

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SRAM, LLC,

Plaintiff,

v.

FOX FACTORY, INC.,

Defendant.

CIVIL ACTION FILE

No. 1:23-CV-00492-SCJ

ORDER

This matter appears before the Court on the Show Cause Order regarding sanctions. Doc. No. [30].¹ The Parties have timely and fully briefed the issue (Doc. Nos. [31]; [32]; [33]), and the Court addresses it below.

I. BACKGROUND

A. FOX's Initial Representations to the Court

On March 6, 2024, the Court denied the Motion to Transfer (Doc. No. [22]) by Defendant Fox Factory, Inc. ("FOX"). In its Order, the Court raised concerns

¹ All citations are to the electronic docket unless otherwise noted, and page numbers referenced are those imprinted by the Court's docketing software.

about Fox's representations about its principal place of business. Doc. No. [30], 23–25. Specifically, advocating for a transfer, in its opening brief, FOX asserted that California was its principal place of business and that it had no “special or significant” connections with this forum. Doc. No. [22], 5, 7. In support of FOX's transfer motion, Wesley Allinger, an Executive Vice President of FOX and of FOX's parent FOX Factory Holding Corp. (“FOX Holding”), submitted a declaration stating that FOX has its principal place of business in Scotts Valley, California, and identifying the offices in Duluth, Georgia, as those of FOX's corporate parent (FOX Holding). Doc. No. [22-2], ¶¶ 2, 5.

In its Response, Plaintiff SRAM, LLC (“SRAM”), presented evidence showing that FOX's principal place of business is in this Georgia District. Doc. No. [23], 3–10. Specifically, SRAM showed that in its corporate filings with several Secretaries of State and in its trademark filings with the United States Patent and Trademark Office and the intellectual property offices of other nations, FOX consistently identified a Georgia location as its principal office address. SRAM also pointed out that, among other things, (1) FOX identifies Georgia as its headquarters on its social media pages; (2) FOX lists Georgia as the location of its principal executive office on its website; (3) FOX's executive officers

are located in Georgia; and (4) FOX entered into agreements with the Georgia-based Gainesville and Hall County Development Authority (“GHCDA”) for financing and tax benefits in exchange for moving its headquarters to Georgia.

FOX admitted in its Reply that it is headquartered in Georgia, but it argued that Scotts Valley, California, remained its principal place of business because it was the principal place of business for FOX’s bicycle suspension business unit. Doc. No. [26], 4–8. While asserting that it was not denying its Georgia affiliation, FOX denied any deep ties with Georgia by maintaining that FOX Holding and not FOX received tax and financing benefits from GHCDA.

The Court concluded that transfer was not warranted because SRAM’s forum choice was entitled to high deference—as one of the Parties (i.e., FOX) had its principal place of business in this District—and FOX had failed to make the showing necessary to overcome that deference. The Court *sua sponte* required FOX to show cause why sanctions should not issue over its misrepresentations regarding the location of its principal place of business and allowed SRAM an opportunity to file a rebuttal.

B. Show Cause Briefing

In its response to the Court's Order, FOX argues that sanctions are not appropriate because FOX had a good-faith factual basis and its counsel had a good-faith legal basis for the belief that California was FOX's principal place of business and that FOX and its counsel mistakenly represented that FOX Holding (rather than FOX), was the beneficiary of the tax and financial arrangements with GHCD. A.

According to FOX's Chief Legal Officer, FOX has undergone a geographical and business reorganization for the past several years. Doc. No. [31-2] ("Merchant Decl."), ¶ 5. Starting in 2018, although FOX expanded its operations to Georgia – opening new headquarters here – many of its mountain bike employees and some powered vehicle employees remained in its Scotts Valley facilities and those facilities continued to be "home" to FOX's mountain bike business. Id.; Doc. No. [33], 7. According to FOX's litigation counsel,² they reasonably relied on the understanding of FOX's now-former in-house counsel

² FOX is represented in this matter by Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.

