

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

In the Matter of	)	
	)	
Yue Niu,	)	Proceeding No. D2023-32
	)	
Respondent	)	
_____	)	

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 Yue “Frank” Niu (“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.

The Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets for the parties’ stipulated facts, legal conclusions, and sanctions.

Jurisdiction

1. Respondent of Beijing, China, is an attorney admitted to practice in New York and California and is currently in good standing in each of those jurisdictions. As such, he is authorized to practice before the USPTO in trademark and other non-patent matters. *See* 37 C.F.R. § 11.14(a).

2. At all times relevant hereto, Respondent was engaged in practice before the Office in trademark matters and subject the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

3. 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.

Background

A. The U.S. Counsel Rule

4. Effective August 3, 2019, any foreign-domiciled trademark applicant or registrant must be represented before the USPTO by an attorney who is licensed to practice law in the United States. *See* 37 C.F.R. § 2.11(a); *see also Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, 84 Fed. Reg. 31498 (July 2, 2019) (“the U.S. Counsel Rule”).

5. In part, the U.S. Counsel Rule was intended to (1) increase compliance with U.S. trademark law and USPTO regulations, (2) improve the accuracy of trademark submissions to the USPTO, and (3) safeguard the integrity of the U.S. trademark register. *See* 84 Fed. Reg. 31498.

B. USPTO Signature Rules for Trademark Matters

6. The USPTO trademark signature rules require that: all signatures on trademark documents be signed by a proper person; trademark documents be personally signed by the signatory named on the document; and a person electronically signing a document must personally enter any combination of letters, numbers, spaces, and/or punctuation marks that he or she has adopted as a signature and that combination be placed between two forward slash (“/”) symbols in the signature block on the electronic submission. *See* 37 C.F.R. §§ 2.193(a), (c), and (e); and 37 C.F.R. § 11.18(a).

7. The Trademark Manual of Examining Procedure (“TMEP”) provides additional

clear and straightforward guidance to practitioners regarding the USPTO trademark electronic signature rules' requirement that the named signatory sign the document:

All documents must be personally signed. 37 C.F.R. §§ 2.193(a)(1), (c)(1), 11.18(a).

The person(s) identified as the signatory must manually enter the elements of the electronic signature.

Another person (*e.g.*, paralegal, legal assistant, or secretary) may not sign the name of a qualified practitioner or other authorized signatory.

Just as signing the name of another person on paper does not serve as the signature of the person whose name is written, typing the electronic signature of another person is not a valid signature by that person.

TMEP § 611.01(c) (case citations omitted) (line spacing added).

8. If the signature fails to comply with 37 C.F.R. § 2.193(a) or (e) because it was entered by someone other than the named signatory or not signed by a proper person, the trademark may be subject to cancellation. *See* 84 Fed. Reg. at 31498 (stating that “[i]f signed by a person determined to be an improper person, the registration may be invalid.”). *See also In re Yusha Zhang*, 2021 TTAB LEXIS 465, at *10, *13 (Dir. USPTO Dec. 10, 2021); *In re Dermahose Inc.*, 82 USPQ2d 1793 (T.T.A.B. 2007); *Ex parte Hipkins*, 20 USPQ2d 1694, 1696-97 (B.P.A.I. 1991); *In re Cowan*, 18 USPQ2d 1407 (Comm’r Pats. 1990). When trademark filings are impermissibly signed and filed with the USPTO, the integrity of the federal trademark registration process is adversely affected.

9. Trademark applications contain declarations that are signed under penalty of perjury, with false statements being subject to punishment under 18 U.S.C. § 1001. Signatories to declarations in trademark applications make specific representations regarding applicants’ use of the mark in commerce and/or their intent to use the mark in

commerce. The USPTO relies on such declarations signed under penalty of perjury in trademark applications in the course of examining trademark applications and issuing registrations.

C. Three Signature Methods: “DIRECT,” “E-SIGN ON,” and “H SIGN”

10. The Trademark Electronic Application System (“TEAS”) is the USPTO’s electronic trademark document filing system. Through TEAS, trademark documents are electronically drafted, signed, and filed with the USPTO.

11. The agency allows for three signature methods for document filed through TEAS: “DIRECT,” “E-SIGN ON,” and “H SIGN”

12. “DIRECT” is TEAS’ default signature procedure. Under this method, the named signatory on the trademark document (typically the person completing the document) signs directly at the end of the document. When signing to verify the contents of an application, the signatory will enter any alpha/numeric character(s) or combination thereof of his or her choosing in the signature block on the application form, preceded and followed by the forward slash (/) symbol. Where a document is signed using the DIRECT signature method, if the document is saved for later filing, any electronic signature would not be saved on the TEAS form and would need to be reentered —personally by the proper signatory— due to a presumption that the document is being saved to be modified later. “The requirement that the electronic signature be reentered at the time of filing is done purposefully, to ensure that the person signing and filing the document is able to personally verify the facts set forth in the document at the time of filing.” *In re Shia*,

