



Press and Information

General Court of the European Union
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Judgment in Case T-718/16
Mad Dogg Athletics v EUIPO

The General Court annuls EUIPO's decision revoking the rights of the proprietor of the EU trade mark SPINNING

A revocation decision may be issued even if the mark has become a common name in only a single Member State but, in the present case, EUIPO should have taken account of the central role played by commercial operators on the exercise equipment and exercise training markets

The American company Mad Dogg Athletics is the proprietor of the EU word mark SPINNING, registered in 2000 and designating 'audio and video cassettes', 'exercise equipment', and 'exercise training' services.

In 2012 Aerospinning Master Franchising, a company governed by Czech law, filed an application with the European Union Intellectual Property Office (EUIPO) for revocation of the rights of the proprietor of the mark referred to above inasmuch as that mark had become the common name for the 'exercise equipment' and the 'exercise training' services in question.

By decision of 21 July 2016, EUIPO revoked Mad Dogg Athletics' rights in connection with the trade mark SPINNING in respect of the goods and services covered by the Czech undertaking's application. In that regard, EUIPO established, in particular, that the term 'spinning' had become, in the Czech Republic, the common name for a type of 'exercise training', namely that practised on indoor cycles, and of 'exercise equipment' used for that training, namely indoor cycles, such that the exclusive right to use that term as an EU trade mark could no longer be granted to economic operators.

Mad Dogg Athletics brought an action for annulment of EUIPO's decision before the General Court.

In today's judgment, the General Court finds that, like a decision regarding the registration of an EU trade mark, a revocation decision concerning that trade mark has binding force for the whole of the territory of the EU.

Thus, where it is established that an EU trade mark has lost all distinctive character in a limited part of the territory of the EU or, as the case may be, in a single Member State, that finding necessarily means that the mark is no longer capable of producing the effects listed by the European Union Trade Mark Regulation¹ throughout the EU. **It is therefore sufficient that the mark has become the common name for the goods or services in respect of which it was registered, even in a single Member State, for its proprietor's rights to be revoked in respect of the whole of the EU.**

In those circumstances, the General Court notes that **EUIPO was fully entitled to revoke the rights of the proprietor of the contested mark on the basis of evidence concerning a single Member State**, namely the Czech Republic.

¹ Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), as amended, itself replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

However, the General Court finds that **EUIPO was wrong to consider that the relevant public to be taken into consideration for the assessment of the ground for revocation consisted only of end users of ‘exercise equipment’, excluding professional customers.** The General Court emphasises that it has been shown that, in the vast majority of cases, the indoor cycles marketed by Mad Dogg Athletics under the trade mark SPINNING are purchased by commercial operators of gyms, sports facilities and rehabilitation facilities. Moreover, it is those commercial operators who, in the context of providing ‘exercise training’ services, make those cycles available to their own customers in order to enable them to practise, in a group, sporting activity using those indoor cycles.

The General Court therefore finds, first, that those commercial operators play a central role on the ‘exercise equipment’ market and, second, that they have a decisive influence on the selection, by end users, of ‘exercise training’ services. In addition, the General Court notes that EUIPO’s decision contains nothing relating to the perception of the trade mark SPINNING by professional customers, whereas, in its revocation decision, **EUIPO should have taken their opinion regarding whether the contested mark had indeed become a common name for the goods and services in question into consideration.**

In those circumstances, the General Court **annuls EUIPO’s decision** as regards ‘exercise equipment’ and ‘exercise training’.

NOTE: European Union trademarks are valid throughout the European Union and co-exist with national trade marks. Applications for registration of a European Union trade mark are sent to EUIPO. Actions against its decisions may be brought before the General Court.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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