

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

|                       |   |                         |
|-----------------------|---|-------------------------|
| In the Matter of      | ) |                         |
|                       | ) |                         |
| Everitt George Beers, | ) |                         |
|                       | ) | Proceeding No. D2016-18 |
| Respondent            | ) |                         |
| _____                 | ) |                         |

**FINAL ORDER PURSUANT TO 37 C.F.R. § 11.26**

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Everitt George Beers (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and Director of the USPTO for approval.

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

**Jurisdiction**

1. At all times relevant hereto, Respondent of San Ramon, California, has been a registered patent attorney (Registration No. 40,508) and subject to the USPTO Code of Professional Responsibility and the USPTO Rules of Professional Conduct.<sup>1</sup>
2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19 and 11.26.

**Joint Stipulated Facts**

**I. Background**

3. At all times relevant hereto, Respondent has been registered as an attorney to practice before the Office and is subject to the provisions of the USPTO Code of Professional Responsibility and the USPTO Rules of Professional Conduct. Respondent’s registration number is 40,508. Respondent has been registered as a patent attorney since August 4, 1997 and has been

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<sup>1</sup> Both the USPTO Code of Professional Responsibility and the USPTO Rules of Professional Conduct are applicable to this proceeding. *See* 37 C.F.R. §§ 10.20-10.112 and 37 C.F.R. §§ 11.101-11.901. The Code applies to conduct prior to May 3, 2013, and the Rules apply to conduct on or after May 3, 2013.

admitted to practice as an attorney in the State of California since May 30, 1980. Respondent represents that he was also admitted to practice as an attorney in the State of Alaska and that he is currently not active as an attorney in Alaska

## **II. *Funds for Preparation and Filing of Trademark Applications***

4. Milyoni Inc. hired Respondent in November 2011 to file and prosecute trademark applications. The period of engagement lasted from November 2011 through November 2012.

### **A. *USPTO Fees***

5. From December 21, 2011, through November 15, 2012, on five occasions Respondent billed for and received from Respondent's client, Milyoni Inc., advanced costs totaling \$2,600 for filing fees to be paid to the USPTO for eight trademark applications.

6. Respondent did not deposit any of the \$2,600 in advanced costs in a trust account.

7. Thereafter, Respondent misappropriated for Respondent's own purposes the \$2,600 in advanced costs received from his client Milyoni Inc.

### **B. *Legal Fees***

8. From December 21, 2011, through November 15, 2012, Respondent received advanced fees of \$5,005 from Milyoni Inc. for preparing and filing eight trademark applications with the USPTO.

9. Respondent performed no services of value on behalf of the client in regard to the eight trademark applications. He neither drafted nor filed any of the eight trademark applications. He did not earn any of the advanced fees paid.

## **III. *Misrepresentations to Client***

10. On November 19, 2012, Respondent sent his client, Milyoni Inc., a list of work purportedly performed, which included eight fictitious trademark application numbers.

11. Respondent represents and acknowledges that on or around November 26, 2012, his client, Milyoni Inc., confirmed that the trademark application numbers that Respondent sent on November 19, 2012, were fictitious.

## **IV. *Representations Regarding Conduct***

12. Respondent acknowledges that he failed to deposit unearned legal fees and USPTO fees in a trust account, and takes full responsibility for converting such funds.

13. Respondent acknowledges that the total amount of unearned fees and costs was \$7,605.

14, Respondent acknowledges that the client, Milyoni Inc. in March 2013 requested a refund of the \$2,600 filing fees. Respondent did not refund promptly any part of the \$2,600 filing fees.

15, Respondent acknowledges that the client, Milyoni Inc. in March 2013 requested a refund of the \$5,005 attorney fees paid. Respondent did not refund promptly any part of the \$5,005 attorney fees.

16, On March 3, 2014, Respondent refunded \$7,605 to Milyoni Inc. both the unearned attorney fees and the USPTO filing fees not incurred.

17. On May 5, 2014, Respondent paid \$1,154.88 to Milyoni Inc. as interest on the unused advanced costs and unearned fees refunded on March 3, 2014.

