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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184486
Party	Plaintiff ContiTech North America, Inc.
Correspondence Address	Zachary D. Cohen McGuireWoods LLP 901 East Cary Street Richmond, VA 23219 UNITED STATES zcohen@mcguirewoods.com
Submission	Motion to Suspend for Civil Action
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Date	06/12/2008
Attachments	Motion to Suspend 77143412.pdf (44 pages)(2113938 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CONTITECH NORTH AMERICA, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91184486
)	Ser. No. 77/143412
BFS DIVERSIFIED PRODUCTS LLC,)	
)	
Applicant.)	

OPPOSER’S MOTION TO SUSPEND PROCEEDINGS

Opposer, ContiTech North America, Inc. (“Opposer” or “ContiTech”), by counsel, and pursuant to Rule 2.117(a) of the Trademark Rules of Practice, respectfully moves the Board to suspend this proceeding pending resolution of the Civil Action now pending between Opposer and Applicant (BFS Diversified Products, Inc.) (“Applicant”).

STATEMENT OF FACTS

On March 28, 2008, Applicant and its alleged related company, Firestone Industrial Products Company, LLC (jointly, “Firestone”), filed a Verified Complaint in the United States District Court for the Southern District of Indiana, entitled *BFS Diversified Products, LLC, et al. v. ContiTech North America, Inc.*, Civil Action No. 1:08-CV-0416-LJM-TAB (the “Civil Action”). In its Verified Complaint, Firestone alleges that ContiTech has engaged in trademark infringement and unfair competition by using the phrases “WORLD’S NUMBER 1 AIR SPRING” and “WORLD’S NO. 1 AIR SPRING.” (Exhibit A, Verified Complaint). Firestone bases its claims against ContiTech in part upon rights in the alleged mark covered by U.S. Application Ser. No. 77/143412 (“Applicant’s Mark”) (*Id.* at ¶ 14).

ContiTech's responsive pleadings in the Civil Action were filed on May 27, 2008. (Exhibit B, ContiTech's Answer and Counterclaim). In its Answer and Counterclaim, ContiTech asserts that the phrase "world's number 1 air spring" is descriptive under section 2(e) of the Lanham Act, that Firestone's use of the phrase "world's number 1 air spring" is deceptive under section 2(a), and that Firestone's use of the phrase "world's number 1 air spring" is deceptively misdescriptive under section 2(e) of the Lanham Act.

On or about June 9, 2008, ContiTech commenced this proceeding by filing a Notice of Opposition with the Trademark Trial and Appeal Board opposing registration of Applicant's Mark. In this proceeding, ContiTech also asserts that the phrase "world's number 1 air spring" is descriptive under section 2(e) of the Lanham Act, that Firestone's use of the phrase "world's number 1 air spring" is deceptive under section 2(a), and that Firestone's use of the phrase "world's number 1 air spring" is deceptively misdescriptive under section 2(e) of the Lanham Act.

ARGUMENT

ContiTech respectfully requests that the Board suspend this opposition action pending resolution of the Civil Action. Rule 2.117(a) of the Trademark Rules of Practice provides that:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that the parties to a pending case are engaged in a civil action which may be dispositive of the case, proceedings before the Board may be suspended until termination of the civil action.

37 C.F.R. § 2.117(a); *See, e.g., General Motors Corp. v. Cadillac Club Fashions, Inc.*, 22 U.S.P.Q.2d 1933 (TTAB 1992).

The rule clearly applies here. ContiTech's Notice of Opposition and its Answer and Counterclaim in the Civil Action both put at issue whether Applicant's Mark is entitled to protection.

If Opposer's defenses are sustained by the Court in the Civil Action, Applicant's Mark will be held invalid. Because the Civil Action involves issues in common with this proceeding, and because the decisions in those proceedings will be binding upon the Board, *see Goya Foods Inc. v. Tropicana Products Inc.*, 846 F.2d 848 (2d Cir. 1988), this proceeding should be suspended.

CONCLUSION

For the reasons stated, ContiTech respectfully moves the Board to suspend this proceeding until final resolution of the Civil Action.

Respectfully submitted,

CONTITECH NORTH AMERICA, INC.



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Counsel for Opposer CONTITECH NORTH AMERICA, INC.

Dated: June 12, 2008

Electronically Filed via ESTTA: June 12, 2008

CERTIFICATE OF SERVICE

On June 12, 2008, a copy of this document was mailed to Michael R. Huber, Bridgestone Americas Holding, Inc., 1200 Firestone Parkway, Akron, Ohio 44317, counsel for Respondent BFS DIVERSIFIED PRODUCTS, LLC.

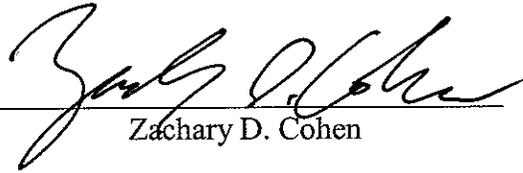

Zachary D. Cohen

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
03 MAR 28 PM 3:50

BFS DIVERSIFIED PRODUCTS, LLC, and)
FIRESTONE INDUSTRIAL PRODUCTS)
COMPANY, LLC,)
)
Plaintiffs,)
)
v.)
)
CONTITECH NORTH AMERICA, INC,)
)
Defendant.)

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

CIVIL ACTION NO. [Text]

1: 08-cv-0416-LJM-TAB

VERIFIED COMPLAINT

Plaintiffs BFS Diversified Products, LLC and Firestone Industrial Products Company, LLC ("Firestone"), by their undersigned attorneys, allege as follows, upon actual knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters.

NATURE OF THE ACTION

1. This is an action for trademark infringement and unfair competition under the U.S. Trademark (Lanham) Act, 15 U.S.C. § 1051, *et seq.*, and Indiana common law. Firestone brings this action seeking equitable relief and damages from Defendant ContiTech North America, Inc.'s infringement of Firestone's WORLD'S NUMBER 1 AIR SPRING trademark tagline through Defendant's unauthorized use of the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING.

THE PARTIES

2. Plaintiff BFS Diversified Products, LLC is a Delaware limited liability company with its principal place of business at 250 West 96th Street, Indianapolis, Indiana 46260.

3. Plaintiff Firestone Industrial Products Company, LLC is an Indiana limited liability company with its principal place of business at 250 West 96th Street, Indianapolis, Indiana 46260. Firestone Industrial Products Company, LLC is a single member limited liability company wholly owned by BFS Diversified Products, LLC.

4. Defendant ContiTech North America, Inc. is a Delaware corporation with a place of business at 136 Summit Ave, Suite 201, Montvale, New Jersey 07645. Defendant has a sales office in this District at 8202 Clearvista Parkway, Regency Center, Suite 5A, Indianapolis, Indiana 46256.

JURISDICTION AND VENUE

5. This action arises under the U.S. Trademark (Lanham) Act 15 U.S.C. § 1051, *et seq.*, and the related law of the State of Indiana. Subject matter jurisdiction over this action is conferred upon this Court by 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). This Court has supplemental jurisdiction over Firestone's state law claims pursuant to 28 U.S.C. § 1367 because those claims are substantially related to Firestone's U.S. Trademark (Lanham) Act claims.

6. This Court has personal jurisdiction over Defendant and venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Firestone is being harmed in this District and because Defendant is doing business in this District (with a sales office at 8202 Clearvista Parkway, Regency Center, Suite 5A, Indianapolis, IN 46256).

