

LEGAL BRIEF FOR THE DEFENSE

IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**LEGAL BRIEF
PRESENTED AS LEGAL DEFENSE
IN A TRADEMARK LAWSUIT
OVER THE USE OF THE PHRASES,
“SEVENTH-DAY ADVENTIST”
AND
“SEVENTH-DAY ADVENTIST CHURCH”**



HARVESTIME BOOKS

LEGAL BRIEF FOR THE DEFENSE PART ONE OF FIVE

IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

THIS FIVE-PART TRACT SET IS ONLY A PORTION OF THE COMPLETE LEGAL BRIEF

PREFACE

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Following this *Introduction*, you will find the first 20 pages of a 36-page Legal Brief (see box on the bottom of next page). According to God's Inspired Word, faithful believers have the God-given right—and responsibility—to identify themselves and their meeting places as Seventh-day Adventist, and to be able to witness and hold evangelistic meetings and, in doing so, to be able to identify themselves as Seventh-day Adventists so they can convert others into their faith. The Spirit of Prophecy declared we must always call ourselves Seventh-day Adventists! (2 *Selected Messages*, 384-386; 1 *Testimonies* 223-224.)

“We are Seventh-day Adventists. Are we ashamed of our name? We answer, No, no! We are not. **It is the name the Lord has given us.** It points out the truth that is to be the test of the churches . . .

“**The name Seventh-day Adventist carries the true features of our faith** in front, and will convict the inquiring mind.”—1 *Testimonies*, p. 224. (Also 5*T* 242-243; 3*SM* 302-303; 299; *GC* 443.)

“We are Seventh-day Adventists, and **of this name we are never to be ashamed.**”—2 *Selected Messages*, p. 384.

With all this in mind, in August 2007, I prayerfully spent a month researching and writing this in-depth *Legal Brief*. Thankfully, I can tell you that, with the help and guidance of my heavenly Father, the result has turned out to be a remarkably complete legal defense, which an attorney can present in court to defend any Adventist group sued for calling themselves “Seventh-day Adventists.”

Having surveyed the field of relevant pro and con arguments and court cases, it is my belief that this brief will cover 95% of the basic arguments you will want to use. As you read the complete brief (this five-part tract set is only 4/9ths of the complete 36-page brief; see box on bottom of next page), you will see that it is powerful.

The most important points have been placed in bold print. This will greatly simplify your search for data, as well as your attorney's presentation. Because the bold print items summarize the key points, he may wish to especially present orally in court only that which is in bold print. (It is best that you not try to argue the case in court yourself. You should retain a competent attorney *who believes in your cause*. Keep in mind that trademark suits are tried in federal courts, which have somewhat more complicated procedures than state courts.)

After having worked through this entire field rather exhaustively, examining both pro and con arguments and citations in relevant cases; it is my belief that, using this Legal Brief (and asking for a jury trial), you may win this case in the lower court. If you lose and appeal it, you may win it in the appeals court. But I believe you will definitely win it if brought before the U.S. Supreme Court. Reading this complete brief, you will see why. The principles, arguments, precedents, and citations are many and powerful.

However, keep in mind that, unless you find an attorney will handle it *pro bono* [free], the cost of hearing this case in the courts will be about \$300,000 to \$800,000.

Whenever applicable, I cited Supreme Court decisions, since they cannot be controverted. One distinct advantage in your winning the case is the discovery I made of a recent “fair use” decision in a 2004 Supreme Court trademark case.

“Confusion of identity” has always been the basic legal argument by the Adventist Church against a small group is using their name. But in the case of *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.* (2004), the Supreme Court ruled that the basic trademark law (15 U.S.C. §1115(b)(4), in the federal legal code) does not include “likelihood of confusion”! This is a major victory for an independent church group that is sued for calling themselves Seventh-day Adventists. For a complete discussion of this, read Section 2 in the Legal Brief, entitled “Fair Use.”

I have already presented a copy of the complete *Legal Brief* to Walter “Chick” McGill, whose Tennessee church is currently being sued by the General Conference. I also included a second copy, plus a CD for his attorney—who expressed deep gratitude! Few attorneys that you could retain would have even half of this legal data easily available to them. They would have to engage in research (at \$150 to \$300 an hour) to find more. Not having to do the legal research himself will save McGill's group a significant amount of money in attorney fees!

When McGill's attorney presented this *Legal Brief* to the court, immediately, Jeffrey Tew, the high-paid attorney who is an expert in trademark law (and who won the Florida case (*USDC, SD Fla, Miami Division, Case 98-2940-CIV-KING*) against Raphael Perez' Eternal Gospel Seventh-day Adventist Church), was apparently shocked. For soon after he told the General Conference that he no longer wanted to represent them in the McGill case. As a top-flight professional, who

regularly wins corporate lawsuits against rival claimants, Tew does not want a reputation for losing a case—and he apparently knew he would lose this one because of the massive amount of defense legal material that would be stacked up against him in court.

But please! Let me give you this advice: Include the word, “*Independent*,” in your church name! (*Example*: Cherry Hill Independent Seventh-day Adventist Church, not Cherry Hill Seventh-day Adventist Church.) You want to avoid the “confusion of identity” legal factor! The word, “*Independent*,” nicely avoids that problem, and your defense will be greatly weakened if you omit it from your church name. “*Independent*” shows that you are separate and not connected to regular conference churches. This public admission is not only a powerful legal defense, but it also just, honorable, honest, and right that you do this.

In addition, add a disclaimer below your church name, wherever it appears. *Here is how this present Legal Brief states it:*

In order to clearly show the independent status of their church, **the defendants have added a dis-**

claimer just below the church sign. In addition, by the main entrance door, or just inside, they have repeated the independent church name, plus, just beneath it, the disclaimer in an expanded form:

This is the wording on the disclaimer just below the main church sign:

“Not affiliated with General Conference churches”

This is the wording on the disclaimer by the front entrance:

“This independent Seventh-day Adventist Church is not affiliated with the General Conference of Seventh-day Adventists headquartered in Silver Spring, Maryland, or with any of its subsidiary conferences or churches.”

If you do not include the word “*Independent*,” and the disclaimer, you not only damage your “confusion of identity” defense, but also greatly weaken your “good faith” and “fair use” legal arguments.

Unfortunately, McGill’s group does not wish to add “*Independent*” to the church name; but instead has used a variant church name. I say, unfortunately, for this means that if his case is fought to the Supreme Court, it will not establish the legal precedent that any group can call their church Seventh-day Adventist, as long as they add the word “*Independent*”—which it is only proper and honest that they do.

For more on this, see section 5, entitled “*No Confusion of Identity*” (which is only in our 44-page book, *Legal Defense against a Trademark Lawsuit*. We did not have room in this five-tract set to include section 5). If you receive the initial letter warning that you are in trademark violation, either from the General Conference or their lead attorney, Vincent Ramik, contact me.

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LEGAL BRIEF FOR THE DEFENSE

IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

LEGAL BRIEF PRESENTED AS LEGAL DEFENSE IN A TRADEMARK LAWSUIT OVER THE USE OF THE PHRASES, “SEVENTH-DAY ADVENTIST” AND “SEVENTH-DAY ADVENTIST CHURCH”

8½ x 11, 41 pages, including a table of contents at front. \$4.00 + \$2.50 in U.S.

(At his request, we will provide a free CD of this *Legal Brief* to the attorney defending you, so he can quickly place the document in the single-column, large type, wide spaced format required by the courts.)

THE STORY OF THE TRADEMARK LAWSUITS

The entire history of these lawsuits from 1981 to the early 1990s, plus significant documents in the appendix. Covers the Huntville, Hawaii, and Kinship Cases.

8½ x 11, 80 pages, including a table of contents. \$5.00 + \$2.50 in U.S.

THE FLORIDA TRADEMARK LAWSUIT

History and analysis of the March 13-16, 2000 Florida Trademark Trial, not including the results of the final appeal (which was settled out of court, when the group agreed to no longer use the name). 8½ x 11m 80 pages, including a table of contents. \$5.00 + \$2.50 in U.S.

LEGAL DEFENSE AGAINST A TRADEMARK LAWSUIT

PLUS THE NOTORIOUS
SETTLEMENT AGREEMENT

An earlier report, which although obsoleted by *Legal Brief for the Defense*, still contains additional worthwhile information. 8½ x 11, 44 pages, including a table of contents. \$4.00 + \$2.50 in U.S.

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INTRODUCTORY STATEMENT

In this defense, I will provide evidence that—

1. This is a valid church, protected by the First Amendment: The defendant’s church is a valid church, which the First Amendment recognizes as a religious body. Under U.S. Constitutional Law this group has a right to worship God as an independent church, free from interference with its beliefs by another religious body.

2. Their religious beliefs require that they call themselves a “Seventh-day Adventist Church”: This church is required, by its beliefs, to identify itself as a “Seventh-day Adventist Church.” As will be shown, this requirement is an important part of its religious faith. And, because of certain church beliefs, held for over a century, this religious group must name itself as “Seventh-day Adventist Church,” or, according to those historic teachings, it is in apostasy from God.

3. Their church name avoids confusion of identity: When the General Conference won a lawsuit over the phrase, “Seventh-day Adventist Church,” the defendant church did not have “Independent” in their name. That Name was not different enough from that of a conference church. This lack has been supplied by the defendant church. The wording of their church name clearly shows that their church is self-governed, independent, and separate from all other Seventh-day Adventist bodies—including those belonging to the General Conference of Seventh-day Adventists headquartered in Silver Spring, Maryland.

4. Their disclaimer, beneath the church name, clearly states that they are not associated with the General Conference and its churches: In a good faith effort to eliminate any misunderstanding, and totally erase any suggestion of organizational connection with General Confer-

ence Churches, they have added a disclaimer, just beneath the church name, on the church sign. There is a second disclaimer by the entrance, in their church bulletins, and all other official papers in which the church name is used. This disclaimer, always placed immediately beneath their church name, clearly states that their little church is not affiliated with the General Conference and its churches. These disclaimers, along with the word “Independent” in the church name, were added in good faith to strengthen their fair use of the term, “Seventh-day Adventist Church.”

5. The General Conference has lost control of the phrase, “Seventh-day Adventist”: Another court has already ruled that the General Conference of Seventh-day Adventists lacks control over “SDA” and “Seventh-day Adventist,” on the grounds that both terms are generic. It was ruled that they can be used by individuals, regardless of their church affiliation, thus voiding General Conference control over those terms.

6. The original trademark filing for these terms was flawed and invalid and should have been rejected for many reasons: At the time of its original 1981 registration of those terms, the General Conference did not have legal grounds for valid trademarks for the phrases, “SDA” and “Seventh-day Adventist.” (It is significant that the General Conference never tried to register the phrase, “Seventh-day Adventist Church,” with the Trademark Office.)

7. Basic freedoms will be violated if the defendant church cannot call itself an independent Seventh-day Adventist church. If this church is required to obey the General Conference demands, its Bill of Rights freedoms of religion, worship, speech, and assembly will be violated. The members will live in fear and hiding, and meet together in secret. They will not be able to witness or evangelize their faith—for fear that their meeting place will be discovered. In addition, a number of the believers may abandon the faith in discouragement and go out into the world. By abandoning its name, “Seventh-day Adventist Church,” the group will be denying the faith and the historic

religious statements requiring them to call their church "Seventh-day Adventist."

Although a totally independent body, this group will be forced to obey a General Conference mandate—as though they were part of that denomination. The insistent demand and objective of the General Conference is that these humble Christians hide their presence and their faith.

Although the legal evidence we will provide for the above points will adequately provide for our defense, additional factors will also be presented which will significantly strengthen it.

Enough court precedents and other legal evidence will be here provided to show that this group has a legal right to identify themselves as Seventh-day Adventists, and their group as a Seventh-day Adventist Church.

This is, obviously, a test case. Freedom accorded to this small group, to practice their religion in peace, will mean that several hundred other small separatist Seventh-day Adventist groups will also be about to enjoy the First Amendment rights which should be accorded to all U.S. citizens.

FIVE PREVIOUS TRADEMARK CASES

In addition to citing other legal precedents, I may, from time to time, refer to one or more of five previous trademark cases by the General Conference:

Location of these court records are listed below. The entire court transcripts are on file and available for sale from the federal courthouse where the trial was held.

The Marik Case in Honolulu, Hawaii: *Civil [Case] No. 87-0274; General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Congregational Church, and John R. Marik, filed at the U.S. District Court, P.O. Box 50129, Honolulu, Hawaii 96850. July 15, 1987, Motion to Vacate the Court Trial and proceed directly to the judgment. The decision was rendered on December 8, 1987. The post-trial hearing before Judge Smith was held on February 22, 1988.*

The Marik Appeals Hearing in San Francisco, California: *Civil No. 87-0274; General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Congregational Church, and John R. Marik, U.S. Appeals Court, San Francisco, May 11, 1989. Decision was rendered on October 5, 1989. The Ninth Circuit Federal Court heard the appeal of this case and remanded it back to the*

lower court in Honolulu for retrial. Trial date was later postponed, so the Kinship Case could be tried first. But, before the remanded case could be heard in a lower court, on December 16, 1989, Pastor John Marik's hiding place in southern California was discovered and he was jailed. Freed on bond, he was in such stark terror that he abandoned his wife and children, rejected Christianity, and fled with another woman. Later, he signed papers, giving a legal precedent in this case to the General Conference.

The Patterson Case in Huntsville, Alabama: *Civil No. 87-HM-5338-EN; General Conference Corporation of Seventh-day Adventists v. Word of Faith Congregational Seventh-day Adventist Church, Inc., and Morris E. Patterson; filed at the U.S. District Court in Huntsville, Alabama. This case began in 1987, but ended that same year before the case went to court, when a terrorized church had Pastor Patterson sign away the church's rights to call themselves "Seventh-day Adventists," so he would not be jailed. This was a strange case because the name, "Seventh-day Adventist," did not appear on any church sign or bulletin. It was only on a paper registered with the county. But Patterson was preaching regular Adventist teachings and there were many Adventists living in the area. For this reason, the General Conference considered him to be "competition."*

The Kinship Case in Los Angeles, California: *General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc., CV 87-8113 PRP. Trial occurred on February 26-27, 1991. At 5:30 p.m. on the 26th, Judge Mariana Pfaelzer decided that the case involved First Amendment freedoms, and asked for briefs by both sides to be presented on March 27, when a post-trial hearing occurred. Her final ruling (decision) was given on October 3, 1991, and filed October 7, 1991, in the U.S. District Court, Central District of California. She ruled that "SDA" and "Seventh-day Adventist" are generic and not subject to trademark. Because Kinship did not use "Church" in its name, she did not rule on "Seventh-day Adventist Church," although it is believed that the legal principles which were the basis of her ruling would have applied equally to that phrase.*

The Perez Case in Miami, Florida: *General Conference Corporation of Seventh-day Adventists v. Raphael Perez d/b/a Eternal Gospel SDA Church, Eternal Gospel Church of Laymen Seventh-day Adventists, et al.; Southern District of Florida, Miami Division, Case 98-2940-CIV-KING;*

LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**PART TWO
OF FIVE**

THIS FIVE-PART TRACT SET IS ONLY A PORTION OF THE COMPLETE LEGAL BRIEF

Continued from the preceding tract in this series

James Lawrence King, Senior District Judge. March 13-16, 2000, Federal Courthouse, Miami, Florida. Judge King ruled against Perez, because his church did not have “Independent,” or something similar in its name. Perez laid plans to appeal to the Atlanta federal appeals court. But he decided to settle out of court and no longer use the contested phrase.

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FIVE LEGAL PRINCIPLES INVALIDATING THE PLAINTIFF’S CASE

1 - THE GENERIC FACTOR

2 - FAIR USE

3 - LACK OF LEGAL STANDING

4 - FIRST AMENDMENT RIGHTS

5 - NO CONFUSION OF IDENTITY

In the following presentation, “U.S.C.” (U.S. Code) = This is part of the actual text of a law enacted by Congress.

“U.S.” = This quotation is part of a U.S. Supreme Court decision.

“Lanham Act” = The U.S. Trademark Act of 1946 is also called the “Lanham Act” (60 Stat. 427, as amended, 15 U.S.C. sect. 1051 *et seq.*).

There are 124 quotations in this legal paper.

1 - THE GENERIC FACTOR

1 - *Generic things cannot be trademarked:*

The Lanham Act (trademark law) concerns itself with identifying things. If something belongs to one organization, another organization may not use it. But **if it can be shown that the phrases in question already belong to many people who have been using them, then they are not the subject of trademark.**

Something which cannot be trademarked is legally known as “generic.”

Generic marks are marks that identify the product but not its source. They are ineligible for incontestable status, because they are unregistrable. *KP Permanent*, 328 F.3d at 1067.

A generic mark is one “that tells the buyer what the product is rather than from where, or whom, it came.”—*Statement by Judge Pfaelzer in General Conference Corporation of Seventh-*

day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP; see *Park ‘N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 194-95 (1985), pp. 11-12.

Generic terms identify a general category of products, of which there can be many competing brands. “Seventh-day Adventist” describes this general category. Many individuals and local church groups classify themselves as fitting into this broad category.

“**Generic marks**—These are words or symbols that describe the product or service itself as a category, rather than distinguish between competing versions of the product or service. For example, “shredded wheat” is a generic term that refers to the category of breakfast cereals that are composed of layers of crunchy wheat strips molded together into a pillow-type shape. This cereal may be manufactured by Kellogg’s, Post, or others. And each manufacturer is free to use the term, “shredded wheat,” to advertise their version of the cereal. To prevent them from using “shredded wheat” would mean they could not equally compete with regard to this product.

“**Thus, generic words are not protected as trademarks precisely because to do so would be akin to granting a monopoly in the product itself**, not in a word or symbol.”—*Mark Law, “Generic.”*

“*Genericness as a defense*—Defendants can succeed with a genericness defense, **when the mark which has allegedly been infringed is a mark that describes the entire category** or genus of product that the mark is supposed to distinguish, and thus cannot receive protection under the law. **Generic marks are either generic from the outset or become generic after they become part of the common descriptive name of a category or genus of products.**

“**Thus a mark that has been registered can lose its registration through a cancellation proceeding or by order of the court where the term has been shown to have become generic through use.**”—*Ibid.*, “*Genericness as a Defense.*”

The above statement clarifies that the trademarked name can lose its registration either by cancellation proceedings, filed at the Trademark Of-

fice, or by a ruling of a court.

“A generic trademark is not entitled to [trademark] protection, even if the trademark has become incontestable [previously accepted by the Trademark Commission as a trademark].”—*Ibid.*

An example of this is *Application of Limestone Products Corp. of America*, 312 F. 2d 825 (C.C.P.A. 1963), in which the court decided that the term, “Calcite Crystals,” was merely a common descriptive name and therefore generic.

“The court considered the makeup of the product, ‘Calcite Crystals,’ and determined that it was simply calcium carbonate in crystal form. Accordingly, the court held that the name, ‘Calcite Crystals,’ was a common descriptive name for ground limestone.”—*Application of Limestone Products Corp. of America*, 312 F. 2d 825 (C.C.P.A. 1963).

The name, “Seventh-day Adventist,” is also descriptive: It identifies the faith of its adherent.

2 - Because the name of a church or religion is generic, therefore it cannot be trademarked:

What would happen if you started a new religious organization, and called it “Faith Baptist Church”? No one would sue you at all because “Faith” and “Baptist” are not only common terms, they are also expressions of religious experience. They describe the group’s religious faith and belief. Such terms are generic.

3 - The word, “Adventist,” cannot be trademarked because it is a generic word; that is, it applies to many different kinds of people.

“Adventist: A member of any of several Christian denominations that believe Christ’s second coming and the end of the world are near at hand.”—*American Heritage Dictionary of the English Language*, 1969 ed., quoted by Judge Pfaelzer at the Kinship trial; *General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated*, Case No. CV 87-8113 MRP, p. 19.

“Adventists: Christians concerned with the imminent Second Coming of Christ.”—*Random House Encyclopedia* (1977), p. 1884.

4 - The trademarked name, “Seventh-day Adventist,” over a period of more than 140 years, has become generic: Millions of people have called themselves “Seventh-day Adventist” ever since a little after the middle of the nineteenth century. It is the common descriptive name of a broad category of believers, under which there

is an immense variety of individual beliefs.

5 - The General Conference improperly uses “Seventh-day Adventist” as a noun (applying only to itself), rather than as an adjective (describing many variations): In order to avoid its obvious generic aspect, the General Conference uses the term as solely and exclusively naming itself, rather than what it actually is: a phrase describing one of many individuals and groups.

“Genericide—This occurs when a trademark starts out as distinctive or descriptive, but then though use becomes generic. This occurs when the mark becomes part of the common descriptive name of a category or genus of products.

