

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

In the Matter of)	
)	
Andrew T. Pham,)	
)	Proceeding No. D2015-01
Respondent)	
_____)	

FINAL ORDER

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Andrew T. Pham (“Respondent”) have submitted a “Proposed Settlement of Disciplinary Matter Pursuant to 37 C.F.R. § 11.26” (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) for approval.

The Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties’ stipulated facts, legal conclusion, and sanctions.

Jurisdiction

1. At all times relevant hereto, Respondent of Modesto, California, has been a registered practitioner (Registration No. 54,879) and subject to the USPTO Code of Professional Responsibility set forth at 37 C.F.R. § 10.20 *et seq.* and the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101 *et seq.*
2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.19.

Joint Stipulated Facts

3. Respondent of Modesto, California, is a registered patent attorney (Registration Number 54,879). He was first registered as a patent attorney on September 23, 2003.
4. Respondent was admitted to the State Bar of Wisconsin (“Wisconsin bar”) on May 20, 2002. Respondent was administratively suspended from the Wisconsin bar between 2009 and 2014 for not properly reporting CLE credits and for failing to remain current on his attorney registration fee. During the time Respondent was administratively suspended from the Wisconsin bar, he was not licensed to practice trademark law in Wisconsin or any other jurisdiction.

5. A corporation held by Respondent's ex-wife became involved in a trademark dispute with another corporation. On September 29, 2011, while he was administratively suspended from the Wisconsin bar, Respondent communicated with attorneys for the opposing corporation on behalf of his ex-wife and her corporation via multiple email messages. Such communications presented legal opinions and settlement positions on behalf of his ex-wife and the corporation held by her, as well as attempts to negotiate a resolution to a legal dispute on behalf of clients. Some of the communications included a signature block referring to Respondent as "Associate General Counsel."
6. In the final email message sent by Respondent to counsel for the opposing corporation on September 29, 2011, Respondent stated to the recipient that he did not represent his ex-wife. Respondent represents that, at the time he drafted the email message, he was under the mistaken impression that his actions did not constitute the practice of law. However, the parties agree that Respondent did not make a diligent investigation as to whether the actions specified above constituted the practice of law. Respondent now admits and understands that his actions did constitute the practice of law.
7. On October 5, 2011, Respondent executed a joint representation agreement with his ex-wife and the firm that would represent her in the litigation of the trademark dispute. Respondent was referred to as an "attorney" within that agreement.
8. The Wisconsin Supreme Court granted Respondent's petition for reinstatement in July 2014, and Respondent is currently a member in good standing of the Wisconsin bar.

Joint Legal Conclusions

9. Respondent acknowledges that, based on the information contained in the Joint Stipulated Facts, above, Respondent's acts and omissions violated the following provisions of the USPTO Code of Professional Responsibility:
 - a. Respondent violated 37 C.F.R. § 10.31(d) (holding himself out as an attorney while not an attorney) by including a signature block that included the words "Associate General Counsel" on a September 29, 2011 communication with opposing counsel in a trademark dispute, while not authorized to practice trademark law, and by executing a joint representation agreement in which he was referred to as "attorney" on October 5, 2011, while not authorized to practice trademark law.

Agreed Upon Sanction

10. Respondent agrees and it is hereby ORDERED that:
 - a. Respondent is hereby publicly reprimanded;
 - b. Respondent shall serve a thirty-six (36) month probationary period commencing on the date of the Final Order approving this Agreement;
 - 1) if the OED Director is of the good faith opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of this Agreement, the Final Order, or any provision of the USPTO Rules of Professional Conduct, the OED Director shall:
 - i. issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for up to six (6) months for the violation set forth in paragraph 9, above;
 - ii. send the Order to Show Cause to Respondent at the last address of record Respondent provided to The State Bar of Wisconsin; and
 - iii. grant Respondent thirty (30) days to respond to the Order to Show Cause; and
 - 2) in the event that after the 30-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of this Agreement, the Final Order, or any provision of the USPTO Rules of Professional Conduct, the OED Director shall:
 - i. deliver to the USPTO Director: (i) the Order to Show Cause; (ii) Respondent's Respondent response to the Order to Show Cause, if any; and (iii) argument and evidence causing the OED Director to be of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Agreement, Final Order, or any provision of the USPTO Rules of Professional Conduct; and

