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UNITED STATES DISTRICT COURT

Northern District of Indiana
South Bend Division

| | | |
|--------------------------------|---|--------------------------|
| HEARTLAND RECREATIONAL |) | |
| VEHICLES, LLC, |) | |
| Plaintiff, |) | |
| |) | CASE NO.: |
| v. |) | |
| |) | |
| UNIVERSAL TRAILER CARGO GROUP, |) | |
| INC., |) | JURY TRIAL DEMAND |
| Defendant. |) | |

**COMPLAINT FOR DECLARATORY JUDGMENT AGAINST TRADEMARK
INFRINGEMENT CLAIM**

Plaintiff, Heartland Recreational Vehicles, LLC (“Heartland”), for its Complaint against Defendant, Universal Trailer Cargo Group, Inc. (“UTC”), alleges and states:

The Parties:

1. Heartland is a corporation organized under the laws of the State of Indiana, having a place of business in 2831 Dexter Drive, Elkhart, Indiana 46514.

2. UTC is a corporation organized under the laws of the State of Delaware, and is also known and currently doing business as Haulmark Trailers. UTC has a place of business at 1503 McNaughton Avenue, Elkhart, Indiana 46514. Under the name Haulmark Trailers, UTC also has a place of business at 14054 C.R. 4, Bristol, Indiana 46507.

Jurisdiction and Venue:

3. This is an action for declaratory judgement under 28 U.S.C. §§2201 and 2202 against a claim of trademark infringement under 15 U.S.C. §1114, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§1331 and 1338.

4. UTC maintains business office(s) in this judicial district and continuously conducts business in this judicial district. UTC has directed its allegations of trademark infringement against Heartland in this judicial district. This Court has personal jurisdiction over UTC.

5. A substantial part of the events giving rise to the claim of trademark infringement occurred in this judicial district. Specifically, UTC has manufactured and sold race car trailers in this judicial district which are marked with the THE EDGE brand, and Heartland has manufactured and sold recreational vehicles, namely, fifth wheel, toy hauler, travel trailers in this judicial district which are alleged to infringe upon UTC's rights arising from its sales of the THE EDGE race car trailers. Thus, venue is proper in this judicial district under 28 U.S.C. §1391(b)(2).

The Factual Background:

6. UTC manufactures and sells "bumper pull" towable trailers, especially formed and apportioned for transport of race cars, using the model name or brand EDGE. Examples of two series of this model of these trailers are shown in the Haulmark internet web site at www.haulmark.com/bumper-pull_racecar-trailer/.

7. UTC owns U.S. Trademark Registration No. 3,338,373 for the brand THE EDGE, as applied to "towage storage trailers." That registration was issued on November 20, 2007.

8. At least since 2010, Heartland has manufactured and sold fifth wheel towable trailers,

especially formed and apportioned as recreational vehicles having living quarters therein with a drop down ramp for forming a patio and/or receiving small vehicles, such as ATV's and/or motorcycles for use while camping, using the model name or brand EDGE. Examples of the apportionment and floorplans for these trailers are shown in the Heartland internet web site at <http://www.heartlandrvs.com/brands/toyhaulers/edge>.

9. Heartland owns U.S. Trademark Registration application number 86/768,274 for the brand EDGE, as applied to "recreational vehicles, namely fifth wheels; recreational vehicles, namely toy haulers; recreational vehicles, namely travel trailers." This application was examined by the United States Patent and Trademark Office, and passed to publication without any objection by the trademark examining attorney on November 4, 2015.

10. On March 30, 2016, UTC informed Heartland via an email at 1:56 p.m. from UTC's attorney (Michael B. Brumm) that it was opposing Heartland's registration of EDGE as applied to Heartland's goods, and included with that email a copy of the Notice of Opposition, initiating litigation before the United States Patent and Trademark Office to block that registration. Further in that email, UTC informed Heartland that unless Heartland ceased and desisted from all use of the EDGE mark "in connection with any type of towable vehicle or trailer," UTC would file a lawsuit against Heartland "bringing federal claims for trademark infringement ." This email was the second allegation of such infringement by UTC. On December 16, 2015, Kevin R. Feazil, an attorney on behalf of UTC, sent a certified letter to Christopher Putt, an attorney on behalf of Heartland, alleging that "your client has infringed and continues to infringe our client's registered trademark" by use of Heartland's EDGE brand.

11. In light of these facts, and especially the affirmative act by UTC threatening trademark

infringement litigation, Heartland has the reasonable apprehension that its continued sales of its EDGE brand of recreational vehicles are put at substantial risk of liability by a trademark infringement lawsuit. Accordingly, a case of actual controversy exists between the parties in that regard which is within the jurisdiction of this Court. Rather than wait for a point in time where the potential liability accrues even further, Heartland seeks prompt resolution of this controversy in this Court. Accordingly, the case is now ripe for a declaration of the rights of the parties by this Court under 28 U.S.C. §2201 and for such further relief as may be appropriate under 28 U.S.C. §2202.

12. Considering the actual use of the term EDGE by the parties, the differences between the goods and the markets for the goods of each party to which that term is applied, as well as the price of the respective goods and the channels of trade for each party's goods, and other relevant factors, there is no legally cognizable likelihood of consumer confusion arising the use of "EDGE" by each party in this context. Accordingly, there is no infringement of any trademark rights which UTC may have in the term EDGE by any actions of Heartland.

The Relief Sought:

Accordingly, Heartland requests that this Court enter judgement in Heartland's favor against UTC and Declare that:

- a. Heartland's use of the term EDGE, as applied to its products, is not an infringement upon any of UTC's rights (if any such rights exist) in that term.
- b. U.S. Trademark Registration No. 3,338,373 should not be construed so broadly as to cover recreational vehicles.
- c. Heartland is entitled to all such other relief as is just and appropriate.

The Trier of Facts:

Heartland requests a trial by jury on all issues so triable.

May 2, 2016

Respectfully submitted,

s/Ryan M. Fountain

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