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UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

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U.S. DISTRICT COURT
SOUTH BEND DISTRICT

FOREST RIVER, INC.,)
Plaintiff,)
)
v.)
HEARTLAND RECREATIONAL)
VEHICLES, LLC,)
Defendant.)

CASE NO.

JURY DEMAND

3:10CV-409 JD

COMPLAINT

Plaintiff, Forest River, Inc. ("Forest River"), for its Complaint against Defendant, Heartland Recreational Vehicles, LLC ("Heartland"), hereby alleges and states:

PREFACE and CONTEXT:

This lawsuit is the fourth pending matter before this Court between these parties. The prior lawsuits are case numbers 3:08-cv-490, 3:09-cv-302, and 3:10-cv-11. The facts which form the basis for this lawsuit include the facts which formed the basis for the "Hotel Action" counterclaims of Forest River in the '490 case plus additional facts which have since then come to light regarding the events of October, 2008 and Heartland's actions in marketing recreational vehicles as part of discovery in the '490 and '302 cases. It is expected that Forest River will seek to consolidate at least this case and the '490 case.

In this lawsuit, Forest River is alleging that Heartland: 1.) infringed Forest River's rights under the trademark laws, 2.) conspired to commit computer fraud and abuse, 3.) committed and

conspired to commit criminal mischief (Class D felony) in violation of Indiana laws, 4.) tortiously interfered with prospective economic advantage and business contracts, and 5.) engaged in unfair competition in violation of Indiana laws. In a general sense, the Hotel Action counterclaims of the '490 case are akin to "lesser included offenses" to the present claims.

JURISDICTION and VENUE:

1. Forest River is a corporation organized under the laws of the State of Indiana, having a principal place of business at 55470 County Road 1, Elkhart, Indiana 46514.

2. Heartland is a corporation organized under the laws of the State of Indiana, having a principal place of business at 1001 All-Pro Drive, Elkhart, Indiana 46514.

3. This action involves claims arising under the trademark laws of the United States, including Title 15, United States Code §1125, the criminal laws of the United States, including Title 18, United States Code §1030, the criminal and civil laws of the State of Indiana, including IC 35-43-1-2 and IC 34-24-3-1, as well as the common law of the State of Indiana, particularly as to unfair competition in various forms.

4. This Court has jurisdiction over the subject matter of the federal claims pursuant to 15 U.S.C. §1121 and 28 U.S.C. §1338. This Court has supplemental jurisdiction over the related state law claims under 28 U.S.C. §1367. The Court has personal jurisdiction over the defendant because it resides within this judicial district, regularly does business within this judicial district, and has committed the actions upon which the Complaint is based within this judicial district.

5. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b).

BACKGROUND FACTS:

Forest River and the RV Market:

6. Forest River is a manufacturer and seller of recreational vehicles (“RVs”). Forest River primarily markets its RVs through dealers who sell the RVs to end-users or consumers. Forest River markets its RVs in interstate commerce and throughout North America.

7. Until 2008, in recent years the primary sales event in the RV industry every year was the Recreational Vehicles Industry Association trade show in Louisville, KY. Those Louisville trade shows were primarily “dealer shows” rather than “retail shows” in that many RV manufacturers would each display their products and meet with RV dealers to try to get new dealers signed up and to obtain additional sales or sales order commitments from each of their existing dealers. Dealer shows were not typically used to sell RV products to end-users, and the general public (comprising prospective end-user purchasers) was often not permitted to attend dealer shows.

8. In 2008, the RV market suffered a significant decrease in sales. Along with this decrease in sales, lender financing both for dealers to purchase or “floor plan” RVs and for end-users to purchase RVs became more difficult to obtain.

9. In an effort to counteract the decrease in sales and to assist dealers in obtaining financing for RVs, on October 22 and 23, 2008, Forest River hosted a private trade show next to its corporate offices in Elkhart, Indiana. On display were nearly the full range of product types manufactured and sold by the various divisions of Forest River, including boats, portable toilets, cargo trailers, travel trailers, motor homes, and modular buildings. More than 700 guests were invited to attend, representing approximately 350 RV dealerships from across North America and as far away as Australia. That event was briefly featured on the evening news of WSBT-TV in South Bend on

October 22, 2008. However, that was not a public showing of Forest River products; the facilities were surrounded by a chain link fence, and there were gate attendants at the entrance to ensure that only invited guests and other persons given specific permission by Forest River could attend.