18. Respondent takes full responsibility for misrepresenting to the client that Respondent had prepared and filed the eight trademark applications while providing false trademark application numbers.

#### ***V. Representations Regarding Discipline in another Jurisdiction***

19. On February 23, 2015, the Supreme Court of California, a duly constituted authority of the State of California, disciplined Respondent on ethical and professional misconduct grounds in Supreme Court of California Case No. S223207.

20. Respondent received a two year suspension stayed with an actual suspension of six months and a two year probation in that case.

#### ***VI. Additional Considerations***

21. Respondent has no prior disciplinary history before the Office during the nearly nineteen (19) years he has been registered as a patent practitioner.

22. Respondent represents that on or about August 22, 2011, evidence of a serious medical condition was first detected in Respondent after his hospitalization for injuries suffered in a biking accident. As a result of the accident, Respondent suffered chest injuries (which required placement of a tube in the chest wall) and a fractured collarbone. After the serious medical condition was detected, treatment for that condition began in September 2011 and lasted at least through July 2014.

23. Respondent represents that in the fall of 2012, Respondent's wife suffered a serious biking accident in which she shattered a shoulder and required extensive surgery to implant a metal plate to hold nine broken bone pieces together. After her release from the hospital, Respondent was his wife's primary caregiver. In May 2013, Respondent's 94-year-old father, who was responsible for Respondent's developmentally disabled sister – both of whom reside in Alaska – fell and broke his hip requiring surgery. Respondent's father had to be hospitalized and

was no longer able to supervise Respondent's disabled sister. Thereafter, Respondent had to make several trips to Alaska to oversee care for his father and sister. Respondent petitioned to become co-guardian of his disabled sister and was appointed in November 2013.

24. Respondent represents that Respondent sought and obtained psychological counseling regarding his misappropriation of funds and misrepresentations to this client prior to being contacted by the California State Bar and by OED and within two weeks of being confronted by the client, demonstrated remorse and recognition of wrongdoing, which were steps designed to atone for the consequences of his misconduct. Respondent represents that his psychologist opined that he will not reoffend. Respondent also has attended Lawyers Assistance Program meetings, and made full restitution – albeit not spontaneously.

### **Joint Legal Conclusions**

25. Respondent acknowledges that, based on the information contained in the Joint Stipulated Facts above, his conduct violated the following provisions of the USPTO Code of Professional Responsibility:

- a. 37 C.F.R. § 10.23(b)(4), which proscribes engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and 37 C.F.R. § 10.23(b)(6), which proscribes engaging in other conduct that adversely reflects on the practitioner's fitness to practice, by taking unearned legal fees and USPTO fees paid by a client and converting them for Respondent's benefit and by misrepresenting to the client that the work had been performed while submitting eight fictitious trademark application numbers as representative of the client's application numbers;
- b. 37 C.F.R. § 10.40(b)(3), which requires a practitioner to withdraw from employment when the practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively, by continuing the representation of a client during a period in which Respondent's physical conditions made it unreasonably difficult for practitioner to carry out his duties to the client;
- c. 37 C.F.R. § 10.84(a), which proscribes a practitioner from intentionally failing to seek the lawful objectives of a client through reasonably available means, intentionally failing to carry out a contract of employment entered into with a client for professional services, and intentionally prejudicing or damaging a client during the course of a professional relationship, by failing to perform the work that Respondent was hired to do (filing eight trademark applications), and by collecting legal fees and USPTO fees for such unperformed work and then failing to promptly return to the client legal fees for the work not performed and USPTO fees not used;
- d. 37 C.F.R. § 10.112(a), which requires a practitioner to deposit funds of clients paid to a practitioner or a practitioner's firm, except advances for costs or expenses, into

identifiable bank accounts, by failing to deposit the legal fees for the work not performed into an identifiable bank account, such as a trust account; and

- e. 37 C.F.R. § 10.112(c)(4), which requires a practitioner to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the practitioner that the client is entitled to receive, by failing to promptly return to the client legal fees for the work not performed and USPTO fees not used.