“Genericide is more likely to happen to marks that are used improperly as nouns instead of adjectives, whether such usage is by the trademark owner or by others.”—*Mark Law*, “Genericide.”

6 - The General Conference claims the term, “Seventh-day Adventist,” belongs only to itself: It claims that this is the identifying name of the organization, and cannot be used by any group anywhere without its permission.

But, in addition to being the name of an **organization**, the term also accurately refers to—and belongs to—**individuals** and **local churches** who believe they adhere to Adventist religious beliefs. **Because the phrase, “Seventh-day Adventist,” can belong to all three, it is generic.**

7 - The General Conference claims the right to even forbid its own church members from using the name, “Seventh-day Adventist,” without its permission! (See 163-88NG General Conference Trademark Policy: *New Policy/GCO/88SM/88AC to CBR88YE, Revised Ed.*, dated 4-9-88, p. 2.) The General Conference wants to keep that phrase tightly controlled. (More on this later.)

However, on October 7, 1991, **Judge Pfaelzer, in the Kinship Case, ruled that “this Court is persuaded that the term, ‘Seventh-day Adventist,’ has a dual meaning: It refers not only to the Church, but to adherents of the religion of ‘Seventh-day Adventists’ ”** (*Kinship Case decision transcript*, p. 14). Therefore, she gave the decision to Kinship against the General Conference. Henceforth, individual Adventist believers had a legal right to call themselves “Seventh-day Adventists.”

8 - The term, “Seventh-day Adventist,” is generic because it is not a single company-

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7 owned product, but a type of product, of which there can be many subsets, types, and varieties.

All this may sound commercial, but **the trademark law was only designed to deal with commercial matters, not matters of religion**. Indeed, the U.S. Supreme Court has repeatedly ruled that church names are protected under the First Amendment and cannot be trademark controlled. (More on this later.)

The term, “Xerox,” belongs to a certain firm, but “photocopies” is generic. “Telephone” and “carrots” are generic. But “Lutheran,” “Baptist,” and “Seventh-day Adventist” belong to many variant groups—so they are generic.

9 - Groups of people have to be identified, and generic phrases identify them: In this world, we have to name things. What do you call people who hold to the faith given the defendants in this lawsuit? Because they hold to the faith of their spiritual forefathers, **they are accurately called “Seventh-day Adventists.” What else could you possibly call them? There is no other term which is applicable. Therefore the phrase is generic. It points to a type of people** rather than merely—or exclusively—to an organization headquartered in Silver Spring, Maryland.

10 - Attempts in the past to defend trademarked church names have generally failed: The only reason such General Conference lawsuits have had any success in our own denomination is due to the fact that, for several reasons, the cases have not been appealed. The U.S. Supreme Court would probably throw every one of them out, if they ever reached it.

11 - Even church names which are extremely rare and unique have been ruled generic: Two examples of church groups with extremely unusual names which hardly any churches would use are the “Baha’i” and “Christian Science” churches. Yet, in both instances, when the head of a denomination claimed trademark control, it lost the case in court. The judges ruled the names were names of religions, and therefore generic and protected by the First Amendment.

Those two court decisions closely parallel the issues in this present case and are of special significance. Both involve the original church suing a later offshoot for using its religion name plus “Church.” **Both share the same basic legal factors:** religious rights for the name expressing the church’s faith based on the First Amendment, genericness, as well as fair use. **In both of those other suits the defendant church arose at a later**

time than the original, and the offshoot church did not identify its church name with the word, “Independent.” —**Yet the court ruled that no confusion of identity was involved because the trademarked names (“Baha’i” and “Christian Science”) expressed religious faith.** In addition, as in the present suit here, both cases included “Church” as part of the contested term. The courts ruled that both could freely use the religion names (“Baha’i Church” and “Christian Science Church”),—even though the full church name of the smaller church was almost identical to that of the parent church.

(1) The Baha’i court case: The term, “Baha’i,” was the basis of the first of these cases. **Notice how very similar both of these extremely unusual religious names are to each other** (*National Spiritual Assembly and Trustees of the Baha’is vs. Spiritual Assembly of the Baha’is*). —Yet, because they represented religions, not automobiles or bottled soda drinks, they were ruled generic and not subject to trademark.

“Use of the name ‘Baha’i’ could not be enjoined [forbidden to be used by others] because it was the name of a religion.”—Judge Pfaelzer, in General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP; see Park ‘N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 194-95 (1985).

At issue was the question whether the defendant church had a right to call itself by that religious name.

The defendant church was even granted the right to make sales under the contested name, “Baha’i.”

“In *McDaniel v. Mirza Ahmad Sohrab*, 27 N.Y.S. 2d 525 (1941), the court decided the issue of whether the plaintiff, the National Spiritual Assembly and Trustees of the Baha’is of the United States and Canada, could contest defendant Spiritual Assembly of the Baha’is of New York’s right to operate under the description of the Baha’i religion. The plaintiff alleged that the defendant was creating an erroneous impression of being connected with, and authorized to represent, the Baha’i religion.

“The court held that the Baha’i plaintiff had no right to a monopoly of the name of a religion. It further held that the defendants had the absolute right to practice Bahaism and, more importantly, to conduct meetings, collect funds, and sell literature in connection therewith, and to conduct a [commercial] book shop under the business name, ‘Baha’i Book Shop.’

“Numerous courts have determined that, in light of a term being generic and hence a common descriptive name of a ‘product,’ such a term cannot become an exclusively owned trademark—regardless of the market situation—as to indication of origin or secondary meaning.”—*Supporting Brief presented to Commissioner of Patents and Trademarks, January 19, 1990, in W.L. Perry and V. Stocker v. General Conference Corporation of SDA, p. 20.*

(2) The Christian Science court case: The second case also involves a totally unique religious name: “Christian Science.”

In the Christian Science Case, **it was ruled, not only that the offshoot church was separate from the original church but also, that the practice of the religion predated the founding of the “mother church.”** (Later in this present case, evidence will be presented showing that the Seventh-day Adventist religion was practiced by individuals, two local conferences, and a publishing house—before the General Conference was formed.)

“In holding that ‘**Christian Science**’ was the name of a religion and hence unprotectable, the court in *Evans* found that the religion and the mother church were conceptually separate and that the religion preexisted the organization.”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP; see p. 12; see Evans, 520 A, 2d at 1352.*

Neither “Christian Science” nor “Christian Science Church” received trademark protection. Here is the court ruling:

“In the later case [*Evans*], the Supreme Court of New Jersey ruled that (1) ‘Christian Science Church’ was a generic name that was not entitled to trademark status, and (2) [the] Trademark Clarification Act afforded no protection to generic terms, ‘Christian Science’ or ‘Christian Science Church.’

“In the Christian Science Case, the New Jersey Supreme Court held that **the phrase, ‘Christian Science Church,’ was not entitled to trademark status because it was an inherently generic name.** *Christian Science v. Evans, 520 A. 2d at 1352.* The court determined that, **as a matter of law, ‘Christian Science’ was in the public domain and referred to anyone who practiced the Christian Science religion, not simply those who belonged to a specific church organization.**”—*Christian Science Board of Directors v. Evans, 105 N.J. 297, 520 A. 2d 1347,*

2 - FAIR USE

1 - Judge Pfaelzer, in the Kinship Case, mentioned the “fair use” issue as applying to a Seventh-day Adventist trademark case:

“Fair use: Why should this organization [Seventh-day Adventist Kinship] not have a right to fair use of the name? Does everyone who calls themselves ‘Catholic’ have to be approved by the Vatican to do so? ‘Fair use’ is an important legal term.”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship.*

2 - The defendant church uses the name, “Seventh-day Adventist,” in good faith. It is not seeking to harm the plaintiff’s church, but only to describe its own religious beliefs: Here are two statements on trademark law which explain this:

Independent groups are entitled to “fair use” of the phrase when it can be shown that their “intent” is honest and sincere, that they are not profiting from their action, and that they can show strong reasons why they must use their religious name, (in this case, “Seventh-day Adventist”) in their church name.

“*Fair Use*—Fair use of a mark is **use [of a trademarked name] in a way that is descriptive of one’s products, rather than as a trademark,** and use that is undertaken in good faith (i.e. not to cash in on the goodwill of the trademark owner.) **Fair use is generally treated as an absolute defense to a claim of trademark infringement.**”—*Mark Law, “Fair Use.”*

“*Good faith defense*—When a defendant claims that use of plaintiff’s mark is defensible as a fair use, one deciding factor is whether or not the defendant was exercising good faith . . . **If it appears that defendant was justifiably using the mark in order to describe the underlying goods or services, then the defendant will likely be found to have had good faith in using the mark.** Furthermore, since the plaintiff in a trademark lawsuit is often seeking injunctive relief, which is an equitable remedy requiring the balancing of harms, **whether or not the defendant exercised good faith or bad faith can have a considerable impact on the court’s decision.**”—*Mark Law, “Good Faith Defense.”*

3 - An important “strengthening of “fair use” by the defendant was made in a 2004

Continued on the next tract

LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**PART THREE
OF FIVE**

THIS FIVE-PART TRACT SET IS ONLY A PORTION OF THE COMPLETE LEGAL BRIEF

Continued from the preceding tract in this series

Supreme Court case: Fair use has always been an important defense in U.S. trademark law. But a very important Supreme Court decision greatly strengthened its use by the defense.

The following data on this landmark 2004 U.S. Supreme Court *KP Permanent Make-Up* trademark case is summarized from a June 10, 2006, legal analysis by Michael Fuller, J.D., of the University of Baltimore Law School:

In *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc. (2004)*, the U.S. Supreme Court held that a defendant asserting the affirmative defense of fair use in response to a claim of trademark infringement does not have to shoulder the burden of proving there was no likelihood of confusion as a result of their fair use. 125 S. Ct. 542, 547-48 (2004). The Supreme Court granted KP Permanent's petition for *certiorari* in this matter to resolve a split among six of the federal courts of appeal (125 S. Ct. 542, 547-48; especially 547, 2004).

[A writ of *certiorari* is written permission, issued from a higher court, calling for the record of a proceeding from a lower court or an official or quasi-official judicial body to be presented for review or inspection.]

As you can see from the above legal decision, this was a major decision by the Supreme Court.

Instead of having the defendant prove that the two similar name cases are actually quite different,—henceforth, the plaintiff must prove that they are too similar!

In its unanimous opinion, written by Justice Souter, the Court found that a defendant in a trademark infringement case may assert the fair use defense of 15 U.S.C. §1115(b)(4) without having to bear the burden of negating a likelihood of confusion. **Instead, the burden of proving a likelihood of confusion remains on the plaintiff.** To reach this decision, the Court engaged in some detailed statutory interpretation.

The Court first considered the elements that a party claiming trademark infringement must prove. **The plaintiff must prove that, due to the defendant's infringement, there exists a likelihood of confusion to consumers.** However, 15 U.S.C. §1115(b)(4) does not explicitly require that a defendant asserting the fair use defense bear the burden of negating a likelihood of confusion.

The Court ruled that “Congress said nothing about likelihood of confusion in setting out the elements of the fair use defense in §1115(b)(4).” Furthermore, according to this Supreme Court ruling, to read into the fair use statute a requirement of negating a likelihood of confusion would be nonsensical. The Court stated: “Starting from these textual fixed points, it takes a long stretch to claim that a defense of fair use entails any burden to negate confusion.” To say this in simpler words, **a fair use defense by the defendant does not mean it has to show that there was no confusion of identity.**

Additionally, the Court reasoned that because 15 U.S.C. §1114 refers to a likelihood of confusion and 15 U.S.C. §1115(b)(4) does not, **Congress did not intend that a defendant must prove that there was no likelihood of confusion when invoking the fair use defense.**

The Court also noted that the common law of unfair competition recognized **it was quite normal—and hence legal—that some degree of consumer confusion may stem from a defendant's descriptive use of the plaintiff's mark**, stating that “‘[t]he use of a similar name by another to truthfully describe his own product does not constitute a legal or moral wrong, even if its effect be to cause the public to mistake the origin or ownership of the product.’ ”

—The above legal analysis summary of this important U.S. Supreme Court decision basically says that **other individuals and firms have the right to a fair use of the trademarked name, and cannot be sued for doing so.**

Here is how the court applied *Fair Use* to the case of *Christian Science Board of Directors v. Evans*, 105 N.J. 297, 520 A. 2d 1347, 1350 (N.J. 1987):

“The Lanham Act specifically provides that no incontestable [safe trademarked control] right shall be acquired in a mark which is the ‘**common descriptive**,’ as opposed to the ‘**merely descriptive**,’ name of an article or substance, patented or otherwise. 15 U.S.C. par 1065(4). No court should assume the registrability [validity] of a mark.”—*Christian Science Board of Directors v. Evans*, 105 N.J. 297, 520 A. 2d 1347, 1350 (N.J. 1987).

The name, “Seventh-day Adventist,” is extremely descriptive. It describes what certain

people believe. Hence, it is “common descriptive.”

“In holding that ‘Christian Science’ was the name of a religion and hence unprotectable, the court in Evans found that the religion and the mother church were conceptually separate and that the religion preexisted the organization.”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated*, Case No. CV 87-8113 MRP; see p. 12; see *Evans*, 520 A, 2d at 1352.

“[In the Christian Science Case,] The court grounded its opinion on the fact that the religion known as Christian Science was founded and practiced prior to the formal organization and establishment of the mother church [in Boston], formally known as the First Church of Christ, Scientist, and that the Christian Science religion and organization were conceptually separate. 520 A. 2d at 1350.”—*Brief of Amicus Curiae, presented to Ninth Circuit Court of Appeals, in Hawaii Case*, p. 19.

This “fair use” principle is made even more difficult for the General Conference to oppose, since **the contested terms (“Seventh-day Adventist” and “Seventh-day Adventist Church”) do not apply to goods and services, but to religious faith and freedom of speech.**

Here is a summary of six different cases that were heard in the U.S. Supreme Court,—each of which the plaintiff lost:

The effects of the *125 S. Ct. 542, 547-48 (2004)* Supreme Court decision are many. **Generic and descriptive marks continue to receive the lowest level of protection under federal trademark law.** See *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2nd Cir. 1976). Generic marks are not entitled to federal trademark protection at all, and **marks that are shown to have become generic may be canceled at any time.** *Park 'N Fly v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 194 (1985). **Merely descriptive marks cannot be registered unless the plaintiff can prove the mark has acquired distinctiveness through secondary meaning, a high bar to reach.** 15 U.S.C. §1052(f). Courts have historically been unsympathetic toward plaintiffs who claim infringement of descriptive marks. See *Cosmetically Sealed Industries, Inc. v. Chesebrough-Pond's USA Co.*, 125 F.3d 28, 30 (2nd Cir. 1997). (“If any confusion results, that is a risk the plaintiff accepted when it decided to identify its product with a mark that uses a well-known descriptive phrase.”) However, **fanciful or arbitrary terms are considered strong marks for purposes of trademark protection.** See *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992).

Thus we see that, in view of the above six Supreme Court decisions, the General Conference has an even weaker case in attempting to defend its trademark than it had years ago.

In the case of *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 125 S. Ct. 542, 551 (2004), the Supreme Court sent a strong message to the lower courts:

“A defendant asserting the fair use defense to an incontestable mark has no burden of negating a likelihood of confusion in a trademark infringement case. It [fair use] is pretty much an absolute defense to trademark infringement.”—*Case comment by Michael Fuller, J.D., of the University of Baltimore Law School.*

In summary of this, **here are several points which, because of the KP Permanent ruling, weaken the General Conference's position:**

In a typical infringement litigation where the defendant has invoked the fair use defense, this test would require the gathering of a little more evidence in addition to that which is already required for the likelihood of confusion and fair use tests. The test would consider the following factors:

(1) Any change in the economic position of the junior user that could be directly attributable to the use (or denial of the use) of the mark is significant: This element could be shown through simple balance sheets, other accounting information, or surveys (as an adjunct to determining actual confusion, below), while acknowledging that correlation does not equal causation. In other words, if the court found a change in economic position, it would not treat it as dispositive, but merely suggestive of the junior user's descriptive use of the mark causing this improvement. However, if no financial difference was found, the court would have to hold that this suggested that no economic advantage could be attributed to the potentially infringing use of the senior mark. Alternatively, **the court should take into consideration any data which shows that the defendant would be potentially injured if denied the right to use the mark descriptively for his product.**

Small independent Adventist groups would be greatly disadvantaged and injured, if they had to choose between fighting a General Conference lawsuit, hiding out so they could not be discovered, or yielding and denying their faith.

(2) Descriptive marks are weaker than distinctive marks: The General Conference phrase, “Seventh-day Adventist,” is descriptive in nature because it describes certain people and their religious beliefs. The disputed trademark has to be descriptive in order for the fair use defense to be used against it. Without the existence of a descriptive mark, the fair use defense would be

11 inapplicable.

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The name, “Seventh-day Adventist,” is highly descriptive! It describes the faith of the believers. In contrast, “Coca Cola” is distinctive; for it only identifies a brand.

“*Legal strength of a trademark*—Strength of a mark can be measured on two different levels: marketing strength and legal strength. *Words that describe* very closely the underlying good or service they represent have strong marketing potential, since such marks immediately communicate to customers what the product actually is or does. An example is “Quick Fix Radiator Mix.” This tells the customer immediately that it is a substance that fixes radiators quickly. **The problem with using descriptive marks such as these is that they are weak from a legal perspective. The legal strength of a mark is generally measured by its distinctiveness, not its descriptiveness.** In fact, distinctiveness and descriptiveness are almost two ends on the same spectrum. Generally speaking, the more distinctive the mark, the stronger is the legal protection available for that mark, but the less ability the mark has to communicate with the consumer. Distinctive marks are those that are coined or fanciful (made up), or suggestive (suggesting qualities of the underlying products without plainly describing them).”—*Mark Law, “Legal Strength of a Trademark.”*

Other examples of distinctive, unique trademark names would be WD-40, Trailways, Zenith, Verizon, Formica, Visa, Exxon, and Cingular. They do not describe the product. These are also called “coined terms.”

(3) “Coined terms (Fanciful terms)—These are terms that are invented for the sole purpose of serving as trademarks. Examples include KODAK for photographic equipment, UNIX for a computer operating system, REEBOK for shoes, and XEROX for photocopying equipment. **Coined marks receive the highest level of protection, because a coined word has no known meaning and therefore has no possible association with the goods or services for which it is used.** As a result, infringers of these marks are hard-pressed to provide any plausible explanation for their use of the mark, leaving the impression that the real reason was in fact a blatant attempt to trade off the goodwill generated by the owner of the trademark.”—*Ibid.*, “*Coined Words.*”

“Xerox” is a coined word because it does not describe the product. But, from its very beginning nearly a century and a half ago, **the phrase, “Seventh-day Adventist,” was used solely to describe certain people and their religious faith. Because it is totally descriptive, “Seventh-day Adventist” has essentially no legal strength** as a trademark.

In addition, small, independent Adventist groups only meet for worship; they are not competing with anyone.

(4) “Descriptive” words and phrases cannot be trademarked: This is an important point. The courts have noted **the importance of “protect[ing] the right of society at large to use words or images in their primary descriptive sense . . .”**—*Car-Freshner Corp. v. S.C. Johnson & Son, Inc.*, 70 F.3d 267, 269 (2nd Cir. 1995).

Both “Seventh-day Adventist” and “Seventh-day Adventist Church” are fully descriptive terms! They describe the religious beliefs of individuals and groups. Everyone has a right to use these terms in speech, writing, and general use.

(5) Most other churches are not suing one another: The Mormons based in Utah (“Church of Latter-day Saints”) are not suing the one with headquarters in Missouri (“Reorganized Church of Latter-day Saints”); yet both have nearly the same name.

The “Church of God (Anderson)” headquartered in Anderson, Indiana, is not suing the “Church of God (Cleveland),” in Cleveland, Tennessee. —**Yet both denominations have the very same name!**

Look through a book listing Protestant churches in America, and you will find dozens of examples!

3 - LACK OF LEGAL STANDING

The General Conference lacks “legal precedence and standing” to sue separated groups of Seventh-day Adventists, by claiming trademark violations.

A surprising number of different points fall under this category. Some of them center around failure by the General Conference, at the time of its original filing of these trademarks, to give full disclosure to the U.S. Trademark Office of certain facts which would have invalidated its trademark.

