

EXHIBIT 13

{81600.DOC}

August 11, 2010

Heather M. Morado, Esq.
Invicta Law Group, PLLC
1000 Second Avenue, Suite 3310
Seattle, Washington 98104-1019

**Re: *Soaring Helmet Corporation v. Nanal, Inc.*, C09-0789-JLR (W.D. Wash.)
Plaintiff's Responses to Nanal's First Set of Discovery Requests**

Dear Heather:

I write in connection with Plaintiff Soaring Helmet Corporation's responses to Defendant Nanal, Inc.'s first set of discovery requests, specifically, Defendant Nanal, Inc.'s First Set of Interrogatories Nos. 1-22 to Plaintiff Soaring Helmet Corporation and Defendant Nanal, Inc.'s First Set of Requests for Production Nos. 1-29 to Plaintiff Soaring Helmet Corporation. We have identified several issues described in more detail below with respect to Plaintiff's responses to those requests and therefore pursuant to CR 37(a)(1)(A), we request a conference of counsel to discuss the issues in the hope of avoiding the need for court intervention.

I. Plaintiff's Answers to Defendant Nanal, Inc.'s First Set of Interrogatories Nos. 1-22 to Plaintiff Soaring Helmet Corporation.

As to **Interrogatory No. 2**, Plaintiff names a potential dealer of Plaintiff's products, Jim Squire of Holiday Powersports, in connection with alleged actual confusion but fails to provide sufficient identification information for him, specifically contact information. If Plaintiff is in possession of additional specific contact information for Mr. Squire, please supplement Plaintiff's response with that information.

For a number of Plaintiff's responses to Nanal's interrogatories (specifically **Interrogatory Nos. 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20 and 21**), Plaintiff has responded, in whole or in part, by referring Nanal to other interrogatory responses, without further explanation or substantive response. For example, in response to Interrogatory Nos. 7 and 10, Plaintiff purports to state the applicable law but the only "substantive" response to the interrogatory directs Nanal to "see" other interrogatory responses. And with respect to other interrogatories, Plaintiff's "substantive" response consists solely of a "see" reference to another interrogatory or interrogatories (*see, e.g.*, responses to Interrogatory Nos. 8, 9, 11, 12, 13, 14, 16, 17, 20 and 21). The issue is further exacerbated because in several instances, Plaintiff's response to an interrogatory instructs Nanal to see another interrogatory response which response in turn refers

Heather M. Morado, Esq.
August 11, 2010
Page 2

Nanal to yet another interrogatory response (*see, e.g.*, responses to Interrogatory Nos. 8, 12, 13, 14 and 21).

But FED. R. CIV. P. 33(b)(3) states that “[e]ach interrogatory must, to the extent it is not objected to, be answered *separately and fully* in writing under oath.” (Emphasis added.) “It is well-established that an answer to an interrogatory ‘must be responsive to the question. It should be complete in itself and should not refer to the pleadings, or to depositions or other documents, or to other interrogatories, at least where such references make it impossible to determine whether an adequate answer has been given without an elaborate comparison of answers.’” *Smith v. Logansport Cmty. Sch. Corp.*, 139 F.R.D. 637, 650 (N.D. Ind. 1991) (quoting 4A J. MOORE, J. LUCAS, MOORE’S FED. PRAC. ¶ 33.25[1] (2d ed. 1991)); *see also United States ex rel. O’Connell v. Chapman Univ.*, 245 F.R.D. 646, 650 (C.D. Cal. 2007); *Scaife v. Boenne*, 191 F.R.D. 590, 594 (N.D. Ind. 2000). Plaintiff’s responses to the identified interrogatories (Interrogatory Nos. 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20 and 21) fail to comply with these standards. Therefore, please provide supplemental responses that respond separately and fully to each of these interrogatories.

As to **Interrogatory No. 19**, Nanal asked Plaintiff to set forth each category of damage Plaintiff claims to have incurred as a result of the alleged acts of Nanal of which Plaintiff complains, “including the computation of the amount of damages Plaintiff claims to have incurred for each category.” Although Plaintiff claims to have “suffered damages arising out of the lost dealer in Michigan” and that “[d]amages will be calculated based on the average amount of dealer purchases in Michigan,” Plaintiff fails to provide the actual computation of such damages as requested by the interrogatory. As reflected by the lack of objection to this interrogatory, there can be no dispute that it seeks relevant, discoverable information. Therefore, please promptly supplement Plaintiff’s response with the requested information.

As to **Interrogatory No. 20**, Nanal asked Plaintiff to set forth in detail Plaintiff’s computation of its lost sales if Plaintiff claims to have lost sales as a result of the actions alleged in Plaintiff’s Second Amended Complaint. Plaintiff’s response, however, simply states, “[s]ee answer to interrogatory number 19.” This response is insufficient, however, because, as discussed above, mere reference to other interrogatory answers does not comply with FED. R. CIV. P. 33(b)(3) and is particularly problematic in light of Plaintiff’s inadequate response to Interrogatory No. 19. Therefore, please promptly provide a supplemental response to Interrogatory No. 20 that substantively responds to the interrogatory.

II. Defendant Nanal, Inc.’s First Set of Requests for Production Nos. 1-29 to Plaintiff Soaring Helmet Corporation and Objections and Responses Thereto.

In its response to Interrogatory No. 2, Plaintiff references an email that was sent to Plaintiff in approximately December 2009 by one of Plaintiff’s sale representatives. Upon review of Plaintiff’s limited document production to-date, however, Plaintiff appears to have failed to produce that email, notwithstanding that the email (and any responses or other documents relating thereto) would be responsive to Nanal’s **Request for Production No. 1** (as well as other requests, including but not limited to **Request for Production Nos. 6, 9, 10, 14, 26**

Heather M. Morado, Esq.
August 11, 2010
Page 3

and 28). As a result, please promptly supplement Plaintiff's document production with the email and related documents or provide an explanation if Plaintiff is unable to do so.

In its Requests for Production, Nanal sought indisputably relevant discovery regarding Plaintiff's computation of alleged damages in this matter and specifically documents relating to or supporting those damages, in particular **Request for Production Nos. 17, 20, 24 and 27.** Based on a review of Plaintiff's limited document production to-date, however, it appears that Plaintiff has produced *no* documents responsive to these requests. There can be no dispute that the requested documents are relevant and the proper subject of discovery, as evidenced by the fact that Plaintiff made no objection to these requests. Therefore, please promptly supplement Plaintiff's document production with all documents responsive to these requests or confirm that Plaintiff has no responsive documents.

III. Plaintiff's Amended Initial Disclosures Pursuant to FED. R. CIV. PRO. 26(a)(1).

In Plaintiff's Amended Initial Disclosures, a copy of which Nanal received in February 2010, Plaintiff represented that it would produce certain documents, specifically: (1) "Documents pertaining to the use of the marks set forth in the Complaint;" (2) "Documents pertaining to the marketing and advertising of Soaring Helmet's products bearing the VEGA mark;" and (3) "Documents and other evidentiary material bearing on the nature and extent of injury to Soaring Helmet by reason of actions alleged in the Complaint."

Please advise whether Plaintiff has produced all such identified documents or, if it has not, when those documents will be produced.

Please let me know your availability for a conference to discuss these issues. I will be out of the office on Friday, August 13, 2010 and Monday, August 16, 2010, but am available any other day this week and next week. Because the deadline for filing any discovery motions is August 20, 2010, however, we request that the conference take place no later than Thursday, August 19, 2010, in the event we are unable to resolve the issues addressed herein.

Sincerely,

HENDRICKS & LEWIS PLLC



Stacia N. Lay

via email