



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

February 21, 2013

Mr. Andy Ninh
3TMC / 3rd Alternative
P.O. Box 1818
Rancho Cucamonga, CA 91729-1818

Dear Mr. Ninh:

This letter is to notify you that, effective immediately, the United States Patent and Trademark Office (USPTO) is excluding you and your company, 3TMC/3rd Alternative, from participating as a correspondent or domestic representative in any trademark matters before the USPTO.

Summary of Prior Correspondence

In a letter to you, dated October 25, 2012, the USPTO indicated that the circumstances surrounding your involvement in more than 600 trademark applications and registrations suggest that you are engaging in the unauthorized practice of trademark law by preparing trademark filings or otherwise representing applicants before the USPTO. *See* 37 C.F.R. §§11.5(b)(2), 11.14; TMEP §608.¹ The letter requested that you show cause why the USPTO should not cease use of your contact information for correspondence and prohibit you and your company from participating as a correspondent or domestic representative in any trademark matters before the USPTO. In addition, the letter stated that you should provide supporting evidence for any such showing.

On November 5, 2012, you responded, indicating that you are not an attorney and asserting that you are not representing your clients before the USPTO. You state that, instead, you are an intellectual property filing consultant who provides trademark application filing assistance, as well as trademark docketing and management services. Further, you indicate that your clients' USPTO correspondence is directed to you for purposes of administrative efficiency and to protect your clients from unsolicited third-party letters. Your response contains no supporting evidence.

Facts and Circumstances Support Exclusion

¹ Please note that "TMEP" identifies the *Trademark Manual of Examining Procedure* (Oct. 2012), available online at <http://tess2.uspto.gov/tmdb/tmep/>.

Generally, a non-attorney may not act as a representative for others in the prosecution of a trademark application, in the maintenance of a trademark registration, or in a proceeding before the USPTO. 37 C.F.R. §11.14; TMEP §§602.02, 608.01. Subject to certain exceptions not applicable here, only an attorney who is a member in good standing of the bar of the highest court of a relevant U.S. jurisdiction may practice before the USPTO on behalf of others in trademark matters. *See* 37 C.F.R. §§11.1, 11.14; TMEP §602. Practice before the USPTO includes consulting with or giving advice to a client in contemplation of filing a trademark application; preparing a trademark application; prosecuting a trademark application by submitting an amendment, response, or other document; signing amendments and responses to Office actions; and authorizing issuance of examiner's amendments. 37 C.F.R. §11.5(b)(2); TMEP §608.01. While the USPTO encourages foreign applicants to appoint a domestic representative for the purpose of providing a contact and address for service of process, the mere designation of a domestic representative does not authorize the designated individual to practice before the USPTO. 37 C.F.R. §2.24(a)(3); TMEP §610.

In the present case, your response briefly describes the services you provide, but their exact nature and extent remain unclear, and information available to the USPTO suggests that some of your activities exceed the bounds of the description you provided. For instance, you state that, as part of your filing assistance services, you visit clients or speak with them on the phone "to guide them through the process of online filing of their trademark application." However, embedded information in many of the TEAS applications you are associated with indicates that the applications themselves, as well as related amendments, responses, and other filings, were completed and directly electronically signed by someone using a computer on a computer network located in or around Rancho Cucamonga, California, where you maintain a mailing address. USPTO records show instances of this even when the applicant resides in a foreign country. As it is highly unlikely that all of these applicants, foreign or otherwise, are traveling to your location to complete and sign these electronic filings, it may be presumed that you are completing, signing, and submitting these filings yourself.

In addition, USPTO records indicate that you have authorized examiner's amendments (*see, e.g.*, U.S. Application Serial Nos. 77139809 and 77140934), which can be properly authorized only by an individual applicant, a person with legal authority to bind a juristic applicant, or a qualified attorney who represents the applicant. *See* TMEP §707.01.

In view of the foregoing, a sufficient and reasonable basis exists to conclude that you are engaging in unauthorized practice before the USPTO by preparing trademark applications; by submitting amendments, responses, or other documents; by signing responses and amendments to Office actions; and by authorizing issuance of examiner's amendments.

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, which necessarily includes the ability to exclude

particular individuals from practicing before the USPTO in trademark matters or serving as correspondents or domestic representatives in such matters.

Pursuant to this authority, you and your company are hereby excluded from participating as a correspondent or domestic representative in any current or future trademark matters before the USPTO. Accordingly, your contact information will be removed immediately from all relevant trademark applications and registrations. If necessary, the USPTO will notify the affected applicants and registrants of any change to the application/registration record.

No response to this letter is required. However, you may appeal this decision by 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 letter's mailing date. *See* 37 C.F.R. §2.146(d).

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah S. Cohn".

Deborah S. Cohn
Commissioner for Trademarks