Proceeding No. D2014-31, p. 4 at ¶ 11 (USPTO Mar. 4, 2016).¹

13. The second electronic signature procedure is “ESIGN-ON.” Under this method, the USPTO sends a hyperlink via email to a designated email address (*e.g.*, the email address for the named signatory of the trademark document), and the recipient opens the hyperlink, electronically signs his or her own name, and submits the signature to the USPTO. No downloading of a portable form is required. After the signatory enters his or her signature, the signed form is then returned to the original preparer of the document, who can then complete the submission process to the USPTO. Specifically, to use the ESIGN-ON signature method, the document preparer (a) selects the “E-mail Text Form to second party for signature” method in the Signature Information section, (b) enters the signatory’s name, position, and telephone number and clicks “Validate,” and (c) at the Validation page, first clicks the link for “Text Form for E-Signature” and next clicks the link for “Send this Text Form to the authorized signatory(ies)” to request e-signature(s). Typically, the requestor enters his/her name and e-mail address and clicks “Send Email,” and TEAS will send the e-signature request directly back to the requestor, and then the requestor must forward the resulting e-mail to the intended signatory. With this approach, the requestor will receive any possible “undeliverable” notice, and as such, immediately be aware when a problem exists with the signatory’s e-mail that requires possible correction and re-sending. All reply communications will be directly between the signatory and the requestor. Then, to sign the form, the intended signatory (a) clicks the link in the e-mail and enter the signature and (b) after completing all the mandatory fields,

¹ The USPTO disciplinary decisions cited in this memorandum are accessible via the agency’s website at <https://foiadocuments.uspto.gov/oed/>.

clicks the “Sign” button to return the signed form to the originator of the request. The requestor will receive an e-mail with a “Submit” link, to allow access to the Validation page wherein the final steps of the process are completed.²

14. With the “H SIGN” procedure, an electronic file (*e.g.*, a PDF file) of an original handwritten pen and ink signature is submitted. Through this method, the text form of the document is typically printed out and then transmitted to the signatory, who signs the document in the traditional pen-and-ink manner. Once the signed form has been transmitted back to the preparer, the signed document is attached to the TEAS application (or other document) as a JPG image file, and a complete application can then be validated and filed electronically. Under this option, the original application is saved using the Download Portable form button on the Validation Page.

D. Certifications to the USPTO when Presenting Papers

15. A practitioner makes important certifications via 37 C.F.R. § 11.18 whenever presenting (*e.g.*, by signing, filing, submitting, or later advocating) any paper to the USPTO. Specifically, the practitioner certifies that all statements made on his or her own knowledge are true, and that all statements based on the practitioner’s information and belief are believed to be true. *See* 37 C.F.R. § 11.18(b)(1).

16. The practitioner also certifies that:

[t]o the best of the party’s knowledge, information and belief, *formed after an inquiry reasonable under the circumstances* (i) the paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; (ii) the other legal

² The form must be signed and the filing to the USPTO completed within fourteen (14) days. The 14-day period starts when the requestor clicks “Send this Text Form to the authorized signatory(ies) to request e-signature(s),” and it is not based on when the requestor then forwards the e-mail to the intended signatory. The period is calculated to the minute, and an error message will be displayed where that the time period for filing has expired and the entire process must then be started from the beginning.

contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (iii) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (iv) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

37 C.F.R. § 11.18(b)(2) (emphasis added).

17. Accordingly, a practitioner who presents any paper to the USPTO —patent or trademark documents alike— certifies that he or she has conducted an inquiry reasonable under the circumstances that supports the factual assertions set forth in the paper. *See* 37 C.F.R. § 11.18(b)(2)(iii).

18. Violations of § 11.18 may jeopardize the probative value of the filing, and any false or fraudulent statements are subject to criminal penalty under 18 U.S.C. § 1001. *See* 37 C.F.R. § 11.18(b)(1). Any practitioner who violates the provisions of § 11.18 may also be subject to disciplinary action. *See* 37 C.F.R. § 11.18(d).

Joint Stipulated Facts

A. Background

19. Respondent of Beijing, China, has been an attorney licensed to practice in the State of New York (since June 2014) and the State of California (since December 2012).

20. Respondent and Mr. Yiheng “Roy” Lou are co-founders of, and partners in, Mainleaf Law Group, PLLC, a law firm they opened in 2017.

21. Respondent began practicing before the USPTO in trademark matters in or around mid-2020. He became the attorney of record on over 10,200 trademark applications filed between January 2020 and June 2023 on behalf of foreign-domiciled trademark applicants.

22. Approximately 1,170 of the aforementioned 10,200 trademark applications were filed on behalf of customers of a China-domiciled trademark agency, Shenzhen Baiyue Network Technology Services Co. Ltd. (“Baiyue”).

B. Respondent’s Knowledge of May 12, 2021 Disciplining of His Law Partner

23. At all relevant times, Mr. Lou was suspended from the practice of law before the USPTO and by the State of New York.

24. In June 2020, the Office of Enrollment and Discipline (“OED”) informed Mr. Lou that he was being investigated for alleged violations of the USPTO Rules of Professional Conduct in connection with Mr. Lou’s representation of China-domiciled trademark customers of Shenzhen Dingji Intellectual Property Company (“Dingji”) under the U.S. Counsel Rule. From June 2020 to February 2021, OED investigated Mr. Lou’s alleged misconduct, including requesting and receiving information from Mr. Lou.

