UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF:	)	
	)	
Zhuojingwen Tian,	)	**Proceeding No. D2025-05**
	)	
Respondent.	)	
	)	

INITIAL DECISION AND DEFAULT ORDER

Before me is the United States Patent and Trademark Office ("USPTO" or "Office") Director of the Office of Enrollment and Discipline's ("OED Director's") March 27, 2025, Motion to Deem Complaint Admitted and for Entry of Default Judgement ("Default Motion"). The Default Motion requests that I find Respondent Zhuojingwen Tian ("Respondent") in default for her failure to file an Answer in this matter or to respond to my March 17, 2025, Order to Respondent to Show Cause explaining that lapse. Default Mot.; Order to Resp. to Show Cause (Mar. 17, 2025) ("Order to Show Cause"). The Default Motion further requests that I "impose a sanction [on Respondent] of either exclusion from practice before the USPTO or a suspension of 12-months with a 24-month probation." Default Mot. 7. For the reasons that follow, the OED Director's Default Motion is **Granted**, and, upon thorough consideration of the factors set out in 37 C.F.R. § 11.54(b), Respondent is hereby suspended from practice before the USPTO for one year, to be followed by two years' probation.

I. PROCEDURAL HISTORY

On November 22, 2024, the OED Director instituted this disciplinary proceeding under 35 U.S.C. § 32 and the regulations promulgated thereunder at 37 C.F.R. Part 11, Subpart C, §§ 11.19–11.60 (the "Procedural Rules"), against Respondent.

The Complaint charges Respondent in four Counts. Count One charges Respondent with presenting to the Office declarations that did not support the factual representations made therein, in violation of 37 C.F.R. §§ 11.101, 11.103, 11.303(a)(1), 11.303(a)(3), 11.303(d), 11.804(c), 11.804(d), and/or 11.804(i) of the USPTO Rules of Professional Conduct, 37 C.F.R. Part 11, Subpart D, § 11.101 *et seq.* (the "RPC"). Compl. ¶¶ 51–71. Count Two alleges that Respondent improperly signed and impermissibly allowed others to sign her name on change of representation forms, violated the USPTO change of representation rules, made false representations, and violated the USPTO signature rules, in violation of sections 11.101, 11.103, 11.303(a)(1), 11.303(a)(3), 11.303(d), 11.804(c), 11.804(d), and 11.804(i) of the RPC. Compl. ¶¶ 72–115. Count Three alleges that Respondent failed to conduct an inquiry reasonable under the circumstances and inadequately reviewed trademark applications before presenting the

trademark documents to the USPTO, in violation of sections 11.101, 11.103, 11.303(a)(1), 11.303(a)(3), 11.303(d), 11.804(c), 11.804(d), and 11.804(i) of the RPC. Compl. ¶¶ 116–123. And Count Four alleges that Respondent failed to cooperate with the USPTO's disciplinary investigation, in violation of sections 11.801(b) and 11.804(d) of the RPC. Compl. ¶¶ 124–137. For these violations, the Complaint sought entry of an order either excluding or suspending Respondent from practice before the USPTO. Compl. 34.

Pursuant to the Procedural Rules, Respondent was required to file an answer to the Complaint "within the time set in the [C]omplaint," 37 C.F.R. § 11.36(a)—in this instance, 30 days from the Complaint's filing. Compl. 35. The Procedural Rules further required that Respondent's "answer shall be filed in writing with the hearing officer *at the address specified in the complaint*." 37 C.F.R. § 11.36(b) (emphasis added). Here, the Complaint specified that Respondent was to file her answer by United States Mail or commercial delivery service to the physical address of the U.S. Environmental Protection Agency Office of Administrative Law Judges ("OALJ") or "[b]y electronically filing via the OALJ E-Filing System." Compl. 35.

On December 13, 2024, Respondent emailed a copy of her purported answer to OALJ's Headquarters Hearing Clerk. Default Mot. Ex. 2. On February 19, 2025, the Headquarters Hearing Clerk replied to Respondent's email, informing Respondent that the Clerk could not accept the purported answer via email. Default Mot. Ex. 4.[1]

On February 26, 2025, I was designated to preside over this disciplinary proceeding. Order of Designation (Feb. 26, 2025). On the same day, I issued an Order Scheduling Prehearing Procedures ("OSPP"), wherein I established various prehearing deadlines for this case. OSPP (Feb. 26, 2025). The OSPP reiterated that Respondent's email to the Headquarters Hearing Clerk did not constitute effective filing or service of an answer under the Rules. OSPP 1. The OSPP therefore directed Respondent to file an answer using one of the methods described in the Complaint no later than March 7, 2025. OSPP 1. The OSPP noted that Respondent's failure to comply with this directive would risk entry of a default order against her. OSPP 1 (citing 37 C.F.R. § 11.36(e)). The OSPP also addressed settlement negotiations, both by directing the parties to engage in at least one settlement conference and by emphasizing that "Until and unless a settlement is finalized, the parties must prepare for hearing and shall strictly comply with this Order's prehearing requirements. *The pendency of settlement negotiations or the existence of a settlement in principle does not constitute a basis for failing to strictly comply with this Order*." OSPP 2.

The Headquarters Hearing Clerk served the OSPP on Respondent at her known addresses and via email. OSPP, Certificate of Service. On March 1, 2025, Respondent replied to the Clerk's service email, stating "I have already sent the answer at least one month ago. I am

[1] Counsel to the OED Director also emailed Respondent on December 19, 2024, to inform her that her purported answer was not appropriately filed. Default Mot. Ex. 3.

not sure what should I [sic] do next." Default Mot. Ex. 6. On March 3, 2025, the Clerk replied, referring Respondent to the February 19, 2025, email that stated the Clerk could not accept Respondent's answer via email, and to the terms of the OSPP, which, the Clerk explained, "contain important information and specific instructions on what is expected from the parties, along with filing deadlines." Default Mot. Ex. 7. The Clerk appended both documents to her reply. Default Mot. Ex. 7.

Despite this correspondence, Respondent did not file an answer by the March 7 deadline set by the OSPP. Therefore, on March 17, 2025, I ordered Respondent to make a submission showing cause as to why she had failed to file an answer and why an adverse order should not be entered against her. Order to Respondent to Show Cause ("Order to Show Cause"). The Order to Show Cause noted that Respondent had yet to file an answer through any of the methods described in the Complaint, and had, "therefore, effectively failed to file an answer." Order to Show Cause 2. The Order to Show Cause directed Respondent to file and serve a response thereto no later than March 21, 2025, and admonished Respondent that in doing so she was to comply with all filing and service requirements set out in the Rules and the OSPP. Order to Show Cause 2. The Order to Show Cause also advised Respondent that she was required to file her answer along with her response. Order to Show Cause 2.

The Headquarters Hearing Clerk served the Order to Show Cause on Respondent at her known addresses and via email. Default Mot. Ex. 14. On March 21, 2025, Respondent replied to the Clerk's service email, stating "I thought the case went to settlement discussion until [sic] was informed otherwise by [OED Director's counsel] Ms. Dearly. I still haven't figured out how the system work [sic]. I will do so within next week." Default Mot. Ex. 15. The Headquarters Hearing Clerk responded to clarify that Respondent should submit any correspondence for my consideration via the OALJ E-Filing Portal, and not by electronic mail. To date, Respondent has not filed an answer or a response to the Order to Show Cause, nor has she at any time reached out to the Tribunal's staff for filing assistance. *See* OSPP 7 (providing multiple email addresses and telephone numbers via which the parties could seek filing assistance or clarification related to the OSPP).

On March 27, 2025, the OED Director filed the Default Motion. Therein, the OED Director noted that Respondent had failed to file an answer or a response to the Order to Show Cause. Default Mot. 1–2, 3. The OED Director requested that this Tribunal address Respondent's lapses by deeming the Complaint admitted and entering a default judgment against her. Default Mot. 7. The OED Director further requested that the Tribunal impose a sanction against Respondent of either exclusion from practice before the USPTO or a suspension of 12-months with a 12-month probation. Default Mot. 7.

On April 1, 2025, the OED Director filed a motion to stay this proceeding pending my decision on the Default Motion. OED Dir.'s Mot. for Stay of Proceedings (Apr. 1, 2025) ("Stay Motion"). On April 2, 2025, I issued an order granting in part and denying in part the OED Director's stay motion. Order Granting in Part & Denying in Part OED Dir.'s Mot for Stay of

Proceedings (Apr. 2, 2025) ("Stay Order"). The Stay Order stayed all outstanding deadlines in this matter but required the Director to file a statement setting out its support for its requested sanction no later than April 4, 2025. Stay Order 2. The Stay Order also flagged for Respondent that her Response to the Default Motion was due no later than April 11, 2025. Stay Order 2.

The OED Director timely filed a position statement on sanctions on April 4, 2025. OED Dir.'s Stmt. on Sanctions (Apr. 4, 2025) ("Sanctions Statement"). Respondent has not filed a response to the Default Motion.

On April 28, 2025, I ordered the OED Director to file proof that the OED Director effected service of the Complaint upon Respondent in accordance with 37 C.F.R. § 11.35. Order to Dir. to File Proof of Serv. (Apr. 28, 2025). The OED Director timely filed an offer of proof the next day. OED Dir.'s Resp. to Tribunal's Order to Provide Proof of Serv. of the Compl. (Apr. 29, 2025) ("Proof of Service"). This order follows.

II. SERVICE OF PROCESS

The record shows that the OED Director properly served Respondent with the Complaint as required by the Rules. Rule 11.35 provides, in pertinent part, that the OED Director may serve a complaint on a respondent "[b]y any method mutually agreeable to the OED Director and the respondent." 37 C.F.R. § 11.35(a)(3). Here, the record supports the following findings of fact related to the OED Director's service of the Complaint upon Respondent:

1. On March 18, 2024, as part of the OED Director's disciplinary investigation of Respondent, a staff member for Office emailed Respondent at "tianzhuojingwen@haibu.com.cn" to inform her that the Office had sent important correspondence (a set of Requests for Information, Proof of Serv. 2), to Respondent "at the following two mailing addresses: 1. No. 52 Xiaozhai East Road, Building 8, Apt. 362, Xi'an, China; and 2. PO Box 671112, Flushing, NY 11367." Proof of Serv. Ex. C. The Office staff member indicated that the mail sent to the Flushing, NY address had been returned, asked Respondent for a current mailing address, and whether she could "email you a courtesy copy of this important correspondence." Proof of Serv. Ex. C.

2. On March 19, 2024, Respondent replied to the Office's March 18, 2024, email as follows:

> Can you try "China, Xi'an, ChangAnQu, Lv Di Cheng Chang An Gong, Tian Zhuojingwen, Tel +86 18992812630". I am not sure if this would work because international mail can be tricky sometime. Last time I tried to send mail to USPTO, but it was returned.
>
> Yes, it would be more efficient if you can send me a copy of the correspondence through email, so I can reply.

Proof of Serv. Ex. C.

3. On November 22, 2024, the OED Director mailed a copy of the Complaint to Respondent via United Parcel Service ("UPS") at the following address using Tracking Number 1ZA4752R0494754758: No. 52 Xiaozhai East Road, Building 8, Apt. 362, Xi'an, 710064, China. Proof of Serv. 2; Proof of Serv. Ex. A.

