

ESTTA Tracking number: **ESTTA547495**

Filing date: **07/09/2013**

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

Proceeding	91211197
Party	Plaintiff Mad Dogg Athletics, Inc.
Correspondence Address	Konrad Gatien Stubbs Alderton & Markiles, LLP 1453 3rd Street Promenade, Suite 310 Santa Monica, CA 90401 UNITED STATES uspto@stubbsalderton.com, kgatien@stubbsalderton.com
Submission	Other Motions/Papers
Filer's Name	Konrad Gatien
Filer's e-mail	uspto@stubbsalderton.com, kgatien@stubbsalderton.com
Signature	/s/
Date	07/09/2013
Attachments	Notice re Undeliverable Mail dated 9 July 2013.pdf(403423 bytes )

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

In re Application Nos. 85729154 and 85729165, Published on February 19, 2013

Mad Dogg Athletics, Inc.	)	
	)	Opposition No. 91211197
Opposer,	)	
	)	
v.	)	
	)	
4 Pillar Dynasty LLC,	)	
	)	
	)	
Applicant.	)	
_____	)	

**NOTICE RE UNDELIVERABLE MAIL**

On June 19, 2013, Mad Dogg Athletics, Inc. (“Opposer”) filed a Notice of Opposition against Application Nos. 85729154 and 85729165 with the Board, and a copy of the opposition was concurrently served on the Applicant, 4 Pillar Dynasty LLC, at 246 West 35th Street, New York, NY 10001 (the applicant’s address of record in the Office). Opposer received the aforementioned service copy with a “return to sender” label on or about July 8, 2013 (*see* Exhibit 1). Pursuant to TMBP 309.02(c)(1) and the Board’s June 19, 2013, Institution Order, Opposer is notifying the Board of the returned service copy. Opposer is not aware of an alternate address for Applicant, nor does Opposer have any information indicating that a different party may have an interest in defending the case.

Opposer believes that Applicant is aware of the opposition through the Board’s June 19, 2013 Institution Order; however, Opposer is re-serving Applicant at its attorney’s address (see below proof of service).

Opposer believes the foregoing in no way nullifies the opposition filing, as (1) the notice of opposition was timely filed and included a certificate of service, and (2) the notice of opposition was timely served on applicant. *See Chocoladefabriken Lindt & Sprungli AG v. Karlo Flores*, 91 USPQ2d 1698, 1700 (TTAB 2009) (timely service of notice of opposition on applicant directly, rather than at applicant's correspondence address of record, which was his attorney's address, was sufficient to commence opposition proceeding; motion to dismiss denied).

Respectfully submitted,

Dated: July 9, 2013



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Konrad K. Gatien  
Stubbs Alderton & Markiles, LLP  
Attorneys for Opposer  
Mad Dogg Athletics, Inc.  
1453 3<sup>rd</sup> Street Promenade, Suite 310  
Santa Monica, California 90401  
Telephone: (310) 746-9800  
Facsimile: (310) 746-9820

**CERTIFICATE OF SERVICE**

It is hereby certified that I served a this notice and the opposition on Applicant's attorney of record, MAX MOSKOWITZ, OSTROLENK FABER LLP, 1180 AVENUE OF THE AMERICAS FL 7, NEW YORK, NY 10036-8443, by placing true and correct copies thereof in a sealed envelope, postage prepaid, in First Class U.S. mail, for collection and mailing with the United States Postal Service on this 9th day of July 2013.



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Konrad Gatien

# **Exhibit 1**

**Stubbs  
Alderton &  
Markiles, LLP**  
BUSINESS & TECHNOLOGY LAW



4 Pillar Dynasty LLC  
246 West 35th Street  
New York, NY 10001

WTK

NIXIE 100 4E 1009 0106/27/13  
RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD  
BC: 91403530799 #1452-00141-21-37  
1403052501

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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	)	Opposition No. _____
Opposer,	)	
	)	
v.	)	
	)	
4 Pillar Dynasty LLC,	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

Mad Dogg Athletics, Inc. (“Opposer”), a California corporation, having its principal place of business at 2111 Narcissus Court, Venice, California, 90291, believes that it will be damaged by the registration of the above-identified mark (the “SPINWEAR Mark”) for use in connection with “ladies, mens and children’s clothing, namely, bottoms, tops, athletic tops, athletic bottoms, sweaters, jeans, blouses, skirts, dresses, jackets, vests, coats, rainwear, lingerie, sleepwear, loungewear, swimwear, gloves, socks, hosiery and scarves,” in Class 25 and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Opposer alleges:

1. Opposer is the owner of all rights, title and interest in and to, among others, the following trademarks:
  - a. SPIN (Reg. No. 2173202), which is registered with the United States Patent and Trademark Office for use in connection with “stationary exercise

bicycles” in International Class 028 and “physical fitness instruction” in International Class 041;

- b. SPINCIRCUIT (Reg. No. 4140957), which is registered with the United States Patent and Trademark Office for use in connection with “prerecorded video tapes featuring exercise and general physical fitness instruction” in International Class 009, “exercise equipment, namely, stationary exercise bicycles” in International Class 028, and “physical fitness instruction” in International Class 041;
- c. SPINERVALS (Reg. No. 2336564), which is registered with the United States Patent and Trademark Office for use in connection with “Prerecorded video cassettes featuring exercise and general physical fitness instruction” in International Class 009;
- d. SPINFITNESS (Reg. No. 3974848), which is registered with the United States Patent and Trademark Office for use in connection with “apparel, namely, t-shirts, tank tops, polo shirts, sports bras, jackets, sports jackets, coats, rain suits, sweatshirts, sweatpants, warm-up suits, sweaters, jerseys, pullovers, hooded sweatshirts, tights, shorts, shoes, socks, sweatbands, gloves, and caps” in International Class 025;
- e. SPIN FITNESS (Reg. No. 3990272), which is registered with the United States Patent and Trademark Office for use in connection with “apparel, namely, T-shirts, tank tops, polo shirts, sports bras, jackets, coats, rain suits,

sweatshirts, hooded sweatshirts, sweatpants, warm-up suits, sweaters, jerseys, pullovers, tights, shorts, socks, caps” in International Class 025;

- f. SPINGYM (Reg. No. 3334266), which is registered with the United States Patent and Trademark Office for use in connection with “prerecorded video cassettes, DVDs, audio cassettes, and compact discs featuring exercise and general fitness instruction” in International Class 009 and “physical fitness instruction” in International Class 041;
- g. SPIN PILATES (Reg. No. 3990274), which is registered with the United States Patent and Trademark Office for use in connection with “apparel, namely, T-shirts” in International Class 025;
- h. SPIN YOGA (Reg. No. 3986020), which is registered with the United States Patent and Trademark Office for use in connection with “apparel, namely, T-shirts, tank tops, polo shirts, sports bras, sweatshirts, hooded sweatshirts, sweatpants, tights” in International Class 025;
- i. SPINNING (Reg. No. 2003922), which is registered with the United States Patent and Trademark Office for use in connection with prerecorded video cassettes featuring exercise and general physical fitness instruction in International Class 009; clothing in the nature of sports and leisure clothing, namely shoes, T-shirts, sweatshirts, sweat pants, polo shirts, shorts, sports coats and jackets, socks, sweatbands, and warm-up suits in International Class

025; and exercise equipment in the nature of stationary exercise bicycles and weight training machines in International Class 028.

- j. SPINGEAR, which is an unregistered trademark used in connection with apparel and fitness accessories.

(hereinafter collectively referred to as the “SPIN Family of Marks”)

2. Opposer’s SPIN Family of Marks is well-known and distinctive through extensive use and advertizing by Opposer and its licensees, and the marks therein have become highly valuable symbols of Opposer’s business and goodwill.

3. Since long before Applicant’s filing of its trademark application with the United States Patent and Trademark Office, Opposer has used its SPIN Family of Marks in connection with the advertising and sale of fitness goods and services, and, in particular with respect to this proceeding, apparel.

4. The United States Patent and Trademark Office has recognized Opposer’s exclusive right to use its SPIN Family of Marks by issuing the registrations for said marks.

5. Opposer’s registrations are valid and subsisting and provide *prima facie* evidence of Opposer’s ownership of, and exclusive right to use, Opposer’s SPIN Family of Marks in commerce.

6. Opposer has developed a well-known business reputation throughout the United States and Opposer’s SPIN Family of Marks has been and continues to be publicized through advertising and promotion in the United States.

7. As a result of the advertising and sales of goods and services offered under Opposer's SPIN Family of Marks, the marks have become established as distinctive source indicators and valuable symbols of Opposer's business and goodwill.

8. Notwithstanding Opposer's prior established rights in its SPIN Family of Marks, Applicant filed on September 14, 2012, its applications for registration of the SPINWEAR Mark.

9. Opposer has used its SPIN Family of Marks continuously on or in connection with its goods and services in interstate commerce since long prior to Applicant's filing date for Applicant's SPINWEAR Mark.

10. Applicant had constructive knowledge of Opposer's prior rights in Opposer's SPIN Family of Marks well before Applicant filed its applications for its SPINWEAR Mark.

11. On information and belief, Applicant had actual knowledge of Opposer's prior rights in Opposer's SPIN Family of Marks well before Applicant filed its applications for its SPINWEAR Mark.

**COUNT I**  
**LIKELIHOOD OF CONFUSION - §2(d)**

12. Applicant's SPINWEAR Mark so closely resembles Opposer's SPIN Family of Marks, and each of them, that the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Applicant's apparel, including athletic apparel, and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's SPIN Family of Marks, and each mark in said family.

13. The goods of Applicant are so closely related to the goods and services of Opposer that the public is likely to be confused, to be deceived and to assume erroneously that

Applicant's goods are those of Opposer or that Applicant is in some way connected to, sponsored by, or affiliated with Opposer, all to Opposer's irreparable damage.

14. Likelihood of confusion in this case is enhanced by the fact that customers or viewers of Applicant's goods are likely to associate Applicant's SPINWEAR Mark with goods and services sold, approved or endorsed by Opposer under its SPIN Family of Marks; moreover, customers and viewers of Applicant's goods are prospective purchasers of Opposer's goods and services.

15. Opposer is not affiliated or associated with or connected to Applicant; Applicant's goods do not originate from Opposer; and Opposer has not endorsed, sponsored or approved of Applicant's goods or commercial activities offered under the SPINWEAR Mark.

16. Similarly, Opposer has not approved any goods sold or intended for sale by Applicant under Applicant's SPINWEAR Mark, nor has Opposer granted Applicant permission to use said mark.

WHEREFORE, Opposer prays that its opposition be sustained and that registration be denied.

Respectfully submitted,



Dated: June 19, 2013

Konrad K. Gatien  
Stubbs Alderton & Markiles, LLP  
Attorneys for Opposer  
Mad Dogg Athletics, Inc.  
1453 3<sup>rd</sup> Street Promenade, Suite 310  
Santa Monica, California 90401  
Telephone: (310) 746-9800  
Facsimile: (310) 746-9820

**CERTIFICATE OF SERVICE**

It is hereby certified that I served a true and correct copy of the foregoing Notice of Opposition on Applicant and its correspondent of record, 4 Pillar Dynasty LLC, 246 West 35th Street, New York, NY 10001, by placing a true and correct copy thereof in a sealed envelope, postage prepaid, in First Class U.S. mail, for collection and mailing with the United States Postal Service on this 19<sup>th</sup> day of June 2013.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 19, 2013, at Beverly Hills, California



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Konrad Gatien