

20D02-2209-PL-000156

Elkhart Superior Court 2

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STATE OF INDIANA) IN THE ELKHART SUPERIOR COURT
) SS:
COUNTY OF ELKHART) CAUSE NO: 20D02-2209-PL-_____

PHOENIX USA RV, INC.,

Plaintiff,

v.

HOOSIER CUSTOM CRUSIERS LLC,
BOBBY B. BUTLER, JR., CAROL C.
SIMS, EARL ROBBINS, JAMES G.
FISHER, EDWARD E. LABEAU,
PATRICIA A. MOLES, JAMES W.
NEWELL, MATTHEW R. SIMS, and
MICHAEL E. STRAWS,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Phoenix USA RV, Inc. ("Phoenix USA"), for its Complaint for Injunctive and Other Relief against Defendants Hoosier Custom Cruisers LLC ("HCC"), Bobby B. Butler, Jr., Carol C. Sims, Earl Robbins, James G. Fisher, Edward E. Labeau, Patricia A. Moles, James W. Newell, Matthew R. Sims, and Michael E. Straws (the "Individual Defendants" and, together with HCC, the "Defendants") alleges:

NATURE OF THE ACTION

1. This is an action for criminal conversion and theft, breach of fiduciary duty, misappropriation of trade secrets, trade dress infringement, and unfair competition.

2. Plaintiff Phoenix USA designs, builds, markets, and sells custom motor homes to customers through authorized retailers across the United States.

3. Defendants, which include former Phoenix USA employees and the competitor company they founded while still working at Phoenix USA, abused their positions of trust with Phoenix USA throughout 2020 and early 2021 to sabotage Phoenix USA operations, steal intellectual and tangible personal property from Phoenix USA, and use Phoenix USA's stolen property to design and build a prototype RV for Defendant HCC (the "Hoosier Cruiser") that is virtually identical to Phoenix USA's Phoenix Cruiser.

4. Phoenix USA files this complaint to prevent Defendants from continuing to unfairly compete using Phoenix USA's distinctive trade dress, trade secrets, and tangible property and to seek redress for Defendants' theft of Phoenix USA's property and their flagrant abuse of their positions of trust with Phoenix USA to sabotage Phoenix USA's operations and growth for their own benefit.

PARTIES, JURISDICTION, AND VENUE

5. Phoenix USA is an Indiana corporation with a principal place of business at 3504 Cooper Drive, Elkhart, IN 46514.

6. HCC is an Indiana limited liability company with a principal place of business at 2994 Paul Dr., Elkhart, IN.

7. Butler was formerly employed by Phoenix USA as plant supervisor and is a current member and owner of HCC. He resides at 54375 Wilson Street, Elkhart, IN 46514.

8. Carol Sims was formerly employed by Phoenix USA as purchasing manager and is a current member and owner of HCC. She resides at 27422 Bison Ridge, Elkhart, IN, 46514.

9. Robbins was formerly employed by Phoenix USA as sales manager and is a current member and owner of HCC. He resides at 1055 Joliet Dr., Niles MI 49120.

10. Fisher was formerly employed by Phoenix USA as a welder and is a current member and owner of HCC. He resides at 26084 Arlington Rd., Elkhart, IN, 46514.

11. Labeau was formerly employed by Phoenix USA in its electrical department and is a current member and owner of HCC. He resides at 54548 Princess Ave., Elkhart, IN, 46514.

12. Moles was formerly employed by Phoenix USA in the trim and putty department and is a current member and owner of HCC. She resides at 54375 Wilson Street, Elkhart, IN 46514.

13. Newell was formerly employed by Phoenix USA in its final finish department and is a current member and owner of HCC. He resides at 56771 Spruce Lane, Elkhart, IN, 46516.

14. Matthew Sims was formerly employed by Phoenix USA as a plumber and is a current member and owner of HCC. He resides at 1111 Columbian Ave., Elkhart, IN, 46514.

15. Straws was formerly employed by Phoenix USA in its flooring department and is a current member and owner of HCC. He resides at 54539 Buckhorn Rd., Three Rivers, MI, 49093.

