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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

Louis Vuitton Malletier, S.A.,)	Case No. C 07 3952 JW (HRLx)
)	
Plaintiff,	)	REPLY OF PLAINTIFF TO
v.	)	DEFENDANTS' EVIDENTIARY
	)	OBJECTIONS TO COOMBS
Akanoc Solutions, Inc., et al.	)	DECLARATION IN SUPPORT OF
	)	MOTION FOR PERMANENT
Defendants.	)	INJUNCTION; DECLARATION AND
	)	EXHIBITS IN SUPPORT
)	
	)	Date: January 25, 2010
	)	Time: 9:00 a.m.
	)	Court: Hon. James Ware
)	

Defendants' objections to the attachment of the trial record to Plaintiff's moving papers for lack of authentication but their objections are properly overruled.

The sole authority relied upon by Defendants is factually inapplicable. The transcript at issue in, *see Orr v. Bank of America, NT & SA*, 285 F.3d 764, 775 (9th Cir. 2002) involved a deposition transcript and not a transcript of proceedings held before the District Court and which have, separately by filed by the Court Reports.

Trial transcripts are self-authenticating under Fed. R. Evid. 902(2) or (4). In the alternative, trial transcripts may be authenticated under Fed. R. Evid. 901(b)(4) or (7) according to the following:

“(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

...

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.”

Fed. R. Evid. 901(b)(4), (7). The format of the trial transcript pages are unique as each page bears the identifier of either the court reporter by name, “U.S” District Court” or “U.S. Court Reporters” as well as the page number. These documents are public records that are authorized by law to be recorded or filed and in fact were recorded or filed. 28 USC § 753. Defendants’ objections should be overruled.

“The guiding principle is that proper authentication requires some sort of proof that the document is what it purports to be.” *Sinotes-Cruz v. Gonzales*, 468 F.3d 1190, 1196 (9th Cir. 2006) *citing Iran v. INS*, 656 F.2d 469, 473 (9th Cir. 1981). The pages from the trial transcript on their face provide the necessary indicia of authenticity in their format and content. There has been no indication from Defendants that the transcript excerpts have been altered or are incorrect. The Court should overrule Defendants’ objections.

A similar result should follow under Fed. R. Evid. 902 which provides in part:

“(2) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

...

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.”

Fed. R. Evid. 902(2) and (4). Aside from the signature on the transcript of the Court Reporter working in his or her official capacity as employed by the United States District Court, the trial transcript has been filed and mandated under General Order No. 59 to be filed electronically. 28

1 USC § 753. Docket Nos.254, 255, 260, 261, 262 and 263 being transcripts of proceedings held
 2 each day testimony was presented to the Court. The court reporters involved in this matter have
 3 done so as required by Chief Judge Walker, The Judicial Counsel of the United States and
 4 Congress, satisfying the requirements of Fed. R. Evid. 902(2) and (4).

5 Most cases involving objections to trial transcripts on the grounds advanced by Defendants
 6 relate to the transcripts from other trials in other courts, not the transcript for the trial that took
 7 place before the presiding Court. In any event, Defendants do not dispute the authenticity of the
 8 transcripts, and the documentation that Defendants require, is attached to the Declaration of J.
 9 Andrew Coombs attached hereto. *Bonneau v. Clifton*, 215 F.R.D. 596, 601 (D. Or. 2003) (court
 10 overruling objection when additional pages were submitted in relation to a deposition transcript).
 11 Accepting Defendants' arguments and excluding the trial record under these circumstances would
 12 be to elevate form over substance, and would be particularly prejudicial given the lack of any
 13 discrepancy cited by Defendants.

14 Plaintiff was attempting to aid the Court in providing easier access to the same transcript
 15 that the Defendants are in possession and that have been filed with the Court by the court reporters.
 16 Plaintiff has already cited with specificity in its moving papers the portions of the transcript that it
 17 references and the witnesses that were testifying. Excluding the trial record in this instance
 18 without applicable authority advanced by Defendants, would be improper.

19 Defendants' objections should be overruled in their entirety.

20
 21 Dated: January 11, 2010

J. Andrew Coombs, A Professional Corp.

22
 23 /s/ J. Andrew Coombs
 By: J. Andrew Coombs
 Annie S. Wang
 24 Attorneys for Plaintiff Louis Vuitton Malletier, S.A.
 25
 26
 27
 28

DECLARATION OF J. ANDREW COOMBS

I, J. ANDREW COOMBS, declare as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of California and the United States District Court for the Northern District of California. I am an attorney for Plaintiff Louis Vuitton Malletier, S.A. ("Plaintiff") in an action styled Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., et al. I make this Declaration in support of Plaintiff's Reply to Defendants' Evidentiary Objections to Coombs Declaration. Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:

2. Attached Exhibit A is a true and accurate copy of portions of Volume 1 of the certified court reporter's transcript from the Trial in this matter from August 18, 2009, of the trial testimony of Plaintiff's witness, Mr. Nikolay Livadkin.

3. Attached Exhibit B is a true and accurate copy of portions of Volume 2 of the certified court reporter's transcript from the Trial in this matter from August 19, 2009, of the trial testimony of Plaintiff's witness Mr. Nikolay Livadkin and the deposition reading of Defendants' employee Ms. Juliana Luk.

4. Attached Exhibit C is a true and accurate copy of portions of Volume 3 of the certified court reporter's transcript from the Trial in this matter from August 20, 2009, of the deposition reading of Defendant Steve Chen.

5. Attached Exhibit D is a true and accurate copy of portions of Volume 4 of the certified court reporter's transcript from the Trial in this matter from August 21, 2009, of the trial testimony of Defendant Steve Chen.

6. Attached Exhibit E is a true and accurate copy of portions of Volumes 8 and 9 of the certified court reporter's transcript from the Trial in this matter from August 25, 2009, of the trial testimony of Defendant Steve Chen and the trial testimony of Defendants' employee Mr. Andrew Cheng and Defendants' expert Mr. Richard Gralnik.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States of America.

/s/ J. Andrew Coombs
J. ANDREW COOMBS

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LOUIS VUITTON) C-07-03952-JW
MALLETTIER, S.A.,)
) AUGUST 18, 2009
PLAINTIFF,)
) VOLUME 1
V.)
) PAGES 1 - 199
AKANOC SOLUTIONS, INC.,)
ET AL.,)
)
DEFENDANTS.)
-----)

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFF: J. ANDREW COOMBS
BY: J. ANDREW COOMBS
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GLENDALE, CALIFORNIA 91206

FOR THE DEFENDANTS: GAUNTLETT & ASSOCIATES
BY: JAMES A. LOWE
CHRISTOPHER G. LAI
18400 VON KARMAN
IRVINE, CALIFORNIA 92612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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

ALSO PRESENT:

LAW OFFICES OF J. ANDREW
COOMBS
BY: RUTH ADLER, PARALEGAL
517 E. WILSON AVENUE
SUITE 202
GLENDALE, CALIFORNIA 91206

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

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

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INDEX OF EXHIBITS

	IDENT.	EVIDENCE
PLAINTIFF'S:		
451		145
74		170
75		177

1 PRODUCT BEARING LOUIS VUITTON TRADEMARKS.

2 I BROUGHT THIS EXHIBIT 82.1 TO COMPARE TO
3 THE NONGENUINE. THIS IS THE CLOSEST I COULD FIND
4 BECAUSE AGAIN IT'S A PRODUCT THAT WE DO NOT
5 MANUFACTURE ANYMORE.

6 BY MR. COOMBS:

7 Q AND CAN YOU DESCRIBE FOR US HOW YOU CAN
8 IDENTIFY THE NONGENUINE ARTICLE AS NONGENUINE?

9 A WELL, AGAIN, QUITE EASY. THIS PLASTIC
10 PROTECTION OF THE METALLIC PARTS THAT I JUST
11 MENTIONED, THE BUCKLE HERE IS QUITE DIFFICULT TO
12 TURN AND TO CLOSE COMPARED TO THE GENUINE WHICH
13 WORKS VERY SMOOTHLY.

14 THE INTERIOR IS NOT THE SAME. YOU WILL
15 SEE THE LINING IS NOT THE SAME.

16 Q THE LINING.

17 A THE LINING, SORRY. THE QUALITY OF THE
18 METALLIC PARTS IS QUITE POOR. THESE CARDS WHICH
19 PROBABLY ARE MADE TO LURE THE CUSTOMER THAT IT'S
20 NOT AN AUTHENTICITY CARD, WE DO NOT DO THESE CARDS.

21 THERE'S A LITTLE BOOKLET INSIDE WHICH IS
22 PRINTED NOT IN THE RIGHT WAY. PART OF THE TEXT IS
23 ACTUALLY CUT SO THAT'S AN EASY WAY TO SEE THAT IT
24 DOESN'T COME FROM OUR COMPANY.

25 Q I'LL GIVE YOU A SHORT BREAK FROM PRODUCT

1 IDENTIFICATION AND MOVE TO -- AND ASK YOU A LITTLE
2 MORE ABOUT THE MANUFACTURING DISTRIBUTION OF
3 GENUINE LOUIS VUITTON. WHERE IS GENUINE LOUIS
4 VUITTON MADE?

5 A LOUIS VUITTON PRODUCTS ARE MADE IN LOUIS
6 VUITTON'S OWN MANUFACTURING FACILITIES. THERE ARE
7 14: 11 IN FRANCE, 2 IN SPAIN, AND 1 IN SAN DIMAS
8 IN CALIFORNIA. THAT'S FOR LEATHER GOODS.

9 THERE'S ONE MANUFACTURING FACILITY IN
10 ITALY FOR SHOES AND IN SWITZERLAND FOR WATCHES.

11 Q AND HOW MANY PEOPLE DOES LOUIS VUITTON EMPLOY
12 IN THE UNITED STATES.

13 A IN THE UNITED STATES LOUIS VUITTON EMPLOYS
14 MORE THAN 1,300 PEOPLE AND MANY IN THE HEADQUARTERS
15 IN THE LOCAL COMPANY OF NEW YORK.

16 IN THE STORE CHAIN THERE ARE AROUND 100
17 STORES ACROSS THE UNITED STATES. WE EMPLOY A
18 LITTLE BIT MORE THAN 300 PEOPLE IN THE WORKSHOP
19 PRODUCTION IN SAN DIMAS, CALIFORNIA, AND WE
20 EMPLOYED I THINK 30 PEOPLE I THINK IN THE CUSTOMER
21 SERVICE DEPARTMENT IN SAN FRANCISCO.

22 Q AND ONCE LOUIS VUITTON PRODUCT IS
23 MANUFACTURED, HOW IS IT DISTRIBUTED?

24 A ONCE LOUIS VUITTON PRODUCTS ARE MANUFACTURED,
25 THEY'RE DISTRIBUTED THROUGH ONE MAIN LOGISTICS

1 CENTER LOCATED IN THE SUBURBS OF PARIS AND FOR
2 THESE PRODUCTS MANUFACTURED IN CALIFORNIA, THEY'RE
3 DISTRIBUTED THROUGH THE LOGISTICS CENTER BASED IN
4 MEMPHIS.

5 Q AND ARE THOSE LOGISTIC CENTERS OWNED BY LOUIS
6 VUITTON?

7 A YES, THEY ARE.

8 Q AND THEY'RE OPERATED BY THEM?

9 A YES, THEY ARE.

10 Q AND ARE THERE ANY OTHER LOGISTIC CENTERS FOR
11 LOUIS VUITTON PRODUCTS?

12 A WELL, THERE ARE LOCAL REGIONAL STORAGE
13 FACILITIES, BUT I WOULDN'T CALL THEM LOGISTICS
14 CENTER.

15 Q THE STORAGE CENTERS ARE OPERATED AND
16 MAINTAINED BY LOUIS VUITTON?

17 A BY LOUIS VUITTON.

18 Q SO ARE THERE ANY LICENSEES FOR LOUIS VUITTON
19 MERCHANDISE?

20 A NO, THERE ARE NO LICENSEES.

21 Q AND DOES LOUIS VUITTON USE WHOLESALERS TO
22 DISTRIBUTE ANY OF ITS MERCHANDISE?

23 A NO.

24 Q ARE THERE ANY INTERVENING THIRD PARTIES
25 BETWEEN THE LOUIS VUITTON OWNED PRODUCTION

1 FACILITIES THAT YOU DESCRIBED AND THE CONSUMER
2 OTHER THAN LOUIS VUITTON ITSELF?

3 A NO. LOUIS VUITTON PRODUCTS ARE PRODUCED IN
4 OUR OWN MANUFACTURING FACILITIES AND ARE
5 DISTRIBUTED THROUGH A WHOLLY OWNED AND CONTROLLED
6 STORE CHAIN.

7 Q AND CAN YOU DESCRIBE HOW THE STORE CHAIN IS
8 STRUCTURED?

9 A THERE ARE AROUND 450 STORES AROUND THE WORLD
10 AND IN MOST OF THE CONTINENTS.

11 Q AND HOW ABOUT DEPARTMENT STORES?

12 A THERE ARE INDEED ALSO CORNERS IN HIGH-END
13 DEPARTMENT STORES. THESE CORNERS ARE STAFFED BY
14 LOUIS VUITTON PERSONNEL.

15 Q IS ANY FINISHED LOUIS VUITTON PRODUCT MADE IN
16 ASIA?

17 A NO.

18 Q DOES LOUIS VUITTON ASSIGN ITS TRADEMARKS TO
19 ANYONE ELSE?

20 A NO.

21 Q AND DOES IT SELL PRODUCT ON LINE?

22 A YES, IT DOES BUT IN JUNE OF 2009 LOUIS VUITTON
23 PRODUCTS WERE SOLD ON TWO WEB SITES, ELUXURY.COM,
24 WHICH IS A WEB SITE BELONGING TO LOUIS VUITTON AND
25 LOUIS VUITTON'S OWN WEB SITE LOUISVUITTON.COM AND

1 CURRENTLY LOUIS VUITTON IS SELLING OUR PRODUCTS.

2 Q LOUIS VUITTON PRODUCTS ARE EXPENSIVE, ISN'T
3 IT?

4 A YES, THEY ARE.

5 Q AND WHY IS THAT?

6 A WELL, LOUIS VUITTON'S PRODUCTS ARE, IF I CAN
7 SAY, A SYMBOL OF LUXURY. WE -- OUR CUSTOMERS DREAM
8 ABOUT THE BEST PRODUCT, THE PERFECT PRODUCT, AND
9 THIS IS COSTLY.

10 LOUIS VUITTON, ONE OF THE KEYS TO LOUIS
11 VUITTON'S SUCCESS IS THE QUALITY, AND WE REQUIRE
12 THE HIGH QUALITY STANDARDS AT ANY LEVEL FROM THE
13 HEAD OFFICES THROUGH THE STORES AND MANUFACTURING
14 FACILITIES.

15 THERE ARE QUALITY CHECKS AND AT ALL
16 LEVELS OF THE PRODUCTION AND THEY'RE SUPPLEMENTED
17 BY SELF-CHECKS BY THE OPERATOR DURING THE VARIOUS
18 OPERATIONS THAT HE PERFORMS WHEN THE PRODUCTS HE'S
19 MADE.

20 THIS REQUIRES, OF COURSE, VERY CAREFUL
21 SELECTION OF RAW MATERIALS WHICH COST -- WHICH ARE
22 COSTLY. SOME OF THE RAW MATERIALS SUCH AS THE
23 EXOTIC AND SOME EXOTIC LETTERS ARE EVEN SO RARE AND
24 SO DIFFICULT TO SOURCE THAT WHEN A CUSTOMER MAKES
25 AN ORDER FOR SUCH PRODUCT, HE NEEDS TO WAIT UNTIL

1 THE PARTICULAR OR PIECE OF EXOTIC LEATHER IS
2 AVAILABLE COULD COME FROM -- IT'S DIFFICULT TO
3 SOURCE.

4 Q SO IF LOUIS VUITTON CAN COMMAND SUCH A PRICE
5 FOR ITS PRODUCT WHY DOES IT CARE ABOUT THE
6 NONGENUINE PRODUCT THAT WE HAVE BEEN LOOKING AT?

7 A WELL, I WASN'T --

8 Q I'M SORRY. DID I INTERRUPT?

9 A WE ALSO MANUFACTURE IN COUNTRIES WITH HIGH
10 LABOR COSTS. WE SHOULD BE PARTICULARLY IN EUROPE.
11 WE'RE PROBABLY AMONGST THE LAST COMPANIES THAT DO
12 NOT OUTSOURCE PRODUCTION IN LOW COST PRODUCTION
13 COUNTRIES PRECISELY BECAUSE WE NEED TO SOURCE THE
14 BEST QUALITY PRODUCT.

