



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 59

Date of Decision: 2024-03-26

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Nelligan O'Brien Payne LLP

Registered Owner: Evolution Markets, Inc.

Registration: TMA818,193 for EVOSCREEN

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. TMA818,193 for the trademark EVOSCREEN (the Mark), owned by Evolution Markets, Inc. (a Delaware corporation) (the Owner).

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

THE RECORD

[3] At the request of Nelligan O'Brien Payne LLP (the Requesting Party), the Registrar of Trademarks issued a notice to the Owner under section 45 of the Act on March 8, 2023. The notice required the Owner to show whether the Mark had been

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 March 8, 2020, to March 8, 2023.

[4] The Mark is registered for use in association with the services “Financial services, namely trading commodities.”

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

(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.

[6] It is well accepted that 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)]. However, 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 goods and services specified in the registration during the relevant period.

[7] In response to the Registrar’s notice, the Owner furnished the affidavit of Matthew W. Knox, the General Counsel of the Owner, sworn on August 10, 2023. Neither party submitted written representations; no oral hearing was held.

EVIDENCE

[8] Mr. Knox explains that the Owner provides the financial services of trading commodities, particularly for global energy and environmental markets, with offices in New York, Houston, London, and France, and that its clients include Canadians.

[9] As Exhibits 2, 3, and 4, Mr. Knox attaches screenshots from the Owner’s *evomarkets.com* website home page, the Owner’s *evoscreen.evomarkets.com* website

home page, and the login page for the latter website. He states that these screenshots are representative of the sites' appearance throughout the relevant period, and that Canadians could access these sites throughout the relevant period to access the Owner's services. The Mark is displayed in the "Terms and Conditions" section of the Exhibit 2 screenshots, and prominently on the Exhibit 3 and 4 screenshots.

[10] Mr. Knox explains that the Owner "provided financial services, namely trading commodities to Canadians in association with the [Mark] during the Relevant Period through trades made by Canadians directly through [the Owner's] brokers". As Exhibits 5 through 8, he attaches copies of invoices dated through the relevant period and issued by the Owner to Canadian clients. In each instance, Mr. Knox confirms that "[f]or this commodities trade [the Owner] executed the trade on behalf of this Client". He states that Canadian clients would have seen the Mark displayed on the EVOSCREEN login page [Exhibit 4] and in the terms and conditions shown in Exhibit 2 in the course of performance of these services.

ANALYSIS

[11] It is clear from the invoices attached to Mr. Knox's affidavit that the Owner provided its commodities trading services in Canada during the relevant period. Further, Mr. Knox has explained how the Mark was displayed in the course of performance of these services to the Owner's Canadian clients during the relevant period. I am therefore satisfied that the Owner has shown use of the Mark in association with the registered services within the meaning of sections 4(2) and 45 of the Act.

DISPOSITION

[12] In view of all of the foregoing, 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.

G.M. Melchin
Member

Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Requesting Party: Nelligan O'Brien Payne LLP

For the Registered Owner: Method Law Professional Corporation