16. The Court has jurisdiction over the subject matter of this Complaint.

17. The Court has personal jurisdiction over all Defendants because the facts giving rise to all claims alleged in the Complaint have sufficient contacts to the State of Indiana. The Court also has general personal jurisdiction over HCC and any Individual Defendants who are residents of Indiana.

18. Venue in Elkhart County is proper and preferred under Indiana Trial Rule 75(A)(1), (2), and (4).

FACTUAL ALLEGATIONS

A. Phoenix USA's Business and Trade Dress

19. Phoenix USA was founded in 1996 and has spent years developing a unique, custom design and style for its Phoenix Cruiser "Class B+" motorhome that has become instantly recognizable by RV enthusiasts across the country. What separates Phoenix USA's RVs from the competition is its commitment to quality in design and construction, customer satisfaction, and the custom touches that characterize Phoenix Cruisers. Phoenix USA's commitment to quality custom design and customer service has made Phoenix USA one of the most reputable companies in the industry with one of the highest customer satisfaction ratings.

20. The "Phoenix Cruiser Trade Dress" consists of a distinctive combination of source-identifying elements, including: (1) a streamlined front cap that begins just above the windshield line and ends where it mates perfectly with the roof; (2) the Ford E-450 chassis; (3) contoured sidewall; (4) the shape, location, and design of the slide-outs; and (5) the distinctive angled shape and style of the rear cap. Below is a picture.



21. Since first introducing the Phoenix Cruiser in 1997, Phoenix USA has continuously manufactured, sold, and promoted RVs bearing the Phoenix Cruiser Trade Dress.

22. The combination of elements comprising the Phoenix Cruiser Trade Dress serves no function other than as a signifier of the Phoenix USA brand. The Phoenix Cruiser Trade Dress is not essential to the use or purpose of the RV, it does not reduce the cost or improve performance of the RV, and its use by Phoenix USA does not put competitors at any significant non-reputation-related disadvantage. Competitors have available a multitude of alternative RV designs they could use. For example, other popular “Class B+” RVs, such as the (1) Airstream Atlas, (2) Coachmen Cross Trek, (3) Winnebago Ekko, (4) Thor Motor Coach Gemini, and others, do not include the distinctive elements of the Phoenix Cruiser Trade Dress.

B. Individual Defendants abuse their positions of trust as Phoenix USA employees to build a virtually identical competing RV using stolen intellectual and tangible personal property.

23. In 2017, Phoenix USA’s founder, Kermit Fisher, sold the company to its current owners, Chuck and Tina Cooper. At the time of the sale, Phoenix USA was a stable company with an excellent reputation and a skilled, long-term workforce, including the Individual Defendants.

24. The Individual Defendants were upset with the decision to sell Phoenix USA and became unhappy with the direction of the company under new ownership. The Individual Defendants felt that their history with Phoenix USA entitled them to own the company.

25. Defendant Robbins, Phoenix USA’s long-time sales manager and the former face of the company, left the company in 2018, but the other Individual Defendants continued to work for Phoenix RV and actively resisted Phoenix USA’s

efforts to expand its workforce and introduce improvements to the design of the Phoenix Cruisers.

26. Sometime in or before 2020, the Individual Defendants began developing plans to start their own custom RV business to manufacture Phoenix-style cruisers in direct competition with Phoenix USA.

27. In September 2020, a group of Phoenix USA employees, including the Individual Defendants, created a limited liability company named Hoosier Custom Cruiser LLC and began to design, build, market, and sell custom RVs in direct competition with Phoenix USA. This was not known to Phoenix USA at the time.

28. Rather than resign from their jobs at Phoenix USA to pursue their own path, however, the Individual Defendants continued to accept employment and pay from Phoenix USA, while at the same time developing a directly competing product.

29. While continuing to use their positions at Phoenix USA to prevent design and other improvements to the Phoenix Cruiser, the Individual Defendants used trade secrets and other information to which they had access as Phoenix USA employees to design and build a directly competing product, incorporating some of the same improvements they had refused to make to the Phoenix Cruiser.

