

## APPLICANT'S RESPONSE

Application Serial No. 88300334

Mark: ALTITUDE Pole & Fitness (Word – Standard Character)

The Trademark Attorney states, in pertinent part, that:

- (A) Registration of the applied-for mark (ALTITUDE Pole & Fitness) 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 Pole & Fitness" 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 Pole & Fitness" with the mark in Reg. No. 4861583, i.e. "Altitude – The height of fitness", they do not appear to be confusingly similar. This holds true even when the words Pole & Fitness are disclaimed from Applicant's applied for mark for descriptiveness.

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 Pole & Fitness" would not be deemed confusingly similar to Registration No. 4861583 for "Altitude – The height of fitness".