25. On March 12, 2021, the OED Director filed a “Complaint and Notice of Proceeding under 35 U.S.C. § 32” against Mr. Lou setting forth alleged violations of the USPTO Rules of Professional Conduct based on Mr. Lou’s representation of foreign-domiciled trademark applicants before the USPTO.

26. The OED Director and Mr. Lou engaged in settlement negotiations to resolve the matter. On May 8, 2021, Mr. Lou signed a Proposed Settlement Agreement, and on May 10, 2021, the OED Director signed the Proposed Settlement Agreement.

27. On May 12, 2021, the USPTO Director approved the parties’ Proposed Settlement Agreement and entered a Final Order in *In re Lou*, Proceeding No. D2021-04 suspending Mr. Lou for three months on ethical grounds for violating numerous provisions of the USPTO Rules of Professional Conduct in connection with Mr. Lou’s practice before the

Office in trademark matters.

28. The Final Order entered in *In re Lou*, Proceeding No. D2021-04 explains that Mr.

Lou engaged in professional misconduct as follows:

- a. Mr. Lou violated 37 C.F.R. § 11.101 (practitioner shall provide competent representation) by not ensuring that he knew and understood the USPTO trademark signature rules, which resulted in violations of those signature rules in the course of representing trademark clients;
- b. Mr. Lou violated 37 C.F.R. § 11.103 (practitioner shall act with reasonable diligence and promptness in representing a client) by failing to take reasonable steps to ensure that his clients' trademark filings were signed in accordance with the USPTO trademark signature rules;
- c. Mr. Lou violated 37 C.F.R. §§ 11.104(a) and (b) (communications with client) by not informing his clients as to the actual or potential adverse consequences of not complying with the USPTO trademark signature rules, including whether the electronic signing of a document, including a declaration, by one other than the names signatory jeopardizes the intellectual property rights of the clients, so that the clients could make informed decisions about their trademark applications and/or issued regulations;
- d. Mr. Lou violated 37 C.F.R. § 11.108(f) (conflict of interest) by failing to communicate to clients referred to him by Dingji adequate information and explanation about the material risks of, and reasonably available alternatives to, Dingji paying respondent for trademark application services performed on behalf of the clients;
- e. Mr. Lou violated 37 C.F.R. §§ 11.303(a)(1), (a)(3), (b), and (d) (candor toward the USPTO) by knowingly authorizing and instructing non-practitioners to sign his name on trademark documents, including declarations, filed with the USPTO;
- f. Mr. Lou violated 37 C.F.R. § 11.503(b) (responsibilities regarding non-practitioner assistance) by authorizing non-practitioners to sign his name to trademark documents filed with the USPTO;
- g. Mr. Lou violated 37 C.F.R. § 11.505 (assisting unauthorized practice before the USPTO in trademark matters) by authorizing non-practitioners sign his name to trademark documents filed with the USPTO; and
- h. Mr. Lou violated 37 C.F.R. § 11.804(d) (conduct prejudicial to the administration of justice) by authorizing non-practitioners to sign his name on

trademark documents filed with the USPTO, including declarations, where he was the named signatory on the document and the attorney of record for the trademark applicant, with the knowledge that the USPTO would rely on such trademark documents in examining applications and issuing registrations, and by assisting another to engage in the unlawful practice of trademark law before the USPTO.

29. At least since May or June 2021, Respondent knew about Mr. Lou's unethical misconduct.

30. At least since May or June 2021, Respondent knew or reasonably should have known about the numerous published USPTO decisions disciplining trademark practitioners for violations of the USPTO Rules of Professional Conduct predicated on the practitioners' violations of the USPTO trademark signature rules and the U.S. Counsel Rule.

C. Respondent's Lack of Adequate Control over His Clients' Correspondence for Trademark Matters Transferred to Respondent from Mr. Lou

31. As mentioned, the USPTO Director suspended Mr. Lou from practice before the Office on ethical grounds pursuant to the May 12, 2021 Final Order entered in *In re Lou*, Proceeding No. D2021-04.

32. As a suspended practitioner, Mr. Lou was prohibited from engaging in practice before the Office in patent, trademark, or other non-patent matters. *See* 37 C.F.R. § 11.58(b).

33. As a suspended practitioner, Mr. Lou was prohibited from communicating directly in writing, orally, or otherwise with another practitioner's client or prospective client in regard to any immediate or prospective business before the Office. *See* 37 C.F.R. § 11.58(h)(4)(i).

34. As a suspended practitioner, Mr. Lou was prohibited from meeting in person with (a) any USPTO employee in connection with the prosecution of any patent, trademark, or

other matter before the Office or (b) any client, or prospective client, of another practitioner, the other practitioner's law firm, or the client-employer of the other practitioner regarding immediate or prospective business before the Office. *See* 37 C.F.R. § 11.58(h)(4)(iii).

35. As a suspended practitioner, Mr. Lou was prohibited from aiding another practitioner unless employed as a salaried paralegal for the other practitioner under the conditions set forth in 37 C.F.R. § 11.58(h). Respondent did not employ Mr. Lou as a salaried paralegal.

