

NOTE TO THE FILE

Date: 12/10/2021

By: The Office of the Deputy Commissioner for Trademark Examination Policy

NOTE:

The attached Order for Sanctions (presented without exhibits) was issued on December 10, 2021. A complete version of the Order is presently available at <https://www.uspto.gov/trademarks/trademark-updates-and-announcements/orders-issued-commissioner-trademarks>. The Order was placed into this record because the U.S. Trademark Serial Number and/or Registration Number was identified in the Exhibit A to the Order.

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

In re:)
)
Yusha Zhang)
and)
Shenzhen Huanyee Intellectual)
Property Co., Ltd.,)
)
Respondents)
_____)

This Order is Citable as Precedent

FINAL ORDER FOR SANCTIONS

On June 8, 2021, the Deputy Commissioner for Trademark Examination Policy of the United States Patent and Trademark Office (“USPTO” or “Office”), issued an order (the “Show Cause Order”) requiring Shenzhen Huanyee Intellectual Property Co., Ltd. (“Huanyee”) and Ms. Yusha Zhang, Huanyee’s Executive Director (collectively, “Respondents”) to show cause why certain sanctions should not be imposed for Respondents’ conduct involving submission of thousands of documents in trademark matters in violation of the USPTO’s rules of practice in trademark matters (“USPTO Rules”) and USPTO website terms of use. Respondents submitted a response to the Show Cause Order on July 6, 2021 (“Response”). The Director has delegated the authority to decide this matter, including to impose appropriate sanctions, to the Commissioner for Trademarks pursuant to 35 U.S.C. §3(a)-(b). Upon careful consideration of the Response, the Director finds that imposing the sanctions proposed in the Show Cause Order is appropriate.¹

I. Preliminary Issue: Public disclosure of the orders and Response in this proceeding is permissible

Respondents assert that the USPTO is prohibited from making information concerning this administrative proceeding available for public review on its website and request that the USPTO remove postings and references to the Show Cause Order. Response at 4. Specifically, Respondents assert that “the Privacy Act absolutely prohibits disclosure of information concerning this matter” and the USPTO’s Systems of Records Notices (“SORNs”) “do not permit exceptions through routine uses, or otherwise, for this widespread dissemination.” *Id.* Respondents assertions are incorrect.

¹ A list of the U.S. Trademark Serial Numbers and Registration Numbers affected by this decision is attached as Exhibit A.

Respondents, as foreign individuals and a foreign business entity, have no rights under the Privacy Act. The Privacy Act generally covers citizens of the United States and lawful permanent residents and only applies to records of such individuals. See 5 U.S.C. § 552a(a)(2) (stating that individual means “a citizen of the United States or an alien lawfully admitted for permanent residence”); *St. Michael’s Convalescent Hosp. v. State of Cal.*, 643 F.2d 1369, 1371 (9th Cir. 1981). It “extends no rights to organizations or corporations.” *Pub. Emps. for Env’t Responsibility v. EPA*, 926 F. Supp. 2d 48, 55 (D.D.C. 2013); see also 5 U.S.C. §§ 552a(a)(2), (a)(4). Even if Respondents were entitled to rely on the Privacy Act, the Show Cause Order and the Response are covered by a routine use in the USPTO’s SORN for Trademark Application and Registration Records (COMMERCE/USPTO-26), namely “public disclosure” which includes making all categories of records² available for access and download at the USPTO’s website “for a variety of business purposes related to determining eligibility of a mark for federal registration and enforcing trademark rights.” 85 Fed. Reg. 8847, 8848. Accordingly, it is appropriate to refer to the Show Cause Order and Response in this decision and for the USPTO to make those documents available to the public.³

The Director also rejects Respondents’ related argument that the public availability of the Show Cause Order and its coverage by publications and blogs warrants termination of these proceedings or corrective action by the USPTO. Response at 4. The Response cites to 37 C.F.R. § 11.306, which prohibits practitioners participating in investigatory or litigation matters before the USPTO from making extrajudicial statements that will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. Response at 4. That rule does not apply to an administrative order issued by the USPTO.

² The SORN describes the categories of records in the system as follows: “All categories of records may include the name, citizenship, domicile, email address, postal address, and telephone number of the trademark applicant, registrant, and applicant’s or registrant’s legal or other authorized representative(s), an attorney’s law firm or company affiliation and professional licensing information, and other information pertaining to an applicant’s or registrant’s activities in connection with the applied-for or registered mark. Records in this system include trademark applications, applicant and registrant declarations, office actions, registration certificates, and correspondence generated in the course of the prosecution of a trademark application or maintenance of a trademark registration.” 85 Fed. Reg. 8847, 8848.

