UNITED STATES PATENT AND TRADEMARK OFFICE

ROUNDTABLE ON FRAUDULENT SOLICITATIONS
TO TRADEMARK OWNERS

Alexandria, Virginia

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Commissioner for Trademarks
United States Patent and Trademark Office

Opening Remarks:

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Closing Remarks:

MARY BONEY DENISON  
Commissioner for Trademarks  
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COMMISSIONER DENISON: On behalf of the USPTO and the Trademark Public Advisory Committee, I want to welcome everyone here today. We're delighted that you're here in our office in Alexandria as well as in the regional offices around the country to discuss this very important topic of fraudulent solicitations.

Fraudulent solicitations may come in several different forms. They might come in a renewal scam format, they might come in a useless database scam, they might be a monitoring scam, or they might be something related to customs and border protection recordation. So, there are a lot of variations on this, but the one thing that we do know is that they keep coming.

So, we're delighted that Joe Matal is here with us today. He is performing the functions and duties of the Undersecretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office --
long title -- and we're delighted he's about to join us today. He will speak first and then next we will have quite a few public speakers here and some in our regional offices who will make statements as well. We also have some people who have submitted written statements which Jody Drake will read on their behalf.

And finally, we'll here from representatives of other U.S. government agencies. Clearly, the topic of fraudulent solicitations, both domestically and internationally, is ripe for discussion, and we're delighted that we have a representative of JPO with us today, so thank you so much for coming.

So, let's get started. Joe, thank you for joining us today. The floor is yours.

MR. MATAL: Thank you, Mary, and thank you all for coming here to participate in this important event. Unfortunately, increasingly businesses large and small are solicited by private companies offering to provide various trademark services and that's a good thing if
they're providing the services. But this business model has increasingly grown up of people who promise to register you and don't actually register you, people who promise to monitor goods for you to make sure no one is infringing and who don't actually do it, or my favorite is the ones who offer to put you in a private registry that's completely worthless. But people are taken in by these scams and unfortunately one of the problems we see is these people use names that are designed to make them think that they're part of a government agency. Some of the names we've come across are Patent & Trademark Agency -- sounds kind of official, right? I had to double check that that's not actually part of our own operations. (Laughter) The U.S. and Trademark Compliance Office, the Patent & Trademark Office -- you've heard of them -- and the Patent & Trademark Resource Center. And a lot of folks running a small business who aren't all that familiar with our Agency are taken in by this and think that this is from some official government
source and they pay good money for this stuff, and it really just damages the credibility of the whole system; it takes advantage of these people.

PTO has tried to do its part to stop this. We have a page on our website that lists organizations that have been doing this, names that you should know to avoid. We have a video to education the public about this. On our office actions we notify people about these scams. But we can't do it alone here. PTO doesn't have the ability to prosecute these cases and to deal with these individuals appropriately. We need the cooperation of the other parts of the government.

And they've been providing that cooperation. The Department of Justice over the last two years, working with the Postal Inspection Service, has brought some important prosecutions. They recently shut down the Trademark Compliance Center -- again, not one of our components. One of these fraudulent scammers on the outside was operating out of Los Angeles and, again, getting people to pay for services that they don't need or
that they weren't actually provided.

We've invited and have participation at this event from the Justice Department, the Postal Inspection Service, Customs and Border Protection, FTC, and SBA. We all need to work together to corral and fix this problem. I'm also glad to have the participation of our regional offices via webex. Those offices are a great resource and are great for events like this so people from all around the country can participate. And then as Mary mentioned we have a representative of the Japan Patent Office here, and we've already started efforts to cooperate with other members of the TM5 to address what unfortunately is a growing phenomenon.

So, again, thank you all for coming here and let's hope we can make some progress on this important issue.

COMMISSIONER DENISON: Thank you very much, Joe. We know your time is precious so thank you for being here with us today.

I'm going to turn it over to Dee Ann
Weldon-Wilson, who is the Chair of the Trademark Public Advisory Committee. Thank you, Dee Ann.

MS. WELDON-WILSON: Thank you, Mary, and thank you, Joe, for your comments. We appreciate you being here today.

We have a number of people from the public who are very interested in the topic and would like to speak on this, so we have asked the speakers to limit their remarks to five minutes. We appreciate all of you being able to do so.

Our first speaker today is Peter Sloane of Leason Ellis here in Alexandria.

MR. SLOANE: Thank you for providing me with this opportunity to talk about my experience in dealing with fraudulent solicitations on trademark owners. I'm a partner at Leason Ellis, a patent and trademark copyright firm in White Plains, New York, and I'm the Chair of its trademark practice. My clients and the clients of my firm include companies and organizations of all sizes as well as individuals.

For many years now we've been receiving
inquiries from clients who are confused about these official-looking notices they're receiving from companies with official-sounding names. The notices often look like invoices and they all seek payment for something of dubious value. The damage caused is varied. It includes interfering with our client relationships, wasting time in responding to inquiries, actual and potential loss sales, and importantly for this group a diminished perception of the value of trademarks, something that as IP attorneys we know is intangible and often difficult to quantify.

Several years ago we decided to do something about it. In 2012 we filed a civil action in federal court against a company named USA Trademark Enterprises. This company charged consumers almost $1,000.00 to have their trademark registrations appear in a yearly catalog of trademarks, as was mentioned before. I wish I had brought the book with me, I'm sorry I left it at the office. It is actually a physical catalog. Who knows who they sent it to, probably no one.
But the physical example would have been nice to bring, so I apologize for that.

Our clients received solicitations and we did as well because we registered our firm logo with the U.S. Patent & Trademark Office. So once we filed suit the defendants appeared and they agreed to take a consent judgment which prohibited them from conducting business in the field of trademarks ever again. They also agreed to a $10,000.00 monetary payment which we attempted to provide to the PTO but for various reasons it was decided not to go forward with that. Believe me, the money we spent on prosecuting the case was far more than $10,000.00.

The following year we encountered a different kind of scam and filed suit against a company named Patent & Trademark Agency, LLC, one of many similarly named companies. PTO is offering to file a Section 8 Declaration of Use on behalf of trademark registrations for the low, low price of $985.00, which presumably includes the $100.00 official fee. It incorrectly referring to
these Section 8s as renewals. And importantly, it
would file them without any change to the
identification of goods, even if it's subject to
the registration to attack based on fraud for
non-use. One of our clients -- actually, it's a
film production company, and behind that company
was a celebrity actor -- they even instructed the
filing of a Section 8 Declaration through Patent &
Trademark Agency after receiving its unsolicited
notices.

So, included in our complaint that we
filed against them was a claim that they were
engaged in the unauthorized practice of law before
the USPTO. The lawsuit resulted in the defendants
agreeing to take a consent judgment like the other
company which effectively shut down its trademark
business.

We were hoping that these kinds of
actions would convince others in the trademark
community, especially in private practice, to take
action against trademark scammers as we have done.
I've written articles in publications including
Westlaw and Corporate Counsel to help publicize the ability of a law firm like ours to take private action but I'm not aware of any other law firms filing any civil actions.

Meanwhile, the list of scammers continues to grow. If you were to look at the exhibits from our 2012 complaint against USA Trademark Enterprises there were a handful of companies listed on the PTO website at that time, and that list has grown exponentially. We just filed another lawsuit, the first in several years, against a company named Patent & Trademark Association, Inc, which is essentially an online version of the catalog published by USA Trademark Enterprises. That suit is currently pending before the U.S. District Court for the Southern District of New York. We're hoping that once again this action of ours shines a light on what is really a scourge on our field.

Now, I'm genuinely excited to be here today and see this gathering of people to talk about an issue which we all deal with on an
individual basis in our office. I think it's amazing that we're able to come together as a group to discuss it.

MS. WELDON-WILSON: We appreciate your comments, Mr. Sloane. Could you wrap them up in another 15, 20 seconds?

MR. SLOANE: Needless to say, there are many things that can be done by the USPTO and by some of the government agencies who are here today. I'm hoping that we have the opportunity to talk about those issues in a dynamic collective setting toward the end of the program. Thank you. (Applause)

MS. WELDON-WILSON: Thank you very much. Our next speaker is Darlene Klinksieck from Smith, Gambrell & Russell.

MS. KLINKSIECK: Hi there, everyone. My name is Darlene Klinksieck. I am the trademark portfolio manager with the D.C. office of Smith, Gambrell & Russell. I have 35 years of trademark experience. I've been doing this since there was no such thing as an electronic filing. We sent
five copies of each specimen in and it took forever to get things like that done. But in any event, as the trademark portfolio manager, I probably spend more time dealing with clients than some of the attorneys and so when something goes wrong I'm the first one they contact. What is this? You told us it was going to be X amount of dollars, et cetera, et cetera.

I think one of the most egregious invoices I received -- and I sent Mary Denison an email that afternoon and said this is ridiculous, this is absurd. We represent a little real estate broker in Long Island, New York and she was scrapping together her money to go ahead and file the application, there were some issues regarding the mark and the specimens and whatever. We were so pleased when it went through without any formal objections. About a month later she, almost in tears, called me up and said, oh, my gosh, we can't -- you said it was -- oh, geez. And I said what are you talking about, Phyllis? Send it to me. There was an invoice with her little
trademark on it from IP Direct for $2,356.00. Now these folks are out of the Czech Republic but they were telling her that what she needed to do is be on the international register and that she needed to pay the amount within 14 days. She was given the option of wire or check. And that just really irked me to think that here's this little person there who was saving up her hard-earned money to register her trademark and she was hit with something like this.

Not too long after that -- we have an office in Atlanta, and one of the partners in the Atlanta office who is not trademark savvy is a member of a fraternal organization, and they have a couple of trademarks that were not really maintained over the years and so they decided they really wanted to shape up their portfolio. So, they came to us in the D.C. office and said we'd really like to get some protection in the UK. So we said, okay, well, that's great, let's go ahead and file these applications in the UK for you, it's going to be X amount of dollars in the
foreign associate fees, and it's going to be X amount of dollars for us to go back and forth and perform the work, et cetera, et cetera.

Well, a month or two went by and then we started hearing some grumblings from the Atlanta office. Then we started getting some emails saying, oh, the powers that be at the fraternal organization are very upset, it was misrepresented to them what these amounts were going to be. So it was going from the applicant to the partner in the Atlanta office to the partner in the D.C. office who was coming to me. And sure enough, two of the four applications that had been filed in the UK -- and we were using a great firm in the UK -- they got notices from the World Organization of Trademarks, acronym WOTRA, for $946.00 each. And this was for -- I'm not even sure what it was for, but again they were given bank transfer and check options, please pay within 14 days. Now, this company is out of Budapest. I think I forgot to mention that this one is out of the Czech Republic.
So, we had to explain to Atlanta so
Atlanta could explain to the client that they
could just ignore these things and when they see
things that look formal they get a little bit
nervous about ignoring them. So we were able to
assuage that.

And then I guess most recently -- and I
don't know if anybody else experienced this --
back in April or so we started getting emails from
an organization Account Services at
Trademarksoncall.com. They were notifying us of
cancelled registrations. Now, these were all
intentional cancellations, Section 8s. But I got
something that came through -- and I said to
docketing, wait a minute, I don't remember seeing
this come through. What is this?

So I went onto PTO's website and sure
enough it hadn't even been cancelled officially by
the PTO, yet we were getting these notices. Now,
they didn't ask for anything but it was kind of
puzzling. Then all of a sudden they stopped, so
I'm not sure what really happened there.
And I read everywhere, hear people talking about how you should notify the clients and we try to do that, notify them that we're the only ones you should be receiving anything from. If you get anything that you don't understand, before you do anything about it just send it to us. If you get something demanding money just ignore it, send it to us.

