

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

In the Matter of:

ANITA MAR,

Respondent.

Proceeding No. D2019-11

August 2, 2019

INITIAL DECISION ON DEFAULT JUDGMENT

This matter arises from a disciplinary complaint filed by the Director for the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “the Office”) against Anita Mar (“Respondent”) pursuant to 35 U.S.C. § 32 as implemented by 37 C.F.R. Part 11.¹ The OED Director has filed a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction and a Memorandum in Support* (“Default Motion”) seeking a default judgment and an order excluding Respondent from practice before the Office.

PROCEDURAL HISTORY

On March 25, 2019, the OED Director filed a *Complaint and Notice of Proceedings Under 35 U.S.C. § 32* (“Complaint”) against Respondent pursuant to 37 C.F.R. §§ 11.32 and 11.34, alleging violations of the USPTO Rules of Professional Conduct (37 C.F.R. §§ 11.101 *et seq.*). The *Complaint* describes Respondent’s misconduct related to filing applications and declarations on numerous trademark applications, impermissible division of fees, and failure to cooperate with an Office of Enrollment and Discipline (“OED”) investigation. The *Complaint* enumerated Respondent’s violations of the USPTO Rules of Professional Conduct. On the same day the *Complaint* was filed, the OED Director, in accordance with 37 C.F.R. § 11.35(a)(2), served a copy of the *Complaint* on Respondent by sending a copy to her via United Parcel Service (“UPS”) through UPS Worldwide Saver to the Tecumseh, Ontario, Canada address that Respondent had provided to OED pursuant to 37 C.F.R. § 11.11.² UPS records show that the *Complaint* was delivered to that address on March 26, 2019.

Also on March 25, 2019, the OED Director served a copy of the *Complaint* on Respondent, using UPS Worldwide Saver, to two addresses where the OED Director reasonably believed that Respondent was receiving mail, namely: 2844 Parent Avenue, Windsor, Ontario

¹ Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases brought by the USPTO.

² 37 C.F.R. § 11.11(a) requires a registered practitioner such as Respondent to notify the OED Director of the postal address for the practitioner’s office and to provide written notice of any address change within 30 days of the change.

N8X 4K9, CANADA (the “Parent Avenue” address), and Trademark Angel, Inc., 506 Aylmer Avenue, Unit 2, Windsor, Ontario N9A 1T8, CANADA (the “Aylmer Avenue” address). Those copies of the *Complaint* were delivered on March 26, 2019 and March 28, 2019, respectively. Although no Answer to *Complaint* has been filed, the Court draws the permissible inference that the *Complaint* was received by Respondent. See *In re Whitney*, Proceeding No. D2018-48 (USPTO Mar. 14, 2019)³; *Toomey v. District of Columbia*, 315 A.2d 565,567 (D.C. 1974) (*per curiam*) (quoting *Columbia Fin. Co. v. Worthy*, 141 A.2d 185,186 (D.C. 1958)) (there is a presumption that mail, “properly addressed and stamped,” was received by the addressee.)

On March 28, 2019, this Court issued a *Notice of Hearing and Order*, requiring Respondent to file her Answer on or before April 24, 2019. The Notice also set other pre-hearing deadlines.

On April 29, 2019, counsel for the OED Director sent a letter, pursuant to 37 C.F.R. § 11.43 to Respondent at her § 11.11 address, her Parent Avenue address, and two email addresses from which Respondent had communicated with OED. That letter notified Respondent that the OED Director intended to file a motion for default judgment and for imposition of sanctions. The letter invited Respondent to contact counsel for the OED Director on or before May 9, 2019, to discuss resolving the default motion voluntarily. Respondent did not respond to the letter.

On July 12, 2019, the OED Director filed a *Motion for Default*. Pursuant to the *Notice of Hearing and Order*, any party opposing a motion must file his or her opposition within ten days after the motion is docketed. Accordingly, Respondent’s response to the *Default Motion* was due on July 22, 2019. However, Respondent did not respond to the *Default Motion* by that date.

As of the date of this decision, Respondent has not filed an answer, responded to the *Default Motion* or sought an extension of time to do so, nor otherwise appeared in this matter. In short, the Court has received no communication from or on behalf of Respondent.

APPLICABLE LAW

1. USPTO Disciplinary Proceedings

The USPTO has the “exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it.” *Kroll v. Finnerty*, 242 F.3d 1359, 1364 (Fed. Cir. 2001). This authority flows from 35 U.S.C. § 2(b)(2)(D), which empowers the USPTO to establish regulations governing patent practitioners’ conduct before the Office, and 35 U.S.C. § 32, which empowers the USPTO to discipline a practitioner who is “shown to be incompetent or disreputable, or guilty of gross misconduct,” or who violates the USPTO’s regulations. The practitioner must receive notice and an opportunity for a hearing before such disciplinary action is taken. 35 U.S.C. § 32. Disciplinary hearings are conducted in accordance with the USPTO’s procedural rules at 37 C.F.R. part 11, subpart C, and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by a hearing officer

³ Available at: <https://go.usa.gov/xynH5>.

appointed by the USPTO. See 37 C.F.R. §§ 11.39(a), 11.44. The OED Director has the burden of proving any alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49.

In 1985, the USPTO issued regulations based on the ABA Model Code of Professional Responsibility to govern attorney conduct and practice. See Practice Before the Patent and Trademark Office, 50 Fed. Reg. 5158 (Feb. 6, 1985) (Final Rule) (codified at 37 C.F.R. §§ 10.20-10.112). These rules set forth the USPTO Code and “clarif[ied] and modernize[d] the rules relating to admission to practice and the conduct of disciplinary cases.” Id. In May 2013, the USPTO replaced the USPTO Code with the USPTO Rules, which are fashioned on the ABA’s Model Rules of Professional Conduct. See Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. 20180 (April 3, 2013) (Final Rule) (codified at 37 C.F.R. §§ 11.101-11.901). By updating its regulations, the USPTO sought to “provid[e] attorneys with consistent professional conduct standards, and large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules.”⁴ Id. at 20180.

2. Consequences for Failure to Answer Complaint

The USPTO’s procedural rules set forth the requirement for answering the *Complaint* and the consequences for failing to do so: “Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment.” 37 C.F.R. § 11.36(e). The disciplinary *Complaint* served on Respondent also stated: “A decision by default may be entered against Respondent if a written answer is not timely filed.”

3. Burden of Proof

The OED Director must prove alleged disciplinary violations by “clear and convincing evidence.” 37 C.F.R. § 11.49; In re Johnson, Proceeding No. D2014-12 (USPTO Dec. 31, 2014)⁵ at 2. This standard “protect[s] particularly important interests . . . where there is a clear liberty interest at stake.” Johnson, at 3 (quoting Thomas v. Nicholson, 423 F.3d 1279, 1283 (Fed. Cir. 2005)) (internal quotation marks omitted). “Clear and convincing evidence” requires a level of proof that falls “between a preponderance of the evidence and proof beyond a reasonable doubt.” Id. (quoting Addington v. Texas, 441 U.S. 418, 424-25 (1979)) (internal quotation marks omitted). The evidence must be of such weight so as to “produce[] in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.” Id. (quoting Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001)) (internal quotation marks omitted). “Evidence is clear if it is certain, unambiguous, and plain to the understanding, and it is convincing if it is reasonable and persuasive enough to cause the trier of facts to believe it.” Id. (quoting Foster v. AlliedSignal, Inc., 293 F.3d 1187, 1194 (10th Cir. 2002)) (internal quotation marks omitted).

⁴ Thus, the USPTO Code, the Comments and Annotations to the ABA Model Rules, and disciplinary decisions and opinions issued by state bars are useful to understanding the USPTO Rules. See Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. at 20180.

⁵ Available at: <https://go.usa.gov/xmWrf>.

FINDINGS OF FACT

At all relevant times, Respondent resided and practiced in Canada. Respondent is not an attorney; she is registered in Canada as a trademark agent. On December 18, 2012, Respondent submitted a signed request to the USPTO for reciprocal recognition pursuant to 37 C.F.R. § 10.14(c). On December 13, 2013, the USPTO granted Respondent 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 filing and prosecution of trademark matters. The December 13, 2013 letter from the OED Director granting Respondent that limited recognition closed with:

In view of the recognition granted to you under § 11.14(c), you are required to conduct yourself in compliance with the U.S. Patent and Trademark Code of Professional Responsibility. 37 CFR §§ 10.20 through 10.112. Effective May 3, 2013, the applicable rules of conduct will be the USPTO Rules of Professional Conduct. 37 CFR §§ 11.101 through 11.901.

1. Respondent's Trademark Practice

Respondent is the Chief Executive Officer of Trademark Angel Inc. ("TMA"), a company located in Windsor, Ontario, Canada. TMA assists individuals in procuring trademark registrations. Respondent and TMA have been conducting business from Windsor, Ontario, Canada, since at least July 12, 2017. Before then, Respondent was located in British Columbia, Canada. Respondent's current business address is in Windsor, Ontario, Canada.

Respondent has one assistant who lives in Armenia and two assistants who live in the Philippines. Neither of these assistants nor any of Respondent's other assistants are U.S. licensed attorneys, nor are they otherwise recognized to practice before the USPTO. Respondent and TMA hired U.S. licensed attorneys to work as independent contractors.

2. Trademark Signature Methods

The Trademark Electronic Application System ("TEAS") is the USPTO's electronic trademark filing and prosecution system. Via TEAS, trademark documents are electronically prepared, signed, and filed with the USPTO. 37 C.F.R. § 2.193(a) states, in pertinent part, that "[e]ach piece of correspondence that requires a signature" filed with the USPTO in trademark matters must bear:

(1) A handwritten signature **personally signed** in permanent ink by the person named as the signatory, or a true copy thereof; or

(2) An electronic signature that meets the requirements of paragraph (c) of this section, **personally entered by the person named as the signatory**. The Office will accept an electronic signature that meets the requirements of paragraph (c) of this section on correspondence filed on paper, by facsimile transmission

(§ 2.195(c)), or through TEAS or [the Electronic System for Trademark Trials and Appeals “ESTTA”].

(emphasis added). See 37 C.F.R. § 2.193(a).

The “DIRECT” signature method is the default signature method for signing trademark documents filed with the USPTO. The other two electronic signature procedures for signing trademark documents are: (a) “ESIGN-ON” where a hyperlink is sent to a third party who opens the link, electronically signs his or her name, and submits the signature directly to the USPTO, and (b) “H SIGN” where an electronic version of an original handwritten pen-and-ink signature is submitted to the USPTO via TEAS.

37 C.F.R. § 2.193(c) elaborates on the requirements for electronic signatures submitted to the USPTO and reiterates that a “person signing a document electronically must . . . [p]ersonally enter” the characters that he or she has adopted as their signature, placed between two forward slash symbols. See 37 C.F.R. § 2.193(c).

The USPTO’s Trademark Manual of Examining Procedure (“TMEP”), which is electronically published and updated by the USPTO, provides trademark examining attorneys at the USPTO, trademark applicants, trademark attorneys, and representatives for trademark applicants with a reference guide on the practices and procedures relating to all phases of the USPTO trademark registration process. At all times relevant to this *Complaint*, the TMEP was electronically accessible over the Internet without cost at <https://tmep.uspto.gov>. The TMEP was readily available to Respondent, TMA’s non-practitioner assistants, and the U.S. licensed attorneys who worked for Respondent.

TMEP § 611.01(b) sets forth the general requirements for signatures on trademark documents filed with Office. TMEP § 611.01(b). TMEP § 611.01(b) specifically states that “[a]nother person (e.g., paralegal, legal assistant, secretary) may not sign the name of an attorney or other authorized signatory. See In re Dermahose Inc., 82 USPQ2d 1793 (TTAB 2007); and In re Cowan, 18 USPQ2d 1407 (Comm’r Pats. 1990).” Id.

TMEP § 611.01(c) sets forth the agency’s specific rules for signatures of documents electronically filed with the Office. TMEP § 611.01(c). TMEP § 611.01(c) states, among other things:

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. See In re Dermahose Inc., 82 USPQ2d 1793 (TTAB 2007); In re Cowan, 18 USPQ2d 1407 (Comm’r Pats. 1990).

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.

TMEP § 611.01(c) (paragraph spacing and emphasis added).

The USPTO's signature requirements are critical to the integrity of the United States trademark registration process because each application includes a declaration required to be signed by the person whose name appears on the application as the signatory and no other person. The declaration contains certifications that are signed under criminal penalty of fine or imprisonment pursuant to the provisions of 18 U.S.C. § 1001. A practitioner may not allow another to sign trademark applications, accompanying declarations, or other trademark filings where the practitioner is the named signatory. Furthermore, a practitioner may not authorize another to violate the USPTO signature rules.

The Trademark Image Capture & Retrieval System ("TICRS") is an internal USPTO database that, among other things, captures and records (i) the date and time when a document is created on TEAS and when a document is submitted via TEAS, and (ii) the signature method used when a signed document is filed with the USPTO via TEAS. Likewise, TICRS records the Internet Protocol ("IP") address of the computer used by the document preparer to access the TEAS System. An "IP address" is a unique string of numbers separated by periods that identifies a computer using the Internet Protocol to communicate over a network.

When the DIRECT signature method is used, the IP address captured by TICRS routinely specifies the geographic location (*e.g.*, city, state/province/country) of the computer from where the application is prepared, signed, and filed.

3. Respondent Impermissibly Signed or Directed Others to Sign Documents

Respondent impermissibly personally entered electronic signatures for others or had TMA non-practitioner assistants, at her direction, impermissibly enter electronic signatures for herself or others on trademark documents filed with the USPTO. Respondent also impermissibly personally signed her clients' names to trademark documents filed with the Office.

4. U.S. Trademark Practitioner [REDACTED]

[REDACTED] is a licensed attorney, in good standing, in New York and Massachusetts. Ms. [REDACTED] resides in [REDACTED].

On August 6, 2018, Ms. [REDACTED] entered into an Independent Contractor Agreement with TMA agreeing to: prepare and/or check trademark applications; prepare and/or submit office action responses; conduct trademark searches; correspond with clients, Trademark Offices, and foreign associates; conduct phone calls with prospects and clients; write articles for the TMA website; conduct research, including research relating to prospecting of customers; create, revise,

and edit internal manuals pertaining to the business and operation of TMA; maintain and keep deadlines in the TMA system; and give legal advice.

On some of the trademark applications, accompanying declarations, or other documents filed with the USPTO for which she was the named signatory, Ms. [REDACTED] did not enter her signature. There are at least 29 trademark filings where Ms. [REDACTED] name was signed by Respondent or one of TMA's non-practitioner assistants at the direction of Respondent, even though Ms. [REDACTED] was the named signatory on the filings. Respondent or one of TMA's non-practitioner assistants entered the keystrokes constituting the electronic signature of Ms. [REDACTED] on these trademark filings.

Ms. [REDACTED] did not apply her signature to the following TMA-filed trademark applications and accompanying declarations on which she was the named signatory:

- U.S. Trademark Application Number [REDACTED]
- U.S. Trademark Application Number [REDACTED]
- U.S. Trademark Application Number [REDACTED]
- U.S. Trademark Application Number [REDACTED]
- U.S. Trademark Application Number [REDACTED]

Ms. [REDACTED] did not remotely access Respondent's or TMA non-practitioner assistants' computers to sign trademark applications, accompanying declarations, or other trademark filings that TMA filed on which she was the named signatory. Instead, TMA's non-practitioner assistants, at the direction of Respondent, entered Ms. [REDACTED] electronic signature to trademark documents filed with the Office. Ms. [REDACTED] terminated her relationship with TMA on January 23, 2019.

5. U.S. Trademark Practitioner [REDACTED]

[REDACTED] is an attorney licensed to practice law in New York and is in good standing with the New York State Bar. Mr. [REDACTED] is also a member of the Florida Bar, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. [REDACTED] was a TMA independent contractor and a U.S. licensed attorney. Mr. [REDACTED] prepared some trademark applications from information collected by TMA on behalf of non-Canadian clients of TMA. Mr. [REDACTED] was not experienced in trademark practice before the USPTO prior to becoming an independent contractor for Respondent and TMA. Mr. [REDACTED] had not practiced trademark law prior to meeting Respondent. Mr. [REDACTED] followed Respondent's advice on how to practice trademark law.

Mr. [REDACTED] did not enter his signature on some of the applications, the accompanying declarations, and other trademark filings that were submitted to the USPTO on behalf of TMA's clients where he was the named signatory. Instead, these documents were signed by Respondent or TMA non-practitioner assistants at the direction of Respondent.

Mr. [REDACTED] received trademark applications and other documents that were to be filed at the USPTO which had been prepared by Respondent or TMA non-practitioner assistants who collected the information from TMA clients. Before filing the documents, Mr. [REDACTED] reviewed them—for substance and to understand the “consequences of such a document”—prior to allowing either Respondent or one of TMA’s non-practitioner assistants to affix his signature to the trademark applications, accompanying declarations, and other documents he reviewed. As of November 1, 2018, Respondent and Mr. [REDACTED] severed ties.

6. Impermissible Signing of Respondent’s Signature on USPTO Trademark Filings

Each of the trademark applications identified in Table One, below, identifies Respondent as the named signatory. For each of the 27 trademark applications identified in Table One, below, Respondent falsely asserted to OED that she signed her own signature on to the trademark application and accompanying declarations directly either from her own computer in Windsor, Ontario, Canada, or on her assistant’s computer “while remotely connected.” Respondent never provided proof of the existence or use or any such remote access system by TMA to OED.

The IP address associated with each of the trademark applications in Table One demonstrates that the applications were prepared, signed, and filed from a computer located in either Armenia or the Philippines, not Ontario, Canada. TICRS data indicates that, for each of the trademark applications in Table One, the DIRECT signature method was used to enter Respondent’s signature, indicating that Respondent would have had to have been in Armenia or the Philippines when signing the trademark applications and accompanying declaration. Respondent was not in Armenia or the Philippines on the dates the applications were signed.

Respondent did not sign the trademark applications and accompanying declarations, or other trademark filings set out in Table One, as required by the USPTO trademark regulations.

Table One

Date of filing	Application number	Location from where filing was signed and submitted to the USPTO based on IP address data captured by TICRS	Type of filing
10 MAY 2018	87/915,443	Philippines	New application
22 MAY 2018	87/931,798	Philippines	New application
24 MAY 2018	87/934,714	Philippines	New application
6 JUNE 2018	87/951,092	Armenia	New application
11 JUNE 2018	87/956,705	Philippines	New application
21 JUNE 2018	88/009,450	Philippines	New application
21 JUNE 2018	88/009,461	Philippines	New application

Date of filing	Application number	Location from where filing was signed and submitted to the USPTO based on IP address data captured by TICRS	Type of filing
22 JUNE 2018	88/011,202	Armenia	New application
5 JULY 2018	88/026,548	Armenia	New application
10 JULY 2018	88/031,844	Philippines	New application
11 JULY 2018	88/032,981	Philippines	New application
11 JULY 2018	88/032,992	Philippines	New application
11 JULY 2018	88/032,998	Philippines	New application
16 JULY 2018	88/039,594	Philippines	New application
16 JULY 2018	88/039,606	Philippines	New application
8 AUG 2018	88/069,817	Philippines	New application
23 AUG 2018	88/090,338	Armenia	New application
23 AUG 2018	88/090,471	Armenia	New application
23 AUG 2018	88/090,502	Armenia	New application
23 AUG 2018	88/090,526	Armenia	New application
25 AUG 2018	87/763,499	Philippines	Statement of Use
4 SEPT 2018	88/103,943	Philippines	New application
10 SEPT 2018	88/110,354	Philippines	New application
13 SEPT 2018	88/116,550	Armenia	New application
20 SEPT 2018	88/126,049	Philippines	New application
20 SEPT 2018	88/126,052	Philippines	New application
20 SEPT 2018	88/126,053	Philippines	New application

5. Impermissible Signing of Mr. [REDACTED] Signature on USPTO Trademark Filings

Respondent signed Mr. [REDACTED] name to trademark filings in violation of 37 C.F.R. §§ 2.193(a) and 2.193(c) and TMEP § 611.01(c). Table Two, below, identifies 19 U.S. trademark application filings that were prepared by TMA, as evidenced by the “anita@trademarkangel.com” or “tm@trademarkangel.com” email address entered on the applications. Each of the trademark applications in Table Two identifies Mr. [REDACTED] as the named signatory. But the IP address indicates that for each of the trademark application filings listed in Table Two, the filings were signed and filed from a computer located in Ontario, Canada, and not in [REDACTED] where Mr. [REDACTED] is located.

TICRS data indicates that, for each of the trademark applications and accompanying declarations in Table Two, the DIRECT signature method was used to enter Mr. [REDACTED] signature, indicating that Mr. [REDACTED] would have had to have been in Ontario, Canada when he was signing the applications and accompanying declarations. Mr. [REDACTED] was not in Ontario, Canada when the applications were signed. Mr. [REDACTED] did not sign the trademark applications

and accompanying declarations or other trademark filings set out in Table Two as required by the USPTO trademark regulations.

Table Two

Date of filing	Application number	Location from where filing was signed and submitted to the USPTO based on IP address data captured by TICRS	Type of filing
19 JULY 2017	██████████	Ontario, Canada	New Application
7 SEPT 2017	██████████	Ontario, Canada	New Application
25 SEPT 2017	██████████	Ontario, Canada	New Application
16 OCT 2017	██████████	Ontario, Canada	Response to Office Action
24 OCT 2017	██████████	Ontario, Canada	Response to Office Action
2 NOV 2017	██████████	Ontario, Canada	New Application
4 DEC 2017	██████████	Ontario, Canada	Change of Correspondence Address
22 DEC 2017	██████████	Ontario, Canada	Statement of Use
1 FEB 2018	██████████	Ontario, Canada	New Application
6 APRIL 2018	██████████	Ontario, Canada	Response to Office Action
10 APRIL 2018	██████████	Ontario, Canada	Declaration of Use/Incontestability
18 APRIL 2018	██████████	Ontario, Canada	Response to Office Action
24 APRIL 2018	██████████	Ontario, Canada	Statement of Use
25 APRIL 2018	██████████	Ontario, Canada	Revocation, Appointment, or Change of Address of Attorney
2 MAY 2018	██████████	Ontario, Canada	Revocation, Appointment, or Change of Address of Attorney
2 MAY 2018	██████████	Ontario, Canada	Revocation, Appointment, or Change of Address of Attorney
7 JUNE 2018	██████████	Ontario, Canada	Response to Office Action
28 JUNE 2018	██████████	Ontario, Canada	Request for Extension of Time to File Statement of Use
28 JUNE 2018	██████████	Ontario, Canada	Request for Extension of Time to File Statement of Use

7. Respondent Impermissibly Signed USPTO Filings on Behalf of the Applicants

Respondent also impermissibly signed the names of applicants to trademark applications, accompanying declarations, and other trademark filings. Table Three, below, identifies 15

trademark application filings that were prepared by Respondent or one of TMA's non-practitioner assistants on behalf of TMA clients who were not located in Canada.

Each of the trademark application filings listed in Table Three bears what purports to be the applicant's electronic signature. But the IP address indicates that for each of the trademark applications and accompanying declarations, or other trademark filings listed in Table Three, the filings were signed and filed from a computer located in Ontario, Canada, not where the applicant was located. TICSRS data indicates that, for each of the trademark applications and accompanying declaration, or other trademark filing in Table Three, the DIRECT signature method was used to enter the applicants' signatures, indicating that each applicant would have had to have been in front of Respondent's computer in Ontario, Canada, at the time he or she signed the trademark filings and submitted them to the USPTO. The applicants did not travel to Respondent's office in Windsor, Ontario, Canada to sign their trademark applications and accompanying declarations or other trademark filings. Respondent impermissibly entered the applicants' signatures on the trademark applications and accompanying declarations, or other trademark filings listed in Table Three.

Table Three

Date of filing	Application number	Location from where filing was signed and submitted to the USPTO based on IP address data captured by TICSRS	Applicants' address	Type of filing
8 SEPT 2017	87/600,807	Ontario, Canada	Wilmington, Delaware	New Application
20 SEPT 2017	87/616,483	Ontario, Canada	Tampa, Florida	New Application
11 OCT 2017	87/641,969	Ontario, Canada	Fort Lauderdale, Florida	New Application
23 OCT 2017	87/655,438	Ontario, Canada	Union Hall, Virginia	New Application
27 OCT 2017	87/662,579	Ontario, Canada	Tyler, Texas	New Application
25 NOV 2017	87/389,883	Ontario, Canada	McLean, Virginia	Response to Office Action
25 NOV 2017	87/389,883	Ontario, Canada	McLean, Virginia	Change of Correspondence Address
25 NOV 2017	87/403,133	Ontario, Canada	McLean, Virginia	Change of Correspondence Address

9. Respondent's Noncompliance with the OED Director's Investigation

During the course of a disciplinary investigation, the OED Director may request from a practitioner information and evidence by sending a "Request for Information" or "RFI" regarding possible grounds for discipline of the practitioner. See 37 C.F.R. § 11.22(f)(1)(ii). A practitioner has an ethical obligation to respond to any lawfully issued RFI and cooperate with OED in an investigation of any matter before OED. See 37 C.F.R. § 11.801(b).

i. The October 11, 2018 RFI

On October 11, 2018, the OED Director sent an RFI to Respondent seeking information about her practice. The October 11, 2018 RFI was lawfully issued pursuant to 37 C.F.R. § 11.22(f)(1)(ii). Respondent responded to the October 11, 2018 RFI on November 27, 2018. Respondent provided false or misleading information to OED in her response to the October 11, 2018 RFI by asserting that she had signed her own signature on each of the 27 trademark applications and accompanying declarations identified in Table One, above.

Respondent provided additional false or misleading information to OED in her response to the October 11, 2018 RFI by asserting that Ms. [REDACTED] had connected remotely to computers of TMA non-practitioner assistants and personally signed the following:

- U.S. Trademark Application Number [REDACTED]
- U.S. Trademark Application Number [REDACTED]
- U.S. Trademark Application Number [REDACTED]

This statement was false. Ms. [REDACTED] did not remotely access any TMA computer operated by Respondent or one of Respondent's non-practitioner assistants, nor was this option ever mentioned to Ms. [REDACTED] during the brief time she worked with Respondent and TMA. Additionally, Ms. [REDACTED] specifically denies signing U.S. Trademark Application Number [REDACTED] and U.S. Trademark Application Number [REDACTED].

In response to the October 11, 2018 RFI, Request 5, related to signatures on applications, Respondent falsely or misleadingly stated to OED that applicants not located in Canada had signed their names to the trademark applications, accompanying declarations, or other trademark filings identified in Table Three, above:

For applicants, the signature was entered by the applicable applicant himself using TEAS Direct method in most cases until September 2018 when [Ms. [REDACTED]] started working with TMA as a contractor U.S. licensed attorney. Today, it's common practice to have a virtual office and for computers to be remotely connected together. Signing was done by clients remotely on TMA computers or those of licensed U.S. attorneys through remote access directly to such computer. My central computer, assistants' computers and the contracted licensed U.S. attorney's computers can all be remotely connected within a matter of seconds. This allows either the

registered agent or the licensed U.S. attorney, as applicable, to review draft Application Plans (when these were previously being used), client correspondence, etc. to be reviewed on assistants' (or my remote computer) in real time or for clients to connect to TMA computers or those of licensed U.S. attorneys for final review, approval and signature by the client or the licensed U.S. attorney as applicable.

After [Mr. ██████] [was] no longer contracted with TMA, we discontinued this practice as it was becoming more difficult to manage with increased volume.

Considering that we all have different locations all over the world (myself, licensed U.S. attorneys, assistants and foreign agents), I cannot identify the exact locations for each applicant's signature. Further, it is not my practice to inquire about the client's location when signing as applicant, and therefore cannot identify the exact locations for these applicants' signatures.

This response was untruthful. Applicants did not sign their own applications and accompanying declarations or other trademark filings by directly remoting into Respondent's, Ms. ██████ s, Mr. ██████ or any non-practitioner assistant's computers.

In the October 11, 2018 RFI, Respondent was asked in Request 1(c), to provide information related to the terms and conditions of the employment of the U.S. licensed attorneys who worked with Respondent, including:

For example, please state the amount (in U.S. dollars) of the compensation, the nature of the compensation (e.g., flat rate, hourly rate), and the nature of the work performed for such compensation (e.g., draft application or other trademark document, review application or other trademark application prepared by others). If the terms and conditions are in writing, please provide a copy of the document(s).

In response to Request 1(c), Respondent stated:

TMA either (i) refers work to Canadian and or U.S. licensed attorneys for them to conduct according to their own terms; or (ii) contracts with Canadian and U.S. licensed attorneys on an 'as needed' basis and pays such attorneys on an hourly basis for the services provided directly to the clients. Right now TMA works solely with [Ms.] ██████, who works with TMA between 20-30 hours per week.

Amount of compensation: (i) In the event of referrals, TMA is not paid any fees by Canadian and or U.S. licensed attorneys receiving the referrals; and (ii) In the event that TMA contracts with Canadian and or U.S. licensed attorneys, then TMA pays such contracting attorneys on an hourly basis. Please see TMA's terms of engagement ("Terms") attached hereto as Schedule "A", which sets out to our clients how we engage and[/]or refer attorneys as required.

Nature of the work: emails and calls with clients, preparation, revision and review of trademark applications, checking emails prepared by assistants, office action preparation and submission, correspondence with the USPTO and USPTO attorneys, giving legal advice to clients including opinions on registrability of trademarks, opposition work and other work as may be required of U.S. licensed lawyers.

During the OED investigation, Respondent did not provide any documents related to Respondent's and/or TMA's contracts with Ms. [REDACTED] or Mr. [REDACTED]. Respondent claimed she had an "Independent Contractor Agreement" with Ms. [REDACTED] but Respondent did not provide a copy of the Agreement to OED during the investigation. Respondent likewise did not provide to OED any documents relating to the employment of Mr. [REDACTED]. Nor did Respondent provide the full amount of compensation paid to either Ms. [REDACTED] or Mr. [REDACTED].

In the October 11, 2018 RFI, Respondent was asked in Request 1(e):

[P]lease (i) state whether you had or have a fee division or sharing agreement with each attorney and, if so, (ii) for each such agreement please describe fully the nature of any fee division or sharing agreement, including (1) the amount or percentage allotted to the attorney, (2) whether the applicant for whom the trademark services are being provided has consented to the terms of the division arrangement, including the share the attorney will receive, and (3) whether the applicant's consent is confirmed in writing. Please provide copies of documents corroborating that applicant's consent is confirmed in writing.

In response to Request 1(e), Respondent stated:

(i) I confirm that TMA does not have a fee division or sharing agreement with the U.S. licensed attorneys set out in l(a). My response in l(c) sets out the nature of the contract payment to the contractors. Our payments for the packages are flat-fee based and this is a fair and very effective arrangement that works well for our clients and is consistent with industry trends in this area to move away from billing on an hourly basis.

Respondent provided no documents responsive to the inquiry about the amount or percentage of fees provided to Ms. [REDACTED] or Mr. [REDACTED]

In the October 11, 2018 RFI, Respondent was asked in Request 1(f) and 1(g) to provide the amount of compensation that had been paid by Respondent to Ms. [REDACTED] and Mr. [REDACTED] for calendar years 2017 and 2018 for trademark law or trademark law-related services. Respondent was also requested to provide copies of documents corroborating the amount of such compensation. In response to Request 1(f), Respondent stated:

The correspondence regarding fees is subject to privacy and confidentiality obligations that TMA owes the applicant since it is commingled with correspondence receiving instructions and private client information.

Respondent did not explain what privacy or confidentiality obligation applies to responding to the request for information about TMA's payments to U.S. attorneys, and she did not provide documents with the purportedly private client information redacted or a privilege log along with this assertion.

In response to Request 1(g), Respondent stated:

The correspondence regarding fees is subject to privacy and confidentiality obligations that TMA owes the applicant since it is commingled with correspondence receiving instructions and private client information.

Respondent did not explain what privacy or confidentiality obligation applies to responding to the request for information about TMA's payments to U.S. attorneys, and she did not provide documents with the purportedly private client information redacted or a privilege log along with this assertion.

In the October 11, 2018 RFI, Respondent was asked in Request 1(i) to "identify each trademark application for which each attorney [related to TMA] provided trademark law or trademark law-related services in calendar year 2018." Then the October 11, 2018 RFI asked Respondent in Request 1(j) about trademark applications that Respondent had identified in Request 1(i). Respondent was asked to provide copies of all correspondence between: (i) Respondent and the applicant or applicant's representative, (ii) Respondent and Ms. [REDACTED] (iii) Respondent and Mr. [REDACTED] (iv) Ms. [REDACTED] and the applicant, and/or (v) Mr. [REDACTED] and the applicant. In response to Request 1(j), Respondent stated:

(i) TMA has privacy and confidentiality obligations that it owes to its clients and therefore cannot disclose its client communications. . . .

(ii) Disclosure of TMA's correspondence with the U.S. licensed attorneys that may contain client information would breach its

privacy and confidentiality obligations owed to such clients, whether this relates to client referrals or legal services directly being provided by the U.S. licensed attorneys to U.S. clients. . . .

- (iii) Disclosure of correspondence between U.S. licensed attorneys and TMA clients who TMA contracted with such attorneys for trademark law and trademark law-related services would breach TMA's privacy and confidentiality obligations to such affected clients.

Respondent did not explain what privacy or confidentiality obligation applies to responding to the request for information about TMA's communications with U.S. attorneys, or communications between the U.S. attorneys hired by TMA and the clients, and she did not provide documents with the purportedly private client information redacted or a privilege log along with this assertion.

In further response to the subparts of the October 11, 2018 RFI Request 1, Respondent asserted that she had computer problems with her email data. Respondent stated:

In addition, TMA has a virtual office. We do not keep paper documents or files.

* * *

During a recent archival procedure, we lost all of our old email data. The file tree looks the same, but the folders do not contain any emails. We do not have any emails that were received or sent before October 2018. We have subsequently changed the email password. I am not sure why this happened, and I have hired a third-party computer technician to assess this however he was unable to recover the emails for us.

Despite this claim by Respondent, Ms. [REDACTED] was able to access emails and documents from TMA's server with no problem during the time period that Respondent asserted the emails were lost.

ii. The February 6, 2019 RFI

On February 6, 2019, OED mailed and emailed to Respondent another RFI (the "February 6, 2019 RFI") asking for information about practitioners, non-practitioner assistants, and clients who allegedly remotely accessed TMA computers located in Canada and elsewhere. The February 6, 2019 RFI was lawfully issued pursuant to 37 C.F.R. § 11.22(f)(1)(ii). Respondent was asked by OED to respond to the February 6, 2019 RFI within seven days, or on or before February 13, 2019.

By way of an email dated February 11, 2019 to OED, Respondent stated that she had not had time to work on a reply to the February 6, 2019 RFI, but would do so the following day. As of the date of the filing of the *Complaint*, Respondent still had not provided any response to OED to the February 6, 2019 RFI, despite being given ample time and opportunity to respond.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes that Respondent violated the following USPTO Rules of Professional Conduct, for the following reasons.

Count I: Impermissible Signing of Trademark Filings

a. 37 C.F.R. § 11.101 provides that a practitioner “shall provide competent representation to a client.” Respondent violated this provision when she directly signed, or had non-practitioner assistants sign, trademark applications and accompanying declarations and other trademark filings on behalf of the listed signatories, in violation of the USPTO trademark electronic signature regulations.

b. 37 C.F.R. § 11.503(b) provides that “[a] practitioner having direct supervisory authority over the non-practitioner assistant shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the practitioner.” Respondent violated this provision when she allowed or otherwise permitted her non-practitioner assistants to personally enter the elements of the named signatory’s electronic signature into trademark applications, accompanying declarations, and other filings before the USPTO rather than having the named signatory do so.

c. 37 C.F.R. § 11.804(c) provides that is professional misconduct for a practitioner to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Respondent violated this provision when she: (i) entered the electronic signatures of Mr. [REDACTED] Ms. [REDACTED] and the applicants on numerous applications and accompanying declarations and other trademark filings made with the USPTO; (ii) directed or allowed her non-practitioner assistants to enter her signature on applications and accompanying declarations and other trademark filings made with the USPTO; and (iii) directed non-practitioner assistants to sign applications and accompanying declarations and other trademark filings with Ms. [REDACTED] and Mr. [REDACTED] signatures, all in violation of the USPTO signature requirements.

d. 37 C.F.R. § 11.804(d) provides that it is professional misconduct for a practitioner to “engage in conduct that is prejudicial to the administration of justice.” Respondent violated this provision when she (i) entered the electronic signatures of Ms. [REDACTED] Mr. [REDACTED] and applicants on numerous applications and accompanying declarations and other trademark documents filed with the USPTO; and (ii) directed or allowed her non-practitioner assistants to enter Respondent’s, Ms. [REDACTED] or Mr. [REDACTED] electronic signature on applications and accompanying declarations and other trademark documents filed with the USPTO.

Count II: Impermissible Division of Fees

37 C.F.R. § 11.105(e) provides that “[a] division of a fee between practitioners who are not in the same firm may be made only if: (1) [t]he division is in proportion to the services performed by each practitioner or each practitioner assumes joint responsibility for the representation; (2) [t]he client agrees to the arrangement, including the share each practitioner will receive, and the agreement is confirmed in writing; and (3) [t]he total fee is reasonable. Respondent violated this provision when she divided fees with Mr. [REDACTED] and Ms. [REDACTED] without first obtaining the clients’ agreement in writing to the arrangement.

Count III: Respondent’s Failure to Cooperate in OED’s Investigation

a. 37 C.F.R. § 11.801(a) provides that “a practitioner in connection with a disciplinary . . . matter, shall not . . . [k]nowingly make a false statement of material fact.” Respondent violated this provision when she knowingly provided false or misleading information to OED during its investigation as evidenced by Respondent’s assertions that: (i) clients signed their names to trademark filings while remotely connected, when they did not do so; (ii) Ms. [REDACTED] signed certain trademark applications when she did not do so; (iii) Ms. [REDACTED] connected remotely to the computers of TMA assistants and personally signed certain U.S. trademark applications, which was untrue; and (iv) Respondent had computer problems with her email data which meant she could not provide copies of requested emails, which was false.

b. 37 C.F.R. § 11.801(b) proscribes, among other things, failing to cooperate with OED in an investigation. Respondent violated this provision when she provided false or misleading information to OED during its investigation and/or not did not respond to requests for information as evidenced by: (i) asserting to OED that clients signed their names to trademark applications and accompanying declarations and other trademark filings while remotely connected to TMA’s computers, when they did not do so; (ii) asserting to OED that Ms. [REDACTED] signed certain trademark applications and accompanying declarations, when she did not do so; (iii) asserting to OED that Ms. [REDACTED] connected remotely to computers of TMA non-practitioner assistants and personally signed certain U.S. trademark applications and accompanying declarations and other trademark, which was untrue; (iv) asserting to OED that she had computer problems with her email data which resulted in her inability to produce requested emails, which was false; (v) failing to provide documents requested by OED or properly establish a basis for withholding such documents; and (vi) failing to respond to the February 6, 2019 RFI.

c. 37 C.F.R. § 11.801(b) also proscribes, among other things, knowingly failing to respond to a lawful demand or request for information from a disciplinary authority. Respondent violated this provision as charged in Count III when she knowingly provided false or misleading information to OED during its investigation and/or not responded to requests for information as evidenced by: (i) asserting to OED that clients signed their names to trademark applications and accompanying declarations and other trademark filings while remotely connected to TMA’s computers, when they did not do so, (ii) asserting to OED that Ms. [REDACTED] signed certain trademark applications and accompanying declarations, when she did not do so, (iii) asserting to

OED that Ms. [REDACTED] connected remotely to computers of TMA non-practitioner assistants and personally signed certain U.S. trademark applications and accompanying declarations and other trademark, which was untrue, (iv) asserting to OED that she had computer problems with her email data which resulted in her inability to produce requested emails, (v) failing to provide documents requested by OED or properly establish a basis for withholding such documents, and (vi) failing to respond to the February 6, 2019 RFI.

d. 37 C.F.R. § 11.804(c) provides that is professional misconduct for a practitioner to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Respondent violated this provision when she provided false or misleading information to OED during its investigation and/or failed to respond to requests for information as evidenced by: (i) asserting to OED that clients signed their names to trademark applications and accompanying declarations and other trademark filings while remotely connected to TMA’s computers, when they did not do so; (ii) asserting to OED that Ms. [REDACTED] signed certain trademark applications and accompanying declarations, when she did not do so; (iii) asserting to OED that Ms. [REDACTED] connected remotely to computers of TMA non-practitioner assistants and personally signed certain U.S. trademark applications and accompanying declarations and other trademark, which was untrue; and (iv) asserting to OED that she had computer problems with her email data which resulted in her inability to produce requested emails, which was false.

e. 37 C.F.R. § 11.804(d) provides that it is professional misconduct for a practitioner to engage in conduct that is prejudicial to the administration of justice. Respondent violated this provision when she provided false or misleading information to OED during its investigation and/or failed to respond to requests for information as evidenced by: (i) asserting to OED that clients signed their names to trademark applications and accompanying declarations and other trademark filings while remotely connected to TMA’s computers, when they did not do so; (ii) asserting to OED that Ms. [REDACTED] signed certain trademark applications and accompanying declarations, when she did not do so; (iii) asserting to OED that Ms. [REDACTED] connected remotely to computers of TMA non-practitioner assistants and personally signed certain U.S. trademark applications and accompanying declarations and other trademark, which was untrue; (iv) asserting to OED that she had computer problems with her email data which resulted in her inability to produce requested emails, which was false; (v) failing to provide documents requested by OED or properly establish a basis for withholding such documents; and (vi) failing to respond to the February 6, 2019 RFI.

SANCTIONS

The OED Director asks the Court to sanction Respondent by entering an order excluding her from practice before USPTO in trademark and other non-patent matters. The primary purpose of legal discipline is not to punish, but rather “is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.” *In re Brufsky*, Proceeding No. D2013-18 (USPTO June 23, 2014)⁷ at 8 citing *Matter of Chastain*, 532 S.E.2d 264, 267 (S.C. 2000).

⁷ Available at: <https://go.usa.gov/xmWgb>.

In determining an appropriate sanction, USPTO regulations require this Court consider the following four factors: (1) whether the practitioner has violated a duty owed to a client, the public, the legal system, or the profession; (2) whether the practitioner acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the practitioner's conduct; and (4) the existence of any aggravating or mitigating factors. See 37 C.F.R. § 11.54(b). See also In re Morishita, Proceeding No. D2017-25 (USPTO Sept. 28, 2018)⁸; In re Lau, Proceeding No. D2016-37 (USPTO May 1, 2017)⁹; and In re Schwedler, Proceeding No. D2015-38 (USPTO Mar. 21, 2016).¹⁰

1. Respondent violated a duty owed to her clients and the legal profession

The practitioner-client relationship is a fiduciary relationship in which the practitioner owes the client a duty to represent his or her interests diligently and in good faith. See In re Bender, Proceeding No. D2000-01 (USPTO Sept. 30, 2003)¹¹ at 20 (“Respondent owed a fiduciary duty individually to each of his clients. . . .”); Carter v. ALK Holdings, Inc., 605 F.3d 1319, 1325 (Fed. Cir. 2010) (referencing patent practitioner's expected fiduciary duties to clients). See also Pet. of Bd. of Law Examiners, 210 N.W. 710, 711 (Wis. 1926) (“An attorney occupies a fiduciary relationship towards his client. It is one of implicit confidence and of trust. . . . There is no field of human activity which requires fuller realization with respect to fiduciary relationship than that which exists between the lawyer and his client.”).

In the instant matter, Respondent breached her fiduciary duty to her clients when she agreed to represent multiple trademark clients before the Office but filed trademark applications and other documents with the Office that were improperly signed, thereby putting her clients' trademarks at risk of cancellation.

Respondent also violated duties she owed to the public, the legal system, and the legal profession by not cooperating in the disciplinary investigation. Respondent failed to fully and completely respond to lawful requests for information from OED during the investigation of this matter, thus impeding OED's ability to ascertain the truth. Respondent failed to respond at all to the February 6, 2019 RFI. Lastly, Respondent likewise failed to file an Answer to the *Complaint*, flouting this Court's authority and imperiling the orderly functioning of the disciplinary process. See In re Lau, supra.

Respondent similarly violated her duty to the legal profession by engaging in misconduct that decreases the public's confidence in the integrity and professionalism of persons who practice before the Office by not representing her clients competently and diligently, by failing to supervise her employees, thereby allowing them to forge client signatures on documents filed with the Office, by engaging in conduct involving dishonesty, and by falsely entering signatures other than her own on multiple trademark filings. Respondent also violated duties she owed to

⁸ Available at: <https://go.usa.gov/xEnVK>.

⁹ Available at: <https://go.usa.gov/xn7ag>.

¹⁰ Available at: <https://go.usa.gov/xn7aC>.

¹¹ Available at: <http://go.usa.gov/x9tbQ>.

the legal system and the legal profession by not communicating honestly with the USPTO, not responding to some of the RFIs issued to her, and by failing to participate in these disciplinary proceedings. “[A] lawyer’s failure to cooperate in disciplinary investigations weakens the public’s perception of the legal profession’s ability to self-regulate,” and “harms the legal profession by undermining the integrity of the attorney disciplinary system.” In re Disciplinary Action against Brost, 850 N.W.2d 699, 705 (Minn. 2014).

Respondent, in particular, owed special duties to the USPTO, given the nature of her practice before the Office. Even citizens of the United States who reside in the United States may not practice trademark law before the Office unless they are an attorney in good standing before the highest court of a State as defined in 37 C.F.R. § 11.1. See 37 C.F.R. § 11.14(a) (“*Attorneys*. Any individual who is an attorney as defined in §11.1 may represent others before the Office in trademark and other non-patent matters. An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent matters. Registration as a patent practitioner does not itself entitle an individual to practice before the Office in trademark matters.”); see also 37 C.F.R. § 11.1 (“*Attorney* or *lawyer* means an individual who is an active member in good standing of the bar of the highest court of any State. A *non-lawyer* means a person who is not an attorney or lawyer” and “*State* means any of the 50 states of the United States of America, the District of Columbia, and any Commonwealth or territory of the United States of America.”). The USPTO only allows foreign attorneys or trademark agents who are not residents of the United States—*e.g.*, Canadian residents—to practice trademark law before the Office if they are granted reciprocal recognition for the limited purpose of representing parties located in the country they are located in before the USPTO in the presentation and prosecution of trademark matters. See 37 C.F.R. § 11.14(c). Furthermore, the USPTO grants reciprocal recognition only if the patent or trademark office of the country they are located in allows substantial reciprocal privileges to U.S. attorneys who practice trademark law. Id. Therefore, Respondent’s ability to practice before the USPTO was a special exception to the USPTO’s rules, and Respondent flouted that special authority by representing non-residents of Canada, ignoring the practice rules of the USPTO, and ignoring the USPTO ethics rules that applied to her.¹²

2. Respondent acted intentionally and knowingly

Respondent’s acts and omissions were intentional. Respondent knowingly accepted the representation of her clients who resided in Canada, as she was permitted to do under the terms of her authorization from the Office. But Respondent also knowingly accepted the representation of her clients who did **not** reside in Canada, which she is not permitted to do. Thereafter, she knowingly allowed her employees to forge client signatures to documents filed

¹² As of August 3, 2019, all foreign-domiciled trademark applicants, registrants, and parties to Trademark Trial and Appeal Board proceedings are required to be represented by an attorney who is licensed to practice law in the United States. See Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants, 84 Fed. Reg. 31498, 31511 (Final Rule, July 2, 2019). This Rule also applies to trademark applicants who are working with foreign trademark attorneys or trademark agents who are reciprocally recognized by the USPTO under 37 C.F.R. § 11.14(c). See Fed. Reg. at 31506. Therefore, starting on August 3, 2019, any foreign trademark attorney or foreign trademark agent reciprocally recognized will have to work with an American attorney when practicing before the Office. See also “Trademark rule requires foreign applicants and registrants to have a U.S.-licensed attorney,” *available at*: <https://www.uspto.gov/trademark/laws-regulations/trademark-rule-requires-foreign-applicants-and-registrants-have-us> (retrieved July 11, 2019).

with the Office, while knowing that discovery of such a forgery could result in her clients' trademarks being cancelled. Respondent herself also forged client signatures. Respondent also failed to communicate honestly with the USPTO. Furthermore, Respondent intentionally and purposefully ignored all communications from this Court and OED. There can be no dispute that Respondent intentionally and knowingly engaged in misconduct.

A practitioner has an ethical obligation to act with reasonable diligence in representing a client. See 37 C.F.R. § 11.103. This Court concludes that "diligence" requires a practitioner to take reasonable steps to ensure that trademark filings have been signed in accordance with the USPTO trademark signature rules. Regarding a practitioner's ethical obligation to supervise non-practitioner assistants and to monitor the actions the assistants take on behalf of the practitioner's clients, the USPTO Director has issued numerous final orders that have long made clear that a practitioner has the ultimate responsibility for ensuring that a client's affairs are competently handled. See, e.g., In re Martinez, Proceeding No. D2009-27 (USPTO May 1, 2009);¹³ In re Martin, Proceeding No. D2010-39 (USPTO Oct. 26, 2010)¹⁴ (practitioner disciplined for, *inter alia*, failing to adequately supervise non-practitioner staff in connection with electronic fund transfers to USPTO); and In re Tachner, Proceeding No. D2012-30 (USPTO Apr. 12, 2013)¹⁵ (practitioner failed to adequately supervise his office assistant).

A practitioner "may not escape responsibility to his clients by blithely saying that any shortcomings are the fault of his employee. He has a duty to supervise the conduct of his office." In re Hill, Proceeding No. 2001-06 (USPTO July 26, 2004)¹⁶ at 8 (quoting Attorney Grievance Commission of Maryland v. Goldberg, 441 A.2d 338, 341 (1982)). Nor may a practitioner's failure to supervise be excused by the practitioner's lack of knowledge of the assistant's misconduct. Rather, the USPTO Director has disciplined practitioners for not adequately monitoring their assistants even though the practitioner asserts that he or she was unaware of the assistant's misconduct and was surprised by it. See, e.g., In re Meyer, Proceeding No. D2010-41 (USPTO Sep. 7, 2011)¹⁷ (practitioner disciplined for, *inter alia*, failing to adequately oversee or monitor the activity of non-practitioner who had responded to Office communications pertaining to certain trademark registration applications, even though practitioner had no reason to believe that the non-practitioner was engaged in such activity and said he was taken by complete surprise by the conduct of non-practitioner); In re Druce, Proceeding No. D2014-13 (USPTO Sep. 5, 2014)¹⁸ (practitioner disciplined for, *inter alia*, non-practitioner assistant's actions, including the assistant's submission of false statements to the USPTO, even though Respondent was not aware of most of the non-practitioner assistant's conduct).

¹³ Available at: <https://go.usa.gov/xy2hF>

¹⁴ Available at: <https://go.usa.gov/xy2hM>

¹⁵ Available at: <https://go.usa.gov/xy2hu>

¹⁶ Available at: <https://go.usa.gov/xy2hS>

¹⁷ Available at: <https://go.usa.gov/xyTqq>

¹⁸ Available at: <https://go.usa.gov/xyTq3>

The USPTO Director has disciplined practitioners for neglect or lack of diligence in connection with filings submitted to the USPTO and/or for failing to adequately supervise assistants involved in preparing, signing, and filing documents with the Office. See, e.g., In re Jensen, Proceeding No. D2009-46 (USPTO Feb. 18, 2010)¹⁹ (practitioner reprimanded for allowing a non-attorney, who was not located in the practitioner's office nor directly supervised by the practitioner, to sign and file trademark papers in a client's case); In re Sutton, Proceeding No. D2009-24 (USPTO Jan. 10, 2011)²⁰ (practitioner disciplined for, *inter alia*, failing to adequately supervise a subordinate who was tasked with drafting documents to be filed in the USPTO); In re Terzo, Proceeding No. D2016-35 (USPTO Nov. 2, 2016)²¹ (practitioner excluded on consent after a disciplinary complaint was filed alleging that, *inter alia*, practitioner directed his paralegal to sign his name to trademark documents filed with the USPTO); In re Swyers, Proceeding No. D2016-20 (USPTO Jan. 26, 2017)²² (practitioner excluded on consent after a disciplinary complaint was filed alleging that, *inter alia*, practitioner allowed non-attorney assistants to sign thousands of trademark applications and related documents filed with the USPTO); and In re Alia, Proceeding No. D2016-32 (USPTO Mar. 3, 2017)²³ (practitioner excluded on consent after a disciplinary complaint was filed alleging that, *inter alia*, practitioner allowed his non-attorney assistant to sign his name to trademark documents filed with the USPTO).

3. The Potential Injuries are Significant

Respondent caused significant potential injury to her clients. She had an ethical obligation not to offer evidence (*e.g.*, a declaration not signed by the named signatory) known to be false. See generally 37 C.F.R. § 11.303(a). Once the Office is aware that a granted trademark was based on falsified documents, it can cancel the trademark. Likewise, if a competitor seeks to use the trademark, the competitor can have the trademark cancelled based on the false signatures. Accordingly, the clients who obtained trademarks based on false signatures are at risk of losing their marks.

Furthermore, 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 is required to take reasonable remedial measures, including, if necessary, disclosure to the USPTO. See 37 C.F.R. § 11.303(a)(3). Practitioners also have the obligation to disclose to the USPTO, if necessary, that a person is engaging in or has engaged in fraudulent conduct relating to the examination of a client's trademark application and to take reasonable remedial measures. See generally 37 C.F.R. § 11.103(b). Respondent has done neither.

¹⁹ Available at: <https://go.usa.gov/xyTqc>

²⁰ Available at: <https://go.usa.gov/xyTqa>

²¹ Available at: <https://go.usa.gov/xyTqC>

²² Available at: <https://go.usa.gov/xyTqY>

²³ Available at: <https://go.usa.gov/xyTq4>

4. Aggravating and Mitigating Factors Exist in this Case

The American Bar Association, STANDARDS FOR IMPOSING LAWYER SANCTIONS (2015), (“STANDARDS” or “STANDARD”) set forth aggravating and mitigating factors for the Court to consider in determining an appropriate sanction. Citing § 9.22 of the American Bar Association’s Standards for Imposing Lawyer Sanctions (2005), the OED Director contends that the following aggravating factors warrant a more severe sanction in this case: a dishonest or selfish motive; a pattern of misconduct; multiple violations; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of OED; and substantial experience in the practice of law. This Court agrees.

The first aggravating factor is a “dishonest or selfish motive.” See STANDARDS § 9.22(b). Respondent acted with a dishonest and selfish motive when she accepted payment from her clients to prepare and file trademark applications and other documents to obtain a valid trademark, but then endangered the status of any such trademarks by forging signatures on trademark documents (or allowing others to do so).

The second aggravating factor is “a pattern of misconduct.” See STANDARDS § 9.22(c). Respondent engaged in the same conduct with multiple clients. When evidence demonstrates repeated instances of similar misconduct, courts have held that the aggravating factor of “a pattern of misconduct” may be established under STANDARD 9.22(c). Id.; see, e.g., People v. D’Acquisto, 146 P.3d 1041 (Colo. O.P.D.J. 2006) (lawyer engaged in pattern of misconduct by failing to professionally represent clients and by failing to appear in court on six separate client matters); In re Gines, 869 So. 2d 778, 782 (La. 2004) (pattern of misconduct among the numerous aggravating factors demonstrated by lawyer’s “consistent pattern of disregard for her obligations under the Rules of Professional Conduct” as well as a pattern of neglect of client matters, failure to communicate, and failure to account for fees, warranting disbarment).

The third aggravating factor is the commission of “multiple offenses.” See STANDARDS § 9.22(d). Multiple offenses committed in the context of a single disciplinary proceeding may be an aggravating factor. Respondent engaged in the same conduct with multiple clients. The *Complaint* outlined multiple trademark applications or other trademark documents that were filed with forged signatures.

This is not a case where the practitioner engaged in an isolated incidence of misconduct. Instead, Respondent’s business practice was based on the routine use of forged signatures. In order to protect the public the USPTO must remove practitioners who engage in multiple acts of wrongdoing. See In re Warnock, Proceeding No. D2016-08 (USPTO Apr. 22, 2016)²⁴ at 13 (default judgment excluding respondent for neglect of 32 patent applications and 133 trademark applications); Ala. State Bar v. Hallett, 26 So.3d 1127 (Ala. 2009) (lawyer’s multiple violations of professional conduct rules arising from his representation of divorce client, including excessive fees and conflicts of interest, supported finding of multiple offenses as aggravating factor); In re Sisk, 54 A.3d 257 (Table) (Del. 2012) (delay in dealing with client matters and unresponsiveness to client inquiries supported finding of multiple offenses as aggravating factor); In re McNeely, 98 So. 3d 275 (La. 2012) (in imposing three-year suspension, court found

²⁴ Available at: <http://go.usa.gov/x9tDD>.

that multiple counts of neglect, failure to communicate, and failure to return unearned fees supported consideration of multiple offenses as aggravator); In re Disciplinary Action Against Britton, 484 N.W.2d 110 (N.D. 1992) (aggravating factors including multiple offenses under STANDARD 9.22(d) and pattern of misconduct under STANDARD 9.22(c) for, *inter alia*, negligent representation of clients warranted two years' suspension).

The fourth aggravating factor is "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency." See STANDARDS § 9.22(e). Courts have found that a lawyer's bad faith obstruction of a disciplinary proceeding by intentionally failing to comply with disciplinary rules or orders constitutes an aggravating factor under STANDARD § 9.22(e). Respondent half-heartedly participated in OED's initial investigation, failed to provide complete information, and in some instances lied to OED. She ignored OED's February 6, 2019 RFI and despite promises to respond, did not do so. Moreover, Respondent has completely failed to participate in the disciplinary process once the *Complaint* was filed. Despite receiving the *Complaint*, the Court's *Order*, and the meet and confer letter, Respondent did not file an Answer to the *Complaint*, and did not seek permission to file a late Answer.

Respondent's behavior demonstrates a willful disregard of her obligations to the USPTO and this Court. This conduct is not indicative of someone who should be practicing before the Office. The USPTO Director and multiple courts in other jurisdictions have recognized that a practitioner's failure to cooperate in her own disciplinary proceeding is a significant aggravating factor and is indicative of indifference toward and even contempt for disciplinary procedures that demonstrates a complete want of professional responsibility. See, e.g., In re Morishita, *supra*; In re Lau, *supra*; In re Schwedler, *supra*; see also Matter of Brown, 910 P.2d 631 (Ariz. 1996); People v. Reeves, 766 P.2d 1192 (Colo. 1988); In re Lea, 969 A.2d 881 (D.C. 2009); In re Houdek, 497 N.E.2d 1169 (Ill. 1986), and In re Brody, 357 N.E.2d 498 (Ill. 1976).

The fifth aggravating factor applicable here is Respondent's submission of false evidence, false statements, or other deceptive practices during the disciplinary process. See STANDARDS § 9.22(f). Respondent lied to OED about the practices that were followed in her office. She also falsely told OED that she had lost the ability to retrieve certain emails due to a server problem, when her employee was able to access emails for the same time period without any issues. This conduct is a significant aggravating factor. See Att'y Grievance Comm'n v. Dominguez, 47 A.3d 975, 985 (Md. 2012) (attorney disbarred for neglecting several client matters and making false statements to disciplinary counsel that she had never been assigned to handle a particular case, when she had a retainer agreement with the client); Idaho State Bar v. Malmin, 78 P.3d 371 (Idaho 2003) (aggravating factor where lawyer knowingly provided state bar with three different accounts of events during course of disciplinary investigation).

The sixth aggravating factor is Respondent's refusal to acknowledge the wrongful nature of her conduct. See STANDARD § 9.22(g). In connection with her misrepresentations and falsehoods made to OED, Respondent has also refused to accept responsibility for her misconduct. This conduct should result in an enhancement of the sanction imposed on Respondent. In a Delaware case, the court noted it was "deeply concerned" when the lawyer being disciplined argued that the documents he destroyed had no evidentiary value or he thought

they had no evidentiary value. In re Melvin, 807 A.2d 550, 554 (Del. 2002). This Court should likewise be concerned with Respondent's conduct in either destroying relevant emails, or lying about her ability to retrieve them. See also, Att'y Grievance Comm'n v. Mininsohn, 846 A.2d 353, 376 (Md. 2004) (reluctance to accept responsibility for actions is an aggravating factor)

The seventh aggravating factor is Respondent's indifference to making restitution. Respondent has made no effort to fix the problems she created for her clients by filing trademark applications and other documents with falsified signatures. It appears she has not even notified her clients of the potential problems with their trademark files or offered to try and fix the applications. And Respondent has not notified the USPTO Trademark Office, of the filing of documents with false signature in the trademark applications associated with her Office. The failure to make restitution, or at least offer to attempt to fix the problems her misconduct has caused is a factor in aggravation. See In re Augenstein, 871 P.2d 254, 258 (Ariz. 1994) (indifference to making restitution was aggravating factor; even if respondent had financial inability to fix the problems he created he should have at least contacted his clients and offered them an apology for his misconduct)

The Court finds all of the foregoing to be aggravating factors. These factors, along with the potential injury Respondent caused to her clients, the knowing and intentional nature of her conduct, and the fact that she violated duties owed to her clients and her profession, warrant the severe sanction of exclusion.

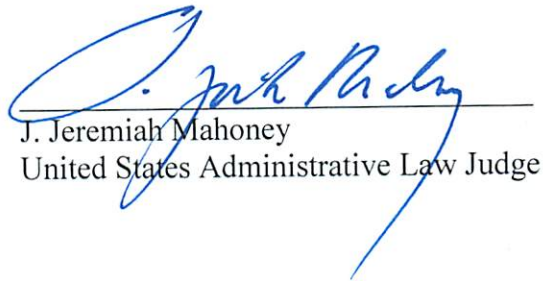
STANDARD § 9.32 identifies mitigating factors which, if they exist, are considerations or facts that may justify a reduction in the degree of discipline to be imposed. See STANDARDS § 9.31. The only mitigating factor here is the "absence of a prior disciplinary record." See STANDARDS § 9.32(a). The Court finds that mitigating factor to be of little weight, given Respondent's misconduct as described above.

CONCLUSION

Because Respondent has failed to answer the *Complaint* or otherwise appear in this matter, Respondent is found to be in **DEFAULT**. Based on the facts hereby admitted, this Court finds that Respondent has violated the USPTO Rules of Professional Conduct as alleged. The OED Director requests that the Court sanction Respondent by excluding her from practice before the USPTO in trademark and other non-patent cases or matters. After analyzing the factors enumerated in 37 C.F.R. § 11.54(b), this Court concludes that Respondent's misconduct warrants the sanction of exclusion.

Accordingly, Respondent shall be **EXCLUDED** from practice before the U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters.²⁵

So **ORDERED**,



J. Jeremiah Mahoney
United States Administrative Law Judge

Notice of Required Actions by Respondent: Respondent is directed to refer to 37 C.F.R. § 11.58 regarding her responsibilities in the case of suspension or exclusion.

Notice of Appeal Rights: Within thirty (30) days of this initial decision, either party may file an appeal to the USPTO Director pursuant to 37 C.F.R. § 11.55.

²⁵ An excluded practitioner is eligible to apply for reinstatement no earlier than five years from the effective date of the exclusion. See 37 C.F.R. § 11.60(b). Eligibility is predicated upon full compliance with 37 C.F.R. § 11.58.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION ON DEFAULT JUDGMENT**, issued by J. Jeremiah Mahoney, Administrative Law Judge, in D2019-11, were sent to the following parties on this 2nd day of August 2019, in the manner indicated:


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