

This Opinion is Not a
Precedent of the TTAB

Mailed: September 25, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

JJI International, Inc.

v.

Sparkle Life LLC

Opposition No. 91204296

Craig M. Scott of Scott & Bush Ltd.
for JJI International, Inc.

Thomas Toner of Shumaker Loop & Kendrick LLP
for Sparkle Life LLC.

Before Bergsman, Wellington, and Lykos,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Sparkle Life LLC (“Applicant”) filed an application to register the mark **Sparkle Life** in standard character form for “bracelets; charms; costume jewelry; necklaces; precious and semi-precious crystal stones and beads for use in jewelry” in International Class 14.¹

¹ Application Serial No. 85356064 was filed on June 24, 2011 based on an allegation of first use anywhere and in commerce on July 1, 2010 under Section 1(a) of the Trademark Act.

JJI International, Inc. (“Opposer”) has opposed registration of Applicant’s mark based on a likelihood of confusion with its registered standard character mark **SPLASHES & SPARKLES** for “jewelry” in International Class 14.² Specifically, Opposer pleaded, *inter alia*,³ that “registration of [Applicant’s mark] will damage [Opposer] because this designation is confusingly similar to [Opposer’s registered mark], and Applicant’s use of the designation in connection with jewelry is likely to cause confusion, deception, and/or mistake among the consuming public in violation of Section 2(d) of the Lanham Act.” ¶7.

In its answer, Applicant denied the allegations that use of the applied-for mark would cause a likelihood of confusion with Opposer’s registered mark.

I. The Parties’ Stipulation Regarding the Introduction of Evidence

On January 13, 2014, a stipulated agreement involving the parties’ introduction of evidence was filed with the Board.⁴ See TBMP §§702.04(d) (2014) (“ACR Using Stipulated Record and Trial Briefs”) and 702.04(e) (“Utilizing Stipulations in Non-ACR Board cases”). By way of the stipulation, the parties agreed to the following: that testimony may be introduced by sworn declaration in lieu of live deposition; and that “documents or things produced and/or disclosed in discovery...[and] written discovery responses and/or disclosures of either party in this opposition

² Registration No. 3005830 issued on October 11, 2005; Sections 8 & 15 affidavits filed and accepted.

³ Opposer also pleaded false suggestion of a connection and deceptiveness grounds for opposition in the Notice of Opposition under Section 2(a) of the Trademark Act. Opposer did not pursue either ground at trial or argue these grounds in its trial brief. In accordance with the Board’s usual practice, we deem these claims to have been waived. *See, e.g., Knight Textile Corp. v. Jones Investment Co.*, 75 USPQ2d 1313, 1314 n.4 (TTAB 2005).

⁴ 32 TTABVUE (“Stipulation For Introduction of Evidence At Trial”).

proceeding” may be introduced as evidence and relied upon at trial, subject to objections on “any applicable ground.”⁵

II. Record

The record in this case consists of the pleadings and, by rule, the file of the involved application. Trademark Rule 2.122(b)(1).

In accordance with the aforementioned stipulation, Opposer has submitted the sworn declarations, with accompanying exhibits, of its CEO, Mr. Dale Kincaid,⁶ and of its designated expert, Dr. Geoffrey T. Fong.⁷ Mr. Fong’s declaration includes an “Export Report” as an exhibit. In addition, Opposer submitted the following materials under notices of reliance: a copy of its pleaded registration (Registration No. 3005830) and printouts from the USPTO electronic database for the same registration, including printouts from the registration file history;⁸ copies of an Office Action, request for abandonment and Notice of Abandonment, all involving a third-party application (Serial No. 85180816) for the mark SPARKLE;⁹ documents produced by Opposer during discovery;¹⁰ and Applicant’s responses to Opposer’s First Set of Interrogatories and First Request for Production of Documents.¹¹

⁵ *Id.*

⁶ 33 TTABVUE.

⁷ 31 TTABVUE.

