

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

## **FINAL ORDER**

Pursuant to 37 C.F.R. § 11.55, Elizabeth Pasquine (“Appellant”) has appealed the August 13, 2021 Initial Decision and Order (“Initial Decision”) of Administrative Law Judge (“ALJ”) J. Jeremiah Mahoney to the Director of the United States Patent and Trademark Office (“USPTO” or “Office”). In that Initial Decision, the ALJ concluded that Appellant violated USPTO’s disciplinary rules<sup>1</sup> 37 C.F.R. §§ 11.103, 11.104(a)(3) and (b), and, after considering the relevant factors set forth in 37 C.F.R. § 11.54(b), the ALJ ordered that Appellant receive a public reprimand and serve a 12-month probationary period.

For the reasons set forth below, the ALJ's Initial Decision is **AFFIRMED**.

## I. FINDINGS OF FACT

#### A. Background

1. At all times relevant to this matter, Appellant of Arlington, Virginia has been an attorney licensed to practice law in New York and is currently an active member in good standing. (A.3; A.377 ¶ 1; A.481).<sup>2</sup> Appellant has practiced in trademark matters before the USPTO in

<sup>1</sup> Effective May 3, 2013, the USPTO Rules of Professional Conduct, 37 C.F.R. §§ 11.101 through 11.901, apply to persons who practice before the Office. Prior to May 3, 2013, the USPTO Code of Professional Responsibility applied to persons practicing before the Office. See 37 C.F.R. §§ 10.20-10.112.

<sup>2</sup> References to specific pages in the Administrative Record are designated as "A. ".

trademark matters for almost the entirety of her career. (A.377 ¶ 3; A.497). As such, she is subject to the USPTO Rules of Professional Conduct (“USPTO Rules”). *See* 37 C.F.R. §§ 11.101 through 11.901.

2. On July 10, 2017, Appellant began working as a Senior Trademark Attorney for LegalForce RAPC Worldwide (“LegalForce”), a law firm headquartered in Mountain View, California, with an office in Tempe, Arizona. (A.3; A.377 ¶ 4; A.492; A.920; A.7783). The firm provides trademark legal services including filing trademark applications, trademark prosecution, and trademark enforcement. (A.3; A.7784-85). LegalForce, which is owned and founded by [REDACTED] [REDACTED], has been in business for approximately a decade and during that time has filed at least 40,000 trademark applications before the USPTO. (A.377 ¶ 5).

3. LegalForce’s U.S. trademark attorneys and legal assistants are located primarily in the firm’s Tempe office. (A.4; A.377 ¶ 5; A.978). However, Appellant worked remotely from her home in Arlington, Virginia. (A.4; A.377 ¶ 4). LegalForce also employed non-practitioner assistants located in Nagpur, India who were responsible for preparing trademark filings and obtaining signatures for filings. (A.4; A.519-20; A.663).

4. Appellant’s job duties as a Senior Trademark Attorney included pre-filing review, trademark prosecution, and representing clients in TTAB proceedings. (A.492-93). She left her employment with LegalForce on March 29, 2019. (A.7784, lines 4-6).

B. Trademark Signature Methods.

5. The Trademark Electronic Application System (“TEAS”) is the USPTO’s electronic trademark filing and prosecution system accessed via the USPTO.gov website. (A.5; A.378 ¶ 11). Through TEAS, trademark documents are electronically prepared, signed, and filed with the

USPTO. (*Id.*) All trademark documents have to be personally signed. (A.5; A.378 ¶ 14; A.7687, lines 8-20). *See also* 37 C.F.R. § 2.193(c)(1).

6. There are three signature methods that can be used to file a trademark document with the USPTO. (A.5; A.7687 lines 17-18; A.7688 lines 2-3). The “Direct Sign” method, the default signature method, is when the individual preparing the trademark document personally enters his or her electronic signature by entering any combination of letters, numbers, spaces, and/or punctuation marks that he or she has adopted as a signature. (A.5; A.378 ¶ 12; A.7688 lines 5-9; A.7689 lines 20-21).

7. A second signature method is the “ESIGN-ON” procedure, where a link is sent to a third party who opens the link, electronically signs his or her name, and uploads the documents to the USPTO TEAS system. (A.5; A.378 ¶ 13; A.7688 lines 18-22; A.7689 lines 1-9).

8. The third method is the “HSIGN-ON” procedure. (A.1484). With this method, an individual signs a document with a pen-and-ink signature and uploads the signed form to TEAS. (A.5; A.7689 lines 10-17).

9. Regardless of the signature method used, it is not permissible for a person to sign another person’s name to a TEAS form. (A.7687 lines 14-20).

10. LegalForce non-attorney assistants were responsible for obtaining client signatures on trademark documents. (A.519-20; A.663; A.7131-35; A.7791 lines 10-22; A.7793 lines 2-9).

