

ESTTA Tracking number: **ESTTA202537**

Filing date: **04/03/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	RightPath Investments and Financial Planning, Inc.		
Entity	Corporation	Citizenship	Colorado
Address	PO Box 208 Frisco, CO 80443 UNITED STATES		

Attorney information	Marina T Larson Marina Larson & Associates, LLC PO Box 4928 Dillon, CO 80435 UNITED STATES docket@himtnpatents.com, mlarson@himtnpatents.com Phone:9702621800		
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Registration Subject to Cancellation

Registration No	3268797	Registration date	07/24/2007
International Registration No.	NONE	International Registration Date	NONE
Registrant	SELECTPATH BENEFITS & FINANCIAL INC. Suite 101, 219 Oxford Street West London, Ontario, H6H 1S5 CANADA		

Goods/Services Subject to Cancellation

<p>Class 036. First Use: 2000/01/01 First Use In Commerce: 2006/07/25 All goods and services in the class are cancelled, namely: Financial planning services relating to group benefit plans, group retirement plans, and financial planning and investments, comprising consultation and advice on issues relating to cash and risk management, taxation, retirement, estate and education planning, wealth accumulation, management and preservation; registered and non-registered investment planning; management of investment funds and portfolios; corporate asset management; business succession and key person insurance, group retirement plans; group benefit plans; group life, health, medical, disability, dental, accidental death and dismemberment, home, auto, travel and employee assistance insurance benefits and consultation; group pension and retirement strategies; employee benefit programs; mutual fund investment services; operating a website designed to distribute and disseminate comprehensive financial planning information relating to group benefit plans, group retirement plans, and financial planning and investments to clients and the public</p>
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	78726905	Application Date	10/05/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	RIGHTPATH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2002/09/10 First Use In Commerce: 2002/12/11 Financial management; Financial planning; Financial planning consultation; Financial portfolio management; Investment consultation; Investment management		

Attachments	78726905#TMSN.jpeg (1 page)(bytes) ground_cancel.pdf (4 pages)(11126 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/marina/
Name	Marina T Larson
Date	04/03/2008

1. Petitioner is the Applicant in US Trademark Application No. 78/726,905 for the mark RIGHTPATH for use in connection with financial management, financial planning, financial planning consultation, financial portfolio management, investment consultation, and investment management. Registration in this application has been refused under 35 USC § 1052(d) over Registration No. 3,268,797.
2. US Trademark Application 78/726,905 was filed by Petitioner on October 5, 2005, and alleges a date of first use September 10, 2002, and a date of first use in commerce of December 11, 2002.
3. Petitioner is wholly owned by Steven R. Smith, a Certified Financial Planner®. Petitioner is a Registered Investment Advisor.
4. On or about June 4, 2002, Steven R. Smith, registered the domain name, rightpathinvestments.com.
5. On or about June 17, 2002, Steven R. Smith, the owner of Petitioner submitted an application to the Colorado Secretary of State to register as a d/b/a the name "RightPath Investments and Financial Planning".
6. On or about September 10, 2002, Steven R Smith sent a business plan for RightPath Investments and Financial Planning to an advisor located in Boston, Massachusetts.
7. On or about October 14, 2002, Steven R. Smith commenced printing and distribution of business cards using the name RightPath Investments and Financial Planning in connection with financial planning and investment advising services.
8. On order about December 11, 2002, Steven R Smith sent correspondence to a client in Colorado for financial planing services on letterhead reading "RightPath Investments and Financial Services" that identified him as a representative of Lara, Shull & May, Ltd, a company with its principle offices in Virginia. The same letterhead was subsequently used in

correspondence with clients in other states, including one letter to a client in Florida dated September 4, 2003. .

9. On or about December 14, 2002, Steven R. Smith commenced publication and distribution of a brochure using the name RightPath Investments and Financial Planning in connection with financial planning and investment advising services.

10. On or about December 2, 2003 Articles of Incorporation for Petitioner were accepted by the Colorado Secretary of State for filing. This filing was necessary to become a registered Investment Advisor in the state of Colorado. Petitioner was registered as an Investment Advisor under Colorado law in February 2004. Steven R Smith transferred all related business assets, including trademark rights and associated good will, to Petitioner in connection with the organization of Petitioner.

11. Since December 11, 2002, Petitioner has continuously made use of the RIGHTPATH mark in connection with the services identified in Petitioner's trademark application.

12. Registration No. 3,269,797 has filing date of September 4, 2004, and claim priority from a Canadian Application filed March 24, 2004.

13. Registration No. 3,269,797 alleges a date of first use of January 1, 2000 and a date of first use in commerce July 25, 2006.

14. On information and belief, the services listed by Registrant in Registration No. 3,269,797 can lawfully be offered or performed in the United States only by individuals who are registered with the Securities and Exchange Commission or by a state licensing agency. On information and belief, such licensure requires an office located within the United States.

15. On information and belief, at not time prior to March 24, 2004 did Registrant have an office located in the United States.

16. On information and belief, at no time prior to March 24, 2004 was Registrant licensed to provide financial planning services relating to group benefit plans, group retirement plans, and financial planning and investments, comprising consultation and advice on issues relating to cash and risk management, taxation, retirement, estate and education planning, wealth accumulation, management and preservation to persons or companies in the United States or in any state of the United States.

17. On information and belief, at no time prior to March 24, 2004 was Registrant licensed to provide registered and non-registered investment planning services to persons or companies in the United States or in any state of the United States.

18. On information and belief, at no time prior to March 24, 2004 was Registrant licensed to provide management of investment funds and portfolios to persons or companies in the United States or in any state of the United States.

19. On information and belief, at no time prior to March 24, 2004 was Registrant licensed to provide corporate asset management services to persons or companies in the United States or in any state of the United States.

20. On information and belief, at no time prior to March 24, 2004 was Registrant licensed to provide business succession and key person insurance group retirement plan, group benefit plans; group life, health, medical, disability, dental, accidental death and dismemberment, home, auto, travel and employee assistance insurance benefits and consultation services to persons or companies in the United States or in any state of the United States.

21. On information and belief, at no time prior to March 24, 2004 was Registrant licensed to provide group pension and retirement strategies; employee benefit programs; or mutual fund investment services to persons or companies in the United States or in any state of the United States.

22. Operation of a website describing services that cannot be offered in the United States is

not use in commerce within the United States.

23. Advertising and promotion of a mark in connection with services marketed in Canada creates no priority rights in said mark in the United States as against Petitioner.

24. Registrant's mark THE RIGHT PATH is not now and was not in December 2002 famous.

25. March 24, 2004 is the earliest date to which Registrant can claim priority of use in the United States.

26. Petitioner's adoption and use of the mark RIGHTPATH is before March 24, 2004 and therefore Petitioner has priority with respect to the mark and is entitled to registration of its marks.

27. Petitioner is unable to secure registration of its mark while Registration No 3,268,797 remains in effect, and therefore cancellation of the registration is necessary to avoid injury to Petitioner and to permit Petitioner's mark to be registered.