

Solutions to the Trademark Lawsuits

PART ONE OF FOUR

It grieves our hearts to find that the General Conference is continuing to sue humble believers—simply because, even though they are separated from the organization,—they continue to believe and practice the faith of Seventh-day Adventists!

Faithful children of God, when confronted by General Conference lawsuit threats, either panic and sign away their Adventist faith or are confronted with expensive litigation.

This miserable situation weighed me down; and, while crying to my kind Father about it, an organized arrangement of what to do began to come to mind. So I set to work.

It appears that we now may have an answer.

The result is the most complete refutation to the General Conference's charge, that independent Adventist groups are not permitted to call themselves "Seventh-day Adventist."

It is so thorough that it is likely that, as soon as they receive the letter, they will not go forward with the suit. Why? *Because all the legal loopholes are filled* (that is, if you are willing to make certain adjustments in your church name, noted below).

As you know, the present writer has spent a sizeable amount of time over the past decade writing and counseling on this subject, detailing the history of the trademark crisis in our church, and compiling pertinent legal data.

We have learned that it is vital to present all the key points in court—and as early as possible. In addition, when those threatened with a suit present these points, if litigation occurs, there will be less research expenses they will have to pay a local attorney to conduct.

With all this in mind, the present classified collection has been prepared. If, at any time, you need a copy of the actual 25-page letter—let me know. As a part of pastoral counseling, I am able to provide it to you. Of course, copies of this tract reprint are also available.

Back in the early 1980s, when the General Conference began persecuting small Adventist groups, we little realized what a powerful defense was available to us. Little wonder that the General Conference has had to resort to powerful threats in an attempt to close down small groups—so the cases

would not actually go to court (as in the Indiana, Alabama, and numerous other instances). Once in court, the General Conference would get the court to skip the trial (as in the Hawaii case), or delay it (as in the Hawaii retrial). Another device was to sue a group which would generally be considered despicable enough that the General Conference could ram the case through (the Kinship case). —Church leaders knew that, given an opportunity for the small churches to fairly present their case, the General Conference would lose.

At this juncture, I must say that there has been a string of strange occurrences which has permitted the General Conference to carry on this persecution so long. If you will read my more recent 80-page historical study, *The Story of the Trademark Lawsuits* (\$7.00+\$3.00), you will learn what they were.

There is no doubt, in the mind of the present writer, that the God of heaven permitted this—so that the evil in men's hearts would be revealed. He was testing our leaders and their hired men in the General Conference,—and He found far too many to be base metal. Some were bent on destroying innocent people while others were hirelings willing to bloody their hands in a nefarious work.

In the letter, which begins on page 4 of this four-part tract set, you will discover how strong is the defense of those who have chosen to meet separately from conference churches.

Here are the three primary, legal pillars undergirding their defense:

The first pillar is the generic factor—The Lanham Act (the U.S. federal 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 item in question belongs to anyone who wishes to have it, then it is not the subject of trademark.

Let us illustrate it with a concrete example: The General Conference says the term, "*Seventh-day Adventist*," belongs to them; for it is the identifying name of their organization. Therefore they have a right to trademark it, own it, and forbid others to use it. —In their policy books, they even claim the right to forbid valid church members to use it! (*163-88NG General Conference Trademark Policy; New*

Policy / GCO/88SM/88AC to CBR88YE, Revised ed., dated 4-9-88, p. 2.)

But if the term, “*Seventh-day Adventist*,” is generic, then it is not a single company-owned product, but a *type of product*. (All this sounds very commercial, but the trademark law was supposed to deal only with commercial matters.) The term, “*Xerox*,” belongs to a certain firm while “*photocopiers*” is generic and can be used by anyone. “*Telephone*” and “*carrots*” are generic terms; no one can win a trademark suit on those words.

In this world, we have to identify things. What do you call people who hold to the faith given us, following the Millerite movement through Ellen G. White? You call them “*Seventh-day Adventists*.” What else can you 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 to a specific organization.

The second pillar is the First Amendment—As Americans, our First Amendment rights are still powerful.

First, we have freedom to practice our religion, and that includes obeying the Spirit of Prophecy command to ever call ourselves “*Seventh-day Adventists*” (1T 223-224; 2SM 384).

Second, we have freedom of speech, and that includes our right to express our beliefs verbally and in writing. We have the right to tell others that we are Seventh-day Adventists.

The third pillar is the non-confusion factor—*The Lanham Act (trademark law) was enacted by Congress solely to avoid firm and product confusion.* If a company in America began calling itself “*General Motors*,” and tried to make or sell a vehicle under that name, there would understandably be confusion as to who was making what. No other firm in America would dare call itself “*Microsoft*” without having a suit filed against it within a week.

“*Seventh-day Adventist Church*” is a well-known name. Can another group call itself “*Seventh-day Adventist Church*”—and not be sued? Well, in reality, there are lots of denominations which have nearly the same name. **In regard to churches, close similarities are the rule rather than the exception.**

So, if you are sued, you must assure the court that you have taken definite steps to avoid all such confusion in name similarity. How this is done, we shall discuss shortly.

This avoidance of confusion, combined with the generic and First Amendment factors—provides faithful believers with a solid base of defense against a trademark attack.

As I look through past trademark court appearances and arguments, it is quite clear that **the strategy of the General Conference has consistently**

been to focus on the confusion factor while trying to ignore or muffle the generic factor and First Amendment rights.

Make no mistake: Their strength lies in the confusion factor. Because of this, before the federal judges heard the case, they tended to be perplexed. They partially recognized the religious factor, yet the appearance of “product similarity” appeared daunting.

Then there was the fact that a major conservative Christian denomination, with several million members worldwide and thousands of local churches, was represented. Surely, these great, high-ranking religion officials must be in the right. So, before hearing the defense, the court was inclined to pay deference to them.

Here was the **CENTERVILLE SEVENTH-DAY ADVENTIST CHURCH**, a conference church. On the other side of town was the **ROCKY HILL SEVENTH-DAY ADVENTIST CHURCH**, not a conference church.

Surely there needed to be a way to tell them apart! Can you tell them apart? By their names, it cannot be done.

The answer, dear friends, is simple: **Every independent church should make sure it is recognized as independent. All possible confusion should be avoided, and this can be done without compromising our faith.**

First step—every independent church should come out openly and tell what it is: **The word, “*Independent*,” should be added to its church name.** “Truth in advertising” should be our motto.

That is a good step, but then we go two steps further in avoiding confusion. We want to sew up this matter so tightly that the General Conference will see from the beginning that it cannot possibly win a case against any independent group which, while openly calling itself “*Seventh-day Adventist*,” carefully follows these three steps!

—Remember, the generic and First Amendment factors are powerful; it was only the possible confusion of names factor which could be used by church leaders to win the case. If we remove that confusion, they have no chance of winning!

Second step—Instead of calling yourself “*Seventh-day Adventist Church*,” name it “*Church of Seventh-day Adventists*.” By doing this, you have not violated the Spirit of Prophecy command (*given in 1T 223-224; 2SM 384*), which was that we ever **publicly** call ourselves “*Seventh-day Adventists*.”

