

UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of: )
Christopher J. McGeehan, ) Proceeding No. D2018-28
Respondent )

FINAL ORDER UNDER 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, the Director of the United States Patent and Trademark Office ("USPTO" or "Office") hereby orders that Christopher McGeehan ("Respondent") be suspended for ninety (90) days from the practice of patent, trademark, and other non-patent law before the USPTO and be required to pay restitution in the amount of \$2,490.00 to QQ Concepts (with an acknowledgement that restitution has been made) for violation of 37 C.F.R. § 11.804(h). The discipline is reciprocal discipline for the September 22, 2017 Order in In re: Christopher Joseph McGeehan, M.R.28740, in which the Supreme Court of Illinois suspended Respondent from the practice of law in Illinois for a period of ninety (90) days and until Respondent pays restitution in the amount of \$2,490.00 to QQ Concepts.

I. BACKGROUND AND PROCEDURAL HISTORY

At all times relevant to this Complaint, Respondent has been registered to practice in patent matters before the USPTO. Respondent's USPTO Registration Number is 56,001. Respondent is subject to the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101 et seq. The Director of the USPTO has jurisdiction over this proceeding pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19 and 11.24.

State Disciplinary Proceedings

On September 22, 2017 the Supreme Court of Illinois issued an Order in In re: Christopher Joseph McGeehan, M.R.28740, suspending Respondent from the practice of law in

that jurisdiction for a period of ninety (90) days and until restitution of \$2,490.00 is paid to QQ Concepts, based on ethical grounds.

USPTO Disciplinary Proceedings

On May 3, 2018, the Director of the USPTO's Office of Enrollment and Discipline ("OED Director") served a "Request for Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Request for Notice and Order") on Respondent, including a "Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24." The OED Director requested that the USPTO Director impose reciprocal discipline on Respondent using the procedures set forth in § 11.24 for violating 37 C.F.R. § 11.804(h), by being disciplined on ethical grounds by a duly constituted authority of a State.

On May 4, 2018, the Deputy General Counsel for General Law, on delegated authority by the USPTO Director, issued a Notice and Order giving Respondent 40 days to file a response "containing all information that Respondent believes is sufficient to establish, by clear and convincing evidence, a genuine issue of material fact that the imposition of discipline identical to that imposed by would be unwarranted, and the reasons for such claim." *See* Notice and Order Pursuant to 37 C.F.R. § 11.24.

Respondent filed a Response to the Notice and Order on June 13, 2018. In that Response, Respondent does "not contend the procedure culminating in the Illinois discipline was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process" and does "not contend that there was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistent with its duty, accept as final the conclusion of the Illinois authorities on that subject." Response, at ¶ 5, 6. Respondent also does "not dispute that [he] is the attorney disciplined in the Illinois proceeding." Response, at ¶ 7.

Although Respondent does "not contend that the imposition of the 90-day suspension by the Office would result in grave injustice", he averred that he had already made restitution to QQ

Concepts as ordered by the Supreme Court of Illinois. Response, at ¶ 8-9. Thus, he requested that restitution not be included as a term of his reciprocal discipline.

## II. LEGAL STANDARD

Pursuant to 37 C.F.R. § 11.24(d), and in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), the USPTO has codified standards for imposing reciprocal discipline based on a State's disciplinary adjudication. Under *Selling*, state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper, unless an independent review of the record reveals: (1) a want of due process; (2) an infirmity of proof of the misconduct; or (3) that grave injustice would result from the imposition of reciprocal discipline. Federal courts have generally "concluded that in reciprocal discipline cases, it is the respondent attorney's burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline." *In re Kramer*, 282 F.3d 721, 724 (9th Cir. 2002); *In re Friedman*, 51 F.3d 20, 22 (2d Cir. 1995). "This standard is narrow, for '[a Federal court, or here the USPTO Director is] not sitting as a court of review to discover error in the [hearing judge's] or the [state] courts' proceedings.'" *In re Zdravkovich*, 634 F.3d 574, 578 (D.C. Cir. 2011) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)) (second and third alternations in original).

The USPTO's regulation governing reciprocal discipline, 37 C.F.R. § 11.24(d)(1), mirrors the standard set forth in *Selling*:

[T]he USPTO Director shall consider any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:

- (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute deprivation of due process;
- (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;
- (iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would

- result in a grave injustice; or
- (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

*Id.*

To prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that there is a genuine issue of material fact as to one of these criteria by clear and convincing evidence. *See id.* As discussed below, however, Respondent has not shown by clear and convincing evidence that there is a genuine issue of material fact with regard to any of the factors set forth in 37 C.F.R. § 11.24(d)(1).

### III. ANALYSIS

#### A. Imposition of a Reciprocal Suspension Would Not Result in a Grave Injustice under 37 C.F.R. § 11.24(d)(1)(iii).

Respondent's sole argument under § 11.24(d) is that imposing discipline that included a term requiring restitution to QQ Concepts, as ordered by the Supreme Court of Illinois, would "create confusion whether this is a new obligation." Response, at ¶ 8. Respondent's argument is analyzed under grave injustice standard as it relates to the sanction at issue here and whether an order of restitution here is appropriate in any reciprocal discipline order.