FIRESTONE AND ITS "WORLD'S NUMBER 1 AIR SPRING" TRADEMARK TAGLINE

7. Air springs are air-filled rubber or elastomer bags that are pressurized to provide support in a number of applications, often in vehicle suspensions.

8. Since introducing its air springs in the 1930s, Firestone has grown to become a leading manufacturer of air springs for a variety of applications, including use in passenger vehicles, heavy duty trucks and trailers, mass transit systems (such as bus and rail), agricultural equipment (such as post-emergent sprayers, tractors, and planters), construction equipment, and various industrial applications.

9. At least as early as 1989, Firestone began using WORLD'S NUMBER 1 AIR SPRING as a trademark tagline for its air spring business.

10. Since that time, Firestone's air springs, offered in connection with the WORLD'S NUMBER 1 AIR SPRING tagline, have been featured as standard equipment on trucks, trailers, and cars including, for example, the LINCOLN TOWN CAR sedan and LINCOLN NAVIGATOR sport utility vehicle. Today, Firestone's air springs are used on more trucks and trailers than any other brand and on over half of all the trucks and trailers on the road in North America.

11. Billions of dollars of air springs have been sold in connection with Firestone's WORLD'S NUMBER 1 AIR SPRING tagline. In the past five years alone, Firestone's air spring sales exceeded \$1.2 Billion.

12. Firestone has spent millions of dollars advertising and promoting its WORLD'S NUMBER 1 AIR SPRING tagline through a variety of media, including in publications, at trade shows and conferences, and on the Internet. Examples of materials showing Firestone's WORLD'S NUMBER 1 AIR SPRING tagline are attached as Exhibit A.

13. Firestone has created valuable trademark rights and goodwill in its WORLD'S NUMBER 1 AIR SPRING tagline through nearly two decades of use of that tagline, substantial promotional and marketing efforts, substantial advertising and promotional expenditures, and

billions in sales and revenues, and as a result, WORLD'S NUMBER 1 AIR SPRING acquired a Firestone source indicating significance long before Defendant's use of WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING began.

14. Firestone owns the following U.S. trademark registration applications for its WORLD'S NUMBER 1 AIR SPRING mark:

Mark	Goods	Serial. No.	Filing Date
WORLD'S NUMBER 1 AIR SPRING	Suspension systems and components for vehicles consisting of air springs and control devices; pneumatic suspension springs and shock absorber units for vehicles and structural and replacement parts therefor; air helper springs for vehicles	77143307	03/29/2007
WORLD'S NUMBER 1 AIR SPRING	Pneumatic actuators for use as a motion control device in manufacturing, material handling, assembly, forestry, paper, hydraulics and pneumatics, and related industries; vibration absorbing suspensions and vibration isolators for machinery and parts therefor; pneumatic suspension springs and shock absorber units for machinery and equipment and structural and replacement parts therefor	77143412	03/29/2007

15. The U.S. Patent and Trademark Office approved Firestone's trademark registration application Serial No. 77143412 for Registration on March 19, 2008.

16. Firestone's trademark rights in its WORLD'S NUMBER 1 AIR SPRING tagline long predate Defendant's use of the infringing taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING.

**DEFENDANT'S UNLAWFUL USE AND INFRINGEMENT OF FIRESTONE'S
"WORLD'S NO. 1 AIR SPRING" TRADEMARK TAGLINE**

17. Defendant and Firestone are direct competitors in the air spring market.

18. Like Firestone, Defendant makes and sells air springs for a variety of applications, including for use in vehicles, equipment, and industrial applications.

19. On March 27, 2008, Firestone learned that Defendant is using the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING in connection with the sale and marketing of its air springs.

20. Specifically, Firestone learned of Defendant's infringement from brochures and manuals that Defendant is distributing at the Mid-America Trucking Show tradeshow in Louisville, Kentucky—a trade show that both Firestone and Defendants are attending. Pictures of those brochures are attached as Exhibit B.

21. The Mid-America Trucking Show tradeshow in Louisville, Kentucky is the largest annual event dedicated to the heavy duty trucking industry in the world (see www.truckingshow.com). Consistent with its marketing practices, Firestone is using its WORLD'S NUMBER 1 AIR SPRING tagline at the tradeshow.

22. After learning of Defendant's infringement, the President of Firestone Industrial Products Company, LLC approached Defendant's Executive Vice President at the Mid-America Trucking Show and requested that Defendant immediately stop using the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING. As of this time, Defendant's President has not committed to doing so and Defendant continues to use the taglines at the show.

23. In a different conversation at the same trade show, an employee of Defendant who is a former Firestone employee noted that both companies now have the "World's Number 1 Air Spring," or words to that effect.

24. Defendants knew, or should have known, of Firestone's long use of its WORLD'S NUMBER 1 AIR SPRING tagline.

25. Defendant knew, or should have known, that its use of the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING violates Firestone's rights. As a result, Defendant has acted knowingly, willfully, and in reckless disregard of Firestone's rights.

INJURY TO THE PUBLIC AND FIRESTONE

26. Defendant's unauthorized use of the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING is likely to cause confusion, mistake, and deception as to the source or origin of Defendant's air springs and is likely to falsely suggest a sponsorship, connection, or association between Defendant, its air springs, business, products, and/or commercial activities with Firestone.

27. Defendant's unauthorized use of the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING has damaged and irreparably injured, and, if permitted to continue, will further damage and irreparably injure Firestone, Firestone's WORLD'S NUMBER 1 AIR SPRING trademark tagline, Firestone's reputation and goodwill associated with its tagline, and the public interest in being free from confusion.

FIRST CLAIM FOR RELIEF

**Trademark Infringement, False Designation of Origin,
Passing Off, and Unfair Competition Under Section 43(a)(1)(A)
of the U.S. Trademark (Lanham) Act, 15 U.S.C. § 1125(a)(1)(A)**

28. Firestone repeats and realleges each and every allegation set forth in paragraphs 1 through 27 of this Complaint.

29. Defendant's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Defendant, its products, and/or its commercial activities by or with Firestone, and thus constitute trademark infringement, false designation of origin, passing off, and unfair competition in violation of Section 43(a)(1)(A) of the U.S. Trademark (Lanham) Act, 15 U.S.C. § 1125(a)(1)(A).

SECOND CLAIM FOR RELIEF
Trademark Infringement and Unfair Competition
Under Indiana Common Law

30. Firestone repeats and realleges each and every allegation set forth in paragraphs 1 through 29 of this Complaint.

31. Defendant's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Firestone, or as to the origin, sponsorship, or approval of Defendant, its products, and its commercial activities by or with Firestone such that Defendant's acts constitute infringement of Firestone's trademark rights in its WORLD'S NUMBER 1 AIR SPRING tagline, misappropriation of Firestone's goodwill in that tagline, and unfair competition under Indiana common law.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Firestone demands a trial by jury on all issues that are properly triable by a jury in this action.

PRAYER FOR RELIEF

Firestone requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. An Order declaring that Defendant's use of the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING infringes Firestone's WORLD'S NUMBER 1 AIR SPRING tagline and constitutes unfair competition under federal and/or state law, as detailed above;

B. A preliminary and permanent injunction enjoining Defendant and its employees, agents, partners, officers, directors, owners, shareholders, principals, subsidiaries, related

companies, affiliates, distributors, dealers, and all persons in active concert or participation with any of them:

1. From using the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING and any other marks or names that are confusingly similar to Firestone's WORLD'S NUMBER 1 AIR SPRING tagline as, or as part of, a tag line, slogan, trademark, trade name, logo, corporate name, business name, e-mail address, domain name, URL, metatag, or other name, mark, or identifier; and

2. From representing by any means whatsoever, directly or indirectly, that Defendant, any products or services offered by Defendant, or any activities undertaken by Defendant, are associated or connected in any way with Firestone or sponsored by or affiliated with Firestone.