But I heard a horror story once from someone who said that didn't always work because he had some sort of paragraph he put in his letters to his clients, here is your new registration, blah, blah, blah, ignore anything that you get from anybody else and send it to me. Well, apparently they forgot the second part of that and they ignore a cease and desist letter for three months and it was from a principal to a principal, so it was the actual organization that was receiving a cease and desist letter from the other organization, there wasn't really outside counsel involved.

MS. WELDON-WILSON: Can you wrap it up
in the next 15, 20 seconds?

MS. KLINKSIECK: I'm done. That was literally it.

MS. WELDON-WILSON: We appreciate the comment.

MS. KLINKSIECK: Thank you so much.

MS. WELDON-WILSON: Well, we appreciate the comment.

(Applause) Our next speaker is Eric Perrott with the Gerben Law Firm. He's also here in our Alexandria office.

MR. PERROTT: I also appreciate everyone giving me the chance to talk about these trademark solicitations. My name is Eric Perrot. I'm a trademark attorney with Gerben Law Firm. We are a small firm based out of D.C. but we file 700 applications each year. A majority of these are flat-free prosecution services, so searches and risk assessment, the actual registrations themselves. As a result, many of our clients are new and small businesses whose owners are juggling
the day-to-day responsibilities of running a business in addition to trying to protect their trademarks.

They typically don't have the benefit of in-house counsel. And even when they do and we are working with a business attorney, it's not always obvious that these are fraudulent solicitations. So we get a lot of questions. I'd say we probably get one every other week. Typically, it is just to confirm that it is a scam because we do warn each of our clients to expect these kinds of solicitations, but we still get emails.

And I kind of provided some examples that will probably sound very familiar to the practitioners in the room. This one says, "I received the attached in the mail and just wanted to see if everything was okay and if anything was required at this stage." "I received mail that looked legitimate but upon further research it appears to be a company from the Czech Republic. Just wanted to confirm that this was a scam." And
the final one, "Attached is a renewal form I received. Is this for real or is this a scam?"

And they each provide a copy of the letter they received.

Sometimes we get clients who are upset or stressed out because they think they missed a deadline or that they owed additional fees beyond the flat fee that they had already provided. In one example a client wrote to us with the subject line, "I thought this trademark was filed," in all CAPS. There is nothing in the body but it was an attachment to one of these fraudulent solicitations.

Another client wrote that, "I received several official letters with my personal information and trademark information with warning saying pay this amount by X date. All of them want $2,500.00 each. Do these look official? What is this? Do I pay these invoices? Is my trademark in danger? What is going on?" A third client actually asked if we had sold his information to a foreign company.
Our practice is built on the idea that you can pay a flat fee and have an experienced trademark attorney give you trademark advice and prosecute your trademark application. And when they receive a message like this it really undercuts our relationship with the client, and like what was mentioned earlier, the integrity of the trademark registration process itself. In addition to that, it's an administrative burden, especially for a small firm because we can't tell them that they can just ignore anything that they receive because it could be a legitimate solicitation or cease and desist letter, something that needs to be addressed.

So, we have to look at each one of these. We have to evaluate them and we have to respond to the client. Anyone who works on a flat fee knows that any of these kind of communications do directly cut into the flat fee that we charge and makes it harder to provide affordable services in the future when you have to account for responding to emails about fraudulent
solicitations.

So, on behalf of myself, Josh Gerben, and the Gerben Law Firm, I really do commend that the aggressive enforcement recently that's been occurring by the USPTO and the other organizations. We appreciate the time to talk about these issues before everyone who is also experiencing similar difficulties. Thank you.

(Applause)

MS. WELDON-WILSON: Thank you for your comments. We appreciate them. Our next speaker is Carol McCallister from Champion Business Services. I believe she was not able to make it, and so we are going to ask Jody Drake of Shugrue Mayan who is also a current member of TPAC to please provide us with some summaries of written statements of Patricia Cotton, Michael Hall, and George Bowman.

MS. DRAKE: Thank you, Dee Ann. The first statement I'm going to read is from Patricia Cotton from the Pillsbury Winthrop Shaw Pittman Firm in their Palo Alto, California office.
"The issue I would like to raise for this roundtable concerns a trademark service provider in California," -- and she references Provider from here on -- "that continues to send misleading solicitations to its former client even after the client has moved his application to my firm and a Substitution of Attorney has been files with the USPTO. The emails are misleading because they falsely suggest the provider is still attorney of record and is receiving USPTO correspondence in the applications. Moreover, the emails are direct solicitation for further business from the applicant even though Provider plainly knows that he is represented by new counsel.

"My client hired Provider in April 2016 to file two trademark applications. In October 6, 2016, he transferred both matters to Pillsbury. I promptly filed a Substitution of Attorney with the USPTO and notified Provider of the transfer of responsibility. In January 2017, Provider emailed my client regarding one of the matters. I
contacted Provider to remind them that their power of attorney had been revoked and I asked Provider not to contact my client further regarding the applications.

"In April 2017, an office action issued in one of my client's applications. Several days later my client received an email directly from Provider. The email contained the following text: 'I am contacting you because we have received an office action from the Trademark Office. Our team has analyzed this office action and determined that the primary concerns of the examiner center around disclaimers, goods, and services. Based on the difficulty level, we've determined that the cost to prepare the response is $389.00.'

"I contacted Provider immediately to remind them that their power of attorney had been revoked and that I now represented the client, the applicant. I also expressed concern that Provider's email implied that they had received the USPTO correspondence when this clearly was not the case. Provider responded to me by email,
apologized for the contact with my client, and said they would remove my client from their internal mailing list.

"On July 4, 2017, a Notice of Allowance issued in my client's other application. Several days later my client received another email from Provider. The email contained the following text:

'We have received a Notice of Allowance from the U.S. Patent & Trademark Office, congratulations. This means your mark is almost registered. What we need now is an example of how you actually use your trademark in interstate commerce. Responding to a Notice of Allowance does entail additional legal fees, $379.00, and government fee, $100.00 per class. You will not have a registered trademark until you submit proof of your use of the mark. Click here if you are ready to submit a proof of use and pay for this final step.'

"Yet again, I contacted Provider to ask that the firm stop contacting my client about his applications. I noted the Provider's power of attorney had been terminated for nearly a year and
that Provider had been notified multiple times that the applicant was represented by new counsel. I also noted the Provider's most recent emails were false and misleading since it stated incorrectly that the Notice of Allowance was sent to Provider and implied that Provider was still representing Applicant.

"Finally, I recalled to Provider my similar complaint in April 2017, and Provider promised to remove my client from its database. Once again, Provider sent me an email apologizing for the oversight and advising that the paralegal responsible for removing my client from Provider's database in April had not followed instructions and was no longer with the firm. The email assured me that Provider had now made the necessary change in the system.

"Ongoing concerns. While I appreciate the Provider has apologized several times for these emails I am somewhat skeptical that this regret is sincere. Despite repeated reminders, Provider's misleading email solicitations seem to
continue and they do not appear to be wholly automated. At best, the emails suggest that Provider's internal oversight mechanisms are insufficient. At worst, they suggest that part of Provider's business model is to purposely mislead former clients into thinking they are current clients."

Was that five minutes? (Laughter) Four minutes and seconds.

The next statement is from Michael Hall, a trademark attorney with Kacvinsky Daisak Bluni.

"I would estimate clients have forwarded me at least a dozen solicitations in the last three years from various entities attempting to secure the client's permission to file a maintenance document with the USPTO on the client's behalf. The attached example, which a client emailed me, is a good example of the misleading nature of the solicitations." And there's an example of one of these letters. In this case it's from Patent & Trademark Bureau located in Philadelphia, Pennsylvania.
"Second, the letter invites the registrant to sign the document and return it if you would like to renew your trademark. If the signed document is returned then the letter states, 'Your trademark will be renewed for a period of another 10 years. You will receive an invoice from us after we have received the signed document from you. By signing this document you automatically empower Patent & Trademark Bureau to renew the trademark stated above on your behalf.

"These statements are misleading in that they suggest the only action that must be taken to renew the registration is to sign the document and pay a fee. The letter does not inquire whether the mark is still in use in commerce, on all of the goods and services, or whether there may be excusable non-use, or mention the need for a specimen of use. Perhaps those issues would have been raised later in the process after the registrant had signed and paid the invoice, but this letter suggests it's simply a matter of paying a fee."
The next statement is from George Bowman. He's a principal Midwest EMI Associates, which I believe is a company located in Illinois.

"Thank you for the opportunity to address your group pertaining to the misrepresentation associated with the Patent & Trademark Office to confuse and redirect small companies on matters relating to their patents and trademarks.

"Almost all of the companies use a similar name association to the U.S. Patent & Trademark Office and infer that they are acting as an agent of the government. These companies are in fact not a regulated group. These groups are already known to the government who have published a facsimile of the application forms. It is difficult for small business owners to detect the differences until after they have applied "applied" for the trademark or patent and unless the form is carefully tracked and the companies involved threatened they may not act on the approval."
I am providing some email correspondence with one of the companies involved who I threatened after waiting to see action on an approval. I believe these companies are linked in some manner and have offices in New York, Philadelphia, and Washington, D.C. to appear as legitimate. They are also scamming organizations in Europe for the European equivalent grants. They sent out correspondence well in advance of the true required date for submission of renewals and indicate that if their service is not used the trademark may be "lost." The USPTO is advised that variations of the applications may exist that omit critical disclosures.

"My specific involvement was on a symbol renewal for my company symbol, Midwest EMI. I received a renewal form early in March 2016, which I surmised was from the U.S. Patent & Trademark Office. The form looked legitimate even when read in detail. On April 10, 2016, I sent in a renewal and payment form to an entity known as Patent & Trademark Office, New York, with a check for
$1,690.00 to complete the extension. I then waited over 90 days for some activity on the submission with nothing happening.

"I became suspicious after receiving a letter from my local attorney, Joe Schmidt, of Taft, Stettinius and Hollister who I had lost track of due to a move he made between law firms. He invited me to contact him for the renewal. I discussed the matter with him via email and it immediately became clear I was dealing with an unknown entity not affiliated with the government. I then went on your website and found that the form I signed was the same as one your website indicated was a possible fraud site. It was of concern at that time that the filing would be made on time if at all.

Mr. Schmidt performed a search and indicated no filing had been made. Since no correspondence had been received from the entity contracted it was necessary to trace back using only information on the check at the urging of Mr. Schmidt. My search revealed a number of companies
with the same or similar names existing in Philadelphia, New York, and Washington. I first contacted the company Patent & Trademark Bureau in Philadelphia who indicated they were not the entity who had received the funds.

After locating the facsimile of the form at your USPTO website I then contacted the second entity of the similar name in New York, Patent & Trademark Office, which turned out to be correct. I specifically asked them for a timeline for completion which they indicated would take another 90 days. The trademark was started the day after and issued after waiting the additional time but only started after I had complained strongly.

"In hindsight, it would be useful if the government required a registration process for lawyers soliciting for the service and some oversight on them. It would also be useful to require any entity representing itself as an "agent" be required to prominently display a warning message "not a U.S. government entity" on their forms, similar to the health warnings on
cigarettes and in advertising. Third, it would be useful to require all such companies to issue confirming correspondence back to the sponsor company providing a person's name and phone number handling the case, detailed information, and schedule on the status of their submittal, including a receipt and anticipated date of submittal with a process to request payment back if the schedule is not adhered to. The government should receive notice that the file is being worked on by the entity contracted."

MS. WELDON-WILSON: Thank you, Jody, for providing those summaries of the comments by Ms. Cotton, Mr. Hall, and Mr. Bowman.

I believe our next speaker is Carrie Devorah, from the Center for Copyright Integrity. Thank you so much.