30. One or more of the Individual Defendants, including but not limited to Defendant Carol Sims and Butler, on their own behalf and as agents of HCC, used their positions of responsibility at Phoenix USA to cultivate relationships with Phoenix USA vendors and other contacts, often during time when they were on-the-clock and being compensated by Phoenix USA.

31. While still employed by Phoenix USA, one or more of the Individual Defendants, including but not limited to Carol Sims, Labeau, and Straws, on their own behalf and as agents of HCC, also stole numerous components that were the property of Phoenix USA and used them build their prototype HCC RV, called the "Hoosier Cruiser." These Defendants used Phoenix USA's inventory on a weekly basis

as a “shopping mall” for parts and components that the HCC Defendants needed to construct the prototype Hoosier Cruiser.

32. While still employed by Phoenix USA, one or more of the Individual Defendants, including but not limited to Carol Sims, on their own behalf and as agents of HCC, used their positions at Phoenix USA to obtain custom front and rear caps that belonged to Phoenix USA without authorization, either directly from Phoenix USA, by diverting a delivery intended for Phoenix USA, or by knowingly purchasing caps produced using Phoenix USA’s custom molding without Phoenix RV’s authorization.

33. The Defendants made minor modifications to the stolen custom front and rear caps to produce molds with which other identical components could be produced to build additional Hoosier Cruisers that are virtually identical to the Phoenix Cruiser.

34. While still employed by Phoenix USA, one or more of the Individual Defendants, including but not limited to Matthew Sims, on their own behalf and as agents of HCC, used their positions of trust at Phoenix USA to sabotage Phoenix USA RV units by deliberately failing to complete portions of RV units and concealing the incomplete workmanship. This sabotage was done with the intent of undermining the reputation of Phoenix USA and giving HCC an unfair competitive advantage.

35. While still employed by Phoenix USA, one or more of the Individual Defendants, including but not limited to Carol Sims, on their own behalf and as agents of HCC, used their positions of trust at Phoenix USA to sabotage Phoenix USA’s vendor relationships. This sabotage was done with the intent of undermining the reputation of Phoenix USA and giving HCC an unfair competitive advantage.

36. In December 2020, Defendant Butler was terminated for striking another employee. Prior to his departure, Butler solicited other employees, customers, and/or vendors to switch from Phoenix USA to HCC.

37. In June 2021, Defendants Labeau, Moles, Matt Sims, and Carol Sims walked off the job without notice to Phoenix USA. They informed other employees that their goal was to shut down Phoenix USA. Prior to their departure, these Individual Defendants solicited other employees, customers, and/or vendors to switch from Phoenix USA to HCC.

38. Defendants sought to skip the significant investments required to develop original, authentic, and distinctive high-quality RVs, including the design and construction of front and rear cap molding, and instead chose to convert Phoenix USA's parts to create new molds with insignificant modifications.

39. Defendants have used components and parts stolen from Phoenix USA to produce a prototype Hoosier Cruiser that is virtually identical to the Phoenix Cruiser. Below is a picture of the prototype Hoosier Cruiser.



40. HCC later transferred its prototype Hoosier Cruiser to Robbins for an unknown amount. Robbins purchased the prototype Hoosier Cruiser with actual or constructive knowledge that it was built using intellectual and tangible personal property owned by Phoenix USA without Phoenix USA's authorization.

C. The Defendants unfairly compete with Phoenix USA using the prototype Hoosier Cruiser, which was virtually identical to a Phoenix Cruiser.

41. Both before and after the transfer to Robbins, Defendants used the prototype Hoosier Cruiser to advertise and write orders for other Hoosier Cruisers.

