

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

In the Matter of)
)
Matthew H. Swyers,)
)
Respondent)
_____)

Proceeding No. D2018-45

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Matthew H. Swyers (“Respondent”) on January 21, 2021. Respondent submitted the three-page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

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

Jurisdiction

Respondent, of Cary, North Carolina is an attorney licensed to practice law in the Commonwealth of Virginia and the District of Columbia. Respondent is subject to the USPTO Rules of Professional Conduct, which are set forth at 37 C.F.R. §§ 11.101 *et seq.*

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

Respondent's Affidavit of Resignation

Respondent acknowledges in his January 21, 2021 Affidavit of Resignation that:

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

2. He is aware that there is a disciplinary complaint pending before an Administrative Law Judge in the U.S. Environmental Protection Agency, namely: USPTO Proceeding No. D2018-45, which alleges, *inter alia*, that:

- a. Respondent is licensed to practice law in the Commonwealth of Virginia and the District of Columbia, and is a former USPTO Trademark Examining Attorney.
- b. On March 11, 2016, the OED Director filed a Complaint and Notice of Proceedings Under 35 U.S.C. § 11.5(b)(2), Proceeding No. D2016-20, against Respondent.
- c. On December 20, 2016, Respondent submitted an Affidavit for Consent Exclusion to the USPTO.
- d. On January 26, 2017, the USPTO Director entered a Final Order excluding Respondent from practice before the Office.
- e. An excluded practitioner may not engage in the practice of trademark law before the Office. *See* 37 C.F.R. § 11.58(a).
- f. Practice before the USPTO in trademark matters includes, but is not limited to, consulting with or giving advice to a client in contemplation of filing a trademark application or other document with the USPTO. *See* 37 C.F.R. § 11.5(b)(2).
- g. During the investigation of Respondent's conduct that resulted in Respondent's exclusion on consent from practice before the Office, Respondent created a new company called TTC Business Solutions.
- h. After Respondent's exclusion from practice before the Office on January 26, 2017, Respondent and TTC Business Solutions prepared and filed over a thousand trademark applications with the USPTO.
- i. TTC Business Solutions regularly and impermissibly engages in the activities described in 37 C.F.R. § 11.5(b)(2), which defines practice

before the Office in trademark matters. Specifically, TTC Business Solutions provides trademark legal services including (i) consulting with or giving advice to clients in contemplation of filing trademark applications and other documents with the Office and (ii) concomitantly preparing applications for trademark registration.

- j. OED opened four investigations into Respondent's conduct, identified as OED File Numbers G3073, G3110, G3197, and G3241.
- k. During the course of an investigation, the OED Director may request from a practitioner information and evidence regarding possible grounds for discipline of the practitioner. *See* 37 C.F.R. § 11.22(f)(1)(ii).
- l. A practitioner has an ethical obligation to respond to any lawfully issued RFI. *See* 37 C.F.R. § 11.801(b).
- m. Respondent was provided ample notice and opportunity to respond to the Requests for Information and Evidence issued in OED File Numbers G3073, G3110, G3197, and G3241, but he has failed to do so.

3. He is aware that the disciplinary complaint filed against him alleges that he

violated the following provisions of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 503 (responsibilities regarding non-practitioner assistants);
- b. 37 C.F.R. § 505 (practicing law before the USPTO in violation of USPTO regulations or assisting another in doing so);
- c. 37 C.F.R. § 11.804(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation);
- d. 37 C.F.R. § 11.804(d) (engaging in conduct that is prejudicial to the administration of justice); and
- e. 37 C.F.R. § 804(i) (engaging in other conduct that adversely reflects on a practitioner's fitness to practice before the USPTO).

