



United States Patent and Trademark Office

Office of the Commissioner for Trademarks

To: Yiwu Xinyang Ecommerce Co., Ltd.

June 5, 2024

Via Email: btctown@gmail.com

In re Yiwu Xinyang Ecommerce Co., Ltd.

SHOW CAUSE ORDER

Dear *Yiwu Xinyang Ecommerce Co., Ltd.* and any other officers thereof:

The United States Patent and Trademark Office ("USPTO") has evidence that *Yiwu Xinyang Ecommerce Co., Ltd.*, and their officers, employees, and/or affiliates (collectively "Respondents") filed, or otherwise authorized the filing of, trademark submissions with false information in violation of the Rules of Practice in Trademark Cases before the USPTO. See U.S. Trademark Application Serial No. 88612038.¹

The Director has authority to sanction relevant parties that are in violation of USPTO rules and has delegated to the Commissioner for Trademarks the authority to impose such sanctions and to otherwise exercise the Director's authority in trademark matters. 35 U.S.C. § 3(a)-(b); 37 C.F.R. § 11.18(c); *see also In re Yusha Zhang*, 2021 TTAB LEXIS 465, *10, *23-24 (Dir. USPTO Dec. 10, 2021). The authority to issue administrative sanctions orders has been further delegated to the Deputy Commissioner for Trademark Examination Policy.

Based on the available evidence demonstrating Respondents' rule violations, this order requires Respondents to show cause as to why the USPTO should not immediately sanction Respondents pursuant to 37 C.F.R. § 11.18(c).

A response to this letter is required by **5:00 PM (ET) June 19, 2024**. As noted below, please email your formal response to TMPolicy@USPTO.gov.

I. RELEVANT RULES OF PRACTICE IN TRADEMARK CASES BEFORE THE USPTO

All submissions to the USPTO in trademark matters are governed by U.S. trademark laws and the regulations governing practice in trademark matters before the USPTO, including

¹ The public may view and print images of the contents of trademark application and registration records through the Trademark Status and Document Retrieval ("TSDR") database on the USPTO website at <http://tsdr.uspto.gov/>.

rules concerning signatures, certification, and representation of others (collectively, “USPTO Rules”). See *generally* 15 U.S.C. 1051 *et seq.*; 37 C.F.R. Parts 2, 11.

Under USPTO Rules, an applicant, registrant, or party to a trademark proceeding whose domicile is not located within the United States or its territories must be represented before the USPTO by an attorney who is an active member in good standing of the bar of the highest court of a U.S. state or territory. See 37 C.F.R. §§ 2.11(a), 11.1, 11.14(a). Therefore, all foreign-domiciled applicants, registrants, or parties to proceedings before the Office are required to be represented by a qualified U.S.-licensed attorney (“U.S. Counsel Rule”). See 37 C.F.R. §§ 2.11(a), 2.18(a), 2.193(e), 11.14(a).

Providing false, fictitious, or fraudulent information in connection with the requirement for U.S. counsel is considered submitting a paper for an improper purpose in violation of 37 C.F.R. § 11.18(b) and is subject to the sanctions and actions set forth in 37 C.F.R. § 11.18(c). See 37 C.F.R. § 2.11(e). Those may include striking the offending paper, terminating the proceedings, or other actions deemed appropriate under the circumstances. 37 C.F.R. § 11.18(c).

Furthermore, a party who presents a trademark submission to the USPTO is certifying that all statements made therein of the party’s own knowledge are true and all statements made therein on information and belief are believed to be true. See 37 C.F.R. §§ 2.193(f); 11.18(b)(1). The party is also certifying that, “[t]o the best of the party’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances, . . . the paper is not being presented for any improper purpose” and “[t]he allegations and other factual contentions have evidentiary support.” 37 C.F.R. § 11.18(b)(2). Thus, knowingly or negligently submitting a document that includes false signatory information, false attorney information, or false claims of use (or intent to use) of the mark in commerce for goods and services that the applicant is not actually offering (or lacks a bona fide intent to offer), violates 37 C.F.R. § 11.18(b)(1), and doing so without evidentiary support or with intent to circumvent USPTO Rules violates 37 C.F.R. § 11.18(b)(2). Violations of 37 C.F.R. § 11.18(b) may jeopardize the validity of the application or registration and may result in the imposition of sanctions under § 11.18(c). 37 C.F.R. § 2.193(f), including termination of proceedings. 37 C.F.R. § 11.18(c)(5).

