

The Honorable James L. Robart

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. C09-789-JLR

DECLARATION OF ALBERT
BOOTESAZ IN SUPPORT OF
DEFENDANT NANAL, INC.'S MOTION
FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
November 26, 2010

I, Albert Bootesaz, on oath declare and state as follows:

1. I am over the age of 18 and, if called upon to testify, could testify competently to the matters stated herein.

2. I am the President of Defendant Nanal, Inc., d/b/a LeatherUp.com ("Nanal").

3. Nanal is a Nevada corporation formed in or about 2005. Nanal owns and operates the website LeatherUp.com, which promotes and sells motorcycle apparel, such as leather and mesh jackets, boots, helmets, and vests, and motorcycle accessories and parts direct to consumers. One of the brands Nanal sells through the LeatherUp.com website is "Xelement." All of Nanal's sales are made through its website.

4. On about September 1, 2008, Nanal purchased the keywords "vega helmets" through Google AdWords. The keywords were generated by Google's automated keyword suggestion tool, which suggests keywords based on user input. Nanal input the generic term

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1 "helmet" and the tool suggested "vega helmets." At that time, I believed that the word "Vega"
2 referred to a solar system or star.

3 5. Nanal ceased use of the keyword "vega" in connection with Google's AdWords
4 program on or about April 3, 2009, after receiving a "cease and desist" letter from counsel for
5 Plaintiff Soaring Helmet Corporation. Moreover, as I have previously described in papers filed
6 in this case, Nanal took the additional step of incorporating a negative instruction to Nanal's
7 Google AdWords campaign so that LeatherUp.com's advertisements do not appear when the
8 word "Vega" is searched alone or in combination with any other word(s).

9 6. Based on data provided by Google through its AdWords program, during the brief
10 period of time in which the keywords "vega helmets" were used in connection with the program,
11 Nanal's advertisement resulted in 40,209 views and 2,457 "clicks." Attached hereto as
12 **Exhibit 1** are true and correct printouts, Bates numbered D 000001 – D 000004, from Nanal's
13 Google AdWords' account reflecting these "clicks." Those 2,457 "clicks" resulted in 25 sales
14 totaling \$2,431.67 and a net profit of \$729.50.

15 7. To my knowledge, Nanal has never purchased the keyword "Vega" alone or in
16 combination with any other term in connection with any advertising program offered by the Bing
17 or Yahoo! search engines. Attached hereto as **Exhibit 2** is a true and correct printout, Bates
18 numbered D 000005, from Microsoft's adCenter, showing no accounts, campaigns, ad groups,
19 keywords or ads associated with the word "Vega" for LeatherUp.

20 8. To my knowledge, the word "Vega" has never been used on the LeatherUp.com
21 website and I have never directed the word to be incorporated in any manner on the website.

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

24 EXECUTED at LOS ANGELES, CALIFORNIA, this 3 day of November, 2010.

25
26 
27 ALBERT BOOTESAZ