11. Appellant never verified with the LegalForce legal assistants, even though she could have done so, about the method by which her clients’ signatures were obtained for the trademark application documents filed with the Office. (A.381 ¶ 24; A.523; A.7165; A.7795; A.7831 lines 7-17). She assumed that signature link emails, as with the ESIGN-ON method, would be found in a particular firm email account but she did not have access to that account. (A.308; A.7794

lines 15-18). She never had personal knowledge regarding whether or not client applicants personally filed trademark documents and she never asked to see specific filing receipts. (A.7794-95). Further, although Appellant assumed that the firm had a policy whereby clients personally signed trademark documents, she did not have a copy of any written procedures. (A.521-22; A.7790-95). Appellant assumed that the firm's procedures were appropriate and did not give much thought to how client signatures were obtained. (A.522; A.537).

12. The lack of clear firm procedures was “a point of contention” and frustration during Appellant’s time at LegalForce. (A.7790-91). Appellant would be frustrated when she “would get different answers from different people” whenever she asked a colleague how to do something or who handled a task. (*Id.*).

#### C. Impermissible Signature Practice at LegalForce.

13. On June 8, 2018, a LegalForce non-practitioner assistant admitted in an email that a trademark declaration had “not been signed by the client personally. As per our regular practice here also we have signed on behalf of the client.” (A.821). The assistant later explained that because the client had approved the form, she believed “that she was able to fill in the client’s name on the Form.” (A.980).

14. In July of 2018, Heather Sapp, a supervisory attorney at LegalForce, informed Appellant that there were discussions within LegalForce regarding improper signatures. (A.7796-97). Ms. Sapp explained that issue arose from a trademark application with which Appellant was not involved. (A.7797 lines 13-16).

15. During a subsequent meeting for LegalForce attorneys convened by Ryan Bethell, LegalForce Attorney Manager, Appellant was informed that the signature issue previously mentioned by Ms. Sapp was a rare occurrence, and that legal assistants in the India office had

been specifically instructed not to sign documents on behalf of clients. (A.537; A.7809 lines 8-19). Appellant was not concerned about client signatures in applications for which she was the attorney of record, because she considered her cases to be relatively new and the USPTO did not yet require post application trademark prosecution documents to be filed in those cases. (A.7803 lines 17-22 – A.7804 lines 1-6; A.7809 lines 12-13).

16. Around the time Appellant learned of the impermissible signature incident from Ms. Sapp and Mr. Bethell, the OED was investigating LegalForce’s signature practices, sending Requests for Information (“RFI”) to past and present LegalForce attorneys. Those RFI’s suggested that trademark filings prepared by LegalForce attorneys were part of an investigation concerning the signature practices at LegalForce. *See infra.*, Sect. I.D. Appellant received the first RFI from OED on October 17, 2018. (A.484-88).

17. In December of 2018, [REDACTED] sent emails to clients whose trademark filings had been specifically identified by the OED as potentially bearing an improper signature. (A.2615-20; A.2629; A.2682). These emails were also sent to Appellant’s clients who were identified OED RFIs, and Appellant was copied on the emails as they were sent. (*Id.*). In each of the emails, [REDACTED] introduced himself as a shareholder of LegalForce and asked the client, “How was your experience working with our firm?” (*Id.*). [REDACTED] would then acknowledge that a particular document was filed for the client’s trademark and state, “I want to confirm that you approved this document for filing and to confirm that you signed the declaration portion of this document.” (*Id.*). [REDACTED] then noted that the USPTO may attempt to contact the client regarding their signature on the document. (*Id.*). [REDACTED] added, “If you decide to respond to such a letter (which you are allowed to do), you should speak with independent counsel, as your response may affect your trademark rights as it may be public

record.” (*Id.*) [REDACTED] then warned, “Be careful of scam mailers that you may receive however.” (*Id.*) [REDACTED] closed his emails inviting the client to contact him with any questions. (*Id.*).

18. Appellant conceded that “not later than January 29, 2019,” she learned that the impermissible signature practice might affect thousands of applications and registrations (A.537; A.548). Despite this knowledge of the impermissible signature practice, Appellant did not contact her clients to communicate with them about the issue and the potential impact to their trademark applications and registrations. (A.538).

19. On February 1, 2019, Ryan Bethell, Attorney Manager with LegalForce, sent an email to the entire firm in which he acknowledged that the impermissible signature practice was widespread. (A.773; A.810).

D. OED Investigation of Appellant and LegalForce

20. On October 17, 2018, the OED sent an initial RFI (“First RFI”) to Appellant. (A.484-88). Therein, the OED informed Appellant that it had discovered information indicating that owner/applicant signatures on trademark filings for which she was attorney of record may be improper (*e.g.* not in accordance with USPTO signature requirements). (A.485). The First RFI listed nine specific trademark filings that were of concern and requested additional information from Appellant. (A.486).

