EXHIBIT 1623

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5   LOUIS VUITTON   ) C-07-03952-JW
     MALLETIER, S.A.,   )
6   ) AUGUST 21, 2009
              PLAINTIFF,   )
7   ) VOLUME 4
              V.   )
8   ) PAGES 1 - 208
     AKANOC SOLUTIONS, INC.,   )
9   ET AL.,   )
)
10   DEFENDANTS.   )
     _____)

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12

13   THE PROCEEDINGS WERE HELD BEFORE

14   THE HONORABLE UNITED STATES DISTRICT

15   JUDGE JAMES WARE

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

17   FOR THE PLAINTIFF: J. ANDREW COOMBS
                         BY: J. ANDREW COOMBS
18   ANNIE S. WANG
                         517 E. WILSON AVENUE
19   SUITE 202
                         GLENDALE, CALIFORNIA 91206
20
     FOR THE DEFENDANTS: GAUNTLETT & ASSOCIATES
21   BY: JAMES A. LOWE
                              CHRISTOPHER G. LAI
22   18400 VON KARMAN
                         IRVINE, CALIFORNIA 92612
23

24   (APPEARANCES CONTINUED ON THE NEXT PAGE.)

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

EXHIBIT

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1623

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U.S. COURT REPORTERS

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

2

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

6   LVMH FASHION GROUP
                                BY: NIKOLAY LIVADKIN
7   2 RUE DU PONT-NEUF 75001
                                PARIS, FRANCE

8
                                AKANOC SOLUTIONS, INC.
9   BY: STEVE CHEN, PRESIDENT
                                45535 NORTH PORT LOOP EAST
10   FREMONT, CALIFORNIA 94538

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      FOR THE DEFENDANTS:
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5   CROSS-EXAMINATION P. 165

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1   THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

2   **STEVEN CHEN,**

3   BEING CALLED AS A WITNESS ON BEHALF OF HIMSELF,

4   HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND

5   TESTIFIED AS FOLLOWS:

6   THE WITNESS: YES.

7   THE CLERK: PLEASE BE SEATED. COULD YOU

8   PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST

9   NAME FOR THE RECORD.

10   THE WITNESS: STEVE CHEN. S-T-E-V-E,

11   C-H-E-N.

12   **DIRECT EXAMINATION**

13   BY MR. LOWE:

14   Q   GOOD MORNING, MR. CHEN. ARE YOU A DEFENDANT

15   IN THIS CASE?

16   A   YES.

17   Q   AND YOU HAVE BEEN PRESENT DURING THE ENTIRE

18   TRIAL SO FAR?

19   A   YES.

20   Q   HOW ARE YOU EMPLOYED?

21   A   I STARTED THE COMPANY. SO AT THIS POINT I'M

22   GENERAL MANAGER OF MANAGED SOLUTIONS GROUP, INC.,

23   AND AKANOC SOLUTIONS.

24   Q   THE OTHER TWO DEFENDANTS IN THIS CASE?

25   A   YES, THAT'S CORRECT.

5

1   WHEN CUSTOMER HAS A PROBLEM SIMPLY BECAUSE A LOT OF

2   TIMES CUSTOMER MISUSE IT AND WHEN THEY HAVE

3   PROBLEMS THEN ONCE WE TOUCH IT AND THEY WOULD CLAIM

4   THAT WE SCREWED UP, NOT THEY SCREWED UP.

5   SO WE TEND TO SAY IF YOU SCREWED UP OR

6   SOMETHING YOU CANNOT -- YOU IDENTIFY SOMETHING THAT

7   YOU CANNOT FIX, WHAT WE CAN DO IS WE CAN ALWAYS DO

8   A RESTORE AND RETURN EVERYTHING BACK TO WHEN WE

9   DEPLOYED THE SERVER TO YOU, AND THEN YOU CAN TAKE

10   IT FROM THERE UNLESS THEY ARE SOMEONE FAIRLY

11   TECHNICALLY SURE THAT WE KNOW EACH OTHER GOOD

12   ENOUGH THAT THEY WILL SAY, HEY, COULD YOU GO INTO

13   MY SERVER AND -- HERE'S THE PASSWORD. COULD YOU GO

14   INTO MY SERVER AND MAKE A CONSOLE COMMAND TO IT AND

15   THIS WILL WORK.

16   IN THAT CASE WE WILL PROBABLY HELP THEM

17   TO DO THAT.

18   Q   BUT DOES THAT HAPPEN VERY OFTEN?

19   A   NO. VERY, VERY FEW CUSTOMER WILL TRUST THAT

20   THEY HAD THAT TYPE OF JUDGMENT.

21   Q   I'M SORRY. YOU WOULD NOT TRUST THEM, OR THEY

22   WOULDN'T TRUST YOU?

23   A   WE WOULD NOT TRUST THEM.

24   Q   YOU MENTIONED SOMETHING ABOUT PASSWORDS. HOW

25   ARE PASSWORDS SET ON THESE SERVERS?

50

1   A   WE SET UP THE PASSWORDS RANDOMLY WHEN WE FIRST

2   DEPLOYED THE SERVER.

3   Q   WHEN YOU FIRST RENT IT OUT?

4   A   WHEN WE FIRST RENT IT OUT WE HAVE -- I MEAN,

5   IN LENOX YOU CAN ASK THE COMPUTER TO GIVE YOU ALL

6   OF THE OPERATING SYSTEM TO GIVE YOU A RANDOM

7   PASSWORD AND YOU TURN THAT RANDOM PASSWORD TO THE

8   CUSTOMER.

9   IN A WINDOW BASED SYSTEM WE HAVE SPECIAL

10   CODES THAT WOULD CODE IT SO THAT WHEN WE ACTIVELY

11   RETURN IT TO THE CUSTOMER WE DOCUMENT THAT. BUT

12   MOST LIKELY WHEN WE TURN IT OVER TO THE CUSTOMER,

13   THEY CHANGE IT RIGHT AWAY.

14   Q   SO EXPLAIN HOW A PASSWORD WORKS ON A COMPUTER?

15   WHAT DOES IT CONTROL?

16   A   WE ONLY MET -- WE ONLY TOUCH THE SO-CALLED

17   ADMINISTRATIVE PASSWORD.

18   SO AN ADMINISTRATIVE PASSWORD IS THE

19   HIGHEST PASSWORD LEVEL, HIGHEST LEVEL OF THE

20   PASSWORD FOR THAT PARTICULAR SYSTEM THAT CAN GO

21   INTO WE CALL IT ROOT ACCESS.

22   Q   ROOT ACCESS?

23   A   YES, ROOT ACCESS, R-O-O-T. SO IN THAT CASE IT

24   CONTROLS EVERYTHING.

25   BUT WHEN WE TURN OVER THE CONTROL TO OUR

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1   CUSTOMER, WE TURN OVER THE ROOT ACCESS TO THE

2   CUSTOMER.

