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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 CLAUDIA
MALLARD IN SUPPORT OF
PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

1. My name is Claudia Mallard. I reside in Shelbyville, Bedford County, Tennessee. 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 a sales representative for VEGA Helmets. My territory includes the southeastern United States (Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Florida Panhandle). I am



DECLARATION OF CLAUDIA MALLARD – 1

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1 based in Tennessee. I have been with VEGA Helmets for more than 8 years. I have been
2 employed in the motorcycle industry since 1979.

3 3. As part of my job, I am aware of VEGA Helmet corporate policies. As a
4 matter of corporate policy, VEGA Helmet does business only with dealers who sell
5 VEGA Helmet products at no less than VEGA's suggested retail price (MSRP).
6 Occasionally, VEGA Helmets allows discounting of older products, but never of current
7 products except for special sales, according to the corporate policy.

8 4. The VEGA corporate policy is printed each year in our annual catalogue,
9 which is provided to all our retailers each year.

10 5. I am aware that the "bricks and mortar" stores, who are my customers, are
11 very aware of any discounting in the industry, particularly internet discounting.
12 Discounting is a big issue for our dealers, because retailers in this industry are mostly
13 "mom and pop" stores, or some small chains. These retailers see discounting,
14 particularly on the internet, as very harmful to their business, and they watch all
15 competitors very closely for any possible discounting.

16 6. One of the huge selling features of the VEGA brand is that it is protected
17 from deep discounting, and retailers are assured that if they stock VEGA brand products,
18 it will be profitable for the retailer. It is critical to our business that we protect the brand,
19 and it makes my job, selling VEGA products, much easier because my customers know
20 we protect the brand.

21 7. In fact, the reason I stopped selling a competing brand, and chose to sell
22 VEGA helmets instead, is because of the way VEGA promotes and protects its brand.
23

DECLARATION OF CLAUDIA MALLARD – 2

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1 8. In April of 2009, I was traveling on sales calls with Wayne Layman, the
2 VEGA Helmet sales representative for Michigan and Indiana.

3 9. We called on a large retailer in Michigan Center, Michigan, called Holiday
4 Powersports.

5 10. We met with Jim Machnik who was the buyer for Holiday Powersports and
6 the son of the owner.

7 11. Attached as Exhibit A is a true and correct copy of Mr. Jim Machnik's
8 business card, which he gave me on that visit.

9 12. Wayne and I did a full-line presentation of the VEGA products to the
10 buyer and some other parts and accessories personnel who were present. The
11 presentation took about an hour, and the viewers seemed very interested in our line.

12 13. Around that point in the conversation, Ed Machnik, the owner of Holiday
13 Powersports, came into the store and walked by. I introduced myself to him. He asked
14 me if we sold our helmets online. I told him that we did, but that we had a strict policy of
15 not allowing discounting, and we enforced that policy, for online retailers as well as for
16 brick and mortar stores. He then walked away, to his office.

17 14. Jim Machnik, the buyer, was very interested in buying our products. He
18 walked over to the owner's office, and came back holding a sheet of paper. He said to
19 me "This is the reason he won't do business with you" and "he says VEGA's a price
20 whore". He handed me a print-out of the Leatherup.com advertisement. That was the
21 first time I saw the advertisement that claimed Leatherup.com sold VEGA Helmets at
22 50% off.
23

DECLARATION OF CLAUDIA MALLARD – 3

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1 15. Before that, I had never heard of Leatherup.com.

2 16. It was clear to me that the advertisement caused the owner and the buyer at
3 Holiday Powersports to refuse to consider buying VEGA Helmets.

4 17. Attached as Exhibit B is a true and correct copy of the notes I made of my
5 visit, right after the call on Holiday Powersports on April 9, 2009. It is my practice to
6 make notes after every sales call, and I did that after this call. In case you can't read my
7 handwriting, the notes say, "Jim and counter guys love helmets. Dad-owner-will only
8 sell Fulmer. No internet. Owner printed 50% off Leatherup.com ad on computer to give
9 to me. All parts guys like helmets – owner says we discount." Although my notes don't
10 reflect his actual words, I clearly remember that Jim told me his father said, "VEGA's a
11 price whore."

12 18. Fulmer is a helmet manufacturer who allows absolutely no internet sales,
13 which is what my notes mean when I wrote "Fulmer - ∅ internet."

14 19. I called Jeanne DeMund, owner of VEGA Helmet, and told her about
15 Leatherup.com and the impact it was having on doing future business with prospective
16 customers.

17 20. Attached as Exhibit C is a true and correct copy of my notes from my visits
18 on April 8, 2009. At the entry recording my visit at Harbor Sports Cycle, which is a
19 Honda Powerhouse Store, I wrote that the owner told me he was planning to open an
20 internet business, and I wrote that I reminded him of VEGA's policy that he could only
21 sell at MSRP. I told him we don't like to do business with discounters, who screw it up
22 for everyone else in the business.
23 

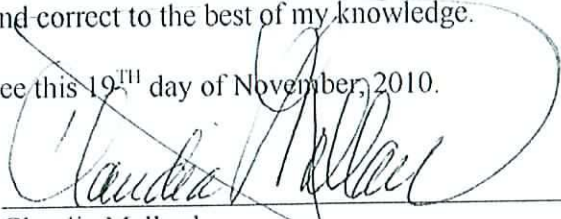
DECLARATION OF CLAUDIA MALLARD – 4

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

Executed at Shelbyville, Tennessee this 19TH day of November, 2010.



Claudia Mallard