MS. DEVORAH: Thank you to everybody. Bit of a preparation: I'm not a lawyer. My sons are lawyers. But I come from the arts world. I was one of the earliest members of the licensing industry, merchandise association. I actively
built the first crime lab on a college campus on the continent, and I tend to go after documents. While everybody else is swatting at the hornets, I just go in and pull down the nest.

My prepared remarks. The definition of fraud: a false representation as a matter of fact by words, conduct, by false and misleading allegations, by concealment of what should have been disclosed, but is intended to deceive another so that the individual will act upon it to his or her legal injury. Fraud, five elements: false statement of material fact, knowledge the statement is untrue, intent to deceive the alleged victim, reliance by the victim on the statement, an injury to the alleged victim as a result.

The USPTO functions include reviewing trademark applications to confirm elements needed to federally register an applied mark which are to distinguish our goods and services from another's. Words, names, symbols, sounds, colors. We don't have to register our trademark here in the U.S. but you tell us that we have benefits when we pay
your agency for federal trademark registration.

You spend our tax dollars selling us on a dream registering our trademark gives us advantages, civil remedies, the ability to file a civil action in court. A crime that is big or profile enough is referred to the U.S. attorney's office, the DOJ, or maybe the FBI, U.S. Customs and Immigration Enforcement. Investigative agencies may get involved, but for us little guys it's a pipe dream even to find a lawyer willing to take on our cases.

Your Agency is perpetuating a fraud on the very people you federal employees take an oath to protect, making false statements of the material fact. There is no enforcing intellectual property laws domestically or internationally. You know that yet you take our money.

The U.S. (inaudible) add a domain-naming function to the control of I CAN, a private charity in 1998 was our game changer. Frauds you failed to prevent started with online cybersquatting of our trademarks, followed with
rolling out of thousands of detailed Ts. What began as dot.com, dot.gov, dot.edu, dot.mil, dot.org exploded into infinite possibilities, trademarks strong and unending sentences like taylor.swift.does.not.have.enough.money.in.the.world.to.protect.her.trademark.

There is no stopping infringements with evolving technologies. Darknet, Tor, virtual borders. The treaties you point to, meaningless. The FBI, Interpol, World Customs Organizations, International Chamber of Commerce estimating 512 billion in global sales lost to fraud is delusional. You're blowing smoke up my skirt. It's the internet, no one knows. Your disclaimer that USPTO attorneys can provide helpful information and tips but cannot provide legal advice? Let's be honest. Lawyers I know who are honest are telling their clients trademarking is no longer worth the time and the money. Your Agency's mission is to develop, strengthen, and protect domestic and international intellectual property policy. It's game over.
Fraud is the crime of using dishonest methods to take something valuable from another person. Stop defrauding creators. Stop taking our money under the pretense of protection you cannot provide. Start admitting you were asleep at the wheel as the American IP ownership protection was being lost. Thank you. (Applause)

MS. WELDON-WILSON: Thank you for coming today and providing your comments.

Our next speaker is John Heinbockel of Erik M. Pelton & Associates.

MR. HEINBOCKEL: Thank you for the introduction. Thank you for having us here today. I'm here on behalf of Erik M. Pelton & Associates. We are also a small trademark law firm that represents primarily small businesses. Since 1999 we've registered more than 2,500 trademark registrations. We're also the owner of numerous trademark registrations ourselves.

As the owner of registrations we frequently receive mailed solicitations from entities calling themselves Patent & Trademark
Agency or something similar promoting registry or directory services or offering to handle trademark names documents. On a weekly basis the firm fields calls or emails from clients or from people who have read our blog questioning documents or invoices they've received from these entities. Others call and email asking about the status of their trademark registrations and maintenance documents prompted by similar mailings. Many of our clients are confused because they were under the impression that they had already paid the government fees to register their mark for maintaining their registration, or because they believe that their lawyer was on top of the matter and would notify them if any issues arose.

As a firm, our awareness of these solicitations is kind of a drop in the ocean. While we warn clients of these solicitations in our application and registration updates, it's impossible to know how many of these trademark owners take these warnings to heart or even read them. More troubling, it's impossible to know how
many victims respond to these solicitations either. While we occasionally hear from upset trademark owners, we believe that the majority either don't realize they've been duped or are too embarrassed to admit that they've been defrauded.

The various services offered in these directory solicitations are problematic in many ways, perhaps most obviously in that they offer no value to trademark owners in exchange for large amounts of money. In years of discussing the solicited directory or services with hundreds of trademark attorneys and thousands of trademark owners we have not once heard anyone suggest that the directory services offered in these solicitations have any significance, purpose, or value.

Solicitations concerning trademark registration obfuscate the actual nature of the services offered. It's never clear whether these solicitations are offering actual legal services or providing actual legal advice, and if they are they rarely conform to the rules of professional
conduct concerning attorney advertising and solicitation. If they're not, they're prices are truly extreme.

But the problems caused by these entities go beyond the obvious. Taken as a whole these solicitations impose great costs on the trademark registration system. The majority of trademark owners are small businesses for whom the cost of trademark registration and maintenance are significant. The expenses imposed by these solicitation schemes interfere with the decision-making process of small businesses regarding the management of their trademark portfolios.

The misinformation and deliberate confusion caused by these solicitations negatively affects the ability of trademark owners to make informed choices about managements of their trademark rights. Every dollar spent in response to these solicitations is a dollar not spent on effectively managing one's trademark portfolio or growing his or her business.
Furthermore, these schemes dilute the messaging from the PTO and the value of legitimate trademark services. A decision not to renew a registration or file a new application based on the cost, whether real or perceived of a solicitation, undermines the accuracy of the register. The same goes for these misfiled maintenance documents.

At this moment perhaps (inaudible) and public trust of government institutions and leaders, the integrity of trademark register is more important than ever. Limiting public access to trademark data is not a viable option to solving this issue and warnings have proven ineffective. Instead we implore the agencies here today to work together to stop these scams by stepping up enforcement efforts and prevent these solicitation schemes from preying on unsuspecting trademark owners. Thank you. (Applause)

MS. WELDON-WILSON: Mr. Heinbockel, we thank you for your comments and for coming to be with us today.
I'm going to turn the microphone over to Jody Drake again who is going to provide a summary of the statement of Charlotte Beaumatin, who is the French attaché of the Embassy of France for the National Industrial Property Institute.

MS. DRAKE: Thank you, Dee Ann. This is Ms. Beaumatin's statement.

"The French Office is also the victim, along with the trademark owners, of the fraudulent activities of certain companies. Indeed for several years already trademark owners receive letters asking them to pay royalties using names, phrases, and websites that suggest that it is the French Office (INPI). Each year the INPI receives between 50 and 100 mails of trademark owners who complain of having been abused.

"That's why INPI filed a complaint against X in 2016, in France, against companies that seem to be the most dangerous. These companies are located in Eastern Europe (Austria, Poland, Czech Republic). The complaint alleges misleading or
misleading advertising,
constituting an unfair commercial
practice as misleading,
unauthorized copying, and fraud and
attempted fraud. This penal action
has the virtue of imposing
penalties on natural persons with
the recurrence of very heavy risks.

"But this answer is not enough. The
main offices also need to mobilize diplomatic
channels in order to put pressure on the countries
hosting fraudsters. To fight against this type of
profile I think that systematically initiating tax
audits and all other types of controls (social
law, labor law, compliance with standards for head
office buildings, et cetera) will be more
effective than actions in the respective
territories of the offices on which our fraudsters
will not move and for which the implementation of
the sanction will be complicated.

"We could also organize a mobilization
of all the victim offices to the Austrian, Polish,
and other offices so that they could act on their territory in consultation with the national repressive forces. Finally, a tool could be useful and effective. It is well known in the United States. I am talking about collective actions. Offices could organize wherever possible a "class action" to increase penalties and risks.

"The only way to be effective and strong enough to face and solve this problem is to combine our strengths and our efforts. Cooperation is essential in order to deal with this scourge and to find all the means that can undermine the guilty societies."

MS. WELDON-WILSON: Thank you for summarizing those comments, Jody.

Our next speaker is Stephanie Bald, who is here on behalf of the American Intellectual Property Law Association.

MS. BALD: Good afternoon. My name is Stephanie Bald, I'm a partner at Kelly IP, LLC here in D.C. I'm also the chair of the Trademark Law Committee of the American Intellectual
Property Law Association, or AIPLA. Today I'm here speaking on behalf of AIPLA.

AIPLA is a national bar association of approximately 13,500 members who are primarily lawyers engaged in private or corporate practice in government service and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting IP.

AIPLA appreciates the opportunity to comment on behalf of its members regarding the increasingly frequent occurrence of fraudulent and misleading solicitations to trademark owners. AIPLA members see this issue as a serious concern to trademark owners which causes confusion as to the source of the solicitations and their legitimacy. We applaud the USPTO's willingness to consider this topic and to generate a dialogue with the aim of investigating this solicitous
correspondence in the various forms and to try to
reduce it if not all together eliminate it.

Often solicitations are sent to
trademark owners within days of a new filing at
the USPTO offering assistance to a trademark owner
with prosecution issues that may arise as the
application undergoes the examination. Other
solicitations are sent to trademark owners gauging
the trademark owner's interest in filings outside
the U.S. corresponding to new U.S. filings.
Still other solicitations offer publication of the
trademark owner's application or registration
renewal in a digest or catalog of quasi-official
sounding directories for an exorbitant sum, when
in reality such publication confers no real
benefit to the trademark owner. Some are styled
to look like an invoice for registration renewal.

This barrage of fraudulent and
misleading correspondence is a concern to AIPLA
members and trademark owners because of the
deceptive appearance of the solicitation letters
and because of its increasing regularity. The
solicitation looks official, sometimes baring a stamp or seal, and can appear to be sent from official-sounding source on government-like entities. Numerous solicitations have taken the form of an invoice with a request for the trademark owner to pay fees on what could be understood as a trademark maintenance fee. The fine print usually contains details that are easily overlooked by the trademark owner. Several AIPLA members have confirmed that their clients have been harmed by these notices including, among other things, suffering unnecessary lost time and expense. Because the solicitations often appear to be invoices they may be directly routed to the trademark owner's accounting departments and do not get legal review first resulting in inadvertent payment. Trademark counsel often do not learn that clients have paid these invoices until too late to recover the fees paid.

Fees for individual invoices are usually over $1,000.00 and sometimes are several thousand
dollars. Even if inadvertent payments can be stopped it is not without substantial effort and coordination with banks and attorneys, as well as additional bank charges to stop payment. If payment can be avoided trademark owners and counsel still suffer lost talent, time, and expense associated with the trademark owner scanning and sending the fake invoice to the counsel to get confirmation that the invoice is not official.

Although AIPLA members were hesitant to disclose specific victims by name, members shared their experiences and confirmed the pervasiveness of harm and burden on the trademark community. The fraudulent invoices appear to come from both within the United States as well as from across Europe and other countries. An additional concern is that the trademark owners pay these invoices, and if they pay them there is a grave risk that they will be misled into believing they have completed the requirements for filing renewals or maintenance for filings for the USPTO and failed.
to complete these necessary filings. Such a failure results in total loss of registration rights.

One member shared that a restaurant client had received and paid multiple of these fraudulent invoices believing that it was renewing its trademark registrations. Because the client did not file the renewal documents required by the USPTO and paid the invoices instead the registration was cancelled. The client wanted to enforce their trademark rights and sought assistance of counsel, at which time counsel learned that the registration which should have been incontestable was cancelled. The client was forced to refile new trademark applications and suffered an inability to assert what could have been an incontestable trademark registration.

Members also advised that they had learned clients had paid these official-looking invoices oftentimes because the invoice was routed to accounting or office managers who did not know to get the invoices reviewed. The payments were
not recovered in these instances, resulting in the loss of several thousands of dollars in each instance.