C. An Order directing Defendant to, within thirty (30) days after the entry of the injunction, file with this Court and serve on Firestone's attorneys a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

D. An Order directing Defendant to destroy all products, signage, advertisements, promotional materials, stationery, forms, and/or any other materials and things that contain or bear Defendant's taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING, or any other marks or names that are confusingly similar to Firestone's WORLD'S NUMBER 1 AIR SPRING tagline;

E. An Order requiring Defendant to disseminate pre-approved corrective advertising and send pre-approved letters to all customers, prospective customers, trade show attendees,

agents, and representatives to address the likely confusion caused from its use of Defendant's acts;

F. An Order requiring Defendant to account for and pay to Firestone any and all profits arising from the foregoing acts, and increasing such profits, in accordance with 15 U.S.C. § 1117 and other applicable laws;

G. An Order requiring Defendant to pay Firestone damages in an amount as yet undetermined caused by the foregoing acts, and trebling such damages in accordance with 15 U.S.C. § 1117 and other applicable laws;

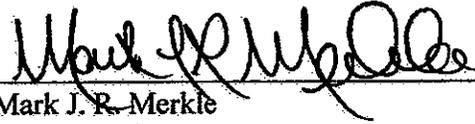
H. An Order requiring Defendant to pay Firestone all of its litigation expenses, including reasonable attorney's fees and the costs of this action pursuant to 15 U.S.C. § 1117 and other applicable laws;

I. An Order requiring Defendant to pay Firestone punitive damages for unfair competition under Indiana common law; and

J. Other relief as the Court may deem appropriate.

Dated: March 28, 2008

Respectfully submitted,



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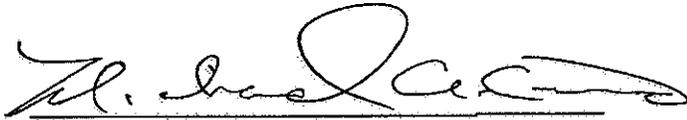
Attorneys for Plaintiffs
BFS Diversified Products, LLC and
Firestone Industrial Products Company, LLC

VERIFICATION

I declare under penalty of perjury that I have read the foregoing Verified Complaint and that the same is true and correct.

Executed on March 28, 2008.

BFS DIVERSIFIED PRODUCTS, LLC AND
FIRESTONE INDUSTRIAL PRODUCTS COMPANY,
LLC

A handwritten signature in black ink, appearing to read "M. Cerio", written over a horizontal line.

Michael Cerio
President Firestone Industrial Products Company, LLC

EXHIBIT A



Ride with the original Firestone
AIRIDE™ Air Springs

**Genuine,
mile after
mile.**



FIRESTONE
AIRIDE™
SPRINGS

A Tradition of Innovation...
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Firestone
World's Number 1
Air Spring. 
TRUCKS • BUSES • PASSENGER VEHICLES

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ACTUATORS

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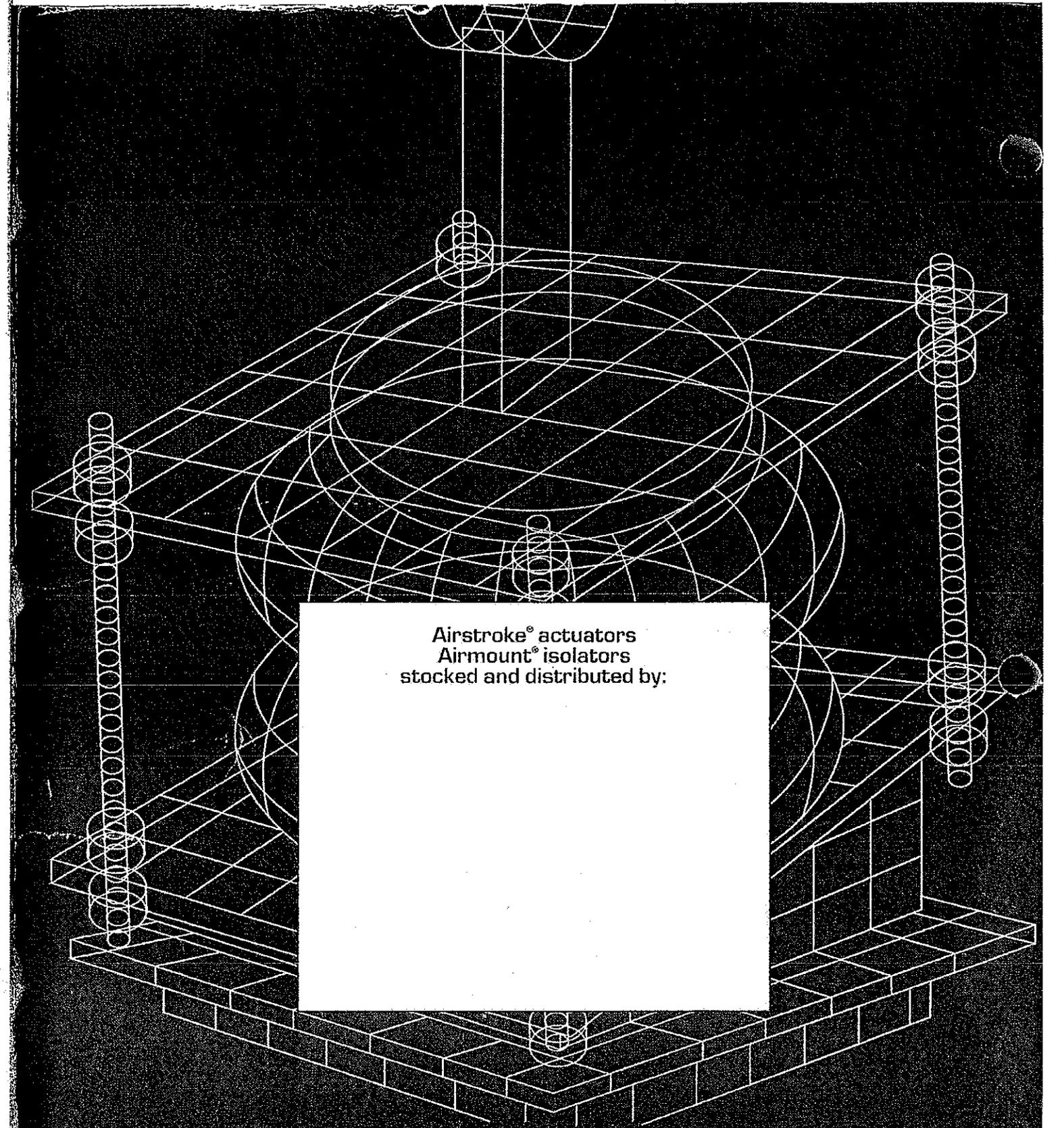
ISOLATORS



Engineering Manual & Design Guide

World's Number 1 
Air Spring.

