

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 AS CAN
vs.	)	
	)	
FOREST RIVER, INC.	)	
	)	
Defendant.	)	

**FOREST RIVER’S RESPONSES TO HEARTLAND RECREATIONAL VEHICLES,  
LLC'S SECOND  
SET OF INTERROGATORIES TO FOREST RIVER, INC.**

**INTERROGATORY NO. 12:** With respect to the sales orders listed in the tab of the Spreadsheet labeled "Orders Oct22-Dec3\_08," please do the following:

- (1) Identify each sale you believe to be caused by Heartland's allegedly unlawful conduct at issue in this lawsuit. In identifying each sale, please list the sales order number, the dealer who placed the order, and the "created date" (first column of the tab) for the sales order;
- (2) Specifically state the allegedly unlawful act(s) of Heartland that caused each particular sale listed in response to number (1) above;
- (3) For each sale listed in response to number (1), identify and state in detail the substance of each communication you have had with the dealer placing the sale and state whether you have obtained an affidavit from the dealer; and
- (4) For each sale listed in response to number (1), identify any and all other facts supporting your contention that the specific sale was caused by Heartland's allegedly unlawful conduct in this lawsuit.

**RESPONSE:** To identify “each sale” or “all facts” supporting contentions is objected to as premature and thereby irrelevant and unduly burdensome because Heartland has so far failed to provide the documents relevant and requested to this issue by Forest River as well as many needed documents it was ordered by the Court to produce. However, Forest River does not object to that identification of sales when it has received the information it has requested at a later date. The request for “all facts” supporting contentions is further objected to as unduly burdensome and irrelevant as to the information already provided and/or made available to Heartland. The request as to “create date” is objected to since that term is considered indefinite and misleading, thereby requiring irrelevant information. In order to move this matter along and avoid waste, Forest River is willing to state that the sales can be identified by Heartland itself as all those which arose at least in part as a result of Heartland illegally obtaining the Forest River dealer list for the private dealer show. As to specifically stating which unlawful act caused the sales in issue, the request is objected to as indefinite to the extent it requires more information than the acts of unfair competition relating to obtaining and using the dealer list. Further, that request is objected to as unduly burdensome to the extent it requires Forest River to repeat information which has been previously set forth in detail in discovery to Heartland and court filings in this case addressing the actions in question. As to the defined “communications” with dealers and (as to certain facts) “all facts” supporting contentions, the request is objected to as calling for irrelevant material and attorney work-product and trial preparation material, but the “privilege log” format of responding set forth in Rule 26 in that regard is objected to as irrelevant and unduly burdensome to the extent this request is understood.

**INTERROGATORY NO. 13:** Please identify which categories of costs contained in the

Spreadsheet you believe should not be deductible from a potential damage award in this lawsuit, and for each category identified, please state in detail the reason(s) for your belief that it is not deductible.

**RESPONSE:** Initially, this request is objected to as indefinite and not comprehensible outside of proper context; at this point in time, Forest River is proceeding on three alternative measures of damage to strip away from Heartland the benefit of its illegal activity, and, as explained below, according to one such measure, there could be allowable costs deducted from the gross revenues received from the illegal actions, but no allowable costs under one or more of the other measures used. Also, this request is objected to as indefinite since the “categories” referred to are not defined sufficiently in that Spreadsheet to identify the information sought. This request is also objected to as being based upon an invalid assumption, specifically that it is “categories of costs” per se which Forest River believes should not be deductible. Instead, after receiving more detailed information from Heartland on September 1, 2010 with the partial income statements, Forest River objects to inclusion of certain costs within those categories and Forest River objects to the use of those “categories” to the extent they attempt to represent themselves in terms which are not in compliance with by GAAP standards. This request is further objected to as premature since Heartland has not provided the all of the documents requested by Forest River and those ordered to be produced by the Court as to the actual revenues and expenses noted on the Spreadsheet and other sales records of the Hotel Action and use of the Forest River dealer list.

However, to avoid misunderstanding and any further waste of time, Forest River is willing to state that it believes that no “expenses” should be deducted from the revenues except those expenses which would not have occurred anyway except for the sale of the accused products through the Hotel Action or the unfair competition in obtaining and using the Forest River dealer

list. In economic and accounting terminology, this means that the only allowable deductions are those for the “marginal incremental costs” of producing and selling the additional accused trailers. Fixed overhead, for example, should not be allocated to the accused trailer cost deductions since it would have been incurred by Heartland regardless of the illegal actions. Forest River should not have to provide price supports for illegal activity that was facilitated by pre-existing overhead. In addition, Forest River objects to any deduction of “cost” which was in reality a “constructive dividend” to shareholders under the Internal Revenue Code or GAAP. An example of this that we have noted thus far is as to “rent” Heartland is paying to a related entity controlled by one or more of its shareholders. That rental fee appears to be 3.5X the fair market rent for prime manufacturing property in Elkhart at the time. This constructive dividend is really a form of “profit” under Indiana corporate law and the relevant tax laws. Profits cannot be validly disguised like that for purposes of avoiding damage recovery by parties Heartland has infringed upon. This request is further objected to for yet another reason, the assumption that Forest River agrees to any deduction at all from revenues received under the cash flow or business valuation method of damages analysis. In short, under the cash flow damage analysis, during periods of “economic meltdown” for Heartland, as Mr. Brady described the time period in question, the mere fact of extra revenue from illegal activity kept Heartland alive when it should have suffered the actual effects of that melt down. Therefore, the revenue itself is a proper minimum measure of damage, with no allowance at all for costs of production or sales of the illegal products. Stated differently, if “robbing Peter to pay Paul” kept them afloat when they would have sunk, the money used to do that is one measure of the value of what gain they obtained. Elaborating further on the objection, if the cash flow kept the company alive during the meltdown, then the present value of the company itself is a measure of the gain obtained

from illegal activity, and no deduction at all is allowed for the category of costs.

