

This Opinion is Not a  
Precedent of the TTAB

Mailed: April 12, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Deidra O. Babers and Leon Babers, Jr.*

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Serial No. 90775501  
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Scott L. Nielson, Law Office of Scott L. Nielson, for Deidra O. Babers and  
Leon Babers, Jr.

Deepa Singh,<sup>1</sup> Trademark Examining Attorney, Law Office 113,  
Myriah Habeeb, Managing Attorney.

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Before Greenbaum, Heasley, and Johnson,  
Administrative Trademark Judges.

Opinion by Johnson, Administrative Trademark Judge:

Deidra O. Babers and Leon Babers, Jr. (“Applicants”) seek registration on the Principal Register of the composite mark shown below (“Applicants’ Mark” or “Kingdom Kuts composite mark”) for “Barber shop services; Barber services; Barbering services” (“Applicants’ Services”) in International Class 44.<sup>2</sup>

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<sup>1</sup> Application Serial Number 90775501 was originally assigned to Examining Attorney Alison Keeley. On September 18, 2023, the Application was reassigned to Examining Attorney Deepa Singh.

<sup>2</sup> Application Serial Number 90775501 was filed on June 15, 2021, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicants’ claim of first use of the mark



The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 2(d), on the ground that Applicants' Mark is likely to be confused with the standard character mark THE KINGDOM BARBERSHOP,<sup>3</sup> registered on the Principal Register for "Barbershops; Hair cutting; Hair cutting services; Hair salon services, namely, hair cutting, styling, coloring, and hair extension services" in Class 44. After the Examining Attorney made the refusal final, Applicants requested reconsideration, which the Examining Attorney denied in a subsequent final Office action.

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anywhere and in commerce at least as early as June 15, 2021. The mark is described as follows: "The mark consists of a circular design of a head of a lion shaded in gold and black. The lion is wearing a gold pointed crown and appears inside a shaded gold circle. Above the lion design is the wording KINGDOM in a gold font with the wording KUTS appearing below the lion design in a gold font. The design and wording all appear on a black rectangular background." The colors gold and black are claimed as a feature of the mark. The exclusive right to use "CUTS" is disclaimed.

<sup>3</sup> Registration No. 5204078 issued on May 16, 2017; a combined declaration under Trademark Act Sections 8 and 15, 15 U.S.C. §§ 1058 and 1065, has been accepted and acknowledged. "BARBERSHOP" is disclaimed.

Applicants then filed a notice of appeal and a second request for reconsideration, which the Examining Attorney denied,<sup>4</sup> and the appeal proceeded. The appeal has been fully briefed. We affirm the refusal to register.

## I. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark must be refused registration if it “[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the [services] of the applicant, to cause confusion, or to cause mistake, or to deceive ... .” 15 U.S.C. § 1052(d).

To determine whether there is a likelihood of confusion between the marks under Section 2(d), we analyze the evidence and arguments under the *DuPont* factors. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019). However, “[n]ot all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances.” *Stratus Networks, Inc.*

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<sup>4</sup> Request For Reconsideration After Final Action Denied dated June 6, 2023; *see also* 4 TTABVUE.

Citations to the appeal record are from the publicly available documents in TTABVUE, the Board’s electronic docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). The number preceding “TTABVUE” corresponds to the docket entry number; the number(s) following “TTABVUE” refer to the page number(s) of that particular docket entry, if applicable. Applicants’ Brief appears at 8 TTABVUE, the Examining Attorney’s Brief appears at 10 TTABVUE, and Applicants’ Reply Brief appears at 11 TTABVUE.

*v. UBTA-UBET Commc'ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at \*3 (Fed. Cir. 2020); *see also Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011). Two key considerations are the similarities between the marks and the relatedness of the services. *See Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (“The likelihood of confusion analysis ... ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the [services].’”).

In applying the *DuPont* factors, we bear in mind the fundamental purposes underlying Trademark Act Section 2(d), which are to prevent consumer confusion as to source and to protect registrants from damage caused by registration of confusingly similar marks. *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 34 USPQ2d 1161, 1163 (1995); *DuPont*, 177 USPQ at 566.

