

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

In the Matter of)
)
Travis S. Crabtree,)
)
Respondent)
_____)

Proceeding No. D2018-31
D2018-47

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Travis S. Crabtree, (“Respondent”) on April 23, 2019. Respondent submitted the four (4) page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order.

Respondent of Houston, Texas, is an attorney admitted to practice in Texas and is currently in active status. Respondent has practiced before the Office in trademark matters. Respondent is a “practitioner” pursuant to 37 C.F.R. § 11.1. Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent’s Affidavit of Resignation and to exclude Respondent on consent from the practice of trademark and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in his April 22, 2019 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.

2. He is aware that, pursuant to 37 C.F.R. § 11.34, the OED Director has filed two disciplinary Complaints alleging that he violated the USPTO Rules of Professional Conduct, namely: *In re. Travis S. Crabtree*, Proceeding Nos. D2018-31 and D2018-47. The Complaints allege, *inter alia*, the following:

- a. Respondent is an attorney in good standing admitted to practice law in Texas, Texas Bar Card Number 24015192, and has practiced trademark law before the USPTO;
- b. Respondent started Trademark Engine, LLC, in 2016 to assist customers with preparing and filing trademark applications;
- c. Respondent is one of the owners, general counsel, and a managing member of Trademark Engine;
- d. Respondent is the only member of Trademark Engine who is a licensed attorney;
- e. Respondent drafted the protocols and procedures ("Trademark Filing Manual") employed by the non-practitioner employees of Trademark Engine;
- f. When Trademark Engine began operations all trademark applications were signed by customers using the E-SIGN ON procedure;
- g. From a period starting in 2017 until early in 2018, non-practitioner Trademark Engine employees used a procedure that cut and pasted customers' signatures onto trademark applications, usually after Trademark Engine customers reviewed the application summaries and agreed to the same verifications required on the USPTO application;
- h. Without Respondent's knowledge or consent, Trademark Engine non-practitioner employees submitted an express abandonment on behalf of a customer without the customer's knowledge or consent using the signature cut and paste protocol;
- i. During the time period leading up to the date of the first Complaint, Respondent did not supervise as a lawyer the non-practitioner employees of Trademark Engine who assisted customers with their trademark filings and those non-practitioner

employees on various occasions violated company policy by answering questions or providing information that constituted legal advice;

- j. During the time period prior to the date of the first Complaint, non-practitioner employees of Trademark Engine would in some instances offer suggestions to customers related to class, specimen acceptability and description;
- k. After disclosure to the customer, and agreement to the Terms of Service by the customer, Trademark Engine charged customers an additional \$50 in fees whenever an application was filed in TEAS Plus reflecting the discounted filing fee charged by the USPTO. Trademark Engine retained these discounts as fees;
- l. Trademark Engine collected fees from customers for assistance with trademark filings;
- m. Trademark Engine collected filing fees for trademark applications and other trademark filings which were then paid to the USPTO; and
- n. Trademark Engine does not maintain escrow accounts for customers' fees or USPTO filing fees.

3. Respondent is aware that based on the allegations set out in the Complaints, that the OED Director is of the opinion that he violated the following provisions of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 11.101 (It is professional misconduct if a practitioner fails to provide competent representation to a client);
- b. 37 C.F.R. § 11.105(b) (It is professional misconduct if a practitioner fails to communicate the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible before or within a reasonable time after commencing the representation);
- c. 37 C.F.R. § 11.115(a) (It is professional misconduct if a practitioner fails to hold property of clients or third persons that is in a practitioner's possession in connection with a representation separate from the practitioner's own property);

- d. 37 C.F.R. § 11.115(c) (It is professional misconduct if a practitioner fails to deposit into a client trust account legal fees and expenses that have been paid in advance. It is professional misconduct if a practitioner withdraws from the client trust account those fees and expenses before the fees are earned or expenses are incurred);
- e. 37 C.F.R. § 11.303(a)(1) (It is professional misconduct if a practitioner makes false statements of fact or law to the USPTO. It is professional misconduct if a practitioner fails to correct a false statement of material fact or law previously made to the USPTO by the practitioner);
- f. 37 C.F.R. § 11.503(a) (It is professional misconduct if a practitioner fails—as a practitioner who is a partner, and a practitioner who individually or together with other practitioners possesses comparable managerial authority in a law firm—to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the practitioner);
- g. 37 C.F.R. § 11.503(b) (It is professional misconduct if a practitioner fails—as a practitioner having direct supervisory authority over a non-practitioner assistant—to make reasonable efforts to ensure that the non-practitioner assistant’s conduct is compatible with the professional obligations of the practitioner);
- h. 37 C.F.R. § 11.503(c)(1) (It is professional misconduct if a practitioner orders or ratifies, with knowledge of the conduct, the conduct of non-practitioner assistants which would have violated the USPTO Rules of Professional Conduct if it had been engaged in by the practitioner);

