



# United States Patent and Trademark Office

Office of the Commissioner for Trademarks

November 6, 2018

## VIA FIRST CLASS MAIL

David Nelson Golphin, Jr.  
2610 Old South Drive  
Jonesboro, GA 30236

## VIA E-MAIL (courtesy)

davidgolphinjr@gmail.com

## EXCLUSION ORDER

Dear Mr. Golphin,

This letter is to inform you that, effective immediately, the United States Patent and Trademark Office (USPTO) is excluding you from conducting business in any trademark matters before the USPTO unless you are represented by a qualified attorney.

### *Summary of Prior Correspondence*

A show-cause order dated August 9, 2018, and mailed to you at 2610 Old South Drive, Jonesboro, GA 30236, identified violations of 37 C.F.R. §§ 2.192, 2.193, and 11.18(b), based on evidence suggesting that you had engaged in a pattern of (i) filing extraneous documents for improper purposes, (ii) making frivolous, irrelevant, and unsupported factual contentions, and (iii) failing to conduct yourself with the requisite level of decorum and courtesy expected in matters before the USPTO.

The order required you to explain your actions before the USPTO, including the reasons for filing hundreds of voluntary amendments in Serial No. 87844863, an explanation as to threatening statements made in the record, and how you were able to file dozens of amendments on the same day within three to four minutes of each other.

The order warned that a failure to respond within 30 days of the date of the order would result in an exclusion from representing yourself and a requirement that you appoint a qualified practitioner to represent you in any further business with USPTO in trademark matters.

### ***Facts and Circumstances Support Exclusion***

The previous order noted that you filed an excessive number of responses or amendments through the USPTO's online Trademark Electronic Application System (TEAS) in connection with U.S. Trademark applications. These submissions contained extraneous and irrelevant statements or information, and in some cases, apparent threats against employees of the USPTO and others.

Specifically, the order noted that on March 22, 2018, you filed U.S. Application Serial No. 87844863 in your own name. Four days later, you signed and presented six separate voluntary amendments; one attempted to change the applicant from an individual to a sole proprietorship, two provided additional "substitute specimens," and each of the other three provided a new drawing of the mark (each seemingly identical to the mark in the initial application).

Two days later, you filed two more amendments and again provided unsolicited "substitute specimens." On March 30, 2018, you filed eleven additional amendments, some of which merely contained extraneous and irrelevant statements. You then requested that "all miscellaneous statements in this application be made invalid and not accepted with this application," in three separate amendments.

The order further noted how your actions continued during the ensuing months. You filed daily voluntary amendments, including several periods of time when you were filing in 3-4 minute intervals. Many of these voluntary amendments contained either nonsensical or unsupported contentions. Nonetheless, you continued to file daily, and began providing translation and significance statements containing the text of various unrelated and irrelevant regulations and code provisions. The USPTO also began receiving inappropriate amendments featuring long, complicated disclaimer statements for terms, numbers, and names not appearing in the mark and including disclaimers of ownership unrelated to the pending trademark application. In fact, before the application was assigned to an examining attorney for review on May 31, 2018, you had already filed at least 787 voluntary amendments. None of these voluntary amendments appeared to contain any information, arguments, or evidence that were actually relevant to the examination of the application.

Finally, the order noted that your past behavior before the USPTO indicates a pattern of filing similar frivolous amendments.

You have not timely responded to the show-cause order or otherwise provided any explanation for your behavior. In fact, your inappropriate behavior has continued. On August 31, 2018 you filed U.S. Application Serial No. 88100407 in your own name. In connection with this application, you filed 4 voluntary amendments before the file was assigned to an examining attorney, and another 54 voluntary amendments after issuance of an Office action. None of the amendments appears to contain evidence or arguments directly related to the Office action, and each contains the same kinds of nonsensical disclaimers, marks descriptions, and other statements found in the filings noted in the previous order.

