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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 SOARING HELMET CORPORATION, a
10 Washington corporation,

11 Plaintiff,

12 v.

13 NANAL, INC., a Nevada corporation, d/b/a
LEATHERUP.COM, and GOOGLE INC., a
14 Delaware corporation.

15 Defendants.
16

Cause No. C09-0789 JLR

JOINT STATUS REPORT AND
DISCOVERY PLAN

17
18 This Joint Status Report and Discovery Plan is filed by Plaintiff SOARING
19 HELMET CORPORATION ("Soaring Helmet") and Defendant GOOGLE INC.
20 ("Google").

21 **1. Statement of the Nature and Complexity of the Case**

22 The parties agree that this is not a complex case.
23

1 Plaintiff Soaring Helmet's Statement of the Case:

2 Plaintiff Soaring Helmet has asserted claims for federal trademark infringement,
3 false designation of origin, false advertising and unfair competition and tortious
4 interference with prospective economic advantage against Defendants. The claims are in
5 connection with the alleged infringement of Soaring Helmet's trademark "VEGA®" by
6 Defendants, Nanal, Inc., d/b/a LeatherUp.com, and Google.

7 Soaring Helmet has used the trademark VEGA in connection with the marketing
8 and sale of motorcycle helmets since 1994. Soaring Helmet has invested substantial
9 sums of time, money, and effort to develop the favorable cachet, goodwill, and
10 reputation associated with its VEGA mark. In April 2009, Soaring Helmet learned that
11 when the query "VEGA helmets" was searched via the Google search engine, a false and
12 misleading sponsored link appeared stating that Defendant Leatherup.com offered "50%
13 off VEGA helmets." Soaring Helmet lost business as a result of the misleading
14 advertisement when a potential distributor, attempting to research Soaring Helmet's
15 reputation via the Google search engine, refused to associate with Soaring Helmet based
16 on the mistaken assumption that it sells its VEGA helmets to deep discount retailers,
17 when in fact, Soaring Helmet does not.

18 Soaring Helmet notified Defendants of its objection to the use of the VEGA mark
19 as a keyword for Sponsored Links in connection with companies that do not in fact sell
20 any of Soaring Helmet's products. Although Defendant Google agreed to remove the
21 VEGA mark from the text of the advertisement, a search query for "VEGA helmets" still
22 generates an advertisement for the Leatherup.com website. Soaring Helmet believes that
23

1 Defendant Leatherup.com should not be permitted to siphon the goodwill associated with
2 the VEGA mark by falsely luring consumers searching specifically for Soaring Helmet's
3 mark to the Leatherup.com website; and Defendant Google should not be permitted to
4 profit from the sale of Soaring Helmet's mark to companies that do not in fact sell any of
5 Soaring Helmet's products. Although the confusion may be resolved once the consumer
6 visits the Leatherup.com website, the damage to Soaring Helmet has already occurred
7 because the potential consumer has been unfairly misled to Defendant Leatherup.com's
8 website. Consumers should not be induced to purchase Defendant Leatherup.com's
9 products based on an association with a trademark that Soaring Helmet exclusively
10 owns. The use of Soaring Helmet's VEGA mark by Defendants unfairly trades on the
11 favorable goodwill and cachet of the VEGA mark and creates initial interest confusion
12 among consumers.

13
14 Defendant Google's Statement of the Case

15 Defendant Google is an Internet service provider that operates a popular search
16 engine, which is available free of charge to Internet users. In conjunction with this free
17 search engine, Google operates an advertising program called AdWords, which allows
18 hundreds of thousands of people and businesses to promote their products and services
19 through targeted advertising. Under Google's AdWords program, ads placed by
20 advertisers are displayed on the organic search results page under the heading
21 "Sponsored Links" and relate to the particular terms and phrases entered by users into
22 Google's search engine. Both Google's "organic" search results and its revenue-

1 producing AdWords advertisements help Internet users quickly and easily access
2 relevant information.

3 Plaintiff's purported claims against Google are based on AdWords advertisements
4 created and paid for by Defendant Nanal, Inc., d/b/a LeatherUp.com. After Soaring
5 Helmet requested that Google remove a LeatherUp.com advertisement that it claimed
6 was inaccurate, Google did so, as Soaring Helmet admits in its complaint. Accordingly,
7 it appears that Soaring Helmet has named Google as a defendant based solely on (i) its
8 temporary publication of the inaccurate LeatherUp.com advertisement, which Google did
9 not have any reason to doubt the accuracy of until notification by Plaintiff, at which time
10 Google promptly removed that advertisement, and/or (ii) its publication of
11 LeatherUp.com advertising for competing products—with no reference to "Vega"—in
12 response to user queries for "Vega helmets." Truthful advertisements, labeled as
13 "Sponsored Links," that contain links to websites offering competitive products are
14 helpful to consumers, not confusing as to source or affiliation. As such, Google has not
15 violated any of Soaring Helmet's rights under the Lanham Act or otherwise.
16