21. Appellant responded to the First RFI on November 21, 2018. (A.489-98).

22. OED sent a second RFI (“Second RFI”) on December 11, 2018. (A.504-15). The Second RFI noted that the OED has uncovered many more trademark filings by trademark attorneys with LegalForce where the keystrokes constituting the electronic signature of the named signatory were seemingly entered by someone other than the named signatory. (*Id.*). This Second RFI

identified eleven trademark filings for which the OED was requesting specific information from Appellant. (A.515).

23. Appellant responded to the Second RFI on January 28, 2019. (A.519-32).

24. The OED sent a final RFI (“Third RFI”) to Appellant on March 22, 2019. (A.540-43).

The Third RFI did not identify any additional trademark filings related to Appellant that potentially included an improper signature. Rather, the Third RFI asked whether Appellant had contacted clients who did not personally sign the trademark filings, and whether Appellant had notified USPTO of trademark filings that might be at issue. (*Id.*).

25. Appellant submitted a response to the Third RFI on April 10, 2019. (A.544-48). In her response, Appellant informed the OED that her employment with LegalForce ended on March 29, 2019, and she no longer had access to the firm’s records. (*Id.*). Appellant stated that she did not have “material facts to establish that there were impermissible signatures with regard to the records specifically identified … by the OED nor for [her] filings generally.” (A.547). She added that she did not contact her clients regarding signatures because she had “not been able to independently confirm that [impermissible signatures] occurred in any of [her] cases through review of the firm records that were available … at the time” and was relying on firm communications to potentially affected clients. (A.544-48). For example, Appellant referred to [REDACTED] email to clients whose trademark applications were identified in OED’s RFIs. (A.545).

## **II. OED DISCIPLINARY PROCEEDING**

The OED Director issued a Complaint and Notice of Proceedings against Appellant under 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19, 11.32, and 11.39 on July 2, 2019. (A.29-51). The Complaint charged Appellant with three counts of professional misconduct through violations of the USPTO Rules. (*Id.*). The violations stemmed from allegations that Appellant

failed to engage in appropriate oversight to ensure that trademark applications and other documents filed with the USPTO were signed by the named signatory, and failed to advise clients and the USPTO of impermissible signatures. (*Id.*) The OED Director requested that Appellant be excluded or suspended from practice before the USPTO in patent, trademark, and other non-patent matters. (A.48).

Appellant filed her “Answer to Complaint and Notice of Proceeding Under 35 U.S.C. § 32” (“Answer”) on August 30, 2019. (A.66-75).

A hearing was held on February 11, 2020 in Washington, DC. (A.2; A.7674-923). At hearing, Counsel for the OED Director called three witnesses, including Appellant, to testify live at the hearing. (A.2; A.7678). The deposition transcript and video of one witness was accepted into evidence, as well as exhibits offered by both parties. (A.2; A.7873-74; A.7107-243). After both parties submitted post-hearing briefs, the ALJ issued the Initial Decision on the August 13, 2021. (A.1-26).

### **III. INITIAL DECISION BY ADMINISTRATIVE LAW JUDGE**

The Initial Decision, dated August 13, 2021, concluded that Appellant violated 37 C.F.R. §§ 11.103 and 11.104(a)(3) and (b). (A.15, A.17). Specifically, the ALJ concluded that Appellant failed to represent clients with reasonable diligence when she “chose to allow non-practitioner assistants to handle the filings at issue in this case without properly supervising those assistants or attempting to ensure the assistants were completing tasks appropriately” in violation of §11.103. (A.15). Additionally, once Appellant received the First RFI, she was found to be on notice that impermissible signature practice within LegalForce could have occurred with regard to some of the filings she approved. (A.17). By January 29, 2019, and as reaffirmed by an email from Mr. Bethell a few days later, Appellant understood that thousands of applications and

registrations could be affected by the firm's impermissible signature practice. (*Id.*). Given this information, the ALJ concluded it was unreasonable for Appellant to not have initiated communications with her clients that may have been affected, thus violating § 11.104 (a)(3) and (b). (A.17-18).

Appellant filed her appeal on November 17, 2021.<sup>3</sup> In her appeal, Appellant claims it was not unreasonable for her to follow the firm's established practices for ensuring that non-attorney conduct is compatible with ethics rules. (Appeal at 18-19). She asserts that she had rarely participated in the type of work affected by the impermissible signatures and had a good faith belief that LegalForce had procedures ensuring that the affected work was overseen by supervisory attorneys at every step. (*Id.* at 19-20). Further, she also claims it was "not unreasonable or negligent for her to defer to the firm" to notify clients of the possibility of improper signatures on filings. (*Id.* at 25-26). She also raises other arguments including that she did not personally approve sixteen of the filings listed in the Complaint, argues with the information provided by the OED investigation, and argues that it would have been futile to ask LegalForce staff and clients about the signatures practice. Appellant requests that the public reprimand be withdrawn and that the one-year probationary period be withdrawn or closed. Alternatively, Appellant requests that she be considered for the USPTO's newly introduced OED Diversion pilot program to avoid formal discipline.