4. UPS confirmed that the Complaint was delivered to that address on November 27, 2024. Proof of Serv. Ex. A.

5. Also on November 22, 2024, the OED Director emailed a copy of the Complaint to Respondent at tianzhuojingwen@haibu.com.cn and a second email address, ztian@law.cardozo.yu.edu. Proof of Serv. Ex. B.

6. On December 13, 2024, Respondent replied to the OED Director's email from the tianzhuojingwen@haibu.com.cn address, attaching a copy of her purported "response to the complaint." Proof of Serv. Ex. B.

These facts suffice to establish that the OED Director served the Complaint upon Respondent in compliance with 37 C.F.R. § 11.35. During the same disciplinary investigation that gave rise to this action, Respondent expressed a preference to receive correspondence from the OED Director via email given the difficulties of receiving international mail. The OED Director served the Complaint upon Respondent via email at the same address for which Respondent had previously expressed a preference to receive correspondence. Respondent received that email, as evidenced by her response thereto. Respondent has raised no issue as to service of the Complaint. Given the foregoing, I find that the OED Director served Respondent by at least one "method mutually agreeable to the OED Director and the respondent." 37 C.F.R. § 11.35(a)(3). The OED Director therefore satisfied the Rules' service requirements for the Complaint.[2]

III. RESPONDENT'S DEFAULT

Under the Procedural Rules, "[f]ailure to timely file an answer [to a complaint] 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). To be considered timely, "[a]n answer to a complaint shall be filed within the time set in the complaint but in no event shall that time be less than thirty days

[2] Because I find that the OED Director served Respondent with the Complaint through at least one method mutually agreeable to the parties, I do not address whether the OED Director also served Respondent at her last known physical address. *See* 37 C.F.R. § 11.35(a)(4)(ii) (permitting unregistered respondents residing outside the United States to be served by "sending a copy of the complaint . . . [to] the last address for the respondent known to the OED Director.").

from the day the complaint is filed." 37 C.F.R. § 11.36(a). To be properly filed, the answer must be submitted "in writing with the hearing officer at the address specified in the complaint." 37 C.F.R. § 11.36(b).

Here, the Complaint directed Respondent to file her answer within 30 days of the Complaint's filing, using any of three specified methods—*i.e.* via U.S. Mail or commercial delivery to OALJ's physical address, or by using the OALJ E-Filing system. Compl. 35. The record reflects that Respondent has not filed an answer to the Complaint via any of these methods and has, therefore, failed to file an answer to the Complaint. In addition, Respondent has not filed any response to my Order to Show Cause, nor has she responded to the OED Director's Default Motion. *Supra* Pt. I.

Because the OED Director served Respondent with the Complaint in full compliance with the requirements set forth in 37 C.F.R. § 11.35(a), and because Respondent has since failed to file a timely answer in the manner required by the Rules, Respondent is hereby found to be in **DEFAULT**. 37 C.F.R. § 11.36(e). Respondent's failure to file a timely answer to the Complaint constitutes an admission of all well-pled factual allegations in the Complaint, as set forth below. 37 C.F.R. § 11.36(e).

IV. DISCIPLINARY VIOLATIONS

A. Relevant Legal Principles

1. Legal Principles Applicable to 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 derives 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. *See* 35 U.S.C. § 32. Disciplinary proceedings are conducted in accordance with the Procedural Rules and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by a hearing officer appointed by the USPTO. 37 C.F.R. §§ 11.39(a), 11.44(a).

Applying its authority to regulate practitioners, the USPTO has promulgated disciplinary rules governing practice before the Office. 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 of Professional Responsibility and "clarif[ied] and modernize[d] the rules relating to admission to practice and the conduct of disciplinary cases." 50 Fed. Reg. at 5158. In May 2013, the USPTO replaced the

Code with the RPC. *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." 78 Fed. Reg. at 20180.

The Director has the burden of proving any alleged disciplinary violations by clear and convincing evidence. 37 C.F.R. § 11.49; *In re Johnson*, Proceeding No. D2014-12, 2014 USPTO OED LEXIS 120, at *4 (USPTO Dec. 31, 2014). This "standard is applied 'to protect particularly important interests . . . where there is a clear liberty interest at stake.'" *Johnson*, 2014 USPTO OED LEXIS 120, at *4–5 (quoting *Thomas v. Nicholson*, 423 F.3d 1279, 1283 (Fed. Cir. 2005)). "Clear and convincing evidence" requires a level of proof that falls "between a preponderance of the evidence and proof beyond a reasonable doubt." *Id.* at *5 (quoting *Addington v. Texas*, 441 U.S. 418, 424–25 (1979)) (internal quotation marks omitted). The evidence must be of such weight 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)). "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).

This Tribunal has jurisdiction over this proceeding pursuant to 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. § 11.39(a).

2. Legal Background Related to Respondent's Alleged Disciplinary Violations

a. Attorney Representation in the Prosecution of Trademark Applications

Only attorneys who meet the requirements set out in 37 C.F.R. § 11.14 may practice before the USPTO in trademark cases. 37 C.F.R. § 2.17(a); *see also* 37 C.F.R. § 11.14(a)–(c), and (e) (describing categories of individuals who may practice before the Office in trademark matters, which expressly exclude non-attorneys except in circumstances irrelevant here). "Practice before the Office includes, but is not limited to, law-related service that comprehends any matter connected with the presentation to the Office or any of its officers or employees relating to a client's rights, privileges, duties, or responsibilities under the laws or regulations administered by the Office for the grant of a patent or registration of a trademark." 37 C.F.R. § 11.5(b). In trademark matters, such practice expressly includes "preparing or prosecuting an application for trademark registration; preparing an amendment that may require written argument to establish the registrability of the mark; [and] preparing or prosecuting a document for maintaining, correcting, amending, canceling, surrendering, or otherwise affecting a registration." 37 C.F.R. § 11.5(b)(3). Thus, non-attorneys may not prepare or submit trademark

applications to the Office. *See* Trademark Manual of Examining Procedure ("TMEP") § 608.01 (July 2021) ("An individual who does not meet the requirements of 37 C.F.R. § 11.14 cannot . . . prepare an application . . . or otherwise represent an applicant, registrant, or party to a proceeding in the USPTO.").

Beyond barring non-attorneys from representing parties in the prosecution of trademark applications, the USPTO's "U.S. Counsel Rule" requires that foreign-domiciled trademark applicants or registrants must be represented by an attorney who is either licensed to practice law in the United States or the recipient of an approved application for reciprocal recognition. 37 C.F.R. § 2.11(a) ("An applicant, registrant, or party to a proceeding whose domicile is not located within the United States or its territories must be represented by an attorney, as defined in § 11.1 of this chapter, who is qualified to practice under § 11.14 of this chapter."); 37 C.F.R. § 11.14 (a), (c) (describing domestic and foreign attorneys who may practice before the office in trademark matters); Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants, 84 Fed. Reg. 31498 (July 2, 2019) (Final Rule) ("the U.S. Counsel Rule"). The USPTO promulgated the U.S. Counsel Rule to "instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters." 84 Fed. Reg. at 31507.

Once the USPTO recognizes a qualified attorney as the representative of an applicant or registrant, a new attorney is not permitted to represent the applicant or registrant until (1) the applicant or registrant revokes the previous power of attorney and/or submits a new power of attorney naming the new, qualified attorney, (2) recognition of the previously recognized attorney is deemed to have ended pursuant to 37 C.F.R. § 2.17(g); (3) the previously-recognized attorney withdraws or has been suspended or excluded from practicing in trademark matters before the USPTO; or (4) the previous attorney was falsely, fraudulently, or mistakenly designated. 37 C.F.R. § 2.18(a)(2); *see also* TMEP § 604.04 (summarizing circumstances in which a new qualified attorney is permitted to represent an applicant before the USPTO).

b. <u>USPTO Signature and Certification Requirements</u>

(1) Declarations Regarding Use of Specimens in Commerce

Trademark applicants routinely must submit sworn statements regarding the use of the mark in commerce and/or the applicant's intent to use the mark in commerce. For example, when submitting a substitute specimen, the applicant must include an affidavit or declaration verifying that the substitute specimen was in use in commerce as of a certain date pertinent to the application. *See* 37 C.F.R. § 2.59(a)–(b) (requiring submission of verified statements confirming use in commerce and outlining relevant dates of use). Trademark declarations are signed under penalty of perjury, with false statements being subject to punishment under 18 U.S.C. § 1001. *See* 37 C.F.R. § 2.20 (declaration language for use in trademark submissions).

(2) Requirement to Certify Accuracy of Factual Submissions

A practitioner who presents any document to the USPTO, whether by signing, filing, submitting, or later advocating based upon that document, must certify the accuracy of the information contained therein. 37 C.F.R. § 11.18(a)–(b). Specifically, the practitioner must certify that:

> To the best of the party's knowledge, information and belief, *formed after an inquiry reasonable under the circumstances* (i) [t]he paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; (ii) [t]he other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (iii) [t]he allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (iv) [t]he denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

37 C.F.R. § 11.18(b)(2) (emphasis added).

(3) Trademark Signature Rules – Personal Signatures and Signatures Revoking Attorney Representation

All documents filed in the Office for which a signature is required must be personally signed or have the signature personally entered by the named signatory. 37 C.F.R. § 2.193(a), (c); *see also* 37 C.F.R. § 11.18(a) ("Each piece of correspondence filed by a practitioner in the Office must bear a signature, personally signed or inserted by such practitioner."). This is true for both physical and electronic signatures. 31 C.F.R. § 2.193(a), (c); TMEP § 611.01(c).

The agency publishes online and regularly updates the TMEP. USPTO, TMEP, https://www.uspto.gov/trademarks/guides-and-manuals/tmep-archives. The TMEP provides trademark practitioners with a reference on the practices and procedures that relate to the prosecution of applications to register marks with the USPTO. The TMEP provides the following guidance regarding electronic signatures:

> All documents must be properly signed. 37 C.F.R. §§ 2.193(a), (c)(1), 11.18(a). The person(s) identified as the signatory must personally sign the printed form or personally enter his or her electronic signature, either directly on the TEAS form or in the e-mailed form. 37 C.F.R. § 2.193(a), (d). Another person (e.g.,

> paralegal, legal assistant, or secretary) *may not sign or enter the name of a qualified U.S. attorney 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) (emphasis added).

