



THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

CAUSE NO. 70709

Petitioner's Reply Brief – Oldham
Page 1 of 6

A. The conduct that gave rise to Respondent's USPTO sanction would result in professional misconduct in Texas.

Respondent fails to establish his subsection D and E defenses because the premise of his argument relies on an apples-to-oranges comparison. Respondent argues that “the failure to personally enter the key strokes on trademark filings submitted to the USPTO does not constitute Professional Misconduct in Texas” because the Texas Disciplinary Rules of Professional Conduct (the “Texas Rules”) lack the signature requirements unique to the USPTO. Resp. Br. At 7 (internal mark omitted). While Respondent is correct that the Texas Rules do not require applicants to personally sign trademark applications, neither do the USPTO’s Rules of Professional Conduct (the USPTO Rules). *See* 37 C.F.R. § 11.101 *et seq.* The signature rules Respondent broke, which gave rise to his sanction, are procedural rules codified in the Rules of Practice in Trademark Cases under 37 C.F.R. §§ 2.193(a), (c), and (e); and 37 C.F.R. § 11.18(a). *See* Petition for Reciprocal Discipline, Exhibit 1 at 14 (discussing signature requirements for trademark documents).

Likewise, Respondent was not sanctioned for breaking the signature rules, he was sanctioned, upon his own admission, for violating USPTO Rules 37 C.F.R. § 11.103 (not acting with reasonable diligence and promptness in representing a client); 37 C.F.R. § 11.303(a)(1) and (3) (candor toward the tribunal); 37 C.F.R. § 11.503(a) and (b) (responsibilities over non-practitioner assistants); 37 C.F.R. § 11.804(c) (engaging in conduct involving misrepresentation); and, 37 C.F.R. § 11.804(d) (engaging in conduct prejudicial to the integrity of the USPTO trademark registration system). *See* Petition for Reciprocal Discipline at 20 – 21.

Thus, an apples-to-apples defense would require Respondent to show that his conduct—instructing another to sign on his behalf when prohibited—would not amount to professional misconduct under the Texas Rules; he cannot.

- i. *The Texas Rules and USPTO Rules prohibit the same types of attorney misconduct for which Respondent was sanctioned.*

The Texas Rules contain, substantively, the same or similar provisions as the USPTO Rules

Respondent agreed he violated by instructing another to sign on his behalf when prohibited:

<u>USPTO Rule</u>	<u>Texas Rule</u>
11.103 (requiring reasonable diligence and promptness in representing a client).	1.01 (requiring competent and diligent representation) 1.03(a) (requiring prompt compliance with reasonable requests for information).
11.303(a)(1) (requiring candor to a tribunal)	3.03(a) (requiring candor toward the tribunal)
11.303(a)(3) (imposing ongoing duty required by subsection (a)).	3.03(c) (similar imposition of ongoing duty required by subsection (a)).
11.503(a) and (b) (responsibilities over non-practitioner assistants)	5.03(a) (imposing substantially the same requirements)
11.804(c) (prohibiting conduct involving misrepresentation)	8.04(a)(3) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation)
11.804(d) (prohibiting conduct prejudicial to the administration of justice)	8.04(a)(d) (prohibiting conduct constituting obstruction of justice). Rule 3.02 (prohibiting unreasonable delay in resolution of a matter).

Therefore, to establish the defense he asserts under either Tex. R. Disc. P 9.04(D) or (E), Respondent must show why the same conduct would not violate the analogous Texas Rules. He has not and cannot meet that burden, whether specifically considering the rules governing Texas trademark applications or in other contexts.

- ii. *Texas Trademark rules require applicants to personally sign trademark applications.*

Chapter 93 of the Texas Administration Code governs trademarks. Subchapter D contains application requirements and provides that applications must be “signed and verified” in one of two ways: by oath verified by one authorized to administer oaths in Texas; or by unsworn declaration in compliance with Tex. Civ. Prac. & Rem. Code Ann. § 132.001. *See* 1 Tex. Admin. Code §§ 93.31(d) and 93.33(a). In either case, a Texas trademark application must be personally signed by the signor, just like a USPTO trademark application. Likewise, the signature affixed to both Texas and USPTO applications attests to the veracity of the application’s contents. *Compare* 37 C.F.R. §§ 2.193(f) and 11.18(b) (listing verifications implicated by *any* signed document presented to the USPTO) *with* 1 Tex. Admin. Code § 93.31(a) (listing required trademark application statements to be verified by personal signature). In an apples-to apples comparison, Respondent’s conduct would have violated the signature requirements for Texas trademark applications and, considering the representations supported by his signature, also amounted to professional misconduct under the Texas Rules.

- iii. *Respondent’s conduct amounts to professional misconduct in other contexts.*

The Board need not focus solely on the trademark context to find Respondent’s conduct—instructing another to sign his name when prohibited—amounts to professional misconduct under the Texas Rules. For example, unsworn declarations can be used in a variety of contexts “in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law.” Tex. Civ. Prac. & Rem. Code Ann. § 132.001(a). Regardless of the context, in order to comply with § 132.001, an unsworn declaration must be personally signed; so too must a deed. *See* Tex. Prop. Code Ann. §§ 12.0011). An attorney who instructs another to sign such documents in his name could be found liable for professional misconduct under the Texas Rules listed above.

B. Respondent failed to meet his burden to show that imposing discipline identical, to the extent practicable, with that imposed by the USPTO would result in grave injustice.

Establishing the “grave injustice” defense under Tex. R. Disc. P. 9.04(C) requires clearing a high bar. Respondent argues that under his particular circumstances, the Board’s imposition of a public reprimand or a 30-day suspension that includes a notification requirement would result in grave injustice. For example, Respondent argues that his USPTO sanction only affected his practice in that court, not in Texas generally. Resp. Br. at 8 – 9. However, the same could be true of an attorney sanctioned in any other jurisdiction. Moreover, one purpose of reciprocal discipline is to protect against attorneys bar-shopping to avoid the repercussions of their misconduct. The same applies to an attorney who pivots his practice after suspension to a practice area unaffected by that suspension. In either case, the imposition of reciprocal discipline does not result in a grave injustice upon the attorney-respondent but helps to prevent the same against the public.

Respondent also argues that a second public sanction could confuse his current and potential clients and make it hard for him to grow his business. *Id.* at 8. Even so, those hurdles do not amount to a grave injustice. Respondent’s cited hardships focus on limited reputational harm lack of business growth—he does not risk disbarment and has not offered evidence demonstrating what, if any, undue hardship a 30-day active suspension would impose on his practice or livelihood.

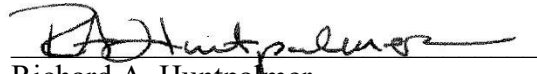
II. CONCLUSION

For these reasons, the Commission prays that upon trial of this matter that this Board enter a judgment imposing discipline identical with that imposed by the United States Patent and Trademark Office and that the Commission have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Richard A. Huntpalmer
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4253
Email: richard.huntpalmer@texasbar.com

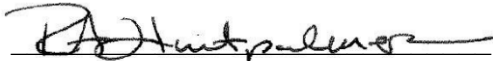

Richard A. Huntpalmer
Bar Card No. 24097857

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on April 15, 2025, a copy of this Reply Brief to Respondent Oldham's Brief in Response to Order to Show Cause on Petition for Reciprocal Discipline was served on Roland K. Johnson, by Email as follows:

Harrison Buckland Oldham
c/o Roland K. Johnson
777 Main Street, Ste. 1800
Fort Worth, Texas 76102
Via Email to Rolandjohnson@hfblaw.com


Richard A. Huntpalmer