36. At all relevant times, Respondent knew about Mr. Lou's suspension and that Mr. Lou, as a suspended practitioner, was prohibited from engaging the activities set forth in paragraphs 32 through 35, above.

37. In May or June 2021, approximately 3,900 of the aforementioned 10,200 trademark matters were transferred to Respondent from Mr. Lou as a result of Mr. Lou being suspended from practice before the Office on ethical grounds pursuant to the May 12, 2021 Final Order entered in *In re Lou*, Proceeding No. D2021-04. Specifically, Change of Address or Representation ("CAR") forms were filed in the 3,900 trademark matters transferred to Respondent from Mr. Lou.

38. The CAR forms, however, did not change the correspondence email address for the attorney of record and, in particular, kept Mr. Lou's email address as the official correspondence email address for each of the transferred 3,900 trademark matters.

39. Respondent asserts that Mr. Lou's email was kept on the trademark matters for "administrative efficiency." The OED Director reasonably disagrees with Respondent's assertion.

40. Respondent acknowledges that he did not have access to Mr. Lou's email address, did not establish an independent means of monitoring incoming email sent in those 3,900 trademark matters sent to Mr. Lou's email address, and did not otherwise directly receive USPTO or third party correspondence sent in those 3,900 trademark matters.

41. Respondent acknowledges that he relied on Mr. Lou to receive all email correspondence sent in those 3,900 trademark matters and to forward such correspondence to him.

42. Respondent acknowledges that he did not have reasonably adequate controls in place to learn whether, in fact, Mr. Lou was forwarding all USPTO and third party correspondence to Respondent's email address.

43. Respondent acknowledges that he did not have reasonably adequate controls in place to learn whether, in fact, Mr. Lou was communicating with any of the 3,900 clients or their foreign representative regarding incoming correspondence or otherwise engaging in practice before the Office in trademark matters.

44. In May 2023, Respondent filed updated CAR forms that, designated his email address as the official correspondence address for those 3,900 trademark matters and he asserts he now directly receives correspondence sent via email regarding those trademark matters.

D. Respondent's Business Relationship with Baiyue.

45. In or around December 2020, Respondent began to serve as U.S. counsel for foreign-domiciled trademark customers of Baiyue.

46. Respondent worked with Baiyue from December 2020 until May of 2021.

47. Respondent asserts that he was paid \$10 to \$15 per trademark matter that he

reviewed.

E. Respondent's Signature Practice for Baiyue Customers

48. According to Respondent, Baiyue would send Respondent trademark matters to review via its "proprietary software." Respondent asserted that Baiyue provided him with all the information comprising a trademark application in a single screen view, including specimens. Respondent characterizes Baiyue's proprietary software as better for him than reviewing trademark applications on the TEAS system because of its single screen view capability.

49. Respondent asserts that he reviewed the information prior to a trademark application being prepared.

50. According to Respondent, after reviewing a Baiyue matter and finding no issues, he so informed Baiyue and uploaded a PDF of a trademark declaration page bearing his hand signature using Baiyue's software. Baiyue would then prepare a trademark application using the TEAS trademark form, attach the PDF of Respondent's signature via the H SIGN ON signature method, and file the application with the USPTO via TEAS.

51. Although Respondent asserts he reviewed the trademark materials used to prepare an application, he acknowledges that he did not review the trademark application that was subsequently prepared and filed by Baiyue bearing his signature prior to the application being filed with the USPTO.

52. Respondent acknowledges that he did not have reasonably adequate controls in place to know whether the trademark documents he reviewed and approved were the same (*i.e.*, unaltered and unchanged) as used by Baiyue for the trademark application it prepared and filed with the USPTO.

53. Respondent acknowledges that he did not have reasonably adequate controls in place to know whether Baiyue was using the PDF of Respondent's signature (along with his attorney credentials) to make other trademark filings without his knowledge or consent.

F. Respondent's Inadequate Review of Specimens

54. A review of 500 applications where (a) 620 Office Actions were issued based on documents presented to the USPTO by Respondent and (b) Respondent filed a response thereto between April 25, 2021, and September 27, 2022, showed that 61.5% of the Office Actions issued in those applications (*i.e.*, 381 of 620) concerned issues with the specimens submitted by Respondent to the USPTO and that 21.5% of the Office Actions (*i.e.*, 134 of 620) were issued specifically because the Examining Attorney believed that the specimen appeared to have been digitally created or an altered image or mockup.

55. Respondent acknowledges that his review of specimens was inexperienced and hence inadequate.

Additional Considerations

56. Respondent has acknowledged his ethical lapses, demonstrated genuine contrition, and accepted responsibility for his acts and omissions.

57. Respondent has expressed understanding of the seriousness of the violations of the USPTO Rules of Professional Conduct stipulated herein, and he acknowledges the potential adverse impact on his clients' intellectual property rights from the trademark filings that were made in violation of the USPTO's trademark regulations.

58. Respondent represents that he has never been the subject of professional discipline by the USPTO, any court, or any state bar.