(David Haugen)³ that Scotts Valley remained FOX's principal place of business (notwithstanding FOX's Georgia expansion) because Mr. Haugen was closely involved with the Georgia expansion and had intimate familiarity with the business and operations of both FOX and FOX Holding. Doc. Nos. [31], 6; [31-1] ("McCauley Decl."), ¶¶ 2-3; [31-3] ("Bhattacharyya Decl."), ¶ 3. Moreover, according to FOX, it did not manufacture its belief for the sake of this litigation; rather, FOX had maintained in previous litigation with SRAM in 2022 that California was its principal place of business and had represented to the California Secretary of State (in March 2023), days before filing its transfer motion in this case, that Scotts Valley was its principal address. Doc. No. [31], 7; Bhattacharyya Decl. ¶¶ 4-5.

FOX's counsel contends that their reading of the case law supported their understanding that a corporation's headquarters and its principal place of business could be in different locations and, thus, had a good faith basis for their argument that Scotts Valley was FOX's "nerve center" (i.e., its principal place of business). Counsel maintains that FOX did not pivot from its opening brief's

³ Mr. Haugen's employment with FOX and FOX Holding ended in December 2023. Doc. No. [31-3] ("Bhattacharyya Decl."), ¶ 2.

stance that Scotts Valley was FOX's principal place of business. Instead, in shifting to the argument (in FOX's reply brief) that Scotts Valley was the principal place of business for **FOX's bike suspension business**, counsel merely intended to emphasize that Scotts Valley was "the center for day-to-day business" for the business unit that was at issue in this case. Doc. Nos. [31], 15; [33], 7-8; McCauley Decl., ¶ 2; Bhattacharyya Decl., ¶ 13.⁴

On FOX's misrepresentation about FOX Holding (rather than FOX) having received tax and financial benefits from GHCD, FOX's counsel explain that they consulted Mr. Haugen on the issue, drafted and filed FOX's Reply (containing the misrepresentation) with his approval, and did not discover the error until they received the Court's Order. McCauley Decl., ¶ 3; Bhattacharyya Decl., ¶ 10. While counsel reviewed the agreements with GHCD that SRAM had supplied, "given the complex nature of the agreements and interrelationships between FOX [Holding] and FOX," they relied on Mr. Haugen's "experience and expertise on the subject." Doc. No. [33], 9. FOX now maintains that had it and its counsel understood the "correct facts and commitments to Georgia" they would not have

⁴ Counsel note that the reply brief stated that Scotts Valley was FOX's principal place of business. Doc. No. [31], 15.

argued that FOX's principal place of business was not in Georgia. Doc. No. [31], 9.

In rebuttal, SRAM argues that FOX's failure to withdraw its transfer motion following receipt of SRAM's opposition brief and evidence in support warrants sanctions. SRAM contends that, contrary to FOX's counsels' assertion that that they had no reason to question Mr. Haugen's belief that Scotts Valley was FOX's principal place of business, a simple review of the evidence SRAM presented in opposition to the transfer motion (representing publicly available information) should have provided counsel ample grounds. Doc. No. [32], 5. According to SRAM, FOX's counsel failed in their duty to reasonably inquire into the facts and the law by relying solely on the "say-so" of Mr. Haugen and ignoring evidence to the contrary. Id. at 7. SRAM also argues that FOX's legal argument about its principal place of business based on the location of its bike suspension business was frivolous because it is well established that the location of an unincorporated corporate division, even a dominant division, does not

determine the corporation's principal place of business. Id at 10–11.⁵ SRAM advocates for the imposition of such sanctions as the Court deems proper.

FOX acknowledges that it made a mistake in determining FOX's principal place of business, but it contends that because it did not act in bad faith and has taken corrective action by "candidly admit[ting] and apologizing for its errors"⁶ sanctions are inappropriate. Doc. No. [33], 19.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 11(b) provides that an attorney who signs a submission to the Court certifies that "the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." See Fed. R. Civ. P. 11(b)(2). "If, after notice and a reasonable opportunity to respond,

⁵ SRAM suggest that FOX's entire motion to transfer was frivolous. Doc. No. [32], 3. FOX counters that, apart from its (erroneous) belief that its principal place of business was in California, it had other legitimate bases to seek a transfer. Doc. No. [33], 10–15. The issue here is not whether FOX's transfer motion was otherwise colorable. Indeed, the Court concluded that some of the Section 1404(a) transfer factors favored transfer. The issue here is whether FOX misrepresentations regarding its principal place of business—one consideration in the transfer analysis—and, relatedly, its connections to Georgia, warrant sanctions.