#### **IV. DECISION**

The USPTO Director shall decide an appeal from an initial decision of the hearing officer. On appeal from the initial decision, the USPTO Director has authority to conduct a *de novo*

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<sup>3</sup> On October 5, 2021, the USPTO Director waived the regulatory deadline for Appellant to file an appeal in this matter. The basis for the waiver was that Appellant relied upon language in the ALJ's Initial Decision, which provided Appellant with incorrect appeal filing dates. As a result, Appellant's appeal was timely filed on November 17, 2021.

review of the factual record. 37 C.F.R. § 11.56(a); *see also Marinangeli v. Lehman*, 32 F. Supp. 2d 1, 5 (D.D.C. 1998). The USPTO Director may affirm, reverse, or modify the initial decision or remand the matter to the hearing officer for such further proceedings as the USPTO Director may deem appropriate. 37 C.F.R. § 11.56(a)

The OED Director has the burden of proving the alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49. “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.’” *Foster v. AlliedSignal, Inc.*, 293 F.3d 1187, 1194 (10th Cir. 2002).

Having considered the record, as well as the arguments presented by the parties, the ALJ’s Initial Decision is affirmed.

**A. Appellant Engaged in Misconduct That Violated USPTO’s Disciplinary Rules.**

As noted, the Director of the USPTO reviews an appeal from an ALJ Initial Decision on the record before the ALJ. *See* 37 C.F.R. §§ 11.55(l), 11.56(a). Here the record clearly and convincingly supports the ALJ’s conclusion that Appellant violated 37 C.F.R. §§ 11.103 and 11.104(a)(3) and (b). The record unquestionably shows that LegalForce non-attorney assistants were responsible for obtaining client signatures on trademark documents. Even though she could have instituted checks of the non-attorney legal assistants’ work, Appellant never verified with those non-attorney legal assistants the method in which her clients’ signatures were obtained for the trademark application documents filed with the Office. (A.381 ¶ 24; A.523; A.7165; A.7795; A.7831 lines 7-17). This is so even though the lack of clear firm procedures was “a point of contention” and frustration during for her during time at the firm. (A.7790-91). Finally, despite the uncontested facts that Appellant received notice that non-attorney legal assistants impermissibly signed client names on trademark documents filed with the USPTO, the record

shows that she took no proactive steps to contact her clients or to inform them about the impermissible signature situation and/or to explain the potential impact of the impermissible signature practice on their trademarks. These acts, or inactions, are a failure of her obligations under the USPTO Rules, as noted further below. Thus, the ALJ's Initial Decision is affirmed.

1. 37 C.F.R. § 11.103.

The Complaint charged Appellant with violating 37 C.F.R. § 11.103 (failing to act with diligence and promptness in representing a client) by filing documents, or having documents filed for her, in trademark applications where someone other than the named signatory signed the documents in violation of USPTO trademark signature regulations, by not taking steps to learn whether non-practitioner assistants who were tasked with obtaining clients' signatures for documents filed in trademark applications were impermissibly signing documents, and/or by not knowing that non-practitioner assistants tasked with obtaining clients' signatures for documents filed on behalf of her clients were, until June 2018, signing the clients signatures. (A.38-39). The ALJ concluded that the OED Director sufficiently proved this charge and, consequently, Appellant was found to have violated § 11.103. After a review of the record, as well as the parties' arguments and briefs, this finding is affirmed.

The USPTO Rules requires practitioners to "act with reasonable diligence and promptness in representing a client." 37 C.F.R. § 11.103. "Reasonable . . . when used in relation to conduct by a practitioner means the conduct of a reasonably prudent and competent practitioner." *In re Flindt*, Proceeding No. D2016-04 at 20 (USPTO Aug. 4, 2017)(citing 37 C.F.R. § 11.1). Whether a practitioner fails to act reasonably in terms of this rule cannot be resolved by a categorical determination of what constitutes diligence and promptness but must be examined in context of the surrounding circumstances. *See Att'y. Griev. Comm'n of Md. v. Ruddy*, 981 A.2d 637, 651

(Md. 2009) (stating that reasonable diligence and promptness “must be examined in context of the surrounding circumstances”). As the OED Director notes in his brief, USPTO precedent states that a practitioner has a duty to monitor non-practitioner assistants to ensure that their activities comply with the USPTO’s rules, including the USPTO trademark signature rules. *See In re Mar*, Proceeding No. D2019-11 at 23 (USPTO Aug. 2, 2019) (Practitioner “has the ultimate responsibility for ensuring that a client’s affairs are competently handled.”); *In re Lou*, Proceeding No. D2021-04 at 5 (USPTO May 12, 2021) (Practitioner violated § 11.103 by failing to ensure that his client’s trademark filings were compliant with the USPTO trademark signature rules.).