42. The prototype Hoosier Cruiser is virtually identical to the Phoenix Cruiser, as illustrated below, and incorporates the Phoenix Cruiser Trade Dress without authorization from Phoenix USA. The design of the Hoosier Cruiser includes: (1) a streamlined front cap identical to the Phoenix Cruiser front cap; (2) the same Ford E-450 chassis; (3) the same contoured sidewall; (4) the same shape, location, and design of the slide-outs; and (5) the same distinctive angled shape and style of the rear cap. The marketing pictures below show the Phoenix Cruiser (top) and the virtually identical Hoosier Cruiser (bottom):



43. Below is an additional visual comparison of the side profiles of Phoenix Cruiser (top) and the Hoosier Cruiser (bottom):



44. Below is a visual comparison of the rear of the Phoenix Cruiser (top) and the Hoosier Cruiser (bottom), showing the same distinctive angled shape:



45. Defendants continue to possess and use the prototype Hoosier Cruiser and other RVs produced using intellectual and tangible property owned by Phoenix USA, without Phoenix USA's authorization, to market and advertise online and at RV trade shows, including but not limited to "America's Largest RV Show," which will take place in Hershey, PA from September 14–18, 2022.

46. Defendants continue to exercise unauthorized possession and control of tangible personal property owned by Phoenix USA, including the molding constructed using front and rear caps owned by Phoenix RV and various components and other parts stolen from Phoenix USA.

47. Defendants continue to use Phoenix USA's trade secrets and other intellectual property without Phoenix USA's authorization.

48. Without permission, authorization, or consent from Phoenix USA, the Defendants have infringed Phoenix USA's trade dress rights by designing, making, using, promoting, advertising, selling, and/or offering to sell the Hoosier Cruiser that is confusingly similar to Phoenix USA's Phoenix Cruiser Trade Dress.

49. The infringing Hoosier Cruisers produced, distributed, marketed, promoted, offered for sale, and sold by Defendants are not made by Phoenix USA. Nor are Defendants' products associated, affiliated, or connected with Phoenix USA, or licensed, authorized, sponsored, endorsed, or approved by Phoenix in any way.

50. The likelihood of confusion, mistake, and deception engendered by Defendants' infringement of Phoenix Cruiser Trade Dress is causing irreparable harm to the goodwill symbolized by the trade dress and the reputation for originality, authenticity, and quality that it embodies.

51. Defendants' activities are likely to cause confusion before, during, and after the time of purchase because consumers, prospective purchasers, and others viewing Defendants' infringing Hoosier Cruiser at the point of sale or post-purchase are likely to mistakenly attribute the infringing Hoosier Cruiser to Phoenix USA. By

causing a likelihood of confusion, mistake, and deception, Defendants are inflicting irreparable harm on Phoenix USA and damaging its reputation.

52. On information and belief, Defendants knowingly, willfully, intentionally, and maliciously adopted and used confusingly similar imitations of the Phoenix Cruiser Trade Dress.

53. On information and belief, Defendants deliberately intended to trade off the popular and positive goodwill associated with Phoenix USA and its trade dress rights by using features on the infringing Hoosier Cruiser RV that are nearly identical to or that include a confusingly similar combination of elements as the Phoenix Cruiser Trade Dress.

54. Defendants knew or should have known of Phoenix USA's prior rights in its asserted trade dress before using their imitation marks, and thus Defendants has acted willfully with respect to Phoenix USA's and trade dress rights.

55. On information and belief, each Individual Defendant has individually or in conspiracy with the other Defendants, knowingly directed, aided and abetted, or ratified the actions of all other Defendants alleged herein.

CAUSES OF ACTION

Count I – Conversion (All Defendants)

56. Phoenix USA incorporates all previous paragraphs of this Complaint as if fully set forth herein.

57. Phoenix USA owns various tangible personal property, as described above, that was used by the Defendants to build a prototype Hoosier Cruiser (the "Stolen Property").

58. Phoenix USA had an unqualified right of possession of the Stolen Property.

59. Defendants converted the Stolen Property by taking, selling, receiving, or conspiring to take, sell, or receive the Stolen Property and using the Stolen Property to build a prototype Hoosier Cruiser and create molds to build additional Hoosier Cruisers, all without the authorization of Phoenix USA and in defiance of Phoenix USA's rights in the Stolen Property.