- ii. request that the USPTO Director enter an order immediately suspending Respondent for up to six (6) months for the violation set forth in paragraph 9, above;
- 3) Nothing herein shall prevent the OED Director from seeking discipline for the misconduct leading to Respondent's suspension pursuant to the preceding subparagraph;
- c. The OED Director shall comply with 37 C.F.R. § 11.59;
- d. In the event the USPTO Director suspends Respondent pursuant to subparagraph 2(b), above, and Respondent seeks a review of the suspension, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension; and that Respondent be placed on probation pursuant to 37 C.F.R. § 11.20(a)(4) for a period of three years from the date of the Final Order;
- e. The OED Director shall electronically publish the Final Order at the OED's electronic FOIA Reading Room, which is publicly accessible through the Office's website at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
- f. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Reprimand and Probation

This notice concerns Andrew T. Pham of Modesto, California, a registered patent attorney (Registration Number 54,879) who is currently admitted to practice before the United States Patent and Trademark Office ("USPTO" or "Office"). The USPTO Director has publicly reprimanded Mr. Pham and imposed a three-year period of probation.

Mr. Pham was administratively suspended between 2009 and 2014 from the practice of law in Wisconsin, the only state in which he was admitted, for not properly reporting CLE credits and not remaining current with his attorney registration fees. Mr. Pham maintained his registration with the USPTO at all times relevant to this action.

While administratively suspended in Wisconsin and not authorized to practice trademark law, Mr. Pham assisted his ex-wife and a corporation held by her in a trademark matter. Mr. Pham sent multiple email messages over the course of one day to opposing counsel on behalf of his ex-wife and her corporation. Within those messages, Mr. Pham presented legal opinions and settlement positions on behalf of his ex-wife and the corporation held by her. Some of the correspondence contained a

signature block implying that he was an attorney. The final email communication clarified, for the first time in the correspondence, that Mr. Pham was not representing his ex-wife.

Also while administratively suspended in Wisconsin and not authorized to practice trademark law, Mr. Pham executed a joint representation agreement with his ex-wife, her corporation, and the firm that represented her in the trademark dispute. That agreement referred to Mr. Pham as an attorney.

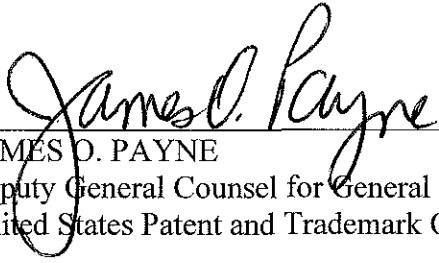
Mr. Pham was reinstated to the practice of law in Wisconsin in July 2014.

Respondents are reminded of their obligation to comply with the USPTO Rules of Professional Conduct.

This action is the result of a settlement agreement between Mr. Pham and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.20, 11.26, and 11.59. Disciplinary decisions involving Respondents are posted at OED's electronic FOIA Reading Room, which is publicly accessible through the Office's website at:

<http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp> .

- g. Nothing in this Agreement or the Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order:
 - 1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office; and/or
 - 2) in any future disciplinary proceeding against Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (ii) to rebut any statement or representation by or on Respondent's behalf;
- h. The OED Director shall file a motion with the administrative law judge requesting the dismissal of the pending disciplinary proceeding within fourteen (14) days of the date of the Final Order; and
- i. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this Agreement and the Final Order.



JAMES O. PAYNE
Deputy General Counsel for General Law
United States Patent and Trademark Office

FEB 25 2015

Date

on behalf of

Michelle K. Lee
Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the United States Patent and Trademark Office

cc:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

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