCESSFUL, WE BUILD FURTHER
22 EVIDENCE THAT WOULD BE USED IN COURT AND WE ISSUE
23 CIVIL OR CRIMINAL ACTIONS.

24 Q HOW MANY PEOPLE WITHIN LOUIS VUITTON MONITOR
25 WEB SITES FOR COUNTERFEIT ACTIVITY?

1 A CURRENTLY FOUR.

2 Q IN YOUR DEPARTMENT; IS THAT RIGHT?

3 A YES.

4 Q AND IS THIS A PART-TIME JOB OR A FULL-TIME JOB
5 FOR THOSE PEOPLE?

6 A IT'S A FULL-TIME JOB.

7 Q DO YOU HAVE ANY IDEA HOW MANY WEB SITES AT ANY
8 GIVEN TIME MIGHT BE SELLING INFRINGING PRODUCTS?

9 A I BELIEVE THOUSANDS.

10 Q DO YOU KNOW HOW MANY WEB SITES THERE ARE
11 ACTIVE AT ANY TIME IN THE WORLD?

12 A NO. MILLIONS PROBABLY.

13 Q MILLIONS?

14 A YEAH.

15 Q ISN'T IT TRUE THAT SOMEONE SELLING INFRINGING
16 PRODUCTS COULD SET UP A WEB SITE UNDER WHATEVER
17 NAME IT WANTED, ABCD OR XYZ OR WHATEVER THEY CHOSE,
18 THEY WOULDN'T HAVE TO USE THE LOUIS VUITTON NAME IN
19 IT?

20 MR. COOMBS: OBJECTION.

21 THE COURT: OVERRULED.

22 THE WITNESS: CAN YOU REPEAT YOUR
23 QUESTION?

24 BY MR. LOWE:

25 Q ISN'T IT TRUE THAT THE PARTY WHO WANTS TO

1 INFRINGE OR SELL INFRINGING PRODUCTS COULD SET UP A
2 WEB SITE WITH ANY SORT OF NAME, ABCD OR XYZ DOT
3 COM, OR THOSE SORTS OF THINGS?

4 A THAT'S TRUE.

5 Q SO YOU CAN'T TELL BY THE NAME OF THE WEB SITE
6 WHETHER IT'S SELLING COUNTERFEIT PRODUCTS?

7 A WELL, THE WEB SITE -- IF THE WEB SITE NAME IS
8 REPLICAVUITTON.COM, DOT NET OR WHATEVER.

9 Q WELL, IF IT DOESN'T HAVE THE COMPANY NAME IN
10 IT, IT'S GOING TO BE DIFFICULT TO KNOW WHETHER THAT
11 PARTICULAR WEB SITE SELLS IT WITHOUT PARTICULARLY
12 LOOKING AT THE WEB SITE; RIGHT?

13 A ONLY FROM LOOKING AT THE DOMAIN NAME, NO,
14 UNLESS IT SPECIFICALLY INDICATES THAT THE WEB SITE
15 DEALS WITH THE REPLICAS OF OUR TRADEMARKS.

16 Q ISN'T IT TRUE THAT YOU HAVE NO EVIDENCE THAT
17 THE DEFENDANTS HAVE MONITORED ANY OF THE WEB SITES
18 THAT ARE AT ISSUE IN THIS CASE?

19 A CAN YOU REPEAT YOUR QUESTION?

20 Q YES. ISN'T IT TRUE THAT YOU HAVE NO EVIDENCE
21 THAT THE DEFENDANTS, ANY OF THEM, MONITORED ANY OF
22 THE WEB SITES THAT ARE AT ISSUE IN THIS CASE IN
23 ORDER TO SEE WHAT THEY'RE SELLING?

24 A I DO HAVE EVIDENCE.

25 Q AND WHAT EVIDENCE IS THAT?

1 A A DOCUMENT PRODUCED BY THE DEFENDANTS AS
2 EXHIBIT 1598.

3 Q AND THAT EXHIBIT SHOWS ACTION TAKEN AFTER
4 RECEIVING COMPLAINTS OF INFRINGING CONDUCT THAT
5 THEY GET FROM YOUR COMPANY?

6 A AFTER RECEIVING COMPLAINTS OR AT THEIR OWN
7 INITIATIVE.

8 Q ALL RIGHT. BUT DOESN'T THAT DOCUMENT JUST
9 INDICATE WHETHER A PARTICULAR WEB SITE AT A
10 PARTICULAR DATE IS USING AN IP ADDRESS THAT IS
11 ASSIGNED TO ONE OF THE DEFENDANT COMPANIES?

12 A IT SHOWS THAT THE DEFENDANTS HAVE MONITORED
13 THE HOSTING STATUS OF THESE DOMAIN NAMES -- OF
14 THESE WEB SITES. SORRY.

15 Q AND HOW DOES IT SHOW THE HOSTING STATUS? WHAT
16 DO YOU MEAN BY THAT?

17 A WELL, THEY VERIFY WHETHER THE WEB SITE IS
18 HOSTED BY THEM AND THEY HAVE TAKEN FURTHER ACTION.

19 Q SO WHAT YOU SEE ON THAT IS IF YOU GET A
20 COMPLAINT, WHAT YOU SEE ON EXHIBIT 1598, IF THEY
21 GET A COMPLAINT ABOUT A PARTICULAR WEB SITE, THEY
22 WILL CHECK TO SEE WHETHER THAT WEB SITE IS USING AN
23 IP ADDRESS THAT IS ASSIGNED TO THEM; IS THAT RIGHT?

24 A I BELIEVE SO.

25 Q AND THEN THEY WILL DETERMINE IF IT IS, WHAT

1 ACTION THEY SHOULD BE TAKEN AND THAT'S REFLECTED ON
2 THAT EXHIBIT AS WELL; IS THAT RIGHT?

3 A WELL, NOT EVERYTHING SEEMS CORRECT TO ME FROM
4 THIS SHEET, BUT IN ANY CASE, IT CONFIRMS THAT THEY
5 DO MONITOR INFRINGING WEB SITES. I BELIEVE THAT
6 WAS THE INITIAL QUESTION.

7 Q DO THEY MONITOR WEB SITES BY LOOKING AT THE
8 WEB SITE TO YOUR KNOWLEDGE?

9 A WELL, UM --

10 Q WHAT THE WEB SITES WERE DOING AS OPPOSED TO
11 WHAT IP ADDRESS THAT THEY'RE USING?

12 MR. COOMBS: OBJECTION, YOUR HONOR.

13 THE COURT: OVERRULED. I'M NOT -- YOU
14 MIGHT LAY A FOUNDATION AS TO HOW HE WOULD KNOW
15 BECAUSE YOUR QUESTION IS BROAD ENOUGH TO INCLUDE
16 INFORMATION THAT MIGHT COME TO HIM FROM HIS COUNSEL
17 OR THIRD PARTIES OR FROM THE DEFENDANTS THEMSELVES.

18 BUT IF IT'S PURELY A KNOWLEDGE QUESTION,
19 DO YOU HAVE KNOWLEDGE THAT ANY DEFENDANT HAS EVER
20 OPENED UP ONE OF THESE SITES AND LOOKED AT WHAT IS
21 THERE, THAT IS A PROPER QUESTION.

22 BY MR. LOWE:

23 Q DO YOU HAVE ANY EVIDENCE THAT THAT HAS EVER
24 HAPPENED?

25 A NO.

1 Q THANK YOU.

2 I HAVE NO FURTHER QUESTIONS AT THIS TIME,
3 YOUR HONOR.

4 THE COURT: ANY REDIRECT?

5 MR. COOMBS: JUST BRIEFLY, YOUR HONOR.

6 **REDIRECT EXAMINATION**

7 BY MR. COOMBS:

8 Q MR. LIVADKIN, IN CROSS-EXAMINATION YOU WERE
9 ASKED ABOUT THE DOMAIN NAME ESHOES99.COM AND ASKED
10 WHY LOUIS VUITTON DID NOT TAKE ACTION AGAINST THE
11 REGISTRAR. AND COULD YOU EXPLAIN WHY YOU WOULD NOT
12 TAKE -- WHY LOUIS VUITTON DOES NOT TAKE ACTION
13 AGAINST THE REGISTRAR OF THE DOMAIN NAME
14 ESHOES99.COM?

15 A WELL, THERE'S TWO ADDITIONAL THINGS. THERE'S
16 THE DOMAIN NAME AND THE WEB SITE ITSELF.

17 THE DOMAIN NAME ESHOES99.COM DOES NOT
18 INTEGRATE ANY OF OUR TRADEMARKS.

19 A DOMAIN NAME THAT WOULD INTEGRATE OUR
20 TRADEMARK WOULD BE REPLICAVUITTON.COM. THE DOMAIN
21 NAME DOT COM CONTAINS THE NAME VUITTON. IN
22 ESHOES99.COM THE WORD CONTAINS THE WORD E AND THE
23 WORD SHOES AND AS WELL AS 99. NONE OF THIS IS A
24 REGISTERED TRADEMARK BY LOUIS VUITTON, AND
25 CONSEQUENTLY WE HAVE NOT CONVEYED WITH THE

1 REGISTRAR.

2 WE WOULD DO THIS WITH A DOMAIN NAME SUCH
3 AS REPLICAVUITTON.COM.

4 AS I PREVIOUSLY EXPLAINED, WE WOULD FILE
5 A UDRP, A UNIFORM DOMAIN RESOLUTION PROCEDURE, THAT
6 DEALS SPECIFICALLY WITH THE ISSUE OF THE DOMAIN
7 NAME INTEGRATING OUR TRADEMARK.

8 Q AND LOUIS VUITTON DOES, IN FACT, USE THAT
9 PROCEDURE TO COVER THE LOUIS VUITTON NAMES THAT
10 DOES INFRINGE ITS TRADEMARK?

11 A YES.

12 Q AND NOW, MR. LOW ASKED YOU A SERIES OF
13 QUESTIONS ABOUT YOUR RELATIONSHIP BETWEEN THE
14 DEFENDANTS AND THE WEB OPERATORS WHOSE SITES ARE
15 HOSTED ON THE DEFENDANTS' SERVERS AND MY QUESTION
16 IS SIMPLY: DO WE KNOW WHO THE OPERATOR IS?

17 A WE DON'T.

18 Q DO WE KNOW WHETHER THE OPERATOR IS, IN FACT,
19 ONE OF THE DEFENDANTS' CUSTOMERS FOR THAT MATTER?

20 A WE DON'T.

21 Q AND WHY IS THAT?

22 A BECAUSE THE DEFENDANTS HAVE NOT INDICATED
23 PROPERLY WHOIS INFORMATION FOR THE IP ADDRESS WHO
24 THOSE CUSTOMERS ARE.

25 MR. COOMBS: THANK YOU, YOUR HONOR. I

1 HAVE NO FURTHER QUESTIONS.

2 THE COURT: ANY FURTHER QUESTIONS?

3 MR. LOWE: NO.

4 THE COURT: THIS LAST -- I DON'T OFTEN
5 ASK QUESTIONS, BUT I WANTED TO CLARIFY THIS LAST
6 RESPONSE. AND DO I UNDERSTAND WHEN YOU SAY THERE'S
7 NOT BEEN PROPER IDENTIFICATION OF THE CUSTOMER, ARE
8 YOU TESTIFYING THAT YOUR UNDERSTANDING IS THAT
9 THERE'S A PLACE WHERE A HOST COMPANY SUCH AS ONE OF
10 THE DEFENDANTS WOULD BE REQUIRED TO REGISTER OR
11 LIST OR SOMEHOW ADVISE AS TO WHO WOULD BE USING THE
12 IP ADDRESS?

13 THE WITNESS: WELL, IT DEPENDS ON WHETHER
14 THE WEB HOST IS A RETAILER OR A WHOLESALER AS OUR
15 DEFENDANTS REPRESENT THEMSELVES.

16 A RETAILER WOULD BE THE COMPANY GO DADDY,
17 THAT'S THE NAME, THEY DEAL DIRECTLY WITH THE PERSON
18 WHO OPERATES THE WEB SITE MEANING IF I WANT TO SET
19 UP A WEB SITE, I'LL GO TO GO DADDY AND ASK THEM TO
20 HOST MY WEB SITE.

21 THE DEFENDANTS HAVE TOLD US THAT THEY'RE
22 WHOLESALERS, MEANING THAT THEY SELL THEIR
23 CYBERSPACE TO OTHER HOSTS, WHICH WE REFER TO AS
24 DOWNSTREAM PROVIDERS WHO THEN HAVE A DIRECT CONTACT
25 WITH THE WEB SITE OPERATORS.

