EXHIBIT 10

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ī		THE HONORABLE JAMES L. ROBART
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8	UNITED STATES DIST WESTERN DISTRICT OF WASH	
9	SOARING HELMET CORPORATION, a Washington corporation,	Cause No. C09-0789 JLR
11	Plaintiff,	PLAINTIFF'S THIRD AMENDED COMPLAINT FOR:
13	v. NANAL, INC., a Nevada corporation, d/b/a LEATHERUP.COM; Albert Bootesaz and Jande	(1) FEDERAL TRADEMARK INFRINGEMENT, 15 U.S.C. §1114;
14 15 16	Doe Bootesaz, individually and as part of the marital community composed thereof; Defendants.	(2) FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING, AND UNFAIR COMPETITION, 15 U.S.C. §1125(a);
17		(3) UNFAIR COMPETITION, RCW 19.86.
18		(5) TORTIOUS INTERFERENCE WITH PROSPECTIVE
20		ECONOMIC ADVANTAGE
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THIRD AMENDED COMPLAINT - 1

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Plaintiff Soaring Helmet Corporation ("Soaring Helmet" or "Plaintiff"), complains and alleges as follows:

I. <u>INTRODUCTION</u>

- 1.1 This matter concerns the trademark infringement, unfair competition, and tortious interference with prospective economic advantage by Defendant, NANAL, INC., d/b/a LEATHERUP.COM ("Defendant") against the owner of the following registered trademark: "VEGA" U.S. Trademark Registration No. 2087637 (the "Mark").
- 1.2 Soaring Helmet brings this action to secure relief under Federal and Washington State law. Soaring Helmet seeks: (a) a temporary, preliminary and permanent injunction prohibiting Defendant from further infringement of Soaring Helmet's Mark; (b) money damages for Defendant's past infringement of the Mark, unfair competition, and tortious interference with prospective economic advantage.

II. THE PARTIES

- 2.1 <u>Plaintiff</u>. Plaintiff Soaring Helmet is a corporation duly organized and existing under the laws of the State of Washington with its principal place of business in Tukwila, Washington. Soaring Helmet is in good standing with the Washington Secretary of State's Office and has done all things necessary and proper to bring this lawsuit.
- 2.2 <u>Defendant Nanal Inc.</u> Based on information and belief, Defendant Nanal, Inc. is a Nevada corporation d/b/a Leatherup.com. On information and belief, Defendant offers motorcycle accessories for sale on a nationwide basis, including Washington State, via its website and a toll-free telephone number.

THIRD AMENDED COMPLAINT - 2

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Case 2:09-cv-00789-JLR Document 74-2 Filed 12/10/10 Page 4 of 35

2.3 Defendant Albert Bootesaz is the President of Nanal, Inc. On information and belief, Mr. Bootesaz is the sole decision maker of the corporation and directs and controls its day to day activities including the acts which form the basis of the claims herein.

III. JURISDICTION AND VENUE

- 3.1 This Court has original jurisdiction over Count I and II under 15 U.S.C. §1121(a) (action arising under the Lanham Act) and 28 U.S.C. §§1331, 1338(a) (federal question) in that this case arises under the Trademark Laws of the United States, 15 U.S.C. §§1051-1127.
- 3.2 This Court has jurisdiction over Count III and Count IV under 28 U.S.C §1338(b) in accordance with the principles of pendant jurisdiction in that said claims are joined with substantial and related claims under the Trademark Laws of the United States, 15 U.S.C. §§1051-1127.
 - 3.3 Venue is proper in this district pursuant to 28 U.S.C. §1391(b).
- 3.4 Personal jurisdiction in this district is proper because Defendants maintain continuous and systematic commercial contacts with Washington State. On information and belief, Defendants have purposefully availed themselves of the opportunity to conduct commercial activities in this forum, and this Complaint arises out of those activities.

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THIRD AMENDED COMPLAINT - 3

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IV. FACTUAL BACKGROUND

Soaring Helmet's Trademark Rights.