“*Protectability of a Mark*—A mark is capable of being registered by the U.S. Patent and Trademark Office and protected in the courts as long as the mark (1) **is not being used by someone else [before it was registered with the Trademark Office];** (2) **is not forbidden [not violating the First Amendment];** (3) **is distinctive [uniquely different and not already used by others];** and (4) **is being used in commerce to allow consumers to identify one brand [they can purchase], and distinguish it from others.**”—*Mark Law, “Protectability of a Mark.”*

On every point in the above definition, **the disputed General Conference trademark, “Seventh-day Adventist,” is not able to be protected in the courts.**

When the name was initially presented to the Trademark Office, it should have properly been rejected by the Trademark examiner.

“Rejection by the Trademark Examiner— An initial refusal to register a mark made by the U.S. Patent and Trademark Office (USPTO) Examining Attorney. **Marks may be rejected for several reasons**, including that the mark is likely to cause confusion with other marks, is not distinctive, is generic or forbidden, or for inadequacies of the application itself such as a description of goods that is too vague, or specimens that don’t demonstrate use for the claimed goods or services.”—*Ibid.*, “*Rejecting by the Trademark Examiner.*”

Evidence provided here indicates that the trademark for “Seventh-day Adventist” may have been fraudulently obtained.

“Fraud—Fraud occurs when the mark owner knowingly made a false representation to the U.S. Patent and Trademark Office (USPTO) regarding a material fact, or else willfully withheld material information, and the USPTO would not have issued the registration but for its reliance on the false representation.

“Fraud in procuring or maintaining a trademark registration is a defense to [the plaintiff’s charge of] trademark infringement, and can lead to the cancellation of the mark’s federal registration. (The mark owner retains common law rights). Additionally, under *Lanham Act §38* a civil court may award damages to any person who has been damaged by the mark owner’s fraud.”—*Mark Law*, “*Fraud.*”

1 - The very definition of a trademark does not agree with the way in which the General Conference is using theirs: Their use of “Seventh-day Adventist” violates the very meaning of what trademarks are to be used for.

“[A trademark is defined as] any word, name, symbol, or device, or any combination thereof adopted and issued by a manufacturer or merchant **to identify his goods and distinguish them from those manufactured or sold by others.**”—*15 U.S.C., sect. 1127.*

In the above excerpt from the U.S. Trademark Law enacted by Congress, no mention is made about church names; it only mentions about goods which are manufactured and sold.

2 - Neither of the two contested phrases (“Seventh-day Adventist” and “Seventh-day Adventist Church”) are goods which are manu-

factured or sold: The trademark law was not designed for churches, religions, or religious beliefs. **To do so infringes on the First Amendment right of religious freedom.** (More on this later.)

According to the U.S. Trademark Law, trademarks are:

“Any word, name, symbol, or device, or any combination thereof . . . used by a person . . . **to identify and distinguish his or her goods . . . from those manufactured and sold by others** and to indicate the source of the goods, even if that source is unknown.”—*15 U.S.C. §1127.*

The Trademark Law is about commercial goods, not religious faith.

“Trademark—A trademark can be a word, name, symbol, device, or any combination thereof **which is used to identify and distinguish the goods or services of one company from goods or services of another.**

“In order to qualify as a trademark, the mark must be used in federally regulated commerce, and the mark must be distinctive. In a nutshell, the distinctiveness requirement means that a mark cannot describe the underlying product.”—*Mark Law*, “*Trademarks.*”

As mentioned earlier, the “distinctiveness” requirement is fully met in a coined word or phrase, such as “Xerox” brand photocopiers.

It is clear that in two important ways, “Seventh-day Adventist” and “Seventh-day Adventist Church” cannot be protected by trademark: (1) They **refer to religion**, not to commercial goods and sales. (2) The phrases are **totally descriptive:** they describe a special people and their faith.

3 - In order to violate the Trademark Law, the defendant church would have had to use the trademarked phrases in commerce, which has not been done:

The contested phrases, “Seventh-day Adventist” and “Seventh-day Adventist Church,” have not been “exchanged” or sold in a regular marketplace. The following court decision explains this:

“This court lacks jurisdiction over the subject matter of this complaint [lawsuit] under the Lanham Act, since **defendant has not used plaintiff’s trademark or service mark in any commerce which is regulable by Congress . . .** Under the ‘commerce clause’ of the United States Constitution, ‘commerce’ implies that there is a commodity capable of being reduced to private possession and then exchanged for goods or services of the same or similar economic value.”—*State ex rel Douglas v. Sporhose, 208*

LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**PART FOUR
OF FIVE**

THIS FIVE-PART TRACT SET IS ONLY A PORTION OF THE COMPLETE LEGAL BRIEF

Continued from the preceding tract in this series

Neb. 703, 305 N.W. 2d 6y14, 610 (1981).

4 - Trademark laws were made for business and industry, not churches.

Judge Pfaelzer, in the Kinship Case, made this statement:

“As one court observed, **the law of unfair competition has developed primarily in commercial settings, and its language is ill-suited for application to religious institutions.**”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP, p. 8.*

5 - General Conference “service marks” are also invalid: The General Conference says it has “trademarks and service marks” on “Seventh-day Adventist.” A federal *trademark* is about goods transported across state lines, which are for sale. **In contrast, a federal service mark pertains only to words, symbols, phrases, etc., used in interstate commerce to identify and distinguish services which are sold,** as opposed to identifying goods.

The shirts you buy in the store are “goods.” You had to pay for them. But if you later take the shirts to a dry cleaning shop to have them cleaned, they do it as a *paid* service. **In the first instance, you purchased a product; in the second, you paid for a service. However, in both cases, you bought something!** You paid for the goods or the services with cash or credit card. A transfer of money was involved, and the money was *required* as part of the transfer—or you did not receive the goods and services.

None of the Adventist churches—either conference or independent—are selling anything in church! No goods or services are sold.

So not only are General Conference trademarks on “Seventh-day Adventist” and “Seventh-day Adventist Church” invalid, but their service marks on those phrases are also.

6 - The General Conference trademarks are used as nouns and not as adjectives, as required: This may seem to be an odd requirement, yet it is true. It means that **to use the trademark properly,—it should be churches which are being sold!** Using “Seventh-day Adventist” as an ad-

jective, in the proper legal trademark sense, would be thus: “*Seventh-day Adventist brand churches for sale.*” The following paragraph explains this:

“*Proper Use of a Trademark*—To use a mark properly, the trademark owner should: (1) **always use the mark as an adjective of the underlying product rather than as a noun**, as in “people prefer CLUB HOUSE brand steaks” rather than “people prefer CLUB HOUSE;” (2) *Italicize, underline, capitalize or boldface the mark when it appears in text, in order to set it out from the generic word for the product;* (3) *affix the mark to the goods or services;* (4) *provide proper notice of trademark rights.*”—*Mark Law, “Proper Use of Trademarks.”*

As the above example reveals, **to use the phrase properly, the General Conference should call its churches “Seventh-day Adventist brand churches,” along with a sale price on a nearby sign.** Instead, it uses “Seventh-day Adventist Church” as a noun.

7 - When included in written text, the trademarked terms (“Seventh-day Adventist,” etc.) should always be set out from the generic word, with the “registered sign” immediately after the phrase, to show that they are trademarked products. But this is not done. The General Conference does not do this, because church members would be upset that it is trying to trademark their religious faith.

“*Proper Use of a Trademark*—To use a mark properly, the trademark owner should: . . . (2) **Italicize, underline, capitalize or boldface the mark when it appears in text,** in order to set it out from the generic word for the product; (3) *affix the mark to the goods or services;* (4) **provide proper notice of trademark rights.**”—*Mark Law, “Proper Use of Trademarks.”*

8 - The attempt to control the religious freedom of religious organizations is a violation of the Lanham Act: The U.S. Trademark Law does not have jurisdiction over any names which describe a religion.

This is because **the laws enacted by Congress (including the Lanham Act) must conform to the U.S. Constitution and its Bill of Rights.** These rights are broad in their scope. —According to the Supreme Court, **not only individuals but, organizations (including independent churches)**

can hold and share religious views.

The following Supreme Court ruling clearly states this:

“Religious organizations are extended the same right under the free exercise clause [of the First Amendment] to be free from government coercion as is extended to individuals.”—*Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 97 L.Ed. 120, 73 S.Ct (1952); quoted in *Murdoch v. Pennsylvania*, 319 U.S. 105, 87L. Ed. 1292, 63 S.Ct. 870 (1943), 145 ALR 81; *Fallett v. McCormick*, 321 U.S. 573, 88 L.Ed. 938, 64 S. Ct. 717 (1944), 152 ALR 317.

9 - Other Adventist denominations were already using the name when the trademark application was filed: The General Conference deceptively obtained a trademark on the name, “Seventh-day Adventist,” without telling the Trademark Office that other church bodies had for decades been using that name in their official church names. A trademark that is filed for a word or phrase—that has been used by others in the same line of activity for years prior to the trademark application date is rendered invalid.

In her legal decision in *Adventist Kinship*, Judge Pfaelzer mentioned that **at least two other denominations in America had the term in their official titles, yet both were started decades before the General Conference trademarked the name on November 10, 1981.** Therefore the General Conference does not have the right to control the term (*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc.*, CV 87-8113 PRP, Judge Mariana Pfaelzer’s ruling [decision], October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California).

(The two organizations are the Seventh-day Adventist Reform Church and the Davidian Seventh-day Adventist Church. More on both later in this section.)

It is known that the General Conference does not dare sue either of those denominations, since both predate its trademark. An attempt to do so would result in quickly canceling it. When the General Conference first applied for the trademarks, it withheld these facts from the Trademark Office. If it had disclosed the truth, the Trademark Examiner would quickly have canceled those marks.

For example, Coca Cola could not trademark its name if other companies were previously marketing products under that name.

This important principle is stated by Judge Pfaelzer in her *Kinship* ruling. Note that she cites a

major Supreme Court decision as a source:

“Because it does not [correctly] identify the origin of a product, it is not entitled to trademark protection.”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated*, Case No. CV 87-8113 MRP; see *Park ‘N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 194-95 (1985), p. 12.

The November 10, 1981, trademark registration of the terms, “Adventist” and “Seventh-day Adventist,” was invalid because a number of independent groups were already using those names.

General Motors could not file for trademark protection for its brand name, if the Trademark Office knew that other firms are already making cars under that name.

We have here a case of falsification in omitting the existence of other prior denominations with that name. **The phrase, “Seventh-day Adventist,” is used by several different church bodies, groups, and organizations, all of which are independent of one another.** Some have been quite small; others have been rather large. The General Conference is not the only one. Several hundred have sprung up since the early 1980s, when liberal pastors and workers, graduating from liberal colleges, began modifying church standards and beliefs.

One such organization was the **Seventh-day Adventist Reform Movement, which began using the name in Germany, in 1915, and only a few years later in America.** Another was the **Davidian Seventh-day Adventist Association, which began using that name in 1942.** Neither organization was ever subsidiary to, or controlled by, the General Conference in Maryland.

“Seventh-day Adventist Reform Movement—An offshoot movement beginning in Germany in 1915 . . . The ‘reformist’ delegation presented their case before the General Conference delegation at Friedensau Missionary Seminary, Germany, in July 1920.”—*Seventh-day Adventist Encyclopedia*, 1976 ed., pp. 1332, 1333.

“Shepherd’s Rod . . . [was] an offshoot lunched by Victor T. Houteff, member of an SDA church in Los Angeles, California, in 1929, popularly called the ‘Shepherd’s Rod’ after the title of his first book. His organization took the name of ‘Davidian Seventh-day Adventist.’ ”—*Ibid.*, p. 376.

“In 1942 the name of the organization was changed [from ‘Shepherd’s Rod’] to the ‘Davidian Seventh-day Adventist Association.’ ”—*Encyclopedia of American Religions*, p. 467.

10 - The contested phrases primarily apply to individuals: The contested name, “Seventh-day Adventist,” has been used, not only

15 by groups but by millions of people to represent their faith, both before and after the 1981 trademark filing.

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The name, "Seventh-day Adventist," refers to people holding to a set of religious beliefs. The word, "church," applies to a group of individuals who essentially believe those religious beliefs. **Both phrases primarily apply to individuals, and only in a secondary sense to organizations or denominations.** Thus the phrase, "Seventh-day Adventist Church," primarily applies to individuals which have banded together to form a local congregation. Only in a secondary sense can it denote an overarching organization (a denominational headquarters).

It is for local churches to decide whether they should be in the denomination; **it is not for a few men at denominational headquarters to decide who can be a "Seventh-day Adventist" or have a "Seventh-day Adventist Church."**

11 - The phrases, "SDA" and "Seventh-day Adventist," have already been ruled invalid trademarks: In her October 7, 1991, Adventist Kinship ruling, Judge Pfaelzer ruled that both "SDA" and "Seventh-day Adventist" are generic and cannot be trademarked. Yet, in the March 2000 Florida Lawsuit, the General Conference did not mention that. But they maintained that the General Conference controlled the phrase, "SDA."

"The Court finds that, as used by SDA Kinship, **'Seventh-day Adventist' and its acronym 'SDA' are generic, and are not entitled to trademark protection.**"—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP, p. 15.*

"Conclusion: The terms, 'Seventh-day Adventist' and 'SDA,' as used by SDA Kinship [without "Church" after either term] are generic. **This finding disposes of all of the claims asserted by plaintiff.** Therefore, judgment shall be entered in favor of the defendant."—*Ibid., p. 18.*

12 - These trademark suits falsify the work given to Christians: The twisted use made by the General Conference of the phrase, "Seventh-day Adventist," in seeking to hound out of existence those not submitted to its authority, attempts to change the purpose assigned by God to Christians—from that of giving the Gospel to merely selling merchandise.

"Defendant's primary occupation and endeavor is the proclamation of the gospel of Jesus Christ. The gospel of Jesus Christ cannot be bought or sold. **Defendant's use of the name, Seventh-day Adventist, is an essential part of their**

proclamation of the gospel of Jesus Christ; it is its essence, its centrality and meaningfulness. Accordingly, defendants are not engaged in commerce at all, and therefore do not come within the scope of the regulatory provisions of the Lanham Act."—*Max Corbett, Motion to Set Aside Judgment, Hawaii trademark case, December 28, 1987, pp. 6-7.*

13 - The trademark lawsuits fail to specify what saleable goods have been misused:

"Throughout plaintiff's complaint, **it has failed to specify what goods or services, in plaintiff's trademark, defendant is alleged to have used.** Plaintiff has also failed to specify in what manner defendants are supposed to have engaged in acts which comprise a use in commerce regulable by Congress. If defendant was alleged to have engaged in interstate commerce, plaintiff should have so stated. If defendant was alleged to have engaged in intrastate commerce, but such intrastate commerce was of such a significant and substantial amount as to affect plaintiff's interstate commerce, then plaintiff should have so alleged.

"In the absence of such information, the court lacks jurisdiction over the subject matter of the complaint, since there is no trademark registration which has been infringed and there is no unfair competition . . . Clearly, the jurisdictional amount has not been met since **there is not one single act alleged to have been performed by defendant such as would constitute damage.**"—*Max Corbett, Motion to Set Aside Judgment, Hawaii trademark case, December 28, 1987, pp. 6-7.*

14 - "Seventh-day Adventist Church" was never included in any trademark application:

The term, "Seventh-day Adventist Church," was not included in the U.S. Trademark Office filings; only the terms, "Adventist" and "Seventh-day Adventist." Yet the Kinship judge ruled that "Seventh-day Adventist" was generic. This present trial is about the phrase, "Seventh-day Adventist Church," which was never trademarked by the General Conference.

15 - The term, "Adventist," is also totally generic, although it too was trademarked:

It is our understanding that the term, "Adventist," has never been successfully ruled on as an inflexible trademark by any court. The General Conference does not dare focus a trademark lawsuit on that single word; for it would even more quickly lose the case.

16 - Church worship services were not in-

cluded in the original filing for the term, “Adventist”: Two trademark filings were made for the single word, “Adventist.” The first one was filed on November 3, 1981, and only listed trademark protection for publications and medical care and facilities. The second, filed a year later on November 30, 1982, added educational instruction in schools. And, **in a separate paragraph dealing with health care (not church services), they added “religious observances and missionary services.” No mention was made of church Sabbath School or worship services.**

17 - Church worship services were also not included in the original filing for the term, “Seventh-day Adventist”: This is an important fact. The original, official trademark application, filed by Vincent Ramik on behalf of the General Conference on November 10, 1981, **only lists nonreligious commerce and related activities. The only exceptions are “religious” publications (para. 2), and “conducting religious observances and missionary services” listed under para. 5, discussing “health care services.” This entire application is for commercial, not religious purposes. Worship services, Sabbath School services, and Church services are not mentioned;** only incidentally mentioned was “conducting religious observances,” such as a prayer breakfast or Easter sunrise service, which some businesses occasionally do for the patients in a hospital or nursing home. The General Conference was very careful not to include religion in that filing—because, if they had, it would have been rejected.

Here are the only references to religious matters in this 1981 trademark filing for “Seventh-day Adventist”:

“For religious books, magazines, [etc.] . . . in commerce.”—*Trademark/Service Mark Principle Register: Seventh-Day Adventist, para. 3.*

“For health care services—namely, hospital, dental, pharmaceutical, nursing home, and medical laboratory services, conducting religious observances and missionary services, in Class 42 (U.S. CL. 100).”—*Ibid., para. 7.*

Nowhere in that trademark application is there the slightest hint of the real purpose of this trademark registration: to eliminate other Seventh-day Adventist churches!

In addition, **it is highly significant that no attempt was ever made to trademark the phrase, “Seventh-day Adventist Church.” —Yet that is the sole target of all the lawsuits,** not the use of “Seventh-day Adventist” in books or flyers,—which the General Conference knew could not be stopped

by a trademark lawsuit! (U.S. Copyright Law permits incidental use of such words in books and flyers.)

If the real objective had been disclosed, the Trademark Examiner would quickly have canceled the new trademark as generic and in violation of First Amendment protections.

18 - A follow-up affidavit was never filed by the General Conference: A little detail which the General Conference’s lead attorney, Vincent Ramik, forgot was the filing of a required affidavit prior to the expiration of the mandatory 5-year waiting period before filing a lawsuit against any group for trademark violation. **Judge Pfaelzer, in the Kinship Case, said that this nullified their trademark.**

“Plaintiff’s [the General Conference’s] trademark was effective November 10, 1981. For such trademark to remain effective [in force at the Trademark Office], **an affidavit was required to be filed in the Patent and Trademark Office prior to November 10, 1987, 15 U.S.C. sect. 1058(b).** The record does not reflect that such affidavit has been filed. **This is prima facie evidence that the trademark is invalid and subject to cancellation** by the Commissioner of the Patent and Trademark Office.”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP, p. 9.*

That is an important statement! Therefore, the General Conference does not hold a valid trademark on anything they filed in November 1981.

19 - The Lanham Act was passed to protect businesses, not to criminalize religion: The original U.S. Trademark Law was enacted by Congress to protect business firms, not to provide a means which a church or denomination could use to criminalize, on a federal level, worship groups which it considered to be rivals.

20 - Where there is no commerce, there is no trademark violation: Trademark violations do not apply to groups and organizations which are not engaged in commerce:

Federal trademark law only has jurisdiction over intrastate and interstate commercial—buy-sell activities. Trademark law was enacted and worded to protect commercial products. The Lanham Act was not passed by Congress to decide who could practice their religious beliefs or punish those who hold beliefs shared by others.

The independent church in this present law-

LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**PART FIVE
OF FIVE**

THIS FIVE-PART TRACT SET IS ONLY A PORTION OF THE COMPLETE LEGAL BRIEF

Continued from the preceding tract in this series

suit does not engage in commerce, unless a rare evangelistic effort in a local or nearby town could be considered to be commerce! (Yet other court decisions, noted elsewhere, permit the sale and distribution of religious literature.) For example:

“The court held that the plaintiff had no right to a monopoly of the name of a religion. It further held that the defendants had the absolute right to practice Bahaism and, more importantly, to conduct meetings, collect funds, and sell literature in connection therewith, and to conduct a [commercial] book shop under the business name, ‘Baha’i Book Shop.’”—*Supporting Brief presented to Commissioner of Patents and Trademarks, January 19, 1990, in W.L. Perry and V. Stocker v. General Conference Corporation of SDA, p. 20.*

The following court decision clearly spells out this important truth: **Where there is no commercial activity, trademark law does not apply:**

“This court lacks jurisdiction over the subject matter of this complaint [lawsuit] under the Lanham Act, since defendant has not used plaintiff’s trademark or service mark in any commerce which is regulable by Congress . . . Under the ‘commerce clause’ of the United States Constitution, ‘commerce’ implies that there is a commodity capable of being reduced to private possession and then exchanged for goods or services of the same or similar economic value.”—*State ex rel Douglas v. Sporhose, 208 Neb. 703, 305 N.W. 2d 6y14, 610 (1981).*

That is an outstanding court decision! The alleged trademark violation was ruled invalid because **no commerce—that is, no saleable property transaction of any kind—was involved!**

“Acts which [1] do not take place in interstate commerce, or [2] intrastate commerce, and [3] which do not constitute commerce at all, or [4] which involve the free exercise of speech or [5] a religious belief protected by the United States Constitution, are not within the scope of the Lanham Act.”—*Motion to Set Aside Judgment in the Hawaii Case, December 28, 1987, p. 3.*

“Throughout plaintiff’s complaint, it has failed to specify what goods or services in plaintiff’s trademark defendant is alleged to have used.

