

End of Perez Trademark Lawsuit

PART ONE OF TWO

The General Conference has settled its trademark lawsuit against the Perez group out of court. The terms of the settlement are favorable to independent groups which want to worship God in peace.

This report will explain what is involved in the settlement.

WHY DID THE GENERAL CONFERENCE SETTLE OUT OF COURT?

Why did the General Conference back down and settle out of court? Here are several possible reasons to consider:

- The cost of these ongoing trademark lawsuits to the General Conference has been immense, both financially and otherwise.

- The General Conference budget is the amount of money allotted yearly to the support of the General Conference and all its own activities and employees. They had spent so much money on trademark lawsuits in the 1980s, that, by the end of the decade, an Annual Council severely cut their yearly budget. We reported on it at the time. The General Conference was forced to drop approximately 20% or more of its employees. For several years thereafter, it did nothing but send threatening letters to independent ministries.

Finally, in the later 1990s, it decided to take on the Perez group in order to establish a legal precedent. Keep in mind that prior to the Perez case, the General Conference had never won a trademark suit in court. The Kinship judge had ruled against the Church by permitting individuals to call themselves Seventh-day Adventists. The Hawaii case had never been retried, as the San Francisco Appeals Court ruled that it should be. Instead, John Marik capitulated and signed papers.

Yet the Perez case turned out to be another money

waster, for it cost the Church millions of dollars.

- The 2000 Annual Council may have threatened to cut the General Conference's budget even further if it did not bring these lawsuits to a halt.

- Yet, for reasons discussed below, the General Conference had no assurance that, after winning the Perez case, it would not have to wage still more lawsuits,—with the very real possibility of not winning them.

- If the General Conference did not settle this suit, it faced a situation in which even more court battles lay ahead in the Perez case. Robert Pershes, the attorney representing the Perez group, was personally dedicated to fighting the General Conference, regardless of what or how long it took.

Pershes is a Jew and he was totally shocked that such religious persecution could arise in America, as he was witnessing by Seventh-day Adventist leadership. Nowhere else in the United States is any larger church body systematically trying to destroy, through the courts, its offshoots! Pershes recognized that he was at the center of a battle which could affect the future of the nation and, ultimately, even his own synagogue.

- Pershes was planning to appeal the case to the Appeals Court. Last fall I learned from a special source that the 11th Circuit judges, who would hear this case in Atlanta, tended to be religious and were very likely to decide against this thinly veiled attempt by the General Conference to use the federal court system to destroy, what it considered to be, its rivals.

- If Atlanta rejected Pershes' appeal, he was planning to take the case to the U.S. Supreme Court.

- All these appeals would cost the General Conference more and more money; and, all the while, Pershes would be hanging on like a bulldog.

- But an appeal to the U.S. Supreme Court, if accepted, could spread the dirty tricks of the General Conference of Seventh-day Adventists before the entire nation! First, because of its very unusual nature, the Supreme Court would be likely to accept the case. Second, a variety of non-Adventist groups and denominations would be likely to jump in as "friends of the court," and file *amici curiae* briefs. That would greatly add to the humiliation. The present writer knows of a number of instances in which the Mormon Church has tried to foil Adventist plans in certain lines. Mormon leadership would love to get into this case as a "friend of the court," on behalf of the Perez group.

Two outstanding books will provide you with the history of the General Conference trademark lawsuits:

The Story of the Trademark Lawsuits, 80 pp., 8½ x 11, \$7.00 + \$2.00 p&h.

The Florida Trademark Trial Booklet, 102 pp., 8½ x 11, \$7.50 + \$2.50 p&h.

The public press, which tends to be secular, would be glad to place such a Supreme Court case on page one of every media outlet. The news would travel around the world.

- Not satisfied with a possible win on the Appeals and Supreme Court level, Pershes was also actively pursuing a second attempt to cancel the General Conference trademark over the term, “Seventh-day Adventist,” at the Federal Patent and Trademark Commission in Washington, D.C. He had points in his favor, including the fact that the General Conference fraudulently obtained the trademark on November 10, 1981, by not divulging that other groups and churches already were using the name; some of which had used it for over 40 years.

- Yet, even if the General Conference won all these attacks on its trademarks by Pershes, they knew that it would be a hollow victory. More lawsuits would have to follow. The problem was that we were notifying independent groups of the various ways to let the public know that their group meetings belonged to, and were attended, by Seventh-day Adventists! With every passing year, the financial costs would mount and the General Conference would have little to show for what it had gained.

- The present writer had explained to Perez, early on, that the requirements of the Lanham Act (the U.S. trademark law) were primarily focused on eliminating confusion of identify. Insertion of the word, “Independent,” in the title (*example*: “Sunshine Hill Independent Seventh-day Adventist Church”) and the addition of a disclaimer in smaller print below that (*example*: “Not affiliated with the General Conference of Seventh-day Adventists, headquartered in Silver Spring, MD”) would totally eliminate confusion.

At the time, Perez did not follow that advice and he repeatedly told me, after the court trial, that he was so sorry he had not done so; but, he said he had been outvoted by two attorneys and influential associates who wanted a stronger win in the courts. They wanted to protect the right in America for anyone to be able to post a sign saying, for example, “Rocky Knoll Seventh-day Adventist Church” or “Middletown Seventh-day Adventist Church.” But this could not be—for it would be a clear case of identify confusion. The word, “Independent,” had to be added. This had never been done by any group which had been taken to court by the General Conference. The disclaimer would cinch it. (Keep in mind that the wording would have to appear on all signs, legal papers, church bulletins, publications, newspapers, or other media ads in which the “Seventh-day Adventist” name of the group was given.)

Following our advice, local groups were beginning to post the “Independent” and disclaimer. It is extremely unlikely that the General Conference would dare initiate a suit against such a sign. So, even if the General Conference won the Perez suit, it would lose later on.

Church leaders knew that. Our tracts had been distributed widely, alerting local groups about how to word their signs. The Perez case was the best the General Conference would ever have, since clear-cut confusion of identity could be shown in court by General Conference attorneys. Yet future cases would have a far more dismal outlook.

- Then there was another wording device which had surfaced, which we had also alerted the independent groups to. It is equally powerful and, some maintain, on even firmer legal ground than the independent/disclaimer method.

This is the “Founded by . . .” sign (*example*: “Pine Ridge Church” and, below that, “Founded by Seventh-day Adventist believers in 1998,” or some other date).

“Seventh-day Adventist” does not appear in the title, and a statement of fact appears below it. This is said to be incontestable in a trademark court.

(Of course, an added disclaimer could be printed in smaller print below that, for an even more powerful effect (*example*: “Not affiliated with the General Conference of Seventh-day Adventists, headquartered in Silver Spring, MD”).

Can you see why the General Conference would only lose on future trademark lawsuits? Whether or not it initiated more suits in the future, it would have very little to show for what it had already gained. The independent groups had learned how to erect signs which could not be effectively contested.

- After the Miami trial, the Perez group placed the “Founded by . . .” notice below its church name which no longer contained “Seventh-day Adventist” (“Eternal Gospel Church” and “Founded by Seventh-day Adventist Believers in 1990”). The group then offered to settle out of court, using that sign, plus the disclaimer.

You can see that this sign would totally undercut the gain won by the General Conference at Miami. Yes, it had won the right to keep “Seventh-day Adventist” out of the title,—but now the forbidden name was just below it on the sign!

The General Conference had spent an immense amount of money on the battle, and had lost a great deal of credibility as the nation’s “champion of religious liberty,”—yet all for a victory which did not amount to much of anything!

You will recall that, back on February 22, 1988, Judge Smith at the Hawaii hearing told the General Conference attorneys that, if they persisted with this attempt to muzzle the right of Seventh-day Adventists to tell others their religious identity, it would ere long prove to be a “pyrrhic victory.” So it has turned out to be! (See our book, *Story of the Trademark Lawsuits*, p. 18.)

