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LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2019 TMOB 127**

**Date of Decision: 2019-11-27**

**IN THE MATTER OF A SECTION 45 PROCEEDING**

**Investment Planning Counsel, Inc.**

**Requesting Party**

**and**

**Royal Bank of Canada – Banque Royale  
du Canada**

**Registered Owner**

**TMA843,424 for INSURANCE ADVICE  
FOR YOUR LIFE**

**Registration**

[1] This is a decision involving a summary expungement proceeding under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration No. TMA843,424 for the trademark INSURANCE ADVICE FOR YOUR LIFE (the Mark), owned by Royal Bank of Canada – Banque Royale du Canada.

[2] The Mark is registered for use in association with the following services:

Insurance services.

[3] For the reasons that follow, I conclude that the registration ought to be maintained.

INTRODUCTION

[4] At the request of Investment Planning Counsel, Inc. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on August 10, 2017, to Royal Bank of Canada – Banque Royale du Canada (the Owner), the registered owner of the Mark.

[5] The notice required the Owner to show whether the trademark has been used in Canada in association with the services specified in the registration at any time within the three-year period immediately preceding the date of the notice and, if not, the date when it was last in use and the reason for the absence of such use since that date. In this case, the relevant period for showing use is August 10, 2014 to August 10, 2017.

[6] The relevant definition of use is set out in section 4 of the Act as follows:

4(2) A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[7] The display of the trademark in the advertisement of the services is sufficient to satisfy the requirements of section 4(2) of the Act, from the time the owner of the trademark offers and is ready to perform the services in Canada [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[8] It is well established that bare statements that a trademark is in use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these proceedings is low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with each of the services specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)].

[9] In response to the Registrar's notice, the Owner furnished the affidavit of Robynn Pellegrini, sworn on February 21, 2018. Both parties filed written representations. An oral hearing was not requested.

#### THE OWNER'S EVIDENCE

[10] In her affidavit, Ms. Pellegrini states that she has been Senior Marketing Manager, RBC Insurance, with the Owner since September 2011. She states that she has access to records of the

Owner as well as RBC Life Insurance Company [“RBC Life”] and RBC Insurance Services Inc. [“RBC Services”], which are wholly-owned subsidiaries of the Owner that offer insurance services in Canada. She explains that the Owner has granted RBC Life and RBC Services a licence to use various trademarks, including the Mark, but states that she has not attached the relevant licence agreement for confidentiality reasons.

[11] Ms. Pellegrini states that in the normal course of business, RBC Life offered insurance services, namely life insurance services, in association with the Mark in Canada during the relevant period. She explains that RBC Life issued more than three hundred and fifty thousand life insurance policies to customers in Canada, and that the Mark was used during the relevant period in association with these services. Further, she states that the nature and quality of these life insurance services were under the direct control of the Owner in accordance with the terms of the aforementioned licence agreement.

[12] In support, Ms. Pellegrini attaches the following exhibits to her affidavit:

- Exhibit A: advertising and other materials made available during the relevant period by RBC Life on the RBC Insurance Sales Resource Centre webpage, operated by RBC Services, allowing RBC Life’s authorized brokers to promote the registered services. Each of these materials prominently displays the Mark. The materials appear to be presentation slides, some of which indicate “02/2011” in the bottom right corner. “RBC Insurance” appears in the top left corner of each slide. Ms. Pellegrini confirms that authorized brokers used such materials during the relevant period to promote the registered services, and that all such use of the Mark was under the control of the Owner under the terms of its licence agreement with RBC Services.
- Exhibit B: a representative advertisement for “guaranteed acceptance life insurance”, displaying the Mark. Ms. Pellegrini attests that this advertisement appeared in the January 2015 issue of the Canadian monthly magazine *Reader’s Digest*. “RBC Insurance” appears in the top left corner of the advertisement.
- Exhibit C: a screenshot from an advertisement that appeared as part of a national television campaign broadcasted in Canada between January and March 2015 on channels such as CBC and CTV News. The Mark is clearly displayed in the screenshot, which advertises “guaranteed acceptance life insurance”. “RBC Insurance” appears in the bottom left corner of the screenshot.

#### ANALYSIS

[13] The Requesting Party raises a number of issues with respect to the Owner’s evidence, which can be categorized as follows: that use of the Mark by the Owner’s subsidiaries or by its

authorized brokers does not enure to the Owner; that Ms. Pellegrini has not provided evidence to support her statements regarding sales figures and use of the Mark on the RBC Insurance Sales Resource Centre webpage; and that Ms. Pellegrini has not sufficiently explained how “guaranteed acceptance life insurance” fall within the ambit of the registered services.