A member who is an in-house counsel at a corporation shard that he had received dozens of these fraudulent, misleading solicitations asking for publication or trademark registration. Although the company was aware of the issue it still experienced lost time and expense wasted by confusion within various departments that are receiving and processing these kinds of invoices, and in some cases it still sent copies of the invoices to outside counsel to confirm that the solicitation could be ignored and was not official.

Other members confirmed that the clients are spending time sending these fraudulent invoices to outside counsel either believing they should be paid or otherwise asking for confirmation that they should not be paid, and that the trademark owners are spending time on internal education to try to make sure their
accounting departments do not pay these upon receipt.

AIPLA appreciates the USPTO's increased efforts to educate trademark owners about these fraudulent and misleading solicitations. AIPLA supports the USPTO's ongoing efforts to elevate the seriousness of these issues, to stiffen enforcement against the purveyors of these crimes, and to remedy the harm in the trademark community. AIPLA members thank the USPTO for their time and attention to this important issue. (Applause)

MS. WELDON-WILSON: Ms. Bald, we appreciate you sharing your comments with us today. Our next and final speaker of the day is Patrick Flaherty, who is speaking on behalf of the International Trademark Association.

MR. FLAHERTY: Good afternoon. My name is Patrick Flaherty and I am in-house counsel for Verizon for intellectual property. I'm here today on behalf of the International Trademark Association, or INTA, in a volunteer capacity.

INTA is a global association of
trademark owners from businesses of all sizes. We are dedicated to supporting trademarks and related intellectual property in order to protect consumers and to promote fair and effective commerce. INTA (inaudible) advocacy work throughout the world to advance trademarks and offers educational programs and informational resources.

INTA members include more than 7,000 organizations from 190 different countries and more than 30,000 individual members worldwide. Our headquarters are in New York and we have offices in Brussels, Santiago, Shanghai, Singapore, and Washington, D.C., in addition to representatives in Geneva and New Delhi. While INTA is global, the largest segment of this membership is from the U.S. with more than 14,000 individual members and more than 3,000 organizations.

Trademark owners and their representatives from around the world have been receiving an increasing number of fraudulent
notices claiming to be from or sent on behalf of government trademark offices. These seemingly realistic letters demand unnecessary payment for services or to maintain trademark registrations. The services they offer often are unnecessary or duplicate the services provided by the government Trademark Office. In other instances the mailings may offer what might seem to be a legitimate service, such as a trademark watch service, but under false pretenses. For example, the usage names such as the United States Trademark Office which sounds like an official government agency.

The mailings are often directed to business or accounting offices rather than to legal departments. Staff that receive them believe that this is a bill that has to be paid in order to keep the application in progress or to maintain the registration. It is often when they consult with our legal counsel that they understand that the bills are not legitimate. It would not be surprising, therefore, to know that small businesses without in-house trademark
counsel may be paying these fraudulent types of notices.

Government trademark offices are now working to inform users of this trend and to help them avoid falling for such scams. INTA applauds the USPTO's efforts to post clear warnings and include the names of those known perpetrating entities and examples of the fraudulent type letters. However, this is not an exhaustive list as these entities change their names from time to time and new entities emerge to engage in this type of practice. It is clear that additional action needs to be taken in order to combat these deceptive and illegal practices.

We hope that the United States government agencies will work together within their mandates and with their stakeholders to actively combat this problem. INTA would be interested in participating in any way to assist with these efforts.

INTA appreciates the opportunity to speak this afternoon about this very important
issue that's affecting businesses and the
customers they serve. We thank you for organizing
this timely roundtable discussion. (Applause)

MS. WELDON-WILSON: Mr. Flaherty, we
thank you for your comments on behalf of INTA
today.

I believe that is all of the public
speakers that we had scheduled, so although we are
ahead of time may I turn the program back over to
Mary Denison.

COMMISSIONER DENISON: Thank you, Dee
Ann. We're very grateful to all the public
speakers for taking time out of your very busy
schedules to be with us today. Similarly, we very
much appreciate the participation of the other
government agencies today.

I wanted to take a moment to tell you a
couple things. One is that we have applied for
CLE, for anyone that is interested in Virginia.
It hasn't been granted yet but stay tuned if you
are interested in CLE for this. Second is we will
be having a reception afterwards and so if you can
stick around for a few minutes, hopefully some of
the government people can stick around as well,
and you can have an opportunity to have some
correspondence with the government staff here.

Also, I understand that since Peter
didn't get through his whole thing, he had some
questions, and I have answers to some of the
questions that he would have asked had he had
time. So, I thought I might just use this
opportunity to address some of the issues that he
had raised.

One of the questions was whether
anything could be done to restrict the
dissemination of bulk data or mining of data on
the USPTO website. There are many people who have
legitimate reasons to use our data. We have
always wanted to have the trademark data be public
data to encourage transparency, open government,
that whole concept. So, while we have had
conversations about restrictions we have not
really ever pursued it because we have felt that
the open data access for legitimate companies,
such as trademark search companies, probably
outweighed the problems caused by this. However,
if major bar groups which are represented here
today -- I see three -- if you are interested in
having a further conversation with us about
restriction of the data we would be happy to
discuss that with you.

Another question that I believe Peter
Sloane was interested in asking was whether the
USPTO is actively coordinating with industry
groups such as the Anti-Fraud Taskforce of MARQUES
which is an association of European trademark
owners. Until you brought this to our attention
we were not aware that there was one, but we are
happy to be in touch with them.

Third question you had was the
anti-fraud network of the European Union
Intellectual Property Office. My understanding is
that we were inadvertently not invited to the last
meeting so we did not attend because we didn't
know about it. But we are happy to engage with
them. They have not been terribly active in the
last few years, but we have discussed this with
them when we were in Spain in May at the INTA
meeting and at the TM5 meeting. So, we are
definitely now plugged into that group in a way we
were not before.

We have also proposed to the TM5, which
is the five largest offices in the world, China,
Korea, Japan, Europe, and us, that we have a
project for the TM5 on this fraudulent
solicitation. So, it has not been accepted by the
TM5 but it is under consideration and will likely
be discussed at our next meeting which is November
30th and December 1st in Spain.

You had another question about whether
the USPTO is able and willing to file litigation
in federal court or even domain name complaints
under the Uniform Domain Name Dispute Resolution
Policy, known as the UDRP, against those who use
confusingly similar names as part of domain names
in perpetrating their trademark scams. I'm going
to ask Tom Casagrande from our Solicitor's Office
to address that.
MR. CASAGRANDE: The answer is yes. One of the things that we deal with here at the PTO is that Congress has not given us independent litigation authority, so to the extent we want to pursue something, a civil action in federal court, whether it's for trademark infringement or fraud, we have to get the okay and be represented by DOJ in that. This is in the civil part of DOJ. We have communicated with them about doing this but they have limited resources and it really takes some sort of outrageous conduct, and also someone that they can go after and get meaningful relief from, in order to get them to commit to doing that.

So, what we have done is try to do what we can do on our own, which has taken a couple of forms. Number one, when we can identify someone who is doing this in a way that's harming our stakeholders and is actually present in the United States personally, as you've heard from some of the public speakers a lot of these people are in foreign countries in Eastern Europe and elsewhere,
but when there is someone in the United States we will send them a traditional cease and desist letter and explain to them that we think that they are misrepresenting their services and duping our stakeholders into providing services that either aren't provided at all or are provided poorly. And we've had some limited success with that.

A couple of years ago there were a couple of entities owned by a couple of people in Los Angeles that we actually sent them a letter, they got a lawyer and responded to us, and we negotiated essentially that they stop doing this and they dissolve the two entities that they were operating out of. The names of those were The U.S. Trademark Registration Office and the U.S. Trademark Enforcement Office. That's really the only one that we've had success with on a cease and desist level because, of course, if they push back we can't go to court until DOJ says we can go to court with them representing us.

There was another instance where I think one of the people that you were pursuing we were
pursuing at the same time, a number of entities owned by Mr. Oganistans who is from one of the Baltic states. We went back and forth with a lawyer that he had retained in Houston, and eventually you got a consent judgment and we, at that point, stopped our efforts to go after him in a parallel fashion. I believe also that the Department of the Attorney General of Vermont was going after him at the same time and may have -- correct me if I'm wrong --

MR. SLOANE: Actually we went after them after the state AG of Vermont I think had ended (off mic). Thank you. I'm aware of the Vermont Attorney General going after PTA, and my understanding is that the AG in Vermont had reached some kind of a consent judgment with them prior to our taking action. Our issue there was I think the action by the Virginia (sic) AG stopped short of full relief and PTA continued their deceptive practices.

MR. CASAGRANDE: And that raises another issue about these folks. A lot of them are
essentially so lawless that they won't even stop
doing what they're doing once they have a judgment
against them. It's like a game of whack-a-mole
and they will just pop up using aliases and things
of that nature.

For example, this Mr. Oganistans had a
particular -- I won't call it a business model, if
you want to call it that -- where he would
essentially act as a lawyer for the people who
signed up for his service, but because he wasn't a
lawyer he would have to say that he was part of
the company. So, he represented himself as a
manager of the company which was false, he was
not. So, because that really constitutes the
unauthorized practice of law our Office of
Enrollment and Discipline started a very
comprehensive investigation into precisely how he
does what he does and how far his tentacles have
reached. And it turns out that he actually was
associated with several different entities that
were similarly named, and once there was a
show-cause order issued by our OED office he
started using aliases after failing to respond to the show-cause order, basically an order that he not practice before the Agency. But he flouted that an essentially he started operating under a number of aliases, Adam Cain, David Nickles, Nick Coleman, just making up American-sounding names. So, we got a lot of information from that particular investigation, but unfortunately were not able to stop him because he doesn't want to comply with lawful orders.

MR. SLOANE: Can I ask a question about that? I'll go back to my seat in a second.

MR. CASAGRANDE: Absolutely.

MR. SLOANE: As long as I'm up here. I'm aware of him using aliases, but is there a technical way for the PTO to do some kind of reverse searching on the email addresses that he was using?

MR. CASAGRANDE: I've just got a summary of what went on. I think there was information such as what IP addresses were being used, what email addresses were being used, what credit card
numbers were being used, but I don't know that there is yet a software way that we have in place to go back and actually reverse search all of that. But that is something that's under discussion.

MR. SLOANE: Right. Because I think the bulk data includes a tremendous amount of information, but that may be one of the only fields that's missing.

MR. CASAGRANDE: Yes. That's a good idea.

MR. SLOANE: Which would help private practitioners like me if we're in the same situation to try to learn more about these trademark scammers.

MR. CASAGRANDE: That's a very good point. Another kind of interesting wrinkle that our Office of Enrollment and Discipline found out was this isn't really limited to lawless scammers who aren't lawyers. There was one practitioner in the United States who was approached by a software
company that had mined all of our trademark registration data, lawfully as it turns out, and then pitched to him that he could then use that data to send out these notices and maybe get a lot of money from people.

So, it turns out that these forms -- because this was a real U.S. attorney -- the forms that he was sending out did not comply with the ethical rules that guide attorneys' practice here in the U.S. For example, they didn't say attorney advertising or anything like that. So, our OED office was able to get a consent judgment against that person and he disbanded that entire aspect of his practice.

But those are sort of victories that are few and far between. Some of them are really just pyrrhic victories. So, what we have been doing is working with federal law enforcement, and a number of these representatives are here and we're happy to have them here. They've had some success on the criminal front against some of the more notorious scammers that have preyed on our
stakeholders as well. I'll leave it to them to talk about that.

The last thing we do is educational. We have a very comprehensive web warning which has the names of all of the scammers that people have reported to us as having duped clients or people who have been duped themselves. And we have examples of all of their forms that we've been provided so that hopefully as the word gets out people will know to check there and see if one of the letters they've gotten is one of the people we've reported as being potential fraudulent solicitations.

