

Exhibit H

September 15, 2010

Heather M. Morado
Email: hmorado@inyictalaw.com**VIA EMAIL sl@hllaw.com**
and FIRST CLASS MAILMs. Katherine Hendricks
Ms. Stacia Lay
HENDRICKS & LEWIS, PLLC
901 Fifth Avenue, Suite 4100
Seattle, WA 98164**Re: Soaring Helmet Corporation v. Nanal, Inc.**
Cause No. C09-0749 JLR

Dear Kate and Stacia:

Nanal's responses to Soaring Helmet's discovery requests remain deficient, and we request your immediate attention to these deficiencies. In our Rule 37 discovery conference on August 18, 2010, Ms. Lay agreed that Nanal would provide answers to interrogatory numbers 3, 5, and 12, and also provide a response to request for production number 15. This agreement was confirmed in my e-mail correspondence to Ms. Lay of the same date, which is attached as Exhibit A. Most of these requests relate to Nanal's profits.

In my follow-up letter to the discovery conference dated August 20, 2010, I made it clear that Soaring Helmet would pursue discovery related to an award of Nanal's profits as a possible measure of Soaring Helmet's damages in this case. See Exhibit B. For that reason, the information requested regarding Nanal's profits is critical. In the letter, we also reserved the right to ask the Court for relief if Nanal did not provide sufficient discovery responses as agreed in our discovery conference.

Nanal has not provided responses to these discovery requests as agreed in the discovery conference. You have refused to stipulate to an extension of the discovery period, so the deposition of Mr. Bootesaz will proceed on Monday, September 20th. It is imperative that we receive the above-referenced discovery responses in order to prepare for the deposition. Given that these discovery responses are already overdue, we expect to receive them by the close of business on Thursday, September 16th. If we do not receive the responses, we reserve the right to take a second deposition of Mr. Bootesaz, and we will also

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ask the Court for sanctions for Nanal's failure to comply with the discovery rules, and for fees and costs associated with both depositions.

Please contact me if you have any questions.

Very truly yours,

INVICTA LAW GROUP, PLLC



Heather M. Morado

HMM:kma

cc: Jeanne DeMund

Exhibit A

Heather Morado

From: Stacia Lay <SL@hllaw.com>
Sent: Wednesday, August 18, 2010 2:42 PM
To: Heather Morado
Subject: RE: Soaring Helmet v. Nanal, conference re discovery

Heather,

Thanks for your email.

I had just a few clarifications or corrections.

Re (2), Request for Production No. 8 is not one that Nanal did not respond to pending entry of the protective order. Other than that correction, (2) is accurate.

Re (3), I will obtain the best image of the motorcycle jacket, which may be in a form other than a photograph (i.e., by way of example only, catalog, digital image, etc.).

Re (6), I believe the Interrogatories should be 5, 12 and 14, not 13. Other than that correction, (6) is accurate.

Regarding the deposition dates, I have communicated with Mr. Bootesaz but do not have specific dates yet. He did mention that he would need accommodation for the Jewish holiday, which I assume would not be a problem. And regarding an approximate timetable for supplementation of Nanal's responses, I will forward that information to you as soon as possible.

In addition, I thought I'd confirm our conversation today with regard to Soaring Helmet's discovery responses. Specifically, Soaring Helmet agreed as follows:

- (a) Interrogatory No. 2, to provide supplemental information, namely, contact information for Jim Squire.
- (b) Interrogatory Nos. 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20 and 21, to provide supplemental responses that do not refer to other interrogatory responses.
- (c) Interrogatory Nos. 19 and 20 and Requests for Production Nos. 17, 20, 24 and 27, to provide supplemental responses/documents pertaining to damages, which you said you expected from your client today.
- (d) Interrogatory No. 2 and related Requests for Production (Nos. 1, 6, 9, 10, 14, 26, and 28), to provide a supplemental response to the interrogatory correcting the reference to the December 2009 email, which you stated was in fact a telephone conversation.
- (e) Amended Initial Disclosures, to follow-up with your client regarding the documents specified therein for production.

Please also let me know approximately when you expect to supplement these responses. I will also be in touch soon to begin discussing possible dates for the depositions of individuals identified by Soaring Helmet in response to Nanal's discovery requests.

