

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

In the Matter of)
)
Ryan Bethell,)
)
Respondent)
_____)

Proceeding No. D2019-42

FINAL ORDER

The Deputy General Counsel for Enrollment and Discipline and the Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Ryan Bethell (“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 background set forth below, is hereby approved. This Final Order sets forth the parties’ background and sanctions.

Jurisdiction

1. Respondent is an attorney who is licensed to practice in Arizona and who is in good standing in that jurisdiction. Given his Arizona license, he is authorized to practice before the USPTO in trademark and other non-patent matters. *See* 37 C.F.R. § 11.14(a). At all times relevant hereto, Respondent was engaged in practice before the Office in trademark matters.

2. Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

3. 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, 11.26, and 11.56.

Background

4. On June 19, 2019, the OED Director filed a Complaint and Notice of Proceedings against Respondent (i.e., Proceeding No. D2019-42) charging violations of the following USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.103, 11.104(a)(3), 11.104(b), 11.303(a)(1), 11.303(a)(3), 11.303(b), 11.303(d), 11.501(a), 11.501(b), 11.501(c)(2), 11.503(a), 11.503(b), 11.503(c)(2), 11.801(b), 11.804(c), 11.804(d), and 11.804(i).

5. The hearing in this matter was held between January 27 – 29, 2020, in Phoenix, Arizona.

6. On November 20, 2023, the Administrative Law Judge issued an Initial Decision and Order on all claims alleged in the Complaint. The Initial Decision found that Respondent violated 37 C.F.R. § 11.103 (failure to act diligently). The Initial Decision did not find that Respondent violated any of the other USPTO Rules of Professional Conduct raised in the Complaint, including 37 C.F.R. § 11.804(d) (conduct prejudicial to the administration of justice), which was the basis of three separate charges in the Complaint. As a sanction for the violation of 37 C.F.R. § 11.103, the ALJ ordered that Respondent be publicly reprimanded.

7. On December 4, 2023, the OED Director filed a notice of appeal of the November 20, 2023 Initial Decision and Order pursuant to 37 C.F.R. § 11.55(a).

8. On December 14, 2023, Respondent filed a notice of cross appeal of the November 20, 2023 Initial Decision and Order pursuant to 37 C.F.R. § 11.55(b).

9. The parties enter into this Agreement for the purpose of settling Proceeding No. D2019-42 including the appeal and cross appeal.

Agreed Upon Sanction

10. Respondent has freely and voluntarily agreed, and it is hereby ORDERED that:

- a. The November 20, 2023 Initial Decision and Order is hereby modified, finding that Respondent violated 37 C.F.R. § 11.103 (not acting with reasonable diligence in representing a client) and one charge of 37 C.F.R. § 11.804(d) (engaging in conduct prejudicial to the administration of the USPTO trademark registration system);
- b. The sanction of a public reprimand in the November 20, 2023 Initial Decision and Order is affirmed; and
- c. The OED Director shall publish a notice including in the Official Gazette that is materially consistent with the following:

Notice of Public Reprimand

This notice concerns Ryan Bethell of Tempe, Arizona, an attorney licensed in the State of Arizona who engaged in practice before the United States Patent and Trademark Office (“USPTO”) or (“Office”) in trademark matters. The USPTO Director has publicly reprimanded Mr. Bethell for one charge of violating 37 C.F.R. § 11.103 and one charge of violating § 11.804(d) of the USPTO Rules of Professional Conduct. The violations are predicated on non-practitioner assistants electronically signing numerous USPTO trademark filings on behalf of named signatories in violation of the USPTO trademark electronic signature regulations and guidance in trademark matters where Mr. Bethell was the attorney of record.

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 who represent trademark applicants before the USPTO have an ethical obligation to provide diligent representation to a client. *See generally* 37 C.F.R. § 11.103. Practitioners may delegate tasks to non-practitioner paraprofessionals and other non-practitioner assistants. But where a task is so delegated, the practitioner is required to confirm that the task is performed in compliance with the USPTO rules. A practitioner may be disciplined for failing to act diligently by, among other things, delegating the task of obtaining client signatures to non-practitioner assistants, and not reasonably ensuring that the task was being carried out in compliance with the USPTO trademark signature rules.

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. *See generally* 37 C.F.R. § 11.804(d). Accordingly, practitioners who represent trademark applicants before the USPTO are reasonably expected not to file, or allow to be filed, trademark documents, including declarations, that are improperly signed under USPTO regulations. These improperly signed documents may lead to trademark registrations on the USPTO register. Indeed, the public relies on the register that is maintained by the USPTO to determine whether a chosen mark is available for use or registration. Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants, 84 FR 31498 (July 2, 2019) (Final Rule). 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 conduct necessarily

implicates the USPTO and unquestionably undermines the public's perception of the USPTO. In fact, 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. Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants, 84 FR 31498 (July 2, 2019) (Final Rule).

The USPTO has published ample, readily available information for practitioners regarding what is competent practice before the Office in trademark matters. In particular, the agency maintains a webpage regarding important trademark information including specific links to relevant laws, rules, regulations, and rulemaking. (*See* www.uspto.gov/trademarks). The agency publishes online and regularly updates its Trademark Manual of Examining Procedure ("TMEP") (*See* tmepl.uspto.gov/RDMS/TMEP/current). The TMEP provides trademark practitioners, *inter alia*, with a reference work on the practices and procedures relative to prosecution of applications to register marks in the USPTO. The TMEP provides unambiguous information about the agency's signature requirements at TMEP § 611.01(c) (stating, in part, "All documents must be personally signed or bear an electronic signature that was personally entered by the named signatory"). 37 C.F.R. §2.193(a)(1), (c)(1). Another person (*e.g.*, paralegal, legal assistant, secretary) may not sign or enter the name of an attorney or other authorized signatory. *See In re Dermahose Inc.*, 82 USPQ2d 1793 (TTAB 2007); *In re Cowan*, 18 USPQ2d 1407 (Comm'r Pats. 1990)." (Parenthesis in original)). When trademark filings are impermissibly signed and filed with the USPTO, the integrity of the federal trademark registration process is adversely affected. Therefore, practitioners who represent applicants, registrants, or others before the USPTO in trademark matters are reasonably expected to know (a) the laws, rules, regulations, and procedures pertaining to their representation of their trademark clients, and (b) the potential adverse consequences to clients' intellectual property rights in trademark applications and registrations as well as to the integrity of the U.S. trademark registration system when such laws, rules, regulations, or procedures are violated.

This action is the result of a settlement agreement between Mr. Bethell 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 11.56;

- d. Nothing in 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 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;

- e. Based on Respondent's agreement to do so, 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; Respondent also waives any claim for relief under the Equal Access to Justice Act; and
- f. Each party shall bear their own costs incurred to date in connection with Proceeding No. D2019-42 and with carrying out the terms of this Agreement and any Final Order.

Users, Shewchuk, David
Digitally signed by Users,
Shewchuk, David
Date: 2024.01.27 07:29:57
-05'00'

David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

Date

on delegated authority by

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order was sent, on this day, to the parties in the manner indicated below-

Via e-mail:

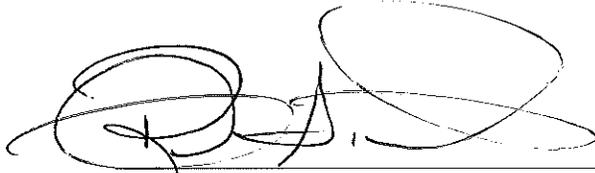
Michael E. McCabe, Jr.
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Counsel for Respondent

Via e-mail:

Sydney Johnson
Sydney.Johnson@uspto.gov
[REDACTED]
Counsel for the OED Director

1/29/2024

Date



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