FIRESTONE INDUSTRIAL PRODUCTS COMPANY

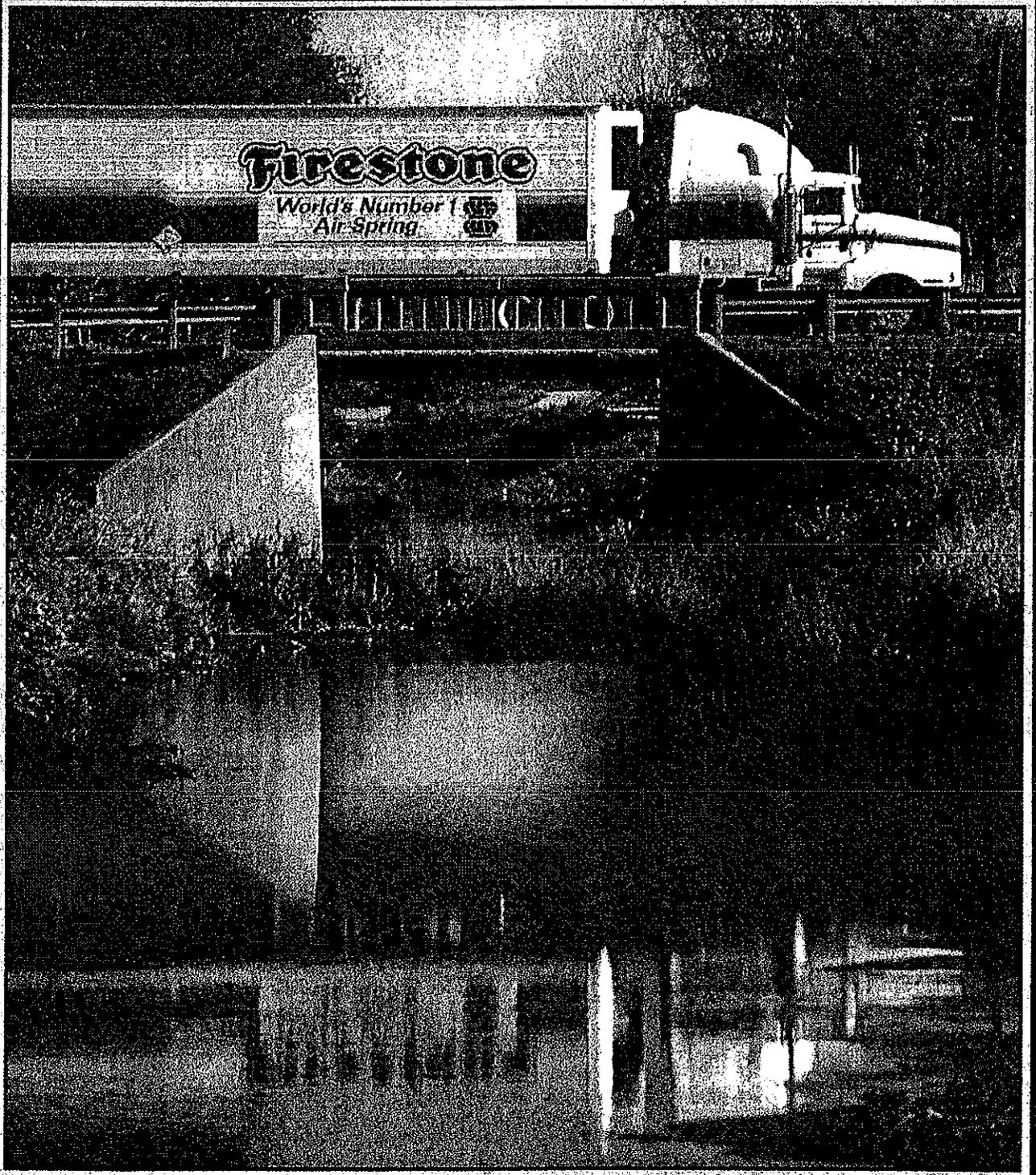


Airstroke[®] actuators
Airmount[®] isolators
stocked and distributed by:

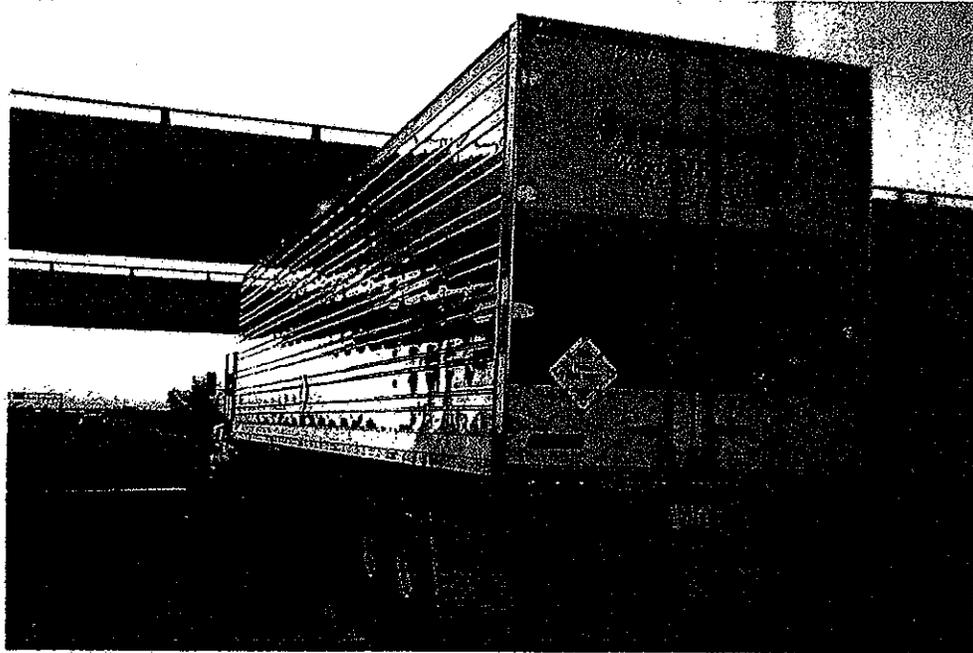
World's Number 1 
Air Spring.

FIRESTONE INDUSTRIAL PRODUCTS COMPANY

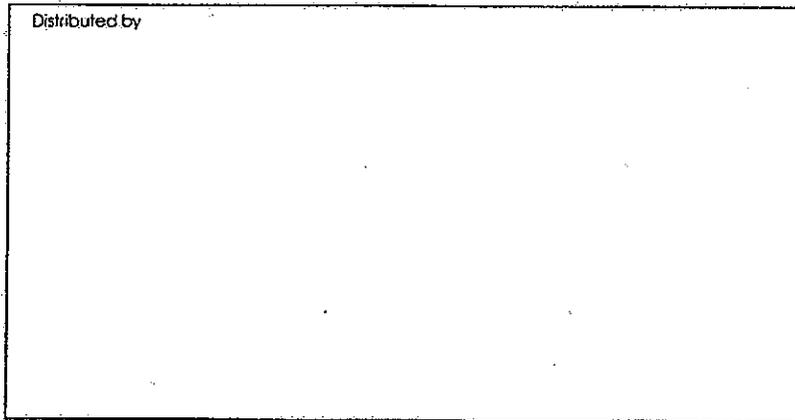
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1-800-888-0650



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Firestone

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Air Spring. 

FIRESTONE INDUSTRIAL PRODUCTS COMPANY

FIRESTONE INDUSTRIAL PRODUCTS COMPANY
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317/773-0650 • 800/888-0650

03DSADV390

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EXHIBIT B

World's
Number 1
Air Spring for
Commercial
Vehicles



Continental
CONTITEC

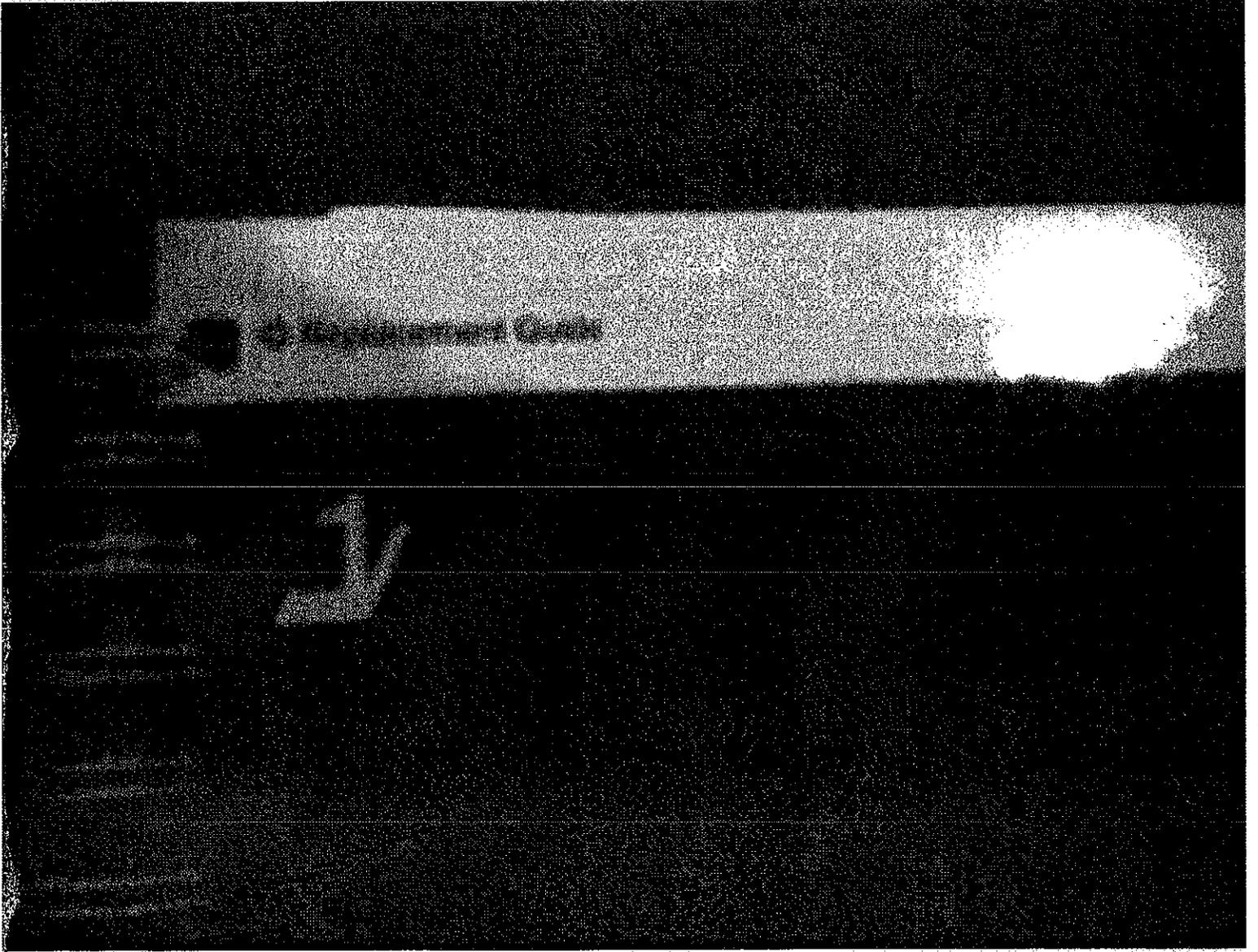


EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

BFS DIVERSIFIED PRODUCTS, LLC, and)
FIRESTONE INDUSTRIAL PRODUCTS)
COMPANY, LLC,)

Plaintiffs,)

v.)

CONTITECH NORTH AMERICA, INC.,)

Defendant.)

CIVIL ACTION NO. 08-0416 LJM-TAB

CONTITECH NORTH AMERICA, INC.,)

Counter-Plaintiff,)

v.)

BFS DIVERSIFIED PRODUCTS, LLC, and)
FIRESTONE INDUSTRIAL PRODUCTS)
COMPANY, LLC,)

Counter-Defendants.)

ANSWER AND AFFIRMATIVE DEFENSES TO VERIFIED COMPLAINT

NOW COMES Defendant ContiTech North America, Inc. (“ContiTech”), by its undersigned attorneys, and for its answer and affirmative defenses to the verified complaint of Plaintiffs BFS Diversified Products, LLC and Firestone Industrial Products Company, LLC (“Firestone”), states as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement and unfair competition under the U.S. Trademark (Lanham) Act, 15 U.S.C. § 1051, *et seq.*, and Indiana common law. Firestone brings this action seeking equitable relief and damages from Defendant ContiTech North America, Inc.’s infringement of Firestone’s WORLD’S NUMBER 1 AIR SPRING trademark tagline through Defendant’s unauthorized use of the taglines WORLD’S NUMBER 1 AIR SPRING and WORLD’S NO. 1 AIR SPRING.

ANSWER: ContiTech admits that Firestone is seeking equitable relief and damages. ContiTech denies that Firestone has stated a cause of action for trademark infringement or unfair competition under federal law or Indiana common law. ContiTech denies that Firestone has trademark rights in the laudatory phrase “world’s number 1 air spring.” Responding further, ContiTech denies any remaining allegations contained in Paragraph 1.

THE PARTIES

2. Plaintiff BFS Diversified Products, LLC is a Delaware limited liability company with its principal place of business at 250 West 96th Street, Indianapolis, Indiana 46260.

ANSWER: ContiTech states that it is without sufficient information to admit or deny the allegations contained in Paragraph 2 and, accordingly, denies same.

3. Plaintiff Firestone Industrial Products Company, LLC is an Indiana limited liability company with its principal place of business at 250 West 96th Street, Indianapolis, Indiana 46260. Firestone Industrial Products Company, LLC is a single member limited liability company wholly owned by BFS Diversified Products, LLC.

ANSWER: ContiTech states that it is without sufficient information to admit or deny the allegations contained in Paragraph 3 and, accordingly, denies same.

4. Defendant ContiTech North America, Inc. is a Delaware corporation with a place of business at 136 Summit Ave, Suite 201, Montvale, New Jersey 07645. Defendant has a sales office in this District at 8202 Clearvista Parkway, Regency Center, Suite 5A, Indianapolis, Indiana 46256.

ANSWER: ContiTech admits all of the allegations contained in Paragraph 4.

JURISDICTION AND VENUE

5. This action arises under the U.S. Trademark (Lanham) Act 15 U.S.C. § 1051, *et seq.*, and the related law of the State of Indiana. Subject matter jurisdiction over this action is conferred upon this Court by 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). This Court has supplemental jurisdiction over Firestone’s state law claims pursuant to 28 U.S.C. § 1367 because those claims are substantially related to Firestone’s U.S. Trademark (Lanham) Act claims.

ANSWER: ContiTech denies that Firestone has stated a cause of action under the Lanham Act or the law of the State of Indiana. Responding further, ContiTech states that the

remaining allegations contained in Paragraph 5 are legal conclusions to which no response is required. To the extent a response is required, ContiTech denies the remaining allegations contained in Paragraph 5.