60. Phoenix USA suffered damages as a result of Defendants' conversion.

Count II – Criminal Conversion
(All Defendants)

61. Phoenix USA incorporates all previous paragraphs of this Complaint as if fully set forth herein.

62. Phoenix USA owns the Stolen Property.

63. Phoenix USA had an unqualified right of possession of the Stolen Property.

64. Defendants knowingly and intentionally exercised unauthorized control over the Stolen Property by taking, selling, receiving, or conspiring to take, sell, or receive the Stolen Property and using the Stolen Property to build a prototype Hoosier Cruiser and create molds to build additional Hoosier Cruisers, all without the authorization of Phoenix USA and in defiance of Phoenix USA's rights in the Stolen Property.

65. Phoenix USA suffered damages as a result of Defendants' conversion.

66. Under the Indiana Crime Victims Relief Act, IC 35-43-4-3, Phoenix USA is entitled to recover: (1) An amount not to exceed three its actual damages; (2) the costs of the action; (3) a reasonable attorney's fee; and (4) other expenses and reasonable costs of collection as outlined in the statute.

Count III – Theft
(All Defendants)

67. Phoenix USA incorporates all previous paragraphs of this Complaint as if fully set forth herein.

68. Phoenix USA owns the Stolen Property.

69. Defendants knowingly and intentionally exercised unauthorized control over the Stolen Property by taking, selling, receiving, or conspiring to take, sell, or receive the Stolen Property and using the Stolen Property to build a prototype Hoosier Cruisers and create molds to build additional Hoosier Cruisers, all without the authorization of Phoenix USA.

70. Defendants intended to deprive Phoenix USA of all or part of the value of the Stolen Property.

71. Phoenix USA suffered damages as a result of Defendants' theft.

72. Under the Indiana Crime Victims Relief Act, IC 35-43-4-3, Phoenix USA is entitled to recover: (1) An amount not to exceed three its actual damages; (2) the costs of the action; (3) a reasonable attorney's fee; and (4) other expenses and reasonable costs of collection as outlined in the statute.

Count IV– Breach of Fiduciary Duty
(Butler, Carol Sims, Fisher, Labeau, Moles,
Newell, Matthew Sims, and Straws)

73. Phoenix USA incorporates all previous paragraphs of this Complaint as if fully set forth herein.

74. As employees of Phoenix USA, the Individual Defendants owed a fiduciary duty of loyalty to Phoenix USA.

75. The Individual Defendants breached their fiduciary duty of loyalty to Phoenix USA by, among other things: (1) converting tangible personal property from Phoenix USA; (2) using Phoenix USA's trade secrets and other confidential information to directly compete with Phoenix USA; (3) soliciting employees,

suppliers, and customers on behalf of HCC; (4) failing to use best efforts to perform the duties of their employment at Phoenix USA; and (5) actively sabotaging the business of Phoenix USA.

76. Phoenix USA suffered damages as a result of Defendants' breach of their fiduciary duty of loyalty.

Count V Unfair Competition under the Lanham Act
(All Defendants)

77. Phoenix USA incorporates all previous paragraphs of this Complaint as if fully set forth herein.

78. By virtue of Phoenix USA's extensive advertising, substantial promotion, and the provision by Phoenix USA of high-quality products under the Phoenix Cruiser Trade Dress, the relevant purchasing public, including the general public, has come to identify Phoenix USA as the source and origin of high-quality RVs offered under the Phoenix Cruiser Trade Dress.

79. Defendants have infringed, and contributed to the infringement of, by creating, marketing, and advertising the Hoosier Cruiser, which is virtually identical to the Phoenix Cruiser. These acts deceive and mislead the public into believing that Defendants' products are actually Phoenix USA's products or are otherwise sponsored, authorized, endorsed, supervised, and/or guaranteed by Phoenix USA.

80. As Phoenix USA cannot control the quality of Defendants' offered products or the content on the websites operated by Defendants, Defendants' actions have caused and, unless enjoined, will continue to cause irreparable harm to Phoenix USA and its trade dress.

81. The foregoing acts, practices, and conduct of Defendants misrepresent the nature, characteristics, and qualities of Phoenix USA's products. Defendants' conduct constitutes unfair competition; false designation, description or representation; false advertising; fraud; and/or unfair or deceptive trade practices

that are likely to cause confusion or mistake by the public, in violation of 15 U.S.C. § 1125(a).

