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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SOARING HELMET CORPORATION, a  
Washington Corporation,

Plaintiff,

v.

NANAL, INC., a Nevada corporation, d/b/a  
LEATHERUP.COM,

Defendant.

Cause No. C09-0789 JLR

SOARING HELMET’S RESPONSE TO  
DEFENDANT’S MOTIONS IN LIMINE

**I. INTRODUCTION**

Defendant’s motions in limine share a single theme: they are redundant attempts to exclude evidence relating to topics upon which it has not taken any discovery. In most cases, the issues which form the basis of each motion were addressed, and denied, in Defendant’s unsuccessful motion for summary judgment. The Court should likewise deny these motions.

1           **II.       MOTION TO STRIKE DECLARATION OF KATHERINE HENDRICKS**

2           The Declaration of Katherine Hendricks in Support of Defendant Nanal, Inc.'s  
3           Motions in Limine (the "Hendricks Declaration") should be stricken in its entirety pursuant  
4           to CR 7(g), Federal Rule of Evidence 801, Model Rule of Professional Conduct 3.7, and  
5           Fed.R.Civ.P. 37(c)(1). Ms. Hendricks, Defendant's lead trial counsel, seeks to place in  
6           evidence portions of an interview and/or conversation she had with Jim Squire of Holiday  
7           Powersports, a Michigan business. Ms. Hendricks conveys what she purports to be some or  
8           all of Mr. Squire's statements, apparently in response to prompting by Ms. Hendricks.

9           The Hendricks Declaration is fatally deficient and inadmissible for numerous  
10          reasons. First, pursuant to Federal Rule of Evidence 801, all of the substantive statements by  
11          Ms. Hendricks are pure hearsay, as they are offered only for the truth of the matter she is  
12          asserting, i.e., that she had a conversation with Mr. Squire in which he made certain  
13          statements when questioned by Ms. Hendricks. The statements of Mr. Squire are also pure  
14          hearsay under ER 801, for the same reason. No basis for any exception to the hearsay rule  
15          applies to any of the statements offered by any party in the Hendricks Declaration.

16          More troubling is that the Hendricks Declaration is testimony from an attorney  
17          representing a party in a lawsuit. As opposed to offering a declaration properly providing  
18          admissible procedural facts or background, or providing a foundation for or authentication of  
19          otherwise admissible documents, the Hendricks Declaration seeks to offer only substantive  
20          testimony on facts that are core to the claims and defenses asserted by the parties to the case.  
21          A lawyer shall not act as advocate where the lawyer is a witness. See Model Rules of  
22

1 Professional Conduct 3.7.<sup>1</sup> Because the testimony relates to contested issues, no exception to  
2 this Rule applies.

3 Additionally, Ms. Hendricks has never been listed as a witness in any disclosure,  
4 discovery response, or pleading in this case. As such, Ms. Hendricks' testimony is untimely,  
5 undisclosed evidence and should be stricken pursuant to Fed.R.Civ.P. 37(c)(1), which  
6 provides that where a party fails to identify a witness as required by Rule 26(a) or (e), a party  
7 is not allowed to use that witness to supply evidence on a motion, at hearing, or trial.

8 Finally, to the extent that the Declaration is not withdrawn or excluded by the Court,  
9 it is clear that the proffering of the interview statements in this context constitutes a complete  
10 waiver of any work product immunity that might otherwise apply to Ms. Hendricks'  
11 investigation and examination of Mr. Squire. Further, to the extent that the Hendricks  
12 Declaration is not stricken, Defendant should be required to immediately provide a complete  
13 supplementation of Defendant's discovery responses so that the complete records, including  
14 Ms. Hendricks' notes, summaries, or other documentation, relating to the interview of Mr.  
15 Squire, are properly disclosed.

### 16 III. ARGUMENT

#### 17 A. Defendant's Motion in Limine to exclude Soaring Helmet's Evidence of 18 Damages Should Be Denied.

- 19 i) **Defendant provides no support for its claim that Plaintiff is required to**  
20 **produce a precise mathematical computation of damages prior to trial.**

21 Defendant claims that Soaring Helmet's evidence of actual damages should be  
22 excluded because Soaring Helmet is required to assert a specific, final computation of

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23 <sup>1</sup> See also Washington Rule of Professional Conduct 3.7.



1 damages, rather than the categories of damages, supported by evidence, which is required by  
2 CR 26.

3 Courts have upheld awards of Plaintiff's actual damages, even when the Plaintiff had  
4 produced *no evidence* of its lost profits. For example, in *Skydive Arizona, Inc. v. Quattrochi*,  
5 704 F.Supp.2d 841, 850-51 (D. Ariz. 2010), the Court upheld the jury's award of \$1,000,000  
6 as plaintiff's actual damages sustained as a result of Defendant's false advertising, despite the  
7 fact that Plaintiff had not produced *any evidence* of its lost profits:

8 "Defendants argue, in essence, that Plaintiff failed to provide evidence quantifying its  
9 actual damages. It is true that *Plaintiff did not introduce any evidence* regarding its  
10 lost profits...Lost profits, however, were not the only factor the jury was permitted to  
11 consider when determining actual damages. The instruction also told the jury to  
12 consider: (1) injury to the Plaintiff's reputation; (2) injury or loss of Plaintiff's  
13 goodwill, including injury to general business reputation; (3) the expense of  
14 preventing customers from being deceived; and (4) the cost of future corrective  
15 advertising reasonably required to correct public confusion caused by the  
16 infringement. To this end, Plaintiff introduced evidence concerning its advertising  
17 expenditures between 1997 to 2007, i.e., money spent promoting its mark...A jury  
18 may properly take such expenditures into account when attempting to quantify the  
19 loss of a plaintiff's goodwill." (emphasis added).

20 In this case, Soaring Helmet has produced spreadsheets showing the amount of its  
21 dealer purchases in Michigan, the amount of its dealer purchases in the United States, as well  
22 as evidence of its advertising and promotional expenditures. Further, Soaring Helmet's Vice  
23 President will testify, and would have testified had she been deposed, as to which of the  
listed retailers serve as comparable damages to the lost retailer, Holiday Powersports. While  
similar numbers are not available for the XElement Vega jacket, Defendant has produced  
evidence of its total sales of XElement products, which, as discussed below, will provide a  
basis for damages. The foregoing evidence is more than sufficient to support Soaring  
Helmet's claim for actual damages. See also *Sega Enterprises, Ltd. v. MAPHIA*, 948 F.Supp.

1 923, 941 (N.D.Cal. 1996) (Plaintiff was awarded its actual damages, despite the fact that:  
2 “[Plaintiff] has presented no evidence regarding its damages or profits. If [Plaintiff] wishes  
3 to provide actual damages or lost profits, the matter will be referred to the Chief Magistrate  
4 Judge or his designee to hold a hearing on the issue.”) Thus, Defendant’s motion to exclude  
5 Soaring Helmet’s evidence of its actual damages should be denied.

6 **B. Soaring Helmet has shown causation, both as to its damages for the false Google**  
7 **advertisement and as to its damages for the XElement Vega jacket.**

8 Defendant argues that Soaring Helmet has not shown that Defendant’s infringement  
9 caused Soaring Helmet to suffer damages, either from Defendant’s “50% Off Vega Helmets”  
10 false advertisement, or from Defendant’s infringing XElement Vega jacket. Defendant  
11 ignores the presumption that once Soaring Helmet shows that Defendant made illegal sales  
12 (which Defendant admitted, *See* Bootesaz Dec. in Support of Motion for Summary  
13 Judgment, ¶6), the burden shifts to Defendant to prove that there was no causal connection  
14 between its profits and unlawful conduct. *Conopco, Inc. v. May Dept. Stores Co.*, 784 F.  
15 Supp. 648, (E.D. Mo. 1992), opinion amended, 797 F. Supp. 740 (E.D. Mo. 1992) and  
16 judgment rev’d on other grounds, 46 F.3d 1556 (Fed. Cir. 1994), reh’g denied, in banc  
17 suggestion declined, (Nov. 29, 1994). The evidence submitted by Defendant – its partial  
18 Google sales records – show its profits resulting from the false advertisement, and Defendant  
19 has made no effort to rebut the presumption that the profits were based exclusively on the  
20 infringing activity. With regard to the XElement Vega jackets, Defendant has refused to  
21 produce its sales information, despite Soaring Helmet’s repeated requests. However, Soaring  
22 Helmet will show at trial that Defendant did in fact make these infringing sales. Defendant’s  
23 failure to meet its discovery obligations should not support its claim of lack of sufficient



1 evidence, particularly since the need for speculation is the direct result of Defendant's own  
2 malfeasance. See, e.g., *Australian Gold, Inc. v. Hatfield*, 436 F.3d 1228, 1241 (10<sup>th</sup> Cir.  
3 2006).<sup>2</sup> Thus, Soaring Helmet has produced sufficient evidence supporting its claim of  
4 damages caused by Defendant's infringement.

5 **C. Defendant's Motion to Exclude Soaring Helmet's Evidence of Actual Confusion**  
6 **Should Be Denied.**

7 **i) Soaring Helmet's evidence of actual confusion is not precluded by the**  
8 **hearsay rule.**

9 Contrary to Defendant's suggestion, the majority of courts have held that testimony  
10 related to actual confusion of customers is not hearsay because it is not offered to prove the  
11 truth of any customer's assertion that there is a connection or affiliation between the parties,  
12 but only to prove the confused state of mind of the customer. See McCarthy on Trademarks  
13 § 23:15; *Mustang Motels, Inc. v. Patel*, 226 U.S.P.Q. 526, 527, n.1, 1985 WL 72659 (C.D.  
14 Cal. 1985) (testimony of plaintiff's employees that customers phoned plaintiff asking for  
15 information about defendant held not inadmissible as hearsay, the evidence was offered to  
16 prove that callers made the assertions, not to prove the truth of their statements); *Conversive,*  
17 *Inc. v. Conversagent, Inc.*, 433 F.Supp.2d 1079, 1092, 79 U.S.P.Q.2d 1284 (C.D. Cal. 2006)  
18 (plaintiff's employees' testimony as to what their customers told them is admissible evidence  
19 and is not barred by the hearsay rule).

20 <sup>2</sup> Further, Defendant's case citations are not on point and misleading. For example, Defendant cites *Taylor*  
21 *Made Golf Co. v. Carsten Sports, Ltd.*, 175 F.R.D. 658-661 (S.D. Cal. 1997), for the proposition that absent  
22 proof of actual damages in "dollars and cents", no monetary award may be made. In fact, that sentence was  
23 merely introductory dicta. The court went on to hold that it was entirely reasonable to grant (and treble) a  
damages award that was imprecise, when the Defendant was entirely uncooperative in presenting evidence of its  
ill-gotten profits. The Court cited *Nintendo v. Ketchum*, 830 F.Supp. 1443, 1445-1446, (M.D.Fla.1993) for the  
proposition that, "doubts about the actual assessment of damages will be resolved against the party who  
frustrates proof of such, and the factfinder may calculate damages at the highest reasonably ascertainable  
value." Contrary to Defendant's citation, there were no actual "dollars and cents" put forth as evidence of  
damages in that case, but merely an attorney's estimate of damages.

1 Soaring Helmet's evidence of actual confusion includes the following: 1) the  
2 confused Michigan distributor who refused by carry VEGA® products after viewing the false  
3 Google advertisement; 2) the 2,457 confused customers that Defendant admits were diverted  
4 to the Leatherup website as a result of the false Google advertisement; 3) the confused sales  
5 representative of Soaring Helmet that was unsure as to whether Soaring Helmet had  
6 manufactured or licensed the XElement Vega jacket; and 4) the confused dealer of Soaring  
7 Helmet that did not know whether Soaring Helmet had manufactured or licensed the  
8 XElement Vega jacket. Soaring Helmet's evidence of actual confusion is not hearsay  
9 because the statements are not offered for the truth of the matter asserted. i.e., that Defendant  
10 sold VEGA® products. *See* Fed.R.Evid. 801(c). Further, the statements are also admissible  
11 under an exception to the hearsay rule because they are offered to show the then-existing  
12 state of mind of the declarant. *See* Fed.R.Evid. 803(3); *See Conversive, Inc. v. Conversagent,*  
13 *Inc.*, 433 F. Supp. 2d at 1091. These instances of actual confusion are strong evidence that  
14 confusion among consumers is likely.<sup>3</sup>

15 **ii) Non-purchaser confusion is probative of purchaser confusion.**

16 The instance of actual confusion involving Soaring Helmet's representative is also  
17 relevant to the issue of likelihood of confusion, notwithstanding the fact that the  
18 representative was not a direct purchaser of Soaring Helmet's products. Injury from  
19 confusion can occur not just from loss of sales, but also through damage to reputation and  
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22 <sup>3</sup> Further, the confusion involving Joy Loga (Soaring Helmet's sales representative) will not involve double  
23 hearsay because Joy Loga will testify at trial regarding the incident involving the phone call she received from  
one of Soaring Helmet's top dealers who mistakenly believed that Soaring Helmet had manufactured or  
licensed the XElement Vega motorcycle jacket.



1 goodwill. Damage to reputation and goodwill can be triggered by confusion among non-  
2 purchasers. See *Beacon Mut. Ins. Co. v. One Beacon Ins. Group*, 376 F.3d 8, 10 (2004)  
3 (Confusion among non-purchasers probative because it “presents a significant risk to the  
4 sales, goodwill, or reputation of the trademark owner”); *Mid-State Aftermarket Body Parts,*  
5 *Inc. v. MQVP, Inc.*, 466 F.3d 630, 80 U.S.P.Q.2d 1534 (8<sup>th</sup> Cir. 2006) (Confusion of non-  
6 purchaser end-users of auto parts relevant because they could exacerbate confusion of the  
7 manufacturers and distributors who were potential customers of plaintiff’s certification mark  
8 program).

9 In this case, the confusion of Soaring Helmet’s representative is relevant because  
10 although Ms. Loga was not a direct purchaser of VEGA products, she was in a position to  
11 damage Soaring Helmet’s reputation and goodwill by influencing purchasers of Soaring  
12 Helmet’s products. As a sales representative for Vega, Ms. Loga was in a position to further  
13 damage the goodwill and reputation of Soaring Helmet through her own additional confusion  
14 as to whether or not Soaring Helmet had manufactured or licensed the jacket. Although  
15 different from damage incurred through direct lost sales, this type of damage to goodwill and  
16 reputation is cognizable under the Lanham Act. See 4 McCarthy on Trademarks, § 23:5  
17 (“[A]ctionable confusion need not be limited to potential purchasers whose confusion could  
18 cause a direct loss of sales...damage to reputation and goodwill can be triggered by confusion  
19 among non-purchasers”). Thus, Ms. Loga’s confusion is relevant, actionable confusion  
20 under the Lanham Act.  
21  
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23



1           **D. Soaring Helmet has not waived its claim for injunctive relief.**

2           Defendant grossly mischaracterizes the scope of its own summary judgment motion  
3 and Soaring Helmet’s response thereto with respect to its claim for injunctive relief.<sup>4</sup> First,  
4 its waiver argument is identical to the failed waiver argument (rejected by the Court) it  
5 previously asserted on summary judgment. It is also self-evident that Soaring Helmet filed a  
6 twenty-four page brief, and substantial evidence, opposing Defendant’s summary judgment  
7 motion and requesting that the motion be denied in its entirety. Clearly, the facts submitted  
8 and arguments asserted by Soaring Helmet in response to the summary judgment do not  
9 constitute a waiver of its request for injunctive relief. Indeed, the conclusion to Soaring  
10 Helmet’s brief states that “Soaring Helmet has presented overwhelming evidence of disputed  
11 material facts. Therefore, Soaring Helmet respectfully requests the Court to deny  
12 Defendant’s Motion for Summary Judgment.” Plaintiff’s Response to Defendant’s Motion  
13 for Summary Judgment, p. 24. There is simply no indication in any portion of Soaring  
14 Helmet’s brief of an intent to abandon the remedy of injunction.

15           Defendant also presents no argument as to what specific type of evidence it seeks to  
16 exclude that would somehow permit Soaring Helmet to recover only damages, but not  
17 “injunctive relief” in the form requested by Soaring Helmet since the onset of this lawsuit.  
18 Here, the evidence provided to the Court in response to Defendant’s motion for summary  
19 judgment provides ample factual support for the injunctive relief requested. Thus,  
20 Defendant’s motion to preclude Soaring Helmet from seeking injunctive relief fails because  
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22           <sup>4</sup> The sole case cited by Defendant from a trial court in Indiana is not helpful; there, unlike here, the court  
23 determined on summary judgment that certain specific claims had affirmatively been abandoned and were  
wholly unsupported by evidence. *Morgan v. Snider High School*, No. 1:06-CV-337, 2007 WL 3124524, at \*5  
(N.D. Ind. Oct. 23, 2007).

1 there is no evidence in the record that Soaring Helmet affirmatively waived its claim for  
2 injunctive relief.

3 **E. Evidence of Mr. Bootesaz’s business acumen and experience, including his other**  
4 **business interests, is relevant and admissible.**

5 Defendant mistakenly asserts that Mr. Bootesaz’s other business interests are  
6 irrelevant. However, Defendant has identified Mr. Bootesaz as a primary witness that will  
7 testify at trial on *all aspects of the case*. In Defendant’s CR 16(i)(5) witness disclosure,  
8 Defendant stated:

9 *Albert Bootesaz, president, Nanal, Inc.... Will testify. Mr. Bootesaz is*  
10 *expected to testify about all aspects of the case. In specific but no way*  
11 *limiting example, Mr. Bootesaz is expected to testify about Nanal’s business*  
12 *and specifically its website, LeatherUp.com; Nanal’s use of the Google*  
13 *AdWords program specifically as it relates to the use of keywords; Nanal’s*  
14 *sale of Xelement-branded motorcycle jackets; and all other aspects of the*  
15 *case.*

16 See Declaration of Stacie Foster in Support of Plaintiff’s Response to Defendant’s  
17 Motions in Limine, ¶2, Exh. A, (emphasis added). Plainly, Mr. Bootesaz is Nanal’s key  
18 witness, and there is literally no limitation placed by Defendant upon the scope and breadth  
19 of his testimony. Mr. Bootesaz’s trial testimony will be disputed on numerous issues by  
20 Soaring Helmet’s witnesses and Mr. Bootesaz’s own prior testimony; and his credibility will  
21 be assessed by the factfinder. Soaring Helmet believes that the sophisticated nature and  
22 breadth of Mr. Bootesaz’s business dealings are directly relevant to Mr. Bootesaz’s intentions  
23 in selecting and using Soaring Helmet’s marks. Soaring Helmet seeks to show that because  
of Mr. Bootesaz’s wide ranging business experience and acumen, the frequency with which  
he selects business names or brands for his own companies, and his understanding of the  
legal requirements of names and brands in commerce, he was well aware of the risks and



1 ramifications of choosing to use a particular name – Plaintiff’s trademark - in connection  
2 with his own company’s products and services.

3 Soaring Helmet also believes that Mr. Bootesaz will seek to establish his lack of  
4 willfulness and even his own “good faith” by testifying that he did not know about Soaring  
5 Helmet or VEGA® branded products when he purchased VEGA® as an advertising keyword  
6 from Google. Soaring Helmet believes the evidence will show that Mr. Bootesaz knew of  
7 the existence of Soaring Helmet’s VEGA® products when he purchased the keyword  
8 “Vega.” In addition, Defendant concedes that Mr. Bootesaz will testify to his ownership  
9 and/or other relationship with the manufacturer of the Xelement-branded jacket sold by  
10 Nanal using Soaring Helmet’s VEGA® mark.<sup>5</sup> It is impossible to conclude that Mr.  
11 Bootesaz’s testimony relating to his relationship with this company – whether by ownership  
12 or as a retailer – could be deemed irrelevant.

13 It is obvious that a witness’s business sophistication and experience is relevant to  
14 show his state of mind and knowledge; further, such evidence has little potential for unfair  
15 prejudice. See Fed. R. Evid. 403 (relevant evidence excluded only where potential for unfair  
16 prejudice *outweighs* probative value); *U.S. v. Miell*, 2008 WL 5411692, \*16 (N.D. Iowa,  
17 2008); *Davidson Pipe Co. V. Laventhal and Horwath*, 120 F.R.D. 455, 460 (S.D.N.Y. 1988)  
18 (evidence of sophistication and experience relevant in business transactions is relevant).  
19 Defendant argues that evidence of Mr. Bootesaz’s other business interests will somehow  
20 prejudice Defendant, but provides not one example of how Mr. Bootesaz could be prejudiced  
21

22 \_\_\_\_\_  
23 <sup>5</sup> Soaring Helmet has alleged that Nanal was the manufacturer of the “Xelement Extreme Vega” motorcycle  
jacket. See, e.g., Second Amended Complaint, p.5, ¶ 4.

1 by such evidence. Defendant asserts only a wholly unsubstantiated fear that Mr. Bootesaz  
2 will be “painted” as a “bad” person. Defendant’s Motions in Limine, p. 16.<sup>6</sup> Aside from  
3 being impossibly vague, this assertion is not supported by a single example of how evidence  
4 of Mr. Bootesaz’s other business interests will make him appear “bad” to the factfinder.