II. IMPROPER DESIGNATION OF ATTORNEY OF RECORD

U.S. Trademark Application Serial No. 88612038 designates an owner’s domicile address that is located outside of the United States or its territories. Thus, the applicant, also Respondent, is foreign-domiciled and must be represented by a U.S.-licensed attorney under the U.S. Counsel Rule. 37 C.F.R. § 2.11(a).

This new application submission filed on September 11, 2019 for U.S. Trademark Application Serial No. 88612038 improperly sets forth the name “Trig R. Smith” as the attorney of record, and the correspondent. This submission also includes bar membership information generally consistent with Mr. Smith’s admission to the California Bar while omitting his license number. This submission, however, also provides an attorney email address unrelated to Mr. Smith, appearing to be that of a third party.

The attached supporting declaration from Mr. Smith indicates that he did not represent Respondents despite being listed as Respondents' attorney of record. See Exhibit A. Even though Mr. Smith is a U.S.-licensed attorney who may practice before the USPTO in trademark matters, he has informed the USPTO that (i) he is not the attorney of record in the application; (ii) he did not consent to be listed as such; (iii) he has no ongoing relationship with the applicant named in the application; and/or (iv) he has never used the email address listed in the application. *Id.*

Therefore, the record indicates that Respondents have provided false or fictitious attorney information in violation of 37 C.F.R. § 11.18.² In Trademark Electronic Application System (TEAS) form filings, Respondents, or someone acting on Respondents' behalf, impermissibly attempted to designate an attorney who has attested to the fact that he did not consent to the representation of Respondents. Accordingly, this submission falsely identified Mr. Smith as the attorney of record and constitutes a paper submitted for an improper purpose in violation of USPTO rules. See Zhang, 2021 TTAB LEXIS 465, at *30-31; 37 C.F.R. § 11.18(b)(2).

Such actions indicate an intentional effort to mislead the USPTO regarding Respondents' representation in these trademark proceedings, which supports a finding that such false material representations of fact were made knowingly, willfully, or at the very least with reckless disregard. See *In re Bose Corp.*, 580 F.3d 1240, 1243, 91 USPQ2d 1938, 1939 (Fed. Cir. 2009); see also *Chutter v. Great Concepts, LLC*, 2021 USPQ2d 1001 at *25 (TTAB 2021)(holding that "willful" includes reckless behavior and "as a matter of law that reckless disregard satisfies the requisite intent for fraud on the USPTO in trademark matters"), *rev'd on other grounds*, 2023 USPQ2d 1215 at *9 (Fed. Cir. 2023).

III. SHOW CAUSE REQUIREMENT

In view of the foregoing, Respondents are hereby ordered to show cause with objective, factual evidence, as to why the USPTO should not order sanctions.

In determining appropriate sanctions, the USPTO considers many factors, including any response received to the issued Show Cause Order, whether the conduct was willful or negligent, whether it was part of a pattern of activity or an isolated event, whether it infects the entire record or is limited to a single submission, whether the conduct was intended to injure a party, what effect the conduct has on the agency, and what is needed to deter similar conduct by others. See 73 Fed. Reg. 47650, 47653 (Aug. 14, 2008); 87 Fed. Reg. 431 (Jan. 5, 2022).

² To the extent that Respondents may have authorized a third party to file submissions on its behalf, false and misleading statements in a trademark submission are attributable to the applicant or registrant when signed or submitted on that party's behalf. *Cf. Fuji Med. Instruments Mfg. Co., Ltd. v. Am. Crocodile Int'l Grp., Inc.*, 2021 USPQ2d 831 (TTAB July 28, 2021) citing *Smith Int'l v. Olin Corp.*, 209 USPQ 1033, 1048 (TTAB 1981) ("Even if the affidavit was prepared by its attorney, [Applicant] must be held accountable for any false or misleading statement made therein.").

Sanctions may include terminating application proceedings, requiring Respondents to be represented by a U.S.-licensed attorney to continue prosecution of current or future applications, deactivating USPTO.gov accounts used by Respondents, or taking other actions consistent with protecting the integrity of the U.S. Trademark Register.

This Order is issued without prejudice to the USPTO taking all other appropriate actions to protect its systems and users from the improper activity described herein, including precluding Respondents from representing themselves in matters before the USPTO, issuing additional orders relating to other applications, or referring conduct to relevant state and federal law enforcement agencies.