3   Q   BY GIVING THEM THE PASSWORD THAT HAS BEEN

4   GENERATED?

5   A   THAT'S CORRECT.

6   Q   AND IN YOUR EXPERIENCE DO THEY USUALLY KEEP

7   THAT PASSWORD OR DO THEY CHANGE IT?

8   A   NO, THEY CHANGE IT RIGHT AWAY, IN PARTICULAR

9   FOR CHINA CUSTOMER, THEY READ -- I FINALLY FOUND

10 OUT WHY THEY CHANGE THE PASSWORD REALLY FAST IS

11 BECAUSE THEY'RE TYPING IN THEIR CHINESE -- THINGS

12 THAT THEY CAN REMEMBER IN CHINESE.

13 Q   OH.

14 A   BUT IN ENGLISH CHARACTERS SO THAT THEN THEY

15 COME UP WITH A SERIES OF SOMETHING THAT NOBODY CAN

16 UNDERSTAND.

17 Q   SO THEY'RE TYPING SOMETHING IN ENGLISH FROM

18 CHINESE IS WHAT YOU'RE SAYING?

19 A   YES.

20 Q   AND WITHOUT THE PASSWORD, DO YOU HAVE ANY

21 ACCESS TO WHAT IS ON THAT SERVER?

22 A   LIKE THE OTHER GENTLEMAN TESTIFIED UNLESS WE

23 BREAK IN, BREAK IN MEANING RESET THE PASSWORD AT

24 THE ADMINISTRATIVE LEVEL.

25 Q   WITHOUT DOING THAT, WITHOUT RESETTING THE

52

1   PASSWORD, DO YOU HAVE ANY ACCESS?

2   A   NO, NO, NO. I THINK THAT EVERYBODY HAS SOME

3   EXPERIENCE THAT LOST PASSWORD FOR YOUR OWN

4   COMPUTER, YOU'RE IN TROUBLE. IT WILL TAKE A WHILE

5   TO FIGURE OUT HOW TO RESET IT.

6   Q   AND WHAT HAPPENED IF YOU WERE TO RESET THE

7   PASSWORD LIKE YESTERDAY MR. WILSON WAS SUGGESTING?

8   A   THEN YOU GET TO GO INTO THE COMPUTER.

9   Q   AND DO YOU DO THAT?

10   A   NO, WE DON'T.

11   Q   AND WHY NOT?

12   A   THERE'S NO POINT FOR IT. IF WE GO INTO ANY

13   PARTICULAR COMPUTER THAT DOESN'T BELONG TO US,

14   FIRST OF ALL, WE'RE GOING TO HAVE A HARD TIME

15   FIGURING OUT WHAT IS IN IT, YOU KNOW. BUT WE DON'T

16   HAVE ANY REASON FOR WANTING TO KNOW WHAT IS IN IT.

17   SO EVEN IF WE BREAK INTO A COMPUTER, WHAT

18   IS THAT FOR? WE HAVE NO REASON TO DO THAT.

19   AND ONCE YOU GET IN, AS MR. WILSON

20   TESTIFIED YESTERDAY, IT TAKES SO MUCH EFFORT FOR

21   SOMEBODY IN HIS -- IT TOOK HIM 20 HOURS TO

22   RECONSTRUCT A PORTION OF THE DATA, WHAT DO WE NEED

23   TO DO?

24   Q   WELL, LET'S SAY THAT YOU DID RESET A PASSWORD.

25   DOES THAT -- DOES YOUR CUSTOMER THEN STILL HAVE

53

1   ACCESS TO WHAT IS ON THAT MACHINE?

2   A   NO, THE PASSWORD CHANGED.

3   Q   SO HE DOESN'T KNOW THE PASSWORD?

4   A   NO, HE DOESN'T. YEAH, HE WOULD NOT KNOW THE

5   REVISED PASSWORD.

6   Q   AND DO YOU THINK THAT THAT WOULD MAKE THE

7   CUSTOMER HAPPY OR NOT?

8   A   CERTAINLY NOT. IF HE CONCEDED THAT IT WAS HIS

9   OWN MACHINE AND WE JUST WALKED THROUGH IT. AND

10   NOBODY WOULD BE HAPPY IF SOMEBODY LIKE GOES THROUGH

11   YOUR DESK. IT'S THE SAME THING.

12   Q   WHAT ABOUT PRIVACY ISSUES. ARE THERE ANY WHEN

13   YOU'RE RENTING THESE SERVERS OUT?

14   THE COURT: CAN WE USE THE CHANGE OF THIS

15   SUBJECT TO THE PRIVATE ISSUES AS THE MARKER TO COME

16   BACK AFTER OUR BREAK?

17   MR. LOWE: SURE.

18   THE COURT: IT'S 10:30, AND WE'LL TAKE A

19   TEN MINUTE BREAK.

20   (WHEREUPON, A RECESS WAS TAKEN.)

21   (WHEREUPON, THE PROCEEDINGS IN THIS

22   MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

23   THE COURT: READY TO RESUME?

24   MR. LOWE: YES, YOUR HONOR.

25   THE COURT: SUMMON THE JURY.

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1   (WHEREUPON, THE FOLLOWING PROCEEDINGS