59. Respondent cooperated with OED's investigation, *e.g.*, by providing candid, timely responses to OED's requests for information and engaging in a telephonic interview.

Joint Legal Conclusions

60. Respondent acknowledges that, based on the information contained in the Joint Stipulated Facts, above, Respondent's acts and omissions violated the following provisions of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 11.101 (practitioner shall provide competent representation) by, *inter alia*, (1) not having adequate means of receiving USPTO or client correspondence for 3,900 trademark clients; and (2) not having reasonably adequate controls in place to learn whether (i) Mr. Lou was transmitting to him USPTO or client correspondence sent to Mr. Lou's email address in 3,900 matters, (ii) Mr. Lou, as a suspended practitioner, was communicating with any of the 3,900 clients or their foreign representatives regarding incoming correspondence or otherwise engaging in unauthorized practice before the Office in trademark matters, (iii) Baiyue was changing the substance of the trademark applications that he reviewed and transmitted to Baiyue, (iv) Baiyue was using the PDF of Respondent's signature to make other trademark filings, or (v) a trademark document he reviewed and signed was actually filed by Baiyue;
- b. 37 C.F.R. § 11.103 (practitioner shall act with reasonable diligence and promptness in representing clients) by, *inter alia*, (1) not having adequate means of receiving USPTO or client correspondence for 3,900 trademark clients; (2) not having reasonably adequate controls in place to learn whether (i) Mr. Lou was transmitting to him USPTO or client correspondence sent to Mr. Lou's email address in 3,900 matters, (ii) Mr. Lou, as a suspended practitioner, was communicating with any of the 3,900 clients or their foreign representatives regarding incoming correspondence or otherwise engaging in unauthorized practice before the Office in trademark matters, (iii) whether Baiyue was changing the substance of the trademark applications that he reviewed and transmitted to Baiyue, (iv) Baiyue was using the PDF of Respondent's signature to make other trademark filings, or (v) a trademark document he reviewed and signed was actually filed by Baiyue; and (3) failing to review adequately specimens or otherwise not conducting an inquiry reasonable under the circumstances regarding specimens as required by 37 C.F.R. § 11.18 prior to presenting them to the Office;

- c. 37 C.F.R. § 11.804(d) (engaging in conduct prejudicial to the administration of justice) by, *inter alia*, (1) not having reasonably adequate controls in place to learn whether (i) Mr. Lou, as a suspended practitioner, was communicating with any of the 3,900 clients or their foreign representatives regarding incoming correspondence or otherwise engaging in unauthorized practice before the Office in trademark matters, (ii) Baiyue was changing the substance of the trademark applications that he reviewed and transmitted to Baiyue, (iii) Baiyue was using the PDF of Respondent's signature to make other trademark filings, or (iv) a trademark document he reviewed and signed was actually filed by Baiyue; and (2) failing to review adequately specimens or otherwise not conducting an inquiry reasonable under the circumstances regarding specimens as required by 37 C.F.R. § 11.18 prior to presenting them to the Office; and
- d. 37 C.F.R. § 11.804(i) (engaging in other conduct that adversely reflects on the practitioner's fitness to practice before the Office) by, *inter alia*, engaging in other acts and omissions as U.S. Counsel of record for foreign-domiciled trademark applicants that did not reasonably ensure compliance with USPTO trademark rules and regulations.

Agreed-Upon Sanction

61. Respondent has freely and voluntarily agreed, and it is hereby ORDERED that:

- a. Respondent is suspended from practice before the Office for a period of five (5) months;
- b. Respondent shall comply fully with 37 C.F.R. § 11.58;
- c. Respondent may satisfy his obligations under 37 C.F.R. § 11.58(c)(3)(i) regarding providing written notice of the order of suspension to clients (*e.g.*, trademark applicants, parties before the USPTO Trademark Trial and Appeal Board, and other persons having prospective or immediate business before the Office in trademark matters) who are domiciled in a foreign country by emailing a copy of this Final Order that has been correctly translated into the client's respective native language to:
 - 1. the email address for each client as set forth in the "Applicant's Information" portion of each client's trademark application (if

applicable), but only if such email address is an email address belonging to the client and one that Respondent reasonably believes to which the client has direct access (*i.e.*, not the email address belonging to a foreign referring entity);

2. an email address belonging to the client and one that Respondent reasonably believes to which the client has direct access (*i.e.*, not the email address belonging to a foreign referring entity); or
3. the foreign referring entity who referred the client to Respondent, but only if
 - A. Respondent takes reasonable measures to ensure that the foreign referring entity thereafter promptly forwards Respondent's email to the client with this Final Order attached and Respondent is copied on the forwarded email,
 - B. Respondent takes reasonable measures to learn from the foreign referring entity that the client actually received the email and Final Order forwarded to the client,
 - C. Respondent's affidavit submitted pursuant to 37 C.F.R. § 11.58(d) sets forth the details of his reasonable measures that are required by subparagraphs A and B immediately above, and
 - D. any petition for reinstatement filed by or on behalf of Respondent sets forth the details of his reasonable measures that are required by subparagraphs A and B immediately above;

d. Respondent shall be granted limited recognition pursuant to 37 C.F.R. § 11.58(f) for

thirty (30) days starting on the date of this Final Order so that Respondent may endeavor to conclude work on behalf of clients on any matters pending before the Office and, if such work cannot be concluded within such thirty (30) days, Respondent shall so advise each such client so that the client may make other arrangements;

e. Respondent shall be placed on probation commencing on the date of this Final Order and continuing for twelve (12) months from the date of an order granting Respondent's petition for reinstatement to practice before the Office;

f. As a term of his probation, on at least a bi-weekly basis throughout the term of the probationary period, Respondent shall:

1. diligently search the agency's trademark electronic search system for applications identifying him as the attorney of record, and
2. promptly inform in writing appropriate personnel at the USPTO of any filings identifying him as the attorney of record that were not made by him or with his knowledge and consent;

g. On a 90-day basis during the term of the probationary period, Respondent shall submit a written report to the OED Director stating that he has completed the searches of the USPTO database required by the preceding subparagraph, and, if applicable, stating that he identified no applications in which he was named as the attorney of record that were not made by him or without his knowledge and consent;

h. The 90-day reporting requirement shall cease thirty-six (36) months after the date of this Final Order if Respondent's petition seeking Respondent's reinstatement to practice before the USPTO is not received by the OED Director thirty-six (36) months after the date of this Final Order;

i. Effective the date of the expiration of the 30-day period of limited recognition afforded to Respondent under 37 C.F.R. § 11.58(f), the USPTO is hereby authorized to disable or suspend any USPTO.gov accounts registered to Respondent as of the date of this Final Order (including all accounts that Respondent has ever established, sponsored, or used in connection with any trademark matter);

j. Effective the date of the expiration of the 30-day period of limited recognition afforded to Respondent under 37 C.F.R. § 11.58(f), the USPTO is authorized to dissociate Respondent from all USPTO-issued Customer Number(s) with which Respondent is associated;

k. Respondent shall, within seven (7) days of the entry of this Final Order, conduct a thorough search for any other USPTO.gov accounts and any related USPTO accounts that Respondent has ever opened, sponsored, had access to, or used in connection with any trademark matter, and provide OED with a written list of any such other account(s) that shall include all name(s), email(s), and address(es) associated with the account(s);

l. Immediately upon expiration of the 30-day period of limited recognition afforded to Respondent under § 11.58(f), Respondent is prohibited from using, assessing, or assisting others in using or accessing any USPTO.gov account(s) or other USPTO filing systems for preparing or filing documents with the USPTO for trademark matters;

m. 1. if the OED Director is of the good faith opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Agreement, this Final Order, or any provision of 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 enter an order immediately suspending the Respondent for up to an additional nine (9) 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;

C. grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

2. in the event that after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during Respondent's probationary period, failed to comply with the USPTO Rules of Professional Conduct, the OED Director shall:

A. deliver to the USPTO Director: (i) the Order to Show Cause; (ii) Respondent's response to the Order to Show Cause, if any; and (iii) argument and evidence supporting the OED Director's position; and

B. request that the USPTO Director enter an order immediately suspending Respondent for up to an additional nine (9) months for the violations set forth in the Joint Legal Conclusions above;

n. Nothing herein shall prevent the OED Director from seeking discrete discipline for any misconduct that formed the basis for an Order to Show Cause issued pursuant to the preceding subparagraph;

o. In the event the Respondent seeks a review of any action taken pursuant to subparagraph m., above, such review shall not operate to postpone or otherwise hold in abeyance the suspension;

p. Respondent's name shall be dissociated from any Customer Number(s) and USPTO verified Electronic System account(s), and Respondent shall not apply for, obtain, nor have his name added a USPTO Customer Number or a USPTO verified Electronic system account unless and until he is reinstated to practice before the USPTO;

q. Respondent shall cooperate fully with the USPTO in any present or future USPTO inquiry made into improper filings by Shenzhen Baiyue Network Technology Services Co. Ltd. or any foreign associates with whom Respondent, Mr. Yiheng Lou, or Mainleaf Law Group, PLLC, have worked in connection with trademark documents submitted to the USPTO;

r. The OED Director shall electronically publish this Final Order at the OED's electronic FOIA Reading Room, which is publicly accessible through the Office's website at: <https://foiadocuments.uspto.gov/oed/>;

s. The OED Director shall publish a notice in the Official Gazette that is materially consistent with the following:

Notice of Suspension and Probation

This notice concerns Mr. Yue Niu of Beijing, China, an attorney licensed in the State of New York and the State of California who engaged in practice before the United States Patent and Trademark Office ("USPTO") or "Office") in trademark matters. The USPTO Director has suspended Mr. Niu from practice before the Office for a period of five (5) months and placed him on probation.

The suspension and probation is based on Mr. Niu violating 37 C.F.R. §§ 11.101, 11.103, 11.804(d), and 11.804(i) in connection with his representation of foreign-domiciled trademark applicants before the USPTO. Mr. Niu's legal practice encompasses trademark legal services.