1 THOSE DOWNSTREAM PROVIDERS ARE -- USUALLY
2 THEIR CONTACT DETAILS ARE INDICATED INTO THE IP
3 ADDRESS.

4 THE COURT: I'M SORRY. SAY THAT LAST
5 PART AGAIN. THE DOWNSTREAM PROVIDERS --

6 THE WITNESS: THE DOWNSTREAM PROVIDERS
7 CONTACT DETAILS ARE USUALLY INDICATED INTO THE IP
8 WHOIS INFORMATION.

9 THE COURT: AH. SO IN THE WHOIS
10 INFORMATION -- THIS WHOLE WORLD OF TECHNOLOGY HAS
11 INTRODUCED SOME STRANGE LANGUAGE -- BUT THE WHOIS
12 INFORMATION DOES LIST THE NAMES OF THE DOWNSTREAM
13 PROVIDERS?

14 THE WITNESS: YES. WHEN A PARTICULAR IP
15 ADDRESS HAS BEEN ASSIGNED BY ARIN TO DEFENDANTS,
16 THEY NEED TO INDICATE TO THE WHOIS THEIR CONTACT
17 DETAILS.

18 AND IF THEY'RE ASSIGNED, IF THEY'RE
19 RESELLING SPACE TO OTHER COMPANIES, THEY NEED TO
20 INDICATE THESE OTHER COMPANIES AS A DOWNSTREAM
21 PROVIDER.

22 THE COURT: AND IN THIS CASE, ALTHOUGH WE
23 HAVEN'T SEEN THE EVIDENCE, YOUR UNDERSTANDING IS
24 THAT THE DEFENDANTS HAVE IDENTIFIED THE DOWNSTREAM
25 PROVIDERS.

1 THE WITNESS: THEY HAVE IDENTIFIED THAT
2 THERE IS A DOWNSTREAM PROVIDER, BUT THEY HAVEN'T
3 PROVIDED THE CONTACT DETAILS.

4 THE COURT: AH. SO THEY INDICATED THERE
5 IS A DOWNSTREAM PROVIDER, BUT THEY HAVEN'T GIVEN
6 THE NAME OF THAT DOWNSTREAM PROVIDER.

7 THE WITNESS: WELL, IN CERTAIN OCCASIONS
8 WE CAN SEE A NAME DISPLAYED IN CHINESE BUT THE
9 CONTACT E-MAIL ADDRESS FOR THESE DOWNSTREAM
10 PROVIDER IS AN E-MAIL ADDRESS FOR DEFENDANTS.

11 THE COURT: AH.

12 THE WITNESS: THAT WOULD BE, FOR EXAMPLE,
13 ABUSE@AKANOC.COM WHICH INDICATES TO US THAT THE
14 UPSTREAM PROVIDER, MEANING THE DEFENDANTS, AND THE
15 DOWNSTREAM PROVIDER ARE IN CLOSE RELATIONSHIP
16 BECAUSE --

17 THE COURT: LET ME SLOW YOU DOWN. SO AS
18 I UNDERSTAND IT THE STRUCTURE THAT SHOULD BE
19 FOLLOWED IS THE HOST WOULD ORDINARILY LIST THE
20 NAMES AND THE E-MAIL ADDRESS OF THE VARIOUS
21 DOWNSTREAM PROVIDERS?

22 THE WITNESS: YES.

23 THE COURT: AND WITH THE CASE OF THE
24 DEFENDANT, YOUR INFORMATION IS THAT IT HAS LISTED
25 THE NAMES IN CHINESE OF VARIOUS DOWNSTREAM

1 PROVIDERS?

2 THE WITNESS: YES.

3 THE COURT: BUT RATHER THAN GIVE THEIR
4 E-MAIL ADDRESS, IT HAS LISTED ITS OWN E-MAIL
5 ADDRESS?

6 THE WITNESS: ABSOLUTELY.

7 THE COURT: AND IS THERE ANY REQUIREMENT
8 THAT THE DOWNSTREAM PROVIDERS LIST THE OPERATORS OF
9 THE WEB SITES?

10 THE WITNESS: NOT THE OPERATORS OF THE
11 WEB SITES.

12 THE COURT: ALL RIGHT. SO THAT THE
13 STRUCTURE AS YOU UNDERSTAND IT IS THAT IF THIS WERE
14 BEING DONE ACCORDING TO -- AND WHERE ARE THESE
15 RULES SET UP WITH RESPECT TO THE DOWNSTREAM
16 PROVIDER THE CONTACT SHOULD INCLUDE THE E-MAIL
17 ADDRESS? WHO HAS ESTABLISHED THAT?

18 THE WITNESS: WELL, THAT'S A FORM
19 PROVIDED BY ARIN, AND IT NEEDS TO BE FILLED IN BY
20 THE PERSON WHO REQUESTS ARIN TO ASSIGN A PARTICULAR
21 IP ADDRESS.

22 THE COURT: I SEE. AND I UNDERSTAND NOW.

23 THANK YOU. I HAVE NO FURTHER QUESTIONS
24 BUT THE COURT'S QUESTIONS MIGHT PROVOKE SOME
25 QUESTIONS. SOMETIMES THEY DO.

1 MR. LOWE: YOUR HONOR, MIGHT I INQUIRE
2 BRIEFLY?

3 THE COURT: CERTAINLY.

4 **RECROSS-EXAMINATION**

5 BY MR. LOWE:

6 Q MR. LIVADKIN, IF I UNDERSTAND WHAT YOU HAVE
7 JUST BEEN TESTIFYING ABOUT IN ANSWERING THE JUDGE'S
8 QUESTIONS, YOU'VE INDICATED THAT YOUR UNDERSTANDING
9 IS THAT ARIN WHO ASSIGNS IP ADDRESSES IN NORTH
10 AMERICA --

11 A YES.

12 Q -- WANTS TO HAVE AN E-MAIL ADDRESS TO WHOM THE
13 PARTY TO WHICH THE IP ADDRESSES ARE ASSIGNED. DO I
14 UNDERSTAND THAT CORRECTLY?

15 A YES.

16 Q AND DO I UNDERSTAND THAT BETWEEN AKANOC AND
17 MANAGED SOLUTIONS THEY HAVE ABOUT 40,000 IP
18 ADDRESSES ASSIGNED TO THEM?

19 A YES.

20 Q AND DO YOU ALSO -- WERE YOU TESTIFYING THAT
21 AKANOC AND MANAGED SOLUTIONS DO, IN FACT, PROVIDE
22 TO ARIN THEIR INFORMATION, THEIR CONTACT
23 INFORMATION FOR THOSE 40,000 ADDRESSES?

24 A I DON'T THINK THEY HAVE DONE THIS FOR EACH
25 INDIVIDUAL IP ADDRESS OF THE 40,000.

1 THEY ARE REQUESTING A BLOCK OF IP
2 ADDRESSES TO BE ASSIGNED TO THEM. SO I BELIEVE
3 THAT THEY PROVIDE THIS INFORMATION ONCE FOR A BLOCK
4 OF IP ADDRESSES.

5 Q AND WHAT IS THE BASIS FOR YOUR THINKING THAT
6 THEY'RE SUPPOSED TO CHANGE THAT CONTACT INFORMATION
7 EVERY TIME THEY LEASE OUT A SERVER AND SOME IP
8 ADDRESSES THAT THEY HAVE TO NOTIFY ARIN ABOUT THIS?

9 A WELL, THEY HAVE TO KEEP UP TO DATE WHOIS
10 INFORMATION FOR THEIR CONTROL. THE E-MAIL ADDRESS
11 ABUSE@AKANOC.COM SHOULD BE LISTED HERE SO THAT IF
12 THERE IS AN ABUSE COMPLAINT IT COULD REACH THE
13 PERSON WHO HAS TO DEAL WITH THESE COMPLAINTS.

14 Q AND THE, FOR EXAMPLE, THE DOMAIN TOOLS THAT
15 YOU HAVE SEEN AND TESTIFIED ABOUT TODAY DO, IN
16 FACT, HAVE ABUSE@AKANOC.COM OR ABUSE@MANAGED
17 SOLUTIONS, THINGS OF THAT SORT, DON'T THEY?

18 A I HAVEN'T MANAGED THE DOMAIN TOOLS REPORT.
19 I'M SPEAKING ABOUT ARIN WHOIS REPORT.

20 Q BUT YOU HAVEN'T TESTIFIED AT ALL ABOUT AN ARIN
21 REPORT HERE, HAVE YOU?

22 A PARDON?

23 Q YOU HAVE NOT TESTIFIED ABOUT ANY ARIN REPORT
24 HERE, HAVE YOU?

25 A WE HAVE BEEN TALKING ABOUT A REPORT SINCE

1 YESTERDAY.

2 Q A REPORT FROM ARIN?

3 A WELL, THE INFORMATION THAT DOMAIN TOOLS
4 OBTAINS ABOUT WHO THE IP ADDRESS IS ASSIGNED TO
5 COMES FROM ARIN.

6 Q THAT WAS MY QUESTION. BUT WHEN YOU HAVE THEN
7 GOT THAT SECONDARY INFORMATION FROM DOMAIN TOOLS,
8 HASN'T IT SHOWN THAT DOMAIN TOOLS REPORTS THAT
9 THEY'RE PERHAPS GETTING INFORMATION FROM ARIN THAT
10 AKANOC IS TELLING THEM THAT THE CONTACT INFORMATION
11 AT ABUSE@AKANOC.COM?

12 A I'M SORRY. I'M NOT FOLLOWING YOU.

13 Q LET ME TRY THIS BRIEFLY. DO YOU HAVE ANY
14 DOCUMENT THAT SHOWS THAT THE DEFENDANTS HAVE NOT
15 PROVIDED ARIN THE LEGALLY REQUIRED INFORMATION FROM
16 ARIN'S POINT OF VIEW?

17 A FROM ARIN'S POINT OF VIEW?

18 Q YES.

19 A I DON'T KNOW WHAT ARIN'S POINT OF VIEW IS.

20 Q SO YOU'RE JUST TALKING ABOUT YOUR OWN POINT OF
21 VIEW?

22 A I'M TALKING ABOUT WHAT I HAVE SEEN ON THE ARIN
23 REPORTS. THERE'S THE SECTION WHICH IS DESIGNED FOR
24 THE DOWNSTREAM PROVIDER, LISTS DEFENDANTS' E-MAIL
25 ADDRESS AS A CONTACT E-MAIL ADDRESS.

1 Q WHAT ARIN REPORTS ARE YOU TALKING ABOUT?

2 A I'M TALKING ABOUT IP WHOIS REPORTS OBTAINED
3 FROM ARIN.

4 Q IS THERE AN EXHIBIT THAT WE HAVE SEEN TODAY
5 THAT CAME FROM ARIN?

6 A TODAY? NO.

7 Q IN FACT, YOU HAVEN'T PRESENTED ANY ARIN
8 REPORT, HAVE YOU?

9 A I BELIEVE THERE ARE MANY WITHIN THE EXHIBITS.

10 Q HAVE WE SEEN ANY OF THEM IN THIS TRIAL?

11 A YOU HAVEN'T DIRECTED ME TO ANY OF THEM.

12 Q AND YOUR COUNSEL HASN'T EITHER; IS THAT RIGHT?

13 A NO, BECAUSE THE DOMAIN TOOLS REPORT ARE
14 PROVIDING THE SAME INFORMATION.

15 MR. LOWE: I THINK THAT'S ALL I HAVE,
16 YOUR HONOR.

17 THE COURT: ANY QUESTIONS FROM THE
18 PLAINTIFF'S COUNSEL?

19 MR. COOMBS: YOUR HONOR, JUST A COUPLE
20 THAT WILL HOPEFULLY HELP CLARIFY.

21 **FURTHER REDIRECT EXAMINATION**

22 BY MR. COOMBS:

23 Q YOU INDICATED THAT LOUIS VUITTON HAS A -- HAS
24 WORKED OUT A WAY OF DEALING WITH THE RESELLER
25 SITUATION THROUGH SOFT LAYER WHICH YOU UNDERSTAND

1 TO HAVE A SIMILAR SORT OF RELATIONSHIP WITH ITS
2 CUSTOMERS TO THE RELATION THAT THE DEFENDANT HAS
3 WITH ITS CUSTOMERS?

4 A WELL, ACTUALLY WE FOUND OUT THAT SOME OF THEM
5 RESELLERS OR DOWNSTREAM PROVIDERS FOR SOFT LAYER
6 ARE THE SAME AS SOME OF THE DOWNSTREAM PROVIDERS OF
7 DEFENDANTS.

