

ESTTA Tracking number: **ESTTA675315**

Filing date: **06/01/2015**

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

| | |
|------------------------|--|
| Proceeding | 92060308 |
| Party | Plaintiff SFM, LLC |
| Correspondence Address | NICOLE M MURRAY QUARLES & BRADY LLP 300 N LASALLE ST, STE 4000 CHICAGO, IL 60654 UNITED STATES tm-dept@quarles.com, nicole.murray@quarles.com, christi-an.stahl@quarles.com |
| Submission | Opposition/Response to Motion |
| Filer's Name | Matthew T. Ingersoll |
| Filer's e-mail | matthew.ingersoll@quarles.com, tm-dept@quarles.com, nicole.murray@quarles.com, christian.stahl@quarles.com |
| Signature | /Matthew T. Ingersoll/ |
| Date | 06/01/2015 |
| Attachments | Response - Corcamore - 12(e)&(f).pdf(91722 bytes) |

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

In the Matter of Registration No. 3,708,453; Mark: SPROUT;
Date of Registration: November 10, 2009

SFM, LLC

Petitioner,

v.

Cancellation No: 92060308

CORCAMORE, LLC

Respondent.

**PETITIONER'S RESPONSE TO RESPONDENT'S MOTION PURSUANT TO RULE
12(E) AND 12(F)**

On May 11, 2015, Respondent served on SFM a motion seeking relief under Rules 12(e) and 12(f) of the federal rules of civil procedure. A copy of Respondent's motion is attached hereto as Exhibit A.

The certificate of service for Respondent's motion avers that its attorney "electronically filed" the motion with the Trademark Trial and Appeal Board. However, the motion does not appear on the proceeding's electronic docket. SFM attempted to contact Respondent's attorney to confirm that it was filed, but received no response on that issue.

If Respondent did file its motion, the filing was improper. In the Board's April 30, 2015 Order, the Board explained that the proceedings "remain suspended pending disposition of that portion of the motion which seeks summary judgment. Any paper filed during the continued pendency of this motion which is not relevant thereto will be given no consideration." The outstanding summary judgment issue is one for issue preclusion that was originally raised in

Respondent's December 12, 2014 motion to dismiss. Respondent's motion for relief under Rules 12(e) and (f) seek a more definite statement or, alternatively, to strike portions of SFM's petition. These issues are not relevant to the issue preclusion issue being decided by the Board on summary judgment, and should be given no consideration now.

SFM requests that in the event Respondent did file the attached motion, the Board direct Respondent to re-serve the motion after the Board has resumed proceedings after ruling on the outstanding summary judgment issue.

Dated: June 1, 2015

By: /s/ Christian G. Stahl
Christian G. Stahl

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Attorneys for Petitioner SFM, LLC

CERTIFICATE OF SERVICE

I certify that on June 1, 2015, a true and correct copy of the foregoing was served via U.S. Mail upon the following:

Charles L. Thomason
55 W. 12th Ave.
Columbus, Ohio 43210

/s/ Christian G. Stahl

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

| | | |
|------------------------|---|----------------------------|
| SFM, LLC, | } | |
| | } | Cancellation No: 92 060308 |
| v. | } | |
| | } | |
| Corcamore, LLC | } | Registration No. 3708453 |
| | } | |
| Respondent-Registrant. | } | |

ELECTRONICALLY SERVED

NOTICE OF MOTION PURSUANT TO RULE 12(e) and (f)

TO: Nicole M. Murray, Esq.
Quarles & Brady LLP
30 N. LaSalle St., Suite 4000
Chicago, IL 60654
Email: *Nicole.Murray[at]quarles[dot]com*

PLEASE TAKE NOTICE that the Respondent and registrant Sprout Retail, Inc. moves for a more definite statement, or alternatively, to strike, as to the averments in paragraph 10 of the First Amended Petition alleging “Registrant owns, operates, and/or manages” vending machines, and the related averment in paragraphs 11 and 13 of “Registrant’s vending machines.” Respondent and registrant does not own or operate vending machines.

Procedural Background.

Petitioner alleged in paragraphs 10, 11 and 13 of the Petition that which is incorrect, and so, vague and ambiguous that the Respondent and registrant cannot reasonably be required to frame a response thereto. Without the desired information about what basis, if any, petitioner has to aver that “Registrant owns, operates, and/or manages” vending machines, the movant is unable to frame a response thereto. The

movant cannot make a good faith response to the averment of ownership or operation, unless petitioner is ordered to provide a more definite statement as to those averments in paragraphs 10, 11 and 13 of the Petition. *GNI Waterman LLC v. A/M Valve Co., LLC*, 2007 WL 2669503, 2007 U.S. Dist. LEXIS 68715 (E.D.Cal. 2007). Relief is sought under civil Rule 12(e), and TBMP §505.

In the alternative, Respondent and registrant moves to strike from the Petition the averments in paragraph 10 of the Petition alleging “Registrant owns, operates, and/or manages” vending machines, and the related averment in paragraphs 11 and 13 of “Registrant’s vending machines.” Those averments, being incorrect, are immaterial, impertinent or scandalous matter, which should be stricken pursuant to civil Rule 12(f) and TBMP §506. *Knickerbocker Toy Co. v. Faultless Starch Co.*, 467 F.2d 501, 175 USPQ 417 (CCPA 1972).

Based on the foregoing, Respondent and registrant moves for relief necessary to address the indefiniteness, incorrectness and immateriality of the averments in paragraphs 10, 11 and 13 of the Petition.

Respectfully submitted

Date: 11 MAY 2015

~ S ~ /Charles L. Thomason/
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Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2015, I electronically filed the foregoing Notice of Motion, and mailed a copy to the attorneys for the Petitioner, directed to the email address of the attorney indicated below:

Nicole M. Murray, Esq.
Quarles & Brady LLP
30 N. LaSalle St., Suite 4000
Chicago, IL 60654
Email: *Nicole.Murray[at]quarles[dot]com*

Date: 11 MAY 2015

~S~/Charles L. Thomason/
Charles L. Thomason