

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

| | | |
|-------------------|---|-------------------------|
| In the Matter of |) | |
| |) | |
| Daniel L. Brinza, |) | Proceeding No. D2019-53 |
| |) | |
| Respondent |) | |
| _____ |) | |

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.27

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 Daniel L. Brinza (“Respondent”) on December 12, 2019. Respondent submitted the 15-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 Oakville, Ontario, Canada is a trademark agent registered to practice before the Canadian Intellectual Property Office (“CIPO”) in trademark matters only. Respondent has been granted reciprocal recognition pursuant to 37 C.F.R. § 11.14(c) for the limited purpose of representing parties located in Canada before the USPTO in the presentation and prosecution of trademark matters only. Respondent has practiced before the Office in

trademark matters. Respondent is a “practitioner” pursuant to 37 C.F.R. § 11.1. Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

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 December 12, 2019 Affidavit of Resignation that:

A. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.

B. He is aware that, pursuant to 37 C.F.R. § 11.34, the OED Director has filed a disciplinary Complaint alleging that he violated the USPTO Rules of Professional Conduct, namely: *In re Brinza*, Proceeding No. D2019-53. The Complaint alleges, *inter alia*, the following:

Background

1. On July 4, 2012, CIPO registered Respondent as a trademark agent who was authorized to represent persons in trademark matters filed with CIPO. Respondent is not authorized by CIPO to represent persons in patent matters filed in Canada.
2. On November 21, 2014, the USPTO granted Respondent, via a letter signed by the OED Director, reciprocal recognition pursuant to 37 C.F.R. § 11.14(c) for the limited purpose of representing parties located in Canada before the USPTO in the presentation and prosecution of trademark matters only. The November 21, 2014 letter expressly stated, “In view of the recognition granted to you under 37 [C.F.R.] § 11.14(c), you are required to conduct yourself in compliance with the USPTO Rules of Professional Conduct. *See* 37 [C.F.R.] §§ 11.101 through 11.901.”
3. Respondent is not a registered patent agent or patent attorney with the USPTO and, therefore, he is not authorized to represent persons before the USPTO in patent matters.

Count I
Respondent's Representation of Justine Veree Naiman

4. At least as early as July 7, 2017, Respondent agreed to perform legal services on behalf of Justine Veree Naiman. These services included, *inter alia*, preparing and filing two trademark applications before the USPTO.

U.S. Trademark Application No. 87/521,464

5. On July 10, 2017, Respondent filed U.S. Trademark Application No. 87/521,464 (“the ‘464 application”) with the USPTO on behalf of Ms. Naiman.
6. At all relevant times, information concerning the ‘464 application was publicly available on the USPTO website.
7. Respondent listed himself in the Attorney Information section of the ‘464 application and designated his North Service Road address and his “dbrinza@canadianiplaw.com” email address as addresses to receive correspondence.
8. On October 6, 2017, the USPTO issued an Office action in the ‘464 application. The Office emailed the October 6, 2017 Office action to the email address specifically designated by Respondent to receive such correspondence.
9. Respondent did not notify Ms. Naiman of the October 6, 2017 Office action. Respondent did not inform or advise Ms. Naiman about options for responding to the October 6, 2017 Office action. Respondent did not inform Ms. Naiman about the potential consequences to her intellectual property rights if no response to the October 6, 2017 Office action was filed.
10. Because no response to the October 6, 2017 Office action was filed, on May 4, 2018, the Office issued a Notice of Abandonment in the ‘464 application. The Office mailed the May 4, 2018 Notice of Abandonment to the North Service Road address designated by Respondent to receive such correspondence.
11. Respondent did not notify Ms. Naiman of the May 4, 2018 Notice of Abandonment. Respondent did not inform or advise Ms. Naiman about options for responding to the May 4, 2018 Notice of Abandonment. Respondent did not inform Ms. Naiman about the potential consequences to her intellectual property rights if no response to the May 4, 2018 Notice of Abandonment was filed.
12. Ms. Naiman discovered that the ‘464 application had gone abandoned and notified Respondent. Respondent was not aware that the ‘464 application had gone abandoned until Ms. Naiman notified him.

13. On May 29, 2018, Respondent filed a Petition to Revive the '464 application. Respondent asserted in the May 29, 2018 Petition to Revive the '464 application that he "did not receive the Office action prior to the expiration of the six-month response period."
14. On May 30, 2018, the USPTO granted the Petition to Revive the '464 application.
15. On May 31, 2018, the USPTO issued a subsequent Office action in the '464 application. The Office emailed the May 31, 2018 Office action to the email address specifically designated by Respondent to receive such correspondence.
16. Respondent did not notify Ms. Naiman of the May 31, 2018 Office action. Respondent did not inform or advise Ms. Naiman about options for responding to the May 31, 2018 Office action. Respondent did not inform Ms. Naiman about the potential consequences to her intellectual property rights if no response to the May 31, 2018 Office action was filed.
17. Because no response to May 31, 2018 Office action was filed, the Office issued a Notice of Abandonment in the '464 application on December 27, 2018. The Office emailed the December 27, 2018 Notice of Abandonment to the email address specifically designated by Respondent to receive such correspondence.
18. Respondent did not notify Ms. Naiman of the December 27, 2018 Notice of Abandonment. Respondent did not inform or advise Ms. Naiman about options for responding to the December 27, 2018 Notice of Abandonment. Respondent did not inform Ms. Naiman about the potential consequences to her intellectual property rights if no response to the December 27, 2018 Notice of Abandonment was filed.
19. The '464 application remained abandoned as of the date of the Affidavit.

U.S. Trademark Application No. 87/522,107

20. On July 10, 2017, Respondent filed U.S. Trademark Application No. 87/522,107 ("the '107 application") before the USPTO also on behalf of Ms. Naiman.
21. At all relevant times, information concerning the '107 application was publicly available on the USPTO website.
22. Respondent listed himself in the Attorney Information section of the '107 application and designated his North Service Road address and his

“dbrinza@canadianiplaw.com” email address as addresses to receive correspondence.

23. On October 6, 2017, the USPTO issued an Office action in the ‘107 application. The Office emailed the October 6, 2017 Office action to the email address specifically designated by Respondent to receive such correspondence.
24. Respondent did not notify Ms. Naiman of the October 6, 2017 Office action. Respondent did not inform or advise Ms. Naiman about options for responding to the October 6, 2017 Office action. Respondent did not inform Ms. Naiman about the potential consequences to her intellectual property rights if no response to the October 6, 2017 Office action was filed.
25. Because no response to the October 6, 2017 Office action was filed, on May 4, 2018, the Office issued a Notice of Abandonment in the ‘107 application. The Office mailed the May 4, 2018 Notice of Abandonment to the North Service Road address specifically designated by Respondent to receive such correspondence.
26. Respondent did not notify Ms. Naiman of the May 4, 2018 Notice of Abandonment. Respondent did not inform or advise Ms. Naiman about options for responding to the May 4, 2018 Notice of Abandonment. Respondent did not inform Ms. Naiman about the potential consequences to her intellectual property rights if no response to the May 4, 2018 Notice of Abandonment was filed.
27. After Ms. Naiman discovered that the ‘107 application had gone abandoned, she notified Respondent. Respondent was not aware that the ‘107 application had gone abandoned until Ms. Naiman notified him.
28. On May 29, 2018, Respondent filed a Petition to Revive the ‘107 application. Respondent asserted in the May 29, 2018 Petition to Revive the ‘107 application that Respondent “did not receive the Office action prior to the expiration of the six-month response period.”
29. On May 30, 2018, the USPTO granted the Petition to Revive the ‘107 application.
30. On May 31, 2018, the USPTO issued a subsequent Office action in the ‘107 application. The Office emailed the May 31, 2018 Office action to the email address specifically designated by Respondent to receive such correspondence.
31. Respondent did not notify Ms. Naiman of the May 31, 2018 Office action. Respondent did not inform or advise Ms. Naiman about options for responding to the May 31, 2018 Office action. Respondent did not inform Ms. Naiman

about the potential consequences to her intellectual property rights if no response to the May 31, 2018 Office action was filed.