8 Q AND DOES SOFT LAYER PROVIDE INFORMATION THAT
9 ALLOWS YOU TO CONTACT THE DOWNSTREAM PROVIDER
10 DIRECTLY?

11 A SOFT LAYER HAS PROVIDED TO ARIN WHOIS -- HAS
12 PROVIDED IN ARIN WHOIS IP REPORT SUFFICIENT
13 INFORMATION ALLOWING US TO CONTACT DIRECTLY THE
14 DOWNSTREAM PROVIDER OR THE RESELLER.

15 Q SO INSTEAD OF HAVING ABUSE@SOFTLAYER.COM AS A
16 CONTACT IN THAT CONTEXT, IT WOULD HAVE AN E-MAIL
17 SPECIFIC TO THE DOWNSTREAM PROVIDER?

18 A YES.

19 Q AND WHEN YOU COMMUNICATE WITH THE DOWNSTREAM
20 PROVIDER, YOU COMMUNICATE WITH THEM THE SAME WAY
21 YOU HAVE TESTIFIED TO EARLIER TODAY IN TERMS OF
22 DEALING WITH ISP'S?

23 A YES, WE WOULD ADDRESS -- EXCUSE ME -- WE WOULD
24 ADDRESS OUR NOTIFICATION DIRECTLY TO THE DOWNSTREAM
25 PROVIDER.

1 WE WOULD COPY SOFT LAYER TO THE E-MAIL
2 AND IF OUR LETTER IS IGNORED BY THE DOWNSTREAM
3 PROVIDER OR THE RESELLER, WE WOULD ADDRESS THE
4 SITUATION DIRECTLY WITH THE SOFT LAYER AND THAT'S
5 USUALLY ENOUGH TO SOLVE THE PROBLEM.

6 Q THANK YOU.

7 I HAVE NO FURTHER QUESTIONS.

8 THE COURT: VERY WELL. YOU MAY STEP
9 DOWN.

10 THE WITNESS: THANK YOU.

11 THE COURT: CALL YOUR NEXT WITNESS.

12 MS. WANG: YOUR HONOR, OUR NEXT WITNESS
13 WILL BE JULIANA LUK, AND WE'LL BE READING IT.

14 THE COURT: VERY WELL, YOU'RE GOING TO DO
15 IT RESPONSIVELY? SOMEONE WILL READ THE QUESTION
16 AND SOMEONE WILL READ THE ANSWER?

17 MS. WANG: YES.

18 THE COURT: SOMETIMES THE CASE IS THAT
19 THE WITNESS IS NOT HERE AND THE DEPOSITION WILL BE
20 READ TO YOU OF THAT WITNESS. TO HAVE YOU FOLLOW
21 THAT, RATHER THAN HAVING TO HAVE YOU SAY QUESTION
22 AND ANSWER AND READ IT, SOMEONE IS GOING TO STAND
23 AT THE WITNESS STAND AND READ THE ANSWER AND
24 SOMEONE WILL STAND AT THE MICROPHONE AND READ THE
25 QUESTION.

1 AS YOU BEGIN THIS PROCESS MAKE SURE YOU
2 ADVISE THE JURY AS TO WHO THIS PERSON IS AND THE
3 SIGNIFICANCE OF THE TESTIMONY THAT IS ABOUT TO BE
4 READ.

5 GO AHEAD.

6 MS. WANG: WE WILL BE READING FROM THE
7 DEPOSITION OF JULIANA LUK, WHO IS THE DEFENDANT'S
8 PART-TIME EMPLOYEE WHO HANDLED SECURITY OR ABUSE
9 COMPLAINTS FOR THE DEFENDANTS.

10 AND THE SIGNIFICANCE OF HER TESTIMONY
11 OUTLINES WHAT THE DEFENDANTS DID OR DIDN'T DO IN
12 RESPONSE TO ABUSE COMPLAINTS AND ALSO HER
13 BACKGROUND AND INSTRUCTIONS THAT SHE WAS GIVEN
14 PURSUANT TO HER JOB IN HANDLING THE COMPLAINTS
15 BEFORE THE DEFENDANTS.

16 THE COURT: WHAT IS YOUR ESTIMATE AS TO
17 HOW LONG THIS READING WILL TAKE?

18 MS. WANG: IT SHOULD TAKE ABOUT, AT MOST
19 ABOUT 45 MINUTES.

20 THE COURT: ALL RIGHT. SO THAT SHOULD
21 TAKE IT RIGHT UP UNTIL WHEN WE END. SEE IF YOU CAN
22 SQUEEZE IT INTO THAT.

23 MS. WANG: I WILL DO THAT.

24 THE COURT: AND IS THERE A STIPULATION
25 THAT YOU CAN SUBMIT THIS AND SO WE DON'T HAVE TO

1 PUT IT ON THE RECORD, OR DO YOU WANT IT ON THE
2 RECORD?

3 MR. COOMBS: YOUR HONOR, I THINK WE
4 PREFER TO HAVE IT ON THE RECORD.

5 THE COURT: VERY WELL. WE'LL KEEP THE
6 COURT REPORTER REPORTING. GO AHEAD.

7 MS. WANG: AND, YOUR HONOR, THERE IS ONLY
8 ONE OR TWO PLACES WHERE DEFENSE COUNSEL WANTED
9 SOMETHING THAT THEIR ATTORNEY HAD SAID ON THE
10 RECORD, AND I'LL INDICATE THAT WHEN IT COMES UP.

11 THE COURT: YOU'RE JUST GOING TO READ IT
12 AS PART OF YOUR PRESENTATION?

13 MS. WANG: RIGHT.

14 THE COURT: VERY WELL.

15 BY MS. WANG:

16 Q WILL YOU PLEASE STATE AND SPELL YOUR NAME FOR
17 THE RECORD?

18 A J-U-L-I-A-N-A, LAST NAME L-U-K.

19 Q AND WHAT IS THE HIGHEST LEVEL OF EDUCATION
20 THAT YOU HAVE COMPLETED?

21 A HIGH SCHOOL.

22 Q AND WHERE WAS THAT?

23 A IN HONG KONG.

24 Q AND HAVE YOU EVER ATTENDED ANY TRADE SCHOOLS?

25 A NO.

1 Q DO YOU HAVE ANY CERTIFICATIONS?

2 A YOU MEAN CERTIFICATION ON WHAT?

3 Q ANYTHING THAT YOU TOOK A CLASS FOR TO GET
4 CERTIFIED?

5 A OH, I JUST FINISHED MY G.E.D. AT MT. SAC,
6 THAT'S A HIGH SCHOOL AS WELL. IT'S ONLY HIGH
7 SCHOOL.

8 Q AND WHEN WAS THAT?

9 A LAST NOVEMBER.

10 Q HAVE YOU HAD ANY TECHNICAL TRAINING?

11 A NO.

12 Q ARE YOU CURRENTLY EMPLOYED?

13 A YES.

14 Q AND BY WHOM?

15 A BTG APPAREL.

16 Q ANYONE ELSE?

17 A OH, AKANOC, IT'S PART-TIME.

18 Q YOU MEAN AKANOC SOLUTIONS, INC.?

19 A YES.

20 Q HOW LONG HAVE YOU BEEN EMPLOYED BY AKANOC?

21 A TWO TO THREE YEARS.

22 Q AND WHAT DID YOU DO BEFORE YOU STARTED WITH
23 AKANOC?

24 A NOTHING. I DIDN'T WORK.

25 Q HOW DID YOU HEAR ABOUT THE JOB WITH AKANOC

1 SOLUTIONS?

2 A OH, BECAUSE I WORKED FOR MR. CHEN BEFORE.

3 Q AND WHAT DID HE TELL YOU THE JOB IS GOING TO
4 BE?

5 A WHEN I RECEIVE COMPLAINTS, I WILL JUST SEND IT
6 TO THE CUSTOMER.

7 Q DO YOU HAVE A TITLE AT AKANOC?

8 A NO.

9 Q HAVE YOU DONE THE SAME JOB THROUGHOUT YOUR
10 TIME AT AKANOC?

11 A YES.

12 Q WHICH IS RECEIVE COMPLAINTS AND SEND THEM TO
13 CUSTOMERS?

14 A YES.

15 Q ALL RIGHT. YOU WORK OUT OF YOUR HOME?

16 A YEAH, CHINO HILLS.

17 Q IN CHINO HILLS. SO HAVE YOU EVER BEEN TO THE
18 BUSINESS OFFICE, HOME OFFICE OF AKANOC --

19 A NO.

20 Q -- SOLUTIONS?

21 A NO.

22 Q AND DO YOU EVER TRAVEL TO ANY OFFICES OF
23 AKANOC?

24 A NO.

25 Q AND IN YOUR JOB AT AKANOC, DO YOU REPORT TO

1 ANYONE?

2 A TO STEVE CHEN.

3 Q AND ANYONE ELSE?

4 A NO.

5 Q DO YOU EVER COMMUNICATE WITH ANYONE ELSE AT
6 AKANOC?

7 A TO THE SUPPORT DEPARTMENT.

8 Q AND WHAT DO YOU COMMUNICATE WITH THE SUPPORT
9 DEPARTMENT?

10 A TO UNPLUG THE CUSTOMERS IP.

11 Q AND DO YOU HAVE ANY TECHNICAL KNOWLEDGE AS
12 REQUIRED FOR THE JOB THAT YOU DO?

13 A NO.

14 Q DO YOU RECEIVE INSTRUCTION FROM STEVE OR
15 ANYONE ELSE AT AKANOC REGARDING YOUR POSITION?

16 A YES.

17 Q AND WHAT KINDS OF INSTRUCTIONS DO YOU RECEIVE?

18 A SEND A COMPLAINT LETTER TO CUSTOMER, THAT'S
19 IT.

20 Q AND HOW MANY HOURS DO YOU WORK FOR AKANOC IN A
21 WEEK?

22 A A WEEK? TEN.

23 Q AND HOW IS THAT SPLIT UP OVER THE WEEK?

24 A EACH DAY TWO HOURS.

25 Q IS THAT MONDAY THROUGH FRIDAY?

1 A AT SOMETIMES I DO WORK ON SATURDAYS.

2 Q SO YOU MIGHT WORK ANYWHERE FROM 10 TO 12 HOURS

3 A WEEK?

4 A YES.

5 Q DO YOU EVER WORK MORE THAN THAT?

6 A I DON'T THINK SO.

7 Q DO YOU HAVE WORK LESS THAN THAT?

8 A YES.

9 Q WHAT IS THE LEAST AMOUNT THAT YOU MIGHT WORK A
10 WEEK?

11 A OH, IT DEPENDS ON THE WORKLOAD. SO THE LEAST
12 MIGHT BE ABOUT NINE HOURS.

13 Q AND BY WORKLOAD, WHAT DO YOU MEAN?

14 A SOMETIMES I MIGHT RECEIVE A LOT OF COMPLAINTS
15 ON SPAMMING SO IT WILL TAKE ME A LITTLE BIT MORE
16 TIME TO NOTIFY THE CUSTOMERS.

17 Q HOW DO YOU RECEIVE COMPLAINTS?

18 A BY E-MAILS.

19 Q AND WHICH E-MAIL ADDRESSES DO YOU RECEIVE
20 COMPLAINTS?

21 A ABUSE@MSGMANAGEDSG -- I CAN'T EVEN REMEMBER.
22 IT'S THE ACCOUNT AT AKANOC. IT'S THE ABUSE
23 ACCOUNT. I DON'T REMEMBER.