⁶ FOX has also filed a corrected statement with the California Secretary of State that identifies its Georgia principal office address. Merchant Decl., ¶ 6.

the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.”⁷ Fed. R. Civ. P. 11(c)(1). “The main objective of the Rule . . . is to deter baseless filings and curb abuses.” Bus. Guides, Inc. v. Chromatic Commc’ns Enters., Inc., 498 U.S. 533, 553 (1991); see also Kaplan v. DaimlerChrysler, A.G., 331 F.3d 1251, 1255 (11th Cir. 2003) (“The purpose of Rule 11 sanctions is to reduce frivolous claims, defenses, or motions, and to deter costly meritless maneuvers.”) (cleaned up). Courts assess sanctions under Rule 11:

- (1) when a party files a pleading that has no reasonable factual basis;
- (2) when the party files a pleading that is based on a legal theory that has no reasonable chance of success and that cannot be advanced as a reasonable argument to change existing law; or (3)
- when the party files a pleading in bad faith for an improper purpose.

Kaplan, 331 F.3d at 1255.⁸ “The standard for testing conduct under amended Rule 11 is reasonableness under the circumstances,” which calls for a two-step inquiry:

⁷ Although Rule 11 authorizes both “nonmonetary directives” and the imposition of a monetary sanction, represented parties are exempted from the latter. Fed. R. Civ. P. 11(c)(4)–(5)(a).

⁸ While Kaplan sets the standard in terms of “pleadings,” Sanctions under Rule 11 are not restricted to pleadings but rather extend to violations of Rule 11(b)’s in “a pleading, written motion, or other paper.” Fed. R. Civ. P. 11(b)–(c)(1); see Kelly v. Montgomery

“first[,] whether the party’s claims are objectively frivolous with no reasonable factual basis; and second, whether the person who signed the pleadings should have been aware that they were frivolous after conducting a reasonable inquiry.” In re Office of the Ala. AG, No. 21-13514, 2023 U.S. App. LEXIS 432, at *8–9 (11th Cir. Jan. 9, 2023) (cleaned up).

Beyond the reasonableness inquiry, however, “[b]ecause no ‘safe harbor’ opportunity exists to withdraw or correct a submission challenged in a court-initiated proceeding, . . . [t]he initiating court must employ (1) a ‘show-cause’ order to provide notice and an opportunity to be heard; and (2) a higher standard (‘akin to contempt’) than in the case of party-initiated sanctions.” Kaplan, 331 F.3d at 1255. Although the district court “should apply a heightened Rule 11 standard that is more ‘akin to contempt’” when imposing *sua sponte* Rule 11 sanctions, Vient v. Highlands News-Sun, 829 F. App’x 407, 409 (11th Cir. 2020), the Eleventh Circuit has yet to decide the “*mens rea* standard” governing the imposition of such sanctions. In re Office of the Ala. AG, No. 21-13514, 2023 U.S.

Hous. Auth., No. 2:24-cv-166-MHT-JTA (WO), 2024 U.S. Dist. LEXIS 114329, at *4 (M.D. Ala. June 28, 2024) (“Violations of Rule 11 . . . including [through] the filing of frivolous motions, may result in imposition of sanctions, including monetary sanctions or an adverse judgment, with or without prejudice.”).

App. LEXIS 432, at *8 (11th Cir. Jan. 9, 2023) (emphasis added). However, district courts in this Circuit have concluded that the “akin to contempt” standard is not met where there is “[m]ere negligence or ignorance of the facts or law” but that “subjective bad faith” action or “making a knowingly false statement or exhibiting a deliberate indifference to obvious facts is akin to contempt and warrants *sua sponte* Rule 11 sanctions.” Hodge v. Orlando Utils. Comm’n, No. 6:09-cv-1059-Orl-19DAB, 2010 U.S. Dist. LEXIS 12564, at *17 (M.D. Fla. Jan. 24, 2010) (emphasis added).

