

ESTTA Tracking number: **ESTTA504261**

Filing date: **11/07/2012**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Spin Concepts, Inc.
Granted to Date of previous extension	11/07/2012
Address	12110 W. 129th Terrace Overland Park, KS 66213 UNITED STATES

Attorney information	Joan Optican Herman HOVEY WILLIAMS LLP 10801 Mastin Blvd., Suite 1000 Overland Park, KS 66210 UNITED STATES joh@hoveywilliams.com, litigation@hoveywilliams.com, clb@hoveywilliams.com Phone:913-647-9050
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Applicant Information

Application No	85552310	Publication date	07/10/2012
Opposition Filing Date	11/07/2012	Opposition Period Ends	11/07/2012
Applicant	Gwynn, David 1395 East Lafayette Tallahassee, FL 32301 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. All goods and services in the class are opposed, namely: Restaurant services
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3302233	Application Date	05/24/2006
Registration Date	10/02/2007	Foreign Priority Date	NONE
Word Mark	SPIN!		

Design Mark	<h1>SPIN!</h1>
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 prepared foods for consumption on and off the premises, namely, pizza, panini, and gelato Class 043. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 restaurant services and restaurant carry-out services

U.S. Registration No.	3163808	Application Date	01/14/2005
Registration Date	10/24/2006	Foreign Priority Date	NONE

Word Mark	SPIN! NEAPOLITAN PIZZA
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Design Mark	
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Description of Mark	The mark consists of the word SPIN stacked above the stylized image of a man bending over while riding a bicycle and spinning a pizza over his head with the words NEAPOLITAN PIZZA below the image.
Goods/Services	Class 030. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 [Prepared foods for consumption on and off the premises, namely, pizza, panini and gelato] Class 043. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Restaurant services and restaurant carry-out services

U.S. Registration No.	3172270	Application Date	01/14/2005
Registration Date	11/14/2006	Foreign Priority Date	NONE

Word Mark	SPIN! NEAPOLITAN PIZZA
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Design Mark	
Description of Mark	The mark consists of The stylized image of a man bending over while riding a bicycle and spinning a pizza over his head with the words SPIN! and NEAPOLITAN PIZZA below the image.
Goods/Services	<p>Class 030. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Prepared foods for consumption on and off the premises, namely, pizza, panini and gelato</p> <p>Class 043. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Restaurant services and restaurant carry-out services</p>

U.S. Application No.	85432074	Application Date	09/26/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SPIN! NEAPOLITAN PIZZA
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Design Mark	
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Description of Mark	The mark consists of the vertically stacked words SPIN! NEAPOLITAN PIZZA in all capital letters, presented within an essentially square design having rounded corners and a symmetrical cartouche design along each side thereof, and having a thin line positioned slightly inside of the edges of the square and tracking the same design as the perimeter of the square.
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Goods/Services	<p>Class 029. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Prepared foods for consumption on and off the premises, namely, soups and vegetable salads primarily consisting of vegetables</p> <p>Class 030. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Prepared foods for consumption on and off the premises, namely, pizza, panini, gelato and deli sandwiches, and coffee and tea beverages</p> <p>Class 043. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Restaurant and restaurant carry-out services, featuring pizza, panini, gelato, deli sandwiches, soups and salads, and coffee and tea beverages; bar services; catering services; wine bar services</p>
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U.S. Application No.	85325175	Application Date	05/19/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SPIN!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Restaurant and restaurant carry-out services, featuring pizza, panini, gelato, deli sandwiches and salads; bar services; catering services		

Attachments	78891702#TMSN.jpeg (1 page)(bytes) 78548071#TMSN.jpeg (1 page)(bytes) 78547987#TMSN.jpeg (1 page)(bytes) 85432074#TMSN.jpeg (1 page)(bytes) 85325175#TMSN.jpeg (1 page)(bytes) Notice of Opposition .pdf (11 pages)(1833733 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	/Joan Optican Herman/
Name	Joan Optican Herman
Date	11/07/2012

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

Spin Concepts, Inc.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
David Gwynn)	Re: Serial No. 85/552,310
)	
Applicant.)	

NOTICE OF OPPOSITION

In the matter of Application Serial No. 85/552,310, filed February 24, 2012, in the name of David Gwynn (hereinafter “Applicant”), published for opposition in the Trademark *Official Gazette* of July 10, 2012, for the mark SO GOOD IT’LL MAKE YOUR HEAD SPIN (hereinafter the “Opposed Application”), Spin Concepts, Inc. (hereinafter “Opposer”) believes that it would be damaged by registration of the mark shown in said application and hereby opposes the same.

As grounds for opposition, it is alleged as follows:

1. Opposer, Spin Concepts, Inc., is a corporation organized under the laws of the State of Kansas, having a principal place of business at 12110 W. 129th Terrace, Overland Park, Kansas 66213.
2. Applicant, David Gwynn, is, on information and belief, an individual whose current address is 1395 East Lafayette, Tallahassee, Florida, 32301.
3. Applicant seeks to register the mark SO GOOD IT’LL MAKE YOUR HEAD SPIN, and filed an application for registration of that mark for use on or in connection with the following goods: restaurant services, in International Class 43. The opposed application was published in the *Official Gazette* on July 10, 2012.