⁸ 27 TTABVUE (Notice of Reliance)

⁹ 28 TTABVUE (Notice of Reliance)

¹⁰ 29 TTABVUE (Notice of Reliance). We note that, absent a stipulated agreement like the one submitted in this proceeding, a party generally may not introduce copies of documents it produced in response to discovery requests under a notice of reliance. Trademark Rule 2.122(e).

¹¹ 30 TTABVUE (Notice of Reliance).

During its testimony period, Applicant introduced the following materials via notices of reliance: printouts from forty (40) various third-party websites for purposes of showing “descriptive and/or trademark use of the term SPARKLE in conjunction with jewelry”;¹² and copies of nineteen (16) third-party registrations for marks containing the term SPARKLE in connection with jewelry;¹³ and 3 third-party registrations for marks containing the term SPLASH in connection with jewelry.¹⁴

III. Opposer’s Standing and Priority

In view of Opposer’s pleaded registration, which is of record, and the declaration of Opposer’s CEO, Opposer has established its standing in this matter. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000).

Priority is also not an issue with respect to Opposer’s registered mark and goods identified in the registration vis-à-vis the applied-for mark and goods identified in the application. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 USPQ 108 (CCPA 1974).

IV. Likelihood of Confusion

Our determination under Trademark Act Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); *see also In re Majestic Distilling Company, Inc.*, 315

¹² 34 TTABVUE.

¹³ 35 TTABVUE.

¹⁴ *Id.*

F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See 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. The Parties’ Goods, Trade Channels and Consumers

There is no dispute that the parties’ goods, as described in the respective identifications of goods, are identical to the extent that they include jewelry. More specifically, Opposer’s identified “jewelry” is broad enough to include Applicant’s “bracelets; charms; costume jewelry; necklaces” and is otherwise very closely related to applicant’s “precious and semi-precious crystal stones and beads for use in jewelry.” Because the goods are, in part, identical and neither party’s goods are limited to any specific trade channels, classes of consumers, or price points, we must also presume that the trade channels and classes of customers are the same. *See American Lebanese Syrian Assoc. Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011); *see also In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (finding Board entitled to rely on this presumption).

Accordingly, the factors focusing on the similarity of the parties’ goods, trade channels and consumers all support a finding of likely confusion.

B. Dissimilarity of the Marks and Weakness of the Term SPARKLE

We now consider the similarity or dissimilarity of the marks at issue in terms of appearance, sound, meaning, and overall commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). “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.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). In conjunction with the similarity of the marks, we also consider the sixth *du Pont* factor that requires consideration of any evidence pertaining to “the number and nature of similar marks in use on similar goods.” In essence, this factor involves the notion that as a result of a certain degree of third-party use of similar marks for similar goods, consumers may be able to differentiate between such marks and that confusion is not likely even if the marks contain a common element.

In comparing the respective marks in their entireties, it is clear that an essential question before us is what importance, if any, should give to the fact that both marks contain the term SPARKLE(S). Although Opposer argues that the marks have a “similar format, structure and syntax,” it is primarily the term SPARKLE(S) that Opposer contends “constitutes the dominant part of each mark” and relies on for purposes of similarity. Brief at pp. 12-13.

Applicant, on the other hand, contends that the term “Sparkle” is “fairly diluted” and a “weak formative in the jewelry industry.” Brief at p. 4. Applicant points to the evidence it introduced, namely, the printouts from forty (40) different websites depicting trademark and descriptive use of “Sparkle” as well as the third-party registrations containing the same term (or a formative thereof).

We agree with Applicant, and the record establishes, that “Sparkle” is a suggestive, if not descriptive, term when used in connection with jewelry and it is entitled to only a narrow scope of protection or exclusivity of use.

“Sparkle” may be defined as a noun meaning “a sparkling appearance, luster, or play of light: *‘the sparkle of a diamond.’*”¹⁵

It may also be defined as verb meaning “Shine brightly with flashes of light: *‘her earrings sparkled as she turned her head.’*”¹⁶

The aforementioned definitions, including the example sentences supplied in the dictionaries,¹⁷ make it clear that the term “Sparkle” is very suggestive in connection with jewelry.