The TMEP also provides guidance on who is authorized to sign documents presented to the Office seeking to change the attorney of record in a pending application. TMEP Section 604.04, "Change of Attorney," sets forth the following rules regarding changing of the applicant's representative:

> Once the USPTO recognizes a qualified U.S. attorney as the representative of an applicant or registrant, a new qualified U.S. Attorney from a different firm is not permitted to represent the applicant or registrant until:
>
> (1) the applicant or registrant revokes the previous power of attorney;
>
> (2) the applicant or registrant submits a new power of attorney naming the new qualified U.S. attorney;
>
> (3) recognition of the previously recognized U.S. attorney has been deemed to end pursuant to 37 C.F.R. § 2.17(g); or
>
> (4) the previously recognized U.S. attorney withdraws or has been suspended or excluded from practicing in trademark matters before the USPTO.
>
> 37 C.F.R. §[§] 2.18(a)(7), 11.15. Until such action is taken, the new qualified U.S. attorney cannot sign responses to Office actions, authorize issuance of examiner's amendments or priority actions, expressly abandon an application, authorize a change of correspondence address, or otherwise represent the applicant or registrant. *See* 37 C.F.R. § 2.17(a).
>
> If an applicant or registrant is already represented by a qualified U.S. attorney, and a new qualified U.S. attorney from a different firm wishes to take action with respect to the application or registration, the new attorney must file a revocation of the

> previous power of attorney and/or a new power of attorney naming the new qualified U.S. attorney, signed by the individual applicant or registrant or someone with legal authority to bind a juristic applicant or registrant (e.g., a corporate officer or general partner of a partnership), before the USPTO will accept filings by or correspond with the new attorney. *See* 37 C.F.R. § 2.18(a)(2). *The new attorney may not sign the revocation of the previous power*. *See* 37 C.F.R. § 2.17(c) . . . .

TMEP § 604.04 (emphasis added).

B. Findings of Fact as to Disciplinary Violations

Because Respondent failed to answer the Complaint, she is deemed to have admitted the well-plead factual allegations therein, which are set forth below as the Hearing Officer's findings of fact.

1. Respondent Tian

Respondent is an attorney who has been licensed to practice law in the State of New York since February 25, 2019. Compl. ¶ 1. Her[3] New York State Bar Number is 5693668. Compl. ¶ 1. As indicated on the New York State Unified Court System website, on October 4, 2024, Respondent's registration status was "Attorney – Currently Registered." Compl. ¶ 2. Therefore, she is licensed and in good standing in the highest court of the state and qualified to represent others before the Office in trademark and other non-patent matters. Compl. ¶ 2. At all relevant times, Respondent has been a trademark practitioner engaged in practice before the USPTO. Compl. ¶ 3. Respondent has been listed as the attorney of record on over 2,500 U.S. trademark applications. Compl. ¶ 4.

2. The Trademark Electronic Application System

The Trademark Electronic Application System ("TEAS") is the USPTO's electronic trademark filing and prosecution system. Compl. ¶ 24. Via TEAS, trademark documents are electronically prepared, signed, and filed with the USPTO. Compl. ¶ 24. A user must hold a USPTO.gov account to submit an application via TEAS. Compl. ¶ 24. In connection with the electronic filing of trademark documents via TEAS, the USPTO captures the Internet Protocol address ("IP address") assigned to the computer where a document is filed. Compl. ¶ 25. An IP address is typically associated with the location of such computer. Compl. ¶ 25.

[3] The Complaint misidentifies Respondent as "him" throughout. The Director's subsequent filings have corrected this error, *see generally, e.g.*, Default Motion, and this Order adopts that correction.

The Office specifies three permissible signature methods for documents filed through TEAS including, as relevant here, "DIRECT" and "H-SIGN." Compl. ¶ 26. The "DIRECT" method is the default signature procedure. Compl. ¶ 27. The DIRECT signature procedure is used where the originator and signatory of the document signs their electronic signature directly onto the form via TEAS, shortly before the form is filed. Compl. ¶ 27. In the "H-SIGN" or handwritten signature method, an electronic file (e.g., a PDF) of the original handwritten pen and ink signature is submitted to the Office. Compl. ¶ 28. Typically, this involves printing the document out and transmitting it to the signatory, who then signs the document in the traditional pen-and-ink manner. Compl. ¶ 28.

3. Respondent's Representation of Foreign-Domiciled Clients in Trademark Matters Before the USPTO

Respondent represented foreign-domiciled trademark applicants before the USPTO by affiliating with foreign-based companies located in China. Compl. ¶ 29.

a. Respondent's Affiliation with Haibu Law Firm

Respondent worked as a "contractor" or "independent lawyer" with the Haibu law firm beginning in 2021, specifically, with its office in Xi'an, China. Compl. ¶ 30. Respondent was the only U.S. licensed attorney at Haibu. Compl. ¶ 31.

b. Respondent's Affiliation with Shenzhen Yunshanhui Intellectual Property Service Co.

Shenzhen Yunshanhui Intellectual Property Service Co., Ltd. ("Shenzhen YIP") is a trademark agency located in Shenzhen City, Guangdong Province, China. Compl. ¶ 32. Respondent was approached by Shenzhen YIP in 2019 to apply for U.S. trademark registrations for their clients. Compl. ¶ 33. Respondent worked with Shenzhen YIP until around February 2022. Compl. ¶ 34. Respondent estimated that she received 611 referrals from Shenzhen YIP from May 2020 through February 2022. Compl. ¶ 35.

c. Respondent's Affiliation with Sea & Mew Cross Border Trade Service Group

Sea & Mew Cross Border Trade Service Group (hereinafter "Sea & Mew") is a China-located trademark service agency. Compl. ¶ 36. Respondent was approached by Sea & Mew sometime in 2023. Compl. ¶ 37. Sea & Mew referred clients to Respondent until approximately September 2023. Compl. ¶ 38. During their affiliation, Sea & Mew referred between 50 and 200 trademark applications to Respondent each month, for a total of approximately 1,500 trademark applications. Compl. ¶ 39.

d. Respondent's Use of Non-Practitioner Assistants for Trademark Practice

Respondent identified at least three people who were involved in her practice and were neither U.S. licensed attorneys, nor attorneys in China: Amy Liu of Shenzhen YIP; Ren Nana (or "Nana Ren") of Sea & Mew; and Ren Ping of Sea & Mew. Compl. ¶ 40.

e. Email Addresses Used by Respondent in Trademark Practice

Respondent used the email addresses "info@yshipr.com" and "tianzhuojingwen@haibu.com.cn" while representing foreign-domiciled trademark applicants before the USPTO. Compl. ¶ 41. Amy Liu of Shenzhen YIP had access to the "info@yshipr.com" email account. Compl. ¶ 42.

Respondent used another email address when she was the named signatory, namely: "jeannie124@hotmail.com." Compl. ¶ 43. For example, that email address is used in the filings for Trademark Application No. 90496716. Compl. ¶ 43.

According to Respondent, she monitored and checked the inbox and sent box for the email addresses "info@yshipr.com" and "tianzhuojingwen@haibu.com.cn" "basically everyday [sic]." Compl. ¶ 44.

f. USPTO.gov Accounts Sponsored by Respondent and Used in Trademark Practice

Respondent sponsored five USPTO.gov accounts for the following foreign non-practitioner assistants: Amy Liu; Nana Ren; Fenxiang Xiao; Hua Zhang; and Zhang Liqiang. Compl. ¶ 45.

Respondent used two USPTO.gov accounts in connection with her trademark practice, both of which were assigned to her. Compl. ¶ 46. Respondent's first account was affiliated with the email address, 353226872@qq.com and was abandoned in or around the beginning of 2023. Compl. ¶ 47. Respondent allowed Shenzhen YIP to use her first or "old" account to prepare applications. Compl. ¶ 48.

Respondent's second and current account is affiliated with the "ztian@law.cardozo.yu.edu" email address and was opened in or around the beginning of 2023. Compl. ¶ 49.

g. Respondent's Physical Location While Engaged in Trademark Practice

Respondent told OED she practiced primarily from Shenzhen, and Xi'an, and traveled for work to Hong Kong, Tokyo, Shanghai, and Beijing. Compl. ¶ 50. Respondent stated that she never physically went to or practiced in other places. Compl. ¶ 50.

4. <u>Count I: Respondent presented to the Office declarations that did not support the factual representations made therein to the Office.</u>

a. Respondent Submitted Trademark Documents Containing Pre-Dated Declarations

Respondent presented at least 40 Responses to Office Actions that included H-SIGN declarations executed before the Office Action itself was issued—sometimes even before the application's filing date. Compl. ¶ 57. These previously executed declarations did not support the factual representations Respondent made when responding to the associated Office Actions. Compl. ¶ 58.

Respondent also filed Responses to Office Actions containing substitute specimens of website screenshots where the accompanying declaration was executed prior to the existence of the specimens themselves. Compl. ¶ 59. These previously executed H-SIGN declarations did not, and could not, support the Responses' factual representations, because the declarations were drafted and executed for some reason unrelated to the trademark document later filed by Respondent. Compl. ¶ 60.

The OED has identified 40 H-SIGN declarations that were executed before the associated Office Actions were mailed to Respondent. Compl. ¶ 61. Each of the 40 identified declarations were signed using the handwritten H-SIGN method and filed in TEAS using Respondent's USPTO.gov account. Compl. ¶ 62. The filing receipts for each of the trademark documents and accompanying declarations were sent to "info@yshipr.com," which is the email address Respondent used in connection with her trademark practice. Compl. ¶ 63. Respondent informed OED that she checks her email ". . . basically everyday. [sic]" Compl. ¶ 64. Since Respondent checked her email address daily, she actually knew or reasonably should have known that the declarations did not and could not support the factual assertions being made in the documents Respondent was presenting to the Office under her § 11.18 certifications. Compl. ¶ 65.

The following chart lists examples of pre-signed declarations that Respondent presented to the Office in violation of her certifications under § 11.18:

Serial # or Reg. #	**Description of document filed in response to Office action**	**Date OA issued**	**Date/Time (ET) response to OA filed**	**Declaration's date that was filed with response to OA**	**Length of Time by which the declaration's date preceded the date of the OA**

88914224	Request for reconsideration ("RFR") info@yshipr.com	5/17/2021	6/27/2021 22:18	5/13/2020	369 days
90094563	Response to Office action ("ROA") info@yshipr.com	03/15/2021	7/12/2021	5/16/2020	303 days
90017125	ROA tianzhuojingwen@haibu.com.cn	03/01/2021	08/03/2021 04:28	06/23/2020	251 days
90079705	ROA info@yshipr.com	11/20/2020	05/14/2021 11:07	07/29/2020	114 days
90110536	ROA info@yshipr.com	02/01/2021	06/29/2021 11:41	08/12/2020	173 days
90121818	ROA info@yshipr.com	03/08/2021	07/25/2021 20:18	08/18/2020	202 days
90122236	ROA info@yshipr.com	03/08/2021	07/25/2021 20:31	08/18/2020	202 days
90121522	ROA info@yshipr.com	03/08/2021	07/25/2021 20:31	08/18/2020	202 days
90122164	ROA info@yshipr.com	03/08/2021	08/03/2021 03:25	08/18/2020	202 days
90121557	ROA info@yshipr.com	02/11/2021	06/19/2021 08:56	08/18/2020	177 days
90121502	ROA info@yshipr.com	02/11/2021	06/29/2021 11:53	08/18/2020	177 days
90121638	ROA info@yshipr.com	02/11/2021	07/12/2021 04:44	08/18/2020	177 days
90128118	ROA info@yshipr.com	01/25/2021	06/30/2021 23:48	08/20/2020	158 days
90128125	ROA info@yshipr.com	01/25/2021	07/07/2021 00:54	08/20/2020	158 days
90128130	ROA info@yshipr.com	01/25/2021	07/07/2021 01:05	08/20/2020	158 days
90150862	ROA info@yshipr.com	01/06/2021	06/17/2021 03:31	09/01/2020	127 days

90152305	ROA info@yshipr.com	01/05/2021	06/17/2021 04:41	09/01/2020	126 days
90155641	ROA info@yshipr.com	01/25/2021	06/27/2021 21:22	09/02/2020	145 days
90178702	ROA info@yshipr.com	01/25/2021	06/27/2021 21:50	09/02/2020	145 days
90158845	ROA info@yshipr.com	01/25/2021	07/12/2021 03:13	09/02/2020	145 days
90178821	ROA info@yshipr.com	01/25/2021	07/12/2021 03:22	09/02/2020	145 days
90158967	ROA info@yshipr.com	01/25/2021	07/23/2021 10:14	09/02/2020	145 days
90195556	ROA info@yshipr.com	03/01/2021	06/06/2021 03:17	09/20/2020	162 days
90195571	ROA info@yshipr.com	03/01/2021	06/06/2021 03:36	09/20/2020	162 days
90195571	ROA info@yshipr.com	06/09/2021	08/09/2021 02:46	09/20/2020	262 days
90276481	ROA info@yshipr.com	02/15/2021	07/07/2021 11:15	10/25/2020	113 days
90276475	ROA info@yshipr.com	02/15/2021[4]	07/12/2021 04:04	10/25/2020	113 days
90276518	ROA info@yshipr.com	03/25/2021	06/28/2021 02:57	10/26/2020	150 days
90276902	ROA info@yshipr.com	03/25/2021	06/28/2021 03:42	10/26/2020	150 days

[4] This Office Action in part concerned specimens. Compl. ¶ 66 n.7. In her response thereto, Ms. Tian submitted specimen(s) that included website screenshots dated March 29, 2021. Compl. ¶ 66 n.7. The declaration is dated October 25, 2020—i.e., before the physical existence of the screenshots. Compl. ¶ 66 n.7.

