

# Decoding the nuances of ethical trademark practice before the USPTO



A worrying number of trademark attorneys remain unaware of the USPTO's Office of Enrolment and Discipline, let alone that they are subject to its rules – and could face disciplinary action for violating them. But whether the trademark bar knows it or not, the office is always present

**It is estimated** that about 50,000 attorneys regularly practise before the USPTO in trademark matters; however, very few US trademark lawyers are also registered patent practitioners. Although the USPTO requires patent attorneys and agents to have a science background and pass a patent-specific registration examination just to be considered for membership to the patent bar, the USPTO has no such special examination for trademark attorneys and does not maintain a register of qualified trademark attorneys. This is because any attorney who is licensed and in good standing with the highest court of any state, the District of Columbia or a US territory is automatically permitted to practise before the USPTO in trademark proceedings (see Sections 11.1 and 11.14, Title 37 of the Code of Federal Regulations (CFR)).

The USPTO's regulations broadly define trademark practice before the USPTO as including pre-filing

#### AUTHORS

EMIL J ALI AND  
MICHAEL E  
MCCABE JR

**PICTURE:**  
MARK VAN SCYOC/  
SHUTTERSTOCK.COM

activities, such as advising a client in contemplation of filing a trademark application. Any practitioner who engages in practice before the USPTO – even one who never makes a formal appearance – is potentially at risk of professional discipline if the USPTO concludes that they have violated any of the USPTO Rules of Professional Conduct, which govern the ethical norms of attorneys practising at the agency (see 37 CFR §11.19).

Congress granted authority to the USPTO to determine the qualifications for those allowed to represent clients in agency proceedings and to regulate the conduct of attorneys through the enforcement of the USPTO rules. While some types of attorney conduct are universally condemned under every jurisdiction's ethics rules (eg, stealing from clients), the USPTO applies its own interpretation of the USPTO rules to conduct that arises in matters unique to IP law – including trademark

representation. In fact, trademark attorney practices that may be of no interest to a state bar could well be of significant interest to the USPTO's ethics investigators at the Office of Enrolment and Discipline (OED).

This article examines how the USPTO rules apply to trademark practitioners and the system created by the office to police them. It also addresses the main issues that IP ethics attorneys see as being the most significant trends and current areas of interest to the OED in trademark practice. Finally, it provides practice tips for avoiding some common ethics traps for the unwary trademark practitioner.

### What rules apply to your practice?

Every trademark practitioner who is a US attorney must generally conform their conduct to the ethical standards set out in both the USPTO's rules and the rules of ethics of every state or territorial jurisdiction in which they are a member. While all states have adopted some version of the American Bar Association (ABA) Model Rules of Professional Conduct, this does not mean that all jurisdictions interpret those (often) similarly worded rules the same way. Further, different states may apply significantly different sanctions for the same or similar conduct; this is also true of the USPTO, which has a tendency, at least in some cases, to seek more substantial discipline than many state bars will impose for similar misconduct.

This leads to the question: what happens if the same trademark attorney conduct leads to two different results – a violation under one jurisdiction's ethics rule but not a violation under another jurisdiction's version of the same rule? The ABA addressed this potential for conflicts of ethics laws in Model Rule 8.5, which addresses choice of law in disciplinary cases, stating that when the attorney's conduct relates to a matter before a tribunal, then the ethics rules of the jurisdiction in which the tribunal sits apply. Outside the litigation context, determining what ethics rules apply to the conduct becomes murky. ABA Model Rule 8.5(b) establishes that for other conduct – presumably, not conduct before a tribunal – the applicable ethics rules are the “rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct”.

According to ABA Model Rule 8.5, the rules of the jurisdiction where the conduct occurred, or where the predominant effect is, will apply. The rest of paragraph (b) provides an apparent safe harbour for when there are conflicts between two jurisdictions, to allow the lawyer to conform to the more permissive rules if that is where “the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur”.

The USPTO has refused to adopt a counterpart to the ABA's Model Choice of Law Rule. Neither do the USPTO rules provide any safe harbour for a practitioner whose conduct complies with a state's ethics rules while also violating a counterpart under the USPTO's rules (there appears to be a limited exception under 37 CFR §11.115). Therefore, trademark lawyers may inadvertently violate a USPTO rule even if their conduct is perfectly compliant in the view of a state ethics regulator. Consequently, trademark practitioners must consider their conduct under both their own state bar rules and the USPTO rules to assure compliance with both bodies of rules.

### OED: the USPTO unit you should know about

One of the most common complaints that we hear from trademark attorney clients is that they have no idea what the OED is, let alone that they are subject to the USPTO rules – including possible discipline for violations of those rules. And why should they? Since there is no registration requirement or approval process to appear as a trademark attorney before the USPTO, most trademark attorneys could go their entire careers without hearing from – or about – the OED. But whether the trademark bar knows it or not, the OED is always present.

The OED's mission includes investigating allegations of misconduct by patent and trademark practitioners. These can come from a variety of sources, typically clients, examining attorneys and competitors, as well as other sources – including even an article in a publication or a court decision. The OED also accepts anonymous grievances.

If the OED formally opens an investigation into a practitioner's conduct, the practitioner is under investigation until the OED officially closes its investigation. The OED can terminate an investigation in various ways. At one end of the spectrum, it can determine that it lacks sufficient evidence of an ethical violation and terminate its investigation either by taking no action or by issuing a private, unpublished, non-disciplinary warning letter.

At the other end of the spectrum, the OED may negotiate a settlement agreement with a practitioner if the OED director believes that they have enough evidence to prove an ethics violation and such alleged misconduct warrants some form of public discipline. A practitioner is not obliged to settle with the OED and the OED is not required to offer a settlement (although it usually tries to go down this route).

Finally, the OED can file a disciplinary complaint against the offending trademark lawyer. In this case, the complaint is assigned to an administrative law judge outside the USPTO. Presently, USPTO disciplinary trials are held before administrative law judges from the Department of Housing and Urban Development and the Environmental Protection Agency, who are contracted by the USPTO specifically to serve in USPTO disciplinary proceedings.

The filing of such a complaint starts an *inter partes* contested proceeding pitting the OED director against the named practitioner. Such proceedings run like litigation – although without nearly the same rights available in a typical contested civil or criminal proceeding – and are considered quasi-criminal in nature. For example, in an ordinary civil case, parties have the right to pre-trial discovery. This is not the case with USPTO disciplinary proceedings. In fact, discovery in a USPTO disciplinary proceeding is the exception rather than the rule. In a criminal case, the prosecution is required to produce exculpatory evidence to the defence, without demand.

In USPTO disciplinary proceedings, the OED director's claims have no such requirement. Therefore, the OED may simply choose to withhold information that is helpful to the defence, thus forcing the respondent attorney to file a motion for discovery – which may or may not be granted and which will almost certainly be objected to by the OED and/or modified and narrowed by the administrative law judge.

Contrary to ordinary state or federal court practice, USPTO disciplinary trials are not open to the public and records are sealed from disclosure under the Privacy Act 1974. There is no public notice announcing the trial schedule of a USPTO disciplinary proceeding – even the fact that a complaint was filed is confidential.

The disciplinary hearing process proceeds rapidly, with the aim of getting the case to a hearing within six to nine months from the filing of the complaint. In fact, the USPTO rules set a target of nine months from the filing of the complaint until issuance of an initial decision by the administrative law judge. In reality, actual trial schedules vary from judge to judge and case to case. There can be significant motions practices as well, including the typical motions filed in federal court – although neither the Federal Rules of Civil Procedure nor the Federal Rules of Evidence apply in OED disciplinary cases. Therefore, experience and nuance are critical for attorneys who appear before this unique tribunal.

### Why the OED cares about trademarks

In the past several years, the USPTO has seen a significant increase in unlawful or illegitimate trademark filings. In 2019 INTA Director Andrei Iancu specifically addressed this phenomenon, noting that: “Over the last few years, the USPTO has seen a tremendous uptick in foreign applications with inaccurate or possibly fraudulent claims of use of the mark for the goods or services specified in the application.” He went on to state that: “We have observed that many of these questionable applications are coming in from non-US ‘filing factories’, which appear to be using practitioners not authorised to practise law in the United States or even overseas.”

Not long after those remarks, the USPTO finalised the Requirement of US-Licensed Attorney for Foreign-Domiciled Rule in the Federal Register (see 84 FR 31498). In this, it claimed that “requiring a qualified attorney to represent applicants, registrants, and parties whose domicile is not located within the US or its territories is an effective tool for combatting the growing problem of foreign individuals, entities, and applicants failing to comply with US law”.

The new rule further explains that: “Requiring foreign applicants, registrants, and parties to retain US counsel in all trademark matters before the USPTO will likely reduce the instances of unauthorised practice of law (UPL) and misconduct.” While not a panacea to prevent misconduct, the rule shifts the enforcement mechanism to allow the USPTO to go directly after someone over whom they may take meaningful action if there is a violation of the USPTO rules during a trademark representation – the practitioner. The USPTO’s rule is unequivocal with regard to this point, stating: “When UPL and/or misconduct does occur, requiring foreign applicants, registrants, and parties to retain US counsel will enable the [OED] to more effectively pursue those who are engaged in UPL and/or misconduct.”

### Top five trademark ethics issues

Ethics issues come in all shapes and sizes. This article discusses one small nuance of trademark practice that has come under the microscope – filings made on behalf of foreign applicants. However, these issues may involve any and all clients.

### False specimens or statements of use

One of the cornerstones of the US trademark system is that trademark rights are derived from use of the mark in commerce. To qualify for a use-based registration, applicants must submit a specimen along with a sworn verification or declaration stating that the mark is being used in commerce. The specimen must show how the applied-for mark is being used on – or in connection with – the goods or services included in the application, and trademark examiners are required to scrutinise the proof of use submitted with a trademark filing. Trademark practitioners who receive specimen rejections may be referred to the OED for investigation.

When a practitioner requests a specimen and date of first use from an applicant, the USPTO expects them to perform an inquiry that is “reasonable under the circumstances”. What this means is that, in many cases, it would not necessarily be appropriate for the trademark attorney to simply accept the client’s representations at face value, as some clients may not understand the specimen requirement. Therefore, it is imperative for trademark attorneys to communicate with their clients regarding the specimen requirements, including what does and does not qualify as a valid specimen.

Such an explanation should detail the nature of the statements of use made under penalty of perjury, along with the potential invalidity of a mark registered by fraudulent means (eg, *In re Bose Corp*, No 08-1448 (Fed Cir, 31 August 2009)). Moreover, in the case of renewals, clients may need a primer on the USPTO’s post-registration audit programme, including the pros and cons of submitting multiple specimens. Also related to the USPTO’s audit programme, practitioners should be keenly aware that the deletion of goods or services during audits in multiple registrations, even if innocuous, may attract the attention of the OED, which may open an ethics investigation even if the client is still using the mark but simply did not wish to respond to the office action.

In other cases, clients may provide their trademark attorney with a fake or altered specimen, representing that the specimen is proof of actual use. While some of those specimens are obviously not genuine to the naked eye, with improvements in digital technology, some applicants can create realistic looking trademark specimens, which they then pass off as proof of use in commerce. Before simply accepting the specimens and filing them without inquiry, attorneys must be mindful that they are representing to the USPTO that they have a reasonable basis for believing that the submitted specimen shows how the applicant actually uses its mark in commerce.

Unless the practitioner has a deeper understanding or personal knowledge of a client’s use of a particular trademark, they should independently review and try to verify their client’s proof of use. If a practitioner is suspicious about whether a mark is really being used, they should request alternative specimens, as well as confirmation from the client of how and when it uses its mark. Additionally, the practitioner could perform a reverse image search, which might help to uncover other uses of the same mark and thus help to identify a fake or forged specimen before it is filed at the USPTO.

Further, foreign applicants with trademark registrations in a foreign country may seek to register their mark based on a *bona fide* intention to use it in interstate commerce (rather than under Section 44). Determining whether an applicant's intention to use its mark is genuine requires a fact-based analysis. To meet the *bona fide* intent requirement, applicants should have reasonably concrete plans to commercialise the mark for the claimed goods and services in the United States and should take steps to implement those plans (eg, market research or the development of promotional materials).

As illustrated in some of the cases referenced below, the USPTO believes that any filing made by a practitioner in a trademark application is done so after a reasonable inquiry pursuant to Section 11.18, Title 37 of the CFR. Rather than simply allowing the client to directly sign a declaration that appears suspect, the practitioner should perform a reasonable amount of due diligence. What is 'reasonable' depends on the circumstances. An in-house attorney at a sophisticated multinational will most likely require less explanation, as well as a lower level of review. However, if the client is not a sophisticated trademark applicant and has no website through which use in commerce may be more easily verified, then a practitioner would be wise to conduct a more thorough inquiry into the legitimacy of the specimen and the use in commerce.

If a client claims a *bona fide* intention to use the mark in commerce, the applicant's counsel should consider obtaining evidence to support this claim. Simply relying on an applicant's stated hope to use a mark in the future may not be sufficient to discharge the attorney's duty to make a reasonable inquiry. Thus, if it turns out that the applicant had no *bona fide* intention to use its mark in commerce – and a reasonable pre-filing investigation would have uncovered this fact – the trademark practitioner could come under OED scrutiny for failing to conduct a reasonable pre-filing investigation.

#### Personal signature entry

Another source of recent concerns for trademark attorneys relates to how signatures are affixed to documents filed at the USPTO. According to Section 2.193, Title 37 of the CFR, all signatures must be "personally" applied by the named signatory. The USPTO's position on this is the same whether the document is signed by hand or a typed-in "S-signature". Whatever method, the person whose name appears as the signatory must be the same person who signs or types the signature into the document.

For the purposes of attorney signatures, neither an associate attorney nor a paralegal can sign the attorney's name on a trademark document for them. The same rule also applies for client signatures; only the client, as a named signatory, is permitted to type in or hand-sign their own signature.

The ethical sanctions for violating the personal signature rule can be harsh. Some practitioners have agreed to be excluded from practice before the USPTO rather than fight a protracted, costly disciplinary hearing and appeals process. Therefore, trademark practitioners should take the personal signature rule

literally. The USPTO offers multiple ways for documents to be signed, including sending a document to a third party to enter their own signature or uploading a hand-signed document.

In the past two years, the USPTO has disciplined a number of trademark attorneys whose conduct included, among other things, not personally entering their own signatures in trademark filings or allegedly permitting others to enter signatures for their clients. Many trademark practitioners have found that the OED takes an unusually keen interest in precisely whose fingers are pressing down on the keyboard when typing an S-signature on a trademark form and has taken the position that an improperly entered signature may be evidence of an ethics violation. Trademark practitioners should therefore be mindful of the requirement for personal entry of signatures in filings made with the USPTO.



## Trademark practitioners must consider their conduct under both their own state bar rules and the USPTO rules to assure compliance with both bodies of rules

#### Unauthorised practice of law

It is a violation of the USPTO's ethics rules, as well as the ethics rules of every jurisdiction in the United States, to engage in the unauthorised practice of law. As Iancu observed at INTA, the USPTO has seen a significant increase of this in trademark practice.

There are several reasons for this, including a significant demand, particularly from overseas markets, for deeply discounted trademark services. This can involve an overseas source searching for someone willing to provide attorney-like services at a non-attorney-like fee. As Iancu aptly noted, the overseas source is less likely to care about whether the non-attorney gets into trouble since they are not subject to USPTO discipline. If their filer (attorney or otherwise) gets into trouble, the overseas client will simply retain a different lawyer.

Second, online companies that are not law firms sometimes offer trademark legal services. Because such online providers lack the overheads of a law firm, they are usually able to offer trademark services at substantial discounts from customary legal fees charged by qualified practitioners. These non-lawyer competitors create price pressure that may erode the fees that a qualified practitioner can charge.

Third, as a result of these price-eroding competitive forces, legitimate trademark law practices may find that they have to reduce their own fees and costs to survive. Market conditions may lead to practitioners relying more heavily on para-professionals (eg, paralegals, legal assistants and other non-attorneys) to assist with services that could be more appropriately provided by an attorney. This means that some trademark practitioners may feel pressured to sacrifice quality for price simply to stay in business.

In defining what constitutes ‘practice before the office’ in either patent or trademark matters, the USPTO draws an exception for assistance from non-lawyer employees of the practitioner. The USPTO rules state that “nothing in this section prohibits a practitioner from employing or retaining non-practitioner assistants under the supervision of the practitioner to assist the practitioner in matters pending or contemplated to be presented before the Office”.

Para-professionals have always played an integral support role in the delivery of trademark services. Nonetheless, these non-practitioners must be careful not to cross the line from providing permissible assistance to impermissibly engaging in the unauthorised practice of law. A non-lawyer may assist a lawyer in drafting documents for filing at the USPTO, provided that they do so under the supervision of a qualified practitioner. What the non-lawyer cannot do is apply their own legal judgement to a client’s specific application without a lawyer’s involvement. On the other hand, they may relay an attorney’s response to a client’s question since, in that scenario, the non-lawyer is merely a conduit between the client and a practitioner.

While many readers of this article are likely to be qualified trademark attorneys, we highlight the case of *In re Shia* (Proc No D2014-31 (1 August 2016) (reconsideration denied)), which involved a patent agent who served as a domestic representative and correspondent for foreign trademark applicants. The trademark commissioner determined that Banger Shia had engaged in the unauthorised practice of trademark law and issued an exclusion order prohibiting her from participating as a correspondent or domestic representative in any current or future trademark matters.

However, Shia continued to assist clients in preparing trademark documents, in violation of the exclusion order. She was subsequently charged by the OED (as a patent agent) with engaging in the unauthorised practice of trademark law. At a hearing, she argued that she was only a “domestic representative”. The USPTO rejected this argument because a domestic representative is not authorised to prosecute an application or represent a party in a proceeding before the USPTO.

Shia also argued that she was authorised to practise based on a power of attorney received from the applicants (ie, that she was their attorney in fact). This argument was also rejected because the rules provide no exception to the ‘attorney’ requirement; the attorney must be an attorney at law, not someone holding a power of attorney. Shia was excluded from practice before the USPTO (including in both patent and trademark matters) based on substantial evidence that she had entered the S-signatures of foreign clients on various trademark forms. In addition to being excluded from practice, the USPTO filed a notice in each of her clients’ trademark applications indicating her lack of licensure and her exclusion order.

**Conflicts of interest**

Trademark attorneys must be careful to avoid engaging in conflicts of interest. There are several ways that these can arise. For example, a law firm represents Client A in connection with assisting it with registering its trademark. Client B asks the law firm to represent it in



Any practitioner who engages in practice before the USPTO is at risk of professional discipline if they are found to have violated the USPTO Rules of Professional Conduct

PICTURE: REIIMAGINE/SHUTTERSTOCK.COM

environmental litigation against Client A. Even though the two matters are unrelated, the USPTO’s ethics rules prohibit the law firm from representing Client B unless both clients agree to waive the conflict after being made aware of the pros and cons of the representation.

A conflict of interest also can arise in more limited circumstances when a lawyer takes an action that may be considered adverse to the interests of a former client in a matter that is substantially related to the prior representation. For example, if a lawyer prosecutes a trademark application for Client A, the lawyer is generally precluded from providing an opinion to Client B on the validity of Client A’s mark.

Another common conflict of interest can arise when a trademark lawyer represents two or more co-owners of a mark. In such situations, the lawyer must ensure that they take no action for the benefit of one co-client to the detriment of the other.

In one trademark case that illustrates the co-client problem, a law firm represented two individuals who applied for the mark in their individual capacities as joint owners (*In re Blackowicz*, Proc No D2015-13 (11 May 2015); *In re Newman*, Proc No D2015-14 (12 May 2015)). The law firm – following the instructions of one of the clients – abandoned the trademark application and filed a new application for the same mark naming only one of its clients as sole owner. It never told the other client, which led to an OED investigation. The lawyers eventually agreed to a licence suspension for violating the USPTO’s rules by neglecting the interests of their second co-owner client.

**Attorney supervision**

Lawyers have an obligation to supervise attorney and non-attorney subordinates. For example, a law firm managing partner has the supervisory responsibility to ensure that all lawyers in their firm are conducting themselves consistent with the USPTO rules.

In addition to their responsibility for supervising other practitioners, attorneys have an ethical obligation to ensure that non-attorneys under their direct supervision are also conducting themselves in accordance with the professional ethical obligations of the lawyer. The idea behind the supervisory rule is that since non-attorneys

are not trained legal professionals, attorneys must ensure that their conduct is compatible with the practitioner's own professional obligations. A lawyer may not escape supervisory liability by shifting blame to the misconduct of an individual whom the lawyer was obliged to supervise.

This is not to say that an attorney cannot use support staff. But there are limits as to what a paralegal or other support person can do under the supervision of a practitioner. A non-lawyer may assist a lawyer in drafting documents for filing at the USPTO. What the non-lawyer cannot do is apply their own legal judgement to the client's specific application.

The duty of supervision places the onus on the attorney to put into place reasonable measures to ensure that non-attorneys are conducting themselves ethically. Often, this duty of supervision may be discharged by regular oversight, routine audits of non-attorney work product, training on ethical responsibilities (including the duty of confidentiality, proper docketing practices and proper billing practices) and consulting with outside ethics counsel.

One case that is instructive about the duty of supervision is *In re Reyner Meikle* (Proc No D2019-17 (21 March 2019)). Reyner Meikle is a US attorney who owned a paralegal outsourcing business, which provided assistance to practitioners and corporations that do not have in-house paralegals. The company also provided trademark preparation assistance directly to trademark applicants themselves. In particular, it allowed paralegals to sign documents on behalf of trademark applicants, in alleged violation of Section 1.4(d), Title 37 of the CFR, which requires that signatures be entered "personally" by the named signatory. The USPTO and Meikle agreed that he had failed in his duty of supervision because he had allowed his assistants to sign trademark filings on behalf of others, not the named signatory.

In another trademark ethics case, *In re Swyers* (Proc N D2016-20 (26 January 2017)), trademark lawyer Matthew Swyers established the Trademark Company, PLLC. Through this business, he became a prolific filer, often at or near the top of the rankings for most filed applications. Swyers' practice included himself as sole practitioner supported by a dozen or so paralegals. According to the USPTO's disciplinary complaint, Swyers allowed unsupervised paralegals to prepare and file trademark applications and other documents and to advise clients without his supervision. Notably, he was also alleged to have had his paralegal doctor specimens. Swyers agreed to resolve the complaint by consenting to exclusion from the USPTO.

Finally, in *In re Crabtree* (Proc Nos D2018-31; D2018-47 (25 April 2019)), an attorney operated an online company that assisted clients with trademark filings. Employees helped with crafting descriptions of goods or services, identifying classifications, determining date of first use and reviewing and selecting specimens. The USPTO alleged that the company was engaged in the unauthorised practice of law by assisting clients with preparing trademark applications. The practitioner denied the OED's allegations. However, to settle the dispute, he agreed to an exclusion from

practice before the USPTO without admitting to the alleged misconduct.

### Best practices

Law firms should ordinarily use written engagement agreements in all their trademark representations. At the very least, a good engagement agreement will:

- identify the client;
- define the scope and objective of the representation;
- explain how the lawyer's fee is determined; and
- state when the representation ends.

When a lawyer agrees to represent multiple clients, they must be careful to avoid conflicts that may arise between those clients. In addition, they must have a good conflict checking system to avoid representing one client in a matter that is adverse to another client's interest or is substantially related to a matter on which they have previously worked.

In addition, lawyers should be proactively involved in representing their client. They cannot delegate their independence to a non-lawyer or have their assistants perform legal tasks without supervision. While it is perfectly permissible for a lawyer to receive assistance from a subordinate, they remain ethically responsible for the subordinate's work product.

Trademark lawyers must also be mindful of their own right to practise before the USPTO. An administratively suspended lawyer should not appear on or sign documents filed in any USPTO matter while under suspension, as such an action could be construed as engaging in the unauthorised practice of law. For example, a failure to complete continuing legal education requirements or pay bar dues could cause an administrative suspension, albeit not on ethical grounds, before a state bar. However, continued trademark practice during that time could invite an OED disciplinary investigation.

Trademark firms must be scrupulous with their processes for entering signatures on USPTO filings. If a document must be signed by a client, then it is the client who must sign the document. The same goes for documents that must be signed by the lawyer; if a practitioner is the named signatory, then the practitioner must personally enter their own signature, whether it is a hand signature or an S-signature.

Finally, trademark lawyers have a duty to conduct a reasonable investigation before filing any paper in the office. It is generally no longer acceptable simply to accept what a client says as true without asking questions to verify that it is using its mark in commerce before filing a use-based application. Fake specimens or the inability of a client to otherwise substantiate actual use in commerce with evidence should raise a red flag that further investigation may be required.

The USPTO continues to be proactive in policing the practice of trademark law. Trademark practitioners would be wise to revisit their practices and ensure that they are conducting themselves in accordance with best practices and the USPTO Rules of Professional Conduct. **WTR**



Emil J Ali is a partner and Michael E McCabe Jr is a managing partner at McCabe & Ali LLP  
[emil@mccabeali.com](mailto:emil@mccabeali.com) | [mike@mccabeali.com](mailto:mike@mccabeali.com)