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THE HONORABLE JAMES L. ROBERT

**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

PRETRIAL ORDER

[PROPOSED]

JURISDICTION

Jurisdiction is vested in this Court by virtue of:

1. This Court has original jurisdiction over Counts I and II under 15 U.S.C. §1121(a) (action arising under the Lanham Act) and 28 U.S.C. §§1331, 1338(a) in that this case arises under the Trademark Laws of the United States, 15 U.S.C. §§1051-1127.

2. This Court has jurisdiction over Count III under 28 U.S.C §1338(b) and 28 U.S.C. §1367 in accordance with the principles of pendant jurisdiction in that said claims are

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PRETRIAL ORDER – 1 (C09-0789 JLR)

INVICTA LAW GROUP, PLLC
1000 SECOND AVENUE, SUITE 3310
SEATTLE, WA 98104-1019
FAX (206) 903-6365
TEL (206) 903-6364

1 joined with substantial and related claims under the Trademark Laws of the United States, 15
2 U.S.C. §§1051-1127.

3 **CLAIMS AND DEFENSES**

4 **A. Soaring Helmet's Claims.**

5 The plaintiff will pursue at trial the following claims:

6 1) Federal trademark infringement under 15 U.S.C. §1114 for injunctive relief
7 and damages resulting from Defendant's infringing use of Soaring Helmet's VEGA®
8 trademarks (the "VEGA® Marks").

9 2) False designation of origin, false advertising and unfair competition under the
10 Lanham Act § 43(a) (15 U.S.C. § 1125(a)) for injunctive relief and damages resulting from
11 Defendant's infringing use of Soaring Helmet's VEGA® Marks.

12 3) Based on these violations of the Lanham Act, Soaring Helmet seeks judgment
13 in the amount of three (3) times its damages, together with reasonable attorney's fees and
14 costs of suit pursuant to 15 U.S.C. § 1117(a).

15 4) Violation of the Washington State Consumer Protection Act, RCW 19.86.

16 5) Based on the violations of RCW 19.86, Soaring Helmet seeks judgment for
17 treble damages and attorney's fees.

18 **B. Nanal's Defenses and/or Claims.**

19 The defendant will pursue the following affirmative defenses and/or claims at trial:

20 1. Plaintiff's Second Amended Complaint fails to state any claim upon which
21 relief can be granted.
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1 2. Plaintiff's claims are barred, in whole or in part, by the doctrines of fair use,
2 nominative fair use and/or descriptive use.

3 3. Plaintiff's claims are barred, in whole or in part, because any use of the term
4 "vega" by Nanal was not a trademark use.

5 4. Plaintiff's claims are barred, in whole or in part, because Plaintiff's trademark
6 rights, if any, in the term "vega" are limited to the goods and services identified in
7 Registration No. 2,087,637.

8 5. Plaintiff's claims are barred, in whole or in part, because any use of the term
9 "vega" by Nanal was not likely to cause confusion.

10 6. Plaintiff's claims are barred, in whole or in part, because any use of the term
11 "vega" by Nanal was a legitimate use of Plaintiff's mark for comparative advertising
12 purposes and there was no likelihood of confusion with respect to such use.

13 7. Plaintiff's claims are barred, in whole or in part, because any infringement, if
14 any, was innocent.

15 8. Plaintiff's attempt to preclude use of the term "vega" as a keyword in internet
16 search engines is an unreasonable restraint of trade, anticompetitive, trademark misuse and
17 bad faith trademark enforcement.

18 9. Nanal acted reasonably and in good faith.

19 10. Plaintiff's claims are barred, in whole or in part, by waiver.

20 11. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show
21 that it will suffer any continuing and/or irreparable harm from Nanal's alleged actions.
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1 12. The alleged injury or damage suffered by Plaintiff, if any, would be
2 adequately compensated by damages; Plaintiff, therefore, has a complete and adequate
3 remedy at law and is not entitled to equitable relief.

4 13. Plaintiff's claims are barred, in whole or in part, because Plaintiff was not
5 damaged by any act alleged against Nanal in the Second Amended Complaint.

6 14. Plaintiff's claims are barred, in whole or in part, because Nanal was not the
7 actual or proximate cause of any damages to Plaintiff.

8 15. Plaintiff's Second Amended Complaint fails to state facts upon which the
9 claims for exemplary or enhanced damages may be maintained.

10 16. Without admitting that the Second Amended Complaint states a claim, any
11 remedies are limited to the extent that there is sought an overlapping or duplicative recovery
12 pursuant to the various claims for any alleged single wrong.

13 17. Plaintiff's Second Amended Complaint fails to state facts upon which the
14 claims for attorneys' fees may be maintained.

15 18. Plaintiff failed to mitigate its damages, if any.

16 19. The Court lacks personal jurisdiction over Nanal under the Washington long-
17 arm statute and Nanal should therefore be awarded its attorneys' fees in defense of this action
18 under RCW 4.28.185.

19 20. Venue is not proper in this District.

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SEATTLE, WA 98104-1019

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TEL (206) 903-6364

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ADMITTED FACTS

The following facts are admitted by the parties:

1. Plaintiff Soaring Helmet is a Washington State corporation with its principal place of business in Tukwila, Washington.

2. Soaring Helmet sells motorcycle apparel and accessories including but not limited to motorcycle helmets and jackets.

3. Soaring Helmet owns the VEGA® Mark for “motorcycle helmets,” which was registered on the principal register of the United States Patent and Trademark Office (the “PTO”) on August 12, 1997, and was assigned Registration Number 2,087,637.

4. Since March 18, 1994, and continuously to the present, Soaring Helmet has owned and used the VEGA® Mark in connection with the sale of its motorcycle helmets.

5. Defendant Nanal, Inc. (“Nanal” or “Defendant”) is a Nevada corporation, incorporated in 2005, which owns and operates the website www.LeatherUp.com.

6. Nanal promotes and sells motorcycle apparel, including but not limited to helmets and jackets, direct to consumers only through its website LeatherUp.com and a toll-free telephone number.

7. Nanal has never been an authorized retailer of Soaring Helmet’s VEGA® motorcycle helmets, or other VEGA® products.

8. Albert Bootesaz is the president of Nanal. Mr. Bootesaz has responsibility for marketing.

9. Pursuant to Google’s AdWords service, Nanal purchased the keyword terms “vega helmets” on or about September 1, 2008.

1 10. Between approximately September 1, 2008 and April 3, 2009, the total number
2 of times the LeatherUp.com advertisement appearing on Exhibit No. 22 (Bates No. SHC
3 00002) was reviewed by users in connection with Google's AdWords service was 40,209,
4 resulting in 2,457 "clicks."

5 11. Soaring Helmet is aware that Nanal no longer bids on the keyword "vega" or
6 any combination of terms containing the word "vega" in connection with Google's AdWords
7 program.

8 12. "Vega" is an English word defined as "the brightest star in the constellation
9 Lyra." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY at p. 1386 (11th ed. 2003).

10 **The Plaintiff contends as follows:**

11 1. Plaintiff Soaring Helmet owns the trademarks VEGA® for "motorcycle
12 helmets," and VEGA TECHNICAL GEAR® for "motorcycle helmets and protective
13 clothing" (Registration No. 3,639,490 on the PTO register).

14 2. Soaring Helmet sells exclusively through authorized distributors of its
15 products, who are reputable dealers with "brick and mortar" stores.

16 3. Soaring Helmet advertises direct to consumers both over the internet and in
17 industry publications.

18 4. As a matter of corporate policy, Soaring Helmet refuses to do business with
19 on-line only dealers such as defendant Nanal, as such retailers are viewed as carrying
20 products of lesser quality and prestige. It also requires its dealers to sell VEGA® products at
21 no less than Soaring Helmet's manufacturer's suggested retail price. Any perception that
22 VEGA® products are offered a discount severely tarnishes plaintiff's reputation.
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1 5. Google operates an Internet search engine through which customers can
2 search for websites offering products and services. The Google search engine generates a
3 listing of websites matching those terms. Google also sells the opportunity to have
4 advertisements appear alongside its website listings. These advertisements appear as
5 “Sponsored Links” next to the listed results.