32. Because no response to May 31, 2018 Office action was filed, the Office issued a Notice of Abandonment in the '107 application on December 27, 2018. The Office emailed the December 27, 2018 Notice of Abandonment to the email address specifically designated by Respondent to receive such correspondence.
33. Respondent did not notify Ms. Naiman of the December 27, 2018 Notice of Abandonment. Respondent did not inform or advise Ms. Naiman about options for responding to the December 27, 2018 Notice of Abandonment. Respondent did not inform Ms. Naiman about the potential consequences to her intellectual property rights if no response to the December 27, 2018 Notice of Abandonment was filed.
34. The '107 application remained abandoned as of the date of the Affidavit.

U.S. Trademark Application No. 85/912,813

35. On April 23, 2013, U.S. Trademark Application No. 85/912,813 (“the ‘813 application”) was filed with the Office on behalf of Client X.
36. At all relevant times, information concerning the ‘813 application was publicly available on the USPTO website.
37. On December 11, 2014, an Appointment of Attorney was filed naming Respondent as the attorney of record in the ‘813 application. The Appointment of Attorney designated his North Service Road address and his “dbrinza@canadianiplaw.com” email address as addresses to receive correspondence.
38. On February 10, 2015, the Office issued a Notice of Incomplete Statement of Use requiring a response by March 12, 2015. The Office emailed the February 10, 2015 Office action to the email address specifically designated by Respondent to receive such correspondence.
39. Respondent did not notify his client of the February 10, 2015 Notice. Respondent did not inform or advise his client about options for responding to the February 10, 2015 Notice. Respondent did not inform his client about the potential consequences to the client’s intellectual property rights if no response to the February 10, 2015 Notice was filed.
40. Because no response to the February 10, 2015 Notice was filed, the Office issued a Notice of Abandonment on March 25, 2015. The Office mailed the March 25, 2015 Notice of Abandonment to the North Service Road address specifically designated by Respondent to receive such correspondence.

41. Respondent did not notify his client of the March 25, 2015 Notice of Abandonment. Respondent did not inform or advise his client about options for responding to the March 25, 2015 Notice of Abandonment. Respondent did not inform his client about the potential consequences to the client's intellectual property rights if no response to the March 25, 2015 Notice of Abandonment was filed.
42. On September 2, 2015, Respondent filed a Petition to Revive the '813 application. In the Petition to Revive, Respondent asserted that he did not file a timely reply to the USPTO correspondence because he did not receive it.
43. Respondent did not notify his client about the Petition to Revive that he filed in the '813 application. Respondent did not inform his client about the potential consequences of the USPTO's grant or denial of a Petition to Revive on the client's intellectual property rights.
44. On September 10, 2015, the Office issued a Notice of Deficiency in response to the September 2, 2015 Petition to Revive. The Office emailed the September 10, 2015 Notice of Deficiency to the email address specifically designated by Respondent to receive such correspondence.
45. Respondent did not notify his client of the September 10, 2015 Notice of Deficiency. Respondent did not inform or advise his client about options for responding to the September 10, 2015 Notice of Deficiency. Respondent did not inform his client about the potential consequences to the client's intellectual property rights if no response to the September 10, 2015 Notice of Deficiency was filed.
46. On November 9, 2015, the Office denied the Petition to Revive because no response had been received to the September 10, 2015 Notice of Deficiency. The Office emailed the November 9, 2015 denial of the Petition to Revive to the email address specifically designated by Respondent to receive such correspondence.
47. The '813 application remained abandoned as of the date of the filing of the Affidavit.

U.S. Trademark Application No. 87/360,601

48. On March 6, 2017, Respondent filed U.S. Trademark Application No. 87/360,601 ("the '601 application") with the Office, listing himself as the attorney of record on behalf of Client Y.
49. At all relevant times, information concerning the '601 application was publicly available on the USPTO website.