³ Respondents also labeled the Response “Confidential” and “Exempt from [the Freedom of Information Act] FOIA.” Not only did Respondents not identify any specific business or other information Respondents believe to be confidential, but also the Response is devoid of facts or figures of genuine competitive or commercial significance that could be appropriately classified as confidential in a judicial-like proceeding. See *In re Violation of Rule 28(d)*, 635 F.3d 1352, 1360, 98 USPQ2d 1144 (Fed. Cir. 2011) (sanctioning an attorney for unjustified labeling of legal argument as “confidential”). The Response will not be treated as “confidential.” As to FOIA, Respondents have no authority to determine the applicability of a FOIA exemption status for a document they submitted to the USPTO. The USPTO determines whether disclosure of documents to a requestor is appropriate or “exempt from FOIA,” and the “confidential” label Respondents placed on the document would not control that determination or automatically create a FOIA exemption. See, e.g., *Campbell v. U.S. Dep’t of Just.*, 164 F.3d 20, 32 (D.C. Cir. 1998) (explaining that in the context of FOIA, an agency must be able to demonstrate the relationship between the label, the record, and the specific FOIA exemption); *accord Climate Investigations Ctr. v. U.S. Dep’t of Energy*, 331 F. Supp. 3d 1, 19 (D.D.C. 2018) (merely labeling a document “confidential” does not create a FOIA exemption where none existed before).

Furthermore, insofar as third-party reports containing allegedly erroneous statements about Respondents exist, the USPTO is not the publisher of those statements and owes Respondents no duty to take any corrective action.

II. Background and discussion of Respondent's acts in violation of USPTO Rules and website terms of use

Respondents have been involved in filing submissions in more than 15,000 trademark matters before the USPTO. As detailed in the Show Cause Order and summarized below, Respondents have engaged in the unauthorized practice of law, provided false domicile information for applicants, impermissibly entered the signature of the named signatory on declarations and verifications, and violated other USPTO Rules and the USPTO's website terms of use. The Response either does not address or concedes that Respondents engaged in the conduct described in the Show Cause Order.

A. Unauthorized practice of law

At all relevant times, the USPTO Rules have provided that only attorneys admitted to practice before the bar of the highest court of a U.S. state or jurisdiction ("U.S. licensed attorney") may practice before the USPTO in trademark matters on behalf of others. 37 C.F.R. §§ 2.17(a), 11.1, 11.14(a); *see also* 5 U.S.C. § 500(b).⁴ Practicing before the USPTO in trademark matters includes all "law-related service[s] that comprehend[] any matter connected with the presentation to the Office . . . relating to a client's rights, privileges, duties, or responsibilities under the laws or regulations administered by the Office for the . . . registration of a trademark." 37 C.F.R. § 11.5(b). Individuals who are not U.S. licensed attorneys may not, on behalf of others, (1) give advice to an applicant or registrant in contemplation of filing a U.S. trademark application or application-related document; (2) prepare or prosecute any U.S. trademark application, response, or post-registration maintenance document; (3) sign amendments to applications, responses to Office actions, petitions to the Director, or request to change correspondence information; or (4) authorize any other amendments to an application or registration. 37 C.F.R. §§ 11.5(b), 11.14(b).⁵

Huanyee is a China-based organization that advertises that it assists clients with registering trademarks in China, has filed more than 30,000 foreign trademark applications, including in the United States, and offers U.S. trademark registration services via its website.

⁴ None of the limited exceptions to representation apply in this case. *See* 37 C.F.R. § 11.14(b)-(c).

⁵ *See* 37 C.F.R. §§ 11.5(b), 11.14(b). This list is non-exhaustive, but represents the most common ways a party may "practice before the Office."

Respondents are not authorized to make submissions to the USPTO on behalf of others in trademark matters. Ms. Zhang is not a U.S. licensed attorney, nor does Huanyee have any U.S. licensed attorneys on staff who supervise Respondents' work.⁶

The name "Yusha Zhang" and/or email addresses associated with Respondents appeared in the correspondence fields of more than 1,700 trademark applications and registrations naming different allegedly unrepresented applicants submitted through the USPTO's Trademark Electronic Application System ("TEAS"), allegedly filed by the applicants between 2016 and 2019. The submissions primarily identified the mailing address for Huanyee and an email address within the domain huanyee.com. Further, Respondents registered several uspto.gov accounts and continued to file more than 14,000 more applications and other submissions on behalf of others during the past three years.

Despite being unauthorized to practice before the USPTO in trademark matters, Respondents engaged in such practice by counseling and advising clients in contemplation of filing trademark applications and other documents before the USPTO, preparing and prosecuting applications for U.S. trademark registrations, preparing and submitting arguments and amendments in trademark matters before the USPTO, and communicating directly with the USPTO on behalf of others.

The record establishes that Respondents engaged in unauthorized practice before the Office. The Response acknowledges that Respondents did so. See Response at 6 (stating that Respondents "plan[] to move past this and conform its conduct to the requisite USPTO regulations" by, among other things, endeavoring to "work with U.S. Trademark Counsel") and Response at 8 (noting that Respondents "are already precluded and aver that they will no longer make filings").

B. Providing false domicile addresses

Since August 3, 2019, the USPTO Rules have required that all applicants must provide and keep current the address of their domicile⁷ and that any foreign-domiciled applicant, registrant, or party to a proceeding must be represented by a U.S. licensed attorney in trademark matters before the USPTO. See 37 C.F.R. §§ 2.11(a), § 2.189.⁸ The USPTO

⁶ The Response explains that Huanyee's inclusion on its website of two individuals identified as U.S. attorneys "was in error." Response at 5.

