UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

In re:	)
	)
Xiamen Huizhichuang E-Commerce Co., Ltd.,	)
	)
Respondent	)
	)

FINAL ORDER FOR SANCTIONS

In a Show Cause Order dated July 7, 2020, the United States Patent and Trademark Office ("USPTO" or "Office") informed Xiamen Huizhichuang E-Commerce Co., Ltd. ("Respondent") of evidence indicating that Respondent violated the USPTO rules of practice in trademark matters ("USPTO Rules"). Respondent was ordered to show cause why certain sanctions should not be imposed based on Respondent's conduct.[1] A response was required within 60 days. The USPTO did not receive a timely or substantive response from Respondent.

The Director has authority to sanction those filing trademark submissions in violation of the USPTO Rules and has delegated to the Commissioner for Trademarks ("Commissioner") the authority to impose such sanctions and 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 Zhang*, 2021 TTAB LEXIS 465, at *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 ("Deputy Commissioner"). Accordingly, based on Respondent's rule violations, discussed below, the Deputy Commissioner orders that the sanctions herein are warranted and are hereby imposed.[2]

I. Overview of Respondent's acts in violation of USPTO Rules

The previously issued Show Cause Order details the conduct that forms the basis for imposing sanctions and is incorporated by reference in this final order. The following summary of the facts is provided for background.

[1] Links to orders issued under the authority of the Commissioner for Trademarks are available at https://www.uspto.gov/trademarks/trademark-updates-and-announcements/orders-issued-commissioner-trademarks

[2] As noted below, U.S. Trademark Application Serial Nos. 88315874, 88319425, and 88323773 are affected by this order.

The record demonstrates that Respondent is responsible for repeatedly providing false or fictitious signature information in violation of 37 C.F.R. § 11.18.[3] In TEAS form filings, Respondent, or someone acting on Respondent's behalf, impermissibly entered the electronic signature of an attorney who neither consented to the representation of Respondent nor personally entered the electronic signature on the filing. These impermissible signatures appeared in the signature block of a form which falsely identified the attorney as attorney of record.

Entering the electronic signature of another violates 37 C.F.R. § 2.193, which requires that the signature must be handwritten in permanent ink by the person named as the signatory or the signatory must personally enter the combination of letters, numbers, spaces and/or punctuation that the signatory has adopted as a signature directly in the signature block on the electronic form. 37 C.F.R. §§ 2.193(a) and (c). These improperly signed declarations notably stated that the entry of false information within the form "…may jeopardize the validity of the application or submission or any registration resulting therefrom."[4] Further, as a foreign-domiciled applicant, Respondent must be represented by a U.S.-licensed attorney in trademark matters before the USPTO ("U.S. Counsel Rule"). 37 C.F.R. § 2.11. Therefore, Respondent cannot sign responses to Office actions, amendments to applications, and other submissions. *See* 37 C.F.R. §§ 2.11, 2.193(e).

Respondent or someone acting on Respondent's behalf further knowingly and repeatedly provided false attorney information with various submissions to circumvent 37 C.F.R. § 2.11, which requires foreign-domiciled trademark owners to be represented by a qualified U.S.-licensed attorney before the USPTO. Providing false, fictitious, or fraudulent attorney information in a trademark submission to the USPTO constitutes submission of a document for an improper purpose in violation of 37 C.F.R. § 11.18(b) and is subject to the sanctions and actions provided in 37.C.F.R. §§ 11.18(c). *See* 37 C.F.R. § 2.11(e). As explained in the Show Cause Order and accompanying declaration, the named attorney confirmed 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 (iv) he has never used the email address listed in the application. Additionally, the named attorney stated in this declaration that he did not sign the submission.

Based upon this pattern of activity, Respondent's submission of trademark documents, containing false representations of fact and improperly signed submissions, has been deemed willful by the USPTO. *See, e.g.*, *In re Bose Corp.*, 580 F.3d 1240, 1243, 91 USPQ2d 1938, 1939 (Fed. Cir. 2009); *Chutter, Inc. v. Great Mgmt. Grp., LLC*, 2021

[3] To the extent that Respondent 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.").

[4] *See* 37 C.F.R. § 2.20; *see also* 37 C.F.R. § 11.18(b)(1).

