

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

**In the Matter of:** )  
 )  
**Carl Christen La Mondue,** ) **Proceeding No. D2011-08**  
 )  
**Respondent** )  
 )  
\_\_\_\_\_ )

**FINAL ORDER UNDER 37 C.F.R. § 11.24**

Pursuant to 37 C.F.R. §§ 11.19 and 11.24(d), the Director of the United States Patent and Trademark Office (USPTO or Office) hereby orders the public reprimand of Carl Christen La Mondue (Respondent) for violation of 37 C.F.R. § 10.23(b)(6).

**I. BACKGROUND AND PROCEDURAL HISTORY**

At all times relevant to this matter, Respondent has been an attorney admitted to practice law in the Commonwealth of Virginia and has practiced trademark matters before the USPTO. *See* Subcommittee Determination (Public Reprimand Without Terms) (hereinafter referred to as Subcommittee Determination) at 1; Complaint for Reciprocal Discipline Under 37 C.F.R § 11.24 at 1.

On March 29, 2010, a Second District Subcommittee of the Virginia State Bar (VSB Subcommittee) publicly reprimanded Respondent for violating Virginia Rules of Professional Conduct 1.3 (intentionally failing to carry out a contract of employment for professional services) and 1.16 (representing a client when the lawyer has been discharged). Subcommittee Determination. The reprimand was based on a March 18, 2010 VSB Subcommittee hearing, where the VSB Subcommittee considered and accepted an agreement entered into by Respondent and the Virginia State Bar regarding allegations of

misconduct by Respondent. Subcommittee Determination at 1. At the hearing, Respondent and the Virginia State Bar proffered evidence on the record to support their agreement. *Id.* At the conclusion of his case, “Respondent affirmatively *agreed* that the bar had clear and convincing evidence for the misconduct as set forth in the Charges of Misconduct dated November 5, 2009, *agreed* that such evidence supported findings of Rule violations as set forth in the same Charges of Misconduct, and *agreed* to a sanction of a Public Reprimand without Terms.” *Id.* (emphasis added). On March 29, 2010, the VSB Subcommittee accepted the agreement and imposed a public reprimand without terms on Respondent. *See id.* at 4. Respondent did not appeal this VSB Subcommittee decision. *See* Letter from Virginia State Bar (Nov. 15, 2011) (“Mr. La Mondue has not attempted to appeal the sanction in the [Subcommittee Determination].”).

The reprimand was for Respondent’s conduct in a divorce case before the Chesapeake Circuit Court of the First Judicial District of Virginia. Subcommittee Determination at 2-3. Specifically, the VSB Subcommittee found that Respondent violated Rules 1.3 and 1.16 of its Rules of Professional Conduct when: (1) he did not withdraw from representing his client after she unconditionally terminated his representation of her in a letter on November 7, 2008; (2) after convincing his client, in a conversation sometime after the November 7th letter, to allow him to continue to represent her for purposes of finalizing the divorce, he refused to proceed or withdraw from the case until his outstanding legal fees and costs were paid in full, and (3) he did not withdraw from the case until after his client filed a bar complaint. *See id.* at 2-3, ¶’s 6-13.

On February 7, 2011, the Director of the Office and Enrollment and Discipline (OED Director) served a Complaint for Reciprocal Discipline Under 37 C.F.R. § 11.24

(OED Complaint) on Respondent. OED Complaint at 4. In the OED Complaint, the OED Director requested that the USPTO Director impose reciprocal discipline on Respondent for violating 37 C.F.R. § 10.23(b)(6)<sup>1</sup> when he was reprimanded on ethical grounds by a duly constituted authority of a State. *Id.* at 2-3. On March 18, 2011, Respondent filed a Response and Objection to Reciprocal Disciplinary Action (Response).

