

## APPLICANT'S RESPONSE

Application Serial No. 88310181

Mark: ALTITUDE (Design – with figure of woman)

The Trademark Attorney states, in pertinent part, that:

(A) Registration of the applied-for mark (ALTITUDE) is refused only for Applicant's Class 41 services because of a likelihood of confusion under TM Act Section 2(d) with the mark in U.S. Registration No. 4861583 (ALTITUDE – THE HEIGHT OF FITNESS).

In response thereto, Applicant disagrees that its applied for mark "ALTITUDE" is confusingly similar to Reg. No. 4861583 for "Altitude – The height of fitness" because "The height of fitness" portion of Reg. No. 4861583 was not found to be descriptive by the USPTO examining attorney; therefore, when you compare Applicant's mark "ALTITUDE" with the mark in Reg. No. 4861583, i.e. "Altitude – The height of fitness", they do not appear to be confusingly similar.

In a similar case, when the Trademark Application for Serial No. 87887767 was filed with the USPTO for the mark "ALTITUDE" for services in Class 41, that mark was not said to be confusingly similar to Registration No. 4861583 for "Altitude – The height of fitness". It would seem to follow that our client's applied for mark "ALTITUDE" would not be deemed confusingly similar to Registration No. 4861583 for "Altitude – The height of fitness".

Additionally, the design element of a woman appearing to fly from left to right under the word portion of the mark is distinctive and would reduce any incidence of confusion.