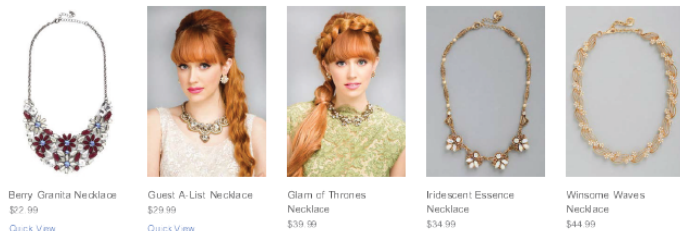
¹⁵ Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://dictionary.reference.com/browse/sparkle> (accessed: September 19, 2014). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010)

¹⁶ Oxforddictionaries.com Oxford University Press (2014) http://www.oxforddictionaries.com/us/definition/american_english/sparkle (accessed: September 19, 2014).

¹⁷ We further note that the Merriam-Webster online dictionary also provides the following example sentence that references jewels or jewelry in its definition of the word “Sparkle”: “He caught the *sparkle* of her diamond out of the corner of his eye.” <http://www.merriam-webster.com/dictionary/sparkle> (accessed: September 19, 2014), definition based on print version of *Merriam-Webster's Collegiate Dictionary, Eleventh Edition*.

The highly suggestive, if not descriptive, value of the term “sparkle” is made clear in the third-party website materials introduced by Applicant. The following is a representative sample of excerpts taken from the forty (40) different websites using either the “Sparkle” in the name of the site or to describe the goods:

Fancy Sparkle Jewelry



18



19



20

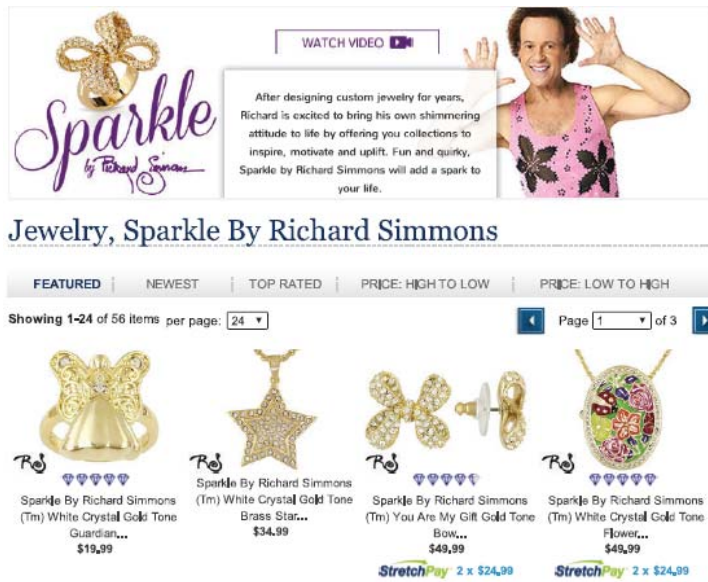
¹⁸ 34 TTABVUE at 49.

¹⁹ *Id.* at 52.

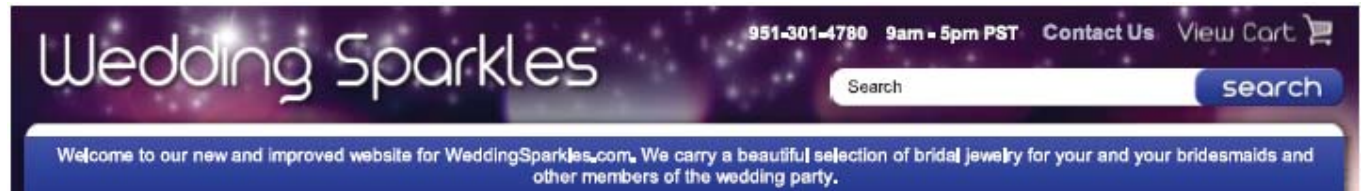
²⁰ *Id.* at 103.