On June 13, 2011, the Acting Deputy General Counsel for General Law, on behalf of the USPTO Director, issued an Order giving Respondent forty days to file a response “containing all information that Respondent believes is sufficient to establish a genuine issue of material fact that the imposition of discipline identical to that imposed by the Second District Subcommittee of the Virginia State Bar would be unwarranted based upon any of the grounds permissible under 37 C.F.R. § 11.24(d)(1).” Notice and Order Pursuant to 37 C.F.R. § 11.24 at 1-2. Although Respondent had already filed a Response, the USPTO Director nevertheless issued the Order due to the requirements of 37 C.F.R. § 11.24(b).<sup>2</sup> In light of Respondent’s prior filing of his Response, the USPTO Director stated that Respondent could file additional information during the forty-day period set forth by the Order. *Id.* at 2, n. 1. Respondent did not file any additional information in response to the USPTO Director’s Notice and Order.

In his Response, Respondent claims that the Office cannot subject him to reciprocal discipline because he meets at least one of the standards set forth in 37 C.F.R. § 11.24(d)(1) that an attorney must meet to prevent the imposition of reciprocal discipline. *See* Response.

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<sup>1</sup> Section 10.23(b)(6) provides that “[a] practitioner shall not . . . [e]ngage in any conduct that adversely reflects on the practitioner’s fitness to practice before the office.”

<sup>2</sup> Section 11.24(b) provides that “the USPTO Director *shall* issue a notice directed to the practitioner . . . containing . . . [a]n order directing the practitioner to file a response with the USPTO Director . . . within forty days of the date of the notice establishing a genuine issue of material fact . . . that the imposition of the identical . . . public reprimand . . . would be unwarranted and the reason for that claim.” (emphasis added).

Specifically, Respondent claims that “(1) the procedure culminating in the March 29, 2010 Public Reprimand Without Terms issued by the Second District Subcommittee was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; . . . (2) there was such infirmity of proof establishing the March 29, 2010 Public Reprimand without terms as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; and (3) the imposition of the same sanction by the USPTO would result in grave injustice.” Response at 1; *see* 37 C.F.R. § 11.24(d)(1). As discussed below, the Office finds that Respondent has not shown by clear and convincing evidence that there is a genuine issue of material fact with regard to any of the standards set forth in 37 C.F.R. § 11.24(d)(1).

## II. LEGAL STANDARD

Under 37 C.F.R. § 11.24(d), the USPTO, in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), has codified standards for imposing reciprocal discipline based on a state’s disciplinary adjudication. Under *Selling*, state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper unless an independent review of the record reveals: (1) a want of due process, (2) an infirmity of proof of the misconduct, or (3) that grave injustice would result from the imposition of reciprocal discipline. Federal courts have generally “concluded that in reciprocal discipline cases, it is the respondent attorney’s burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline.” *In re Kramer*, 282 F.3d 721, 724 (9<sup>th</sup> Cir. 2002); *In re Friedman*, 51 F.3d 20, 22 (2<sup>nd</sup> Cir. 1995). “This standard is narrow, for ‘. . . [a Federal court, or here the USPTO Director is] not sitting as a court of review to discover error in the [hearing judge’s] or the [state] courts’ proceedings.” *In re Zdravkovich*, 634

F.3d 574, 578 (D.C. Cir. 2011) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)).

Below is the language of 37 C.F.R. § 11.24(d), which mirrors the standard set forth in

*Selling*:

The USPTO Director shall consider any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:

- (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute deprivation of due process;
- (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;
- (iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in a grave injustice; or
- (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

The Office reiterates that, to prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that he meets one of these factors by clear and convincing evidence—a task that is particularly difficult for Respondent because he stipulated to the facts as set forth in the Subcommittee Determination, admitted that he violated Virginia Rules of Professional Conduct 1.3 and 1.16, and agreed that a public reprimand was the appropriate discipline for his misconduct. *See* Subcommittee Determination. Nor did Respondent attempt to appeal from the Subcommittee Determination. *See* Letter from Virginia State Bar (Nov. 15, 2011).

