

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

**In the Matter of** )  
 )  
**Bruce A. Tassan,** )  
 )  
**Respondent.** )  
\_\_\_\_\_ )

**Proceeding No. D03-10**

**FINAL ORDER**

The Director of the Office of Enrollment and Discipline (OED Director) of the United States Patent and Trademark Office (USPTO) and Bruce A. Tassan, Respondent, USPTO registration number 31,143, have submitted a settlement agreement in the above proceeding that meets the requirements of 37 C.F.R. § 10.133(g).

In order to resolve the case without the necessity of a hearing, Respondent and the OED Director have agreed to certain stipulated facts, legal conclusions and sanctions, all of which are set forth below. It was further agreed between the OED Director and Respondent that this agreement resolves any and all disciplinary action by the USPTO arising from the allegations set forth in the Complaint.

Pursuant to that agreement, this Final Order sets forth the following stipulated facts, agreed-upon legal conclusions and sanctions.

**STIPULATED FACTS**

1. Respondent is registered to practice before the USPTO. Respondent's registration number is 31,143.
2. Respondent, as a registered practitioner, is subject to the USPTO Code of Professional Responsibility and signed an oath or affirmation swearing that he would: observe the laws and rules of practice of the USPTO; would maintain the respect due to the USPTO and officials thereof; and would abstain from all offensive personality.
3. Respondent represented applicant Braemore Neckwear Company before the Trademark Trial and Appeal Board (TTAB) in Trademark Opposition No. 111,483, *Eredi Chiarini s.r.l. v. Braemore Neckwear Co.*
4. On March 9, 2000, following two stipulated Motions to Extend Deadlines, both of which were granted, TTAB interlocutory attorney Cindy B. Greenbaum denied a motion filed by Respondent to extend the testimony period.

5. On March 14, 2000, attorney Greenbaum issued a further Order acknowledging receipt of two telephone voicemail messages from Respondent on Saturday, March 11, 2000. The Order stated:

The tone and most of the content of the messages were inappropriate. The content consisted of either inappropriate presentations of the merits of defendant's position on scheduling issues, or inappropriate personal attacks on the Board attorney. Both parties are advised that no further *ex parte* communications will be allowed in this proceeding.

6. On March 20, 2000, attorney Greenbaum forwarded a copy of the March 14, 2000 Order via facsimile to Respondent. The facsimile cover sheet stated:

Repeated phone calls suggest the attached order may not yet have been received. A copy is provided as a courtesy. Further communications in regard to the case should be made in writing and include proof of service of a copy thereof on the adverse party.

7. On January 16, 2002, TTAB Administrative Trademark Judges Rany Simms, Theresa Holtzman and Carlisle Walters issued a Final Decision in the proceeding sustaining the opposition to Braemore's application for registration.

8. On January 17, 2002, Respondent left a voicemail message with Judge Simms, believed by the OED Director to have been transcribed accurately as follows:

Hey Mr. Simms, this is Bruce Tassan, I've just received an opinion by the Board on a Eredi Chiarini vs. Braemore Neckware involving application No. 75/269,411. Can you tell me why you didn't mention in your opinion the fact the we're already registered for this mark. I mean are you an absolute imbecile or what, GODDAMIT. YOU STUPID FUCKING PEOPLE! (CLICK, CLICK).

9. On January 17, 2002, Respondent left a voicemail message with Judge Holtzman, believed by the OED Director to have been transcribed accurately as follows:

Hey Miss Holtzman. This is Bruce Tassan. I just received a oh an opinion regarding application number 75/269,411, that's 75/269,411 um the opinion doesn't mention the fact that we already have this mark registered, and you guys have just absolutely ignored the fact that I have a goddamn registration for this mark for the client, and there is nothing in here about this opinion that mentions that. So could you please give me a FUCKIN CALL, GODDAMIT (*yells the phone number*) 703 522-5305. You guys are absolutely FUCKIN worthless.

10. On January 17, 2002, Respondent left a voicemail message with Judge Walters, believed by the OED Director to have been transcribed accurately as follows:

Oh Carlisle this is Bruce Tassan, I just received the decision with your name on it concerning opposition number 111,483 concerning an application number 75/269,411. My client already registered this mark and I don't see anything in the opinion to the effect that you've even acknowledged that fact. I don't really expect much from the TTAB or from Government workers, or anything else, but for God sakes I thought at least you'd mention in the opinion the fact that you don't give a GODDAM about the fact the client's mark's already registered. JESUS CHRIST, YOU STUPID IDIOTS.

