

ESTTA Tracking number: **ESTTA963518**

Filing date: **03/29/2019**

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

Proceeding	86871517
Applicant	Health New England, Inc.
Applied for Mark	HEALTH NEW ENGLAND   BE HEALTHY
Correspondence Address	NICHOLAS TUCCILLO GROGAN, TUCCILLO & VANDERLEEDEN LLP ONE FINANCIAL PLAZA1350 MAIN STREET; SUITE 508 SPRINGFIELD, MA 01103 UNITED STATES docket@gtv-ip.com 413-736-5401
Submission	Appeal Brief
Attachments	5022-0057_AppealBrief.pdf(42189 bytes ) 5022-0057_ExhibitA.pdf(150828 bytes ) 5022-0057_ExhibitB.pdf(189431 bytes )
Filer's Name	Nicholas J. Tuccillo
Filer's email	docket@gtv-ip.com
Signature	/NICHOLAS J. TUCCILLO/
Date	03/29/2019

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

Serial No.: 86871517

Applicant: Health New England, Inc.

**APPLICANT'S EX PARTE APPEAL BRIEF**

This Appeal is taken in response to the Denial of the Applicant's Request for Reconsideration After Final Action ("Denial of Reconsideration") issued on November 19, 2018 in U.S. TM. App. Serial No.: 86871517 for the mark "HEALTH NEW ENGLAND | BE HEALTHY" in classes 36 and 44. The Applicant acknowledges that the Office has accepted the specimen provided for class 44. Thus, the Applicant is appealing the Office's rejection of the specimen for class 36 in connection with "underwriting insurance for prepaid health care".

Accordingly, the Office is denying registration of the present application on the grounds that the specimen provided for class 36 "...does not appear on the specimen." *See* Denial of Reconsideration.

The Applicant respectfully disagrees and traverses. In particular, the substitute specimen filed on October 26, 2018 clearly shows the mark "HEALTH NEW ENGLAND | BE HEALTHY" prominently, in large font, on the home page of the Applicant's publicly available website, which contains a link titled "BROKERS". *See* Specimen filed 26OCT2019, page 3. As is readily understood by insurance brokers for any type of insurance, selling insurance policies to any customer necessarily involves submitting an application for coverage on behalf of such customer, which is reviewed by an underwriter to determine whether the prospective customer meets eligibility

requirements, etc. That is, all brokers understand that underwriting is an inherent part of obtaining insurance for a client. In the present case, therefore, insurance brokers visiting the Applicant's website and seeing the brokers link expect that insurance underwriting services are part of the services offered by the Applicant.

Moreover, the specimen filed on October 26, 2018 also shows the Brokers subpage that is displayed when following the "BROKERS" link. *See* Specimen filed 26OCT2019, page 1. Notably, the Brokers subpage clearly shows the link/term "Underwriting" under the "Tools and Resources" section.

As further evidence that brokers associate the "BROKERS" link with the provision of underwriting services, the Applicant submits herewith copies of additional subpages of the Applicant's website displayed upon following the "Underwriting" link. *See* EXs. A and B. These subpages contain the following text, "Underwriting From business verification and employer contribution to participation guidelines and enrollment area requirements, our general underwriting guidelines explain everything you need to know," with an additional link to a "Learn More" subpage that provides for "GENERAL UNDERWRITING GUIDELINES". *See* Ex. B.

Additionally, the provided specimens clearly demonstrate that the healthnewengland.org website has used, as of the claimed date of first use, the "HEALTH NEW ENGLAND | BE HEALTHY" mark in connection with the provision of prepaid health insurance. For example, the first page of the specimen filed on October 26, 2018 shows a link for "Plans", states that "[Health New England is] here for brokers committed to finding employers the best health plans possible," and has a link to "Get a Quote".

The Applicant notes that there is no requirement that a specimen show the exact language used in the description of the goods or services section of an application, *see* TMEP § 1604.12, nor has the Office cited such a requirement. The Applicant further notes that there is no requirement that a single webpage of a multi-page website show the mark used in connection with each term of the description, nor has the Office cited such a requirement. *See* TMEP §§ 904.03 and 1301.04(i) (Examples of Acceptable Service-Mark Specimens – Ex. 4, noting that a mark and services shown on separate but proximate webpages/screens conveys a connection).

Accordingly, for at least the above-stated reasons, the Applicant submits that the outstanding rejection is improper and, therefore, respectfully requests that it be withdrawn, and the present Application moved to publication.

Respectfully submitted,

By           /Nicholas J. Tuccillo /            
Nicholas J. Tuccillo  
Attorney for Applicant(s)

Customer No. 132545  
Grogan, Tuccillo & Vanderleeden, LLP  
One Financial Plaza  
1350 Main Street, Suite 508  
Springfield, MA 01103  
Tel. (413) 736-5401  
Fax (413) 733-4543

# **EXHIBIT A**

# TOOL AND RESOURCES



Become a Broker

Interested in becoming a broker for Health New England? Learn more about the credentialing and application process.

[Learn More >](#)

New Business Submission

Health New England will require all new group submissions be received ideally, at least five days prior to the effective date. Get started by reading our new business submission guidelines.

[Learn More >](#)

Underwriting

From business verification and employer contribution to participation guidelines and enrollment area requirements, our general underwriting guidelines explain everything you need to know.

[Learn More >](#)

# **EXHIBIT B**



# GENERAL UNDERWRITING GUIDELINES

## Business Verification

For all small group (6-50 employees) prospects and for renewal groups, proof of eligibility is required.

## Employer Contribution

**HMO/POS/PPO Large Group** (Greater than 50 employees)

The employer contribution must be at least 50% of the individual and the family rates, or 70% of eligible employees must participate in company sponsored health benefits AND the employer must contribute at least 25% toward the individual and family rates.

**HMO/POS/PPO Small Group** (less than 50 employees)

The employer contribution must be at least 50% of the individual rate. A minimum dollar value equal to 100% of the individual rate must be contributed towards the family premium.

## Participation Guidelines

**1-5 Employees** -

100 % of all employees in Health New England's enrollment area must enroll.

**6-10 Employees** -

75 % of all employees in Health New England's enrollment area must enroll.

**11-50 Employees** -

Greater of 8 or 50% of employees in Health New England's enrollment area must enroll.

**51+ Employees** -

50 % of all employees in Health New England's enrollment area must enroll.

## Enrollment Area Requirements

**HMO/POS/PPO** At least 70% of the eligible and participating subscribers must live within the HNE enrollment area. HNE only markets within the enrollment area.