The grave injustice analysis focuses on whether the severity of the punishment "fits" the misconduct and allows for consideration of various mitigating factors. *See In re Thav*, 852 F. Supp. 2d 857, 861-62 (E.D. Mich. 2012); *see also In re Kramer*, 282 F.3d at 727 (on challenge to imposition of reciprocal discipline, "we inquire only whether the punishment imposed by [the first] court was so ill-fitted to an attorney's adjudicated misconduct that reciprocal disbarment would result in grave injustice"); *In re Attorney Discipline Matter*, 98 F.3d 1082, 1088 (8th Cir. 1996) (no grave injustice where disbarment imposed by the state court "was within the appropriate range of sanctions"); *In re Benjamin*, 870 F. Supp. 41, 44 (N.D.N.Y. 1994) (public

censure within range of penalties for misconduct and thus censure was not a grave injustice). As long as the discipline from the state bar was within the range of appropriate sanctions, it is not grave injustice for the [USPTO] to impose reciprocal discipline.” See *Persaud v. Director of the USPTO*, No. 1:16-cv-00495, 2017 WL 1147459, at \*2 (E.D. Va. Mar. 27, 2017).

Here, Respondent does “not contend that the imposition of the 90-day suspension by the Office would result in grave injustice.” Response, at ¶ 8. However, he claims that including term requiring restitution to QQ Concepts, as ordered by the Supreme Court of Illinois, would “create confusion whether this is a new obligation.” Response, at ¶ 8. That claim is without merit. For the term of restitution, it is possible to avoid confusion and duplicative requirements by permitting the Respondent to provide evidence or proof that the state level term was satisfied. This has been done with other state ordered terms of discipline, such as requirements that a practitioner take training. See *In re: Arno T. Naeckel*, (USPTO, 2018) (practitioner permitted to satisfy term of reciprocal discipline requiring training upon showing to the OED Director that the class had been taken); *In re Dhand*, Proceeding No. D2016-17, at 5 (USPTO Nov. 16, 2016). As a result, requiring that Respondent make restitution to QQ concepts is appropriate where Respondent is able to satisfy that term upon a showing that restitution has been made. Because Respondent has not shown that including the restitution requirement would be a grave injustice, reciprocal discipline is warranted.

#### ORDER

ACCORDINGLY, it is ORDERED that:

1. Respondent is suspended from the practice of patent, trademark, and non-patent matters before the USPTO for a period of 90 days beginning the effective date of this Order;

2. Respondent shall pay restitution in the amount of \$2,490.00 to QQ Concepts.

However, Respondent is permitted to satisfy this condition by providing proof of having already

paid restitution to QQ Concepts. Such proof shall be provided to the OED Director during the term of his 90-day suspension;

3. ORDERED that the OED Director shall make public the following Notice in the Official Gazette:

**Notice of Suspension**

This notice concerns Christopher J. McGeehan of Chicago, Illinois, who is a registered patent attorney (Registration Number 56,001). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office (“USPTO”) has ordered that Mr. McGeehan be suspended from practice before the USPTO in patent, trademark, and other non-patent matters for violating 37 C.F.R. § 11.804(h) for ninety (90) days and until Mr. McGeehan pays restitution in the amount of \$2,490.00 to QQ Concepts (with an acknowledgement that restitution has been made), predicated upon being suspended from the practice of law by a duly constituted authority of a State.

On September 22, 2017, the Supreme Court of Illinois suspended Mr. McGeehan for ninety (90) days and until Mr. McGeehan pays restitution in the amount of \$2,490.00 to QQ Concepts. Mr. McGeehan failed to file design and utility patent applications or otherwise perform any work for his client, QQ Concepts, from the date of his hire to the date of his termination. He also failed to refund any portion of the unearned \$1,900.00 legal fee paid by QQ Concepts. Mr. McGeehan also deposited the \$590.00 QQ Concepts paid to him for filing costs into his business account, and used those funds for his own business or personal purposes without his client’s authority. Finally, Mr. McGeehan engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, by knowingly converting funds provided by QQ Concepts for the filing of patents for his own business or personal use without authorization.

Mr. McGeehan violated the following Illinois Rules of Professional Conduct: 1.3 (failing to act with reasonable diligence and promptness); 1.16(d) (failing to refund unearned legal fees); 1.15(a) (failing to hold property of client separately from lawyer’s own property); and 8.4 (conduct involving dishonesty, fraud, deceit, or misrepresentation).

This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline’s FOIA Reading Room, located at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;

4. ORDERED that the OED Director give notice pursuant to 37 C.F.R. § 11.59 of

the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;

5. Respondent shall comply with the duties enumerated in 37 C.F.R. § 11.58;

6. The USPTO dissociate Respondent's name from any Customer Numbers and the public key infrastructure ("PKI") certificate associated with those Customer Numbers; and

7. Respondent shall not apply for a USPTO Customer Number, shall not obtain a USPTO Customer Number, nor shall he have his name added to a USPTO Customer Number, unless and until he is reinstated to practice before the USPTO.

Pursuant to 37 C.F.R. § 11.57(a), review of the final decision by the USPTO Director may be had by a Petition filed with the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 "within thirty (30) days after the date of the order recording the Director's action." *See* E.D. Va. Local Civil Rule 83.5.

8/8/2018  
Date

Sarah T. Harris  
Sarah T. Harris  
General Counsel  
United States Patent and Trademark Office

on delegation by  
Andrei Iancu  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office

cc:

**VIA EMAIL AND HAND DELIVERY**  
OED Director  
U.S. Patent and Trademark Office  
[REDACTED]

**VIA FIRST CLASS MAIL and EMAIL**

Christopher J. McGeehan

P.O. Box 810

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