

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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

No. C09-789-JLR

[PROPOSED] ORDER GRANTING  
DEFENDANT NANAL, INC.’S  
MOTIONS IN LIMINE

THIS MATTER comes before the Court on Defendant Nanal, Inc.’s (“Defendant” or “Nanal”) Motions in Limine to exclude (1) evidence of damages not disclosed during discovery; (2) evidence of monetary damages absent evidence of a causal connection between the alleged wrongful conduct and any damage to Plaintiff Soaring Helmet Corporation (“Plaintiff”); (3) evidence of Plaintiff’s alleged incidents of actual confusion; (4) any claim for injunctive relief; (5) evidence of or reference to the business interests of Albert Bootesaz other than Nanal and its website, LeatherUp.com; and (6) evidence of or relating to Plaintiff’s registration for the mark VEGA TECHNICAL GEAR.

Having considered Defendant Nanal, Inc.’s Motions in Limine and the record herein, and being fully advised in the premises, the Court hereby GRANTS Nanal’s Motions in Limine as follows:

1           1.       Plaintiff failed to comply with its obligation to timely disclose its computation of  
2 damages in this matter and therefore pursuant to FED. R. CIV. P. 37(c)(1), Plaintiff is prohibited  
3 from offering any computation of damages at trial, including any evidence supporting any  
4 damages computation.

5           2.       In light of Plaintiff's failure to timely disclose its computation of damages and the  
6 resulting order prohibiting Plaintiff from offering any computation of damages at trial, Plaintiff  
7 cannot establish a causal connection between the alleged wrongful conduct and any damage to  
8 Plaintiff. Plaintiff is therefore precluded from claiming monetary damages on its remaining  
9 claims in this action.

10          3.       Plaintiff is prohibited from offering evidence at trial relating to Plaintiff's two  
11 incidents of alleged actual confusion—one incident involving Holiday Powersports, a Michigan  
12 retailer, and the other involving Plaintiff's sales representative, Joy Loga—as (a) the offered  
13 statements constitute inadmissible hearsay not subject to any hearsay exception; (b) the alleged  
14 incidents do not constitute relevant, actionable confusion; and (c) the two alleged incidents are  
15 insubstantial, de minimis evidence of actual confusion.

16          4.       Plaintiff waived its claim for injunctive relief by failing to offer argument and  
17 evidence in support of such a claim in response to Nanal's motion for summary judgment.  
18 Plaintiff is therefore prohibited from offering evidence at trial in support of a claim for injunctive  
19 relief or from otherwise making such a claim at trial.

20          5.       Plaintiff is prohibited from offering any evidence or argument relating to Albert  
21 Bootesaz and other business interests he may have that are not related to Nanal or Nanal's  
22 website LeatherUp.com. Mr. Bootesaz is not a party to this action and therefore evidence  
23 pertaining to Mr. Bootesaz's other business interests is irrelevant and inadmissible pursuant to  
24 FED. R. EVID. 401 and 402. Additionally, even assuming such evidence had some arguable  
25 relevance, the unfair prejudice to Nanal in admitting such evidence far outweighs any probative  
26 value of the evidence with respect to Plaintiff's remaining claims in this action.



1 **PROOF OF SERVICE**

2 I am employed in the County of King, State of Washington. I am over the age of  
3 eighteen years and am not a party to the within action. My business address is Hendricks &  
4 Lewis PLLC, 901 Fifth Avenue, Suite 4100, Seattle, Washington 98164.

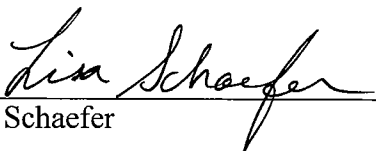
5 I hereby certify that on January 4, 2011, I electronically filed the foregoing with the Clerk  
6 of the Court using the CM/ECF system which will send notification of such filing to the  
7 following CM/ECF participants:

8 Heather M. Morado, Esq.  
9 Stacie Foster, Esq.  
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12 Seattle, Washington 98104  
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[hmorado@invictalaw.com](mailto:hmorado@invictalaw.com)

14 Attorneys for Plaintiff Soaring  
15 Helmet Corporation

16 I declare under penalty of perjury under the laws of the State of Washington that the  
17 foregoing is true and correct.

18 Executed January 4, 2011, at Seattle, Washington.

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20   
21 Lisa Schaefer