2   WERE HELD IN THE PRESENCE OF THE JURY:)

3   THE COURT: VERY WELL. YOU MAY CONTINUE

4   WITH YOUR EXAMINATION.

5   BY MR. LOWE:

6   Q   MAY IT PLEASE THE COURT, CAN WE SEE EXHIBIT

7   21, PLEASE. MR. CHEN, CAN YOU PLEASE TELL ME WHAT

8   EXHIBIT 21 IS? IT SHOULD BE IN YOUR BOOK THERE?

9   A   THIS SHOULD BE A SERVICE AGREEMENT THAT AKANOC

10   PROVIDED TO -- THE AKANOC WEB SITE.

11   Q   IS THIS PUBLISHED ON YOUR WEB SITE?

12   A   THAT'S CORRECT.

13   Q   AND IS THIS AN AGREEMENT THAT YOU HAVE WITH

14   YOUR CUSTOMERS?

15   A   YES.

16   Q   AND WHAT DOES IT -- DOES IT PROVIDE FOR WHAT

17   YOU'RE SUPPOSED TO DO AND WHAT THE CUSTOMER IS

18   SUPPOSED TO DO, RESPECTIVE OBLIGATIONS?

19   A   TO BE VERY HONEST WITH YOU, I PERSONALLY NEVER

20   REALLY READ THAT MYSELF.

21   IT JUST BASICALLY WE KNOW WHAT WE'RE

22   DOING AND WE'VE BEEN DOING IT.

23   Q   OKAY.

24   A   OTHER THAN THAT I MEAN, I DON'T READ THE VERY

25   DETAIL OF THAT, OF THE AGREEMENT ITSELF.

1   Q   DOES YOUR RELATIONSHIP WITH YOUR CUSTOMERS

2   GIVE YOU THE RIGHT TO LOOK AT INFORMATION THAT THEY

3   PUT ON THE SERVERS?

4   A   NO, THEY DON'T. ONCE WE TURN OVER THE

5   PASSWORD WE ASSUME THAT IT'S THEIRS. SO WE -- WE

6   HAD NO REASON TO GO BACK TO THE SERVER ITSELF.

7   Q   DO YOU THINK YOU HAVE THE RIGHT TO LOOK AT ANY

8   PRIVATE INFORMATION ON THE SERVERS?

9   A   I CERTAINLY DON'T THINK I HAVE THE RIGHT.

10   Q   AND WHY IS THAT?

11   A   I RENT SOMETHING TO MY CUSTOMER AND THEN IT

12   SHOULD BE MY CUSTOMER'S PROPERTY WHICH I DON'T

13   THINK THAT I SHOULD HAVE THE RIGHT TO GO IN AT MY

14   LEISURE AND CHECK WHAT IS IN IT.

15   JUST LIKE IF I GO TO THE BANK AND RENT A

16   SAFETY DEPOSIT, I DON'T THINK THAT I WOULD

17   APPRECIATE THAT THE BANK HAS ANY TYPE OF CAPACITY

18   TO GO INTO MY DEPOSIT AND SEARCH WHAT IS IN IT

19   EVERY DAY.

20   I DON'T THINK IT'S RIGHT.

21   Q   IF YOU WERE -- FOR EXAMPLE, MR. WILSON

22   YESTERDAY WAS USING THE ANALOGY OF RUNNING SERVERS

23   AND SO ON LIKE YOU DO TO RENTING AN APARTMENT IN AN

24   APARTMENT BUILDING.

25   WOULD YOU HAVE A RIGHT AS THE OWNER OF

56

1   A   YES.

2   Q   WHAT DO YOU HAVE TO DO BEFORE YOU FORWARD ON

3   THOSE COMPLAINTS?

4   A   IT COMES IN DIFFERENT FORMS. IT MAY VARY IN A

5   VERY SHORT SPOT, VISIBLE SPOT IN THE WHOLE

6   COMPLAINT.

7   SO I NEED TIME TO READ THOSE AND FIND

8   EXACTLY WHICH DOMAIN NAME THEY'RE COMPLAINING. AND

9   ONCE I HAVE THE DOMAIN NAME I NEED TO PING IT. AND

10   USUALLY I DO TWO PINGS.

11   I ASSUME MOST ATTORNEYS DON'T KNOW THIS.

12   THEY WILL COMPLAIN THAT IT'S XYZ.COM AND SO I PING

13   XYZ.COM AND THEN I WOULD ALSO PING WWW.XYZ.COM.

14   Q   IS THERE A DIFFERENCE?

15   A   YES. A LOT OF TIME PEOPLE REGISTER THE SAME

16   DOMAIN BUT WITHOUT WWW OR DIFFERENTLY. SO IT MAY

17   BE WWW.XYZ.COM AND IT'S POINTING TO THIS ONE BUT

18   THEN THE XYZ.COM IS POINTING TO THE OTHER IP.

19   SO I CHECK THAT, AND I WANT TO MAKE SURE

20   THAT THE COMPLAINT, WITHOUT KNOWLEDGE OF THE

21   ATTORNEY, THAT INDEED ANY ONE OF IT IS WITHIN MY

22   NETWORK. AND ONCE I FIND THAT NETWORK --

23   Q   WELL, BEFORE WE DO THAT, YOU MENTIONED

24   PINGING. BRIEFLY COULD YOU TELL US WHAT YOU MEAN

25   BY THAT AND WHAT YOU'RE TALKING ABOUT THERE?

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1   A   IT'S JUST GO TO ANY COMPUTER THAT HAS A DOS