4. The Opposed Application was filed as an intent-to-use application on February 24, 2012, on the basis of Section 1(b) of the Trademark Act.

5. Opposer, on its own and/or through its predecessors in interest and/or related entities, is and has been engaged in the sale of restaurant and restaurant carry-out services, as well as prepared foods for consumption on and off the premises, since long prior to the February 24, 2012, filing date recited of the Opposed Application, and has built a successful business in that field.

6. Opposer, on its own and/or through its predecessors in interest and/or related entities, has used the mark SPIN! in interstate commerce in connection with its restaurant and restaurant carry-out services, and its prepared foods for consumption on or off the premises, such use commencing at least as early as May, 2005, and being continuous thereafter until the present. Materials showing Opposer's use of its SPIN! mark are attached hereto as Exhibit 1, and incorporated by reference in this Notice of Opposition.

7. Opposer's use of the SPIN! mark in connection with its prepared foods and its restaurant and restaurant carry-out services, has been continuous, commercially significant, and substantially exclusive.

8. Opposer is the owner of a family of marks registered with the United States Patent and Trademark Office, which consist of or contain the SPIN! Mark, and all of which are valid and subsisting, as follows:

Mark	Reg. No.	Goods/Services
SPIN!	3,302,233	(Int'l. Class: 30) Prepared foods for consumption on and off the premises, namely, pizza, panini, and gelato; and (Int'l. Class: 43) Restaurant services and restaurant carry-out services.
SPIN! NEAPOLITAN PIZZA and Design	3,163,808	(Int'l. Class: 43) Restaurant services and restaurant carry-out services.

SPIN! NEAPOLITAN PIZZA and Design 3,172,270 (Int'l. Class: 30) Prepared foods for consumption on and off the premises, namely, pizza, panini, and gelato; and
(Int'l. Class: 43) Restaurant services and restaurant carry-out services.

Current copies of these Certificates of Registration are attached hereto as Exhibit 2, and are incorporated by reference in this Notice of Opposition. Registration Nos. 3,163,808 and 3,172,270 have achieved incontestability status.

9. Opposer has, since long prior to the filing date of the Opposed Application, used its SPIN! mark in commerce which Congress may regulate in connection with its restaurant services and prepared foods for consumption on and off the premises, and has priority with respect to the same based upon its date of first use, as shown in Exhibit 2.

10. Opposer's SPIN! mark is inherently distinctive as applied to Opposer's goods and services and its business, and has acquired extensive goodwill as related to restaurant services and prepared foods for consumption on and off the premises, identifying high quality goods and services which have their origin with Opposer.

11. Opposer is also the owner of the mark SPIN! NEOPOLITAN PIZZA and Design, Serial No. 85/432,074, filed on September 26, 2011, covering: prepared foods for consumption on and off the premises, namely, soups and vegetable salads primarily consisting of vegetables, in International Class 29; prepared foods for consumption on and off the premises, namely, pizza, panini, gelato and deli sandwiches, and coffee and tea beverages, in International Class 30; and restaurant and restaurant carry-out services, featuring pizza, panini, gelato, deli sandwiches, soups and salads, and coffee and tea beverages; bar services; catering services; wine bar services, in International Class 43, and listing a date of first use of January 2008, which application is currently suspended.

12. Opposer is also the owner of the mark SPIN!, Serial No. 85/325,175, filed on May 19, 2011 covering: restaurant and restaurant carry-out services, featuring pizza, panini, gelato, deli sandwiches, and salads; bar services; catering services, in International Class 43, and listing a date of first-use of May 1, 2005, which application is currently suspended.

13. Applicant's SO GOOD IT'LL MAKE YOUR HEAD SPIN mark is confusingly similar to Opposer's SPIN! mark, as the marks are highly similar, and the goods listed in Class 43 of the Opposed Application include services which are identical to those services provided by Opposer under its SPIN! mark.

14. Applicant's services are such that they travel through the same and overlapping channels of trade as Opposer's services and goods, and Opposer's business, and are provided to the same and overlapping classes of customers.

15. Applicant's mark SO GOOD IT'LL MAKE YOUR HEAD SPIN, used in connection with restaurant services listed in Class 43 of the Opposed Application, so resembles Opposer's SPIN! mark as used by Opposer in connection with its restaurant services and its prepared food products, that it is likely to cause confusion in the minds of the public, and to cause mistake and/or deception as to the source of origin of Applicant's services that would lead the public and prospective purchasers to believe that Applicant's services are those of Opposer's, and/or are provided by, sponsored by, approved by, licensed by, affiliated with Opposer, or are in some other way legitimately connected to Opposer and/or its services, goods, and/or licensed products. Thus, Applicant's SO GOOD IT'LL MAKE YOUR HEAD SPIN mark should not be registered, under Section 2(d) of the Trademark Act.

16. Any defect, objection to or fault found with Applicant's services provided under the SO GOOD IT'LL MAKE YOUR HEAD SPIN mark would necessarily reflect on and injure the reputation that Opposer has established for its products, services and business.

17. If Applicant is granted a registration for the SO GOOD IT'LL MAKE YOUR HEAD SPIN mark for the services identified in Class 43 of the Opposed Application, Applicant would obtain at least a *prima facie* exclusive right to use this mark. Such registration would be a source of damage and injury to the Opposer, and to the reputation and goodwill it enjoys in its SPIN! mark.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and Class 43 of Applicant's application to register the mark SO GOOD IT'LL MAKE YOUR HEAD SPIN, Application Serial No. 85/552,310, be denied as filed and published, and Applicant adjudged not entitled to registration of the mark SO GOOD IT'LL MAKE YOUR HEAD SPIN , in Class 43.

The \$300 filing fee for this Opposition has been charged to Deposit Account No. 19-0522 through the Trademark Trial and Appeal Board's ESTTA filing system. If any additional fees are due in connection with the filing of this Notice of Opposition, they may be charged to this account, and any overpayment may be credited to this account.

Respectfully Submitted,

Dated: November 7, 2012

Spin Concepts, Inc.

By its Attorneys,

/s/ Joan Optican Herman
Joan Optican Herman
Cheryl Burbach
HOVEY WILLIAMS LLP
10801 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210
(913) 647-9050 - Phone
(913) 647-9057 - Fax
Attorneys for Opposer

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Notice of Opposition, which was filed electronically with the Trademark Trial and Appeal Board, was served upon the attorney of record for Applicant, William H. Hollimon, this 7th day of November, 2012, at the following addresses:

William H. Hollimon, Esq.
HOLLIMON, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301

/s/Joan Optican Herman

TAKE A SPIN! MENU SPIN CLUB! HAPPENINGS LOCATIONS/HOURS TALK TO US! JOBS HOME

PIZZA AND
WINES
OF THE WEEK

SUMMER BIKE
RIDES AT SPIN!
We ride, then
eat pizza!

FOLK
ON THE PATIO
EVERY TUESDAY

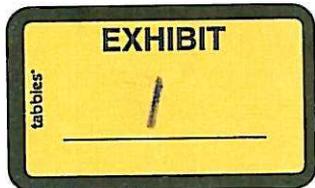
Eat Fluent Italian.

HAND-TOSSED, STONE-FIRED PIZZA,
SALADS, SANDWICHES, WINE & GELATO
IN THE NEAPOLITAN TRADITION



SPIN![®]
neapolitan pizza

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Int. Cls.: 30 and 43

Prior U.S. Cls.: 46, 100 and 101

United States Patent and Trademark Office

Reg. No. 3,302,233

Registered Oct. 2, 2007

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

SPIN!

SPIN CONCEPTS, INC. (KANSAS CORPORATION)
12110 W. 129TH TERRACE
OVERLAND PARK, KS 66213

FOR: PREPARED FOODS FOR CONSUMPTION ON AND OFF THE PREMISES, NAMELY, PIZZA, PANINI, AND GELATO, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

FOR: RESTAURANT SERVICES AND RESTAURANT CARRY-OUT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,163,808 AND 3,172,270.

SER. NO. 78-891,702, FILED 5-24-2006.

NAKIA HENRY, EXAMINING ATTORNEY



Int. Cls.: 30 and 43

Prior U.S. Cls.: 46, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,163,808

Registered Oct. 24, 2006

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



SPIN CONCEPTS, INC. (KANSAS CORPORATION)
12110 W. 129TH TERRACE
OVERLAND PARK, KS 66213

FOR: PREPARED FOODS FOR CONSUMPTION ON AND OFF THE PREMISES, NAMELY, PIZZA, PANINI AND GELATO, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

FOR: RESTAURANT SERVICES AND RESTAURANT CARRY-OUT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE NEAPOLITAN PIZZA, APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORD SPIN STACKED ABOVE THE STYLIZED IMAGE OF A MAN BENDING OVER WHILE RIDING A BICYCLE AND SPINNING A PIZZA OVER HIS HEAD WITH THE WORDS NEAPOLITAN PIZZA BELOW THE IMAGE.

SN 78-548,071, FILED 1-14-2005.

GRETTA YAO, EXAMINING ATTORNEY

Int. Cls.: 30 and 43

Prior U.S. Cls.: 46, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,172,270

Registered Nov. 14, 2006

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



SPIN CONCEPTS, INC. (KANSAS CORPORATION)
12110 W. 129TH TERRACE
OVERLAND PARK, KS 66213

FOR: PREPARED FOODS FOR CONSUMPTION ON AND OFF THE PREMISES, NAMELY, PIZZA, PANINI AND GELATO, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

FOR: RESTAURANT SERVICES AND RESTAURANT CARRY-OUT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NEAPOLITAN PIZZA", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE STYLIZED IMAGE OF A MAN BENDING OVER WHILE RIDING A BICYCLE AND SPINNING A PIZZA OVER HIS HEAD WITH THE WORDS SPIN! AND NEAPOLITAN PIZZA BELOW THE IMAGE.

SN 78-547,987, FILED 1-14-2005.

GRETTA YAO, EXAMINING ATTORNEY