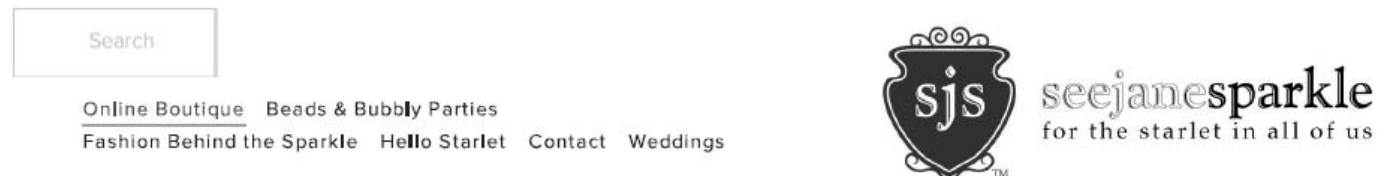
21



22



23



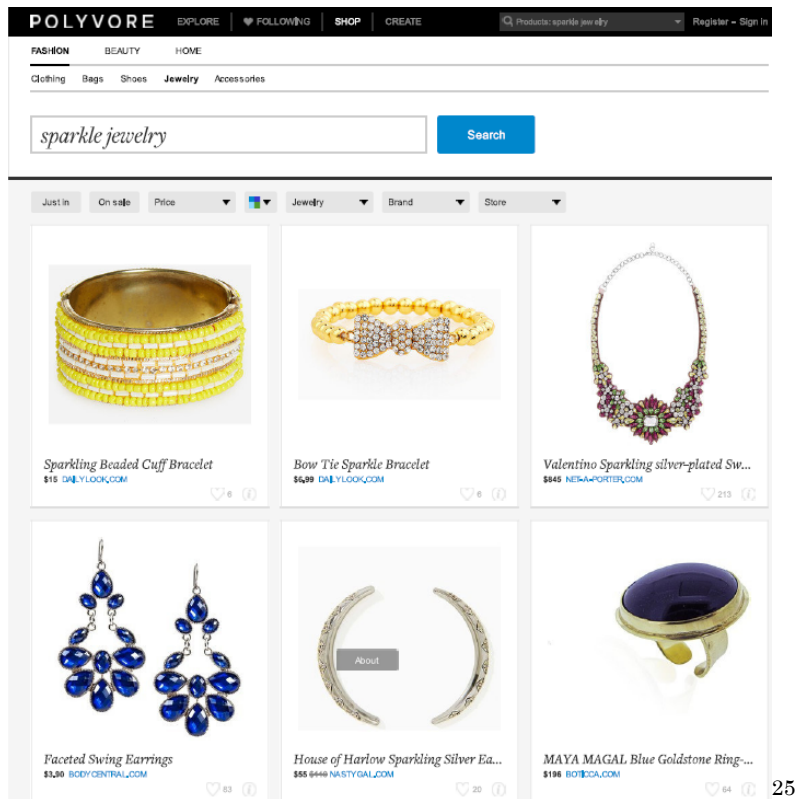
24

²¹ Id. at p. 64.

²² Id. at p. 67.

²³ Id. at p. 74.

²⁴ Id. at p. 95.



Although we cannot gauge the popularity of these websites, *e.g.*, the number of people who have viewed them, sales, etc., the sheer number of websites and manner of use makes it evident that SPARKLE is a term that easily lends itself for use in marks in the field of jewelry. This evidence, on its face, further shows that consumers readily understand the highly suggestive or descriptive meaning of the term in connection jewelry. Indeed, in the latter excerpt shown above, the term “sparkling” is used to describe shiny or shimmering pieces of jewelry, namely, bracelets, necklace and earrings.