15 Q SO --

16 A ALSO THE SALE OF LUXURY GOODS REQUIRES QUITE
17 EXPENSIVE COMMUNICATION AND ADVERTISING CAMPAIGNS
18 WHICH IS THIS ADDITIONAL COST GOES TO THE END PRICE
19 OF THE PRODUCT.

20 Q SO A CONSIDERABLE EXPENSE ON MARKETING?

21 A YES.

22 Q SO IF LOUIS VUITTON CAN COMMAND A PREMIUM
23 PRICE FOR ITS PRODUCT, THEN WHY DOES IT CARE ABOUT
24 THE NONGENUINE PRODUCT THAT YOU'VE BEEN LOOKING AT?

25 A WELL, IT'S A BIG PROBLEM FOR US. NOT ONLY

1 BECAUSE IT'S A CUSTOMER WHO PURCHASES A NONGENUINE
2 PRODUCT WILL PROBABLY NOT BUY OUR PRODUCT, BUT ALSO
3 BECAUSE PEOPLE WHO HAVE -- WHO LOVE OUR PRODUCT SO
4 MUCH THAT THEY WOULD SAVE MONEY FOR A LONG TIME TO
5 BUY A BAG THAT THEY DREAMED FOR A LONG TIME, THEY
6 ARE GENUINELY DISGUSTED WHEN THEY SEE A CHEAP
7 IMITATIONS OF THIS BAG ALL OVER THE PLACE.

8 WE RECEIVE MANY, MANY COMPLAINTS OF SUCH
9 PEOPLE.

10 Q SO HOW IS IT THAT LOUIS VUITTON IS HARMED BY
11 THESE NONGENUINE PRODUCTS.

12 A THE IMAGE OF THE COMPANY AS A LUXURY BRAND
13 SUFFERS FROM THESE PRODUCTS.

14 Q SO GIVEN THAT, WHAT DOES LOUIS VUITTON DO TO
15 ADDRESS THE PROBLEM -- WHEN WE TALK ABOUT
16 "NONGENUINE SALES" WE'RE TALKING ABOUT MERCHANDISE
17 THAT LOUIS VUITTON HAS NOT MADE; IS THAT CORRECT?

18 A YES.

19 Q AND SO WHAT DOES LOUIS VUITTON DO TO TRY TO
20 CURTAIL THE SALE OF SUCH MERCHANDISE?

21 A LOUIS VUITTON EMPLOYS WITHIN THE INTELLECTUAL
22 PROPERTY DEPARTMENT 40 PEOPLE FULLY DEDICATED ON
23 THIS KIND OF ISSUES MAINTAINING OUR RIGHTS AND
24 ENFORCING THEM.

25 THIS TEAM OF 40 PEOPLE IS MAINLY BASED IN

1 PARIS WITH LOCAL OFFICERS AROUND THE WORLD IN NEW
2 YORK, BUENOS AIRES, MULAN, DUBAI, HONG KONG, AND
3 TOKYO.

4 Q AND WHAT KIND OF BUDGET DOES LOUIS VUITTON
5 ALLOCATE TO DEALING WITH THIS ISSUE ON AN ANNUAL
6 BASIS?

7 A AROUND 15 MILLION EUROS PER YEAR WHICH WOULD
8 BE MORE THAN \$20 MILLION.

9 Q TURNING TO YOUR OFFICES AND HOW DID YOU LEARN
10 ABOUT LOUIS VUITTON DISTRIBUTION OF COUNTERFEITS?

11 A THERE ARE SEVERAL INFORMATION ABOUT LOUIS
12 VUITTON DISTRIBUTION OF COUNTERFEITS. THE ONE
13 SOURCE WE GET IS BY OUR CUSTOMERS. OUR CUSTOMERS
14 CAN REACH OUR CUSTOMER SERVICE DEPARTMENTS BY PHONE
15 CALL OR AN E-MAIL AND THEY ACTUALLY DO SO VERY
16 OFTEN AND REPORT COUNTERFEIT SALES TO US.

17 WE ALSO EMPLOY AN EXTERNAL SERVICE
18 PROVIDER SPECIFICALLY FOR ONLINE DISTRIBUTION OF
19 COUNTERFEITS. THIS COMPANY MAINTAINS THE DATABASE
20 FOR US OF COUNTERFEIT WEB SITES AND THIS DATABASE
21 IS UPDATED TWICE A MONTH WHERE NEW COUNTERFEIT WEB
22 SITES ARE ADDED.

23 Q AND HOW DO CUSTOMERS COMPLAINTS ABOUT ONLINE
24 INFORMATION REACH YOUR OFFICE?

25 A THEY REACH OUR OFFICE VIA OUR CUSTOMER SERVICE

1 DEPARTMENT.

2 FOR EXAMPLE, WHEN AN E-MAIL IS RECEIVED
3 BY THE CSD, THE CSD WILL REPLY TO THE CUSTOMER AND
4 WILL COPY OUR INTELLECTUAL PROPERTY DEPARTMENT TO
5 THE E-MAIL. RESPONSE TO THE CUSTOMER.

6 Q SO YOUR OFFICE WOULD RECEIVE A COPY OF THE
7 RESPONSE BEING SENT TO THE CONSUMER?

8 A YES.

9 Q AND DOES YOUR OFFICE RETAIN THOSE REPORTS IN
10 THE NORMAL COURSE?

11 A YES.

12 Q DID YOU TAKE --

13 A WE ALSO -- THERE ARE ALSO MANY CUSTOMERS WHO
14 COME TO THE STORES AND COMPLAIN ABOUT IT, IN THIS
15 CASE THE STORES THAT WOULD TRANSFER INFORMATION TO
16 US.

17 WE ALSO RECEIVE INFORMATION FROM A WIDE
18 NETWORK OF AGENTS AND INVESTIGATORS AND LAWYERS
19 AROUND THE WORLD WHO WORK WITH US.

20 Q AND WHY DO CUSTOMERS COME INTO THE LOUIS
21 VUITTON STORES TO COMPLAIN ABOUT NONGENUINE
22 MERCHANDISE?

23 A WELL, THAT HAS HAPPENED ON SEVERAL OCCASIONS
24 AND IT'S BECOMING A REAL PROBLEM FOR LOUIS VUITTON
25 BECAUSE IT ACTUALLY DIVERTS OUR STAFF FROM SELLING

1 PRODUCTS TO AUTHENTICATING GOODS.

2 PEOPLE COME AND MAKE PURCHASES ON THE
3 INTERNET AND THINKING THAT THEY HAVE PURCHASED AN
4 AUTHENTIC LOUIS VUITTON ITEM AND ACTUALLY THEY
5 RECEIVE A FAKE SO THEY COME IN THE STORE AND THEY
6 ASK OUR STAFF TO AUTHENTICATE THE PRODUCT.

7 VERY OFTEN THE GOAL OF THIS
8 AUTHENTICATION IS TO ASK LOUIS VUITTON TO PROVIDE A
9 CERTIFICATE SO THAT THE CUSTOMER -- SO THAT THESE
10 PEOPLE GET A REFUND FROM THEIR CREDIT CARD OR FROM
11 COMPANIES SUCH AS PAY PAL.

12 Q I THINK BY YOUR FEET THERE SHOULD BE A BINDER
13 OF VOLUME 1 AND IN IT EXHIBIT 74. IF YOU COULD
14 TAKE A LOOK AT IT AND IDENTIFY IT FOR US.

15 A EXHIBIT 74 IS A RESPONSE VIA E-MAIL BY OUR
16 CUSTOMER SERVICE DEPARTMENT TO A LOUIS VUITTON
17 CUSTOMER, AND WE HAVE BEEN BLIND COPIED ON THIS
18 E-MAIL.

19 IN THE HISTORY OF THE E-MAIL WE ACTUALLY
20 SEE THE ACTUAL COMPLAINT RECEIVED BY THE LOUIS
21 VUITTON CUSTOMER.

22 Q AND THIS IS THE TYPE OF CUSTOMER COMPLAINT
23 THAT YOU WERE DESCRIBING EARLIER THAT IS ROUTINELY
24 COPIED, THE RESPONSE IS ROUTINELY COPIED TO YOUR
25 OFFICE?

1 A YES.

2 Q AND IT'S A DOCUMENT THAT IS RETAINED IN THE
3 NORMAL COURSE OF YOUR --

4 A YES.

5 MR. COOMBS: I WOULD MOVE EXHIBIT 74 INTO
6 EVIDENCE.

7 THE COURT: AGAIN, IT'S NOT NECESSARY TO
8 FORMALLY MOVE AS LONG AS THERE'S NO OBJECTION. IF
9 YOU KNOW THERE'S A TENDERED OBJECTION -- BUT
10 OTHERWISE 74 IS IN EVIDENCE AND WILL BE
11 DISPLAYED.

12 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 74,
13 HAVING BEEN PREVIOUSLY MARKED FOR
14 IDENTIFICATION, WAS ADMITTED INTO
15 EVIDENCE.)

16 MR. COOMBS: I APOLOGIZE. CAN YOU READ
17 THE CONSUMER COMPLAINT THAT IS REFLECTED IN EXHIBIT
18 74?

19 THE WITNESS: THIS CUSTOMER REPORTS THE
20 WEB SITE ATOZBRAND, AND IT'S ONE OF THE WEB SITES
21 POSTED BY THE DEFENDANTS FOR WHICH THEY HAVE BEEN
22 NOTIFIED. AND IT READS, "I AM SICK AND TIRED OF
23 COPIES OF YOUR PRODUCTS."

24 THE COURT: LET ME INTERRUPT YOU BEFORE
25 YOU KEEP GOING. IS THERE A WAY TO ZOOM IN ON THAT

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1 EXHIBIT SO WE CAN SEE WHAT IS BEING READ?

2 MR. COOMBS: IF YOU WOULD WAIT JUST A
3 MOMENT, SIR.

4 THE COURT: ALL RIGHT. GO AHEAD. GO
5 AHEAD.

6 THE WITNESS: "I'M SICK AND TIRED OF
7 COPIES OF YOUR PRODUCTS. IT'S DESTROYED YOUR BRAND
8 WHICH MY WIFE AND I LIKE A LOT. I DID FIND A BIG
9 PRODUCER AND SELLER IN CHINA. IT LOOKS LIKE FAKES,
10 AND I HEREBY GIVE YOUR THE WEB PAGE WHICH I FOUND
11 THROUGH ALIBABA.COM."

12 Q HAVE YOU FOLLOWED THAT WEB SITE?

13 A YES.

14 Q AND WHAT DO YOU KNOW ABOUT THAT WEB SITE?

15 A THIS IS ONE OF THE WEB SITES ORIGINALLY BEFORE
16 THE COMPLAINT THAT WE ORIGINALLY COMPLAINED ABOUT
17 TO DEFENDANTS.

18 Q WHAT IS THE OTHER REASONS THAT YOU DESCRIBE
19 REPORTS FROM YOUR OFFICE OF THE REPORTS OF ONLINE
20 MONITORING? COULD YOU DESCRIBE FOR THE JURY HOW
21 THAT WORKS?

22 A AS I SAID, LOUIS VUITTON IT HAS ITS OWN ONLINE
23 OFFER OF GOODS THROUGH THE WEB SITE
24 LOUISVUITTON.COM. IT'S VERY IMPORTANT FOR US THAT
25 THIS WEB SITE HAVE A GOOD RANKING ON SEARCH ENGINES

1 AND THAT ITS POSITIONS ON SEARCH ENGINES SUCH AS
2 YAHOO, GOOGLE, AND TWITTER IS NOT POLLUTED BY THE
3 COUNTERFEIT MERCHANDISE.

4 SO WE WOULD REGULARLY MONITOR SEARCH
5 ENGINES BY ACQUIRING THEM, SEARCH ENGINES OR SEARCH
6 TERMS SUCH AS LOUIS VUITTON AND MAKE SURE THAT NEXT
7 TO OUR WEB SITE THAT USUALLY APPEARS AT THE FIRST
8 POSITION THERE ARE NO OTHER OFFERS FOR COUNTERFEIT
9 GOODS.

10 IF THERE ARE SUCH, WE WOULD ACT AGAINST
11 THEM AS A PRIORITY.

12 Q YOU MENTIONED THAT YOU RECEIVE REPORTS FROM
13 OUTSIDE VENDORS, INVESTIGATORS AND SO FORTH. WHY
14 IS THAT? DO YOU HAVE ANY UNDERSTANDING AS TO WHY
15 THEY BRING THOSE REPORTS TO YOUR ATTENTION?

16 A WELL, AS I SAID, THEY ARE SERVICE PROVIDERS SO
17 SOME OF THEM WANT TO DO BUSINESS WITH US, AND,
18 THEREFORE, THEY TRY TO BE NICE BY SENDING US
19 INFORMATION.

20 Q AND IS ROB HOLMES AN INVESTIGATIVE AGENCY ONE
21 OF THOSE VENDORS THAT YOU DEAL?

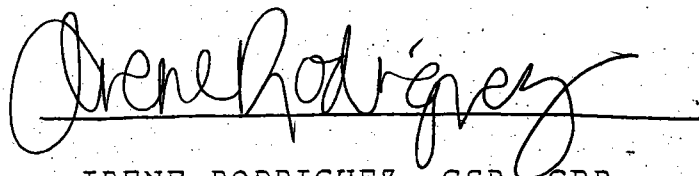
22 A YES.

23 Q AND HOW LONG HAVE YOU BEEN WORKING WITH
24 MR. HOLMES ON THE INVESTIGATION WITH ONLINE
25 INFRINGEMENT OF LOUIS VUITTON'S PROPERTIES?

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE, INCLUSIVE, CONSTITUTED A TRUE, FULL
AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN
AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in cursive script, reading "Irene Rodriguez", is written over a horizontal line.

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER CSR 8074

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LOUIS VUITTON	)	C-07-03952-JW
MALLETIER, S.A.,)	
	)	AUGUST 19, 2009
PLAINTIFF,)	
	)	VOLUME 2
V.)	
	)	PAGES 1 - 230
AKANOC SOLUTIONS, INC.,)	
ET AL.,)	
)	
DEFENDANTS.)	
-----)	

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFF: J. ANDREW COOMBS
BY: J. ANDREW COOMBS
ANNIE S. WANG
517 E. WILSON AVENUE
SUITE 202
GLENDALE, CALIFORNIA 91206

FOR THE DEFENDANTS: GAUNTLETT & ASSOCIATES
BY: JAMES A. LOWE
CHRISTOPHER G. LAI
18400 VON KARMAN
IRVINE, CALIFORNIA 92612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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

ALSO PRESENT:

LAW OFFICES OF J. ANDREW
COOMBS
BY: RUTH ADLER, PARALEGAL
517 E. WILSON AVENUE
SUITE 202
GLENDALE, CALIFORNIA 91206

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

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

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NIKOLAY LIVADKIN

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INDEX OF EXHIBITS

FOR THE PLAINTIFF'S:

MARKED

ADMITTED

75.1

29

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 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 THE COURT: SUSTAINED.

2 BY MR. COOMBS:

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

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

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

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

18 A YES.

19 Q AND DID YOU RECEIVE ANY RESPONSE TO THAT
20 COMMUNICATION?

21 A NO.

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

23 A YES.

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

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 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 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 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 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 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 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 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.

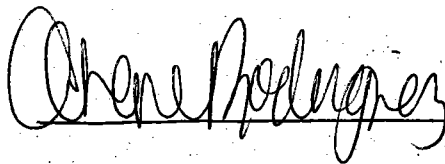
23 Q STEVE HAD TOLD YOU TO WRITE THAT TO THE
24 CUSTOMER?

25 A YES, REGARDING FRAUD OR IDENTITY THEFT.

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE, INCLUSIVE, CONSTITUTED A TRUE, FULL
AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN
AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in cursive script, reading "Irene Rodriguez", is written over a horizontal line.

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER CSR 8074

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LOUIS VUITTON	)	C-07-03952-JW
MALLETIER, S.A.,)	
	)	AUGUST 20, 2009
PLAINTIFF,)	
	)	VOLUME 3
V.)	
	)	PAGES 1 - 267
AKANOC SOLUTIONS, INC.,)	
ET AL.,)	
)	
DEFENDANTS.)	
-----)	

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFF: J. ANDREW COOMBS
BY: J. ANDREW COOMBS
ANNIE S. WANG
517 E. WILSON AVENUE
SUITE 202
GLENDALE, CALIFORNIA 91206

FOR THE DEFENDANTS: GAUNTLETT & ASSOCIATES
BY: JAMES A. LOWE
CHRISTOPHER G. LAI
18400 VON KARMAN
IRVINE, CALIFORNIA 92612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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

ALSO PRESENT:

LAW OFFICES OF J. ANDREW
COOMBS
BY: RUTH ADLER, PARALEGAL
517 E. WILSON AVENUE
SUITE 202
GLENDALE, CALIFORNIA 91206

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

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

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1 Q WOULD HE FORWARD IT TO THE CUSTOMER OR TO
2 JULIANA LUK FOR HANDLING?

