

This Opinion is not a
Precedent of the TTAB

Mailed: August 24, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re UT Fidem Foundation

Serial No. 88592284

Brian J. Laurenzo of Brick Gentry PC,
for UT Fidem Foundation.

Karl A. Wert, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

Before Taylor, Kuczma and Goodman,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

UT Fidem Foundation (“Applicant”) seeks registration on the Principal Register



of the mark for “Small group Christian ministry services and
providing religious faith counseling services” in International Class 45.¹

¹ Application Serial No. 88592284 was filed on August 26, 2019 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere and

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the mark KEEP THE FAITH (in standard characters) for "Providing a website featuring information about religious belief systems, and, in particular the Catholic religious belief system" in International Class 45.²

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal resumed. The appeal is fully briefed.

We reverse the refusal to register.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177

first use in commerce since at least as early as March 1, 2019. The mark consists of the words "UT FIDEM" in an irregular font where the letter "T" symbolizes a cross. The words "KEEP THE FAITH" are under the words "UT FIDEM." Color is not claimed as a feature of the mark. The English translation of "UT FIDEM" in the mark is "KEEP THE FAITH."

Page references to the application record refer to the online database pages of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. Applicant's brief is at 6 TTABVUE. The Examining Attorney's brief is at 8 TTABVUE. Applicant's reply brief is at 9 TTABVUE.

² Registration No. 4163899 issued June 26, 2012, Section 8 filed, Section 15 acknowledged.

USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, referred to as “*DuPont* factors” “). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

“Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. ... Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at *3 (Fed. Cir. 2020). In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. Similarity or Dissimilarity of the Services, Trade Channels and Classes of Consumers.

We first consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *DuPont*, 177 USPQ at 567. *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014). The services need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they

could give rise to the mistaken belief that the goods [or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). It is sufficient for a finding of likelihood of confusion as to a particular class if relatedness is established for any item of identified goods or services within that class in the application or cited registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Applicant’s services are “Small group Christian ministry services and providing religious faith counseling services” and Registrant’s services are “Providing a website featuring information about religious belief systems, and, in particular the Catholic religious belief system.”³

In support of relatedness, the Examining Attorney submitted the definition of “Catholicism” as “the faith, practice or system of Catholic Christianity.” June 22, 2020 Office Action at TSDR 2.

³ We take judicial notice of the dictionary definitions for “religious,” “belief system,” and “ministry.” *In re Jonathan Drew, Inc.*, 97 USPQ2d 1640, 1642 n.4 (TTAB 2011) (the Board may take judicial notice of dictionaries, including online dictionaries which exist in print format).

Religious is defined as “relating to or manifesting faithful devotion to an acknowledged ultimate reality or deity.” MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/system> (accessed July 23, 2021).

Belief system is defined as “a set of principles, ideas, or convictions which together form a tenable thesis, working ethos, or presiding ideology; esp. a religion or philosophy viewed in terms of its constituent ideas and beliefs.” OXFORD ENGLISH DICTIONARY, <https://www.oed.com/> (accessed July 23, 2021).

Ministry is defined as “the spiritual work or service of a Christian or group of Christians; the period of time spent serving the Church.” OXFORD LEARNING DICTIONARY <https://www.oxfordlearnersdictionaries.com/us/definition/english/ministry> (accessed July 23, 2021).

As further support of relatedness, the Examining Attorney submitted website evidence “from third parties that provide small group ministries and faith mentoring in addition to a religious website.” December 2, 2019 Office Action at TSDR 1, 2-11. The Examining Attorney also submitted website evidence that “demonstrates that Christian ministries, specifically in-person Catholic ministries and in person faith counseling, commonly provide websites with information about Catholicism.” June 22, 2020 Office Action at TSDR 1, 3-24.

According to the websites, small group ministries offer individuals an opportunity to study, pray and share discussions about their faith:

The Unity Worldwide Ministries website states that “[s]mall group exploration is an intentional gathering of usually not more than 12 people who come together regularly to explore specific spiritual themes.” December 2, 2019 Office Action at TSDR 6. unityworldwideministries.org.

