

EXHIBIT 10

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The Honorable James L. Robart

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. C09-0789-JLR

DEFENDANT NANAL, INC.'S
CORRECTED RESPONSES TO
PLAINTIFF SOARING HELMET
CORPORATION'S INTERROGATORIES
NOS. 1-4, 6-11, 13 AND 15-18

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Western District of Washington, Defendant Nanal, Inc. ("Defendant" or "Nanal") hereby provides the following CORRECTED responses to Plaintiff Soaring Helmet Corporation's ("Plaintiff") Interrogatories Nos. 1-4, 6-11, 13 and 15-18.

GENERAL OBJECTIONS

1. Nanal objects to each interrogatory to the extent it requests information outside the scope of discovery authorized by the Federal Rules of Civil Procedure, i.e., information not reasonably calculated to lead to the discovery of admissible evidence.

2. Nanal objects to each interrogatory to the extent it requests information that is protected by the attorney-client privilege and/or the attorney work product doctrine. Nanal will not provide such information and will assume the interrogatories apply only to that information falling outside the scope of the attorney-client privilege and the attorney work product doctrine.

DEFENDANT'S CORRECTED RESPONSES TO PLAINTIFF'S
INTERROGATORIES NOS. 1-4, 6-11, 13 AND 15-18 (C09-0789-JLR) - 1
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901 Fifth Avenue, Suite 4100
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1 the ground that it is overbroad to the extent that Plaintiff purports to have rights to "the Mark" in
2 connection with products other than motorcycle helmets. Subject to and without waiving its
3 objections, Nanal responds as follows:

4 Nanal did not "use" Plaintiff's alleged trademark VEGA, Registration No. 2,087,637.
5 Pursuant to Google's AdWords service, Nanal purchased the keyword terms "vega helmets" on or
6 about September 1, 2008, and discontinued use on or about April 3, 2009.

7 **INTERROGATORY NO. 3.** State why you selected the Mark for use in
8 connection with the marketing and sale of products, including but not limited to motorcycle
9 jackets, and identify the person who was primarily responsible for the selection of the Mark.

10 **RESPONSE TO INTERROGATORY NO. 3:**

11 In addition to the General Objections, Nanal objects to Interrogatory No. 3 to the extent it
12 seeks an admission that Nanal "used" "the Mark." Nanal further objects to Interrogatory No. 3 on
13 the ground that it is overbroad to the extent that Plaintiff purports to have rights to "the Mark" in
14 connection with products other than motorcycle helmets. Subject to and without waiving its
15 objections, Nanal responds as follows:

16 Nanal did not "use" Plaintiff's alleged trademark VEGA, Registration No. 2,087,637.
17 Nanal selected the keyword terms "vega helmets" using the automated Google AdWords keyword
18 tool that suggests keywords based on user input. Nanal input the generic term "helmet" into the
19 Google AdWords keyword suggestion tool and it suggested "vega helmet." Albert Bootesaz,
20 President of Nanal, was primarily responsible for selecting the keyword terms through use of
21 Google's Adwords keyword suggestion tool. In further response, based on Nanal's investigation
22 to-date, Nanal did not use the word "vega" in connection with a motorcycle jacket as alleged in
23 Plaintiff's Second Amended Complaint and Exhibit E thereto.

24 **INTERROGATORY NO. 4.** Describe the steps you took (including when the steps
25 were taken and by whom), if any, to investigate whether it would be legally appropriate for you to
26 use the Mark, including whether any trademark searches were conducted.

1 **CORRECTED RESPONSE TO INTERROGATORY NO. 4:**

2 In addition to the General Objections, Nanal objects to Interrogatory No. 4 to the extent it
3 purports to seek information protected by the attorney-client privilege and/or attorney work
4 product doctrine and purports to seek a legal conclusion. Nanal further objects to Interrogatory
5 No. 4 to the extent it seeks an admission that Nanal “used” “the Mark.” Subject to and without
6 waiving its objections, Nanal responds as follows:

7 Nanal did not “use” Plaintiff’s alleged trademark VEGA, Registration No. 2,087,637.
8 Nanal selected the keyword terms “vega helmets” using the automated Google AdWords keyword
9 tool that suggests keywords based on user input. Nanal input the generic term “helmet” into the
10 Google AdWords keyword suggestion tool and it suggested “vega helmet.” Nanal first purchased
11 the keyword terms on or about September 1, 2008, and the use was discontinued on or about April
12 3, 2009. Albert Bootesaz, President of Nanal, was primarily responsible for selecting the keyword
13 terms through use of Google’s AdWords keyword suggestion tool. No trademark searches were
14 necessary and none were conducted.

15 **INTERROGATORY NO. 6.** Identify the channels of trade in which you market
16 and sell products, including but not limited to motorcycle jackets.