24 Q DO YOU RECEIVE E-MAILS FOR ABUSE@AKANOC.COM?

25 A YES.

1 Q AND DO YOU RECEIVE ABUSE -- I'M SORRY. DO YOU
2 RECEIVE COMPLAINTS AT ABUSE@MANAGEDSG?

3 A YES. THAT IS THE ONE THAT I CAN'T REMEMBER.
4 I CAN'T REMEMBER THE WHOLE DOT COM NAME. YES, I
5 DO.

6 Q AND, WELL, IF YOU DON'T REMEMBER, IS IT
7 ABUSE@MANAGEDSG-INC.COM?

8 A YES.

9 Q AND DO YOU EVER PRINT OUT YOUR E-MAILS FOR
10 AKANOC?

11 A NO.

12 Q DO YOU EVER SAVE THESE AKANOC E-MAILS?

13 A NO.

14 Q AND DO YOU EVER CREATE ANY FILES OF ANY KIND
15 IN THE COURSE OF YOUR WORK FOR AKANOC?

16 A ONLY THE FILES FOR THE COMPLAINT LETTER.

17 Q CAN YOU DESCRIBE FOR ME WHAT YOU MEAN BY WHEN
18 YOU CREATE THE FILES FOR THE COMPLAINT LETTER?

19 A IT'S A COVER LETTER TO SEND ALONG WITH THE
20 COMPLAINTS TO THE CUSTOMER.

21 Q YOU DRAFT A COVER LETTER FOR THE COMPLAINT
22 THAT YOU SEND TO THE CUSTOMER?

23 A I DON'T DRAFT THEM.

24 Q WHERE DO YOU GET THE COVER LETTERS?

25 A AKANOC SENT IT TO ME.

1 Q DID THEY SEND YOU DIFFERENT COVER LETTERS
2 DEPENDING ON THE COMPLAINT?

3 A ONLY ONE.

4 Q SO AKANOC ONLY SENDS YOU ONE COVER LETTER?

5 A YES.

6 Q AND DO YOU REMEMBER WHAT THAT COVER LETTER
7 SAID?

8 A SAYING WE RECEIVED A LOT OF COMPLAINTS
9 REGARDING TO SPAMMING, ILLEGAL SITES SO THAT WE
10 WANT THE CUSTOMER, THAT THEY SHOULD TAKE CARE OF IT
11 IMMEDIATELY.

12 Q DOES THIS COVER LETTER HAVE SPECIFIC WORDS
13 THAT YOU TAKE OUT DEPENDING UPON THE COMPLAINTS IF
14 ONE IS FOR SPAMMING YOU WRITE SPAMMING IN A
15 SPECIFIC PLACE AND IF IT WAS FOR AN ILLEGAL SITE
16 YOU WOULD CHANGE SPAMMING TO AN ILLEGAL SITE?

17 A I DON'T NEED TO CHANGE ANYTHING.

18 Q YOU SEND THE SAME LETTER OUT?

19 A YES.

20 Q FOR ALL COMPLAINTS?

21 A YES.

22 Q HAVE YOU ALWAYS DONE THAT?

23 THE COURT: NOW YOU'RE GOING QUICKLY.
24 SHE'S GOOD BUT SHE'S NOT --

25 MS. WANG: SORRY. I WILL TRY TO SLOW IT

1 DOWN.

2 Q AND WHEN YOU SAY THAT YOU ARE WARNING THE
3 CUSTOMER?

4 A YES.

5 Q AND WHAT ARE YOU WARNING THEM AGAINST?

6 A WHATEVER THE COMPLAINT IS.

7 Q AND IF THEY DON'T LISTEN TO YOUR COVER LETTER
8 OR YOUR E-MAIL, WHAT HAPPENS?

9 A I DON'T KNOW.

10 Q WHAT DO YOU MEAN YOU DON'T KNOW?

11 A MY JOB IS JUST TO SEND THE WARNING LETTER, AND
12 THAT'S IT. I DON'T NEED TO FOLLOW UP.

13 Q DO YOU HAVE ANY IDEA WHAT HAPPENS WHEN SOMEONE
14 DOES NOT RESPOND TO A FORWARDED COMPLAINT?

15 A NO.

16 Q SO HAVE YOU EVER INSTRUCTED SOMEONE AT AKANOC
17 TO UNPLUG A CUSTOMER FOR ANY REASON?

18 A YES.

19 Q AND WHAT ARE THOSE REASONS?

20 A FOR EXAMPLE, IF I RECEIVE A BIG LOT OF
21 COMPLAINT TO THE SAME IP SO IT WILL -- BECAUSE I
22 REMEMBER THE IP IN ONE OR TWO DAYS, IT HAPPENED
23 ONCE OVER A 100 COMPLAINTS TO ONE IP AND THEN I
24 REMEMBER THE IP AND I UNPLUG IT BECAUSE THAT WAS A
25 MASSIVE SPAMMING.

1 Q AND WHEN YOU SAY, "I UNPLUG IT," YOU SEND AN
2 E-MAIL TO SOMEONE AT AKANOC TO UNPLUG?

3 A TO THE SUPPORT DEPARTMENT.

4 Q TO SOMEONE AT THE SUPPORT DEPARTMENT TO UNPLUG
5 THAT SPECIFIC IP ADDRESS?

6 A YES.

7 Q AND WHAT KINDS OF SITUATIONS WOULD YOU DISCUSS
8 WITH STEVE IN YOUR JOB AT AKANOC?

9 A MASSIVE SPAMMING, FRAUD EBAY SITES, MICROSOFT
10 COPYRIGHT INFRINGEMENT.

11 Q DO YOU KNOW IF STEVE EVER RESPONDS TO E-MAILS
12 THAT ARE SENT TO THOSE ACCOUNTS?

13 A HE DOES.

14 Q ARE THERE ANY KINDS OF COMPLAINTS THAT YOU
15 FORWARD ON TO STEVE FOR HANDLING?

16 A I DON'T REMEMBER.

17 Q IS STEVE THE ONLY OTHER PERSON WHO HAS ACCESS
18 TO THE ACCOUNTS THAT YOU HANDLE FOR AKANOC?

19 A I DON'T KNOW.

20 Q YOU SAID SOMETHING ABOUT MICROSOFT COPYRIGHT
21 INFRINGEMENT COMPLAINTS?

22 A YES.

23 Q WAS THERE SOMETHING SPECIFIC ABOUT THOSE
24 COMPLAINTS THAT YOU FELT YOU NEEDED TO SPEAK TO
25 STEVE ABOUT?

1 A MICROSOFT IS SO BIG SO I THINK IT'S JUST
2 SERIOUS. I DON'T KNOW.

3 Q THANK YOU. WERE THERE ANY OTHER COMPLAINTS
4 FROM COMPANIES REGARDING COPYRIGHT INFRINGEMENT OR
5 TRADEMARK INFRINGEMENT THAT YOU FELT REQUIRED, YOU
6 KNOW, A DISCUSSION WITH STEVE OR ANYONE ELSE AT
7 AKANOC?

8 A NO.

9 Q IT WAS JUST THE MICROSOFT COMPLAINTS?

10 A AND THE EBAY.

11 Q SO YOU HAD STATED THAT YOU TALKED TO STEVE
12 ABOUT FRAUD EBAY COMPLAINTS AND MICROSOFT COPYRIGHT
13 INFRINGEMENT COMPLAINTS?

14 A YES.

15 Q AND IS THERE ANY OTHER REASON WHY YOU SPOKE TO
16 HIM ABOUT THESE COMPLAINTS SPECIFICALLY?

17 A BECAUSE I KNOW MICROSOFT AND EBAY, THEY ARE
18 BIG.

19 Q AND IS THAT THE ONLY REASON THAT YOU TALKED TO
20 STEVE ABOUT THESE COMPLAINTS?

21 A YES.

22 Q AND DO YOU EVER READ THE COMPLAINTS?

23 A I DON'T READ THE WHOLE COMPLAINT LETTER. I
24 ONLY TRY TO FIND THE DOMAIN NAME AND THE IP ADDRESS
25 SO I CAN FORWARD TO THE CUSTOMER.

1 Q DID YOU AT ANY TIME READ THE COMPLAINT TO SEE
2 IF THEY WERE FROM MICROSOFT?

3 A ON THE SUBJECT LINE THEY WOULD SAY FROM
4 MICROSOFT OR FROM EBAY. I ONLY READ THAT.

5 Q SO DID YOU READ ANYTHING OTHER THAN THE
6 SUBJECT LINE?

7 A VERY SELDOM I WOULD READ THE WHOLE PAGE.

8 Q DO YOU KEEP A LOG OF THE COMPLAINTS?

9 A NO.

10 Q HOW DO YOU DETERMINE WHO TO FORWARD THE
11 COMPLAINT TO?

12 A I GO TO THE DATA CENTER AND FIND THE CUSTOMER
13 NAME UNDER THE IP SO I WOULD FORWARD THE COMPLAINT,
14 THE COVER LETTER TO THAT CUSTOMER.

15 Q WHAT DO YOU MEAN BY GO TO THE DATA CENTER?

16 A THERE IS A -- WHAT DO YOU -- THERE IS A LINK
17 TO THE AKANOC DATA CENTER SO THAT I CAN GET THE
18 CUSTOMER'S NAME.

19 Q DO YOU KNOW THE NAME OF THE DATA CENTER?

20 A NO.

21 Q DID YOU CREATE THIS LINK ON YOUR COMPUTER TO
22 AKANOC DATA CENTER?

23 A NO.

24 Q WHO DID?

25 A AKANOC GAVE ME THE LINK. IT IS THEIR LINK. I

1 MEAN, THIS IS THE ONE OF THEIR -- SORRY -- THIS IS
2 ONE OF THEIR DEPARTMENTS.

3 Q WHAT DO YOU MEAN BY THEY GAVE YOU THE LINK?

4 A IF I WERE TO FIND WHO THE CUSTOMER IS, I NEED
5 TO GO INTO THAT -- DO I NEED TO CALL THAT A LINK OR
6 WHATEVER? I DON'T KNOW. BUT I HAVE A PAGE TO GET
7 INTO THAT. I SHOULD STILL CALL IT A LINK.

8 Q IS IT A -- DOES IT START WITH HTTP, THAT KIND
9 OF LINK? IS IT A URL THAT YOU WOULD PLUG INTO THE
10 INTERNET?

11 A I DON'T RECALL THAT.

12 Q OKAY. CAN YOU DESCRIBE TO ME WHERE THIS LINK
13 IS ON YOUR COMPUTER?

14 A IT'S ON MY DESKTOP, AN ICON CALLED SEARCH
15 PAGE. SO IT'S JUST ONE OF THE LINK WITH AKANOC SO
16 I CAN CLICK INTO IT, TYPE THE IP ADDRESS AND THE
17 CUSTOMER'S NAME WILL COME UP SO THAT I WILL COPY IT
18 AND SEND TO THE CUSTOMER.

19 Q AND DO YOU HAVE TO BE PLUGGED INTO -- DOES
20 YOUR COMPUTER HAVE TO BE PLUGGED INTO THE INTERNET
21 FOR THE LINK TO WORK?

22 A YES.

23 Q AND IS THE ICON FOR THE LINK IN THE SHAPE OF
24 AN E?

25 A I DON'T REMEMBER.

1 Q DO YOU REMEMBER ANYTHING ABOUT THE WAY THE
2 ICON LOOKS?

3 A I DON'T.

4 Q WHEN YOU CLICK ON THE LINK, WHAT DOES THE PAGE
5 LOOK LIKE ON YOUR COMPUTER?

6 A IT'S JUST A PAGE I CAN TYPE THE IP ADDRESS AND
7 THEN IT WILL COME UP WITH THE CUSTOMER'S NAME.

8 Q SO IS THERE A SEARCH BOX ON THAT THAT SAYS THE
9 IP ADDRESS?

10 A YES.

11 Q IS THERE ANYTHING ELSE THAT YOU CAN SEARCH BY
12 ON THAT PAGE?

13 A I ONLY KNOW HOW TO DO IT WITH INPUTTING THE IP
14 ADDRESS. THE OTHERS I DON'T UNDERSTAND, AND I
15 DON'T WANT TO TOUCH IT.

16 Q BUT THERE ARE OTHER BOXES ON THAT PAGE?

17 A YES.

18 Q OKAY. WHAT IF A COMPLAINT THAT YOU RECEIVE
19 DOESN'T HAVE AN IP ADDRESS BUT JUST A DOMAIN NAME.
20 HOW DO YOU HANDLE THAT KIND OF SITUATION?

21 A I -- I PING ON THE -- WHAT DO YOU CALL THAT?
22 A CMD. I ONLY KNOW HOW TO DO IT. I CAN'T EXPLAIN
23 IT.

24 Q SO WHEN YOU DON'T HAVE AN IP ADDRESS BUT YOU
25 HAVE A DOMAIN NAME, YOU PING THE DOMAIN NAME?

1 A YES.

2 Q ON -- IS THIS AN INTERNET PROGRAM?

3 A YES.

4 Q AND DO YOU REMEMBER WHICH ONE THAT IS?

5 A I JUST KNOW HOW TO CLICK TO IT.

6 Q IS IT AN AKANOC PROGRAM?

7 A NO.

8 Q IT'S A PROGRAM THAT IS AVAILABLE PUBLICLY?

9 A YES.

10 THE COURT: SLOW DOWN.

11 BY MS. WANG:

12 Q DO YOU HAVE DO ANY FOLLOWUP AFTER FORWARDING
13 ANY OF THE COMPLAINTS TO CUSTOMERS?

14 A NO.

15 Q DO YOU DO ANY FOLLOWUP AFTER RECEIVING THE
16 SPAMMING COMPLAINTS?

17 A NO.

18 Q IF YOU RECEIVE A SECOND COMPLAINT ABOUT THE
19 SAME IP ADDRESS OR CUSTOMER, DO YOU DO FOLLOWUPS
20 THEN?

21 A NO. I'LL JUST SEND IT LIKE I USED TO DO IT.

22 Q DO YOU RESPOND TO A SECOND COMPLAINT THE SAME
23 WAY YOU WOULD RESPOND TO A FIRST COMPLAINT?

24 A YES.

25 Q HOW DO YOU KNOW IF A COMPLAINT THAT YOU

1 RECEIVE IS A SECOND OR A THIRD COMPLAINT AS OPPOSED
2 TO A FIRST COMPLAINT?

3 A I DON'T KNOW.

4 Q YOU STATED BEFORE THAT IF YOU REMEMBER THE IP
5 ADDRESS OR THE COMPLAINT, THEN THAT WOULD BE THE
6 ONLY RECORD THAT YOU WOULD HAVE THAT THERE WAS A
7 REPEAT COMPLAINT?