Under the USPTO's rules of practice, applicants may represent themselves in trademark matters. *See* 37 C.F.R. § 11.14(e). In doing so, individual applicants are permitted to personally sign and file responses, amendments to applications, requests for reconsideration, petitions, and other documents without representation by an attorney. *See* 37 C.F.R. § 2.193(e)(2)(ii).

However, by signing and presenting a document to the USPTO, the signatory is certifying that (i) the document is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; (ii) legal contentions within the document are warranted by existing law (or by a nonfrivolous argument for a change or extension to existing law); (iii) the allegations and other factual contentions have evidentiary support; and (iv) denials of factual contentions are warranted on the evidence. *See* 37 C.F.R. §§ 2.193(f), 11.18(b). In addition, applicants are required to conduct their business before the USPTO with appropriate decorum and courtesy. 37 C.F.R. § 2.192. Violating these rules subjects a party to various sanctions, such as striking offending papers and precluding the party from submitting additional documents or continuing to represent oneself before the Office. *See* 37 C.F.R. § 11.18(c).

Your actions and statements described above and in the show cause order are clearly contrary to 37 C.F.R. § 2.192, and you continue to violate 37 C.F.R. §§ 2.193 and 11.18(b) through the filing of frivolous and voluminous amendments that bear no relationship to issues at matter in the pending applications. Your continued misconduct disrupts the operations of the USPTO and interferes with the effective performance of its employees in the carrying out of their duties.

#### ***Commissioner's Authority to Exclude Parties from Conducting Business Before the USPTO***

Under 35 U.S.C. § 3(b)(2)(A), the Commissioner for Trademarks possesses the authority to manage and direct all aspects of the activities of the USPTO that affect the administration of trademark operations. This includes the authority to exclude a person from conducting business in trademark matters before the USPTO, when appropriate. *See* 35 U.S.C. § 3(b)(2)(A). Furthermore, the Director of the USPTO has delegated to the Commissioner for Trademarks the power to exercise supervisory authority in trademark-related matters. *See* TMEP § 1709.

Based on this authority, and in view of the facts and circumstances described above, you, David Nelson Golphin, Jr., are hereby excluded and prohibited from representing yourself in any current or future trademark matters before the USPTO.

You may not directly file any submissions or engage in any communications with the USPTO on behalf of yourself or others in any trademark matter. The USPTO will no longer accept any correspondence filed by you in a trademark matter. All future business before the USPTO in connection with trademark matters, including any communications or contact with any USPTO employee within the scope of their job, must be conducted by an attorney who is qualified to practice before the USPTO in trademark matters. *See* 37 C.F.R. §§ 2.17(a), 11.1, 11.14; TMEP §§ 602-602.01.

***Responding to this Exclusion Order***

You are not required to respond to this order. However, you may appeal your exclusion by filing a petition to the Director of the USPTO. *See* 37 C.F.R. § 2.146. If you choose to appeal, the petition must be filed within two months of this order’s mailing date. *See* 37 C.F.R. § 2.146(d).

Due to the nature of this exclusion order, the USPTO will not accept any submissions from you other than a “Petition to the Director Under Trademark Rule 2.146,” filed through the Trademark Electronic Application System at <https://www.uspto.gov/trademarks-application-process/filing-online/petition-forms>. The petition should include a verified statement of the relevant facts, the points to be reviewed, the requested action or relief, and the fee required by 37 C.F.R. § 2.6. *See* 37 C.F.R. § 2.146(c). It should be accompanied by a supporting brief and any evidence to be considered. For detailed information on petition procedures, see TMEP §§ 1705–1705.09. **No other submissions of any other type from you will be given any consideration.**

You are strongly encouraged to hire a private attorney specializing in trademark matters to provide legal advice and represent you in both this matter and in the ongoing prosecution of your pending trademark applications. The USPTO will not accept any responses or amendments in those pending applications filed by any person other than an authorized practitioner. The USPTO may not assist an applicant in the selection of a private attorney. 37 C.F.R. § 2.11.

Sincerely,



Mary Boney Denison  
Commissioner for Trademarks

Cc:

David Nelson Golphin Jr.  
6460 Boca Grande Blvd.  
Forest Park, GA 30297