3 A FORWARD IT TO SECURITY@AKANOC.

4 Q AND DO YOU HAVE ANY REASON TO DISPUTE THAT ANY
5 OF THE LETTERS MARKED AS EXHIBITS 1, 2, 3, AND 4
6 WERE AT ANY TIME RECEIVED BY AKANOC?

7 A I JUST NEVER SEEN IT.

8 Q BUT DO YOU HAVE ANY REASON TO DISPUTE IT THAT
9 THEY WERE ACTUALLY RECEIVED?

10 A NO.

11 Q AND DO YOU HAVE ANY REASON TO DISPUTE THAT THE
12 SITES REFERRED TO IN THOSE LETTERS WERE IN FACT
13 HOSTED ON SERVERS AT AKANOC'S FACILITY?

14 A WE -- I DEFINITELY HAVE NO IDEA WHERE THOSE
15 WEB SITES POINTED TO AT THAT TIME.

16 Q I'LL MARK AS 6 A LETTER DATED APRIL 20, 2007
17 AND ASK THE WITNESS IF HE HAS SEEN THAT.

18 A I HAVE NO RECOLLECTION OF THIS.

19 Q AND WOULD YOU HAVE ANY WAY OF DETERMINING
20 WHETHER OR NOT THIS LETTER WAS, IN FACT, RECEIVED
21 BY YOU ON OR ABOUT THE DATED IT BEARS?

22 A I REMEMBER I RECEIVED ONE OF THIS FROM YOUR
23 OFFICE AND I TOOK IT TO THE OFFICE AND SINCE IT'S
24 CONCERNING AKANOC, SO I PRETTY MUCH JUST PUT IT IN
25 THE FILE.

1 Q SO WHEN YOU SAY YOU TOOK IT TO THE OFFICE,
2 THAT'S BECAUSE THE ONONDAGA DRIVE S IS YOUR HOME
3 ADDRESS?

4 A THAT'S CORRECT.

5 Q AND SO DO YOU RECALL RECEIVING A LETTER AT
6 YOUR HOME?

7 A YES.

8 Q CONCERNING LOUIS VUITTON?

9 A YES.

10 Q WHEN YOU SAY YOU TOOK IT TO YOUR OFFICE AND
11 PUT IT ON A PILE, WHAT DOES THAT MEAN?

12 A I MEAN PUT IT ON THE DESK.

13 Q WHOSE DESK?

14 A THAT PARTICULAR -- THAT EMPTY DESK I WAS
15 TALKING ABOUT BECAUSE THAT WAS, AT THE TIME THAT
16 WAS THE PLACE THAT WE PUT ALL OF THIS TYPE OF
17 LETTERS.

18 Q AND TO YOUR KNOWLEDGE WHAT HAPPENED WITH THE
19 LETTER AFTER YOU PUT IT ON THE DESK?

20 A THERE WERE -- THERE WERE TOO MANY PEOPLE
21 TRYING TO SHARE THE WORKLOAD OVER THERE SO I HAVE
22 NO IDEA.

23 Q OKAY. TO THE EXTENT THAT I UNDERSTAND THAT
24 YOU CAN'T SAY WHAT HAPPENED WITH THIS LETTER, BUT
25 IN TERMS OF AKANOC'S POLICIES AND PROCEDURES, WHAT

1 SHOULD HAVE HAPPENED WITH THE LETTER AFTER IT WAS
2 PUT ON THE DESK?

3 A WE -- VERY, VERY SELDOM THAT WE RECEIVE
4 COMPLAINT THROUGH E-MAIL, I MEAN, THROUGH REGULAR
5 MAILS. SO MOST OF THE ABUSE ISSUES WERE ALL
6 REVOLVED IN THE E-MAIL FORMAT. SO THIS TYPE OF
7 E-MAILS -- I MEAN, THROUGH REGULAR MAILS -- I MEAN,
8 LETTERS ACTUALLY SOMETHING FROM, LIKE, THINGS LIKE
9 SUBPOENA WE NEED TO RESPOND, OR SOMETHING LIKE COME
10 IN FROM LEGAL AUTHORITY, WE NEED TO RESPOND. BUT
11 GENERAL COMPLAINTS, WE JUST DON'T HAVE A LOT OF
12 EXPERIENCE WITH IT AND WE DON'T HAVE ANY MECHANISM
13 TO TAKE CARE OF LETTER COMPLAINTS.

14 Q SO THERE WAS NO REAL POLICY TO HANDLE --

15 THE COURT: LET ME INTERRUPT YOU. IT
16 DIDN'T SOUND YOU WERE GOING TO FINISH IN A MINUTE
17 OR TWO AND YOU PROMISED US AN HOUR AND WE'VE BEEN
18 GOING FOR ABOUT 45 MINUTES.

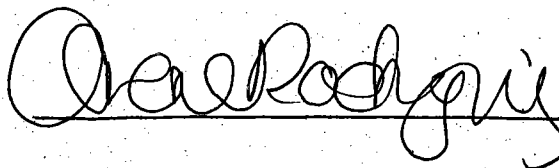
19 LET'S TAKE A LUNCH BREAK, AND WE'LL COME
20 BACK AT 1:00 O'CLOCK.

21 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)
22
23
24
25

CERTIFICATE OF REPORTER

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IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER CSR 8074

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IN THE UNITED STATES DISTRICT COURT
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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CERTIFICATE NUMBER 8074

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FOR THE DEFENDANTS:

STEVEN CHEN

DIRECT EXAMINATION P. 5

CROSS-EXAMINATION P. 165

1 THIS ROW DOWN HERE ON THIS CHART
2 REPRESENTS RESELLERS OF SERVICES; IS THAT RIGHT?

3 A YES.

4 Q HOW DOES THIS WORK THEN FOR SOMEBODY USING
5 YOUR SERVERS GOING TO SOMEBODY DOING BUSINESS WITH
6 YOUR RESELLERS?

7 A I DON'T REALLY KNOW THEIR RELATIONSHIP, BUT I
8 TURN OVER MY SERVICE TO MY RESELLER AND IN TURN
9 THEY MAY RESELL THE WHOLE THING TO ANYBODY THAT
10 ACTUALLY OPERATES THE WEB SITE OR SOME OTHER
11 PURPOSE OR SOME OTHER APPLICATION.

12 I DON'T REALLY KNOW WHAT MY RESELLERS DO
13 WHEN THEY RECEIVE A DEPLOYMENT.

14 Q SO IF YOU HAVE A RESELLER THAT YOU TESTIFIED
15 ABOUT, THEY CONTROL THE SERVER?

16 A IN SOME CASES YES AND IN SOME CASES NO. I
17 HAVE SEEN IF I HAD A COMPLAINT TO MY RESELLER, MY
18 CONSENT -- MY RESELLER MAY COME BACK WITH THAT I
19 FORWARDED THE INFORMATION TO -- I FORWARDED THE
20 COMPLAINT TO MY CUSTOMER, OR THEY MAY COME BACK AND
21 SAY, WE ONLY TAKE ACTION ON IT. WHAT DOES THAT
22 MEAN? WHETHER THEY TALK TO THEIR END USER OR NOT,
23 I DON'T KNOW.

24 Q SO YOU DON'T CONTROL THE SERVER. MAYBE THE
25 RESELLER DOES OR MAYBE -- THEIR CUSTOMER DOES?

1 ANYTHING AFTER THAT IS A CLEAR RECORD.

2 Q SO FROM JUNE 2007 ON?

3 A THAT IS CORRECT.

4 Q AND IF YOU HAD GOTTEN THE COMPLAINT PRIOR TO
5 JUNE OF 2007, WOULD YOUR PRACTICE IN HANDLING THAT
6 COMPLAINT BEEN ANY DIFFERENT THAN THE WAY YOU
7 TESTIFIED HERE TODAY?

8 A NO. AT THAT TIME WE DON'T HAVE A LAWSUIT. WE
9 WOULD KEEP GOING EXACTLY THE SAME WAY.

10 Q DO YOU HAVE ANY IDEA WHY THE IP ADDRESSES FOR
11 THESE -- LET'S ASSUME THAT LOUIS VUITTON THOUGHT
12 THAT THERE -- THAT THESE DOMAINS, THESE WEB SITES
13 WERE BEING HOSTED ON YOUR SERVERS AND THAT'S WHY
14 THEY FILED A LAWSUIT. DO YOU HAVE ANY IDEA WHY
15 THEY WERE NO LONGER ON YOUR RANGE OR THEY WERE NOT
16 FUNCTIONING AT THE TIME OF THE LAWSUIT?

17 A SOMEBODY MUST HAVE DONE SOMETHING TO TRIGGER
18 THE IP FROM CHANGING.

19 Q SOMETHING CAUSED SOMETHING TO CAUSE THE IP TO
20 CHANGE?

21 A MOST LIKELY WE SEE SOMETHING AND WE FORWARD IT
22 TO THE CUSTOMER AND THE CUSTOMER DECIDES TO MOVE IT
23 AROUND.

24 Q NOW I WANT TO DROP DOWN TO A NUMBER OF THESE
25 ENTRIES AND TRY TO FOCUS ON THE ONES THAT

1 TO INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS; IS
2 THAT ALSO NOT CORRECT?

3 A THAT IS CORRECT.

4 Q AND IT ALSO PROVIDES FOR IMPOSING FEES UNDER
5 PARAGRAPH SUB 4; IS THAT ALSO NOT CORRECT?

6 A THAT'S CORRECT.

7 Q AND IT DOESN'T ACTUALLY SPECIFY A MINIMUM OR
8 MAXIMUM IN THE NUMBER AMOUNT OF FEES THAT CAN BE
9 IMPOSED; IS THAT ALSO THE CASE?

10 A THAT'S CORRECT.

11 Q AND IT ALSO SAYS THAT AKANOC RESERVES THE
12 RIGHT TO REMOVE THE OFFENDING CONTENT UNDER SUB.
13 5, IS THAT ALSO NOT THE CASE?

14 A THAT'S CORRECT.

15 Q AND ALL OF THESE TOOLS THAT ARE PROVIDED FOR
16 BY YOUR OWN CONTRACT HAVE BEEN PART OF THAT
17 CONTRACT SINCE AKANOC STARTED DOING BUSINESS?

18 A THAT IS CORRECT.

19 Q AND THEY HAVE BEEN WITHIN THE ARSENAL OF
20 AKANOC'S CONTRACTUAL RIGHTS TO DEAL WITH COPYRIGHT
21 AND TRADEMARK INFRINGEMENT FROM 2003 AND 2004
22 WHENEVER AKANOC FIRST STARTED DOING BUSINESS?

23 A THAT IS CORRECT.

24 Q AND NOW, ONE THING I HAVEN'T SEEN IS TERMS OF
25 THE SERVICE AGREEMENT OR ACCEPTABLE USE POLICY FOR

1 MANAGED SOLUTIONS GROUP. IS THERE ONE?

2 A NO, THERE WAS NOT SIMPLY BECAUSE OF --

3 THE COURT: YOU WEREN'T ASKED -- YOU WERE
4 JUST ASKED WAS THERE?

5 THE WITNESS: NO.

6 BY MR. COOMBS:

7 Q DOES MANAGED SOLUTIONS GROUP MAINTAIN A WEB
8 SITE?

9 A NO.

10 Q AND HAS IT EVER MAINTAINED A WEB SITE SINCE
11 MANAGED SOLUTIONS GROUP SPLIT OFF FROM MANAGED?

12 A NO.

13 Q AND DOES IT HAVE ONE TODAY?

14 A NO.

15 Q DOES YOUR CUSTOMERS HAVE A RELATIONSHIP WITH
16 MANAGED?

17 A IT DOES NOT.

18 Q AND THAT'S TRUE IF THE IP IS OWNED BY MANAGED
19 SOLUTIONS GROUP?

20 A THAT'S CORRECT.

21 Q AND SO IT'S A GENERAL PUBLIC THAT IS LOOKING
22 AT A WEB SITE THAT IS WITHIN THE MANAGED SOLUTIONS
23 GROUP BLOCK OF IP NUMBERS, IT WOULD APPEAR THAT
24 MANAGED SOLUTIONS GROUP IS, IN FACT, THE OWNER OR
25 OPERATOR OR THE ISP WEB HOST OF THE APPLICABLE WEB

1 LOCATING WITH YOUR SERVERS HERE IN SAN JOSE?

2 A THAT'S CORRECT.

3 Q SO IN ADDITION TO THE FACT THAT YOU PROVIDE
4 THE SERVERS, THE ROUTERS, THE BANDWIDTH THAT YOU
5 WERE TESTIFYING TO THIS MORNING, THERE'S ALSO THE
6 FACT THAT THE BASIC CONNECTIVITY THAT AKANOC OFFERS
7 THAT ENHANCES BASICALLY THE INTERNET EXPERIENCES
8 FOR PEOPLE THAT ARE VISITING HOSTING SITES ON YOUR
9 SERVERS?

10 A THAT IS CORRECT.

11 Q LET'S ACTUALLY TALK ABOUT THE DIGITAL
12 MILLINEUM COPYRIGHT ACT FOR JUST A MOMENT. I THINK
13 IT'S EXHIBIT 54 FOR ONE OF THE INTERIM DESIGNATION
14 OF THE DEFENDANTS; IS THAT CORRECT?

15 A YES.

16 Q AND CAN YOU TELL ME WHAT DATE THAT WAS FILED
17 ON?

18 THE COURT: IF THERE'S A DATE ON THE
19 DOCUMENT I'LL HAVE YOU SCROLL DOWN TO THE DATE
20 LINE.

21 THE WITNESS: NOVEMBER 30TH, 2007.

22 BY MR. COOMBS:

23 Q AND THAT WAS AFTER THE LAWSUIT WAS FILED AND
24 SERVED ON AKANOC SOLUTIONS?

25 A I BELIEVE SO.

1 Q AND DOES HE HAVE ANYTHING TO DO WITH IT NOW?

2 A NO.

3 Q AND HAS HE HAD ANYTHING TO DO WITH IT FOR THE
4 LAST THREE YEARS?

5 A NO.

6 Q AND SO WHO, IF NOT YOU -- ARE YOU
7 SUGGESTING -- STRIKE THAT.

8 ARE YOU SUGGESTING THAT MR. PHAM
9 CONTINUED TO HAVE A RESPONSIBILITY TO FILE THE
10 DESIGNATION?

11 A NO.

12 Q SO WHO DID?

13 A ME.

14 Q OKAY. AND DID YOU FILE ONE BEFORE ROUGHLY
15 NOVEMBER OF 2007?

16 A NO.

17 Q SO IT'S THE FIRST ONE FOR BOTH OF THE
18 CORPORATE DEFENDANTS?

19 A YES.

20 Q OKAY. THANK YOU. AND THESE ARE BOTH AGAIN
21 AFTER THE LAWSUIT WAS FILED BY LOUIS VUITTON?

22 A THAT'S CORRECT.

23 Q NOW, YOU ARE DESIGNEE UNDER THAT ACT?

24 A THAT'S CORRECT.

25 Q AND WHAT IS YOUR UNDERSTANDING OF THE

1 REQUIREMENT UNDER THE ACT FOR THE FILING OF THE
2 AGENT NOTIFICATION OF THE TYPE THAT WE'RE LOOKING
3 AT RIGHT NOW?

4 A TO BE HONEST WITH YOU, I DON'T REALLY
5 UNDERSTAND. I JUST KNOW THAT IT'S A PROCESS THAT I
6 NEED TO DO.

7 Q DO YOU HAVE ANY UNDERSTANDING OF THE
8 REQUIREMENT OF THE DIGITAL MILLENNIUM COPYRIGHT ACT
9 TO HAVE A PUBLISHED TERMS OF SERVICE?

10 A I REALLY DON'T UNDERSTAND THAT PARTICULAR LAW
11 PER SE.

12 Q OKAY. DO YOU HAVE ANY UNDERSTANDING OF WHAT
13 THAT LAW REQUIRES IN RESPONSE TO NOTICES OF
14 INFRINGEMENT TRANSMITTED ACCORDING TO ITS TERMS?