#### **A. The Similarity and Nature of the Services and Channels of Trade**

We begin with the *DuPont* likelihood of confusion factors regarding the similarity and nature of the services and the channels of trade. *See* 177 USPQ at 567. When analyzing the second *DuPont* factor, we look to the identification of services in the application and cited registration. *Stone Lion Cap. Partners v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of [services] set forth in the application

regardless of what the record may reveal as to the particular nature of an applicant's [services], the particular channels of trade or the class of purchasers to which sales of the [services] are directed.”).

The services identified in the Application are “Barber shop services; Barber services; Barbering services,” and the services identified in the Cited Registration are “Barbershops; Hair cutting; Hair cutting services; Hair salon services, namely, hair cutting, styling, coloring, and hair extension services.” The services are legally identical, as “Barber shop services” are identified in Applicants’ Services, and “Barbershops” are identified in Registrant’s services. Moreover, Applicants’ “Barber shop services; Barber services; Barbering services” are encompassed by Registrant’s “Barbershops; Hair cutting; Hair cutting services.” Such legal identity is sufficient to establish relatedness, supporting a finding of a likelihood of confusion. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)); *see also In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (“it is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.”). In addition, Applicants agree “that both marks involve barbering services.” (8 TTABVUE 11).

Also, there are no limitations as to channels of trade or classes of purchasers in the identifications of services in the Application and the Registration. As a result, given the legal identity of the services, we must presume that they will be sold in the

same channels of trade and bought by the same classes of purchasers. *In re Viterra*, 101 USPQ2d at 1908; *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1518-19 (TTAB 2016).

In sum, the legal identity of the services and the channels of trade here cause the second and third *DuPont* factors to weigh heavily in favor of finding a likelihood of confusion.

### **B. The Similarity or Dissimilarity of the Marks**

Next, we consider the *DuPont* factor relating to the similarity or dissimilarity of the respective marks. In comparing the marks, we must consider their appearance, sound, meaning, and overall commercial impression when assessing them in their entireties. *Palm Bay Imps. Inc. v. Veuve Cliquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). Similarity as to any one of these elements may be sufficient to support a finding that the marks are similar for likelihood of confusion purposes. *See Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”); *see also In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. Sept. 13, 2019).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1748

(Fed. Cir. 2017) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); *see also In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (marks “must be considered . . . in light of the fallibility of memory and not on the basis of side-by-side comparison.”).

Our analysis must focus on the recollection of the average purchaser — here, an ordinary consumer of barbershops and barber shop services, barber and barbering services, hair cutting and hair cutting services, and hair salon services, namely, hair cutting, styling, coloring, and hair extension services — who normally retains a general, rather than specific, impression of marks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014) (“The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks.”) (citations omitted).

Overall, “our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on a comparison of the entire marks, not just part of the marks.” *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at \*4 (TTAB 2020) (citing *Stone Lion*, 110 USPQ2d at 1161). In making such a determination, “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety. Indeed, this type of analysis appears to be unavoidable.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also In re Viterra*, 101 USPQ2d at 1908 (“For rational reasons, though, we may give more or less weight to a particular feature of a mark,

provided the ultimate conclusion rests on a consideration of the marks in their entireties.”).

Applicants argue that their composite mark is distinct in appearance, sound, connotation, and overall commercial impression from the mark of the Cited Registration, THE KINGDOM BARBERSHOP. (8 TTABVUE 6-10). We find, however, that the marks at issue are similar in sound, appearance, connotation, and overall commercial impression.

“KINGDOM” is the dominant term in both marks. It appears first in Applicants’ Mark, and thus is the part of the mark that is most likely to be remembered by purchasers. *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1998) (first part of a mark “is most likely to be impressed upon the mind of a purchaser and remembered”). Generally, regarding composite marks, the word portion is normally accorded greater weight because it is likely to make a greater impression on purchasers, be remembered by them, and be used by them to refer to or request the services. *In re Viterra*, 101 USPQ2d at 1908 (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*41 (TTAB 2022) (quoting *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at \*31 (TTAB 2021)). Consistent therewith, we accord greater weight to the words in Applicants’ Kingdom Kuts composite mark. With respect to Registrant’s mark, KINGDOM is the dominant term because as discussed in more detail below, the definite article “THE,” although it appears first, is non-distinguishing, and “BARBERSHOP” is disclaimed.