This highly suggestive meaning of the term “Sparkle” in connection with jewelry is further buttressed by the manner in which so many third-parties have sought to

²⁵ Id. at p. 120.

adopt marks containing this term in connection with jewelry. *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976) (third-party registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used”); *In re Sela Prods., LLC*, 107 USPQ2d 1580, 1588 (TTAB 2013). In other words, in conjunction with the defined meaning of the term, these registrations corroborate the term’s suggestive significance in the field of jewelry. A representative sample of the third-party registrations of record includes the following:

Mark	Reg. No.	Goods
MAKE LIFE SPARKLE	3565207	jewelry, precious stones, gemstones and watches
SPARKLEMOM	3592064	bracelets; earrings; key chains of precious metal; key rings of precious metal; necklaces; rings being jewelry
IT’S ALL ABOUT THE SPARKLE	3732391	distributorship services in the field of diamonds, precious stones and jewelry
PRINCESS SPARKLE (with design)	3336189	hand crafted jewelry
SPIRITUAL SPARKLE	3795102	jewelry, diamonds, precious gemstones, semi-precious gemstones, precious gems and watches
SPARKLES OF HOPE	4111001	jewelry
THE ULTIMATE SPARKLE	4211424	Jewelry
DESIGN, STYLE, SPARKLE!	4248874	jewelry and imitation jewelry; key chains as jewelry; women's jewelry...
THE SPARKLE FACTORY	4356294	retail store services featuring jewelry...
MORE SPARKLE. MORE STYLE. MORE COMPLIMENTS	4229833	Jewelry

Based on the entire record and given the meaning of the term SPARKLE, we conclude that this term is weak and the fact that both parties share this term does not support a finding that the marks are similar. The term has inherent weakness as shown by the numerous examples of others using its defined meaning to either describe jewelry or strongly suggest a common characteristic of jewelry, i.e., that it shines or glimmers. The fact that so many other third-parties in the jewelry business have adopted the term (or its formatives) in their own marks, registered marks with the same, or use the term to describe the goods certainly dilutes the term's source-identifying significance.

Given the conceptual or inherent weakness of the term "Sparkle," we find that the marks, viewed in their entireties, are dissimilar and the commercial impressions created are very different. Applicant's SPARKLE LIFE connotes a glamorous lifestyle. Opposer's SPLASHES & SPARKLES, on the other hand, will be understood as describing flashy or showy goods. In addition, while both marks begin with the letters "SP," Opposer's mark has an alliterative feature that is not present in Applicant's mark. Moreover, the initial terms in each mark are different and, with respect to Opposer's mark, consumers tend to focus on the first term SPLASHES for purposes of remembering the mark. Cf., *Palm Bay Imports Inc.*, 396 F.3d at 1372, 73 USPQ2d at 1692 (2005); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); and *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is

often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”).

In sum, we find the marks are sufficiently dissimilar and there would be no likelihood of confusion. That is, viewing the marks in their entirety, we find that because the common element SPARKLE(S) is weak in that it is both suggestive of the jewelry and in use by third parties for jewelry, the differences in the marks discussed above create an overall different commercial impression sufficient to distinguish the marks.

C. Dr. Fong Report (“Fong Survey”)

With regard to the Fong survey introduced by Opposer, we note that Dr. Fong concluded that his “expert opinion [is] that there is likelihood of confusion” between the parties’ marks because there is a “statistically significant rate of likelihood of consumer confusion of 16.5%.”²⁶ Relying on the Fong survey, Opposer asserts it “corroborates that Applicant’s mark is likely to cause consumer confusion.” Brief at p. 22.

The Fong survey main questionnaire was conducted via Internet and comprised, in part, the following essential questions:²⁷

²⁶ 31 TTABVue (Fong Declaration ¶ 5).

²⁷ The control and test surveys were administered equally to 412 respondents (206 respondents per survey) from a pool of 1550 persons receiving invitation (by email) to participate in the survey. The respondents met certain qualifications, *e.g.*, responded that they were over 18 years old, were completing the survey with an appropriate device (computer, tablet, etc.), did not have family members who work for a jewelry company, and would consider purchasing a piece of women’s jewelry in the price range of \$25-250 in the last/next 12 months.

Q1. The image below shows a piece of jewelry that you might see in a store or online. Please look at the image as if you were considering shopping for this type of jewelry.²⁸



Have you ever seen this brand of jewelry before (in person or in an advertisement)?

- Yes
- No
- Unsure

Q2. The image below shows a different piece of jewelry. Please look at the image as if you were considering shopping for this type of jewelry.



Q3. Do you think that the jewelry in the image above is put out by a different company or the same company that puts out the jewelry in the image you saw before, or are you unsure?

