

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

HEARTLAND RECREATIONAL VEHICLES,	)	
LLC	)	
	)	
Plaintiff,	)	
	)	Case No. 3:08-CV-490 RLM CAN
vs.	)	
	)	
FOREST RIVER, INC.	)	
	)	
Defendant.	)	

**HEARTLAND RECREATIONAL VEHICLES, LLC'S MOTION TO DISMISS FOREST RIVER, INC.'S LANHAM ACT COUNTERCLAIM**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Heartland Recreational Vehicles, LLC ("Heartland") respectfully moves to dismiss Forest River, Inc.'s ("Forest River") Lanham Act Counterclaim for failure to state a claim for which relief can be granted. Forest River fails to allege a *prima facie* case of a Lanham Act violation because it does not allege that Heartland made any false or misleading statements in connection with either its own products or Forest River's products, a clear requirement under 15 U.S.C. § 1125(a)(1)(A). Therefore, Forest River's Lanham Act counterclaim should be dismissed as a matter of law.

The grounds for Heartland's motion are set forth more fully in the accompanying Memorandum in Support of Heartland Recreational Vehicles, LLC's Motion to Dismiss Forest River, Inc.'s Lanham Act Counterclaim.

WHEREFORE, Heartland respectfully requests that this court dismiss Forest River, Inc.'s counterclaim.

BAKER & DANIELS LLP

By: /s/ David P. Irscher

David P. Irscher (#15026-02)

Abigail M. Butler (#22295-02)

111 East Wayne, Suite 800

Fort Wayne, Indiana 46802

Tel: 260.424.8000

Fax: 260.460.1700

david.irscher@bakerd.com

abigail.butler@bakerd.com

ATTORNEYS FOR PLAINTIFF,  
HEARTLAND RECREATIONAL  
VEHICLES, LLC

**CERTIFICATE OF SERVICE**

The undersigned counsel for plaintiff Heartland Recreational Vehicles, LLC, hereby certifies that a copy of the foregoing HEARTLAND RECREATIONAL VEHICLES, LLC'S MOTION TO DISMISS FOREST RIVER'S LANHAM ACT COUNTERCLAIM were served upon the following, this 12<sup>th</sup> day of December, 2008, by operation of the Court's ECF System.

Ryan M. Fountain  
420 Lincoln Way West  
Mishawaka, Indiana 46544-1902

ATTORNEY FOR DEFENDANT  
FOREST RIVER, INC.

BAKER & DANIELS

*/s/ David P. Irmischer*  
\_\_\_\_\_  
David P. Irmischer