8 A UNLESS IT IS SO MANY COMPLAINTS ALTOGETHER IN
9 ONE DAY THAT WOULD MAKE ME REMEMBER THE IP,
10 OTHERWISE THE NEXT DAY I'LL FORGET EVERYTHING. HOW
11 CAN I REMEMBER SO MANY THINGS?

12 Q THE ONLY RECORD THAT YOU HAVE OF REPEAT
13 COMPLAINTS IS WHAT YOU REMEMBER IN YOUR BRAIN?

14 A YES.

15 Q YOU STATED THAT YOU SENT THE SAME COVER LETTER
16 TO CUSTOMERS REGARDING THESE COMPLAINTS THAT YOU
17 WOULD RECEIVE. WAS THERE ANY ACTION THAT YOU
18 REQUIRED THEM TO TAKE IN RESPONSE TO YOUR E-MAIL?

19 A YOU MEAN IN THE COVERING LETTER?

20 Q YES.

21 A THEY ARE SUPPOSED TO RESOLVE IT WITHIN 24
22 HOURS.

23 Q WAS THERE ANY OTHER ACTION THAT THEY WERE
24 SUPPOSED TO TAKE OTHER THAN RESOLVING IT IN 24
25 HOURS?

1 A I DON'T KNOW.

2 Q DID YOU EVER REQUIRE ANY ONE OF YOUR CUSTOMERS
3 TO DO SOMETHING OTHER THAN RESOLVE IT WITHIN 24
4 HOURS?

5 A NO.

6 Q WOULD YOU EVER CHECK TO MAKE SURE THAT THEY
7 COMPLIED WITH YOUR REQUEST THAT THEY RESOLVED THE
8 PROBLEM WITHIN 24 HOURS?

9 A NO.

10 Q DID YOU EVER REVIEW ANY WEB SITE CONTENT TO
11 MAKE SURE THAT SOMETHING THAT SOMEONE WAS
12 COMPLAINING ABOUT WAS REMOVED?

13 A NO.

14 Q DID YOU EVER CHECK TO SEE IF A WEB SITE THAT
15 WAS THE SUBJECT OF A COMPLAINT HAD MOVED FROM ONE
16 IP ADDRESS TO ANOTHER IP ADDRESS WITHIN THE BLOCK
17 ASSIGNED TO AKANOC?

18 A NO.

19 Q ARE YOU FAMILIAR WITH THE \$25 PENALTY FOR
20 VIOLATION OF YOUR AGREEMENTS WITH THE CUSTOMERS?

21 A YES.

22 Q AND WHEN WAS THAT PENALTY ENFORCED?

23 A I DON'T THINK -- IT NEVER ENFORCED.

24 Q DO YOU KNOW WHEN IT WAS SUPPOSED TO BE
25 ENFORCED?

1 A WHEN AKANOC UNPLUGGED THEM. I THINK THEY'RE
2 SUPPOSED TO PAY THAT.

3 Q WHY WOULD AKANOC UNPLUG THEIR CUSTOMERS?

4 A I DON'T KNOW.

5 Q DID YOU EVER DECIDE IF SOMEONE SHOULD HAVE TO
6 PAY A \$25 PENALTY FOR ANY REASON?

7 A NO.

8 Q DO YOU SEND ANYTHING ELSE OTHER THAN THE COVER
9 LETTER TO THE CUSTOMERS?

10 A THE COMPLAINT ITSELF I WILL SEND ALONG WITH
11 THE LETTER.

12 Q ANYTHING ELSE?

13 A NO.

14 Q DO YOU EVER COMMUNICATE WITH THE CUSTOMERS
15 OTHER THAN FORWARDING THEM COMPLAINTS?

16 A YES.

17 Q AND WHAT DO THOSE COMMUNICATIONS CONSIST OF?

18 A DUE TO A LOSS OF SPAMMING I UNPLUG THEM.
19 SOMETIMES CUSTOMER WOULD WRITE TO SECURITY. IF I
20 HAPPEN TO READ THAT E-MAIL I WOULD TELL THEM THAT
21 THEY WOULD NEED TO RESOLVE IT OR I WON'T, I WON'T
22 PLUG IT BACK.

23 Q HOW CAN YOU TELL IF YOU HAVE READ AN E-MAIL
24 THAT APPEARS IN YOUR IN BOX?

25 A IT COMES IN BOLD LETTERS SO I'LL READ IT. IF

1 IT'S NOT IN BOLD LETTERS, I DON'T READ IT.

2 Q HOW DO YOU MAKE SURE THAT YOU DO NOT DUPLICATE
3 THE WORK DONE BY OTHERS WHEN REVIEWING THE
4 COMPLAINT?

5 A IF IT'S JUST BOLD LETTERS, THEN I JUST SEND
6 IT. IF IT IS NOT THEN I DON'T NEED TO SEND IT. IF
7 IT IS IN BOLD, THAT MEANS I HAVE TO SEND IT TO THE
8 CUSTOMER. OTHER THAN THAT I DON'T HAVE TO TAKE
9 CARE OF ANYTHING.

10 Q DO YOU RECALL RECEIVING ANY COMPLAINTS FROM
11 LOUIS VUITTON REGARDING INTELLECTUAL PROPERTY
12 INFRINGEMENTS?

13 A I DON'T REMEMBER.

14 Q DO YOU HAVE ANY WAY OF CHECKING TO SEE IF YOU
15 RECEIVED ANY COMPLAINTS FROM LOUIS VUITTON?

16 A CAN YOU PUT IT CLEARER?

17 Q SURE. DO YOU HAVE ANY WAY OF CHECKING TO SEE
18 IF YOU EVER RECEIVED A COMPLAINT FROM LOUIS
19 VUITTON?

20 A NO.

21 Q AT ANY TIME WHILE YOU WERE EMPLOYED BY AKANOC?

22 A I THINK YESTERDAY I GOT ONE.

23 Q WHO DID YOU RECEIVE IT FROM?

24 A I DON'T KNOW. IN THE HEADING THERE IS LOUIS
25 VUITTON LIKE THAT SO I THINK YESTERDAY OR THE DAY

1 BEFORE YESTERDAY I GOT ONE.

2 Q DO YOU REMEMBER WHO WAS READING THIS E-MAIL
3 FROM LOUIS VUITTON DATED JANUARY 17TH, 2007
4 ADDRESSED TO ABUSE@AKANOC.COM?

5 A NEVER SEEN IT BEFORE.

6 Q DO YOU RECEIVE THE E-MAILS FOR
7 ABUSE@AKANOC.COM?

8 A I HAVE THIS ACCOUNT IN MY E-MAIL INBOX, OKAY,
9 BUT I HAVE NEVER SEEN THIS BEFORE.

10 Q SO IS YOUR NOT REMEMBERING THIS EXHIBIT IS
11 THAT YOU DON'T REMEMBER THEM GENERALLY OR BECAUSE
12 YOU HAVE NEVER SEEN THIS BEFORE?

13 A I HAVE NEVER SEEN THIS BEFORE.

14 Q AND YOU'RE SURE THAT YOU HAVE NEVER RECEIVED
15 THIS E-MAIL?

16 A I'M SURE.

17 Q BUT EVEN GENERALLY DO YOU RECALL DOING
18 ANYTHING RELATED TO WENDY929.NET?

19 A NO.

20 Q OKAY. HAVE THE WITNESS REVIEW EXHIBIT 2, A
21 LOUIS VUITTON E-MAIL DATED FEBRUARY 9TH, 2007
22 ADDRESSED TO ABUSE@AKANOC.COM.

23 A NEVER SEEN IT BEFORE.

24 Q DO YOU RECALL SEEING IT, OR ARE YOU SURE YOU
25 NEVER RECEIVED THIS E-MAIL?

1 A I'M SURE I NEVER RECEIVED IT.

2 Q ASK THE WITNESS TO REVIEW EXHIBIT 4 TO STEVEN
3 CHEN'S DEPOSITION. IT'S AN E-MAIL FROM LOUIS
4 VUITTON TO INFO@AKANOC.COM, AND I ASKED THE WITNESS
5 TO REVIEW THE EXHIBIT. THIS HAS BEEN MARKED AS
6 EXHIBIT 4. I'M SORRY. THE FIRST PAGE OF THE
7 EXHIBIT BEING AN E-MAIL DATED FEBRUARY 21ST, 2007.
8 I BELIEVE THE EXHIBIT IS A LETTER.

9 MS. WANG: I BELIEVE THE EXHIBIT IS A
10 LETTER, AN E-MAIL, AND A TRACKING CONFIRMATION BUT
11 IT'S ALL COLLECTIVELY MARKED AS EXHIBIT 4.

12 HAVE YOU EVER SEEN THIS LETTER --

13 MR. COOMBS: EXCUSE ME, YOUR HONOR. I
14 DON'T THINK THE IMAGES OF THESE EXHIBITS ARE COMING
15 UP ON THE DISPLAY.

16 THE COURT: WELL, WE WEREN'T ADVISED THAT
17 YOU WOULD BE SHOWING THEM SO.

18 MR. COOMBS: SORRY.

19 THE COURT: WHO IS DISPLAYING THEM? YOU
20 ARE.

21 MR. COOMBS: I HAVE EXHIBIT 4.

22 THE COURT: SO TURN THAT ON SO EXHIBIT 4
23 CAN BE VIEWED.

24 MR. COOMBS: THANK YOU.

25 THE COURT: IT'S THE SAME EXHIBIT 4 IN

1 YOUR LIST HERE AS IN THE DEPOSITION.

2 BY MS. WANG:

3 Q HAVE YOU EVER SEEN THIS E-MAIL OR LETTER
4 BEFORE?

5 A NO.

6 Q DO YOU RECEIVE E-MAILS FOR INFO@AKANOC.COM?

7 A NO.

8 Q HAVE YOU EVER ON OCCASION?

9 A NO.

10 Q I WOULD ASK THE WITNESS TO REVIEW EXHIBIT 7 TO
11 STEVEN CHEN'S DEPOSITION A LETTER FROM THE LAW
12 OFFICE OF J. ANDREW COOMBS, DEFENSE COUNSEL,
13 REGARDING SOME DOMAIN NAMES.

14 THE COURT: JUST A MOMENT. EXHIBIT 4
15 NEVER CAME UP.

16 JURORS: THERE IT IS.

17 THE COURT: YOU'RE NOW AT EXHIBIT 7.

18 BY MS. WANG:

19 Q DO YOU RECOGNIZE THAT LETTER?

20 A NO.

21 Q WERE YOU EVER FORWARDED THIS LETTER FROM
22 ANYONE?

23 A I'M SORRY. I LOST MY PLACE.

24 Q PAGE 43. WERE YOU EVER FORWARDED THIS LETTER
25 FROM ANYONE?

1 NOW WE'RE AT THE TOP OF PAGE 44.

2 A NO, I NEVER HAVE SEEN THIS LETTER.

3 Q AND DEFENSE COUNSEL SAYS, WHEN YOU SAY "YOU,"
4 YOU MEAN HER PERSONALLY?

5 MY RESPONSE: NO. WHENEVER I WAS
6 SPEAKING AT THIS POINT IT WAS IN HER CAPACITY AT
7 AKANOC SOLUTIONS. WAS THAT EVER UNCLEAR?

8 DEFENSE COUNSEL SAYS, THAT'S FINE, I JUST
9 WANT TO MAKE SURE -- MAKE IT CLEAR THAT SHE'S NOT
10 SPEAKING ON BEHALF OF AKANOC.