15 A I DON'T REALLY UNDERSTAND THAT LAW.

16 Q OKAY. ARE YOU FAMILIAR WITH THE TERM AT ALL
17 OF EXPEDITIOUS REMOVAL?

18 A NO.

19 Q SO YOU DON'T HAVE ANY UNDERSTANDING ABOUT A
20 REQUIREMENT THAT IN RESPONSE TO A NOTICE OF
21 INFRINGEMENT A WEB HOST OR ISP THAT WANTS TO AVAIL
22 ITSELF OF THAT STATUTE MUST EXPEDITIOUSLY REMOVE
23 THE INFRINGING CONTENT THAT IS THE SUBJECT OF THE
24 NOTICE?

25 A I DON'T UNDERSTAND THE LANGUAGE INSIDE OR THE

1 LANGUAGE YOU JUST TALK ABOUT.

2 I'M ONLY DOING THINGS IS WHAT INDUSTRY
3 PEOPLE DO EVERY DAY.

4 Q HAVE YOU ASSIGNED -- OTHER THAN MS. LUK ABOUT
5 WHOM WE HAVE TALKED ABOUT A LITTLE BIT OVER THE
6 LAST COUPLE DAYS, HAVE YOU ASSIGNED ANY
7 RESPONSIBILITY FOR HANDLING THESE INFRINGEMENT
8 NOTICES TO ANYONE ELSE AT EITHER AKANOC OR MANAGED
9 SOLUTIONS GROUP?

10 A AGAIN BEFORE THE SEPARATION? EVEN AFTER THE
11 SEPARATION FOR QUITE SOME TIME WE EVEN HAVE MORE
12 STAFF HANDLING THE BUSINESS. THERE WERE TWO OTHER
13 GENERAL CLERK THAT THEY WERE MORE INTENT TO HANDLE
14 THIS TYPE OF WORK.

15 Q OKAY. I'M SORRY. I'M GETTING A LITTLE
16 CONFUSED AND IF I AM, I'M SURE -- I HOPE I'M NOT
17 THE ONLY ONE SO LET'S TALK ABOUT THE SEPARATION
18 THAT YOU'RE REFERRING TO.

19 YOU HEARD A LITTLE DEPOSITION TESTIMONY
20 ABOUT IT, BUT MAYBE WE CAN CLEAR UP A COUPLE OF
21 THINGS.

22 WHEN MANAGE SOLUTIONS BUSINESS STARTED
23 BUSINESS IN ABOUT WHAT YEAR?

24 A END OF 2003.

25 Q AND AT THAT TIME YOU WERE NOT THE SOLE OWNER?

1 GROUP DIDN'T HAVE A WEB SITE SO IT WASN'T PUBLISHED
2 ON A WEB SITE. AND IT WASN'T PUBLISHED WITH THE
3 COPYRIGHT OFFICE, SO IT WASN'T PUBLISHED WITH
4 THE --

5 A THAT'S RIGHT.

6 Q AND THERE'S NOTHING THE AKANOC SOLUTIONS --
7 AKANOC.COM WEB SITE THAT TALKS ABOUT IT; IS THAT
8 CORRECT?

9 A THAT'S RIGHT.

10 Q AND WAS IT ANYWHERE ELSE?

11 A IF I CAN REMEMBER DEFINITELY THAT ARIN RECORD
12 WE HAVE CHANGED -- ANY TYPE OF FORMAL RECORD WE
13 WOULD NEED TO CHANGE WE WOULD CHANGE.

14 Q BUT MANAGE.COM WAS, IN FACT, THE WEB SITE FOR
15 MANAGED SOLUTION GROUP UP UNTIL AT LEAST MR. PHAM
16 UNTIL 2004?

17 A THAT'S CORRECT.

18 Q AND MANAGED SOLUTIONS GROUP HAD NO WEB SITE
19 PRESENCE AFTER THE SEPARATION FROM MANAGE.COM?

20 A NO.

21 Q AND MANAGE.COM, THEIR PLACE OF BUSINESS ALSO
22 MOVED, DID IT NOT? THEY MOVED TO NEW JERSEY I
23 THINK?

24 A I THINK OVER TIMES THEY -- JACK PHAM SOLD THE
25 BUSINESS TO ANOTHER GENTLEMAN NAMED JOHN MEARS OR

1 A I HAVE NO IDEA.

2 Q AND WE'LL PUT UP THE NEXT ONE THAT COMES NEXT
3 FROM MARCH 3, '08 AND THIS, TOO, IS A -- IS ANOTHER
4 TAKEDOWN NOTICE -- THAT'S THE TAKEDOWN NOTICE
5 REFERRING TO ESTARBIZ ON 3-3; IS THAT CORRECT?

6 A YES.

7 Q AND IT'S TO MR. WANG KIYO; IS THAT CORRECT?

8 A YES.

9 Q AND IT'S CONCERNING THE SAME DOMAIN NAME
10 ESTARBIZ.COM?

11 A YES.

12 Q AND IT CONCERNS THE SAME --

13 A THIS ONE --

14 Q I DIDN'T MEAN TO INTERRUPT. BUT MY ONLY
15 QUESTION IS THAT IT'S THE SAME IP ADDRESS AS
16 REFLECTED ON THE PREVIOUS EXHIBITS?

17 A YES.

18 Q AND THAT SUGGESTS TO ME AT LEAST THAT THAT WEB
19 SITE WAS IN OPERATION FROM NOVEMBER OF 2007 AND
20 UNTIL MARCH OF 2008. DO YOU HAVE A DIFFERENT
21 CONCLUSION?

22 A CAN YOU PUT THE LAST? THE FIRST THING I SAID
23 IS THAT YOUR SERVER HAS BEEN UNPLUGGED.

24 Q MR. CHEN, I DIDN'T ASK YOU WHAT THE E-MAIL
25 SAID. I ASKED YOU WHETHER THE ESTARBIZ WAS ON THE

1 SAME SERVER WITH THE SAME CUSTOMER FROM NOVEMBER OF
2 2007 UNTIL MARCH OF 2008?

3 A YES.

4 Q NOW, IS MR. WANG KIYO STILL A CUSTOMER OF
5 AKANOC SOLUTIONS?

6 A MAYBE.

7 Q YOU DON'T KNOW?

8 A I DON'T KNOW.

9 Q YOU NEVER TOOK ANY ACTION TO TERMINATE HIM AS
10 A CUSTOMER?

11 A I DON'T HAVE A REASON TO TERMINATE HIM.

12 Q SO IN SPITE OF THE LITIGATION AND IN SPITE OF
13 ALL OF THE DEMANDS THAT ARE GOING ON, THIS SITE CAN
14 STAY UP FOR FOUR MONTHS AND THE ONLY THING YOU CAN
15 DO IS UNPLUG THE SERVER. AND DO YOU KNOW WHAT
16 HAPPENED TO THE SERVER AFTER HE UNPLUGGED IT?

17 A AS I PREVIOUSLY SAID, I HAVE NO WAY OF
18 KNOWING. THE ONLY THING I CAN BE IN CONTROL OF IS
19 UNPLUG THE SERVER.

20 Q NOW, LET'S BACK UP FOR A MOMENT AND GO BACK TO
21 PAGE 1 OF 1598 AND THE FIVE WEB SITES THAT WERE
22 LISTED IN THE COMPLAINT WHICH YOU INDICATE HERE WAS
23 SERVED ON YOU ON AUGUST 20TH, 2007. DO YOU SEE
24 THAT?

25 A YES.

1 Q AND JUST SO I'M CLEAR, YOU HAVE NO INFORMATION
2 REGARDING THE STATUS OF APRIL168.COM AT ANY TIME
3 BEFORE AUGUST 20TH, 2007?

4 A I JUST DON'T REMEMBER IT.

5 Q YOU DON'T HAVE ANY EVIDENCE THAT YOU DID
6 ANYTHING IN CONNECTION WITH THE DOMAIN NAME OF
7 AUGUST 20TH, 2007? DO YOU HAVE ANY --

8 THE COURT: YOU INTERRUPTED HIS ANSWER.
9 I WASN'T SURE IF YOU WANTED TO WITHDRAW YOUR
10 QUESTION OR NOT, BUT YOU DID ASK A QUESTION AND HE
11 STARTED TO ANSWER.

12 MR. COOMBS: I'M SORRY. I THOUGHT HE WAS
13 NOT CLEAR ON THE QUESTION, AND SO I WAS TRYING TO
14 REPHRASE.

15 THE WITNESS: IF I HAVE -- IF IT'S IN MY
16 REGULAR BUSINESS OPERATION, I CAN CHECK MY E-MAIL
17 LOG TO SEE WHETHER THE COMPLAINT COMES IN, WHETHER
18 I HAVE FOLDING OF THE COMPLAINT.

19 BY MR. COOMBS:

20 Q I THINK YOU TESTIFIED THAT YOU CHECKED YOUR
21 E-MAIL LOG IN PREPARATION OF EXHIBIT 1598? NO?
22 DID I MISUNDERSTAND THAT?

23 A 1598 IS A SUMMARY REPORT BASED ON A PARTICULAR
24 DATE THAT I RECEIVED INFORMATION AND WHAT I DID TO
25 IT, AND I PULLED ALL OF THE E-MAILS AND THIS IS THE

1 SUMMARY OF ALL OF THE E-MAILS.

2 Q SO AGAIN, MY UNDERSTANDING IS I THINK FROM
3 YOUR TESTIMONY IS THAT 8-20-07 IS THE DATE THAT YOU
4 WERE SERVED WITH THE COMPLAINT IN THIS MATTER; IS
5 THAT CORRECT?

6 A THAT IS CORRECT.

7 Q AND THERE IS NO ENTRY FOR APE168.COM BEFORE
8 AUGUST 20TH, 2007; IS THAT CORRECT?

9 A NO.

10 Q AND THERE'S NO RELATING ACTIVITY RELATING TO
11 ATOZBRAND.COM FROM AUGUST 20TH, 2007; IS THAT
12 CORRECT?

13 A I DON'T KNOW.

14 Q I'M LOOKING AT 1598. IS THERE ANY INDICATIONS
15 THAT AKANOC SOLUTIONS DID ANYTHING IN RESPONSE TO A
16 REPORT OF INFRINGEMENT ON ATOZBRAND.COM AT ANY TIME
17 BEFORE THEY WERE SERVED WITH THE COMPLAINT IN THIS
18 MATTER?

19 A I DON'T KNOW BECAUSE I HAVEN'T SEARCHED.

20 Q IS THERE ANYTHING INDICATED -- OH, I'M SORRY.
21 WHEN YOU PREPARED THIS, YOU WERE ASKED NOT TO
22 SEARCH FOR ANYTHING CONCERNING ANY ACTIVITY BEFORE
23 THE COMPLAINT WAS FILED, IS THAT WHAT I UNDERSTAND?

24 A WHEN I ASKED THIS PARTICULAR INFORMATION, IT
25 STARTED ON THE 8-20 -- 8 -- AUGUST 20, 2007.

1 WE START BUILDING BECAUSE OF THE ENTRIES
2 STARTED -- THE COMPLAINT THAT I HAVE BEEN SERVED,
3 IT'S STARTING BACK THEN SO WE START BUILDING
4 INFORMATION BASED ON THAT.

5 Q SO YOU WERE NOT INTERESTED IN ANY OF THE
6 ACTIVITY WHICH ACTUALLY LED TO THE FILING OF THE
7 COMPLAINT IN THE FIRST PLACE?

8 A I MAY HAVE RESEARCHED THAT IN THE PAST, BUT
9 IT'S NOT FOR THIS PARTICULAR REPORT.

10 Q AND DO YOU HAVE ANY RECOLLECTION OF THE
11 RESULTS OF THE RESEARCH THAT YOU DID IN THE PAST?

12 A I THINK I HAVE SOMETHING.

13 Q AND WHAT IS IT? WHY IS IT NOT HERE?

14 A HOW CAN I REMEMBER TWO YEARS AGO? BUT I DID
15 RESEARCH IT.

16 Q HAVE YOU PRODUCED ANYTHING IN THIS ACTION
17 REFLECTING ANY RESPONSE BY AKANOC OR MANAGED
18 SOLUTIONS GROUP TO ANY LOUIS VUITTON COMPLAINT
19 CONCERNING ANY ONE OF THE FIVE WEB SITES LISTED
20 HERE?

21 A YES.

22 Q AND WHAT WAS THAT?

23 A SOME OF THE E-MAIL IF I CAN FIND, SOME OF THE
24 ACTIONS THAT I THINK IS RELATED TO THE COMPLAINT
25 ITSELF.

1 Q YOU HAVE A SPECIFIC RECOLLECTION OF E-MAILS
2 DESPITE THE SERVER CRASH WE HAD TALKED ABOUT
3 EARLIER?

4 A NO, BECAUSE ANYTHING -- THE E-MAIL RECORD THAT
5 WE HAVE, THE E-MAIL LOG THAT WE HAVE IS JUNE 15TH
6 AND AFTER.

7 AND JUNE 15TH, '07 AND AFTER
8 EVERYTHING -- AND I DID SEARCH THAT PERIOD OF TIME
9 AND THERE IS NOTHING IN IT.

10 Q SO THERE IS NO EVIDENCE, NO E-MAIL TRAFFIC IN
11 PARTICULAR, RELATING TO ANYTHING CONCERNING THESE
12 FIVE WEB SITES BEFORE JUNE OF 2007?

13 A THAT IS CORRECT.

14 Q OKAY. SO WHAT IS THERE REGARDING ACTIVITY
15 BETWEEN JUNE OF 2007 AND AUGUST 20TH, 2007? WHY
16 HAVEN'T WE SEEN IT?

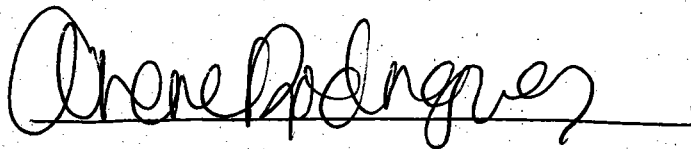
17 A THE ANALYSIS I WAS DOING I THINK IS BASED ON
18 THE EVIDENCE THAT YOU PROVIDE OF CERTAIN COMPLAINTS
19 COMES IN, AND I WAS TRYING TO FIGURE OUT WHAT IS
20 THE IP CHANGE HISTORY BASED ON YOUR COMPLAINT.

21 Q WELL, YOU WERE HERE YESTERDAY WHEN I WAS
22 READING FROM YOUR DEPOSITION TESTIMONY ABOUT ALL OF
23 THE COMPLAINTS THAT LOUIS VUITTON HAD SENT FROM
24 OCTOBER OF 2006 UNTIL APRIL OF 2007 AND IN RESPONSE
25 TO THOSE QUESTIONS YOU SAID YOU HAD NO

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE, INCLUSIVE, CONSTITUTED A TRUE, FULL
AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN
AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in cursive script, reading "Irene Rodriguez", written over a horizontal line.

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER CSR 8074

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LOUIS VUITTON MALLETTIER, S.A.,)
) C-07-03952 JW (HRL)
 PLAINTIFF,)
) AUGUST 25, 2009
 V.)
) VOLUMES 8 AND 9
 AKANOC SOLUTIONS, INC.,)
)
 MANAGED SOLUTIONS GROUP, INC.,) PAGES 1 - 231
 STEVEN CHEN AND DOES 1 THROUGH)
 10, INCLUSIVE,)
)
 DEFENDANTS.)
 _____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

OR THE PLAINTIFFS: J. ANDREW COOMBS, A PROF. CORP.
BY: J. ANDREW COOMBS, ESQ.
ANNIE S. WANG, ESQ.
517 E. WILSON AVE., SUITE 202
GLENDALE, CA 91206
TEL: (818) 500-3200

ALSO APPEARING: RUTH ADLER
NIKOLAY LIVADKIN

FOR THE DEFENDANTS: GAUNTLETT & ASSOCIATES
BY: JAMES A. LOWE, ESQ.
18400 VON KARMAN, SUITE 300
IRVINE, CA 92612
TEL: (949) 553-1010

OFFICIAL REPORTER PRO TEM: JANA L. RIDENOUR, CSR
LICENSE NUMBER 9302

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**REPORTER NOTE: ALL QUOTED EXCERPTS IN THIS TRANSCRIPT
WERE REPORTED AND TYPED "AS READ."**

1 2009.

