

# McDermott Will & Emery

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Strategic alliance with MWE China Law Offices (Shanghai)

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January 8, 2013

*Via Email (formcomments@ttb.gov) & Hand Delivery*

Mary A. Wood  
Alcohol & Tobacco Tax & Trade Bureau  
1310 G. Street, N.W., Suite 200E  
Washington, DC 20005

Re: Power of Attorney, TTB Form 5000.8, OMB #1513-0014

Dear Ms. Wood:

I write to propose a revision of TTB's Power of Attorney form, TTB F5000.8, in accordance with the Federal Register Notice published on Friday, November 9, 2012. *See* 77 Fed. Reg. 67442, 67444 (Nov. 9, 2012). We urge TTB to amend the Power of Attorney form and related practices to recognize the representation of industry members by *law firms*, not simply individuals employed by those law firms. We believe doing so will avoid serious risks to TTB employees arising from the provisions of 26 U.S.C. § 6103, reduce administrative burden on both TTB employees and the industry, and reflect the fiduciary responsibilities that flow between law firm and client, not simply individual employee and client.

To date, TTB only recognizes individuals as having the authority to represent a client in proceedings before TTB. Where that individual is employed by a law firm, however, this results in needless additional paperwork when new partners, associates, or other professionals are enlisted to work on particular matters before TTB. Indeed, the normal course of law firm operations frequently results in changing personnel working on matters for a single client, particularly a long-term client. By requiring each individual to submit a Power of Attorney form for represented industry members, TTB greatly multiplies both the burden on National Revenue Center staff to process additional Power of Attorney forms and also increases the burden on the industry.

More seriously, TTB's current practice threatens to and, indeed, has resulted in inadvertent disclosures that could be deemed violations of 26 U.S.C. § 6103 as well as other confidentiality obligations imposed on the federal government and its employees. A former employee of a law firm no longer has any right to speak for or otherwise represent a client of the law firm based on the client's retention of that law firm. Indeed, the legal profession has very strict rules pertaining to the transfer of client files and client work upon the departure of an attorney, and those procedures require an affirmative act by the client in order for the departing attorney to continue acting on behalf of that client.

The Power of Attorney form and TTB's related procedures create the opposite presumption. TTB does not recognize the attorney-client relationship between law firm and client and, instead, would recognize an ever growing number of potential (and not real) "attorney client relationships" as individuals leave the law firm for other firms, companies, or to form their own law firm. Instead of presuming that the departure of the individual severs the attorney-client relationship between that individual and a client, TTB's practice of only recognizing individuals requires an affirmative act by the industry member to sever the attorney-client relationship. Not only does this place yet another administrative burden on both TTB and the industry, it is unrealistic to expect today's large industry members, who may engage multiple law firms with hundreds of employees, to keep track of all of the individuals at those law firms who may have been granted a Power of Attorney over the course of many years.

As a result, TTB's current form and practice pose a very real risk to confidential client information. Indeed, recently upon the departure of an employee of this firm, and despite this firm's clear communication of this departure to TTB, a number of confidential documents submitted by this individual during her time as an employee of McDermott were returned to her *after* she had begun employment in-house with an industry member. By doing so TTB had, in fact, provided confidential information of one industry member directly to the employee of another industry member. While the individual in question did not, to the best of our knowledge, do anything improper with the information aside from alerting McDermott to the situation, the incident illustrates the serious confidentiality problems with TTB's current form and practice.

In informal discussions in recent months, TTB personnel suggested to me that allowing the Power of Attorney form to recognize law firms would force TTB to keep track of the personnel in each law firm with which it does business. We respectfully disagree. Were an individual to falsely represent him or herself as an employee of a law firm in order to wrongfully make representations on behalf of and/or obtain documents related to a client of the law firm, that individual would be committing fraud. TTB, of course, cannot be held responsible for such fraud any more than it cannot be held responsible under its current Power of Attorney form if a former employee of an industry member or any individual were to misrepresent his or her identity for the same purposes. TTB would not be held responsible under Section 6103 or any other confidentiality statute for relying on fraudulent statements by an individual, as long as such reliance was reasonable.

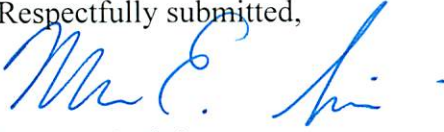
Law firms have an obligation to safeguard information and to ensure an orderly transition of documents and other client information when an attorney leaves for other employment. If the Power of Attorney extended to a firm, attorneys who leave would be committing fraud and committing an ethical violation by contacting TTB on behalf of a client without obtaining a new Power of Attorney. With the electronic communications tools available to TTB and members of the bar, a secure system could be established between TTB and law firms that would relieve TTB of the obligation to process multiple Powers of Attorney and place the burden on participating firms to adequately monitor and update the professionals who require access to client documents and messages from TTB.

We urge TTB to take these considerations into account and accordingly revise the Power of Attorney form to allow a law firm, including all its professionals, to have the authority to represent

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a client. Should TTB wish to receive any further comments on the points made in this submission, we would happily entertain such a request or other questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marc E. Sorini", with a stylized flourish at the end.

Marc E. Sorini

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