We acknowledge the differences in appearance and sound between Applicants' Kingdom Kuts composite mark and Registrant's mark, THE KINGDOM BARBERSHOP, given the terms "THE" and "BARBERSHOP" in the latter, and "KUTS" in Applicants' Mark. But "KUTS," which does not appear in the dictionary,<sup>5</sup> is the phonetic equivalent of "CUTS," and "CUTS" is the plural form of the noun "CUT," which is defined as "a haircut."<sup>6</sup> Therefore, "KUTS" is descriptive of the services identified by Applicants' Mark, since barber shop services, barber services, and barbering services involve "cutting and dressing hair, shaving and trimming beards, and performing related services."<sup>7</sup>

In addition, the terms "KUTS" in Applicants' Mark and "BARBERSHOP" in the mark of the Cited Registration have been disclaimed.<sup>8</sup> "It is well-settled that disclaimed, descriptive (or generic) wording may have less significance in likelihood of confusion determinations. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little

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<sup>5</sup> Office Action dated Mar. 8, 2022 at 12; Final Office Action dated Sept. 22, 2022 at 36-37.

<sup>6</sup> Office Action dated Mar. 8, 2022 at 11 (MERRIAM-WEBSTER DICTIONARY definition located at merriam-webster.com) and 21 (AMERICAN HERITAGE DICTIONARY definition located at ahdictionary.com).

<sup>7</sup> *See* Office Action dated Mar. 8, 2022 at 13-14.

<sup>8</sup> As noted above, the Application includes a disclaimer of the word "CUTS," which is the correct spelling of the term "KUTS." *See, e.g., In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (disclaimer of "URBANHOUSING" as "urban housing" acceptable).

weight in reaching a conclusion on likelihood of confusion.”) (quoting *In re Nat'l Data*, 224 USPQ at 752); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”).

As to Registrant’s mark, THE KINGDOM BARBERSHOP, in this case, the definite article “THE” does not distinguish source, since “THE” at the beginning of a mark generally will not affect or otherwise diminish the overall similarity between the marks. *See, e.g., Motorola, Inc. v. Griffiths Elecs., Inc.*, 317 F.2d 397, 137 USPQ 551, 552 (CCPA 1963) (“THE” in THE GOLDEN GRID is “of trifling importance”); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009) (finding WAVE and THE WAVE “virtually identical” marks; “[t]he addition of the word ‘The’ at the beginning of the registered mark does not have any trademark significance.”); *In re Narwood Prods., Inc.*, 223 USPQ 1034, 1034-35 (TTAB 1984) (finding THE MUSIC MAKERS and MUSIC-MAKERS “virtually identical” marks; the inclusion of the definite article “the” is “insignificant in determining the likelihood of confusion”); *In re The Comput. Store, Inc.*, 211 USPQ 72, 74-75 (TTAB 1981) (“THE” in THE COMPUTER STORE does not “convert[ ] the merely descriptive term into a registrable service mark”); *U.S. Nat'l Bank of Or. v. Midwest Sav. and Loan Ass'n*, 194 USPQ 232, 236 (TTAB 1977) (definite article “THE” “most generally serves as a means to refer to a particular business entity or activity or division thereof, and it would be a natural tendency of customers in referring to opposer’s services under the mark in question to utilize the article ‘THE’ in front of ‘U-BANK’ in view of their uncertain memory or

recollection of the many marks that they encounter in their everyday excursion into the marketplace.”).

Finally, we find that consumers may easily drop the non-source identifying terms “THE” and “BARBERSHOP” from the mark of Cited Registration, and instead refer to Registrant’s business simply as “KINGDOM” in conversation or written communications, causing Applicants’ Mark and Registrant’s mark to look and sound similar, given “the propensity of consumers to often shorten [service marks],” *Big M Inc. v. U.S. Shoe Co.*, 228 USPQ 614, 616 (TTAB 1985), and the significant impression that words in a composite mark generally make on consumers. *See In re Viterra*, 101 USPQ2d at 1908. As a result, some consumers may consider Applicants’ Kingdom Kuts composite mark, shown below, as a related enterprise of Registrant’s THE KINGDOM BARBERSHOP.