2 Q. ALL RIGHT. THANK YOU.

3 SO BOTH BAG925.COM AND WWW.BAG925.COM APPEAR TO BE
4 HOSTED ON DEFENDANT'S SERVERS AS ESSENTIALLY TODAY; IS
5 THAT CORRECT?

6 A. YES, THAT'S CORRECT.

7 Q. AND THAT'S BORNE OUT BY THE OTHER PORTION OF THE
8 EXHIBIT I HAVE MARKED, WHICH IS NOW IN FRONT OF YOU, AND
9 WHICH HAS THE WHOIS ARIN RESULT FOR THAT IP ADDRESS;
10 CORRECT?

11 A. THAT'S CORRECT.

12 Q. NOW, ON THAT PORTION OF THE REPORT YOU WILL SEE
13 RA ABUSE HANDLE -- I'M SORRY, R ABUSE HANDLE, R TECH
14 HANDLE OR ABUSE HANDLE OR TECH HANDLE. CAN YOU TELL US
15 WHAT THOSE REFER TO?

16 A. "ABUSE" IS FOR ABUSE ISSUE TECH; "TECH HANDLE" IS
17 FOR TECH -- TECH ISSUES.

18 Q. SO, AS I UNDERSTOOD YOUR TESTIMONY, THE
19 INFORMATION PERTAINING TO THOSE HANDLES SHOULD BE
20 CONTACT -- CURRENT CONTACT INFORMATION FOR MANAGED
21 SOLUTIONS GROUP; IS THAT CORRECT?

22 A. THAT IS CORRECT.

23 Q. SO IT SHOULD BE -- I THINK YOU SAID ABUSE.MANAGER
24 SG-INC.COM FOR THE E-MAIL ADDRESS?

25 A. YES.

1 Q. AND THAT WOULD BE THE NORTHPOINT LOOP ADDRESS IN
2 FREMONT FOR THE MAILING ADDRESS; IS THAT CORRECT?

3 A. THAT'S CORRECT.

4 Q. OKAY. NOW, LET'S MARK AS 626 A ONE-PAGE ARIN
5 WHOIS DATABASE SEARCH FOR THE HANDLE ABUSE 429-ARIN.

6 MR. LOWE: EXCUSE ME, YOUR HONOR. I OBJECT TO
7 THIS. WE HAVE NOT SEEN THESE EXHIBITS BEFORE. THEY
8 WERE NOT PROVIDED IN DISCOVERY. APPARENTLY, THEY HAVE
9 BEEN CREATED IN THE LAST DAY OR TWO.

10 THE COURT: EVEN IF YOU ARE USING IT FOR
11 IMPEACHMENT, PROVIDE COUNSEL WITH THE DOCUMENTS YOU ARE
12 USING IN THIS EXAMINATION.

13 MR. COOMBS: MY APOLOGY.

14 MR. LOWE: I WOULD ASK HE HAND US ALL THE
15 DOCUMENTS HE INTENDS TO USE TODAY SO WE DON'T SEE THEM
16 ON THE SCREEN FOR THE FIRST TIME TODAY.

17 THE COURT: OF COURSE. THAT IS A COURTESY TO
18 DO THAT, COUNSEL.

19 MR. COOMBS: YES, YOUR HONOR. I APOLOGIZE.

20 (WHEREUPON, EXHIBIT 626 WAS MARKED FOR
21 IDENTIFICATION.)

22 BY MR. COOMBS:

23 Q. NOW, CAN YOU TELL ME WHAT MAILING ADDRESS IS
24 INDICATED ON THAT WHO -- I'M SORRY, ARIN SEARCH RESULT?

25 THE COURT: MAILING ADDRESS OR E-MAIL?

1 BY MR. COOMBS:

2 Q. I'M SORRY. THAT'S NOT THE ONE I WAS PUTTING UP.
3 THIS IS 626. LET ME ZOOM IT OUT A BIT.

4 CAN YOU TELL ME WHAT THAT IS, MR. CHEN?

5 A. IT LOOKS LIKE IT IS THE OLD ADDRESS WHEN WE FIRST
6 SET UP THE COMPANY, THE 46750 FREMONT BOULEVARD.

7 Q. NOW, AS I UNDERSTOOD YOUR TESTIMONY, MANAGED
8 SOLUTIONS GROUP AKANOC, THEY HAVEN'T BEEN AT THAT
9 ADDRESS FOR MANY YEARS NOW?

10 A. MANY YEARS.

11 Q. AND I'LL JUST SCROLL UP, IF I CAN, AND CAN YOU
12 READ THE DATE THAT APPEARS AT THE BOTTOM RIGHT-HAND
13 CORNER OF THAT PAGE?

14 A. AUGUST 24, 2009.

15 Q. THANK YOU.

16 BAG925.COM, THAT WAS IN THE ORIGINAL COMPLAINT
17 SERVED IN AUGUST OF 2007; CORRECT?

18 A. EXCUSE ME?

19 Q. THAT WAS ONE OF THE --

20 THE COURT: "THAT" BEING -- SAY THE NAME
21 AGAIN.

22 BY MR. COOMBS:

23 Q. BAG925.COM WAS ONE OF THE WEBSITES THAT WAS
24 ALLEGED IN THE ORIGINAL COMPLAINT SERVED ON YOU IN
25 AUGUST OF 2007?

1 SAY THEY THEMSELVES AREN'T THE ONES OPERATING THE
2 WEBSITES HOSTED ON YOUR SERVERS?

3 A. WHAT'S THAT GOT TO DO WITH -- I LOST THE QUESTION
4 BECAUSE THE WEBSITE HAS NOTHING TO DO WITH MY CUSTOMER.

5 Q. HOW DO YOU KNOW THAT, IF YOU DON'T KNOW WHAT YOUR
6 CUSTOMERS DO WITH IT?

7 A. MOST OF THE CUSTOMERS THAT I DEAL WITH, WE -- I
8 DEAL WITH THEM AT MORE LIKE TECHNICAL LEVEL, AND THEY
9 ARE JUST HOSTING RESELLERS.

10 Q. BUT YOU SAID YOU DON'T EVEN KNOW WHETHER THEY ARE
11 DOING WEBSITES AS OPPOSED TO OTHER INTERNET
12 APPLICATIONS. HOW CAN YOU SAY THEY THEMSELVES ARE NOT
13 OPERATING THE WEBSITES OR SOMEBODY WORKING FOR THEM
14 OPERATING THE WEBSITES THAT ARE ON THEIR SERVERS?

15 A. I DIDN'T SAY THEY DON'T OPERATE WEBSITES; I SAID I
16 DON'T KNOW WHETHER THEY OPERATE A WEBSITE OR NOT.

17 Q. SO IT COULD BE THAT THEY DO IN FACT OPERATE
18 WEBSITES THAT ARE ON THOSE SERVERS?

19 A. YES.

20 Q. IT COULD BE THAT SOMEBODY CONNECTED WITH THEM
21 OPERATES THOSE WEBSITES ON THOSE SERVERS?

22 A. MAYBE.

23 Q. COULD BE A FAMILY MEMBER, FOR EXAMPLE?

24 A. MAYBE.

25 Q. NOW, IN YOUR DIRECT TESTIMONY, YOU SPOKE A LITTLE

1 16,000 TO JACQUES PHAM. JACQUES, J-A-C-Q-U-E-S, PHAM,
2 P-H-A-M.

3 Q. LET'S PULL UP EXHIBIT 25.

4 I'LL ASK MS. ADLER TO TURN TO PAGE 2, AND
5 SCROLL DOWN TO PARAGRAPH 5-B.

6 CAN YOU READ PARAGRAPH 5-B FOR US, MR. CHEN?

7 A. "APPLICANT IS RESPONSIBLE FOR THE TIMELY AND
8 ACCURATE MAINTENANCE OF DIRECTORY SERVICES DATA AS WELL
9 AS ANY ORGANIZATION TO WHICH IT FURTHER SUBDELEGATES
10 NUMBER RESOURCES."

11 Q. I UNDERSTAND THAT TO MEAN THAT THE ENTITY TO WHICH
12 IP ADDRESSES ARE ALLOCATED IS REQUIRED TO MAINTAIN
13 CORRECT CONTACT INFORMATION IN THE ARIN DATABASE; IS
14 THAT YOUR UNDERSTANDING AS WELL?

15 A. YES.

16 Q. AND THAT APPLIES WHETHER OR NOT THE NAMES HAVE
17 BEEN SUBDELEGATED OR ASSIGNED OR ALLOCATED TO SOMEONE
18 ELSE ACTUALLY USING THE IP ADDRESSES?

19 A. I DON'T UNDERSTAND THE WORD OF "SUBDELEGATE."

20 Q. WELL, AS I UNDERSTAND IT, THE DEFENDANTS WILL
21 ASSIGN IP ADDRESSES TO THEIR CUSTOMERS. WE WERE JUST
22 TALKING ABOUT THAT.

23 A. THAT'S RIGHT.

24 Q. AND I UNDERSTAND THAT TO BE SUBDELEGATING.

25 A. YES.

1 Q. SO THAT THIS CLAUSE WOULD APPLY REGARDLESS OF
2 WHETHER OR NOT THE DEFENDANTS ARE ASSIGNING IP ADDRESSES
3 TO THEIR CUSTOMERS?

4 A. THAT'S CORRECT.

5 (WHEREUPON, EXHIBIT 627 WAS MARKED FOR
6 IDENTIFICATION.)

7 BY MR. COOMBS:

8 Q. OKAY. I HAVE JUST MARKED AS 627 A FOUR-PAGE
9 PRINTOUT FROM THE KNOWLEDGE BASE ON THE ARIN WEBSITE.
10 JUST FOCUSING ON THE TOP FIRST PARAGRAPH OF THAT
11 PRINTOUT, COULD YOU READ THE FIRST -- THE SENTENCE THAT
12 ENDS ON THE FOURTH LINE OF THAT?

13 A. THE FOURTH LINE?

14 Q. COULD YOU READ THE FIRST FOUR LINES OF THAT
15 PORTION? MAYBE IT WOULD BE EASIER IF I DID IT THIS WAY.
16 I HAVE HIGHLIGHTED A PORTION OF THIS. COULD YOU JUST
17 READ THIS FOR US? COULD YOU READ IT INTO THE RECORD,
18 PLEASE. COULD YOU READ IT OUT LOUD?

19 A. "ARIN'S STEWARDSHIP OF INTERNET NUMBER" --

20 THE COURT: WHY DON'T YOU READ IT? DON'T --
21 YOU HAVE THE DOCUMENT. YOU ARE MUCH BETTER ABLE TO
22 SEE IT.

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

24 BY MR. COOMBS:

25 Q. I'M READING FROM EXHIBIT 627 AND THE FIRST PORTION

1 COPYRIGHT OFFICE AFTER THE LITIGATION WAS FILED?

2 A. SHOULDN'T CHANGE ANYTHING.

3 Q. OKAY. YOU REMEMBER THAT I TOOK YOUR DEPOSITION,
4 MR. CHEN, IN APRIL OF 2008?

5 A. YES.

6 Q. OKAY. I'M GOING TO READ TO YOU SOME QUESTIONS AND
7 ANSWERS AND ASK YOU IF THESE QUESTIONS AND ANSWERS WERE
8 IN FACT GIVEN AT THAT DEPOSITION.

9 "QUESTION:" --

10 AND THIS IS BEGINNING AT PAGE 194.

11 MR. LOWE: EXCUSE ME, YOUR HONOR. PERHAPS WE
12 COULD PROVIDE THE WITNESS WITH A COPY?

13 MR. COOMBS: I'M SORRY. DO YOU HAVE THE
14 ORIGINAL?

15 MR. LOWE: GIVE US A MOMENT.

16 (WITNESS PROVIDED A COPY OF THE DEPOSITION.)

17 MR. COOMBS: IN VOLUME I -- I'M SORRY, VOLUME
18 II, PAGE 194 --

19 THE WITNESS: PAGE WHAT?

20 MR. COOMBS: 194.

21 THE WITNESS: LINE?

22 BY MR. COOMBS:

23 Q. BEGINNING AT LINE 5:

24 "QUESTION: NOW, IF THAT HAPPENS,
25 DO YOU DO ANYTHING YOURSELF OR

1 DOES MANAGED SOLUTIONS DO
2 ANYTHING TO VERIFY THAT THE
3 OFFENDING SITE WAS IN FACT
4 REMOVED AS REPRESENTED BY THE
5 CUSTOMER?"
6 "ANSWER: THE NEWEST PROCEDURE
7 THAT WE IMPOSE RIGHT NOW IS
8 QUITE SIMPLE. WE WANT EVERYBODY
9 TO MAKE SURE THE DOMAIN NAME
10 DOES NOT RESULT TO OUR IP SO WE
11 JUST NEED TO PING. IF IT'S
12 STILL WITHIN OUR IP, THEN WE
13 WILL CONSIDER IT STILL THERE;
14 IF IT'S NOT, THEN WE WOULD
15 REVIVE THE IP. THAT'S THE
16 NEWEST PROCEDURE THAT WE HAVE
17 RIGHT NOW."
18 "QUESTION: WHEN WAS THAT
19 PROCEDURE IMPLEMENTED?"
20 "ANSWER: PROBABLY FEBRUARY,
21 MARCH."
22 "QUESTION: OF 2008?"
23 "ANSWER: OF 2008. THAT'S
24 CORRECT."
25 WERE THOSE QUESTIONS ASKED AND ANSWERS GIVEN

1 DURING YOUR DEPOSITION?

2 A. YES.

3 Q. AND I THINK FEBRUARY/MARCH OF 2008 WAS AFTER THE
4 COMPLAINT IN THIS ACTION, WAS IT NOT?

5 A. YES.

6 Q. THANK YOU.

7 LET'S TURN BACK TO 1598, PLEASE. AND IF WE
8 COULD SCROLL DOWN TO PAGE 3 TO THE ENTRY FOR
9 LOVERNIKE.COM.

10 DO YOU SEE THAT ENTRY, MR. CHEN?

11 A. YES.

12 Q. AND IN THAT, YOU INDICATE THAT THE WEBSITE WAS NOT
13 FUNCTIONING; IS THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. AND THIS WAS BASED ON A STUDY OF YOUR E-MAIL LOGS;
16 IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. SO TELL ME, WHAT DO YOU DO -- HOW IS IT THAT YOU
19 COME TO THE CONCLUSION THAT A WEBSITE IS NOT FUNCTIONAL?

20 A. TRY TO PING -- TRY TO USE A BROWSER TO GET INTO
21 THE WEBSITE.

22 Q. IF A WEBSITE IS FUNCTIONING, YOU CAN LOOK AT IT
23 LIKE ANYBODY ELSE; IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. SO, BASICALLY, YOU ARE SAYING IT RETURNS THE KIND

1 OF ERROR MESSAGES THAT WE HAVE HEARD FROM OTHER
2 WITNESSES DURING THE CASE?

3 A. THAT'S CORRECT.

4 Q. "PAGE NOT FOUND" OR SOMETHING TO THAT EFFECT?

5 A. THAT IS CORRECT.

6 Q. SO THIS INDICATES THAT ON OR SOON AFTER THE 26TH
7 OF NOVEMBER, THE WEBSITE LOVERNIKE.COM WAS NOT
8 FUNCTIONING; IS THAT CORRECT?

9 A. THAT'S CORRECT.

10 Q. CAN YOU TELL US WHAT DATE THAT CHECK WAS DONE?

11 A. SHOULD BE ON THE 26TH OR SOMEWHERE AROUND THERE,
12 IN THE TWO DAYS.

13 Q. LOOKS AS THOUGH, WHERE YOU DID FIND THE WEBSITE ON
14 YOUR SERVERS, THAT A TAKEDOWN NOTICE WAS SENT ON THE
15 29TH; CORRECT? IF YOU LOOK ABOVE AND BELOW "LOVERNIKE,"
16 YOU WILL SEE A FEW THAT SAY "TAKEDOWN NOTICE SENT ON
17 11/29." DO YOU SEE THOSE?

18 A. YES.

19 Q. IT SUGGESTS TO ME, AT LEAST, THAT YOU LOOKED AT
20 THESE WEBSITES BETWEEN THE 26TH, WHEN THE LETTER WAS
21 SENT, AND THE 29TH, WHEN THE TAKEDOWN NOTICES WERE SENT.
22 IS THAT A REASONABLE INTERPRETATION?