- i. 37 C.F.R. § 11.503(c)(2) (It is professional misconduct if a practitioner fails to take reasonable remedial action when the conduct of non-practitioner assistants under the supervision of the practitioner violates the USPTO Rules of Professional Conduct, and the practitioner knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action);
- j. 37 C.F.R. § 11.505 (It is professional misconduct if a practitioner assists in the unauthorized practice of law);
- k. 37 C.F.R. § 11.804(c) (It is professional misconduct if a practitioner engages in conduct involving dishonesty, fraud, deceit or misrepresentation);
- l. 37 C.F.R. § 11.804(d) (It is professional misconduct if a practitioner engages in conduct prejudicial to the administration of justice); and
- m. 37 C.F.R. § 11.804(i) (It is professional misconduct if a practitioner engages in other conduct that adversely reflects on the practitioner's fitness to practice before the USPTO).

4. Without admitting to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct outlined in the Complaints *In re. Travis S. Crabtree*, Proceedings Nos. D2018-31 and D2018-47, he acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60 to practice before the USPTO in trademark and/or other non-patent matters, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that (a) the allegations regarding him in the Complaints *In re. Travis S. Crabtree*, Proceeding Nos. D2018-31 and D2018-47 are true, and (b) he could not have successfully defended himself against such allegations.

5. He has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of consenting to exclusion from practice before the USPTO in trademark and other non-patent matters.

6. He consents to being excluded from practice before the USPTO in trademark and other non-patent matters.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Accordingly, it is hereby ORDERED that:

1. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
2. Respondent shall be, and hereby is, excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order;
3. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
4. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns Travis S. Crabtree, an attorney admitted to practice law in Texas, Texas Bar Card Number 24015192, who is practicing trademark law. The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Crabtree's affidavit of resignation and ordered his exclusion on consent from practice before the Office in trademark and non-patent law.

Mr. Crabtree voluntarily submitted his affidavit at a time when a two disciplinary Complaints were pending against him. The investigation concerned Trademark Engine, LLC, a company that Mr. Crabtree started in 2016 to assist customers with preparing and filing trademark applications. Mr. Crabtree drafted

the protocols and procedures employed by the non-practitioner employees of Trademark Engine. When Trademark Engine began operations all trademark applications were signed by customers using the E-SIGN ON procedure. However, from a period starting in 2017 until early in 2018, non-practitioner Trademark Engine employees used a procedure that cut and pasted customers' signatures onto trademark applications, usually after Trademark Engine customers reviewed the application summaries and agreed to the same verifications required on the USPTO application. Without Mr. Crabtree's knowledge or consent, Trademark Engine non-practitioner employees submitted an express abandonment on behalf of a customer without the customer's knowledge or consent using the signature cut and paste protocol. During the time period leading up to the date of the first Complaint, Mr. Crabtree did not supervise as a lawyer the non-practitioner employees of Trademark Engine who assisted customers with their trademark filings and those non-practitioner employees on various occasions violated company policy by answering questions or providing information that constituted legal advice. During the time period prior to the date of the first Complaint, non-practitioner employees of Trademark Engine would in some instances offer suggestions to customers related to class, specimen acceptability and description.

Furthermore, after disclosure to the customer, and agreement to the Terms of Service by the customer, Trademark Engine charged customers an additional \$50 in fees although an application filed in TEAS Plus had a discounted filing fee charged by the USPTO. Trademark Engine retained these discounts as fees. Trademark Engine collected fees from customers for assistance with trademark filings. Trademark Engine collected filing fees for trademark applications and other trademark filings which were then paid to the USPTO. Trademark Engine does not maintain escrow accounts for customers' fees or USPTO filing fees.

