

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

In the Matter of

Allen A. Meyer,

Respondent

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Proceeding No. D2010-41

FINAL ORDER

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Allen A. Meyer (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and USPTO Director for approval.

The Proposed Settlement Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties’ stipulated facts, legal conclusions, mitigating factors, and sanctions to which the OED Director and Respondent have agreed in order to resolve voluntarily the disciplinary complaint against Respondent.

Jurisdiction

1. At all times relevant hereto, Respondent of Greenwich, Connecticut, has been an attorney registered to practice before the Office (Registration No. 19,590) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 et seq.

2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20 and 11.26.

Stipulated Facts

Background

3. Respondent of Greenwich, Connecticut, is an attorney registered to practice patent law before the Office (Registration Number 19,590) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 et seq.

4. At all relevant times, Trademarks To Go (“TTG”) was a domestic, for-profit corporation located in White Plains, New York, and operated by Carol Desmond.

5. On information and belief, Ms. Desmond is the principal of TTG.

6. Ms. Desmond is neither a lawyer nor a registered practitioner, but, at all relevant times, she was an accredited paralegal.

Respondent's Business Relationship with TTG

7. Prior to the formation of TTG, Respondent had known Ms. Desmond for over twenty-five years. They had worked together at a law firm where Ms. Desmond provided trademark paralegal services for many of the law firm's clients. During that time, Respondent developed a trust in Ms. Desmond's skills, reputation, and accomplishments at the law firm and believed that she was a person of integrity.

8. At all relevant times, TTG solicited applicants for trademark registration, requested, and received attorney fees for trademark law services to be rendered and obtained information from those applicants about what trademark law services were to be rendered.

9. At all relevant times, Respondent and TTG maintained a business relationship wherein, *inter alia*, Respondent (a) prepared trademark registration applications on behalf of trademark applicants referred to him by TTG, (b) returned the completed applications to TTG for filing in the USPTO, and (c) requested and received payment for having prepared trademark applications on behalf of the referred applicants.

Respondent's Communication with Trademark Registration Applicants

10. Under the USPTO Code of Professional Responsibility, the trademark registration applicants referred to Respondent by TTG were clients of Respondent.

11. Respondent did not always communicate adequately with the referred trademark applicants about their applications or the trademark legal services he intended to render on their behalf. Instead, at times he relied on the information obtained by TTG.

12. Although trademark applicants knew that Respondent would prepare trademark applications on their behalf and received from TTG an estimate of the cost for Respondent's trademark legal services, Respondent did not obtain the consent, after full disclosure, from the referred trademark applicants to accept compensation from TTG (rather than directly from the trademark applicants) for trademark legal services Respondent intended to provide the TTG-referred trademark applicants. Respondent represents that he was unaware of his obligation under the USPTO Code of Professional Responsibility to obtain such consent and, therefore, his omission to obtain consent after full disclosure was not intentional.

13. Although trademark applicants knew that Respondent would prepare trademark applications on their behalf, Respondent did not divulge to them his business relationship with TTG or the actual or potential conflict of interest such relationship presented in his representing the trademark applicants' interests. Nor did Respondent obtain their consent after full disclosure to represent them in light of Respondent's business relationship with TTG. Respondent represents that he was unaware of his obligations under the USPTO Code of Professional Responsibility to make such disclosures and to obtain such consent after full disclosure and, therefore, his omissions were not intentional.

Respondent's Handling of Trademark Matters Entrusted to Him

14. Generally speaking, after preparing a trademark registration application on behalf of a TTG-referred trademark applicant, Respondent sent the application and all related file materials to TTG and requested payment from TTG. Respondent expected TTG to file the trademark registration applications. It was not Respondent's business practice to keep a copy of the trademark registration applications he prepared or the other file materials he sent to TTG.

15. Respondent did not always inform trademark applicants that he relied on TTG to file their applications and to maintain copies of their application files. Respondent did not always take adequate measures to ensure and verify that the trademark registration applications and all other file materials he sent to TTG were maintained in a confidential manner by TTG. Respondent represents, however, that he had no reason to believe that TTG would not maintain the confidentiality of client matters.

16. After Respondent sent applications and all other file materials to TTG, Respondent did not adequately oversee the filing of the application by TTG. Specifically, Respondent did not always take adequate measures to ensure and verify: (a) the trademark applications were, in fact, filed by TTG, (b) he was listed as the attorney of record on the trademark applications filed by TTG, and/or (c) that his address and telephone number were listed as the correspondence address on the trademark applications filed by TTG.