“Plaintiff has also failed to specify in what

manner defendant is supposed to have engaged in acts which comprise a use in commerce regulable by Congress.

“If defendant was alleged to have engaged in interstate commerce, plaintiff should have so stated. If defendant was alleged to have engaged in intrastate commerce, but such intrastate commerce was of such a significant and substantial amount as to affect plaintiff’s interstate commerce, then plaintiff should have so alleged.

“In the absence of such information, the court lacks jurisdiction over the subject matter of the complaint, since there is no trademark registration which has been infringed and there is no unfair competition . . . Clearly, the jurisdictional amount has not been met since there is not one single act alleged to have been performed by defendant such as would constitute damage.”—*Max Corbett, Motion to Set Aside Judgment, Hawaii trademark case, December 28, 1987, pp. 6-7.*

“Defendant’s primary occupation and endeavor is the proclamation of the gospel of Jesus Christ. The gospel of Jesus Christ cannot be bought or sold. Defendant’s use of the names, ‘Seventh-day Adventist’ and ‘Seventh-day Adventist Church,’ is an essential part of their proclamation of the gospel of Jesus Christ; it is its essence, its centrality and meaningfulness. Accordingly, defendants are not engaged in commerce at all, and therefore do not come within the scope of the regulatory provisions of the Lanham Act.”—*Ibid., pp. 6-7.*

Elsewhere in the same court ruling **the intrastate (within state) commerce factor is declared to not apply to this case, since plaintiff has not shown how and when such commerce has occurred or that, if done at all, that it was significant enough to warrant legal attention.**

21 - The trademarked product must be used in interstate commerce, in order to qualify under federal trademark law: This saleable product must actually be carried across state lines in trucks, or otherwise, so it can be sold!

“Use requirement—In order to qualify for protection a trademark must be used in commerce. For the purposes of federal registration, use in [intrastate] commerce alone is insufficient and use in interstate commerce is required.”—

Mark Law, "Use Requirement."

"Interstate commerce requirement—Interstate commerce of a mark occurs **when the trademark applicant or owner uses the mark on goods or in connection with the sale of goods or services that are sold or otherwise transported across state lines.** The kind of use required to create or maintain a trademark under the Trademark Act **must be a "bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in a mark."** 15 U.S.C. §1127. Using a mark in interstate commerce is required whether applying for a trademark under an actual use application, filing a statement of use under an intent-to-use application, or filing a renewal application."—Mark Law, "Interstate Commerce Requirement."

Notice in the above legal definition, that **it is not enough to hold a trademarked name in order to control it. That name must apply to a commercial product which is actually—regularly—being transported across state lines and sold to purchasing customers.**

22 - There was falsification in identifying the origin of the name: The General Conference repeatedly maintains that it was the organization—the General Conference itself,—and not individual believers, which originally gave the name, "Seventh-day Adventist," to the believers and to the entire church.

At the two-day Kinship trial, General Conference attorneys consistently made the point that (1) **the name, "Seventh-day Adventist," came from the church and not from God, from Ellen White, or from religious beliefs and practices,** and (2) that only those approved by the church have a right to identify themselves by that name.

But we are authoritatively told that it was God who gave us that name.

"We are Seventh-day Adventists. Are we ashamed of our name? We answer, No, no! we are not. **It is the name the Lord had given us.** It points out the truth that is to be the test of the churches."—*1 Testimonies*, p. 224; *Faith I Live By*, p. 304.

23 - The false claim was made that the General Conference invented the phrase: The General Conference maintains that the name did not exist, and was not used by believers, until it was adopted as the official name in 1860. They also do not mention that the "General Conference" organization itself was not brought into existence until three years later, in 1863.

The complete history of this is given just below.

24 - Individuals and local churches were

using the name, "Seventh-day Adventist," before it became the name of the denomination:

Historical evidence will be provided here that **the Seventh-day Adventist religion was practiced by individuals, two local conferences, and a publishing house—several years before the General Conference was formed.**

The term, "Seventh-day Adventist," as identifying a religious faith, preceded the use of it as a denominational name. This is an important fact which was not told to the Trademark Office at the time that the name was registered. **This fact, therefore nullifies the church's trademark.**

"In holding that 'Christian Science' was the name of a religion, and hence, unprotectable, the court in Evans found that **the religion and the mother church were conceptually separate and that the religion preexisted the organization.**"—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP; see p. 12; see Evans, 520 A, 2d at 1352.*

"[In the Christian Science Case,] **the court grounded its opinion on the fact that the religion known as Christian Science was founded and practiced prior to the formal organization and establishment of the mother church** [in Boston], formally known as the First Church of Christ, Scientist, and that the Christian Science religion and organization were conceptually separate. *520 A. 2d at 1350.*"—*Brief of Amicus Curiae, presented to Ninth Circuit Court of Appeals, in Hawaii Case, p. 19.*

Many believers were identifying themselves by that name prior to the 1863 decision of a group of individuals meeting together—to entitle the organization as "Seventh-day Adventist."

According to official sources, **the first Seventh-day Adventist believers were active in 1844; their opponents were referring to them by that name by 1847; and the name was officially selected for local congregations and one conference in 1860.**

"Date of First Use—**The date a mark was first used anywhere. In the United States,** the first to use a mark generally has priority, and can exclude all subsequent users of identical or confusingly similar marks."—Mark Law, "Date of First Use."

Yet **the General Conference and the denomination as such were not organized until 1863.** That was **19 years after** the first Seventh-day Adventists existed, **14 years after** opponents were calling them by that name, and **3 years after** local Adventist churches officially began using that name to identify themselves.

The ruling of Judge Pfaelzer in the Kinship Case

19 mentions this point:

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“Because it does not [correctly] identify the origin of a product, it is not entitled to trademark protection.”—Judge Pfaelzer in *General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated*, Case No. CV 87-8113 MRP; see *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 194-95 (1985), p. 12.

Here is the historical background of this, as given by several historical sources:

“It was from among the Adventists engaged in this movement in America that **there arose a small group in 1844**, in Washington N.H., who began to observe the seventh-day Sabbath, as they found it enjoined in the fourth commandment of the Decalogue. **Thus came the first Seventh-day Adventists, though the name was not formally adopted until later years.**”—U.S. Bureau of the Census publication, “Religious Bodies,” quoted in *Seventh-day Adventist Bible Students’ Source Book*, 1962, p. 934.

“The first to use the name, ‘Seventh-day Adventist,’ appears to have been their opponents. One of the earliest references to the name, ‘Seventh-day Adventist,’ occurred **in 1847** in the *Advent Herald*, the main publication of the non-Sabbatarian Adventists. **In 1853 the Seventh Day Baptist Central Association designated the Sabbatarian Adventists as ‘Seventh-day Advent people.’**

“Although during the 1850s the need for organization grew, there were theological obstacles regarding the adoption of a name and the formation of a legal organization which were only slowly overcome . . .

“At the 1860 Battle Creek Conference of Sabbatarian Adventists, the decision was made to adopt an official name . . . Then the name, ‘Seventh-day Adventist,’ was proposed as a ‘simple name and one expressive of our faith and position.’ After discussion, it was adopted by those present at the conference and recommended to the believers at large. In general it was well received, though a few communities opposed it . . .

“Finally in 1863, having overcome the theological obstacles to organization, **the SDA organized legally** with the specific purpose of ‘Securing unity and efficiency in labor.’”—P.G. Damsteegt, *Foundations of the Seventh-day Adventist Message and Movement*, pp. 254-255.

So it was not until the late spring of 1863 that the General Conference organization came into existence. It did not exist before that time.

“On Wednesday afternoon, May 20 [1863], twenty ministers and laymen assembled in Battle

Creek were ready to present their credentials. The conference moved into its work, **in organizing the General Conference** of Seventh-day Adventists.”—Ellen G. White [*Biography*], Vol. 2, p. 31.

Judge Pfaelzer, in her ruling against the General Conference, said that **the name was clearly in use by 1859—and that this was one of the factors causing her to give the case to the defendants.**

“The name, ‘Seventh-day Adventist,’ was clearly in use prior to its adoption at the Battle Creek Conference [in 1860], as evidenced by a letter published in the Review and Herald in 1859. 14 Review and Herald 103 (Aug. 18, 1859). [The General Conference of Seventh-day Adventists, and the denomination itself] was not legally incorporated until 1863.] **The Court finds, therefore, that Seventh-day Adventism, the religion, pre-existed the Seventh-day Adventist Church.**”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc.*, CV 87-8113 PRP, Judge Mariana Pfaelzer’s ruling (decision), October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California, p. 13.

“[That fact] is relevant, in this Court’s view, as it sheds light on the current primary significance of the term ‘Seventh-day Adventist.’ ”—*Ibid.*, pp. 13-14.

“This court is persuaded that **the term, ‘Seventh-day Adventist,’ has a dual meaning: It refers not only to the Church, but to adherents of the religion** of Seventh-day Adventism.”—*Ibid.*, p. 14.

The above information is rather complete. But here is still more:

We are told that, **in 1860, local churches in Michigan were using the name**, “Seventh-day Adventist,” before the first legal organization was brought into existence the next year. **In that year, two conferences were formed and, with all their local churches, took the name, “Seventh-day Adventist Church.” The next year, the publishing house was incorporated under that name.**

“In a general meeting at Battle Creek in 1860, the denominational name was adopted and a committee formed to incorporate the publishing house [the Review and Herald in Battle Creek]. The SDA Publishing Association was incorporated in 1861. **In 1860 also the churches of Michigan were organized into a ‘conference’** (in the Methodist sense of the word); later other conferences were formed. **In 1863 a General Conference met and a constitution was formed.**”—*SDA Encyclopedia*, p. 1327.

Church leaders officially decided in 1860 to use

the name, "Seventh-day Adventist," which the believers had been using to identify their faith and practice for nearly 20 years. The next year, 1861, the publishing house in Battle Creek adopted the name. **It was not until 1863 that the denomination was formed and the General Conference came into existence.**

25 - The Christian Science trademark was canceled by the court because its members were using the name before the denomination was organized: Although mentioned earlier, it should be repeated that, **in the Christian Science Case, it was ruled that, because the name was used by the believers in Christian Science before it was the name of the organization,—the denominational headquarters had no valid trademark on the name!**

"[In the Christian Science Case,] **the court grounded its opinion on the fact that the religion known as Christian Science was founded and practiced prior to the formal organization and establishment of the mother church** [in Boston], formally known as the First Church of Christ, Scientist, and that the Christian Science religion and organization were conceptually separate. 520 A. 2d at 1350."—*Brief of Amicus Curiae, presented to Ninth Circuit Court of Appeals, in Hawaii Case, p. 19.*

The fact, that the people were the first to use the name, made it generic and nullified the trademark.

"In the Christian Science Case, the New Jersey Supreme Court held that **the phrase 'Christian Science Church' was not entitled to trademark status because it was an inherently generic name.** *Christian Science v. Evans, 520 A. 2d at 1352.* The court determined that, **as a matter of law, 'Christian Science' was in the public domain and referred to anyone who practiced the Christian Science religion, not simply those who belonged to a specific church organization.**"—*Christian Science Board of Directors v. Evans, 105 N.J. 297, 520 A. 2d 1347, 1350 (N.J. 1987), pp. 22-23.*

26 - The name, "Seventh-day Adventist," actually stands for three different things: Using the word, "Lutheran," as an example, first, it designates **the faith of individual believers.** Second,

it represents **an organized set of beliefs, doctrines, liturgy, and related religious practices.** Third, it applies to **several different denominations and independent church groups;** all have it as part of their church name.

But the General Conference falsely claims that the name only represents the General Conference itself.

27 - The holder of the trademark is not the General Conference, but something different: This is a strange technicality in these trademark lawsuits. **Both the original trademarks and first lawsuits are not made by the General Conference of Seventh-day Adventists, which is the world headquarters of that denomination,—but by a different legal corporation, called the "General Conference Corporation" of Seventh-day Adventists.** It is the word, "Corporation," which makes it different. This is a different organization, holding a number of Adventist assets (primarily buildings and real estate). **It does not represent the people, has no membership lists, is not in charge of any church divisions, unions, conferences or local churches,—and only has a small committee which generally meets only once a year!**

This "General Conference Corporation" cannot validly represent the interests of local Adventist churches; for it is neither a church nor does it control any churches! This is another of several strange things about these trademark lawsuits.

28 - For two decades, new General Conference local churches have tended to avoid using "Seventh-day Adventist" in their church names: Another very strange fact about these lawsuits is that the General Conference is attempting to forbid the use of "Seventh-day Adventist" by independent church groups,—at the same time that its own subsidiaries are gradually no longer using that phrase to identify themselves!

The increasing trend of General Conference subsidiaries is to avoid using the term, "Seventh-day Adventist," in their official names! For some reason they want to avoid that phrase.

If so many of its entities do not want to use the name, "Seventh-day Adventist," why does the General Conference try to ban others, who love the phrase, from using it?

A careful study of a recent edition of the entire

THIS CONCLUDES THE FIRST 20 PAGES OF A 41-PAGE LEGAL BRIEF. THE ENTIRE BRIEF IS IN THE BOOK, LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST LAWSUIT. THAT BOOK IS ADVERTISED ON PAGE 2 OF THIS TRACT SET.

LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**PART SIX
OF ELEVEN**

THIS FIVE-PART TRACT SET IS ONLY A PORTION OF THE COMPLETE LEGAL BRIEF

Continued from the preceding tract in this series

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After sending out the first five tracts in this entire *Legal Brief for the Defense* [WM-1472-1476] in any lawsuit brought against faithful believers who want to call their little group “Seventh-day Adventists,” **we have received repeated requests to mail out the remainder of the Legal Brief tracts, even though all of it is available from us in booklet and CD format. So the remainder is enclosed in this and the next mailing.**

I have been asked what is the strongest, single legal point in favor of the defense in a trademark lawsuit brought against an individual group of Seventh-day Adventist believers.

Of the five defenses in such a case, (the Generic Factor, Fair Use, Lack of Legal Standing, First Amendment Rights, No Confusion of Identity), the Generic Factor, First Amendment (free speech) Rights, and No Confusion of Identity (especially if the word, “Independent” is included in the church name) are the most important.

In 1991, in the Seventh-day Adventist Kinship Case, Judge Mariana Pfaelzer decided that First Amendment freedoms were involved. So she asked for briefs by both sides to be presented on March 27, when a post-trial hearing occurred. Her final ruling (decision) was given on October 3, 1991, and filed October 7, 1991, in the U.S. District Court, Central District of California. **Judge Pfaelzer ruled that “SDA” and “Seventh-day Adventist” are generic and not subject to trademark.** Pfaelzer’s decision was that **the General Conference of Seventh-day Adventists lacks control over “SDA” and “Seventh-day Adventist,” on the grounds that both terms are generic.** It was ruled that they can be used by individuals, regardless of their church affiliation, thus voiding General Conference control over those terms.

Yet within the past several months, the General Conference has sent threatening letters to small groups, telling them that they could not use “SDA” or “Seventh-day Adventist” in their church sign—even though Judge Pfaelzer ruled in 1991 that they could!

(Because Kinship did not use “Church” in its name, she did not rule on “Seventh-day Adventist Church,” although it is believed that the legal principles which were the basis of her ruling would have

applied equally to that phrase, on the basis of no confusion of identity.)

In the March 13-16, 2000 Perez case (Federal Courthouse, Miami, Florida), Judge James King ruled in favor of the General Conference, partially because the Perez church did not have “Independent,” or something similar in its church name to distinguish it from other local Adventist churches. This could be considered a violation of the *no confusion of identity* legal factor, which was a key aspect of the original trademark law (the U.S. Trademark Act of 1946, also called the “Lanham Act,” 60 Stat. 427, as amended, 15 U.S.C. sect. 1051 *et seq.*). However, if the Perez group had appealed the case all the way to the Supreme Court, it very possibly would have won. But, exhausted by the ongoing harassment, those good folk decided not to do so.

While the First Amendment free speech clause of the First Amendment provides for individual believers to identify themselves as “Seventh-day Adventists,” whether or not they have ever belonged to a Seventh-day Adventist church, it is the generic factor which helps clarify the right of believers to identify their church as “Seventh-day Adventist Church.”

You will find the generic factor discussed in more detail elsewhere in this *Legal Brief* tract. But, briefly, **a name is generic if it can be shown that the phrase in question already belongs to many people who have been using it.** Generic marks are marks that identify the product but not its source. **A generic term “tells the buyer what the product is” rather than from where, or whom, it came** (*Statement by Judge Pfaelzer in her SDA Kinship ruling*). **A generic term identifies a general category of products, of which there can be many competing brands.** “Seventh-day Adventist” is part of this general category. **A generic mark describes the product, or service itself, as a category rather than distinguishing between competing versions of the product or service.** “Shredded wheat” is a generic term that refers to the category of breakfast cereals. Each manufacturer (Post, Kellogg’s, etc.) is free to use the term, “shredded wheat,” to advertise their version of the cereal. To prevent them from using “shredded wheat” would mean they could not equally compete with regard to this product. **Generic marks**

are either generic from the outset or become generic after they become part of the common descriptive name of a category or genus of products.

We are all agreed that “automobile” cannot be trademarked, but what about the religiously based name of a church—when several different groups, not affiliated with one another, want to use it?

It is because of this fact that attempts in the past to defend trademarked church names have generally failed. The only reason such General Conference lawsuits have had any success in our own denomination is due to the fact that, for several reasons, the cases have not been appealed. The U.S. Supreme Court would probably throw out every one of them if they ever reached it.

Even church names which are extremely rare and unique (far more than “Seventh-day Adventist”) have been ruled generic. Two examples of church groups with *extremely unusual names* which hardly any churches would use are the “Baha’i” and “Christian Science” churches. Yet, **in both instances, when the head of the much larger denomination claimed trademark control, it lost the case in court.**

A key point was that, in each of those two cases, **the judge ruled the names were names of religions**, and therefore generic and protected by the First Amendment.

Those two court decisions closely parallel the issues in “trademark infringement” cases brought by the General Conference against smaller groups. In both the “Baha’i” and “Christian Science” cases, **the original church was suing a later and much smaller offshoot for using its religion name plus “Church.”**

Both cases share the same basic legal factors: (1) religious rights for the name expressing the church’s faith based on the First Amendment, (2) genericness, as well as (3) fair use.

In both of those other suits the defendant church arose at a later time than the original, and the offshoot church did not identify its church name with the word, “Independent.”—Yet the court ruled that no confusion of identity was involved because the supposedly “trademarked names” (“Baha’i” and “Christian Science”) expressed religious faith.

In addition, **both cases included “Church” as part of the contested term.** The courts ruled that both could freely use the religion names (“Baha’i Church” and “Christian Science Church”),—even though the full church name of the smaller church was almost identical to that of the ear-

lier, and much larger, parent church.

“Telephone” and “carrots” are generic. Similarly, the words and phrases “Lutheran,” “Baptist,” and “Seventh-day Adventist” belong to a number of variant groups—so those phrases are generic.

In this world, we have to name things. **Groups of people have to be identified, and generic phrases identify those groups.** What do you call people who hold to the faith given the defendants in a lawsuit such as brought by the General Conference? **Because they hold to the faith of their spiritual forefathers, the smaller group is accurately called “Seventh-day Adventists.” What else could you possibly call them? There is no other term which is applicable. Therefore the phrase is generic. It points to a type of people rather than merely—or exclusively—to an organization** headquartered in Silver Spring, Maryland.

In preparing this Legal Brief, I discovered a recently tried (2004) case before the U.S. Supreme Court—which greatly weakens the General Conference position! This was a major discovery and, in my opinion, drives the last nail into the coffin, able to bury General Conference “trademarking” of our name!

In *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc. (2004)*, the U.S. Supreme Court held that a defendant asserting the affirmative defense of fair use in response to a claim of trademark infringement **does not have to shoulder the burden of proving there is no likelihood of confusion as a result of their fair use.** 125 S. Ct. 542, 547-48 (2004). The Supreme Court granted KP Permanent’s petition for *certiorari* in this matter to resolve a split among six of the federal courts of appeal (125 S. Ct. 542, 547-48; especially 547, 2004).