6 6. Google also offers a service known as Google AdWords, which allows
7 advertisers to purchase keyword terms that will trigger “Sponsored Links” for the advertiser
8 when a user performs a search of the keyword terms.

9 7. On September 1, 2008, Albert Bootesaz purchased the advertising keywords
10 “vega helmets” from Google’s AdWords program. Thereafter, when potential customers
11 performed Google searches using the query “Vega helmets,” an advertisement for
12 Leatherup.com appeared falsely stating that it offered “50% off Vega helmets.”

13 8. Albert Bootesaz made the decision on behalf of Nanal to purchase the
14 keywords “vega helmets.”

15 9. Because Soaring Helmet and Nanal are competitors, Nanal’s use of the
16 VEGA® Marks places Soaring Helmet at risk of consumers believing that Soaring Helmet is
17 somehow affiliated with Nanal or Leatherup.com.

18 10. During the period that Nanal utilized Soaring Helmet’s VEGA® Marks as a
19 Google advertising keyword, no fewer than 40,209 advertisements for the Leatherup.com
20 website were displayed, and 2,457 potential customers clicked through to the Leatherup.com
21 website, resulting in sales of third-party motorcycle helmets for Nanal.
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1 11. In April 2009, Soaring Helmet's products were rejected for sale by a potential
2 large retailer, Holiday Powersports, because the store owner wrongly believed that Soaring
3 Helmet sold its products to discount on-line retailers.

4 12. Leatherup.com also advertised motorcycle jackets, manufactured by Nanal,
5 under the designation "XELEMENT Extreme Vega." One of Soaring Helmet's largest retailers,
6 as well as one of its sales reps, was confused about the source of the "XELEMENT Vega"
7 motorcycle jacket.

8 13. Nanal denies that it ever used the VEGA® Marks in connection with
9 motorcycle jackets, but the term "Vega" continues to appear in the Leatherup.com website
10 URL for the page offering the jacket for sale.

11 14. Nanal's use of the VEGA® Marks in connection with motorcycle jackets and
12 helmets is an intentional, willful, knowing and deliberate infringement of Soaring Helmet's
13 trademarks.

14 15. Soaring Helmet has suffered damages in the amount of Nanal's profits from
15 the sale of products sold using the infringing VEGA® Marks and in the amount of its lost
16 sales due to the infringement.

17 **The Defendant contends as follows:**

18
19 1. Nanal is a Nevada corporation that sells motorcycle apparel, including
20 helmets and jackets, through its website LeatherUp.com. Nanal sells its products direct to
21 consumers only through its website and a toll-free telephone number.

22 2. Soaring Helmet does not sell products direct to consumers under the VEGA
23 Mark. Rather than sell direct to consumers either through the internet or through "brick-and-
mortar" stores, Soaring Helmet sells only to distributors. Soaring Helmet admitted in

1 response to a request for admission in this matter that it does not sell VEGA products direct
2 to consumers but has refused to include that admission in the admitted facts herein.

3 3. Soaring Helmet's corporate policy of discriminating against online only
4 retailers, which in theory would include highly-respected retailers such as Amazon, and its
5 mandate to dealers requiring them to sell Soaring Helmet's products at no less than the
6 manufacturer's suggested retail prices is anticompetitive, seeking to force consumers to pay
7 the highest price for its products.

8 4. Soaring Helmet's attempt to preclude use of the word "vega" as a keyword in
9 connection with internet search engines is an unreasonable restraint of trade and is
10 anticompetitive, and seeks to deprive consumers of the opportunity to do the same type of
11 comparison shopping on the internet that they do in "brick-and-mortar" stores.

12 5. As part of its marketing for LeatherUp.com, Nanal uses Google's AdWords
13 program, which allows advertisers to select keyword terms that will trigger Nanal's
14 advertisements when computer users search terms using Google's search engine.

15 6. In about September 2008, Nanal purchased the keywords "vega helmets"
16 through Google AdWords. The keywords were generated by Google's automated keyword
17 suggestion tool, which suggests keywords based on user input; Nanal input the generic term
18 "helmet" and the tool suggested "vega helmets."

19 7. Nanal only used the keywords through Google's AdWords program for a
20 matter of months. After receiving notice that Soaring Helmet objected to the use of the word
21 "Vega," Nanal twice took steps in about the spring and/or summer of 2009 to ensure that
22 advertisements for LeatherUp.com did not appear when the word "Vega" was searched on
23 Google and specifically incorporated a "not Vega" instruction in Nanal's Google AdWords
advertising settings.

1 8. In the brief time the keywords were used, the advertisement generated only
2 2,457 “clicks” and only 25 sales, a number of which were of other third-party brands of
3 motorcycle helmets that were listed in LeatherUp.com’s advertisement.

4 9. Soaring Helmet has no evidence supporting a link between the use of the
5 keywords for this brief period of time and any specific injury or damage to Soaring Helmet.

6 10. Soaring Helmet has no evidence demonstrating the existence of relevant,
7 actionable confusion among consumers resulting from the use of the keywords.

8 11. At the time Nanal purchased the keywords through Google’s AdWords
9 program, Nanal’s president, who is not himself a motorcycle enthusiast, does not recall
10 having heard of Soaring Helmet’s VEGA-branded helmets.

11 12. “Vega” is an English word defined as the “brightest star in the constellation
12 Lyra.” According to various dictionaries, the word “Vega” is derived from the Arabic word
13 for “falling,” “falling vulture” or “falling eagle.”

14 13. Nanal also sells Xelement-branded products, including motorcycle jackets, on
15 its website, LeatherUp.com, but has never used the word “Vega” as a trademark in
16 connection with the Xelement-branded jackets.

17 14. To the extent that Plaintiff is able to prove that the word “Vega” appeared in
18 connection with the Xelement-branded jacket, in the context of the website screenshot, the
19 word is not being used in a trademark sense and the clear focus is on the trademark
20 “Xelement.”

21 15. Soaring Helmet has no facts demonstrating or suggesting the existence of any
22 confusion resulting from the alleged use of the word “Vega” in the description of the
23 Xelement-branded jacket nor, therefore, does Soaring Helmet have any facts establishing a
causal link between the alleged use of the word and any injury or damage to Soaring Helmet.

 16. Soaring Helmet has no evidence of damages resulting from Nanal’s use of the
keywords “vega helmets” for a short period of time in connection with Google’s AdWords

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1 program or the alleged use of the word "Vega" in the description of the Xelement-branded
2 jacket.

3 ISSUES OF LAW

4 The following are the issues of law to be determined by the Court:

5 **Plaintiff's Issues:**

6 1 Whether Defendant intentionally infringed Soaring Helmet's VEGA® Marks
7 by utilizing them on Defendant's website www.Letherup.com to falsely advertise
8 motorcycle helmets and jackets despite constructive knowledge of Soaring Helmet's
9 VEGA® Marks, in violation of 15 U.S.C. § 1114.

10 2. Whether there is a likelihood of confusion, mistake or deception as to the
11 association between Soaring Helmet and Defendant as a result of Defendant's use of the
12 VEGA® Marks to advertise motorcycle helmets and jackets on its website Letherup.com.

13 3. Whether Defendant should be permanently enjoined from any further use of
14 the VEGA® Marks.

15 4. Whether Defendant violated the Washington State Consumer Protection Act
16 by using Soaring Helmet's VEGA® Marks.

17 5. Whether Defendant is liable for monetary and non-monetary damages caused
18 by its willful infringement of Soaring Helmet's VEGA® Marks and for its violation of the
19 Washington State Consumer Protection Act, RCW 19.86 et. seq.

20 6. Whether Soaring Helmet is entitled to attorney's fees and costs for
21 Defendant's willful infringement of 15 U.S.C. § 1114, and violation of the Washington State
22 Consumer Protection Act, RCW 19.86.

23 //

1 **Defendant's Issues:**

2 1. Where Plaintiff has no evidence that any consumers were confused by Nanal's
3 use of the keywords "vega helmets" in connection with Google's AdWords program, can
4 Plaintiff establish trademark infringement or unfair competition under federal or state law?

5 2. Where Plaintiff has no evidence establishing a causal connection between
6 Nanal's use of the keywords "vega helmets" for a short period of time in connection with
7 Google's AdWords program or the alleged use of the word "Vega" in the description of a
8 Xelement-branded jacket and any injury or damage to Plaintiff, is Plaintiff entitled to recover
9 monetary damages?