10. A theme of that trade show was “Pick Your Partner,” referring to the personal, business, and economic relationships that can develop between an RV manufacturer and an RV dealer and provide a probability of future economic benefit to both parties. One of the purposes of this event was to obtain new dealers for Forest River’s products. Another purpose was to encourage sales of various Forest River products to new and existing RV dealers. However, there were also presentations made and information given to those dealers about methods of coping with and remaining profitable during the current economic downturn in the RV industry, as well as presentations made and information given to dealers by related businesses involved in RV financing and insurance, such as GEICO (like Forest River, another subsidiary corporation of Berkshire Hathaway, Inc.).

11. That Forest River trade show became one of the major sales events in the RV industry in 2008, rivaling the Louisville trade show. Since 2008, the Forest River trade show has become an annual event with ever greater attendance by RV dealers. In 2010, several other RV manufacturers publicly arranged to have their own dealer shows or “open houses” take place at the same time as the Forest River trade show, with the result that thousands of recreational vehicle dealers from across North America are expecting to be converging on Elkhart County at the same time.

12. Preparation for the 2008 Forest River trade show required substantial time, effort, and financial investment by Forest River and its employees.

13. For example, to provide overnight accommodations for its guests, Forest River reserved

several hotels in Mishawaka, Indiana, including the Hyatt Place, Country Inn & Suites, Residence Inn, Courtyard Marriott, Springhill Suites, Holiday Inn Express, Hampton Inn, and Varsity Club. Forest River itself paid for its guests' accommodations at these hotels.

14. Prior to the private trade show, as the invitations were made to RV dealers throughout North America and those dealers responded back, Forest River created and updated an internal business document, called a "Master List" or "dealer list for the show," identifying each guest who would be attending the private trade show and which hotel that guest would be staying at. This Master List was created and maintained on Forest River's computer system. That computer system is used in connection with Forest River's sales of RV products in interstate and foreign commerce. This Master List was updated periodically with additional and/or revised information on Forest River's computer system. This Master List contained valuable information which reflected a compilation of the identities of dealers Forest River expected to solicit business with in interstate commerce at the time of the private trade show, as well as useful information about those dealers at that time. This list was subject to limited circulation within Forest River. This list and its updates were only accessible from Forest River's computer system.

15. By October 1, 2008, the existence of the up-coming Forest River trade show was widely known in the RV industry. However, the contents of the Master List as a whole were not generally known within the RV industry. Forest River took reasonable steps to prevent the contents of the Master List from being known to persons outside of Forest River. The Master List was confidential and proprietary to Forest River and constituted a trade secret belonging to Forest River under Indiana law.

Heartland's Actions in Violation of Forest River's Rights:

16. Heartland is in the business of manufacturing and selling travel trailers. Heartland is and has been at least since 2005 a direct competitor of Forest River. Heartland sells its travel trailers to dealers, at least some of whom are also dealers of one or more brands of Forest River travel trailers.

17. On or about October 1, 2008, Timothy Hoffman, one of the owners of Heartland and an officer of the company responsible for sales and marketing, found out about the Forest River trade show being planned. Approximately two weeks before that private trade show began, Heartland obtained a copy of the Master List from Forest River's computer system. Heartland obtained that Master List in the following way:

a. Heartland knew or had reason to know that the list of dealers attending Forest River's private trade show would be stored on Forest River's computer system. No employee of Heartland was authorized to have any access to that computer system for any reason.

b. One of Heartland's managers (who continued to be an employee of Heartland until 2010) contacted a sales person at Open Range RV (who is no longer employed by Open Range RV) and asked that sales person to obtain a list of the dealers coming to the Forest River trade show. That sales person had previously been considered for inclusion in Heartland as a founding member/owner when Heartland was created in 2004 and was personally known to several employees and managers of Heartland, including Mr. Hoffman. The Open Range sales person agreed with Heartland's request to attempt to obtain the list.

c. The Open Range sales person then contacted a personal friend of his who was a sales employee at Forest River and asked that sales employee to get him a copy of the Master

List. The Open Range sales person used a false or misleading description or representation of fact made to the River sales employee, namely that there was no plan or intention to provide the Master List to anyone else, specifically promising that he would instead “keep it to myself.” That description or representation of fact was false and/or misleading at the time it was made, and it was made in connection with the marketing of RVs in interstate commerce. The Open Range sales person knew at that time that he was going to immediately give the Master List to Heartland, as per Heartland’s request, and that it would be used by Heartland to sell RVs to dealers outside of the State of Indiana. The Open Range sales person should have but did not disclose to the Forest River sales employee that he had been asked to obtain that Master List by Heartland. The Open Range sales person knew or should have known that if he had made that disclosure, the Forest River sales employee would not have given him the Master List. The Open Range sales person lead the Forest River sale employee to believe that the only reason the Master List was requested was to help get some sales for Open Range. The Forest River sales employee believed that Open Range RV products were not directly targeted against Forest River’s RV products to any significant degree and, accordingly, he mistakenly believed that disclosure of the Master List would not significantly injure Forest River.

d. The Open Range sales person deceived the Forest River sales employee as to the true plan and expected use for the Master List. The false or misleading description or representation of fact as to the true plan for use of the Master List was likely to cause, and did actually cause, the Forest River sales employee to be mistaken and/or confused as to the affiliation, connection, or association of the Open Range sales person with Heartland.

e. In effect, the Open Range sales person deceived the Forest River sales employee by passing off Heartland's business plan for the Master List as his own business plan. The result of that passing off was to cause the Forest River sales employee to be mistaken as to the adverse effect of disclosing the Master List and to thereby be induced by his personal friendship and trust in the Open Range sales person to breach his fiduciary duty to Forest River by giving confidential and proprietary information to someone outside of Forest River.

f. Heartland materially contributed to this deception and intentionally induced the deception by the Open Range sales person, knowing and intending that its own use of the Master List would likely cause pecuniary loss and injury to Forest River.

g. Heartland knowingly and intentionally caused the Open Range sales person to deceive the Forest River sales employee by requesting the Open Range sales person to obtain the Master List "through the back door." Heartland also conspired with the Open Range sales person to knowingly cause Forest River to suffer pecuniary loss by that deception when Heartland agreed to accept the copy of the Master List so obtained. Heartland acted in furtherance of both the deception and this conspiracy when it accepted the copy of the Master List and then used that Master List to divert and attempt to divert sales of RVs from Forest River.

h. Additional specific information about this deception is already known to Heartland via the declaration of the Open Range sales person attached as Exhibit A to DE#96 in the '490 case (a sealed motion) and from the deposition testimony of Mr. Hoffman in the '490 case taken on June 17, 2009.

i. The Forest River sales employee obtained a copy of the Master List to give the

Open Range sales person from Forest River's computer system by exceeding his authorized access for use of that computer system. That sales employee then provided the copy of the Master List to the Open Range sales person.

j. The Open Range sales person then gave the copy of the Master List to the Heartland manager who had previously requested it from him. When he did so, the Open Range sales person gave that list to the Heartland manager in confidence and asked the Heartland manager "to keep that list to himself." The Heartland manager did not indicate he would not agree to that or that he had any other plans for use of the Master List. The Open Range sales person was not told what Heartland planned to actually do with the Master List. The Open Range sales person "assumed that [the Heartland manager] himself would use it to arrange to meet dealers that he already knew when they came to town, such as by showing up at the lounge of the hotel the dealers would be staying at and greeting them." If instead the Open Range sales person had known what Heartland was really going to do with the Master List, he "would never have given him that list. In [the Open Range sales person's] experience, Heartland took it to an extreme and did something with that dealer list that was outside the normal practice and courtesy in the RV industry."

k. Under the circumstances of the relationship of those two persons, the failure of the Heartland manager to be candid with the Open Range sales person and disclose the material fact of the real plans for use of the Master List constitutes deception. The Heartland manager knew or should have known that if he had told the Open Range sales person that his plan was most certainly not "to keep that list to himself" then the Open Range sales person would not have given him the Master List. Heartland's deception of the Open Range sales

person was intentional and for the express purpose of enabling Heartland to cause pecuniary injury or loss to Forest River by obtaining the Master List and using it competitively against Forest River.