26. Respondent acknowledges that, based on the information contained in the Joint Stipulated Facts above, his conduct also violated the following provision of the USPTO Rules of Professional Conduct:

37 C.F.R. § 11.804(h)(1), which proscribes being disciplined on ethical or professional misconduct grounds by any duly constituted authority of a State, by being suspended on ethical and professional grounds by the Supreme Court of California.

#### **Agreed Upon Sanction**

27. Respondent agrees and it is hereby **ORDERED** that:

- a. Respondent shall be, and hereby is, suspended from practice before the Office in patent, trademark, and other non-patent matters for four (4) months commencing on the date of this Final Order;
- b. Respondent shall remain suspended from the practice of patent, trademark, and non-patent law before the USPTO until the OED Director grants a petition reinstating Respondent pursuant to 37 C.F.R. § 11.60;
- c. Respondent shall comply with 37 C.F.R. § 11.58;
- d. Respondent shall comply with 37 C.F.R. § 11.60 upon any request for reinstatement to practice before the Office;
- e. The USPTO shall dissociate Respondent's name from any Customer Numbers and the public key infrastructure ("PKI") certificate associated with those Customer Numbers;
- f. Respondent shall not apply for or obtain a USPTO Customer Number, or have his name added to a Customer number, unless and until he is reinstated to practice before the USPTO;
- g. The OED Director shall electronically publish the Final Order at the OED'S electronic FOIA Reading Room, which is publicly accessible through the Office's website at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;

- h. The OED Director shall publish a notice materially consistent with the following Notice of Suspension in the *Official Gazette*:

**Notice of Suspension**

This notice concerns Everitt George Beers of San Ramon, California, a registered patent attorney (Registration Number 40,508). The Director of the United States Patent and Trademark Office (“USPTO” or “Office”) has suspended Mr. Beers for four (4) months from practice before the Office in patent, trademark, and other non-patent matters for violating provisions of the USPTO Code of Professional Responsibility and USPTO Rules of Professional Conduct. Mr. Beers recognizes the seriousness of his misconduct, is remorseful for it and its effect on the reputation of the legal profession, and made full restitution.

Mr. Beers violated numerous USPTO Disciplinary rules by: being disciplined on ethical and professional grounds by the Supreme Court of California on February 23, 2015, in California Supreme Court Case No. S223207; collecting unearned legal fees and USPTO filing fees paid by a client and converting them for Respondent’s benefit; misrepresenting to the client that the work had been performed and providing the client with eight fictitious trademark application numbers as representative of the client’s application numbers; continuing the representation of a client during a period in which Respondent’s physical conditions made it unreasonably difficult for practitioner to carry out his duties to the client; failing to perform the work that Respondent was hired to do; failing to promptly return to the client legal fees for the work not performed and USPTO fees not used upon being asked to do so by the client; failing to deposit the legal fees for the work not performed in an identifiable bank account, such as a trust account.

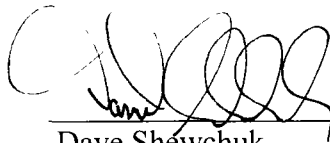
In reaching this agreement, the OED Director considered that, at or around the relevant period of time, Mr. Beers suffered a serious medical condition. Also, during the relevant period, Respondent was required to attend to a number of family difficulties including caring for his wife who had a biking accident and his elderly father. Mr. Beers expressed remorse for his actions, returned the monies paid by his client, and paid interest on the monies to the client.

This action is the result of a settlement agreement between Mr. Beers and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.20, 11.26, and 11.59.

Disciplinary decisions involving practitioners are posted at OED's electronic FOIA Reading Room, which is publicly accessible through the Office's website at:  
<http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

- i. Nothing in this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order: (1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office; (2) in any future disciplinary proceeding against Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed, and/or (ii) to rebut any statement or representation by or on Respondent's behalf; and (3) when considering any request for reconsideration submitted by Respondent pursuant to 37 C.F.R. § 11.60; and
- j. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this Agreement and any Final Order.

10 June 2016  
Date



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

On behalf of

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

cc: Director of the Office of Enrollment and Discipline  
United States Patent Office

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