23 A. IT'S A BIG BATCH SO I MUST HAVE WORKED ON IT IN --
24 IN THAT COUPLE DAYS.

25 Q. OKAY. BUT BY THE 29TH, YOU HAD LOOKED AT

1 LOVERNIKE.COM AND CONCLUDED IT DID NOT ACTUALLY RESULT
2 IN A WEBSITE?

3 A. THAT IS CORRECT.

4 Q. CAN WE PULL UP EXHIBIT 616 AND SCROLL TO PAGE 14.
5 SCROLL DOWN.

6 DO YOU SEE THE HIGHLIGHTED ENTRIES,
7 PARTICULARLY THE FIRST ONE ON 11/30? CAN YOU READ TO US
8 THE ENTRY BESIDE THE 133131 TICKET NUMBER?

9 A. 133131?

10 Q. CORRECT.

11 A. "133131, UNPLUGGED PER STEVE DUE TO COUNTERFEIT
12 PRODUCT, THIRD COMPLAINT WWW.LOVERNIKE.COM,
13 205.209.185.226."

14 Q. THAT DOMAIN NAME IS THE SAME DOMAIN NAME WE WERE
15 JUST TALKING ABOUT; CORRECT?

16 A. THAT IS CORRECT.

17 Q. THAT SUGGESTS THAT THE WEBSITE WAS IN FACT
18 FUNCTIONAL ON THE 30TH OF NOVEMBER; IS THAT NOT CORRECT?

19 A. IF IT'S AFTER THE UNPLUGGED, THEN IT WILL NOT BE
20 FUNCTION.

21 Q. IN FACT, WHEN YOU SAY "WEBSITE NOT FUNCTIONAL," IT
22 WAS ONLY NOT FUNCTIONAL BECAUSE YOU HAD IN FACT
23 UNPLUGGED THE SERVER ON WHICH THE WEBSITE WAS FOUND?

24 A. MAY. THE RECORD IS JUST SHOWING AT THAT
25 PARTICULAR TIME IT WAS NOT FUNCTION. WHETHER I DID

1 ANYTHING TO IT, I HAVE NO RECOLLECTION.

2 Q. WELL, DOESN'T THIS INDICATE THAT YOU UNPLUGGED IT
3 BECAUSE LOVERNIKE.COM WAS ON THE SERVER AT THAT TIME?

4 A. RIGHT.

5 Q. THANK YOU.

6 YOU DON'T ACTUALLY UNPLUG SERVERS IF THE
7 WEBSITE IS NOT THERE, DO YOU?

8 A. IF WEBSITE IS NOT THERE, THEN I DON'T NEED TO.

9 Q. NOW, HOW MANY -- THERE'S A LIST THAT WE HAVE,
10 ABOUT THREE OR FOUR PAGES. YOU MAY WANT TO TURN -- I
11 THINK YOU HAVE A BINDER WITH 1598 IN IT.

12 BUT THERE WERE SEVERAL TAKEDOWN NOTICES SENT
13 ON THE 29TH IN RESPONSE TO THE NOVEMBER 26TH LETTER; IS
14 THAT NOT CORRECT?

15 A. COULD YOU REPEAT A QUESTION?

16 Q. IF YOU LOOK AT PAGES -- FROM THE BOTTOM OF PAGE 1
17 UNTIL PAGE 5, YOU WILL SEE A LIST OF DOMAIN NAMES THAT
18 WERE THE SUBJECT OF THE NOVEMBER 26TH LETTER. DO YOU
19 SEE THAT?

20 A. YES.

21 Q. AND YOU WILL SEE THAT SEVERAL OF THEM WERE THE
22 SUBJECT OF TAKEDOWN NOTICES SENT ON NOVEMBER 29TH. DO
23 YOU SEE THAT?

24 A. THAT'S CORRECT.

25 Q. HOW MANY OF THOSE WERE SENT TO THE SAME CUSTOMER?

1 A. I HAVE NO RECOLLECTION.

2 Q. ALL RIGHT. MAYBE WE CAN HELP YOU WITH THAT.

3 LET'S PULL UP EXHIBIT 550. IF YOU COULD
4 SCROLL JUST TO THE HEADER. OOPS.

5 YOU SEE THAT THAT IS SENT TO ZHONGHH; CORRECT?

6 A. YES.

7 Q. AND I THINK YOU TESTIFIED FRIDAY THAT ZHONGHH IS
8 ALICE CHEN'S ACCOUNT; IS THAT CORRECT?

9 A. YES.

10 Q. AND IT SAYS THAT YOU'VE RECEIVED A COMPLAINT
11 REGARDING SERVER 204.16.193.107 MAIN IP 204.13.69.210.
12 YOU SEE THAT?

13 A. YES.

14 Q. AND IT'S REGARDING THE WEBSITE BAG4SELL.COM?

15 A. THAT'S CORRECT.

16 Q. SO THAT'S ONE THAT WAS SENT TO MS. CHEN.

17 LET'S TURN TO EXHIBIT 554, AND LET'S EXPAND
18 THE HEADER ON THIS ONE.

19 THAT'S ALSO SENT TO ZHONGHH; CORRECT?

20 A. THAT'S CORRECT.

21 Q. AND THAT'S THE SAME DAY?

22 A. YES.

23 Q. AND IT'S SENT CONCERNING MAIN IP -- THIS IS A
24 SLIGHTLY DIFFERENT MAIN IP; IT'S 205.209.136.90?

25 A. THAT'S CORRECT.

1 Q. SO IT'S TWO THAT WERE SENT ON THE SAME DAY TO
2 MS. CHEN.

3 LET'S TURN TO EXHIBIT 555.

4 NOW, ON FRIDAY I THINK YOU SAID CHENDAN IS
5 ALSO MS. CHEN; IS THAT CORRECT?

6 A. YES.

7 Q. SO THAT'S THREE NOTICES THAT WERE SENT ON
8 NOVEMBER 29TH TO MS. CHEN; CORRECT?

9 A. YES.

10 Q. THAT'S CONCERNING DREAMYSHOES; CORRECT?

11 A. CORRECT.

12 Q. LET'S TURN TO 557.

13 THIS ONE WAS SENT TO ZHONGHH AS WELL?

14 A. YES.

15 Q. MS. CHEN?

16 A. YES.

17 Q. ON NOVEMBER 29TH; CORRECT?

18 A. YES.

19 Q. LET'S TURN TO EXHIBIT 559.

20 THIS ONE IS BEING SENT TO ZHONGHH AS WELL, SO
21 THAT'S MS. CHEN ON NOVEMBER 29TH AS WELL; IS THAT
22 CORRECT?

23 A. YES.

24 Q. AND LET'S TURN TO 560.

25 THAT'S TO CHENDAN, MS. CHEN, AGAIN?

1 A. YES.

2 Q. AND THAT'S NOVEMBER 29TH, 2007.

3 AND LET'S TURN TO EXHIBIT 562.

4 THAT'S ZHONGHH; THAT'S MS. CHEN, AGAIN?

5 A. YES.

6 Q. DIFFERENT WEBSITE; CORRECT?

7 A. YES.

8 Q. AND THAT'S THE SAME DAY?

9 A. YES.

10 Q. LET'S TURN TO 564.

11 MS. CHEN AGAIN ON THE SAME DAY CONCERNING YET
12 ANOTHER WEBSITE, CORRECT?

13 A. YES.

14 Q. LET'S TURN TO 582.

15 ZHONGHH AGAIN, NOVEMBER 29TH, 2007, CONCERNING
16 PRO-JORDAN?

17 A. YES.

18 Q. SO I HAVE GOT NINE NOTICES SENT TO ONE CUSTOMER
19 CONCERNING NINE DIFFERENT WEBSITES ON SEVERAL DIFFERENT
20 EXTRA IP NUMBERS?

21 A. YES.

22 Q. WOULD IT SURPRISE YOU TO KNOW THAT YOU SENT NINE
23 NOTICES TO ANOTHER ONE OF YOUR CUSTOMERS THAT SAME DAY
24 CONCERNING NINE DIFFERENT WEBSITES ON NINE DIFFERENT
25 EXTRA IP'S CONTROLLED BY THEM?

1 SUMMARY OF ALL THE E-MAILS THAT I SENT OUT.

2 Q. MR. CHEN, I -- MAYBE I WAS NOT CLEAR ON MY
3 QUESTION. DID YOU FINE MS. CHEN BECAUSE OF THIS
4 EXTENSIVE INFRINGEMENT THAT WAS IDENTIFIED ON HER SERVER
5 ON NOVEMBER 27TH?

6 A. IF I VERIFY --

7 Q. MR. CHEN, DID YOU FINE -- DID YOU IMPOSE ANY KIND
8 OF MONEY PENALTY ON MS. CHEN FOR THE VARIOUS
9 INFRINGEMENTS THAT WERE ON HER SERVER AT THE END OF
10 NOVEMBER 2007?

11 A. NO.

12 Q. DID YOU SUSPEND MS. CHEN -- I MEAN THE CUSTOMER,
13 MS. CHEN -- AS A RESULT OF THE VARIOUS INFRINGEMENTS
14 IDENTIFIED ON HER SERVER AT THE END OF NOVEMBER, 2007?

15 A. NO.

16 Q. DID YOU TERMINATE HER?

17 A. NO.

18 Q. OF COURSE NOT.

19 THE COURT: DON'T -- YOUR COMMENT IS
20 ARGUMENTATIVE.

21 MR. COOMBS: I'M SORRY.

22 BY MR. COOMBS:

23 Q. LET'S GO BACK TO EXHIBIT 554.

24 THIS IS ONE OF THE E-MAILS WE WERE JUST
25 LOOKING AT, AND IT'S BUYSHOES.NET WHICH IS LOCATED ON

1 IP 205.209.136.90, MAIN IP 205.209.136.90. SO THEY ARE
2 THE SAME IP NUMBER, ACTUALLY, AREN'T THEY?

3 A. YES.

4 Q. AND THIS IS THAT EXTRA MAIN ISSUE WE WERE TALKING
5 ABOUT A LITTLE EARLIER?

6 A. NO, THIS IS JUST ONE IP. THIS IS ON THEIR MAIN
7 IP.

8 Q. AND IF WE GO BACK TO 1598, ON THE TOP OF PAGE 2
9 YOU WILL SEE THE FIRST ENTRY IS BUYSYSHOES.NET AND IT
10 INDICATES A TAKEDOWN NOTICE SENT ON NOVEMBER 29TH, 2007.
11 DO YOU SEE THAT?

12 A. YES.

13 Q. AND THE TAKEDOWN NOTICE REFERRED TO THERE IS THE
14 E-MAIL THAT WE WERE JUST LOOKING AT; IS THAT NOT
15 CORRECT?

16 A. THAT'S CORRECT.

17 Q. LET'S LOOK AT EXHIBIT 564.

18 NOW, THAT IS ALSO HOSTED ON THE SAME MAIN IP;
19 IS THAT CORRECT?

20 A. YES.

21 Q. WHEN YOU SAY IN THE NEXT LINE "DIFFERENT IP," ARE
22 YOU TALKING ABOUT THE "EXTRA IP" OR THE "MAIN IP"? IF
23 YOU LOOK NEXT TO -- ON THE LINE CONCERNING
24 BUYSYSHOES.NET, IT SAYS, YOU KNOW, "1/3/08, DIFFERENT IP
25 NOTICE SENT" -- "TAKEDOWN NOTICE SENT 1/14/08." DO YOU

1 SEE THAT.

2 A. WE ONLY CHECK THE --

3 Q. I'M JUST ASKING YOU IF YOU SEE THE ENTRY I'M
4 REFERRING TO.

5 A. WHAT DO YOU WANT ME TO LOOK AT?

6 THE COURT: THE CURSOR IS NOT IN THE RIGHT
7 COLUMN. IT'S THE NEXT -- THAT COLUMN.

8 BY MR. COOMBS:

9 Q. DO YOU SEE WHERE IT SAYS "1/3/08, DIFFERENT IP"?

10 A. YES.

11 Q. IS THE DIFFERENT IP THERE A DIFFERENT EXTRA IP OR
12 A DIFFERENT MAIN IP?

13 A. DIFFERENT IP FOR THE DOMAIN ITSELF.

14 Q. SO THE MAIN IP, IN FACT, COULD BE THE SAME?

15 A. I DON'T KNOW.

16 Q. YOU DON'T KNOW -- BECAUSE YOU ARE REALLY ONLY
17 LOOKING AT THE EXTRA IP?

18 A. YES.

19 Q. NOW, LET'S PULL UP EXHIBIT 557 THAT WE WERE
20 LOOKING AT A MOMENT AGO.

21 THIS IS ONE OF THE NOTICES TO MS. CHEN ON
22 NOVEMBER 29TH; CORRECT?

23 A. YES.

24 Q. AND IT'S THE MAIN IP ENDING IN DOT NINE ZERO.

25 LET'S LOOK AT EXHIBIT 549. LET'S ENLARGE THE

1 PICK UP FROM THE AVAILABLE POOL THAT WE CAN ASSIGN THOSE
2 IP ATTACHED TO THAT PARTICULAR MAIN IP. SO WITH A
3 ROUTER, WE CAN ALWAYS CHANGE THE EXTRA IP.

4 THE COURT: SO THAT AT THE ROUTER, THEN, IF
5 SOMEONE IS USING AN EXTRA IP IN A WAY THAT YOU WOULD
6 WISH TO DISABLE THAT IP ADDRESS, YOU COULD DO THAT AT
7 THE ROUTER?

8 THE WITNESS: YES.

9 THE COURT: AND YOU ARE ABLE ALSO TO GO TO THE
10 SERVER AND DISABLE THE ENTIRE SERVER?

11 THE WITNESS: YES. THAT'S BASICALLY
12 DISCONNECT THE NETWORK CABLE.

13 THE COURT: AND THERE WERE OCCASIONS ALSO WHEN
14 YOU WOULD YOURSELF GO ONTO THE INTERNET USING A BROWSER
15 LIKE ANY MEMBER OF THE PUBLIC WOULD TO SEE WHAT WAS AT A
16 PARTICULAR DOMAIN NAME?

17 THE WITNESS: YES.

18 THE COURT: BUT YOU COULDN'T DO THAT FROM
19 WITHIN YOUR OWN SERVER SYSTEM?

20 THE WITNESS: NO.

21 THE COURT: THE FINAL QUESTION THAT I HAVE,
22 AND IT HAS TO DO WITH 1598, WHICH WE HAVE BEEN USING --
23 AND ACTUALLY, IT'S UP ON THE SCREEN STILL.

24 ONE OF THE PARTIES ASKED ABOUT YOUR CUSTOMERS.
25 THIS SHOWS A COMPLAINT THAT IS ADDRESSED AND INDEXED BY

1 THE VARIOUS DOMAIN NAMES. DID YOU EVER TAKE THE VARIOUS
2 DOMAIN NAMES AND CROSS-REFERENCE THEM TO YOUR CUSTOMER
3 LIST TO DECIDE WHETHER OR NOT YOU HAD A CUSTOMER THAT
4 WAS REGULARLY INVOLVED IN COMPLAINTS?

5 THE WITNESS: NOT REALLY. THIS IS SOMETHING
6 THAT WE PUT TOGETHER FOR THE PRESENTATION.

7 THE COURT: ALL RIGHT. NOW, DO YOU HAVE A
8 CUSTOMER LIST?

9 THE WITNESS: IT'S IN OUR DATABASE.

10 THE COURT: ALL RIGHT. BUT YOU DON'T HAVE IT
11 HERE FOR US? YOU HAVEN'T PRODUCED A CUSTOMER LIST SO WE
12 COULD SEE A LIST OVER A PERIOD OF TIME OF WHO YOUR
13 CUSTOMERS WERE?

14 THE WITNESS: NO.

15 THE COURT: AND DID YOU EVER HISTORICALLY
16 SEARCH FOR DOMAIN NAMES IN YOUR CUSTOMER LIST TO SEE
17 WHICH CUSTOMERS WERE ASSOCIATED WITH WHICH DOMAIN
18 NAMES?

19 THE WITNESS: I CAN ONLY -- I ONLY KNOW ONE
20 CUSTOMER FROM CHINA THAT THEY ARE ACTUALLY A DOMAIN
21 REGISTRAR, AND THEY MIGHT HAVE -- THEY MIGHT ASSOCIATE
22 TO A LOT OF DOMAINS THEMSELVES. THE REST OF THE
23 CUSTOMERS, AS I KNOW, THEY ALL RESELLERS; THEY DON'T OWN
24 DOMAIN NAMES THEMSELVES.