The Paulist Evangelization Ministries website states that “Small group” is an “adult form of Faith Formation.” December 2, 2019 Office Action at TSDR 8. pemdc.org.

The Inland Hills Church website indicates that a small group is “a place to learn more about God and about how to deepen your relationship with Him.” December 2, 2019 Office Action at TSDR 4. inlandhillschurch.com.

The Saint Patrick-Saint Anthony Church and the Franciscan Center for Urban Ministry website states that men’s fellowship meetings “are held throughout the year around specific spiritual topics; presentations are followed by small group discussions. Each meeting includes time for prayer, fellowship and refreshment.” June 22, 2020 Office Action at TSDR 5. spact.org.

The Ascension Catholic website states “[t]here are two groups that study the books of the Bible using resources provided by the Little Rock Bible Study Series ... There is also the Women of the Word (W.O.W.) group that engages in prayer study of faith-based Bible studies and lots of supportive fellowship.” June 22, 2020 Office Action at TSDR 15. ascensioncatholic.net.

The Saint Paul Catholic Parish website states that “[t]he Scripture Study Ministry brings together a dedicated group of seekers to pray, study, share and celebrate the Word of God as found in the Bible.” June 22, 2020 Office Action at TSDR 3. stpaulkensington.org.

The Saint Gabriel Catholic Church website states that “[s]mall prayer groups share an experience of hospitality, prayer and conversations about their faith.” June 22, 2020 Office Action at TSDR 19. sgdc.church.

The Church of St. Timothy website states that “Small Christian Communities help ordinary people help each other to connect life and faith regularly.” June 22, 2020 Office Action at TSDR 8. sttimothywesthartford.com.

The websites that provide small group ministries or fellowships also provide religious information and religious education, some of which can be accessed online:

The Paulist Evangelization Ministries website offers small group ministry as well as “webinars” on a variety of topics. December 2, 2019 Office Action at TSDR 8-10. pemdc.org.

The St. Mary & St. Philip Parishes website offers, among other things, small group ministries, and under faith formation, religious education courses that can be accessed online, also enabling individuals who take the courses to “share ideas with other catechists ... through the interactive discussion board.” June 22, 2020 Office Action at TSDR 18-19. stmarysgrafton.org.

The Saint Paul Catholic Parish website offers small group scripture studies and offers online resources for religious education and religious information such as faith at home, daily devotions, proverbs, prayers, and catechism. June 22, 2020 Office Action at TSDR 3-4. stpaulkensington.org.

The Diocese of La Crosse website offers Bible studies and small group ministries and religious information such as downloadable prayer card ministries and a downloadable list of Bible studies and faith building resources, as well as materials available for free rental. June 22, 2020 Office Action at TSDR 16-17. diolc.org.

The Ascension Catholic website offers Bible study, religious information such as online writings by Father Tobin, sacraments, and faith formation information. June 22, 2020 Office Action at TSDR 13-15. ascensioncatholic.net.

The Saint Patrick-Saint Anthony Church and the Franciscan Center for Urban Ministry website offers men’s fellowship, faith formation information, and religious

education information. The website also offers information about sacraments. June 22, 2020 Office Action at TSDR 5-6. spact.org.

The Unity Worldwide Ministries website offers small group ministry and its web pages also show links for “education.” December 2, 2019 Office Action at TSDR 6-7. unityworldwideministries.org.

The Saint Gabriel Catholic Church website offers small groups and Bible study, and provides information about the rite of Christian initiation of adults, faith formation, and information about baptism on its website. June 22, 2020 Office Action at TSDR 10-12. sgdc.church.

The Church of St. Timothy website offers small Christian communities and information about sacraments. June 22, 2020 Office Action at TSDR 7-9. sttimothywesthartford.com.

Applicant argues that “[t]he cited examples operate to either inform the public of worship opportunities through church organizations or encourage evangelism of the public instead of focusing prominently on Catholic student faith growth” and “are not the services described in the cited registration,” and therefore do not support the relatedness of the services. 6 TTABVUE 21.

However, Applicant’s “small group Christian ministry” services are broad enough to encompass Registrant’s services of “Providing a website featuring information about religious belief systems, and, in particular the Catholic religious belief system” because ministry services may include providing information and online resources for, among other things, religious education, prayers, and devotions focused on Catholicism, and allowing individuals to learn more about and deepen their Christian faith.