The applicant's response must include detailed answers to the following request for information:

1. Explain the circumstances surrounding the preparation and filing of the offending papers identified above. Please also identify who prepared these documents and who filed them.
2. Explain the applicant's relationship with Mr. Smith. If applicant believes that Mr. Smith agreed to represent the applicant before the USPTO in this matter, state the basis for such belief and provide any supporting documents.
3. Explain why the attorney of record in the offending papers is identified as Mr. Smith.

How to respond. A response to this letter is due in writing by **5:00 PM (ET) June 19, 2024**. Please email your formal response to TMPolicy@USPTO.gov.

If you do not provide a sufficient response with accompanying evidence before the end of the response period, appropriate sanctions including but not limited to termination of affected application may be imposed.

So ordered,

Amy P. Cotton
Deputy Commissioner for Trademark Examination Policy
United States Patent & Trademark Office

Attachment(s): Exhibit A

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Exhibit A

Trig R. Smith
Robbins Geller Rudman & Dowd
655 West Broadway
Suite 1900
San Diego, CA 92101

United States Patent & Trademark Office
Office of the Deputy Commissioner for Trademark Examination Policy
600 Dulany Street
Alexandria, VA 22313-1450

Dear Deputy Commissioner:

I have been made aware that my name, electronic signature, bar membership information, and/or other correspondence information improperly appears in the record for a number of U.S. trademark registrations/applications. I respectfully request the assistance of the United States Patent and Trademark Office ("USPTO") in removing this information from the affected records in the trademark database. In support of this request, I am providing the following declaration.

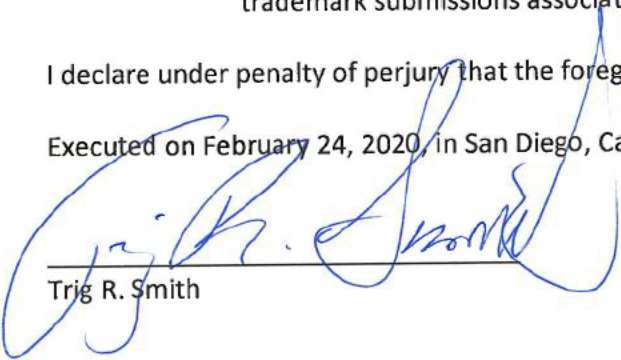
Pursuant to 28 U.S.C. §1746, the undersigned declares as follows:

1. My name is Trig Randall Smith, and I am a licensed attorney in good standing with the State Bars of California and Colorado.
2. I have been made aware that my name presently appears as the attorney of record in a number of trademark applications and/or registrations before the USPTO.
3. I have further been made aware that my electronic signature appears in a number of trademark applications and/or registrations.
4. I do not practice trademark law, and do not presently represent any party in any matter before the USPTO. Where my name appears as the attorney, correspondent, domestic representative, or signatory in a trademark submission, the USPTO should presume that such use was unauthorized. If I should decide to represent parties before the USPTO in trademark matters, I will inform the USPTO at that time.
5. I have not agreed to serve as an attorney, correspondent, domestic representative, or signatory in any trademark applications and/or registrations.
6. I did not prepare, sign, or submit any filings in connection with the affected applications and/or registrations and did not direct or instruct any other person to do so.
7. The email address btctown@gmail.com is not and has never been my address or the address of any person associated with my legal practice.
8. My office is not and has never been located at either 901 Tenth Avenue, San Diego, CA 92101 or 201 E Center St, Suite 112 #260, Anaheim, CA 92805.
9. To the best of my knowledge, there is no reason for my name or electronic signature to appear on any filing in connection with any of the affected applications and/or registrations:
 - a. I do not have any association or connection to any of the owners listed in these trademark applications or registrations;
 - b. I do not have the legal authority to bind the owners of these applications and/or registrations;

- c. I do not have any firsthand knowledge of the facts contained in any of the trademark applications and/or registrations, responses, amendments to allege use, or any other trademark submissions associated with these applications and/or registrations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2020, in San Diego, California.



Trig R. Smith

CERTIFICATE OF SERVICE

I certify that on June 5, 2024 the foregoing Show Cause Order was emailed to Respondents at the following email address:

Yiwu Xinyang Ecommerce Co., Ltd.
72-2-303 Gongdatang Cun
Yiwu 322000 China
btctown@gmail.com

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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