### III. ANALYSIS

#### *a. Deprivation of Due Process.*

Respondent argues that 37 C.F.R. § 11.24(d)(i) should apply because the procedure

used by the VSB Subcommittee was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process. Response at 2-3. Respondent first argues that he was deprived of due process because he did not consent to the agreement on which the reprimand is partly based. Response at 2-3. Respondent does not contest, however, that he was present at and participated in a hearing before the VSB Subcommittee, and was aware that the Virginia State Bar issued its Subcommittee Determination to resolve the proceeding. He acknowledges that the Subcommittee Determination states that he consented to it, and he offered no evidence to show that he objected to the Subcommittee Determination. Further evidence that he did not object to the Subcommittee Determination is shown by his failure to appeal the Subcommittee Determination. The only evidence Respondent submits in support of his argument is a document he states is an unsigned version of the Subcommittee Determination wherein the language in the Findings of Fact is slightly different. Respondent, however, did not submit any evidence that demonstrates what the document is or what, if any, role it had in the hearing process before the VSB Subcommittee.

Respondent next argues that he suffered from a deprivation of due process because his subpoenaed witness failed to appear at the hearing. Response at 2. Respondent stated that he subpoenaed his former paralegal, Yvette Lester, to testify at the hearing, and she “called the Respondent [on the day of the hearing] and told him that she would not be able to appear because of a prior scheduled doctors’ [sic] appointment . . . .”<sup>3</sup> *Id.* In support of this argument, Respondent submits a subpoena that he mailed to Ms. Lester on March 8, 2010, ordering her to appear at the hearing on March 18, 2010. Respondent does not

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<sup>3</sup> Respondent said he wanted Ms. Lester to testify because he claims that Ms. Lester, and not he, “was accused of telling . . . [his client’s husband’s attorney] that the Respondent was not going to proceed with terminating his representation entering the final Divorce Decree until he was paid.” *See* Response at 2.

indicate, however, whether he asked for a continuance of the VSB Subcommittee hearing or sought to enforce the subpoena after Ms. Lester failed to appear. Any difficulty posed by the absence of Ms. Lester's testimony resulted from Respondent's failure to take appropriate action after Ms. Lester did not appear. Further, the uncontroverted record shows that he agreed to the Subcommittee Determination and its supporting evidence and did not attempt to appeal. In sum, Respondent has failed to show by clear and convincing evidence that the Virginia State Bar "procedure . . . was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process . . ." under 37 C.F.R. 11.24(d)(i).

***b. Infirmity of Proof.***

Respondent further argues that there is such an infirmity of proof as to give rise to the clear conviction that the Office could not, consistently with its duty, accept the Virginia State Bar's final conclusion in the Subcommittee Determination. *See* 37 C.F.R. § 11.24(d)(ii). Respondent's challenge fails, however, because he participated in a hearing before a VSB Subcommittee where he proffered evidence. Respondent then stipulated to the facts, admitted that he violated Virginia Rules of Professional Conduct 1.3 and 1.16, and agreed that a public reprimand was the appropriate discipline for his misconduct. Subcommittee Determination at 1. If Respondent believed that the evidence of misconduct was weak, he could have challenged the facts and the finding of misconduct, as well as the imposition of the discipline, rather than stipulating to all these matters. Respondent also repeats his argument that he did not consent to the Subcommittee Determination. As discussed in Section a. above, however, Respondent has not provided any support for his claim, nor shown any attempt to appeal the Subcommittee Determination. *See* Final Order at 5-6, *supra*. Nor has he shown any infirmity in the evidence proffered at the hearing. As a result, Respondent has failed to show that there was "such infirmity of proof establishing

the conduct as to give rise to the clear conviction that the Office could not . . . accept the final conclusion . . .” in the Subcommittee Determination. 37 C.F.R. § 11.24(d)(ii).