11 THE COURT: THAT SHE IS NOT SPEAKING ON
12 BEHALF OF AKANOC?

13 MS. WANG: RIGHT. THAT'S WHAT IT SAYS.

14 THE COURT: WELL, MY -- LET ME INTERJECT.
15 MY UNDERSTANDING, MEMBERS OF THE JURY, IS THAT THIS
16 IS AN EMPLOYEE OF AKANOC AND WHEN ASKED WHETHER OR
17 NOT SHE HAS SEEN IT BEFORE, THERE IS A QUESTION AS
18 TO WHETHER OR NOT THE COMPANY HAS RECEIVED IT,
19 SOMEONE ELSE IN THE COMPANY OR A QUESTION WHETHER
20 OR NOT SHE HAS SEEN IT AS A PERSON WHO IS EMPLOYED
21 BY THE COMPANY IT WOULD BE IMPORTANT THAT YOU
22 UNDERSTAND THAT HER TESTIMONY AS AN EMPLOYEE IS
23 BINDING ON THE COMPANY. A COMPANY CAN ONLY ACT
24 THROUGH ITS AGENTS AND EMPLOYEES.

25 BUT IF THE CONFUSION IS WHETHER OR NOT

1 SHE IS BEING ASKED WHETHER OR NOT ANYONE HAS EVER
2 SEEN IT, THERE'S NO FOUNDATION LAID THAT SHE WOULD
3 PERHAPS KNOW THAT.

4 AS I'VE LISTENED TO THE DEPOSITION, THERE
5 IS SOME REFERENCE TO THE WITNESS WHOSE TESTIMONY
6 THAT YOU ARE HEARING BEING THE RECIPIENT OF THE
7 E-MAILS THAT GO TO A PARTICULAR E-MAIL ADDRESS.

8 AND SO YOU MAY CONSIDER THAT IF AN E-MAIL
9 IS PROPERLY ADDRESSED, THAT IT WOULD ORDINARILY
10 COME TO THE DEPONENT'S, A WITNESS YOU'RE NOW
11 HEARING E-MAIL SO THAT SHE WOULD BE ABLE TO SEE IT.

12 YOU MAY PROCEED.

13 BY MS. WANG:

14 Q MAY I HAVE THE WITNESS REVIEW EXHIBIT 16
15 ATTACHED TO THE DEPOSITION OF STEVEN CHEN AN E-MAIL
16 AND LETTER DATED FEBRUARY 14TH, 2007 ADDRESSED TO
17 ABUSE@MANAGEDSG-INC.COM.

18 DO YOU RECEIVE E-MAILS TO THE ADDRESS TO
19 ABUSE@MANAGEDSG-INC.COM AS ADDRESSED ON THE FIRST
20 PAGE OF THIS EXHIBIT?

21 A NO.

22 Q YOU DO NOT RECEIVE E-MAIL TO THAT ADDRESS?

23 A I RECEIVE E-MAILS FROM THAT MAIL ADDRESS, I
24 DO.

25 Q YOU MEAN ADDRESSED TO THAT E-MAIL, TO THAT

1 E-MAIL ADDRESS?

2 A YES.

3 Q AND HAVE YOU SEEN THIS LETTER BEFORE?

4 A NO.

5 Q YOU DON'T RECALL EVER SEEING THE LETTER?

6 A NO, I DON'T THINK SO.

7 Q WHEN YOU SEND MESSAGES TO OTHER PEOPLE, IS
8 YOUR "FROM" ADDRESS SECURITY@AKANOC.COM?

9 A YES.

10 Q ASK THE WITNESS TO REVIEW EXHIBIT 31 ATTACHED
11 TO THE DEPOSITION OF STEVEN CHEN AN E-MAIL BETWEEN
12 STEVE CHEN AND SECURITY DATED ON OR ABOUT SEPTEMBER
13 12TH, 2007?

14 A YES.

15 Q DO YOU RECALL RECEIVING THIS E-MAIL FROM STEVE
16 CHEN?

17 A I DON'T REMEMBER, NO.

18 Q AND IF THE WITNESS CAN REVIEW THE MESSAGE
19 BEGINNING "THE RULE IS VERY CLEAR, WHEN WE HAVE A
20 COMPLAINT WITH CERTAIN WEB SITE, THAT WEB SITE
21 NEEDS TO BE OUT OF OUR NETWORK," AND ON UNTIL THE
22 SIGNATURE STEVEN.

23 DO YOU REMEMBER EVER RECEIVING ANY KIND
24 OF E-MAIL LIKE THIS FROM MR. CHEN?

25 A I DON'T REMEMBER.

1 Q DID STEVE EVER GIVE YOU ANY INSTRUCTION LIKE
2 THIS AS STATED IN THIS E-MAIL?

3 A YES.

4 Q AND HOW OFTEN WAS THAT?

5 A VERY SELDOM.

6 Q AND WHAT WAS THAT IN REGARD TO?

7 A MICROSOFT, EBAY, PAY PAL SITES.

8 Q I'M SORRY. WAS IT YOUR TESTIMONY THAT YOU DID
9 NOT RECEIVE ANY COMPLAINTS FROM LOUIS VUITTON OR
10 THAT YOU COULD NOT REMEMBER IF YOU RECEIVED ANY
11 COMPLAINTS FROM LOUIS VUITTON?

12 A TO ME NEVER SEEN THOSE LETTERS.

13 Q WHEN YOU SAID THOSE LETTERS, YOU MEAN THE
14 LETTERS THAT I SHOWED YOU OR ANY LETTERS FROM LOUIS
15 VUITTON?

16 A ANY.

17 Q I WOULD ASK THE WITNESS TO REVIEW EXHIBIT 38
18 ATTACHED TO THE DEPOSITION OF STEVEN CHEN WHICH
19 APPEARS TO BE AN E-MAIL BETWEEN SECURITY AND STEVE
20 CHEN DATED SEPTEMBER 14TH, 2007.

21 DO YOU RECALL RECEIVING THIS E-MAIL FROM
22 STEVE CHEN?

23 A YES.

24 Q ON THE FIRST PAGE OF THE EXHIBIT THERE'S A
25 MESSAGE THAT IT IS AN IP ADDRESS AND IT SAYS

1 PINGLVBAGZ.COM. BELOW THAT THERE'S A MESSAGE FROM
2 SECURITY TO STEVE CHEN. DID YOU SEND THAT E-MAIL?

3 A YES.

4 Q THE E-MAIL READS NO CUSTOMER DATA IN CPRO,
5 SHOULD BE A CANCELLED IP. DID YOU WRITE THAT?

6 A YES.

7 Q AND WHAT IS CPRO?

8 A IT'S THE DATABASE.

9 Q SO THE DATABASE YOU REFERENCED EARLIER, IS THE
10 NAME OF THAT DATABASE CPRO?

11 A YES, I THINK SO.

12 Q BELOW THAT THERE'S ANOTHER MESSAGE FROM
13 SECURITY SENT SEPTEMBER 14TH, 2007 AND IT APPEARS
14 TO SAY, "HERE IS ANOTHER ONE. PLEASE TAKE ACTION.
15 DO I NEED TO SEND OUT NOTICE FIRST OR JUST UNPLUG."
16 DID YOU WRITE THAT E-MAIL?

17 A YES.

18 Q AND IS THERE A REASON THAT YOU WROTE THIS
19 E-MAIL AS OPPOSED TO YOUR STANDARD COVER LETTER
20 STRAIGHT TO THE CUSTOMER?

21 A BECAUSE STEVE CHEN TOLD ME THAT FROM THEN ON
22 EVERY SINGLE POSSIBLE COUNTERFEIT SITE HAS TO BE
23 TAKEN DOWN.

24 Q WAS THERE A SPECIFIC TIMEFRAME FROM WHICH THAT
25 WEB SITE HAD TO BE TAKEN DOWN?

1 A WHAT DO YOU MEAN BY TIMEFRAME?

2 Q DID YOU GIVE THEM A DEADLINE TO TAKE THE SITE
3 DOWN?

4 A EITHER -- USUALLY IT'S 12 HOURS.

5 Q DO YOU RECALL ABOUT WHEN YOU WERE GIVEN THIS
6 INSTRUCTION REGARDING COUNTERFEIT WEB SITES?

7 A AROUND THIS TIME.

8 Q AROUND SEPTEMBER OF 2007 YOU WERE INSTRUCTED
9 TO TAKE --

10 A YEAH, ON OR BEFORE THAT.

11 Q ON OR ABOUT SEPTEMBER 27TH?

12 A UH-HUH, YES.

13 Q SO ON OR AROUND SEPTEMBER 2007, YOU STOPPED
14 SENDING THE COVER LETTER FORWARDING THE COMPLAINTS
15 TO THE CUSTOMERS?

16 A I STILL HAVE TO SEND THE COVER LETTER AND THEN
17 I WOULD CC COPY TO STEVE CHEN AND SO HE COULD
18 FOLLOW UP SO THAT FROM THEN ON WHENEVER I RECEIVED
19 A COMPLAINT I SUSPECT THAT IS A COUNTERFEIT WEB
20 SITE I WOULD CC COPY TO STEVE CHEN.

21 Q WHAT KINDS OF THINGS IN THE COMPLAINT WOULD
22 ALERT YOU TO THE FACT THAT IT WAS A COMPLAINT FOR
23 COUNTERFEITING?

24 A IT DEPENDS ON THE SUBJECT LINE.

25 Q IS THE SUBJECT LINE THE ONLY THING THAT YOU

1 WOULD LOOK AT TO DETERMINE IF IT WAS
2 COUNTERFEITING?

3 A YES.

4 Q AND SO WHAT DID YOU DO DIFFERENTLY OTHER THAN
5 CC STEVE WHEN YOU FORWARDED COMPLAINTS ABOUT
6 COUNTERFEIT WEB SITES AROUND -- STARTING AROUND
7 SEPTEMBER OF 2007?

8 A I ONLY FORWARD CC COPIED TO STEVEN.

9 Q AND OKAY. ON THE FIRST PAGE OF THE EXHIBIT
10 THERE'S A PORTION THAT READS STEVE CHEN WROTE "GIVE
11 CUSTOMER 12 HOURS NOTICE, 24 HOURS UNPLUG IS GOOD
12 ENOUGH."

13 A YES.

14 Q DID YOU RECEIVE THAT MESSAGE FROM STEVE CHEN?

15 A YES.

16 Q WHAT DID YOU TAKE THAT MESSAGE TO MEAN?

17 A SEND A COVER LETTER AND COMPLAINT TO THE
18 CUSTOMER, THAT'S IT, BECAUSE I DON'T NEED TO FOLLOW
19 UP.

20 Q WHAT DOES 24 HOURS UNPLUG IS GOOD ENOUGH MEAN
21 TO YOU?

22 A HE'S GOING TO DO IT.

23 Q MEANING STEVE CHEN WILL UNPLUG WITHIN 24
24 HOURS?

25 A YES.

1 Q IN REFERRING TO THIS SPECIFIC EXAMPLE, DID YOU
2 EVER UNPLUG ANYONE IN THIS KIND OF A CIRCUMSTANCE
3 FOR COUNTERFEIT WEB SITES?

4 A I DON'T.

5 Q DID YOU EVER SEND INSTRUCTIONS TO UNPLUG FOR
6 ANY OTHER REASON?

7 A ONLY ON SPAMMING, MASSIVE SPAMMING.

8 Q ASK THE WITNESS TO REVIEW EXHIBIT 41, ATTACHED
9 TO THE DEPOSITION OF STEVE CHEN. APPEARS TO BE AN
10 E-MAIL EXCHANGE BETWEEN SECURITY AND STEVE CHEN
11 DATED ON OR ABOUT AUGUST 21ST, 2007?

12 A YES.

13 Q DID YOU SEND THIS E-MAIL TO STEVE CHEN?

14 A YES.

15 Q THE E-MAIL READS, "OKAY. LET ME KNOW WHEN IT
16 SURFACE. I NEED TO NOTIFY CUSTOMER. GUESS IT IS A
17 SERIOUS ISSUE!"

18 DID YOU WRITE THAT?

19 A YES.

20 Q CAN YOU TELL ME WHAT THAT IS IN REFERENCE TO?

21 A SOME INFRINGEMENT WEB SITES, SO AROUND THAT
22 TIME I HAVE TO FORWARD THE COMPLAINT TO THE
23 CUSTOMER AND CC COPY TO STEVE CHEN. BUT THIS ONE I
24 CANNOT FIND THE CUSTOMER'S NAME IN CPRO SO I NEED
25 TO ASK HIM SO THAT HE WILL GIVE ME THE EXACT IP

1 ADDRESS SO THAT I CAN NOTIFY THE CUSTOMER AND TO --
2 AND LET STEVE HANDLE THE REST.

3 Q LET ME ASK THE WITNESS TO REVIEW LET'S MARK
4 THIS PLAINTIFF'S EXHIBIT NUMBER 43. IT'S AN E-MAIL
5 FROM SECURITY TO ABUSE@KNOWNHOST.COM DATED
6 SEPTEMBER 2ND, 2007?

