

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

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

CASE NO.: 3:08-cv-490 TLS-CAN

**HEARTLAND'S MOTION FOR LEAVE TO  
FILE BRIEF IN EXCESS OF TWENTY-FIVE PAGES**

In accordance with Local Rule 7.1, Heartland Recreational Vehicles, LLC ("Heartland") respectfully moves the Court for leave to file a memorandum in excess of twenty-five (25) pages in order to adequately support its forthcoming Motion for Summary Judgment. Specifically, Heartland requests leave to file a brief not exceeding forty (40) pages in length. In support of its Motion, Heartland states the following:

1. Heartland counsel David Irmischer consulted with Forest River, Inc. ("Forest River") counsel Ryan Fountain, and Forest River does not object to this motion.
2. Forest River has asserted the following three counterclaims against Heartland: (1) inequitable conduct in the prosecution of United States Patent No. 7,278,650 (the "'650 Patent"); (2) "passing off" in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A); and (3) criminal deception in violation of Ind. Code §§ 35-43-5-3(6) and 34-24-3-1.

3. Essentially, this case involves two separate counterclaims, one pertaining to the prosecution of the '650 Patent and the other pertaining to Heartland's alleged conduct at certain hotels on or about October 22, 2008. The facts and law relevant to Forest River's inequitable conduct counterclaim are wholly distinct from the facts and law relevant to Forest River's Lanham Act and criminal deception claims.

4. Forest River's Amended Answer, Defenses, and Counterclaims and its answers to Heartland's First Set of Interrogatories contain numerous allegations that Heartland must address in its Motion for Summary Judgment on Forest River's claim of inequitable conduct. Demonstrating the absence of any inequitable conduct during the prosecution of the '650 Patent will require a lengthy and comprehensive analysis of the respective deficiencies of each of these allegations.

5. Forest River's Lanham Act counterclaim fails as a matter of law for multiple independent reasons, each requiring an individualized analysis and a discussion of separate case law.

6. Forest River's criminal deception counterclaim also fails as a matter of law for multiple independent reasons. Though based on the same facts as Forest River's Lanham Act claim, the criminal deception claim is governed by completely separate statutory and case law authority and requires a separate legal analysis.

7. Because of the sheer volume of Forest River's inequitable conduct allegations and the existence of multiple deficiencies in Forest River's Lanham Act and criminal deception claims, Heartland may require forty (40) pages to fully and properly defend itself against Forest River's counterclaims.

8. Conservatively, Heartland requests that the Court grant leave to file a memorandum not exceeding forty (40) pages in length. However, Heartland pledges to keep the memorandum as brief as reasonably possible in the hope that the full forty (40) pages will not be necessary.

WHEREFORE, Heartland respectfully requests leave to file a memorandum in excess of twenty-five (25) pages to support its forthcoming Motion for Summary Judgment.

BAKER & DANIELS LLP

*/s/ David P. Irmischer*

---

David P. Irmischer (#15026-02)

Abigail M. Butler (#22295-02)

111 East Wayne, Suite 800

Fort Wayne, Indiana 46802

Tel: 260.424.8000

Fax: 260.460.1700

david.irmscher@bakerd.com

abigail.butler@bakerd.com

ATTORNEYS FOR PLAINTIFF,  
HEARTLAND RECREATIONAL  
VEHICLES, LLC

**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 17<sup>th</sup> day of December, 2009, by operation of the Court's electronic filing system:

Ryan M. Fountain  
420 Lincoln Way West  
Mishawaka, Indiana 46544-1902

*/s/ David P. Irmischer*  
\_\_\_\_\_

David P. Irmischer