As to connotation, the appearance in Applicants’ Mark of a gold lion’s head with whiskers and a broad mane topped by a gold crown reinforces the term “KINGDOM,”

defined as “a political or territorial unit ruled by a sovereign,”<sup>9</sup> given that “[t]he lion is a common charge in heraldry. It traditionally symbolizes courage, nobility, royalty, strength, stateliness and valour, because historically the lion has been regarded as the ‘king of beasts.’”<sup>10</sup> The crown is “a circular decoration for the head, usually made of gold and jewels (= precious stones), and worn by a king or queen at official ceremonies.”<sup>11</sup> And gold is often used as a color, or tincture, in heraldry.<sup>12</sup>

As mentioned above, both marks share the dominant literal term “KINGDOM.” The other terms found in each mark are non-source identifying, disclaimed, or descriptive. This causes the marks to sound similar when spoken by consumers. Moreover, we find that in Applicants’ Mark, “KINGDOM” is reinforced by the color and design elements of the mark, and outweighs those color and design elements as well. As a result, we find that both marks share the same commercial impression of nobility or royalty.

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<sup>9</sup> Office Action dated Mar. 8, 2022 at 9 (definition from AMERICAN HERITAGE DICTIONARY, located at ah.com).

<sup>10</sup> Subsequent Final Refusal dated Feb. 21, 2023 at 6 (Wikipedia article for “Lion (heraldry)”).

<sup>11</sup> THE CAMBRIDGE DICTIONARY (US) (dictionary.cambridge.org/us/dictionary/english/crown) (last accessed Apr. 4, 2024). The Board may take judicial notice of dictionary definitions, including definitions from online dictionaries which exist in printed format or have fixed regular editions. See *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

<sup>12</sup> See “Heraldry,” OXFORD DICTIONARY OF WORLD HISTORY (www.oxfordreference.com) (last accessed Apr. 4, 2024). The Board may take judicial notice of encyclopedia entries, census data, standard reference works, and commonly known facts. See, e.g., *In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 n.24 (TTAB 2013) (judicial notice taken of entry for “tea” from Encyclopædia Britannica).

Overall, we find that Applicants' Mark and the mark of the Cited Registration are similar in appearance, sound, connotation, and commercial impression. This *DuPont* factor also weighs heavily in favor of a finding of likelihood of confusion.

### C. Applicants' Survey

Finally, we address Applicants' argument that the survey<sup>13</sup> they conducted is further proof that confusion is unlikely between the marks. Applicants assert that "when presented with the entirety of the marks at-issue, consumers seem to easily make distinctions." (8 TTABVue 6).

Survey results can be used to help prove or disprove likelihood of confusion. *See Miles Lab's Inc. v. Naturally Vitamin Supplements Inc.*, 1 USPQ2d 1445, 1457 (TTAB 1986) (survey results may be corroborative of likelihood of confusion holdings). We "must give appropriate consideration to the proffered survey evidence." *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1834 (Fed. Cir. 2015). The level of confusion found to support a determination of likely confusion varies from case to case, but generally, where survey results have a low **percentage** of confused respondents — usually below ten percent — such results may support the ultimate conclusion of no likely confusion. *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1477 (TTAB 2016) ("When the percentage results of a confusion survey dip below 10%, [the percentage results] can become evidence which will indicate that confusion is not likely.") (quoting J. Thomas McCarthy,

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<sup>13</sup> Request For Reconsideration after Final Action dated Jan. 23, 2023 at 14-34.

MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 32:189 (4th ed. Mar. 2016)); *see also Water Pik, Inc. v. Med-Sys. Inc.*, 726 F.3d 1136, 107 USPQ2d 2095, 2105 (10th Cir. 2013) (likelihood of confusion rate of less than 6.5% found to be “insignificant”); *1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229, 1248-1249 (10th Cir. 2013) (“We are not persuaded ... that surveys showing confusion as low as 7% can by themselves sustain a finding of likelihood of confusion.”); *Henri’s Food Prods. Co., Inc. v. Kraft, Inc.*, 717 F.2d 352, 220 USPQ 386, 391 (7th Cir. 1983) (“The remaining question is whether the district court was correct in holding that a 7.6% confusion finding weighs against infringement. We hold that it was. Kraft has pointed to no case in which a 7.6% figure constituted likelihood of confusion.”); *Wuv’s Int’l, Inc. v. Love’s Enters., Inc.*, 208 USPQ 736, 756 (D. Colo. 1980) (9% results; no likelihood of confusion proven).

We are obligated to consider the methodology used in order to assess a survey’s probative value, even though “[t]he Board may be somewhat more lenient in its approach in the consideration of surveys in ex parte proceedings than inter partes proceedings.” TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1208 (2023). Overall, survey results must be weighed based on their probative value and in the context of the totality of the evidence as we weigh the various *DuPont* factors.