(A *writ of certiorari* is written permission, issued from a higher court, calling for the record of a proceeding from a lower court or an official or quasi-official judicial body to be presented for review or inspection.)

This was a landmark decision by the U.S. Supreme Court in regard to “generic” in trademark lawsuits!

Instead of having the defendant prove that the two similar name cases are actually quite different,—henceforth, the plaintiff must prove that they are too similar!

In its **unanimous opinion**, written by Justice Souter, the Court found that a defendant in a trademark infringement case may assert the fair use defense of 15 U.S.C. §1115(b)(4) without having to bear the burden of negating a likelihood of confusion. **Instead, the burden of proving a likelihood**

of confusion remains on the plaintiff. To reach this decision, the Court engaged in some detailed statutory interpretation.

The Court first considered the elements that a party claiming trademark infringement must establish. **The plaintiff must prove that, due to the defendant's infringement, there exists a likelihood of confusion to consumers.** However, in an earthquake decision regarding the meaning of the original trademark law—the Lanham Act: *15 U.S.C. §1115(b)(4)*—**does not explicitly require that a defendant asserting the fair use defense bear the burden of negating a likelihood of confusion.**

The Court ruled that “Congress said nothing about likelihood of confusion in setting out the elements of the fair use defense in *§1115(b)(4)*.” Furthermore, according to this Supreme Court ruling, to read into the fair use statute a requirement of negating a likelihood of confusion would be nonsensical. The Court stated: “Starting from these textual fixed points, it takes a long stretch to claim that a defense of fair use entails any burden to negate confusion.” To say this in simpler words, **a fair use defense by the defendant does not mean it has to show that there was no confusion of identity.**

This recent decision by our highest court

shatters the hopes of the General Conference ever winning a trademark case—on the Supreme Court level—against a small group calling itself “Seventh-day Adventist Church.”

Additionally, the Court reasoned that because *15 U.S.C. §1114* refers to a likelihood of confusion and *15 U.S.C. §1115(b)(4)* does not, **Congress, when it originally enacted the trademark law (the Lanham Act), did not intend that a defendant must prove that there was no likelihood of confusion when invoking the fair use defense.**

The Court also noted that the common law of unfair competition recognized **it was quite normal—and hence legal—that some degree of consumer confusion may stem from a defendant's descriptive use of the plaintiff's mark,** stating that “**‘[t]he use of a similar name by another to truthfully describe his own product does not constitute a legal or moral wrong, even if its effect be to cause the public to mistake the origin or ownership of the product.’**”

—I will here conclude this brief overview of several basic legal principles. ***Here now is the rest of this ten-part tract set;*** the first five tracts were mailed to you about two months ago. —*vf*

Continued from Part Five, page 20, of this

1,098-page denominational *Yearbook*, which lists all of their subsidiary institutions, reveals that **of the 1,673 church entities, periodicals, and broadcast stations throughout the world, only 101 include the name, “Seventh-day Adventist,” in their official name.** If we omit overseas small clinics and dispensaries, that number reduces to 34. **Only 2 of those 34 are in the United States and its territories.** Oddly enough, both of them are in extremely out-of-the-way localities, where few people would ever be likely to read their signboards: One is Holbrook Seventh-day Adventist Indian Mission School, far out in the desert of Holbrook, Arizona. The other is Guam Seventh-day Adventist Clinic, in Tamuning, Guam.

A large number of local congregations in America have, for decades, been called “Seventh-day Adventist.” **The present trend, since 1987** (ironically, *the same year* the General Conference began its trademark lawsuits), **is for many of the newly started local churches to frequently be given neutralized names, such as “New Life Community Church,” “New Hope Church,” “Abundant Life Church,” etc.,** which provide no indication of denominational affiliation whatever.

According to the denomination's *Yearbook*, **within the United States and its territories, none of the following General Conference entities have “Seventh-day Adventist” in their official names:**

Schools, academies, health-care systems, hospitals, clinics, dispensaries, food factories, nursing homes, retirement homes, orphanages, media centers, radio or television stations, publishing houses, periodicals, or insurance agencies.

Since the General Conference churches and other entities are moving away from their name, “Seventh-day Adventist,” **why do they demand that small congregations who are worshipping quietly in peace, but not affiliated with them, must stop calling themselves by the one phrase which identifies their faith: “Seventh-day Adventist”?**

To add to the mystery, several years ago, the General Conference sent out word to church members throughout the world field, to no longer identify to themselves as “SDAs or as “Seventh-day Adventists,” but to refer to themselves as “Adventists.” For some reason, that “Seventh-day” part is being increasingly omitted.

4 - FIRST AMENDMENT RIGHTS

1 - This is where, in the laws governing

America, our most basic human rights are enshrined:

The *First Amendment* to the *U.S. Constitution* is also the first section of the **Bill of Rights**, which is arguably the most important part of the *U.S. Constitution*, because it **guarantees freedoms of religion, speech, peaceful assembly**, writing and publishing, and the freedom to raise grievances with the Government. In addition, **it requires that a wall of separation be maintained between church and state (so that neither can dominate the other).**

This is the wording of the First Amendment:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.”

In the spring of 1778, the *Constitutional Convention* was held in Philadelphia, PA. The delegates resolved three main religious controversies. They:

1. Decided that there would be no religious test, oath, or other requirement for any federal elected office.

2. Allowed Quakers and others to affirm (rather than swear) their oaths of office.

3. Refrained from recognizing the religion of Christianity, or one of its denominations, as an established state church.

But there was no specific guarantee of religious freedom in the U.S. Constitution.

Jefferson was pleased with the Constitution, but felt it was incomplete and **pushed for legislation that would guarantee individual rights, including what he felt was the prime guarantee: freedom of, and from, religion.** Madison promised to promote such a bill, in order to gain support for the ratification of the Constitution by the State of Virginia. In 1789, the First of Ten Amendments were written into the Constitution; they have since been known as the *Bill of Rights*.

2 - These basic rights must not be restricted.

The following four Supreme Court rulings attest to this fact:

“[There is not to be] a restriction of the free exercise of these freedoms which are protected by the First Amendment.”—*Murdoch v. Pennsylvania*, 319 U.S. 105, 114 (1943).

“Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.”—*Murdoch*, p. 141.

“Freedom of thought, which includes free-

dom of religious belief, is basic to the society of free men . . . The first amendment does not select any one group or any type of religion for preferred treatment. It puts them all in that position.”—*United States v. Ballard*, 322 U.S. 78, 86-87 (1944).

“The rights of conscience are, in their nature, of such peculiar delicacy, and will little bear the gentlest touch of the governmental hand.”—*Abington School District v. Schempp*, 374 U.S. 203, 231 (1963). [*Justice Brennan in a concurring statement, quoting Rep. Daniel Carroll of Maryland during a debate in the First Congress on whether to enact the proposed Bill of Rights.*]

Here is a Congressional statement regarding this:

“The framers of the Constitution recognized the eternal principle, that man’s relation with his God is above human legislation and his rights of conscience inalienable. Reasoning was not necessary to establish this truth; we are conscious of it in our own bosoms. It is this consciousness which, in defiance of human laws, has sustained so many martyrs in tortures and flames. **They felt that their duty to God was superior to human enactments, and that man could exercise no authority over their consciences.** It is an inborn principle which nothing can eradicate.”—*Congressional documents (U.S.A.), serial No. 200, document No. 271* [quoted in *Great Controversy*, pp. 295-296].

“Courts in this country have been reluctant to interfere with the internal affairs of private groups.”—*Ibid.*; see *Healy v. James*, 408 U.S. 169 (1972).

“When the underlying dispute is properly characterized as religious, **the suit . . . becomes a transparent vehicle for invoking governmental assistance to benefit one side in a religious conflict** at the expense of the other.”—*L. Tribe, American Constitutional Law*, 1155 (2nd ed. 1987), p. 1235.

“The First Amendment’s Religion Clauses are **meant to protect churches and their members from civil law interference.**”—*Jones v. Wolf*, 443 U.S. 595, 613-14 n.2 (1979).

“[A civil statute’s] unintended adverse impact upon persons of a particular faith can invalidate it.”—*J.H. Ely, “Legislative and Administrative Motivation in Constitutional Law,”* 79 *Yale Law Journal*, 1205, 1319 (1970).

“It is no business of courts to say what is a religious practice or activity, or to say that one group is not a religion under the protection

LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**PART SEVEN
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of the First Amendment.”—*Fowler v. Rhode Island*, 345 U.S. 67 (1953).

“The hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern . . . To reach those questions would require the civil courts to engage in **the forbidden process of interpreting and weighing church doctrine** . . . Plainly, the First Amendment forbids civil courts from playing such a role.”—*Presbyterian Church*, 393 U.S. at 449-451.

According to the Supreme Court, an attempt to use the ruse of declaring a religious belief or practice to be a commercial product is illegal.

“[A law] **does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with wares and merchandise of hucksters and peddlers, and treats them all alike.** Such equality of treatment does not save the ordinance. **Freedom of press, freedom of speech, and freedom of religion are in a preferred position.**”—*Murdock v. Pennsylvania*, 319 U.S. 115.

“**Much of [that which is] religious is inherently associational [that is, found in religious people in groups],** interposing the religious community or organization between the state and the individual believer.”—*L. Tribe, American Constitutional Lq.*, p. 1155 (2d ed. 1987).

“The New Testament itself provided early precedent for civil deference to religious authority on ecclesiastical questions in the account contained in Acts 18:12-16, describing Gallio’s refusal, as proconsul of Achaia, to judge a claim that Paul ‘persuadeth men to worship God contrary to the law.’ **Because it was a matter of ‘words and names, and of your [religious] law,’** Gallio told Paul’s accusers, ‘look ye to it; for **I will be no judge of such matters.**’”—*L. Tribe, American Constitutional Law*, 1155 (2d ed. 1987), 1237 n. 73.

3 - It is illegal to try to use a trademark to deny a person the right to his religion: That was the ruling by Judge Pfaelzer in the 1991 Kinship Case.

“A prerequisite for application of the free exercise clause [of the First Amendment] under either

decision is that **the [trademark] law requires the claimant to act in a way that his religion forbids or that it prohibits him from doing something that his religion requires.**”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc.*, CV 87-8113 PRP, Judge Mariana Pfaelzer’s ruling (decision), October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California, p. 18.

4 - The General Conference lawsuits violate the “free exercise of religion” clause: The effort to trademark the terms, “Seventh-day Adventist” and “Seventh-day Adventist Church,” is in violation of the Free Exercise Clause of the First Amendment. Referring to this, Judge Pfaelzer, in the Kinship Case, noted on February 21, 1991:

“**I am concerned about the free exercise clause of the Constitution, as it may apply to this case. There appears to be an infringement of the right of free speech** here . . . This First Amendment aspect should be closely examined before an opinion is rendered by the [appeals] court in this case.”—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated*, Case No. CV 87-8113 MRP.

Recognizing that it would lose on appeal, the General Conference never appealed this case, which it lost.

Judge Pfaelzer also said this:

“**As one court observed, the law of unfair competition has developed primarily in commercial settings, and its language is ill-suited for application to religious institutions.**”—*Ibid.*, p. 8.

5 - Civil courts can be used to solve church property disputes, but not religious issues: The following Supreme Court decision makes this clear.

“Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property . . . but **First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution of civil courts of controversies over religious doctrines.**”—*Presbyterian Church*, 393 U.S. 449, 451, 450.

Freedom of speech rights are even more important than property rights. That is why you can knock on a door, or enter an apartment house or place of business, and hand someone a piece of religious literature. You are not trespassing.

“When the rights of property owners are juxtaposed [compared] with the right of freedom of speech, the latter occupies the preferred position.”—*Marsh v. State of Alabama*, 326 U.S. 501, 90 L. ED, 265, 66 S.Ct. 276 (1946).

6 - The Supreme Court ruled that revivals, worship services, and religious gatherings to hear preaching are protected freedoms:

“Its purpose [Missionary literature distribution] is as evangelical as the revival meeting. This form of religious activity occupies **the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits**. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has **the same claim as the others to the guarantees of freedom of speech and freedom of the press.**”—*Murdoch v. Commonwealth of Pennsylvania*, 63 S.Ct. 870, 87, L.Ed. 1292, 146 A.L.R. 81; cite as 310 U.S. 105, 63 S.Ct. 870 (May 3, 1943).

7 - It is illegal to attempt to use the courts to punish those who do not submit to an edict of a certain church: The Supreme Court said it in this way:

“[The intent of the First Amendment is] to ensure that no one powerful sect or combination of sects could use political or governmental power to punish dissenters whom they could not convert to their faith.”—*Zorach v. Clauson*, 343 U.S. 306, 319 (1952).

Here is a portion of the letter from the General Conference’s lead trademark attorney, Vincent Ramik, to John Marik, the pastor who later abandoned his wife, his children, and his Christian faith due to the ensuing ordeal over being sued and jailed for not renouncing the fact that he was a Seventh-day Adventist:

“Your use of ‘Seventh-day Adventist’ does not have the approval of the Seventh-day Adventist Church or the General Conference . . . We trust that upon receipt of this letter you will immediately cease and desist from utilizing the expression ‘Seventh-day Adventist,’ or any names or expressions equivalent thereto.”—*Vincent Ramik, letter dated September 25, 1985, to John Marik.*

Surely, the General Conference and their skilled trademark attorneys, in the Washington, D.C. area,

must have known that this General Conference trademark violated the First Amendment and the Trademark Law!

“It has now been approximately six weeks since you received our letter of September 25 . . . Perhaps you do not appreciate the severity of your activities, but we do emphasize that **your utilization of ‘Seventh-day Adventist’ deceptively impugns upon the good will of the Seventh-day Adventist Church and is completely contrary to established legal precedent** and equity.”—*Ramik to Marik, November 22, 1985.*

Marik typed a lengthy theological letter to General Conference leadership, which was passed on to Ramik, who then replied:

“The difficulty, most unfortunately, is that your very testimony evidences existing confusion in **the name (‘Seventh-day Adventist’) legally the property of only the General Conference . . .** If, however, you live by your stated faith and conviction, **perhaps you and your congregation will favorably consider changing your name to avoid the use of ‘Seventh-day Adventist’ . . .** Should such not be the case, we will proceed through litigation to obtain equitable relief.”—*Ramik to Marik, December 30, 1985.*

Later on, the newspapers carried a notice of the lawsuit:

“Adventists Sue over Church Name—The General Conference Corporation of Seventh-day Adventists says a big island [south island of Hawaii] **church has picked the wrong name. But church members feel they are using the proper one.**

“The organization of Seventh-day Adventists yesterday filed suit in federal court [in Honolulu] alleging that the Seventh-day Adventist Congregational Church in Kealakekua has violated its federally registered trademark.”—*Honolulu Star Bulletin, April 10, 1987, p. C-7.*

Here is part of Vincent Ramik’s first letter to Pastor Morris E. Patterson of the Word of Faith church in Huntsville, Alabama, which did not use “Seventh-day Adventist” in their sign, church bulletin, or any advertising:

“We have advised the General Conference that **we consider your use of ‘Seventh-day Adventist’ to be an infringement** of the trademark/service mark rights of the Seventh-day Adventist Church, **and also to constitute unfair competition and false designation of origin.** However, it is our hope that you will voluntarily immediately terminate the use of ‘Seventh-day Adventist,’ and that should put an equitable finality to this matter.”—*Ramik to Patterson, February 9, 1987.*

8 - It is illegal in America to have, as an objective, the imprisonment, if necessary, of people who refused to abandon their faith:

Yet this was the threat hanging over the heads of the members of John Marik's little church in Hawaii, beginning in 1987,—because they refused to stop being Seventh-day Adventist believers.

“They [the nine-member group, which included their pastor] have been advised by their attorney of record that pursuant to the provisions of 15 U.S.C. 1116(a), the injunction, set forth in the Judgment of the Court entered on December 8, 1987, may be enforced by [federal] ‘proceedings to punish for contempt, or otherwise.’ **They fully recognize and understand that the punishment for noncompliance with the injunction may result in their commitment to jail,** and the imposition of such other penalties as the Court may deem just and proper.”—*General Conference Corporation v. John Marik and Congregational Seventh-day Adventist Church, Compliance Report, dated January 4, 1988, p. 2.*

9 - In addition to trying to remove their religious faith, the General Conference consistently demands monetary payments from the defendants—although they do not sell anything in competition: These excessive demands for money appear to be made in order to ensure that the “competition,” totally bankrupted by the suit, will close down.

One can understand why, by the late 1980s, workers in the General Conference building had nicknamed the Trademark Committee the “*Search and Destroy Committee.*”

In later *Adventist Review* statements, the General Conference said it had never asked that trademark courts award it money from defendants. But **in each of the official lawsuit papers against various independent worship groups, it routinely asks for five monetary payments:** (1) **Payment of all court costs,** which were themselves immense. (2) **All plaintiff's attorney fees.** (3) **Money “to recover Defendant's profits”** which supposedly had been lost because the little group was worshipping alone, and not at a General Conference church. (4) **“An award of damages and the profits derived by Defendants.”** (5) **“The award of profits be trebled [tripled].”**

Here is evidence of this fact: The tiny Hawaiian group, for example, which, without any advertising, had been quietly worshipping alone each Sabbath, were confronted with a lawsuit intended to financially ruin them.

“The acts of Defendants, taken individually and

jointly, and described heretofore and in subsequent causes of action **make their conduct and this case ‘exceptional,’ entitling Plaintiff its reasonable attorney fees.** The acts of Defendants further entitle Plaintiff to **recover Defendant's profits, all damages sustained by Plaintiff and costs of this action . . .**

“Wherefore, Plaintiff prays for judgment against defendants as follows: . . .

“h. For **an award of damages suffered by Plaintiff and the profits derived by Defendants,** as determined by the accounting, **and that the award of profits be trebled . . .**

“i. **For costs of suit** herein . . .

“j. For an award to Plaintiff of **its reasonable attorneys' fees . . .**

“k. **For such other further relief** as this Court may deem just and proper.”—*Complaint [plaintiff's lawsuit paper] for Federal Trademark and Service Infringement, p. 7.*

These demands were made in all subsequent General Conference trademark lawsuits.

—**But there is no way that the General Conference can prove that any sales its own churches made on the Sabbath were reduced by sales made in the independent churches.** However, in reality this is all a smoke screen,—for **neither conference churches nor independent churches sell anything on the Sabbath; the Bible forbids them from doing this!** The defendant church never sells anything in its church on any other day of the week.

Even in a commercial selling trademark lawsuit, it is difficult to prove lost profits.

“*Lost profits, as a measure of damages*—The plaintiff's lost profits may be awarded as damages in a trademark lawsuit, but monetary relief is generally reserved for cases of intentional infringement. **To receive plaintiff's lost sales as damages, the plaintiff must show that, if it were not for the defendant's infringing activities the plaintiff would have had a certain number of sales—that were not in fact had.** Proving this is often difficult since there may be a number of reasons besides defendant's infringing use of the mark that could account for plaintiff's lost sales.”—*Mark Law, “Lost Profits, as a Measure of Damages.”*

10 - Adventists are required by their authoritative books to retain and use the name, “Seventh-day Adventist”:

“We are Seventh-day Adventists. Are we ashamed of our name? We answer, No, no! We are not. **It is the name the Lord has given us.** It points out the truth that is to be the test of the churches . . .

“The name Seventh-day Adventist carries the true features of our faith in front, and will convict the inquiring mind.”—*1 Testimonies*, p. 224; *Faith I Live By*, p. 304.

“We are Seventh-day Adventists, and **of this name we are never to be ashamed.**”—*2 Selected Messages*, p. 384.

Strangely enough, one of the teachings accepted by the Adventist denomination for over a hundred years is that it should not initiate lawsuits!

“Lawsuits between brethren are a disgrace to the cause of truth. Those who take such a course expose the church to the ridicule of her enemies and cause the powers of darkness to triumph.”—*5 Testimonies*, 242-243.

“Some, when God reproves them for wanting their own way, make the world their confidence **and bring church matters before the world for decision.** Then there is collision and strife, and **Christ is crucified afresh** and put to open shame. **Those church members who appeal to the courts of the world show that they have chosen the world as their judge, and their names are registered in heaven as one with unbelievers.**”—*3 Selected Messages*, pp. 302-303.

“These men cast aside the counsel God has given, and do the very things He has bidden them not to do . . . Let these men know that God does not hear their prayers.”—*3 Selected Messages*, p. 299.

The above statements were penned by Ellen G. White, who is considered an inspired, authoritative writer for the church.