*c. Grave Injustice.*

Respondent finally argues that the adoption of the sanction imposed by the Subcommittee Determination would result in a grave injustice under 37 C.F.R. § 11.24(d)(iii). Response at 3-4. Respondent’s argument fails, however, because he agreed, before the VSB Subcommittee, that a public reprimand was the appropriate sanction for his misconduct. Subcommittee Determination at 1. Nor has Respondent attempted to show that the original sanction (public reprimand) was too harsh for the type of misconduct to which he admitted. *See In re Benjamin*, 870 F. Supp. 41, 43-44 (N.D.N.Y. 1994) (finding that adoption of discipline imposed by another authority is a grave injustice when respondent’s conduct is not sufficiently grave to warrant the discipline that was imposed). Instead, he argues that the USPTO should not impose reciprocal discipline because: (1) he has never had any public reprimands (although he admitted three private admonishments were imposed upon him, *see* Response at 3) in his seventeen-year legal career; (2) the discipline was for his actions in a divorce proceeding and does not reflect on his abilities to provide services to trademark clients; and (3) a public reprimand by the USPTO would cause further damage to Respondent’s practice and his reputation. Response at 3-4. None of these arguments demonstrate that the discipline imposed by the Subcommittee Determination was discordant with his admitted misconduct. *See In re Benjamin*, 870 F. Supp. at 43-44. Thus, Respondent’s argument that adoption of the discipline imposed by the Virginia State Bar would result in a grave injustice is denied.



#### IV. CONCLUSION

For the reasons discussed above, the USPTO Director denies Respondent's objection to the imposition of reciprocal discipline for his violation of 37 C.F.R. § 10.23(b)(6).

#### ORDER

ACCORDINGLY, it is:

ORDERED that Respondent is publicly reprimanded; and

ORDERED that the OED Director shall make public the following Notice in the Official Gazette:

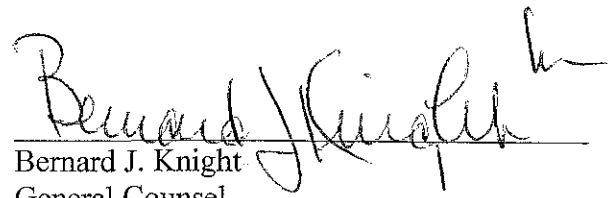
#### Notice of Reprimand

This concerns Carl Christen La Mondue of Norfolk, Virginia, an attorney licensed by the Commonwealth of Virginia who has practiced in trademark matters before the United States Patent and Trademark Office ("USPTO"). Mr. La Mondue is not a registered patent practitioner and is not authorized to practice patent law before the USPTO. In a reciprocal disciplinary proceeding, the USPTO Director has ordered that Mr. La Mondue be, and he hereby is, publicly reprimanded for violating 37 C.F.R. § 10.23(b)(6) by being publicly reprimanded by a duly constituted authority of a State.

In connection with Mr. La Mondue's handling of a divorce matter for a client, the Virginia State Bar publicly reprimanded Mr. La Mondue for violating that jurisdiction's Rule of Professional Conduct 1.3 (intentionally failing to carry out a contract of employment for professional legal services) and Rule of Professional Conduct 1.16 (representing a client when the lawyer has been discharged). This action is taken pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.24 and 11.59. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline's Reading Room located at: <http://des.usp.gov/Foia?OEDReadingRoom.jsp>.

NOV 17 2011

Date



Bernard J. Knight  
General Counsel  
United States Patent and Trademark Office

on behalf of  
David Kappos  
Under Secretary of Commerce for  
Intellectual Property and Director of the  
United States Patent and Trademark Office

cc:

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Office of Enrollment and Discipline  
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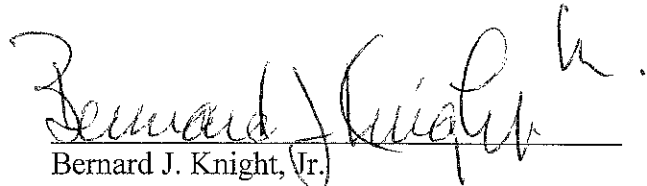
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NOV 17 2011

Date



Bernard J. Knight, Jr.  
General Counsel  
United States Patent and Trademark Office



on behalf of  
David Kappos  
Under Secretary of Commerce for  
Intellectual Property and Director of the  
United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I hereby certify that forgoing Final Order Pursuant to 37 C.F.R. §11.24 was mailed first class certified mail, return receipt requested, this day to the Respondent at the following address for Respondent known to the OED Director:

Carl Christen La Mondue  
La Mondue Law Firm, P.L.C.  
Suite 400  
500 East Plume Street  
Norfolk, VA 23510

Dated: NOV 17 2011

   
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