⁷ Domicile means the permanent legal place of residence of a person or the principal place of business (i.e., the location of the headquarters or where the entity's activities are directed and controlled) of a juristic entity. 37 C.F.R. § 2.2(o)-(p).

⁸ The rule was implemented to address the problem of foreign trademark applicants who violate U.S. legal and regulatory requirements in trademark matters and do so largely on the advice of foreign unauthorized individuals or entities. See 84 FR 31498. In addition to the formal notice and comment rulemaking process, the change in the representation requirements for foreign-domiciled applicants was heavily promoted by the USPTO through various means, including the uspto.gov website, email alerts, and speeches.

relies on provided domicile information to make a determination regarding whether an applicant has complied with all requirements for registration, including that a foreign-domiciled applicant be represented by a U.S. licensed attorney. See 37 C.F.R. §§ 2.11, 2.32. Providing false, fictitious, or fraudulent domicile or attorney information in a trademark submission to the USPTO constitutes submitting 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).

Apparently aware of this rule, Respondents adjusted their practice to provide false applicant domicile addresses to circumvent the rule. Using uspto.gov accounts controlled by Respondents, Respondents filed more than 4,500 applications and other submissions through TEAS in the name of various different juristic entities allegedly formed in the United States.

When USPTO examining attorneys began questioning the domicile information provided in these applications, Respondents provided a second false domicile address in most of them, either in response or via preliminary amendments.⁹ Respondents provided the same first and second domicile addresses across many unrelated applications, knowing the addresses were not in fact the named applicants' actual domicile addresses.

The record establishes that Respondents repeatedly and knowingly provided false, fictitious or fraudulent domicile information to the USPTO. The Response does not address Respondents' provision of false domicile addresses to the USPTO.

C. Impermissibly entering signatures of others

The U.S. trademark laws and the USPTO Rules require that an application for U.S. registration of a trademark must be supported by a verified statement, signed by the mark owner or a person properly authorized to sign on behalf of the owner. 15 U.S.C. §§ 1051(a)(3), (b)(3); see also 37 C.F.R. §§ 2.33, 2.193(e). Additionally, at all relevant times, the USPTO Rules have required that any signatures on documents submitted to the USPTO in a trademark matter must be *personally* signed by the named signatory. 37 C.F.R. § 2.193(a); Trademark Manual of Examining Procedure ("TMEP") (July 2021 version)¹⁰ § 611.01(b). That is, the signature must be either handwritten in permanent ink by the person named as the signatory or the signatory must be the one who enters his or her electronic signature on the document (i.e., personally enter the combination of letters, numbers, spaces and/or punctuation that the signatory has adopted as a signature

⁹ Respondents often provided 18351 Colima Road, Rowland Heights, California, a commercial mail receiving agency offering mail scanning and forwarding services, as the applicants' address, and later identified 6547 North Academy Blvd, Colorado Springs, Colorado, another commercial mail and receiving agency. In many of these matters, Respondents also changed the applicants' state of incorporation from California to Colorado.

¹⁰ The current and prior versions of the TMEP are available on the USPTO's website at <https://tmep.uspto.gov/RDMS/TMEP/current>.

directly in the signature block on the electronic form). 37 C.F.R. §§ 2.193(a) and (c). 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 1407 (Comm'r Pats. 1990); *In re Lou*, Proceeding No. D2021-04, at *9-12 (USPTO May 12, 2021), *available at* https://foiadocuments.uspto.gov/oed/Lou_Final_Order_D2021-04_Redacted.pdf; *In re Bang-er Shia*, Proceeding No. D2014-31, at *10-12 (USPTO Apr. 22, 2015), *available at* https://foiadocuments.uspto.gov/oed/0875_dis_2015-04-22.pdf; *see also* TMEP § 611.01(b)-(c). If a declaration or verification is improperly executed as a result of being signed by a person other than the named signatory or a person determined to be an unauthorized signatory, it is invalid 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 at 1409.

Under the USPTO Rules, documents in trademark matters must be investigated and read thoroughly before signing and filing because any person who presents a trademark submission to the USPTO is certifying, among other things, that “[a]ll statements made therein of the person’s own knowledge are true, all statements made therein on information and belief are believed to be true” and 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” and “[t]he denials of factual contentions are warranted on the evidence.” 37 C.F.R. § 11.18(b)(1)-(2); 37 C.F.R. § 2.193(f). 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 37 C.F.R. § 11.18(c). 37 C.F.R. § 2.193(f).

Respondents filed more than 15,000 trademark applications and other trademark submissions with the USPTO believed to contain signatures in support of verifications or declarations that were entered by Respondents, not the named signatories.

Respondents used the uspto.gov accounts they controlled to file multiple different documents through TEAS, often within minutes and sometimes seconds of each other, that each purported to be directly signed by different named signatories located in different geographic regions.

A number of submissions by Respondents referenced in the Show Cause Order contain both a signature of a U.S. licensed attorney with offices located in the United States, and a signature of an applicant with a domicile address in China that were entered directly in the TEAS form apparently at the same time.¹¹ Such submissions were filed between March 5, 2021 and May 6, 2021, when essentially all noncitizen travel from China to the United States was suspended. *See* U.S. Presidential Proclamation 9984 (suspending

¹¹ Regardless, Respondents make no attempt to explain the circumstances surrounding the signatures in question.

entry into the United States for all noncitizens physically present in China, effective January 31, 2020).

