

**UNITED STATES DISTRICT COURT**  
Northern District of Indiana  
South Bend Division

HEARTLAND RECREATIONAL	)	
VEHICLES, LLC,	)	
Plaintiff,	)	
	)	
v.	)	CASE NO.: 3:08-cv-490 JD
	)	
FOREST RIVER, INC.,	)	
Defendant.	)	

**HEARTLAND'S STATEMENT OF GENUINE DISPUTES AND MATERIAL FACTS IN SUPPORT OF ITS RESPONSE TO FOREST RIVER'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND ITS CROSS-MOTION FOR SUMMARY JUDGMENT**

Heartland Recreational Vehicles, LLC ("Heartland"), by counsel, pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, supports its Response to Forest River's Motion for Partial Summary Judgment and its Cross-Motion for Summary Judgment with the following Statement of Genuine Disputes and Material Facts:

**I. THE PARTIES**

1. Forest River, Inc. ("Forest River") was formed in 1996. Today, it is one of the two largest manufacturers of Recreational Vehicle ("RV") products in the country.

2. Heartland was formed by five individuals in 2003. Since that time, it has grown steadily and become an established manufacturer of RV products.

**II. THE 2008 FOREST RIVER TRADE SHOW**

3. On or about October 22-23, 2008, Forest River held a private trade show in Elkhart, Indiana (the "Trade Show"). (*See* Babcock Dep., Exh. A, p. 56, ll. 9-12.)

4. Approximately 260 Forest River RV dealers (the "Dealers") attended the Trade Show. (Babcock Dep., Exh. A, p. 59, ll. 24-25; p. 60., ll 1-13.)

5. 95-97 % of the Dealers that attended the Trade Show sell other RV companies' products in addition to Forest River's products. (Babcock Dep., Exh. A, p. 60, ll. 23-25; p. 61, l. 1.)

6. Forest River created a list it referred to as the "Master List" that identified the guests attending the Trade Show and the hotels at which the guests would be staying. (Forest River's Statement of Facts, DE #134-2, ¶ 6.)

### **III. HEARTLAND'S ACQUISITION OF FOREST RIVER'S "MASTER LIST"**

7. In October of 2008, Heartland employee Brad Whitehead called Rod Lung, an employee of Open Range RV. Open Range RV sells fifth wheel and travel trailer RVs in competition with both Heartland and Forest River. (Decl. of R. Lung, Exh. B, ¶ 3); (Printout of Open Range RV website, Exh. C, December 7, 2010, *available at* [www.openrangerv.com](http://www.openrangerv.com)).

8. During that phone call, Brad Whitehead asked Lung if he could obtain a list of the dealers planning to attend the Trade Show. Lung told Whitehead that he thought he could do so. (Decl. of R. Lung, Exh. B, ¶ 3.)

9. According to Lung, "it is not uncommon for dealer lists to be traded among recreational vehicle manufacturers." (Decl. of R. Lung, Exh. B., ¶ 4.)

10. Lung called Mike Tribble, an employee of Forest River, who was a long time friend of Lung. Lung asked for a copy of the list of dealers attending the Trade Show. Tribble asked Lung "what he would be getting for this." (Decl. of R. Lung, Exh. B, ¶ 5.)

11. Lung offered to trade Tribble a list of dealers of Keystone RV. Like Heartland, Forest River, and Open Range RV, Keystone RV is a competing manufacturer of fifth wheels

and travel trailers. Tribble accepted Lung's offer. Tribble and Lung exchanged lists, and Tribble asked Lung to keep the Trade Show list to himself, which Lung agreed to do. Tribble believed that providing the list to a competitor was simply common practice. (Decl. of R. Lung, Exh. B, ¶¶ 5, 6, 8;) (Printout of Keystone RV website, Exh. D, December 7, 2010, available at [www.keystonerv.com](http://www.keystonerv.com)).

12. Lung then gave the list of dealers attending the Trade Show to Brad Whitehead. Lung asked Whitehead to keep the list to himself. Lung's declaration does not state whether Whitehead told Lung that he would use the list only for himself, instead merely stating that "[Lung] trusted Brad to do so." (Decl. of R. Lung, Exh. B, ¶ 7.)

