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Attorneys for Defendants

Akanoc Solutions, Inc.,

Managed Solutions Group, Inc.

and Steve Chen

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

LOUIS VUITTON MALLETIER, S.A.,

Plaintiff,

vs.

AKANOC SOLUTIONS, INC., et al.,

Defendants.

) Case No.: C 07-3952 JW

) Hon. James Ware

) **DEFENDANTS' EVIDENTIARY**  
) **OBJECTION TO THE COOMBS**  
) **DECLARATION IN SUPPORT OF**  
) **VUITTON'S OPPOSITION TO**  
) **DEFENDANTS' SUPPLEMENTAL**  
) **MOTION FOR SUMMARY JUDGMENT**

) Date: September 8, 2008

) Time: 9:00 a.m.

) Dept.: Courtroom 8, 4<sup>th</sup> Floor

1 Plaintiff hereby objects to the entire Declaration of J. Andrew Coombs (“Coombs  
2 Declaration”) filed in support of Vuitton’s Objection to Defendants’ Supplemental Motion for  
3 Summary Judgment. J. Andrew Coombs is an incompetent witness and his Declaration is  
4 inadmissible for the following reasons:

5 Advocate-Witness Rule

6 Mr. Coombs cannot testify in this case because he is Vuitton’s counsel in this case and is not  
7 a competent witness under the advocate-witness rule that prohibits an attorney from appearing both  
8 as a witness and an advocate in the same litigation.<sup>1</sup>

9 Fed. R. Civ. P. 56

10 Vuitton admits in its Opposition to Defendants’ Supplemental Motion for Summary  
11 Judgment, “Plaintiff’s counsel is neither a necessary or appropriate witness in this case.” (p. 4:24-  
12 25). Under Fed. R. Civ. P. 56(e)(1), “an opposing affidavit [declaration] must be made on personal  
13 knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent  
14 to testify on the matters stated.” Vuitton admits that Mr. Coombs is not a competent witness in this  
15 case, and under Fed. R. Civ. P. 56(e)(1), the Coombs Declaration is inadmissible.

16 Hearsay

17 Coombs’ declaration may not be used because any such testimony would be inadmissible  
18 hearsay. Mr. Coombs cannot authenticate any material from any website because such material can  
19 only be authenticated by the testimony of “someone with knowledge of the accuracy of the contents  
20 of the websites”<sup>2</sup> Mr. Coombs has no such knowledge and his testimony is based on pure hearsay.

21 Settlement Communications

22 Paragraphs 3, 4, 5, 6, 7 and 8 of the Coombs Declaration are inadmissible under Fed. R.  
23 Evid. 402(a)(2) because the communications to Defendants’ counsel about which Coombs is  
24 testifying are akin to settlement communications. Any letters sent to Defendants’ counsel or  
25 received from Defense counsel about allegedly infringing websites were sent in order to solve

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27 <sup>1</sup> *U.S. v. Prantil*, 764 F.2d 548, 552-553 (9<sup>th</sup> Cir. 1985); *see also* Rule 5-210 of the California Rules  
of Professional Conduct, Rule 3.7 of the ABA Model Rules Prof. Conduct.

28 <sup>2</sup> *See Internet Specialties West, Inc. v. ISPWest*, No. CV 05-3296 FMC AJWX, 2006 WL 4568796,

1 disputes more quickly, not to create evidence of any liability for use in a lawsuit.

2  
3 Dated: August 25, 2008

**GAUNTLETT & ASSOCIATES**

4  
5 By: /s/ James A. Lowe

6 David A. Gauntlett  
7 James A. Lowe  
8 Brian S. Edwards

9 Attorneys for Defendants Akanoc Solutions,  
10 Inc., Managed Solutions Group, Inc., and Steve  
11 Chen

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at \*2 (C.D. Cal. Sept. 19, 2006)

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