2   PROMPT BUT MOST OF THE PEOPLE DON'T USE IT SO

3   PROBABLY EVERY USER WOULD NOT KNOW.

4   YOU GO TO THE DOS PROMPT AND YOU TYPE

5   P-I-N-G, SPACE, THE DOMAIN NAME, WHICHEVER DOMAIN

6   NAME YOU WANT TO LOOK FOR AND IT COMES BACK WITH

7   THE IP INFORMATION IF INDEED IT'S A LIVE IP.

8   Q   WHAT DO YOU MEAN IF IT'S A LIVE IP?

9   A   A LIVE IP AT LEAST IS BEING REGISTERED IN THE

10   NAMES OF -- IT DOESN'T MEAN THE WEB SITE IS LIVE

11   BUT IT DOES AT LEAST PROVE IT'S BEING REGISTERED.

12   Q   THE XYZ.COM IS REGISTERED SOMEWHERE?

13   A   YES. LET'S ASSUME THIS VERY EASY. IF YOU GO

14   TO DOMAIN REGISTRAR, YOU WIPE OUT YOUR NAME SERVER

15   INFORMATION ON THE WEB SITE, THEN IF ANYBODY WANTS

16   TO FIND XYZ.COM THEN YOU CANNOT BE RESOLVED TO

17   ANYTHING.

18   JUST LIKE IF YOU GO TO THE FRANCHISE TAX

19   BOARD AND YOU WIPE OUT YOUR BUSINESS ADDRESS AND

20   THEN PEOPLE CAN FIND THE COMPANY BUT CANNOT FIND

21   THE ADDRESS INFORMATION.

22   Q   OKAY. SO WHEN YOU PING YOU'RE ABLE TO FIND

23   OUT SOMETHING IS REGISTERED?

24   A   YES.

25   Q   AND IF IT IS REGISTERED THEN YOU'RE ABLE TO

95

1   FIND OUT AN IP ADDRESS?

2   A   YES.

3   Q   AND WHEN DO YOU FIND OUT WHETHER THAT IP

4   ADDRESS IS IN THE RANGE OF IP'S THAT HAVE BEEN

5   ASSIGNED TO YOU FROM ARIN?

6   A   IF IT'S SOMETHING LIKE 205.209, IT'S OURS.

7   Q   SO YOU KNOW YOURS?

8   A   YES.

9   Q   AND SO YOU RECOGNIZE YOURS?

10   A   YES.

11   Q   AND THEN HOW DO YOU DETERMINE IF IT IS

12   SOMETHING OR AN IP ADDRESS THAT IS ASSIGNED TO YOU,

13   HOW DO YOU FIND OUT WHICH CUSTOMER MIGHT BE USING

14   IT?

15   A   WE GO TO OUR OWN DATABASE WE CALL CPRO.

16   Q   C-P-R-O?

17   A   C-P-R-O, YES. SO CPRO THERE'S A FIELD THAT

18   YOU TYPE IN THE IP ADDRESS AND IT WILL SHOW WHO IS

19   USING THAT PARTICULAR IP AT THAT PARTICULAR TIME.

20   Q   AT THAT MOMENT IN TIME?

21   A   YES.

22   Q   AND THEN YOU DO WHAT?

23   A   THEN I FORWARD THE COMPLAINT.

24   Q   TO THAT CUSTOMER?

25   A   TO THAT PARTICULAR CUSTOMER.

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1   **AFTERNOON SESSION**

2   (WHEREUPON, THE FOLLOWING PROCEEDINGS

3   WERE HELD IN THE PRESENCE OF THE JURY:)

4   THE COURT: PERHAPS THE MOST CHALLENGING

5   TIME, FRIDAY AFTERNOON. SO DAZZLE US.

6   MR. LOWE: WE HAVE DANCING GIRLS IN THE

7   HALLWAY, YOUR HONOR. I WISH.

8   THE COURT: ALL RIGHT. LET ME ALLOW YOU

9   TO FINISH YOUR EXAMINATION.

10   MR. LOWE: THANK YOU.

11   Q   WOULD YOU PLEASE LOOK AT EXHIBIT 1315.

12   MR. CHEN, COULD YOU PLEASE TELL US WHAT

13   THIS IS?

14   A   THIS IS A DOMAIN TOOLS SCREEN SHOT AND DOWN

15   BELOW IT HAS THE DOS PROMPT PING DATA.

16   Q   AND WHERE DID THIS COME FROM?

17   A   I GOT THIS A WHILE AGO WHILE I WAS USING OR

18   CHECKING OR LEARNING DOMAIN TOOLS.

19   Q   SO YOU GOT THIS INFORMATION YOURSELF?

20   A   YES.

21   Q   OKAY. SO DID THIS COME FROM TWO DIFFERENT

22   PLACES WHAT WE SEE ON ONE SHEET NOW?

23   A   YES. ONE IS FROM A DOS PROMPT WHICH I COPY

24   PASTED AND THEN ANOTHER CAME FROM DOMAIN TOOLS.

25   Q   THAT YOU COPY AND PASTED?

                                                    107

1   A   YES.

2   Q   OKAY.

3   A   TO MAKE IT ONE COPY.

4   Q   OKAY. AND WHAT IS THE PURPOSE OF THESE --

5   WHAT DO THESE TWO ITEMS SHOW?

6   A   AS I SAID I SPENT ABOUT A MONTH TRYING TO

7   UNDERSTAND HOW DOMAIN TOOLS WORK.

8   JUROR: WE CAN'T SEE.

9   THE COURT: OH, I TURNED IT OFF.

10   YOU MAY PROCEED.

11   THE WITNESS: AND AS I WAS EXPLAINING A

12   WHILE AGO THAT I TRIED TO UNDERSTAND HOW DOMAIN

13   TOOLS WORK AND I PROBABLY SPENT PROBABLY A MONTH

14   AND SIGN UP GOLD MEMBER SO I KNOW WHAT IS IN IT AND

15   EVENTUALLY I COME TO THE CONCLUSION THAT THIS IS

16   NOT A REALTIME DATABASE.

17   Q   A REALTIME?

18   A   YES. NOT SOMETHING THAT YOU CAN GET AN EXACT

19   PING DATA ON IT.

20   Q   IS PING DATA REALTIME?

21   A   PING DATA WILL BE REALTIME, YES.

22   Q   SO IT GIVES A REPORT OF WHAT IS GOING ON THIS

23   VERY SECOND, FOR EXAMPLE?

24   A   YES, IN THIS PARTICULAR CASE IF YOU LOOK AT

25   EVEN THE IP ADDRESS SHOWING 204.

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1   Q   WHAT ARE WE LOOKING AT, THE DOMAIN TOOLS

2   PRINTOUT?

3   A   YES.   UNDER SERVER DATA AND YOU HAVE THE IP

4   ADDRESS.

5   Q   CAN WE HIGHLIGHT THAT.

6   A   AND SEE THE IP LOCATION.

7   Q   NOW, WHAT IS -- FIRST OF ALL, WHAT DOMAIN NAME

8   ARE YOU LOOKING FOR HERE?

9   A   THIS IS ESHOES99.NET.

10   Q   ALL RIGHT.   SO GO BACK UP TO THE IP ADDRESS,

11   PLEASE, FOR THIS ON THE DOMAIN TOOLS.

12   A   SO AT THAT PARTICULAR POINT IT WAS SHOWING

13   204.16.192.77 AND UNDER THAT IP LOCATION IT SAYS

14   NEW YORK.

15   Q   IT HAS AKANOC SOLUTIONS ON THAT LINE THOUGH?

16   A   YES.

17   Q   HAS AKANOC EVER BEEN IN NEW YORK?

18   A   NO.

19   Q   ALL RIGHT.

20   A   AND I DOCUMENT THIS AND JUST TO BE SURE THAT I

21   UNDERSTAND THAT THIS IS NOT REALLY A REAL TIME

22   DATABASE.

23   Q   OKAY. COULD YOU GO DOWN TO THE PING

24   INFORMATION AT THE BOTTOM OF THIS PAGE. AND WHAT

25   IS THE DOMAIN OR THE IP ADDRESS FOR THIS DOMAIN

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1   SHOWN BY THE PING?

2   A   SO IT IS SHOWING 61.145.126.133. AND BY

3   LOOKING AT THE PING TIME IT HAS 592 MILLISECONDS.

4   SO MOST LIKELY THIS IS IN CHINA.

5   Q   AND HOW DO YOU KNOW THAT?

6   A   BECAUSE OF THE PING TIME.

7   Q   BECAUSE IT TAKES A LONG TIME?

8   A   IN THE STATES IT'S PROBABLY ANYWHERE BETWEEN

9   15 MILLISECONDS ALL OF THE WAY TO LESS THAN 100

10   MILLISECONDS IF IT'S IN THE EAST COAST.

11   Q   SO IT HAS TO TRAVEL ALL THE WAY AROUND THE

12   WORLD ON THE INTERNET?

13   A   THAT'S CORRECT.

14   Q   AND SO ARE THE -- IS THE IP ADDRESS SHOWN IN

15   THE PING THE SAME AS THE IP ADDRESS SHOWN IN THE

16   DOMAIN TOOLS REPORT?

17   A   NO, IT IS NOT.

18   Q   AND WERE THOSE DONE AT THE SAME TIME?

19   A   YES, THAT'S CORRECT.

20   Q   AND SO WHAT CONCLUSION DID YOU REACH FROM THAT

21   EXPERIMENT?

22   A   AS I SAID, I SPENT A MONTH AND I DOCUMENT

23   VIEWED THIS TYPE OF DIFFERENT INFORMATION, AND

24   THERE'S NO POINT FOR ME TO INVESTIGATE ANY FURTHER.

25   Q   ALL RIGHT. IF YOU LOOK PLEASE AT EXHIBIT

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1   AND IF IT'S SHOWING SOME OTHER NETWORK'S IP NOT

2   WITHIN MY NETWORK, THEN I WOULD CONSIDER THEY HAVE

3   DONE THEIR JOB.

4   Q   OKAY.

5   A   THEY MAY, WHICH IS THE ONE THAT I REALLY LIKE,

6   IS THAT THEY MAY NOT RESPOND AT ALL.

7   Q   WHY DO YOU LIKE THAT?

8   A   BECAUSE THAT -- THERE'S NO CONFUSION. IF THEY

9   DON'T RESPOND TO ME, AT LEAST I CAN DISABLE THE IP

10   AND NO QUESTION IS ASKED BECAUSE YOU DON'T RESPOND

11   TO ME. IF YOU RESPOND TO ME WITH ANY TYPE OF

12   LEGITIMATE ARGUMENTS, THEN I STILL NEED TO WORK

13   WITH YOU.

14   BUT IF YOU JUST DON'T RESPOND, IT'S

15   EASIER FOR ME.

16   Q   DO YOU EVER TRY TO ARGUE WITH THE PEOPLE WHO

17   MADE THE COMPLAINT TO YOU AT LOUIS VUITTON SAYING

18   WHY ARE YOU SAYING THESE THINGS OR SOMETHING LIKE

19   THAT?

20   A   ARGUE WITH THE COMPLAINER OR THE COMPLAINEE?

21   Q   THE COMPLAINER?

22   A   THE COMPLAINER? YES. MANY TIMES I EVEN HAVE

23   THE ATTORNEY CALL ME DIRECTLY ON THE PHONE AND ASK

24   ME TO REMOVE A PARTICULAR WEB SITE WHEREAS I DID

25   REMOVE THE WEB SITE.

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1 BECAUSE WE HAVE NO CONTROL OVER IT. SO WE DON'T

2 KNOW HOW TO FOLLOW UP WITH THOSE.

3 Q   NOW, LET'S TAKE A COMPLAINT AND YOU SEND IT ON

4 TO THE CUSTOMER SAYING WE HAVE TAKEN IT OFF OUR

5 SERVER OR SOMETHING, AND THEN YOU VERIFY IT'S NOT

6 THERE ANYMORE; IS THAT RIGHT?

7 A   THAT'S RIGHT.

8 Q   NOW, WHAT CAUSES YOU TO TAKE ANY STRONGER

9 ACTION?

10 A   FOR INSTANCE, IF ANOTHER COMPLAINT COMES IN

11 AND SOMETIMES EVEN SAY A SECOND COMPLAINT, THEN

12 I'LL VERIFY IT AGAIN OR IF IT'S STILL WITHIN --

13 EVEN WITHIN THE SAME SERVER OR WITH A DIFFERENT IP

14 MOST OF THE TIME I WOULD JUST UNPLUG THE SERVER SO

15 WHOEVER OPERATES THAT SERVER KNOWS, YOU CANNOT JUST

16 MOVE AROUND.

17   IF THEY COME BACK WITH ANY REPLY OR ANY

18 QUESTION TO THE SECURITY DEPARTMENT SAYING WHY IS