82. As a direct and proximate result of the foregoing acts, practices, and conduct, Phoenix USA has been or is likely to be substantially injured in its business, including its reputation and business identity, resulting in lost revenues and profits, and diminished goodwill and reputation.

83. Phoenix USA has no adequate remedy at law because its trade dress is unique and represents to the public the source, reputation, and goodwill of Phoenix USA's products. The damages caused by Defendants' actions are not susceptible to any ready or precise calculation because such damages involve lost profits, lost business opportunities, loss of goodwill, and the impairment of the integrity of Phoenix USA's products and trade dress. Accordingly, monetary damages alone cannot fully compensate Phoenix USA for Defendants' misconduct.

84. Unless enjoined by the Court, Defendants will continue to make false descriptions or representations and to pass off the products as provided by, sponsored by, or associated with Phoenix USA to Phoenix USA's irreparable injury. This threat of future injury to Phoenix USA's business identity, goodwill, and reputation requires injunctive relief to in order to prevent Defendants' continued false descriptions, representations, and passing off, and to ameliorate and mitigate Phoenix USA's injuries.

85. Defendants' conduct has caused irreparable harm in the form of lost business and reputation, and other irreparable damages, entitling Phoenix USA to recover compensatory damages and obtain injunctive relief.

86. Defendants' use of the infringing Hoosier Cruiser trade dress has been willful, justifying the award of attorneys' fees and costs to Phoenix USA pursuant to 15 U.S.C. § 1117(a).

Count VI – Trade Dress Dilution under the Lanham Act
(All Defendants)

87. Phoenix USA incorporates all previous paragraphs of this Complaint as if fully set forth herein.

88. Phoenix USA owns the Phoenix Cruiser Trade Dress.

89. The Phoenix Cruiser Trade Dress is inherently distinctive and is famous.

90. The Phoenix Cruiser Trade Dress was famous before Defendants copied it for use with the Hoosier Cruiser.

91. Defendants have caused the Hoosier Cruiser products to enter into interstate commerce.

92. Defendants' use of the Phoenix Cruiser Trade Dress includes commercial use.

93. Phoenix USA actively polices the use of its trade dress by third parties.

94. Defendants intended and intend to dilute the Phoenix Cruiser Trade Dress and to trade on the recognition of the famous Phoenix Cruiser Trade Dress.

95. Defendants' activities are likely to cause, have caused, and are causing trade dress dilution by blurring. Specifically, Defendants have created an association, which based on the similarity of Defendants' Hoosier Cruiser to the established Phoenix Cruiser Trade Dress, that damages the Phoenix Cruiser Trade Dress's ability to serve as a unique identifier, in violation of § 43 of the Lanham Act, 15 U.S.C. § 1125(c).

96. Phoenix USA is entitled to injunctive relief pursuant to 15 U.S.C. §§ 1116 and 1125.

97. Phoenix USA is entitled to damages pursuant to 15 U.S.C. § 1117(a), including disgorgement of Defendants' profits, an award of Phoenix USA's actual damages, and the costs of this action.

98. Defendants' dilution by blurring has been willful, and this qualifies as an extraordinary case justifying the award of attorneys' fees and costs to Phoenix USA pursuant to 15 U.S.C. § 1117(a).

Count VII – Trade Dress Infringement under Indiana Common Law
(All Defendants)

99. Phoenix USA incorporates all previous paragraphs of this Complaint as if fully set forth herein.

100. The Phoenix Cruiser Trade Dress is distinctive, and Phoenix USA distinguishes products sold with the Phoenix Cruiser Trade Dress from other RV companies and their products.

101. Defendants' use of the Phoenix Cruiser Trade Dress name is likely to cause confusion and has caused confusion as to the source of Defendants' RVs.

102. Defendants intended and still intend to deceive and confuse the public and members of the RV community, including trade shows, media, and customers regarding the source of the Hoosier Cruiser.

