

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOARING HELMET CORPORATION, a
Washington corporation,

Plaintiff,

v.

NANAL, INC., d/b/a LEATHERUP.COM, a
Nevada corporation,

Defendant.

No. C09-0789-JLR

ANSWER OF DEFENDANT NANAL,
INC. TO PLAINTIFF'S SECOND
AMENDED COMPLAINT

Defendant Nanal, Inc., d/b/a Leatherup.com ("Defendant" or "Nanal"), answers and otherwise defends as follows:

1.1 Admits that Nanal is a Defendant in this action and otherwise denies the allegations of paragraph 1.1.

1.2 Admits that Plaintiff Soaring Helmet Corporation ("Plaintiff" or "Soaring Helmet") asserts that it is entitled to injunctive and monetary relief in this action under Federal and Washington law and otherwise denies the allegations of paragraph 1.2.

2.1 Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2.1, and on that basis denies such allegations.

2.2 Admits that Nanal is a Nevada corporation, does business as Leatherup.com, offers certain products for use by motorcyclists via its website and by telephone, and denies any remaining allegations of paragraph 2.2.

1 3.1 Admits that the Court has original subject matter jurisdiction of Plaintiff's
2 trademark infringement and unfair competition claims arising under the Lanham Act and denies
3 any remaining allegations of paragraph 3.1.

4 3.2 Admits that the Court has supplemental jurisdiction of Plaintiff's Washington
5 state law claims and denies any remaining allegations of paragraph 3.2.

6 3.3 Denies that venue is proper under 28 U.S.C. § 1391(b)(1) or (2) and denies that
7 Nanal may be found in this district.

8 3.4 Denies that the Court has personal jurisdiction over Nanal.

9 4.1 Lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations of paragraph 4.1, and on that basis denies such allegations.

11 4.2 Lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations of paragraph 4.2, and on that basis denies such allegations.

13 4.3 Lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations of paragraph 4.3, and on that basis denies such allegations.

15 4.4 Lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations of paragraph 4.4, and on that basis denies such allegations.

17 4.7¹ Admits that Nanal does not sell VEGA helmets and denies the remaining
18 allegations of paragraph 4.7.

19 4.8 Lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations of paragraph 4.8, and on that basis denies such allegations.

21 4.9 Admits that Soaring Helmet sent a letter to Nanal, a copy of which is Exhibit C to
22 the Second Amended Complaint, states that the letter speaks for itself, and denies any remaining
23 allegations of paragraph 4.9.

24 4.10 Admits that Nanal does not use the term "vega" to trigger sponsored listings on
25 Google, admits that the terms "vega" and "helmets" has triggered a listing for
26
27

28 ¹ For clarity of reference, Defendant has followed the numbering of Plaintiff's Second Amended Complaint, including duplicative and erroneous numbering contained therein.

1 www.leatherup.com on the Bing search engine, and denies any remaining allegations of
2 paragraph 4.10.

3 4.11 Lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations of paragraph 4.11, and on that basis denies such allegations.

5 4.12 Lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations as to what Soaring Helmet was able to confirm or what Soaring Helmet suspected
7 and on that basis denies such allegations. Admits that Soaring Helmet sent a letter to counsel for
8 Defendant, a copy of which is Exhibit E to the Second Amended Complaint, and states that the
9 letter speaks for itself. Denies any remaining allegations of paragraph 4.12.

10 4. Lacks knowledge or information sufficient to form a belief as to the truth of the
11 allegations that Soaring Helmet has been damaged or that actual confusion has occurred and on
12 that basis denies such allegations. Denies the remaining allegations of paragraph 4.

13 5.1 Nanal realleges and incorporates by reference its responses to the allegations of
14 all of the preceding paragraphs as if fully set forth herein.

15 5.2 Lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations of paragraph 5.2, and on that basis denies such allegations.

17 5.3 Denies.

18 5.4 Denies.

19 5.4 Denies.

20 5.5 Denies.

21 5.6 Lacks knowledge or information sufficient to form a belief as to the allegation
22 regarding the value of Soaring Helmet's alleged goodwill, and on that basis denies such
23 allegations, and denies the remaining allegations of paragraph 5.6.

24 5.7 Admits that Plaintiff did not give Nanal consent, denies that any consent was
25 required and denies the remaining allegations of paragraph 5.7.

26 5.8 Denies.

27 5.9 Denies.

28 5.10 Denies.

1 5.11 Admits that Plaintiff seeks treble damages and attorneys' fees and denies the
2 remaining allegations of paragraph 5.11.

3 5.12 Denies.

4 5.13 Denies.

5 5.14 Denies.

6 6.1 Nanal realleges and incorporates by reference its responses to the allegations of
7 all of the preceding paragraphs as if fully set forth herein.

8 6.2 Denies.

9 6.3 Denies.

10 6.4 Denies.

11 6.5 Denies.

12 6.6 Denies.

13 6.7 Denies.

14 6.8 Denies.

15 6.9 Denies.

16 7.1 Nanal realleges and incorporates by reference its responses to the allegations of
17 all of the preceding paragraphs as if fully set forth herein.

18 7.2 Denies.

19 7.3 Denies.

20 7.4 Denies.

21 7.5 Denies.

22 7.6 Denies.

23 7.7 Admits that Soaring Helmet seeks damages, costs and attorneys' fees and denies
24 the remaining allegations of paragraph 7.7.

25 7.8 Admits that Soaring Helmet seeks treble damages and denies the remaining
26 allegations of paragraph 7.8.

27 8.1 Nanal realleges and incorporates by reference its responses to the allegations of
28 all of the preceding paragraphs as if fully set forth herein.

1 8.2 Denies.

2 8.3 Denies.

3 8.4 Denies.

4 8.5 Denies.

5 8.6 Denies.

6 **PLAINTIFF'S PURPORTED PRAYER FOR RELIEF**

7 8.7 Defendant avers that the WHEREFORE paragraphs 1-6 (including both
8 paragraphs 3), which appear after paragraph 8.6 of the Second Amended Complaint, do not
9 contain any allegations that require a response. To the extent, if any, that such paragraphs
10 include any allegations requiring a response, Defendant denies them.

11 **DEFENSES AND AFFIRMATIVE DEFENSES**

12 As and for its separate defenses and affirmative defenses to Plaintiff's Second Amended
13 Complaint, Defendant asserts the following:

14 1. The Second Amended Complaint, or one or more of the claims set forth therein,
15 fails to state a claim upon which relief can be granted.

16 2. Plaintiff's claims are barred, in whole or in part, by the doctrines of fair use,
17 nominative fair use and/or descriptive use.

18 3. Plaintiff's claims are barred, in whole or in part, because any use of the term
19 "vega" by Nanal was not a trademark use.

20 4. Plaintiff's claims are barred, in whole or in part, because Plaintiff's trademark
21 rights, if any, in the term "vega" are limited to the goods and services identified in Registration
22 No. 2,087,637.

23 5. Plaintiff's claims are barred, in whole or in part, because any use of the term
24 "vega" by Nanal was not likely to cause confusion.

25 6. Plaintiff's claims are barred, in whole or in part, because any use of the term
26 "vega" by Nanal was a legitimate use of Plaintiff's mark for comparative advertising purposes
27 and there was no likelihood of confusion with respect to such use.
28

1 7. Plaintiff's claims are barred, in whole or in part, because any infringement, if any,
2 was innocent.

3 8. Plaintiff's attempt to preclude use of the term "vega" as a keyword in internet
4 search engines is an unreasonable restraint of trade, anticompetitive, trademark misuse and bad
5 faith trademark enforcement.

6 9. Defendant acted reasonably and in good faith.

7 10. Plaintiff's claims are barred, in whole or in part, by waiver.

8 11. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show
9 that it will suffer any continuing and/or irreparable harm from Defendant's alleged actions.

10 12. The alleged injury or damage suffered by Plaintiff, if any, would be adequately
11 compensated by damages; Plaintiff, therefore, has a complete and adequate remedy at law and is
12 not entitled to equitable relief.

13 13. Plaintiff's claims are barred, in whole or in part, because Plaintiff was not
14 damaged by any act alleged against Defendant in the Second Amended Complaint.

15 14. Plaintiff's claims are barred, in whole or in part, because Defendant was not the
16 actual or proximate cause of any damages to Plaintiff.

17 15. Plaintiff's Second Amended Complaint fails to state facts upon which the claims
18 for exemplary or enhanced damages may be maintained.

19 16. Without admitting that the Second Amended Complaint states a claim, any
20 remedies are limited to the extent that there is sought an overlapping or duplicative recovery
21 pursuant to the various claims for any alleged single wrong.

22 17. Plaintiff's Second Amended Complaint fails to state facts upon which the claims
23 for attorneys' fees may be maintained.

24 18. Plaintiff failed to mitigate its damages, if any.

25 19. The Court lacks personal jurisdiction over Nanal under the Washington long-arm
26 statute and Nanal should therefore be awarded its attorneys' fees in defense of this action under
27 RCW 4.28.185.

28 20. Venue is not proper in this District.

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PROOF OF SERVICE

I am employed in the County of King, State of Washington. I am over the age of eighteen years and am not a party to the within action. My business address is Hendricks & Lewis PLLC, 901 Fifth Avenue, Suite 4100, Seattle, Washington 98164.

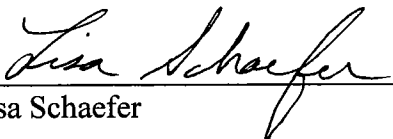
I hereby certify that on May 20, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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Attorneys for Plaintiff Soaring
Helmet Corporation

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed May 20, 2010, at Seattle, Washington.



Lisa Schaefer