

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

In the Matter of)

Thomas E. Wettermann,)

Respondent)
_____)

Proceeding No. D2021-02

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 Mr. Thomas E. Wettermann (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) for approval.

This 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’ joint stipulated facts, joint legal conclusions, and agreed upon sanctions found in the Agreement.

Jurisdiction

1. At all times relevant to this matter, Respondent of Chicago, Illinois, has been a registered attorney (Registration No. 41,523) subject to the USPTO Rules of Professional Conduct, 37 C.F.R. §§ 11.101 through 11.901.
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. §§ 11.19, 11.20, and 11.26.

Joint Stipulated Facts

3. The Parties stipulate that if a disciplinary proceeding was brought against the Respondent, evidence would be presented that would clearly and convincingly establish the following facts:
 - a. At all times relevant to this matter, Respondent has been an attorney licensed in the State of Illinois, engaged in practice before the Office as set forth below, and subject to the provisions of the USPTO Rules of Professional Conduct.
 - b. At all times relevant to this matter, Respondent was a partner in the Chicago office of the McDonnell Boehnen Hulbert & Berghoff LLP intellectual property law firm (“Firm”).

- c. At all times relevant to this matter, as a partner at the Firm, Respondent was responsible for patent prosecution and due diligence matters. As part of the work he did for the Firm and its clients, Respondent occasionally travelled from Chicago to other cities and towns, and he knew that the Firm would reimburse him for the airfare, lodging, dining, and other expenses that he legitimately incurred on those business-related trips.
- d. The Firm's expense-reimbursement process required that attorneys submitting requests for reimbursement were to support their requests by attaching receipts (including, for example, for airfare, hotel bills, and restaurants), then signing the form to verify both the accuracy of its contents and that the expenses for which they were seeking reimbursement had been incurred for business purposes. In some cases, Respondent bought airline tickets or made other transportation reservations, then canceled the original purchase and received a full or partial refund. Respondent kept the receipt for the original purchase or reservation, and submitted it to the Firm as part of a request to be reimbursed for expenses he had not actually paid, and for trips he had not actually taken.
- e. In 2015, Respondent submitted three requests that the Firm reimburse him for purported expenses he falsely claimed to have incurred in making ten trips to Brookfield, Wisconsin, between January and November of that year. Respondent requested and received \$1,171.67 in payment of purported expenses that he knew he had not actually paid.
- f. In 2016, Respondent submitted at least 68 false requests that the Firm reimburse him for purported expenses he claimed to have incurred in travelling to various locations between November 18, 2015 and December 15, 2016. In reality, Respondent had not taken those trips or paid the claimed expenses. Respondent requested and received \$37,600.19 in payment of purported expenses that year that he knew he had not actually paid.
- g. In 2017, Respondent submitted at least 116 false requests that the Firm reimburse him for purported expenses he claimed to have incurred in travelling to various locations between December 19, 2016 and December 22, 2017. In reality, Respondent had not taken those trips or paid the claimed expenses. Respondent requested and received \$66,448.88 in payment of purported expenses that year that he knew he had not actually paid.
- h. In 2018, Respondent submitted at least 104 false requests that the Firm reimburse him for purported expenses that he claimed to have incurred in travelling to various locations between November 26, 2017 and December 8, 2018. In reality, Respondent had not taken those trips or paid the claimed expenses. Respondent requested and received \$82,836.95 in payment of purported expenses that year that he knew he had not actually paid.
- i. In 2019, Respondent submitted at least 91 false requests that the Firm reimburse

him for purported expenses that he claimed to have incurred in travelling to various locations between December 7, 2018 and October 11, 2019. In reality, Respondent had not taken those trips or paid any of the claimed expenses. Respondent requested and received \$91,807.46 in payment of purported expenses that year that he knew he had not actually paid.

- j. The vast majority of the funds Respondent received came at the Firm's expense, as he attempted to remove from his clients' bills (i.e., "write off") the fraudulent charges that he originally identified as having related to client matters (as opposed to business development for the Firm), but he was not entirely successful in doing so. In at least four instances, fraudulent travel charges totaling \$4,624.96 were passed on to, and paid by, Firm clients. After it discovered Respondent's conduct, the Firm reimbursed those clients.
- k. In 2019, the Firm conducted a review of Respondent's claimed travel expenses. Following its review, it concluded that in addition to the false claims outlined above (for which it found that there was no evidence to show the trips had been taken, and in many cases evidence to show that the trips had not been taken), there were additional claimed expenses that could not be documented. The amount of those claimed expenses was \$81,771.32, which, when combined with the \$279,865.15 described above, brought the total of Respondent's questioned expenses to \$361,646.47. On November 27, 2019, Respondent paid the Firm \$100,000 as partial restitution. He later paid an additional \$20,000 to the Firm and forfeited his capital account and a portion of his monthly draw. On December 19, 2019, the Firm's other partners voted to terminate Respondent's partnership in the Firm.

Additional Considerations

- 4. Respondent fully and diligently cooperated with OED's investigation by thoroughly responding to OED's requests in a timely and candid manner and maintaining active communication with OED throughout the investigation and settlement process.
- 5. Respondent voluntarily sought assistance in understanding why he committed this misconduct and has been candid with OED about his efforts to ensure this misconduct does not occur again.