90276860	ROA info@yshipr.com	03/25/2021	07/07/2021 07:56	10/26/2020	150 days
90276514	ROA info@yshipr.com	03/25/2021	07/07/2021 11:31	10/26/2020	150 days
90283046	ROA info@yshipr.com	04/06/2021	07/07/2021 10:42	10/28/2020	160 days
90283059	ROA info@yshipr.com	04/06/2021	07/07/2021 11:05	10/28/2020	160 days
90283036	ROA info@yshipr.com	04/06/2021	08/04/2021 04:09	10/28/2020	160 days
90281043	ROA info@yshipr.com	03/29/2021	07/07/2021 10:18	10/28/2020	152 days
90347397	ROA info@yshipr.com	05/19/2021	06/17/2021 05:41	11/30/2020	170 days
90347387	ROA info@yshipr.com	05/19/2021	06/27/2021 23:29	11/30/2020	170 days
90435562	ROA info@yshipr.com	03/27/2021	06/19/2021 08:41	12/31/2020	86 days
90435519	ROA info@yshipr.com	03/27/2021	06/19/2021 09:28	12/31/2020	86 days
5141463	§ 8 Declaration info@yshipr.com	02/14/2022 (5-yr anniversary from 02/14/2017 registration date)	04/01/2022 03:06	03/28/2021	323 days before the 5-yr anniversary

Compl. ¶ 66.

During OED's investigation, Respondent represented to OED that she reviews declarations before presenting them to the USPTO. Compl. ¶ 67. Specifically, Respondent stated, that her "[n]ext step is to check the signed declaration if the document is personally signed by the individual listed." Compl. ¶ 67. Respondent also represented to OED that she reviews declarations especially carefully, stating that "[t]he documents that are held to a higher standard of review are evidence of use, declarations, etc." Compl. ¶ 68.

5. <u>COUNT II: Respondent Improperly Signed and Impermissibly Allowed Others to Sign her Name on Change of Representation Forms, Violated USPTO Change of Representation Rules, Made False Representations, and Violated USPTO Signature Rules</u>.

a. Respondent Violated USPTO Rules Regarding Change of Representation.

At least as early as January 2021, and again in March 2021, Respondent knew about the Office's rules regarding change of representation, because the Office had informed her that she was not authorized to sign a CAR form revoking a previous attorney. Compl. ¶ 78.

CAR Form in Trademark Application No. 88902972: On October 2, 2020, a CAR form was filed in Application No. 88902972. Compl. ¶ 79. The first attorney of record was Adriano Pacifici, Intellectual Property Consulting, LLC. Compl. ¶ 80. Respondent was not affiliated with Mr. Pacifici or a part of the Intellectual Property Consulting, LLC firm. Compl. ¶ 81. The CAR form bore Respondent's electronic signature and sought to change the attorney of record from Mr. Pacifici to Respondent. Compl. ¶¶ 82, 83.

On October 9, 2020, a Response to an Office Action was filed in Application No. 88902972. Compl. ¶ 84. The Response bore Respondent's electronic signature. Compl. ¶ 85. On January 26, 2021, the Office issued a Non-Responsive Submission in Application No. 88902972. Compl. ¶ 86. It explained that the October 2, 2020 CAR form had been improperly signed, stating: "A revocation of power of attorney was filed on October 2, 2020; however, it was ***not properly signed because a new attorney signed the revocation rather than applicant.***" Compl. ¶ 86.

The Non-Responsive Submission also explained that the October 9, 2020 Response to Office Action had been improperly signed by Respondent rather than by Mr. Pacifici, stating:

> Response is not signed by a proper party and cannot be accepted.
>
> Applicant filed a response on October 9, 2020 that was signed by a different attorney from a different law firm than the original and currently recognized attorney(s) and firm of record in this application.
>
> An <u>acceptable and properly signed revocation</u> of the original attorney and appointment of a new attorney was not filed; thus this new attorney did not have authority to sign the response.

Compl. ¶ 87.

The Non-Responsive Submission also issued an Advisory explaining that Respondent was not authorized to sign the CAR form. Compl. ¶ 88. In part, the Advisory stated:

> **Who can sign the response.**
>
> ***Applicant has an attorney.*** The attorney must sign the response. 37 C.F.R. § 2.193(e)(2)(i); TMEP § 712.01. When, as in this case, an applicant who was initially represented by an attorney hires a different attorney from a different law firm, the new attorney from the different firm can sign responses only after the applicant has signed and filed a revocation of the current attorney or a power/appointment of attorney for the new attorney, or the current attorney withdraws. *See* 37 C.F.R. §§ 2.17(c), 2.19(a)-(b), 2.193(e)(3); TMEP § 604.03.

Compl. ¶ 88.

On February 25, 2021, a CAR form bearing the applicant's purported signature was filed in Application No. 88902972. Compl. ¶ 89. Despite the USPTO informing Respondent on January 26, 2021, that it could not accept her filings as the applicant's representative because she had improperly signed the subject CAR form, on February 28, 2021, Respondent filed a Response to an Office Action. Compl. ¶ 90.

On March 2, 2021, the Office issued a Notice of Abandonment in Application No. 88902972, which it sent to Respondent at her info@yshipr.com email address. Compl. ¶¶ 91–92. The Notice of Abandonment explained that the associated application was deemed abandoned in part because the October 9, 2020, Response to Office Action was improperly signed. *See* Compl. ¶ 93.[5]

CAR Form in Trademark Application No. 88914224: On March 31, 2021, the Office issued a Non-Responsive Submission in Application No. 88914224, which it sent to Respondent at her info@yshipr.com email address. Compl. ¶¶ 94–95.

As with Application No. 88902972, the March 31, 2021, Non-Responsive Submission explained that the:

[5] The Complaint specifically alleges that "The March 2, 2021 Notice of Abandonment explained that the application is abandoned because the applicant's response to the March 2, 2021 Office Action was incomplete because the October 9, 2020 Response to Office Action was improperly signed." Compl. ¶ 93. The reference to a March 2, 2021, Office Action is an apparent scrivener's error, but likely refers to a February 28, 2021 Response to Office Action referenced earlier in the Complaint. *See* ¶ 90.

> **Response is not signed by a proper party and cannot be accepted.** Applicant filed a response on December 8, 2020 that was signed by a different attorney from a different law firm than the current attorney and firm of record in this application. The revocation or power of attorney filed prior to this response was not properly signed by applicant; thus, the new attorney does not have authority to sign the response. *See* 37 C.F.R. §§ 2.17(c)(2), 2.19(a)(1), 2.193(e)(3); TMEP §§ 604.03, 611.03(b)-(c). The USPTO cannot accept a response signed by an improper party; therefore, the contents will not be reviewed. *See* 37 C.F.R. § 2.62(b); TMEP § 718.03.

Compl. ¶ 96.

The March 31, 2021, Non-Responsive Submission also explained, as with Application No. 88902972, that:

> When, as in this case, an applicant who was initially represented by an attorney hires a different attorney from a different law firm, the new attorney from the different firm can sign responses only after the applicant has signed and filed a revocation of the current attorney or a power/appointment of attorney for the new attorney, or the current attorney withdraws. *See* 37 C.F.R. §§ 2.17(c), 2.19(a)-(b), 2.193(e)(3); TMEP § 604.03.

Compl. ¶ 97.

Based, in part, on the Office's communications in Application Nos. 88902972 and 88914224, Respondent knew, or reasonably should have known, about the USPTO trademark rules regarding change of representation at least as of January 2021 and no later than March 2021. Compl. ¶ 98.

b. Respondent Presented 29 Self-Signed CAR Forms to the USPTO After Having Been Informed She Was Not Permitted to Do So.

Even after the March 2021, Non-Responsive Submission, Respondent improperly filed at least 29 CAR forms with the USPTO where she signed as the applicants' attorney where another attorney was, or previously had been, the attorney of record. Compl. ¶ 99. Each CAR form was filed from Respondent's USPTO.gov account, was signed using the DIRECT signature method, and bore Respondent's signature. Compl. ¶¶ 100–01.

The table below lists 29 CAR forms that Respondent filed after the Office had informed her in January 2021 and March 2021 that new attorneys were not authorized to sign CAR forms. Compl. ¶ 102. They are as follows:

Serial #	Filing Date/Time (ET) for CAR Form
90202759	7/27/2021 5:21
87517275	3/9/2022 2:46
87517275	3/9/2022 3:06
88272060	3/9/2022 3:29
88279501	3/9/2022 3:41
87850888	3/9/2022 3:53
90712921	3/14/2022 4:40
85863782	3/29/2022 2:21
90756661	3/29/2022 23:32
90722567	3/31/2022 22:31
90745130	4/7/2022 6:02
87528314	5/9/2022 3:36
87528309	5/9/2022 3:48
87746484	5/9/2022 4:11
87264764	5/9/2022 4:59
88236312	5/9/2022 5:14
90745130	5/13/2022 4:22
97694531	2/15/2023 9:39
97675058	2/15/2023 9:48
97687976	2/15/2023 9:54
97722098	3/2/2023 23:57
97360414	3/3/2023 0:06

97523477	3/3/2023 0:25
97360252	3/3/2023 4:19
97360297	3/3/2023 4:25
97360301	3/3/2023 4:34
97360502	3/15/2023 6:43
97360432	3/15/2023 7:12
97360315	4/29/2023 6:15

Compl. ¶ 102.

c. Respondent Made False Representations on Ten CAR Forms.