17 **RESPONSE TO INTERROGATORY NO. 6:**

18 In addition to the General Objections, Nanal objects to Interrogatory No. 6 on the grounds
19 that it is overbroad and is not reasonably calculated to lead to the discovery of admissible evidence
20 in that it is not limited to the specific goods allegedly relevant to Plaintiff’s claims in this action.
21 Subject to and without waiving its objections, Nanal responds as follows:

22 The Internet and specifically Nanal’s website, www.leatherup.com.

23 **INTERROGATORY NO. 7.** Identify the purchasers by class (e.g., retailers,
24 general public) of each product sold by you, including but not limited to motorcycle jackets.

25 **RESPONSE TO INTERROGATORY NO. 7:**

26 In addition to the General Objections, Nanal objects to Interrogatory No. 7 on the grounds
27 that it is overbroad and is not reasonably calculated to lead to the discovery of admissible evidence
28

1 in that it is not limited to the specific goods allegedly relevant to Plaintiff's claims in this action.

2 Subject to and without waiving its objections, Nanal responds as follows:

3 Nanal sells to the general public through its website, www.leatherup.com.

4 **INTERROGATORY NO. 8.** State the date (month, day, and year) of your first
5 purchase of the Keywords, and identify each internet search engine from which the Keywords
6 were purchased.

7 **CORRECTED RESPONSE TO INTERROGATORY NO. 8:**

8 In addition to the General Objections, Nanal objects to Interrogatory No. 8 on the ground
9 that it is overbroad to the extent the term "the Keywords" is intended to include the term
10 "helmets," a generic term to which Plaintiff has no exclusive rights. Subject to and without
11 waiving its objections, Nanal responds as follows:

12 Pursuant to Google's AdWords service, Nanal purchased the keyword terms "vega
13 helmets" on or about September 1, 2008, and discontinued use on or about April 3, 2009. Nanal
14 did not purchase the keyword term "vega" from any other Internet search engine.

15 **INTERROGATORY NO. 9.** State why you selected the Keywords for use in
16 connection with the marketing of your goods and services, and identify the person who was
17 primarily responsible for the selection of the Keywords.

18 **RESPONSE TO INTERROGATORY NO. 9:**

19 In addition to the General Objections, Nanal objects to Interrogatory No. 9 on the ground
20 that it is overbroad to the extent the term "the Keywords" is intended to include the term
21 "helmets," a generic term to which Plaintiff has no exclusive rights. Subject to and without
22 waiving its objections, Nanal responds as follows:

23 Nanal selected the keyword terms "vega helmets" using the automated Google AdWords
24 keyword tool that suggests keywords based on user input. Nanal input the generic term "helmet"
25 into the Google AdWords keyword suggestion tool and it suggested "vega helmet." Albert
26 Bootesaz, President of Nanal, was primarily responsible for selecting the keyword terms through
27 use of Google's AdWords keyword suggestion tool. Nanal did not purchase the keyword term
28 "vega" from any other Internet search engine.

1 **INTERROGATORY NO. 10.** Describe the steps you took (including when the steps
2 were taken and by whom), if any, to investigate whether it would be legally appropriate for you to
3 use the Keywords.

4 **CORRECTED RESPONSE TO INTERROGATORY NO. 10:**

5 In addition to the General Objections, Nanal objects to Interrogatory No. 10 to the extent it
6 purports to seek information protected by the attorney-client privilege and/or attorney work
7 product doctrine and purports to seek a legal conclusion. Nanal further objects to Interrogatory
8 No. 10 on the ground that is overbroad to the extent the term “the Keywords” is intended to
9 include the term “helmets,” a generic term to which Plaintiff has no exclusive rights. Subject to
10 and without waiving its objections, Nanal responds as follows:

11 Nanal selected the keyword terms “vega helmets” using the automated Google AdWords
12 keyword tool that suggests keywords based on user input. Nanal input the generic term “helmet”
13 into the Google AdWords keyword suggestion tool and it suggested “vega helmet.” Nanal first
14 purchased the keyword terms on or about September 1, 2008, and the use was discontinued on or
15 about April 3, 2009. Albert Bootesaz, President of Nanal, was primarily responsible for selecting
16 the keyword terms through use of Google’s AdWords keyword suggestion tool. Nanal did not
17 purchase the keyword term “vega” from any other Internet search engine and therefore does not
18 have information responsive to this interrogatory pertaining to search engines other than Google.

19 **INTERROGATORY NO. 11.** State the number of times an advertisement for the
20 Website was displayed in response to a consumer search utilizing the Keywords, and the amount
21 of “clicks” generated to the Website as a result of a search utilizing the Keywords, i.e., the number
22 of times a consumer clicked on the Website after viewing an advertisement generated by the
23 Keywords.

24 **RESPONSE TO INTERROGATORY NO. 11:**

25 In addition to the General Objections, Nanal objects to Interrogatory No. 11 on the ground
26 that it is overbroad to the extent the term “the Keywords” is intended to include the term
27 “helmets,” a generic term to which Plaintiff has no exclusive rights. Subject to and without
28 waiving its objections, Nanal responds as follows:

DEFENDANT’S CORRECTED RESPONSES TO PLAINTIFF’S
INTERROGATORIES NOS. 1-4, 6-11, 13 AND 15-18 (C09-0789-JLR) - 6
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1 Total number of times the leatherup.com advertisement was reviewed by users in
2 connection with the Google AdWords service is 40209, which resulted in 2457 clicks. Nanal did
3 not purchase the keyword term "vega" from any other Internet search engine and therefore does
4 not have information responsive to this interrogatory pertaining to search engines other than
5 Google.

6 **INTERROGATORY NO. 13.** Identify all media (e.g., internet, newspapers,
7 magazines, trade journals, radio and/or television stations, etc.) where you have advertised your
8 goods and/or services.

9 **RESPONSE TO INTERROGATORY NO. 13:**

10 In addition to the General Objections, Nanal objects to Interrogatory No. 13 on the grounds
11 that it is overbroad and is not reasonably calculated to lead to the discovery of admissible evidence
12 in that it is not limited as to time or the specific goods allegedly relevant to Plaintiff's claims in
13 this action. Subject to and without waiving its objections, Nanal responds as follows:

14 The Internet and specifically Nanal's website, www.leatherup.com.

15 **INTERROGATORY NO. 15.** Set forth fully the facts and circumstances regarding
16 how and when you first became aware or otherwise gained any knowledge of the existence of
17 Plaintiff, the products and/or services offered by Plaintiff, and/or Plaintiff's use of the Mark.

18 **RESPONSE TO INTERROGATORY NO. 15:**

19 Subject to and without waiving its General Objections, Nanal responds as follows:

20 To the best of the recollection of Albert Bootesaz, President of Nanal, he was not aware of
21 Plaintiff until he received notice of the present action.

22 **INTERROGATORY NO. 16.** Set forth fully the facts and circumstances regarding
23 whether you investigated Plaintiff after you became aware of Plaintiff's existence and its use of
24 the Mark.

25 **RESPONSE TO INTERROGATORY NO. 16:**

26 Subject to and without waiving its General Objections, Nanal responds as follows:

27 Nanal did not investigate Plaintiff.
28

1 **INTERROGATORY NO. 17.** Identify the geographical areas in which you have
2 sold products and/or services.

3 **RESPONSE TO INTERROGATORY NO. 17:**

4 In addition to the General Objections, Nanal objects to Interrogatory No. 17 on the grounds
5 that it is overbroad and is not reasonably calculated to lead to the discovery of admissible evidence
6 in that it is not limited to the specific goods allegedly relevant to Plaintiff's claims in this action.
7 Subject to and without waiving its objections, Nanal responds as follows:

8 Nanal cannot state with precision all of the geographical areas in which its products have
9 been sold without a detailed review of Nanal's records of sales. However, Nanal sells its products
10 through the Internet at its website www.leatherup.com, therefore, Nanal's products are available
11 for purchase nationally and internationally.

12 **INTERROGATORY NO. 18.** Set forth fully the facts and circumstances regarding
13 any incidents where a person or entity has been confused, mistaken or deceived as to the source of
14 goods or services sold by you and the goods or services sold by Plaintiff.

15 **RESPONSE TO INTERROGATORY NO. 18:**

16 Subject to and without waiving its General Objections, Nanal responds as follows:

17 Other than allegations of confusion by Plaintiff in its Second Amended Complaint and its
18 responses to discovery in this action, Nanal is not aware of any such alleged incidents.

19 DATED this 16th day of September, 2010.

HENDRICKS & LEWIS PLLC

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21 By:


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23
24
25 Attorneys for Defendant Nanal, Inc.

1 **PROOF OF SERVICE**

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

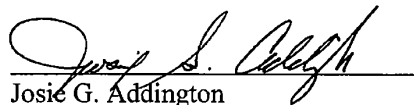
5 I hereby certify that on September 16, 2010, I served, via hand delivery by ABC Legal
6 Messenger Service, DEFENDANT NANAL, INC.'S CORRECTED RESPONSES TO
7 PLAINTIFF SOARING HELMET CORPORATION'S INTERROGATORIES NOS. 1-4, 6-11,
8 13 AND 15-18, on the person(s) listed below:

9 Heather M. Morado, Esq.
10 Stacie Foster, Esq.
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20 Attorneys for Plaintiff Soaring Helmet Corporation

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

23 Executed September 16, 2010, at Seattle, Washington.

24 
25 Josie G. Addington