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Subject: U.S. TRADEMARK APPLICATION NO. 77779424 - FARMERS MUTUAL  
HAIL INSURANCE - N/A - EXAMINER BRIEF

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# UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**APPLICATION SERIAL NO.** 77779424

**MARK:** FARMERS MUTUAL HAIL INSURANCE



**CORRESPONDENT ADDRESS:**

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**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**TTAB INFORMATION:**

<http://www.uspto.gov/web/offices/dcom/ttab/index.html>

**APPLICANT:** Farmers Mutual Hail Insurance  
Company

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

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## EXAMINING ATTORNEY'S APPEAL BRIEF

### I. INTRODUCTION

Applicant, Farmers Mutual Hail Insurance Company of Iowa, has appealed the examining attorney's final refusal to register, under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), the proposed mark FARMERS MUTUAL HAIL INSURANCE COMPANY OF IOWA and design for "Insurance services, namely, writing multi-peril crop insurance, hail insurance and re-insurance underwriting in the field of multi-peril crop insurance," in International Class 36. The Section 2(d) refusal was issued on the ground that applicant's mark, as applied to applicant's services, so resembles the marks in U.S. Registration Nos. 1821673 (FARMERS INSURANCE GROUP), 1899192 (FARMERS), 1920139 (FARMERS INSURANCE EXCHANGE), and 3505986 (FARMERS BUSINESS INSURANCE EXPRESS) so as to be likely to cause confusion, or to cause mistake, or to deceive.

## II. FACTS

On July 13, 2009, applicant filed the instant application to register the mark, FARMERS MUTUAL HAIL INSURANCE COMPANY OF IOWA and design, for “Insurance services, namely, writing multi-peril crop insurance, hail insurance and re-insurance underwriting in the field of multi-peril crop insurance.”

On October 14, 2009, an Office action was issued refusing registration of the proposed mark under Section 2(d) because of a likelihood of confusion with the following registrations. The cited registrations are owned by a single registrant, namely, Farmer’s Group, Inc., and the registered marks and the respective services are as follows:

Registration No. 1821673 – FARMERS INSURANCE GROUP (INSURANCE GROUP disclaimed) for “insurance services; namely, underwriting, claims administration and agency services for property and casualty, life, automobile, boat, farm and ranch, flood, workers' compensation, mortgage protection (life), renters, townhouse, condominium, and homeowners insurance; underwriting and agency services of individual retirement annuities (IRA) and flexible payment annuities; administration of employee pension plans,” in International Class 36;

Registration No. 1899192 – FARMERS for “underwriting and claims administration for property, casualty, life, mortgage protection (life), automobile, farm and ranch, flood, workers' compensation, renters', townhouse, condominium, and homeowners insurance; underwriting and administration of individual retirement annuities (IRA) and flexible payment annuities,” in International Class 36;

Registration No. 1920139 – FARMERS INSURANCE EXCHANGE (INSURANCE EXCHANGE disclaimed) for “underwriting, claims administration and

property, casualty and automobile insurance agency services,” in International Class 36;  
and

Registration No. 3505986 – FARMERS BUSINESS INSURANCE EXPRESS  
(BUSINESS INSURANCE EXPRESS disclaimed) for, among other things, “Insurance brokerage services; insurance services, namely, providing a full range of business insurance and risk management services for businesses, insurance underwriting, claims administration and agency services,” in International Class 36.

A Final refusal was issued September 15, 2011 wherein the examining attorney accepted applicant’s revised mark description and claim of acquired distinctiveness under Trademark Act Section 2(f), disclaiming the wording INSURANCE COMPANY OF IOWA, thereby withdrawing the disclaimer requirement while making final the likelihood of confusion refusal under Section 2(d) on the basis of the cited registrations.<sup>1</sup> The instant application was reassigned to the undersigned examining attorney on October 27, 2012, and a subsequent Final refusal was issued on November 30, 2011. This appeal followed.

### III. ARGUMENT

**THE MARKS ARE HIGHLY SIMILAR AND THE PARTIES’ RESPECTIVE SERVICES ARE CLOSELY RELATED SUCH THAT THERE EXISTS A LIKELIHOOD OF CONFUSION UNDER SECTION 2(d) OF THE TRADEMARK ACT.**

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and

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<sup>1</sup> Upon further review, it has been determined that the disclaimer incorrectly omits the generic term HAIL. Accordingly, in the event that this Board overturns the refusal under Trademark Act Section 2(d), the examining attorney respectfully requests that jurisdiction be restored to the examining attorney for further examination with respect to the disclaimer, pursuant to 37 C.F.R. §2,142(f)(6); TBMP §1209.02.

registrant. See 15 U.S.C. §1052(d). In the seminal decision *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), the court listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP §1207.01. However, not all the factors are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1355, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); TMEP §1207.01; see also *In re Dixie Rests. Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973));

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