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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SOARING HELMET CORPORATION, a  
Washington Corporation,  
  
Plaintiff,  
  
v.  
  
NANAL, INC., a Nevada corporation, d/b/a  
LEATHERUP.COM,  
  
Defendant.

NO. C 09-0789 JLR

DECLARATION OF JEANNE  
DEMUND IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

1. My name is Jeanne DeMund. I reside in Renton, Washington. I am over the age of eighteen and I am competent to testify to, and have personal knowledge of, the facts stated herein.

2. I am the Vice-President of Soaring Helmet Corporation, a Washington Corporation, duly organized and existing under the laws of the State of Washington with its principal place of business in Kent, Washington. Soaring Helmet Corporation is a wholesaler of motorcycle helmets and accessories.

1           3.     In addition to motorcycle helmets, Soaring Helmet also sells a variety of  
2 motorcycle-related riding apparel and accessories, such as motorcycle jackets, vests,  
3 pants, boots, goggles, chest protectors, gear bags, and head wraps.

4           4.     Soaring Helmet Corporation is the owner of the VEGA trademark (the  
5 "Mark"), which was registered on the principal register of the PTO on August 12, 1997  
6 and was assigned Registration Number 2,087,637 for "motorcycle helmets". From  
7 March 18, 1994, and continuously to the present, Soaring Helmet Corporation has owned  
8 and used the trademark VEGA® in interstate commerce in the United States.

9           5.     Soaring Helmet also owns the federally registered trademark VEGA  
10 TECHNICAL GEAR (Registration No. 3639490) for "motorcycle helmets and protective  
11 clothing".

12           6.     Since it first adopted the Marks, Soaring Helmet Corporation has sold a  
13 wide and diverse variety of helmets and technical gear to customers throughout the  
14 United States using the Marks. Soaring Helmet Corporation has invested substantial  
15 sums of money, effort and time to use, advertise, promote and develop the Marks. As a  
16 result, the Marks have become an integral and indispensable part of Soaring Helmet's  
17 business.

18           7.     Soaring Helmet sells exclusively through authorized distributors of its  
19 products. Soaring Helmet only sells through legitimate, reputable retailers, and Soaring  
20 Helmet requires potential dealers to provide proof of legitimacy including copies of their  
21 business licenses, sales tax permits, business telephone listing information, as well as  
22 photos of their store interior and exterior.  
23

Declaration of Jeanne DeMund – 2

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1           8.       As a matter of corporate policy, Soaring Helmet also requires its dealers to  
2 sell VEGA® products at no less than Soaring Helmet's manufacturer's suggested retail  
3 price (MSRP). Soaring Helmet terminates relationships with dealers that violate this  
4 policy by selling VEGA® products at a discount. Attached as Exhibit A is a true and  
5 correct copy of our corporate policy.

6           9.       Each of our sales representatives is required to be familiar with our  
7 corporate policy, and to make sure our retailers are familiar with our policy. Our  
8 corporate policy is printed in our catalogue, which is published annually, and is provided  
9 to each of our current and potential retailers, along with our price list.

10          10.       When the internet began to be a factor in retail sales, Soaring Helmet  
11 developed a policy that included selling only through legitimate dealers, and not  
12 establishing internet-only sales outlets (such as Leatherup.com) as dealers. Our brick-  
13 and-mortar retailers are very sensitive to this distinction, as there is a strong sense among  
14 our retailers that selling on internet-only sites diminishes and taints the value of the  
15 product.

16          11.       We recognize that many legitimate dealers are actively selling on the  
17 internet, and we can accommodate that activity within our selling policy guidelines by  
18 allowing internet sales only by retailers that also have a brick-and-mortar store. We  
19 screen prospective dealers carefully, either through on-site sales calls by our sales  
20 representatives, or by requiring numerous proofs of legitimacy as part of the application  
21 process, and by seeking independent confirmation of store location via internet mapping  
22  
23

1 and satellite photo technology, specifically, Google Earth. We reject applications from  
2 dealers that cannot confirm to our satisfaction that they meet our criteria.

3 12. We have in fact stopped doing business with a number of our dealers who  
4 did not agree with our policy, and who sold our products online at a discount. We have  
5 cut off bricks-and-mortar dealers for discounting, even if they were not selling on line,  
6 and declined to do business with dealers whose business model is deep discounting,  
7 thereby keeping our policy consistent.

8 13. It has been my experience, based on 16 years in the industry, that dealers in  
9 this industry are very sensitive to discounting, particularly on the internet. Our corporate  
10 policies were developed because internet sales and particularly internet discounting is  
11 such a hot button issue for our dealers. The motorcycle industry at the retail level is  
12 composed overwhelmingly of individually owned stores, or small chains with few  
13 outlets, who perceive internet discounting as harmful to their interests. They watch  
14 carefully for unfair discounting, and brands that allow this are quickly tainted.

15 14. To the best of my knowledge, Nanal or Leatherup.com has never sold  
16 VEGA® Helmets. They have certainly never been an authorized retailer.