17. After Respondent sent applications and all other file materials to TTG, Respondent did not always take adequate measures to: (a) ensure and verify that he received Office communications about the trademark applications he prepared and TTG filed and/or (b) monitor the activity of TTG with regard to the trademark applications he prepared and TTG filed, including steps that would have uncovered that Ms. Desmond had responded to Office communications pertaining to certain trademark registration applications. Respondent represents, however, that he had no reason to believe that TTG would not have forwarded Office communications to him.

18. After Respondent sent applications and all other file materials to TTG, Respondent did not always adequately communicate with his clients about the status of their trademark registration applications. Respondent represents, however, that he had no reason to believe that TTG would not so communicate with the trademark applicants.

19. Respondent acknowledges that he was remiss in the manner in which he communicated with clients, in the manner in which he handled and maintained their legal documents, and in not ensuring that he received Office communications about their trademark registration applications.

Respondent's Oversight of Third Party Who Respondent Allowed to File Trademark Registration Applications

20. Respondent did not always adequately oversee or monitor the activities of TTG after Respondent sent the trademark registration applications to TTG for filing. Consequently, Respondent did not timely learn that:

- a. Ms. Desmond identified herself as the attorney of record on at least 12 trademark applications prepared by Respondent and filed by TTG;
- b. Ms. Desmond provided the Office with TTG's address and telephone number as the correspondence address in at least 12 trademark applications prepared by Respondent and filed by TTG; and
- c. Ms. Desmond received communications from the Office on at least 12 trademark applications prepared by Respondent and, thereafter, without informing Respondent, prepared, signed, and filed with the Office responses to Office communications in at least 12 trademark applications prepared by Respondent and filed by TTG.

21. The manner in which Respondent communicated with clients and handled their legal documents (as discussed above in paragraphs 11 through 20) and oversaw or monitored the activities of TTG appear to have contributed to Ms. Desmond being able to represent herself as an attorney and/or to engage in the unauthorized practice of trademark law before the Office by (i) listing her name in the space denoted "Attorney" on at least 12 trademark applications filed in the Office, (ii) signing responses to Office communications in those 12 applications, and (iii) attempting to conduct at least one interview on behalf of a trademark applicant with a USPTO Trademark Examining Attorney in another trademark registration application.¹

22. When the OED Director informed Respondent that Ms. Desmond was representing herself as an attorney and/or engaging in the unauthorized practice of trademark law before the Office, Respondent did not take adequate steps to prevent Ms. Desmond from continuing to do so, such as regaining custody of client files from TTG and notifying the clients that Ms. Desmond was not an attorney. Respondent's omission, although not intentional, also appears to have contributed to Ms. Desmond's unauthorized practice of trademark law before the Office.²

23. Respondent represents that he had no reason to believe that Ms. Desmond would engage in the unauthorized practice of law. He represents that he has been taken by complete surprise by Ms. Desmond's conduct.³

Respondent's Understanding of Referring Party's Accounting Procedures

24. Although Respondent had a general idea of how much money TTG collected from trademark registration applicants for attorney's fees for trademark law services to be rendered, he did not verify the exact amount of money collected by TTG for attorney fees or endeavor to learn whether TTG placed such fees in a client trust account so as to keep those funds segregated from TTG's general operating account and, thus, secure from TTG's creditors. Respondent did

¹ The stipulated facts characterizing Ms. Desmond's conduct reflect the opinion of the OED Director that Ms. Desmond engaged in the unauthorized practice of law before the Office and does not constitute a finding by the USPTO.

² See footnote 1.

³ See footnote 1.

not endeavor to learn whether legal fees were being shared with a non-lawyer and non-practitioner. Respondent did not discuss TTG's escrow accounting with TTG-referred applicants.

Additional, Relevant Information

25. Respondent represents that there have been no issues concerning his communication with clients in patent matters.

26. Respondent represents that, he believes that he handled trademark legal services to clients referred to him from TTG in a timely and competent manner, and he is genuinely remorseful for his unintentional lapses from certain obligations under the USPTO Code of Professional Responsibility.

27. In light of the particular facts presented in this case, and the mitigating factors set forth below, the OED Director reasonably believes that it is not necessary for Respondent to be suspended from the practice of patent, trademark, or other non-patent law in order for the public to be protected.

Legal Conclusions

28. Based on the information contained above in paragraphs 3 through 27, Respondent acknowledges that his conduct violated:

- a. 37 C.F.R. § 10.47 by aiding a non-lawyer/non-practitioner in the unauthorized practice of law through a lack of oversight or failure to monitor the activities of the non-lawyer/non-practitioner;
- b. 37 C.F.R. § 10.49 by engaging in the aforementioned business relationship with a non-lawyer/non-practitioner where the activities of the business relationship consisted of the practice of trademark law before the Office;
- c. 37 C.F.R. § 10.62(a) by accepting referred clients from a referring entity without the consent of the referred client after full disclosure that the exercise of Respondent's independent professional judgment on behalf of the referred client would be or reasonably may be affected by the practitioner's own financial, business, property, or personal interests (e.g., Respondent's business relationship with the referring entity);
- d. 37 C.F.R. § 10.68(a)(1) by accepting compensation for legal services to or for a client from one other than the client without full disclosure to, and with consent of, the client, including not adequately describing the escrow and payment arrangement for trademark legal services performed for the referred clients; and
- e. 37 C.F.R. § 10.77(c) by neglecting trademark matters entrusted to him by not always adequately communicating with referred clients about their trademark

registration applications and by not adequately supervising or monitoring the entity responsible for filing those applications.

Mitigating Factors

29. Respondent has no prior disciplinary history before the Office during the over fifty years he has been registered as a patent practitioner.

30. He now fully understands and appreciates how his behavior deviated from the standards and disciplinary rules of the USPTO Code of Professional Responsibility.

31. He expressed sincere contrition for his misconduct and cooperated with the agency during the investigation and resolution of this matter.

Agree Upon Sanction

32. Respondent agrees, and it is ORDERED that:

- a. Respondent be, and hereby is, publicly reprimanded;
- b. Respondent be, and hereby is, placed on a twenty-four month probation commencing on the date the Final Order is signed and automatically ending twenty-four months thereafter without further action by Respondent and/or the USPTO being required;
- c. (1) if, at any time, the OED Director is of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for up to twenty-four months for the violations set forth above in paragraph 28, above;

(B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a); and

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

and

(2) in the event that, after the fifteen-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent failed to comply with any provision of the Final Order or

any Disciplinary Rule of the USPTO Code of Professional Responsibility during the probationary period, the OED Director shall:

(A) deliver to the USPTO Director: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) argument and evidence causing the OED Director to be of the opinion that Respondent failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the probationary period, and

(B) request that the USPTO Director enter an order immediately suspending Respondent for up to twenty-four months for the violations set forth above in paragraph 28, above;

d. If Respondent is suspended pursuant to the provisions of the preceding subparagraph:

(1) Respondent shall comply with 37 C.F.R. § 11.58;

(2) the OED Director shall disseminate information in accordance with 37 C.F.R. § 11.59;

(3) the USPTO shall promptly dissociate Respondent's name from all USPTO Customer Numbers and Public Key Infrastructure (PKI) certificates;

(4) Respondent may not apply for or obtain a USPTO Customer Number unless and until he is reinstated to practice before the USPTO;

e. In the event that the USPTO Director enters an order pursuant to the Final Order immediately suspending Respondent for up to twenty-four months, and Respondent seeks a review of the USPTO Director's action, any such review shall not operate to postpone or otherwise hold in abeyance the USPTO Director's order;

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

g. The OED Director shall publish a Notice of Public Reprimand and Probation in the *Official Gazette* materially consistent with the following notice:

Notice of Public Reprimand and Probation

Allen A. Meyer of Greenwich, Connecticut, an attorney registered to practice before the Office (Registration No. 19,590). The United States Patent and Trademark Office ("USPTO" or "Office") has publicly reprimanded Mr. Meyer and placed him on probation for twenty-four months commencing on September 7, 2011, and automatically ending

twenty-four months thereafter without further action by Mr. Meyer and/or the USPTO being required.

The reprimand and probation is predicated upon violations of 37 C.F.R. §§ 10.47, 10.49, 10.62(a), 10.68(a)(1), and 10.77(c). Mr. Meyer may practice patent, trademark, and other non-patent law before the Office while on probation.