19 MY -- WHY DID YOU UNPLUG MY WHOLE SERVER, THEN I

20 WOULD ANSWER TO THEM YOU CANNOT LET THIS PARTICULAR

21 WEB SITE IN THIS SERVER BECAUSE YOU ARE JUST

22 DODGING THE -- YOU ARE DODGING WHAT WE ASSIGN YOU

23 AS THAT PREVIOUS IP AND TO A DIFFERENT IP. THAT

24 WON'T WORK.

25 Q   NOW, IF YOU UNPLUG THE SERVER, DOES THAT

120

1   AFFECT OTHER USERS DOWN THE LINE?

2   A   YES, EVERYTHING ON MY SERVER IS BASICALLY

3   GONE.

4   Q   AND HOW DOES THAT AFFECT YOUR CUSTOMER?

5   A   ALL THE CUSTOMER ARE NOT FUNCTIONING.

6   Q   SO YOUR CUSTOMER'S CUSTOMER ARE ALL OFF THE

7   INTERNET?

8   A   YES. THAT'S ASSUMING THAT THIS PARTICULAR

9   PERSON IS MANAGING THAT PARTICULAR SERVER.

10   Q   AND WHAT DOES A CUSTOMER HAVE TO DO TO GET YOU

11   TO PLUG THEM BACK IN?

12   A   I WOULD TELL THEM TO MOVE THAT DOMAIN NAME OUT

13   OF MY NETWORK.

14   Q   AND WHAT DO THEY HAVE TO DO TO PROVE THAT TO

15   YOU?

16   A   OH, THEY WOULD COME BACK IN A LITTLE TIME AND

17   SAY WE ALREADY CHANGED THE NAME SERVER

18   REGISTRATION, MEANING THAT THEY MOVE THE IP TO

19   SOMEWHERE ELSE. AND ONCE I CAN PING THAT

20   PARTICULAR IP IS NOT IN MY NETWORK, THEN THEY MUST

21   HAVE DONE SOMETHING.

22   Q   NOW, UNDER WHAT CIRCUMSTANCES WOULD YOU

23   DISABLE -- EXCUSE ME -- DISABLE AN IP ADDRESS

24   INSTEAD OF UNPLUGGING THE ENTIRE SERVER?

25   A   MOST LIKELY AS I EXPLAINED, IF YOU DON'T

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1   RESPOND TO MY REQUEST FOR A CERTAIN PERIOD OF TIME,

2   THEN THAT PUTS ME IN THE POSITION TO JUST DISABLE

3   YOU.

4   Q   SO YOU TYPICALLY DO THAT IF YOU DON'T HEAR

5   FROM THEM?

6   A   THAT'S CORRECT.

7   Q   BUT IF YOU SEE REPEATED PROBLEMS ON A SERVER,

8   YOU'LL UNPLUG THE SERVER?

9   A   THAT IS CORRECT.

10   Q   NOW, DO YOU EVER STOP DOING BUSINESS WITH SOME

11   CUSTOMER OF YOURS BECAUSE OF COMPLAINTS LIKE THIS?

12   A   IF THEY ALWAYS REACT TO RESPONSES TO THE

13   COMPLAINT THAT WE SEND THEN FOR CONTRACTUAL REASONS

14   I CAN TERMINATE THEM AS LONG AS THEY RESPOND TO

15   WHAT WE ARE SENDING OR -- SO WE CAN'T JUST SAY WE

16   DON'T LIKE YOU SO WE TERMINATE YOU BECAUSE THEY PAY

17   FOR THEIR SERVICE.

18   THE COURT: I WANT TO MAKE SURE THAT THE

19   JURY UNDERSTANDS THAT ALTHOUGH THE WITNESS IS

20   TESTIFYING AS TO HIS UNDERSTANDING AND HIS BUSINESS

21   PRACTICE, HE IS NOT CITING TO YOU -- IT WOULD BE UP

22   TO THE COURT TO INSTRUCT YOU ON THE LAW.

23   IN OTHER WORDS, WHAT HE MAY OR MAY NOT DO

24   UNDER A CONTRACT, THERE MAY BE HIS UNDERSTANDING OF

25   WHAT HE WOULD DO UNDER A CONTRACT AND WHAT HE

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1   WHEN THEY RENT SERVER THEY UPLOAD A LOT OF THE

2   STUFF.

3   SO I WOULD IMAGINE THAT WHETHER THEY USE

4   EVERYTHING INSIDE OR SOMETHING, THEY MAY BE JUST A

5   PACKAGE OF EVERYTHING IN IT AND SO ASSUMING I'M THE

6   WEB SITE OPERATOR IF I RAN VIRUS INSIDE OF THE

7   UNITED STATES AND UPLOAD ALL OF THE SAME CONTENT AT

8   THE SAME TIME, THEN IT'S A MATTER OF HOW I CHANGE

