

1 J. Andrew Coombs (SBN 123881)
 andy@coombsp.com
 2 Annie S. Wang (SBN 243027)
 annie@coombsp.com
 3 J. Andrew Coombs, A Prof. Corp.
 517 E. Wilson Ave., Suite 202
 4 Glendale, California 91206
 Telephone: (818) 500-3200
 5 Facsimile: (818) 500-3201

6 Attorneys for Plaintiff Louis
 Vuitton Malletier, S.A.
 7






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



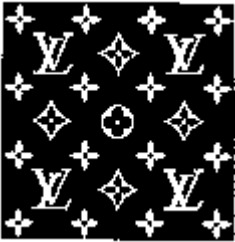


10	Louis Vuitton Malletier, S.A.,)	Case No.: C 07 3952 JW
11)	
12	Plaintiff,)	DECLARATION OF NIKOLAY
13	v.)	LIVADKIN IN SUPPORT OF
14	Akanoc Solutions, Inc., et al.)	OPPOSITION TO DEFENDANTS'
15)	MOTION FOR SUMMARY
16	Defendants.)	JUDGMENT; EXHIBITS THERETO
17)	Date: September 8, 2008
)	Time: 9:00 a.m.
)	Courtroom 8, 4 th Floor
)	
)	


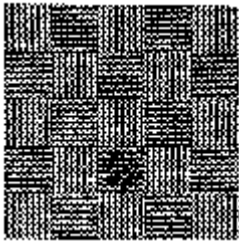
18 I, NIKOLAY LIVADKIN, declare as follows:

19
 20 1. I am an Anti-Counterfeiting Coordinator with LVMH Fashion Group, a division of
 21 LVMH. I have responsibility for global Internet enforcement for brands included within LVMH
 22 Fashion Group, specifically including Plaintiff, Louis Vuitton Malletier, S.A. ("Louis Vuitton"). I
 23 have had responsibility for Louis Vuitton's Internet enforcement efforts since 2002. Except as
 24 otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if
 25 called as a witness, I could and would competently testify as follows.
 26
 27
 28

2. Louis Vuitton has duly registered and renewed the following trademarks and copyrights with the United States Patent and Trademark Office and the United States Copyright Office, respectively:

TRADEMARK	REGISTRATION NUMBER	TRADEMARK PICTURE	CLASS OF GOODS
Louis Vuitton (Interlocked Letters) in a Circle Design	286,345		18
Louis Vuitton (Interlocked Letters) and Monogram Canvas Design	297,594		18
LOUIS VUITTON	1,045,932	LOUIS VUITTON	18
Louis Vuitton (Interlocked Letters) Design	1,519,828		18
LOUIS VUITTON MALLETIER A PARIS in Rectangle	1,615,681		16, 18
Louis Vuitton (Interlocked Letters) on Epi Leather Design	1,655,564		18

TRADEMARK	REGISTRATION NUMBER	TRADEMARK PICTURE	CLASS OF GOODS
Louis Vuitton (Interlocked Letters) and Monogram Canvas Pattern Design	1,770,131		25
Louis Vuitton (Interlocked Letters) Design	1,794,905		16, 25
Louis Vuitton (Interlocked Letters) and Monogram Canvas Design	1,875,198		16
Louis Vuitton (Interlocked Letters)	1,938,808		14, 24
LOUIS VUITTON World Mark	1,990,760	LOUIS VUITTON	16, 18, 24, 25
Louis Vuitton (Interlocked Letters) Design	2,291,907		34
LOUIS VUITTON	2,303,212	LOUIS VUITTON	34

TRADEMARK	REGISTRATION NUMBER	TRADEMARK PICTURE	CLASS OF GOODS
Louis Vuitton (Interlocked Letters) Design	2,361,695		25
LOUIS VUITTON PARIS and Damier (pattern design)	2,378,388		18

<u>Copyright</u>	<u>Reg. No.</u>	<u>Date Published</u>	<u>Date Registered</u>
Multicolor Monogram – Black Print	VA 1-250-121	12/18/02	06/24/04
Multicolor Monogram – White Print	VA 1-250-120	12/18/02	06/24/04

3. True and correct copies or proof of registration of all of the aforementioned properties are collectively attached hereto as Exhibit A.

