VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MATTHEW HOWARD SWYERS

VSB DOCKET NO. 18-052-110203

AGREED DISPOSITION MEMORANDUM ORDER
TWO-YEAR SUSPENSION

On Wednesday, August 25, 2021, this matter was heard, telephonically, by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by Part 6, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The panel consisted of Steven B. Novey, 2nd Vice Chair, Stephanie G. Cox, Yvonne S. Gibney, John D. Whittington, and Nancy L. Bloom, Lay Person. The Virginia State Bar was represented by Renu Brennan, Bar Counsel. Matthew Howard Swyers was present and was represented by counsel, Bernard J. DiMuro. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Jacquelin Longmire, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Answer, Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Disciplinary Board accepts the Agreed Disposition, and the Respondent shall receive a two-year suspension, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective August 25, 2021.

It is further **ORDERED** that:

The Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the Suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding Judges in pending litigation. The

Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, Paragraph 13-9.E of the Rules.

It is further ORDERED that an attested copy of this Order be mailed to the Respondent by electronic, regular first-class and certified mail, return receipt requested, at his last address of record with the Virginia State Bar at 2703 Jones Franklin Road, Suite 205, Cary, NC 27518, and a copy by electronic mail to Bernard J. DiMuro, Respondent's counsel, and a copy by electronic mail to Renu Brennan, Bar Counsel and **Elizabeth Shoenfeld, Senior Assistant Bar Counsel.**

Enter this Order this 25th day of August, 2021

VIRGINIA STATE BAR DISCIPLINARY BOARD

Steven B. Novey
2nd Vice Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MATTHEW HOWARD SWYERS VSB Docket No. 18-052-110203

AMENDED AGREED DISPOSITION
(TWO-YEAR SUSPENSION)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, and Matthew Howard Swyers, Respondent, and Bernard J. DiMuro, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of this matter.

I. ALLEGATIONS OF FACT

1. Respondent was admitted to the VSB in 1996. In 2017, Respondent switched his VSB status from active to associate status, and he remains an associate member of the VSB. Respondent is an active member of the District of Columbia bar.

2. Between 2003 and 2016, Respondent operated a law firm called The Trademark Company, PLLC ("TMC").

3. Between 2010 and 2015, TMC was responsible for filing 17,492 trademark applications. Respondent was the only licensed attorney at TMC.

4. This matter involves Respondent's practice before the United States Patent and Trademark Office ("USPTO"), which is located in Alexandria, Virginia.

5. To represent others before the USPTO in trademark matters, one must be an attorney who is an active member in good standing of the bar of the highest court of any state. 37 C.F.R. § 11.1.

6. Practice before the USPTO in trademark matters includes:

> Consulting with or giving advice to a client in contemplation of filing a trademark application or other document with the Office; preparing and prosecuting an application for trademark registration; preparing an amendment which may require written argument to establish the

registrability of the mark; and conduct an opposition, cancellation, or concurrent use proceeding . . . .

37 C.F.R. § 11.5(b)(2).

The Trademark Application Process

7. A trademark is used to protect brand names and logos used on commercial goods and services. In order to apply for a trademark, the applicant, along with any legal representation, must identify (1) the mark to be registered; (2) the type of goods and/or services to which the mark will apply; and (3) the basis for filing.

8. When identifying the mark to be registered on the basis of actual use, the applicant must demonstrate how the mark appears when used in commerce. This is accomplished by attaching a "specimen" to the trademark application. The "specimen" can be a "label, tag, or container for the goods, or a display associated with the goods." Trademark Manual of Examining Procedure ("TMEP") 904.03, citing 37 C.F.R. § 2.56(b)(1).

9. A trademark application must also identify the types of goods and/or services with which the applicant uses, or intends to use, the mark in commerce. TMEP 1402.01. The USPTO has adopted an international classification of goods and services, and classification schedules are provided.

10. For domestic trademark filings, an applicant can pursue two different types of bases for filing. The first is called a "use in commerce" basis, as set forth in Section 1(a) of the Trademark Act. To qualify for a use in commerce mark, the registrant must be currently using the mark in commerce with goods and/or services. The second is called an "intent-to-use" basis, as set forth in Section 1(b) of the Trademark Act. To qualify for an intent-to-use mark, the registrant must have a genuine intent to use the mark in commerce with goods and/or services in the near future.

11. Often, the application process does not end when the trademark application is filed.

12. For example, the USPTO examining attorney may send an "Office Action," which is a letter in which the examining attorney identifies problems with the trademark application or the chosen trademark.

13. Office Actions require a written response. Generally, if a written response is not received within six months from the date it is issued, the application may be deemed abandoned.

TMC's Process for Accepting, Preparing and Filing Trademark Applications

14. Respondent maintained a website, www.thetrademarkcompany.com. From 2010-2014, the website advertised that clients' trademark applications were prepared by a "specialized attorney."

15. Respondent also advertised a variety of trademark-related "packages" that clients could purchase. Some packages included researching the proposed trademark, responding to Office Actions, or handling trademark appeals.

16. When retaining Respondent's services, the majority of clients paid for their package by credit card. At the same time, the clients also paid any USPTO filing fees. Respondent stated that three business days after a client's credit card was charged the client's money would be deposited into TMC's general operating account.

17. Between 2010 and 2015, Respondent did not deposit the advanced legal fees or filing fees he charged to clients' credit cards for preparing and filing trademark applications into a trust account.[1] Instead, he deposited them into TMC's general operating account.

18. Respondent contends that he did not need to deposit fees and expenses for preparing and filing trademark applications into a trust account charged to his clients' credit cards because his office filed trademark applications within one business day of receipt of the online order and two days before any deposit of the clients' funds from their credit cards into TMC's general operating account.

19. The VSB has no evidence that Respondent failed to file a trademark application or pay for the filing fees for any client for which Respondent received advanced legal fees and filing fees as set forth above.

20. Some of the packages also included services that could not be performed within one business day, such as responses to a procedural Office Action.

21. As of April 7, 2010, Respondent's standard trademark application package cost $149[2], plus the client was required to pay the USPTO filing fee of at least $225. Between 2010 and 2015, Respondent deposited all these advanced legal and filing fees as charged to his clients' credit cards above into TMC's general operating account.

22. After a client signed up for a package, Respondent relied on paralegals to prepare and file trademark applications.

23. The paralegals went through a two-week training program that Respondent created, and which he called "Trademark University."

24. Respondent's non-lawyer employees were then authorized to talk generally to clients about the type of trademark applications available, how to determine the likelihood of their trademark application being accepted, and options to respond to correspondence issued by the USPTO if issued in response to an application.

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[1] Prior to May 2013, the USPTO's Code of Professional Conduct, 37 C.F.R. § 10.112(a), did not expressly require advances for costs and expenses to be deposited into a trust account.

[2] Respondent's "Platinum Package" cost $449 plus the filing fee, and his "International Package for Foreign Trademark Registrations" cost $299 plus the filing fee.

25. Respondent also allowed his non-lawyer employees to sign his electronic signature to trademark applications as set forth below. TMEP 611.01(c) specifies that a paralegal cannot sign for an attorney. Moreover, 37 C.F.R. § 11.18(b) states that when a person presents a document to the USPTO, the person certifies that all the statements in the document are true.

26. Respondent admitted that between summer of 2013 and January 28, 2015, his staff signed his name to and filed "a portion," which he estimated at 1,200, of the trademark applications without Respondent reviewing the applications prior to their submission. Rather, Respondent reviewed the applications after they were signed and submitted. Respondent asserted that he offered to remedy the issue by submitting a supplemental declaration re-certifying some of the applications.

27. Respondent also allowed his non-lawyer employees to sign his name to some Section 2(f) declarations. Applicants can file Section 2(f) declarations in order to establish that their mark has "acquired distinctiveness," which means that the applicant has used and promoted an otherwise non-distinctive mark to the extent that consumers now associate the mark with the applicant. *See* 15 U.S.C. § 1052(f). This type of trademark application is referred to as a "Section 2(f)" application. One method to seek trademark protection under Section 2(f) is to submit a "verified statement that the mark has become distinctive of the applicant's goods or services by reason of the applicant's substantially exclusive and continuous use of the mark in commerce for the five years before the date on which the claim of distinctiveness is made." TMEP 1212.

28. A Section 2(f) declaration must aver that the signatory has personal knowledge or a good faith belief about the factual assertions contained in the declaration. 37 C.F.R. § 2.41. It must be signed by a "proper person," who can be (i) a person with legal authority to bind the owner; (ii) a person with firsthand knowledge of the facts and actual or implied authority to act on the owner's behalf; or (iii) an attorney who has actual or implied power of attorney from the owner. 37 C.F.R. § 2.193(e)(1)(i)-(iii).

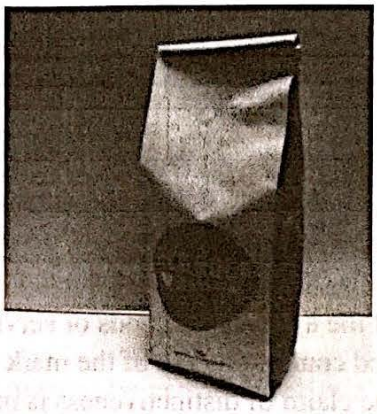
29. Between July 1, 2013 and January 8, 2015, Respondent allowed his employees to prepare, file and sign his name to at least 59 Section 2(f) declarations. The declarations acknowledged that "willful false statements and the like are punishable by fine or imprisonment, or both" and that they "may jeopardize the validity of the application or any registration resulting therefrom." Respondent did not review these Section 2(f) declarations prior to allowing his employees to file them under his purported signature. Respondent asserted that he offered to remedy the issue by submitting a supplemental declaration re-certifying some of the 2(f) declarations.

30. In January 2015, after meeting with the USPTO's Office of Enrollment and Discipline, Respondent revised TMC's practices to incorporate his review of all trademark applications and to ensure that he, and he alone, signed each application personally.

31. TMC filed certain trademark applications with specimens that were not representative of how the mark was being used in commerce. Respondent asserted that the filing of non-representative specimens was inadvertent.

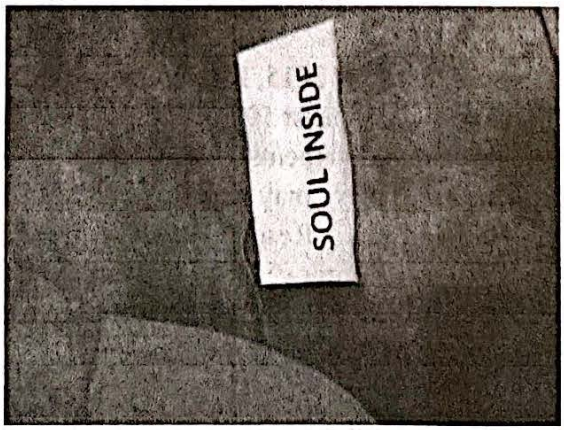
32. For example, on March 11, 2014, Respondent's office filed a trademark application for the mark RED ROCK ROASTERS. However, the wrong specimen was submitted. In a declaration accompanying the mark, which purported to be signed by Respondent, it was represented that the attached specimen was being used in commerce, when in fact it was not. The actual specimen that the client provided to Respondent's office bore little resemblance to the specimen that Respondent's office submitted.

Submitted Specimen



Actual Specimen

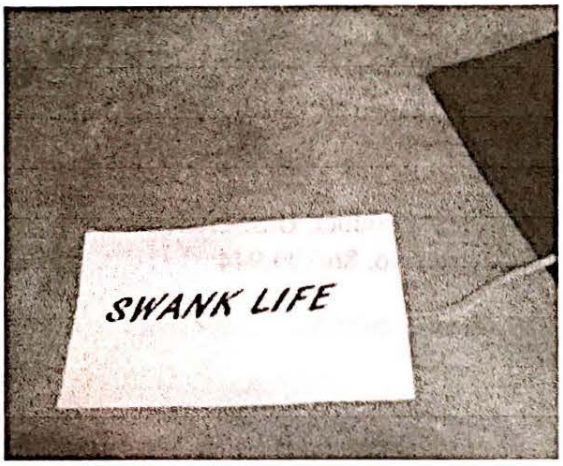
33. On May 21, 2014, Respondent's office filed an application for the mark SOUL INSIDE, and submitted the following specimen with it:



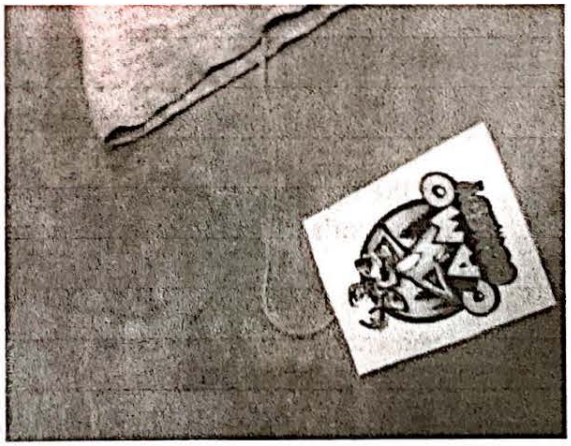
34. Based upon information and belief, Respondent claimed that one of his nonlawyer assistants created this "sample specimen" to send to the client, but then inadvertently uploaded the .jpg image of the wrong specimen as part of the trademark application.

35. At least four other similar hangtag specimens were submitted to the USPTO in other applications filed by Respondent's office. All of them showed what appeared to be part of a short-sleeved shirt, a string, and a basic hangtag. All of the pictures appeared to have been taken on the same desktop. Respondent asserted that all of these hangtag specimens were created by the same nonlawyer assistant. Respondent filed a new trademark application for the applicant for the SWANK LIFE trademark.

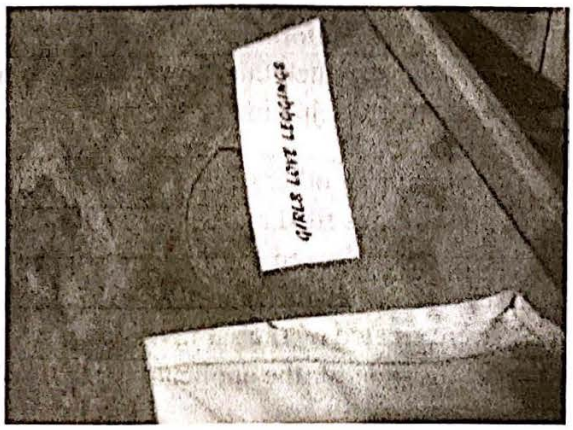
Swank Life, U.S. Trademark Application No. 86/091,374



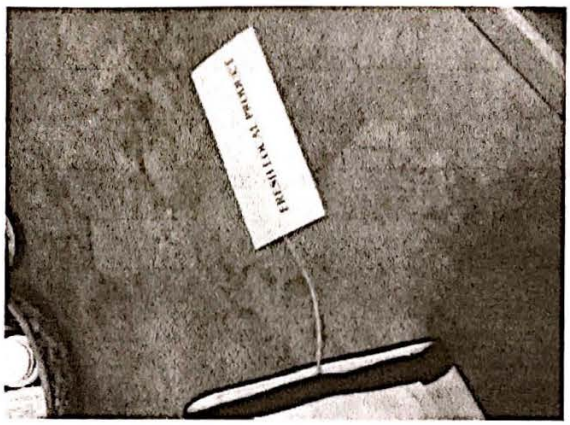
Camo Comedy, U.S. Trademark Application No. 86/082,632



Girls Love Leggings, U.S. Trademark Application No. 86,100,026



Fresh Local Product, U.S. Trademark Application No. 86/199.944



36. Trademarks were issued based on all of the specimens identified above.

37. The USPTO asserted that TMC employees filed inaccurate specimens under Respondent's name in the following additional matters:

- U.S. Trademark Application No. 86/032,298 for the mark "BANG UR HEAD"
- U.S. Trademark Application No. 86/032,268 for the mark "NOCTURNAL NONTYPICAL"
- U.S. Trademark Application No. 86/036,370 for the mark "DON'T LET HIM LIVE IN THE DARK"
- U.S. Trademark Application No. 86/072,750 for the mark "LIQUID SURFACES"
- U.S. Trademark Application No. 86/287,301 for a design mark
- U.S. Trademark Application No. 86/171,919 for the mark "TREEFREE"
- U.S. Trademark Application No. 85/849,588 for the mark "SHE'S A 10! WEAR"

- U.S. Trademark Application No. 86/176,924 for the mark "WHAT'S IN YOUR GENES"
- U.S. Trademark Application No.86/176,924 for the mark "WHAT'S IN MY GENES"
- U.S. Trademark Application No.86/219,272 for the mark "HEALTH CIRCULATOR"
- U.S. Trademark Application No. 86/226,090 for the mark "VAN DER HAGEN"
- U.S. Trademark Application No. 86/240,315 for the mark "OSPREY POWER PLATFORM"
- U.S. Trademark Application No. 86/273,334 for the mark "STEM ENHANCER BIOXCELL"
- U.S. Trademark Application No. 86/303,859 for the mark "AMERICAN CRANES & TRANSPORT AC&T"
- U.S. Trademark Application No. 86/303,783 for the mark "ACCESS, LIFT & HANDLERS ALH"
- U.S. Trademark Application No. 86/223,316 for the mark 'TEAM NETWORK SOLUTIONS TRAINING EVENTS MARKETING"

38. Respondent contends that no one has taken action to cancel the registrations issued therefrom on the basis of fraud.

II. NATURE OF MISCONDUCT

Pursuant to Virginia Rule of Professional Conduct 8.5(b)(1), "for conduct in connection with a proceeding in a court, agency, or other tribunal before which the lawyer appears, the rules to be applied shall be the rules of the jurisdiction in which the court, agency, or other tribunal sits, unless the rules of the court, agency, or other tribunal provide otherwise." Moreover, Virginia Rule of Professional Conduct 5.5(c) states that an attorney shall not "practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so."

Respondent's conduct set forth in this Certification was in connection with trademark applications filed with the USPTO, which is located in Alexandria, Virginia. When practicing before the USPTO, attorneys are subject to USPTO Code of Professional Responsibility, which

is set forth at 37 C.F.R. § 10.20 *et seq*., and the USPTO Rules of Professional Conduct, which are set forth at 37 C.F.R. § 11.101-11.901.[3] Consequently, the USPTO Rules and/or the Virginia Rules of Professional Conduct, which are substantially similar, apply. In the event of a conflict between the USPTO Rules and the Virginia Rules, the USPTO Rules control. *See* Va. R. Prof. Cond. 8.5 cmt. 9.

VIRGINIA RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

USPTO CPC 37 CFR § 10.77 Failing to Act Competently

A practitioner shall not:

(a) Handle a legal matter which the practitioner knows or should know that the practitioner is not competent to handle, without associating with the practitioner another practitioner who is competent to handle it.

(b) Handle a legal matter without preparation adequate in the circumstances.

USPTO RPC 37 C.F.R. § 11.101 Competence

A practitioner shall provide competent representation to a client. Competent representation requires the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

VIRGINIA RULE 1.3 Diligence

[3] The USPTO Code of Professional Responsibility applies to conduct prior to May 3, 2013, and the USPTO Rules of Professional Conduct apply to conduct thereafter.

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

USPTO CPC 37 C.F.R. § 10.77 Failing to Act Competently

A practitioner shall not:

(c) Neglect a legal matter entrusted to the practitioner.

USPTO RPC 37 C.F.R. § 11.103 Diligence

A practitioner shall act with reasonable diligence and promptness in representing a client.

VIRGINIA RULE 1.15 Safekeeping Property (effective January 2004-June 2011)

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law

firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

VIRGINIA RULE 1.15 Safekeeping Property (effective June 2011-November 2013)

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

. . .

(b) Specific Duties. A lawyer shall:

. . .

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

VIRGINIA RULE 1.15 Safekeeping Property (effective November 2013-March 2020)

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

. . .

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

USPTO CPC 37 C.F.R. § 10.112 Preserving identify of funds and property of client

(a) All funds of clients paid to a practitioner or a practitioner's firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the United States or, in the case of a practitioner having an office in a foreign country or registered under § 11.6(c), in the United States or the foreign country.

USPTO RPC 37 C.F.R. § 11.115 Safekeeping Property

(c) A practitioner shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the practitioner only as fees are earned or expenses incurred.

VIRGINIA RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

USPTO RPC 37 C.F.R. § 11.503 Responsibilities Regarding Non-Practitioner Assistants

With respect to a non-practitioner assistant employed or retained by or associated with a practitioner:

(a) A practitioner who is a partner, and a practitioner who individually or together with other practitioners possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the practitioner;

(b) A practitioner having direct supervisory authority over the non-practitioner assistant shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the practitioner; and

(c) A practitioner shall be responsible for conduct of such a person that would be a violation of the USPTO Rules of Professional Conduct if engaged in by a practitioner if:

(1) The practitioner orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The practitioner is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

VIRGINIA RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

USPTO CPC 37 C.F.R. § 10.47 Aiding Unauthorized Practice of Law

(a) A practitioner shall not aid a non-practitioner in the unauthorized practice of law before the Office.

. . .

(c) A practitioner shall not aid a non-lawyer in the unauthorized practice of law.

USPTO RPC 37 C.F.R. § 11.505 Unauthorized Practice of Law

A practitioner shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

VIRGINIA RULE 8.4Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another[.]

USPTO CPC 37 C.F.R. § 10.23 Misconduct

(b) A practitioner shall not:

. . .

(2) Circumvent a Disciplinary Rule through actions of another.

USPTO RPC 37 C.F.R. § 11.804 Misconduct

It is professional misconduct for a practitioner to:

(a) Violate or attempt to violate the USPTO Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

. . .

III. PROPOSED DISPOSITION

Accordingly, bar counsel and Respondent tender to the Disciplinary Board for its approval the agreed disposition of a two-year suspension as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. Bar counsel and Respondent agree that the effective date for the sanction shall be the date of entry of the Disciplinary Board Order approving this Agreed Disposition.

Upon satisfactory proof that all terms and conditions have been met, this matter shall be closed.

Prior to having his license reinstated in Virginia, Respondent must comply with the requirements set forth in the Rules of Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-25.D.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9.E of the Rules.

THE VIRGINIA STATE BAR

By: _____
Elizabeth K. Shoenfeld
Senior Assistant Bar Counsel

_____
Matthew Howard Swyers
Respondent

_____
Bernard J. DiMuro
Respondent's Counsel