

Shifting Gears: A Quick Tour of Genericide

February 24, 2021 – The TMCA

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Have you ever been to an indoor cycling class? If so, you most likely have heard the term “spin class,” or referred to the act itself as “spinning.” Mad Dogg Athletics, Inc. would take offense, however, calling such uses infringement unless the studio is an authorized licensee of its marks. Mad Dogg Athletics has owned numerous trademark registrations for SPIN and SPINNING for a number of goods and services, including exercise equipment and fitness instruction, since the early 1990s. It’s been a heck of a ride for Mad Dogg, though Peloton Interactive Inc. recently upped resistance by filing [petitions](#) in the U.S. Trademark Trial and Appeal Board to cancel Mad Dogg’s exclusive rights in both marks for exercise equipment and fitness instruction.

According to Peloton, Mad Dogg Athletics has lost exclusive rights in the SPIN and SPINNING marks for indoor cycling equipment and fitness instruction due to genericide. Genericide is nothing new: ESCALATOR, LINOLEUM, and DRY ICE are just a few examples of terms that were once the subject of trademark protection that are now known as common nouns for those same items. Genericide is not up to a brand owner – it occurs when the relevant public understands the primary significance of the mark as referring to the name for the goods or services. See 15 U.S.C. §1064(3). In essence, companies can fall victim to their own success in the marketplace when the brand name they create and promote becomes *what* their goods/services actually are called or how they are referred to generally instead of functioning as a source indicator. Brand owners can contribute to genericide by using their trademarks as verbs or nouns, which effectively turns the mark into an everyday term instead of a source indicator. The relevant public is the primary decider, however, of which marks have become generic, and consumer survey evidence often plays a critical role in the inquiry into whether a term has become generic.

Successful brand owners understand the need to break away from genericide by actively policing the marketplace, enforcing against descriptive uses of their marks by competitors, informing the press, and educating their customers and licensees on how to properly refer to the brand as a source indicator. For example, the owners and attorneys who represent Velcro® fasteners made the hilarious viral video "[Don't Say Velcro](#)" to educate the public that Velcro® is a registered trademark for hook and loop fasteners.

Mad Dogg Athletics has tried similar tactics, allegedly sending numerous demand letters to competitors and even writing to the Deputy Commissioner of the U.S. Patent and Trademark Office in 2012, requesting that Examining Attorneys refuse marks that include SPIN and SPINNING for goods/services related to health and fitness, particularly indoor cycling and group fitness instruction; stop treating the terms “spin” and “spinning” as merely descriptive for goods/services related to indoor cycling; and stop permitting third parties to include “spin” or “spinning” relating to indoor cycles or indoor cycling instructions. Whether such efforts have succeeded is a question that Mad Dogg Athletics will have to address in the TTAB proceeding. Peloton obviously has the resources to go the distance in this trademark dispute and to commission consumer survey evidence to support its position. Ultimately, though, whether Mad Dogg’s marks have become generic will shift down to what the relevant public understands the terms “spin” and “spinning” to mean.