The submissions were often filed in rapid succession bearing purported direct signatures of individuals with addresses in diverse geographic regions, making it impossible that the named signatories personally entered their signature on the submissions.

The record establishes that Respondents repeatedly violated the USPTO Rules concerning signatures and certifications and caused invalid declarations and verifications to be submitted in thousands of applications. The Response concedes that Respondents entered the signatures of others on filings submitted to the USPTO. Response at 4 (stating that Respondents “were unaware of the signature requirements”) and 7 (stating that Respondents were “unfamiliar with the filing requirements and did not fully understand the signature requirements under 37 C.F.R. § 2.193” at the time they made the submissions to the USPTO). The only conclusion on this record is that the USPTO cannot rely on any signature appearing in any submission provided to the Office by Respondents and, moreover, every declaration supporting an application or other proof of use submitted by Respondents is invalid.

D. Misuse of uspto.gov accounts and TEAS

Users must register for and use a uspto.gov account to access electronic forms and submit trademark documents through TEAS. A party who uses USPTO systems, including uspto.gov accounts and TEAS, is bound by the Terms of Use for USPTO websites. See <https://www.uspto.gov/terms-use-uspto-websites>. An individual is responsible for all activities that occur under his/her registered USPTO.gov account, with such account being limited to use by the individual to whom the account is registered. The sharing of online USPTO accounts violates the USPTO website terms of use.

Respondents registered and shared access to at least three separate uspto.gov accounts including the name of Yusha Zhang.¹²

Respondents used these accounts to make submissions on behalf of others through TEAS in thousands of trademark matters.

Given that many of the submissions were often filed through TEAS in rapid succession from the various accounts, it is clear that the accounts were used by multiple people, not just Ms. Zhang. The record establishes that the uspto.gov accounts and TEAS were used by Respondents to commit multiple violations of USPTO Rules and website terms of use. The Response does not address Respondents’ misuse of the USPTO’s systems.

¹² Ms. Zhang’s name was registered in connection with three different MyUSPTO accounts with email addresses 1090194565@qq.com, sztmlaw@hotmail.com, and paralegal1@tbchadwick.com, though Respondents’ names and email addresses also appear in trademark application and registration submissions separate and apart from those filed in connection with these three accounts.

III. Respondents' arguments in response to the Show Cause Order

The Response expresses disagreement “with many of the assertions in the Show Cause Order” (Response at 5) but provides no evidence to rebut them. The Response ultimately concedes that Respondents violated the USPTO Rules and website terms of use but seeks to excuse the violations and avoid sanctions by challenging the administrative sanctions procedure and authority to issue sanctions. The Response also argues that sanctions should not be imposed because Respondents were unfamiliar with the requirements of the USPTO Rules, did not willfully violate them, and are taking actions to correct the issues raised. As discussed below, the arguments are unpersuasive and fail to establish why any of the sanctions outlined in the Show Cause Order should not be imposed.

A. A hearing is not required

Respondents argue that these proceedings are improper based on the incorrect assumption that the USPTO's authority to sanction Respondents is limited to that specified in 35 U.S.C. § 32, which requires opportunity for a hearing in proceedings to suspend or exclude an agent, attorney, or person recognized to represent applicants before the Office from further practice before the Office for incompetence, disreputability, gross misconduct, or for failure to comply with the regulations established under 35 U.S.C. § 2(b)(2)(D).¹³ Response at 3-4 (citing 35 U.S.C. § 32). Specifically, the Response suggests that no agency sanctions are permissible before the USPTO offers an in-person hearing before an administrative law judge at a time and place convenient for Respondents, and that sanctions must be limited to misconduct discovered within certain time constraints. *Id.* Respondent's reliance on 35 U.S.C. § 32 is misplaced for at least the following reasons.

First, by the statute's terms, the required hearing is limited to proceedings to suspend or exclude a practitioner from further practice before the Office.¹⁴ This is not a proceeding to suspend or exclude an attorney, agent, or person recognized to represent others before the Office from further practice before the Office.¹⁵ Neither Ms. Zhang nor any employee

¹³ 35 U.S.C. § 2(b)(2)(D) grants the USPTO express authority to establish regulations governing “recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office.”

¹⁴ Notably, Section 32 does not limit the USPTO's authority under 35 U.S.C. § 2(b)(2)(D) to establish regulations providing for different procedures governing the recognition and conduct of persons representing applicants or parties that do not involve suspension or exclusion from further practice. For example, a hearing is not required if the USPTO denies registration or recognition of individuals to practice before the Office. The regulations provide instead for a notice to show cause and an opportunity for the individual seeking registration or recognition to respond by establishing that he or she possesses good moral character and reputation. See 37 C.F.R. § 11.7(j).

¹⁵ Respondents' assertion that the Administrative Procedures Act (“APA”), 3 U.S.C. § 554, requires an agency hearing in this matter likewise fails. This case does not involve “adjudication of a revocation of a license” (Response at 3). Also, the relevant section of the APA applies “in every case of adjudication

of Huanyee has been recognized to practice before the Office pursuant to the USPTO's representation rules.¹⁶ See 37 C.F.R. §§ 11.1, 11.14(a).

