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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 WAYNE  
LAYMAN IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

1. My name is Wayne Layman. I live in Plainwell, Michigan. 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 Michigan sales representative for Soaring Helmet, Inc., the parent company for VEGA Helmets. I have been with VEGA Helmets for about five years. Prior to that, I worked for a distributor of another brand of

1 motorcycle helmets for approximately eight years. I have been in the  
2 motorcycle parts and accessories industry for nineteen years.

3 3. As part of my job, I am aware of VEGA Helmet corporate policies.  
4 As a matter of corporate policy, VEGA Helmet does business only with dealers  
5 who sell VEGA Helmet products at no less than VEGA's suggested retail price  
6 (MSRP). Sometimes, dealers are allowed to discount older products, but only  
7 according to the corporate policy.  
8

9 4. VEGA corporate policy only allows dealers to carry our products if  
10 they have a stocking storefront, and a Yellow Pages ad, not just an internet  
11 presence.  
12

13 5. I know from personal experience that the "bricks and mortar" retail  
14 stores, who are my customers, are very aware of any discounting in the  
15 industry, particularly internet discounting. All of retailers in this industry are  
16 leery of discounting, and see discounting as very harmful to their business.  
17

18 6. Discounting, especially online discounting, can really hurt the  
19 reputation of a product in this industry. My retailers do not want to have to  
20 compete with discounters, particularly online discounters who do not have the  
21 overhead costs of the brick and mortar store. If a customer walks in off the  
22 street, and sees a product which they think is available at a deep discount on the  
23

1 internet, they may demand the same discount, which the brick and mortar store  
2 can't afford to give them. Therefore, it is my experience that retailers feel that  
3 selling a product which is sold at a deep discount on the internet hurts their  
4 business, and in most cases they refuse to carry those products.

5  
6 7. In April of 2009, I was traveling on sales calls with Claudia  
7 Mallard, the VEGA Helmet sales representative for the South.

8 8. We called on a large retailer in Michigan Center, Michigan, named  
9 Holiday Powersports. Because Holiday Powersports is such a large retailer, I  
10 have been interested in having them as a dealer for VEGA products.

11 9. We met with Jim Machnik, the parts manager and buyer for  
12 Holiday Powersports, and the son of the owner. For the retailers I deal with, the  
13 parts and accessories manager is often the person in charge of choosing and  
14 ordering products to sell, and that's who I ask for on a sales call.

15  
16 10. Claudia and I presented the entire VEGA product line to Jim and  
17 some other counter people. We spent about one hour making our sales pitch,  
18 and they really liked the line.

19  
20 11. Around that point in the conversation, Ed Machnik, the owner of  
21 Holiday Powersports, walked by and introduced himself. Either Ed or his son  
22 Jim asked about our internet discounting policy, and I told him we did not allow  
23

1 discounting online, and we did not sell through internet-only retailers. Ed told  
2 us that he knew that VEGA Helmets were sold online at a discount. Claudia  
3 and I told him that was not true, so he went to an office, and came back with a  
4 print-out of a Leatherup.com internet advertisement. That was the first time I  
5 saw the ad claiming that Leatherup.com sold VEGA Helmets at a 50%  
6 discount. Claudia and I were floored when we saw the ad.  
7

8 12. At that point, I had never heard of Leatherup.com. I suspected the  
9 ad was false, because VEGA Helmets are not sold on the internet and because  
10 they couldn't make any money if they were selling VEGA helmets at 50% off.  
11

12 13. Prior to Ed showing us the ad, the sales call was going in a positive  
13 direction. We would have had a much better shot with Holiday Powersports if  
14 the owner hadn't seen the Leatherup.com ad claiming to sell VEGA helmets at  
15 a 50% discount.  
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14. Claudia called Jeanne DeMund, owner of Soaring Helmet, and told her about Lcathcrup.com and the ad, and the way it hurt our sales call.

I declare under penalty of perjury under the laws of the state of Michigan and the United States that the foregoing is true and correct to the best of my knowledge.

Executed at 11:00 AM this 21<sup>TH</sup> day of November, 2010.

  
Wayne Layman

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**CERTIFICATE OF SERVICE**

I hereby certify that 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 persons/attorneys of record:

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

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