The aforementioned violations of the USPTO Rules of Professional Conduct are predicated, in part, on Mr. Niu's acts and

omissions during the course of business with Shenzhen Baiyue Network Technology Services Co. Ltd. ("Baiyue"), a China-based company that, because of Mr. Niu's inadequate processes, Mr. Niu did not know whether Baiyue was (a) changing the substance of the trademark applications that he reviewed and transmitted to Baiyue, (b) actually filing trademark documents that Mr. Niu reviewed and signed, and (c) using the PDF of his signature to make other trademark filings. Mr. Niu explained that Baiyue would transmit documents to him for review via a proprietary software portal and that he would review the information prior to a trademark application being filed. After reviewing Baiyue matters and finding no issues, he uploaded a PDF of a trademark declaration page bearing his hand signature using Baiyue's software, and Baiyue would then file a trademark application using the TEAS trademark forms, with the PDF of his signature via the H SIGN ON method. Notably, Mr. Niu did not review the trademark application prepared and filed by Baiyue bearing his signature prior to the application being filed by Baiyue.

The aforementioned violations of the USPTO Rules of Professional Conduct are also predicated, in part, on Mr. Niu's acts and omissions during the course of business on behalf of 3,900 China-domiciled trademark and a suspended practitioner, Mr. Yiheng Lou. After the USPTO suspended Mr. Lou from practice before the Office on ethical grounds in May 2021, Mr. Niu became the attorney of record for 3,900 of Mr. Lou's trademark clients via Change of Representation forms. The CAR forms, however, did not change the correspondence email address for the attorney of record and, in particular, kept Mr. Lou's email address as the official correspondence email address for each of the transferred 3,900 trademark matters. Mr. Niu did not have access to Mr. Lou's email address, did not establish an independent means of monitoring incoming email sent in those 3,900 trademark matters sent to Mr. Lou's email address, and did not otherwise directly receive USPTO or third party correspondence sent in those 3,900 trademark matters. Instead, Mr. Niu relied on Mr. Lou to receive all email correspondence sent in those 3,900 trademark matters and to forward such correspondence to him. Mr. Niu acknowledged that (a) he did not have adequate means of receiving USPTO or client correspondence for those 3,900 trademark clients, and (b) he did not have reasonably adequate controls in place to learn whether (i) Mr. Lou was transmitting to him USPTO or client correspondence sent to Mr. Lou's email address in those 3,900 matters, (ii) Mr. Lou, as a suspended practitioner, was communicating with any of the 3,900 trademark clients or their

foreign representatives regarding incoming correspondence or otherwise engaging in unauthorized practice before the Office in trademark matters.

Finally, the aforementioned violations of the USPTO Rules of Professional Conduct are also predicated, in part, on Mr. Niu not always adequately reviewing specimens or otherwise not conducting an inquiry reasonable under the circumstances regarding specimens as required by 37 C.F.R. § 11.18 prior to presenting them to the Office.

Mr. Niu has not been previously disciplined by the USPTO, and he represents that he has never been the subject of professional discipline by any court or state bar. He represents that he now understands, and has expressed contrition for, his prior lack of understanding of the duties to trademark applicants and to the Office under the USPTO Rules of Professional Conduct

The USPTO has published ample, readily available information for practitioners regarding what is competent practice before the Office in trademark matters. In particular, the agency maintains a webpage regarding important trademark information including specific links to relevant laws, rules, regulations, and rulemaking. (See www.uspto.gov/trademarks). The agency publishes online and regularly updates its Trademark Manual of Examining Procedure (“TMEP”). (See tmep.uspto.gov/RDMS/TMEP/current). The TMEP provides trademark practitioners, *inter alia*, with a reference work on the practices and procedures relative to prosecution of applications to register marks in the USPTO. The TMEP provides unambiguous information about the agency’s signature requirements at TMEP § 611.01(c) (stating, in part, “All documents must be personally signed or bear an electronic signature that was personally entered by the named signatory. 37 C.F.R. §2.193(a)(1), (c)(1). Another person (e.g., paralegal, legal assistant, secretary) may not sign or enter the name of an attorney or other authorized signatory. See *In re Dermahose Inc.*, 82 USPQ2d 1793 (TTAB 2007); *In re Cowan*, 18 USPQ2d 1407 (Comm’r Pats. 1990).” (parenthesis in original)). When trademark filings are impermissibly signed and filed with the USPTO, the integrity of the federal trademark registration process is adversely affected. Therefore, practitioners who represent applicants, registrants, or others before the USPTO in trademark matters — including those who serve as U.S. counsel for foreign-domiciled clients — are reasonably expected to know (a) the laws, rules, regulations, and procedures pertaining to their representation of

their trademark clients, and (b) the potential adverse consequences to clients' intellectual property rights in trademark applications and registrations as well as to the integrity of the U.S. trademark registration system when such laws, rules, regulations, or procedures are violated.

The USPTO has also published ample information about the U.S. Counsel Rule. *See, e.g., Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, 84 FR 31498 (Final Rule) (July 2, 2019); 37 C.F.R. § 2.11 (Requirement for representation); TMEP § 601. There is also ample, readily available information for practitioners regarding what is ethical practice before the Office in trademark matters. (See <https://foiadocuments.uspto.gov/oed>).