17 15. Any perception by dealers that we allow deep discounting is a very serious  
18 issue for us. Not only is Nanal claiming to offer VEGA® helmets when they are not able  
19 to supply them, and are not now nor ever have been a dealer of ours, but they are offering  
20 those helmets in a way that is extremely damaging to our reputation.  
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Declaration of Jeanne DeMund - 4

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1           16.       There are many forums for motorcycle store owners to share their  
2 experiences with different brands, including franchise dealer meetings for dealers who  
3 carry the main brands of motorcycles, or "20 Groups" where dealers who are not  
4 geographic competitors meet to train on managing their business and compare notes. We  
5 have attracted many dealers through this type of word of mouth advertising, in part  
6 because of our internet and selling policies. Any perception by dealers that we allow  
7 deep discounting is a very serious issue for us and will result in a loss of our reputation as  
8 well as a loss of sales.

9  
10           17.       When I became aware of Leatherup.com's false Google advertisement of  
11 "50% off VEGA Helmets", via a phone call from VEGA sales representative Claudia  
12 Mallard, I immediately went to the Leatherup.com website. I began looking for a contact  
13 phone number, intending to resolve the matter directly with the company. This is how I  
14 attempt to handle all potential trademark or sales issues involving another company.  
15 When I found the 800 number on the website, I called and asked to speak to the owner. I  
16 was told he was not available. When I asked for his name, I was told they did not give  
17 out that information. I asked for the general manager, and was told there was no one  
18 available to speak with.

19           18.       At that point, I went back to the website and found a "contact us" form. I  
20 sent an e-mail request, using the "contact us" form, for the owner or general manager to  
21 contact me by phone or e-mail to discuss the "50% off VEGA Helmets" advertisement.  
22  
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1 I gave my name, title, company, phone and e-mail information to allow communication.

2 I never received any response.

3 19. In frustration at Nanal's lack of response, I asked my trademark attorneys  
4 to pursue the issue. They had similar difficulties in locating, and communicating with,  
5 the owner of Nanal, but were finally able to file and serve this lawsuit.

6 20. Incredibly, while this litigation was pending, a different sales  
7 representative, Joy Loga from Maryland, called to report that she had received a call from  
8 a large customer of Soaring Helmet. The customer is one of Soaring Helmet's top  
9 dealers, and has been doing business with Soaring Helmet since 2007. His sales of  
10 VEGA® helmets range from \$150,000- nearly \$300,000 annually.  
11

12 21. Joy reported that the customer asked her if Soaring Helmet was now  
13 making leather jackets, and pointed her to the Leatherup.com website. There, she saw the  
14 "XElement Vega Leather Jacket". She called me to ask if we had licensed our name, or  
15 were making leather jackets. I told her that we were not.

16 22. I went to the Leatherup.com website and saw the advertisement which used  
17 our trademark. I called my attorneys and told them about this new infringement.  
18

19 23. To this day, the XElement Extreme VEGA jacket is sold on other websites,  
20 such as eBay.com and Cobragear.com.

21 24. To date, we have spent over \$600,000 in advertising expenditures for our  
22 VEGA® brand since 1994. We have advertised on our website, vegahelmet.com, since  
23 1996. Sales are not made through our website, but it is interactive in that interested

Declaration of Jeanne DeMund - 6

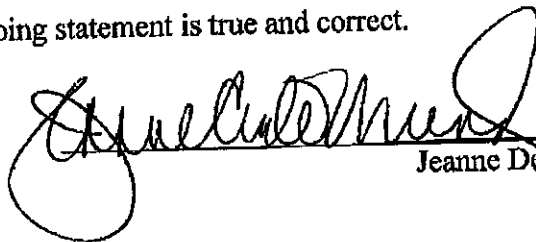
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1 buyers can enter their zip code, and will be sent the name of an authorized dealer in their  
2 area.

3 25. We advertise VEGA® products at the following trade shows: V-Twin  
4 Expo and Advanstar Dealernews Powersports Expo. We produce over 10,000 printed  
5 catalogues each year which are distributed to retail dealers, and we advertise in industry  
6 and consumer magazines such as Dealer News, Motorcycle Industry Magazine, Iron  
7 Horse Magazine, Wing World Magazine, and others. We have sales representatives in  
8 nearly every state, and have maintained the same toll-free telephone customer service  
9 number since 1995.

10  
11 26. As a direct and proximate result of the Defendant's trademark  
12 infringement, Soaring Helmet Corporation has suffered and continues to suffer damages,  
13 both direct and consequential to its business, goodwill, reputation and profits.

14 I certify under penalty of perjury under the laws of the State of Washington that  
15 the foregoing statement is true and correct.

16  
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18 \_\_\_\_\_  
19 Jeanne DeMund

20 DATED: NOVEMBER 22, 2010

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Declaration of Jeanne DeMund - 7


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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 Ms. Katherine Hendricks  
6 Ms. Stacia N. Lay  
7 HENDRICKS & LEWIS, PLLC  
8 901 Fifth Avenue, Suite 4100  
9 Seattle, WA 98164

10 Dated this 22<sup>nd</sup> day of November, 2010, at Seattle, Washington.

11 

12 \_\_\_\_\_  
13 Katy M. Albritton  
14 Legal Assistant  
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