50. Respondent listed himself in the Attorney Information section of the '601 application, and designated his North Service Road address and his "dbrinza@canadianiplaw.com" email address as addresses to receive correspondence.
51. On May 31, 2017, the USPTO issued an Office action requiring that a response be filed on or before December 1, 2017. The Office emailed the May 31, 2017 Office action to the email address specifically designated by Respondent to receive such correspondence.
52. Respondent did not notify his client of the May 31, 2017 Office action. Respondent did not inform or advise his client about options for responding to the May 31, 2017 Office action. Respondent did not inform his client about the potential consequences to the client's intellectual property rights if no response to the May 31, 2017 Office action was filed.
53. On January 9, 2018, the Office issued a Notice of Abandonment because no response to the May 31, 2017 Office action was filed. The Office mailed the January 9, 2018 Notice of Abandonment to the North Service Road address specifically designated by Respondent to receive such correspondence.
54. Respondent did not notify his client of the January 9, 2018 Notice of Abandonment. Respondent did not inform or advise his client about options for responding to the January 9, 2018 Notice of Abandonment. Respondent did not inform his client about the potential consequences to the client's intellectual property rights if no response to the January 9, 2018 Notice of Abandonment was filed.
55. On March 8, 2018, Respondent filed a Petition to Revive the '601 application. In the Petition to Revive, Respondent asserted that he did not file a timely reply to the USPTO correspondence because he did not receive it.
56. On March 8, 2018, the Office granted the Petition to Revive.
57. On July 11, 2018, the Office issued an Office action requiring that a response be filed on or before January 11, 2019. The Office emailed the July 11, 2018 Office action to the email address specifically designated by Respondent to receive such correspondence.
58. Respondent did not notify his client of the July 11, 2018 Office action. Respondent did not inform or advise his client about options for responding to the July 11, 2018 Office action. Respondent did not inform his client about the potential consequences to the client's intellectual property rights if no response to the July 11, 2018 Office action was filed.

59. An Examiner's Amendment was entered February 19, 2019 indicating that the '601 application had been partially abandoned due to the failure to file a response to the July 11, 2018 Office action. The Examiner's Amendment also indicated that "[i]f applicant's failure to respond was unintentional, applicant may file a petition to the Director to revive the portion of the application that abandoned."
60. On March 17, 2019, Respondent filed a second Petition to Revive the '601 application. The Petition to Revive included a response to the July 11, 2018 Office action. In the March 17, 2019 Petition to Revive, Respondent asserted that he did not file a timely reply to the USPTO correspondence because he did not receive it.
61. On May 10, 2019, the Office issued a Notice of Revival of the '601 application.
62. The '601 application was allowed on September 3, 2019.

U.S. Trademark Application No. 87/643,177

63. On October 12, 2017, Respondent filed U.S. Trademark Application No. 87/643,177 ("the '177 application") with the Office, listing himself as the attorney of record on behalf of Client Z.
64. At all relevant times, information concerning the '177 application was publicly available on the USPTO website.
65. Respondent listed himself in the Attorney Information section of the '177 application and designated his North Service Road address and his "dbrinza@canadianiplaw.com" email address as addresses to receive correspondence.
66. On January 23, 2018, the USPTO issued an Office action in the '177 application. The Office emailed the January 23, 2018 Office action to the email address specifically designated by Respondent to receive such correspondence.
67. Respondent did not notify his client of the January 23, 2018 Office action in the '177 application. Respondent did not inform or advise his client about options for responding to the January 23, 2018 Office action. Respondent did not inform his client about the potential consequences to the client's intellectual property rights if no response to the January 23, 2018 Office action was filed.
68. On July 25, 2018, after the abandonment of the application but prior to the USPTO issuing a Notice of Abandonment in the '177 application, Respondent filed a Petition to Revive the '177 application. In the Petition to Revive, Respondent asserted that he did not file a timely reply to the USPTO correspondence because he did not receive it.

69. Respondent did not notify his client about the Petition to Revive that he filed in the '177 application. Respondent did not inform his client about the potential consequences of the USPTO's grant or denial of a Petition to Revive on the client's intellectual property rights.
70. The '177 application was revived on July 25, 2018.
71. The Office emailed the July 25, 2018 Notice of Revival to the email address specifically designated by Respondent to receive such correspondence.
72. Respondent did not notify his client that the '177 application had been revived.
73. On July 26, 2018, the USPTO issued a subsequent Office action. The Office emailed the July 26, 2018 Office action to the email address specifically designated by Respondent to receive such correspondence.
74. Respondent did not notify his client of the subsequent Office action. Respondent did not inform or advise his client about options for responding to the subsequent Office action. Respondent did not inform his client about the potential consequences to the client's intellectual property rights if no response to the subsequent Office action was filed.
75. On March 22, 2019, the Office issued a Notice of Abandonment because no response to the July 26, 2018 Office action was filed. The Office emailed the March 22, 2019 Notice of Abandonment to the email address specifically designated by Respondent to receive such correspondence.
76. The '177 application remained abandoned as of the date of the filing of the Affidavit.

Other Trademark Matters before the USPTO

77. Respondent allowed U.S. Trademark Application Nos. 87/765,009; 87/769,316; 87/780,918; 87/806,281; and 87/806,294 to go abandoned without his clients' knowledge or consent.
78. Respondent filed Petitions to Revive in U.S. Trademark Application Nos. 86/077,439; 86/143,038; and 86/077,449 in which he asserted that he did not receive Office correspondence.
79. Respondent represented clients in the 44 trademark applications listed in Table One below:

Table One: List of Other Abandoned Applications

| U.S. Trademark Application Nos. | Date of Notice of Abandonment |
|--|--------------------------------------|
| 85/912,820 | 05/26/2015 |
| 86/090,288 | 10/14/2015 |
| 86/079,090 | 03/03/2016 |
| 86/143,658 | 04/04/2016 |
| 86/277,697 | 05/31/2016 |
| 86/064,931 | 08/08/2016 |
| 86/241,004 | 08/08/2016 |
| 86/064,935 | 08/22/2016 |
| 86/066,244 | 08/22/2016 |
| 86/774,248 | 08/25/2016 |
| 86/064,910 | 08/29/2016 |
| 86/872,098 | 11/25/2016 |
| 86/064,888 | 12/19/2016 |
| 86/064,923 | 01/23/2017 |
| 86/941,551 | 01/24/2017 |
| 86/748,748 | 02/13/2017 |
| 86/706,370 | 04/03/2017 |
| 87/042,700 | 04/19/2017 |
| 87/040,669 | 05/10/2017 |
| 87/040,687 | 05/10/2017 |
| 87/040,698 | 05/10/2017 |
| 86/867,187 | 08/14/2017 |

| U.S. Trademark Application Nos. | Date of Notice of Abandonment |
|--|--------------------------------------|
| 87/195,827 | 08/17/2017 |
| 87/239,603 | 09/25/2017 |
| 87/239,613 | 09/25/2017 |
| 87/248,143 | 09/25/2017 |
| 87/324,752 | 09/28/2017 |
| 87/324,756 | 09/28/2017 |
| 86/730,462 | 10/30/2017 |
| 86/731,043 | 10/30/2017 |
| 86/730,486 | 11/27/2017 |
| 87/324,781 | 12/04/2017 |
| 87/347,841 | 12/04/2017 |
| 87/347,862 | 12/04/2017 |
| 87/238,194 | 1/02/2018 |
| 87/369,705 | 01/03/2018 |
| 86/064,899 | 02/12/2018 |
| 87/416,614 | 02/16/2018 |
| 86/174,928 | 04/02/2018 |
| 87/540,800 | 05/21/2018 |
| 87/540,907 | 05/23/2018 |
| 87/688,329 | 10/01/2018 |
| 87/696,666 | 10/02/2018 |
| 87/744,604 | 11/19/2018 |

80. Respondent had a pattern and practice of not notifying his clients when the Office issued communications in their applications, including the applications listed in Table One.
81. Respondent had a pattern and practice of not informing or advising his clients about options for responding to USPTO communications, including the applications listed in Table One.
82. Respondent had a pattern and practice of not informing his clients about the potential consequences to the clients' intellectual property rights if no response to USPTO communications were filed, including the applications listed in Table One.

83. Respondent's conduct led to the abandonment of his clients' applications listed in Table One, above.
84. Respondent did not take adequate steps to stay apprised of the status of his clients' trademark matters.

Count II

Unauthorized Practice before the USPTO in Patent Matters

85. In part, the practice of patent law before the USPTO is defined as:

preparing and prosecuting any patent application, consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office, [and] drafting the specification or claims of a patent application[.]

37 C.F.R. § 11.5(b)(1).

86. Respondent is not authorized to practice before the Office in patent matters.
87. Respondent began engaging in practice before the Office in patent matters on April 11, 2015.
88. Respondent continued to engage in practice before the Office in patent matters until May 1, 2019.
89. Respondent prepared provisional and non-provisional patent applications, provided patent legal advice, received compensation from clients for doing so, and did not associate with a registered practitioner when he provided such services.
90. Respondent agreed to perform patent legal services on behalf of [REDACTED] including preparing and filing two provisional patent applications before the USPTO.
91. On [REDACTED], Respondent prepared and filed U.S. Provisional Patent Application No. [REDACTED] before the USPTO on behalf of [REDACTED]
92. On [REDACTED], Respondent prepared and filed U.S. Provisional Patent Application No. [REDACTED] before the USPTO on behalf of [REDACTED]
93. Respondent represented applicants before the Office and engaged in practice before the Office in patent matters in 51 patent applications listed below in Table Two, including those he prepared and filed on behalf of [REDACTED]

Table Two

| Patent Application No. | Filing Date | Document Bearing Reference to Respondent or Respondent's Address |
|-------------------------------|--------------------|---|
| 14/684,339 | 2015-04-11 | Application Data Sheet |
| | 2015-06-22 | Response to Notice to File Corrected Application Papers |
| | 2015-08-22 | Petition and Response to Notice of Incomplete Reply |
| ██████████ | ██████████ | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
| | ██████████ | Preliminary Amendment ("Petition and Response" and Application Data Sheet) |
| 62/183,734 | 2015-06-24 | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
| 62/207,890 | 2015-08-20 | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
| 62/261,846 | 2015-12-01 | Application Data Sheet |
| 62/261,851 | 2015-12-01 | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
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| 15/192,977 | 2016-06-24 | Application Data Sheet |
| | 2019-02-04 | Fax Cover Letter (Response to Office Action, Amendment, and Arguments/Remarks in Support) |
| | 2019-05-28 | Fax Cover Letter (Request for Continued Examination, Amendment, Claims, and Arguments/Remarks in Support) |
| ██████████ | ██████████ | Application Data Sheet |
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| Patent Application No. | Filing Date | Document Bearing Reference to Respondent or Respondent's Address |
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| 62/513,384 | 2017-05-31 | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
| 62/537,051 | 2017-07-26 | Application Data Sheet |
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| ██████████ | ██████████ | Response to Notice (Preliminary Amendment, Applicant Arguments/Remarks, Abstract, Specification, and Drawings) |
| ██████████ | ██████████ | Application Data Sheet |
| ██████████ | ██████████ | Application Data Sheet |
| 16/046,670 | 2018-07-26 | Application Data Sheet |
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94. Respondent also prepared and filed responses to Office actions or notices in U.S. Patent Application Nos. ██████████; 15/192,977; and ██████████, as indicated in Table Two, above.

C. Respondent is aware that based on the allegations set out in the Complaint, the OED Director is of the opinion that he violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.103 (failing to act with reasonable diligence and promptness in representing a client); 11.104(a)(2) (failing to reasonably consult with a client about the means by which the client's objectives are to be accomplished); 11.104(a)(3) (failing to keep a client reasonably informed about the status of a matter); 11.104(b) (failing to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation); 11.505 (engaging in the unauthorized practice of law in patent matters before the USPTO); and/or 11.804(i) (engaging in other conduct that adversely reflects on the practitioner's fitness to practice before the USPTO).

D. Without admitting to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct outlined in the Complaint, *In re Brinza*, Proceeding No. D2019-53, 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 allegations regarding him in the Complaint, *In re Brinza*, Proceeding No. D2019-53, are true and (b) he could not have successfully defended himself against such allegations.

E. 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.

F. 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:

- A. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
- B. 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;
- C. 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/>;
- D. 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 Daniel L. Brinza of Oakville, Ontario, Canada. Mr. Brinza is a trademark agent registered to practice before the Canadian Intellectual Property Office ("CIPO"), and an individual was granted reciprocal recognition pursuant to 37 C.F.R. § 11.14(c) for the limited purpose of representing parties located in Canada before the USPTO in the presentation and prosecution of trademark matters only. The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Brinza's affidavit of resignation and ordered his exclusion on consent from practice before the Office.

Mr. Brinza voluntarily submitted his affidavit at a time when a formal disciplinary Complaint was pending against him. The Complaint alleged neglect of client matters in 52 trademark applications or registrations, failure to communicate with clients about the status of their matters, and the unauthorized practice of patent law in 51 patent matters. Mr. Brinza repeatedly failed to timely respond to properly transmitted Office correspondence sent to the postal and electronic mail addresses that he had designated in trademark matters, resulting in the abandonment of clients' trademark matters without the clients' knowledge or consent. Mr. Brinza further did not notify his clients of the abandonment of their matters and, instead, filed petitions to revive the abandoned client matters without the clients' knowledge or consent. Mr. Brinza also did not advise his clients about

the potential consequences to their intellectual property rights as a result of abandonment or as a result of a granted petition to revive. Mr. Brinza alleged in several of the petitions to revive that he did not receive the Office correspondence at issue from at least 2015 until 2018. Mr. Brinza did not take reasonable or timely measures to rectify his alleged non-receipt of Office correspondence.

On August 3, 2019, the USPTO amended the rules of practice to require non-U.S. domiciled applicants to have U.S. counsel. *Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, 84 Fed. Reg. 31498 (July 2, 2019). 37 C.F.R. § 2.11 now imposes the requirement and amended 37 C.F.R. § 11.14 has been changed in recognition of 37 C.F.R. § 2.11.

Mr. Brinza also engaged in unauthorized practice before the Office in patent matters. Per 37 C.F.R. § 11.5(b)(1), “[p]ractice before the Office in patent matters includes, but is not limited to, preparing and prosecuting any patent application, consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office, [and] drafting the specification or claims of a patent application[.]” In 51 patent matters, Mr. Brinza represented others before the USPTO by, *inter alia*, preparing and filing patent applications and/or responding to Office correspondence without associating with a registered patent practitioner. Mr. Brinza is not authorized to practice before the Office in patent matters, nor is he authorized to do so before CIPO.

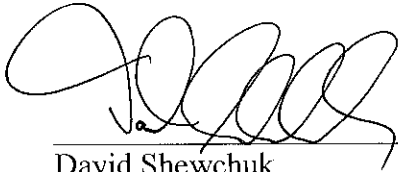
Mr. Brinza acknowledged that the OED Director was of the opinion that his conduct violated 37 C.F.R. §§ 11.103 (failing to act with reasonable diligence and promptness in representing a client); 11.104(a)(2) (failing to reasonably consult with a client about the means by which the client’s objectives are to be accomplished); 11.104(a)(3) (failing to keep a client reasonably informed about the status of a matter); 11.104(b) (failing to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation); 11.505 (engaging in the unauthorized practice of law in patent matters before the USPTO); and/or 11.804(i) (engaging in other conduct that adversely reflects on the practitioner’s fitness to practice before the USPTO).

While Mr. Brinza did not admit to violating any provisions of the USPTO Rules of Professional Conduct as alleged in the Complaint, 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 allegations set forth in the Complaint against him are true, and (ii) he could not have successfully defended himself against those allegations.

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/>;

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

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



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

16 Dec 2019
Date

on delegated authority by

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

cc:
William R. Covey
Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Mr. Daniel L. Brinza
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