10 3. Where Plaintiff has no evidence of intent apart from an allegation that Nanal
11 had prior knowledge of the existence of VEGA-branded motorcycle helmets, can Plaintiff
12 establish willfulness in order to be entitled to an award of Nanal's profits?

13 4. Where the alleged wrongful conduct has ceased and there is no evidence that
14 the conduct will resume, and in the absence of any claim that monetary damages would not
15 adequately compensate for any alleged injury, is Plaintiff entitled to equitable relief in the
16 form of an injunction?

17 5. Has Plaintiff waived any claim for injunctive relief by failing to respond to
18 Nanal's contention in its motion for summary judgment on Plaintiff's Second Amended
19 Complaint that Plaintiff had no evidence establishing an entitlement to equitable relief?

20 **EXPERT WITNESSES**

21 No expert witnesses have been designated by the parties.

22 //

1 **OTHER WITNESSES**

2 The name and addresses of witnesses to be used by each party at the time of trial and
3 the general nature of the testimony of each are:

4 (a) On behalf of the Plaintiff:

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Witness	Will testify or possible witness only	Nature of Testimony
Jeanne DeMund	Will testify	Ms. DeMund is the Vice President of Soaring Helmet, c/o Invicta Law Group, PLLC, 1000 Second Avenue, Suite 3310, Seattle, WA 98104-1019. Ms. DeMund will testify regarding all issues related to the parties' claims and defenses.
Wayne Layman	May testify	Mr. Layman is the VEGA sales representative for Michigan and Indiana, c/o Invicta Law Group, PLLC, 1000 Second Avenue, Suite 3310, Seattle, WA 98104-1019. Mr. Layman may testify regarding Soaring Helmet's corporate policies, his history as a representative of VEGA products, and sales calls to retailers including Holiday Powersports.
Claudia Mallard	Will testify	Ms. Mallard is the VEGA sales representative for the southeastern United States, c/o Invicta Law Group, PLLC, 1000 Second Ave., Ste. 3310, Seattle, WA 98104-1019. Ms. Mallard will testify regarding Soaring Helmet's corporate policies, sales calls to potential VEGA retailers, and her experience in connection with Leatherup.com. She will testify about actual customer confusion, retailer demand for VEGA products, discounting and pricing practices, and VEGA's reputation and goodwill in the market.
Joy Loga	May testify	Ms. Loga is a sales representative for VEGA Helmets, c/o Invicta Law Group, PLLC, 1000 Second Ave., Ste. 3310, Seattle, WA 98104-1019. Her territory includes the Southeast. Ms. Loga will testify regarding an instance of actual customer confusion, her own confusion as to the maker of the "XElement Vega" jacket, demand for VEGA products, discounting and pricing practices, and VEGA's reputation and goodwill in the market.
Albert Bootesaz	Will testify	President of Nanal. Inc., c/o Hendricks & Lewis PLLC, 901 Fifth Avenue, Ste. 4100, Seattle, WA 98164. Mr. Bootesaz will testify regarding all aspects of Plaintiff's claims and Defendant's defenses.

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1 (b) On behalf of the Defendant:

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Witness	Will testify or possible witness only	Nature of Testimony
Albert Bootesaz	Will testify	President of Nanal, Inc. Address: c/o Hendricks & Lewis PLLC, 901 Fifth Ave., Ste. 4100, Seattle, WA 98164. Mr. Bootesaz is expected to testify about all aspects of the case. In specific but no way limiting example, Mr. Bootesaz is expected to testify about Nanal's business and specifically its website, LeatherUp.com; Nanal's use of the Google AdWords program specifically as it relates to the use of keywords; Nanal's sale of Xelement-branded motorcycle jackets; and all other aspects of the case.
Aaron Golshen	May testify	Address: c/o Hendricks & Lewis PLLC, 901 Fifth Avenue, Ste. 4100, Seattle, WA 98164. Mr. Golshen is expected to testify about Nanal's electronic marketing, including with any relevant internet search engine, namely, Google's search engine, and Nanal's use of Google's AdWords program.
Jim Squire	May testify	Holiday Powersports, 4501 Page Avenue, Michigan Center, Michigan 49254. Mr. Squire is expected to testify about the reason(s) for Holiday Powersports' decision not to carry Plaintiff's motorcycle helmets.
Lou Xu	May testify	President, Soaring Helmet Corporation, c/o Invicta Law Group, PLLC, 1000 Second Avenue, Suite 3310, Seattle, WA 98104. Mr. Xu is expected to testify about all aspects of the case including but not limited to Soaring Helmet's business, operations and marketing.