- 4.1 Since March 18, 1994, and continuously to the present, Soaring Helmet has owned and used the trademark VEGA in interstate commerce in connection with the sale of motorcycle helmets.
- 4.2 On August 23, 1996, Soaring Helmet filed an application to register the Mark with the United States Patent and Trademark Office (PTO). The Mark was registered on the Principal Register of the PTO on August 12, 1997 and was assigned Registration Number 2087637. A true and correct copy of the Certificate of Registration issued by the PTO is attached hereto as **Exhibit A**.
- 4.3 Soaring Helmet has sold a wide variety of VEGA helmets to customers throughout the United States. Soaring Helmet has invested substantial sums of time, money and effort to develop, use, advertise and promote the Mark. As a result, the Mark has become an integral and indispensable part of Soaring Helmet's business. To this end, Soaring Helmet carefully guards its intellectual property rights.

Defendants' Wrongful Acts.

- 4.4 In approximately April 2009, Plaintiff learned that when the query "VEGA helmets" is searched via the Google internet search engine, an advertisement appeared under the Google's sponsored listings that stated that Leatherup.com offered "50% off Vega Helmets." A copy of the search results is attached hereto as Exhibit B.
- 4.7 Defendant's advertisement was false and misleading because Defendant does not in fact sell any of Soaring Helmet's VEGA products.

THIRD AMENDED COMPLAINT - 4

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Case 2:09-cv-00789-JLR Document 74-2 Filed 12/10/10 Page 6 of 35

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- 4.8 Soaring Helmet has lost business due to actual confusion caused by Defendant's false and misleading advertisement when at least one retailer refused to do business with Soaring Helmet due to the fact that the advertisement falsely stated that Defendant sells Soaring Helmet's products at a deep discount.
- 4.9 On or about April 28, 2009, Soaring Helmet sent a letter to Defendant Nanal, demanding it cease and desist all use of the Mark in connection with false and misleading advertisements. A copy of this letter is attached hereto as **Exhibit C.**
- 4.10 On or about December 2009, Soaring Helmet discovered that Defendants were selling motorcycle jackets under the designation, "XElement Extreme Vega." Soaring Helmet discovered the infringement when one of Soaring Helmet's clients inquired as to whether Soaring Helmet was the manufacturer of the "XElement Extreme Vega" jacket.
- 4.11 Soaring Helmet was not able to immediately confirm that Defendants were the manufacturer of the "XElement Extreme Vega" jacket. However, Soaring Helmet suspected that the XElement Leather Brand and Defendant were likely affiliated if not one and the same. On or about January 27, 2010, Soaring Helmet sent a cease and desist letter to both the address for XElement Leather Brand and to counsel for Defendant. A copy of this letter is attached hereto as **Exhibit D**.
- 4.12 On or about March 2010, counsel for Defendants confirmed that Defendant Nanal was the manufacturer of the "XElement Extreme Vega" motorcycle jacket. Counsel for Defendant also stated that Defendant had removed the "Vega" designation from its motorcycle jackets. However, Soaring Helmet has been damaged by

THIRD AMENDED COMPLAINT - 5

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Case 2:09-cv-00789-JLR Document 74-2 Filed 12/10/10 Page 7 of 35

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Defendant's past infringing sales, and the actual confusion that occurred with at least one of Soaring Helmet's clients.

- 4.13 Defendant Bootesaz operated the corporation, Nanal, with disregard for the corporate form. There is a complete unity of interest and ownership between Nanal and Bootesaz that there is virtually no distinction bewteen the corporation and the individual.
- 4.14 Defendant Bootesaz is the sole decision maker for Nanal, Inc. and thus bears individual liability for each of the claims alleged herein.