11 - The General Conference is also in violation of its own historic church teachings on Church and State. Historically, Seventh-day Adventists have always taken strong positions defending separation of Church and State, which is vital to everyone’s religious freedoms:

The warning has been given that, as it has been done in past centuries, efforts will be made in the future to use the power of the State to enforce decrees made by the Church. It is a tragedy when the General Conference is among the first to start doing this!

Here are several additional statements, penned by Ellen G. White. She is considered an inspired, authoritative source for the Seventh-day Adventist Church. The following passages describe **the terrible danger which occurs when the Church seeks to obtain the aid of the State in enforcing its edicts:**

“The very beginning of the great apostasy was in seeking to supplement the authority of God by that of the church.”—*Great Controversy*, pp. 289-290.

“When the early church became corrupted by departing from the simplicity of the gospel and accepting heathen rites and customs, **she lost the Spirit and power of God; and in order to control the consciences of the people, she sought the support of the secular power.** The result was . . . **a church that controlled the power of the state and employed it to further her own ends, especially for the punishment of ‘heresy.’**”—*Great Controversy*, p. 443.

“Every secular government that attempts to regulate or enforce religious observances by civil authority is sacrificing the very principle for which the evangelical Christian so nobly struggled.”—*Statement by Protestants, when giving their “Protest” at the 1529 Diet of Spires in Germany.*

“[In the early American Colonies] **a kind of state church was formed,** all the people being required to contribute to the support of the clergy, and the magistrates being authorized to suppress heresy. **Thus the secular power was in the hands of the church.** It was not long before these measures led to the inevitable result—persecution.”—*Great Controversy*, pp. 201, 293.

“He [Roger Williams, founder of the State of Rhode Island] declared it to be **the duty of the magistrate to restrain crime, but never to control the conscience.** ‘The public or the magistrates may decide,’ he said, ‘what is due from man to man; but **when they attempt to prescribe a man’s duties to God, they are out of place,** and there can be no safety; for it is clear that if the magistrate has the power, he may decree one set of opinions or beliefs today and another tomorrow; as has been done in England by different kings and queens.”—*Great Controversy*, p. 294.

“The [U.S.] Constitution guarantees, in the most explicit terms, the inviolability of conscience: ‘No religious test shall ever be required as a qualification to any office of public trust under the United States.’ ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.’”—*Great Controversy*, p. 295.

“The union of the church with the state, be the degree never so slight, while it may appear to bring the world nearer to the church, does in reality but bring the church nearer to the world.”—*Great Controversy*, p. 297.

LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**PART EIGHT
OF ELEVEN**

THIS FIVE-PART TRACT SET IS ONLY A PORTION OF THE COMPLETE LEGAL BRIEF

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Several additional warnings were also given:

“It is no part of Christ’s mission to compel men to receive Him. It is Satan, and men actuated by his spirit, that seek to compel the conscience. Under a pretense of zeal for righteousness, **men who are confederate with evil angels bring suffering upon their fellow men, in order to convert them to their ideas of religion;** but Christ is ever showing mercy, ever seeking to win by the revealing of His love. He can admit no rival in the soul, nor accept of partial service; but He desires only voluntary service, the willing surrender of the heart under the constraint of love. **There can be no more conclusive evidence that we possess the spirit of Satan than the disposition to hurt and destroy those who do not appreciate our work, or who act contrary to our ideas.**”

“Every human being, in body, soul, and spirit, is the property of God. Christ died to redeem all. **Nothing can be more offensive to God than for men, through religious bigotry, to bring suffering upon those who are the purchase of the Saviour’s blood.**”—*Desire of Ages*, pp. 487-488.

12 - It is illegal to try to curtail one’s right to share his religious beliefs: Every American has a right to share his religious views with others, both verbally and in the literature that he distributes! For the complete text of all U.S. Supreme Court decisions on door-to-door literature distribution and canvassing, see the book, *Supreme Court Legal Precedents*.

Supreme Court decisions in Murdoch are very significant in regard to this:

“**Governmental powers may not be employed to inhibit the dissemination of particular religious views.**”—*Murdoch v. Pennsylvania*, 319 U.S. 105, 87L. Ed. 1292, 63 S.Ct. 870 (1943), 145 ALR 81; *Fallett v. McCormick*, 321 U.S. 573, 88 L.Ed. 938, 64 S. Ct. 717 (1944), 152 ALR 317.

“Religious liberty includes, as it must, the right to communicate [one’s] experiences to others.”—*United States v. Ballard*, 322 U.S. 78, 1944.

“**Spreading one’s religious beliefs or preaching the Gospel through distribution of literature and through personal visitations** is an age-old type of evangelism with as high a claim to con-

stitutional protection as the more orthodox types [of religious practices].”—*Murdoch vs. Pennsylvania*, 319 U.S. 110.

“**Freedom of speech, freedom of the press, freedom of religion are available to all**, not merely to those who can pay for them.”—*Murdoch v. Pennsylvania*, 319 U.S. 114.

In another, more recent Supreme Court case, several important points were made: The decision of the petitioners (Watchtower), that **Scriptural requirements to speak and evangelize are above those of the State and are protected rights.** The application of even a small fee, or prohibition for doing so, is illegal.

“Those [earlier Watchtower] cases involved **petty offenses that raised constitutional questions of the most serious magnitude**—questions that implicated the free exercise of religion, the freedom of speech, and the freedom of the press.”—*Watchtower Bible and Tract Society of New York, et al. v. Village of Stratton et al.*, 122 S.Ct. 2080 (June 17, 2002).

Such restrictions impose “censorship” to the efforts of these people to practice their faith, which in this case involved the distribution of literature.

“**The ordinance imposes censorship**, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. **To require censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.**”—*Ibid.* [*italics theirs*].

It is clear, from various Supreme Court rulings, that individuals and religious groups in America have the right to worship and practice their faith, as long as it is done in a peaceful manner, **unhampered by forbiddings from other organizations.**

“The rhetoric used in the World War II-era [Supreme Court] opinions, that repeatedly saved petitioners’ coreligionists from petty prosecutions, reflected the Court’s evaluation of the **First Amendment freedoms that are implicated in this case.** The value judgment that then motivated a united democratic people fighting [overseas] to defend those very freedoms from totalitarian attack is unchanged. It motivates our decision today.”—*Ibid.*

13 - The General Conference is attempting to curtail freedom of speech: In its trademark lawsuits, the General Conference seeks not only to curtail advertising of certain phrases,—but speech as well. And when speech is eliminated, identity soon follows. It is impossible for an Adventist to identify his faith and the faith of his group as being "Seventh-day Adventist"—if he cannot do it in writing and in speech. They go together. The General Conference would ban even such things as evangelistic campaign advertising that mentions the term.

In each of the trademark lawsuits which have been filed against independent believers, they have been told to abandon "Seventh-day Adventist" as the statement of their identity—and do several other things, which one would not expect that America citizens, living under the protections of the Bill of Rights, should be ordered to do! This is what, in each lawsuit case, the General Conference requires that must be done in order for the suit to be dropped [full caps theirs]:

"Cease all use of SEVENTH-DAY ADVENTIST and/or SDA.

"Cease all use of SEVENTH-DAY ADVENTIST and/or SDA in conjunction with your advertising, your telephone directory, your letterhead and any and all other business and ministerial activities presently performed directly by you or on your behalf utilizing either or both aforesaid Church's trademarks and service marks, and otherwise.

"Avoid all usage of SEVENTH-DAY ADVENTIST and/or SDA likely to be confused with these marks as used by the Seventh-day Adventist Church."—*Vincent Ramik, attorney representing General Conference of SDA, letter dated March 17, 1998.*

Notice, in the above demand, that "ministerial activities" using the name must be stopped! This is a clear and flagrant violation of First Amendment rights!

In the Adventist Kinship Case, Judge Pfaelzer made this statement:

"Freedom of speech: Why should this organization [Kinship] not have a right to call themselves Adventists, when it has been admitted that **the leadership of the [Adventist denominational] organization presently permits a wide plurality of beliefs and practices of its own members?**"—*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP.*

Mark these words from the Supreme Court:

"Religious liberty includes, as it must, the

Freedom of speech is a basic right accorded to U.S. citizens by the First Amendment:

"First Amendment—There is a constant tension between the First Amendment rights of free speech and the grant of exclusive rights to use words and other symbols as trademarks. **Trademark rights are therefore curbed to the extent possible to promote free speech** and free competition in the marketplace. For this reason, raising the First Amendment as a defense to a trademark infringement claim is often worthwhile."—*Mark Law, "First Amendment."*

14 - The General Conference objective, to eliminate competition, includes a concern to eliminate the competition's books containing religious beliefs as well: This may sound incredible, but here are excerpts from the lawsuit paper against the Hawaiian church. This identical statement was included in every subsequent trademark lawsuit by the General Conference. Because it is routine for judges to use the legal paper presented by the winning case, the following was entered into the final judgment against the offending church. **All books, journals, and papers in the possession—not only of the church but of each of its members—containing the words, "Seventh-day Adventist,"** were required to be surrendered, so they could be burned by the Plaintiff:

"f. That defendants, each of them, deliver up to Plaintiff for destruction all labels, signs, prints, advertising materials **and other literature in the possession of the Defendants**, any and all agents thereof, or any of them, or under Defendants' control, bearing the term, 'Seventh-day Adventist.' "—*General Conference Complaint [lawsuit paper] for Federal Trademark and Service Infringement, p. 17.*

15 - The General Conference has ruled that not even its member organizations have a right to the name:

Not only does the General Conference forbid nonmembers from using both trademarked names ("SDA" and "Seventh-day Adventist"),—but **it also forbids its own church organizations from using those phrases without its permission!**

"B 80 35 . . Lay and professional groups [within the denomination] **may not utilize trademarks owned by the General Conference Corporation without its express written approval.** Applications for such use shall be made to the secretary of the Seventh-day Adventist Trademark Commit-

tee of the General Conference. Use of such trademarks by lay and professional groups must be solely for noncommercial purposes. Granting such license to use trademarks owned by the General Conference shall be at the sole discretion of the General Conference, based on the following conditions:

“a. Recommendation by the local conference or mission that the lay or professional group requesting trademark usage be granted the license . . .

“e. The trademark shall be utilized solely in noncommercial functions . . .

“B 80 40 Right to Revoke—The General Conference Corporation **shall maintain the right to revoke permission for the use of any trademarks by any denominational entity or lay group** at any time, with or without cause.”—*163-88NG General Conference Trademark Policy; New Policy/GCO/88SM/88AC to CBR88YE, Revised ed, dated April 9, 1988, p. 2.*

5 - NO CONFUSION OF IDENTITY

A brief review of key points: All but one of the legal arguments which disprove the General Conference position in these lawsuits has been presented earlier. **Most are founded on one or more of six basic pillars: the generic factor, fair use, lack of legal precedence, First Amendment rights, the interstate commerce factor, and the nonconfusion factor.**

In order to introduce this possible Confusion of Identity factor, it is well to briefly review a few points:

The Trademark Law was enacted with one primary purpose in mind: to protect a commercial business, which is regularly manufacturing, buying, and selling products from competitors whose products are so similar that they are siphoning off some of its business.

“A Trademark is a visible symbol that serves to identify and **distinguish your particular brand of goods from similar goods made by others.** It may be a name, phrase, sign or a combination of these elements, and it has distinct value as personal property. **Federal law enables you to register trademarks used on goods you sell in interstate commerce.** Most states also have laws providing for the registration of trademarks, usually on goods sold only within their boundaries.”—*You and the Law, p. 193.*

We have already shown that **the General Conference trademark of the phrase, “Seventh-day Adventist,” is not valid for several reasons:**

The phrase **describes the religious faith of**

many people and identifies the ones holding to those religious beliefs. Therefore “Seventh-day Adventist” is generic and not subject to trademark control.

Prior to the General Conference registration of the trademark, there were several churches and hundreds of thousands of people using the phrase to identify themselves, their faith, and their churches.

An attempt to control who can hold to that faith, and worship together under that name, is a clear violation of the Bill of Rights freedoms of religion, speech, and of assembly.

The Kinship Case ruled that “Seventh-day Adventist” is generic, and can be used by anyone who believes he holds to that religious faith. **No trademark was ever obtained on the phrase, “Seventh-day Adventist Church.”**

In addition, here are several additional points specifically about the defendant church in this present court case:

The defendant church is not engaged in commercial activity. It does not manufacture, buy, or sell any tangible commodities. It does not profit from the sale of anything. It has no sales, no saleable goods. It has no intrastate commerce and no interstate commerce.

Those who attend this small church only do so to worship, share their faith with one another, pray, sing praises to their God, study the Inspired Writings, and listen to encouraging sermons. They do not go there for any other purpose or do any other activity.

The defendant church has chosen not to take up offerings, so it cannot be said that it is “profiting” from its meetings or from those who attend.

The defendant church does no advertising. It has no leaflets, no newspaper advertising. It does not even print a church bulletin.

The only evidence that its building is a church, and that those meetings are attended by Seventh-day Adventist believers, is the sign out front.

Here is information on the defendant’s sign:

These believers have identified their church as “Seventh-day Adventist” because **that phrase alone expresses their faith** and because **they have been commanded by authoritative church writings to identify themselves by that name.** Therefore, they cannot use any other name.

They have done this in “good faith,” believing that doing so is a definite part of their religion. They did not do it to “compete” with the General Conference or its churches, or to “make profit” by using the name.

They use this name as “fair use.” Although

“Seventh-day Adventist” is trademarked by the General Conference, **independent groups are entitled to “fair use” of the phrase when it can be shown that their “intent” is honest and sincere, that they are not profiting from their action, and that they can show strong reasons why they must use “Seventh-day Adventist” in their church name.**

We will now turn our attention to the legal question of possible Confusion of Identity.

The name of defendant’s church must show that it is sufficiently “distinctive” and different from all other “Seventh-day Adventist” church signs, including those conference churches belonging to the General Conference. **Distinctiveness is an important factor in Trademark Law** in avoiding confusion of identity.

The name used by the defendant must be sufficiently different, in some way, from that of the General Conference’s local churches. Or it must, in some manner, state the difference and separation. Or its “trademark dress” must be different. Or it must have a clear-cut disclaimer attached to, or close to, the sign.

It should be noted that the Miami Case ruled that “Seventh-day Adventist Church” remained under the control of the General Conference—because the defendant’s name was not sufficiently different from that of conference churches belonging to the General Conference. **Their sign did not indicate that they were a separatist church. It did not indicate they were not affiliated with, and independent of, conference churches.**

Local General Conference churches, known as “conference churches,” have either one of two types of signs: (1) “Blank [Main Street, Shady Grove, etc.] Seventh-day Adventist Church” or in the new trend since 1987 (ironically, the same year the General Conference trademark lawsuits began). (2) Under the new denominational trend, a nondenominational church name is selected, such as “New Life Community Church,” “New Hope Church,” “Abundant Life Church,” etc.

But, to a Seventh-day Adventist who sees it, the defendant’s church sign is startlingly different and distinctive. The name of defendant church is totally unique from that of any conference church in the entire world!

It is:

“[Pleasant Hill [etc.] Independent Seventh-day Adventist Church.”

The word, “Independent,” clearly identifies this church and sets it apart as totally differ-

ent, separate, self-governing, and independent of General Conference control. No conference church or any other General Conference entity, anywhere, does this!

The word, “Independent,” clearly identifies *this* local church as being something very different than a conference church.

The use of the word, “Church,” in the church sign of separatist Seventh-day Adventists will strengthen the point that the name, “Seventh-day Adventist,” refers to people holding to a set of religious beliefs.

3 - In addition, the defendant church has a disclaimer in close proximity to the sign bearing its name:

In order to clearly show the independent status of their church, **the defendants have added a disclaimer just below the church sign. In addition, by the main entrance door, or just inside, they have repeated the independent church name, plus, just beneath it, the disclaimer in an expanded form:**

This is the wording on the disclaimer just below the main church sign:

“Not affiliated with General Conference churches”

This is the wording on the disclaimer by the front entrance:

“This independent Seventh-day Adventist Church is not affiliated with the General Conference of Seventh-day Adventists headquartered in Silver Spring, Maryland, or with any of its subsidiary conferences or churches.”

In trademark law, the use of disclaimers greatly aids in distinguishing between two organizations with similar names. This is especially so when the disclaimer is displayed close to the disputed name. The importance of the proximity of the disclaimer to the name is important. Doing so greatly strengthens two legal factors: It shows good faith on the part of the defendant and it avoids confusion in the minds of the public.

“Disclaimer, in conjunction with use of another person’s mark—A statement by the user of another company’s trademark that the user is not affiliated with the trademark owner . . . [is] effective in eliminating consumer confusion as to the affiliation between the two companies.

“If the disclaimer is likely to be seen by those who see the trademark, then there is a

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good chance the disclaimer is effective in eliminating consumer confusion.”—*Mark Law, “Disclaimer, in Conjunction with Use of Another Person’s Trademark.”*

4 - The defendant church does not use the special General Conference church logo: In addition, the defendant church does not have the typical metal sign with a special logo, which is placed in front of all conference churches. This also helps distinguish the defendant church from conference churches.

5 - Here are additional supporting legal facts about fair use, confusion of identity, and disclaimers:

Fair Use: The earlier information, under *Fair Use*, about the Supreme Court ruling in the 2004 *KP Permanent Make-Up Case* is very important. Since then, **because of that decision, instead of the defendant having to prove that the two names are different, the plaintiff will have to prove that they are too similar!** This provides independent Adventist churches with a decided advantage in defending their use of “Seventh-day Adventist.”

“An incontestable registration is ‘conclusive evidence . . . of the registrant’s exclusive right to use the . . . mark in commerce,’ *sect. 1115(b)*. **But that, as just noted, requires a showing that the defendant’s actual practice is likely to produce confusion in the minds of consumers about the origin of the goods or services in question.**”—*KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.* 125 S. Ct. 542, 547-48 (2004).

In *KP Permanent Make-Up*, the U.S. Supreme Court held that **a defendant asserting the affirmative defense of fair use in response to a claim of trademark infringement does not have to shoulder the burden of proving there was no likelihood of confusion as a result of their fair use of the name.**

This was a major decision by the Supreme Court. **Instead of having the defendant prove that the two similar names are actually quite different,—henceforth, the plaintiff must prove that they are too much alike!**

In its unanimous opinion, the Court found that

a defendant in a trademark infringement case may assert the fair use defense of 15 U.S.C. §1115(b)(4) without having to bear the burden of negating a likelihood of confusion. **Instead, the burden of proving a likelihood of confusion to consumers remains on the plaintiff.**

The Court ruled that “Congress said nothing about the likelihood of confusion in setting out the elements of the fair use defense in §1115(b)(4).” Furthermore, according to this Supreme Court ruling, to read into the fair use statute a requirement of negating a likelihood of confusion would be nonsensical: “Starting from these textual fixed points, it takes a long stretch to claim that a defense of fair use entails any burden to negate confusion.” This was a major shift in “fair use,” as applied to trademarks!

Additionally, the Court reasoned that because 15 U.S.C. §1114 refers to a likelihood of confusion and 15 U.S.C. §1115(b)(4) does not, **Congress did not intend that a defendant must prove that there was no likelihood of confusion when invoking the fair use defense.**

—The Supreme Court, in this dramatic *KP Permanent Make-Up* decision, decided that Congress did not want the Lanham Act to include confusion of identity!

The Court also noted that the common law of unfair competition recognized **it was quite normal—and hence legal—that some degree of consumer confusion may stem from a defendant’s descriptive use of the plaintiff’s mark**, stating that:

“The use of a similar name by another to truthfully describe his own product **does not constitute a legal or moral wrong, even if its effect be to cause the public to mistake the origin or ownership of the product.**”—*KP Permanent Make-Up Case*.

Confusion of identity: Here is additional information on the confusion of identity issue: [*The data in this section may be too complicated to be orally presented in court, but it is included here in order to provide additional information to the defending attorney.*]

In a trademark lawsuit, **actual evidence of consumer confusion is very difficult for the plaintiff to produce**, even for its most diligent attorneys.

Since it is hard to prove actual confusion,

the court will consider whether the mark fulfills the “test for likelihood of confusion,” as first described in *Polaroid Corporation v. Polaroid Electronics Corporation* (287 F.2d 492, 495, 2nd Cir. 1962).