6. This Court has personal jurisdiction over Defendant and venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Firestone is being harmed in this District and because Defendant is doing business in this District (with a sales office at 8202 Clearvista Parkway, Regency Center, Suite 5A, Indianapolis, IN 46256).

ANSWER: ContiTech denies that Firestone is being harmed in this District or any other District. Responding further, ContiTech states that the remaining allegations contained in Paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, ContiTech denies the remaining allegations contained in Paragraph 6.

**FIRESTONE'S USE OF THE LAUDATORY PHRASE
"WORLD'S NUMBER 1 AIR SPRING"**

7. Air springs are air-filled rubber or elastomer bags that are pressurized to provide support in a number of applications, often in vehicle suspensions.

ANSWER: ContiTech admits all of the allegations contained in Paragraph 7.

8. Since introducing its air springs in the 1930s, Firestone has grown to become a leading manufacturer of air springs for a variety of applications, including use in passenger vehicles, heavy duty trucks and trailers, mass transit systems (such as bus and rail), agricultural equipment (such as post-emergent sprayers, tractors, and planters), construction equipment, and various industrial applications.

ANSWER: ContiTech admits that Firestone together with its subsidiaries and affiliates is a leading manufacturer of air springs in North America but is without sufficient information to admit or deny its status as to each of the applications listed in Paragraph 8 and, accordingly, denies same as to each application. ContiTech states that it is without sufficient information to admit or deny when Firestone or its predecessors/affiliates first began selling air springs. ContiTech denies that Firestone is the "world's number 1" manufacturer of air springs and denies any remaining allegations contained in Paragraph 8.

9. At least as early as 1989, Firestone began using WORLD'S NUMBER 1 AIR SPRING as a trademark tagline for its air spring business.

ANSWER: ContiTech denies that Firestone has any trademark rights in the laudatory phrase "world's number 1 air spring." ContiTech is without sufficient information to admit or deny the remaining allegations contained in Paragraph 9 and, accordingly, denies same.

10. Since that time, Firestone's air springs, offered in connection with the WORLD'S NUMBER 1 AIR SPRING tagline, have been featured as standard equipment on trucks, trailers, and cars including, for example, the LINCOLN TOWN CAR sedan and LINCOLN NAVIGATOR sport utility vehicle. Today, Firestone's air springs are used on more trucks and trailers than any other brand and on over half of all the trucks and trailers on the road in North America.

ANSWER: ContiTech states that it is without sufficient information to admit or deny the allegations contained in Paragraph 10 and, accordingly, denies same.

11. Billions of dollars of air springs have been sold in connection with Firestone's WORLD'S NUMBER 1 AIR SPRING tagline. In the past five years alone, Firestone's air spring sales exceeded \$1.2 Billion.

ANSWER: ContiTech states that it is without sufficient information to admit or deny the allegations contained in Paragraph 11 and, accordingly, denies same.

12. Firestone has spent millions of dollars advertising and promoting its WORLD'S NUMBER 1 AIR SPRING tagline through a variety of media, including in publications, at trade shows and conferences, and on the Internet. Examples of materials showing Firestone's WORLD'S NUMBER 1 AIR SPRING tagline are attached as Exhibit A.

ANSWER: ContiTech states that it is without sufficient information to admit or deny the allegations contained in Paragraph 12 and, accordingly, denies same.

13. Firestone has created valuable trademark rights and goodwill in its WORLD'S NUMBER 1 AIR SPRING tagline through nearly two decades of use of that tagline, substantial promotional and marketing efforts, substantial advertising and promotional expenditures, and billions in sales and revenues, and as a result, WORLD'S NUMBER 1 AIR SPRING acquired a Firestone source indicating significance long before Defendant's use of WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING began.

ANSWER: ContiTech denies all of the allegations contained in Paragraph 13 and specifically denies that (1) Firestone has any trademark rights in the laudatory phrase "world's

number 1 air spring” and (2) the phrase “world’s number 1 air spring” has acquired a source indicating significance.

14. Firestone owns the following U.S. trademark registration applications for its WORLD’S NUMBER 1 AIR SPRING mark:

Mark	Goods	Serial No.	Filing Date
WORLD’S NUMBER 1 AIR SPRING	Suspension systems and components for vehicles consisting of air springs and control devices; pneumatic suspension springs and shock absorber units for vehicles and structural and replacement parts therefor; air helper springs for vehicles	77143307	03/29/2007
WORLD’S NUMBER 1 AIR SPRING	Pneumatic actuators for use as a motion control device in manufacturing, material handling, assembly, forestry, paper, hydraulics and pneumatics, and related industries; vibration absorbing suspensions and vibration isolators for machinery and parts therefor; pneumatic suspension springs and shock absorber units for machinery and equipment and structural and replacement parts therefore	77143412	03/29/2007

ANSWER: ContiTech admits only that BFS Diversified Products, LLC (“BFS”) has filed two trademark applications (Ser. No. 77/143,307 and Ser. No. 77/143,412). Responding further, ContiTech states that neither of these applications has progressed to registration, that ContiTech intends to oppose both applications and that ContiTech has extended its time to oppose Application Ser. No. 77/143412. ContiTech denies that Firestone owns a WORLD’S NUMBER 1 AIR SPRING mark and denies any remaining allegations contained in Paragraph 14.

15. The U.S. Patent and Trademark Office approved Firestone's trademark registration application Serial No. 77143412 for Registration on March 19, 2008.

ANSWER: ContiTech denies all of the allegations contained in Paragraph 15. Responding further, ContiTech states that BFS's putative mark has merely been published for opposition. It has not been registered. ContiTech has, in fact, extended the time in which it may oppose that application and will commence opposition proceedings against that application.

16. Firestone's trademark rights in its WORLD'S NUMBER 1 AIR SPRING tagline long predate Defendant's use of the infringing taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING.

ANSWER: ContiTech denies all of the allegations contained in Paragraph 16 and specifically denies that Firestone has any trademark rights in the laudatory phrase "world's number 1 air spring."

**DEFENDANT'S FAIR USE OF THE DESCRIPTIVE PHRASE
"WORLD'S NO. 1 AIR SPRING"**

17. Defendant and Firestone are direct competitors in the air spring market.

ANSWER: ContiTech admits all of the allegations contained in Paragraph 17.

18. Like Firestone, Defendant makes and sells air springs for a variety of applications, including for use in vehicles, equipment, and industrial applications.

ANSWER: ContiTech admits all of the allegations contained in Paragraph 18.

19. On March 27, 2008, Firestone learned that Defendant is using the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING in connection with the sale and marketing of its air springs.

ANSWER: ContiTech states that it is without sufficient information to admit or deny the allegations contained in Paragraph 19 and, accordingly, denies same.

20. Specifically, Firestone learned of Defendant's infringement from brochures and manuals that Defendant is distributing at the Mid-America Trucking Show tradeshow in Louisville, Kentucky—a trade show that both Firestone and Defendants [sic] are attending. Pictures of those brochures are attached as Exhibit B.

ANSWER: ContiTech admits that both it and Firestone attended the Mid-America Trucking Show in March 2008. Responding further, ContiTech states that it is without sufficient information to admit or deny the last sentence of Paragraph 20 as the pictures attached to the verified complaint as Exhibit B are too fuzzy to ascertain whether they are an accurate representation of ContiTech's brochures. ContiTech denies all remaining allegations contained in Paragraph 20.

21. The Mid-America Trucking Show tradeshow in Louisville, Kentucky is the largest annual event dedicated to the heavy duty trucking industry in the world (see www.truckingshow.com). Consistent with its marketing practices, Firestone is using its WORLD'S NUMBER 1 AIR SPRING tagline at the tradeshow.

ANSWER: ContiTech admits that the Mid-America Trucking Show is a large tradeshow. ContiTech denies that the Mid-America Trucking Show is the largest event in the world. ContiTech is without sufficient information to admit or deny whether Firestone used the phrase "world's number 1 air spring" at the tradeshow consistent with its marketing practices. Responding further, ContiTech denies any remaining allegations contained in Paragraph 21.

22. After learning of Defendant's infringement, the President of Firestone Industrial Products Company, LLC approached Defendant's Executive Vice President at the Mid-America Trucking Show and requested that Defendant immediately stop using the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING. As of this time, Defendant's President has not committed to doing so and Defendant continues to use the taglines at the show.

ANSWER: ContiTech admits that Firestone requested at the tradeshow that ContiTech stop truthfully informing consumers that it is the world's number one air spring company and that ContiTech did not accede to Firestone's demand. ContiTech denies that Firestone has trademark rights in the laudatory phrase "world's number 1 air spring" or that ContiTech has infringed any rights belonging to Firestone. Responding further, ContiTech denies any remaining allegations contained in Paragraph 22.

23. In a different conversation at the same trade show, an employee of Defendant who is a former Firestone employee noted that both companies now have the "World's Number 1 Air Spring," or words to that effect.

ANSWER: ContiTech states that the allegation contained in Paragraph 23 is so vague and ambiguous that ContiTech may not reasonably be expected to formulate a response thereto and, accordingly, denies same.

24. Defendants [sic] knew, or should have known, of Firestone's long use of its WORLD'S NUMBER 1 AIR SPRING tagline.

ANSWER: ContiTech admits that Firestone has historically used the phrase "world's number 1 air spring" and that it continues to use that phrase even though its product is not now the world's number 1 air spring. Responding further, ContiTech denies any remaining allegations contained in Paragraph 24.

25. Defendant knew, or should have known, that its use of the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING violates Firestone's rights. As a result, Defendant has acted knowingly, willfully, and in reckless disregard of Firestone's rights.

ANSWER: ContiTech denies all of the allegations contained in Paragraph 25 and specifically denies that Firestone has any rights to the laudatory phrase "world's number 1 air spring."

THERE IS NO INJURY TO THE PUBLIC OR TO FIRESTONE

26. Defendant's unauthorized use of the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING is likely to cause confusion, mistake, and deception as to the source or origin of Defendant's air springs and is likely to falsely suggest a sponsorship, connection, or association between Defendant, its air springs, business, products, and/or commercial activities with Firestone.

ANSWER: ContiTech denies all of the allegations contained in Paragraph 26.

27. Defendant's unauthorized use of the taglines WORLD'S NUMBER 1 AIR SPRING and WORLD'S NO. 1 AIR SPRING has damaged and irreparably injured, and, if permitted to continue, will further damage and irreparably injure Firestone, Firestone's WORLD'S NUMBER 1 AIR SPRING trademark tagline, Firestone's reputation and goodwill associated with its tagline, and the public interest in being free from confusion.

ANSWER: ContiTech denies all of the allegations contained in Paragraph 27.

FIRST CLAIM FOR RELIEF
Trademark Infringement, False Designation of Origin,
Passing Off, and Unfair Competition Under Section 43(a)(1)(A)
of the U.S. Trademark (Lanham) Act, 15 U.S.C. § 1125(a)(1)(A)

28. Firestone repeats and realleges each and every allegation set forth in Paragraphs 1 through 27 of this Complaint.

ANSWER: For its answer to Paragraph 28, ContiTech restates its answers to Paragraphs 1 through 27 as if fully set forth herein.

29. Defendant's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Defendant, its products, and/or its commercial activities by or with Firestone, and thus constitute trademark infringement, false designation of origin, passing off, and unfair competition in violation of Section 43(a)(1)(A) of the U.S. Trademark (Lanham) Act, 15 U.S.C. § 1125(a)(1)(A).

ANSWER: ContiTech denies all of the allegations contained in Paragraph 29.

SECOND CLAIM FOR RELIEF
Trademark Infringement and Unfair Competition
Under Indiana Common Law

30. Firestone repeats and realleges each and every allegation set forth in Paragraphs 1 through 29 of this Complaint.

ANSWER: For its answer to Paragraph 30, ContiTech restates its answers to Paragraphs 1 through 29 as if fully set forth herein.

31. Defendant's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Firestone, or as to the origin, sponsorship, or approval of Defendant, its products, and its commercial activities by or with Firestone such that Defendant's acts constitute infringement of Firestone's trademark rights in its WORLD'S NUMBER 1 AIR SPRING tagline, misappropriation of Firestone's goodwill in that tagline, and unfair competition under Indiana common law.

ANSWER: ContiTech denies all of the allegations contained in Paragraph 31.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, ContiTech demands a trial by jury on all issues that are properly triable by a jury in this action.

FIRST AFFIRMATIVE DEFENSE

Firestone's putative mark is so highly laudatory and descriptive that it is incapable of acquiring distinctiveness and functioning as a trademark.

SECOND AFFIRMATIVE DEFENSE

Firestone's putative mark is not protectable because it has not attained secondary meaning and has no source identifying significance.

THIRD AFFIRMATIVE DEFENSE

Firestone's claims are barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

ContiTech's use of the phrase "world's number one air spring" is fair use.

PRAYER FOR RELIEF

ContiTech denies that Firestone is entitled to any of the relief delineated in Paragraphs A through J of its prayer for relief.

WHEREFORE ContiTech respectfully prays for entry of judgment in its favor and against Firestone on all counts, that the Court award ContiTech its reasonable expenses, including attorneys' fees, incurred in defending against Firestone's claims, and that the Court grant any further and additional relief it deems just and equitable.

COUNTERCLAIM FOR FALSE ADVERTISING

NOW COMES Defendant/Counter-Plaintiff ContiTech North America, Inc., by its undersigned attorneys, and for its counterclaim against Plaintiffs/Counter-Defendants BFS Diversified Products, LLC and Firestone Industrial Products Company, LLC alleges upon actual

knowledge with respect to itself and upon information and belief as to all other matters as follows:

NATURE OF THE ACTION

1. This is an action for false advertising under the Lanham Act, 15 U.S.C. § 1125(a) arising from Firestone's false claim that its product is the "world's number 1 air spring."

JURISDICTION AND VENUE

2. ContiTech's counterclaim for false advertising is compulsory under Fed. R. Civ. P. 13(a) in that it arises out of the same transaction or occurrences that are the subject matter of Firestone's original claims.

3. This Court has independent and supplemental jurisdiction over ContiTech's claims pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338, 1367(a).

4. This Court has personal jurisdiction over Plaintiffs/Counter-Defendants pursuant to 28 U.S.C. § 1391(b)(1) because Plaintiffs/Counter-Defendants reside in this District.

PARTIES AND BACKGROUND

5. Defendant/Counter-Plaintiff ContiTech North America, Inc. is a Delaware corporation with a principal place of business located at 136 Summit Ave., Montvale, New Jersey 07645. ContiTech North America, Inc. is the North American sales and distribution arm of, and a wholly-owned subsidiary of ContiTech AG, a German corporation with its principal place of business in Hannover, Germany. ContiTech AG is a subsidiary of Continental AG, the parent company of the Continental group of companies. ContiTech North America, Inc. has a sales office located at 8202 Clearvista Parkway, Regency Center, Indianapolis, Indiana 46256. ContiTech North America, Inc., ContiTech AG, Continental AG and their respective subsidiaries

and affiliates, including but not limited to Continental Automotive Systems, are collectively referred to in this Counterclaim as "ContiTech."