25 THE COURT: I SEE. BUT THERE WOULD BE AN

1 THINGS ARE VERIFIED BEFOREHAND.

2 Q. HOW ARE THEY VERIFIED?

3 A. I'M NOT SURE.

4 Q. IT'S LIKE VERIFYING CREDIT CARD INFORMATION, IS
5 THAT WHAT YOU ARE TALKING ABOUT?

6 A. YES.

7 Q. NOW, ARE YOU FAMILIAR WITH -- ARE YOU FAMILIAR
8 WITH ARIN?

9 A. YES.

10 Q. AND WHAT IS THAT?

11 A. ARIN IS AN INTERNET REGISTRY AND THEY ARE
12 RESPONSIBLE FOR ALLOCATING IP ADDRESSES TO ORGANIZATIONS
13 IN AMERICA.

14 THE COURT: SOME OF THIS HAS BEEN COVERED AND
15 NOT CONTROVERSIAL, BUT I'LL PERMIT YOU.

16 MR. LOWE: THAT WAS MERELY THE BACKGROUND,
17 YOUR HONOR.

18 BY MR. LOWE:

19 Q. NOW, DO YOU KNOW WHETHER OR NOT AKANOC AND MANAGED
20 SOLUTIONS PROVIDES INFORMATION TO ARIN CONCERNING THE
21 USAGE OF IP ADDRESSES THAT ARE ASSIGNED TO IT?

22 A. SO PER ARIN GUIDELINES WE ARE RESPONSIBLE FOR
23 KEEPING OUR WHOIS RECORDS UP TO DATE, AND THAT IS
24 PARTICULARLY, YOU KNOW, COMPANY INFORMATION OF AN
25 ORGANIZATION THAT IS UTILIZING AN IP ADDRESS.

1 Q. NOW, WHAT DO YOU MEAN AN ORGANIZATION UTILIZING
2 IT? ARE YOU TALKING ABOUT AKANOC OR A CUSTOMER OF
3 AKANOC, OR SOMETHING ELSE?

4 A. A LITTLE OF BOTH. SO WHEN ARIN ISSUES A BLOCK OF
5 IP ADDRESSES, THEY EXPECT THAT IF THE ISP WILL ASSIGN
6 THOSE TO THEIR CUSTOMERS, THAT THEY WILL ALSO PUT THE
7 CUSTOMER'S INFORMATION IN THE WHOIS DATABASE.

8 Q. AND HOW IS THAT DONE AT AKANOC, MANAGED SOLUTIONS?

9 A. AT AKANOC THERE IS A WHOIS SERVER, AND ARIN HAS
10 BASICALLY A LINK TO THAT WHOIS SERVER TO PULL THE
11 INFORMATION.

12 Q. AND WHAT'S ON THIS WHOIS SERVER?

13 A. THE WHOIS SERVER HAS THE COMPANY NAME AS WELL AS
14 THE CITY AND STATE OF A PARTICULAR ORGANIZATION THAT IS
15 RESPONSIBLE FOR THAT IP ADDRESS. IF WE HAVE A CUSTOMER
16 THAT HAS IP'S FROM US ON ONE OF OUR SERVERS, THEN THAT
17 INFORMATION WILL GET PUBLISHED TO THE WHOIS SERVER.

18 Q. TO THE WHICH SERVER?

19 A. TO THE WHOIS SERVER.

20 Q. THE WHOIS SERVER. SO YOU ARE TALKING ABOUT
21 CUSTOMER INFORMATION FROM THE CPRO DATABASE THAT'S ON
22 THE WHOIS SERVER?

23 A. YES.

24 Q. IF SOMEONE WANTED TO FIND OUT WHO YOUR CUSTOMERS
25 ARE, COULD THEY FIND THAT OUT THROUGH A QUERY TO ARIN?

1 IN OTHER WORDS, COULD SOMEONE LOOK UP THROUGH ARIN AND
2 LINK TO YOUR WHOIS --

3 A. YES.

4 Q. -- SERVER INFORMATION ABOUT YOUR CUSTOMERS?

5 A. YES. THAT'S PUBLIC INFORMATION.

6 Q. SO HOW WOULD THEY DO THAT?

7 A. THERE IS A, I GUESS, WHOIS PROTOCOL THAT'S EITHER,
8 YOU KNOW, FROM A PARTICULAR COMPUTER OR FROM ARIN'S
9 WEBSITE. YOU CAN GO AHEAD AND TYPE IN AN IP ADDRESS AND
10 IT WILL RETURN THE WHOIS INFORMATION FOR A PARTICULAR
11 IP.

12 Q. OKAY. NOW, LET'S GO BACK TO THE OPERATION OF THE
13 ISP HERE AND THE SERVERS. IF SOMEONE HAS, AS YOU HAVE
14 DESCRIBED, ORDERED A SERVER, A PACKAGE SO-TO-SPEAK WITH
15 IPS'S AND BANDWIDTH -- IS THAT THE WAY IT'S SOLD?

16 A. YES.

17 Q. DO YOU HAVE ANY CONTROL OVER WHAT THEY DO WITH
18 THAT SERVER?

19 A. NO. OUR MODEL IS THAT A CUSTOMER RECEIVES A
20 DEDICATED SERVER, AND IN THE INDUSTRY TERMS A DEDICATED
21 SERVER IS, YOU KNOW, FULL ADMINISTRATIVE ACCESS. SO THE
22 SERVER ITSELF WILL HAVE AN OPERATING SYSTEM INSTALLED, A
23 PASSWORD WILL BE SET, AND THAT PASSWORD WILL BE SENT TO
24 THE CUSTOMER. AT THAT POINT IT IS AS IF, YOU KNOW, THE
25 CUSTOMER IS THE ONLY ADMINISTRATOR OF THAT SERVER. IT

1 THE COURT: VERY WELL.

2 ANY CROSS?

3 CROSS-EXAMINATION

4 BY MS. WANG:

5 Q. GOOD MORNING, MR. CHENG.

6 A. GOOD MORNING.

7 Q. ISN'T IT CORRECT THAT WHEN YOU ARE ASSIGNING AN IP
8 ADDRESS, IT ONLY GETS ASSIGNED TO ONE CUSTOMER AT A
9 TIME?

10 A. THAT'S CORRECT.

11 Q. AND WHEN AN INTERNET USER IS TRYING TO ACCESS A
12 WEBSITE THAT IS ON ONE OF YOUR SERVERS, ISN'T AKANOC'S
13 SERVER THE FIRST HOP OUT?

14 A. CAN YOU REPEAT THAT?

15 Q. SURE. WHEN INFORMATION IS BEING TRANSMITTED TO AN
16 INTERNET USER FROM DEFENDANT'S SERVERS, ISN'T THE FIRST
17 ROUTER OR HOP DEFENDANT'S ROUTER?

18 A. SO THE FIRST HOP FROM A CUSTOMER SERVER WILL BE
19 AKANOC'S ROUTER.

20 Q. AND YOU STATED EARLIER THAT THE ARIN WHOIS
21 DATABASE INFORMATION IS UPDATED BY AKANOC OR MSG; IS
22 THAT CORRECT?

23 A. YES.

24 Q. I'M GOING TO SHOW YOU --

25 THE COURT: YOU MIGHT WANT TO BACK OUT A

1 LITTLE BIT.

2 MS. WANG: IS IT FLASHING ON YOUR SCREENS AS
3 WELL?

4 THE COURT: KEEP YOUR VOICE UP.

5 BY MS. WANG:

6 Q. MR. CHENG, CAN YOU SEE THAT?

7 A. YES.

8 Q. AND WHAT DOES IT LIST AS MANAGED SOLUTIONS GROUP'S
9 CONTACT INFORMATION OR ADDRESS?

10 A. IT'S A LITTLE BLURRY.

11 THE COURT: IS THERE AN AUTOFOCUS BUTTON
12 THERE?

13 MS. WANG: YEAH, I TRIED IT EARLIER, BUT --
14 YEAH. SORRY, THAT IS ACTUALLY AUTOFOCUSED.

15 THE WITNESS: IT LISTS 46750 FREMONT.

16 BY MS. WANG:

17 Q. IS THAT A CORRECT ADDRESS FOR MANAGED SOLUTIONS
18 GROUP?

19 A. I BELIEVE THAT IS A -- SOME TYPE OF ADDRESS. IT
20 MIGHT BE THE REGISTERED ADDRESS FOR THE CORPORATION, I'M
21 NOT SURE.

22 Q. COULD YOU READ THE DATE THERE?

23 A. THAT SAYS "8/24/2009."

24 Q. AND, MR. CHENG, YOU ALSO TESTIFIED THAT THE ARIN
25 WHOIS DATABASE WOULD REFLECT YOUR -- OR DEFENDANT'S

1 CUSTOMERS?

2 A. YES.

3 Q. AND THAT WOULD BE ACCORDING TO A SEARCH FOR A
4 PARTICULAR IP ADDRESS?

5 A. YES.

6 Q. I'M SHOWING YOU EXHIBIT 625, WHICH APPEARS TO BE A
7 WHOIS SEARCH FOR A PARTICULAR IP ADDRESS.

8 LOOKING AT THAT RESULT, CAN YOU TELL ME WHICH
9 CUSTOMER THAT IP ADDRESS BELONGED TO?

10 A. I DON'T SEE ANY INFORMATION.

11 MS. WANG: NO FURTHER QUESTIONS, YOUR HONOR.

12 THE COURT: ANY FURTHER QUESTIONS?

13 MR. LOWE: NO, YOUR HONOR.

14 THE COURT: VERY WELL. THE WITNESS IS
15 EXCUSED.

16 THANK YOU VERY MUCH.

17 CALL YOUR NEXT WITNESS.

18 MR. LOWE: I CALL RICHARD GRALNIK.

19 (PAUSE IN PROCEEDINGS.)

20 THE COURT: IS THERE SOMEONE WHO HAS SUMMONED
21 HIM?

22 MR. LOWE: I BELIEVE SO. HE IS STANDING IN
23 THE HALL.

24 THE COURT: COME ALL THE WAY FORWARD HERE AND
25 BE SWORN BY THE CLERK.

1 CONNECTION WITH ANY OF THESE
2 ACCEPTABLE USE VIOLATIONS?"

3 "ANSWER: NO."

4 WERE THOSE QUESTIONS ASKED AND THOSE ANSWERS
5 GIVEN DURING YOUR DEPOSITION?

6 A. YES, THEY WERE.

7 Q. THANK YOU.

8 NOW, DURING YOUR DIRECT EXAMINATION, YOU SAID
9 THAT IN YOUR DISCUSSION WITH, I THINK YOU SAID EIGHT
10 OTHER ISP'S, YOU DEVELOPED NO INFORMATION THAT THERE WAS
11 A FORMAL OR SPECIFIC TIME FRAME FOR RESPONSE TO ABUSE
12 COMPLAINTS; IS THAT CORRECT?

13 A. YES, IT IS.

14 Q. BUT I THINK YOU DID IDENTIFY THAT THERE WAS A
15 REASONABLE TIME THAT -- SORT OF AN OUTER LIMIT, MAXIMUM
16 TIME, THAT THESE ISP'S TENDED TO ADHERE TO; IS THAT NOT
17 THE CASE?

18 A. I BELIEVE SO.

19 Q. AND WHAT WAS THAT TIME FRAME?

20 A. I THINK MY ANSWER WAS A FEW DAYS TO A WEEK.

21 Q. NORMALLY, MOST OF THE ISP'S WITH WHOM YOU TALKED
22 TO, OTHER THAN THE DEFENDANTS, WOULD RESPOND TO AN ABUSE
23 COMPLAINT WITHIN A FEW DAYS TO A WEEK?

24 A. THEY DIDN'T GIVE ME SPECIFIC TIMETABLES. THEY DID
25 SAY THAT THEY WOULD FOLLOW UP AND EITHER HAVE AN

1 INVESTIGATION OR TAKE ONE OF THE STEPS THAT I TALKED
2 ABOUT BEFORE IN RESPONSE TO AN ABUSE COMPLAINT.

3 Q. NOW, YOU SPOKE ALSO ABOUT ESCALATION OF REMEDIES
4 AGAINST REPEATED INFRINGERS -- I'M SORRY, REPEATED
5 ABUSERS. WE ARE NOT LIMITING IT TO INFRINGERS. WELL,
6 THAT'S WHAT I HAVE IN MY NOTES.

7 AND AS I UNDERSTAND IT, YOU KNOW, THE FIRST
8 OBVIOUS LEVEL OF RESPONSE IS JUST A WARNING, "STOP IT.
9 IF YOU DON'T STOP IT, SOMETHING MORE SERIOUS IS GOING TO
10 HAPPEN." IS THAT CORRECT?

11 A. YES.

12 Q. AND THAT'S A POLICY THAT'S PRETTY CONSTANT, AND
13 IN FACT IT'S A POLICY OF THE DEFENDANTS HERE AS WELL; IS
14 IT NOT?

15 A. YES.

16 Q. AND IF THAT WARNING DOES NOT RESULT IN A REMOVAL
17 OF THE ABUSIVE CONDUCT, THEN THE NOTION IS THAT THE NEXT
18 LEVEL WILL BE A MORE SEVERE SANCTION THAN A MERE
19 WARNING. ISN'T THAT ALSO TRUE?

20 A. YES.

21 Q. AND THAT'S A POLICY THAT SEEMED TO BE ADOPTED
22 PRETTY UNIVERSALLY AMONGST THE OTHER EIGHT ISP'S THAT
23 YOU SPOKE WITH?

24 A. YES. THESE POLICIES I LOOKED -- WE LOOKED AT
25 THEIR ESCALATION PROCEDURES. IN MANY CASES THEY ARE

1 ACTUALLY IDENTICAL TASKS, FOR EXAMPLE, OF ALL THESE
2 UNDER THE SAME CONTRACT.

3 Q. VERY SIMILAR TO THE ONES THE DEFENDANTS HAVE HERE?

4 A. YES.

5 Q. SO IT WOULD BE REASONABLE TO CONCLUDE THAT THE
6 DEFENDANTS HAVE THE SAME TOOLS AT THEIR DISPOSAL THAT
7 THESE OTHER ISP'S HAVE?

8 A. YES.

9 Q. WHICH INCLUDE MONEY PENALTIES, SUSPENSION,
10 TERMINATION, AND SO FORTH?

11 A. YES.

12 Q. IN FACT, I THINK THEY ALSO HAVE "REMOVAL OF THE
13 OFFENDING CONTENT" AS AN ADDITIONAL PROVISION IN THEIR
14 ACCEPTABLE RESPONSE; IS THAT NOT ALSO TRUE?

15 A. I DON'T RECALL THAT. I WOULD HAVE TO LOOK AT THE
16 LIST.

17 Q. NOW, I THINK YOU SAID --

18 AND I WOULD ASK TO PULL UP EXHIBIT 1576.

19 NOW, ON YOUR DIRECT YOU SAID THAT, BASED ON
20 YOUR INVESTIGATION, NONE OF THE ISP'S WILL MONITOR
21 ACTIVITY ON THEIR SERVERS; IS THAT CORRECT?

22 A. I THINK I SAID THEY DON'T MONITOR CONTENT.

23 Q. DON'T MONITOR CONTENT. THANK YOU FOR YOUR
24 CORRECTION.

25 NOW, HOSTGATOR, WHICH IS THE COMPANY WHOSE

1 POLICIES I PUT UP IN FRONT OF YOU IN 1576, THAT WAS ONE
2 OF THE COMPANIES YOU SPOKE WITH?

3 A. YES.

4 Q. IT'S ONE OF THE COMPANIES THAT DOESN'T MONITOR
5 CONTENT, ACCORDING TO YOUR TESTIMONY?

6 A. THAT'S RIGHT.

7 Q. I WOULD ASK YOU TO TURN TO PAGE 2 OF 1576, AND IF
8 YOU COULD SCROLL DOWN A LITTLE OVER HALFWAY TO THE
9 SENTENCE THAT BEGINS WITH THE WORD "RESELLERS," AND I
10 WOULD ASK YOU TO READ THAT SENTENCE INTO THE RECORD,
11 PLEASE, MR. GRALNIK.

12 A. "EXAMPLES OF UNACCEPTABLE MATERIAL" --

13 Q. NO, NO. I'M SORRY. I'M SORRY. WE ARE PROBABLY
14 LOOKING AT A DIFFERENT PORTION. YOU COULD READ FOR A
15 LONG TIME IF YOU READ THE WHOLE THING.

16 IS IT NOT COMING UP?

17 MS. WANG: YES.

18 BY MR. COOMBS:

19 Q. YOU HAVE A HARD COPY THERE AS WELL?

20 A. YES, I DO.

21 Q. SO THAT YOU ARE AT THE SAME PLACE EVERYBODY ELSE
22 WILL BE WHEN IT COMES UP ON THE SCREEN, IF YOU GO DOWN
23 ON THE "TERMS OF SERVICE" A LITTLE OVER HALFWAY, THERE'S
24 ONE SENTENCE, ONE INDENTED SENTENCE THERE THAT SAYS
25 "RESELLERS." DO YOU SEE THAT? IT'S ABOUT TWO LINES.