Applicants’ survey, conducted from November 1, 2022 through December 31, 2022, was a “random online anonymous poll” consisting of four separate questions,<sup>14</sup> and

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<sup>14</sup> The four questions were: (1) “Do you think the same business owns the brands pictured?” (216 respondents); (2) “Do the two images below represent the same brand or a different

each question had a different number of total respondents. We do not know how many people were part of the survey universe, whether the respondents for each question were the same, or whether the respondents were eighteen years of age or older. We do not know whether the respondents understood the nature of the questions as they applied to trademark principles, or what information Applicants may have provided to respondents prior to their answering the survey questions. Furthermore, we do not know the geographic diversity of the respondents, or whether the respondents were even American consumers. However, survey data show that respondents accessed each question from IP addresses purportedly originating from the United States.<sup>15</sup>

Arguably, only the first and third survey questions are relevant to likelihood of confusion as to the source of the services at issue here. Twenty-three survey respondents, or 10.65 percent, answered “yes” to the first question: “Do you think the same business owns the brands pictured?” Ten survey respondents, or 12.20 percent, answered “same” to the third question: “If you were shopping for a haircut, would you think that the same business offered the service if you encountered the branding shown below on their door?” Unlike the survey result percentages in *Mini Melts*, which showed a likelihood of confusion rate of 7 to 8.5 percent, here, the percentage

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brand?” (151 respondents); (3) “If you were shopping for a haircut, would you think that the same business offered the service if you encountered the branding shown below on their door?” (82 respondents); and (4) “How closely related to each other do you think KINGDOM KUTS is to THE KINGDOM BARBERSHOP as shown?” (85 respondents). The first three questions displayed the marks as they appeared in their respective application and registration records; the fourth question displayed both of the marks in standard characters only, so we have not considered it.

<sup>15</sup> See Request For Reconsideration after Final Action dated Jan. 23, 2023 at 23-33.

results for the first and third questions are above ten percent each. Thus, the percentage results for the first and third survey questions indicate that confusion is likely between Applicants' Mark and the mark of the Cited Registration. But we accord no probative value to Applicants' survey overall due to what we perceive as its imprecise methodology,<sup>16</sup> discussed above, and a lack of clarity as to who, exactly, designed and conducted it.<sup>17</sup>

## II. Conclusion

Having considered all of the arguments and evidence relating to the relevant likelihood of confusion factors, we conclude that on this record, confusion is likely between Applicants' Kingdom Kuts composite mark, for "Barber shop services; Barber services; Barbering services" in Class 44, and the mark of the Cited Registration, THE KINGDOM BARBERSHOP, for "Barbershops; Hair cutting; Hair cutting services; Hair salon services, namely, hair cutting, styling, coloring, and hair extension services" in Class 44. Weighing the relevant factors, both marks have the same dominant source-indicating term, KINGDOM, and both marks convey the same

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<sup>16</sup> See generally J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 32:165.25 nn. 7 & 8 (5th ed. Mar. 2024 update) (discussion of Internet surveys and proper and improper procedures, protocols, and methodologies for Internet surveys).


<sup>17</sup> Applicants appear to have conducted the survey, but the record is unclear as to who actually designed and conducted it. Therefore, we give no probative weight to the survey results. See, e.g., *Black Dog Tavern Co., Inc. v. Frechette*, 2006 WL 3472710, at \*5 (TTAB Nov. 14, 2006) (survey excluded where there was "no evidence that the 'survey' was made with the assistance of a survey professional ..."); see also *Longevity Network, Ltd. v. Wallach*, 2004 WL 624574, at \*9 (TTAB Mar. 23, 2004) ("We agree with respondent to the extent that we can give the survey little, if any, weight ... The witness indicated that he had no training or background in developing consumer surveys in likelihood of confusion cases."). An opinion designated as not precedential is not binding upon the Board, but may be cited for whatever persuasive value it might have. TBMP §§ 101.03, 1203.02(f).



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overall commercial impression; the services rendered under the marks are legally identical and overlap; and their trade channels overlap. We accord no probative weight to Applicants' survey.



**Decision:** The refusal to register Serial Number 90775501, , on the Principal Register is affirmed under Section 2(d) of the Trademark Act.