While Applicant argues that the Examining Attorney’s evidence does not focus “on Catholic student faith growth” and is not reflective of Registrant’s services, 6

TTABVUE 21, neither Applicant's nor Registrant's identification is limited to Catholic students, and both identifications are broad enough to include services rendered to individuals of all ages who are not participating in organized religious education.

Applicant also argues that "the services of Applicant and Registrant are highly different in their provision and execution, [and] consumers are unlikely to find them related." 6 TTABVUE 22. Applicant asserts that Registrant's services are more "informational and passive," while Applicant's services seek to support individuals in person "to allow a deepening of faith." 6 TTABVUE 21-22. Applicant submits that even if the website examples provided by the Examining Attorney offer online group ministry and mentoring and religious information, a website cannot provide the same experience as in-person group ministry and faith mentoring. 6 TTABVUE 21. Applicant also argues that Registrant's services are "more commercial" while Applicant "seeks to support individuals charitably." 6 TTABVUE 21. Applicant submits that "the fact that some of the information provided on a website and at an in-person meeting may be the same is not sufficient to show that consumers" would find the services related. 6 TTABVUE 22.

Although Applicant argues that its ministry and faith services are offered only in person, the identification in the application is not restricted to in-person small group Christian ministry services and religious faith counseling services and is broad enough to include the delivery of these services electronically, online. In any event, a consumer seeking in-person faith-based services might also seek out religious

information services so that if similar marks are used, a consumer is likely to assume that both services emanate from the same source.

Goods or services that are complementary or likely to be purchased and used together are deemed to be “related.” *See Joseph Phelps Vineyards, LLC v. Fairmont Holdings LLC*, 122 USPQ2d 1733, 1737 (Fed. Cir. 2017) (“relatedness is a broad concept; products may exhibit ‘relatedness’ when they are ‘complementary products sold in the same channels of trade to the same classes of consumers’”).

A provider of small group Christian ministry services may offer a website where it provides religious information and education that assists in faith building as well as informs individuals about its small group ministry and fellowship services that may be offered in person. Thus, the Examining Attorney’s website evidence supports a finding that the religious information services identified in the registration are complementary and related to Applicant’s small group Christian ministry services and will be encountered by the same consumers. The relatedness of the services supports a finding of likelihood of confusion.

We now turn to “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567.

There are no restrictions as to trade channels for Applicant’s and Registrant’s services, and the Examining Attorney’s third-party website evidence shows that the channels of trade overlap. *See, e.g., In re Davey Products Pty Ltd.*, 92 USPQ2d 1198, 1203-04 (TTAB 2009) (internet evidence shows overlapping trade channels); *In re*

Toshiba Med. Sys. Corp., 91 USPQ2d 1266, 1272-73 (TTAB 2009) (website evidence shows same or overlapping channels of trade and classes of customers).

In particular, services of the types rendered by both Applicant and Registrant are offered on the same religious websites. For example, the Paulist Evangelization Ministries website indicates it offers small group ministry as well as “webinars” on a variety of topics. December 2, 2019 Office Action at TSDR 8-10. The St. Mary & St. Philip Parishes website indicates they offer small group ministries and religious education courses that can be accessed online. June 22, 2020 Office Action at TSDR 18-19. The Saint Paul Catholic Parish website indicates it offers small group scripture studies and offers online resources for religious education and religious information such as faith at home, daily devotions, proverbs, and prayers. June 22, 2020 Office Action at TSDR 3-4. The Diocese of La Crosse website indicates it offers Bible Studies and small group ministries and religious information such as downloadable prayer card ministries and a downloadable list of Bible studies and faith building resources. June 22, 2020 Office Action at TSDR 16-17. The Ascension Catholic Ministries website offers Bible study, religious information such as online writings by Father Tobin, sacraments, and faith formation information. June 22, 2020 Office Action at TSDR 13-15.

As to the class of consumers, ordinary consumers seeking Christian religious services are the potential consumers of Applicant’s and Registrant’s services. Therefore, the classes of consumers also overlap.

