

ESTTA Tracking number: **ESTTA684120**

Filing date: **07/16/2015**

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

Proceeding	92060308
Party	Defendant Corcamore, LLC
Correspondence Address	CHARLES L THOMASON 55 W 12TH AVE COLUMBUS, OH 43210 UNITED STATES thomason@spatlaw.com
Submission	Other Motions/Papers
Filer's Name	Charles L. Thomason
Filer's e-mail	thomason@spatlaw.com
Signature	/Charles L. Thomason/
Date	07/16/2015
Attachments	Sprout_R11_Def_Mo_07_16_2015.pdf(14094 bytes )

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

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

---

ELECTRONICALLY FILED

**RESPONDENT-REGISTRANT'S DEFERRAL OF  
NOTICE OF RULE 11 MOTION.**

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

**PLEASE TAKE NOTICE** that the Respondent Corcamore LLC requests deferral of the Rule 11(b)(2), FED. R. CIV. PROC., motion for a further 21 days.

Reliance will be placed on the memorandum of points and authorities, hereinbelow.

Respectfully submitted,

16 JULY 2015

~ S ~ /Charles L. Thomason/  
Charles L. Thomason  
55 W. 12<sup>th</sup> Ave.  
Columbus, OH 43210  
Email: *Thomason[at]spatlaw[dot]com*  
Telep. (502) 349-7227  
Attorney for Respondent-Registrant

## CERTIFICATION OF MEET AND CONFER.

The undersigned conferred with Petitioner's attorney Murray in an effort to resolve the subject matter of the Rule 11(b)(2), FED. R. CIV. PROC. motion. Among the alternatives discussed were withdrawal of, or a 21-day deferral of the motion, along with voluntary production of some evidentiary support for Petitioner's challenged assertions.

Compromise was not achieved, and to negate a procedural argument, it is requested that the Rule 11(b)(2), FED. R. CIV. PROC. motion be deferred for 21-days.

## MEMORANDUM OF POINTS AND AUTHORITIES

Respondent-registrant, Corcamore LLC, gave written notice to Petitioner that described the specific conduct that allegedly violates Rule 11(b), FED. R. CIV. PROC. Then, 22-days later, respondent moved for nonmonetary sanctions, because the Petitioner had not corrected the pleaded averments and factual assertions that lack evidentiary support.

The parties are of two views on the "safe harbor" provision in Rule 11, because the Circuit courts differ in their requirements.

"Moreover, we have held that a letter informing the opposing party of the intent to seek sanctions and the basis for the imposition of sanctions—like the one Gateway sent in this case—is sufficient for Rule 11 purposes. See, e.g., *Fabriko Acquisition Corp. v. Prokos*, 536 F.3d 605, 610 (7th Cir.2008) (finding a letter informing offending party of sanctions to be adequate); *Nisenbaum v. Milwaukee Cnty.*, 333 F.3d 804, 808 (7th Cir.2003) (same)."  
*Matrix IV, Inc. v. Am. Nat. Bank & Trust Co. of Chicago*, 649 F.3d 539, 552-53 (7th Cir. 2011).

"Courts are split as to whether technical compliance with Fed.R.Civ.P. 11(c)(2) is a prerequisite to obtaining Rule 11 relief or whether non-compliance may be excused.

\* \* \*

"Technical compliance with procedural rules is certainly important—and normally not difficult to achieve—but it is not mandatory in every circumstance. Whether non-compliance with Rule 11(c)(2) may be excused is a fact-specific inquiry; where the violation is very minor, or where no prejudice results, the rule need not be enforced to the letter."

*Anaqua, Inc. v. Schroeder*, 2013 WL 1412190, at \*2 (D. Mass. Apr. 5, 2013).

Relief Requested.

To defuse Petitioner's strident contention about whether a strict or substantial compliance approach should be applied to the 'informal notice' and to the filed Rule 11 motion, the Respondent requests that the motion be deferred for 21 more days.

It was hoped that petitioner would agree to voluntarily producing some "evidentiary support" for its assertions that respondent owns vending machines or operates vending machines. That would have negated the need for respondent motion, and Petitioner's early, voluntary, limited production was not inconsistent with the fact that such "evidential support," if any, will later have to be produced by the Petitioner.

Therefore, respondent requests a 21-day deferral of the motion for an Order requiring Petitioner to show cause why the Board should not strike the assertions that there are "Respondent's machines," viz., vending machines owned or operated by respondent that compete with SFM's brick and mortar grocery stores.

Respectfully submitted,

16 JULY 2015

~ S ~ /Charles L. Thomason/  
Charles L. Thomason  
55 W. 12<sup>th</sup> Ave.  
Columbus, OH 43210  
Email: *Thomason[at]spatlaw[dot]com*  
Telep. (502) 349-7227  
Attorney for Respondent-Registrant

## CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of July, 2015, I electronically filed the foregoing Request for Deferral of Motion, and mailed a copy to the attorneys for the Petitioner, directed to the address of the attorney indicated below:

Nicole M. Murray, Esq.  
Quarles & Brady LLP  
300 N. LaSalle St., Suite 4000  
Chicago, IL 60654

Date: 16 JULY 2015

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