

# ZPRAVODAJ

Občanské sdružení [spinning4health.cz](http://spinning4health.cz), Moskevská 25/369, 101 00 Praha 10-Vršovice



PROSINEC 2014

Dovolte, abychom se s Vámi podělili o významné události z poslední doby

## Ochranná známka Spinning

„Chtěli spinning jenom pro sebe. Američané v Česku neuspěli.“ referovala česká média počátkem prosince. Již dvanáct let se snaží uspět americká společnost se zápisem ochranné známky slovní „spinning“, v České republice.

Dva roky po podání přihlášky Úřad průmyslového vlastnictví rozhodl, že samostatný výraz „spinning“ nemůže plnit na území České republiky úlohu ochranné známky. V roce 2006 Městský soud v Praze rozhodnutí Úřadu zrušil a nařídil nové projednání.

Po dalších čtyřech letech byla přihláška ochranné známky slovní zveřejněna v rejstříku pro zápis, s čímž jiní provozovatelé nesouhlasili. Citujeme: „Ostatní podnikatelé provozující spinningové aktivity ale dál protestovali, vznikla dokonce petice proti ochraně slova spinning. Jde o všeobecně známou aktivitu, která nemůže sloužit pouze jedné firmě, uvádějí zástupci tuzemských podnikatelů v dokumentech zaslaných Úřadu průmyslového vlastnictví.“, informoval online magazín deníku Právo NOVINKY.cz v článku ze dne 5. prosince 2014.

Zdroj: [Novinky.cz](http://Novinky.cz) a [Ctusi.info](http://Ctusi.info) - new media web

Odkaz na celý článek online magazínu deníku Právo NOVINKY.CZ naleznete na našich webových stránkách [www.spinning4health.cz](http://www.spinning4health.cz) v sekci Novinky nebo přímo na <http://zpravy.aktualne.cz/ekonomika/chteli-spinning-jenom-pro-sebe-americane-v-cesku-neuspeli/r-77d-4cb367b8c11e4a10c0025900fea04/>

Naopak **zahraniční média** /Holandsko, Belgie, Itálie, Španělsko, USA a další/ k této všeobecně světové problematice zveřejnila články o prvoinstančním rozhodnutí OHIM z čer-



[spinning4health.cz](http://spinning4health.cz)  
přeje **šťastné Vánoce!**

Vkročení do nadcházejícího roku je vždy dobrou příležitostí ke zhodnocení uplynulého roku a vyjádření vřelých přání.







# INTA Bulletin

The Voice of the International Trademark Association

## Trademark Office Profile

Zain Ibrahim Al Awamleh, Jordan IPD

The Director of Jordan's Industrial Property Protection Directorate, Zain Ibrahim Al Awamleh, spoke with the INTA Bulletin about the role of the Office in ensuring protection for and educating the public about IP.

**What is the role of the IPD?**  
As the basis for protection of creativity and human invention, the need for industrial property to protect patents, trademarks, industrial designs and models and integrated circuits ensures an appropriate environment for investments in industries and other commercial activities. This is why the IPD takes on the supervisory role in all matters related to the registration of trademarks, patents, industrial designs and models and integrated circuits, as well as indexing them, in an effort to provide adequate protection

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## Law & Practice

### EUROPEAN UNION OHIM Cancels Registration for SPINNING

On February 7, 2012, the Czech company Aerospinning Master Franchising filed an application for revocation of the registration for the word mark SPINNING, registered on April 3, 2000, in the name of the U.S. company Mad Dogg Athletics, Aerospinning Master Franchising Ltd. v. Mad Dogg Athletics, Inc., No. 6281 C (July 21, 2014).

The application was based on Article 51(1) (b) CTMR, for which two conditions need to be met: first, it must be objectively established that the mark has become the common name in the trade for the product or service in respect of which it is registered; second, this loss of distinctive character must have occurred in consequence of acts or inactivity of the proprietor.

Since the perception of consumers or end users plays a decisive role in assessing the first requirement, the OHIM Cancellation Division first determined which consumers comprise the relevant market. The applicant focused its evidence on the distinctiveness of the mark in the Czech Republic. Consequently, the Cancellation Division ruled that the relevant public

consisted of the Czech-speaking part of the Union. Subsequently, the Cancellation Division found that a substantial part of the relevant Czech market does not perceive the term "spinning" as an indication of origin, indeed, based on the evidence provided and on earlier findings of the Czech Industrial Property Office (Czech IPO) on substantially the same question, the Cancellation Division concluded that, in the Czech market, "spinning" is generally used to refer to a type of exercise training and related equipment.

Therefore, the Cancellation Division found that SPINNING had become the common name in the trade in the Czech market as a type of exercise training and the exercise equipment used in this training.

In assessing the second requirement, the Cancellation Division determined that Mad Dogg Athletics failed to ensure that its licensees did not use the mark as a generic term. In addition, Mad Dogg Athletics only enforced and defended the mark when infringers were brought to its attention in adversarial proceedings. The Cancellation Division was of the

opinion that Mad Dogg Athletics did not proactively protect the mark, but merely retroactively defended it. The decisions of the Czech IPO and the Czech community trademark courts (in relation to infringing proceedings between the same parties) both supported this opinion.