**INTERROGATORY NO. 14:** For each counterclaim of Forest River you believe currently remains in this case, please identify the following:

- (1) the specific damages caused to Forest River by Heartland's conduct at issue in the counterclaim, including the specific amount of those damages;
- (2) the specific conduct of Heartland that caused the damages to Forest River; and
- (3) every fact of which you are award that supports an argument that Heartland actually engaged in that conduct.

**RESPONSE:** This request is objected to as being premature (and both irrelevant and unduly burdensome in that regard) for several reasons. First, there are three primary counterclaims in issue: 1. that this is exceptional case due to Heartland's misconduct both before the USPTO and in this lawsuit, 2. That Heartland committed unfair competition against Forest River in obtaining and using Forest River's dealer list for the private dealer show in October of 2008, and 3. That Heartland violated Forest River's rights under the two Indiana statutes, as set forth in the pleadings. As to the exceptional case damages, the measure of recovery sought is the measure of the litigation expenses and costs incurred, and that is not yet determinable with specificity since the case is not over. As to the unfair competition, Forest River has sought but not yet received numerous financial and business records from Heartland which would show the specific damages, but in a general sense, whatever Heartland gained by taking the dealer list should be strip from it, and the response to Interrogatory 13 provides more elaboration on that. As to the "specific conduct" involved, to the extent the scope of this request is understood, the request is objected to as unduly burdensome and irrelevant in so far as it would require repetition

of the facts and circumstances already set forth by the evidence presented in prior discovery and court filings. However, in order to move this case forward and to avoid further waste, Forest River is willing to state that the inequitable conduct by Heartland in obtaining the first patent from the USPTO and using this lawsuit for improper purposes to support further patent applications which also involved inequitable conduct before the USPTO (and, in effect, resulted in this lawsuit being an abuse of legal process or “sham” litigation to support an improper objective), together with provision of false and misleading information in discovery and withholding of required discovery support the exceptional case claim; the deceptive method of obtaining the dealer list, as set forth in the prior interrogatory answers and in the motions declarations given to Heartland previously as well as the Hotel Action supports the unfair competition claim; and the statutory claims have been explained at length already. As to the request that Forest River detail herein “every” supportive fact, that is objected to as unduly burdensome and irrelevant as to the information already provided and/or made available to Heartland. The same objection is made as to the facts contained within the computer records obtained through Holland Metal Fab., Inc., (which include CAD drawings of prior Damon frames likely known by Mr. Brady). Those records are instead made available as set forth in the response to Heartland’s production request No. 13. Those computer records provide information relevant to the exceptional case claim since they show relevant and material prior art that one or more persons at Heartland were aware of during the patent prosecution, but failed to disclose to the USPTO. Itemization of that prior art (as well as of certain other facts which would literally be requested herein) at this time is objected to as calling for irrelevant material and attorney work-product and trial preparation material, but the “privilege log” format of responding set forth in Rule 26 in that regard is objected to as irrelevant and unduly burdensome to the extent

this request is understood.

**INTERROGATORY NO. 15:** For every signed affidavit you have obtained for use in this case, please identify the affiant and identify all facts contained within that affidavit.

**RESPONSE:** This request is objected to as being based upon an invalid assumption that any such affidavit exists, when in fact no “affidavits” have been obtained in this lawsuit. However, to avoid any misconceptions and further waste of time, it should be noted that Forest River is willing to state that it has obtained “declarations” for use in this lawsuit. To the extent this request seeks information about declarations which have not been produced thus far, it is objected to as calling for the production of attorney work product information and trial preparation materials without the required showing of need under Rule 26. Detailing the “privilege log” in the format set forth in Rule 26 is objected to as calling for the production of irrelevant information and is unduly burdensome to the extent this request is understood. To the extent this request seeks information about declarations which have already been produced, it is objected to being unnecessarily redundant and overly burdensome since Heartland already has those declarations and they speak for themselves in regard to the information sought.

September 14, 2010

Respectfully submitted,

s/ Ryan M. Fountain

Ryan M. Fountain  
420 Lincoln Way West  
Mishawaka, Indiana 46544  
Tel.: 574-258-9296

ATTORNEY FOR FOREST RIVER

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a copy of the foregoing FOREST RIVER'S RESPONSE TO HEARTLAND RECREATIONAL VEHICLES, LLC'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO FOREST RIVER, INC. was served, via U.S. Mail, upon the following, this 14<sup>th</sup> day of September, 2010:

David P. Irmischer  
Baker & Daniels  
111 East Wayne, Suite 800  
Fort Wayne, Indiana 46802

ATTORNEY FOR DEFENDANT

A courtesy copy was sent to Mr. Irmischer via email on this date as well.

s/Ryan M. Fountain

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Ryan M. Fountain