Also, “when rules alone do not provide courts with sufficient authority to protect their integrity and prevent abuses of the judicial process, the inherent power [of the court to sanction] fills the gap.” Peer v. Lewis, 606 F.3d 1306, 1315 (11th Cir. 2010) (cleaned up). In invoking its inherent power, a court must determine that subjective bad faith (i.e., “intentional and not just reckless behavior”) exists. J.C. Penney Corp. v. Oxford Mall, LLC, 100 F.4th 1340, 1346 (11th Cir. 2024); see also Chambers v. NASCO, Inc., 501 U.S. 32, 49–50 (1991); In re Sunshine Jr. Stores, Inc., 456 F.3d 1291, 1304 (11th Cir. 2006) (“[T]he key to unlocking a court’s inherent power is a finding of bad faith.”). “[T]hat intent can

be inferred if an attorney's conduct is so egregious that it could only be committed in bad faith." J.C. Penny, 100 F.4th at 1346.

III. ANALYSIS

"This case started out as a bland [patent infringement] case. . . . But things soon got messy." Plantation Open MRI, LLC v. Infinity Auto Ins. Co., 818 F. App'x 891, 892 (11th Cir. 2020). FOX sought to transfer the case to the Northern District of California, in part, on the grounds that its principal place of business was in California and that neither Party had connections to Georgia. FOX's representations were false—FOX is integrally connected to Georgia through its Georgia headquarters (i.e., its principal place of business). Even after SRAM, relying on public information, pointed this out in its opposition to FOX's transfer motion, rather than withdrawing its motion or, at the least, its argument based on the false representations, FOX double downed and obfuscated, arguing in rebuttal that FOX's principal place of business remained in California because its "bike suspension business" was directed, controlled, and coordinated from there. The Court found that position to be legally unsupported because there is no "legal construct under which a single aspect of a corporation is entitled to its own 'principal place of business.'" Doc. No. [30], 12. Thus, not only did FOX advance

a motion based on false representations, it attempted to shore up those false representations on a legally meritless theory. The question now is whether FOX's actions warrant sanctions. The Court concludes that they do.

Here, both Rule 11 and the Court's inherent power support the issuance of sanctions. FOX's actions were intentional and egregious enough to support an inference of subjective bad faith. Rather than concerning matters related to obscure internal operations of an opposing party, which potentially leave room for a pre-discovery excusable misunderstanding, FOX (a sophisticated corporate entity) made representations to the Court about its own Georgia contacts and its principal place of business—i.e., matters intimately connected to its own governance. Who else but FOX best knows the location of its principal place of business (i.e., headquarters) and depth of contacts with Georgia?

FOX points to its geographical and business reorganization as a cause for its misrepresentations. But that is no excuse—as SRAM pointed out, FOX had contracted with GHDCA and its headquarters were established in Georgia well before the transfer motion was filed. In fact, FOX identified Georgia as its headquarters on its own website and social media page and represented in its corporate filings with various Secretaries of State (among other official filings)

that its principal office was in Georgia. Nevertheless, through its Executive Vice President Wesley E. Allinger, FOX declared that its principal place of business was in California. Either that statement by Wesley Allinger was false or FOX put forward a witness who falsely claimed to have personal knowledge of FOX's principal place of business. When challenged by SRAM regarding its representations, FOX did not rebut SRAM's factual showing, rather, it pivoted to arguing that California remained the principal place of business for its "bike suspension business."

FOX's litigation counsel asserts that through correspondence with Mr. Haugen (FOX's former in-house counsel) before filing the transfer motion and FOX's reply brief in support of that motion they understood that California remained FOX's principal place of business. *Bhattacharyya Decl.*, ¶ 4. According to counsel, they reasonably relied on Mr. Haugen's information in filing FOX's transfer motion and the reply in support of that motion, and they had "no reason to doubt [their] understanding." *Id.* ¶ 6. Not so. Through its filings in a previous litigation involving the Parties, SRAM's counsel informed FOX's counsel (the same litigation counsel who represent FOX in this action) that FOX claimed