The ALJ’s determination that Appellant violated 37 C.F.R. § 11.103 is supported by the record. The record shows that Appellant relied on a variety of assumptions with regard to LegalForce’s signature policies and, had she exercised reasonable diligence, she should have ensured that assistants were appropriately obtaining signatures on trademark documents. (A.15). For example, despite the fact that it was non-attorney employees who took the critical step of coordinating and obtaining client signature on trademark filings before the USPTO, Appellant never verified with those non-attorney legal assistants about the method in which her clients’ signatures were obtained for the trademark application documents filed with the Office. (A.381 ¶24; A.523; A.7795; A.7831 lines 7-17). She assumed that signature link emails, as with the ESIGN-ON method, would be found in a particular email account but she did not have access to that account. (A.308; A.7794 lines 15-18). Appellant never had personal knowledge regarding whether or not client applicants personally filed trademark documents and she never asked to see specific filing receipts for trademark documents. (A.7794-95). And, although Appellant assumed that the firm had a policy whereby clients personally signed trademark documents, she did not

have a copy of those written procedures. (A.521-22; A.7790-95). Because she assumed that the firm's procedures were appropriate, she admitted that did not give much thought to how client signatures were obtained. (A.522; A.537). These assumptions were self-serving and unreasonable on their face. However, they are even more unreasonable given that the lack of clear procedures at LegalForce was "a point of contention" and frustration during her time at the firm. (A.7790-91). Appellant would be frustrated when she "would get different answers from different people" whenever she asked a colleague how to do something or who handled a task. (*Id.*).

Despite not having clear direction about firm procedures, and not having personal knowledge regarding whether or not client applicants personally filed trademark documents, Appellant still took no steps to learn whether non-practitioner assistants were impermissibly signing documents, and/or by not knowing that non-practitioner assistants were tasked with obtaining clients' signatures for documents filed on behalf of her clients were. Instead, she relied on a series of self-serving assumptions that were unreasonable and ineffective. Consequently, based on the record, the ALJ's conclusion that Appellant violated 37 C.F.R. § 11.103 is affirmed.

2. 37 C.F.R. § 11.104(a)(3) and (b).

Appellant was also charged with 37 C.F.R. § 11.104(a)(3) and (b), when she failed to adequately communicate with her clients and failed to keep clients reasonably informed about the status of a matter. (A.40-43). A practitioner is required to "keep the client reasonably informed about the status of the matter." 37 C.F.R. § 11.104(a)(3). In addition, a practitioner must also explain the matter "to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." 37 C.F.R. § 11.104(b). Specifically, Appellant was charged with failing to promptly inform her clients of the impermissible signatures, as well

as the potential consequences the situation. (*Id.*). The ALJ concluded that the OED Director sufficiently proved these charges and, consequently, Appellant was found to have violated § 11.104(a)(3) and (b). As noted below, the ALJ's conclusions are plainly supported by the record and, consequently, are affirmed.

While Appellant may not have had notice of LegalForce's impermissible signature practice initially, she had reason to believe that her clients may be affected by LegalForce's impermissible signature practice after the date that OED sent her the First RFI on October 17, 2018. (A.16; A.484-88). In that First RFI, the OED informed Appellant that it had discovered information indicating that owner/applicant signatures on trademark filings for which she was attorney of record may be improper (e.g. not in accordance with USPTO signature requirements). (A.485). The First RFI listed nine specific trademark filings that were of concern and requested additional information from Appellant. (A.486). As of that time, Appellant would have been on notice that the impermissible signature practice could have occurred with some of the filings she approved. Appellant received two more RFIs on December 11, 2018 and March 22, 2019. (A.519-32; A.540-43).

In addition to the RFIs, Appellant conceded that "not later than January 29, 2019", she learned that the impermissible signature practice might affect thousands of applications and registrations. (A.17; A.537; A.548). Finally, on February 1, 2019, Mr. Bethell sent an email that admitting that the issue as "widespread[.]" (A.17; A.773; A.810). Thus, no later than January 29, 2019, Appellant had clear notice of widespread impermissible signatures on trademark documents. As of that date, she should have taken some steps to personally notify her clients of the potential signature issue and its' implications. She did not. Rather, she conceded that she took no personal action but relied on firm communications to clients whose trademark documents

may have been affected. (A.544-48). This reliance on firm communications to clients is misplaced.