Even though this “test for likelihood of confusion” began its life in the Second Circuit, most other circuits have adopted it. See the following: *ETW Corp. v. Jireh Publ’g, Inc.*, 332 F.3d 915, 939-40 (6th Cir. 2003); *Imagineering, Inc. v. Van Klassens, Inc.*, 53 F.3d 1260, 1264 (Fed. Cir. 1995); *DeCosta v. Viacom Int’l, Inc.*, 981 F.2d 602, 606 (1st Cir. 1992); *Basile, S.P.A. v. Basile*, 899 F.2d 35, 37 (D.C. Cir. 1990); *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 127 (4th Cir. 1990); *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 626 (8th Cir. 1987); *Interpace Corp. v. Lapp, Inc.*, 721 F.2d 460, 463 (3rd Cir. 1983); *Chesebrough-Pond’s, Inc. v. Faberge, Incorporated*, 666 F.2d 393, 398-99 (9th Cir. 1982); *Helene Curtis Industries, Inc. v. Church & Dwight Co.*, 560 F.2d 1325, 1330 (7th Cir. 1977).

This test is a nonexhaustive list of eight factors: (1) “the strength of [a prior owner’s] mark, (2) the degree of similarity between the two marks, (3) the proximity of the products, (4) the likelihood that the prior owner will bridge the gap, (5) actual confusion, (6) the reciprocal of defendant’s good faith in adopting its own mark, (7) the quality of defendant’s product, and (8) the sophistication of the buyers.” *Polaroid Corp. F.2d at 495*. If the court, after consideration of all eight factors, decides that the defendant’s use of its mark is likely to confuse consumers as to the source of the good attached to the mark, it may find that the defendant infringed the plaintiff’s trademark. See *Polaroid Corporation case*.

6 - The Baha’i and Christian Science trademark suits should be mentioned again; for both cases closely parallel the present one: Both involve the original church suing a later offshoot for using its religion name plus “Church.” **Both share the same basic legal factors:** Religious rights for the name expressing the church’s faith based on the First Amendment, genericness, as well as fair use. **In both of those other suits the defendant church arose at a later time than the original,** and the offshoot church did not identify its church name with the word, “Independent.” — **Yet the court ruled that no confusion of identity was involved because the trademarked names (“Baha’i” and “Christian Science”) expressed religious faith.** In addition, as in the present suit here, both cases included “Church” as part of the contested term. The courts ruled that both could freely use the religion names (“Baha’i

Church” and “Christian Science Church”),—even though the full church name of the smaller church was almost identical to that of the parent church.

6 - A SUGGESTED COURT REMEDY

We are asking this court to issue the following ruling in this case, as follows:

This court is aware that (due to First Amendment freedom of speech and freedom of religion protections, and because the word “Church” was not in that defendant’s name) **another court has already ruled that “SDA” and “Seventh-day Adventist” are generic** and can be used by anyone who considers themselves to be Seventh-day Adventist, whether or not they are or ever have been members of the General Conference Corporation and its subsidiaries, to identify themselves or their group.

Therefore, I am not ruling on those two phrases.

This court is also aware that, **in another case, the phrase, “Seventh-day Adventist Church,” was in the defendant’s name, but not accompanied in the name by the distinguishing phrase, “Independent.”** That court ruled in favor of the plaintiff, barring the defendant from using the phrase, “Seventh-day Adventist Church.”

In the present case, **I am ruling on “Seventh-day Adventist” and “Church” when the defendant’s church name includes the word, “Independent.”**

Because evidence has been presented that Seventh-day Adventists believe that they must always use “Seventh-day Adventist Church,” to identify their faith and church, and because “Seventh-day Adventist” represents the faith and doctrines of many people, not only the General Conference system of churches,—positions which are protected by the First Amendment,

And because the General Conference Corporation wishes to reserve for itself and its subsidiary churches the phrases, “Seventh-day Adventist” and “Seventh-day Adventist Church,” contenting that any other group using those phrases would result in confusion and identity,

Therefore, in order to accommodate the primary objective of both defendant and plaintiff, while satisfying the demands of both the First Amendment and the Lanham Act, **it is the ruling of this court that—**

(1) **The General Conference may use the phrase, “Seventh-day Adventist Church,”** when the word, “Independent,” is not in its organizational or group name.

(2) **Independent groups or organizations who**

35 **consider themselves to be Seventh-day Adventists may use the phrases,** “Seventh-day Adventist Church,” “Church of Seventh-day Adventists,” or another arrangement of these words, **when the word, “Independent,” is included in the name.** These phrases may be used in their name, title, and other identifying legal papers; but the word, “Independent,” must always be included.

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(3) I further rule that **just below the main church sign should be this brief disclaimer phrase:**

“Not affiliated with General Conference churches”

(4) I further rule that **these independent organizations and groups must place a disclaimer notice beneath the church name on, beside, or just inside their primary entrance door** which says as follows:

“This independent Seventh-day Adventist Church is not affiliated with the General Conference of Seventh-day Adventists headquartered in Silver Spring, Maryland, or with any of its subsidiary conferences or churches.”

This ruling preserves Bill of Rights protections guaranteeing freedom of speech, freedom of assembly, and freedom of religion; **while at the same time, it satisfies the confusion of identity requirement of the Lanham Act.** For it clearly identifies—and separates between—each of those churches which belong the General Conference and those which do not.

CLOSING SUMMARY

This is, obviously, a test case. Freedom accorded to this small group, to practice their religion in peace, will mean that several hundred other small separatist Seventh-day Adventist groups will also be about to enjoy the First Amendment rights which should be accorded to all U.S. citizens.

1 - THE GENERIC FACTOR

Generic things cannot be trademarked. **It can be shown that the phrases in question already belong to many people who have been using them. Therefore they are not the subject of trademark.**

Generic words are not protected as trademarks precisely because to do so would be akin to granting a monopoly in the product itself, not in a word or symbol.

A mark that has been registered can lose its registration through a cancellation proceeding or by order of the court, where the term has been shown to have become generic through use.

The trademarked name, “Seventh-day Adventist,” over a period of more than 140 years,

has become generic: Millions of people have called themselves “Seventh-day Adventist” ever since a little after the middle of the nineteenth century. It is the common descriptive name of a broad category of believers, under which there is an immense variety of individual beliefs.

The General Conference improperly uses “Seventh-day Adventist” as a noun (applying only to itself), rather than as an adjective (describing many variations). In order to avoid its obvious generic aspect, the General Conference uses the term as solely and exclusively naming itself, rather than what it actually is: a phrase describing one of many individuals and groups.

The term, “Seventh-day Adventist,” is generic because it is not a single company-owned product, but a type of product, of which there can be many subsets, types, and varieties.

All this may sound commercial, but **the trademark law was only designed to deal with commercial matters, not matters of religion.** Indeed, the U.S. Supreme Court has repeatedly ruled that church names are protected under the First Amendment and cannot be trademark controlled.

Groups of people have to be identified, and generic phrases identify them: In this world, we have to name things. What do you call people who hold to the faith given the defendants in this lawsuit? Because they hold to the faith of their spiritual forefathers, **they are accurately called “Seventh-day Adventists.”** What else could you possibly call them? **There is no other term which is applicable. Therefore the phrase is generic. It points to a type of people** rather than merely—or exclusively—to an organization headquartered in Silver Spring, Maryland.

Attempts in the past to defend trademarked church names have generally failed. Even church names which are extremely rare and unique have been ruled generic. Two examples of church groups with extremely unusual names which hardly any churches would use are the “Baha’i” and “Christian Science” churches. Yet, in both instances, when the head of a denomination claimed trademark control, it lost the case in court.

Those two court decisions closely parallel the issues in this present case and are of special significance. Both involve the original church suing a later offshoot for using its religion name plus “Church.” **Both share the same basic legal factors:** Religious rights for the name expressing the church’s faith based on the First Amendment, genericness, as well as fair use. **In both of those other suits, the defendant church arose at a later time than the original and the offshoot**

church did not identify its church name with the word, “Independent.” —**Yet the court ruled that no confusion of identity was involved because the trademarked names (“Baha’i” and “Christian Science”) expressed religious faith.** In addition, as in the present suit here, both cases included “Church” as part of the contested term. The courts ruled that both could freely use the religion names (“Baha’i Church” and “Christian Science Church”),—even though the full church name of the smaller church was almost identical to that of the parent church.

In the first case, the court held that the Baha’i plaintiff had no right to a monopoly of the name of a religion. It further held that **the defendants had the absolute right to practice Bahaism and, more importantly, to conduct meetings, collect funds, make sales, and sell literature** in connection therewith, **and to conduct a [commercial] book shop** under the business name, “Baha’i Book Shop.”

In the second case (Christian Science), **it was ruled, not only that the offshoot church was separate from the original church but also, that the practice of the religion predated the founding of the “mother church.”**

Neither “Christian Science” nor “Christian Science Church” received trademark protection.

2 - FAIR USE

The defendant church uses the name, “Seventh-day Adventist,” in good faith. It is not seeking to harm the plaintiff’s church, but only to describe its own religious beliefs. Here are two statements on trademark law which explain this:

Independent groups are entitled to “fair use” of the phrase when it can be shown that their “intent” is honest and sincere, that they are not profiting from their action, and that they can show strong reasons why they must use their religion name (in the present case, “Seventh-day Adventist”) in their church name.

Fair use of a mark is **use [of a trademarked name] in a way that is descriptive of one’s products, rather than as a trademark**, and use that is undertaken in good faith (*i.e.* not to cash in on the goodwill of the trademark owner.) Fair use is generally treated as an absolute defense to a claim of trademark infringement.

Fair use has always been an important defense in U.S. trademark law. But a very important Supreme Court decision greatly strengthened its use by the defense.

In *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.* (2004), the U.S. Supreme Court

held that a defendant asserting the affirmative defense of fair use in response to a claim of trademark infringement does not have to shoulder the burden of proving there was no likelihood of confusion as a result of their fair use.

As you can see from the above legal decision, this was a major decision by the Supreme Court.

Instead of having the defendant prove that the two similar name cases are actually quite different,—henceforth, the plaintiff must prove that they are too similar!

This “fair use” principle is made even more difficult for the General Conference to oppose, since **the contested terms (“Seventh-day Adventist” and “Seventh-day Adventist Church”) do not apply to goods and services, but to religious faith and freedom of speech.**

In summary of this, **here are several points which, because of the KP Permanent ruling, weaken the General Conference’s position:**

Any change in the economic position of the junior user that could be directly attributable to the use (or denial of the use) of the mark is significant. **The court should take into consideration any data which shows that the defendant would be potentially injured if denied the right to use the mark descriptively for his product.**

Descriptive marks are weaker than distinctive marks. The General Conference phrase, “Seventh-day Adventist,” is highly descriptive in nature because it describes certain people and their religious beliefs.

The courts have noted the importance of “protect[ing] the right of society at large to use words or images in their primary descriptive sense.

Most other churches are not suing one another. The Mormons based in Utah (“Church of Latter-day Saints”) are not suing the one with headquarters in Missouri (“Reorganized Church of Latter-day Saints”); yet both have nearly the same name.

The “Church of God (Anderson)” headquartered in Anderson, Indiana, is not suing the “Church of God (Cleveland),” in Cleveland, Tennessee. —*Yet both denominations have the very same name!*

Books, listing Protestant churches in America, show dozens of examples of this.

3 - LACK OF LEGAL STANDING

The General Conference lacks “legal precedence and standing” to sue separated groups of Seventh-day Adventists, by claiming trademark violations.

A surprising number of different points fall under this category. Some of them center around

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failure by the General Conference, at the time of its original filing of these trademarks, to give full disclosure to the U.S. Trademark Office of certain facts which would have invalidated its trademark.

Evidence provided here indicates that the trademark for “Seventh-day Adventist” may have been fraudulently obtained.

Fraud occurs when the mark owner knowingly made a false representation to the U.S. Patent and Trademark Office. And the USPTO would not have issued the registration, but for its reliance on the false representation.

Fraud in procuring or maintaining a trademark registration is a defense to [the plaintiff’s charge of] trademark infringement.

The Congressional definition of a trademark does not agree with the way in which the General Conference is using theirs. Their use of “Seventh-day Adventist” violates the very meaning of what trademarks are to be used for. *According to the U.S. Code:*

“[A trademark is defined as] any word, name, symbol, or device or any combination thereof adopted and issued by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.”—15 U.S.C., sect. 1127.

In the above excerpt from the U.S. Trademark Law enacted by Congress, no mention is made about church names; it is only about goods which are manufactured and sold.

Neither of the two contested phrases (“Seventh-day Adventist” and “Seventh-day Adventist Church”) are goods which are manufactured or sold: The trademark law was not designed for churches, religions, or religious beliefs. To do so infringes on the First Amendment right of religious freedom.

It is clear that, in two important ways, “Seventh-day Adventist” and “Seventh-day Adventist Church” cannot be protected by a trademark: (1) They refer to religion, not to commercial goods and sales. (2) The phrases are totally descriptive; they describe a special people and their faith.

In order to violate the Trademark Law, the defendant church would have had to use the trademarked phrases in commerce, which has

not been done.

The contested phrases, “Seventh-day Adventist” and “Seventh-day Adventist Church,” have not been “exchanged” or sold in a regular marketplace.

General Conference “service marks” are also invalid. The General Conference says it has “trademarks and service marks” on “Seventh-day Adventist.” A federal *trademark* is about goods, transported across state lines, which are for sale. In contrast, a federal *service mark* pertains only to words, symbols, phrases, etc., used in interstate commerce to identify and distinguish services which are sold, as opposed to identifying goods.

The shirts you buy in the store are “goods.” You had to pay for them. But if you later take the shirts to a dry cleaning shop to have them cleaned, they do it as a *paid* service. In the first instance, you purchased a product; in the second, you paid for a service. However, in both cases, you bought something! You paid for the goods or the services with cash or credit card. A transfer of money was involved, and the money was *required* as part of the transfer—or you did not receive the goods and services.

None of the Adventist churches—either conference or independent—are selling anything in church! No goods or services are sold.

So not only are General Conference trademarks on “Seventh-day Adventist” and “Seventh-day Adventist Church” invalid, but their service marks on those phrases are also.

The General Conference trademarks are used as nouns and not as adjectives, as required. This may seem to be an odd requirement, yet it is true. It means that to use the trademark properly,—it should be churches which are being sold! Using “Seventh-day Adventist” as an adjective, in the proper legal trademark sense, would be thus: “*Seventh-day Adventist brand churches for sale.*”

To use a mark properly, the trademark owner should: (1) always use the mark as an adjective of the underlying product rather than as a noun, as in “people prefer CLUB HOUSE brand steaks” rather than “people prefer CLUB HOUSE.”

When included in written text, the trademarked terms (“Seventh-day Adventist,” etc.) should always be set out from the generic word,

with the “registered sign” immediately after the phrase, to show that they are trademarked products. But this is not done. The General Conference does not do this, because church members would be upset that it is trying to trademark their religious faith.

The attempt to control the religious freedom of religious organizations is a violation of the Lanham Act. The U.S. Trademark Law does not have jurisdiction over any names which describe a religion.

This is because the laws enacted by Congress (including the Lanham Act) must conform to the U.S. Constitution and its Bill of Rights. These rights are broad in their scope. —According to the Supreme Court, **not only individuals, but organizations (including independent churches) can hold and share religious views.**

Other Adventist denominations were already using the name when the trademark application was filed. The General Conference deceptively obtained a trademark on the name, “Seventh-day Adventist,” without telling the Trademark Office that other church bodies had for decades been using that name in their official church names.

It is known that the General Conference does not dare sue those denominations, since they predate its trademark. An attempt to do so would result in quickly canceling it.

The phrase, “Seventh-day Adventist,” is used by several different church bodies, groups, and organizations. All of these are independent of one another.

One such organization was the **Seventh-day Adventist Reform Movement, which began using the name in Germany, in 1915, and only a few years later in America.** Another was the **Davidian Seventh-day Adventist Association, which began using that name in 1942.** Neither organization was ever subsidiary to, or controlled by, the General Conference in Maryland.

The phrases, “SDA” and “Seventh-day Adventist,” have already been ruled invalid trademarks. In her October 7, 1991, Adventist Kinship ruling, Judge Pfaelzer ruled that both “SDA” and “Seventh-day Adventist” are generic and cannot be trademarked. Yet, in the March 2000 Florida Lawsuit, the General Conference did not mention that, but maintained that it controlled the phrase, “SDA.”

These trademark suits falsify the work given to Christians. The twisted use made by the General Conference of the phrase, “Seventh-day Adventist,” attempts to change the purpose assigned by God to Christians—from that of giving the Gospel to merely selling merchandise.

In the absence of such information, the court lacks jurisdiction over the subject matter of the complaint; since there is no trademark

registration which has been infringed and there is no unfair competition. There is not one single act alleged to have been performed by defendant such as would constitute damage. 38

“Seventh-day Adventist Church” was never included in any trademark application. The term, “*Seventh-day Adventist Church*,” was not included in the U.S. Trademark Office filings; only the terms, “*Adventist*” and “*Seventh-day Adventist*.” Yet the Kinship judge ruled that “*Seventh-day Adventist*” was generic. This present trial is about the phrase, “*Seventh-day Adventist Church*,” which was never trademarked by the General Conference.

The term, “Adventist,” is also totally generic, although it too was trademarked. Church worship services were not included in the original filing for the term, “Adventist.”

Church worship services were also not included in the original filing for the term, “Seventh-day Adventist.” This is an important fact. The original, official trademark application, filed by Vincent Ramik on behalf of the General Conference on November 10, 1981, **only lists nonreligious commerce and related activities. The only exceptions are “religious” publications (para. 2), and “conducting religious observances and missionary services” listed under para. 5, discussing “health care services.” This entire application is for commercial, not religious, purposes. Worship services, Sabbath School services, and Church services are not mentioned.**

In addition, **it is highly significant that no attempt was ever made to trademark the phrase, “Seventh-day Adventist Church.”** —Yet that is the sole target of all the lawsuits.

Defendant’s primary occupation and endeavor is the proclamation of the gospel of Jesus Christ. The gospel of Jesus Christ cannot be bought or sold. **Defendant’s use of the names, “Seventh-day Adventist” and “Seventh-day Adventist Church,” is an essential part of their proclamation of the gospel.**

The trademarked product must be used in interstate commerce, in order to qualify under federal trademark law. This saleable product must actually be carried across state lines in trucks, or otherwise, so it can be sold!

In order to qualify for protection, a trademark must be used in commerce. **For the purposes of federal registration, use in [intrastate] commerce alone is insufficient and use in interstate commerce is required.**

There was falsification in identifying the origin of the name. The General Conference repeatedly maintains that it was the organization—the General Conference itself,—and not

39 individual believers, which originally gave the name, "Seventh-day Adventist," to the believers and to the entire church.

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But individuals and local churches were using the name, "Seventh-day Adventist," before it became the name of the denomination.

Historical evidence has been provided that the Seventh-day Adventist religion was practiced by individuals, two local conferences, and a publishing house—several years before the General Conference was formed.

The term, "Seventh-day Adventist," as identifying a religious faith, preceded the use of it as a denominational name. This is an important fact which was not told to the Trademark Office at the time that the name was registered. This fact, therefore nullifies the church's trademark.

The General Conference and the denomination as such were not organized until 1863. That was 19 years after the first Seventh-day Adventists existed, 14 years after opponents were calling them by that name, and 3 years after local Adventist churches officially began using that name to identify themselves.

The ruling of Judge Pfaelzer in the Kinship Case mentions this point:

"Because it does not [correctly] identify the origin of a product, it is not entitled to trademark protection."

In addition, the Christian Science trademark was canceled by the court because its members were using the name before the denomination was organized.

The name, "Seventh-day Adventist," actually stands for three different things: Using the word, "Lutheran," as an example, first, it designates the faith of individual believers. Second, it represents an organized set of beliefs, doctrines, liturgy, and related religious practices. Third, it applies to several different denominations and independent church groups; all have it as part of their church name.

But the General Conference falsely claims that the name only represents the General Conference itself.

4 - FIRST AMENDMENT RIGHTS

This is where, in the laws governing America, our most basic human rights are enshrined.

The First Amendment to the U.S. Constitution is also the first section of the *Bill of Rights*, which is arguably the most important part of the U.S. Constitution. This is because it guarantees freedoms of religion, speech, peaceful assembly, writing and publishing, and the freedom to raise grievances with the Government. In addition, it requires that a wall of separation be maintained between

church and state (so that neither can dominate the other).

According to the Supreme Court, an attempt to use the ruse of declaring a religious belief or practice to be a commercial product is illegal.

"[A law] does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with wares and merchandise of hucksters and peddlers, and treats them all alike. Such equality of treatment does not save the ordinance. Freedom of press, freedom of speech, and freedom of religion are in a preferred position."—*Murdoch v. Pennsylvania*, 319 U.S. 115.

The General Conference lawsuits violate the "free exercise of religion" clause. It is illegal to try to use a trademark to deny a person the right to his religion. That was the ruling by Judge Pfaelzer in the 1991 Kinship Case.

The Supreme Court ruled that revivals, worship services, and religious gatherings to hear preaching are protected freedoms.