- The jewelry in each image is put out by a different company.
- The jewelry in each image is put out by the same company.
- Unsure.

²⁸ The quality of the image in the copy introduced in evidence does not reproduce well; essentially, there are earrings with Opposer's SPLASHES & SPARKLES mark appearing above in a border. For the "control" survey, the same questions were posed using the mark SHIMMER LIFE.

For the respondents who answered “same,” they were asked (“Q3”) to explain “as completely as possible” the reason for their answer to Q3.

For those who answered “different” or “unsure,” they were then asked the followed question:

Q4. Do you think that the company that puts out the jewelry in the image above is affiliated or connected with the company that puts out the jewelry in the image you saw before, it is NOT affiliated or connected, or are you unsure? (Select one only).

- I believe that the two companies are affiliated or connected
- I believe that the two companies are NOT affiliate or connected
- Unsure

The respondents were then asked to explain “as completely as possible” the reason for their answer to Q4.

Applicant has attacked the credibility of the Fong survey for several reasons. First, it argues that the survey is the result of a “fatally flawed design” inasmuch as it employed a “highly suggestive methodology.” Brief at p. 22. In particular, Applicant attacks the Fong survey because it “displayed the products back-to-back when such products would never appear in such a manner in the marketplace.” *Id.* at 25. The survey was also “impermissibly misleading” because “use of the word ‘brand’ in the initial question impermissibly focused respondents on the branding shown on the products.” *Id.* at 26. As to the follow-up question (“Q4”) asked of respondents who answered that they did not believe (or were unsure) that the products were put out by the same company, Applicant likens this to “return[ing] to the well” because respondents are asked twice about a relationship and there is no explanation what “affiliated” might mean. *Id.* at 28. Applicant also questions the

timing of the survey, i.e., within a 24 hour period on December 27-28, and the necessity of the certain questions to qualify respondents. According to Applicant, this follow-up question encouraged respondents “to search for a connection between the products.” *Id.* at 28. Ultimately, Applicant argues that the Fong survey should be excluded.

For purposes of assessing a likelihood of confusion, two main survey formats have been employed. The first is sometimes called the *Ever-Ready* format and generally involves showing participants the junior mark and asking them to name the company they think puts out the mark (and then why they think that or whether they can name any other products made by that brand) with the assumption that they are aware of the senior mark from prior experiences (*i.e.* the senior mark is strong). *See Union Carbide Corp. v. Ever-Ready, Inc.*, 531 F.2d 366, 188 USPQ 623 (7th Cir. 1976). The Board has accepted this type of survey and it has been called the “model” or “gold standard” in likelihood of confusion cases.²⁹ However, this survey format is generally used in cases where the senior mark is alleged to be famous or very strong.³⁰

The second type of survey format, sometimes referred to as the “*Squirt* format,” involves presenting participants with both conflicting marks, without any assumption of familiarity with any of the marks. *See SquirtCo. v. Seven-Up Co.*, 628

²⁹ *Likelihood of Confusion Studies and the Straightened Scope of Squirt*, 98 Trademark Rep. 739, 748 (2008).

³⁰ In this regard, we note that Dr. Fong’s survey report does not reveal the results of the responses to the first question inquiring whether the respondent has “ever seen this brand [referring to Opposer’s mark] of jewelry before” and Opposer does not argue that its mark is “famous.”

F.2d 1086, 207 USPQ 897 (8th Cir. 1980). The marks are presented as an array of branded products, akin to a “product line-up,” and participants are asked if they think any of the goods bearing the marks are from the same source or different sources. They are then asked what makes them think that. This format has received criticism to the extent that it improperly replicates market conditions because participants artificially informed about a mark that they may not necessarily know already and then asked about connections with that mark.³¹

Other survey formats are certainly possible and, indeed, a survey, if properly conducted and with certain results, may be can be regarded as evidence akin to actual confusion. *See Blue Cross & Blue Shield Ass'n v. Harvard Cmty. Health Plan Inc.*, 17 USPQ2d 1075, 1078 n.7 (TTAB 1990).