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EXHIBITS

(a) Admissibility stipulated

Plaintiff's Exhibits:

No.	Description	Stip. Authenticity	Stip Admissibility	Admitted?
1	VEGA Trademark Certificate of Registration (bates SHC 00001)	Yes	Yes	

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No.	Description	Stip. Authenticity	Stip Admissibility	Admitted?
2	Vega street helmets webshots (bates SHC 129-187)	Yes	Yes	
3	Vega 2006 Catalog (bates SHC 294-321)	Yes	Yes	
4	Vega 2009 Catalog (bates SHC 372-411)	Yes	Yes	
5	Vega 2008 Catalog (bates SHC 412-447)	Yes	Yes	
6	Google AdWords: Vega Helmets (bates D000001-D000004)	Yes	Yes	
7	Leatherup.com ads (bates D000010-D000012)	Yes	Yes	
8	Google Invoices to Nanal, Inc. (bates D000013-D000024) CONFIDENTIAL	Yes	Yes	
9	Dotomi, Inc.'s Invoices to LeatherUp.com (bates D000025-D000027) CONFIDENTIAL	Yes	Yes	
10	2007-2009 LeatherUp.com Product Shipped by Brands (bates D000028-D000030) CONFIDENTIAL	Yes	Yes	
11	2007-2009 Vendor List (bates D000031-D000032) CONFIDENTIAL	Yes	Yes	

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No.	Description	Stip. Authenticity	Stip. Admissibility	Admitted?
12	2009 Sales (bates D000033-D000034) CONFIDENTIAL	Yes	Yes	
13	Nanal, Inc. Three Year Cost Analysis (bates D000035) CONFIDENTIAL	Yes	Yes	

Defendant's Exhibits:

No.	Description	Stip. Authenticity	Stip. Admissibility	Admitted?
A-1	Plaintiff's Supplemental Answers to Defendant Nanal, Inc.'s First Set of Interrogatories Nos. 1-22 to Plaintiff Soaring Helmet Corporation dated August 27, 2010	Yes	Yes	
A-2	Plaintiff's Answers to Defendant's First Set of Requests for Admission dated September 17, 2010	Yes	Yes	

(b) Authenticity stipulated, admissibility disputed:

Plaintiff's Exhibits:

No.	Description	Stip. Authenticity	Stip. Admissibility	Admitted?
14.	Soaring Helmet Budget and History Report (bates SHC 00008-00019)	Yes	No	
15.	Vega Technical Gear Trademark Certificate of Registration (bates SHC 101)	Yes	No	

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TEL (206) 903-6364

No.	Description	Stip. Authenticity	Stip. Admissibility	Admitted?
16.	Vega helmet webshots (bates SHC 102-109)	Yes	No	
17.	Vega street apparel webshots (bates SHC 110-128)	Yes	No	
18.	12/08/09 email from Jeanne Demund to Heather Moradore LeatherUp.com Xelement Vega jacket site (bates SHC 242)	Yes	No	
19.	2007 Vega Catalog (bates SHC 250-285)	Yes	No	
20.	Nanal, Inc. Entity Details -- Secretary of State of Nevada (bates D000006-D000007)	Yes	No	
21.	State of Nevada -- Corporate Charter and Certification for Nanal, Inc. (bates D000008-D000009)	Yes	No	
21.5	Vega 2010 Catalog (bates SHC 322-365)	Yes	No	

Defendant's Exhibits:

No.	Description	Stip. Authenticity	Stip. Admissibility	Admitted?
A-4	Claudia Mallard's Notes re Holiday Powersports	Yes	No	
A-5	Claudia Mallard's Notes re sales calls	Yes	No	

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1000 SECOND AVENUE, SUITE 3310

