United States Patent and Trademark Office
Office of the Commissioner for Trademarks

To: Shang Xiang March 8, 2024

Via Email: lpspeedygo@gmail.com

In re Shang Xiang

SHOW CAUSE ORDER

Dear Shang Xiang:

The United States Patent and Trademark Office ("USPTO") has evidence that Shang Xiang 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. 88634779.[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) March 22, 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 attorney, licensed to practice law in the United States ("U.S. Counsel Rule"). *See* 37 C.F.R. §§ 2.11(a), 2.18(a), 2.193(e).

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 sanctions and actions may include striking the offending paper, terminating the proceedings, or other actions deemed appropriate under the circumstances. 37 C.F.R. § 11.18(c).

Additionally, the USPTO Rules require that all signed documents submitted to the USPTO in a trademark matter must be *personally* signed or have electronic signatures *personally* entered by the named signatory. *See* 37 C.F.R. § 2.193; TMEP § 611.01(b). A person may not delegate the authority to sign trademark-related submissions, and no one may sign the name of another, electronically or otherwise. *See, e.g.*, *In re Dermahose Inc.*, 82 USPQ2d 1793, 1796 (TTAB 2007); *In re Cowan*, 18 USPQ2d at 1407. Signatures in declarations or verifications in support of trademark submissions—such as applications, declarations of use, or registration maintenance documents—are relied upon by the USPTO when examining trademark applications, registering marks, and renewing registrations. Moreover, because the veracity of trademark submissions are material to registrability and/or maintenance of registrations, providing false signature information amounts to willful and material misrepresentations of fact designed to mislead the USPTO. *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). A document signed by a person determined to be an unauthorized signatory is improperly executed, and the averments cannot be relied upon to support registration. *See, e.g.*, *Ex parte Hipkins,* 20 USPQ2d 1694, 1696-97 (BPAI 1991); *In re Cowan*, 18 USPQ2d 1407, 1409 (Comm'r. Pats. 1990).

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. 88634779 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. 37 C.F.R. § 2.11(a).

Submissions in U.S. Trademark Application Serial No. 88634779 improperly set forth the name "Alan David Irwin" as the attorney of record, and the correspondent, at some point during prosecution. The submission in this record includes bar membership information consistent with Mr. Irwin's admission to the California Bar but sets forth an attorney email address of a third party.

U.S. Trademark Application Serial No. 88634779 includes submission(s) which list Mr. Irwin and include his purported signature, but the attached supporting declaration from Mr. Irwin indicates that he did not sign any of the submissions. *See* Exhibit A. Moreover, even though Mr. Irwin 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 applications; (ii) he did not consent to be listed as such; (iii) he has no ongoing relationship with the applicant named in the applications; and/or (iv) he has never used the email address listed in the applications. *Id*.

Therefore, the record indicates that Respondents have provided false or fictitious signature information in violation of 37 C.F.R. § 11.18.[2] In TEAS form filings, Respondents, or someone acting on Respondents' behalf, impermissibly entered the electronic signature of an attorney who neither consented to the representation of Respondents nor personally entered the electronic signature on the filing. These impermissible signatures appeared in the signature block of a form which falsely identified Mr. Irwin as the attorney of record.

[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.").

All of the noted conduct warrants a finding that Respondents have submitted multiple documents for an improper purpose and 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' authority 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. *Id*. (*citing Chutter*, 2021 USPQ2d at *25); *see also Bose*, 580 F.3d at 1243, 91 USPQ2d at 1939.

III. SHOW CAUSE REQUIREMENT

In view of the foregoing, the applicant is hereby ordered to show cause with objective, factual evidence, as to why the USPTO should not strike the offending papers, give no weight to the offending papers, terminate the proceedings, or otherwise sanction Respondents.

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).

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. Irwin. If applicant believes that Mr. Irwin 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 signatory in the offending papers is identified as Mr. Irwin and identify who entered the signature.

How to respond. A response to this letter is due in writing by **5:00 PM (ET) March 22, 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 applications may be imposed.

So ordered,

Users,
Cotton, Amy

Digitally signed by Users, Cotton, Amy
Date: 2024.03.08 09:17:16 -05'00'

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

Attachment(s): Exhibit A

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CERTIFICATE OF SERVICE

I certify that on March 8, 2024, the foregoing Show Cause Order was emailed to Respondents' counsel at the following email address:

Yan Gao
Ipspeedy Consulting Company, LLC
10223 Broadway St, Ste P424
Pearland TX 77584
Ipspeedygo@gmail.com

Users, Raja, Amer

Digitally signed by Users, Raja, Amer
Date: 2024.03.08 10:02:21 -05'00'

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

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Exhibit A

Alan David Irwin
Law Offices of Alan D. Irwin
[redacted]

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 USPTO in removing this information from the affected records in the trademark database. In support of this request, I am providing the following declaration.

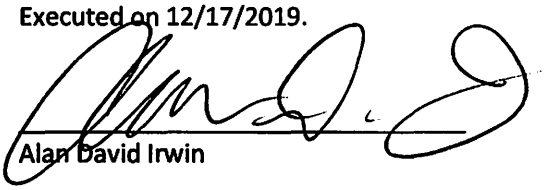
Pursuant to 28 U.S.C. §1746, the undersigned declares as follows:

1. My name is Alan David Irwin, and I am a licensed attorney in good standing with the State Bar of California.
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 United States Patent and Trademark Office ("USPTO"), and that my name continues to appear in additional applications.
3. I have further been made aware that my electronic signature appears in a number of trademark applications and/or registrations and continues to appear in additional applications.
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 trademark-zx@outlook.com is not and has never been my address or the address of any attorney at my law firm.
8. My office is not and has never been located at 3903 Velva Ave., El Monte, CA 91731.
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 12/17/2019.



Alan David Irwin