4. Counterfeiting of Louis Vuitton brands online is widespread. A significant percentage of the overall online counterfeiting activity as it relates to the Louis Vuitton brand originates in the People’s Republic of China. In view of various practical and legal impediments to efficient and effective enforcement of trademark rights in the People’s Republic of China, a significant part of Louis Vuitton’s online enforcement efforts occur in end user markets, specifically including the United States.

1 5. Louis Vuitton is well-positioned to identify counterfeit sales online for several
2 reasons. Among the more important factors is the fact that Louis Vuitton has a strictly controlled
3 distribution network such that the only online sites which sell new authentic Louis Vuitton
4 merchandise in the United States are eluxury.com and louisvuitton.com, controlled by Plaintiff.
5 Samples of offers for Louis Vuitton merchandise from those authorized sites are attached as
6 Exhibit B and C, respectively. Although there is a secondary market for legitimate used Louis
7 Vuitton merchandise, in most cases counterfeit sites are easily distinguished. First, many sites
8 specifically self-identify their sites as offerors of “replica” merchandise. Second, many sites offer
9 a range of merchandise inconsistent with the more limited range of product offered by sellers in the
10 secondary market. Third, counterfeiters identify products in ways which distinguish their product
11 from legitimate merchandise. Finally, the price point of legitimate Louis Vuitton merchandise,
12 combined with strict control over distribution which effectively eliminates any significant
13 discounting of legitimate merchandise all aid me in confirming counterfeit offers online.

14
15
16 6. Over my years of managing Louis Vuitton’s online enforcement efforts, during
17 which time I have analyzed product purchased from several hundred websites each year, I have
18 never obtained legitimate product from a website where my initial determination was that the
19 offered product was counterfeit.

20
21 7. As a general rule, Louis Vuitton strives to secure voluntary compliance with its
22 trademarks rights and the trademark laws through the service of cease and desist letters. In every
23 case, before a demand letter is transmitted, I insure that Louis Vuitton’s file includes evidence of
24 the infringing offer, specifically including contemporaneous printouts from the website evidencing
25 at least some of the offers which are the subject of Louis Vuitton’s demands.

26 8. Each cease and desist letter is followed by a letter to the internet service provider
27 (“ISP”) which acts as host of the website offering counterfeit Louis Vuitton merchandise. In most
28

1 cases, demand letters sent to ISPs are sent to enforce both Louis Vuitton's trademark rights and
2 copyrights. In few cases, where only Louis Vuitton's trademark rights are concerned, I transmit
3 such letters in the form of notices called for under the Digital Millennium Copyright Act
4 ("DMCA"). In my experience, responsible ISPs are familiar with the standards and requirements
5 imposed by the DMCA and are more likely to remove infringing offers where Louis Vuitton's
6 demand addressed to the ISP are framed in the familiar format of a DMCA notice. Before sending
7 a demand to an ISP, I ping the website to confirm the Internet Protocol ("IP") address of the
8 website and I research the Internet, using widely accessible online records to identify the ISP to
9 which the IP address was assigned. I insure that Louis Vuitton's files include records of those
10 additional investigative steps before sending a demand to an ISP.
11

12
13 9. The initial demand to an ISP is transmitted usually by email and, if Louis Vuitton
14 does not receive a satisfactory response within a one to two week time frame or confirm that the
15 counterfeit offers have been deleted, a follow up is sent. The follow up refers to the initial demand,
16 includes a copy of the initial demand and is transmitted by messenger service or by some method
17 intended to confirm receipt of the demand at the address to which the demand has been sent. I rely
18 upon online records to find the address to which demands are sent, specifically including "Contact
19 Me" pages for the ISP and, more importantly, the agent for service filing under the DMCA with the
20 United States Copyright Office.
21

22 10. My office sends hundreds of DMCA notices to ISPs based in the United States each
23 year and the vast majority of these notices result in an immediate disabling of the counterfeit offers
24 which the subject of the DMCA notice.

25 11. During the second half of 2006, I began to notice a pattern where counterfeit offers
26 were not removed, even in response to follow up demands. Upon closer examination it appeared
27 that most of these demands were addressed to the Defendants. In connection with that examination
28

1 I noted that (a) neither of the ISP Defendants had filed a notice with the Copyright Office
2 designated an agent for service of DMCA notices, and (b) that one of the ISP Defendants, Managed
3 Solutions Group, Inc. did not maintain a webpage which posted terms of service, acceptable use
4 policy or other document listing policies for handling notices of infringement as required by the
5 DMCA or a “Contact Us” page with appropriate contact information. Consequently, I researched
6 the World Wide Web and noticed several postings of commercial offers by Managed Solutions
7 Group, Inc. designating www.managed.com as the corporate website for Managed Solutions
8 Group, Inc. I then visited the website located at www.managed.com and noted under “Contact Us”,
9 that the “corporate offices” were located at 2115 Linwood Avenue 5th Floor, Fort Lee, NJ 07024,
10 while for network administration issues the contact electronic mail address was
11 abuse@webhostplus.com. As a result of (b) I was later informed from discovery in this action, that
12 the New Jersey address to which two demands were sent as detailed below, actually belonged to a
13 different company, Managed, Inc., which was a company “spun” out of Managed Solutions Group,
14 Inc., a defendant in this case, and that the website www.managed.com was simply not updated to
15 reflect the change in corporate structure.
16
17

18 12. On or about October 16, 2006, I sent a letter via electronic mail to Managed
19 Solutions Group, Inc., 2115 Linwood Ave 5th Floor, Fort Lee NJ 07024, USA at
20 abuse@webhostplus.com regarding wendy929.net, hosted on IP address 205.209.163.83 registered
21 to Managed Solutions Group, Inc. After receiving no response and confirming that the
22 objectionable material was still viewable, I sent a “reminder” or follow up electronic mail to
23 abuse@webhostplus.com on or about October 25, 2006. In the absence of any kind of response, I
24 noticed that the wendy929.net was moved to a different server with IP address 204.13.69.140,
25 registered to Akanoc Solutions, Inc. I then sent another letter and email on or about October 30,
26 2006, to Akanoc Solutions, Inc. at 45535 Northport loop East, Fremont, CA 94538, USA and
27
28

1 abuse@akanoc.com. I never received a response to any of these letters or emails. Two reminder
2 letters were sent, by electronic mail on or about January 17, 2007 to abuse@akanoc.com and by
3 express mail, on January 23, 2007. Again, no response to these letters or emails was received and
4 wendy929.net remained on Akanoc Solutions, Inc.'s server 204.13.69.140 until approximately
5 mid-December 2007.

6
7 13. On or about February 7, 2007, I sent a letter via electronic mail to Managed
8 Solutions Group, Inc., 2115 Linwood Ave 5th Floor, Fort Lee, New Jersey 07024, USA on
9 abuse@webhostplus.com regarding atozbrand.com, hosted on IP address 205.209.140.10 registered
10 to Managed Solutions Group, Inc. After receiving no response and confirming that the
11 objectionable material was still viewable, I sent a follow up "reminder" letter by express mail to
12 Managed Solutions Group Inc at 46750 Fremont Blvd, Fremont, CA 94538, USA on or about
13 February 21, 2007. I never received a response to any of these letters or email. On or about March
14 22, 2007, the express mail carrier DHL returned the February 21, 2007 follow up letter and
15 explained that the package could not be delivered at that location. On or about March 30, 2007, I
16 drafted a new cease and desist letter and sent it by DHL express mail to Managed Solutions Group,
17 Inc., attn: Steve Chen, 45535 Northport Loop East, Fremont, CA 94538. DHL confirmed delivery
18 of the letter on April 4, 2007. I received no response whatsoever to this letter but noticed on or
19 about April 7, 2007 that atozbrand.com was moved to a different server with IP address
20 204.16.195.49, registered to Akanoc Solutions, Inc. on which atozbrand.com remained until
21 approximately mid-June 2007.

22
23
24 14. On or about February 9, 2007, I sent a letter via electronic mail to Akanoc Solutions
25 Inc., 45535 Northport Loop East, Fremont, CA 95538, USA on abuse@akanoc.com regarding
26 bag925.com, hosted on IP address 204.16.195.46, registered to Akanoc Solutions, Inc.. After
27 receiving no response and confirming that the objectionable material was still viewable, I sent a
28

1 follow up “reminder” letter by express mail carrier DHL to Akanoc Solutions Inc. 45535 Northport
2 Loop East, Fremont, CA 95538, USA on or about February 19, 2007 (DHL confirmed delivery on
3 March 5, 2007). I never received a response to any of these letter or email, while bag925.com
4 remained on various servers registered to Akanoc Solutions, Inc. until approximately mid-June
5 2007.
6