V. FIRST CAUSE OF ACTION FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. §1114)

- 5.1 Soaring Helmet realleges and incorporates herein by reference the allegations contained in all preceding paragraphs of this Complaint as part of this cause of action.
- 5.2 Soaring Helmet holds a valid and existing federal registration for the Mark. Soaring Helmet has continuously used the Mark since as early as 1994.
- 5.3 Defendants' use of the Mark as a keyword to place its sponsored listing advertisements for Leatherup.com, has and is likely to cause initial interest confusion of consumers that are in fact searching solely for Soaring Helmet's Mark.
- 5.4 Defendants' use of the Mark in connection with the marketing, advertising, and sale of motorcycle jackets has and is likely to deceive customers and prospective customers into believing that Defendants' products are that of Soaring Helmet, and, as a consequence, are likely to divert customers away from Soaring Helmet.

THIRD AMENDED COMPLAINT - 6

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ı	5.4 The aforementioned trademark infringement has caused, and is likely to
2	cause confusion, mistake, or deception of consumers, to the detriment of Soaring Helmet.
3	5.5 As a result of the confusion engendered by foregoing infringement,
4	Soaring Helmet's valuable goodwill in respect to its VEGA Mark is at the mercy of
5	Defendants.
6	5.6 The goodwill of Soaring Helmet's business is of enormous value, and
7	Soaring Helmet will suffer irreparable harm should infringement be allowed to continue
8	to the detriment of its trade reputation and goodwill.
9	5.7 Defendants' use of the Mark as alleged herein was done without the
.0	knowledge, consent or permission of Soaring Helmet.
1	5.8 Defendants have violated the trademark rights of Soaring Helmet under the
3	Trademark Act, thereby giving rise to a cause of action under 15 U.S.C. § 1114.
4	5.9 Soaring Helmet will be irreparably harmed unless Defendants are
5	temporarily, immediately and permanently enjoined from any further use of the Mark and
6	any further false and misleading advertising using the Mark.
7	5.10 Soaring Helmet has no adequate remedy at law and serious damage to its
8	trademark rights will result unless Defendants' wrongful use of the Mark is enjoined by
9	the court.
0	5.11 Defendants have continued to use the Mark notwithstanding that they have
1	actual knowledge of Soaring Helmet's superior trademark rights as alleged herein, as
2	well as knowledge of the actual confusion suffered by Soaring Helmet's customers.
3	Defendants' infringement of the Soaring Helmet VEGA Mark accordingly constitutes

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THIRD AMENDED COMPLAINT - 7

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Case 2:09-cv-00789-JLR Document 74-2 Filed 12/10/10 Page 9 of 35

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intentional, willful, knowing and deliberate trademark infringement throughout the United States, including Washington State. Plaintiff therefore seeks judgment in the amount of three (3) times its damages, together with reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

- 5.12 Defendants' infringement of the Mark as alleged herein has caused, and will continue to cause, Soaring Helmet to suffer damages in an amount unknown at this time and has caused, and will continue to cause, Defendant to gain revenues and profit in an amount unknown at this time. Pursuant to 15 U.S.C. § 1117(a), Soaring Helmet is entitled to an award of monetary damages in an amount equal to the losses suffered by Soaring Helmet or the revenues and/or profits gained by Defendants, which damages should be augmented as provided by 15 U.S.C. §1117(a).
- 5.13 Pursuant to 15 U.S.C. § 1117(a), any monetary damages awarded to Soaring Helmet should be trebled.
- 5.14 Pursuant to 15 U.S.C. § 1117(a), Soaring Helmet is entitled to an award of attorneys fees and costs of suit.

VI. SECOND CAUSE OF ACTION FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING AND UNFAIR COMPETITION UNDER LANHAM ACT SECTION 43(a) (15 U.S.C. §1125(a))

6.1 Soaring Helmet realleges and incorporates herein by reference the allegations contained in all preceding paragraphs of this Complaint as part of this cause of action.