17 **2. Preferred ADR Method**

18 The parties' preferred ADR method is mediation, pursuant to Local Rule 39.1.

19 **3. Timing of ADR Proceeding**

20 The parties believe that ADR, and specifically, mediation, should be conducted
21 by November 12, 2010.

22 **4. Deadline for Joining Additional Parties**

23 The parties propose additional parties be joined by August 31, 2009.

1 **5. Proposed Discovery Plan**

2 The parties suggest the following discovery plan:

3 **A. FRCP 26(f) Conference and FRCP 26(a) Initial Disclosures**

4 The parties held a telephonic FRCP 26(f) Conference on August 12, 2009. Initial
5 Disclosures will be exchanged by August 17, 2009, pursuant to the Court's amended
6 scheduling order.

7 **B. Subject Matter and Phases of Discovery**

8 The parties require discovery related to all issues in this case. However, Google
9 anticipates filing early dispositive motions, which it expects will resolve most, if not all,
10 of the claims asserted against it.

11 **C. Limitations on Discovery**

12 The parties agree not to serve discovery requests until August 24, 2009, one week
13 after the exchange of initial disclosures. The parties do not believe at present that any
14 other changes should be made to the limitations on discovery imposed under the Federal
15 and Local Civil Rules, or that any other limitations should be imposed. Recognizing,
16 however, that circumstances may change as the case progresses, the parties reserve the
17 right to request changes if circumstances warrant.

18 **D. Discovery Management**

19 The parties will work together to minimize discovery disputes. In addition, the
20 parties will prepare and file an agreed electronic discovery protocol.
21

1 **E. Other Discovery Orders**

2 The parties believe that a protective order is required to protect confidential
3 information exchanged during discovery. The parties will prepare and file an agreed
4 Stipulated Protective Order. The parties are not presently aware of any other orders that
5 should be entered by the Court under FRCP 26(c) or under Local Rule CR 16(b) and (c).

6 **6. Date for Completion of Discovery**

7 The parties agree that discovery can be completed by September 30, 2010.

8 **7. Referral to Magistrate Judge**

9 The parties do not agree to the designation of a magistrate judge.

10 **8. Bifurcation**

11 The parties see no need to bifurcate any issues.

12 **9. Pre-Trial Statements and Pre-Trial Order**

13 The parties believe that the Local Rules need not be modified.

14 **10. Suggestions for Shortening or Simplifying the Case**

15 The parties presently have no suggestions to offer at this time for shortening or
16 simplifying the case, except that Google anticipates filing early dispositive motions,
17 which it expects will resolve most, if not all, of the claims asserted against it.

18 **11. Date Ready for Trial**

19 The parties agree that the matter can be ready for trial by January 31, 2011.

20 **12. Trial by Jury**

21 A jury trial at this time has not been requested, but Google intends to make a
22 timely jury demand.
23

1 **13. Number of Trial Days Required**

2 The parties anticipate that trial of this matter will require 4-5 court days.

3 **14. Names, Addresses and Telephone Numbers of Trial Counsel**

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5 Steven W. Edmiston
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15 Defendants: Margret M. Caruso
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15. **Service of all Parties**

Both defendants have been served.

16. **Scheduling Conference**

The parties do not believe that a scheduling conference is required.

1 RESPECTFULLY SUBMITTED this 17th day of August 2009.

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3 INVICTA LAW GROUP, PLLC

4 BY: Heather Morado
5 Stacie Foster, WSBA No. 23397
6 Steve Edmiston, WSBA No. 17136
7 Heather M. Morado, WSBA No. 35135
8 Attorneys for Plaintiff Soaring Helmet
9 Corp.

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

BY: /s/ MARGARET M. CARUSO
Margret M. Caruso (admitted *pro hac vice*)
Attorney for Google Inc.

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KELLER ROHRBACK, LLC

BY: /s/ KARIN B. SWOPE
Karin B. Swope, WSBA No. 24015
Attorney for: Google Inc.


1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing with the Clerk of the Court
3 using the CM/ECF system which will send notification of such filing to the following
4 persons/attorneys of record:
5

6 Ms. Karin B. Swope
7 Keller Rohrback, LLC
8 kswope@kellerrohrback.com

9 Ms. Margret M. Caruso
10 Quinn Emanuel Urquhart Oliver & Hedges, LLP
11 margretcaruso@quinnemanuel.com

12 Dated this 17th day of August 2009, at Seattle, Washington.

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14 Katy M. Albritton
15 Legal Assistant
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