SEATTLE, WA 98104-1019

FAX (206) 903-6365

TEL (206) 903-6364

1 (c) **Authenticity and admissibility disputed:**

2 Plaintiff's Exhibits:

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No.	Description	Stip. Authenticity	Stip. Admissibility	Admitted?
22.	Google Search, 4/27/09 – Vega Motorcycle Helmets (bates SHC 00002)	No	No	
23.	Google Search, 6/8/09 – 50% Off Motorcycle Helmets (bates SHC 00003)	No	No	
24.	LeatherUp.com site – Xelement Extreme Vega Jacket (bates SHC 00005)	No	No	
25.	Cease and Desist Letter to Thomas Wagner of Unister, GmbH d/b/a Best-Price.com (bates SHC 00006-00007)	No	No	
26.	Soaring Helmet Customer Sales Analysis Sorted by Client Number (bates SHC 00020-00093)	No	No	
27.	Soaring Helmet Customer Sales Analysis Sorted by State (bates SHC 00094-00100)	No	No	
28.	Leatherup.com website screen shot (bates SHC 188)	No	No	
29.	California Secretary of State Corporation Search – Albert Adams, Inc. (bates SHC 189-190)	No	No	
30.	“Free People Search – White Pages” (re: Albert Bootesaz) (bates SHC 191-	No	No	

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1000 SECOND AVENUE, SUITE 3310

SEATTLE, WA 98104-1019

FAX (206) 903-6365

TEL (206) 903-6364

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	211)			
31.	MyLeather.com webshot (bates SHC 212)	No	No	
32.	MotorcycleCenter.com webshot (bates SHC 213)	No	No	
33.	XelementGear.com webshot (bates SHC 214)	No	No	
34.	LeatherUp.com homepage (bates SHC 215)	No	No	
35.	MotorcycleCenter.com Vega helmet search webshot (bates SHC 216)	No	No	
36.	Leatherup.com Vega dropdown search (bates SHC 217)	No	No	
37.	MotorcycleCenter.com Vega Helmet search (bates SHC 218-221)	No	No	
38.	Leatherup.com Vega Boots search (bates SHC 222-225)	No	No	
39.	Leatherup.com Vega Helmet search (bates SHC 226-229)	No	No	
40.	Leatherup.com Xelement Extreme Vega search 12/21/09 (bates SHC 230)	No	No	
41.	Leatherup.com Xelement Extreme Vega search 9/17/10 (bates SHC 231)	No	No	
42.	ZBGifts.com Vega search (bates SHC 232)	No	No	
43.	ebay Motors Vega search (bates SHC 233-235)	No	No	

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PRETRIAL ORDER – 19 (C09-0789 JLR)

INVICTA LAW GROUP, PLLC

1000 SECOND AVENUE, SUITE 3310
SEATTLE, WA 98104-1019
FAX (206) 903-6365
TEL (206) 903-6364

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44.	Cobra-gear.com Vega search (bates SHC 236)	No	No	
45.	Razor Dirt Rocket Vega search (bates SHC 237-238)	No	No	
46.	ReallyLeather.com Vega search (bates SHC 239)	No	No	
47.	Google Xelement Extreme Vega search 9/17/10 (bates SHC 240-241)	No	No	
48.	September 2010 Rider magazine Big Gear Guide (bates SHC 243)	No	No	
49.	HogTales Summit II Picture from Sept/Oct 2008 magazine (bates SHC 244)	No	No	
50.	Ridin'On Magazine Sept 2010 Merit Mesh Vega Jacket Feature (bates SHC 245-247)	No	No	
51.	Vega Summit 3.0 (bates SHC 248)	No	No	
52.	Dealernews.com (bates SHC 249)	No	No	
53.	Dealernews cover April 2009 (bates SHC 286)	No	No	
54.	MIM Helmet Watch (bates SHC 287)	No	No	
55.	Iron Horse Ad July 2008 (bates SHC 288)	No	No	
56.	Viper Ad MIM 12/07 (bates SHC 289)	No	No	
57.	Iron Horse Ad July 2008	No	No	