5 **F. Soaring Helmet’s federal trademark registration for VEGA TECHNICAL**  
6 **GEAR® is relevant and admissible.**

7 It is undisputed that VEGA TECHNICAL GEAR® is a valid, published, federally  
8 registered trademark. Further, it is undisputed that Soaring Helmet has asserted claims for  
9 relief based upon violation of its trademark rights since the onset of this lawsuit.  
10 Nonetheless, Defendant boldly asserts a ER 403 relevancy objection to evidence that the  
11 Defendant’s conduct infringes upon Soaring Helmet’s trademark registration for VEGA  
12 TECHNICAL GEAR®. The motion should be denied. Defendant is not, in fact, even  
13 making an evidentiary objection. Defendant is rather improperly trying to argue a waiver or  
14 laches defense disguised as a relevancy objection under ER 403.

15 It is telling that Defendant’s Motion in Limine is quite cautiously phrased in that (1) it  
16 does *not* assert the Mark is not relevant,<sup>7</sup> and (2) it does *not* argue that in fact Defendant did  
17 not *know* of this mark. Instead, Defendant offers thin arguments that selectively avoid the  
18 core relevance of the mark, and the Motion relies, wholesale, on an even thinner argument of  
19 prejudice.

20 The VEGA TECHNICAL GEAR® mark is plainly relevant; it would be so even if  
21 offered only for the purpose of establishing elements of the likelihood of confusion. See *KP*  
22 *Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 408 F.3d 596, 606 (9th Cir.2005) (a

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23 <sup>6</sup> The single case cited by Defendant, *United States v. Spencer*, 1 F.3<sup>rd</sup> 742, 744 (9<sup>th</sup> Cir. 1993), could not be  
further off point. There, the Court upheld the suppression of evidence of a seizure of a gun from the car that the  
defendant was driving.

<sup>7</sup> Indeed, the Motion in Limine only argues that “Plaintiff apparently concedes that is has no relevance,” a  
statement which Plaintiff of course disputes.



1 federal registration of the mark “is conclusive evidence that the mark is non-descriptive or  
2 has acquired secondary meaning); *Soilworks, LLC v. Midwest Indus. Supply, Inc.*, 575 F.  
3 Supp. 2d 1118, 1132 (D. Ariz. 2008) *order clarified*, CV-06-2141-PHX-DGC, 2008 WL  
4 4173623 (D. Ariz. Sept. 5, 2008).

5 The prejudice argument also fails; it is of course undisputed and conceded that the  
6 VEGA TECHNICAL GEAR® registration was in fact formally disclosed *prior* to the  
7 discovery cutoff in this lawsuit, over four months before trial. Defendant did not take a  
8 single deposition, and Defendant does not and cannot provide a single piece of evidence it  
9 desires but does not possess with respect to the VEGA TECHNICAL GEAR® mark. There  
10 simply is no prejudice.

11 Finally, Defendant is reduced to arguing, without example or evidence, that  
12 introducing the Mark would “confuse the issues to be tried... which have been based solely  
13 on Plaintiff’s VEGA mark for “motorcycle helmets.” However, Defendant provides no  
14 example of any evidence that would create confusion or how such evidence would be  
15 confusing. Thus, Defendant’s motion in limine to exclude the VEGA TECHNICAL  
16 GEAR® registration should be denied.

#### 17 IV. CONCLUSION

18 Soaring Helmet respectfully requests the Court to deny Defendant’s Motions in  
19 Limine.

20 DATED January 10, 2011.

21 INVICTA LAW GROUP, PLLC

22 By 

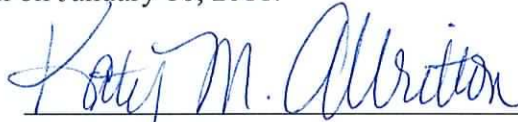
23 Stacie Foster, WSBA No. 23397  
Heather M. Morado, WSBA No. 35135  
Attorneys for Plaintiff

1 **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  
4 persons/attorneys of record:

5 Ms. Katherine Hendricks  
6 Ms. Stacia N. Lay  
7 HENDRICKS & LEWIS, PLLC  
8 901 Fifth Avenue, Suite 4100  
9 Seattle, WA 98164

10 EXECUTED at Seattle, Washington on January 10, 2011.

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12 Katy M. Albritton  
13 Legal Assistant

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23  
**INVICTA LAW GROUP, PLLC**

1000 SECOND AVENUE, SUITE 3310

SEATTLE, WA 98104-1019

FAX (206) 903-6365

TEL (206) 903-6364