USPQ2d 1001 at *13 (TTAB 2021), *appeal filed*, No. 22-1212 (Fed. Cir. Nov. 30, 2021). As a result, Respondent's acts may not be corrected or cured. *See, e.g.*, *Univ. of Ky. v. 40-0*, LLC, 2021 USPQ2d 253 (TTAB 2021); *G&W Labs. Inc. v. GW Pharma Ltd.*, 89 USPQ2d 1571, 1573 (TTAB 2009); *cf. Therasense, Inc. v. Becton, Dickinson and Co.*, 649 F. 3d 1276, 1288-89 (Fed. Cir. 2011).

II. Sanctions ordered

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).

Here, Respondent provided no response to address the USPTO's evidence and finding that Respondent violated the USPTO Rules. The USPTO informed Respondent that failure to respond could result in termination of the application and other appropriate sanctions, yet Respondent made no effort to rebut the USPTO's evidence or explain why sanctions are not merited. Accordingly, there is no basis to find that sanctions should not be imposed.

The USPTO and the public rely on the truth and accuracy of the contents of documents and declarations submitted in support of registration. *See Norton v. Curtiss*, 433 F.2d 779, 794, 167 USPQ 532, 544 (CCPA 1970) ("With the seemingly ever-increasing number of applications before it, the [USPTO] . . . must rely on applicants for many of the facts upon which its decisions are based.); *accord Chutter*, 2021 USPQ2d 1001, at *25 ("The agency, as well as applicants and registrants, and all who rely on the accuracy of the Registers of marks and the submissions made to the USPTO in furtherance of obtaining or maintaining registration, must be able to rely on declarations and the truth of their contents.").

Because of the nature of the rule violations, none of the submissions made by Respondent may be relied upon to support or maintain a trademark registration and therefore may not be given any weight. Additionally, the application proceedings contain fatal defects because improperly signed trademark documents containing material false representations of fact. *See Zhang*, 2021 TTAB LEXIS 465, at *13; *see also Ex parte Hipkins*, 20 USPQ2d 1694, 1969-97 (BPAI 1991); *In re Cowan*, 18 USPQ2d 1407, 1409 (Comm'r Pats.1990). Under the facts presented, and because the circumstances suggest a pattern of activity intended to mislead the USPTO and circumvent USPTO rules, the application proceedings contain filings which are effectively void and the defects in the proceedings cannot be cured. It does not benefit the applicants, registrants, or the USPTO to devote time and resources to further examine applications or post-registration filings known to have such fatal defects. *Cf. The Last Best Beef, LLC v. Dudas*, 506 F.3d 333, 341 (4th Cir. 2007) ("It hardly makes sense for the USPTO to conduct administrative

proceedings on [the] applications if registration, at the culmination of those proceedings, would run afoul of the statute.”).

Accordingly, the following trademark proceedings are ordered terminated:

- Serial No. 88315874 (NISONE, with a filing date of February 26, 2019);
- Serial No. 88319425 (MACOMOT, with a filing date of February 28, 2019); and
- Serial No. 88323773 (SECESE, with a filing date of March 4, 2019).

The USPTO’s electronic records will be updated to include this order and an appropriate entry in the prosecution history indicating that the application was subject to an order for sanctions. The sanctions ordered herein are immediate in effect and are without prejudice to the USPTO taking any subsequent appropriate actions to protect its systems and users from Respondent’s continued improper activity, including issuing additional orders or referring Respondent’s conduct to relevant law enforcement agencies.

So ordered,
Users,
Cotton, Amy

Digitally signed by Users, Cotton, Amy
Date: 2023.07.12 10:11:16 -04'00'

Amy P. Cotton
Deputy Commissioner for
Trademark Examination Policy

July 12, 2023
Date

on delegated authority by

Kathi Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I certify that on July 12, 2023, the foregoing Final Order was emailed to Respondent at the following addresses:

Xiamen Huizhichuang E-commerce Co.,Ltd.
A-11,Unit 03,D-8F,Guoji Hangyun Centre
No.97,Xiangyu Rd,Free Trade Test Zone
Xiamen,Fujian CHINA 361000
Email: 1454677650@qq.com;
Ccclaire2017@outlook.com;firefind@hotmail.com

Users, Bednarz, Dustin

Digitally signed by Users, Bednarz, Dustin
Date: 2023.07.12 13:32:59 -04'00'

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