

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

HEARTLAND RECREATIONAL	)	
VEHICLES, LLC.	)	
	)	
Plaintiff,	)	
	)	CAUSE NO. 3:08-CV-490 TLS
v.	)	
	)	
FOREST RIVER INC.,	)	
	)	
Defendant.	)	

**ORDER**

On February 24, 2010, Defendant, Forest River Inc. (“Forest River”), filed a motion to compel. On March 15, 2010, Plaintiff, Heartland Recreational Vehicles, LLC (“Heartland”), filed a response in opposition. On March 26, 2010, Forest River filed a reply. For the following reasons, Forest River’s motion to compel is **GRANTED**. [Doc. No. 96].

**I. RELEVANT BACKGROUND**

The following facts are taken from the parties’ briefs and are assumed as true for the purposes of this motion only. Heartland and Forest River are competitors in the recreational vehicle (“RV”) industry, and both conduct a significant amount of business in Elkhart, Indiana. On or around October 20, 2008, Forest River held a two-day, private trade show, inviting and hosting several RV dealers from around the country, in Forest River’s principal place of business, Elkhart, Indiana. Forest River alleges that, prior to the trade show, Heartland obtained a list of dealers that Forest River had invited to attend the show; and that, based upon this list, Heartland targeted the attending dealers with advertisements for Heartland’s products. Specifically, Forest River alleges that Heartland sent faxes to the dealers a few days before Forest River’s show and stuffed advertisements under the dealers’ hotel rooms while they were

attended Forest River's show. Forest River argues that Heartland made an unspecified number of new deals with the targeted dealers as a result of these targeted advertisements. Forest River is now suing Heartland for the profits lost on account of Heartland's use of the list of dealers invited to Forest River's private trade show.

Pursuant to this suit, Forest River submitted a number of discovery requests on Heartland to determine which dealers purchased Heartland's products as a result of the advertisements, both during and after Forest River's trade show, and what amount of money was earned by Heartland as a result of these new sales. Each of the ten document requests at issue in the immediate motion to compel are related to answering these questions.

In response to Forest River's discovery requests, Heartland produced summaries of its business transactions with two new RV dealers occurring over the same two week period as Forest River's trade show. Forest River contends that Heartland's responses are deficient for a number of reasons. Most prominently, Forest River objects to the narrowed time period of Heartland's disclosures, unilaterally shortening the requested time period from several months weeks to two weeks, and Heartland's use of discovery summaries rather than actual business records to substantiate its discovery disclosures. Forest River contends that a longer time period of disclosures is necessary to determine the full effect of Heartland's unlawful business solicitations and argues that actual documents are needed to both verify Heartland's factual representations regarding its new sales and for Forest River to use evidence to support its claims at trial.

This Court may now rule on this motion pursuant to its referral order and 28 U.S.C. § 636(b)(1)(A).

## **II. APPLICABLE LAW**

Fed. R. Civ. P. 26 (b)(1) permits discovery into “any matter, not privileged, that is relevant to the claim or defense of any party.” Relevant information need not be admissible at trial so long as the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26 (b)(1). For the purpose of discovery, relevancy will be construed broadly to encompass “any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case.” Chavez v. Daimler Chrysler, 206 F.R.D. 615, 619 (S.D. Ind. 2002) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351(1978)). Discovery under Rule 26, however, is not an invitation to the proverbial fishing expedition; and this Court has broad discretion when deciding whether to compel discovery and may deny discovery to protect a party from oppression or undue burden. Fed. R. Civ. P. 26(c); Sattar v. Motorola, Inc., 138 F.3d 1164, 1171 (7th Cir. 1998) (“[D]istrict courts have broad discretion in matters related to discovery.”); Gile v. United Airlines, Inc., 95 F.3d 492, 495-96 (7th Cir. 1996) (“The district court exercises significant discretion in ruling on a motion to compel.”).

## **III. LEGAL ANALYSIS**

This Court agrees with Forest River in almost every respect of its motion to compel. To begin, this Court agrees with Forest River that an expanded time period for examining Heartland’s sales records is appropriate in this circumstance. Specifically, this Court agrees with Forest River that a time period spanning the two months prior to Forest River’s trade show until Heartland’s own trade show in December of the same year is reasonable in scope to show the likely effects of Heartland’s advertisements on its sales activity. Analyzing Heartland’s sales

records for any unusual increases in new sales before and after Forest River's trade show, while not absolute for establishing causation, is indeed helpful for gathering relevant information that is useful for creating the inference of causation. Without an opportunity to review Heartland's sales records for an expanded window of time, Forest River can not adequately assess what sales were new and what level of sales may have been out-of-the-ordinary for Heartland's business at that time of year. In support of its motion, Forest River produced deposition testimony of Heartland's president, stating that there was an unusual increase in sales between the two trade shows. As such, there may indeed be more sales within the time period requested by Forest River than Heartland has disclosed.

All said, Heartland should not be permitted to unilaterally restrict discovery of its sales records to a two week period immediately following Forest River's trade show, particularly for the reasons asserted; in particular, that Heartland's advertisements were ineffective, and that sales made two months after the trade show could not have been caused by its advertisements. Such arguments are better served in cross-examination of the evidence at trial and not in arguing whether Forest River's requests may lead to discoverable information. It is possible that Heartland's advertisements were effective in adding new sales, otherwise Heartland would not have provided its advertisements to the dealers in the first place. Further, it is also possible that new dealers responded to Heartland's advertisements after the limited, two week period suggested by Heartland. If Heartland disputes causation regarding those sales, it may do so at trial. At this stage of discovery, however, it must provide documents from the period requested by Forest River and not its own truncated time frame.

Further, this Court agrees with Forest River that it should be entitled to the actual business records which support Heartland's discovery summaries. Forest River should not be forced to rely on Heartland's summaries of the evidence or Heartland's conclusions regarding which new sales may have been proximately caused by Heartland's advertisements at the trade show. Instead, Forest River should be permitted to analyze the evidence itself and draw its own conclusions. In addition, Forest River should not be forced to settle for unsigned and unverified discovery summaries put together by Heartland. Rather, Forest River should be permitted to obtain the actual documents requested and utilized by Heartland in crafting its responses so that Forest River may actually use the discovered evidence at trial.

In this vein, this Court finds Heartland's arguments regarding its reluctance to reveal confidential business records, Heartland's purported justification for providing summaries rather than actual business records, to be unfounded. This Court concludes that Heartland's concerns regarding disclosure are outweighed by Forest River's need for the documents, as the documents requested by Forest River are obtainable from Heartland alone and are central to establishing Forest River's claims. In addition, as Forest River points out, a protective order is already in place to cover the disclosure of these documents from improper use by Forest River.

The documents analyzed by Heartland and used to support its discovery responses, must also be made available to Forest River. It is not sufficient to merely summarize that information, and Heartland must disclose it. Further, any similar documents, reflecting all sales and communications with new dealers, that occurred within Forest Rivers' expanded time period, must also be disclosed. Evidence of such sales must be disclosed even if Heartland contends that the cause of such new sales was not due to Heartland's advertisements. Heartland may not

unilaterally conclude which evidence is relevant to causation, and such conclusions are better served by the trier of fact. Finally, although, Heartland contends that it does not utilize hard-copy purchase orders, it must produce whatever form of documentation that it used to track relevant financial transactions during the time period.

That said, however, this Court does not believe that Forest River is entitled to *carte blanche* access of Heartland's business records. This Court agrees with Heartland that it should not be forced to disclose its General Ledger or all of its backup computer files. Such discovery would truly be both over-broad and unduly invasive; and, as such, this Court concludes that neither request is discoverable.

Further, if Heartland believes that it needs additional protection when making the rest of its disclosures, Heartland may move for a more specific protective order regarding the use of the documents. In addition, if Heartland believes that such documents should be submitted in redacted form, in order to protect against disclosure of non-responsive information, it may do so. However, the reasons for Heartland's redactions must be made clear and unambiguous and may be subject to future scrutiny by this Court. In this regard, Heartland is cautioned that this Court will not tolerate efforts to withhold documents that this Court has already determined to be discoverable.

Finally, this Court agrees with Forest River that it should be allowed access to any and all communications made internally or with outside vendors, that reference or relate to Heartland's advertisements at Forest River's trade show or the purported increase in sales resulting from those actions. As requested by Forest River, such discoverable communications include memos, emails, and telephone records that reflect those conversations. In its response, Heartland argues

that it no longer has any such records but asserts that it will continue to search. This Court concludes that Heartland must re-search its records and that the renewed search must necessarily include a targeted search of Heartland's backup computer files, as requested by Forest River. This Court does not agree with Forest River that all of Heartland's computer files must be turned over to Forest River to allow Forest River to conduct the search itself. Instead, Heartland must conduct its own targeted search of its computer files for all communications that are responsive to Forest River's request. Heartland is cautioned, however, that if Heartland is later found to withholding relevant communications, responsive to Forest River's request, Heartland may be subject to future sanctions by this Court.

#### **IV. CONCLUSION**

For the aforementioned reasons, Forest River's motion to compel is **GRANTED**. [Doc. No. 96]. Heartland must produce responsive documents for the time period requested by Forest River and must produce actual business records, rather than mere discovery summaries. In this regard, Heartland can not screen its responses to include only those sales that Heartland believes were proximately caused by its actions at Forest River's trade show, but must produce records of all new sales to new RV dealers and vendors. In addition, Heartland must search its files and computer drives for any communications, both internal to the company and external with new dealers, relating to the new sales occurring within the time period. Heartland is not required to disclose its General Ledger and may provide redacted copies of its document disclosures, but those redactions remain subject to future review by this Court and will be reviewed carefully according to the conclusions of this order.

**SO ORDERED.**

Dated this 31st Day of March, 2010.

S/Christopher A. Nuechterlein  
Christopher A. Nuechterlein  
United States Magistrate Judge