



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2023 TMOB 022

**Date of Decision:** 2023-02-07

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

**Requesting Party:** Glidepath Technologies Inc.

**Registered Owner:** T. Rowe Price Group, Inc.

**Registration:** TMA950,110 for RETIRE WITH CONFIDENCE

### **INTRODUCTION**

[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. TMA950,110 for the trademark RETIRE WITH CONFIDENCE (the Mark), owned by T. Rowe Price Group, Inc. (the Owner).

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

Investment management; financial administration of retirement plans for retirement plan participants.

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

## **THE PROCEEDING**

[4] At the request of Glidepath Technologies Inc. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on January 21, 2022, to the Owner.

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of 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 January 21, 2019 to January 21, 2022.

[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] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary, and expeditious procedure for removing “deadwood” from the register and, as such, the evidentiary threshold that the registered owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448].

[8] With respect to services, the display of a trademark on advertising is sufficient to meet the requirements of section 4(2) when the trademark owner is offering and prepared to perform those services in Canada [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[9] In response to the Registrar’s notice, the Owner furnished the affidavit of Ryan Bruchey, sworn April 21, 2022, together with Exhibits A to H.

[10] Neither party filed written representations and no hearing was held.

## **EVIDENCE SUMMARY**

[11] Mr. Bruchey is the Director, Brand Marketing with the Global Brand Marketing team of the Owner, a position he has held since 2019. He explains that the Owner is an

asset management firm that provides “an array of financial services”, with over \$32 billion in assets under management in Canada [paras 2 and 4]. Mr. Bruchey refers to the Owner’s wholly-owned subsidiaries, T. Rowe Price (Canada) Inc. (TRP Canada) and T. Rowe Price Retirement Plan Services Inc. (TRP Retirement), and states that the Owner has licensed the use of the Mark in Canada to these entities and that the Owner has direct control of the character and quality of the services offered by such entities [para 8].

[12] By way of background, Mr. Bruchey explains that, since at least as early as 2016, the Owner has had significant relationships with Canada’s largest employee-retirement plan administrators, namely Canada Life Assurance Company, Manulife Financial Corporation and Sun Life Financial Inc. As such, the Owner “provides to Canadian employees of such businesses in Canada financial services such as, but not limited to, investment management and financial administration of retirement plans” [para 5].

[13] Mr. Bruchey attests that the registered services were advertised and promoted in Canada during the relevant period by the Owner and its licensees through the Owner’s website, *troweprice.com*, and on various marketing materials, newsletters, articles, portfolio updates and other printed materials published or displayed in Canada [paras 6 and 8]. Mr. Bruchey further attests that the Mark appeared on such materials during that period [para 10].

[14] In support of his assertion of use, Mr. Bruchey attaches a number of exhibits to his affidavit showing the Mark displayed in various documents, emails, promotional materials, publications and screenshots; the most notable of such exhibits include the following:

- Exhibit A is a “sample” retirement account summary of a plan participant in Canada for the period of October to December 2021. This account summary shows that the Owner performed a stock exchange analysis and that it charged administrative fees to the plan participant. The Mark appears throughout the account summary.

- Exhibit B consists of four emails from TRP Retirement, all of which contain the Mark in the signature block, and three of which are dated within the relevant period. These emails show email recipients being invited to register for webinars hosted by the Owner on topics such as “Planning for the New Year”, “Investing Basics” and “Retirement Saving Concepts”.
- Exhibit C includes two documents from the relevant period relating to the Owner’s “The Retire With the Confidence® Program for Participants”. Mr. Bruchey describes these documents as promotional and marketing materials advertising and/or providing an overview of the registered services [para 10]. He further attests that the materials were sent during the relevant period to plan sponsors who have plan participants across Canada engaging the Owner’s services [para 10]. The materials describe the Program as designed to “drive positive actions for achieving retirement success” and delivered “through step-by-step personalized calls to action that can help participants feel more confident about achieving their retirement and savings goals”. The Mark appears throughout the materials.
- Exhibit D is a copy of the Owner’s “2022 U.S. Retirement Market Outlook” publication, which Mr. Bruchey attests was sent to several Canadian residents across various provinces on January 20, 2022 [para 11]. This publication discusses a wide range of issues in the field of retirement, generally falling under the themes of “Access and Adequacy”, “Financial Wellness” and “The Investment Landscape”. The Mark appears throughout the publication.
- Exhibit E consists of three documents dated within the relevant period, which Mr. Bruchey describes as copies of retirement plan enrollment documents provided to the Owner’s clients to support them in enrolling with their desired retirement plans in Canada [para 12]. In this respect, I note, for example, that the first enrollment document provides the steps to follow in order to enroll to a particular retirement plan, and that Mr. Bruchey confirms that such document was sent in 2021 to Canadian resident clients affiliated with the Quebec Government Office, which had chosen the Owner to provide financial services to its employees [para 12]. The documents display the Mark.

- Exhibit F consists of numerous emails from TRP Retirement, all of which are dated within the relevant period, and contain the Mark in the signature block. These emails include reference to the Owner's "smart money management tips and tools", including the "Financial Wellness" and the "Retirement Income Planner" tools available on the Owner's website, as well as the "Confidence Check-In conversation" provided by a representative of the Owner.

### **ANALYSIS AND REASONS FOR DECISION**

[15] In this case, I note that in some instances, the evidence shows that the Mark was displayed in association with services offered by the Owner's wholly-owned subsidiary, TRP Retirement. As Mr. Bruchey confirms that the Owner has licensed the use of the Mark in Canada to this entity and that the Owner has direct control of the character and quality of the services offered by this entity, I am satisfied that any evidenced use of the Mark by TRP Retirement during the relevant period enures to the benefit of the Owner pursuant to section 50(1) of the Act [see *Empresa Cubana Del Tobacco Trading v Shapiro Cohen*, 2011 FC 102 at para 84].

[16] In addition, I am satisfied that the Mark is displayed throughout the exhibited materials, and further that such materials were distributed in Canada during the relevant period. The question is therefore whether, during the relevant period, each of the registered services was performed or, at a minimum, advertised and available to be performed in Canada.

[17] In this respect, in reviewing the exhibited materials and Mr. Bruchey's statements, I am able to identify advertisement and/or performance of each of the registered services as articulated in the registration.

[18] More particularly, with respect to "Investment management", I find that this service was advertised in association with the Mark in the form of the promotional materials, publications, enrollment documents and emails as shown at Exhibits C, D, E and F, respectively. I am further satisfied that the representative account summary at

Exhibit A also demonstrates that such service was offered to Canadian customers and actually performed by the Owner during the relevant period.

[19] With respect to “financial administration of retirement plans for retirement plan participants”, at a minimum, I accept that such service was advertised in association with the Mark in the form of the promotional materials and enrollment documents as shown at Exhibits C and E, respectively.

[20] In view of all of the above, I am satisfied that the Owner has demonstrated use of the Mark in association with each of the registered services within the meaning of sections 4 and 45 of the Act.

**DISPOSITION**

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

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Yves Cozien Papa Tchoufou  
Hearing Officer  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** No hearing held

## **AGENTS OF RECORD**

**For the Requesting Party:** Spiegel Sohmer Inc.

**For the Registered Owner:** DLA Piper (Canada) LLP