The USPTO Director has issued numerous Final Orders imposing discipline on practitioners who violated the USPTO Rules of Professional Conduct based on not complying with the agency's trademark signature rules and/or not complying with their obligations under 37 C.F.R. § 11.18 to conduct an inquiry reasonable under the circumstances in support of factual assertions made to the USPTO, including:

In re Anonymous, Proceeding No. D2014-05 (USPTO Apr. 1, 2014)
In re Kroll, Proceeding No. D2014-14 (USPTO Mar. 4, 2016)
In re Swyers, Proceeding No. D2016-20 (USPTO Jan. 26, 2017)
In re Meikle, Proceeding No. D2019-17 (USPTO Mar. 21, 2019)
In re Crabtree, Proceeding Nos. D2018-31 & -47 (USPTO Apr. 25, 2019)
In re Sapp, Proceeding No. D2019-31 (USPTO May 15, 2019)
In re Sweeney, Proceeding No. D2019-33 (USPTO June 19, 2019)
In re Mar, Proceeding No. D2019-11 (USPTO Aug. 2, 2019)
In re Rajan, Proceeding No. D2019-30 (USPTO Sep. 5, 2019)
In re Caraco, Proceeding No. D2019-50 (USPTO Sep. 12, 2019)
In re Caldwell, II, Proceeding No. D2020-12 (USPTO Mar. 17, 2020)
In re Bashtanyk, Proceeding No. D2020-09 (USPTO Apr. 17, 2020)
In re Lou, Proceeding No. D2021-04 (USPTO May 12, 2021)
In re Mincov, Proceeding No. D2020-30 (USPTO Aug. 23, 2021)
In re David, Proceeding No. D2021-08 (USPTO Sep. 24, 2021)
In re Li, Proceeding No. D2021-16 (USPTO Oct. 7, 2021)
In re Hom, Proceeding No. D2021-10 (USPTO Dec. 17, 2021)
In re Yang, Proceeding No. D2021-11 (USPTO Dec. 17, 2021)
In re Pasquine, Proceeding No. D2019-39 (USPTO Mar. 28, 2022)
In re Wan, Proceeding No. D2022-04 (USPTO Apr. 1, 2022)

In re Hao, Proceeding No. D2021-14 (USPTO Apr. 27, 2022)
In re Zhang, Proceeding No. D2022-16 (USPTO July 11, 2022)
In re Liu, Proceeding No. D2022-03 (USPTO Aug. 9, 2022)
In re Han, Proceeding No. D2022-23 (USPTO Jan. 6, 2023)
In re Chew, Proceeding D2023-08 (USPTO Jan. 20, 2023)
In re McNally, Proceeding D2023-22 (USPTO Apr. 7, 2023)
In re Wu, Proceeding No. D2023-24 (USPTO Apr. 7, 2023)
In re Li, Proceeding No. D2023-19 (USPTO Apr. 19, 2023)
In re Kanakia, Proceeding D2023-25 (USPTO May 8, 2023)
In re Song, Proceeding No. D2023-10 (USPTO May 1, 2023)
In re Gallagher, Proceeding No. D2023-08 (USPTO June 23, 2023)

Therefore, practitioners who represent applicants, registrants, or others before the USPTO in trademark matters—including those who serve as U.S. counsel for foreign-domiciled clients—are reasonably expected to know (a) the provisions of the USPTO Rules of Professional Conduct implicated by such representation, and (b) the potential disciplinary consequences when such provisions of the USPTO Rules of Professional Conduct are violated.

This action is the result of a settlement agreement between Mr. Niu 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 Office of Enrollment and Discipline Reading Room accessible at: <https://foiadocuments.uspto.gov/oed>;

t. Nothing in this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this 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 (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;

u. Respondent waives all rights to seek reconsideration of this Final Order under 37 C.F.R. § 11.56, waives the right to have this Final Order reviewed under 37 C.F.R. § 11.57,

and waives the right otherwise to appeal or challenge this Final Order in any manner;

v. Within a reasonable period after the entry of this Final Order, the OED Director shall file a motion dismissing the pending disciplinary action without prejudice; and

w. Each party shall each bear their own costs incurred to date and in carrying out the terms of the Agreement and this Final Order.

Users, Shewchuk, David
Digitally signed by Users,
Shewchuk, David
Date: 2024.01.03 11:54:22
-05'00'

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

Date

on delegated authority by

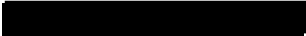
Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order was sent, on this day, to the parties in the manner indicated below-

Via e-mail:

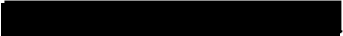
Yue Niu


Respondent

Via e-mail:

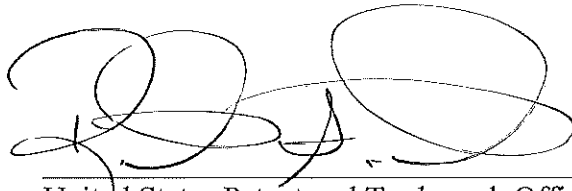
John Ferman
Hendrik deBoer

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Counsel for the OED Director

Date

1/3/2024



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