4. Without admitting to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct, which are the subject of the disciplinary complaint in Proceeding No. D2018-45, Respondent acknowledges that, if and when he applies for reinstatement to practice before the USPTO in trademark or other non-patent matters under 37 C.F.R. § 11.60, the OED

Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that:

- (a) the allegations regarding him in Proceeding No. D2018-45 are true, and
- (b) he could not have successfully defended himself against the allegations

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

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

Exclusion on Consent

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

- 1. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
- 2. Respondent shall be, and hereby is, excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order;
- 3. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <https://foiadocuments.uspto.gov/oed/>;
- 4. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns Matthew H. Swyers of Cary, North Carolina an attorney licensed to practice law in the Commonwealth of Virginia and the

District of Columbia. The Director of the United States Patent and Trademark Office (“USPTO” or “Office”) has accepted Mr. Swyers’ affidavit of resignation and ordered his exclusion on consent from practice before the Office in trademark and non-patent matters.

Mr. Swyers voluntarily submitted his affidavit at a time when a disciplinary complaint was pending before an Administrative Law Judge in the U.S. Environmental Protection Agency, namely: USPTO Proceeding No. D2018-45. The complaint alleged that, on March 11, 2016, the OED Director filed a Complaint and Notice of Proceedings Under 35 U.S.C. § 11.5(b)(2) (Proceeding No. D2016-20) against Mr. Swyers. On December 20, 2016, Mr. Swyers submitted an Affidavit for Consent Exclusion to the USPTO.

On January 26, 2017, the USPTO Director entered a Final Order excluding Mr. Swyers from practice before the Office. An excluded practitioner may not engage in the practice of trademark law before the Office. *See* 37 C.F.R. § 11.58(a). Practice before the USPTO in trademark matters includes, but is not limited to, consulting with or giving advice to a client in contemplation of filing a trademark application or other document with the USPTO. *See* 37 C.F.R. § 11.5(b)(2).

During the investigation of Mr. Swyer’s conduct that resulted in his exclusion on consent from practice before the Office on January 26, 2017, Mr. Swyers created a new company called TTC Business Solutions. After his exclusion from practice before the Office on January 26, 2017, Mr. Swyers and TTC Business Solutions prepared and filed over a thousand trademark applications with the USPTO.

TTC Business Solutions regularly and impermissibly engaged in the activities described in 37 C.F.R. § 11.5(b)(2), which defines practice before the Office in trademark matters. Specifically, TTC Business Solutions provided trademark legal services including (i) consulting with or giving advice to clients in contemplation of filing trademark applications and other documents with the Office, and (ii) concomitantly preparing applications for trademark registration.

The complaint additionally alleged that OED opened four investigations into Respondent’s conduct. During the course of an investigation, the OED Director may request from a practitioner information and evidence 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. *See* 37 C.F.R. § 11.801(b). Respondent was provided ample notice and opportunity to respond to multiple Requests for Information and Evidence issued in the four investigations, but he failed to do so.

Mr. Swyers' affidavit acknowledged that the disciplinary complaint filed against him alleged that his conduct violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 503 (responsibilities regarding non-practitioner assistants); 505 (practicing law before the USPTO in violation of USPTO regulations or assisting another in doing so); 11.804(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); 11.804(d) (engaging in conduct that is prejudicial to the administration of justice); and 804(i) (engaging in other conduct that adversely reflects on a practitioner's fitness to practice before the USPTO).

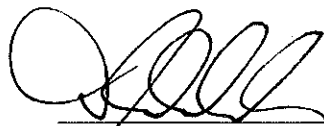
While Mr. Swyers did not admit to violating any of the Disciplinary Rules of the USPTO Rules of Professional Conduct as alleged in the pending disciplinary complaint, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in USPTO Proceeding D2018-45 are true, and (ii) he could not have successfully defended himself against the allegations or charges in the complaint.

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

5. Respondent shall comply fully with 37 C.F.R. § 11.58; and
6. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement; and
7. USPTO Disciplinary Proceeding No. D2018-45 is hereby dismissed.

22 Jan 2021

Date



David Shewchuk
Deputy General Counsel for General Law
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 Office¹

¹ Under 35 U.S.C. § 3, the powers and duties of the U.S. Patent and Trademark Office are vested in an Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office. Effective January 20, 2021, Andrei Iancu resigned as Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office, and Andrew Hirshfeld will be Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO.