

*A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.*

## [Trademark Fraud No More?](#)

September 21, 2011 by [Steve Baird](#)

Just over two years ago, we reported on the CAFC's landmark [trademark fraud](#) decision of [In re Bose](#), [here](#), [here](#), and [here](#).

In addition, I wrote a piece for Thomson Reuters' Client Times Online called [True Lies, Trademark Fraud, and the Medinol Detour: The Federal Circuit Reverses In re Bose](#)."

Our friend, John Welch over at the TTABlog, on the second anniversary of *In re Bose*, genuinely piqued my interest with his recent and seductive post entitled "[TTABlog Special Report: List of Fraud Claims Sustained by TTAB Since In re Bose Corporation](#)."

I thought to myself, what have I missed, but apparently and thankfully nothing, as John explained:

"None. The TTAB has not sustained a single fraud claim in the two years since the CAFC issued its decision in [In re Bose Corporation](#). Nor has it decided whether reckless disregard for the truth is sufficient to satisfy the 'intent' element."

I'm thinking that at least until the CAFC provides further guidance on the subject or the TTAB goes out on a limb and decides to adopt "reckless disregard" even before the CAFC decides whether that standard is sufficient, we'll continue to await decisions that grant successful trademark fraud claims, at least at the USPTO and TTAB.

I'm also thinking that if trademark fraud is an important claim in a case, the client might be best served litigating and proving that claim in federal district court, at least for the time being, since there is at least one federal district court (District of Minnesota) that has sustained a jury's finding of trademark fraud under the more stringent *In re Bose* standard, [and that decision has now been affirmed by the Eighth Circuit Court of Appeals](#).



Whatever the forum though, [why on earth do trademark attorneys continue to sign verified use statements on behalf of their clients](#) and submit them to the USPTO, when it appears that they are [the only class of human beings capable of committing trademark fraud on the USPTO](#), at least as far as the TTAB is currently concerned.

If you want more, please join us at the Midwest IP Institute on Thursday and Friday, more info [here](#).