7 15. On or about October 23, 2006, I sent a letter via electronic mail to Akanoc
8 Solutions, Inc., 45535 Northport Loop East, Fremont, CA 95538 at abuse@akanoc.com regarding
9 eshoes99.com, hosted on IP address 204.16.197.26 , registered to Akanoc Solutions, Inc. After
10 receiving no response and confirming that the objectionable material was still viewable, I sent a
11 follow up email on or about January 17, 2007 to abuse@akanoc.com and a follow up letter on
12 February 6, 2007 by express mail carrier Fedex to Akanoc Solutions, Inc., 45535 Northport Loop
13 East, Fremont, CA 95538. Fedex confirmed delivery on February 8, 2007. On or about February
14 14, 2007, I realized that eshoes99.com had been actually moved to another server with IP address
15 205.209.172.165, registered to Managed Solutions Group, Inc. and decided to send a new cease
16 and desist letter that same day via email to Managed Solutions Group, Inc., 46750 Fremont Blvd.
17 #107, Fremont, CA 94538 at abuse@managedsg-inc.com. After receiving no response and
18 confirming that the objectionable material was still viewable, I sent a follow up letter by express
19 mail carrier DHL to Managed Solutions Group, Inc. at 46750 Fremont Blvd. #107, Fremont, CA
20 94538, USA on or about February 23, 2007. Still without a response or evidence of action, I
21 contacted DHL and was informed by DHL on March 20, 2007 that the package could not be
22 delivered at that location and the follow up letter was returned to me on or about March 23, 2007. I
23 then sent a new cease and desist letter to Managed Solutions Group, Inc., Steve Chen, 45535
24 Northport Loop East, Fremont, CA 94538 via express mail carrier DHL on or about March 30,
25
26
27
28

1 2007, delivery of which DHL confirmed on April 3, 2007. I never received a response to any of
2 these letters or email.

3 16. On or about February 21, 2007, I sent a letter via electronic mail to Akanoc
4 Solutions Inc., 45535 Northport Loop East, Fremont, CA 94538, USA at info@akanoc.com
5 regarding ape168.com, hosted on 204.16.197.27 registered to Akanoc Solutions, Inc.. After
6 receiving no response and confirming that the objectionable material was still viewable, I sent a
7 follow up or “reminder” letter by express mail carrier DHL to Akanoc Solutions Inc. at 45535
8 Northport Loop East, Fremont, CA 94538, USA on or about March 19, 2007. DHL confirmed
9 delivery of the letter on March 23, 2007. I never received a response to any of these letter or email.
10

11 17. I caused further investigation to be made concerning each of the websites which was
12 the subject of the DMCA notices sent to the ISP Defendants, as well as other websites hosted by
13 Defendants in this action and evidentiary purchases were made on behalf of Louis Vuitton by an
14 investigator acting under Louis Vuitton’s direction. Each of the purchases was reviewed by me
15 and I have confirmed that each is counterfeit. Pursuant to that investigation and analysis we
16 determined that the ISP defendants operated out of the same premises and that they appeared to be
17 owned and operated by the same individual, the individual defendant Steven Chen. I caused a
18 further written demand to be transmitted to Mr. Chen’s attention on or about April 20, 2007, and
19 when that, also, did not result in a disabling of the counterfeit offers, Louis Vuitton filed the
20 present action.
21

22 18. During the course of the litigation, Louis Vuitton has identified numerous additional
23 websites which now total more than eighty (80) which were hosted by servers controlled by the ISP
24 Defendants and which have each been the subject of subsequent demands to disable the infringing
25 offers. Follow up investigation concerning those demands reveal that, notwithstanding the present
26 litigation, in many cases the infringing offers which were the subject of Louis Vuitton’s demands
27
28

1 remained accessible through the ISP Defendants' servers for several weeks after the initial demand
2 was transmitted.

3 19. Additionally, while investigating the infringing websites, I conducted Reverse IP
4 Searches to determine other websites hosted at the same IP Address of an identified infringing
5 website. Through this process, I reviewed hundreds of websites which also sold counterfeit Louis
6 Vuitton product while hosted by one or another of the Defendants.
7

8 20. All of the counterfeiting activities that Defendants support and allow to continue
9 damage Louis Vuitton's goodwill, undermine the value of its intellectual properties, and affect
10 sales of legitimate product. However, in this instance, and given the difficulty associated with
11 Defendants' lack of information due to "crash", erasure or otherwise, Louis Vuitton seeks to
12 recover statutory damages.
13

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

16 Executed this 30 day of July, 2008, at Paris, France

17
18
19 
20
21
22
23
24
25
26
27
28

NIKOLAY LIVADKIN