	(bates SHC 290)			
58.	Vega VooDoo press release July 21, 2008 (bates SHC 291-292)	No	No	
59.	Vega ATV press release June 2008 (bates SHC 293)	No	No	
61.	Soaring Helmet Income Statement 2007 (bates SHC 366-367)	No	No	
62.	Soaring Helmet Income Statement 2008 (bates SHC 368-369)	No	No	
63.	Soaring Helmet Income Statement 2009 (bates SHC 370-371)	No	No	

Defendant's Exhibits:

No.	Description	Stip. Authenticity	Stip Admissibility	Admitted?
A-3	Bing search results (bates SHC 0004)	No	No	

ACTION BY THE COURT

(a) This case is scheduled for trial without a jury on February 1, 2011, at 9:00 a.m.

(b) Trial briefs shall be submitted to the Court on or before January 24, 2011.

(c) The following Orders on Motions were entered by the Court on January 3, 2011:

(1) Nanal's Motion to Strike exhibit N to the Morado Declaration, Docket No. 66, is DENIED;

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PRETRIAL ORDER – 21 (C09-0789 JLR)

INVICTA LAW GROUP, PLLC

1000 SECOND AVENUE, SUITE 3310
SEATTLE, WA 98104-1019
FAX (206) 903-6365
TEL (206) 903-6364

1 (2) Nanal's Motion to Strike evidence contained in paragraphs 10-14 and
2 16-20 of the Mallard Declaration, Docket No. 64; in paragraphs 4-11 of the Loga
3 Declaration, Docket No. 63; in paragraphs 8-14 of the Layman Declaration, Docket No. 62;
4 and in paragraphs 20-22 of the DeMund Declaration, Docket No. 61, is DENIED; (3)

5 Nanal's Motion to Strike exhibits A, B and C to the Mallard Declaration, Docket No.
6 64, is GRANTED;

7 (4) Soaring Helmet's Motion for Leave to File Third Amended Complaint,
8 Docket No. 74, is DENIED;

9 (5) Nanal's Motion for Summary Judgment on Soaring Helmet's
10 trademark infringement, unfair competition, false advertising and Washington Consumer
11 Protection Act claims, Docket No. 57, is DENIED;

12 (6) Nanal's Motion for Summary Judgment on Soaring Helmet's claim for
13 tortious interference with prospective economic advantage, Docket No. 57, is GRANTED.

14 This order has been approved by the parties as evidenced by the signatures of their
15 counsel. This order shall control the subsequent course of the action unless modified by a
16 subsequent order. This order shall not be amended except by order of the Court pursuant to
17 agreement of the parties or to prevent manifest injustice.

18 DATED this _____ day of _____, 2011.

19
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21 _____
22 JUDGE JAMES L. ROBART
23 United States District Judge

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Approved as to form:

INVICTA LAW GROUP, PLLC

HENDRICKS & LEWIS PLLC

BY: /s/Stacie Foster
Stacie Foster, WSBA No. 23397
1000 Second Avenue, Suite 3310
Seattle, WA 98104-1019
Tel: (206) 906-6364
Fax: (206) 903-6364
Email: sfoster@invictalaw.com
Attorney for Plaintiff Soaring Helmet

BY: /s/Katherine Hendricks
Katherine Hendricks, WSBA No. 14040
901 Fifth Avenue, Suite 4100
Seattle, WA 98164
Tel: (206) 624-1933
Fax: (206) 583-2716
Email: kh@hllaw.com
Attorney for Defendant Nanal, Inc.

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PROOF OF SERVICE

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

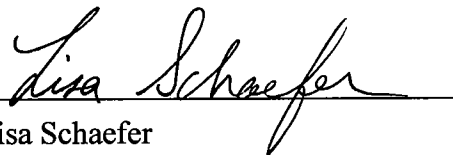
I hereby certify that on January 13, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Heather M. Morado, Esq.
Stacie Foster, Esq.
Invicta Law Group, PLLC
1000 Second Avenue, Suite 3310
Seattle, Washington 98104
Telephone: (206) 903-6364
hmorado@invictalaw.com
sfoster@invictalaw.com

Attorneys for Plaintiff Soaring
Helmet Corporation

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

Executed January 13, 2011, at Seattle, Washington.


Lisa Schaefer