13. Lung believed that Brad Whitehead would use the list to contact and arrange to meet dealers that he already knew when they came to town. Lung believed that Whitehead might go to the lounges of the hotels where the dealers were staying to meet with them. (Decl. of R. Lung, Exh. B, ¶ 4.)

14. According to Lung, using the list to contact the dealers and arrange to meet with them would be consistent with common practice and courtesy in the RV industry. (Decl. of R. Lung, Exh. B, ¶ 4.)

15. Rod Lung was not an employee of Heartland during the Fall of 2008. (Aff. of R. Lung, Exh. E, ¶ 2.)

16. Rod Lung received no compensation from Heartland in the Fall of 2008. (Aff. of R. Lung, Exh. E, ¶ 2.)

17. According to Rod Lung, Heartland never controlled his behavior in any way during the Fall of 2008. (Aff. of R. Lung, Exh. E, ¶ 2.)

#### **IV. HEARTLAND'S USE OF THE MASTER LIST**

18. When other Elkhart, Indiana RV manufacturers have an event to which RV dealers are invited, the dealers attending that event often call Heartland to ask to visit Heartland's facilities while they are in town. (Leonard Dep., Exh. F, p. 12, ll. 8-25; p. 16, ll. 1-24.)

19. Loveall RVs ("Loveall") purchased RVs from Heartland around the relevant time period. Heartland had been prospecting Loveall for six months prior to the Trade Show. Heartland had performed repeated "drive-bys" and visited Loveall's lot. Loveall had shown strong interest in buying Heartland's products prior to the Trade Show. (Hoffman Dep., Exh. G, p. 358, ll. 9-25; p. 359, ll. 1-4.)

20. Campkin's RV Centre ("Campkin's") purchased RVs from Heartland during the relevant time period. Brad Campkin is the President of Campkin's. He attended the Forest River Trade Show. Campkin's was already a Heartland dealer before the Trade Show. Prior to arriving in Elkhart, Indiana for the Trade Show, Brad Campkin was already planning to visit Heartland and other RV manufacturers during his stay. Neither his decision to visit Heartland while he was in Elkhart nor his decision to purchase Heartland products were affected by receiving Heartland promotional materials. Campkin placed orders from Heartland based on the products themselves, not brochures. (Campkin Aff., Exh. H, ¶¶ 2-6.)

21. Forest River deposed only two Heartland salesmen, John Leonard and Jack Plummer, who were responsible for obtaining sales for Heartland around the time period relevant to this action. Leonard and Plummer testified that they did not personally use the list of dealers attending the Trade Show. Leonard never even saw the list, and Plummer never even used the list to call either his current dealers or any other dealers on the list. (Leonard Dep., Exh. F, p. 17,

ll. 10-15; p. 83, ll. 16-25; p. 84; p. 85, ll. 1-4); (Plummer Dep., Exh. I, p. 15, ll. 13-25; p. 16-17; p. 18, l. 1.)

22. During his deposition, John Leonard explained why he did not see any value in using the list of dealers attending the Trade show: "[I]f my dealers are coming into town, I would think that I have a good enough rapport that they're gonna call they tell me that, 'Hey, I'm gonna be there, you know, on such and such a date. You know, if I have time, I'm gonna come by and see you.'" (Leonard Dep., Exh. F, p. 84, ll. 20-25.)

23. One dealer purchasing Heartland products during the relevant time period, Wichita RV, called Heartland salesman John Leonard to schedule an appointment to visit Heartland during the Trade Show. Wichita RV was a dealer of Heartland products before Heartland obtained the list of dealers attending the Trade Show. Wichita RV had negotiated with John Leonard for the sale of several RV units prior to visiting Heartland's facilities at around the time of the Trade Show. (Leonard Dep., Exh. F, p. 13, ll. 2-25; p. 14; p. 15, ll. 1-18.)