Second, 35 U.S.C. § 2(b)(2)(A) provides the Office with separate broad authority to establish regulations governing the conduct of proceedings in the Office. See also 15 U.S.C. § 1123 (repeating the authority specifically for trademark matters). Congress also provided the Director with the power and responsibility to manage the Office and for the registration of trademarks. See 35 U.S.C. § 3(a) and (b)(2)(A). The current administrative proceeding concerns addressing improper submissions made by Respondents in trademark matters and Respondents' repeated noncompliance with the USPTO Rules and website terms of use by subjecting Respondents to appropriate actions or sanctions pursuant to the Director's inherent and express authority in 35 U.S.C. § 3(a)-(b) and 37 C.F.R. § 11.18(c). Cf. *The Last Best Beef, LLC v. Dudas*, 506 F. 3d 333, 340-341 (4th Cir. 2007) (holding that the USPTO "has inherent discretion . . . to manage its own docket").¹⁷

Third, 37 C.F.R. § 11.18(c), cited in the Show Cause Order, sets forth the procedure followed in these administrative proceedings. See Show Cause Order at 8. The rule provides that such sanctions and actions as deemed appropriate may be imposed "after notice and reasonable opportunity to respond." 37 C.F.R. § 11.18(c).¹⁸ Respondents have been given such notice by the Show Cause Order, which explained the rationale for

required by statute to be determined on the record after opportunity for an agency hearing," but as discussed, there is no statute that provides for a hearing in this case.

¹⁶ Respondents suggest that by citing to *In re Bang-er Shia* ("*Bang-er Shia*"), Proc. No. D2014-31 (USPTO Apr. 22, 2015), the USPTO acknowledges that ordinary Office practice requires a hearing from an administrative law judge before ordering sanctions. Response at 4. Respondent again is incorrect. There were two separate proceedings involving *Ms. Bang-er Shia*, a registered patent agent who engaged in unauthorized practice before the Office in trademark matters. The first proceeding was an administrative sanctions proceeding by the Commissioner for Trademarks, which employed the same show cause procedure used here. That was followed by a separate disciplinary proceeding to revoke her recognition as a patent agent and exclude her from practice in patent matters that was initiated by the USPTO's Office of Enrollment and Discipline ("OED") and conducted pursuant to 35 U.S.C. § 32 and the regulations set forth in 37 C.F.R. §§ 11.19-11.60. See *Bang-er Shia*, p. 3; see also *In re Bang Shia*, Order for Sanctions (Dec. Cmm'r Trademarks Feb. 21, 2013) (available at https://www.uspto.gov/sites/default/files/documents/Shia_Exclusion_Order_A.pdf).

¹⁷ The primary regulations at issue, 37 C.F.R. §§ 2.11, 2.17, and 2.193, were established under 35 U.S.C. § 2(b)(2)(A) and 15 U.S.C. § 1123, as opposed to 35 U.S.C. § 2(b)(2)(D). Rules 2.11(e) and 2.193(f) specifically reference Rule 11.18(b)-(c).

¹⁸ The rule also states that sanctions may include "referring a practitioner's conduct to the Director of Enrollment and Discipline for appropriate action." 37 C.F.R. § 11.18(c)(2), and that "[a]ny practitioner violating the provisions of this section may also be subject to disciplinary action," 37 C.F.R. § 11.18(d). These provisions make clear that proceedings under Rule 11.18(c)-(d) are discrete from disciplinary proceedings, see 37 C.F.R. §§ 11.32, 11.44, that provide for the hearing referenced in 35 U.S.C. § 32. It is also worth noting that 37 C.F.R. § 11.18 is modeled on Federal Rule of Civil Procedure 11. See 73 Fed. Reg. 47650, 47653 (Aug. 14, 2008). Federal Rule of Civil Procedure 11 does not provide for a hearing but rather notice and reasonable opportunity to respond. Fed. R. Civ. P. 11(c)(1).

sanctions, and Respondents have been given an opportunity to respond by showing why the sanctions proposed in the Show Cause Order should not be imposed. Respondents submitted a response, which has been considered.

In short, no hearing is required to provide sufficient due process before imposing appropriate sanctions.

B. The Director's authority to sanction Respondents has been properly delegated to the Commissioner for Trademarks

Respondents suggest that the Director cannot delegate the authority to sanction Respondents to the Commissioner for Trademarks or provide for further delegation of that authority. These arguments also lack merit.

As noted above, the authority for these proceedings derives from 35 U.S.C. § 3(a)-(b) and 37 C.F.R. § 11.18(c). Inherent in the Director's authority to manage the Office and the registration of trademarks is the authority to sanction those filing trademark submissions in violation of the USPTO Rules. See 35 U.S.C. § 3(a)-(b).

Moreover, pursuant to 35 U.S.C. §3(a)-(b), the Director has explicitly delegated to the Commissioner for Trademarks the authority to impose such sanctions or actions permitted under 37 C.F.R. § 11.18(c) as deemed appropriate in trademark matters and to otherwise exercise the Director's authority in trademark-related matters, and also has provided that such authority may be further delegated by the Commissioner. See *generally* Delegation of Authority to Issue Sanctions in Trademark Proceedings (January 14, 2020); TMEP § 1701.