MR. SLOANE: Can you just address the UDRP issue?

MR. CASAGRANDE: Yes, that's a very good point. I'm going to discuss that. What Peter had asked in one of his questions is whether we can pursue UDRP complaints, kind of a non-court or non-judicial way to resolve disputes with people who are using domain names that are similar to the USPTO.gov domain name or one of our other
trademarks to solicit for these non-existent or poor services.

I haven't looked into that and that's a really good suggestion. I'm going to be discussing whether or not that is something we need to have DOJ civil work with us on under those statutes that gives them the authority to do that, or whether because it's non-judicial we might be able to do that ourselves. So, I'll be looking into that, and thank you for that.

MR. SLOANE: The postal service has filed quite a few of them.

MR. CASAGRANDE: Okay. I don't know if the postal service -- yeah. That's a very good idea. Thank you.

Yes?

MS. DEVORAH: We can talk about this. I write about this extensively. I've taken to being very creative with people who have linked into me, enforcement, military, others. There is a solution, that people don't go back historically and read documents. The internet is at the bottom
of this. In 1998 the domain naming system was
given to a private charity which means, as I
explained to people, when Charleston Registry
which is Google pays $27 million to ICAN to be a
registry for anybody who wants to sign up at a
domain and allegedly comply with rules, that's a
donation. It's a wash-through because it comes
out the other end as an accepted donation.

The internet was set loose here in
Virginia. You have VERISIGN who was part of the
groups at the beginning who were getting involved
in this whole process. This is quite extensive to
talk about, but you have ICAN which was
homesteaded in Los Angeles down on water street
until September 2016, then papers were done and
the control went over to Switzerland. People say
we can't pursue it now because it is a
judgment-free country. Of course you can because
internet is accessible with portals.

Again, it's a longer conversation. I
just recommend linked into me. It's creative
outside the box. I'm a prime alumnus, but I put
people in jail with some of the things that I've
done, or I help enforcement agencies understand
stuff that's too complex. There are not enough
assets. I just make your work a little bit easier
and colorful.

MS. WELDON-WILSON: Thank you very much.

We're going to move on. First of all, I want to

thank Mr. Frederick, Mr. Gerber, and Ms.
Anderson for all your incredible work you did on
the criminal prosecution in California, we call it
the Darbinyan investigation and prosecution. We
were thrilled to hear of the five convictions and
I understand two have been sentenced. So, I'd
like to start first with Mr. Frederick and Mr.
Gerber and then followed by Ms. Anderson, your
comments about the case, could you tell us a
little bit more for those that aren't familiar
with it? How did you learn about him, and how did
you come to pursue this, and what can we learn
from that?

MR. FREDERICK: My name is Dave
Frederick and I'm a U.S. postal inspector. For
you guys that don't know, we're a federal agency that handle crime that's committed through the mail, so mail fraud, a bunch of other different things.

How we got started on this case was Inspector Gerber had a meeting here at the Patent & Trademark Office about these scams. He asked me to start looking into it. One thing that I use is the Federal Trade Commission's complaint portal that they have. Is it called Consumer Sentinel?

MS. DAFFAN: Consumer Sentinel.

MR. FREDERICK: Consumer Sentinel. And I was able to use their database. We also have one at the Postal Service that you can submit complaints to. I was able to see all the complaints in there, how many of these companies had X number of complaints. I was also able to get who actually paid money and find the victims.

What I noticed in this case was the Trademark Compliance Office and Trademark Compliance Center, they had the most complaints in there, and they also had the most current
complaints. A lot of them were a couple years old. I followed up on some of them. They had moved on to different names or different companies or different entities. So, that's how I started with Trademark Compliance Center and Trademark Compliance Office, was basically by looking at these complaint databases and finding the most current complaints.

What was going on with these guys was they were able to get trademark applicant information, and they were targeting trademark applicants. They would hire a printer, like a mass printer and a mass mailer to mail out all these solicitations. Those solicitations, once the victims got it they would submit their payment to these scammers to an address on the solicitation. Those addresses more or likely are a mail-receiving agency, so a virtual office center. If you guys don't know what a virtual office center is, it's a place where if you have a company and you only need temporary office space you can rent a room, or you can just get mail
forwarding services. You don't even need to rent office space. You can just say, hey, I'm going to have some mail come in here, can you forward it to me.

So, that's what most of those addresses are going to be. It's not where the suspects are. They could be in another country, in another state. In this situation they were actually in California, even though they were having the victims send their payments here to this area. I think they did that because the Patent & Trademark Office is in Alexandria. So, they used like a Regus virtual office center here in Alexandria, right across the street, and then they also used some in D.C. But once those guys got the checks in the mail they were then told to forward it to another virtual office center out to where the suspects lived in California, and then that's where the suspects actually went and picked up the checks and then deposited them into their bank account that they had set up under fraudulent names.
So, it was a lot of work to figure out who these people were because everything was fraud. The phone numbers they were using were real but they were in fraudulent names, the bank accounts were set up in fraudulent names, everything was fraud. What they did was they took the victim's money in this case and they bought gold with it. They didn't provide any service. They also got cash withdrawals.

It's a pretty straight-forward fraud scheme. It just took a lot of work to figure out who they were because of all the false names. They were actually using real identities of young kids that were here on J1 visas, like the foreign students that come over to study and work. Somehow they were able to obtain the information on these people and use their identities. So, they had real Social Security numbers, they had real names, they just didn't belong to them.

How did we end up finding Darbinyan? We ended up just finding him, luckily, through his phone. Just like any other fraudsters or gang
members, when they start using these phones they dump them really fast so you have to really be on it. If you wait any amount of time to start acting on information that you get, by the time you get around to doing it the information is old, it's not going to be any good because they moved on with something else.

In this case they started off with the Trademark Compliance Office and they actually stopped that completely. The checks that were going out there for the Trademark Compliance Office, to where they were ending up at that virtual office, they just didn't go back there. Even though checks were still going there from victims, they just moved on. They even left the money behind. They just change it up.

When you're doing these civil things to try to stop them, what they're going to do is they're just going to move on. So, one of the things that we couldn't do in this case was just get them to stop because then we'd have to start all over again, if that makes sense. They're just
going to start up under another name, another virtual office. So, we pressed on to try to get to a conviction.

COMMISSIONER DENISON: We're thrilled to hear about that conviction.

SPEAKER: (question asked off-microphone)

MR. FREDERICK: The conviction of that individual person, I'll let Alison talk about that. But I can tell you that the person who was behind sending out the fraudulent solicitations, he was charged and he pled guilty. The investigation showed that he had a partner that was actually going to the virtual office center to pick up the checks and also he was on bank surveillance video doing transactions, so he was also convicted. We found that the people at the bank were assisting them to lauder this money, so three people at the bank were also convicted. So, that's where we got the five convictions. You have the two fraudsters and the three bankers.

MS. DEVORAH: Would the Regus Suites
sites not be in any way an accessory to these crimes? The more you pinch the tails of people involved, the more people are going to want to vet out who comes onto their site and who they're providing a service for.

MR. FREDERICK: I'll let the attorneys answer that question. But I can tell you that they were very helpful.

(Laughter) No, seriously, without their help I wouldn't have been able to get Darbinyan, or the suspect, because they were actually making phone calls for me undercover. I mean, they were a big help for me. But their liability? I don't know.

COMMISSIONER DENISON: Don't offer legal opinions if you're not a lawyer, please.

(Laughter)

MR. FREDERICK: I don't.

COMMISSIONER DENISON: But thank you so much for all you've done. Now I'd like to ask Mr.
Gerber if you have any further comments on this.

MR. GERBER: Sure. My name is Clayton Gerber and I'm a supervisor of a team of postal inspectors that sit at the Department of Justice investigating white collar cases. I want to address a little bit about the start of the Darbinyan case and then a couple of the comments that have come through.

The Patent & Trademark Office has been jumping up and down and screaming to law enforcement to please investigate these for a long time, for years. I met with them years ago and they were saying please investigate these cases. They're not alone. In Europe OHIM, and EUIPO is the same thing, I've met with anti-fraud reps from OHIM three times in Europe in the past year-and-a-half. They are doing the same thing and they are seeing the same problems with all of their mark holders. They're screaming up and down to law enforcement in every single country asking law enforcement to try do something.

The Postal Inspection Service has an
administrative authority and we file administrative actions. We file more than half-a-dozen administrative actions against companies that have confusing and indistinguishable names from the Patent & Trademark Office. We've been doing this for years. Again, it's like whack-a-mole. What we're doing -- and as much as I want to be happy with the civil cases that Leason Ellis has filed, you are doing a spectacular job at educating these guys on how to evade any sort of enforcement action. These civil and scattershot enforcement efforts do nothing but educate these guys on how to bury themselves to become very difficult or impossible to find later.

The case where this guy is in the Czech Republic or this guy is in Austria, they're not in any of those locations. Those are just mail drops where mail gets poured into somewhere else, they use burner phones or throwaway cellphones. They could be sitting in the Office here today hearing what we're talking about, or they could be next
door to you. Admittedly, I'm a criminal law
enforcement officer and I'm going to call a pot
black. These are criminals, and this is going to
require a criminal enforcement effort.

Now, law enforcement agencies around the
country and around the world need prosecutors who
can work these. The problem is the prosecutorial
offices have all of their priorities. The U.S.
Department of Justice has everything from national
security all the way down to white powders, to
violent crime, to drugs, to gangs, you name it.
If we have situations where the mark holders don't
want to provide their name and don't want to come
forward and don't want to complain, you just heard
Inspector Frederick, he identified this case
because there were enough complaints, or there
were the most number of complaints.

And they don't complain because they're
ashamed. I've got taken. It's the same thing
with a business email compromise or a CEO fraud
scheme where a company gets take by 50,000 or
100,000 -- they don't want to come forward, they
don't want to cooperate with law enforcement. That money is gone in a day-and-a-half, they need to come forward and cooperate with law enforcement immediately.

So, they sit there silently and suffer through this and they call your law firms after they're a victim. Why don't they call your law firms before they're a victim? Because I was a small business owner before I became a law enforcement officer and I had a trademark, and I had a lawyer. Every time I called him it was $1,000.00. So they don't call you. Who gets the call? The flat-fee guy. (Laughter) Because it doesn't cost anything to call this guy, right?

So, everybody is contributing to this situation that is at issue here, and everyone has a role to play in this. I think that we need the victims to come forward and make complaints. We need this to be known. This is a priority for the Patent & Trademark Office, they've been screaming up and down, but we've already been in conversation about maybe the Patent & Trademark
Office can donate personnel to the Department of Justice to help prosecute these, get dedicated resources that will help prosecute these.

But I can tell you from the Postal Inspection Service doing these mass-mailed solicitation cases -- and we're not unfamiliar, we've known about these for years. We have the same thing in the fraudulent lottery context, in sweepstakes, and gift schemes and things like that. It requires a sustained, coordinated enforcement initiative that is multinational -- and getting records from foreign countries takes months and years -- and it's going to require sustained effort.

Darbinyan was having his mail shipped here to the D.C. area, it was getting forwarded to LA and it was a few guys in LA. Are they the only guys associated? Absolutely not. These folks don't wake up one morning and say, hey, there's a trademark office and they've got this database and I could just create a fraudulent solicitation and then I could print it and I could get a whole
bunch of -- no. They learn from each other. They work for each other, they learn how to do this scheme, and then they branch out and go off on their own, and then there are variations of this scheme. This is an industry, and the only way you tackle this is a coordinated initiative where you circle a rope around this initiative and you put people in jail. That's a bit of a decurrent.

Civil actions, block their domain name; they'll get a new domain name. How many domain names do we have? We have an alpha-numeric and it can be how many dot.coms or dot.whatever you want to be. I mean, we're spinning our wheels doing those sorts of things. You're just emboldening these folks and making them smarter and harder to find the next time.

So, I think we need the victims to come forward, we need them to make their complaints, we need to not be ashamed and not be afraid, we need education but we need enforcement. We need all those resources at the table. But to say that no one is doing something or to blame any one single
person is a disservice because that's not the case. Everybody here is trying to do something.

COMMISSIONER DENISON: Thank you so much. Alison?

MS. ANDERSON: Thank you.

MS. DEVORAH: Can I just make a quick comment?

COMMISSIONER DENISON: Short. Very short.

MS. DEVORAH: Hi. I built the crime lab at UCLA PD. There is something you need before you get a coordinated effort. You need a uniform language. When I worked covering news in England I learned from Alan Hiscox, who had to bring officers down to London and every area had their own command for a screw or a punch lock or this or that or the other. You need to start with a uniform language and then you can bring in the enforcement.

Every department I deal with -- and I quarterback enforcement in some of the stuff I've worked on -- everyone has their own authority.
You need to define the authority and define what I call a plumb line, a single thread that they can all work together on.

COMMISSIONER DENISON: Thank you. Now we're going to move on to the Department of Justice.

MR. GERBER: Appreciate that tremendously. You have two law enforcement agencies up here. We'll chat and come up with some language. You're talking about trying to -- nobody cares about this. This is not a priority for anybody but your mark holders who are getting defrauded. You are asking for something way bigger than you need to. You're trying to move the Titanic here and you are asking for a speedboat.

MS. DEVORAH: I sort of disagree. It's one wheel and many models thereof. Whatever model you develop will be appreciated by other departments. It's what I did with my PD when I quarterbacked it. I brought all the different departments on board, finding the language they
needed, and got them to work together. It may be trademarks here, it will be copyrights there, it will be patents there, it will be shoe designs in New York, crime is crime. It's the same thing. And criminals' heads tend to think the same way. We need to build the model and then filter that out to others.

COMMISSIONER DENISON: Thank you. Mr. Frederick?

MR. FREDERICK: Just one more thing on the reporting for the attorneys and your clients. What's helpful to me as an investigator, if you talk to your clients who have been a victim of this, is when they report to the Federal Trade Commission or to the Postal Service the actual envelope that they receive with the solicitation is important. They need to keep that because I want the stamp, the original stamp, that was sent. Of course, the copy of the solicitation. And when they file their complaint make sure that they put a loss amount in there because that way I know that they paid and I know that I can use their
check to follow the money. So, I'll also need a
copy of their check eventually. But in the report
it's helpful to know who actually lost money and
who is just complaining, if that makes sense.

COMMISSIONER DENISON: Thank you. We're
going to try one more time. The Department of
Justice, thank you.

MS. ANDERSON: It's unusual that I'm not
able to insert myself, so I'm proud of myself
today. (Laughter)

I had a chance to jump on the Darbinyan
team about two months before trial and that was
about two years after the investigation had begun.
Just to give some people some perspective, as soon
as I started looking at what had been done, it's a
truly tremendous amount of work that Postal
Inspector Frederick as well as other agents and my
colleague Will Johnston had been doing for two
years.

What was incredibly clear from looking
through this material was that there were multiple
points along the way where they could have just
lost the entire thing; phone is burned, a computer is switched, wireless card is changed. So, their tenacity was truly amazing. It was a great opportunity for me to be a part of that team.

What I wanted to talk a little bit about today that I thought might be helpful -- maybe it won't -- but I think might be helpful is when do you know you're coming across what might be a good criminal case? I know a lot of you are doing different things, there are different ways of attacking the problem, but when do you come across something that that might be a good opportunity to reach out to law enforcement, have people file complaints, come forward, that sort of thing?

I think what's really important to know is we've heard about a bunch of different, possibly misleading solicitations, people sending things that look sort of like the government, sort of aren't, but really when it comes down to criminal cases the best criminal cases are when they are lying for money. Sometimes they're not even asking for money so you need the case in
which they're asking for money, and you need the

case in which they're either demanding or
requesting money but you also need the lie.

So, really the best criminal cases that
are out there are when you see them promising to
do something that they just don't do. When
they're saying they're representing the government
and they absolutely aren't. But when you really
have that clear lie. I think some of the examples
we've heard today are people just not doing a good
job once their hired, that sort of thing. But
what we're talking about is the scammers, the
people who are just lying. They're just saying
that they're going to do something and they don't
do it. So, when you come across that, that's the
time that you can think that that might be a good
criminal case.

Also, Postal Inspector Frederick touched
on this, but when it's recent. The more recent it
is the more ability that law enforcement will have
to find these folks, to catch these folks, to do
something about it. Also, if you come across a
situation where someone has become a victim and they have paid that amount of money, I think that's a good time to look at that. If their checks are clearing somewhere in the United States, if you can see what's happening with the money, where they're mailing the money, that sort of thing.

These are the types of things that if you come across them could make for a good criminal case and might be a good time to think about reaching out to law enforcement.

Another thing I wanted to touch on is your first instinct -- as my mother called me when she got the IRS scam -- may be to say, "I'm going to call the Justice Department and rat you out," this and that, or, "I'm a lawyer and we're going to sue you." That might be your first instinct to do something like that, but if you come across what would make for a good criminal case and you want to reach out to law enforcement, just reach out to law enforcement. We have a lot more tools when they don't know that we're looking at them.
than when they do know. So, that's something I
would encourage, if you think you've come across
that case reach out and reach out quickly as we've
heard because that's really when we can do our
jobs the best. As your making those sorts of
determinations those are the things to look at.

COMMISSIONER DENISON: Thank you so much
for those helpful hints. I'd now like to see if
the FTC, the SBA, Customs and Border Protection
would like to have any comments about fraudulent
solicitations. Shall we start with the FTC?

MS. DAFFAN: Sure, I'd be happy to. I
just want to thank everyone for being here, and
thank you for organizing the event and inviting us
to be here as the Federal Trade Commission. We're
a rather small agency compared with some of the
folks I'm up here with, so I'll tell you a little
about us just in case some folks in the audience
aren't completely familiar.

We are a civil law enforcement agency so
we don't have criminal authority but we do have
the independent litigation authority that Thomas
was referring to. We have a small staff and a big mission. We have about 1,300 people in the entire Agency, and that's to cover consumer protection but also competition. We also have a Bureau of Economics and many other offices. All of those offices together, there are only 1,300 people in the Agency, so by D.C. standards that's clearly small.

Our mission is to protect consumers and competition in the economy. Basically, our jurisdiction covers most of the U.S. economy, so there's a lot to do. Just to give you an example, I work in the Bureau of Consumer Protection in the Division of Marketing Practices, which is pretty much our fraud shop. Our goal is to handle the worst cases of telemarketing fraud, robocalls, we enforce the CAN-SPAM Act about email spam, we go after business opportunity schemes and all other kinds of hardcore fraud, high-tech fraud.

But I will say that in particular government imposter scams are a huge area of concern for us and for the FTC as a whole. Just
recently we've got cases where scammers were impersonating the Department of Transportation, were impersonating OSHA, were impersonating the FTC. And we see tons of these cases. You know, the IRS scam has obviously been huge in the last few years, and we have people impersonating courts and law enforcement agencies. It's something we bring a lot of cases about. In particular we have had an ongoing conversation with PTO about the issue that we're here to discuss today. It's particularly important to us because we look very hard not only at scams that affect individual consumers but also scams that affect small businesses in the country and entrepreneurs. This is obviously a huge example.

But there are others. I'll just mention briefly that one of my teams has also worked closely with PTO because there was a scam that was a little bit different but that was affecting kind of a similar population. This was an invention promotion scam. A company called World Patent Marketing that was charging individual
consumers or small businesses many thousands of dollars, saying that it would both obtain a patent for them and then help them promote and then even manufacture their invention. They used bogus success stories and testimonials and did not deliver on any of those promises, and in fact did a lot of work to even suppress consumer complaints so that folks who were trying to do their due diligence before hiring the firm wouldn't have any idea what their practices were. So, my team sued that company in March and were able to obtain a temporary restraining order, freezing their assets and appointing a receiver over the business.

But that's just an example of the kind of civil law enforcement that we do. Often we work with criminal authorities and we have a Criminal Liaison Unit where we are sharing information with criminal authorities because a lot of our cases do eventually result in criminal convictions further down the road.

Finally, I'll just mention that another large aspect of our work is consumer education
because of course we want to try to prevent people from becoming victims in the first place rather than just trying to get their money back when the scammers are really good at spending it before we get to their door. We have also worked with PTO recently on some consumer ed about this particular issue, and in case you want to share it with some of your clients we have a blog post for consumers called Scammers Can Be Inventive, and one for businesses called Is the USPTO Really Contacting Your Company, Maybe Not, that describes this issue and links to the PTO's information.

We have a whole division of consumer and business education that really focuses on the best way to communicate with consumers and these blog posts go out to many thousands of people. So, I would encourage you all to sign up if you're interested and to also share those things with your clients. We are happy to continue working with you and with PTO to make sure that the educational messages that are going out to help prevent these scams are as powerful and effective
as possible.

Finally, I'll just piggyback on the pitch to have your consumers file detailed complaints if you can with FTC at ftc.gov. We ask for a ton of information and we share that information with thousands of law enforcement agencies, federal, state, local within the U.S. and then also international law enforcement agencies who can search that information and reach out to victims to bring cases. I would love to see more and more complaints about this important issue in our database as well.

COMMISSIONER DENISON: Thank you. We're very pleased to see that you've put these postings up on your website, so thank you so much for doing that. That's great.

Yes, do you have a question, Patrick?

We need a microphone.

MR. FLAHERTY: Just a quick question. So, when you talk about filing complaints is it at all helpful for me to file a complaint? Because I could send you these every month but I'm not a
victim because I know to tell the business that
it's just a scam.

MS. DAFFAN: Yes, it is helpful for you
to file a complaint. We have a lot of service
providers who file complaints with us. Sometimes
there are even issues, let's say, a legal services
provider for an individual who is not comfortable
sharing their personal information with the
government, but that organization will file a
complaint with us and describe the situation, give
as much detail as possible. Then if a law
enforcement official is interested in that
complaint they know to reach out to you or to the
organization in question. You can see if your
client would be willing at that point to be in
touch with the law enforcement agencies. So that
is definitely helpful.

Just one note about the Consumer
Sentinel complaints. The clients should not
expect to receive a call from the FTC about each
complaint that's filed with us. We get millions
and millions of complaints and are not able to do
that kind of follow up. We are trying to do the best we can and to improve even further the provision of helpful educational materials to folks who are filing complaints with us, but it's not like you're going to be able to file a complaint and then get your problems solved. So, I just want to get that message out there for people so they won't be disappointed. Hopefully you will receive a call from Inspector Frederick at some point if you file a complaint with us, but we obviously can't promise that.

COMMISSIONER DENISON: Thank you.

That's very helpful to know.

MR. GERBER: I'll just add one thing to reiterate what Inspector Frederick said, the targets that he focused on in his investigation, the most number of complaints, the most recent complaints. If we don't get complaints we're not going to be able to focus our efforts. Everyone here talked about resources, so you need to report. FTC is the easiest and most centralized way to do it because every law enforcement agency
in the country practically has access to their
database of complaints, and we can run queries and
mine it and things like that.

So, encourage your mark holders to do it
if they get these, if they have lost money even if
they haven't lost money. A number of complaints
is a number of complaints, but complaints with a
loss, if they actually did pay money, that's much
more impactful in terms of selling a case for
prosecution.

COMMISSIONER DENISON: Thank you. Ms.
Gharib, would you like to say anything?

MS. GHARIB: Sure, thank you. Goli
Gharib from U.S. Customs and Border Protection.
I'm happy to be here. Thank you for the
invitation to represent CBP.

Just to give you a little bit of
background on how we're involved with trademarks
is that CBP maintains a recordation system whereby
registered trademarks and copyrights owners come
to us and record their IPR with us for border
protection purposes. So, our mission is to stop
the importation of IP violative goods.

Quite honestly, my involvement here started with Inspector Frederick as well, all roads seem to lead back to you. (Laughter) In the Darbinyan case where Dave called up -- actually it was an HSI agent, Homeland Security Investigations. AN agent called up and said, "Hey, we've worked together before, you take care of the recordation system for CBP, right?" And I said yes, and she said, "You know, I've got a postal inspector that really needs some evidence." So anyway, next thing you know I'm talking to David and he's telling me all about the Darbinyan case and so forth, and we're happy to help as we can.

Apparently in that case one of the issues was that they took money from the victims and said we're going to provide X, Y, and Z service, one of them being border enforcement of their trademarks. So, just rudimentarily I looked in our database and I said, you know, we don't have -- we just picked out a few of the
trademarks. I said, Dave, I don't think we have any of these after just an initial look. But we're going to have to refer this to our IT folks to dig deeper and see what we can find. So anyway, that's how we got connected with DOJ, Will Johnston, who was prosecuting the case and so forth.

So, in a nutshell what we did, CBP's part in that case was to provide the evidence -- and I think it was by way of sworn statements -- to establish that Darbinyan, et al, did not fulfill -- and so they lied about what services they were going to provide. Not a single trademark was recorded with CBP with the money that they took from the victims. We were able to cull our data and be able to give the DOJ the evidence that they needed for that little piece of what Darbinyan did, or that case was about, that they didn't record any trademarks with our shop, with CBP.

So, while that was going on I was also looking at some of our data, because we do have a
robust recordation system based on the USPTO's data, and I actually started late-night going through our data and I said, U.S. Trademark Compliance Office? Gee, I think that's the one that Dave was talking about. So alarms go off and I start calling here and there. Will Johnston actually said this is maybe an off-shoot but it doesn't have anything to do with our case.

So, here we are some months, maybe a year later, and we're looking again at our data and come to find out U.S. Trademark Compliance Office, being on the USPTO's fraudulent solicitors list, had gotten through our system with over 350 or so recordation. Now, that sounds small but it's kind of substantial to us. I mean, we have in our system about roughly give-or-take 40,000 recordings that include trademarks and copyrights. But still, to me, when we're talking about integrity and so forth 350 -- even one is too many to have slipped through.

So, essentially this started when we launched our online system. Now, not saying that
the U.S. Trademark Compliance Office started this, they started actually I want to say back in 2014 timeframe to get all of those recordations. What they've been doing is sending out these letters that we've been talking about. We have one actually that I forwarded to the USPTO. CBP would never have had occasion to see any of these letters or solicitations, but as it so happened recently an application, a right-holder, a trademark owner, contacted our office and said, "Hey, I got this letter but I've been doing research and your website says that it's $190.00 per international class of goods to record with you. And I got this letter that says I need to pay $495.00. What's the deal here?" And, of course, then we said ignore the letter, you can do your own online application. And within days her application for recordation was approved.

So, that was one that we headed off, but we do have a problem with this U.S. Trademark Compliance Office, and as other panelists have mentioned, whack-a-mole, and they come up with
different names. For us, they haven't changed
their name, they have changed their email address.

So, anyway, back to the 300-some odd recordations. What we've done -- again, we don't
know that a crime has been committed. What have
they promised for this $495.00? $190.00 of it we
know they're paying to record with us. What
they're doing with the rest we don't know. So,
what do we do?

We have been calling the trademark
owners. And with limited resources that all
government agencies are faced with it's kind of a
daunting task to ask one of my colleagues who is
an attorney in the office, hey, could you please
call up these right-holders and see if they've
ever heard of U.S. Compliance Office and what did
they expect, and do they even know. We're not
through the list yet, but what we've found is that
the majority of them are unaware. So, they were
targeted probably -- my guess is that early on in
the registration process at the USPTO they were
sent these letters because that's what a few of
them has said. Oh, yeah, I remember seeing something but I don't know what, and I really don't even know much about UCBP, and I'm really busy, so thanks but there's no issue.

So, it's a balance. Do we want to be alarmists and say you've been scammed when we don't know much? We're trying actually now to go after them through PayGOV which is the credit card that they use in our online system, so that's still pending. A couple of the right-holders have said that yes, we actually did pay for this. That's okay. In our book they're not really doing anything wrong because as far as CBP is concerned they're paying and they're using our application system to record.

But what's onerous to me is that I feel that they're not providing the service that CBP would eventually provide for them. For one thing, they're recording service marks. Service marks don't really lend themselves to enforcement at the border. (Laughter) What do we look at? We look at goods, we open containers, hello. But we will
record service marks. Somebody who has a long list of ICs, and a couple of them happen to be service marks include in that mark, sure we'll record it. That's good, it's being thorough, I guess. Cover all your bases. But a single class in 41 of web services, or online shopping or whatever, just doesn't really pass muster in my opinion.

So, that's one thing. The other thing that we've done to sort of combat passively, if you will, is that we're trying to make changes in our application processing system to -- am I going over time? No, okay. Sorry. Thank you. We're trying to get at them by the technical route, which is make them provide us additional information. If you're familiar with government and how we work, things aren't always quick, it's a process. So, we've put in some mechanisms in place to try and highlight and elicit answers from this U.S. Compliance Office outfit so that we can try and maybe get at them somehow.

But they're not dumb. They're getting
around our questions. Their email address bounces
back when we email them and ask them for
additional information. So, they're pretty
sophisticated and they're doing something to block
us from blocking them, so to speak.

The next step for us is including a
sworn declaration which we've never done before.
Anyone can record their trademark with us; we
don't want to stop people from recording with us.
There is no requirement to be an attorney to
record with us. So, it's kind of a tough spot to
be in. We're just now getting our bearings on
what's going on. Really no harm has been done to
CBP and no fraud on CBP other than data integrity.
So, that's where we're at with it.

COMMISSIONER DENISON: Thanks so much.
That's very helpful.

Mr. Rao?

MR. RAO: Thank you all for having me
here today. I'm an ex-patent examiner from many
moons ago, so it's kind of nice to be back where I
started many years ago in my career. A big
thanks, actually, to Susan Anthony as well for having me come here today.

I think from a Small Business Administration perspective there are a couple things that we have in play. Clayton, I really loved the fact of when you said as a small business owner I called the attorney and it cost me $1,000.00. I understand that pain. I'm not a fan of that. So, I think one of the biggest things I took charge of when I arrived to SBA a few years ago, when I left the private sector to come back to government service, was I pushed on this demystification process. I said, look, if we're going to be the government and we're going to help the public understand the services, resources, and everything that is there in the landscape for a small business, we need to undergo this demystification process. We have to make it clear and easy for people to comprehend.

So, I worked with Susan and a few folks to create what's ongoing today, a webinar series. So, the SBA and the PTO through our SBIR Program
which I work on besides our Growth Acceleratory Program -- basically on a quarterly basis we will train small businesses just on the basic avenues of intellectual property, from patents to trademarks, from trade secrets to copyrights. We just want them to get a little bit of a general basic understanding. Am I asking them to be an expert? No. But am I asking them to be a little more cognizant and mindful with what's going on? Yeah. And I think that's half the battle.

Half the battle as a small business owner because you're getting hit with 20 different things at once. As an ex-entrepreneur in Silicon Valley and doing the start-up stuff I can tell you, yeah, we're inundated all the time. But if you're going to be a savvy small business owner or entrepreneur you have to be a bit cognizant. You have to have what I call -- and I'm sorry for saying this for the record -- but you have to have a good bullshit detector on. That's just a common thread that you should have.

So, that's what I implore for a lot of
small business owners and entrepreneurs is have your gut reaction going, have a good BS detector, and have good counsel around you. I think it's important to have good counsel and make good uses over the resources. So, that was one of the things I did when coming back was to work with USPTO to highlight those resources effectively, not only on SBA.gov but primarily on our SBIR.gov which is our high-tech aspect because that covers 11 different participating agencies that participate in our SBIR program. Companies that get funded from Department of Defense down to EPA, they all benefit from this training. So, that's one of the big things I've been pushing a lot on lately.

As to fraudulent solicitations and whatnot, I'm actually going to go to Susan now because it's given me some ideas of maybe incorporating more of that. Demystification is part of the webinar training. I think it would be imperative to tell people, hey, when you get hit with this think about this. These are the things
you should think about. I really think if we can do a better job as the government in helping demystify and collaborate as we've been doing -- I actually want to bug you at the FTC now because I love that list and have that stuff. I will gladly amplify and gladly tell those stories.

I think that's part of the thing, that folks don't know because, in all honesty, as government, we haven't done a great job in the past with the narrative, with explaining the story and explaining the rules of the road. Having this example with the Darbinyan case is important because if we can explain that narrative better it encourages other people to go, hey, I don't have to be a sucker. We can do this and we can do a better job of helping fight this fraudulent activity.

So, that's in synapsis what I would say right off the bat. I think what's kind of ironic is earlier this week I watched The Founder. I don't know if anyone has ever seen the movie The Founder, but if you haven't go see it. That is a
fantastic film about the subtle undertones in intellectual property theft. I mean, we think of McDonalds and Ray Kroch, and if you watch The Founder -- what was funny is I dug into the story like, wait, really? Did this happen? And I dug into all that stuff and the true origins of McDonalds and what happened at the end of the day. I was like, oh, my God. If those two guys, the original McDonalds, had some better counsel on IP they would not have lost their trademark to Ray Kroch and lost McDonalds. That's a different story altogether.

My point once again is demystification and just being mindful. Being mindful is the most important thing. If you're not being mindful you're going to get taken as a sucker.

COMMISSIONER DENISON: Thank you so much. We had a couple other questions and then I'll throw it out to anybody up here on the panel. One of our statements today proposed international coordination in finding a solution. Would anyone care to address the best way to go about the
international coordination?

MR. GERBER: Well, I can speak to that.

I've been travelling over to Europol extensively over the past two years and dealing with formally OHIM, now EUIPO. Their mark-holders in Europe are getting hit with exactly the same solicitations. It's a little bit different because in the European sense they're not as used to paying their bills with a check. In the U.S. we get an invoice then we write a check. In Europe they don't do that, they send wire advices. So, the solicitations they get actually have a bank account, wire your money to this bank account here.

Sometimes there is an idea or some sort of concept to send some sort of a bank draft. They're actually more often than not seeing PO boxes and mailbox addresses here in the U.S. So, they're looking at us, can you shut these guys down, they're in your backyard. They're not in my backyard, the mail lands here and then it gets turned around and shipped back over to somewhere
else.

So, international cooperation on the law enforcement front is not very difficult through Europol. Now Europol has become extremely robust, so through the European Union and the non-EU members of Europol, which the U.S. is one. We have about 45 U.S. law enforcement officers sit at Europol. So, through that entire community and the international patent and trademark offices in each country, they all want to help. What becomes very slow, cumbersome, and difficult is when you get into an enforcement effort and you need to get admissible records from a foreign country, and you need to find out can you certify who is getting mail at this address or where it's being forwarded to. Depending on the country, that can take -- they may say no based on their privacy laws, they can't release that information. It may be something I can call up a law enforcement officer in Italy and he says, sure, this person is getting the mail and it gets forwarded to this location. And then I'm done with Italy and I've moved on to
France because it's getting forwarded to France.