9   MY NAME SERVER INFORMATION.

10   Q   SO LET'S SAY THE NAME SERVER IS POINTING TO

11   YOUR SERVER FOR THIS DOMAIN NAME AND YOU SOMEHOW

12   SHUT THEM DOWN, CAN THEY JUST POINT TO ANOTHER

13   SERVER WHERE THEY HAVE THE SAME INFORMATION?

14   A   AS I SAID, TEN MINUTES.

15   Q   I'D LIKE YOU TO LOOK AT EXHIBIT 1598, PLEASE.

16   CAN YOU TELL ME WHAT THAT IS?

17   A   THIS IS A SUMMARY REPORT BASED ON ALL OF THE

18   E-MAIL LOG THAT WE HAVE FOR COMPLAINTS COMING IN

19   AND HOW WE DID THE CHECKING, HOW WE REACT TO EVERY

20   SINGLE COMPLAINT.

21   Q   EVERY COMPLAINT OR JUST THE COMPLAINTS FROM

22   LOUIS VUITTON?

23   A   THIS IS JUST FOR LOUIS VUITTON.

24   Q   AND DOES THIS REFLECT COMPLAINTS THAT WERE

25   MADE FROM THE BEGINNING OF THIS LAWSUIT AND UP

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1   UNTIL NOW?

2   A   YES, THAT'S CORRECT.

3   Q   SO EVERY TIME YOU GET NEW COMPLAINTS FROM

4   LOUIS VUITTON, YOU MAINTAIN E-MAIL RECORDS FROM THE

5   TIME OF THIS LAWSUIT?

6   A   YES, THAT'S CORRECT.

7   Q   AND WERE THOSE E-MAIL RECORDS PROVIDED TO

8   LOUIS VUITTON THAT ARE SHOWN IN SUMMARY IN THIS

9   CHART?

10   A   YES, THAT'S CORRECT.

11   Q   NOW, LET'S GO THROUGH A FEW OF THESE SO YOU

12   CAN EXPLAIN TO US WHAT THESE ENTRIES MEAN.

13   OVER ON THE LEFT COLUMN THE FIRST ONE IS

14   UNDER THE WORD COMPLAINT APE168.COM. THAT'S A

15   DOMAIN NAME?

16   A   THAT'S CORRECT.

17   Q   AND UNDER THE COLUMN NOTICE DATE, WHAT DOES

18   THAT MEAN?

19   A   THAT'S THE DATE I WAS NOTICED ON THIS

20   PARTICULAR DOMAIN.

21   Q   AND WAS THAT ACTUALLY THE DATE THAT YOU GOT

22   THE COMPLAINT IN THIS CASE?

23   A   THAT'S CORRECT.

24   Q   UNDER THE NEXT COLUMN IT SAYS RESOLUTION.

25   WHAT DOES THAT ENTRY MEAN?

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1   A   THAT MEANS WHEN I CHECKED THAT PARTICULAR

2   DOMAIN NAME, THE IP ADDRESS IS NOT WITHIN OUR

3   RANGE.

4   Q   AND YOU CHECK IT BY PINGING?

5   A   BY PINGING, YES.

6   Q   AND NOW THERE'S ANOTHER NOTICE DATE. WHAT

7   DOES THAT RELATE TO?

8   A   SO JANUARY 3RD OF 2008 I RECEIVE ANOTHER

9   COMPLAINT FROM LOUIS VUITTON.

10   Q   ABOUT APRIL168.COM?

11   A   THAT'S CORRECT. AND THEN AT THAT TIME I CHECK

12   IT'S SHOWING A DIFFERENT IP ADDRESS.

13   Q   AND A DIFFERENT IP ADDRESS. AND WHAT IS THE

14   RESOLUTION OF THAT?

15   A   THAT THE IP ADDRESS IS NOT WITHIN MY RANGE.

16   Q   AND SO BOTH TIMES YOU GOT COMPLAINTS THIS

17   DOMAIN NAME WASN'T USING YOUR IP ADDRESS?

18   A   THAT'S CORRECT.

19   Q   AND YOU DIDN'T GET ANY MORE COMPLAINTS SINCE

20   THAT TIME --

21   A   APPARENTLY NOT.
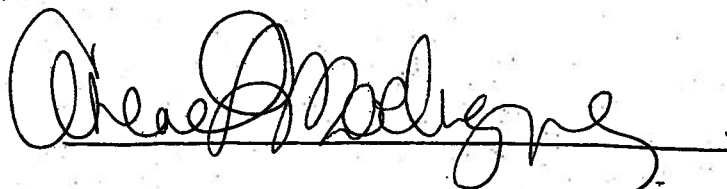
22   Q   -- ABOUT THAT ONE? OKAY.

23   EXPLAIN TO US ABOUT THE NEXT LINE

24   ATOZBRAND.COM. IS THAT ANY DIFFERENT?

25   A   THAT'S PRETTY MUCH THE SAME.

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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.

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER CSR 8074