18. After Heartland obtained the Master List through the actions of one of its managers, it immediately provided copies of that list to various Heartland brand managers, including Michael Creech, Brian Walczak, and Colin Brady. Each of those persons, acting both on behalf of Heartland and for their own personal gain agreed among themselves to use the Master List to the detriment of Forest River's business interests in manners which they knew or should have known would cause pecuniary loss or damage to Forest River. These persons and others at Heartland also conspired to and acted to implement further deceptions to facilitate use of the Master List.

19. For example, after Heartland obtained the Master List, it sought to obtain a copy of the updated version of the Master List shortly before the private trade show began. Specifically, shortly before October 22, 2008, Michael Creech, at the time a Heartland brand manager and at least until recently one of the owners of Heartland, attempted to get the update through a relationship he had established a few months previously with a female employee at Forest River's corporate offices who had access to Forest River's computer system. His communications with that female employee requesting the updated list included communications via email and telephone line text messaging. A copy of one such email was provided to Heartland in discovery during the '490 case. When he ultimately could not obtain the list in that manner, despite several attempts, Mr. Creech abruptly terminated his relationship with that female employee and requested that she assist him by concealing the fact that he had even tried to get the updated list from Forest River.

20. This attempt by Heartland through Mr. Creech to obtain the updated list on behalf of

Heartland was an overt act in furtherance of the agreed upon deceptions and misrepresentations discussed above. Mr. Creech knew or should have known that the update to the Master List was proprietary and confidential information belonging to Forest River. Mr. Creech knew or should have known that his conduct with respect to the female employee constituted inducing her to breach her fiduciary duties to her employer and to access confidential information from Forest River's computer system in a manner which exceeded her authorized access to that computer system.

21. Various Heartland managers, including Mr. Creech and Mr. Brady (who was at least until recently one of the owners of Heartland) acting both on behalf of Heartland and for their own personal gain agreed among themselves to use the Master List to contact various RV dealers indicated on that list prior to and during the Forest River trade show, some of whom were known to and/or dealers of Heartland and some of whom were not. The purposes of those dealer contacts were:

a. To get those dealers to buy or commit to buy Heartland travel trailers prior to the Forest River trade show so that the dealers will have used up a significant portion of their allowed floor plan financing prior to even coming to the trade show and thereby be unable to purchase Forest River products regardless of the product quality, pricing and other incentives Forest River offered at the trade show;

b. To sign up new dealers without having to incur the usual time and expense of traveling to those dealerships located remotely from Elkhart, Indiana;

c. To meet and build or maintain personal relationships with dealers, even existing dealers of Heartland, through critical "face time" at the expense of "face time" that would otherwise have been afforded to Forest River;

d. To interfere with and limit the attention and focus that the dealers would otherwise have given to Forest River's products and sales persons;

e. To take advantage of the investment Forest River made in paying for the dealer expenses in being at the trade show without Heartland having to incur those expenses itself and;

f. To obtain cash flow revenue for Heartland at a time when, according to Heartland's president, Heartland was in the midst of an economic melt-down.

22. Heartland acted in furtherance of that agreement and contacted numerous dealers on the Master List prior to the Forest River trade show. In addition, Heartland arranged to meet approximately 18 of those dealers at its offices in Elkhart during the Forest River trade show, according to the testimony of John Leonard, at least until recently one of Heartland's owners, during his deposition of September 21, 2010 in the '490 case. During these contacts and meetings Heartland offered unusual discounts off of normal RV pricing in further attempts to use the Master List to obtain sales away from Forest River.