Ten of the above-listed CAR forms contained facts that were either false or misleading. Compl. ¶ 103. The CAR forms filed in the applications ending with '275, '060, '502, '888, '782, '314, '309, '484, '764, and '312 changed the applicant's then-existing representation to Respondent. Compl. ¶ 104. The stated reason for the change on each form was: "In view of the client's consideration of the cost of responding to the office action, the client decides to entrust a new attorney to deal with the subsequent problems that may arise." Compl. ¶ 104. However, when these CAR forms were filed, there was no Office Action pending. Compl. ¶ 105. Therefore, Respondent drafted false statements and filed them with the Office. Compl. ¶ 106.

d. Respondent Permitted False Signatures on Three CAR Forms.

Respondent allowed another person to improperly enter her signature on CAR forms filed with the USPTO. Compl. ¶ 107. On March 9, 2022, five CAR forms were filed with the USPTO in four trademark applications, nominally signed by Respondent. Compl. ¶¶ 108, 114. Each of these five CAR forms were filed between 2:46 a.m. and 3:53 a.m. (within approximately one hour). Compl. ¶ 109. Two of the forms were filed from Shenzhen, China, and the other three from Taipei, Taiwan. Compl. ¶ 109. The distance between Shenzhen, Guangdong, China, and Taipei, Taiwan, is 812 kilometers (or a little over 500 miles). Compl. ¶ 110. Respondent informed OED that, in connection with her trademark practice, she only traveled to Shenzhen, Xi'an, Hong Kong, Tokyo, Shanghai, and Beijing. Compl. ¶ 111.

Given that these CAR forms were signed using the DIRECT signature method on the same day from computers located 500 miles apart, that they were all filed within approximately a one-hour time period, and that Respondent never practiced trademark law in Taiwan, Respondent did not enter her signature on at least three of the five CAR forms. Compl. ¶ 112. Because the filing receipts for the CAR forms were sent to Respondent's email address

(info@yshipr.com), Respondent knew, or should have known, that the three CAR forms were impermissibly signed in Taiwan. Compl. ¶ 113.

The following table lists the five CAR forms that Respondent purportedly signed:

App. No.	Filing Date and Time of CAR Form	IP Address/Geo-Location	Email Address Where Filing Receipt Sent
87517275	3/9/2022 2:46 AM	14.153.76.48 (Shenzhen, CN)	info@yshipr.com; info@yshipr.com
87517275	3/9/2022 3:06 AM	218.32.237.218 (Taipei, TW)	info@yshipr.com; info@yshipr.com
88272060	3/9/2022 3:29 AM	218.32.237.218 (Taipei, TW)	info@yshipr.com; info@yshipr.com
88279502	3/9/2022 3:41 AM	218.32.237.218 (Taipei, TW)	info@yshipr.com; info@yshipr.com
87850888	3/9/2022 3:53 AM	14.153.76.48 (Shenzhen, CN)	info@yshipr.com

Compl. ¶ 114.

6. COUNT III: Failure to Conduct Inquiry Reasonable under the Circumstances and Inadequately Reviewing Trademark Applications Before Presenting the Trademark Documents with the USPTO

Respondent acknowledged to OED that she did not conduct any inquiry regarding the certain specimens presented to the Office, namely specimens of screenshots from Amazon or eBay websites. Compl. ¶ 117.

In Application Nos. 90422924 and 90422962, Respondent signed and submitted specimens for the applied-for marks. Compl. ¶ 118. The specimens in the applications appear to be screenshots of Amazon webpages showing the applied-for marks. Compl. ¶ 118. The USPTO issued a Non-Final Office Action refusal in both applications based on the submission of faulty specimens. Compl. ¶ 119. In the Office Actions, dated June 29, 2021, the examining attorney stated that, "the tag on the goods fails to show usual markings associated with tags on goods that are used in commerce. Furthermore, the Amazon listing appears to be created for the submission of this application. There are no reviews, and the examining attorney cannot find the goods actually listed on Amazon.com." Compl. ¶ 120. Respondent did not conduct a reasonable pre-filing inquiry into the specimens, which would have included reviewing the tags on the goods in the specimens and confirming the Amazon websites existed. Compl. ¶ 121.

Between 2019 and September 2023, Respondent's trademark applications repeatedly received Office Actions the nature of which suggested that Respondent did not conduct an inquiry reasonable under the circumstances prior to presenting the applications to the Office. Compl. ¶ 122. For example, the USPTO issued refusals in 27 of Respondent's filed applications due to digitally altered images. Compl. ¶ 122.[6]

7. COUNT IV: Failure to Cooperate

Pursuant to its authority under 37 C.F.R. § 11.22(a), OED issued a First Request for Information and Evidence ("RFI") to Respondent on February 16, 2024. Compl. ¶ 125. Respondent responded only in part to OED's First RFI. Compl. ¶ 126.

In Request 7.d. of the first RFI, OED requested a four-part question:

> *If you do not personally sign trademark applications, please generally describe your process for having the named signatory sign the application. Your response is to include the following information:*
>
> *i. Please state the signature method used and, to the extent that you use more than one signature method, the circumstances under which you use the given signature methods.*
>
> *ii. Please state whether you personally obtain the signature and, if so, how you do so.*
>
> *iii. If another person obtains the signature, please describe how he or she does so.*
>
> *iv. If another person obtains the signature, please state whether you monitor the means by which signatures are obtained and, if so, how.*

Compl. ¶ 127. Respondent did not respond to question 7.d., nor did she provide a reason for not responding. Compl. ¶ 128.

Pursuant to its authority under 37 C.F.R. § 11.22(a), OED issued a Second RFI then a Third RFI to Respondent on October 2, 2024. Compl. ¶ 129. The Third RFI was sent via email to

[6] Trademark Application Nos. 90079803; 90087348; 90087353; 90087370; 90087374; 90094536; 90178702; 90178821; 90224404; 90224471; 90225659; 90436645; 90437188; 90437350; 90521776; 90521954; 90521957;90521964; 90521966; 90521970; 90521972; 90643671; 97078500; 97791710; 90094563; 90096886; and 90195571. Compl. ¶ 122.

Respondent at tianzhuojingwen@haibu.com.cn. Compl. ¶ 130. The Third RFI was also sent on October 3, 2024, to Respondent via Air Mail and again by email. Compl. ¶ 131. Respondent and OED frequently communicated via email during the investigation without any difficulties. Compl. ¶ 132. OED has received no indication that Respondent did not receive the copy of the Third RFI sent by email, i.e., OED did not receive a "message undeliverable" notification from OED's email system. Compl. ¶ 133.

As of the date of the Complaint, Respondent had not provided a response to the Third RFI or otherwise communicated with OED about it. Compl. ¶ 134. Without a response, the OED Director was unable to obtain all the information sought in the Third RFI. Compl. ¶ 135.

C. Conclusions of Law as to RPC Violations

The OED Director's Complaint asserts that Respondent violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. § 11.101; § 11.103; § 11.303(a)(1), (a)(3), (d); § 11.801(b); and § 11.804(c) and (d).[7] Based on the foregoing findings of fact, I find that Respondent violated the cited provisions as set forth below.

1. Respondent Violated 37 C.F.R. §§ 11.101 and 11.103 (Competence and Diligence).

The RPC require a practitioner to provide competent representation to a client, including by exercising "the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation." 37 C.F.R. § 11.101. The RPC also require a practitioner to "act with reasonable diligence and promptness in representing a client." 37 C.F.R. § 11.103. A diligent lawyer "pursue[s] a matter on behalf of a client despite . . . personal inconvenience" and "act[s] with commitment and dedication to the interests of the client." *In re Aquilla*, Proceeding No. D2022-27, 2023 USPTO OED LEXIS 3, at *8–9 (USPTO Jan. 27, 2023) (quoting Model Rules of Pro. Conduct R. 1.3 cmt. 1 (Am. Bar. Ass'n 2018)). Respondent repeatedly violated these requirements.

First, to exercise the legal skill, thoroughness, and preparation necessary to represent clients before the USPTO, Respondent was required to review and understand the USPTO's rules regarding certifications and declarations submitted to the Office in support of factual assertions made in trademark filings. *See, e.g.*, 37 C.F.R. § 11.18. Respondent's failure to comprehend or to exercise these requirements is demonstrated by her failure to conduct an adequate (or any) review of documents provided to the USPTO. Respondent presented 40 Responses to Office Actions that included declarations predating the Office Action to which

[7] The Complaint also charged Respondent with violating 37 C.F.R. § 11.804(i), a catchall provision proscribing "other conduct that adversely reflects on . . . fitness to practice," to the extent her acts and omissions described therein did not otherwise violate the RPC. Because the cited conduct did violate other rules, this Decision need not address § 11.804(i).

they purportedly responded. Compl. ¶¶ 57, 61, 66. At least one of these Responses contained substitute specimens of website screenshots where the accompanying declaration was executed prior to the specimens' existence. Compl. ¶¶ 59, 66 & n.7. In the great majority of the instances the OED Director has identified, Respondent's declarations predated the associated Office action by at least 150 days. Compl. ¶ 66. Because Respondent's clients executed these declarations before the materials or Office Actions they allegedly addressed existed, the clients' statements in the declarations cannot have been addressed to the pertinent Office Action or specimen. This resulted in Respondent presenting declarations to the Office that did not support the factual representations made therein. Compl. ¶¶ 52, 58. Respondent's lack of reasonable attention to her factual submissions violated both her competence and diligence obligations.

Second, Respondent was required to educate herself on the Office's rules regarding signatures in trademark filings and to take reasonable steps to ensure her clients' trademark filings were signed in accordance with those rules. These included the Office's rules regarding change of representation and who may sign a revocation, and the U.S. Counsel Rule. *See, e.g.*, 37 C.F.R. § 2.18(a)(2); TMEP § 604.04. Instead, Respondent disregarded the USTPO's signature requirements. The record shows that Respondent submitted 29 CAR forms to the USTPO that purported to revoke and replace the previously-designated attorney for that application, even after the USTPO had twice informed her that only the applicant could sign off on a CAR revoking that prior attorney's designation. Compl. ¶¶ 86–88, 95–97, 99–102. In addition, Respondent did not personally sign trademark documents on which she was a named signatory, and instead either (1) directed another person to enter her signature thereon and/or (2) otherwise allowed or consented to another person doing so. On March 9, 2022, Respondent's signature was affixed to five CAR forms within approximately one hour, using TEAS's DIRECT signature method. Compl. ¶¶ 108–09, 114. However, it would have been impossible for Respondent to have DIRECT-signed all five forms, as IP data shows that two forms were filed from Shenzhen China and the other three from roughly 500 miles away in Taipei, Taiwan. Compl. ¶¶ 109–112, 114. Respondent's failure to educate herself on or to follow the Office's regulations regarding CAR forms resulted in the abandonment of at least one application and constituted a failure to demonstrate the competence and diligence expected of trademark practitioners. Compl. ¶¶ 91–93,

And, *third and finally*, Respondent violated the RPC's diligence and competence requirements when she certified that multiple specimens she presented to the office were used in commerce, where reasonable review would have revealed that the specimens had been digitally altered. Respondent admitted to OED investigators that she did not conduct any inquiry into whether certain specimens of screenshots showed the applied-for marks. Compl. ¶ 117. Office attorneys also noted reasonably-identifiable faults in Respondent's submissions. For example, in Office Actions related to Application Nos. 90422924 and 90422962, where both of the submitted specimens purported to be from Amazon listings, the examining attorney observed that "the tag on the goods fails to show usual markings associated with tags on goods that are used in commerce," and that "the Amazon listing appears to be created for the

submission of this application" as there were no reviews and the examiner could not actually identify the listing on Amazon.com. Compl. ¶¶ 118–120. Between 2019 and September of 2023, the Office refused 27 trademark applications submitted by Respondent due to digitally altered specimens. Compl. ¶ 122. Respondent's failure to comprehend the USPTO's rules regarding her review obligations, as well as her admitted failure to review materials submitted to the USPTO, violated her duties to provide competent, reasonably diligent representation to her clients.

