

UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

HEARTLAND RECREATIONAL)	
VEHICLES, INC.,)	
Plaintiff,)	
)	CASE NO.: <u>3:08-CV-490 RLM-CAN</u>
v.)	
)	
FOREST RIVER, INC.,)	
Defendant.)	

FOREST RIVER’S SECOND REQUESTS FOR PRODUCTION TO HEARTLAND

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Forest River requests that Heartland produce for inspection and copying the documents and things requested below, separately organized to correspond to the Request No., at the offices of the undersigned counsel on August 3, 2009.

All items sought herein encompass all embodiments of the item in tangible or electronic form or other storage media. If several copies of a given item are maintained by Heartland, only one copy needs to be produced, provided that the copies do not differ in any respect as to content (i.e., a clean, typed copy of a document and another copy with handwritten notes on the typed copy would both need to be produced, while only one of two identical typed copies would need to be produced). Heartland is required to produce all of the requested documents and things owned by it and/or in its custody, possession or control (i.e., documents belonging to Heartland, which were previously given to Heartland’s accounting firm to prepare accounting summaries for Heartland, would need to be produced since those are within the control of Heartland; similarly, the patent file histories in the

possession of Heartland's patent counsel would need to be produced by Heartland directly). If Heartland maintains certain of the requested items in electronic form (such as computer accounting records), then Heartland shall produce those items in electronic form rather than printing out a paper copy of the item, and the electronic form so produced shall have the same functionality and electronic format as that item is used and maintained by Heartland in its regular course of business. For example, if Heartland maintains a data base of certain records that allows for sorting and correlation of those records, then the electronic copy produced by Heartland shall also permit sorting and correlation of those records in the same manner.

In the event that Heartland objects to producing the items requested at the offices of the undersigned counsel because it is excessively burdensome to do so or for some other appropriate reason, those items shall be made available for inspection and copying at the location and in the format that they are normally kept in the ordinary course of Heartland's business, commencing at 9:00 a.m. on August 5, 2009, and in its Response to the applicable Request No. Heartland shall identify that location, including address and telephone number.

As used herein, the phrase "patent in this lawsuit" refers to any patent(s) which Heartland alleges in this lawsuit is infringed by Forest River. Financial terms used herein are to be construed according to GAAP (Generally Accepted Accounting Principles), as normally used by certified public accountants.

Request No. 16: All visitor logs, sales reports, memoranda, email, dealer meeting records, and any other record of Heartland and/or any of its employees which contain any reference to any actual or potential dealer of recreational vehicles (including any employee or agent of any such actual or

potential dealer) who:

- a. was present at Heartland's facilities between October 22 and October 25, 2008,
or
- b. met with a Heartland employee in St. Joseph and/or Elkhart County, Indiana
between October 22 and October 25, 2008.

RESPONSE:

Request No. 17: To the extent not previously requested, all sales logs, purchase orders, sales requests, and invoices for all products sold by Heartland between September 1, 2008 and January 1, 2009.

RESPONSE:

Request No. 18: All documents identifying or referring to any recreational vehicle dealer contacted by Heartland as a result of Heartland obtaining a list of recreational vehicles dealers, directly or indirectly, from Forest River after September 1, 2008 (including without limitation the dealer list provided to Brad Whitehead by Rod Lung, as referred to by Mr. Hoffman in his June 18, 2009 deposition).

RESPONSE:

Request No. 19: All purchase orders, sales requests, and invoices for all products sold to the dealers identified in Request No. 18 between August 1, 2008 and February 1, 2009.

RESPONSE:

Request No. 20: To the extent not previously requested, all purchase orders, sales requests, and invoices for all products sold to Loveall Enterprises.

RESPONSE:

Request No. 21: To the extent not previously requested, all agreements, correspondence, and records referring to Loveall Enterprises or any person employed by Loveall Enterprises.

RESPONSE:

Request No. 22: To the extent not previously requested, all agreements, correspondence, and records referring to Racetrack RV which were created between October 1, 2008 and January 1, 2009.

RESPONSE:

Request No. 23: To the extent not previously requested, all agreements, correspondence, and records referring to Heartland's dealers having DRL#s 10751, 10753, 10754, 10755, 10757, or 10758.

RESPONSE:

Request No. 24: To the extent not previously requested, all records of any type which contain reference to Forest River's sales event (or "open house" as Mr. Brady's email of 10/28/08, 7:36 PM described it) of October 22-23, 2008, including, without limitation, all correspondence to any recreational vehicle dealer referring to that event and/or referring to any sales event of Heartland's between October 22-25, 2008.

RESPONSE:

Request No. 25: All responses to the correspondence identified in Request No. 24 by any recreational vehicle dealer.

RESPONSE:

Request No. 26: Forest River will be seeking damages under 15 USC. §1117(a) for the total of Heartland's sales obtained as a result of the "hotel action" referred to in ¶79 of the Amended Answer in this case. Unless Heartland stipulates that it will not seek to reduce that damage amount by claiming any allowable costs or other deductions, provide all documents sufficient to:

- a. indicate the amount of the cost or deduction to be claimed by Heartland,
- b. indicate when that cost or deduction occurred, and
- c. describe in full the nature of the cost or deduction.

RESPONSE:

Request No. 27: Provide documents sufficient to show Heartland's:

- a. net profit on all sales to Loveall Enterprises,
- b. total revenue received from Loveall Enterprises,
- c. total cost of goods sold to Loveall Enterprises, and
- d. total earnings before interest, taxes, depreciation and amortization from all goods sold to Loveall Enterprises.

RESPONSE:

Request No. 28: If Heartland is claiming any reduction in the damage amount sought by Forest River

on account of administrative or overhead expenses which include payment to any business entity owned directly or indirectly, in whole or part, by Catterton Partners, Brian Brady, John Rhymer, or Tim Hoffman, then provide regularly kept business records which are sufficient to show:

- a. the reason for that payment,
- b. the amount of that payment, and
- c. the portion of that payment of which any of those names persons are a beneficiary.

RESPONSE:

Request No. 29: In his June 15, 2009 deposition, Mr Brady referred to a meeting of the Board of Directors during which it was decided to bring the present lawsuit. Provide all documents memorializing that meeting or describing or referring, in whole or part, to what was said, considered, or done at that meeting.

RESPONSE:

Request No. 30: All documents referring to or describing, in whole or part, any Board of Director meeting of any entity which exerted any control over the actions of Heartland, if in such a meeting the patent in this lawsuit, the hotel action referred to above, or the present litigation was discussed.

RESPONSE:

Request No. 31: All correspondence in any form, apart from communications with Heartland's attorneys, which refers, relates to, or describes, in whole or part, the patent in this lawsuit, the hotel action referred to above, or the present litigation.

RESPONSE:

Dated: July 1, 2009

Respectfully submitted,

s/Ryan M. Fountain

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ATTORNEY FOR PLAINTIFF

Certificate of Service:

I certify that a copy of the foregoing document was served upon the Plaintiff in this case by depositing that copy with the United States Postal Service for delivery via First Class mail, postage pre-paid, on July 1, 2009, addressed for delivery to the following counsel for that party:

David P. Irscher
Baker & Daniels
111 East Wayne, Suite 800
Fort Wayne, IN 46802

A courtesy copy was sent via email as well on that date.

s/Ryan M. Fountain

Ryan M. Fountain