At all relevant times, Trademarks to Go ("TTG") was a company that, *inter alia*, solicited applicants for trademark applications, requested and received attorney fees for trademark law services to be rendered, and obtained information from those applicants about the trademark services to be rendered. TTG and Mr. Meyer maintained a business relationship wherein, *inter alia*, Mr. Meyer (a) prepared trademark registration applications on behalf of trademark applicants referred to him by TTG, (b) returned the completed applications to TTG for filing in the USPTO, and (c) requested and received payment from TTG for having prepared trademark applications on behalf of the referred applicants. Mr. Meyer did not always speak with the TTG-referred clients about their trademark applications or the trademark legal services he intended to render on their behalf, did not divulge his business relationship with TTG to TTG-referred clients nor the actual or potential conflict of interest that it presented in representing their interests, and did not obtain TTG-referred clients' consent after full disclosure (a) to represent them in light of his business relationship with TTG or (b) to be paid by TTG for services he intended to render on their behalf.

After preparing trademark applications, Mr. Meyer did not always adequately supervise the filing of the applications by TTG and monitor its activities in connection with the applications, including not always undertaking adequate measures to ensure and verify that (1) the trademark applications were, in fact, filed by TTG, (2) he was listed as the attorney of record on the trademark applications filed by TTG, (3) his address and telephone number were listed as the correspondence address on the trademark applications, and (4) TTG was not taking action in trademark applications prepared by Mr. Meyer and filed in the Office by TTG. Consequently, a non-lawyer/non-practitioner allegedly engaged in the unauthorized practice of law before the Office (*i.e.*, a TTG employee listed her name in the space denoted "Attorney" on at least 12 trademark applications filed in the Office, signed responses to Office actions and/or other documents filed in the Office in those 12 trademark applications, and attempted to conduct at least one interview on

behalf of a trademark applicant with a USPTO Trademark Examining Attorney in another trademark application).

Mr. Meyer explained that he and the TTG employee had worked together at a law firm where the employee had provided trademark paralegal services for many of the law firm's clients. During that time, Mr. Meyer developed a trust in the TTG-employee's skills, reputation, and accomplishments at the law firm and believed that she was a person of integrity. Mr. Meyer represented that he handled trademark legal services to all clients referred to him from TTG in a timely and competent manner, notwithstanding the above lapses from certain obligations under the USPTO Code of Professional Responsibility.

Mitigating factors reflected in the agreed-upon discipline include the fact that Mr. Meyer has no prior disciplinary history before the Office during the over fifty years he has been registered as a patent practitioner. He now fully understands and appreciates how his behavior deviated from the standards and disciplinary rules of the USPTO Code of Professional Responsibility. He expressed sincere contrition for his misconduct and cooperated with the agency during the investigation and resolution of this matter.

This action is taken pursuant to a settlement agreement between Mr. Meyer and the USPTO pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.20, 11.26, and 11.59. Disciplinary decisions regarding practitioners are posted electronically in the Office of Enrollment and Discipline's Reading Room located at:
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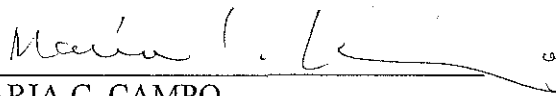
- h. Pursuant to 37 C.F.R. § 11.59, the OED Director will give notice of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;
- i. Pursuant to 37 C.F.R. § 11.20(a)(4), Respondent will, (i) within thirty days of the date of the Final Order, provide a copy of the Final Order to clients he is representing before the Office as of the date of the Final Order, and (ii) within forty-five days of the date of the Final Order, provide an affidavit to the OED Director stating that he so notified those clients;
- j. Nothing in the Proposed Settlement Agreement or the Final Order shall prevent the Office from seeking discipline against Respondent in accordance with the provisions

of 37 C.F.R. §§ 11.34 through 11.57 for the misconduct upon which an Order to Show Cause is issued by the OED Director under subparagraph c., above;

- k. Nothing in the Proposed Settlement Agreement or the Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order, (1) when addressing any further complaint or evidence of the same or similar misconduct brought to the attention of the Office, and/or (2) in any future disciplinary proceeding (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (ii) to rebut any statement or representation by or on Respondent's behalf; and
1. The OED Director and Respondent bear their own costs incurred to date and in carrying out the terms of this agreement.

SEP _ 7 2011

Date


MARIA C. CAMPO
Acting Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

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

cc:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Allen A. Meyer, Esq.
P.O. Box 5251
Greenwich, CT 06831

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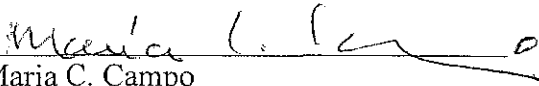
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[signature page follows]

SEP 7 2011

Date


Maria C. Campo
Acting Deputy General Counsel for General Law
Office of General Counsel
United States Patent and Trademark Office

on behalf of

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