2. <u>Respondent Violated 37 C.F.R. § 11.303(a)(1), (a)(3), and (d) (Candor to the Tribunal), but not 37 C.F.R. § 11.804(c) (Dishonesty).</u>

RPC section 11.303 sets out trademark practitioners' duty of candor to the Office, namely that:

> A practitioner shall not knowingly:
>
> (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the practitioner; [or]
>
> . . .
>
> (3) Offer evidence that the practitioner knows to be false. 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 shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A practitioner may refuse to offer evidence that the practitioner reasonably believes is false.

37 C.F.R. § 11.303(a); *see also* 37 C.F.R. § 11.1 (defining "tribunal" to include the Office); *In re Campbell*, Proceeding No. D2019-41, 2024 USPTO OED LEXIS 10, at *38 (USPTO Oct. 10, 2024) ("It would undermine the spirit and purpose of the USPTO Rules of Professional Conduct if an attorney representing clients before the Office's Trademark Operations division did not owe any such duty of candor to the examiner"). The term "knowingly" means actual knowledge of the fact in question, and a person's knowledge may be inferred from the circumstances. 37 C.F.R. § 11.1. *Cf. Campbell*, 2024 USPTO OED LEXIS 10, at *39 ("An essential element of Respondent's duty of candor under § 11.303 is knowledge."). For purposes of RPC section 11.303, the intent to deceive is not required. *Comm. on Pro. Ethics & Conduct of the Iowa State*

Bar Ass'n v. Wunschel, 461 N.W.2d 840, 847 (Iowa 1990) ("Even absent an intent to deceive, an attorney's failure to recognize and correct potentially misleading situations is unethical.").[8]

The RPC do, however, also proscribe "conduct involving dishonesty, fraud, deceit, or misrepresentation." 37 C.F.R. § 11.804(c). "Dishonest conduct is 'characterized by lack of truth, honesty, or trustworthiness.'" *In re Lane*, Proceeding No. D2013-07, 2014 USPTO OED LEXIS 236, at *30 (USPTO Mar. 11, 2014) (quoting Merriam-Webster (2014), http://www.merriam-webster.com/dictionary/dishonest). "Fraud" "means conduct that involves a misrepresentation of material fact made with intent to deceive or a state of mind so reckless respecting consequences as to be the equivalent of intent, where there is justifiable reliance on the misrepresentation by the party deceived, inducing the party to act thereon, and where there is injury to the party deceived resulting from reliance on the misrepresentation." 37 C.F.R. § 11.1.[9] "Deceit" encompasses "dishonest behavior" and "behavior that is meant to fool or trick someone." *Lane*, 2014 USPTO OED LEXIS 236, at *30 (quoting Merriam-Webster (2014), http://www.merriam-webster.com/dictionary/deceit). Misrepresentation constitutes "[t]he act of making a false or misleading assertion about something, usu[ally] with the intent to deceive." *Lane*, 2014 USPTO OED LEXIS 236, at *30 (citing Black's Law Dictionary (9th ed. 2009)).

Here, the Director asserts that Respondent knowingly made and/or failed to correct known false statements of fact or law made to the USPTO on several occasions, including:

- Either falsely certifying that she had reviewed 40 declarations she filed with the Office or falsely certifying that the factual contentions therein were supported, when the declarations, having been "pre-generated," could not and did not provide factual support related to the Office actions at issue. Compl. ¶¶ 57–59, 66.

- Falsely stating the reasons for changing attorneys on 10 CAR forms, by representing that the change of representation had been made because "[i]n view of the client's consideration of the cost of the office action, the client decides to entrust a new attorney to deal with the subsequent problems that may arise," when no Office Action was pending when the CAR forms were filed. Compl. ¶¶ 104–106.

---

[8] In addition, RPC section 11.303(d) requires that "[i]n an ex parte proceeding, a practitioner shall inform the tribunal of all material facts known to the practitioner that will enable the tribunal to make an informed decision, whether or not the facts are adverse." 37 C.F.R. § 11.303(d).

[9] "Fraud also may be established by a purposeful omission or failure to state a material fact, which omission or failure to state makes other statements misleading, and where the other elements of justifiable reliance and injury are established." 37 C.F.R. § 11.1.

- Allowing other individuals to sign her name on trademark documents filed with the USPTO, where Respondent was the named signatory on the document and/or the attorney of record for the trademark applicant. Compl. ¶¶ 112–114.

- Falsely certifying that she had conducted a reasonable inquiry into the accuracy of purported substitute specimens, even though she had knowingly failed to review the specimens before submitting them to the Office. Compl. ¶¶ 117–122.

The Complaint alleges that these misrepresentations, and Respondent's failure to correct them, violated her duty of candor to the Office. Compl. ¶¶ 71(c), 115(c), 123(c); *see* 37 C.F.R. § 11.303(a)(1), (3). I agree. The Complaint's allegations suffice to demonstrate, as a matter of clear and convincing evidence, that Respondent either knew outright that information submitted to the Office was false—specifically, that signatures were submitted as her own that she had not and could not have supplied—or knew, despite certifying that she had conducted a reasonable inquiry, that she was taking a shot in the dark—e.g., by filing declarations and specimens that she had not reviewed and by submitting copy/pasted, inapposite explanations for changes in representation. These knowing misrepresentations constituted a violation of Respondent's duty of candor.

The Director also claims that Respondent's misrepresentations to the Office demonstrated dishonesty. Compl. ¶¶ 71(d), 115(d), 123(d). On the limited record available on default, I am unable to agree. Unlike violations of the duty of candor, "[s]anctionable dishonesty or misrepresentation generally requires an intent to deceive." *In re Swayze*, Proceeding No. D2019-44, 2023 USPTO OED LEXIS 84, at *53 (USPTO Aug. 24, 2023); *see also, e.g.*, *In re Piccone*, Proceeding No. D2015-06, 2016 USPTO OED LEXIS 102, at *133–34 (USPTO June 16, 2016) (finding no violation of § 11.804(c) absent evidence that practitioner's conduct in making misrepresentation was anything more than negligent). As discussed, the record supports a finding that Respondent made repeated false statements. However, while it is possible Respondent had an intent to deceive, Respondent's submissions could also be construed as the byproduct of inattentiveness and corner-cutting. As the Director acknowledges, the Complaint's allegations paint an overall picture of an individual who took on a large volume of matters and, in turn, relied on rubber-stamp, copy/paste tactics to handle her workload. *See* Stmt. on Sanctions 9 ("Respondent's trademark practice involved a high volume of trademark referrals from companies where each company referred hundreds of trademark clients per month. Complaint ¶¶ 35, 39. . . . In order to manage the high volume of work, Respondent took shortcuts resulting in significant mistakes."). Given this alternative explanation, I do not find sufficient evidence in the record that Respondent acted with an intent to deceive.

3. Respondent Violated 37 C.F.R. § 11.801(b) (Failure to Cooperate in Disciplinary Investigation).

A practitioner has a duty under the RPC to cooperate with an OED disciplinary investigation. *See* 37 C.F.R. § 11.801(b). Respondent violated this duty. As set forth above, Respondent failed to respond to question 7(d) of the Directors First RFI and failed entirely to respond to the Director's Third RFI in connection with the Director's investigation into Respondent's conduct. Respondent received the First RFI, as was necessary for her to respond thereto in part. Compl. ¶ 126. The record also supports a finding that Respondent received the Third RFI, as OED received no notice of non-response and as she continued to make use of the email address to which the Third RFI was sent as late as two months after it was issued. Compl. ¶¶ 130, 133; *see* Default Mot. Ex. 4 (email from tianzhuojingwen@haibu.com.cn to Office and OALJ).

4. Respondent Violated 37 C.F.R. § 11.804(d) (Conduct Prejudicial to the Administration of Justice).

RPC Section 11.804(d) prohibits practitioners from "[e]ngag[ing] in conduct that is prejudicial to the administration of justice." 37 C.F.R. § 11.804(d). Generally, an attorney engages in such conduct "when his behavior negatively impacts the public's perception of the courts or legal profession or undermines public confidence in the efficacy of the legal system." *In re Schindler*, Proceeding No. D2019-43, 2023 USPTO OED LEXIS 152, at *34 (USPTO Dec. 5, 2023) (citing *Att'y Grievance Comm'n v. Rand*, 981 A.2d 1234, 1242 (Md. 2009)).

Respondent engaged in conduct prejudicial to the administration of justice through her failure to comprehend and to follow USPTO's trademark rules related to appropriate declarations, signatures, and specimens. *Supra* Part IV.C.1. Respondent's failure to comply with these basic requirements, which require truthful confirmation that the practitioner has reviewed materials before submitting them to the office and has assured that signatures were personally applied, undermined the effective administration of justice by calling into question the competence of trademark practitioners.

Respondent also engaged in conduct prejudicial to the administration of justice through her false or fabricated submissions to the office, including (1) misrepresenting the reasons for changing attorneys on her filed CAR forms; (2) presenting fabricated screenshots of purported specimens to the Office; (3) authorizing, allowing, or otherwise facilitating others to enter her signature on change of representation forms; and (4) falsely certifying that she had conducted a reasonable inquiry into the support for her submissions when she had conducted no inquiry whatsoever. This conduct negatively impacted the effective administration of justice by undermining the public's and the Office's ability to rely on the attestations of trademark practitioners and the resulting false entries in the Office's registry. *See* Sanctions Stmt. 3 (noting that the public "rel[ies] upon an accurate

trademark registry in deciding upon and pursuing their own marks").

Failure to cooperate in a disciplinary investigation is also prejudicial to the administration of justice, because "such a failure undermines the integrity of the disciplinary system and weakens public trust in the bar's ability to police itself." *In re Von Tersch*, Proceeding No. D2022-21, 2023 USPTO OED LEXIS 100, at *28 (USPTO Oct. 31, 2023). Respondent's failure to fully cooperate in the Office's investigation therefore also constitutes a violation of this rule.

V. SANCTION

A. Applicable Legal Principles Related to Determining Sanctions.

Upon a finding of violation, I am authorized by the Rules to impose an order of suspension, exclusion, reprimand and/or probation and "also may impose any conditions deemed appropriate under the circumstances." 37 C.F.R. § 11.54(a)(2). In doing so, I remain mindful that the primary purpose of legal discipline is not to punish, but rather "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, 2014 USPTO OED LEXIS 238, at *13 (USPTO June 23, 2014) (citing *Matter of Chastain*, 532 S.E.2d 264, 267 (S.C. 2000)).