The statutory provision setting forth the powers and duties of the Office specifically provides that the powers vested in the USPTO or its Director may be delegated "as the Director may determine." 35 U.S.C. § 3(b)(3); see also 37 C.F.R. §§ 1.750, 1.181(g), 2.146(h), and 11.1 (each expressly noting the power of the Director to delegate authority). Re-delegations are presumptively permissible absent affirmative evidence of a contrary congressional intent. See *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004).

In this matter, the Commissioner for Trademarks is issuing this final order for sanctions pursuant to his delegated authority to act for the Director in matters involving trademarks, including those arising under 37 C.F.R. § 11.18. The Deputy Commissioner for Trademark Examination Policy acted pursuant to the same delegated authority in issuing the Show Cause Order.

C. Lack of familiarity with the USPTO Rules and promised corrective steps cannot shield Respondents from sanctions

Respondents provided no argument or evidence to rebut the showing supporting sanctions in the Show Cause Order. Instead, Respondents argue sanctions are not warranted because they were "unfamiliar with the filing requirements and did not fully

understand the signature requirements under 37 C.F.R. § 2.193 until engaging counsel” and are taking corrective actions. Response at 8; *see also* Response at 4 (Respondents were “unaware of the signature requirements”). Respondents further argue that such ignorance of the law means that their conduct was not willful, and as such, their “mistakes” should be correctable and no sanctions imposed, especially those that would impact the applicants. As discussed below, these arguments do not provide valid reasons for not imposing sanctions here.

First, those participating in the trademark registration process are presumed to be aware of the governing regulations and are expected to comport themselves appropriately. *Cf. Patagonia, Inc. v. Azzolini*, 109 USPQ2d 1859, 1862 (TTAB 2014) (*pro se* party bears the responsibility of following rules of practice in Trademark matters before the Board); *Hurley Int’l LLC v. Volta*, 82 USPQ2d 1339, 1345 (TTAB 2007) (“the fact that applicants allegedly misunderstood a clear and unambiguous requirement . . . does not change [the Trademark Trial and Appeal Board’s] finding of fraud”).

Second, Respondents’ claimed ignorance of the law provides no defense or excuse for avoiding sanctions. *See, e.g., U.S. v. Int’l Min. & Chem. Corp.*, 402 U.S. 558, 563 (1971) (“The principle that ignorance of the law is no defense applies whether the law be a statute or a duly promulgated and published regulation.”); *Barlow v. U.S.*, 32 U.S. 404 (1833) (stating “[i]t is a common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally”); *In re Whittelsey*, 83 F.2d 894 (C.C.P.A. 1936) (“It is a familiar rule that ignorance of the law is not an excuse for a course of action.”). Furthermore, any applicants who chose Respondents as their representative may be held accountable for the acts and omissions of their chosen representative. *See, e.g., Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 396-97 (1993) (reciting the principle that generally “clients must be held accountable for the acts and omissions of their attorneys”).

Third, Respondents conduct need not be willful to be sanctionable. Whether the improper conduct was willful or negligent is one of many possible considerations that may be utilized in determining an appropriate action or sanction under 37 C.F.R. § 11.18(c). *See* 73 Fed. Reg. 47650, 47653 (Aug. 14, 2008).¹⁹

Although willfulness is not necessary to justify sanctions, the present record amply supports finding that Respondents willfully violated the USPTO Rules. Respondents

¹⁹ Even if Respondents were merely negligent, which as discussed *infra* they were not, it is well settled that inadvertence, ignorance of the rules, or mistakes construing the rules do not usually excuse neglect, either. *See, e.g., Pioneer*, 507 U.S. at 392; *see also Weinstock v. Cleary, Gottlieb, Steen & Hamilton*, 16 F.3d 501, 503 (2d Cir. 1994) (stating that “[t]he excusable neglect standard can never be met by a showing of inability or refusal to read and comprehend the plain language of the federal rules”) (internal citations omitted); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1852 (TTAB 2000) (“Counsel’s misunderstanding or misinterpretation of an unambiguous rule does not constitute excusable neglect.”). Furthermore, lack of actual knowledge of a particular law does not negate a finding that the underlying illegal act was committed intentionally. *Kolstad v. Am. Dental Ass’n.*, 527 U.S. 526, 534 (1999).

describe themselves as a “China-based intellectual property firm that specializes in domestic and foreign intellectual property matters” that “is registered with the Trademark Office of China National Intellectual Property Administration,” has “created relationships with a number of agencies and law firms in over one hundred countries, themselves being a trademark agency,” and whose business includes “trademark, patent, copyright application.” Response at 2. As a registered trademark agent in China that works with agencies and law firms in other countries to secure protection of client intellectual property rights globally, Respondents clearly knew that the trademark registration process in the United States, like in China and any other country, is legal in nature and is governed by laws and regulations. Moreover, having been involved in filing submissions in more than 15,000 trademark matters before the USPTO, Respondents were routinely presented with terms, conditions, averments, and warnings on each form submitted via TEAS and with applicable legal requirements in Office actions received from the USPTO, such that they would be expected to understand they were involved in a legal proceeding, governed by statutes and regulations.