6. Plaintiff/Counter-Defendant Firestone Industrial Products Company, LLC is an Indiana limited liability company with a place of business located at 250 West 96th Street, Indianapolis, Indiana 46260. Firestone Industrial Products Company, LLC is a wholly-owned subsidiary of Plaintiff/Counter-Defendant BFS Diversified Products, LLC, a Delaware limited liability company with a place of business also located at 250 West 96th Street, Indianapolis, Indiana 46260. Firestone Industrial Products Company, LLC and BFS Diversified Products, LLC and their respective subsidiaries and affiliates are collectively referred to in this Counterclaim as "Firestone."

7. ContiTech and Firestone are direct competitors in the global air spring business.

8. Air springs are used in a variety of applications, including, for example, in suspension systems for cars and light trucks; suspension systems and seat/cabin applications for commercial vehicles; suspension systems for rail applications; and motion control devices, vibration absorption/isolation devices, and expansion joints in industrial applications.

9. ContiTech has a world leading global presence with eighty locations in twenty-seven countries. ContiTech's air spring business has seven manufacturing facilities and supports the sale of its products through its headquarters in Germany and worldwide through ten branch offices, three representative offices, and an extensive agent network. ContiTech's global reach is further extended through its worldwide partner network.

10. ContiTech is unsurpassed in its adherence to quality standards. All of ContiTech's production sites are ISO/TS 16949, DIN EN ISO 9001, and DIN EN ISO 14001 certified.

11. ContiTech has world leading technical designs, providing the market with a range of product constructions and designs and innovative technologies, including air-over-shock modules, high pressure air springs, ultrasonic height and pressure sensors, high load capacity air springs, air-damper modules, high temperature air springs, and oel resistant air springs to name a few.

12. ContiTech occupies a world leading position in parts production and product range, offering the complete European range and approximately 90% of the North American range for commercial vehicles. ContiTech also provides an expansive range of industrial actuators, expansion joints, rail air springs and systems, seat and cabin air springs, and more.

13. Upon information and belief, at least as early as 2007, ContiTech's worldwide air spring business generated more revenue and captured more market share than any other company, including Firestone.

FIRESTONE'S FALSE CLAIM TO BE THE "WORLD'S NUMBER 1 AIR SPRING"

14. In connection with its air spring business, Firestone has made the claim that its product is the "world's number 1 air spring." Said claim is currently being made, at least, on its website, in promotional materials, at tradeshow, on packaging materials, and on Firestone-owned vehicles. Firestone's claim is a false or misleading, as, upon information and belief, Firestone's product is not the world's number one air spring in terms of either sales revenue or market share.

COUNT ONE
FALSE ADVERTISING AND UNFAIR COMPETITION
15 U.S.C. § 1125(A)(1)

15. Paragraphs 1 through 14 are incorporated and made a part of Count One as if fully set forth herein.

16. In commercial advertising and promotion, Firestone, in active commercial competition with ContiTech, has made a false or misleading statement of fact that its product is the world's number one air spring.

17. Since at least 2007, this claim has been false or misleading because ContiTech's product is the world's number one air spring.

18. Firestone has made its false or misleading statement with knowledge of its falsity or misleading character, or willfully and with reckless disregard for its falsity or misleading character.

19. Upon information and belief, Firestone's statement has actually deceived a substantial segment of its intended audience. Firestone's statement has the tendency to deceive a substantial segment of its intended audience.

20. Firestone's deception is material as it relates to consumers' air spring purchasing decisions.

21. Firestone caused its false or misleading advertising to enter interstate commerce, including by publishing its false or misleading statement on the Internet and in promotional advertisements and brochures distributed at tradeshows and by sales staff in various states, printing its false or misleading statement on packing materials delivered in various states, and displaying its false or misleading statement on Firestone-owned vehicles traveling in various states.

22. ContiTech has been and is likely to continue to be injured by Firestone's false or misleading advertising by a diversion of business from ContiTech to Firestone or the retention of business by Firestone that would otherwise inure to the benefit of ContiTech as consumers of air springs are misled into believing that Firestone's product is the world's number one air spring.

23. Firestone's false or misleading statement violate the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

24. ContiTech is irreparably harmed, has no adequate remedy at law and is entitled to injunctive relief.

25. Firestone's intentional and willful violations entitle ContiTech to recover three times its actual damages in an amount to be determined at trial pursuant to 15 U.S.C. § 1117(a).

26. Firestone's intentional and willful violations entitle ContiTech to recover its reasonable attorneys' fees in an amount to be determined at trial pursuant to 15 U.S.C. § 1117(a).

COUNT TWO
DECEPTION UNDER IND. CODE § 35-43-5-3

27. Paragraphs 1 through 14 are incorporated and made a part of Count Two as if fully set forth herein.

28. Firestone knowingly and intentionally made a false or misleading written statement with the intent to obtain property.

29. Firestone disseminated to the public an advertisement that it knew was false, misleading, or deceptive, with the intent to promote the purchase or sale of property.

30. As a result of Firestone's deception, ContiTech has been and will likely continue to be damaged.

31. As a result of Firestone's deception, ContiTech is entitled to an award of actual damages, treble damages, costs and attorneys' fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1 or, in the alternative, punitive damages pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-3.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, ContiTech demands a trial by jury on all issues that are properly triable by a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, ContiTech North America, Inc. prays that the Court:

A. Enjoin Firestone and its respective officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or in participation with it, from continuing to unfairly compete with ContiTech through advertisements or statements falsely or misleadingly claiming or implying that Firestone's product is the "world's number 1 air spring" or from making any other statements on promotional materials or advertising that are false or misleading as to the nature of the Firestone air spring business;

B. Direct Firestone to use its best efforts to identify and to recall from any third party any and all false or misleading marketing, advertising, and promotional materials used in connection therewith;

C. Direct Firestone to issue a corrective advertisement or notice to all third parties that Firestone has solicited with false or misleading advertisements, making clear that Firestone's false statements were false or misleading;

D. Direct Firestone to file with the Court and serve on ContiTech's counsel, within ten (10) days after entry of the Court's injunction, a sworn statement as provided in 15 U.S.C. § 1116, setting forth in detail the manner and form in which Firestone has complied with the injunction;

E. Direct Firestone to provide an accounting of all sales and profits from its unfair competition and false and misleading advertisements and promotions;

F. Award ContiTech a monetary judgment against Firestone for damages caused by its false advertising, in an amount to be determined at trial;

G. Award ContiTech a monetary judgment against Firestone in the amount of Firestone's profits, pursuant to 15 U.S.C. § 1117;

H. Award ContiTech treble damages as a judgment against Firestone for its willful violation of the Lanham Act pursuant to 15 U.S.C. § 1117;

I. Award ContiTech its costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

J. Award ContiTech actual damages, treble damages, costs and attorneys' fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1 or, in the alternative, punitive damages pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-3; and

K. Award such further relief as the Court deems just and equitable.

Date: May 27, 2008

Respectfully submitted:

CONTITECH NORTH AMERICA, INC.

By: /s/Jonathan G. Polak
One of Its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served electronically upon opposing counsel on this 27th day of May 2008:

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