Joint Legal Conclusions

- 6. Respondent acknowledges that, based on the information contained in the joint stipulated facts, his conduct violated the following provisions of the USPTO Rules of Professional Conduct:
 - a. 37 C.F.R. § 11.804(c) (practitioner shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) by, *inter alia*, submitting requests

for reimbursement of purported travel expenses that he knew he had not actually paid; and

- b. 37 C.F.R. § 11.804(i) (practitioner shall not engage in other conduct that adversely reflects on the practitioner's fitness to practice before the Office in trademark matters) by engaging in the foregoing acts and omissions to the extent that such acts and omissions do not constitute a violation of the specific provisions of the USPTO Rules of Professional Conduct set forth in subparagraph a.

Agreed Upon Sanction

7. Respondent freely and voluntarily agrees, and it is hereby ORDERED that:

- a. Respondent shall be suspended from practice before the Office for two (2) years beginning on the date of the Final Order;
- b. Respondent shall remain suspended from practice before the USPTO until the OED Director grants Respondent's petition for reinstatement pursuant to 37 C.F.R. § 11.60;
- c. Respondent shall serve a probationary period of twelve (12) months commencing on the date the OED Director grants Respondent's petition for reinstatement pursuant to 37 C.F.R. § 11.60;
 - (1) In the event the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Agreement, the Final Order, or the USPTO Rules of Professional Conduct, the OED Director shall:
 - (A) issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent be immediately suspended for up to twelve (12) months for the violations set forth in the Joint Legal Conclusions, above;
 - (B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director; and
 - (C) grant Respondent fifteen (15) days to respond to the Order to Show Cause;
 - (2) In the event that after the 15 day period for response and after the consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the probationary period, failed to comply with any provision of the

Agreement, the Final Order, or the USPTO Rules of Professional Conduct, the OED Director shall:

(A) deliver to the USPTO Director or his designee: (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 Agreement, the Final Order, or the USPTO Rules of Professional Conduct during the probationary period; and

(B) request that the USPTO Director immediately suspend Respondent for up to twelve (12) months for the violations set forth in the Joint Legal Conclusions, above;

- d. In the event the USPTO Director suspends Respondent pursuant to subparagraph c, above, and Respondent seeks a review of the suspension, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;
- e. Nothing in this 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 concerning Respondent brought to the attention of the Office; and/or (2) in any future disciplinary proceeding against Respondent (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/or (3) in connection with any request for reconsideration submitted by Respondent pursuant to 37 C.F.R. § 11.60;
- f. The OED Director shall electronically publish the Final Order at OED's electronic FOIA Reading Room, which is publicly accessible at: <http://foiadocuments.uspto.gov>;
- g. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Reprimand and Probation

This notice concerns Thomas E. Wettermann of Chicago, Illinois. Mr. Wettermann is an attorney admitted to practice in Illinois and currently has no record of public discipline. The United States Patent and Trademark Office ("USPTO") has suspended Mr. Wettermann for two (2) years from practice before the USPTO. Mr. Wettermann will also serve a one-year probation.

Until December 2019, Mr. Wettermann was a partner in the Chicago office of the McDonnell Boehnen Hulbert & Berghoff LLP intellectual property law firm ("Firm"). Mr. Wettermann was responsible for patent prosecution and due diligence matters at the Firm, and he travelled from Chicago to other cities and towns, and he knew that the Firm would reimburse him for the airfare, lodging, dining, and other expenses that he legitimately incurred on those business-related trips. From 2015 to December 2019, Mr. Wettermann submitted 392 false requests that the Firm reimburse him for purported expenses he claimed to have incurred in travelling to various locations totaling \$361,646.47.

As a result of the above misconduct, Mr. Wettermann violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. § 11.804(c) (Practitioner shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation), and § 11.804(i) (Practitioner shall not engage in other conduct that adversely reflects on the practitioner's fitness to practice before the Office in trademark matters).

Mr. Wettermann fully and diligently cooperated in OED's investigation.

This action is the result of a settlement agreement between Mr. Wettermann and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.20, and 11.26. Disciplinary decisions involving practitioners are posted for public reading at the OED Reading Room, available at: <http://foiadocuments.uspto.gov>.

- h. Respondent waives all rights to seek reconsideration of the Final Order under 37 C.F.R. § 11.56, waives the right to have the Final Order reviewed under 37 C.F.R. § 11.57, and waives the right otherwise to appeal or challenge the Final Order in any manner; and
- i. The OED Director and Respondent shall each bear their own costs incurred to date in carrying out the terms of the Agreement and this Final Order.

16 Feb 2021

Date



David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

on delegated authority by

Andrew Hirshfeld

Performing The Functions And Duties Of The

Under Secretary Of Commerce For Intellectual Property

And Director Of The United States Patent And Trademark Office

Notice of Suspension and Probation

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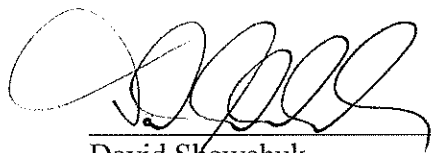
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Deputy General Counsel for General Law
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