In order to eliminate the confusion, adding “*Independent*” should alone do it. But, by making this second change, a far clearer distinction exists. Compare the results:

CENTERVILLE SDA CHURCH, which is conference owned.

ROCKY HILL INDEPENDENT CHURCH OF SEVENTH-DAY

ADVENTISTS, which is not.

No court in the land need declare that there is any confusion of terms. Before, both churches called themselves “*Seventh-day Adventist Church*”; henceforth, only one does.

(An alternative church name you could use would be “*Rocky Hill Independent Seventh-day Adventists*.”)

(Ironically, many liberal conference-approved churches are now abandoning “*Seventh-day Adventist*,” both in their beliefs and in their church names! Instead, you will find conference churches with names like this: “*Centerville Community Church*.”)

However, we go yet one step further. Not that we have to, but it provides a solid buttress against the only legal point (product similarity) the General Conference can use to win its case.

Third step—We add a third distinguishing factor: a brief “statement of separation” in smaller print, below our church sign. This is what it would look like:

**ROCKY HILL INDEPENDENT CHURCH
OF SEVENTH-DAY ADVENTISTS**

NOT AFFILIATED

WITH THE SEVENTH-DAY ADVENTIST DENOMINATION

In addition, on any paid media advertisement, you will either not mention “*Seventh-day Adventist*” or will append this separation statement: “*Sponsored by Seventh-day Adventists, not affiliated with the Seventh-day Adventist Church.*”

With the above anti-confusion changes completed, you have the generic and First Amendment factors to help you nicely settle the matter, if the matter is taken to court.

There are several reasons why you want to show your full battery of legal arguments as soon as you receive Ramik’s letter: (1) Marik’s letter in Hawaii, when fumbling through it, contained the generic factor and their effort to tell visitors they were independent. That letter, alone, was enough that the Appeals Court later refused to award the case to the General Conference. Marik’s initial letter had gone into the court record. **You want your initial letter, with all these points, to go into the court record,—and you must make sure your attorney presents it to the court!** If you think you can trust every lawyer, you have some things to learn. (2) When the General Conference initially sees you know the score and have a full legal defense, they will likely drop the suit. (3) If you have to get an attorney, your presentation of this letter to him will save him countless hours of legal

research, at \$150 or more an hour.

WHAT SHOULD YOU DO?

What should you do if you are targeted with a letter from Vincent Ramik (the Roman Catholic who is the chief attorney representing the General Conference in trademark lawsuits)? I would recommend the following procedure:

1 - Hold a board meeting and, if necessary, revise your name. It should include:

(1) Your special name (“*Piney Knoll*,” “*East Side*,” “*Ocean View*,” etc.) If another Adventist church in the same area is using the name, you should not use that name (“*Middletown*,” “*Springfield*,” etc.)

(2) The word “*Independent*.”

(3) The phrase “*Seventh-day Adventist*.” Ideally, arrange it as “*Church of Seventh-day Adventists*” rather than “*Seventh-day Adventist Church*.”

2 - Add the separation statement immediately below your letterhead and on your church sign. Your letter should also mention the separation statement to be included in your paid ads.

3 - Write a letter to the General Conference, notifying them of the fact that there is no confusion in names, and explain what you mean by this. Your letter should mention that this separation statement, or a variation of it, is placed on every letterhead, church sign, and media ad your church releases.

4 - You may wish to photograph your church sign, and include a copy with your letter. If you wish, ask us for copies of the actual 25-page letter, in letter format, so you can send it to the General Conference. Be sure to retain several signed copies. If the suit continues, presentation of the letter to the court will provide a powerful defense in your favor. The principles are very clearly spelled out in it.

You can receive both legal and pastoral counsel. As you know, I have been a pastor to you for years, counseling, guiding, and helping. Therefore I am able to counsel you at times of such personal crisis. And I am able to provide you with a classified arrangement of data I have gleaned, as I have followed these suits. If the time comes, and you are sent a threatening letter to stop calling yourself a “*Seventh-day Adventist*,” contact me. As your other pastor, I may be able to help you with a custom-made copy of the 25-page letter—which, on the following 13 pages has been retypeset to fit into this set of tracts.

In the following sample letter we will use a fictitious name, “*Shady Grove*,” to identify the local church which is being sued.

—Pastor Vance Ferrell

“Let each one consider carefully the solemn truth, God in heaven is true, and there is not a design, however intricate, nor a motive, however carefully hidden, that He does not clearly understand . . . Men may plan out crooked actions for the future, thinking that God does not understand; but in that great day when the books are opened, and every man is judged by the things written in the books, those actions will appear as they are.”—3 Bible Commentary, 1160.

**SHADY GROVE INDEPENDENT CHURCH
OF SEVENTH-DAY ADVENTISTS**

Somewhere, U.S.A.

NOT AFFILIATED WITH
THE SEVENTH-DAY ADVENTIST DENOMINATION

January 1, 1999

General Conference Corporation
of Seventh-day Adventists
12501 Old Columbia Pike
Silver Spring, Maryland 20904-6600
Phone: 301-680-6000 / Fax: -6090

Dear Sirs,

We are sending this reply directly to you, in response to your letter through your attorney.

If you choose to go ahead with your suit, a copy of this letter, which expresses our position in this matter, will be presented to the court for inclusion in its records of this case. It comprises a rather complete statement of our position in this entire matter.

Special note: Reference will be made from time to time to three earlier trademark lawsuits filed by the General Conference of Seventh-day Adventists against independent Seventh-day Adventist groups. They are as follows:

The Huntsville Case: *Civil case, 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, U.S. District Court, Northern District of Alabama, Huntsville, Alabama.* The case never went to trial. The frightened defendants signed the paper, renouncing and abjuring the fact that they were Seventh-day Adventist believers.

The Hawaii Case: *Civil No. 87-0274; General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Congregational Church and John R. Marik, U.S. District Court, Honolulu, Hawaii.* The case never went to trial, for the plaintiff obtained a judgment on the pleadings (a court decision without a trial) as the baffled defendant stood ignorantly in the room, without an attorney.

The Hawaii Appeals Hearing: *Civil No. 87-0274; General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Congregational*

Church and John R. Marik, U.S. District Court, Honolulu, Hawaii / U.S. Appeals Court, San Francisco, hearing, May 11, 1989, decision, October 5, 1989. "The judgment on the pleadings in favor of plaintiff reversed, and the cause is remanded to the district court for further proceedings." The Appeals Court threw out the sentence and fine against the small group, and sent the case back to the Hawaiian court to be heard again. The reason given, in their ruling (written by Judge W.C. Canby), was that a judgment on the pleadings should not have occurred; that is, a trial should have been held, because the name "Seventh-day Adventist" appeared generic and the name of the church appeared to not be a cause of confusion. (The name of the independent Hawaiian church was "*Congregational Seventh-day Adventist Church.*") —But the case was put on hold till the Kinship case was tried; Pastor Marik left Adventism and, frightened, signed Ramik's paper—essentially giving the case to the General Conference. This closed the case without a trial.

The Kinship Case: *General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc., CV 87-8113 MRP, Judge Mariana Pfaelzer's opinion (ruling) dated October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California.* The case went to trial, the issues were heard, and the General Conference clearly lost the case.