So, it's very country by
country-specific, but it's not insurmountable.

But it's certainly not something your state police
are going to do. It's not something that your
county police are going to do. It's almost
impossible in the civil context. The FTC has an
Office of International Affairs, which is I think
Betsy Broder all by herself. So, there are
different sort of friendly agreements that they
have. But in the criminal context we can
generally get things moving. It can be very, very
slow but we can generally get things moving.

Switzerland. Someone mentioned
Switzerland in their public comments. Switzerland
can be difficult but I've gotten tons and tons of
records out of Switzerland, it just depends. You
have to be very persistent.

MS. ANDERSON: The only thing I would
just add to that is when you look at the Darbinyan
scheme, half of those individuals were involved in
moving the money and that's how they got caught up
in their criminal charges. We often see in other scam cases that while there may be a lot of people overseas making the phone calls or sending certain things, they'll still often have people in the United States that are helping them move the money, helping them do something.

So, just because people are overseas -- and I think the IRS case was a good example of that -- doesn't mean it can't be a good criminal case here, doesn't mean it can't be something that we can work on, and that's just sort of a side piece also piggybacking off of what has already been said about our cooperation efforts. There often are still people here even if the focus is elsewhere.

MR. GERBER: For your mark-holders they're generally U.S. companies. Keep in mind, U.S. bank draft of checks and things like that is generally going to have to pass through a U.S. bank at some point. So while the check is, oh, send it to some drop box in Alexandria and then it goes to the Czech Republic, that gets bundled up
and it's going to get sent back and pass through a
U.S. bank somewhere.

So, as Inspector Frederick said, their
cancelled check where that was passed, that's all
critical information because there's going to be
certain pinch-points in this whole industry and
this whole process that we can target and that we
can look at and that we can go after.

MS. DAFFAN: The only other thing I
would add is that in addition to our Office of
International Affairs we have folks within our law
enforcement divisions that participate in all
kinds of law enforcement groups with international
law enforcers. One of them is the International
Mass Marketing Fraud Working Group that we're on
with DOJ and many other agencies. So, we can make
sure that this is brought to the attention of that
group and to see if anything can be done within
that group as well.

MR. GERBER: As a member I can tell you
they know. OHIM has spoken to the group in the
past three years. They've been jumping up an
down. USPTO came and spoke to the Mass Marketing Fraud Working Group two years ago, which is actually two-and-a-half years ago which is actually what brought around Darbinyan, was that presentation.

MS. DAFFAN: Great.

COMMISSIONER DENISON: Another question.

What kind of additional information, if any, would be helpful to your Agency in comparing these scams that the USPTO or the public could provide you? You've listed that you want the envelopes, you want the checks, that kind of thing, but is there anything else the USPTO could be doing to help you? I got the message on manpower and I'm going to be pursuing that. But anything else anyone can think of?

MR. RAO: It came to my mind that USPTO has access to the pro bono attorney program. Maybe those are folks to utilize as well, have the pro bono attorneys from the USPTO program to be trained and make sure to help advise on these issues too, especially for entrepreneurs and small
MS. GHARIB: I was only going to add that for us, we basically are checking against the information that's in TSDR, so we're trying to get with these bogus applications -- I call them bogus -- to try to check against TSDR. So, we're digging in.

What can you provide? I mean, I've always felt that while I have always bugged Amy Cotton over here about, hey, Amy, can't we get more information? It would make CBP's like so much easier if we could just come through your firewall and grab the information. Come on. We're trustworthy.

(Laughter) But with the same token, I feel like the PTO provides so much information that's out there for these guys to grab, just as we do. We mine your information, they are too. So, I don't know. But anyway, thank you.

COMMISSIONER DENISON: Yes? You have to get a microphone if you want to ask a question.
MS. ANDERSON: While you're moving the microphone I would just say we absolutely appreciated all of your incredible response in this in trying to prosecute the Darbinyan case. As you know, you have a trial, there's always random things that come up, and we absolutely appreciated the assistance from your staff and yourself.

COMMISSIONER DENISON: Thank you. Yes, there were a lot of people here who were helping the DOJ in the background and they did a great job. So, thank you.

MS. RICKETTS: My question, number one, is did the successful prosecution actually seem to reduce the incident of these scams, like did it actually go to a kingpin and really stop it or was that just one branch of a big operation that is ongoing? And number two, do you have a pending investigation where if we got something from those people we could tell you about it that would be helpful, or is that secret?

MR. FREDERICK: So, it appeared to me
the initial response that we were looking for was exactly that, like is it individual people or is it a big ring of people? But like Clayton said earlier, they probably know each other, a lot of them, because if you look at these solicitations you'll see the same language in a lot of them. You can tell that they're kind of bouncing ideas. But it appears that they are individuals. There's not one person overseeing all of it, as far as I can tell. It's a known scam and everybody is trying to get a part of it.

As far as a pending investigation --

MR. GERBER: We're not going to disclose the targets of a pending investigation insofar as we would contact the complaining victim and seek information. That's about the closest we would reveal that we're investigating X person or Y person. It's really more just a one-way street to get the information, unfortunately. These are pernicious and insidious and there's no shortage.

When I asked Inspector Frederick, I said look at these PTO solicitations, we've been
playing whack-a-mole and doing admin actions for years, let's pick the most egregious or who is current, let's look through our complaints, look through our past admin actions, things like that. Again, you have to dig five or six layers to find out who is actually organizing them. So, we have five or six or seven past admin actions, we would have to dig. The person who signed the cease and desist for that admin action is just a nominee. He's a throwaway person on a J1 visa. They're not the ones running the scheme but they're going to be the ones who sign off on it at that level.

So, trying to peel back and figuring out who your recidivist players are is very, very difficult. That's why these low-level civil enforcement actions just serve to educate someone on how to bury themselves lower. I mean, Darbinyan and his four co-conspirators are going to be spending some quality time in public housing, and it's going to be a little bit harder for them to engage in this scheme for the next few years.
MS. RICKETTS: If I send them a check for a dollar and then they cashed it, is that helpful? You're not going to like send them checks so you can track that? (Laughter)

MR. GERBER: So, I'm not handing out junior G-man badges. (Laughter) If you send them a check for a dollar they will gladly cash that. My folks do exactly that functionally. We actually pay the $3.95 or the $16.50 or whatever it is to see how the payment is processed. What I need is I need to focus my efforts. I need complaints, I need to find out who is the most pernicious. I have limited resources too, although I'd be happy to work all of these if I had prosecutors who wanted to prosecute all of them. Some of them would get wrapped up in six months, some of them would take six years.

MR. FREDERICK: Just so you know, the amount of resources to find Darbinyan, to find one person, we're talking hundreds of subpoenas and over a dozen search warrants and with all of those subpoenas there comes responses. So it's just a
lot of work, a lot of data, just to find one guy. So, these cases, when they're hiding behind fake IDs and stuff it's very difficult to do these cases. It takes a while. So, just so you guys know, it's intensive.

MS. ANDERSON: And just to piggyback off of Postal Inspector Gerber, the faster you can get us the complaints too. I mean, I know that it doesn't seem like a week or two weeks is really a lot of time but it really is. I mean, when they were tracking this guy down it would be unbelievable how quickly things moved and shifted. So, just the faster you can get those in too I think the more helpful that would be.

MR. GERBER: To give you a sense on these fraudulent solicitation cases, it's a numbers game. They'll mail 10,000 solicitations and they're hoping to get about 150 responses. And they'll do that to one PO box and then they'll move on to another PO box. And Darbinyan, who changes his phone number every 30 days. So, they'll rent a PO box, mail out 10,000
solicitations, get 150 responses, put the money in their pocket, and they've moved on. Now they're at a new PO box mailing out 10,000 solicitations, aggregating the money to a different location. I mean, it moves that quickly.

MR. CAMPBELL: Hi, my name is Ray Campbell and I'm actually also a postal inspector but I'm not up there on the panel today. You asked a question and I just wanted to jump in because it wasn't mentioned about what the USPTO could do to assist us in our criminal investigations. I am also an investigator who has investigated these patent and trademark scams.

During our investigations we're always trying to connect the dots. As you know, we have individuals that use fake names, they use all sorts of false identities. We've run across where I've been able to obtain IP addresses or an IP address specifically for a fraudster or scammer, and I know that at least in some of these cases those IP addresses are used maybe to log into your systems or to input information. At some point I
requested through USPTO and the IT and it went kind of back and forth about whether or not I could run a general query for an IP address across all of the transmissions that have been put into your system. Ultimately, I don't know if I ever actually got a response to that. It sounded like something that you guys were in the process of doing.

But obviously the use of IP addresses and other ways that we can track down individuals using some of the weaknesses, like computer network addresses and whatnot, will be extremely helpful and would help speed up the process potentially of us having to send a million subpoenas out if we can use some ways that maybe these scammers are unaware that we can track them in that way.

Like I said, we're always looking to determine and link certain business names. We all know that they have more than one business name. They've got dozens of business names and it may be controlled by the same organization. So, as
opposed to us just looking and focusing all our
effort maybe we could figure out all 15 different
business names they're using through the use of
the IP address and through other transmissions
that might be on your website. So, just in the
future if those capabilities come forward I know
it will be very helpful to law enforcement. Thank
you.

COMMISSIONER DENISON: Thank you very
much. We're going to need to wrap up now. I want
to thank everybody for participating today. I
hope that everyone will be able to join us for our
little reception. We know how busy everyone up
here is and we are really grateful to you for
paying attention to this problem which is so
important to our users.

I was delighted that Joe Matal, our
interim director, was able to come. I think the
fact that he came shows that he recognizes the
significance of this to the Agency.

It's been wonderful working with the
Trademark Public Advisory Committee. We were
really delighted to do this program with you, so thank you Dee Ann and the whole Committee. We're very pleased with that.

I also need to have a shout-out to the Office of Policy and International Affairs, particularly Leigh Lowry for all of her help helping us to get people to talk today and to talk to the government agencies and to put the whole package together. So, thank you very much.

There's a lot that happens behind the scenes to make something like this happen.

When we first started talking about this event, I sort of envisioned this event as having a few purposes. One was to raise public awareness of the problem. The more users and attorneys that know about this the better. Second, I wanted us to hear from other parts of the government and for the other parts of the government to hear from our users so that we could determine a good path forward. Then, of course, the most challenging part is helping us figure out how to combat this in the future.
The USPTO is doing as much as it feels like to can right now. When you get a filing receipt for a trademark application you now get a notice. When you get an office action from us in the cover email there is a notice. When you get a registration you get an orange sheet of paper with a warning on it. We have put it in our basic facts booklet. We have more than one webpage on it; I think we're trying to consolidate. We have a video on it.

So, there are a lot of different things that we're doing to try to reach out to the public, and of course, there's a lot more that we obviously can be doing that were interesting ideas today from class actions, finding the help warning, making a statutory change, I guess, to require some sort of warning be put on these things and then you get them for some sort of statutory violation, similar to a tobacco warning.

We'll absolutely reach out to MARQUES, as it was suggested, the European group. Of course, we're already talking to EUIPO. We're
going to do what we can to bring more publicity to this. We're going to be asking our call center to encourage reporting. I think they had 600 calls last year about this, so we can encourage them when they get this type of call to report it to the FTC. We will clearly be exploring the opportunity for details to the Department of Justice with some of our lawyers.

So, these were all sorts of good ideas today, and we are really, really grateful. For those members of the public I hope that no one else falls victim to this, but I fear that more people will. So, thank you. We're here to try to help you, and I really do appreciate everything that everybody in this room is doing to help us with this big problem. So, thank you and please join us for the reception.

(Whereupon, at 4:21 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Mark Mahoney, notary public in and for the Commonwealth of Virginia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: August 31, 2021

Notary Public Number 122985