When determining an appropriate sanction for Respondent's misconduct, the Rules require me to 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. 37 C.F.R. § 11.54(b). The analysis of these four factors is interrelated. *In re Burmeister*, PTO Proceeding No. D99-10, 2004 USPTO OED LEXIS 88, at *27 (USPTO Mar. 16, 2004) (Initial Decision). The American Bar Association Standards for Imposing Lawyer Sanctions (2014) ("ABA Standards") provide guidance as to the aggravating and mitigating factors relevant to deciding an appropriate sanction.[10]

[10] The ABA Standards, as reaffirmed in 2014, are available on the ABA's website at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/sanction_standards.authcheckdam.pdf.

B. Respondent Violated Duties Owed to her Clients, the Public, and the Legal System.

Respondent's misconduct violated duties owed to her clients, the public, and the legal system.

"The practitioner-client relationship is a fiduciary relationship." *In re Keller*, Proceeding No. D2022-22, 2023 USPTO OED LEXIS 94, at *19 (USPTO Apr. 23, 2023). As such, Respondent had a duty to pursue her clients' interests before the Office diligently and competently. *See id.* ("[T]he practitioner owes the client a duty to represent the client's interests diligently and in good faith."); *In re Swayze*, 2023 USPTO OED LEXIS 84, at *59 (USPTO Aug. 24, 2023) ("Respondent owed his client a duty to represent the client's interests competently and diligently."); 37 C.F.R. §§ 11.101, 11.103; ABA Standards at 5, §§ 4.4, 4.5 (duties owed to clients include diligence and competence).

Respondent failed of these duties when she failed to learn or to diligently abide by the Office's rules regarding certifications of fact, signatures, and changes in representation. *See supra* Part IV.C.1; *see also Swayze*, 2023 USPTO OED LEXIS 84, at *38–39 (Respondent violated duty to client to act with diligence and competence when he ignored Office late-filing notices, resulting in the abandonment of multiple patent applications). Respondent also failed to act with diligence when she neglected to review whether substitute specimens she filed with the Office were true examples of the goods or services actually being used in commerce. *See supra*, Part IV.C.1.

Attorneys also bear a duty to the public to act with integrity, which is critical to maintaining public trust in the profession. *Cincinnati Bar Ass'n v. Hennekes*, 850 N.E.2d 1201, 1203 (Ohio 2006) ("The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach.") (citations omitted); ABA Standards at 5 ("The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice."). Respondent failed of this duty through her repeated misrepresentations to the USPTO, which threatened public trust in the USTPO and its practitioners. She made false statements or representations to the USPTO by falsely certifying the veracity of 40 declarations and various substitute specimens, falsely attesting to the rationale for changing attorneys on 10 CAR forms, and allowing other individuals to sign her name on trademark documents even though she was the named signatory and/or attorney of record. *See supra* Part IV.C.2. She allowed these misrepresentations to remain in place by failing to take remedial measures such as disclosing the false signatures to the Office.

Respondent also violated her duties to the public and the legal system when she failed to cooperate with OED's disciplinary investigation. 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 Brost*, 850 N.W.2d 699, 705 (Minn. 2014) (marks and citations omitted). Here, Respondent failed without explanation to answer a question in the Office's First RFI and failed entirely to answer the Office's Third RFI. Compl. ¶¶ 126–35. Thereafter, Respondent repeatedly failed to comply with the Rules' requirements as to how to file an answer to the Complaint, and, after informing this Tribunal of her plans to rectify this lapse, simply ceased communicating with this Tribunal entirely. *Supra*, Part I; Default Mot. Ex. 15. Respondent's failure to conduct herself with professionalism and integrity in response to this matter also risked undermining the public's confidence in trademark practitioners and violated her obligations to the legal system. *See In re Muhammad*, Proceeding No. D2013-21, 2014 USPTO OED LEXIS 167, at *7 (USPTO Jan. 28, 2014) (practitioner excluded upon default for, *inter alia*, not filing an Answer to the Complaint and failing to cooperate with OED, including expressly informing OED twice in emails that he would file a response to the RFIs and not doing so).

C. Respondent Acted Intentionally and Knowingly.

Turning to the consideration of Respondent's culpability, I must assess, whether, at the time of her misconduct, Respondent acted intentionally, knowingly, or negligently. These three mental states address the degree of the lawyer's culpability for disciplinary purposes. *See, e.g.*, *In re Phillips*, 244 P.3d 549, 555 (Ariz. 2010) ("Intentional or knowing conduct is sanctioned more severely than negligent conduct because it threatens more harm."). Intent is the most culpable mental state and is defined as when a practitioner "acts with the conscious objective or purpose to accomplish a particular result." ABA Standards § III. Knowing conduct occurs when a practitioner acts with "conscious awareness of the nature or attendant circumstances of his or her conduct but without the conscious objective or purpose to accomplish a particular result." ABA Standards § III; *Aquilla*, 2023 USPTO OED LEXIS 3, at *15. Negligence is "the failure to take reasonable care." *In re Flindt*, Proceeding No. D2016-04, 2017 USPTO OED LEXIS 96, at *145 (USPTO Aug. 4, 2017).

Here, Respondent's default has prevented the development of a fulsome record of the circumstances surrounding her professional misconduct. Nevertheless, the record supports a finding that some of Respondent's violations were intentional. Respondent filed 29 impermissible revocations of representation despite twice having been informed by the Office that she could not do so. Compl. ¶¶ 98–100. Such conduct indicates that the attendant violations, i.e., Respondent's failure to engage in diligent and competent representation of her clients by ignoring clear direction from the USPTO, were intentional. *See Aquilla*, 2023 USPTO OED LEXIS 3, at *17 (Respondent's failure to submit maintenance fees for client's patent despite knowing of the requirement to do so sufficed to establish intentional violation).

The record further indicates that Respondent's remaining violations were knowing. Forty pre-generated declarations unsupportive of the Responses to Office Actions they accompanied were filed with the Office from Respondent's USPTO.gov account, and Respondent received the filing receipts therefor at an email address she purported to check

"every day." Compl. ¶¶ 57–65. Respondent either knowingly chose to file pre-generated declarations that, intrinsically, could not truthfully attest to the Office actions they predated, or she negligently failed to review 40 declarations but nevertheless knowingly certified that she had done so when she filed them. Respondent also knowingly allowed others to enter her signature onto filed CAR forms. Five CAR forms were filed under Respondent's purported signature from two locations 500 miles apart, within a time frame that made it impossible for Respondent to have signed three of the documents. Compl. ¶¶ 108–10, 112. As Respondent received filing receipts for the CAR forms, Compl. ¶ 113, Respondent knew (at a minimum) that someone else had submitted forms under her signature, but she nevertheless failed to correct the filings.

Respondent also knowingly failed to cooperate with OED's investigation. As evidenced by her partial response, Respondent received the Office's First RFI but failed to respond to a critical component thereof. The record also supports a finding that Respondent received the Office's Third RFI but failed to respond. *Supra* Part IV.C.3. Other practitioners have been excluded from practice for knowingly frustrating an OED investigation. *See, e.g., In re Ho,* Proceeding No. D2009-04, slip op at 8[11] (USPTO Jan. 30, 2009) (initial decision on default excluding practitioner who, *inter alia,* "knowingly failed to provide information requested by OED and intentionally failed to cooperate with OED's investigation."); *Keller*, 2023 USPTO OED LEXIS 94, at *23 (initial decision on default excluding practitioner who "knew or should have known that OED was investigating him, as the OED . . . directed correspondence to him through multiple channels, yet he failed to respond to the RFI or otherwise cooperate in the disciplinary investigation"). Respondent's knowing and intentional misconduct counsels in favor of a heightened sanction.

D. Respondent's Misconduct Caused Actual and Potential Harm to Her Clients.

Although a showing of harm is not required to establish a violation of the RPC, the OED Director argues that, in this case, Respondent's actions resulted in tangible harm to her clients. *In re Fuess*, Proceeding No. D2017-16, 2018 USPTO OED LEXIS 82, at *49 (USPTO Jul. 30, 2018) ("The harm from the violation need not be actual, only potential.") (citing *In re Claussen*, 909 P.2d 862, 872 (Ore. 1996)).

The OED Director asserts that by repeatedly improperly signing CAR forms, Respondent "risked the Trademark Examining attorneys issuing Office actions that could prolong the examination process for her clients and had the potential to incur additional attorney's fees if Respondent charged the client to respond to Office actions." Sanctions Stmt. 6. The OED Director represents that this risk of delay materialized for each incorrect signature identified in the Complaint, as Respondent received Office action denying each of those registrations until a proper person signed the CAR form. Sanctions Stmt. 6–7. While

[11] https://foiadocuments.uspto.gov/oed/0539_dis_2009-01-30.pdf

the OED Director does not provide evidentiary support for this claim, I agree that, at a minimum, Respondent's misconduct risked creating delays and expense for her clients.

The OED Director also argues that Respondent's misconduct resulted in the abandonment of at least one application, No. 88902972. Sanctions Stmt. 7. On October 2, 2020, Respondent filed a CAR form bearing her signature in Application No. 88902972, despite not being the first attorney of record for that application. Compl. ¶¶ 79–83. Respondent then filed a Response to an Office Action in the application on October 9, 2020. Compl. ¶¶ 84-85. On January 26, 2021, the Office issued a Non-Responsive Submission informing Respondent that the CAR form and subsequent Response were improperly signed. Compl. ¶¶ 86–88. Respondent was, at that point, required to submit a new CAR form and properly signed Response within 30 days. Sanctions Stmt. 7. Respondent filed a new CAR form by the February 25, 2021, deadline, but filed the corrected Response to Office Action three days late on February 28, 2021. Compl. ¶¶ 89–90. Thus, on March 2, 2021, the Office issued a Notice of Abandonment, rejecting the Response as untimely. Compl. ¶¶ 91–93. To revive the application, Respondent or her client would have been required to pay a petition fee, which Respondent subsequently stated she was unable to do. *See* Sanctions Stmt. Ex. A at 2 (email from Respondent to examiner, explaining that Respondent was unable to afford to revive three trademarks, including Application No. 88902972). Thus, Respondent's failure to comprehend and follow the Office's rules regarding CAR signatures resulted in the abandonment of Application No. 88902972, representing actual harm to her client. The actual and potential harm caused by Respondent's violations counsel in favor of heightened sanctions.

E. <u>The Relevant Aggravating and Mitigating Factors Support Suspension</u>

The ABA Standards contain a list of aggravating and mitigating factors for use in determining sanctions in attorney discipline matters. ABA Standards § 9.0. Hearing Officers routinely look to the ABA Standards in USPTO disciplinary proceedings. *E.g.*, *Swayze*, 2023 USPTO OED LEXIS 84, at *58–59. In this case, the OED Director cites four aggravating factors that are relevant to the sanction: (1) dishonest or selfish motive; (2) pattern of misconduct; (3) multiple offenses; and (4) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Sanctions Stmt. 8–11. The OED Director also acknowledges one mitigating factor, the absence of a prior disciplinary record, which the OED Director casts as insignificant in comparison to the overall selection of aggravating and mitigating factors. Sanctions Stmt. 11. I agree with the OED Director's analysis.