As noted by the ALJ, [REDACTED] (December 10, 2018) emails to some of Appellant's clients were insufficient to accurately inform those clients about the possible impermissible signature issue is misplaced. That email was plainly insufficient in that it suggested the purpose of the email was to "ensure client satisfaction", spends time warning clients not to respond to USPTO communications without first consulting an attorney, and nowhere does the email inform the clients in any way about the impermissible signature situation, the potential adverse consequences of the practice, or any remedial action that the client might be able to take. (A.17; A.2615-20; A.2629; A.2682). By relying on this email, and failing to take any further action on her own behalf, Appellant did not "keep the client reasonably informed about the status of the matter." 37 C.F.R. § 11.104(a)(3).

In sum, despite all of notice she received of the widespread impermissible signature issue at LegalForce, Appellant failed to inform or advise her clients about the impermissible signature issue. Instead, she relied on a firm email that appears to dissuade clients from talking with the OED and minimizes the impermissible signature issue. The ALJ concluded these failures were in clear violation of 37 C.F.R. § 11.104(a)(3) and (b). (A.17-18; A.382 ¶ 27). That conclusion is supported and affirmed.

#### **B. Appellant's Defenses.**

Appellant raises five purported defenses that she believes warrant the USPTO Director withdrawing the public discipline and period of probation (Appeal at 5-6, 27-28).<sup>4</sup> A practitioner

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<sup>4</sup> The OED Director correctly notes that Appellant presented six -not five- questions in her "Statement of Issues Presented for Review." (Appeal at 5-6). The OED, however, did not locate any substantive argument in support of the fifth question, "[w]hen the duty to notify clients of an unexplained and unsubstantiated OED allegation attaches?" (Appeal at 5). Thus, the OED Director argues that "[b]y failing to present any argument in support of this

shall have the burden of proving any affirmative defense by clear and convincing evidence. 37 C.F.R. § 11.49. However, Appellant does not carry her burden as to the defenses offered in her briefs, and the defenses are not supported by the record.

**a. Reliance on LegalForce's Workflow Procedures.**

Appellant claims that it was reasonable for her to rely on the workflow procedures set-up by LegalForce, which she claims had been “ethically vetted.” (Appeal at 18-19). However, this contradicts her arguments at the hearing that LegalForce did not have any written procedures. (A.7181; A.7790-95). In fact, she noted that the lack of clear procedures was “a point of contention” and frustration during her time at the firm. (A.7790-95). Appellant would be frustrated when she “would get different answers from different people” whenever she asked a colleague how to do something or who handled a task. (*Id.*). Although she now revises these statements on appeal, (Appeal at 19), there is no support for her change of argument in the record.

**b. Little Opportunity to Discover the Impermissible Signature Issue.**

Appellant also claims that she had “little opportunity” to discover the impermissible signature issue because she rarely reviewed filings that required a client’s signature. (Appeal at 19-20). The extension of this argument is that, if she was unable to discover the issue, she would not have had any responsibility to inform her clients about it. But, again, this assertion finds little support in the record.

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argument, Appellant has forfeited the opportunity to contest the ALJ’s factual findings and conclusions of law about this issue. (OED Response at 16 n.8); *see, e.g., Impax Labs. Inc. v. Lannett Holdings, Inc.*, 893 F.3d 1372, 1377 (Fed. Cir. 2018) (arguments that “were not raised or developed either before the district court or on appeal in [appellant’s] opening brief, are waived”). Having not identified any argument concerning the issue of “when the duty to notify clients of unexplained and unsubstantiated OED allegations attaches” in Appellant’s appeal or reply brief, that issue is waived. (Appeal at 5).

As already noted, Appellant had multiple opportunities to discover the impermissible signature practice, starting with when OED sent the First RFI. (A.484-88). At that point, Appellant was on notice about the possible impermissible signature practice. OED then sent a Second RFI on December 11, 2018, (A.504-515) that contained a list of trademark documents that were “likely electronically signed in India rather than at or near the location identified as the address for each applicant.” (A.508). A Third RFI following on March 22, 2019. (A.540-43). Finally, in addition to the notice she received in the form of OED’s RFIs, it is noted that Appellant conceded that, in fact, she did discover the impermissible signature issue. (A.548) In her response to the Third RFI, Appellant admitted that “[d]uring my interview at your offices, your colleague had asked when I had learned that there might be thousands of affected applications and registrations. That was on or about January 29, 2019.” (*Id.*) And, when Appellant learned of this issue, “she became so upset that she literally started throwing household objects.” (A.537). This timeline is rooted in the record and belies the argument that she was not able to discover the impermissible signature issue.