7 A YES.

8 Q DID YOU WRITE THIS E-MAIL?

9 A YES.

10 Q AND THE FIRST LINE OF THE E-MAIL READS --
11 REFERENCES A TICKET. CAN YOU TELL ME WHAT THAT
12 MEANS?

13 A OH, IT'S A TERM.

14 Q WHAT IS THE TERM IN REFERENCE TO?

15 A I JUST HAPPENED TO READ THIS E-MAIL SO HE
16 EXPLAINED. SO TO ME IT'S JUST TO IGNORE IT AND IF
17 I WERE TO -- IF I WERE TO ANSWER THE CUSTOMER I
18 WOULD SAY CLOSE TICKET. ACTUALLY I DON'T HAVE ANY
19 TICKET TO CLOSE.

20 Q OKAY. SO YOU JUST SAY TICKET BUT THERE'S NO
21 ACTUAL TICKET?

22 A THERE'S NO ACTUAL TICKET.

23 Q WHEN YOU SAY YOU IGNORED THIS, WHAT DID YOU
24 MEAN BY THAT?

25 A MOSTLY CUSTOMER NEVER RESPOND TO US AND I --

1 AND MY JOB DOESN'T INCLUDE TO FOLLOW UP SO IF I
2 HAPPEN -- THAT THIS CUSTOMER RESPOND AND I HAPPEN
3 TO READ IT IN THE BOX, IF I SAY THEY RESOLVE IT, SO
4 I TAKE IT AS RESOLVED. AND FOR COURTESY, I WOULD
5 SAY OKAY AND CLOSE THIS TICKET.

6 Q HOW DO YOU KNOW IF A CUSTOMER RESPONDS?

7 A IF I DON'T SEE CUSTOMER WRITING BACK OR WITH
8 BOLD LETTERS I ASSUME THAT THEY NEVER RESPOND.

9 Q SO IN THAT INSTANCE WHEN YOU DON'T RECEIVE AN
10 E-MAIL RESPONSE, YOU STILL, YOU DON'T TAKE ANY
11 ACTION TO NONE RESPONSES?

12 A NOT MY JOB.

13 Q WHEN YOU DO RECEIVE A RESPONSE FROM A
14 CUSTOMER, DO YOU REVIEW THE RESPONSE AND SEE IF THE
15 MATTER HAS BEEN HANDLED?

16 A NO.

17 Q SO AT WHAT POINT WOULD YOU DO AS EXHIBITED BY
18 NUMBER 43 THAT YOU WOULD CLOSE THE TICKET?

19 A BECAUSE HE HAS -- BECAUSE HE SAID HE'S
20 RESOLVED IT.

21 Q WE WILL MARK AS EXHIBIT 44 AN E-MAIL FROM
22 SECURITY TO ZHUJI.BIZ DATED SEPTEMBER 6TH, 2007.

23 A YES.

24 Q DID YOU WRITE THIS E-MAIL?

25 A YES.

1 Q THE E-MAIL REFERENCES THAT IF ANYMORE
2 COMPLAINTS COME IN, I SHOULD HAVE NO CHOICE BUT TO
3 SHUT IT DOWN. DID YOU WRITE THAT?

4 A YES.

5 Q AND WHAT IS THAT IN REFERENCE TO?

6 A FOR IF HE -- IF HE DOESN'T RESOLVE IT AND MORE
7 COMPLAINTS COME IN ON ATTACKING OR HACKING, THEN I
8 HAVE TO UNPLUG IT.

9 Q AND IN THIS INSTANCE YOU RECEIVED -- DID YOU
10 RECEIVE A RESPONSE FROM THIS CUSTOMER?

11 A YES, FROM THIS CUSTOMER.

12 Q AND YOUR E-MAIL WAS IN RESPONSE TO HIS CLAIM
13 THAT HE WAS SURE THAT HIS CLIENT WAS INNOCENT?

14 A BECAUSE HE SAID THAT HIS CLIENT IS INNOCENT
15 AND HE IS VERY SAD, THEN I RESPOND TO HIM SAYING
16 THAT BEING SAD CANNOT RESOLVE ANYTHING, SO HE
17 BETTER GET THIS CUSTOMER TO GET IT DONE AND THAT IS
18 IT. I HAPPEN TO READ THIS E-MAIL, THIS E-MAIL.

19 Q IS THIS ONE INSTANCE WHERE YOU WOULD FOLLOW UP
20 TO MAKE SURE THAT THIS PROBLEM HAD BEEN ADDRESSED?

21 A NO.

22 Q SO WHEN YOU SAY IF ANY MORE COMPLAINTS COME
23 IN, I SHALL HAVE NO CHOICE BUT TO SHUT IT DOWN, IS
24 THAT AN EMPTY THREAT?

25 A YES.

1 Q OKAY. AND IF WE'RE LOOKING AT BOTH SITUATIONS
2 BETWEEN EXHIBIT 43 AND 44, WHY WOULD YOU IN ONE
3 INSTANCE YOU JUST CLOSE THE TICKET, IN 43, AND THEN
4 IN 44 SAY, IF I HAVE ANY MORE PROBLEMS FROM YOU
5 I'LL SHUT YOU DOWN?

6 A BECAUSE ATTACKING OR HACKING, IF HIS IP
7 CONTINUED TO DO THAT, I MIGHT RECEIVE A LOT OF
8 COMPLAINTS, JUST LIKE I SAID, SPAMMING. IT WILL
9 COME 20 OR 30 PIECES A DAY AND THEN I WOULD, I
10 WOULD UNPLUG HIM BECAUSE AT THAT TIME I CAN
11 REMEMBER HIS IP. THIS OTHER ONE HE SAYS HE
12 RESOLVED IT SO I TRUSTED HIM, HE RESOLVED IT SO I
13 SAY OKAY, FINE.

14 Q SO YOU HAD JUST SAID THAT IF YOU RECEIVE MORE
15 COMPLAINTS YOU WOULD HAVE UNPLUGGED THE PERSON
16 REFERENCED IN EXHIBIT 44?

17 A YES.

18 Q SO YOUR THREAT WAS NOT EMPTY, YOU WOULD
19 ACTUALLY UNPLUG SOMEONE --

20 A IF I RECEIVED A LOT OF COMPLAINTS TO THE SAME
21 IP WITH TWO OR THREE DAYS. OTHER THAN THAT I WILL
22 TREAT AS A NEW COMPLAINT BECAUSE I CANNOT REMEMBER
23 ALL OF THOSE DOMAIN NAMES AND ALL OF THOSE NUMBERS,
24 THEY ARE ALL NUMBERS AND I DON'T HAVE TO REMEMBER
25 AND CAN'T REMEMBER.

1 Q HAVE THE WITNESS REVIEW AN E-MAIL FROM
2 SECURITY TO NORAQ@126.COM DATED SEPTEMBER 13TH,
3 2007.

4 A YES.

5 Q DID YOU WRITE THE E-MAIL THAT BEGINS WITH: IT
6 DOESN'T MATTER WHO COMPLAINED, ALL OF THE WAY TO
7 THE WORD SECURITY AT THE TOP OF THE PAGE?

8 A YES.

9 Q THIS IS DATED SEPTEMBER 13TH, 2007. IS THIS
10 ALSO ABOUT THE TIME WHERE YOU WERE INSTRUCTED TO
11 TAKE DIFFERENT ACTION RELATED TO COUNTERFEIT WEB
12 SITES?

13 A YES.

14 Q AND IN THIS INSTANCE YOU STATE THAT PLEASE
15 RESOLVE IT WITHIN 12 HOURS OTHERWISE I WILL HAVE NO
16 CHOICE BUT TO SHUT YOUR SERVERS DOWN?

17 A YES.

18 Q IS THAT AN ACTION THAT YOU WOULD ACTUALLY TAKE
19 IF THE CUSTOMER DID NOT RESOLVE IT WITH THE 12
20 HOURS?

21 A NO. I WOULD LEAVE IT TO STEVE CHEN.

22 Q SO WAS IT THE PROCEDURE AT THE TIME THAT YOU
23 WOULD SEND THE E-MAIL WITH THIS KIND OF MESSAGE AND
24 THEN STEVE WOULD DO -- WOULD FOLLOW UP TO SEE
25 WHETHER OR NOT IT HAD COMPLIED?

1 A YES.

2 Q LET ME MARK COLLECTIVELY AS 47 TWO E-MAILS.
3 THE FIRST ONE DATED SEPTEMBER 12TH, 2007 FROM
4 SECURITY TO BRIAN C IT LOOKS LIKE ROCHE, R-O-C-H-E,
5 AND THE SECOND AN E-MAIL FROM SECURITY TO
6 REBOOT@AKANOC.COM TO STEVE CHEN DATED SEPTEMBER
7 13TH, 2007.

8 WE'LL LOOK AT THE ONE DATED SEPTEMBER 12,
9 2007 FIRST.

10 A YES.

11 Q DID YOU WRITE THE E-MAIL DATED SEPTEMBER 12TH,
12 2007?

13 A YES.

14 Q DID YOU WRITE THE E-MAIL DATED SEPTEMBER 13TH,
15 2007?

16 A YES.

17 Q AND IS THE E-MAIL DATED SEPTEMBER 13TH RELATED
18 TO THE E-MAIL DATED SEPTEMBER 12TH?

19 A YES.

20 Q AND THE SUBJECT LINE IN THE E-MAIL DATED
21 SEPTEMBER 13TH SAYS, "PLEASE UNPLUG IP
22 204.16.198.204?"

23 A UH-HUH, YES.

24 Q AND SO YOU SENT THIS INSTRUCTION TO
25 REBOOT@AKANOC.COM AND -- FOR STEVE TO REBOOT THE

1 SERVER?

2 A YES.

3 Q AND WAS THAT BECAUSE THE CUSTOMER FAILED TO
4 RESPOND TO THE COMPLAINT ON SEPTEMBER 12, 2007?

5 A YES.

6 Q AND DID YOU HAVE TO ASK STEVE OR ANYBODY ELSE
7 BEFORE YOU MADE THE REQUEST TO HAVE THIS SERVER
8 UNPLUGGED?

9 A REGARDING TO MICROSOFT OR EBAY OR PAY PAL
10 AROUND THAT TIME EVEN THE COUNTERFEIT WEB SITE I
11 CAN UNPLUG.

12 Q DID YOU DO THAT ON A REGULAR BASIS?

13 A NOT ON A REGULAR BASIS BECAUSE USUALLY I WOULD
14 CC COPY TO MR. CHEN. SO IF HE UNPLUGGED, THEN I
15 DON'T HAVE TO TAKE ANY ACTION.

16 Q BUT WAS IT YOUR PROCEDURE, STANDARD PROCEDURE
17 TO UNPLUG THE COUNTERFEIT WEB SITE?

18 A AT THAT TIME, YES.

19 Q AND DO YOU STILL UNPLUG COUNTERFEIT WEB SITES
20 AS YOU DESCRIBED?

21 A YES.

22 Q SO BEGINNING AROUND SEPTEMBER OF 2007 ALL OF
23 THE WAY TO THE PRESENT --

24 A YES.

25 Q -- WHEN YOU RECEIVE A COMPLAINT REGARDING

1 COUNTERFEIT WEB SITES, YOU UNPLUG THOSE?

2 A I WOULD STILL SEND A COMPLAINT TO THE
3 CUSTOMER, CC COPY TO MR. CHEN AND THEN MOSTLY I
4 WOULD LEAVE IT TO HIM BECAUSE I DON'T -- I ONLY
5 WORK PART-TIME. IF I HAPPEN TO KNOW THAT THE
6 CUSTOMER DIDN'T COMPLY, THEN I WILL UNPLUG IT BUT
7 MOSTLY I DON'T.

8 THE COURT: HOW MUCH MORE DO YOU HAVE?
9 IT SOUNDS LIKE YOU ARE GOING TO NEED A LITTLE MORE
10 TIME. IT LOOKS LIKE THERE'S ABOUT TEN PAGES.

