

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

In re:)
)
Xi Kai)
)
)
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 Shenzhen Xi Kai¹ (“Respondent”) of evidence indicating that it violated the USPTO rules of practice in trademark matters (“USPTO Rules”). See *generally* 15 U.S.C. § 1051 *et seq.*; 37 C.F.R. Parts 2, 11. Respondent was ordered to show cause why certain sanctions should not be imposed based on Respondent’s conduct.² A response was required within 60 days. The USPTO did not receive a substantive or timely 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 Yusha Zhang, et al.*, 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.

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.

The application record and available evidence demonstrates that Respondent is responsible for providing false or fictitious signature information in violation of 37 C.F.R.

¹ As noted below, U.S. Trademark Application Serial No. 88280198 is affected by this order.

² Links to orders issued under the authority of the Commissioner for Trademarks are available at <https://www.uspto.gov/trademarks/protect/decisions-and-proceedings-search-tool>

§ 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 trademark 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 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). Notably, this improperly signed declaration 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 was required to be represented by a U.S.-licensed attorney in trademark matters before the USPTO ("U.S. Counsel Rule"). 37 C.F.R. § 2.11.

Respondent or someone acting on Respondent's behalf knowingly provided false attorney information in various submissions, presumably to circumvent the U.S. Counsel Rule. Providing false, fictitious, or fraudulent attorney information in formal trademark correspondence 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 declaration attached thereto, 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 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). As a result, Respondent's acts may not be corrected or cured. See, e.g., *Univ. of Ky. v.*

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).

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 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.).

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. Specifically, the application proceedings contain fatal defects because an improperly signed trademark document containing material false representations of fact cannot be relied upon to support or maintain a trademark registration. *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 proceeding is 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 trademark proceeding for Serial No. 88280198 is ordered terminated. 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,

Amy P. Cotton
Deputy Commissioner for
Trademark Examination Policy

March 7, 2024
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 March 7, 2024, the foregoing Final Order was emailed to Respondent at the following addresses:

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