

UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

DOCUMENT
WITHDRAWN BY ORDER
DATED 3/24/10

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

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

HEARTLAND'S MOTION FOR SUMMARY JUDGMENT

Forest River, Inc. ("Forest River") asserts three counterclaims against Heartland Recreational Vehicles, LLC ("Heartland"): (1) inequitable conduct in the prosecution of U.S. Patent No. 7,278,650; (2) "passing off" or "palming 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) & 34-24-3-1. The arguments and evidence in support of this Motion are set forth in the Memorandum and Statement of Undisputed Material Facts filed herewith.

No issue of material fact exists with respect to any of Forest River's counterclaims, and Heartland is entitled to summary judgment as a matter of law.¹ Fed. R. Civ. P. 56(c).

¹ Forest River has also asserted counterclaims seeking a declaratory judgment with respect to the issues of invalidity and non-infringement. Heartland believes that these claims are likely to fall out of the case pursuant to Heartland's Voluntary Motion to Dismiss and the filing of its Covenant Not to Sue. (See Heartland's Mot. to Dismiss Certain Claims in Light of Covenant Not to Sue, Dekt. Entry Nos. 42-43.) However, Forest River has apprised Heartland that it intends to claim that this is an "exceptional case" and to file a motion seeking attorneys' fees. Such a motion would require a determination of the merits of Forest River's inequitable conduct counterclaim. Hence, Heartland has included the counterclaim of inequitable conduct in its Motion for Summary Judgment.

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ATTORNEYS FOR PLAINTIFF,
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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 21st 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