Regards,
Stacia

Stacia N. Lay
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From: Heather Morado [<mailto:hmorado@invictalaw.com>]
Sent: Wednesday, August 18, 2010 1:27 PM
To: Stacia Lay
Subject: RE: Soaring Helmet v. Nanal, conference re discovery

Stacia,
I wanted to confirm that pursuant to our telephone conversation today, Nanal will produce the following:

- 1) Requests for production numbers 1, 2, 9, 13, 14, 18, 19, 23, 24, 26, 27, and 28 - Nanal will either produce responsive documents or state that there are no responsive documents.
- 2) Requests for production numbers 6, 7, 8, 11, and 15 - Nanal will produce responsive documents pursuant to the protective order.
- 3) Request for production number 3 - Nanal will produce a photograph of the motorcycle jacket. Soaring Helmet reserves the right to ask for a sample of the jacket but is not requesting one at this time.
- 4) Requests for production numbers 16 and 17 - Nanal will not be producing these documents.
- 5) Interrogatory number 3 - Nanal will supplement its response with regard to motorcycle jackets.
- 6) Interrogatories numbers 5, 12, and 13 - Nanal will supplement its responses, pursuant to the protective order.
- 7) Interrogatories numbers 8, 9, 10, and 11 - Nanal will supplement its responses with regard to internet search engines other than Google.

Also, please let me know the approximate date by which we should expect to receive supplemental responses / production. In addition, please advise as to when Mr. Bootesaz will be available for a deposition.

Best,

Heather M. Morado | Invicta Law Group, PLLC
Counsel for creative companies

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Exhibit B

August 20, 2010

Heather M. Morado
Email: hmorado@invictalaw.com**VIA EMAIL sl@hllaw.com**
and FIRST CLASS MAILMs. Stacia N. Lay
HENDRICKS & LEWIS, PLLC
901 Fifth Avenue, Suite 4100
Seattle, WA 98164**Re: Soaring Helmet Corporation v. Nanal, Inc.**
Cause No. C09-0749 JLR

Dear Stacia:

I am writing to follow-up on our discovery conference and particularly, outstanding discovery requests related to Soaring Helmet's calculation of damages. In its complaint, Soaring Helmet requested an award of monetary damages in the form of Soaring Helmet's lost profits and/or an award of Nanal's profits gained from the infringement. So there is no confusion, be advised that Soaring Helmet intends to engage and complete discovery related to an award of Nanal's profits as a possible measure of Soaring Helmet's damages in this case.

The Lanham Act provides for the recovery of the defendant's profits. See *15 U.S.C. §1117(a)*. Critically, a plaintiff does not need to show actual damage to obtain an award reflecting the infringer's profits. *Lindy Pen Co. v. Bic Pen Corp.*, 982 F.2d 1400, 1410-11 (9th Cir. 1993) (internal quotation and citation omitted). See also *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1146 (9th Cir. 1997) (the district court has discretion to fashion relief, including monetary relief, based on the totality of the circumstances). Because proof of actual damage is often difficult, a court may award damages based solely on defendant's profits on a theory of unjust enrichment. *Lindy Pen*, 982 F.2d at 1407 (citing 2 J. Thomas McCarthy, *Trademarks and Unfair Competition* § 30:27, at 511 (2d ed. 1984).

At this time, Soaring Helmet will not file a motion to compel Nanal's answers to Soaring Helmet's Requests for Production numbers 16 and 17 (requesting copies of Nanal's tax returns and corporate financial statements). However, Soaring Helmet reserves the right to ask the Court for relief if Nanal does not provide sufficient responses to interrogatory

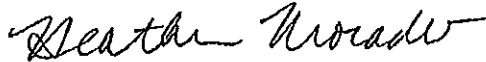
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numbers 5, 12, and request for production number 15 (requesting sales information related to motorcycle jackets and helmets), as agreed in our discovery conference. Soaring Helmet will also amend its interrogatory responses related to its calculation of damages accordingly.

Please contact me if you have any questions.

Very truly yours,

INVICTA LAW GROUP, PLLC



Heather M. Morado

HMM:kma

cc: Jeanne DeMund