- It is an intriguing fact that the General Conference, in its dickering with the Perez group, went along with the posting of the notice “Founded by . . .” below the sign (for it could not do otherwise than accede to

that, since it was just a statement of fact);—*yet General Conference attorneys were deeply concerned that the disclaimer not be put on its sign or anywhere else!* Fact: The General Conference does not want the disclaimer posted. Keep that in mind. Also know that you have a legal right to post it, if you wish. Indeed, doing so strengthens your situation legally.

- There can be no doubt but that an ever-increasing number of church members were complaining to church leaders about facts which we had shared widely. The scandal of these suits was gradually reaching more and more of our denominational constituency in the U.S.,—and they were gradually becoming aware of certain facts: (1) The General Conference is spending an immense amount of money on trademark lawsuits against Adventist groups. (2) The litigation is funded by the tithe the church members give to the Church (see p. 63 of our *Story of the Trademark Lawsuits* for a General Conference letter admitting it). (3) They are unbiblical (*1 Corinthians 6:1-9*). (4) They are not only a threat to religious liberty in America, but later, in the Final Crisis, could be used as an excuse to deprive Seventh-day Adventists of their religious liberty! (5) They are proving to be a great embarrassment, even to the liberals in the church who do not believe in *Great Controversy*.

- It is possible that Jan Paulsen, our new General Conference president may have quietly urged his administrative committee to settle this trademark suit out of court and not initiate any more of them. He would have the authority to do this.

- Last but not least, the influence of Neil C. Wilson (who started the trademarking and lawsuits) may have sufficiently lessened by this time.

BACKGROUND OF THE NEGOTIATIONS

We have considered a number of possible factors, several of which were probably responsible for the decision to settle the Perez case out of court. At any rate, the General Conference accepted the offer to negotiate.

After the Miami lawsuit and judgment was handed down, the Perez group had taken down the “Eternal Gospel Seventh-day Adventist Church” sign. They, instead, put up one which said, “Eternal Gospel Church” and, below that, “Founded by Seventh-day Adventist Believers in 1990.”

The group told the General Conference it would not use “Seventh-day Adventist” in its title, but would use the “Founded by . . .” below it. General Conference attorneys quickly accepted that (frankly, they could not do otherwise, since it was a legal statement of fact). The Perez group also offered to put the “not affiliated with” disclaimer on the bottom of the sign. The General Conference strongly objected to adding that per-

fectly legal statement of fact. So the Perez group put no disclaimer on the sign. (Keep in mind that not only was the wording of a church sign being negotiated, but also the wording at the end of the Perez group newspaper ads.)

The General Conference said that, in order for an out-of-court settlement to be reached, the Perez group would have to sign a statement that the settlement would only apply to the Perez group and to no others.

This, of course, was exactly the tempting offer extended to the Protestants in 1529 at the Diet of Spires (*Great Controversy, 197-207*).

At this juncture, Pastor Raphael Perez nobly said No! He said that any settlement would have to apply to any other independent group as well.

The General Conference eventually acceded on that point,—and then time passed and passed and passed.

It is likely that a fair amount of infighting was taking place in the General Conference. It would be humiliating for those attorneys—and Ramik—to give in now. While the strange delay continued, they no longer tried to squeeze more concessions out of the Perez group. More months passed.

Interestingly enough, from time to time the Perez group would hear from two independent ministry leaders (who had connections with church leaders) as to the progress of thinking and preparation and wording of the Settlement Agreement at the General Conference. Yet they would not be told directly.

Finally, in late fall 2000, the Perez group once again heard, from its intermediary contacts, that the General Conference was very close to sending them the settlement papers to sign. They were told what would be in the papers. But then more time passed.

It is possible that the 2000 Annual Council was involved or needed to end before the papers could be sent.

At any rate, in late December 2000, the papers were finally sent to Raphael Perez. On December 26, he signed and returned them. On January 10, Donald E. Robinson, Secretary of the General Conference, signed the papers. On January 29, 2001, Robert Pershes attorney for the Perez group, sent a cover letter with a copy of the fully signed papers to Perez, with a note that the out-of-court settlement still needed to be processed by the court.

Not until the settlement agreement had wended its way through the court system, could the outcome be divulged.

About a week or so ago, the papers were returned to Raphael Perez’ desk. He did not arrive back from a trip to New Zealand until last Friday. Through a mutual contact, I was able to received a copy on Monday. It is now Tuesday morning, April 24, and we will rush this to press; for we know how anxious you will be to learn about this. Fortunately, there is still a free press in America.

ANALYSIS OF THE SETTLEMENT AGREEMENT

On the next eight pages, the Settlement Agreement is reprinted in its entirety. Here is a brief summary of its key points.

The last paragraph of the cover letter, from Pershes to Perez, is significant:

“This settlement should allow other independent groups to have a format which would not be considered an infringement of the rights of the General Conference, and accordingly provide some guide to them for avoiding litigation.”

That was a key point in these negotiations: Whatever favorable settlement might accrue to the Perez group, would apply to other independent groups. That statement by Pershes is based on the fact that the Settlement Agreement contains no provision limiting it only to the Perez group.

Turning to the eight pages of the Settlement Agreement—we discover that there is really not much there. In summary, here is what it contains:

- The first introductory paragraph defines the parties involved in the Agreement.
- The next three paragraphs briefly mention previous and/or ongoing developments in the lawsuit, which are these: (1) The initial lawsuit alleging that the Perez group had used General Conference copyrights. (2) The Perez denial of the allegations. (3) The Miami court decision, refusing the Perez group the right to use the name at all. (4) The pending Perez appeal to the Atlanta Appeals Court. (5) The desire of both parties to settle the case out of court to the satisfaction of both sides.

At this point, the thirteen numbered paragraphs of the actual Settlement Agreement are given. They basically say this:

- The decision of the Miami Court stands and is accepted by both parties (*para. 1, 3*).
- The Perez group will call its church “Eternal Gospel Church” (*i.e.*, without “Seventh-day Adventist” included); and, below that in smaller print, it will say “Founded in 1990 (or any later year) by Seventh-day Adventist Believers” (*para. 4*).
- Any press release by the Perez group about the Settlement Agreement must first be approved by the General Conference (*para. 5*).

(For your information, you are reading an analysis of the Settlement Agreement which is prepared and published solely by Pilgrims Rest without the help of the Perez group; it is not a Perez press release and therefore does not require or receive the okay of the

General Conference.)

- The Perez group will dismiss their appeal to the Atlanta Appeals Court (*para. 6*).
- Both parties will get this Settlement Agreement approved by the Miami court, thus terminating the suit (*para. 7*).

Following concluding statements (*para. 8-13*), a number of signatures were appended as the Agreement passed back and forth between Florida and Maryland. The final page of the Agreement essentially consists of two lines, showing a sample of how the sign of the Perez group can be worded.

WHAT DID THE SETTLEMENT AGREEMENT ACCOMPLISH?

Prior to this out-of-court settlement, this was the ruling of the Miami federal court:

The Perez group could not use the phrase, “Seventh-day Adventist”—anywhere—on any written or media format.

As a result of the settlement, the group can use the phrase in a second line below its group name line.

What did the Perez group gain? The use of the phrase, “Seventh-day Adventist,” to identify its believers (but not its organization).

What did the General Conference gain? A number of things mentioned earlier in this report; but primarily the cessation of a very embarrassing lawsuit, which would otherwise continue onward with costly appeals for several more years.

How does it affect you? Frankly, your group has all the rights involved in this Agreement, without ever signing one! You have full legal right to call yourself by a name of your choice (without “Seventh-day Adventist” in it). You also have full right to add the “Founded by . . .” sentence below it, for it is a statement of fact and not subject to trademark lawsuit.

In summary: (1) By putting “Seventh-day Adventist” in their church name, the Perez group was sued and forbidden to use it at all. But the Settlement Agreement granted them the right to use it in their second (“Founded by . . .”) line. (2) By omitting the words, “Seventh-day Adventist,” in your church name and putting it in your second line, you will not be sued either. The General Conference will not dare do so.

On the next tract in this two-part tract set, we will reprint the entire eight-page Settlement Agreement, plus the cover letter from Pershes. In order to fit space requirements, we will place page 8 of the Agreement (Exhibit A, containing two lines) at the bottom of page 7 of the Agreement. —vf