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Case 2:09-cv-00789-JLR Document 74-2 Filed 12/10/10 Page 10 of 35

6.2 The actions of Defendants as alleged herein constitute false designation of origin, false advertising and unfair competition pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

- 6.3 The actions of Defendants have and are likely to continue to deceive customers and prospective customers into believing that Defendants sell the products of Soaring Helmet, and, as a consequence, are likely to divert customers away from Soaring Helmet throughout the United States, including in Washington State.
- 6.4 Soaring Helmet has and will continue to be irreparably harmed unless

 Defendants are temporarily, immediately and permanently enjoined from any further use

 of the Mark and any further false and misleading advertising of products using the Mark.
- 6.5 Soaring Helmet has no adequate remedy at law and serious damage to its trademark rights will result unless Defendants' wrongful use of the Mark is enjoined by the court.
- 6.6 The actions of Defendants as alleged herein constitute intentional, willful, knowing and deliberate unfair competition and false advertising pursuant to Lanham Act Section 43(a).
- 6.7 Defendants' acts of unfair competition and false advertising in violation of the Lanham Act Section 43(a) as alleged herein have caused, and will continue to cause, Soaring Helmet to suffer damages in an amount unknown at this time and have caused, and will continue to cause Defendants to gain revenues and profit in an amount unknown at this time. Pursuant to 15 U.S.C. §1117(a), Soaring Helmet is entitled to an award of monetary damages in an amount equal to the losses suffered by Soaring Helmet and the

THIRD AMENDED COMPLAINT - 9

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Case 2:09-cv-00789-JLR Document 74-2 Filed 12/10/10 Page 11 of 35

l	revenues and/or profits gained by Defendants, which damages should be augmented as
2	provided by 15 U.S.C. §1117(a).
3	6.8 Pursuant to 15 U.S.C. §1117(a), any monetary damages awarded to Soaring
4	Helmet should be trebled.
5	6.9 Pursuant to 15 U.S.C. §1117(a), Soaring Helmet is entitled to an award of
6	attorneys fees and costs of suit.
7	VII. THIRD CAUSE OF ACTION
8	WASHINGTON STATE UNFAIR COMPETITION AND CONSUMER PROTECTION ACT
9	(RCW 19.86)
10	7.1 Soaring Helmet re-alleges and incorporates herein by reference the
11	allegations contained in all preceding paragraphs as part of this cause of action.
12	7.2 Defendants have engaged in unfair and deceptive acts or practices by using
13	the Mark in connection with both the sale of products and in false and misleading
14	advertising in Washington thereby creating a likelihood of public confusion as to the
15	source of the goods and services.
16	7.3 Defendants' deceptive acts or practices injured Soaring Helmet.
17	7.4 Defendants' actions offend the public, are unethical, oppressive and
18	unscrupulous, affecting trade and commerce now and in the future both within
9	Washington State and elsewhere.
20	7.5 A causal link exists between the deceptive act and the resulting injury.
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THIRD AMENDED COMPLAINT - 10

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Case 2:09-cv-00789-JLR Document 74-2 Filed 12/10/10 Page 12 of 35

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7.6	Soaring	Helmet 1	has suffered da	mages relating to	o vi	olation	of the C	onsun	10
Protection A	Act RCW	19.86 b	y Defendants.	The quantum	of	these	damages	will	be
proven at tri	ial.								

- 7.7 Soaring Helmet seeks, and is entitled to recover, its actual damages, together with the costs of suit, including reasonable attorneys' fees.
- 7.8 Soaring Helmet seeks and is entitled to recover an award of damages of up to three times the amount of the actual damages sustained up to the amount permitted by law.

VIII. FOURTH CAUSE OF ACTION TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

- 8.1 Soaring Helmet re-alleges and incorporates herein by reference the allegations contained in all preceding paragraphs as part of this cause of action.
- 8.2 Soaring Helmet's right to obtain prospective customers constitutes a valid business expectancy.
 - 8.3 Defendants had knowledge of Soaring Helmet's business expectancy.
- 8.4 Defendants intentionally interfered with Soaring Helmet's business expectancy and destroyed Soaring Helmet's opportunity to obtain prospective business customers. Defendants knew that the interference was certain or substantially certain to occur as a result of their actions.
- 8.5 Defendants' interference with Soaring Helmet's business expectancy was improper and the means used was innately wrongful and predatory in character.

THIRD AMENDED COMPLAINT - 11

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8.6 Soaring Helmet has suffered damages relating to violation of its business expectancy by Defendants. The quantum of these damages will be proven at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Soaring Helmet prays for relief against Defendants as follows:

- 1. For a temporary, preliminary and permanent injunction restraining and enjoining Defendants, and their agents, servants, employees, and all others in active concert or participation with them, as follows:
 - a. From further infringing Soaring Helmet's trademark rights;
 - From the further purchase and/or sale of Soaring Helmet's VEGA
 Mark for use in false and misleading advertising;
 - From further using the Mark in connection with the advertising, marketing, and sale of products or services, in any manner whatsoever;
 - d. From further acts of false advertising and unfair competition as alleged herein.
- 2. For an award of damages suffered by Soaring Helmet, plus any revenues or profits earned by Defendants as a result of Defendants' trademark infringement, unfair competition and false advertising in an amount to be proven at trial.
- 3. For an order requiring the impoundment of all products and materials bearing the infringing mark pending the trial of this matter, and the destruction of all products and materials bearing the infringing mark following trial.

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Case 2:09-cv-00789-JLR Document 74-2 Filed 12/10/10 Page 14 of 35

1	3. For an award of augmented and treble damages as alleged herein pursuant
2	to 15 U.S.C. §1117(a) and RCW 19.86.060.
3	4. For an award of punitive and exemplary damages in an amount to be
4	proven at trial, but sufficient to punish and deter Defendants.
5	5. For an award of attorneys' fees and litigation expenses and costs to the
6	maximum extent allowed by law.
7	6. For such other and further relief as the court deems just and proper.
8	
9	DATED December 10, 2010.
10	Invicta Law Group, PLLC
11	By: <u>s/Heather Morado/</u> Stacie Foster, WSBA No. 23397
12	Heather M. Morado, WSBA No. 35135 Steven W. Edmiston, WSBA No. 17136
13	Attorneys for Plaintiff
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THIRD AMENDED COMPLAINT – 13

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l	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
5	persons/attorneys of record:
6	Ms. Katherine Hendricks Hendricks & Lewis, PLLC 901 Fifth Avenue, Suite 4100 Seattle, WA 98164
8	kh@hllaw.com
9	Dated this 10 th day of December, 2010, at Seattle, Washington.
0	Katy M. Cllritter
1	Katy M. Albritton Legal Assistant
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THIRD AMENDED COMPLAINT - 14

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Exhibit A

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 CORPORATION (WASH-INGTON CORPORATION) 770 INDUSTRY DRIVE, BUILDING 16 TUKWILA, WA 98118 FIRST USE 3-18-1994; IN COMMERCE 3-18-1994.

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

FOR: MOTORCYCLE HELMETS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

DAVID M. MERMELSTEIN, EXAMINING ATTORNEY

Exhibit B

Web Images Maps News Video Gmail more v

<u>Sign in</u>

vega helmets

Search Advanceu or Preferences Advanced Search

Customized based on recent search activity. More detail

Web Shopping

Results 1 - 10 of about 102,000 for vega helmets. (0.11 seconds)

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from The ... Motorcycle helmets and Motorcycle helmet - Welcome to a great place to buy discount motorcycle helme.

www.helmetshop.com/ - 39k - Cached - Similar pages

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www.helmetshop.com/CategoryProductLlst.jsp? cat=Shop+By+Brand.Vega+Helmets - 21k -

Cached - Similar pages

Shopping results for vega helmets

Vega Summit II ColorMatch Motorcycle

\$139.95 - Motorcycle

Helmet

Superstore

Vega Summit XPV 2 Solid Helmets L

\$124.99 - compacc.com

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4/27/2009

Exhibit C

Third Amended Complaint - Exhibit C - 19

Invicta

Counsel for creative companies

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April 28, 2009

Mark V. Jordan Email: mjordan@invictalaw.com

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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 Exhibit B. 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

Third Amended Complaint - Exhibit C - 20

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

MVJ:hmm Enclosure

ce: Soaring Helmet Corporation (w/o encl.)