In this case, the Fong survey loosely resembles the *Squirt* format and, for several reasons explained below, has some flaws. This is not to say that we agree with all of Applicant’s criticisms of the Fong survey or that it should be excluded entirely from our consideration. Rather, we have considered the Fong survey in our likelihood of confusion analysis, with its limitations, and remain convinced in our ultimate finding regarding the dissimilarity of the parties’ marks.

First, we find that the universe of respondents that Dr. Fong used was too narrow. As noted above, there are no restrictions to the channels of trade, classes of

³¹ “Historically, ...Squirt studies have been rejected because they utilize close-ended questions, and opprobrium is likely to continue with respect to such questions that have a clearly ‘leading’ effect...” *Likelihood of Confusion Studies and the Straightened Scope of Squirt*, 98 Trademark Rep. 739, 752 (2008); *See also*, INTA Courts and Tribunals Subcommittee, *Report on Best Practices in Conducting Surveys in Trademark Matters* at page 13.

consumers, or price points in either description of goods. Nevertheless, Dr. Fong limited the universe of respondents to people interested in purchasing (or have purchased) “women’s jewelry” in the price-range of \$ 25-249. Furthermore, the survey excluded respondents from the “relevant universe” if their purchases or prospective purchases were made in a “regional or national store chain (e.g., Claire’s, Forever 21) or its websites...discount retailer (e.g., Walmart, Target) or its website...[and] Online from the manufacturer.” Because of the broadness of the parties’ jewelry, as described in the respective identifications of goods, their jewelry could include men’s jewelry, and not just that “for women,” and could span a larger price-range. We also see no valid reason for the exclusion of purchases or prospective purchases from regional or national retail store chains like Walmart, Target in determining who qualified as a respondent to continue with the survey.

Second, the Fong survey did not present enough marks for the respondents to consider in light of the numerous third parties that use the term SPARKLE(S) in connection with jewelry. It would have been preferable had Dr. Fong included an array of branded products including the parties’ marks. By limiting the comparison to only two marks, this increases the chances of (and perhaps encourages) the participants to identify the branded items as being put out by the same source. As with the *Squirt* format survey, this format also exposes itself to the criticism that it does not replicate market conditions because participants are being informed by the survey about marks that they were not necessarily already familiar with and then asked about connections between the two.

Finally, we note that the Dr. Fong's conclusory 16.5% rate of likelihood of confusion falls closer to the lower end of the spectrum for purposes of assessing a likelihood of confusion. *Cf., Miles Labs Inc. v. Naturally Vitamin Supplements Inc.*, 1 U.S.P.Q.2d 1445, 1456-57 (T.T.A.B. 1987) (finding that "there is no question . . . that a 29% level of confusion is significant"); *Blue Cross and Blue Shield Ass'n v. Harvard Cmty. Health Plan Inc.*, 17 U.S.P.Q.2d 1075, 1078 (T.T.A.B. 1990) (finding 14% level of confusion probative of likely confusion); 6 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 32:188 (4th ed. 2009) (likelihood of confusion survey results in the range of "25% to 50% have been viewed as solid support for a finding of a likelihood of confusion").

In view of the foregoing, we find that the Fong survey slightly favors a finding that there is a likelihood of confusion.

V. Conclusion

In sum, Opposer has not shown by a preponderance of the evidence that there is a likelihood of confusion between its registered mark SPLASHES & SPARKLES and Applicant's mark, SPARKLE LIFE. Although we have found herein that, in part, the parties' goods, trade channels and classes of consumers are identical, we find that the differences between the respective marks are sufficient so as to avoid a likelihood of confusion. For the aforementioned reasons, the fact that the marks share the same suggestively weak element SPARKLE(S) has little significance and the marks in their entireties have different commercial impressions. Indeed, we find this factor to be pivotal and the dissimilarities of the marks outweigh the other factors such that confusion is not likely. *See Kellogg Co. v. Pack'em Enterprises Inc.*,

951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single du Pont factor may not be dispositive”).

Decision: The opposition is dismissed and the application will proceed to registration.