Georgia as its headquarters in FOX's corporate material. Doc. No. [32-1], 5.⁹ At the least, this should have caused FOX's counsel to meaningfully investigate the potential inconsistency. But nothing indicates that counsel took meaningful steps to investigate. Rather, counsel "corresponded" with Mr. Haugen regarding FOX's principal place of business and reaffirmed their understanding. In response to FOX's transfer motion, SRAM provided counsel ample bases to doubt FOX's representation that California remained its principal place of business. However, counsel continued to rely on Mr. Haugen, although SRAM referenced FOX's publicly available corporate information that contradicted information supplied by Mr. Haugen.¹⁰ Nothing indicates that counsel spoke with a client representative in a good faith attempt to determine the accuracy of FOX's representations. Not only did counsel not meaningfully investigate

⁹ Because the page numbers imprinted by the Court's docketing software are illegible, this page number refers to the document page number imprinted on the bottom of the document.

¹⁰ For example, FOX's counsel maintains that they relied on communications with Mr. Haugen for their understanding that FOX Holding and not FOX was the entity involved in (and benefiting from) the agreement with GHDCA. Considering that the agreement documents that SRAM supplied flatly contradicted this understanding, it was **not** reasonable for counsel to continue to rely on information from Mr. Haugen. At the least, counsel turned a willfully blind eye towards all the evidence that showed that FOX's representations were false and, instead, launched a legally frivolous counterargument.

SRAM's showing, but counsel pivoted to arguing that FOX remained California-based because its bike suspension business had its "nerve center" there. Counsel supplied no legal authority for the argument that California remained FOX's "nerve center" because an aspect of the company (i.e., the bike suspension business) was run from there. And, in view of Hertz Corp. v. Friend, 559 U.S. 77, 93 (2010), which explained that a "[a] corporation's 'nerve center,' usually its main headquarters, is a single place," counsel had no meritorious grounds for its argument.

Based on these facts, the Court is constrained to find that FOX and its litigation counsel ¹¹ made "knowingly false statement[s] or exhibit[ed] a deliberate indifference to obvious facts" and, thus, acted in a manner akin to contempt that supports a Rule 11 sanction. Hodge, 2010 U.S. Dist. LEXIS at *17. The same intentional conduct supports the issuance of sanctions under the

¹¹ FOX's local counsel (also with Finnegan, Henderson, Farabow, Garertt & Dunner, L.L.P.) did not submit a declaration in response to the Court's Show Cause Order. The Court's Local Rules require "[l]ocal counsel [to] authorize and sign all pleadings and other papers filed in the case by the attorney appearing *pro hac vice*. Accordingly, local counsel is subject to Fed. R. Civ. P. 11." LR 83.1(B)(4), N.D. Ga. As her signature appears on the filing, the Court assumes that FOX's local counsel approved the reply brief in support of FOX's transfer motion. The Court is disturbed by local counsel's failure to police the integrity of FOX's court filing (specifically, FOX's reply brief in support of its transfer motion).

Court's inherent authority. Accordingly, the Court assesses the following sanctions:

- As against FOX, the Court prohibits its corporate representative Wesley E. Allinger from testifying before the Court (whether at a hearing or at trial or through declarations in furtherance of any motion or response to a motion).
- As against FOX's litigation counsel (Finnegan, Henderson, Farabow, Garertt & Dunner, L.L.P.), the Court assesses the reasonable attorneys' fees incurred by SRAM in defending against FOX's Motion to Transfer (Doc. No. [22]).

IV. CONCLUSION

For the foregoing reasons, finding that FOX has failed to satisfy the Court's Show Cause Order (Doc. No. [30]), the Court **SANCTIONS** both FOX and FOX's litigation counsel (Finnegan, Henderson, Farabow, Garertt & Dunner, L.L.P.). Accordingly, FOX's representative Wesley E. Allinger **SHALL NOT** be allowed to testify before the Court (either at a hearing or at trial or through declarations in furtherance of any motion or response to a motion) in relation to this matter. Moreover, the Court **ASSESSES** the attorneys' fees that SRAM reasonably

incurred in defending against FOX's transfer motion against FOX's litigation counsel. To the extent SRAM seeks to recover its fees, it may do so by filing its attorneys' fee petition within 14 days of the entry of a final judgment in this matter; FOX may respond to the reasonableness of the amount of fees sought within 14 days of a petition by SRAM.

IT IS SO ORDERED this 27th day of September, 2024.

/s/ Steve C. Jones
HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE