

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

In the Matter of

Heather A. Sapp,

Respondent

Proceeding No. D2019-31

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.26

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Heather A. Sapp (“Respondent”), by counsel, have submitted a Proposed Settlement Agreement (“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’ joint stipulated facts, joint legal conclusions, and agreed-upon sanctions found in the Agreement.

Jurisdiction

1. At all times relevant Respondent of Tempe, Arizona, has been an attorney in good standing in the State of Arizona engaged in practice before the Office in trademark matters pursuant to 37 C.F.R. § 11.14(a). Therefore, Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. §§ 11.101 through 11.901.
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, 11.20, and 11.26.

Legal Background

3. USPTO regulations require that the person named as the signatory on an electronic trademark document to be filed with the Office personally enter his or her electronic signature on the document (*i.e.*, personally enter the combination of letters, numbers, spaces and/or punctuation marks that he or she has adopted as a signature, placed between two forward slash (“/”) symbols in the signature block on the electronic submission). *See* 37 C.F.R. § 2.193(a)(2), (c), and (e).
4. The USPTO Trademark Manual of Examining Procedure (“TMEP”) provides guidance to practitioners regarding the USPTO trademark electronic signature regulations:

All documents must be personally signed. 37 C.F.R. §§ 2.193(a)(1), (c)(1), 11.18(a).

The person(s) identified as the signatory must manually enter the elements of the electronic signature.

Another person (*e.g.*, paralegal, legal assistant, or secretary) may not sign the name of a qualified practitioner or other authorized signatory.

Just as signing the name of another person on paper does not serve as the signature of the person whose name is written, typing the electronic signature of another person is not a valid signature by that person.

See TMEP § 611.01(c) (case citations omitted) (line spacing added).

Joint Stipulated Facts

5. From September 1, 2016, to February 2019, Respondent was employed as a Senior Trademark Attorney and the Training and Communications Manager for LegalForce RAPC Worldwide, a law firm. Respondent represents that, although she managed the law firm's law clerks, she did not have the authority to hire or fire the law firm's non-practitioner assistants or have supervisory authority over the law firm's attorneys. Respondent worked in the law firm's Tempe, Arizona office.

6. At all relevant times, Respondent was the attorney of record before the USPTO in pending trademark applications or issued (or renewed) registrations.

7. At all relevant times, Respondent also prepared and reviewed trademark documents in pending trademark applications or issued (or renewed) registrations in which other attorneys from the law firm were the attorney of record before the USPTO.

8. Non-practitioner assistants helped Respondent in preparing and filing trademark documents filed with the USPTO. These non-practitioner assistants were located in Tempe, Arizona, and Maharashtra, India.

9. Contrary to the USPTO trademark signature regulations and guidance referenced in paragraphs 3 and 4, above, non-practitioner assistants were impermissibly signing client names to USPTO trademark filings. The filings—such as Trademark/Service Mark Statements of Use pursuant to 15 U.S.C. § 1051(d)—typically carried an important warning, such as:

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of

his/her own knowledge are true and all statements made on information and belief are believed to be true.

10. The impermissible signature practice existed prior to Ms. Sapp's employment and continued at least until June 2018. By such time, Respondent had been directly involved, as the attorney of record or as an attorney assisting the attorney of record, in numerous impermissibly signed trademark documents filed with the USPTO.

11. Respondent represents that she first became aware in or around June 2018 that non-practitioner assistants were signing client names to trademark filings contrary to the aforementioned USPTO trademark signature regulations and TMEP guidance.

12. Respondent represents that, prior to June 2018, she did not understand adequately the USPTO trademark signature regulations and guidance referenced in paragraphs 3 and 4, above. Respondent now recognizes that (a) as the attorney of record in pending trademark applications or issued (or renewed) registrations before the USPTO in which she prepared, reviewed, and/or caused to be filed trademark documents on behalf of the law firm's clients or (b) as an attorney who prepared, reviewed, and/or caused to be filed trademark documents on behalf of clients in pending trademark applications or issued (or renewed) registrations before the USPTO in which other attorneys from the law firm were the attorney of record, she did not take reasonable and appropriate steps to ensure compliance with the signature requirements of 37 C.F.R. § 2.193 or the guidance set forth in TMEP § 611.01(c). Specifically, she recognizes that, in such matters, she (a) allowed non-practitioner assistants to sign trademark filings rather than having the named signatory (*i.e.*, the client) sign the filings and/or (b) did not adequately monitor or supervise non-practitioner assistants to ensure compliance with the USPTO's trademark signature rules and guidance. Respondent further recognizes that, after learning of the impermissible signature practice, she did not take steps to notify clients or the USPTO promptly about the material misrepresentations set forth in the impermissibly signed trademark filings (*e.g.* that the named declarant did not sign the declaration) for those matters where she was either (a) the attorney of record in pending trademark applications or issued (or renewed) registrations before the USPTO in which she prepared, reviewed, and/or caused to be filed trademark documents on behalf of clients or (b) an attorney who prepared, reviewed, and/or caused to be filed trademark documents on behalf of clients in pending trademark applications or issued (or renewed) registrations before the USPTO in which other attorneys from the law firm were the attorney of record. Instead, she waited several months after learning about the impermissible signature issue to start to take such steps. Respondent represents that she raised the issue of corrective action with the firm's management in June 2018, but she was told that no action was necessary at that time. Respondent further represents that, at the time her relationship with the firm was terminated, she intended to inform the firm's clients of the impermissible signatures and the implications thereof and was taking steps to attempt to identify the affected applications and/or registrations.

Additional Considerations

13. In fourteen years of trademark law practice, Respondent has not been publicly disciplined by any state, territorial bar, state or federal court, or state or federal agency (including the USPTO).

14. Respondent has acknowledged her ethical lapses, demonstrated genuine contrition, and accepted responsibility for her acts and omissions. She understands the seriousness of allowing non-practitioner assistants to impermissibly sign others' signatures on trademark documents, including declarations, filed with and relied upon by the USPTO in examining trademark applications and issuing (or renewing) registrations. She also acknowledges the actual or potential significant adverse consequences that such impermissibly signed trademark filings may have had on clients' intellectual property rights in their pending trademark applications or issued (or renewed) registrations.

15. Respondent cooperated with OED's investigation, *e.g.*, by agreeing to a telephonic interview with Office of Enrollment and Discipline and by providing *sua sponte* informative, supplemental responses to her original responses to requests for information that clarified facts surrounding the impermissible signature practice.

16. Additionally, upon learning of the impermissible signature practice, Respondent took corrective action by way of retraining the firm's practitioners and non-practitioners to ensure future compliance with the USPTO signature regulations and guidance and by developing an internal audit team to assist with verifying and maintaining compliance.

Joint Legal Conclusions

17. Respondent acknowledges that, based on the information contained in the joint stipulated facts, above, her conduct—as either (a) the attorney of record for clients in pending trademark applications or issued (or renewed) registrations before the USPTO or as (b) an attorney who prepared and reviewed trademark documents on behalf of clients in pending trademark applications or issued (or renewed) registrations before the USPTO in which other attorneys from the law firm were the attorney of record—violated the following provisions of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 11.101 (requiring a practitioner to provide competent representation to a client) by not understanding adequately the USPTO trademark signature requirements of 37 C.F.R. § 2.193 or the guidance set forth in TMEP § 611.01(c);
- b. 37 C.F.R. §§ 11.103 (practitioner shall act with reasonable diligence and promptness in representing a client) and 11.503(b) (practitioner's responsibility over non-practitioners assisting practitioner) by (i) having trademark documents filed with the USPTO where someone other than the named signatory electronically signed the documents in violation of USPTO trademark signature regulations and guidance; (ii) prior to trademark documents being filed with the USPTO, not taking reasonable steps to learn whether non-practitioner assistants

who were tasked with obtaining the signatures of the named signatories on trademark documents were impermissibly signing the documents (*e.g.*, by not monitoring the signature process or otherwise taking reasonable steps to learn whether non-practitioner assistants were actually obtaining the named signatories' respective signatures); (iii) not knowing that non-practitioner assistants were signing for the named signatories; and/or (iv) after learning of the impermissible signature practice, not promptly notifying clients about the impermissibly signed trademark filings or the actual or potential adverse consequences to the clients' pending applications or issued (or renewed) registrations arising from the impermissible signature practice;

- c. 37 C.F.R. §§ 11.104(a) and (b) (communications with client), after learning of the impermissible signature practice, by (i) not promptly informing clients about impermissibly signed trademark filings or the status of their pending applications and issued (or renewed) registrations in light of the impermissible signature practice; (ii) not promptly and reasonably explaining to clients the actual or potential adverse consequences to the clients' pending applications or issued (or renewed) registrations arising from the impermissible signature practice (*e.g.*, including whether the electronic signing of a document, including a declaration, by one other than the named signatory jeopardizes the intellectual property rights of the client); and (iii) not promptly and reasonably consulting with clients about the actual or potential adverse consequences to the clients' pending applications or issued (or renewed) registrations arising from the impermissible signature practice so that clients can make informed decisions regarding the representation of their trademark interests;
- d. 37 C.F.R. §§ 11.303(a)(1), (a)(3), (b), (d) (candor toward the USPTO) by having trademark documents, including declarations, filed with the USPTO that were not signed by the named signatory (*i.e.*, documents impliedly falsely representing that the named signatory was the person who actually signed the document) and not promptly reasonably correcting the impliedly false statement of material fact after learning of the impermissibly signed filings (*e.g.*, informing the USPTO that the named signatory did not sign the document);
- e. 37 C.F.R. §§ 11.804(c) (misrepresentation) and (d) (conduct prejudicial to the USPTO trademark registration process) by (i) having trademark documents, including declarations, filed with the USPTO that were not signed by the named signatory (*i.e.*, documents impliedly falsely representing that the named signatory was the person who actually signed the document) and not promptly reasonably correcting the impliedly false statement after learning of the impermissibly signed filings (*e.g.*, informing the USPTO that the named signatory did not sign the document) and (ii) having declarations filed with the USPTO, on which the USPTO relied in examining trademark applications and issuing (or renewing) registrations, that were signed by other than the named declarant and not promptly taking reasonable remedial measures regarding the declarations (*e.g.*, informing the USPTO that the named signatory did not sign the document); and

- f. 37 C.F.R. § 11.804(i) (other conduct that adversely reflects on the practitioner's fitness to practice before the Office) by engaging in the acts and omissions regarding not notifying clients or the USPTO about the impermissible signature practice or the impermissibly signed filings.

Agreed-Upon Sanction

18. Respondent freely and voluntarily agrees, and it is hereby ORDERED that:

- a. Respondent be, and hereby is, publicly reprimanded;
- b. Respondent shall be placed on probation for one year beginning with the date of the Final Order;
- c. Respondent shall be permitted to practice before the USPTO in trademark and other non-patent matters during her probationary period, unless her probation is revoked and she is suspended by order of the USPTO Director or otherwise no longer has the authority to practice before the USPTO;
- d. (1) if the OED Director is of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the USPTO Rules of Professional Conduct, the OED Director shall:
 - (A) issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending the Respondent for up to twelve (12) months for the violations set forth in the Joint Legal Conclusions, above;
 - (B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director;
 - (C) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and
- (2) in the event that after the 15-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 the USPTO Rules of Professional Conduct, the OED Director shall:
 - (A) deliver to the USPTO Director: (i) the Order to Show Cause; (ii) Respondent's response to the Order to Show Cause, if any; and (iii) argument and evidence supporting the OED Director's position; and
 - (B) request that the USPTO Director enter an order immediately suspending Respondent for up to twelve (12) months for the violations set forth in the

Joint Legal Conclusions above;

- e. Nothing herein shall prevent the OED Director from seeking discrete discipline for any misconduct that formed the basis for an Order to Show Cause issued pursuant to the preceding subparagraph;
- f. In the event the Respondent seeks a review of any action taken pursuant to subparagraph d., above, such review shall not operate to postpone or otherwise hold in abeyance the suspension;
- g. 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>;
- h. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Public Reprimand and Probation

This notice concerns non-registered practitioner, Heather A. Sapp of Tempe, Arizona, who is hereby publicly reprimanded and placed on probation for twelve (12) months for violating 37 C.F.R. §§ 11.101; 11.103; 11.104 (a) and (b); 11.303(a)(1), (a)(3), (b) and (d); 11.503(b); 11.804(c); 11.804(d); and 11.804(i). The violations are predicated on non-practitioner assistants electronically signing numerous USPTO trademark filings on behalf of the named signatories in violation of the USPTO trademark electronic signature regulations and guidance in trademark matters where Ms. Sapp was either the attorney of record or the attorney who prepared, reviewed, and/or caused to be filed trademark documents where another attorney was the attorney of record. Ms. Sapp is permitted to practice before the Office in trademark and other non-patent matters during her probationary period unless she is subsequently suspended by order of the USPTO Director.

Between September 1, 2016, and February 2019, Ms. Sapp was a trademark attorney employed by LegalForce RAPC Worldwide. Prior to her employment and until at least June 2018, non-practitioner assistants were signing client names to USPTO trademark filings in violation of USPTO trademark signature regulations and guidance. Ms. Sapp represents that she first became aware in or around June 2018 that non-practitioners were signing documents to be filed with the USPTO. Ms. Sapp further represents that, while representing clients in trademark matters before the USPTO, she did not understand adequately the USPTO trademark signature requirements of 37 C.F.R. § 2.193 or the guidance set forth in TMEP § 611.01(c). Consequently, during this time period, Ms. Sapp, in her capacity as (a) the attorney of record in pending trademark

applications or issued (or renewed) registrations before the USPTO in which she prepared, reviewed, and/or caused to be filed trademark documents on behalf of clients and (b) an attorney who prepared, reviewed, and/or caused to be filed trademark documents on behalf of clients in pending trademark applications or issued (or renewed) registrations before the USPTO in which other attorneys from the law firm were the attorney of record, did not take reasonable and appropriate steps to ensure compliance with the USPTO trademark signature requirements or guidance. Ms. Sapp was directly involved in USPTO trademark filings such that she (i) had trademark documents filed with the USPTO where non-practitioner assistants signed the documents, including declarations, instead of the named signatory; (ii) prior to trademark documents being filed with the USPTO, did not take reasonable steps to learn whether non-practitioner assistants were signing the documents in compliance with USPTO signature regulations and guidance (*e.g.*, she did not monitor the signature process or otherwise take reasonable steps to learn whether non-practitioner assistants were actually obtaining the named signatories' respective signatures); (iii) after learning of the impermissible signature practice, did not promptly notify clients about impermissibly signed trademark filings or the legal status of their pending applications and issued (or renewed) registrations in light of the impermissible signature practice, did not promptly and reasonably explain to clients about the actual or potential adverse consequences to the clients' pending applications or issued (or renewed) registrations arising from the impermissible signature practice (*e.g.*, including whether the electronic signing of a document, including a declaration, by one other than the named signatory jeopardizes the intellectual property rights of the client), and did not promptly and reasonably consult with clients regarding the actual or potential adverse consequences to the clients' pending applications or issued (or renewed) registrations arising from the impermissible signature practice so that clients can make informed decisions regarding the representation of their trademark interests; (iv) after learning of the impermissible signature practice, did not promptly notify the USPTO about the impermissibly signed trademark filings; (v) having trademark documents filed with the USPTO that were not signed by the named signatory (*i.e.*, documents impliedly falsely representing that the named signatory was the person who actually signed the document) and did not promptly reasonably correct the impliedly false statement after learning of the impermissibly signed trademark filings (*e.g.*, informing the USPTO that the named signatory did not sign the document); and (vi) having declarations filed with the USPTO, on which the USPTO relied in examining trademark applications and issuing (or renewing) registrations, that were signed by other than the named declarant, and did not promptly take reasonable remedial measures regarding the declarations (*e.g.*, informing the USPTO that the named signatory did not sign the document). Ms. Sapp represents that she raised the issue of corrective

action with the firm's management in June 2018, but she was told that no action was necessary at that time. Ms. Sapp further represents that, at the time her relationship with the firm was terminated, she intended to inform the firm's clients of the impermissible signatures and the implications thereof and was taking steps to attempt to identify the affected applications and/or registrations.

Ms. Sapp has acknowledged her ethical lapses, demonstrated genuine contrition, and accepted responsibility for her conduct. Moreover, Ms. Sapp cooperated with OED's investigation, *e.g.*, by agreeing to a telephonic interview with Office of Enrollment and Discipline and by providing informative, supplemental responses to her original responses to requests for information that clarified how signatures were entered on USPTO trademark filings.

USPTO trademark signature regulations require that a proper person sign a trademark document and that the person named as the signatory on the document be the one who enters his or her electronic signature on the document (*i.e.*, personally enter the combination of letters, numbers, spaces and/or punctuation marks that he or she has adopted as a signature, placed between two forward slash ("/") symbols in the signature block on the electronic submission). *See* 37 C.F.R. § 2.193(a)(2), (c) and (e).

The USPTO Trademark Manual of Examining Procedure ("TMEP") provides straightforward guidance regarding the USPTO trademark electronic signature regulations:

All documents must be personally signed. 37 C.F.R. §§ 2.193(a)(1), (c)(1), 11.18(a).

The person(s) identified as the signatory must manually enter the elements of the electronic signature.

Another person (*e.g.*, paralegal, legal assistant, or secretary) may not sign the name of a qualified practitioner or other authorized signatory.

Just as signing the name of another person on paper does not serve as the signature of the person whose name is written, typing the electronic signature of another person is not a valid signature by that person.

