Soaring Helmet Corporation v. Bill Me Inc et al

{81600.DOC}

EXHIBIT 4

Dockets.Justia.com

Exhibit 4 Page 38

1	Stacie Foster, WSBA #23397 Heather M. Morado WSBA #35135	THE HONORABLE JAMES L. ROBART
2	INVICTA LAW GROUP, PLLC 1000 Second Avenue, Suite 3310	
3	Seattle, WA 98104-1019 Telephone: (206) 903-6364	a 10 11 12 AM ANT
4	Facsimile: (206) 903-6365	RECEIVED 13
5	Attorneys for Plaintiff	6 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
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9	UNITED STATES I WESTERN DISTRICT OF W	
10	SOARING HELMET CORPORATION, a	·
11	Washington corporation,	NO. C09-0789 JLR
12	Plaintiff,	PLAINTIFF'S AMENDED INITIAL DISCLOSURES PURSUANT TO FED.
13	v.	R. CIV. PRO. 26(a)(1)
14	NANAL, INC., a Nevada corporation, d/b/a LEATHERUP.COM, and GOOGLE, INC., a	
15	Delaware corporation.	
16	Defendants.	
17		
18	Soaring Helmet Corporation, ("Soaring	g Helmet") hereby provides Nanal, Inc. d/b/a
19	Leatherup.com ("Defendant") with its Amend	ed Initial Disclosures pursuant to Federal
20	Rule of Civil Procedure ("FRCP") 26(a)(l). S	oaring Helmet reserves the right to amend
21	and supplement these initial disclosures as fur	ther information becomes available.
22		
23		

PLAINTIFF'S AMENDED INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. PRO. 26(a)(1)-1 INVICTA LAW GROUP, PLLC 1000 SECOND AVENUE, SUITE 3310 SEATTLE, WA 98104-1019 FAX (206) 903-6365 TEL (206) 903-6364

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1	A. Individuals Likely to Have Discoverable Information.		
2	The following individuals are likely to have discoverable information that Soaring		
3	Helmet may use to support its claims or defenses. Unless otherwise indicated, the		
4	following individuals work at 18235 Olympic Avenue S., Tukwila, WA 98188, and may		
5	be contacted via the undersigned trial counsel:		
6	1. Ms. Jeanne DeMund		
7	2. Mr. Lou Xu		
8	3. Mr. Wayne Leyman		
9	4. Ms. Claudia Mallard		
10 11	5. Mr. Albert Bootesaz, President Nanal, Inc.		
12	2200 S Fort Apache, #2036 Las Vegas, NV 89117		
13	Unless otherwise specified, these individuals may be called to testify concerning		
14	their knowledge of all matters relevant to these proceedings, including the trademarks at		
15	issue; financial information; customer base; marketing and advertising; and defendant's		
16	infringement. Soaring Helmet's investigation and discovery concerning this case is		
17	continuing and, if additional information is obtained after the date of these disclosures,		
18	Soaring Helmet will supplement these disclosures according to Rule 26(e) of the FRCP.		
19 20	B. <u>Supporting Documents</u> .		
20	The following documents are attached:		
22	1. The U.S. trademark registration of the VEGA mark set forth in the		
23	Complaint;		

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PLAINTIFF'S AMENDED INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. PRO. 26(a)(1)-2

INVICTA LAW GROUP, PLLC 1000 SECOND AVENUE, SUITE 3310 SEATTLE, WA 98104-1019 FAX (206) 903-6365 TEL (206) 903-6364

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1	2. A copy of the false and misleading Leatherup.com advertisement generated		
2	by the Google search engine, as set forth in the Complaint;		
3	3. A copy of the cease and desist letter sent to Leatherup.com as set forth in		
4	the Complaint; and		
5	4. A copy of the false and misleading Leatherup.com advertisement generated		
6	by the Google search engine, as set forth in the Complaint.		
7	To the extent they exist, responsive, non-privileged documents in the following		
8	categories will be provided for inspection and copying at a mutually agreed time and place		
9	in accordance with FRCP 26(a)(l)(B), subject to an appropriate Protective Order for		
10	confidential business information per FRCP 26(c):		
11	1. Documents pertaining to the use of the marks set forth in the Complaint;		
12	2. Documents pertaining to the marketing and advertising of Soaring Helmet's		
13	products bearing the VEGA mark.		
14	Soaring Helmet's investigation and discovery concerning this case is continuing		
15	and, if additional information is obtained after the date of these disclosures, Soaring		
16	Helmet will supplement these disclosures according to Rule 26(e) of the FRCP.		
17			
18 19	C. <u>Computation of Damages</u> . This suit is intended to recover damages suffered by Soaring Helmet for the		
20	conduct set forth in the Complaint. As specified in its Complaint, if the judgment is that a		
20	likelihood of confusion, mistake or deception exists, Soaring Helmet seeks relief in the		
22	form of profits, enhancement of either of the foregoing, costs and expenses, attorney's		
22			
23	fees, a permanent injunction and the other relief set forth in the Complaint.		
1 :5010	PLAINTIFF'S AMENDED INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. PRO. 26(a)(1)–3 TAX (206) 903-6365 TEL (206) 903-6364		