1 A. YES.

2 Q. AND I THINK WE HAVE IT UP ON THE SCREEN NOW.

3 LET'S TURN TO THE NEXT PAGE AND SCROLL DOWN,
4 AND PERHAPS ENLARGE IT A LITTLE BIT.

5 AND IF YOU COULD READ THAT FOR US?

6 THE COURT: WHAT DO YOU WANT TO ENLARGE IT
7 FOR?

8 THE WITNESS: "RESELLERS, WE WILL
9 SUSPEND THE SITE IN QUESTION AND
10 WILL NOTIFY YOU SO YOU MAY
11 TERMINATE THE ACCOUNT. WE WILL
12 FURTHER MONITOR YOUR ACTIVITY.
13 MORE THAN ONE INFRACTION OF THIS
14 TYPE MAY RESULT IN THE IMMEDIATE
15 TERMINATION OF YOUR ACCOUNT."

16 BY MR. COOMBS:

17 Q. THAT'S THE KIND OF ESCALATION YOU WERE TALKING
18 ABOUT IN YOUR DIRECT EXAMINATION, ISN'T IT?

19 A. SUSPENSION IS ONE OF THE OPTIONS.

20 Q. WELL, ACTUALLY THE WORD HERE IS "TERMINATION."

21 A. WELL, TERMINATION IS ALSO ON THE LIST.

22 Q. TERMINATION IS PROBABLY THE ULTIMATE SANCTION,
23 ISN'T IT? I THINK MOST OF THESE ARE -- WHAT DID YOU
24 CALL THEM? -- SORT OF THE STANDARD LANGUAGE FOR TERMS OF
25 SERVICE THAT STARTS WITH A WARNING AND THEN RUNS THROUGH

1 A SERIES. AND ISN'T TERMINATION THE ULTIMATE FINAL
2 SANCTION THAT'S PROVIDED FOR BY THESE POLICIES?

3 A. I THINK THAT'S LAST ON THE LIST.

4 Q. IS THERE ANY MORE DRASTIC SANCTION THAT YOU CAN
5 THINK OF?

6 A. OFFHAND, NO.

7 Q. BUT YET YOU NEVER SPOKE WITH MR. CHEN ABOUT
8 WHETHER HE EVEN USED THAT SANCTION WITH RESPECT TO ABUSE
9 COMPLAINTS RECEIVED BY THE DEFENDANTS; IS THAT CORRECT?

10 A. I DON'T RECALL EXACTLY WHAT THE CONVERSATION
11 CONSISTED OF. I DO HAVE NOTES THAT I TOOK DURING THE
12 CONVERSATION.

13 Q. WELL, I WILL REFER YOU BACK TO PAGE 38 OF YOUR
14 DEPOSITION TRANSCRIPT, WHICH I THINK WE READ A MOMENT
15 AGO. AND I WILL JUST READ THE FIRST PART OF IT AGAIN,
16 BEGINNING AT LINE 2:

17 "QUESTION: DID YOU HAVE ANY
18 UNDERSTANDING THAT THEY EVER
19 TERMINATED A CUSTOMER IN
20 CONNECTION WITH ANY OF THE
21 ABUSE COMPLAINTS REFERRED TO?"

22 "ANSWER: I DON'T RECALL WE
23 DISCUSSED THAT HAVING BEEN
24 DONE."

25 WAS THAT QUESTION ASKED AND THAT ANSWER GIVEN

1 DURING YOUR DEPOSITION?

2 A. YES, IT WAS, EXCEPT I DON'T RECALL THE ENTIRE
3 CONVERSATION.

4 Q. NO, THAT'S FINE. I WANT TO MAKE SURE WE HAVE THE
5 COMPLETE RECORD ON THESE ISSUES.

6 NOW, I THINK IN YOUR DIRECT YOU TESTIFIED A
7 LITTLE BIT ABOUT CONTENT FILTERING AND DOMAIN NAME
8 FILTERING AND YOU MADE A DISTINCTION. YOU TALKED AT
9 SOME LENGTH ABOUT THIS RAW DATA, THE BITS THAT REPRESENT
10 THE UNDERLYING DATA ON A PARTICULAR SERVER AND THE
11 CHALLENGES THAT ARE ATTACHED TO TRYING TO FILTER THAT
12 CONTENT, BUT THEN YOU ALSO TALKED ABOUT TOOLS THAT ARE
13 AVAILABLE TO ACTUALLY BLOCK SPECIFIC WEBSITES LOCATED AT
14 SPECIFIC DOMAIN NAMES; ISN'T THAT CORRECT?

15 A. YES.

16 Q. OKAY. AND THAT, IN FACT, THAT TOOL EXISTS AND IS
17 A FAIRLY SIMPLE TOOL THAT'S USED IN MANY INTERNET
18 ROUTERS. I THINK YOU MENTIONED CORPORATE ROUTERS IN
19 PARTICULAR THAT WANT TO BLOCK CERTAIN KINDS OF CONTENT
20 THAT MIGHT UNDERMINE EMPLOYEE EFFICIENCY, AS AN EXAMPLE?

21 A. YES.

22 Q. OKAY, SO THAT'S A TOOL. IT'S FAIRLY WIDELY USED,
23 ACTUALLY?

24 A. IN APPROPRIATE CIRCUMSTANCES, I IMAGINE IT WOULD
25 BE, YES.

1 Q. AND IT'S A TOOL THAT I ASSUME IS PROGRAMMABLE.
2 FOR EXAMPLE, THE PEOPLE WHO OPERATE THE ROUTER IN THIS
3 BUILDING MIGHT BLOCK A DIFFERENT WEBSITE FROM THE PEOPLE
4 WHO OPERATE THE ROUTER AT ADOBE DOWN THE STREET?

5 A. YES.

6 Q. AND THEY DO THAT BECAUSE WHOEVER IS RESPONSIBLE
7 FOR PROGRAMMING THE ROUTER WILL INPUT SPECIFIC
8 PROVISIONS, EITHER BY DOMAIN NAME OR BY OTHER CRITERIA,
9 HOWEVER IT'S DONE?

10 A. YES.

11 Q. SO THAT'S SOMETHING THAT THE DEFENDANTS CAN DO:
12 THEY CAN AT THE ROUTER LEVEL INPUT SPECIFIC DOMAIN NAMES
13 AND SAY THESE DOMAIN NAMES DON'T RESOLVE TO A SERVER
14 WITHIN THEIR NETWORK?

15 A. THEY CAN MAKE A LIST, YES.

16 Q. NOW, WHEN YOU WERE I THINK GOING OVER THE 1610
17 CHART, YOU WERE TALKING ABOUT ALL OF THE OTHER PLAYERS
18 THAT ARE INVOLVED IN THE TRANSMISSION OF COMMUNICATIONS
19 OVER THE INTERNET: THE INTERNET USER'S ISP, THE DOMAIN
20 NAME RESOLVER, THE BACKBONE, THE DIFFERENT ROUTERS ALONG
21 THE WAY THAT GET YOU TO YOUR ULTIMATE DESIGNATION. DO
22 YOU RECALL THAT?

23 A. YES.

24 Q. NOW, IT'S MY UNDERSTANDING THAT BETWEEN THE
25 INTERNET USER AND THE ULTIMATE DESIGNATION, THESE ARE

1 A. NO.

2 Q. OKAY. TELL ME WHY I AM WRONG. I'M SORRY, I MUST
3 HAVE MISSED SOMETHING.

4 A. WHEN I DID THIS SPREADSHEET, I WAS LOOKING
5 SPECIFICALLY FOR SITES THAT WERE, NUMBER ONE, LISTED IN
6 EITHER OF THOSE TWO DOCUMENTS, THE JANUARY 30TH LETTER
7 OR THE FIRST AMENDED COMPLAINT, AND COMPARING THAT
8 AGAINST THE LIST OF THE WEBSITES THAT WERE FOUND OR THE
9 FILES -- CONTENTS OF THE WEBSITES THAT WERE FOUND ON THE
10 FIVE SERVERS THAT WERE IMAGED BY MR. WILSON FROM
11 GUIDANCE SOFTWARE. AND THE SECOND COLUMN SHOWS WHETHER
12 OR NOT THE PARTICULAR ONE ON THAT ROW IS ONE OF THE
13 SITES THAT WAS LISTED IN ONE OF THOSE TWO DOCUMENTS.

14 ALL THE SITES ON THE SPREADSHEET ARE ONES THAT
15 I FOUND ON THOSE DRIVE IMAGES, BUT UNLESS THERE'S A
16 "YES" IN THAT COLUMN OR "BOTH" FOR WHATEVER PARTICULAR
17 DOCUMENT I MENTIONED, THAT PARTICULAR SITE WAS NOT ONE
18 OF THE ONES LISTED.

19 I ORIGINALLY STARTED OUT MAKING THE
20 SPREADSHEET BY GOING FROM THE TOP TO THE BOTTOM IN
21 ALPHABETICAL ORDER AND LOOKING THEM UP. THEN I REALIZED
22 PART-WAY THROUGH THAT THERE WAS NO POINT TO THAT, SO I
23 STOPPED.

24 Q. NOW I UNDERSTAND.

25 GOING BACK TO THE FIRST TWO PAGES OF THE

1 EXHIBIT WHERE WE HAVE, I THINK, THE FIRST -- ROUGHLY
2 LOOKS LIKE ABOUT 10 OR 15 DOMAINS ARE INDICATED AS BEING
3 INCLUDED IN THE FIRST AMENDED COMPLAINT, AND THEN THE
4 BETTER PART OF -- THE REST OF PAGE 1 AND THE FIRST HALF
5 OF PAGE 2 ARE ALL ONES WHICH WERE ADDRESSED IN THE
6 JANUARY 30 LETTER BETWEEN COUNSEL; IS THAT CORRECT?

7 A. YES.

8 Q. AND THEN THERE ARE A FEW MORE THAT WERE BOTH IN
9 THE FIRST AMENDED COMPLAINT AND IN THAT LETTER BETWEEN
10 COUNSEL; CORRECT?

11 A. YES.

12 Q. AND, IN FACT, TURN TO PAGE 2 AND SCROLL DOWN WHERE
13 IT BEGINS BIGWORLD SHOES.COM. I'M SORRY, PAGE -- IT'S
14 PAGE 2. IT'S PAGE 3 ON THE SPREADSHEET.

15 OKAY. YOU CAN SCROLL A LITTLE FURTHER DOWN.

16 SO THERE'S A HANDFUL OF DOMAIN NAMES HERE THAT
17 ARE INDICATED THAT ARE SHOWN AS BEING BOTH IN THE FIRST
18 AMENDED COMPLAINT AND IN THE JANUARY 30TH LETTER; IS
19 THAT CORRECT?

20 A. YES.

21 Q. AND AS TO AT LEAST SOME OF THEM, THEY WERE STILL
22 UP AND OPERATING ON AKANOC SERVERS AS OF JUNE 26, 2009
23 WHEN YOU UNDERTOOK THIS INVESTIGATION?

24 A. NO, I CAN'T SAY THEY WERE "STILL UP"; THEY WERE UP
25 AT THAT TIME.

1
2 CERTIFICATE OF REPORTER
3
4

5 I, JANA L. RIDENOUR, OFFICIAL REPORTER PRO TEM
6 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
7 DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN
8 JOSE, CALIFORNIA, DO HEREBY CERTIFY:

9 THAT THE FOREGOING TRANSCRIPT IS A FULL, TRUE
10 AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN LOUIS
11 VUITTON MALLETIER, S.A., V. AKANOC SOLUTIONS, INC.,
12 MANAGED SOLUTIONS GROUP, INC., STEVEN CHEN AND DOES 1
13 THROUGH 10, INCLUSIVE, CASE NO. C-07-03952 JW (HRL),
14 DATED AUGUST 25, 2009; THAT I REPORTED THE SAME IN
15 STENOTYPE AND TRANSCRIBED THE SAME BY COMPUTER-AIDED
16 TRANSCRIPTION TO THE BEST OF MY ABILITY AS HEREIN
17 APPEARS.

18 DATED THIS 4th DAY OF DECEMBER, 2009.
19
20
21

22 Jana L. Ridenour, CSR # 9302
23 JANA L. RIDENOUR, CSR
24 OFFICIAL REPORTER PRO TEM
25 LICENSE NUMBER 9302

CERTIFIED COPY

EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LOUIS VUITTON MALLETIER,) C 07-03952 JW
S.A.,)
Plaintiff,)
vs.) San Jose, CA
AKANOC SOLUTIONS, INC.,) August 26, 2009
et al.,)
Defendants.)

COPY

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Court Reporter: PETER TORREANO, CSR
License Number C-7623

1 to their testimony. Never looked at it.

2 Now, why is that? I would suggest that
3 it's easier to complain about somebody in Silicon
4 Valley than it is to send a notice to somebody
5 else. It's easier and more effective if you can
6 put somebody in Silicon Valley out of business by
7 putting together a gotcha case. "Oh, we sent you
8 letters and nothing happened or it came back."

9 There is no requirement, no legal basis
10 for them to suggest or to argue to you that the
11 only way they can avoid liability is to terminate
12 customers.

13 Let's talk about the Alice Chen
14 situation for a moment. At the time the
15 complaints from Louis Vuitton that we're talking
16 about here were made -- and I think that
17 Plaintiff identified seven or eight particular
18 complaints that happened to be dealing with IP
19 addresses that had been assigned to the
20 businesses associated with Alice Chen.

21 But Alice Chen was renting 100 servers
22 at the time approximately, according to Mr. Chen,
23 and had approximately a thousand IP addresses,
24 and you could have 100 websites, for example, on
25 each of those IP addresses, which would be a

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1 So every single purchase was authorized
2 by the owner of the trademark, by the owner of
3 the copyright, done at their express direction,
4 delivered from China to the United States so that
5 they can come here to this court and say here
6 they are, look how bad all this activity is.

7 Have they ever shown a single shred of
8 evidence that any customer outside of Louis
9 Vuitton has ever bought any product from these
10 websites in the United States? No. Not
11 anybody.

12 Now, if it were really such a big
13 problem and they really did have all these
14 complaints about this, surely they could have
15 done that. Now, they did show us one complaint.
16 One complaint. Not of a customer -- not somebody
17 who bought a product, but some guy in Denmark
18 who's complaining about some website in China.
19 And that has to do with the United States how?
20 It doesn't.

21 So they are just trying to create
22 evidence so that they can blame the Defendants,
23 so they can put them out of business, so they can
24 scare the rest of Silicon Valley and the rest of
25 the technology industry into not doing business

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1 outside the United States because after all
2 someone might be doing bad things and you might
3 get sued.

4 Now, there's another interesting issue
5 about the way these purchases were made. There's
6 no evidence that any of these purchases were made
7 through the servers operated by the Defendants.
8 It's not even clear that they -- that at the time
9 Mr. Holmes saw the product on the Internet or
10 when Mr. Livadkin saw the product on the Internet
11 it was even using the servers. Maybe it was.
12 Maybe it wasn't. But these websites move around
13 a lot.

14 And, by the way, that moving around a
15 lot is established by their own domain tools
16 reports with reverse IP history, for example,
17 showing how they change frequently sometimes, you
18 know, every week, sometimes every couple months.
19 They change perhaps because people are chasing
20 them. Maybe they change because people are --
21 you know, they are just trying to get ahead of
22 somebody else who's about to complain about
23 them.

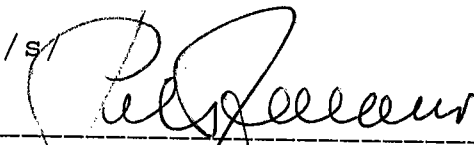
24 But Mr. Holmes' purchases had nothing
25 whatever to do with the Defendants. And yet we

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CERTIFICATE OF REPORTER

I, Peter Torreano, Pro Tempore Court Reporter of the United States District Court for the Northern District of California, 280 South First Street, San Jose, California, do hereby certify:

That the foregoing transcript is a true and correct transcript of the proceedings had in Louis Vuitton Malletier, S.A. versus Akanoc Solutions, Inc., et al., Case No. C-07-03952-JW, dated August 26, 2009; that I reported the same in stenotype to the best of my ability, and thereafter had the same transcribed by computer-aided transcription as herein appears.

/s/ 
PETER TORREANO, CSR
License Number C-7623