11. Approximately one week later, Respondent left a voicemail with Judge Simms, transcribed as follows:

Hi Rany, I was talking to Nancy this morning and asked her to pass this on to you but she said she doesn't see you much anymore. I wanted to apologize for last week and my calls. I had the flu and I was taking a strong cough medicine and when I got that off the fax it was just, there are so many facts behind the scene that made this case so frustrating, it was totally inappropriate and again I apologize, it's just that both parties have abandoned the mark, their respective marks a year ago. So it's all academic anyway but I just uh, uh anyway again it was inappropriate, I apologize and uh just forgive me for being sick and halfway delirious on the medication I was taking. But, like I said, the decision itself is not important anymore and uh, but uh, uh, I was just surprised, uh again, uh take care bye.

12. On or about February 6, 2002, Respondent had a floral arrangement at a cost to Respondent of approximately \$80 delivered to each of Judges Simms, Holtzman, and Walters and also sent identical letters to each, which stated:

My phone calls were unprofessional and there is no excusing them. All I can say is that my assistant was out with the flu for three days and I was sick, as well, and taking powerful prescription cough medicine. I was delirious.

13. USPTO Rules provide that a party may request reconsideration or modification of a decision in an *inter partes* trademark proceeding within one month of the decision. 37 C.F.R. § 2.129(c). The deadline for seeking reconsideration or modification of the January 16, 2002 Final Decision was February 16, 2002.
14. Each of the voicemail messages believed by the OED Director to have been transcribed accurately in Paragraphs 8-11 was left prior to February 17, 2002.

15. On or about February 1, 2002, the OED Director received a complaint from Chief Administrative Trademark Judge J. David Sams including a tape recording of the voicemail messages believed by the OED Director to have been transcribed accurately in Paragraphs 8-11.
16. On February 11, 2002, in response to the complaint of Chief Administrative Trademark Judge David Sams, OED mailed a First Requirement for Information asking Respondent *inter alia*: to confirm whether he had left the voicemail messages; to verify the accuracy of the transcripts of those messages; to indicate whether counsel for Opposer Eredi Chiarini was given notice of or the opportunity to participate in the communications with the judges; to explain any belief on his part that the voicemail messages did not address the merits of Opposition No. 111,483; to identify and provide copies of all correspondence with Judges Simms, Holtzman or Walters dated on or after January 16, 2002; and to identify all items (including dollar value) sent by him or someone on his behalf to Judges Simms, Holtzman or Walters on or after January 16, 2002.
17. On March 22, Respondent filed initial comments that *inter alia*: confirmed that the voicemail transcripts reflect the contents of the messages left with Judges Simms, Holtzman and Walters; acknowledged that opposer's counsel was not given notice or an opportunity to participate in the telephone calls; agreed that all of the voicemails with the exception of the apology to Judge Simms (noted above in paragraph 22) addressed the merits of Opposition No. 111,483; indicated that the floral arrangements were his wife's idea, were intended to express his apologies to the judges, and cost Respondent approximately \$80 each; and attributed his behavior to an adverse drug interaction, lack of sleep, stress, and sickness.
18. On April 29, 2002, Respondent filed supplemental comments indicating that on the morning of January 17, 2002, he consumed approximately six times the normal daily dosage of the prescription cough medicine Tussionex.
19. The March 22 and April 29 comments also assert that the January 17 voicemail messages were an isolated incident.
20. After the initial OED request for information was mailed, the investigation revealed Respondent's conduct resulting in the March 14, 2000 Order and the March 20, 2000 communication. Both are noted above in paragraphs 5 and 6.
21. The investigation further revealed a voicemail message left by Respondent with TTAB interlocutory attorney Cheryl Goodman on September 7, 2001, concerning a matter in another proceeding, Trademark Opposition No. 123,805.

22. According to a contemporaneous e-mail from attorney Goodman to Chief Judge Sams, “an irate Bruce Tassan left [attorney Goodman] a message Friday [September 7, 2001] about opp[osition] proceeding 123,805 . . . railing about the general incompetency of the office and cursing.”
23. The incidents noted above in paragraphs 20-22 raised concern on the part of the OED Director that the January 17, 2002 voicemails were not isolated incidents caused by a drug interaction as Respondent alleged, and a Second Request for Information was mailed on May 8, 2002.
24. Respondent filed a response to the Second Request for Information on July 2, 2002. According to the response, “[b]oth of these incidents and the incident that occurred on January 17, 2002, are the results of general frustration that [Respondent] has experienced over a period of time with the TTAB’s inconsistent policies and management and his concern that these matters cause unnecessary added costs to his clients.” The response added that “[f]rom time to time, [Respondent] has had to rant and rave for his benefit of his clients to get results” and that “his actions . . . were not done with an intent to violate the PTO Disciplinary Rules, but were spontaneous utterances of inappropriate language that found there way out to vent his frustration with the inadequacies of the trademark system.”
25. Respondent has been in the private practice of law for approximately twenty years. He has not been the subject of any other disciplinary action or investigation in that time.
26. Respondent has shown remorse for his actions, and voluntarily has sought and been receiving counseling in anger management from a licensed psychologist.
27. Respondent cooperated fully with OED in the investigation that resulted in the filing of the Complaint.
28. The offenses committed by Respondent did not involve dishonesty, moral turpitude or any client betrayal.
29. Other mitigating factors alleged by Respondent in his Answer to the Complaint include that he has twenty years of experience in the field, and his allegation that as a result of illness and the effects of medication, Respondent’s judgment was severely impaired at the time he left the voicemail messages on January 17, 2002.