See TMEP § 611.01(c) (case citations omitted) (line spacing added).

Practitioners may delegate tasks to non-practitioner paraprofessionals and other non-practitioner assistants. But where a

task is so delegated, the practitioner is to supervise adequately the non-practitioner, including giving appropriate instruction and monitoring the non-practitioners' activities. As in this matter, a practitioner may be disciplined for failing to take reasonable steps to supervise their paraprofessionals and other non-practitioner assistants.

Practitioners who represent trademark applicants before the USPTO have an ethical obligation to provide competent representation to a client, which includes the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. *See generally* 37 C.F.R. § 11.101. Accordingly, practitioners who represent trademark applicants before the USPTO in trademark matters are reasonably expected to be knowledgeable of USPTO regulations and guidance pertaining to electronically signing trademark applications and other trademark documents with the Office, including the regulations cited in, and guidance provided under, TMEP § 611.01(c).

Under 37 C.F.R. § 11.104, practitioners who represent trademark applicants before the USPTO have an ethical obligation to reasonably consult with the client about the means by which the client's objectives are to be accomplished (*e.g.*, who is authorized to electronically sign documents, including declarations, filed with the USPTO on behalf of a client), to keep the client reasonably informed about the status of the matter (*e.g.*, who electronically signed documents, including declarations, filed with the USPTO on behalf of the client), to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (*e.g.*, whether the electronic signing of a document, including a declaration, by other than the named signatory may jeopardize the intellectual property rights of any issued trademark registration where the USPTO relied on an impermissibly signed declaration filed with the USPTO during its examination of the client's trademark application or when renewing a registration), and to consult with the client about any relevant limitation on the practitioner's conduct when the practitioner knows that the client expects assistance not permitted by the USPTO Rules of Professional Conduct or other law (*e.g.*, 37 C.F.R. § 2.193).

Practitioners who represent trademark applicants before the USPTO "shall not knowingly . . . [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the practitioner," which includes, *e.g.*, a declaration not signed by the named signatory. 37 C.F.R. § 11.303(a)(1). "If a practitioner, the practitioner's client,

or a witness called by the practitioner, has offered material evidence and the practitioner comes to know of its falsity, the practitioner shall take reasonable remedial measures, including, if necessary, disclosure to the [USPTO].” 37 C.F.R. § 11.303(a)(3). Practitioners also have the obligation to disclose to the USPTO that a person is engaging in or has engaged in fraudulent conduct relating to the examination of the practitioner’s client’s trademark application or renewal of registration and to take reasonable remedial measures. *See generally* 37 C.F.R. § 11.303(b). Compliance with § 11.303(a)(1), (a)(3), and (b) is required even if compliance requires disclosure of information or evidence otherwise protected by 37 C.F.R. § 11.106. *See generally* 37 C.F.R. § 11.303(d). Similar ethical obligations are found under 37 C.F.R. § 11.401.

Practitioners who represent trademark applicants before the USPTO have an ethical obligation to the USPTO not to engage in conduct prejudicial to the administration of justice and not to engage in conduct involving misrepresentation. *See generally* 37 C.F.R. § 11.804(d) and 37 C.F.R. § 11.804(e). Accordingly, practitioners who represent trademark applicants before the USPTO are reasonably expected not to file, or allow to be filed, declarations that are not signed by the named signatory. Trademark filings bearing declarations—such as a TEAS Plus Application, a Trademark/Service Mark Statement of Use pursuant to 15 U.S.C. § 1051(d) and a Combined Declaration of Use and Incontestability Under Sections 8 and 15—are relied upon by the USPTO when examining trademark applications, registering marks, and renewing registrations. When such filings are impermissibly signed and filed with the USPTO, the integrity of the federal trademark registration process is adversely affected. If signed by a person determined to be an unauthorized signatory, a resulting registration may be invalid.

This action is the result of a settlement agreement between Ms. Sapp 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, and 11.26. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room accessible at: [http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp](http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp;);

- i. Nothing 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 (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.

- j. Respondent waives all rights to seek reconsideration of the Final Order under 37 C.F.R. § 11.56, waives the right to have the Final Order reviewed under 37 C.F.R. § 11.57, and waives the right otherwise to appeal or challenge the Final Order in any manner; and
- k. Each party shall each bear their own costs incurred to date and in carrying out the terms of this Agreement and any Final Order.



David Shewchuk
Deputy General Counsel for General Law
U.S. Patent and Trademark Office

15 May 2019

Date

on delegated authority by

Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office

cc:

Director of the Office of Enrollment and Discipline

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