**c. Appellant Disputes That She Personally Approved Trademark Filings.**

Appellant next disputes that she “personally approved” each of the sixteen trademark filings that are listed in the ALJ’s decision and in which a non-practitioner assistant impermissibly entered a client’s signature in the document. (Appeal at 20-22). Though she concedes that she did work on some of the trademark filings noted, the OED Director’s brief correctly summarizes her claims as to other filings, which are that most of the filings were signed or approved by other attorneys (*id.* at 21-22), a client confirmed signing one filing (*id.* at 22), and three others were “handled in the Approvals workflow rather than by [Appellant], who has no recollection of them.” (*Id.*) But, this is not born out by the record, which shows that “over a period of five

months, sixteen trademark documents were filed with impermissible signatures.” (A.12-13, A.23).

As an initial matter, Appellant admittedly caused multiple trademark documents—including the sixteen trademark filings listed in the ALJ’s decision—to be prepared, signed, and filed with the Office, although her capacity for each filing may have differed. (A.378 ¶¶ 8-10; A.379 ¶ 20). In some filings she appeared as the attorney of record and in others another LegalForce attorney is listed as the attorney of record. (A.378 ¶¶ 8-10). The fact that her capacity may have differed with respect to the sixteen trademark filings is irrelevant. In either role, Appellant established an attorney-client relationship with each of the trademark applicants on whose behalf she signed a trademark document or is otherwise identified as an attorney of record. *See* 37 C.F.R. § 2.17. As such, she was obligated to abide by the USPTO Rules while representing each client before the Office. *See* 37 C.F.R. § 11.19(a) (“All practitioners engaged in practice before the Office... are subject to the disciplinary jurisdiction of the Office[.]”) Here, Appellant failed to do that. As previously discussed, and as held by the ALJ, she failed to uphold her ethical obligations regarding supervising the work of non-attorney assistants and then, upon being informed of the widespread impermissible signature issue at LegalForce, failing to inform her clients of the issue and the potential impacts on their trademark filings.

**d. OED Blame and No Requirement to Make Inquiries with Staff.**

Appellant next blames OED for months of confusion and delayed resolution for LegalForce clients when OED failed to explain the basis for its RFIs. (Appeal at 24). She also argues that there is no legal authority that obligates her “to make inquiries with staff or clients as part of an investigation.” (*Id.* at 23). In response, the OED Director asserts that Appellant’s arguments must fail for at least two reasons: OED did not hide information and cannot be blamed for Appellant’s

delayed acknowledgment of the impermissible signature issue, and the disciplinary rules require Appellant to cooperate during an investigation, which includes making reasonable inquiries to adequately and candidly answer the questions contained in the RFIs that were issued to her. (OED Response at 20-23).

The OED's RFI's were not confusing or opaque. The First RFI informed Appellant that, "OED discovered information indicating that owner/applicant signatures on trademark filings for which you are listed as attorney of record may be improper, e.g., not in accordance with USPTO signature requirements." (A.485). The First RFI also asked Appellant questions about the manner in which "the applicant's signature is entered on a trademark document electronically filed with the Office." (*Id.*). The Second RFI contained a table of trademark applications which OED indicated that information indicated the filings were "electronically signed in India rather than at or near the location identified as the address for each applicant." (A.508). The Third RFI was equally direct and asked whether Appellant had contacted clients who did not personally sign trademark filing or notified USPTO of potentially affected trademark filings. (A.540-43). There is no indication in the record that Appellant sought any meaningful clarification from OED about the RFIs or communicated any confusion created by the RFIs. Consequently, her attempts to shift blame to OED for her failure to act on the impermissible signature claims is rejected.

Appellant's claim that she is being disciplined for violating a duty that "is only likely and without any other authority or explanation" is blatantly incorrect. (Appeal at 23). As noted in the OED Director's brief, publicly available USPTO precedent regarding violations of 37 C.F.R. §§ 11.103 and 11.104 make clear that she had a duty to advise and explain to her clients the impermissible signature practice and the potential adverse consequences to the client's trademark rights of failing to comply with the USPTO signature rules. (A505-06) (OED Response at 22-

23). See, e.g., *In re Swyers*, Proceeding No. D2016-20 (USPTO Jan. 26, 2017) (complaint charged practitioner with violating § 11.104 by, among other things, “failing to inform his clients that their trademark registrations or applications were potentially invalid”); *In re Mikhailova*, Proceeding No. D2017-18 (USPTO Jun. 16, 2017) (practitioner violated § 11.104(a)(3) by failing to notify clients about the status of their matters, namely that their patent applications were going to expire). By her own words, she failed to comply with this requirement.