## LEGAL CONCLUSIONS

Based upon the foregoing stipulated facts, Respondent acknowledges that his conduct violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility:

30. Rules 10.23(b)(5), in that Respondent engaged in conduct prejudicial to the administration of justice;
31. Rule 10.23(b)(6), in that Respondent engaged in conduct reflecting adversely on Respondent's fitness to practice before the USPTO;
32. Rule 10.89(a), in that Respondent disregarded a decision of the USPTO made in the course of a proceeding before the USPTO;
33. Rule 10.89(c)(5), in that Respondent engaged in undignified or discourteous conduct before the USPTO;
34. Rule 10.93(b), in that Respondent, in an *inter partes* proceeding before the USPTO, communicated orally as to the merits of the cause with a judge without adequate notice to opposing counsel.

## SANCTIONS

Based upon the foregoing, it is:

35. **ORDERED** that the Final Order incorporate the facts stipulated in paragraphs 1-29 above.
36. **ORDERED** that Respondent refrain from communicating by telephone or in-person with the TTAB regarding any matter in which he is representing a client, except that Respondent may participate fully on behalf of clients in hearings before the TTAB, for the period of two (2) years immediately subsequent to the date of entry of the Final Order.
37. **ORDERED** that Respondent complete his current course of treatment for anger management; that Respondent file a statement with the Director of OED within six months of the entry of this Order, and at six-month intervals thereafter until the course of treatment is complete, indicating that he is continuing with such treatment; and that completion of the course of treatment be confirmed in a letter to the OED Director signed by Respondent's counselor.
38. **ORDERED** that if Respondent fails to meet any of his obligations set forth in Paragraphs 36 and 37 above, such failure will be deemed a *prima facie* violation of the terms of this agreement and will result in Respondent's suspension from

practice in all patent, trademark, and other non-patent law matters before the USPTO for six months and required to comply with the provisions of 37 C.F.R. § 10.158.

39. **ORDERED** that the OED Director publish this Final Order.
40. **ORDERED** that the OED Director to publish the following Notice in the Official Gazette:

**Notice of Reprimand**

Bruce A. Tassan, of Arlington, Virginia, a licensed patent attorney, registration number 31,143. In settlement of a complaint, the General Counsel, on behalf of the Director of the United States Patent and Trademark Office, has ordered that Mr. Tassan be publicly reprimanded for violating the following USPTO Disciplinary Rules (“DR”): DR 10.23(b)(5) (engaging in conduct prejudicial to the administration of justice), DR 10.23(b)(6) (engaging in conduct that adversely reflects on the practitioner’s fitness to practice before the Office), DR 10.89(c)(5) (engaging in undignified or discourteous conduct before the Office), and DR 10.93(b) (in an *inter partes* proceeding before the Office, communicating orally as to the merits of the cause with a judge without notice to opposing counsel); that for the two (2) years subsequent to entry of the Final Order, Mr. Tassan be prohibited from communicating personally by telephone or in-person with the TTAB regarding any matter in which he is representing a client, except that Mr. Tassan may participate fully on behalf of clients in hearings before the TTAB; and that Mr. Tassan complete a course of treatment for anger management, and that such completion be confirmed in a letter signed by his counselor to the OED Director. This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. §§ 10.133(g) and 10.159.

41. **ORDERED** that the OED Director give notice to appropriate employees of the USPTO, courts, and authorities of any State in which Respondent is known to be a member of the bar; and any appropriate bar association. 37 C.F.R. § 10.159(a).
42. **ORDERED** that Respondent shall bear his own costs, including those associated with the counseling.

September 8, 2003  
Date

/s/  
James A. Toupin  
General Counsel  
United States Patent and Trademark Office  
*on behalf of*  
James E. Rogan  
Undersecretary of Commerce for  
Intellectual Property and Director of the  
United States Patent and Trademark Office

cc: Harry I. Moatz  
Director, Office of  
Enrollment and Discipline  
USPTO