The majority of Respondents’ submissions before the USPTO were new applications filed via TEAS, which require a verified statement alleging, among other things, that the facts set forth in the application are true. See 37 C.F.R. §§ 2.33(a)-(b). The application form begins with a requirement for the filer to identify his or her role (i.e. the applicant or an attorney) and ends with explicit averments requiring acknowledgement and a declaration signed by a proper signatory pursuant to 37 C.F.R. § 2.193. Respondents routinely misrepresented their role and misidentified the filer of the applications as either the applicant or an attorney, even though the filer was neither. Respondents then improperly entered the signature of the named signatory on declarations explicitly stating that “false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom.” See 37 C.F.R. § 2.20; see also 37 C.F.R. § 11.18(b)(1); *Chutter, Inc. v. Great Mgmt. Grp., LLC*, 2021 USPQ2d 1001 at *19 (TTAB 2021) (“A declarant is charged with knowing what is in the declaration being signed, and by failing to make an appropriate inquiry into the accuracy of the statements the declarant acts with a reckless disregard for the truth.”), *appeal filed*, No. 22-1212 (Fed. Cir. Nov. 30, 2021). Verifications or declarations that are not signed by the named signatory are invalid and thus cannot support registration.

Respondents also frequently provided false domicile addresses for the named applicants in the applications, representing that applicants were domiciled in the United States when they were actually domiciled in China, in violation of 37 C.F.R. § 2.11. Even after receiving Office actions that questioned the applicants’ domicile and specifically advised Respondents of the requirement for representation of foreign-domiciled applicants by a U.S. licensed attorney, Respondents either provided another false address to circumvent that requirement or indicated that clients were represented by U.S.-licensed attorneys by entering those attorneys’ names, signatures, and bar information on documents that Respondents prepared and filed themselves.

Given these circumstances, Respondents could not reasonably or in good faith have believed that their actions before the USPTO were proper or permissible, even if they were unaware of the precise text of the USPTO Rules that prohibited their actions. At best, Respondents acted in reckless disregard for whether their actions were prohibited, and at worst, they engaged in a coordinated and intentional effort to avoid the requirements of the USPTO Rules in order to obtain U.S. trademark registrations. Under either view, Respondents' submission of thousands of trademark documents containing false representations of fact upon which the USPTO relied in determining entitlement to registration was willful and constitutes fraud. *See, e.g., In re Bose Corp.*, 580 F.3d 1240, 1243, 91 USPQ2d 1938, 1939 (Fed. Cir. 2009) ("Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application."); *Chutter*, 2021 USPQ2d 1001 at *13 (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"); *Fuji Med. Instruments Mfg. Co., Ltd. v. Am. Crocodile Int'l Grp., Inc.*, 2021 USPQ2d 831 (TTAB 2021) (finding fraud where an attorney signed the declaration at issue). Respondents' 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) ("fraud cannot be cured merely by deleting from the registration those goods...on which the mark was not used at the time of the signing of a use-based application..."); *cf. Therasense, Inc. v. Becton, Dickinson and Co.*, 649 F. 3d 1276, 1288-89 (Fed. Cir. 2011) (explaining that inequitable conduct renders the patent unenforceable and "cannot be cured by reissue or reexamination") (internal citations omitted).

IV. Sanctions ordered

After careful consideration of Respondent's arguments and explanations, Respondents have failed to show why any of the sanctions proposed in the Show Cause Order should not be entered. Based on the nature of the conduct evidenced in this matter, sanctions are warranted to address and deter Respondents' flagrant flouting of the USPTO Rules and improper submissions in trademark matters and to deter similar conduct by others. *See, e.g., NSM Res. Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1038 (TTAB 2014) ("One of the predominant purposes for entering a Rule 11 sanction is to deter further wrongdoing."); *cf. Duffy-Mott Co. v. Cumberland Packing Co.*, 424 F.2d 1095, 165 USPQ 422, 425 (CCPA 1970) (finding that false statement in a Section 15 affidavit "can scarcely be characterized as mere carelessness or misunderstanding to be winked at as of no importance," and, thus, holding that a sanction was necessary "to deter the further development of such a cavalier attitude toward statements in affidavits under section 15.").

In determining appropriate sanctions, various considerations may be taken into account, including whether: the improper conduct was willful, part of a pattern of activity or an isolated event, infected an entire application or one particular submission, the party has engaged in similar conduct in other matters, the conduct was intended to injure, the effect of the conduct on the administrative process in time and expense, and what is needed to deter the conduct by the party and by others. 73 Fed. Reg. 47650, 47653 (2008).

Based on the record and the foregoing considerations, it is ordered that the following sanctions are entered:

A. Proceedings involving submissions filed by Respondents are terminated

As discussed above, the conduct at issue was willful and part of a pattern of activity intended to circumvent the USPTO Rules. The conduct infected thousands of applications, resulted in false and fraudulent submissions being made to the USPTO, and adversely affected the integrity of the federal trademark registration process.

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, Inc.*, 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.”). Facts in the applications and other documents submitted by Respondents were false and supported by verifications or declarations that were not signed by a proper person and the signatures were not personally entered by the named signatory, rendering them invalid. Respondents’ conduct is imputed to the applicants on whose behalf Respondents entered signatures and submitted documents to the USPTO.

The egregious nature of the conduct at issue warrants termination of the proceedings. A lesser sanction than termination of proceedings would not remedy the conduct or deter Respondents or third parties from engaging in similar conduct. A scheme involving intentional circumvention of the USPTO Rules and defrauding the USPTO is the epitome of egregious misconduct warranting termination.

Moreover, the submissions cannot be relied upon to support or maintain registration and therefore may not be given any weight. The declarations supporting the applications are invalid. The same is true of any declarations supporting post-registration filings under 15 U.S.C. §§ 1058, 1059, and 1065. Under the facts presented, the invalid declarations render the applications and any post-registration filings effectively void, and the defect cannot be cured. It does not benefit the applicants, registrants, or the USPTO to devote time and resources to further examining applications or post-registration filings known to have such fatal defects. Cf. *The Last Best Beef*, 506 F. 3d at 341 (“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, all trademark application proceedings involving submissions by Respondents or filed through a uspto.gov account registered to or controlled by Ms. Zhang or any officer, employee or agent of Huanyee are ordered terminated. All applications listed in attached Exhibit A are terminated and the USPTO’s electronic records will be updated in due course to include the sanctions order and an appropriate

entry in the application prosecution history in TSDR to indicate that the application was terminated upon entry of sanctions. For affected registrations listed in attached Exhibit A that issued before or during the administrative sanctions process, the USPTO's electronic records will be updated to include this order and an appropriate entry in the prosecution history indicating that the registration was subject to an order for sanctions. Any pending post-registration submissions will be given no weight. Affected registrants should note that findings made in the sanctions order may affect the underlying validity of the registration.

Insofar as any applicant, registrant, or party to a proceeding before the Trademark Trial and Appeal Board has a proceeding terminated by this Order, but can demonstrate that the particular proceedings did not involve submissions made by Respondents, parties may seek review via a Petition to the Director under 37 C.F.R. § 2.146.

B. Respondents are precluded from further correspondence or submissions

To deter and prevent Respondents from continuing to engage in unauthorized practice in trademark matters before the Office and otherwise violate the USPTO Rules and website terms of use, Respondents are precluded from preparing, signing, or submitting any paper or presenting or contesting any issue in any ongoing application proceeding or any future trademark proceeding before the USPTO on behalf of others. Ms. Zhang and any employees, officers, or agents of Huanyee may not prepare, sign, or submit trademark-related documents on behalf of others under any circumstances, and if they wish to apply for U.S. trademark registration themselves, they must be represented by a U.S. licensed attorney.

Ms. Zhang and the officers, employees, and agents of Huanyee are not and never were authorized or recognized to practice before the USPTO in trademark matters under the USPTO Rules and therefore may not prepare documents to be filed in the USPTO or communicate with the USPTO on behalf of any applicant or registrant. See TMEP § 602.03(b) (July 2021).²⁰ Contrary to assertions in the Response, Respondents may not “file documents under the supervision of an attorney, using the ESIGN-ON method.” Response at 6. The TEAS ESIGN-ON email option is not a workaround for unauthorized parties to prepare documents for submission to the USPTO or to file them with the USPTO. The USPTO Rules specify that foreign-domiciled applicants and registrants, such as Respondents' clients, must be represented by a U.S. licensed attorney. See 37 C.F.R. § 2.11. When an applicant is represented by an attorney, the Office shall correspond only with the attorney concerning the application. See 37 C.F.R. § 2.18. While the attorney may rely on *instructions* from the applicant's foreign attorney or agent, the

²⁰ TMEP § 602.03(c) (Oct. 2018) permitted a “foreign attorney or agent who is not authorized to practice before the USPTO . . . [to] receive correspondence from the USPTO and transmit it to the applicant or registrant” while also making clear that the foreign attorney or agent may not prepare, sign, or submit documents to the USPTO on the applicant's or registrant's behalf. Now moved to TMEP § 602.03(b) (July 2021), the guidance concerning foreign attorneys or agents removes the authority to receive or transmit documents, while preserving the prohibition on preparing, signing, or submitting documents.

attorney is ultimately responsible for the certification and reasonable inquiry into the underlying facts contained in the submission under 37 C.F.R. § 11.18, and for submitting the documents through TEAS using the attorney's uspto.gov account.

The USPTO will remove correspondence information associated with Respondents in the USPTO electronic records for all affected applications and registrations in due course. If correspondence or contact information associated with Respondents appears in any trademark-related document filed after issuance of this order, the Office will remove such information from the USPTO electronic records.

In addition, the USPTO's Office of the Chief Information Officer is directed to permanently deactivate any USPTO accounts in which contact information related to Respondents appears, and to take all reasonable efforts to prevent Respondents from creating or activating further accounts.

* * * * *

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 Respondents' continued improper activity, including issuing additional orders or referring Respondents' conduct to relevant law enforcement agencies.

So ordered,

Users, Gooder, David S.
Digitally signed by Users,
Gooder, David S.
Date: 2021.12.10 11:25:18
-05'00'

David S. Gooder
Commissioner for Trademarks

December 10, 2021
Date

on delegated authority by

Andrew Hirshfeld
Performing the functions and duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office