We have have been advised by your attorney that you have a trademark, dated November 10, 1981, on "*Seventh-day Adventist*" and "*SDA*" (Registration No. 1,177,185 for the first of those terms).

We have also received your request, via our attorney, that (1) we change our name from "*Shady Grove Independent Church of Seventh-day Adventists*" to "*Shady Grove Church*" and (2) that we sign a paper, waiving forever our right to again say, write, or use two sets of words: "*Seventh-day Adventist*" and, its acronym, "*SDA.*"

After careful consideration and earnest prayer, we cannot consent to signing your paper and doing either of these things, for the following reasons:

1 - THE NAME, "SEVENTH-DAY ADVENTIST," IS GENERIC; THAT IS, IT STANDS FOR A TYPE OF PERSON OR A TYPE OF RELIGION. Each person who holds to the historic faith which the Seventh-day Adventist people have held for years, and who so publicly declares himself so, is a Seventh-day Adventist. It is not a matter to be determined by

Solutions to the Trademark Lawsuits

PART TWO OF FOUR

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an organization which has applied for secular trademark control over that hallowed name.

Let us say that a (fictitious) firm, named Sugar Cola Co., has started in business. Coca Cola Co. would be expected to threaten to sue it, unless it drops “cola” from its product name. If Sugar Cola can successfully defend in court that “cola” is a type of drink (that the term is generic), then it can use the term. As is commonly known, years ago, Pepsi Cola did just that—proving that a cola drink was a type of drink, made primarily from the cola nut, which tasted a certain way. The word, therefore, could not thereafter be retained as the exclusive property of the Coca Cola Co.

The same would apply to the phrase, “*Seventh-day Adventist*.” It represents a certain type of people, many of whom (it can be proven) are not in the General Conference of the Seventh-day Adventist denomination, headquartered in Maryland (hereafter referred to as “the General Conference”). Just as cola drinks are made from cola nuts, the hundreds of independent Seventh-day Adventist church groups are composed of Seventh-day Adventists.

According to accepted legal precedents and rulings, a generic term is one of general usage that may be used by anyone, and may not be trademarked. The Appellate Court (Appeals Court) in the Hawaii case stated that it favored the decision of a similar trademark lawsuit that occurred in 1987 on the East Coast. In the case of the *Christian Science Board of Directors v. Evans*, 105 N.J. 297, 520 A.2d 1347, 1351 (1987), the court held that “because ‘Christian Science’ is the name of a religion [generic argument], . . . anyone practicing ‘Christian Science’ can use that phrase in the name of a church” even though they do not belong to the Christian Science Church.

Here are statements from Judge Pfaelzer’s ruling in the Kinship Case, which granted the right to that organization to use the terms, “*Seventh-day Adventist*” and “*SDA*,” in their organizational name and all their literature. (Her ruling against the General Conference was primarily based on the genericness of the name, “*Seventh-day Adventist*”; and a violation of the First Amendment would result if she

ruled against Kinship.)

“SDA Kinship argues that ‘Seventh-day Adventist’ is generic because it refers to religion.”—*Judge Pfaelzer’s opinion, Kinship case, p. 11 (General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc., CV 87-8113 MRP, Judge’s opinion dated October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California).*

“A generic trademark is not entitled to [trademark] protection, even if the trademark has become incontestable.”—*Op. cit., p. 11; see Park ’N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 194-95 (1985).*

“The function of a trademark is to identify the source of the product.”—*Op. cit., p. 11; see also General Conference Corp. of SDA v. SDA Congregational Church, 887 F.2d 228, 231 (9th Cir. 1989), citing 1 J.T. McCarthy, Trademarks and Unfair Competition, sect. 12:1 (2d ed. 1984).*

“A generic mark is one ‘that tells the buyer what the product is rather than from where, or whom, it came.’ ”—*Op. cit., pp. 11-12.*

“Because it does not identify the origin of a product, it is not entitled to trademark protection.”—*Op. cit., p. 12.*

“The relevant test is what the ‘primary significance of the registered trademark is to the relevant public.’ ”—*Op. cit., p. 12; see 15 U.S.C., sect. 1064.3.*

“‘Christian Science’ is a generic term.”—*Op. cit., p. 12; see Evans, 520 A.2d at 1352.*

“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 pre-existed the organization.”—*Op. cit., p. 13; see Evans, 520 A.2d at 1351.*

“The Court finds that, as used by SDA Kinship, the terms ‘Seventh-day Adventist’ and, its acronym, ‘SDA’ are generic and are not entitled to trademark protection.”—*Op. cit., p. 15.*

“Conclusion: The terms ‘Seventh-day Adventist’ and ‘SDA,’ as used by SDA Kinship, are generic. This finding disposes of all of the claims asserted by plaintiff. Therefore, judgment shall be entered in favor of the defendant.”—*Op. cit., p. 18.*

2 - THE NAME, "SEVENTH-DAY ADVENTIST," IS A FAITH AND A SET OF BELIEFS. In addition to being generic, the name, "*Seventh-day Adventist*," is also the term used to describe a certain religious faith and set of historic beliefs. Anyone who holds to that faith and those historic beliefs is a Seventh-day Adventist. It is the name of a religion, and is therefore not subject to trademark control.

"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's opinion, Kinship case, p. 12*. See 29 N.Y.S. 2d 509 (1941).

"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."—*Op. cit., p. 14*.

3 - THE NAME, "SEVENTH-DAY ADVENTIST," IS A CLUSTER OF SEVERAL DIFFERENT CHURCH BODIES, ALL OF WHICH ARE INDEPENDENT OF ONE ANOTHER. The name "*Seventh-day Adventist*" has, since the early 1920s, been used by a number of different church groups and organizations. Some of these have been quite small; others rather large. The General Conference is not the only one. Indeed, due to apostate teachings and practices which have slipped into the General Conference organization, which do not coincide with historic beliefs and standards, many independent church groups have sprung up in America since the mid-1980s.

The name has, for decades, been used by various church groups—and today there are several hundred separate, independent Seventh-day Adventist churches in America.

4 - THUS THE NAME, "SEVENTH-DAY ADVENTIST," STANDS FOR THREE DIFFERENT THINGS—NONE OF WHICH ARE VALID FOR COPYRIGHT, TRADEMARK, SERVICE MARK CONTROL, OR EXCLUSIONS. As an example, let us consider the word, "*Lutheran*." It has three meanings: First, it applies to several different denominational and independent church bodies, as part of their organizational names. Second, it designates the religious faith of the individual. Third, it represents an organized set of beliefs, doctrines, liturgy, and related religious practices.

The same would apply to the name, "*Seventh-day Adventist*," which is used to identify a certain cluster of religious beliefs, and also identifies the religious beliefs of the many people who profess to hold those beliefs. A sizeable minority of those holding these beliefs are not in the General Conference or its subsidiaries, but are in separate churches in America and elsewhere in the world field.

