

UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of  
Jaeson L. Birnbaum,  
Respondent

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Proceeding No. D2022-09

**FINAL ORDER**

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Jaeson L. Birnbaum (“Respondent”) on February 24, 2022. Respondent submitted the two-page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order.

**Jurisdiction**

Respondent of New York, New York is an attorney admitted to practice in New York, currently active. Respondent has practiced before the Office in trademark matters, but he is not registered and not otherwise eligible to represent other persons before the Office in patent matters. Respondent is a “practitioner” pursuant to 37 C.F.R. § 11.1. Respondent is subject to the USPTO Code of Professional Responsibility, 37 C.F.R. § 10.20 *et seq.*, and the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*<sup>1</sup>

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<sup>1</sup> The USPTO Code of Professional Responsibility applies to a practitioner’s conduct that occurred prior to May 3, 2013, while the USPTO Rules of Professional Conduct apply to a practitioner’s conduct occurring on or after May 3, 2013.

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent's Affidavit of Resignation and to exclude Respondent on consent from the practice of trademark and other non-patent law before the Office.

### **Respondent's Affidavit of Resignation**

Respondent acknowledges in his February 24, 2022 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.
2. He is aware that, pursuant to 37 C.F.R. § 11.22, the OED Director opened an investigation of allegations that he violated the USPTO Rules of Professional Conduct, namely: OED File No. [REDACTED]. The investigation delved into and obtained information, *inter alia*, about:
  - a. On September 28, 2021, Respondent pleaded guilty to one count of securities fraud in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, at a plea hearing in the federal criminal case of *United States v. Jaeson Birnbaum*, Case No. 21-CR-595 (S.D.N.Y 2021).
  - b. This count is a felony punishable by up to 20 years imprisonment and a fine.
3. He is aware that the OED Director is of the opinion based on this investigation that he violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.804(b) (It is professional misconduct for a practitioner to commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness or fitness as a practitioner in other respects); and 37 C.F.R. § 11.804(c) (It is professional misconduct to engage in conduct involving dishonesty, fraud, deceptions or misrepresentation).
4. Without admitting to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct investigated by the OED Director in OED File No. [REDACTED], he acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60 to practice

before the USPTO in trademark and/or other non-patent matters, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that:

(a) the facts regarding him in OED File No. [REDACTED] are true, and

(b) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.804(b) (It is professional misconduct for a practitioner to commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness or fitness as a practitioner in other respects) and 37 C.F.R. § 11.804(c) (It is professional misconduct to engage in conduct involving dishonesty, fraud, deceptions or misrepresentation).

5. He has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of consenting to exclusion from practice before the USPTO in trademark and other non-patent matters.

6. He consents to being excluded from practice before the USPTO in trademark and other non-patent matters.

#### **Exclusion on Consent**

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Accordingly, it is hereby ORDERED that:

1. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
2. Respondent shall be, and hereby is, excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order;

3. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <https://foiadocuments.uspto.gov/oed/>;

4. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

**Notice of Exclusion on Consent**

This notice concerns Jaeson L. Birnbaum. The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Birnbaum's affidavit of resignation and ordered his exclusion on consent from practice before the Office in trademark and non-patent law matters. Mr. Birnbaum is not registered and not otherwise eligible to represent other persons before the Office in patent matters.

Mr. Birnbaum voluntarily submitted his affidavit at a time when a disciplinary investigation was pending against him. The investigation concerned pleading guilty to a felony in the Southern District of New York. Mr. Birnbaum acknowledged that the OED Director was of the opinion that his conduct violated 37 C.F.R. §§ 11.804(b) (It is professional misconduct for a practitioner to commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness or fitness as a practitioner in other respects) and 37 C.F.R. § 11.804(c) (It is professional misconduct to engage in conduct involving dishonesty, fraud, deceptions or misrepresentation).

While Mr. Birnbaum did not admit to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct as alleged in the pending investigation, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the facts set forth in the OED investigation against him are true, and (ii) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.804(b) (It is professional misconduct for a practitioner to commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness or fitness as a practitioner in other respects) and 37 C.F.R. § 11.804(c) (It is professional misconduct to engage in conduct involving dishonesty, fraud, deceptions or misrepresentation).

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <https://foiadocuments.uspto.gov/oed/>;

5. Respondent shall comply fully with 37 C.F.R. § 11.58; and

6. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement.

Users,

Shewchuk, David

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David Shewchuk  
Acting General Counsel  
United States Patent and Trademark Office

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Date

on delegated authority by

Drew Hirshfeld  
Performing the functions and duties of the  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office