11 MS. WANG: ACTUALLY I HAVE THREE MORE
12 PAGES.

13 THE COURT: THEN LET'S FINISH THIS UP SO
14 WE DON'T HAVE TO LOOK FORWARD TO COMING BACK AND
15 LISTENING.

16 BY MS. WANG:

17 Q WHAT DO YOU MEAN BY IF YOU HAPPEN TO KNOW THAT
18 THE CUSTOMER DID NOT REPLY?

19 A FOR EXAMPLE, IF ANOTHER COMPLAINT IS COMING
20 UP, I MEAN A LOT OF COMPLAINTS COMING IN, THEN I
21 KNOW THAT HE -- THE CUSTOMER DIDN'T COMPLY. AND TO
22 MICROSOFT AND EBAY AND PAY PAL, THESE COMPANY I
23 KNOW THEY ARE VERY BIG, YOU KNOW, AND SO I WOULD
24 SEE IF THEY HAD ANY COMPLAINT COMING IN OR NOT.

25 SOMETIMES EBAY WOULD COME IN -- WITHIN

1 TWO DAYS THEY WILL SENT ME TWO COMPLAINTS WITHIN
2 TWO DAYS THEN I KNOW THAT THE CUSTOMER DIDN'T
3 COMPLY SO I WILL SHUT THEM DOWN.

4 Q WHEN YOU TALK ABOUT MICROSOFT AND EBAY AS
5 THESE BIG COMPANIES, WOULD YOU CONSIDER LOUIS
6 VUITTON A BIG COMPANY AS WELL?

7 A I DON'T KNOW.

8 Q HAVE YOU EVER HEARD OF LOUIS VUITTON?

9 A NO.

10 Q HAVE YOU EVER HEARD OF LV?

11 A YEAH, FROM MY DAUGHTER.

12 Q WHAT DO YOU KNOW ABOUT LV?

13 A FROM MY DAUGHTER SAYING THAT SHE LIKES -- IS
14 IT HANDBAGS? SOMETHING LIKE THAT? I DON'T KNOW.
15 I NEVER BUY THAT.

16 Q THE ONE PAGE E-MAIL DATED AUGUST 28TH FROM
17 SECURITY TO REBOOT@AKANOC.COM, DID YOU SEND THAT
18 E-MAIL?

19 A YES.

20 Q IT READS THAT DUE TO FAILURE TO RESPOND TO
21 NOTICES OVER 48 HOURS, PLEASE CONFIRM AND TKS. YOU
22 TESTIFIED EARLIER THAT YOU USUALLY GIVE PEOPLE A 12
23 HOUR RESPONSE TIME AND SOMETIMES YOU GIVE THEM
24 LONGER LIKE 48 HOURS?

25 A IF I RECEIVE MORE COMPLAINTS AFTER 12 HOURS OR

1 24 HOURS, I CONSIDER THEM AS IGNORING ME, IGNORING
2 THE SECURITY DEPARTMENT SO I WOULD UNPLUG THEM IF
3 MORE COMPLAINTS COMING IN.

4 Q SO THE 48 HOUR IGNORE PERIOD HAS NO
5 SIGNIFICANCE ON YOUR DECISION TO UNPLUG SOMEONE OR
6 NOT?

7 A IF -- ACCORDING TO THE COVERING LETTER I
8 SHOULD UNPLUG AFTER 12 HOURS BUT USUALLY I DON'T
9 NEED TO FOLLOW UP SO I DON'T KNOW IF THEY RESPOND
10 OR NOT. BUT IF THE NEXT DAY OR THE THIRD DAY MORE
11 COMPLAINTS COMING IN, THAT MEANS CUSTOMER IS NOT
12 RESOLVING IT, SO I CAN UNPLUG THEM IF I HAVE TIME
13 OR STEVE WOULD UNPLUG THEM.

14 Q SO I UNDERSTAND, YOU WOULD UNPLUG SOMEONE IF
15 YOU WERE -- IF YOU SEND OUT AN INITIAL COMPLAINT
16 AND THEN MORE COMPLAINTS CAME IN AFTER 12 HOURS OR
17 48 HOURS, THEN YOU WOULD UNPLUG SOMEONE?

18 A YES.

19 Q SORRY TO DO THIS TO YOU. CAN WE GO BACK TO 46
20 REALLY FAST, AN E-MAIL DATED SEPTEMBER 13TH.

21 IT WOULD APPEAR THAT YOU'RE RESPONDING TO
22 A MESSAGE FROM NORAQ, WHO WANTED TO KNOW WHICH
23 COMPANY IS COMPLAINING TO THE SITES?

24 A YES.

25 Q DO YOU UNDERSTAND THE MESSAGE THAT NORAQ WROTE

1 ABOUT WANTING TO KNOW WHICH COMPANY WERE
2 COMPLAINING AND YOUR RESPONSE TO BE THAT SHE DIDN'T
3 KNOW WHO WAS COMPLAINING?

4 A I UNDERSTAND THAT.

5 Q OKAY. IS THERE AN INSTANCE WHERE YOU DID NOT
6 FORWARD THE COMPLAINT ON TO THE CUSTOMER?

7 A I FORWARDED IT. THEY DON'T UNDERSTAND. IT'S
8 THEIR PROBLEM. THEY DON'T UNDERSTAND WHAT I'M
9 FORWARDING TO THEM.

10 Q OKAY. SO IN THIS INSTANCE YOU HAD FORWARDED
11 THE COMPLAINT THAT YOU HAD RECEIVED TO NORAQ, AND
12 SHE WROTE BACK TO YOU THAT SHE WANTED TO KNOW WHICH
13 COMPANY WAS COMPLAINING; IS THAT CORRECT?

14 A YES.

15 Q AND THEN IN YOUR E-MAIL YOU WROTE, IT DOESN'T
16 MATTER WHO COMPLAINED. CAN YOU TELL ME WHAT THAT
17 MEANS IN REFERENCE TO THIS CONVERSATION?

18 A WELL, JUST AN ANSWER. SHE WANTS TO KNOW OR
19 WHICH COMPANY IS COMPLAINING AND I JUST TELL HER,
20 IT DOESN'T MATTER. ALL YOU HAVE TO DO IS TO REMOVE
21 ALL OF THE COMPLAINT WEB SITES OR DOMAINS.

22 Q DO YOU TREAT SPAMHAUS COMPLAINTS DIFFERENTLY
23 THAN OTHER COMPLAINTS?

24 A YES.

25 Q AND HOW IS THAT?

1 A BECAUSE I'M INSTRUCTED TO DO SO.

2 Q WHAT ARE YOU INSTRUCTED TO DO?

3 A WHENEVER SPAMHAUS SENDS US A COMPLAINT, WE
4 JUST UNPLUG THE SERVER AND DISCONTINUE THE SERVICE
5 TO THE CUSTOMER.

6 Q NOW, IS EXHIBIT 50 AN E-MAIL DATED SEPTEMBER
7 15TH, 2007 FROM SECURITY TO SUPPORT@TOOMING.COM?
8 CAN YOU PLEASE REVIEW THAT?

9 A YES.

10 Q OKAY. DID YOU WRITE THIS E-MAIL STARTING WITH
11 "DEAR SIR"?

12 A YES.

13 Q I'M SORRY. WHEN YOU WRITE SOMETHING LIKE THE
14 SECOND NOTE FROM THIS COMPLAINANT, DOES THAT MEAN
15 YOU RECEIVED A PRIOR COMPLAINT FROM THE CUSTOMER
16 WITHIN THE PAST TWO OR THREE DAYS FROM SEPTEMBER
17 15TH?

18 A YES.

19 Q AND IT WRITES "MAKE SURE YOU KEEP ALL OF THE
20 RECORDS SO THAT IF THE AUTHORITIES NEEDS EVIDENCE,
21 WE CAN PROVIDE THEM," WHAT DID YOU MEAN BY THAT?

22 A INSTRUCTION FROM STEVE.

23 Q STEVE HAD TOLD YOU TO WRITE THAT TO THE
24 CUSTOMER?

25 A YES, REGARDING FRAUD OR IDENTITY THEFT.

1 Q SO WITH CASES OF FRAUD OR IDENTITY THEFT YOU
2 WERE GIVEN SPECIFIC INSTRUCTIONS?

3 A AROUND THAT TIME ON OR BEFORE SEPTEMBER
4 MR. CHEN INSTRUCTED ME TO BE MORE CAREFUL ON THESE
5 FRAUD THINGS SO I WOULD CC COPY TO HIM AND HE WOULD
6 TAKE CARE OF IT. SO I HAVE TO BE VERY STRAIGHT TO
7 THE CUSTOMERS.

8 Q SO AROUND THIS TIME IN SEPTEMBER OF 2007 YOU
9 STATED THAT YOU WERE GIVEN SPECIFIC INSTRUCTIONS
10 ABOUT CERTAIN KINDS OF COMPLAINTS. YOU SAID FRAUD
11 AND COUNTERFEITING. WERE THERE ANY KINDS OF
12 COMPLAINTS THAT YOU WERE GIVEN SPECIFIC
13 INSTRUCTIONS?

14 A PORN SITES, TERRORIST SITES, ALL OF THOSE
15 ILLEGAL ISSUES.

16 Q AND SINCE 2007, AND SINCE SEPTEMBER OF '07,
17 YOU HAVE FOLLOWED THOSE INSTRUCTIONS RELATING TO
18 FRAUD, COUNTERFEIT, THESE ILLEGAL WEB SITES?

19 A MOST OF THE TIME BUT MOST OF THE TIME I WILL
20 CC THESE TO MR. CHEN.

21 Q SO YOU'RE TELLING THE CUSTOMER TO KEEP ALL OF
22 THE RECORDS. DO YOU KEEP ALL OF THE RECORDS AS
23 WELL?

24 A NO.

25 MS. WANG: AND THAT'S THE END OF THE

1 PORTION, YOUR HONOR.

2 THE COURT: I APPRECIATE YOUR PATIENCE IN
3 ALLOWING US TO FINISH IT UP.

4 IT IS SOMEWHAT TEDIOUS TO HAVE THAT
5 MATERIAL READ, BUT AS YOU CAN UNDERSTAND IT DOES
6 PROVIDE US WITH THE OPPORTUNITY TO HAVE THE
7 TESTIMONY READ OF WITNESSES WHO ARE NOT HERE IN A
8 FASHION THAT ALLOWS US TO GET THE FEEL FOR THE
9 ACTUAL TESTIMONY.

10 WE'LL RECESS FOR THE DAY. IT'S ABOUT
11 FIVE AFTER 4:00. WE'LL COME BACK TO THIS MATTER
12 TOMORROW AT 9:00 O'CLOCK. REMEMBER MY ADMONITIONS.

13 THE COURT: VERY WELL. ANY MATTERS BY
14 THE PARTIES OUT OF THE PRESENCE OF THE JURY?

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

17 THE COURT: YOU HAVE -- YOU USED UP MORE
18 TIME, OF COURSE, BECAUSE YOU'RE THE PLAINTIFF AND
19 YOU'RE USING YOUR TIME.

20 I HAVEN'T DONE THE CALCULATION FOR THE
21 DAY, BUT MS. GARCIA MIGHT HAVE GIVEN YOU THE SHEETS
22 THAT I DID FROM THE PREVIOUS THREE SESSIONS AND
23 I'LL DO THIS ONE VERY QUICKLY AND PERHAPS YOU'LL
24 HAVE IT IN THE MORNING.

25 BUT WHAT IS YOUR PLAN FOR TOMORROW?

1 MR. COOMBS: THE PLAN FOR TOMORROW IS TO
2 CALL MR. HOLMES TO TESTIFY AND TO READ A PORTION OF
3 MR. CHEN'S DEPOSITION TRANSCRIPT. I DON'T THINK IT
4 WILL TAKE MUCH LONGER THAN MS. LUK DID TODAY AND
5 DEPENDING ON WHERE WE ARE AT THAT POINT WE CAN CALL
6 THE EXPERT OR START WITH THE EXPERT ON FRIDAY
7 MORNING.

8 THE COURT: I SEE. SO YOU EXPECT TO
9 EITHER BE CLOSE TO RESTING -- YOU'RE RESTING AFTER
10 YOUR EXPERT?

11 MR. COOMBS: THAT'S CORRECT, YOUR HONOR.

12 THE COURT: ANY MATTERS TO BE BROUGHT UP
13 OUT OF THE PRESENCE OF THE JURY?

14 MR. LOWE: NONE AT THIS TIME, YOUR HONOR.

15 THE COURT: VERY WELL. I'LL SEE YOU IN
16 THE MORNING.

17 MR. COOMBS: THANK YOU, YOUR HONOR.

18 (WHEREUPON, THE EVENING RECESS WAS
19 TAKEN.)
20
21
22
23
24
25