103. Defendants' actions have caused damage and loss to the reputation and goodwill of Phoenix USA and the Phoenix Cruiser Trade Dress.

104. Phoenix USA is entitled to injunctive relief under the common law claim of unfair competition via trade dress infringement.

105. Phoenix USA is entitled to compensatory and punitive damages under the common law claim of unfair competition via trade name infringement.

Count VIII – Unfair Competition under Indiana Common Law
(All Defendants)

106. Phoenix USA incorporates all previous paragraphs of this Complaint as if fully set forth herein.

107. Defendants' actions, as alleged above, constitute unfair competition. Defendants' unfair competition includes but is not limited to:

- a. Breaching and soliciting the breach of Phoenix USA's employees' fiduciary duties of loyalty by entering into direct competition while still employed by Phoenix USA;
- b. Sabotaging and soliciting the sabotage of the quality of Phoenix USA's products with the intent of gaining an unfair competitive advantage for the Hoosier Cruiser;
- c. Building a competing product to the Phoenix Cruiser using tangible personal property belonging to Phoenix USA without authorization;
- d. Building a competing product to the Phoenix Cruiser using trade secrets and other intellectual property belonging to Phoenix USA without authorization; and
- e. Attempting to deceive the public and members of the RV industry regarding the source of the Hoosier Cruiser, specifically, that the Hoosier Cruiser is related to or derived from the longstanding and well-known Phoenix Cruiser.

108. Defendants' actions have caused damage and loss to the reputation and goodwill of Phoenix USA and the Phoenix Cruiser Trade Dress.

109. Phoenix USA is entitled to injunctive relief under the common law of unfair competition.

110. Phoenix USA is entitled to compensatory and punitive damages under the common law of unfair competition.

JURY TRIAL REQUESTED

Phoenix USA hereby requests a trial by jury on all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Phoenix USA prays for the following relief:

- A. Set this matter for an evidentiary hearing on Phoenix USA's request for preliminary injunction and, after said hearing, enter a preliminary injunction:
- (i) Enjoining the Individual Defendants from: (a) being employed by and/or rendering services directly or indirectly to HCC in any capacity in which they will disclose, or inevitably disclose, Phoenix USA's Trade Secrets; and (b) using or disclosing Phoenix USA's Trade Secrets in any manner.
 - (ii) Enjoining HCC from: (a) continuing to employ the Individual Defendants in any capacity in which they will disclose, or inevitably disclose, Phoenix USA's Trade Secrets and confidential information; (b) continuing to build, market, and sell RV units that are built using Phoenix USA's Trade Secrets or contain the Phoenix Cruiser Trade Dress; (c) selling or otherwise disposing of any RV unit built using Phoenix RV's tangible personal property or using the Phoenix Cruiser Trade Dress; and (d) using or disclosing Phoenix USA's Trade Secrets in any manner.
- B. After final trial, award Phoenix USA the following relief:
- (i) A permanent injunction enjoining Defendants from engaging in the same conduct identified in paragraph (A) above;
 - (ii) Judgment in Phoenix USA's favor and against Defendants on all claims alleged by Phoenix USA in this Complaint;
 - (iii) Actual damages according to proof, including the value of the personal property converted from Phoenix USA, Phoenix USA's lost profits in an amount to be proved at trial, as well as disgorgement of all profits derived from Defendants' infringement and dilution of the Phoenix Cruiser Trade Dress and from Defendants' unfair competition;

- (iv) Statutory treble damages equal to three times Phoenix USA's actual damages caused by Defendants' conversion and theft of Phoenix USA's tangible personal property under the Indiana Crime Victims Relief Act;
- (v) Exemplary damages under the Indiana Uniform Trade Secret Act;
- (vi) Punitive damages in an amount to be determined at trial for Defendants' willful trade dress dilution, unfair competition, and breach of fiduciary duties;
- (vii) Pre-judgment and post-judgment interest;
- (viii) Attorneys' fees and costs; and
- (ix) All other just and proper relief.

Dated: September 7, 2022

Respectfully submitted:

/s/ Stephen M. Judge
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