Because Applicant's and Registrant's services move in some of the same channels of trade and are offered to the same class of consumers, this *DuPont* factor favors a finding of likelihood of confusion.

B. Strength of the Registered Mark

Applicant contends that "keep the faith" is weak and entitled to a narrow scope of protection. 6 TTABVUE 7, 10.

Evidence of third-party use and registration of a term in the relevant industry is considered in the likelihood of confusion analysis. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015); *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135-36 (Fed. Cir. 2015). If a mark, or an element of a mark, is used extensively in commerce by a number of third parties, it can be evidence of weakness. *Juice Generation*, 115 USPQ2d at 1674; *Jack Wolfskin*, 116 USPQ2d at 1136. This evidence may lead to the conclusion that the consuming public has become familiar with a multiplicity of the same or similar marks, and can distinguish them based on minor differences. *Id.*

Applicant asserts that the "extensive use of the phrase [keep the faith] outside of Registrant's services further weakens the cited mark" and "purchasers are able to distinguish the marks, making confusion unlikely." 6 TTABVUE 12. Applicant submitted evidence of use of "keep the faith" by third-parties in connection with "religious services" and "explicitly religious information or with religious undertones." 6 TTABVUE 12. December 22, 2020 Request for Reconsideration at

TSDR 23-25, 43-52, 70-78, 84-86, 94-99, 104-105, 146-148. Most of these third-party uses show use of the phrase “keep the faith” without additional wording, although some of these uses do not appear to be in connection with services related to religion or faith.

The following submitted evidence shows use of “keep the faith” by third parties in a proprietary manner, i.e., as a trade name or service mark or trademark:

Keep the Faith, a program offered on various radio stations and characterized by one radio station as “Christian family radio” with Keith Stevens and Donna Cruz that provides “a journey through stories of hope and encouragement.” (December 22, 2020 Request for Reconsideration at TSDR 23-25, 43-48, 74-76, 146-148);

Keep the Faith video web series from Time of Grace Ministry featuring Pastor Mike Novotny with topics such as “God’s here,” “God Endures” and “God Reigns.” (at TSDR 49-52);⁴

Grotto Network has a section of its website called “Keep the Faith,” offering “inspirational stories about how our community is living out our beliefs and practices.” (at TSDR 70-73);

Keep the Faith, a syndicated faith-based music-based radio show, with Michelle Pillar Ministries (at TSDR 84-86);

Keep the Faith Audio Tape Ministry, a religious media organization (at TSDR 94-99);

Keep the Faith with Penny, a radio host that is “traveling the path God had in store for her,” offering a show with “contagious encouragement” and stories, phone calls and encouraging moments, from Salem Music Network (at TSDR 109-113, 146-148, 168-169);

Keep the Faith, a traditional audio producer, non-profit apostolate, offering “treasures of the Catholic faith and Catholic worship available 24 hours a day” and teachings from prominent Catholic clergy (with topics such as Christ, Catholic Action,

⁴ While Applicant’s evidence includes a date, almost all of its evidence is missing a URL. Because the Examining Attorney did not object to the evidence, the Board considers the objection waived. *See In re Mueller Sports Medicine, Inc.*, 126 USPQ2d 1584, 1586 (TTAB 2018).

Church History, Church Teaching) and “offering downloads of some of the best Catholic audio recorded,” also offering “Keep the Faith” publications (at TSDR 160-166);

Under the webpage heading “Campaigns,” Norton Healthcare, which has a faith heritage, uses the tagline “Stay Safe and Keep the Faith” in its daily video tagline updates relating to the covid pandemic (at TSDR 149-159); and

Keep the Faith Community Development | Coalition Against Hunger webpage, which is a food pantry (at TSDR 105-106).

Applicant also introduced a use of “keep the faith” in the United Kingdom as the title of a magazine: “Keep the Faith,” “U.K.’s Black and multi-ethnic Christian magazine,” (at TSDR 79-83), although it is not clear to what extent, if any, United States consumers will be exposed to this U.K. online magazine or its digital version.⁵

We find the evidence showing use of “keep the faith” in connection with services or goods related to religion or faith to be probative of weakness and somewhat persuasive, although collectively, these uses represent a more modest showing, than that found probative in *Jack Wolfskin*, 116 USPQ2d at 1136 n.2, (14 third-party uses and registrations probative of weakness) and *Juice Generation*, 115 USPQ2d at 1673 n.1 (at least 26 uses or registrations incorporating the three-word phrase “peace and love” followed by a product identifying term, probative of weakness for restaurant services), or even *In re FabFitFun*, 127 USPQ2d 1670, 1674 (TTAB 2018) (finding 10 uses of SMOKIN’ HOT coupled with dictionary definition probative of weakness).

Applicant further argues that it has provided evidence that “shows the widespread and pervasive use of the phrase” “keep the faith” with religious information. 6

⁵ The webpages indicate that a digital version can be provided to e-mail subscribers. December 22, 2020 Request for Reconsideration at TSDR 80.

TTABVUE 12. In connection with these arguments, Applicant submits that the cited mark is descriptive or non-distinctive but goes on to explain that “its critique” is not collaterally attacking the registration but “goes to the strength of the mark.”⁶ 6 TTABVUE 9; 9 TTABVUE 5-6. We consider Applicant’s arguments regarding the “descriptive” nature of “keep the faith” to go to the weakness of the phrase, not a collateral attack on the cited registration.

Applicant also submitted third party registrations containing the phrase KEEP THE FAITH. December 22, 2020 Request for Reconsideration at TSDR 12-14.

“Third-party registrations are relevant to prove that some segment of the [marks] ... has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation*, 115 USPQ2d at 1675 (internal quotation marks and citation omitted). *See also Jack Wolfskin*, 116 USPQ2d at 1136. Third-party registrations showing that a term carries a highly suggestive or descriptive connotation in the relevant industry is evidence of conceptual weakness. *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1057 (TTAB 2017) (Applicant’s third-party registration evidence “may bear on conceptual weakness if a term is commonly registered for similar goods or services.”).

Applicant relies on two third-party registrations of marks that contain as a component “keep the faith” for unrelated goods and services: Registration No. 6200144 for the mark Stay Safe. Keep the Faith for “healthcare, hospital services,

⁶ Applicant argues that the phrase “KEEP THE FAITH” is used colloquially by Christian religious communities to refer to the act of attending church, although there is no evidence in the record to support this statement. 6 TTABVUE 8.

and medical services” and Registration No. 4907604 for the mark

The logo for 'Keep The Faith Designs' features the words 'Keep The Faith' in a stylized, gothic-style font, with 'Designs' in a smaller, simpler font to the right. Above the words 'Keep The Faith' are two small, decorative icons resembling crosses or flowers. The entire logo is underlined.

HEBREWS 11:1 for “beverage glassware, insulating sleeve holders for beverage cans and cups, mugs, water bottles sold empty.”⁷

Because the good and services in these third-party registrations are unrelated to Applicant’s or Registrant’s services, this evidence does not establish weakness of “keep the faith” in connection with religious-based services. *See Omaha Steaks Int’l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693-1695 (Fed. Cir. 2018) (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus “on goods shown to be similar”); *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017) (disregarding third-party registrations for goods in other classes where the proffering party “has neither introduced evidence, nor provided adequate explanation to support a determination that the existence of I AM marks for goods in other classes, ... support a finding that registrants’ marks are weak with respect to the goods identified in their registrations”).

Applicant submitted dictionary evidence showing that “keep the faith” is an idiom that means “to continue to believe in, trust, or support someone or something when

⁷ As the Examining Attorney points out, Applicant only submitted two third-party registrations during prosecution, although in its brief, and in its December 22, 2020 Request for Reconsideration at TSDR 3, it stated that there were 24 third-party “uses” of “keep the faith” on the Office’s Trademark Electronic Search System (TESS). 6 TTABVUE 9; 8 TTABVUE 4. The Board does not take judicial notice of third-party registrations in the Office. *See In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB, 1974). If Applicant wished the Board to consider any third-party registrations, copies of those registrations should have been timely proffered.

it is difficult to do so” and “to continue to support someone or something.”⁸ June 22, 2020 Response to Office Action at TSDR 14-15; December 22, 2020 Request for Reconsideration at TSDR 53-69. Dictionary definitions are evidence of the suggestiveness of a term. *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209, 1212 (TTAB 1999) (suggestiveness of Azteca established by dictionary definition and further confirmed by third-party registrations).

