

UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

HEARTLAND RECREATIONAL)	
VEHICLES, LLC,)	
Plaintiff,)	
)	CASE NO.: <u>3:08-cv-490</u>
v.)	
)	
FOREST RIVER, INC.,)	JURY DEMAND
Defendant.)	

STATEMENT OF MATERIAL FACTS
NOT GENUINELY IN DISPUTE (PROPOSED AS “ESTABLISHED FACTS”), FILED
IN SUPPORT OF
FOREST RIVER’S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST
HEARTLAND FOR UNFAIR COMPETITION

1. Forest River has asserted counterclaims against Heartland in this lawsuit based upon Heartland’s acquisition and use of Forest River’s Master List of dealers who were to be attending Forest River’s private dealer show on October 22-23, 2008. DE#21-2, at ¶s 71-79 and 81.¹

2. Forest River and Heartland are direct competitors in the manufacture and sale of recreational vehicles (“Rvs”), particularly travel trailers. DE#18, page 3. Heartland has characterized itself to this Court in this lawsuit as a “bitter competitor” of Forest River. DE# 102, page 2. Heartland has also represented to the Court that Heartland and Forest River are “fervent, contentious competitors in the RV industry.” DE#57, page 3.

3. Heartland markets its travel trailers to dealers, and those dealers then resell the travel

¹ The notation “DE#” refers to the Docket Entry number in this case.

trailers to end users. See, *Forest River v. Heartland*, Case No.: 3:09-cv-302 co-pending before this Court and therein DE#17-2 and Ex. 13, page 17, lines 1-2; Ex. 9 (“Locate Dealer” button in top banner); Ex. 6; Ex. 6a; Ex. 7; Ex. 7a thereto in connection with the Motion for Partial Summary Judgment in that case.

4. Forest River hosted a private trade show next to its corporate offices in Elkhart, IN on October 22-23, 2008. DE#118, Response to ¶73.

5. Forest River reserved rooms in certain hotels for dealers attending that private trade show. DE#118, Response to ¶75.

6. Forest River created a list (called “Master List” by Forest River) identifying the guests attending Forest River’s trade show and the hotels at which the guests would be staying. DE#118, ¶75 and Response thereto. DE#81-13, Ex. LL therein showing the list itself.

7. Approximately 260 Forest River RV dealers attended the trade show. DE#80, ¶134.

8. Approximately two weeks before the Forest River trade show Heartland obtained a copy of the Forest River’s Master List of dealers who would be attending. Brad Whitehead at Heartland obtained that copy of the Master List from Rod Lung. Exhibit A, page 270, lines 7-14 hereto.

9. Previously, Mr. Whitehead had asked Mr. Lung to obtain a copy of that list. Mr. Lung was an employee of another RV manufacturer at the time, and contacted Mike Tribble, an employee of Forest River, to obtain a copy of the list. Mr. Lung obtained that list by promising Mr. Tribble that he would keep the list confidential and not disclose it to anyone else. However, at the time Mr. Lung made that promise, he knew that he had been asked to obtain that list for Heartland and that he did not intend to keep that promise to Mr. Tribble. Exhibit B, ¶4-6 hereto.

10. Upon obtaining a copy of the list, Mr. Lung passed that list on to Mr. Whitehead. Mr.

Lung gave that list to Mr. Whitehead in confidence, upon the condition that he keep that list to himself. Mr. Whitehead did not inform Mr. Lung of his true intentions for the list. If Mr. Whitehead had told Mr. Lung that he was not going to keep it confidential, Mr. Lung would not have given him the list. Exhibit B, ¶7 hereto.

11. After obtaining the first copy of the Master List, Heartland attempted to obtain an updated copy shortly before the trade show by the efforts of one of its managers, Mike Creech, in contacting a female employee of Forest River's corporate offices, Dawn Splawski. Exhibit C hereto.

12. After obtaining the copy of the Master List, Heartland's Vice President of Sales, Timothy Hoffman, instructed his brand managers to use the list to contact dealers on that list to invite them to visit Heartland while attending Forest River's trade show. Exhibit A, page 274, line 14 - page 275, line 8; page 278, lines 17-25 hereto. This was done with the intent of taking business away from Forest River. Exhibit A, page 283, lines 9 - 11.

13. By October 21, 2008, Heartland had made arrangements to meet with at least 14 dealers using the Forest River list. Exhibit D hereto (in Appendix filed under seal). After the Forest River trade show, one of Heartland's employees reported to a potential customer that "about 18 dealers" had visited Heartland during Forest River's trade show and that several of them had signed up with Heartland as a result. Exhibit E hereto (in Appendix filed under seal).

14. In addition, several days prior to the Forest River trade show, Heartland used Forest River's dealer list to send "fax flyers" to many of the dealers on that list. Exhibit F hereto (in Appendix filed under seal).

15. Still further, using the Forest River dealer list, one of Heartland's managers, Brian Walczak, arranged for the so-called Hotel Stuffing whereby envelopes with promotional materials

were prepared for delivery to the hotels at which the Forest River dealers were staying. Exhibit G hereto. Afterwards, on the evening of October 22, 2008, Heartland employees Bryan Walczak and Eric Esch went to the hotels at which the dealers were staying. DE#80, ¶137. Mr. Walczak distributed envelopes containing Heartland promotional materials at those hotels. DE#80, ¶140. At least some of those envelopes contained comparative advertising. DE#118, Response to ¶77. At least some of that comparative advertising was specifically directed against Forest River products. DE#87-6 Declaration of Jeffrey Babcock and the exhibits attached thereto. Heartland distributed these promotional materials to the dealers in order to obtain financial gain by signing up new dealers and selling travel trailers to those dealers. DE#118, Response to ¶81.

16. One of the hotel clerks they met testified that if the names of the dealers had not been on the envelopes, at least one hotel would not have delivered them to the dealers' rooms. Ex H hereto.

17. Brian Brady, Heartland's President, sent email correspondence to dealers shortly after the Forest River trade show bragging that "a number of the dealers attending [the Forest River show] stopped by HEARTLAND . . . We signed some new dealers and wrote a pleasantly surprising and quite frankly unexpected number of orders." Exhibit I hereto.

18. Mr. Brady testified that in the fall of 2008 Heartland was facing an "economic meltdown." Exhibit J, page 208, line 1 hereto. Mr. Donat testified that Heartland told at least one creditor in the fall of 2008 that Heartland was unable to pay what was owed to that creditor. Exhibit K, page 241, line 17 - page 248, line 7. Mr. Brady testified that at the time of the Forest River trade show Heartland had not expected to write any new orders for its products. Exhibit J, page 208, lines 9 - 12.

19. When trying to sign up new dealers, it is important for Heartland's sales persons to meet with the dealers face to face. Exhibit L, page 73, line 17 - page 74, line 6. Once a dealer signs up with Heartland, it usually stays a dealer for a period of years. Exhibit L, page 82, lines 8 - 20.

20. In preparing for trade shows, it is advantageous for Heartland to contact dealers who are planning to come to that trade show in advance and get the dealers to commit to purchases before the trade show so that they do not have the financial resources to purchase additional products from another manufacturer at the trade show. Exhibit K, pages 144, line 3 - page 145, lines 23.

Dated: November 2, 2010

Respectfully submitted,

s/Ryan M. Fountain

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ATTORNEY FOR FOREST RIVER, INC.

Certificate of Service

I certify that on November 2, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF system, which sent notification of such filing to all of the parties through at least the following counsel of record:

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s/Ryan M. Fountain

Ryan M. Fountain
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