5 - DICTIONARY DEFINITIONS OF THE DISPUTED PHRASES, "ADVENTIST" AND "SEVENTH-DAY ADVENTIST," CONSISTENTLY REFER TO A PERSON OR PERSONS HOLDING TO A SPECIFIC RELIGIOUS FAITH AND, ONLY SECONDARILY, TO A RELIGIOUS ORGANIZATION. Even the standard dictionaries agree with the facts in this case: "Seventh-day Adventist" and "Adventist" are generic. Here are but a few examples. Many more could be produced.

"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., p. 19*.

"Seventh-day Adventist: A member of a sect of Adventism distinguished chiefly for its observance of the Sabbath on Saturday."—*Op. cit., p. 1186*.

"Adventism: The doctrine that the second coming of Christ and the end of the world are near at hand; the principles and practices of Seventh-day Adventists."—*Webster's New Collegiate Dictionary, 1975 ed., p. 1062*.

"Adventist: Member of a Christian denomination believing that the second coming of Christ will soon occur."—*McMillan Contemporary Dictionary, 1979 ed., p. 15*.

"Adventists: Christians concerned with the imminent second coming of Christ."—*Random House Encyclopedia, 1977 ed., p. 1884*.

"The Court finds it significant that the term 'Seventh-day Adventist' appears in a standard American language dictionary . . . The American Heritage Dictionary of the English Language (1969) defines 'Seventh-day Adventist' as '[a] member of a sect of Adventism distinguished chiefly for its observance of the Sabbath as Sunday.' id. at [p.] 1186."—*Judge Pfaelzer's opinion, Kinship case, p. 12*.

It might be here noted that at the Kinship hearing, in order to somehow establish that "*Seventh-day Adventist*" belonged to the church organization itself, Ronald Graybill, representing the General Conference, cited no dictionaries or history books—other than a statement in a Catholic dictionary! (*New Catholic Encyclopedia, p. 140*.)

6 - OTHER CHURCH BODIES ARE NOT SUING ONE ANOTHER AS THE GENERAL CONFERENCE IS ATTEMPTING TO DO. The Mormons, based in Utah, do not require that the Mormons, based in Missouri, stop calling themselves "*Latter Day Saints*"! One branch of Lutherans do not attempt to get the other branches to stop calling themselves "*Lutherans*." The same applies to the Methodists, the Baptists, and many other church groups. This is because, in each case, the name signifies a

religious faith. By “Lutheran” is meant several pages of religious beliefs,—even though each branch may have slightly different beliefs. Nevertheless, each has the right to call itself “Lutheran,” because of its origins and spiritual ancestry. It is true that, among the various Lutheran churches, those beliefs vary somewhat—yet they all have the right in America to call themselves “Lutherans.” Why do they call themselves that? Simply because they believe that is what they are and declare themselves to be! There is no one in America to legislate whether they are or not. The name represents their beliefs, all of which are traceable back to their spiritual forebears in Germany. “Lutheran” is not a product; it is an expression of the religious faith. The same with the name, “Seventh-day Adventist.” We trace our spiritual lineage back to the beliefs of Seventh-day Adventists of over a century ago.

In an American Bible Society paper, “Partners,” published recently, is to be found a list of 63 of the most important Protestant denominations in the world. In this listing we find 8 “Baptist,” 5 “Brethren,” 4 “Church of God” (and 1 “Churches of God),” 5 “Evangelical,” 5 “Lutheran,” 7 “Methodist,” 2 “Pentecostal,” 5 “Presbyterian Church,” 4 “Reformed Church,” and 3 “Congregational” denominations. There are also a number of *Orthodox* and *Catholic* churches.

Denominational and church names are generally lumped under a relatively few categories. This is because the names denote religious beliefs, a spiritual lineage. It is universally felt that to remove the name is to abrogate the faith.

For example, there is a “Church of Christ” and a “United Church of Christ.” There is a “Methodist Episcopal Church, African,” a “Methodist Episcopal Zion Church, African,” and a “Methodist Episcopal Church, Christian.” There are also two denominations which have the very same name—“Church of God” (*Anderson*) and “Church of God” (*Cleveland*). None of these are suing one another because of name similarity.

Literally hundreds of other close similarities in denominational names could be cited. Church names are similar for two reasons: (1) Their beliefs are expressed in their names, and (2) divisions and splinter groups develop which retain the original name with only slight variation. This is a normal pattern which has continued for hundreds of years. Church names are not a matter for civil governments to legislate upon.

7. WE MUST CALL OURSELVES “SEVENTH-DAY ADVENTISTS,”—BECAUSE ELLEN G. WHITE, THE PROPHET OF THE LORD, COMMANDED US TO DO SO. We do not wish to be a

problem; please be assured of this. We are a peaceable people. But it is part of our religious belief that we must obey the command of the Lord. The prophet, which the God of heaven gave to the Seventh-day Adventist people, to guide them, has instructed us that we must ever call ourselves by this hallowed name.

Here are two sample Divinely Inspired statements:

“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.’”—*Letter 110, 1902, quoted in 2Selected Messages, page 384 (written in 1902).*

“We are Seventh-day Adventists, and of this name we are never to be ashamed. As a people we must take a firm stand for truth and righteousness. Thus we shall glorify God. We are to be delivered from dangers, not ensnared and corrupted by them. That this may be, we must look ever to Jesus, the Author and Finisher of our faith.”—*Letter 106, 1903, quoted in 2Selected Messages, page 384 (written in 1903).*

8. THE NAME, “SEVENTH-DAY ADVENTIST,” WAS GIVEN TO OUR PEOPLE—AT THE EXPRESS COMMAND OF ELLEN G. WHITE—FIVE YEARS BEFORE THE GENERAL CONFERENCE EXISTED. This command expressly required us to forever identify ourselves by this name. The command has precedence over the organization for two reasons: (1) The command comes from the God of heaven, and we must obey God. (2) The command was initially given in 1858, before the Seventh-day Adventist denomination was legally organized as a church in 1863:

“No name which we can take will be appropriate but that which accords with our profession and expresses our faith and marks us a peculiar people. The name Seventh-day Adventist is a standing rebuke to the Protestant world.”—*Testimonies for the Church, Vol. 1, page 223 (written in 1858) [bold type ours].*

“The name Seventh-day Adventist carries the true features of our faith in front, and will convict the inquiring mind. Like an arrow from the Lord’s quiver, it will wound the transgressors of God’s law, and will lead to repentance toward God and faith in our Lord Jesus Christ.”—*Testimonies for the Church, Vol. 1, page 224 (written in 1858).*

9. THE FAITH AND BELIEFS OF SEVENTH-DAY ADVENTISTS, WHICH WE ADHERE TO, WERE GIVEN TO US BY THE GOD OF HEAVEN—BEFORE THE GENERAL CONFERENCE RE-

CEIVED A CHARTER TO EXIST AS A BONA FIDE ORGANIZATION. The Faith and beliefs of Seventh-day Adventists were given to us—before the General Conference came into existence. The General Conference was not officially organized until May 20, 1863, at a meeting in Battle Creek, Michigan.

Not only our name, but our beliefs go back beyond 1863 to a set of beliefs and practices which existed earlier. We can prove this from a sizeable collection of statements and small publications.