**e. Reliance on LegalForce’s Client Notifications.**

Lastly, Appellant “submits that it was not unreasonable or negligent for her to defer to the firm as it was in a better position to properly notify the clients of the possibility of an improper signature and how to remedy it.” (Appeal at 24-26). As already discussed, *see supra* at 15, [REDACTED] [REDACTED] emails were insufficient to provide notice to clients about the possible impermissible signatures. (A.2615-20; A.2629; A.2682).

Although Appellant also several other challenges to the ALJ’s decisions, they are both not relevant to the final order here and lack merit. They are denied.

**V. SANCTION**

The ALJ’s Initial Decision concluded that Appellant engaged in misconduct that violated 37 C.F.R. §§ 11.103 and 11.104(a)(3) and (b), rejected Appellant’s affirmative defenses, and ordered that public reprimand and a twelve (12) month probationary period was the appropriate discipline here. (A.24). In rendering the sanction, the ALJ explained the reason for imposing such a sanction after consideration of the following four factors set forth in 37 C.F.R. § 11.54(b):

- (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 misconduct; and

(4) The existence of any aggravating or mitigating factors.

37 C.F.R. § 11.54(b)(1)-(4).

The Director of the USPTO reviews an appeal from an ALJ Initial Decision on the record before the ALJ. *See* 37 C.F.R. § 11.55(f); *see also* *Marinangeli*, 32 F. Supp. 2d at 5.

Here, the ALJ concluded that Appellant breached the fiduciary duty she owed to her clients by not ensuring their matters were handled with reasonable diligence and acted negligently. (A.21-22). The ALJ also identified three aggravating factors (pattern of misconduct, multiple offenses, and Appellant's substantial practice in trademark law) and one mitigating factor (Appellant's long career) that are relevant to the sanction issued. (A.23-24).

Appellant makes little challenge to the sanction issued here. She does not challenge the aggravating factors noted in the ALJ's opinion. Her lone challenge appears to be that, while she concedes that it "is possible" that an improper signature could jeopardize the validity of the registration, that "filing a new declaration appears to be a remedy that would cause no harm to the client's rights." (Appeal, at 26). This argument, however, is of little value to Appellant since she never undertook such remedial action on behalf of her clients. Nor, as the OED Director notes, is there any evidence in the record that LegalForce filed new declarations. (A.544-48; A.317) ("My review of the USPTO's TSDR database did not indicate that ratifications had yet been filed in any of my cases."). Therefore, Appellant's clients remain at risk of having their trademarks cancelled. *See, e.g., In re Dermahose Inc.*, 82 U.S.P.Q.2d 1793 (T.T.A.B. 2007); *In re Cowan*, 18 U.S.P.Q.2d 1407 (Comm'r Pats. & Trademarks 1990); *see also* TMEP § 611.01(b) (citing *Dermahose* and *Cowan*).

In sum, Appellant has not offered sufficient argument or evidence to alter the ALJ's conclusion or to disturb the ALJ's sanction. The ALJ's sanction is affirmed.

## ORDER

Having considered Appellant's appeal under 37 C.F.R. § 11.55 from the August 13, 2021 Initial Decision of the ALJ to publicly reprimand Appellant, and which ordered Appellant to serve a twelve month probationary period, it is **ORDERED** that the ALJ's Initial Decision is **AFFIRMED**.

It is further:

**ORDERED** that the OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Appellant is admitted to practice, to courts where Appellant is known to be admitted, and to the public.

## RECONSIDERATION AND APPEAL RIGHTS

Any request for reconsideration of this decision must be filed within twenty (20) days from the date of entry of this decision pursuant to 37 C.F.R. § 11.56(c). Any request for reconsideration mailed to the USPTO must be addressed to:

David Shewchuk  
Acting General Counsel  
United States Patent and Trademark Office  
600 Dulany St.  
P.O. Box 1450  
Alexandria, VA 22313-1450

A copy of the request must also be served on the attorney for the Director of Enrollment and Discipline:

Sydney O. Johnson, Jr.  
Counsel for the Director of Office of Enrollment and Discipline  
600 Dulany St.  
P.O. Box 1450  
Alexandria, VA 22313-1450

Any request hand-delivered to the USPTO must be hand-delivered to the Office of the General Counsel, in which case the service copy for the attorney for the Director shall be hand-delivered to the Office of Enrollment and Discipline.

If a request for reconsideration is not filed, and Appellant desires further review, Appellant is notified that she is entitled to seek judicial review on the record in the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 “within thirty (30) days after the date of the order recording the Director’s action.” See E.D. Va. Local Civil Rule 83.5.

**IT IS SO ORDERED.**

Users, Digitally signed by  
Shewchuk, Users, Shewchuk, David  
David Date: 2022.03.28  
11:08:25 -04'00'

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Date

David Shewchuk  
Acting General Counsel  
United States Patent and Trademark Office

on delegated authority by

Andrew Hirshfeld  
Performing the Functions and Duties of the  
Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark  
Office