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1	The amount of Defendant's profits is information within the possession and control		
2	of Defendant and has not yet been discovered, therefore, a computation of this remedy is		
3	premature. Additionally, the extent of Soaring Helmet's damages is currently unknown.		
4	Documents and other evidentiary material bearing on the nature and extent of		
5	injury to Soaring Helmet by reason of actions alleged in the Complaint will either be		
6	produced or made available for inspection and copying after those materials are		
7	discovered.		
8	These initial computations are subject to continuing analysis and will be revised or		
9	supplemented if and as necessary according to Rule 26(e) of the FRCP, except for normal		
10	increases in past damages and claims of interest, all of which should be assumed by the		
11	parties and which do not call for any specific supplementation.		
12	D. <u>Insurance Agreement</u> .		
13	No relevant insurance agreement is known to exist.		
14			
15	DATED February 1, 2010.		
16	INVICTA LAW GROUP, PLLC		
17	By Deather Morado		
18	Heather M. Morado, WSBA No. 35135 Stacie Foster, WSBA No. 23397		
19	Attorneys for Plaintiff		
20			
21			
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	DI A INTIFF'S AMENDED INITIAL DISCLOSURES INVICTA LAW GRO		

PLAINTIFF'S AMENDED INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. PRO. 26(a)(1)-4 INVICTA LAW GROUP, PLLC 1000 SECOND AVENUE, SUITE 3310 SEATTLE, WA 98104-1019 FAX (206) 903-6365 TEL (206) 903-6364 -

1	CERTIFICATE OF SERVICE
2	The undersigned declares under penalty of perjury, under the laws of the State of
3	
4	Washington, that the following is true and correct:
5	On this day, February 1, 2010, I caused to be sent via email and U.S. Mail the
6	following filed documents:
7	1. Plaintiff's Amended Initial Disclosures.
8	To the following:
9	Ms. Katherine Hendricks HENDRICKS & LEWIS, PLLC
10	901 Fifth Avenue, Suite 4100 Seattle, WA 98164
11	Email: kh@hllaw.com
12	
13	EXECUTED at Seattle, Washington February 1, 2009.
14 15	Katy M/Albritton
16	
17	
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	PLAINTIFF'S AMENDED INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. PRO. 26(a)(1)-5 INVICTA LAW GROUP, PLLC INVICTA LAW GROUP, PLLC

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Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,087,637

United States Patent and Trademark Office Registered Aug. 12, 1997

TRADEMARK PRINCIPAL REGISTER

VEGA

SOARING HELMET CORFORATION (WASH-INGTON CORPORATION) 770 INDUSTRY DRIVE, BUILDING 16 TUKWILA, WA 98118

FOR: MOTORCYCLE HELMETS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38). FIRST USE 3-18-1994;. IN COMMERCE 3-18-1994.

SER. NO. 75-155,017, FILED 8-23-1996.

DAVID M. MERMELSTEIN, EXAMINING AT. TORNEY

Plaintiff's Initial Disclosures - 06

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Counsel for creative companies

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www.invictalaw.com

April 28, 2009

Mark V. Jordan Email: mjordan@invictalaw.com

VIA CERTIFIED MAIL:70072680000056348336 AND FIRST CLASS MAIL

LEATHERUP.COM 2620 S. Maryland Suite 846 Las Vegas, NV 89109

Re: Cease and Desist Trademark Infringement

To Whom It May Concern:

We are counsel for Soaring Helmet Corporation, the exclusive owner of the trademark rights to VEGA (the "Mark"). A copy of Soaring Helmet Corporation's federal trademark registration is attached hereto as <u>Exhibit A</u>. Soaring Helmet Corporation views its Mark as a valuable asset that will be protected to the fullest extent allowable by law.

Soaring Helmet Corporation recently learned that when the query "Vega helmets" is searched via the Google website, an advertisement appears under Google's sponsored listings that misleadingly states that the website Leatherup.com offers "50% off Vega Helmets." A copy of the Google search results for "Vega helmets" is attached hereto as <u>Exhibit B</u>. However, Leatherup.com does not in fact sell any of our client's products.

Since Leatherup.com does not sell Vega helmets, we believe that Leatherup.com has wrongfully purchased the Mark from Google, Inc. as a false and misleading advertising keyword. Our client has lost business because the Leatherup.com sponsored link is falsely advertising that it sells our client's products at a deep discount, when in fact, Leatherup.com does not. As a result of the false advertisement, a retailer who does not wish to be associated with products sold at a deep discount has refused to do business with Soaring Helmet Corporation. Further, consumers searching for our client's products will continue to be misled to the Leatherup.com website, causing initial interest confusion. This unauthorized use of the Mark is a violation of federal and state trademark and unfair competition laws.

As I hope you can appreciate, Soaring Helmet Corporation cannot permit others to trade on the goodwill and damage the value and integrity of its Mark through false and misleading advertisements. Because the public closely associates the Mark with our client's

Plaintiff's Initial Disclosures - 08

Leatherup.com April 28, 2009 Page 2

products, we are concerned that this unauthorized use of the Mark will cause consumers to mistakenly assume that Soaring Helmet Corporation sells its products to deep-discount online retailers or is otherwise affiliated with the Leatherup.com website.

Because Soaring Helmet Corporation has been and will continue to be substantially and irreparably damaged should this infringement continue, it must enforce its exclusive rights to the Mark. Soaring Helmet Corporation demands that Leatherup.com immediately remove any reference to the Mark from any false and misleading sponsored listing advertisements.

Unless these demands are complied with by May 8, 2009, Soaring Helmet Corporation will assume Leatherup.com intends to willfully disregard its rights, and Soaring Helmet Corporation will pursue whatever action or remedies it deems appropriate to protect its rights to the fullest extent of the law.

Very truly yours,

INVICTA LAW GROUP, PLLC Iord

MVJ:hmm Enclosure cc: Soaring Helmet Corporation (w/o encl.)

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Plaintiff's Initial Disclosures - 09

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