23. Heartland, through Mr. Walczak, also acted in furtherance of the various agreements made with respect to use of the Master List and the deceptions identified above by the "Hotel Action" events referred to more specifically in the '490 case. Briefly, Mr. Walczak coordinated the efforts of other Heartland employees in stuffing envelopes with Heartland promotional materials, the addressing those envelopes to the dealers on the Master List, including by reference to their individual hotels so as to ensure delivery and receipt of the envelopes to those dealers (as opposed to merely dropping the promotional materials off in the hotel lobbies, if the hotels would even have give permission for that, and then hoping that dealers would just happen to pick them up as they

passed by). The promotional materials in those envelopes specifically invited the dealers to come see Heartland while in Elkhart for the Forest River trade show, giving a map with directions to Heartland's place of business, as well as other information comparing Heartland's products with Forest River's products. Heartland's purpose in doing this was not merely to solicit business for itself, but also to dispute Forest River's efforts at its trade show by getting dealers' attention away from product considerations, per se, due to the unusual and personalized nature of the "hotel stuffing."

24. Forest River suffered pecuniary loss and damage from the above-referenced actions of Heartland. For example, Forest River has lost some sales that it would otherwise have obtained, lost opportunities for further business advantages because the distraction of dealers from the trade show and because of the distraction of Forest River employees in having to deal with the pre-emptive contacts by Heartland with dealers and Hotel Action events during the show, lost some of the profits it would have made but for Heartland's unusual product pricing before and during the show, lost the benefits of the business relationship that it had with its sales employee after the breach of fiduciary duty was discovered, lost the time and money associated with the damage assessment when it discovered that the Master List had been obtained from its computer, and lost the cost of responding to the offenses by Heartland. Forest River's loss as a result of Heartland obtaining and using the Master List in this manner exceeds \$10,000.00.

25. Heartland has been unjustly enriched by its obtaining and using the Master List in this manner. In addition to obtaining sales revenue that it would not otherwise have had, Heartland obtained market share which allowed itself to maintain a line of credit for production that it would not otherwise have had and which allowed its dealers to obtain financing for Heartland products so

as to further increase sales revenues. These benefits had the affect of allowing Heartland to sustain itself during a period of time when other RV manufacturers were failing. These benefits had a direct impact upon Heartland's ability to be sold to Thor Industries for \$209 million on or about September 17, 2010.

LEGAL CLAIMS AGAINST HEARTLAND:

26. Heartland has violated Forest River's legal rights under 15 U.S.C. §1125 (a)(1)(A) and other sections of the federal Lanham Act, those actions of Heartland constituting unfair competition-type trademark infringement, as well as contributory infringement and inducement to such infringement.

27. Heartland has violated Forest River's legal rights under 18 U.S.C. §1030, a federal criminal law against computer fraud and abuse, and particularly with respect to §1030(a)(2)(C), Forest River having standing to bring a civil action with respect thereto under §1030(g).

28. Heartland has committed a Class D felony for criminal mischief under Indiana Code 35-43-1-2 and for conspiracy to commit a felony under IC 35-41-5-2. Forest River has standing to bring a civil action with respect thereto under IC 34-24-3-1 since Heartland caused the pecuniary losses.

29. Heartland has unlawfully interfered with Forest River's contractual relations with Forest River's employees and has unlawfully interfered with Forest River's prospective economic advantage and relationships with dealers identified on the Master List.

30. Heartland has engaged in unfair competition against Forest River in violation of Indiana common law.

JURY DEMAND:

Forest River requests that those issues that could be tried by a jury be so tried.

RELIEF SOUGHT:

Forest River respectfully requests this Court enter Judgement against Heartland and:

A. Preliminarily and permanently enjoin Heartland, including all persons controlling or acting in concert therewith, from violating Forest River's legal rights identified above.

B. Require an accounting from Heartland for all revenue received and economic advantage obtained by the violation of Forest River's legal rights identified above and all profits and advantages so gained by Heartland and any person associated with Heartland;

C. Require payment from Heartland to Forest River for all damages sustained by Forest River as a result of Heartland violating Forest River's legal rights identified above ;

D. Require payment from Heartland to Forest River for all attorney fees and costs in this litigation;

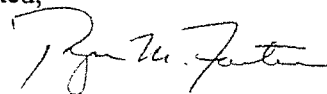
E. Assess heightened damage payment from Heartland to Forest River on account of Heartland's willful misconduct; and

F. Grant and award Forest River all such other relief as is necessary and appropriate.

Dated: September 29, 2010

Respectfully submitted,

s/Ryan M. Fountain



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