1840 031 id280801

Exhibit A

Third Amended Complaint - Exhibit C - 22

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 CORPORATION (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 ATTORNEY

Exhibit B

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<u>Sign in</u>

vega helmets

Search Advanced Search Preferences

Customized based on recent search activity. More detail

Web Shopping

Results 1 - 10 of about 102,000 for vega helmets. (0.11 seconds)

Vega Motorcyle Helmets

Sponsored Links www.TheHelmetZone.com Snow, Motorcycle, Half & Flip-Up Buy Direct & Save - Free Shipping

50% Off Vega Helmets

www.LeatherUp.com Half face, full face helmets from \$29.95, Top Brands HJC, Shoei, Bell

Vega Motorcycle Helmets

www.Jafrum.com/VEGA_Helmets Amazing Prices, 115% Price Match, Free Size Exchanges, Free Shipping!

Welcome to Vega Helmet Corporation

Half Helmets XT Half Helmet · XTS Half Helmet Vega Riding Apparel ... Vega Helmet Corporation. 18235 Olympic Avenue S., Tukwila, WA 98188 ... www.vegahelmet.com/ - 17k - Cached - Similar pages

Street

<u>Snowmobile</u>

Off Road Find a Dealer

NT 200 Company

<u>Altura</u> Summit II

More results from vegahelmet.com »

Vega Helmets - Company

If you are an individual interested in purchasing a Vega Helmet you must email your zip ... "VEGA" helmets are available to legitlmate motorcycle dealers. ... www.vegahelmet.com/company.html - Similar pages

Motorcycle Helmets and Motorcycle Helmet Accessories from The ...

Motorcycle helmets and Motorcycle helmet - Welcome to a great place to buy discount motorcycle helme. www.helmetshop.com/ - 39k - Cached - Similar pages

Vega Motorcycle Helmets

Vega Motorcycle Helmets from The Helmet Shop. ... Subcategories: Vega Full Face Helmets · Vega Open Face Helmets · Vega Half Helmets ... www.helmetshop.com/CategoryProductList.jsp? cat=Shop+By+Brand:Vega+Helmets - 21k -Cached - Similar pages

Shopping results for vega helmets

Vega Summit Il ColorMatch Motorcycle

<u>Helmet</u>

Superstore

Vega Summit XPV 2 Solid Helmets L

Large White

\$124.99 - compacc.com

Vega Altura Helmet DOT 520 Silver

\$69,99 - Jafrum.com

\$139.95 - Motorcycle

Soonsored Links

<u>Vega Helmets</u>

Motorcycle gear, apparel & parts. Low Price Guarantee. Free Shipping! www.Motorcycle-Superstore.com

Online Motocross Store

We carry all the major brands. Great Deals at Motocrossglant. www.motocrossgiant.com

Vega Helmets

Bargain Prices. Smart Deals. Save on Vega Helmets! Shopzilla.com

60% OFF Motorcycle Helmet

Fast & Free Shipping + Free Returns 125% Price Guarantee + MB Guarantee MotoDirect.com/Motorcycle_Helmets!

Vega Helmets

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Vega Helmets

Vega Helmets - Compare prices & find expert reviews! www.Best-Price.com/Helmets

<u>Vega Helmets</u>

Find Car Parts, Accessories, Tools Garage Equipment, Car Care & More Amazon.com/motorcycle

<u>Vega Helmets</u>

Buy Vega Helmets now. Fuel your passion on eBay Motorsi www.eBayMotors.com

More Sponsored Links »

Third Amended Complaint - Exhibit C - 25

http://www.google.com/search?hl=en&n=vega+helmets

4/27/2009

Exhibit D



Counsel for creative companies

1000 Second Ave, Suile 3310 Seattle, WA 98104-1019 (206) 903-6364 fax (206) 903-6366 www.invictalaw.com

January 27, 2010

Heather M. Morado Email: hmorado@invictalaw.com

VIA E-MAIL: aaron@leatherup.com; kh@hllaw.com AND FIRST CLASS MAIL

XELEMENT LEATHER BRAND 1200 Santee Street Suite 907 Los Angeles, CA 90015

NANAL, INC., d/b/a LEATHERUP.COM c/o Ms. Katherine Hendricks HENDRICKS AND LEWIS, PLLC 901 5th Avenue Suite 4100 Seattle, WA 98164

Re: Cease and Desist

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 United States federal trademark registration is attached hereto as Exhibit A.