Therefore, the Cancellation Division found that the evidence suggested that Mad Dogg Athletics failed to vigilantly protect the mark when it could easily have done so. In that regard, the Cancellation Division ruled that the mark's loss of distinctive character could be attributed to Mad Dogg Athletics' failure to act.

For the above reasons, the Cancellation Division concluded that the application for revocation was successful and that SPINNING should be deleted in favor of exercise equipment in Class 28 and exercise training in Class 41 of the Nice Classification.

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### Avoid Regrets Further Down the Line

Settlement and coexistence agreements are intended to solve problems, not cause them. All too often, though, oversights can result in an arrangement's unraveling.

Find out how to minimize the likelihood of recurring disagreements in "Settlement & Coexistence Agreements" in INTA's **Practitioners' Checklists** series, available exclusively to INTA members.



Visit [www.inta.org/practitionerschecklists](http://www.inta.org/practitionerschecklists)

Powerful Network/Powerful Brands. 17

vence 2014. Právě u OHIM - Úřadu pro harmonizaci vnitřního trhu ve španělském Alicante vznesla v roce 2012 česká společnost Aerospinning Master Franchising, s.r.o., zastoupená Mgr. Klárou Studenou-Labalestra žádost na zrušení slovní ochranné známky Společenství č. 175117 „SPINNING“ jejímž vlastníkem je stejná americká společnost.

Tuto informaci otiskla například ve svém pravidelném zpravodaji mezinárodní organizace **INTA (International Trademark Association)**, která je celosvětovým společenstvím vlastníků a odborníků zaměřených na prosazování práv duševního vlastnictví. Tato společnost /založena v roce 1878/ šíří bulletin mezi svými členy počítající 6 400 významných organizací ze 190 zemí světa věnující se průmyslově-právní problematice. Své hlavní centrály soustředí v New Yorku, Bruselu, Washingtonu a zastoupením také v Ženevě a Bombaji. Také významné české patentové a advokátní kanceláře jsou členy této prestižní Mezinárodní asociace pro ochranné známky.

Počátkem prosince tato organizace věnovala problematice SPINNING stranu 17 svého Bulletinu, kde popisuje důvody, které vedly úřad OHIM k prohlášení ochranné známky č. 175117 za neplatnou v celém navrhovaném rozsahu. Bulletin INTA a originál rozhodnutí OHIM /a jeho českou verzi/ lze stáhnout na našich webových stránkách v sekci Novinky – [www.spinning4health.cz](http://www.spinning4health.cz).

Zdroj: INTA Bulletin, Dec.1, 2014 Vol. 69 No.22, The Voice of the International Trademark Association a webové stránky Boels Zanders Advocaten, [www.boelszanders.nl](http://www.boelszanders.nl)



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET**  
(TRADE MARKS AND DESIGNS)  
Cancellation Division

**CANCELLATION No 6281 C (REVOCAION)**

**Aerospinning Master Franchising, Ltd., s.r.o.**, Holandská 49/4, 10100 Prague 10, Czech Republic (applicant), represented by **Klára Studená**, Na Poříčí, 11000 Prague 1, Czech Republic (professional representative)

against

**Mad Dogg Athletics, Inc.**, 2111 Narcissus Court, Venice, California 90291, United States of America, (CTM proprietor), represented by **Greyhills Rechtsanwält Partnerschaftsgesellschaft**, Nollendorfstr. 27, 10777 Berlin, Germany (professional representative)

On 21/07/2014, the Cancellation Division takes the following

**DECISION**

- The CTM proprietor's rights in respect of Community trade mark No 175 117 are revoked in their entirety as from 07/02/2012.
- The CTM proprietor bears the costs, fixed at EUR 1 150.

**REASONS**

On 07/02/2012 the applicant filed an application for revocation of Community trade mark No 175 117, the word mark "SPINNING" (hereinafter referred to as "CTM") which was registered on 03/04/2000.

The request is directed against some of the goods and services covered by the CTM, namely *exercise equipment* in Class 28 and *exercise training* in Class 41 of the Nice Classification.

The applicant invoked Article 51(1)(b) CTMR.

**SUMMARY OF THE FACTS & ARGUMENTS**

The applicant is a Czech company while the CTM proprietor is a U.S. corporation. They are competitors on the fitness and strength training market in the Czech Republic. The CTM proprietor, in particular, sells training equipment as well as supplying training and programmes for its SPINNING indoor-cycling courses.

The parties are in conflict over, *inter alia*, the rights in the term SPINNING as it relates to *exercise training* and *exercise equipment*. The latest manifestation of this dispute concerns the applicant's alleged infringement of the contested CTM on the Czech market as a result of the confusing similarity between the mark subject to these proceedings and a variety of the applicant's signs, such as AEROSPINNING, AEROSPINNING CLASSIC and AEROSPINNER.

**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET**  
(TRADE MARKS AND DESIGNS)  
Cancellation Division

**Notific**

Revocation number:  
Contested trade mark:

Fax number:

Please find attached the decision was delivered on 21/07/2014

Please note that the decision is the responsibility of the responsible officials but on the Office in accordance with Article 64(1) CTMR

Karin KUHL

Enclosures (excluding the copy of the decision)