Applicant also submitted Internet evidence of “keep the faith” showing that it “exists in everyday parlance” and is in common use as an idiom in connection with “explicitly religious information or [information] with religious undertones” and “information on religion and Christianity in particular.” December 22, 2020 Request for Reconsideration at TSDR 15-22, 26-42, 87-93, 100-103, 108-107, 118-146, 149-159; 6 TTABVUE 12, 21; 6 TTABVUE 12.

The phrase and idiom “keep the faith” has been used in the title of articles, many of them related to religion: an article from the website Core Christianity titled “5 Ways to Help Your Kids Keep the Faith” (December 22, 2020 Request for Reconsideration at TSDR 15-17), an article titled “Keep the Faith,” by Richard Edgley, website unknown, (at TSDR 20-22) discusses the meaning of “keep the faith” as being all about trials in life that bring us closer to “our Heavenly Father,” an article from United Church of Christ titled “Keep the Faith and Struggle On” (at TSDR 89-

⁸ The second definition is the British English definition, which generally is not probative of the meaning of the words in the United States, although in this case, the meanings appear to overlap. See *In re Manwin/RK Collateral Trust*, 111 USPQ2d 1311, 1313 n.18 (TTAB 2014).

93), an article on the Trinity on the Green website titled “Keep the Faith, Notes from Clergy” (at TSDR 124-133), an article from America Magazine titled “How Do You Keep the Faith in the Time of Coronavirus” (at TSDR 29-32), an article from Gold Company Media titled “Our View: Keep the Faith: Hope is on the Way” (at TSDR 134-145), an article from Psychology Today titled “Keep the Faith: A Response to Eight Keys to Life Hardiness and Resilience” (at TSDR 121-123), an Associated Press article titled “Joe Biden tells supporters to ‘keep the faith’” (at TSDR 33-42), and an article from Vanity Fair titled “Alex Trebek Says Keep the Faith in Prerecorded Message” (at TSDR 26-28). The phrase “keep the faith” also has been used in connection with a daily devotional e-mail titled “Keep the Faith” (at TSDR 87-88), a New Yorker magazine website section titled “Keep the Faith Dept. News, Opinion and Analysis” (at TSDR 108-107), a book titled “Keep the Faith, A Memoir,” by Faith Evans and Aliya S. King (at TSDR 18-19), and a music album titled “Keep the Faith,” by Charles Jenkins and Fellowship Chicago (at TSDR 100-104).

The above non-trademark uses are probative of conceptual weakness of “keep the faith” as they show that “keep the faith” is a known idiom that is commonly used in reference to religion and maintaining religious faith. We find that Applicant has demonstrated that Registrant’s cited mark KEEP THE FAITH has conceptual weakness when used in religious contexts that limits its scope of protection.

C. Similarity or Dissimilarity of the Marks


We now consider the similarity or dissimilarity of the marks in terms of appearance, sound, connotation, and overall commercial impression. *Palm Bay Imps.*

Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods or services offered under the respective marks is likely to result. *Coach Servs.*, 101 USPQ2d at 1721.

In the case of marks that consist of words and a design, the words are normally accorded greater weight because they would be used by purchasers to request the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (“In the case of a composite mark containing both words and a design, ‘the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.’”) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983)).

In comparing the marks, we consider them in their entireties. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).



Applicant’s mark is  and Registrant’s mark is KEEP THE FAITH. Registrant’s mark is in standard characters, meaning that it can be displayed in any font, style or color. *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011)

As a preliminary matter, we note that Applicant, in filing its application, provided an English translation of UT FIDEM, as “keep the faith,” although it did not identify the language from which it was providing the translation. However, during prosecution and in its brief, Applicant made clear that the phrase UT FIDEM is from Latin.

The Examining Attorney argues that Applicant provided the Latin translation of UT FIDEM “on its own accord,” and that “in submitting the translation as part of the application, applicant arguably deemed the translated wording to have significance.” 8 TTABVUE 7. During prosecution, the Examining Attorney argued that the translation of the Latin phrase provided by Applicant is relevant and that Applicant has simply copied “registrant’s mark KEEP THE FAITH verbatim, and then adds an additional phrase UT FIDEM, which also translates to the identical phrase again” and that UT FIDEM “translates back to the shared wording” “keep the faith.” December 2, 2019 Office Action at TSDR 1; June 22, 2020 Office Action at TSDR 1; January 4, 2021 Denial of Reconsideration at TSDR 1.

Applicant asserts in its brief that the doctrine of foreign equivalents and the Examining Attorney’s arguments relating to consumers translating UT FIDEM to “keep the faith” are inapplicable because “Latin is generally considered a dead language” which is not translated into English “for any and all trademark comparison purposes.” 6 TTABVUE 15-17; 9 TTABVUE 4. Applicant submits that it is “unlikely that an ordinary consumer will stop and translate” since “‘UT FIDEM’ is not found in

common use in English . . . The majority of consumers will likely not recognize the meaning of the Latin phrase.” 6 TTABVUE 17.

Although we often consider the translation of foreign wording under the doctrine of foreign equivalents, the doctrine is only applied to common, modern languages. *Palm Bay Imps.*, 73 USPQ2d at 1696. As Applicant points out, Latin is usually considered to be a “dead” language, and unless the term in question is commonly used in English, we do not consider the English meaning of the Latin term in determining registrability. *See Magnavox Co. v. Multivox Corp. of Am.*, 341 F.2d 139, 144 USPQ 501, 504 (CCPA 1965) (“While ‘vox’ is a dictionary term connoting voice, it is a term of Latin origin not of common use in the English language.”).

The Examining Attorney has provided no evidence regarding the number of persons having knowledge of Latin in the United States or showing that the term UT FIDEM is a term that is still in common use by the relevant public in connection with religious oriented services such that it would be routine for them to stop and translate the phrase UT FIDEM.

The Examining Attorney also has offered no evidence that the term UT FIDEM is a common foreign language word that appears in the English dictionary, such as *croissant*, *fiesta*, or *flambé*, that would be understood without any translation by the ordinary American consumer as “keep the faith.” *Cf.* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) §§ 1207.01(b)(vi)(B) and 1210.10 (July 2021) (a Latin term can be shown to still be in use by the relevant public if the term is found in

current dictionaries or news articles). Therefore, relevant consumers would, instead, simply take the term UT FIDEM as it is.

1. Arguments

The Examining Attorney argues that the additional wording UT FIDEM does not distinguish Applicant's mark and that "[a] reasonable consumer would thus perceive applicant's mark as the equivalent of registrant's mark with additional wording," or Registrant's mark as a shortened form of Applicant's mark, pointing out that "Applicant has incorporated the registered mark in its entirety." 8 TTABVUE 6, 7. The Examining Attorney also argues that even if the Board deems the doctrine of foreign equivalents inapplicable, the marks still have the same commercial impression. 8 TTABVUE 7.

On the other hand, Applicant asserts that UT FIDEM is the most dominant and prominent portion of Applicant's mark and that consumers will remember this element as the first portion of Applicant's mark. 6 TTABVUE 14; 9 TTABVUE 4. Applicant argues that "the visual appearance and pronunciation of Applicant's UT FIDEM KEEP THE FAITH and design mark and Registrant's KEEP THE FAITH mark are 'distinct'" and that the marks have different commercial impressions due to "lengthening the pronunciation and visual appearance" in Applicant's mark as well as the addition of the Latin words in Applicant's mark that have an unknown meaning to consumers. 6 TTABVUE 19. Applicant submits that consumers will not stop and translate UT FIDEM because it is not in common use in English. 6 TTABVUE 15. Applicant also argues that when considering the marks in their entireties and given the narrow scope of protection of Registrant's mark due to the

weakness of the term “keep the faith,” Applicant’s mark is dissimilar to the cited mark. 6 TTABVUE 20.

2. Comparison of the Marks

We now turn to comparison of the marks.

Despite sharing the phrase KEEP THE FAITH, we find Applicant’s mark



and Registrant’s mark, KEEP THE FAITH overall, to be dissimilar.

