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

In the Matter of	)	
	)	
Michelle A. Massicotte,	)	Proceeding No. D2012-22
	)	
Respondent	)	

FINAL ORDER

The Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "Office") and Michelle A. Massicotte ("Respondent") have submitted a proposed settlement agreement ("Agreement") to the Under Secretary of Commerce for Intellectual Property and 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' stipulated facts, legal conclusions, and sanctions.

Jurisdiction

1. At all times relevant hereto, Respondent of Marblehead, Massachusetts, has been an attorney licensed by the Commonwealth of Massachusetts to practice law in that jurisdiction. Respondent is not a registered patent practitioner and is not authorized to practice patent law before the USPTO. As a licensed attorney, Respondent is authorized to practice before the Office in trademark and non-patent matters pursuant to 37 C.F.R. § 11.14(a) and, therefore, is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility set forth at 37 C.F.R. § 10.20 et seq. 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. §§ 11.20 and 11.26.

Stipulated Facts

2. Respondent was an attorney of record in three trademark applications for two clients pending before the Office. Two of these three applications shared the same deadline, which fell on a holiday.

3. The Office e-mailed a non-final Office action in each of the three trademark applications to the law firm where Respondent was then employed.

4. The non-final Office actions were received by Respondent prior to the expiration of their respective response periods.

5. Because Respondent did not respond to the non-final Office actions in a timely manner, each trademark application became abandoned as a matter of law.

6. Respondent asserts that the abandonment of the trademark applications was unintentional.

7. Respondent filed a petition to revive each of the three abandoned trademark applications using the electronic petition format that indicated the Office Actions were not received prior to the expiration of the respective response periods.

8. Respondent represents that, during the time in which the petitions to revive were filed in the three trademark applications, Respondent was enduring a high-risk pregnancy with complications while handling a large volume of work at her prior law firm.

9. The Office granted the petitions and revived the three trademark applications based, in part, on Respondent's representations that she had not received the Office actions prior to the expiration of the response periods.

10. Two of the three trademark applications were subsequently expressly abandoned by the client, and the third trademark application was subsequently allowed to be abandoned by the client per operation of law.

Legal Conclusions

11. Based on the information contained in the Stipulated Facts, Respondent acknowledges that her conduct violated:

a. 37 C.F.R. §§ 10.23(b)(4), (b)(5), and (b)(6) by giving false or misleading information to the Office;

b. 37 C.F.R. § 10.77(c) by neglecting a matter entrusted to Respondent; and

c. 37 C.F.R. § 10.84(a) by failing to seek the lawful objectives of a client through reasonable available means permitted by law.

Mitigating Factors

12. Respondent has no prior disciplinary history before the Office during the over twelve years she has been licensed as an attorney.

13. Respondent's conduct appears to have been aberrational.

14. Respondent provided evidence sufficient to satisfy the OED Director that there was a nexus between Respondent's conduct and an existing medical condition, namely: at all relevant

times, Respondent was enduring a high-risk pregnancy with complications.

15. Respondent fully cooperated with the Office of Enrollment and Discipline during the investigation and resolution of this matter.

Sanction

16. Respondent agrees, and it is ORDERED that:

a. Respondent be, and hereby is, suspended from practicing trademark and other non-patent law before the USPTO for twenty-four (24) months commencing on the date this Final Order is signed;

b. Respondent be, and hereby is, granted limited recognition to practice before the Office beginning on the date this Final Order is signed and expiring thirty (30) days after the date this Final Order is signed for the sole purpose of facilitating Respondent's compliance with the provisions of 37 C.F.R. § 11.58(b);

c. Respondent shall comply with 37 C.F.R. § 11.58;

d. At any time after two (2) months from the date this Final Order is signed, Respondent may file a petition pursuant to 37 C.F.R. § 11.60 requesting reinstatement effective prior to the expiration of the 24-month period of suspension set forth in subparagraph a., above;

e. Respondent shall remain suspended from the practice of trademark and non-patent law before the USPTO until the OED Director grants a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60;

f. Respondent shall serve a twenty-four (24) month period of probation beginning on the date the OED Director reinstates Respondent pursuant to 37 C.F.R. § 11.60;

g. (1) if the OED Director is of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) (i) if Respondent has not yet been reinstated: issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order barring Respondent from requesting reinstatement until after she serves the twenty-four month suspension set forth in subparagraph a., above;

or

(ii) if Respondent has been reinstated: issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for up to twenty-two (22) additional months for the violations set forth in paragraph 11, above;

(B) send the Order to Show Cause to Respondent at the most recent address for Respondent maintained by the Massachusetts Board of Bar Overseers; and

(C) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

(2) in the event 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 any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, 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) evidence and argument supporting the OED Director's conclusion that Respondent, during Respondent's probationary period, failed to comply with any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, and

(B) (i) if Respondent has not been reinstated: request that the USPTO Director enter an order barring Respondent from requesting reinstatement until after she serves the twenty-four month suspension set forth in subparagraph a., above,

or

(ii) if Respondent has been reinstated: request that the USPTO Director enter an order immediately suspending Respondent for up to twenty-two (22) additional months for the violations set forth in paragraph 11, above;

h. In the event that the USPTO Director enters an order pursuant to this Final Order barring Respondent from seeking reinstatement until after she serves the twenty-four month suspension or suspending Respondent for up to twenty-two (22) additional months, and Respondent seeks a review of the USPTO

Director's action, any such review shall not operate to postpone or otherwise hold in abeyance the USPTO Director's order;

i. The OED Director shall publish this Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at: **http://des.uspto.gov/Foia/OEDReadingRoom.jsp**;

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

Notice of Suspension

This notice concerns Michelle A. Gallagher (f.k.a. Michelle A. Massicotte), an attorney licensed to practice law by the Commonwealth of Massachusetts. Ms. Massicotte is not a registered patent practitioner and is not authorized to practice patent law before the USPTO. The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Ms. Massicotte for twenty-four (24) months for violating 37 C.F.R. §§ 10.23 (b)(4), (b)(5), and (b)(6) by giving false or misleading information to the Office; 37 C.F.R. § 10.77(c) by neglecting a matter entrusted to Ms. Massicotte; and 37 C.F.R. § 10.84(a) by failing to seek the lawful objectives of a client through reasonable available means permitted by law. Under the terms of the settlement agreement, Ms. Massicotte is eligible to file a petition requesting reinstatement after serving two (2) months of her 24 month suspension, and, if reinstated, Ms. Massicotte will be permitted to practice trademark and other non-patent law before the Office provided that she otherwise satisfies the conditions of 37 C.F.R. § 11.14(a) and unless subsequently suspended by order of the USPTO Director. Ms. Massicotte is also required to serve a probationary period.

The aforementioned Disciplinary Rule violations are predicated upon Ms. Massicotte having provided the Office with false or misleading information in connection with petitions to revive three abandoned trademark applications.

In agreeing to the above-described sanction, the OED Director took into account that (1) Ms. Massicotte has no prior disciplinary history before the Office during the over twelve years she has been licensed to practice law, (2) the basis for the misconduct appears to have been aberrational, (3) Respondent represents that the abandonment of the trademark applications was unintentional, (4) Ms. Massicotte provided evidence

sufficient to satisfy the OED Director that there was a nexus between Respondent's conduct in the above-referenced matters and an existing medical condition, namely: at all relevant times, Respondent was enduring a high-risk pregnancy with complications, and (5) she cooperated fully with the Office of Enrollment and Discipline during the investigation and resolution of this matter.

This action is the result of a settlement agreement between Ms. Massicotte and the OED Director pursuant to the provisions of 35 U.S.C. §§ (b)(2)(D) and 32 and 37 C.F.R. §§ 11.20, 11.26, and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room located at: **http://des.uspto.gov/Foia/OEDReadingRoom.jsp**;

k. Nothing in the Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this 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/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.

l. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this agreement.

MAY 16 2012

Date

JAMES O. PAYNE
Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

David M. Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

William R. Covey
Deputy General Counsel for Enrollment and Discipline and
Director of the Office of Enrollment and Discipline

Michelle A. Gallagher
(f.k.a. Michelle A. Massicotte)
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Marblehead, MA 01945