Mr. Crabtree acknowledged that the OED Director was of the opinion that his conduct violated 37 C.F.R. §§ 11.101 (requiring a practitioner to provide competent representation to a client); 11.105(b) (requiring a practitioner to communicate the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible before or within a reasonable time after commencing the representation); 11.115(a) (requiring a practitioner to hold property of clients or third persons that is in a practitioner's possession in connection with a representation separate from the practitioner's own property); 11.115(c) (requiring a practitioner to deposit into a client trust account legal fees and expenses that have been paid in advance, and withdrawing from that account only as fees are earned or expenses are incurred); 11.303(a)(1) (proscribing a practitioner from making false statements of fact or law to the USPTO and requiring a practitioner to correct a false statement of material fact or law previously made to the USPTO by the practitioner); 11.503(a) (requiring a practitioner who is a partner, and a practitioner who individually or together with other practitioners possesses comparable managerial authority in a law firm, to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the practitioner); 11.503(b)

(requiring a practitioner having direct supervisory authority over a non-practitioner assistant to make reasonable efforts to ensure that the non-practitioner's conduct is compatible with the professional obligations of the practitioner); 11.503(c)(1) (proscribing ordering or ratifying, with knowledge of the conduct, the conduct of non-practitioner assistants which would have violated the USPTO Rules of Professional Conduct if it had been engaged in by the practitioner); 11.503(c)(2) (requiring a practitioner to take reasonable remedial action when the conduct of non-practitioner assistants under the supervision of the practitioner violates the USPTO Rules of Professional Conduct, and the practitioner knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action); 11.505 (proscribing assisting in the unauthorized practice of law); 11.804(c) (proscribing engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 11.804(d) (proscribing engaging in conduct prejudicial to the administration of justice); and 11.804(i) (proscribing engaging in other conduct that adversely reflects on the practitioner's fitness to practice before the USPTO).

While Mr. Crabtree did not admit to violating any provisions of the USPTO Rules of Professional Conduct as alleged in the Complaints, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in the Complaints against him are true, and (ii) he could not have successfully defended himself against those allegations.

USPTO trademark signature regulations require all electronic signatures to be personally entered by the named signatory and require that a proper person must sign the trademark document. See 37 C.F.R. § 2.193(a) and (e). The agency's electronic signature regulations also state that a person signing a document electronically must personally enter any combination of letters, numbers, spaces and/or punctuation marks that he or she has adopted as a signature, placed between two forward slash ("/") symbols in the signature block on the electronic submission. See 37 C.F.R. § 2.193(c). Additionally, the USPTO Trademark Manual of Examining Procedure ("TMEP") provides guidance regarding the USPTO trademark electronic signature regulations: 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. See TMEP § 611.01(c) (case citations omitted).

Practitioners who represent trademark applicants before the USPTO have an ethical obligation to provide competent representation to a client, which includes the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See generally 37 C.F.R. § 11.101. Accordingly, practitioners who represent trademark applicants before the USPTO in trademark matters are

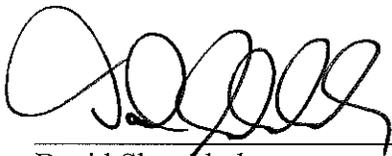
reasonably expected to be knowledgeable of USPTO regulations and guidance pertaining to the electronic signing of USPTO trademark documents.

Practitioners who represent trademark applicants before the USPTO have an ethical obligation to the USPTO not to engage in conduct prejudicial to the administration of justice and not to engage in deceitful conduct. *See generally* 37 C.F.R. § 11.804(d) and 37 C.F.R. § 11.804(c). Accordingly, practitioners who represent trademark applicants before the USPTO are reasonably expected not to file, or allow to be filed, declarations that are not signed by the named signatory. Trademark filings bearing declarations—such as a TEAS Plus Application, a Trademark/Service Mark Statement of Use pursuant to 15 U.S.C. § 1051(d), and a Combined Declaration of Use and Incontestability Under Sections 8 and 15—are relied upon by the USPTO when examining trademark applications, registering marks, and renewing registrations. When such filings are impermissibly signed and filed with the USPTO, the integrity of the federal trademark registration process is adversely affected. If signed by a person determined to be an unauthorized signatory, a resulting registration may be invalid.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

5. Respondent shall comply fully with 37 C.F.R. § 11.58; and
6. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for

reinstatement.



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

25 April 2019

Date

on delegated authority by

Andrei Iancu
Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the United States Patent and Trademark Office

cc:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Travis S. Crabtree
c/o Allison Martin Rhodes
Nicolas Chiara
Holland & Knight LLP
2300 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204

[REDACTED]
[REDACTED]