It is illegal to attempt to use the courts to punish those who do not submit to an edict of a certain church. The Supreme Court said it in this way:

"[The intent of the First Amendment is] to ensure that no one powerful sect or combination of sects could use political or governmental power to punish dissenters whom they could not convert to their faith."—*Zorach v. Clauson*, 343 U.S. 306, 319 (1952).

In addition to trying to remove their religious faith, the General Conference consistently demands monetary payments from the defendants—although they do not sell anything in competition.

There is no way that the General Conference can prove that any sales its own churches made on the Sabbath were reduced by sales made in an independent churches. However, in reality this is all a smoke screen. —For neither conference churches nor independent churches sell anything on the Sabbath. The Bible forbids them from doing this! The defendant church never sells anything in its church on any other day of the week.

Adventists are required by their authoritative books to retain and use the name, "Seventh-day Adventist."

Strangely enough, one of the teachings accepted by the Adventist denomination, for over a hundred years, is that it should not initiate lawsuits!

The General Conference is also in violation of its own historic church teachings on Church

and State. Historically, Seventh-day Adventists have always taken strong positions defending separation of Church and State, which is vital to everyone's religious freedoms.

According to the Supreme Court, in *Murdoch*, every church group has a right to share their faith.

The General Conference is attempting to curtail freedom of speech. In its trademark lawsuits, **the General Conference seeks not only to curtail advertising of certain phrases,—but speech as well.** And when speech is eliminated, identity soon follows. **It is impossible for an Adventist to identify his faith and the faith of his group as being “Seventh-day Adventist”—if he cannot do it in writing and in speech.** They go together. **The General Conference would ban even such things as evangelistic campaign advertising** that mentions the term.

Notice that, in these demands, **that “ministerial activities” using the name must be stopped! This is a clear, flagrant violation of First Amendment rights!**

5 - NO CONFUSION OF IDENTITY

The defendant church is not engaged in commercial activity. It does not manufacture, buy, or sell any tangible commodities. It does not profit from the sale of anything. It has no sales, no saleable goods. It has no intrastate commerce and no interstate commerce.

Those who attend this small church only do so to worship, share their faith with one another, pray, sing praises to their God, study the Inspired Writings, and listen to encouraging sermons. They do not go there for any other purpose or do any other activity.

The defendant church has chosen not to take up offerings, so it cannot be said that it is “profiting” from its meetings or from those who attend.

The defendant church does no advertising. It has no leaflets, no newspaper advertising. It does not even print a church bulletin.

The only evidence that its building is a church, and that those meetings are attended by Seventh-day Adventist believers, is the sign out front.

Here is information on the defendant's sign:

These believers have identified their church as “Seventh-day Adventist” because **that phrase alone expresses their faith** and because **they have been commanded by authoritative church writings to identify themselves by that name.** Therefore, they cannot use any other name.

They have done this in “good faith,” believing that doing so is a definite part of their religion.

They did not do it to “compete” with the General Conference or its churches, or to “make profit” by using the name. 40

They use this name as “fair use.” Although “Seventh-day Adventist” is trademarked by the General Conference, **independent groups are entitled to “fair use” of the phrase when it can be shown that their “intent” is honest and sincere, that they are not profiting from their action, and that they can show strong reasons why they must use “Seventh-day Adventist” in their church name.**

We will now turn our attention to the legal question of possible Confusion of Identity.

The name of defendant's church must show that it is sufficiently “distinctive” and different from all other “Seventh-day Adventist” church signs, including those conference churches belonging to the General Conference. **Distinctiveness is an important factor in Trademark Law** in avoiding confusion of identity.

The name used by the defendant must be sufficiently different, in some way, from that of the General Conference's local churches. Or it must, in some manner, state the difference and separation. Or its “trademark dress” must be different. Or it must have a clear-cut disclaimer attached to, or close to, the sign.

It should be noted that the Miami Case ruled that “Seventh-day Adventist Church” remained under the control of the General Conference—because the defendant's name was not sufficiently different from that of conference churches belonging to the General Conference. **Their sign did not indicate that they were a separatist church or that they were not affiliated with, and independent of, conference churches.**

But, to a Seventh-day Adventist who sees it, the defendant's church sign is startlingly different and distinctive. The name of defendant church is totally unique from that of any conference church in the entire world!

It is:

“[Pleasant Hill [etc.] Independent Seventh-day Adventist Church.”

The word, “Independent,” clearly identifies this church and sets it apart as totally different, separate, self-governing, and independent of General Conference control. No conference church or any other General Conference entity, anywhere, does this!

The word, “Independent,” clearly identifies *this* local church as being something very different than a conference church.

The use of the word, “Church,” in the church

LEGAL BRIEF FOR THE DEFENSE IN A SEVENTH-DAY ADVENTIST TRADEMARK LAWSUIT

**PART ELEVEN
OF ELEVEN**

THIS FIVE-PART TRACT SET IS ONLY A PORTION OF THE COMPLETE LEGAL BRIEF

Continued from the preceding tract in this series

sign of separatist Seventh-day Adventists will strengthen the point that the name, "Seventh-day Adventist," refers to people holding to a set of religious beliefs.

3 - In addition, the defendant church has a disclaimer in close proximity to the sign bearing its name:

In order to clearly show the independent status of their church, **the defendants have added a disclaimer just below the church sign. In addition, by the main entrance door or just inside, they have repeated the independent church name, plus, just beneath it, the disclaimer in an expanded form.**

This is the wording on the disclaimer just below the main church sign:

"Not affiliated with General Conference churches"

This is the wording on the disclaimer by the

front entrance:

"This independent Seventh-day Adventist Church is not affiliated with the General Conference of Seventh-day Adventists headquartered in Silver Spring, Maryland, or with any of its subsidiary conferences or churches."

In trademark law, the use of disclaimers greatly aids in distinguishing between two organizations with similar names. This is especially so when the disclaimer is displayed close to the disputed name. The importance of the proximity of the disclaimer to the name is important. Doing so greatly strengthens two legal factors: It shows good faith on the part of the defendant and it avoids confusion in the minds of the public.

The defendant church does not use the special General Conference church logo. In addition, the defendant church does not have the typical metal sign with a special logo, which is placed in front of all conference churches. This also helps distinguish the defendant church from conference churches.

**THIS CONCLUDES THE ENTIRE LEGAL BRIEF.
THE REMAINDER OF THIS TRACT CONSISTS OF
OTHER MATERIAL I HAVE PREPARED.**

**THESE GENERAL CONFERENCE TRADEMARK LAWSUITS
ARE HELPING TO PREPARE THE WAY
FOR THE NATIONAL SUNDAY LAW**

In these trademark lawsuits, which have been threatened and/or initiated by our General Conference since the mid-1980s, our church is using the power of governmental laws and police power to enforce a church ruling.

I am sorry to have to tell you that this is exactly how one segment of the early Christian church, after having lowered its doctrinal standards for a lengthy period of time,—*became the papacy!*

Here is the evidence; read it for yourself:

"We must study the characteristics of the beast itself—the papacy.

"When the early church became corrupted by departing from the simplicity of the gospel and accepting heathen rites and customs, she lost the Spirit and power of God; and **in order to control the consciences of the people, she sought the support of the secular power.** The result was the

papacy, **a church that controlled the power of the state and employed it to further her own ends,** especially for the punishment of 'heresy.' In order for the United States to form an image of the beast, **the religious power must so control the civil government that the authority of the state will also be employed by the church to accomplish her own ends.**"—*Great Controversy*, 443.

That is one of the most complete single-paragraph definitions of the papacy that is given in the Spirit of Prophecy.

We live in very sobering times.

As you read the quotations on this and the next page, you will recognize how these trademark lawsuits by our denomination are going to encourage the Catholics and Protestants to also demand that the U.S. federal government enforce the one doctrine which they hold in

common: Sunday sacredness.

Our book, *First Centuries*, provides you with the most complete history of the early Christian Church ever produced by our people. In it, you will find a gradual downward progression:

- Church members and leaders lose their enthusiasm to defend and promote their historic, Inspired beliefs.

- **The church in one central location tries to usurp control over local churches elsewhere.**

- Fellowship with religious groups which have other beliefs begins.

- Adoption of those other beliefs and practices begins.

- As faithful believers leave the main church, in order to worship in peace, efforts by the central church authority to demand and enforce obedience to errant beliefs and practices increases.

- **An appeal is made to the strong arm of the state, in order to help enforce decisions made by church councils.**

I could elaborate on this; but a careful study of our book, *First Centuries*, will provide you with a detailed view of these gradual steps downward.

It was apostasy that led the early church to seek the aid of the civil government, and this prepared the way for the development of the papacy—the beast. Said Paul: ‘There shall come a falling away, . . . and that man of sin be revealed.’ 2 Thessalonians 2:3. So apostasy in the church will prepare the way for the image to the beast.”—*Great Controversy*, 443-444.

“When the leading churches of the United States, uniting upon such points of doctrine as are held by them in common, **shall influence the state to enforce their decrees and to sustain their institutions,** then Protestant America will have formed an image of the Roman hierarchy, **and the infliction of civil penalties upon dissenters will inevitably result.**”—*Great Controversy*, 445.

In the very act of enforcing a religious duty by secular power, the churches would themselves form an image to the beast.”—*Great Controversy*, 449.

Our denomination should not be going to the government to enforce its mandates. This is an extremely dangerous trend—and will eventually backfire on our people. **When a church asks the government to become its protector, it will eventually become locked into submission to a variety of requirements made by that government.** Governments rarely give something without asking something.

“Thus again was demonstrated the evil results, so often witnessed in the history of the church from the days of Constantine to the present, of **attempting to build up the church by the aid of the state, of appealing to the secular power** in support of the gospel of Him who declared: ‘My kingdom is

not of this world.’ John 18:36. **The union of the church with the state, be the degree never so slight, while it may appear to bring the world nearer to the church, does in reality but bring the church nearer to the world.**”—*Great Controversy*, 297.

Speaking about the time when papists and Protestants will unite to enforce Sundaykeeping, we are told this:

“The power attending the [third angel’s] message will only madden those who oppose it. The clergy will put forth almost superhuman efforts to shut away the light lest it should shine upon their flocks. **By every means at their command they will endeavor to suppress the discussion of these vital questions. The church appeals to the strong arm of civil power.**”—*Great Controversy*, 607.

“No man, be he king, priest, or ruler, is authorized to come between God and man. **Those who seek to be conscience for their fellow men, place themselves above God.**”—*9 Testimonies*, 234.

It is only when a church cannot support its teachings from the Bible, that it must obtain the cooperation of the state to enforce obedience to its maxims.

“Ministers who deny the obligation of the divine law will present from the pulpit **the duty of yielding obedience to the civil authorities as ordained of God.**”—*Great Controversy*, 592.

“When the Protestant churches **shall unite with the secular power to sustain a false religion,** for opposing which their ancestors endured the fiercest persecution; **when the state shall use its power to enforce the decrees and sustain the institutions of the church**—then will Protestant America have formed an image to the papacy, and there will be a national apostasy which will end only in national ruin.”—*7 Bible Commentary*, 976 (*Signs*, March 22, 1910).

The lack of divine authority will be supplied by oppressive enactments.”—*Great Controversy*, 592.

“God never forces the will or the conscience; but Satan’s constant resort—to gain control of those whom he cannot otherwise seduce—is compulsion by cruelty. Through fear or force he endeavors to rule the conscience and to secure homage to himself. To accomplish this, **he works through both religious and secular authorities, moving them to the enforcement of human laws** in defiance of the law of God.”—*Great Controversy*, 591.

“When men indulge this accusing spirit, they are not satisfied with pointing out what they suppose to be a defect in their brother. If milder means fail of making him do what they think ought to be done, they will resort to compulsion. Just as far as lies in their power they will force men to comply with their ideas of what is right. This is what the Jews did in the days of Christ and what the church has done ever since **whenever she has lost the grace of Christ. Finding herself destitute of the power**

of love, she has reached out for the strong arm of the state to enforce her dogmas and execute her decrees. Here is the secret of all religious laws that have ever been enacted, and the secret of all persecution from the days of Abel to our own time.

“Christ does not drive but draws men unto Him. The only compulsion which He employs is the constraint of love. **When the church begins to seek for the support of secular power, it is evident that she is devoid of the power of Christ**—the constraint of divine love.”—*Mount of Blessing*, 126-127.

It is a seemingly incredible fact that, throughout the history of the United States of America, **our General Conference has been one of the first religious bodies to ever try to use federal laws to enforce the decision of a church council.** This is what we have done in our trademark lawsuit policy. There are many other denominations with similar names, yet they generally do not go to war in the courts against one another. **By this trademark activity, we are emboldening the Protestants and Catholics to unite in a concerted drive to use the U.S. federal government to enforce their mandates regarding first-day worship.**

“Protestants little know what they are doing when they propose to accept the aid of Rome in the work of Sunday exaltation. While they are bent upon the accomplishment of their purpose, Rome is aiming to re-establish her power, to recover her lost supremacy. **Let the principle once be established in the United States that the church may employ or control the power of the state; that religious observances may be enforced by secular laws; in short, that the authority of church and state is to dominate the conscience,** and the triumph of Rome in this country is assured.”—*Great Controversy*, 581.

“Those who honor the Bible Sabbath will be denounced as enemies of law and order, as breaking

down the moral restraints of society, causing anarchy and corruption, and calling down the judgments of God upon the earth. Their conscientious scruples will be pronounced obstinacy, stubbornness, and contempt of authority. They will be accused of disaffection toward the government. **Ministers who deny the obligation of the divine law will present from the pulpit the duty of yielding obedience to the civil authorities as ordained of God.** In legislative halls and courts of justice, commandment keepers will be misrepresented and condemned. A false coloring will be given to their words; the worst construction will be put upon their motives.

“As the Protestant churches reject the clear, Scriptural arguments in defense of God’s law, **they will long to silence those whose faith they cannot overthrow by the Bible.** Though they blind their own eyes to the fact, they are now adopting a course which will lead to the persecution of those who conscientiously refuse to do what the rest of the Christian world are doing, and acknowledge the claims of the papal sabbath.

The dignitaries of church and state will unite to bribe, persuade, or compel all classes to honor the Sunday. The lack of divine authority will be supplied by oppressive enactments. Political corruption is destroying love of justice and regard for truth; and even in free America, **rulers and legislators, in order to secure public favor, will yield to the popular demand** for a law enforcing Sunday observance. Liberty of conscience, which has cost so great a sacrifice, will no longer be respected. In the soon-coming conflict we shall see exemplified the prophet’s words: ‘The dragon was wroth with the woman, and went to make war with the remnant of her seed, which keep the commandments of God, and have the testimony of Jesus Christ.’ Revelation 12:17.”—*Great Controversy*, 592.

WE HAVE BEEN SPECIFICALLY WARNED BY THE GOD OF HEAVEN NOT TO INITIATE LAWSUITS AGAINST ONE ANOTHER

“When troubles arise in the church we should not go for help to lawyers not of our faith. God does not desire us to open church difficulties before those who do not fear Him. He would not have us depend for help on those who do not obey His requirements. Those who trust in such counselors show that they have not faith in God. By their lack of faith the Lord is greatly dishonored, and their course works great injury to themselves. In appealing to unbelievers to settle difficulties in the church they are biting and devouring one another, to be ‘consumed one of another’ (Galatians 5:15).

“These men cast aside the counsel God has given, and do the very things He has bidden them not to do. They show that they have chosen the world as their judge, and in heaven their names are registered as one with unbelievers. Christ is crucified afresh, and put to open shame. Let these men know that God does not hear their prayers.

They insult His holy name, and He will leave them to the buffetings of Satan until they shall see their folly and seek the Lord by confession of their sin. . .

“The interests of the cause of God are not to be committed to men who have no connection with heaven. **Those who are disloyal to God cannot be safe counselors. They have not that wisdom which comes from above.** They are not to be trusted to pass judgment in matters connected with God’s cause, matters upon which such great results depend. If we follow their judgment, we shall surely be brought into very difficult places, and shall retard the work of God.

“Those who are not connected with God are connected with the enemy of God, and while they may be honest in the advice they give, they themselves are blinded and deceived. **Satan puts suggestions into the mind and words into the mouth that are entirely contrary to the mind and will of God.** Thus he works through them to

allure us into false paths. He will mislead, entangle, and ruin us if he can.

“Anciently it was a great sin for the people of God to give themselves away to the enemy, and open before them either their perplexity or their prosperity. **Under the ancient economy it was a sin to offer sacrifice upon the wrong altar. It was a sin to offer incense kindled by the wrong fire.**

“We are in danger of mingling the sacred and the common. The holy fire from God is to be used in our efforts. The true altar is Christ; the true fire is the Holy Spirit. This is our inspiration. It is only as the Holy Spirit leads and guides a man that he is a safe counselor. **If we turn aside from God and from His chosen ones to inquire at strange altars we shall be answered according to our works.**

“Let us show perfect trust in our Leader. Let us seek wisdom from the Fountain of wisdom. In every perplexing or trying situation, let God’s people agree as touching the thing they desire, and then let them unite in offering prayer to God, and persevere in asking for the help they need. We are to acknowledge God in all our counsel, and when we ask of Him, we are to believe that we receive the very blessings sought.”—*Undated Manuscript 112; 3 Selected Messages, 299-301.*

“I have written largely in regard to Christians who believe the truth placing their cases in courts of law to obtain redress. In doing this, they are biting and devouring one another in every sense of the word, ‘to be consumed one of another.’ They cast aside the inspired counsel God has given, and in the face of the message He gives they do the very thing He has told them not to do. **Such men may as well stop praying to God, for He will not hear their prayers.** They insult Jehovah, and He will leave them to become the subjects of Satan until they shall see their folly and seek the Lord by confession of their sins. . .

“The world and unconverted church members are in sympathy. Some, when God reproves them for wanting their own way, make the world their confidence, and bring church matters before the world for decision. Then there is collision and strife, and Christ is crucified afresh, and put to open shame. Those church members who appeal to the courts of the world show that they have chosen the world as their judge, and their names are registered in heaven as one with unbelievers. How eagerly the world seizes the statements of those who betray sacred trusts!

“This action, of appealing to human courts, never before entered into by Seventh-day Adventists, has now been done. God has permitted this that you who have been deceived may understand what power is controlling those who have had entrusted to them great responsibilities. Where are God’s sentinels? Where are the men who will stand shoulder to shoulder, heart to heart, with the truth, present truth for this time, in possession of the heart?”—*Manuscript 64, 1898; 3 Selected Messages, 302-303.*

“The saints are to judge the world. Then are they to depend upon the world, and upon the world’s lawyers to settle their difficulties? **God does not want them to take their troubles to the subjects of the enemy for decision.** Let us have confidence in one another.”—*Manuscript 71, 1903; 3 Selected Messages, 303.*

“To lean upon the arm of the law is a disgrace to Christians; yet this evil has been brought in and cherished among the Lord’s chosen people. **Worldly principles have been stealthily introduced,** until in practice many of our workers are becoming like the Laodiceans—half-hearted, because so much dependence is placed on lawyers and legal documents and agreements. Such a condition of things is abhorrent to God.”—*Manuscript 128, 1903; 3 Selected Messages, 303.*

From this we learn that we should never initiate a lawsuit. But what do you do if you are sued?

1 Corinthians 6:1-9 tells not to start such a suit.

“Dare any of you, having a matter against another, go to law before the unjust, and not before the saints? Do ye not know that the saints shall judge the world? . . . Is it so, that there is not a wise man among you? no, not one that shall be able to judge between his brethren? But brother goeth to law with brother, and that before the unbelievers. Now therefore there is utterly a fault among you, because ye go to law one with another.”—*1 Corinthians 6:1-2, 5-7.*

A number of years ago, a faithful mother phoned and explained her situation to me. Her husband had filed a divorce against her and, as part of the suit, demanded full control of the children. She told me that she took no part in the lawsuit, because of 1 Corinthians 6. But when the final hearing occurred, the judge gave full custody to the father; she could not even visit them.

She then asked for counsel as to what she should do. I explained that because she had not appeared in court, the case was automatically ruled in favor of the father.

1 Corinthians 6 says not to initiate a lawsuit. It does not say we cannot defend ourselves if we are sued! Another part of the passage says:

“Why do ye not rather take wrong? why do ye not rather suffer yourselves to be defrauded? Nay, ye do wrong, and defraud.”—*1 Corinthians 6:7-8.*

This is saying do not initiate a suit—even though you suffer loss by not starting a suit. It is not saying that, if sued, you cannot protect yourself and your loved ones.

From what she told me, if she had appeared in court and presented her evidence, it is very likely that she would have won custody of her children. But the judge was upset because she did not appear.

That is my view of the matter. You may see it differently. —*vf*