This is mainly due to the dominant role of the term UT FIDEM in Applicant’s mark.

As to appearance, although the marks both share the phrase KEEP THE FAITH, the term UT FIDEM appears significantly larger and very prominently above the much smaller-sized phrase KEEP THE FAITH. The emphasis on UT FIDEM is apparent by the large dark bolded letters used, while the phrase KEEP THE FAITH is in a much smaller unbolded lettering. Because of the position of UT FIDEM, this wording would be read first by the consumer. UT FIDEM visually dominates Applicant’s mark and, consequently, it is the term that will most likely be impressed in the minds of consumers. *See, e.g., In re I-Coat Co.*, 126 USPQ2d 1730, 1737 (TTAB 2018) (citing *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (the first part of a mark “is most likely to be impressed upon the mind of a purchaser and remembered”); and *Palm Bay Imps.*, 73 USPQ2d at 1692). The cross design, which primarily substitutes for the letter “T” in the word UT also adds a point of difference between Applicant’s Mark and the cited mark.

As to sound, Applicant's mark will be pronounced differently because it begins with the term UT FIDEM, which is absent from the cited mark. This term creates dissimilarities in sound from Registrant's mark even though pronunciation of the shared phrase KEEP THE FAITH is the same.

As to connotation, while the phrase KEEP THE FAITH in each mark would have a similar connotation, there is no evidence in the record that consumers would recognize the UT FIDEM portion of Applicant's mark and translate it from Latin to English to "keep the faith." UT FIDEM would be perceived as foreign words or an arbitrary term, and this changes the connotation of the mark as a whole.

As to the commercial impression of the marks, we find that when Applicant's mark is considered in its entirety, it has a different commercial impression from Registrant's mark due to the inclusion of the visually prominent and dominant term UT FIDEM with the shared phrase KEEP THE FAITH.

Although Applicant's and Registrant's marks share the phrase KEEP THE FAITH, as noted above, we have found this shared phrase to be weak in connection with religious-oriented services. Applicant's mark contains additional wording that is more prominently displayed that engenders a dissimilar commercial impression from that imparted by Registrant's mark. Because the cross design may not be fully appreciated by consumers given that it also serves as the letter "T" in the word UT, and may even be perceived as part of the letter "F" in FIDEM, it does not add significantly to the religious commercial impression imparted by the shared term in Applicant's and Registrant's marks. Moreover, the suggestiveness of KEEP THE

FAITH in connection with religious-oriented services detracts from the notion that consumers would be confused simply because of Applicant's use of the phrase KEEP THE FAITH in its mark. Consumers are more likely to focus on the larger more prominent term UT FIDEM, while attributing a suggestive meaning to the phrase KEEP THE FAITH in connection with services being offered to assist one in supporting or maintaining one's belief in their religious faith.

Given the conceptual weakness of "keep the faith," consumers will look to the differences in Applicant's and Registrant's marks to distinguish them, which in this case are the differences in sight and sound. *See e.g., Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1076 (TTAB 2011) (because the shared term "Elements" is suggestive, consumers viewing applicant's mark ZU ELEMENTS will "focus on the larger, more prominent and more distinctive term, ZU, while attributing a meaning to the latter, smaller term ELEMENTS that is suggestive of apparel items"); *In re Christian Dior, S.A.*, 225 USPQ 533, 534 (TTAB 1985) ("where ... the [service] marks in question are highly suggestive or merely descriptive or play upon commonly used or registered terms, the addition of . . . other material to the assertedly conflicting [service] mark has been determined sufficient to render the marks as a whole sufficiently distinguishable.").

In sum, we find that the dissimilarity of the marks weighs against a finding of likelihood of confusion.

II. Conclusion

We find that the services are complementary and, therefore, related and that the channels of trade and classes of consumers overlap. However, the marks are more dissimilar than similar, notwithstanding their common element, and the evidence of record establishes that the shared term “keep the faith” is weak in connection with religious-oriented services. On balance, because of the overall differences between the marks in appearance and sound and the weakness of the term shared by them, we find that confusion is not likely between Applicant’s mark and the mark in the cited registration.

Decision: The Section 2(d) refusal to register Applicant’s mark



is reversed.