Selfish or Dishonest Motive, ABA Standards § 9.22(b). The OED Director argues that Respondent's motives were at least selfish, if not outright dishonest. Sanctions Stmt. 9. There is not enough evidence on default judgment to determine Respondent's motives with certainty. However, Respondent's false statements and misleading representations, and her repeated failure to engage in diligent (or any) review of materials before submitting them to the office,

strongly suggest self-interested efforts to manage a large flow of clients by cutting corners. Compl. ¶¶ 35, 39; *supra* Part IV.C.1–2; Sanctions Stmt. 9. As such, this constitutes an aggravating factor. *See Von Tersch*, 2023 USPTO OED LEXIS 100, at *35–36 (while insufficient evidence existed on default to determine Respondent's precise motives, heightened sanction was warranted because record established that Respondent acted knowingly and achieved a self-serving result by retaining unearned fees).

Pattern of Misconduct and Multiple Offenses, ABA Standards § 9.22(c), (d). As the OED Director observes, none of Respondent's violations were one-off errors or one-time lapses in judgment. Sanctions Stmt. 9–10; *see also In re Cherdak*, Proceeding No. D2018-22, 2023 USPTO OED LEXIS 153, at *69–70 (USPTO Dec. 21, 2023) (heightened sanction warranted because "Respondent's conduct here does not reflect a one-time lapse in judgment. Rather, each violation of the disciplinary rule is supported by multiple instances of misconduct reflecting a pattern."). Instead, each violation reflects multiple instances of misconduct reflecting a pattern of ignoring the Office's rules in favor of expediency. Respondent filed 40 pre-generated declarations in response to unrelated Office Actions, made 10 separate false statements to justify changes in representation, submitted at least 27 applications that resulted in refusals due to digitally altered images—several of which she admitted to never reviewing, Compl. ¶ 117—and permitted others (potentially non-U.S., non-attorneys) to apply her signature on at least three occasions. *Supra* Part IV.C.1–2. More, Respondent persisted in her patterns of misconduct even when specifically corrected, submitting 29 CAR forms designating herself as the new attorney for a matter after twice having been informed that this was not permissible. *Supra* Part IV.C.1. And Respondent's pattern of inattention has continued into this disciplinary matter, in which she has failed to respond to OED's RFIs and has repeatedly fail to comply with this Tribunal's Orders. *Supra* Parts I, IV.C.3–4. Respondent's patterns of misconduct and multiple offenses counsel in favor of sanctions. *See In re Stevenson,* Proceeding No. D2019-12, 2019 USPTO OED LEXIS 95, at *36–37 (USPTO Dec. 13, 2019) (finding pattern of misconduct and multiple offenses were aggravating factors, because, respectively, the record showed "repeated instances of similar misconduct" and Respondent's misconduct involved multiple clients and violated eight RPC provisions); *In re Iussa*, Proceeding No. D2020-25, 2020 USPTO OED LEXIS 41, at *38–39 (pattern of misconduct where practitioner repeatedly failed to exercise diligence and promptness, communicate with client, and respond to OED's requests for information and evidence); *Flindt*, 2017 USPTO OED LEXIS 96, at *139–40 (practitioner's failure to file appropriate answer or to respond to court orders represented continuation of pattern of misconduct involving lack of diligence). Furthermore, Respondent's refusal to correct practice errors even after being notified of them suggests she will not respond to mere warnings, and that a more significant sanction is necessary to ensure her future compliance with the Office's regulations.

Bad Faith Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Agency, ABA Standards § 9.22(e). The OED Director persuasively argues that Respondent has obstructed this disciplinary proceeding through her intentional failure to comply with the rules and orders of the Office and this Tribunal. Sanctions

Stmt. 10. The RPC require attorneys to cooperate with Office investigations and to respond to lawful demands for information. Instead, despite otherwise acknowledging the Office's correspondence, Respondent failed to answer part of the Agency's First RFI and wholly failed to respond to its Third RFI. *See In re Lau*, Proceeding No. D2016-37, slip op. at 8[12] (USPTO May 1, 2017) ("Respondent engaged in the bad faith obstruction of the disciplinary proceeding by intentionally failing to respond to the RFI and this Court's order [to show cause].").

Respondent's noncompliance with disciplinary rules and orders continued after this proceeding came before me. Respondent has ignored two orders from this Tribunal to file an appropriate Answer and another order to file a statement explaining her failure to do so. *Supra* Part I. While Respondent has not been completely disengaged from this matter, *e.g.* Default Mot. Exs. 2, 6, 15, her informal explanations for her lapses are not credible. Respondent's asserted lack of understanding as to the need to appropriately file her Answer, Default Mot. Ex. 6, contradicts the OSPP's straightforward instructions as to how that filing was to be achieved. OSPP 1. Likewise, Respondent's statement that she "thought the case went to settlement discussion" is directly contradicted by the OSPP's admonition that the Tribunal's deadlines apply regardless of whether the parties are engaged in settlement discussions. Default Mot. Ex. 15; OSPP 2. As to Respondent's purported difficulty accessing the OALJ E-Filing System, Default Mot. Ex. 15, Respondent has made no effort to make use of the resources offered by this Tribunal to address this purported difficulty. Instead, after asserting that she would make further efforts to engage in this matter, Default Mot. Ex. 15, Respondent has entirely ceased to communicate with the Tribunal. Generally, an attorney's refusal to participate meaningfully in disciplinary proceedings at the adjudicatory stage constitutes a "significant aggravating factor." *Keller*, 2023 USPTO OED LEXIS 94, at *25; *see also Lau*, Proceeding No. D2016-37, slip op. at 8–9 ("Respondent's failure to appear in this matter and his disregard of the Court's order demonstrates that Respondent may no longer be capable of professionally representing his clients."); *In re Kantor*, 850 A.2d 473, 477 (N.J. 2004) ("An attorney who declines to appear before this Court to explain his unprofessional conduct . . . openly displays his unfitness to continue to practice law."); *People v. Barbieri*, 61 P.3d. 488, 495 (Colo. O.P.D.J. 2000) ("In disciplinary matters involving an attorney's conduct, compliance with unchallenged orders issued by the disciplinary body is not elective; it is mandatory. Failure to do so, almost invariably, will inure substantially enhanced discipline."); *Iowa Supreme Ct. Bd. of Prof. Ethics & Conduct v. Ramey*, 639 N.W.2d 243, 246 (Iowa 2002) (attorney's "failure to respond to this attorney disciplinary proceeding suggests an overall attitude of disrespect and disregard for this profession."). While Respondent made some effort to participate in this matter, her apparently willful failure to review and/or comply with the Procedural Rules and the Tribunal's orders counsels in favor of a heightened sanction.

Mitigating factors. The OED Director asserts that the sole mitigating factor present in

[12] https://foiadocuments.uspto.gov/oed/0914_dis_2017-05-01.pdf

this matter is Respondent's lack of a prior disciplinary record. Sanctions Stmt. 11; ABA Standards § 9.32(a). While I agree that this constitutes a mitigating factor here, I would add Respondent's attempt—however unsuccessful—to rectify the consequences of her misconduct by inquiring into a workable fee to restore her clients's abandoned applications. Sanctions Stmt. Ex. A; *see* ABA Standards § 9.32(d) (listing as a mitigating factor "timely good faith effort to make restitution or to rectify consequences of misconduct"). I do agree with the OED Director that these limited mitigating factors are not sufficient to overcome the facts and aggravating factors described above. *See* Sanctions Stmt. 11.

VI. CONCLUSION AND ORDER

Because Respondent has failed to answer the Complaint or otherwise participate in this matter, Respondent is found to be in **DEFAULT** and to have admitted all the allegations in the Complaint. 37 C.F.R. § 11.36(e). Based on the facts thus admitted, I find clear and convincing evidence that Respondent violated the USPTO Rules of Professional Conduct as discussed above.

After extensive consideration of the totality of the record and the OED Director's arguments, I conclude that a twelve-month suspension from practice before the USPTO is an appropriate sanction for the violations discussed above. 37 C.F.R. § 11.20 (granting this Tribunal broad authority to issue sanctions). In an apparent effort to achieve maximum expediency, Respondent engaged in multiple intentional/knowing and repeated violations of her duties to her client, the public, and the legal system—at times persisting even after she was notified of her misconduct. Her lack of diligence has carried over into this proceeding, where she has failed, without reasonable excuse, to comply with multiple orders. Respondent's conduct calls strongly into question her ability to discharge her duties to her clients while complying with the USPTO's regulations, and a significant sanction is supported here.

THEREFORE, IT IS HEREBY ORDERED that Respondent **Zhuojingwen Tian** is hereby **SUSPENDED** for a period of twelve (12) months from practice before the Patent and Trademark Office in patent, trademark, and other non-patent matters, with two (2) years of probation upon reinstatement.

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: Pursuant to 37 C.F.R. § 11.55, either party may initiate an appeal of this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 11.54, by filing a notice of appeal. The notice of appeal must be filed with the General Counsel for the USPTO Director at the address provided in 37 C.F.R. § 1.1(a)(3)(iv) **within 14 days after the date of this Decision**. 37 C.F.R. § 11.55(a). Thereafter, the appeal shall proceed as further described in 37 C.F.R. § 11.55. Failure to file an appeal in accordance with § 11.55 will be deemed to constitute a party's acceptance of the Initial Decision and the party's waiver of rights to further

administrative and judicial review.

In the absence of an appeal to the Director, this Initial Decision will, without further proceedings, become the Final Decision of the Director 30 days from the date this Decision is filed. 37 C.F.R. § 11.54(d).

SO ORDERED.

Michael B. Wright
Chief Administrative Law Judge
U.S. Environmental Protection Agency[13]

Dated: September 29, 2025
Washington, D.C.

[13] The Administrative Law Judges of the U.S. Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office pursuant to an Interagency Agreement effective for a period beginning September 19, 2024. This agreement was entered into under a statutory loan program that allows administrative law judges at one federal agency to perform the duties of administrative law judges at another federal agency. *See* 5 U.S.C. § 3344; *see also* 37 C.F.R. § 11.39(b)(4) ("A hearing officer designated in accordance with paragraph (a) of this section shall be either an administrative law judge appointed under 5 U.S.C. 3105 or an attorney designated under 35 U.S.C. 32.").

In the USPTO Matter of *Zhuojingwen Tian*, Respondent.
Proceeding No. D2025-05

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Initial Decision and Default Order**, dated September 29, 2025, and issued by Chief Administrative Law Judge Michael B. Wright, was sent this day in the following manner to the addresses listed below.

Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic and Regular Mail to:
John D.V. Ferman
Mary Brannen
Associate Solicitors
United States Patent and Trademark Office
Mail Stop 8
Office of the Solicitor
P.O. Box 1450
Alexandria, Virginia 22313-1450
Email: john.ferman@uspto.gov
mary.brannen@uspto.gov
For the Director

Zhuojingwen Tian
PO Box 671112
Flushing, NY 11367
Email: tianzhuojingwen@haibu.com.cn
ztian@law.cardozo.yu.edu
Respondent, pro se

Copy by USPS International Registered Mail No. RE 976 381 768 US to:
Zhuojingwen Tian
No. 52 Xiaozhai East Road
Building 8, Apt. 362
Xi'an, China 710064
Respondent, pro se

Copy by USPS International Registered Mail No. RF 410 400 074 US to:

Zhuojingwen Tian
LV Di Cheng
Chang An
Xi'an Shaanxi, China 710121
Respondent, pro se

Dated: September 29, 2025
Washington, D.C