[14] With respect to the Requesting Party’s first submission, I am satisfied that the Owner exercised control over the character and quality of the services performed by its subsidiaries in association with the Mark under licence, such that the subsidiaries’ use of the Mark enures to the Owner’s benefit under section 50(1) of the Act. As stated by the Federal Court, there are three main methods by which a trademark owner can demonstrate the requisite control pursuant to section 50(1) of the Act: first, by clearly attesting to the fact that it exerts the requisite control; second, by providing evidence demonstrating that it exerts the requisite control; or third, by providing a copy of the licence agreement that provides for the requisite control [*Empresa Cubana Del Tobacco Trading v Shapiro Cohen*, 2011 FC 102 at para 84]. In this case, although Ms. Pellegrini did not provide a copy of the licence agreement, she clearly attested that the Owner exerts the requisite control. This is sufficient for the purposes of a section 45 proceeding.

[15] Similarly, in view of the totality of the evidence, I do not agree with the Requesting Party’s argument that Ms. Pellegrini’s reference to “authorized brokers” indicates that the services were offered and performed by the brokers rather than the Owner or its subsidiaries. While Ms. Pellegrini does not provide details as to the nature of these authorized brokers and their relationship with the Owner or its subsidiaries, she is clear that the insurance services were offered by RBC Life and that the Owner controlled the nature and quality of these services.

[16] With respect to the Requesting Party’s submissions that Ms. Pellegrini has not provided evidence to support her statements regarding sales figures and use of the Mark on the RBC Insurance Sales Resource Centre webpage, I note that, absent evidence to the contrary, an affiant’s sworn statement is to be accepted at face value, and statements in an affidavit must be accorded substantial credibility in a section 45 proceeding [*Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79 at para 25]. It is the evidence as a whole that must be considered; dissection of an affidavit in an overly technical manner is inconsistent with the purpose of section 45 proceedings. In this case, there is nothing in the evidence before me that

would cause me to doubt Ms. Pellegrini's statement that RBC Life has issued over three hundred and fifty thousand life insurance policies to customers in Canada during the Relevant Period.

[17] The Requesting Party notes that Ms. Pellegrini states that the Mark was displayed on the RBC Insurance Sales Resource Centre webpage, but argues that she "has failed to provide any evidence to support this vague and bald allegation" and failed to explicitly state that the Mark was displayed during the relevant period. However, the documents attached as Exhibit A confirm Ms. Pellegrini's sworn statements regarding display of the Mark on the online resource centre, and she explicitly affirms that such materials were used during the relevant period. While some of these documents show a date of "02/2011", this is not inconsistent with Ms. Pellegrini's sworn statements; it suggests to me that the slides were created in 2011 and continued to be used during the relevant period.

[18] Finally, I have no difficulty concluding, contrary to the Requesting Party's submissions, that the phrase "guaranteed acceptance life insurance", as referenced in the advertising materials attached as Exhibits B and C to Ms. Pellegrini's affidavit, falls within the ambit of the services as registered. It is a well-established principle that when interpreting a statement of goods or services in a section 45 proceeding, one is not to be "astutely meticulous when dealing with [the] language used" [see *Aird & Berlis LLP v Levi Strauss & Co*, 2006 FC 654 at para 17]; here, I have no reason to conclude that the aforementioned life insurance services cannot be considered "insurance services" generally.

[19] In sum, Ms. Pellegrini's affidavit, including the promotional material attached as Exhibits A through C, demonstrates that the Mark was displayed in association with advertisement of the registered services in Canada during the relevant period. Based on her statements regarding sales figures during the relevant period, it is clear that the Owner's subsidiaries were offering and prepared to perform the registered services during the relevant period. Ms. Pellegrini's affidavit also establishes that any use of the Mark in association with the services enures to the Owner. As such, I am satisfied that the Owner's evidence establishes use of the Mark in association with the registered services in Canada during the relevant period.

DISPOSITION

[20] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be maintained in compliance with the provisions of section 45 of the Act.

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G.M. Melchin  
Hearing Officer  
Trademarks Opposition Board  
Canadian Intellectual Property Office

**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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No Hearing Held

**AGENTS OF RECORD**

Norton Rose Fulbright Canada LLP/S.E.N.C.R.L., s.r.l.      For the Registered Owner

Ridout & Maybee, LLP      For the Requesting Party