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

Proceeding	92060308
Party	Plaintiff SFM, LLC
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Date	12/01/2014
Attachments	First Amended Petition for Cancellation.pdf(18186 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.)	

FIRST AMENDED PETITION FOR CANCELLATION

Petitioner, SFM, LLC (“SFM” or “Petitioner”), a Delaware limited liability company located and doing business at 11811 N. Tatum Blvd., Phoenix, Arizona 85028, believes that it is and will continue to be damaged by Registration No. 3,708,453 and hereby petitions to cancel the same.

As grounds for cancellation, it is alleged that:

1. SFM is a Delaware limited liability company with its principal place of business at 11811 North Tatum Boulevard, Suite 2400, Phoenix, Arizona 85268. SFM owns and manages the intellectual property, including trademarks, used by Sprouts Farmers Markets, Inc. (“Sprouts Farmers Markets”), SFM’s exclusive licensee, a fresh, natural and organic grocery chain with over 190 stores in the United States.

2. Respondent Corcamore, LLC (“Corcamore” or “Respondent”) is a New Jersey limited liability company located and doing business at 1189 Crim Road, Bridgewater, New Jersey.

3. Since at least as early as 2002, Sprouts Farmers Markets (and its predecessors in interest) has offered retail grocery store services under SFM's SPROUTS family of trademarks.

4. Respondent's alleged Registration No. 3,708,453 is a trademark registration for SPROUT, for use in connection with "vending machine services" in International Class 35, which issued on November 10, 2009. The alleged date of first use of the mark anywhere and in commerce is May 1, 2008. The name and address of the owner of Registration No. 3,708,453 is Corcamore, LLC, a New Jersey limited liability company located and doing business at 1189 Crim Road, Bridgewater, New Jersey.

5. SFM is the owner of multiple federal trademark registrations for SPROUT-nominative trademarks, including U.S. Trademark Registration Nos.:

- a. 2,798,632 (first use date: April 15,2002) for SPROUTS FARMERS MARKETS used in connection with "retail grocery store services" in International Class 35;
- b. 3,322,841 (first use date: April 15, 2002) for SPROUTS used in connection with "retail grocery store services" in International Class 35; and
- c. 4,002,187 (first use date: December 2007) for SPROUTS FARMERS MARKETS & Design used in connection with "retail grocery store services" in International Class 35.

(collectively, the "SPROUTS Trademarks"). These registrations are valid and subsisting.

6. SFM, through its exclusive licensee, has used the SPROUTS Trademarks for retail grocery store services for over 12 years. SFM's licensee also uses the SPROUTS and SPROUTS-nominative trademarks in connection with various goods often found in vending machines, such as potato chips, cookies, popcorn, chocolate bars, fruit juice, and flavored waters.

SFM's licensee also provides additional services under the SPROUTS trademarks, including providing educational information and discounts about Sprouts Farmers Market's offerings online at www.sprouts.com.

7. SFM's rights in its SPROUTS Trademarks are superior to any rights Respondent may have in the mark SPROUT. SFM, through its licensee and its licensee's predecessor's in interest, began using the SPROUTS Trademarks prior to the date of first use claimed in the registration sought to be canceled herein.

8. Upon information and belief, Respondent did not make use of the trademark SPROUT prior to May 1, 2008, the date of first use claimed in the registration sought to be canceled.

9. Respondent's SPROUT mark is nearly identical in sound, appearance and commercial impression to SFM's mark. Thus, when applied to the goods of Respondent, it is likely to cause confusion or mistake, or to deceive the purchasing public. Because the goods sold under SFM's trademark and Respondent's trademark are substantially similar, purchasers will be led to the mistaken belief that SFM's goods and Respondent's goods originate from the same source, or that Respondent's use of SPROUT has been sponsored, authorized, or warranted by SFM, all to SFM's detriment.

10. Respondent owns, operates, and/or manages a wireless network of vending machines under the SPROUT trademark

11. Respondent's vending machines offer a variety of products, including the same or similar products than those offered at retail grocery stores, and more specifically, Sprouts Farmers Markets.

12. Moreover, Respondent purports to connect its customers with, not only their vending providers, but also other food service providers.

13. Respondent's vending machine services, which allows its customers to choose and replenish the items in their vending machines, are analogous to retail grocery store services, and have a high likelihood of causing confusion, mistake, or to deceive customers as to the affiliation, connection, origin, sponsorship, or association of Respondent with SFM or its licensee, Sprouts Farmers Markets.

14. Moreover, Respondent's services purport to focus on healthy options in its vending machine services, further placing it line with SFM's and its licensee's goods and services. For example, its website at www.sproutretail.com touts:

HEALTHY PRODUCTS -- Eating right can be difficult, so we want to make selecting a healthy product easy. Our in-house dietician has developed comprehensive nutritional guidelines and is constantly on the lookout for products meeting our "*Right Choice for a healthier you*" guidelines. We make it easy for you to choose everyday - simply look for the heart-apple symbol and you'll know you've make the right choice....

15. SFM's licensee, Sprouts Farmers Markets, has expended substantial amounts of money, time and effort in advertising, promoting and popularizing its SPROUTS Trademarks and in preserving the good will associated therewith, including Sprouts Farmers Markets as a national leader in healthy, organic food options. The trade and purchasing public have come to know the SPROUTS Trademarks and recognize that any goods or services so marked originate with Sprouts Farmers Markets. Respondent's use of an identical mark for the same goods, particularly in a retail food setting, will cause confusion, mistake and/or deceive, and has impaired SFM's and its licensee's ability to conduct their business in certain channels of trade.

16. Based upon the foregoing, Registration No. 3,708,453 is causing injury and damage to Sprouts.

WHEREFORE, Petitioner requests that Registration No. 3,708,453 for use in connection with “vending machine services” in International Class 35, be canceled and this Petition for Cancellation be sustained.

Dated: December 1, 2014

By: /s/Christian G. Stahl
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CERTIFICATE OF SERVICE

I certify that on December 1, 2014, a true and correct copy of the foregoing First Amended Petition for Cancellation was served via U.S. Mail upon the following:

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