24. Of all the dealers on the "Master List" who purchased Heartland products during the relevant time period, only one, Loveall, began selling Heartland products after the Trade Show. All other dealers placing orders with Heartland from October 22, 2008 to December 2, 2008 were already Heartland dealers prior to Heartland's acquisition of the Master list. (Donat Aff., Exh. J.)

25. Forest River's own 30(b)(6) corporate designee, Jeff Babcock, believes that the reason Loveall purchased Heartland's products is because Heartland's prices were very good. When asked in his deposition if he believed "that the reason Loveall's bought Heartland's products is because the prices were very—very good," Babcock responded, "Yes, I do believe

that's a big part of it, yes." When asked if there were any other reasons, Babcock responded, "Price." (Babcock Dep., Exh. A, p. 401, ll. 11-20.)

26. During his deposition, Babcock admitted that Forest River has not even talked to its dealers to determine whether they had been influenced by Heartland's alleged conduct in this lawsuit. Babcock testified that Forest River had been busy and that it was "not gonna waste time on talking about that in the past." (Babcock Dep., Exh. A, p. 399, ll. 6-23; p. 448, ll. 14-25, p. 449, ll. 1-5.)

27. Babcock admits that promotional materials alone cannot sell product. According to Babcock, giving a dealer promotional materials is "not all you have to do... You gotta sell them on the product... You have to talk to the dealer. You have to go through the product. You have to feature benefit the product. You gotta convince that dealer that the product you have sitting in front of him is gonna make him money on his lot." (Babcock Dep., Exh. A, p. 410, ll. 7-19.)

28. In response to an interrogatory requesting that Forest River "[i]dentify each sale you believe to be caused by Heartland's allegedly unlawful conduct at issue in this lawsuit," Forest River identified no sales. In response to an interrogatory requesting that Forest River specifically identify the damages it has allegedly suffered as a result of Heartland's alleged conduct, Forest River cited no damage to itself, instead stating that Forest River deserves the indefinite amount of "revenue" Heartland gained, or, an amount equal to "the present value of [Heartland] itself." (Forest River's Resp. to Heartland's Second Interrogs., Exh. K, pp. 1-6) (emphasis added).

V. **SPECIFIC OBJECTIONS TO FOREST RIVER'S STATEMENT OF MATERIAL FACTS**

29. In paragraph 1 of Forest River's Statement of Material Facts, Forest River claims that it has "asserted counterclaims against Heartland 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# 134-2, ¶ 1.) Forest River cites paragraphs 71-79 and 81 of its "Amended Answer, Defenses, and Counterclaims" in order to support that statement. (*Id.*) Those paragraphs contain no allegation that Heartland acquired Forest River's "Master List" — improperly or otherwise—or that Heartland used that list.

30. In paragraph 9 of Forest River's Statement of Material Facts, Forest River contends that "Mr. Lung obtained that list by promising Mr. Tribble that he would keep the list confidential and not disclose it to anyone else." (DE# 134-2, ¶ 9.) However, Rod Lung's declaration demonstrates that he actually obtained the list from Tribble by exchanging it for a list of Keystone dealers. (*See* ¶¶ 10-11, *supra.*)

31. In paragraph 13 of Forest River's Statement of Material Facts, Forest River contends that "[b]y October 21, 2008, Heartland had made arrangements to meet with at least 14 dealers using the Forest River list." (DE# 134-2, ¶ 13.) However, the exhibit cited by Forest River in support of that statement, an email from Heartland employee Coley Brady, contains no indication whatsoever that the Master List was used to arrange those meetings. (*See* DE #135.) The evidence shows that dealers often initiate meetings with Heartland themselves when they know that they are coming to town, and it cannot be assumed that the meetings contemplated by that email did not result from communications not involving the use of the list. (*See* ¶¶ 18-20, 22-23, *supra.*)

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**CERTIFICATE OF SERVICE**

The undersigned counsel for plaintiff Heartland Recreational Vehicles, LLC, hereby certifies that a copy of the foregoing was served upon the following, this 8<sup>th</sup> day of December, 2010, by operation of the Court's electronic filing system:

Ryan M. Fountain  
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/s/ David P. Irmscher

David P. Irmscher