The faith originated soon after 1844, and many of the believers were calling themselves “*Seventh-day Adventists*” by 1850. The name was officially adopted as the name of the believers in 1860. But, it was not until three years later, that the General Conference organization (the plaintiff in the present, proposed lawsuit) came into existence. It filed for corporate status under the laws of the State of Michigan in May 1863.

“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 [the Ten Commandments; Exodus 20:3-17]. Thus came the first Seventh-day Adventists, though the name was not formally adopted until later years.”—*Seventh-day Adventist Bible Students’ Source Book, 1962, p. 934.*

“By 1855, the Review and Herald Publishing Association had been set up in Battle Creek, Michigan, and a periodical, *Review and Herald*, was begun, advocating the Saturday Sabbath. In 1860, the name ‘Seventh-day Adventist’ was adopted.”—*Encyclopedia of American Religions, p. 465.*

“It has not been the purpose to write a detailed account of the organization of the Sabbatarian Adventists in the SDA Church. This section will deal with only two aspects of the SDA self-image which are of direct relevance to the understanding of its missionary nature: their name and the authority of the religious body.

“a. The name ‘Seventh-day Adventists.’

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

“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 . . .

“Finally in 1863, having overcome the theological obstacles to organization [a concern that it would be wrong to organize into a definite church structure], 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.*

Judge Pfaelzer, in the Kinship Case, noted this same point. She wrote this in her ruling against the General Conference:

“The parties [both the General Conference and Kinship] stipulated that the basic tenets of the religion practiced by the Seventh-day Adventist Church were established by 1850, and that no formal organizational structure was established until 1860. The name ‘Seventh-day Adventist’ was officially adopted by the Battle Creek Conference in 1860. Prior to that time, Seventh-day Adventists were known by a variety of names . . . but 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. *Review and Herald, Aug. 18, 1859.* [However, the Seventh-day Adventist Church, as an organization, was not legally incorporated until 1863.] The Court finds, therefore, that Seventh-day Adventism, the religion, pre-existed the Seventh-day Adventist Church.”—*Judge Pfaelzer’s opinion, Kinship case, p. 13 (General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc., CV 87-8113 MRP, Judge’s opinion dated October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California).*

“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 pre-existed the organization.”—*Ibid.*

10 - FULL DISCLOSURE OF THE FACT WAS NOT GIVEN WHEN THE GENERAL CONFERENCE APPLIED FOR THEIR TRADEMARK. In legal language, this would be called “the fraudulent acquisition of a trademark.” The General Conference deceptively obtained a trademark on the name, “*Seventh-day Adventist*,” on September 17, 1981—without telling the Trademark Office in Washington, D.C.,

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that other church bodies had, for decades, been using that name in their official titles.

It is our understanding that a word or phrase cannot be trademarked, if it has been in public domain usage by other groups in the same line of activity for years, prior to the trademark application date.

The trademark application was wrongly applied for on three counts:

(1) Although “Seventh-day Adventist” as a religious faith preceded “Seventh-day Adventist” as a denominational name, this fact was not disclosed to the Trademark Office. *(See historical discussion, immediately above, for information on this.)*

(2) The General Conference applied for the trademark in 1981 under false pretenses, presenting itself as though it were the sole organization using that name. But that was not true.

One example of such a “*Seventh-day Adventist*” organization prior to 1981 would be the “*Davidian Seventh-day Adventists*.” They took this name in 1942.

“An offshoot launched 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 publication. His organization took the name of ‘Davidian Seventh-day Adventist.’ ”—*Seventh-day Adventist Encyclopedia, 1976 ed., p. 376.*

“After the attack on Pearl Harbor . . . a formal theocratic organization was created, with Houteff as its leader, and 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.*

Another example would be the “*Seventh-day Adventist Reform Movement*,” commonly known as the “*Seventh-day Adventist Reform Church*.” This organization, which began shortly after World War I, was working in the United States by the 1930s.

The following book mentions this offshoot Seventh-day Adventist Church in America. The book was published by a General Conference publishing house (the Review and Herald)—in 1976, which was five years before the General Conference applied for the

trademark. Thus it clearly knew of the existence of the Seventh-day Adventist Reform Church when it tried to trademark the name.

“The Seventh-day Adventist Reform Movement never had a large following, and by 1937 it was divided into some 25 splinter groups in Europe alone. In the United States of America there are a few little groups.”—*Seventh-day Adventist Encyclopedia, (1976 ed.) p. 1333.*

(3) The Lanham Act (the trademark law) does not have jurisdiction over names which describe a person’s religion. *(This point is discussed below.)*

11 - THE GENERAL CONFERENCE TRADE-MARK IS NO LONGER VALID. A special affidavit was not filed in 1987. An attorney checked into this matter and discovered a discrepancy in the General Conference-held trademark:

“Plaintiff’s trademark was effective November 10, 1981. For such trademark to remain effective [in force at the Trademark Office], an affidavit of use 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.”—*Max Corbett, Motion to Set Aside Judgment, Hawaii trademark case, December 28, 1987, p. 9.*

12 - OUR FIRST AMENDMENT FREE SPEECH RIGHTS ARE HEREBY BEING INFRINGED UPON.

At this juncture, we should comment on the requirements which your chief attorney, Vincent Ramik, stipulated in his letter to us. *This is what we are told we must agree to, in order for you to drop your lawsuit against us:*

[1] “**Cease all use of SEVENTH-DAY ADVENTIST and/or SDA.**”

[2] “**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.

[3] **“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 [full caps his; bold type ours].*

Those three stipulations, if accepted by us, would constitute a violation of our free speech rights! Your attorney, Mr. Ramik (a non-Adventist), is demanding that we no longer take the name, “*Seventh-day Adventist*,” on our lips! This is the name God gave us through His prophet, by which we were ever to identify ourselves. According to the content of his demand, Mr. Ramik is asking that we never again use our religious name in sermons, in Sabbath School classes, on the streets, or in our homes.

For a church body in free America to suggest such restrictions is, frankly, astounding. We are not connected with your organization in any manner,—yet we have the religious faith of historic Seventh-day Adventists, going back to the mid-eighteenth century.

For you to tell us that we can no longer be “Seventh-day Adventist believers, that we can no longer express our religious faith, or mention our religious faith to others is a type of requirement not made in free America! What right do you have to tell people, who are not in your organization, how they can talk?

The bedrock of American liberties is the First Amendment. Why is the General Conference trying to eliminate it in our lives?

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”—*U.S. Constitution, First Amendment.*

In the first Kinship Case hearing, Judge Pfaelzer made this comment to the General Conference attorneys:

“Why should this organization not have a right to call themselves Adventists, when it has been admitted that the leadership of the organization presently permits a wide plurality of beliefs and practices of its own members?”—*Statement by Judge Pfaelzer, Kinship case, December 16, 1989.*

Here are several other pertinent legal statements, which have bearing on our case:

“A prerequisite for application of the free exercise clause [of the First Amendment] under either decision is that the 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.”—*Judge Pfaelzer’s opinion, Kinship case, p. 18. Cf. 1 Testimonies, 223:1-224:1, requiring that Seventh-day Adventist believers identify themselves by that name.*

“Freedom of thought, which includes freedom of religious beliefs, 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 concurring, quoting Rep. Daniel Carroll of Maryland during the debate on the proposed Bill of Rights in the First Congress].*

“Much of [that which is] religious is inherently associational, interposing the religious community or organization between the state and the individual believer.”—*L. Tribe, American Constitutional Law, 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 procounsel 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), p. 1237 n. 73.*

“It is no business of courts to say what is a religious practice or activity, for one group is not a religion under the protection of the First Amendment.”—*Fowler v. Rhode Island, 345 U.S. 67 (1953).*

“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. at 449, 451, 450.*

“The hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.”—*Ibid.*

“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.”—*Ibid.*

“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 (2d ed. 1987).*

The First Amendment’s Religion Clauses are meant to protect churches and their members from

civil law interference.”—*Jones v. Wolf*, 443 U.S. 5.95. 613-14 n. 2 (1979).

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

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

“[The intent of the First Amendment is] to insure that no one powerful sect or combination of sets 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).

“[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).

“[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*, 115.

“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 constitutional protection as the more orthodox types [of religious practices].”—*Murdoch*, 110.

“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*, 114.

“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).”—*Op. cit.*, p. 14.

13 - THIS SUIT INFRINGES ON OUR RELIGIOUS RIGHTS. We have here another, a second, First Amendment violation of our civil rights. Not only our free speech rights but our religious rights are being violated.

The U.S. Trademark Law cannot be used to deny us our right to practice our religion. This “practice” includes (1) what we, in the sight of God, consider ourselves to be, (2) what we profess to be before others, and (3) how we worship God and tell others of our faith.

(See above quotations.)

14 - THE U.S. TRADEMARK LAWS DO NOT APPLY IN THIS CASE. The U.S. Trademark Law was originally enacted to protect commercial products and business operations. A religion is neither. My belief in a set of religious tenets, and my practice of them—is not trademarkable—so that someone else can tell me I can no longer profess the faith I choose.

The Lanham Act was passed in 1946 by the U.S. Congress in order to protect business ownership and brand names. Only industry and commercial businesses are to be governed by that act. Injurious, competitive commercial activity must be shown to have occurred.

Here are several additional facts about the trademark law:

“[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.

“[Trademark laws were made for business and industry, not churches:] 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.”—*Judge Pfaelzer’s opinion, Kinship case, p. 8 (General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc., CV 87-8113 MRP, Judge’s opinion dated October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California)*.

“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 regulatable 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).

15 - PRESENTATIONS, WHICH WERE EARLIER MADE IN THE HAWAII TRADEMARK CASE, CLARIFY THE FACT THAT WE ARE NOT INVOLVED IN TRADEMARK VIOLATION. The complaint in the Hawaii trademark suit was filed April 9, 1987, against John Marik and his eleven-member church (which very soon was reduced to nine).

Here are some comments by the defense attorney who, unfortunately, did not enter the case until after judgment on the pleadings (judgment without a hearing) had been handed down in favor of the plaintiff. Yet these comments apply with equal force to our own situation:

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

“A trademark must be a word or symbol capable of distinguishing the owner’s goods from the goods of others.”—*Op. cit., p. 2.*

“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.”—*Op. cit., pp. 6-7.*

“Throughout plaintiff’s complaint, it has failed to specify on what goods or services defendant is alleged to have used plaintiff’s trademark. Plaintiff has also failed to specify in what manner defendants are supposed to have engaged in acts which comprise a use in commerce regulatable 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.”—*Op. cit., pp. 7-8.*

16 - GOVERNMENT POWERS MAY NOT BE EMPLOYED TO INHIBIT RELIGION. The following legal statements are pertinent to the present case:

“Government powers may not be employed to inhibit the dissemination of particular religious views.”—*Murdock v. Pennsylvania, 319 U.S. 105, 87 L.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 organizations are extended the same

right under the free exercise clause 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).*”—*Motion to Set Aside Judgment, Hawaii Trademark Lawsuit, p. 12.*

17 - THE ISSUE INVOLVED HERE HAS ALREADY BEEN RULED ON AGAINST THE GENERAL CONFERENCE, therefore this case should be dismissed or adjudged in our favor.

Many Seventh-day Adventists—who are not in the General Conference organization—have already been awarded the right, by a U.S. federal trademark court, in the Kinship Case, to (1) call themselves “*Seventh-day Adventist*” and (2) use the name, “*Seventh-day Adventist*,” in their organizational name.

They were given the right by the court, although this group of people are not members of the General Conference or its subsidiaries, and their organization is neither recognized by the General Conference, nor has ever been one of its entities.

About seven years ago, this decision against the General Conference was made in the *Kinship Case* in Los Angeles. On December 7, 1987, the General Conference filed a trademark suit against that group—a suit essentially similar to the one you are filing against us. That group had been advertising itself as “*Seventh-day Adventist Kinship*” (significantly enough, without once using the word “*independent*”) on unauthorized flyers at Seventh-day Adventist college and university campuses, and letters mailed to Adventist young people.

Having lost that case, in which you tried to force former and non-Seventh-day Adventists to relinquish the use of the name “*Seventh-day Adventist*” for themselves and their organization, why are you now trying to harass us?

On October 3, 1991, Judge Pfaelzer issued her decision in the Kinship Case (*General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Incorporated, Case No. CV 87-8113 MRP, filed in the U.S. District Court, Central District of California; filing date October 7, 1991*). Here is part of her ruling:

“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.”—page 14 [full caps ours].

Then, after noting several reasons why the phrase should properly belong to people of that faith, and not merely to a denominational headquarters, she

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ruled:

“SDA Kinship claims that it is ‘made up of Seventh-day Adventists who, despite the attitude of the General Conference, **DO NOT WANT TO FORSAKE THEIR RELIGION**’ and that, in deciding to call itself the Seventh-day Adventist Kinship International, it was merely ‘describing its organization in terms of what it is, an international organization of Seventh-day Adventists’ . . .

“SDA Kinship is entitled to use the term, ‘Seventh-day Adventist,’ TO IDENTIFY THE RELIGION OF THE GROUP’S MEMBERSHIP.”—pages 14-15 [full caps ours].

“*Seventh-day Adventist Kinship, International*” was the contested name in that case. Judge Pfaelzer ruled that they could retain that phrase in their organizational name, and that they could individually call themselves Seventh-day Adventists.

18 - WE DO NOT USE GENERAL CONFERENCE IDENTIFICATION MARKERS. We are careful not to use any identification markers which the General Conference uses. It uses special highway markers and church signs, with which to identify itself. We never use those signs. This is another factor clearly differentiating between our church body, and that of the General Conference and its subsidiaries. There is no confusion in identification.

“The Court also notes that defendant has never used black lettering against a white Bible or white lettering against a blue background, which are characteristic of the Seventh-day Adventist Church highway signs and identification markers.”—*Judge Pfaelzer’s opinion, Kinship case, p. 15.*

19 - OUR CHURCH IS COMPOSED OF SEVENTH-DAY ADVENTIST BELIEVERS, THEREFORE WE RIGHTLY INCLUDE “SEVENTH-DAY ADVENTIST” IN THE ORGANIZATIONAL NAME. We call our group “Seventh-day Adventist,” because it has Seventh-day Adventist believers. Therefore our name is “*Shady Grove Independent Church of Seventh-day Adventists.*” The words, “*Seventh-day Adventist,*” in our name “identifies the religion of the group’s adherents.”

It is the “**Shady Grove Independent Church, which has Seventh-day Adventists in it.**” That is what the name means.

Judge Pfaelzer gave the West Coast group the right to call themselves “*Seventh-day Adventist,*” and their organization, “*Seventh-day Adventist.*” We are following in the same path, doing the same thing which Judge Pfaelzer approved in her October 3, 1991, federal trademark court decision.

Judge Pfaelzer ruled that “SDA Kinship is entitled to use the term, ‘Seventh-day Adventist,’ to identify the religion of the group’s membership.” The words, “*Seventh-day Adventist,*” in our name also identifies the religion of our group’s adherents. Here is the complete statement:

“SDA Kinship claims that it is ‘made up of Seventh-day Adventists who, despite the attitude of the General Conference, do not want to forsake their religion’ and that, in deciding to call itself the Seventh-day Adventist Kinship International, it was merely ‘describing its organization in terms of what it is, an international organization of Seventh-day Adventists.’ SDA Kinship is entitled to use the term ‘Seventh-day Adventist’ to identify the religion of the group’s membership.”—*Judge Pfaelzer’s opinion, Kinship case, pp. 14-15 .*

20 - WE HAVE TAKEN ADEQUATE STEPS TO AVOID ANY CONFUSION OF IDENTITY BETWEEN OUR CHURCH AND YOURS. When there is no such confusion, we have the legal right to “fair use” of the name, under the Lanham Act.

There are three reasons why this is so:

(1) WE HAVE ADDED THE WORD, “INDEPENDENT,” TO OUR CHURCH NAME. This alone should be sufficient. It clearly tells everyone that we are NOT related in any way to your organization! There can be no confusion in anyone’s mind that we might represent you. We are not associated with you, and we want everyone to know the fact.

(2) WE ARE NOT USING THE PHRASE “SEVENTH-DAY ADVENTIST CHURCH,” but “. . . Church of Seventh-day Adventists.” We are not telling people that we are the Seventh-day Adventist Church. In accordance with the limitations of Judge Pfaelzer’s ruling, we are telling them that

we are a church or organization—which has *Seventh-day Adventists in it*. (In the Kinship case, she did not rule on the use of the phrase, “*Seventh-day Adventist Church*,” but that Kinship could use “*Seventh-day Adventist*” in its organizational name and all its literature.)

Thus our name is not

Shady Grove Seventh-day Adventist Church

but

**Shady Grove Independent Church
of Seventh-day Adventists**

(3) ON OUR LETTERHEAD AND ON OUR CHURCH SIGN, WE HAVE ADDED A STATEMENT OF SEPARATION. Here is this “statement of separation” which will appear beneath our organizational name:

“Sponsored by Seventh-day Adventists, not affiliated with the Seventh-day Adventist Church.”

We want everyone to have *not the slightest* doubt about our distance from your organization. They will see the above statement of separation when they read our letters or come to our meetinghouse.

People who come to our church here know we are independent of the General Conference,—and if they do not know, we tell them.

The Appeals Court in San Francisco, in their ruling which reversed the lower court decision against the small nine-member Hawaiian group (which they called a “congregational [i.e., independent] church” and remanded the case back to the lower court, noted that Pastor Marik had stated in his letter that his group was very careful to inform visitors that the church was independent of the General Conference and its subsidiaries.

“[4] In the ‘answers,’ Marik makes several factual assertions regarding the likelihood of confusion. First, he notes that the Congregational Church has ‘never in any way sought to deceive or confuse anyone in regards to our name.’ He also states that the word ‘congregational’ in the name of his church is explanatory, and distinguishes the two different churches. He states that ‘people have been quick to recognize this,’ and that the church intentionally used the word ‘congregational’ to clarify that they were not affiliated with the plaintiff. All of these factual allegations go to the issue of likelihood of confusion, and create a question of material fact that should not have been determined in a judgment on the pleadings.”—*Civil No. 87-0274; General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Congregational Church and John R. Marik, U.S. District Court, Honolulu, Hawaii / U.S. Appeals Court, San Francisco, hearing, May 11, 1989, decision, October 5, 1989, para. 9.*

(4) On any media advertisements or

notices, the following “statement of separation” will appear at the bottom:

SPONSORED BY SEVENTH-DAY ADVENTISTS,
NOT AFFILIATED WITH THE SEVENTH-DAY
ADVENTIST CHURCH

Here are several legal statements on “fair use”:

Judge Pfaelzer, in the Kinship Case, made this comment to the General Conference attorneys at the first hearing:

“Why should this organization 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?”—*Statement by Judge Pfaelzer, Kinship case, December 16, 1989.*

“A provider of a related product or service may be entitled to use the trademarked name in order to describe its own product or service, so long as it does not mislead the consumer as to the origin of the product. This is considered a ‘fair use’ of the name.”—*Judge Pfaelzer’s opinion, Kinship case, p. 9 (General Conference Corporation of Seventh-day Adventists v. Seventh-day Adventist Kinship, International, Inc., CV 87-8113 MRP, Judge’s opinion dated October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California).*

“The fair use defense only applies where the term is a descriptive term used in a non-trademark sense in such a way as to avoid likelihood of confusion.”—*Op. cit., p. 9.*

21 - WE DO NOT WANT TO IDENTIFY WITH THE GENERAL CONFERENCE! That is why we have gone to great lengths in our name and disclaimers to avoid it. Why? Because it is clear that the General Conference organization has left a number of pivotal teachings and practices of our Seventh-day Adventist forefathers.

The General Conference not only violates a number of teachings of the Bible and Spirit of Prophecy, but it even carries out lawsuits against small, clearly independent Seventh-day Adventist groups.

There need be little wonder why we do not want to have the slightest identification with you (although some of our members may wish to later return to the General Conference church. That will be their free, unimpeded choice).

According to General Conference *Policy*, non-church members cannot use the name, “*Seventh-day Adventist*,”—and even church members cannot use the name in books, etc., without permission from the General Conference, following application to and approval by their local conference office (*163-88NG General Conference Trademark Policy: New Policy / GCO/88SM/88AC to CBR88YE, Revised ed., dated 4-9-88, p. 2).*—Such rulings are wrong! Such policies will not bear the scrutiny of Heaven.

In the Hawaiian and Huntsville (Alabama) trade-

mark lawsuits, the General Conference required, in writing, that every book, magazine, or study paper owned by each member of the worship group, containing the phrase, “*Seventh-day Adventist*,” was to be seized by federal marshals for destruction (*Complaint for Federal Trademark and Service Infringement, Hawaii Trademark Case, pp. 7-17*). [*The Huntsville case was a civil case, 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, U.S. District Court, Northern District of Alabama, Huntsville, Alabama.*]

Our prophet, Ellen G. White wrote the following statements. You are acquainted with them, yet you continue to persecute little groups across America who, in response, are either terrorized and repudiate their faith or face bankrupting litigation.

“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 . . . 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.”—*Ellen G. White, Desire of Ages, 487.*

“The Church, being supported by the civil authority, would permit no dissent from her doctrines.”—*Ellen G. White, Great Controversy, 290.*

“He [Roger Williams] declared it to be the duty of the [government] 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.’”—*Ellen G. White, Great Controversy, 294 [cf. 293].*

“The [U.S.] Constitution guarantees, in the most explicit terms, the inviolability of conscience . . . [First Amendment, quoted] . . . 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.”—*Ellen G. White, Great Controversy, 295.*

“The church . . . [employed the power of the state] and employed it to further her own ends, especially to the punishment of heresy . . . Whenever the church has obtained secular power, she has employed it to punish dissent from her doctrines.”—*Ellen G. White, Great Controversy, 443 [cf. 573, 581, 591, 592].*

Even secular judges are shocked at your behavior:

Summary judgment in favor of the General Conference was handed down before the nine-member defendant church in Hawaii could obtain an attorney to represent them. It was on that basis, that the case was won. At the first post-trial hearing follow-

ing this (February 22, 1988), a different judge, Judge Russell Smith, was shocked at the audacity of the General Conference in attempting to crush this small independent church, impose stiff fines, and possibly imprison its pastor. Recognizing that the judgment had already been made and he was not in a position to reverse it, he made this remarkable statement from the bench:

“Now, I am going to do something that I have never done before and that perhaps is unusual. The plaintiff [General Conference] has won a victory in court. But I am not sure that if you pursue this victory it isn’t going to be a pyrrhic one . . . If say, if you [the General Conference] pursue this victory that it is going to be pyrrhic.

“The plaintiff is a conference of a religious group which has certain beliefs which are reasonably unique. The defendant is likewise a religious group which has very similar, if not identical, beliefs. And we have here a struggle between these two religious groups. I think that it is unfortunate that the litigation took the turn that it did . . . that a default judgment was entered [against the nine-member group, without permitting them to have a formal hearing] . . .

“The plaintiff is faced with the problem of making a martyr out of this preacher and out of this congregation . . . I will simply impose fines on the various parties. But I wonder if those fines in the end would ever be collected. And I also wonder about the worthwhileness of them . . .

“Mr. Johns [General Conference officer who was present], you will have a chance to talk to the plaintiff [other General Conference officers]. And I am going to suggest that you open this case, that you allow this case to take its ordinary course with counsel on the other side to work out the issues that do lie between you, and see if you can accommodate those things by settling, if possible . . .

“I think it is unfortunate when we pit two [religious] faiths that are so similar against each other in a [government] courtroom . . . I want you to take this message to your people [back to the General Conference officers] and see if—see what, in their spirit of Christian charity, can be done about the thing. With that, we’ll be in recess.”—*Judge Smith, statement made at post-trial hearing, February 22, 1988, Hawaiian Trademark Lawsuit, pp. 30-41.*

22 - SUMMARY: WE MUST REMAIN SEPARATE FROM YOU, WHILE, AT THE SAME TIME, WE MUST RETAIN OUR HISTORIC NAME. In humble deference, we wish you to know that our group does not want to be identified with your organization,—yet, at the same time, we must continue to identify ourselves by the sacred name which God, through His prophet Ellen G. White, commanded us to ever retain.

The First Amendment protects our right to practice our faith. How can we live our faith—if we no longer are permitted to identify that faith? The ramifications of this are serious. They strike at the heart of the First Amendment. The First Amendment provides the right of free speech to express our faith.

For one church body to attempt to deny other church bodies the right to believe something and express it in free speech—is not only a violation of the First Amendment, it is a species of religious persecution.

According to Judge Pfaelzer's decision, both former and nonmembers of the Seventh-day Adventist Church can now form separate, independent organizations (which, like ours, are not recognized by the General Conference as subsidiary entities). According to her ruling, they can call their organization, "*Seventh-day Adventist*," as expressing the fact that it is composed of individuals who call themselves by that name, because they profess to believe in the historic religious beliefs and standards which the name "*Seventh-day Adventist*" stands for.

We are sorry, very sorry, that, in spite of that ruling—with its clear precedent nullifying the General Conference's attempt to keep people from identifying themselves as "Seventh-day Adventists"—that you are ignoring it and are instituting a suit against us.

Our spiritual forefathers did not drag Seventh-day Adventist believers into civil courts—on the charge of calling themselves Adventists!

We conclude with two thought-provoking brilliant men of former times:

"The doctrine which, from the very first origin of religious dissensions, has been held by all bigots of all sects, when condensed into a few words, and stripped of rhetorical disguise, is simply this: I am in the right, and you are in the wrong. When you are the stronger, you ought to tolerate me; for it is your duty to tolerate truth. But when I am the stronger, I shall persecute you; for it is my duty to persecute error."—*Lord Macaulay, "Essay on Sir James Mackintosh," in Critical and Historical Essays (1865 ed.),*

"We should not feel that we have nothing to do. We are to watch as well as pray. We should watch the work of our adversaries, lest they gain advantage in deceiving souls. We should, in the wisdom of Christ, make efforts to defeat their purposes . . . God will fight our battles for us, and give us precious victories."
—3 Bible Commentary, 1138.

"God would not have us follow the wisdom of men who have disregarded His Word, and made themselves a reproach by their practises and counsels."
—3 Bible Commentary, 1138.

"God will not in the slightest degree favor such [wrong] practices. He hates every false way. He abhors all selfishness and covetousness. Unmerciful dealing He will not tolerate, but will repay in kind . . . His curse rests upon all that is gained by selfish practices."
—3 Bible Commentary, 1158.

Vol. 1, pp. 333-334.

"When a religion is good, I conceive that it will support itself; and, when it cannot support itself, and God does not take care to support, so that its professors are obliged to call for the help of the civil power, it is a sign, I apprehend, of its being a bad one."—*Benjamin Franklin, "Letter to Dr. Price," October 9, 1780, in The Writings of Benjamin Franklin, ed. by Albert Henry Smyth, Vol. 8, p. 154.*

The name, "*Seventh-day Adventist*," is not a commercial product; it is a religious faith, a set of doctrinal beliefs—our beliefs. Those who attend our relatively small group meetings hold to those beliefs. We have a right to call ourselves and our group by that hallowed name.

We adhere to the religion taught by the Bible and Ellen G. White,—and that faith precedes the 1863 formation of the General Conference of Seventh-day Adventists.

We humbly submit this letter to you, notifying you that we are complying with your request as far as we can, without denying our faith. We have the word "*Independent*" in our name, and a disclaimer below it which additionally clarifies our separation from your organization. We therefore humbly and sincerely request that you withdraw your lawsuit.

We await your response. May it be one of peace.
Very sincerely,

John Q. Defendant
Shady Grove Independent
Church of Seventh-day Adventists
1234-5th Street,
Somewhere, U.S.A.

cc Dave Jones, Esq. [*defendant's attorney*]
678-9th Street,
Somewhere, U.S.A.

cc Vincent Ramik
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