We recently learned that you are advertising and selling motorcycle jackets utilizing our client's Mark. Printouts of the XELEMENT EXTREME VEGA motorcycle jacket advertised on the XELEMENT website and offered for sale on the LEATHERUP.COM website are attached as Exhibits B and C. No license or other form of agreement or permission has been granted by Soaring Helmet to you for use of the Mark. Such unauthorized use of the Mark is a violation of federal and state law.

As I hope you can appreciate, our client cannot permit others to trade on the goodwill or to damage the value and integrity of its Mark. Because the public closely associates the Mark with our client's products, we are concerned that your unauthorized use of the Mark will cause consumers to mistakenly assume that you are endorsed by, affiliated with, or otherwise connected with Soaring Helmet Corporation. In fact, Soaring Helmet has already encountered actual confusion of its customers arising out of your use of the Mark.

Third Amended Complaint - Exhibit D - 27

Ms. Katherine Hendricks January 27, 2010 Page 2

Because Soaring Helmet will be substantially and irreparably damaged should this infringement continue, it is prepared to enforce its exclusive rights to the Mark to the fullest extent of the law. If you wish to résolve this matter amicably, you must immediately cease and desist from any further use of the Mark. Soaring Helmet further requires that you immediately comply in writing with the following demands:

- Immediately terminate all infringing or unauthorized use of the Mark together
 with all similar marks, including an acknowledgment that all items constituting
 infringement or use of the Mark have been removed from all products, catalogs,
 brochures, marketing materials (including all websites), advertising or similar
 notices and/or publications;
- 2. Immediately account for and forfeit all copies of any materials displaying the Mark in your possession to counsel for Soaring Helmet;
- 3. Provide a declaration or affidavit, signed under penalty of perjury stating that you will immediately, and for all time, cease using the Mark in any advertisement, promotion, sale or other commercial exploitation of your services.

Unless these demands are complied with immediately and unless we receive the written documentation demanded above by February 5, 2010, Soaring Helmet Corporation will assume you intend to willfully disregard its rights, and will pursue whatever action or remedies it deems appropriate to protect its rights to the fullest extent of the law.

I look forward to your anticipated cooperation in this matter.

Very truly yours,

INVICTA LAW GROUP, PLLC

Heather M. Morado

HMM:kma Enclosures

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

Exhibit A

Int. Cl.: 9

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

Reg. No. 2,087,637

United States Patent and Trademark Office

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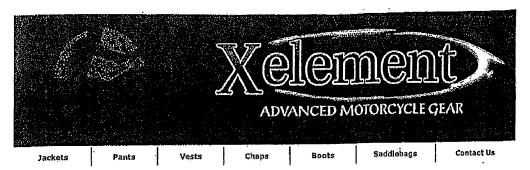
SER. NO. 75-155,017, FILED 8-23-1996.

DAVID M. MERMELSTEIN, EXAMINING ATTORNEY

Exhibit B

Third Amended Complaint - Exhibit D - 31

Xelement Gensen: 00 iff 200 789-JLR Document 74-2 Filed 12/10/10 Page 3 page 35f1



Contact Us

For retail sales contact Leatherup.com

Leather Up Com

For wholesale sales contact Myleather.com



LeatherUp.com MyLeather.com NoxSolutions.com

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Exhibit C

Xelement Extreme Vigg-Brack 789-JLR The cument 74-72 Ref Wild 124114610 3 Rage 35 agt 35 3



Third Amended Complaint - Exhibit D - 34

16 out of 19 people found the following review helpful:

Customer Reviews:

http://www leatherun.com/p/Xelement-iviens-Motorcycle-Jackets/Xelement-Extreme-Veg... 12/21/2009