

ESTTA Tracking number: **ESTTA285578**

Filing date: **05/22/2009**

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

Proceeding	78366349
Applicant	American Gateway Marketing Group, Inc.
Applied for Mark	ZENERGY
Correspondence Address	Mark G Falkin Attorney@Law 4107 Medical Parkway, Suite 207 Austin, TX 78756 UNITED STATES mark@trademarkfalkin.com
Submission	Appeal Brief
Attachments	Microsoft Word - zenergy_ttabbrief_349.pdf (1 page)(13875 bytes)
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Signature	/mf/
Date	05/22/2009

Ex. Parte Appeal
Ser. No. 78366349
Mark: ZENERGY (& Design)

May 22, 2009

There is no confusion with the cited mark in U.S. Registration No. 2895592.

The services listed in this cited registration are: Educational services, namely, conducting classes in the field of health and wellness in Class 41. Applicant's goods are exercise equipment, namely personal exercise mats, yoga and pilates mats in Class 28. A reasonable consumer is not likely to be confused as to source. A reasonable consumer of exercise mats is not going to somehow be confused with registrant's health educational services. The goods and services here flow in completely different streams of commerce.

Additionally, applicant's date of first use in commerce well pre-dates registrant's alleged first use. Thus, applicant is the senior user of this mark.

Applicant and the cited registrant have come to an agreement in this matter which should obviate this appeal, an executed copy of which is contemporaneously filed with the Board and the Examining Attorney.

Applicant respectfully asks that the Examiner's denial be vacated and that this application move forward to registration.

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