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Dear Mr. Martel:

Re: Public Consultation on Draft Code of Conduct

We wish to thank Innovation, Science and Economic Development Canada (ISED) and the Canadian Intellectual Property Office (CIPO) for the opportunity to provide comments on the Draft Code of Conduct for Trademark and Patent Agents.

We generally support the creation of a code of conduct governing the ethical conduct of trademark agents.

As a general comment, many trademark agents are also lawyers, who are already subject to a robust set of professional conduct rules that have been considered and refined by the courts and regulatory bodies over time. In our view, it is important that the professional obligations in any new code of conduct for trademark agents not be inconsistent with or more onerous than the professional obligations imposed on lawyers by the various provincial and territorial law societies. In the event of inconsistencies, it will need to be clear which set of rules governs lawyers who are also trademark agents.

In addition, we also suggest that ISED and CIPO consider amending the text in the manner shown or explained below.

1. Confidentiality, Rule 2.7: *An agent may disclose confidential information to a lawyer to secure legal or ethical advice about the agent's proposed conduct.*

We suggest that the "lawyer" to whom an agent may disclose confidential information be qualified. For example, the rule might exclude lawyers representing a client adverse in interest to the agent's client in the matter in relation to which the advice is sought. Alternatively, "lawyer" might be limited only to a lawyer retained by the agent to provide legal or ethical advice about the agent's proposed conduct or to a lawyer working for a regulatory body that offers ethical advice.

2. Conflicts, Principle: We suggest changing "fidelity" to "loyalty".
3. Examples of Conflicts of Interest, Item 2: An agent, an associate, a firm partner or a family member has a personal financial interest in a client's affairs or in a matter in which

the agent is requested to act for a client, such as a partnership interest in some joint business venture with a client.

4. Examples of Conflicts of Interest, Item 3. [...] If the agent is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the agent's firm, ~~but~~ and would be cured if another agent in the firm who is not involved in such a relationship with the client handled the client's work.
5. Conflicts of Interest Exception, Rule 3.2 (2): In order for consent to be implied ~~and~~ it need not be in writing where all of the following apply: [...]
6. Commentary – Implied consent: [...] The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the matters must be unrelated, the agent must not possess confidential information from one client that could affect the agent's representation of the other client, and there must be a reasonable basis to conclude that the client has commonly accepted that agents may act against it in such circumstances.
7. Concurrent Representation, Rule 3.4: We suggest that consideration be given to further defining the the term "competing interests". Are these legal interests, business interests or something else?
8. Fees, Rule 5.4: An agent must not permit a non-agent to fix any fee to be charged to a client, except where such person uses a fee schedule, ~~and~~ provided that an agent has set the fee schedule. ~~and is responsible for sending the account to the client.~~

Thank you for the opportunity to comment on the Draft Code of Conduct.

Yours truly,

Cassels Brock & Blackwell LLP



Alison Hayman

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