

TRADEMARK DEPOSITION QUESTIONS

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PART ONE OF THREE

On Monday, I received a phone call from a friend who asked if I would help him out. His attorney was going to depose a General Conference officer the following Monday and Tuesday, and he wanted me to fly down and help ask the gentleman the questions. I replied that I could help better by remaining here and sending him a detailed list of questions.

I reminded him of Zwingli, who decided he could best help Oecolampadius in his debate at Baden, by sending him papers hidden in baskets of poultry carried on the heads of couriers (*see Great Controversy*, 182). Because time was extremely limited, I worked all day Tuesday; and then on Wednesday, not having any baskets of poultry available, I mailed it to him by overnight mail.

By the time you receive this, the General Conference representative will already have been deposed, so there is no need to keep these questions secret. However, the day may come when, in your little group, you will be sued for calling yourselves "Seventh-day Adventists,"—and you will need some questions like these to depose their officer.

Here is the entire set of papers which I sent: vf

Note to deposing attorney:

This was hurriedly prepared; for I only received the phone call on Monday, and had only one day in which to write it. Yet it should be helpful. In some instances, you may want to turn a statement into an additional question. If I had time, I would have smoothed that out.

You will want to have the following near you during the deposition. You may need to refer to them:

- 1 - A copy of the 27 Fundamental Beliefs (see p. 7)
- 2 - A copy of the Settlement Agreement (see p. 10)
- 3 - A sample copy of the Perez group newspa-

per ad (see p 12)

4 - A copy of the Nixon letter (see p. 5)

Of the four items listed above, items 1, 2, and 4 are enclosed with this letter. I will enclose a copy of two of my booklets on this: *Legal Defense against a Trademark Lawsuit plus the Notorious Settlement Agreement* and *The Story of the Trademark Lawsuits*.

In preparation for the deposition and the forthcoming court hearing, you would do well to have read, and keep at hand, the Kinship Case decision. You will find it referred to in my 56-page *Kinship Legal Papers Tractbook*, which I earlier sent to Pastor Perez. The Kinship decision is extremely important!

Use any part of these questions, at your discretion, and add others to them. Study these questions carefully, and then the answers of the General Conference officer will be less likely to throw you; you will be able to work with them or around them. Subheads, below, are only for your guidance.

AUTHORITY AND VERACITY OF THE GENERAL CONFERENCE REPRESENTATIVE BEING DEPOSED

What is your name?

What is your official title and position?

The General Conference is the complainant in this case. Is that right?

Did the General Conference authorize that you would be sent here today, to receive deposition in this lawsuit?

You were sent here to represent the position of the General Conference; is that right?

(If No, then someone else should have been sent, and he cannot properly be deposed as representing the General Conference.)

You understand that you cannot be the proper one to be deposed, as representing the General Conference, unless your sworn statements today can be considered as representing the position of the General Conference; is that your understanding?

In your deposition today, you will represent the teachings, doctrines, and positions of the General Conference; is that correct?

We are to assume that you have been properly briefed so that you can speak accurately and fully on matters relating to this lawsuit and its implications; is that correct?

STRUCTURAL AUTHORITY LEVELS OF THE CHURCH

The General Conference claims to represent the entire Seventh-day Adventist Church in this lawsuit; is that your understanding?

The Seventh-day Adventist denomination has its world headquarters at the General Conference in Silver Spring, Maryland; is that right?

Below that, in North America, is the North American Division, also with headquarters in Silver Spring; is that correct?

Below that are eight union conferences, each over a different portion of the United States; is that correct?

Below the union conference level, there are a number of local conferences; is that right?

Below the conference level are thousands of local congregations; is that correct?

(If at some point, he mentions that the North American Division voted approval of the trademark lawsuits, mention that you will question him on the NAD soon; but that, first, you want to consider the other levels.)

Have the eight union conference offices, in duly called board meetings, granted approval to these trademark lawsuits against Seventh-day Adventist believers?

Which of them have?

Which of them have not?

(If he doesn't know:)

It would be expected that you would know this. Is it not true that, due to church actions at the 1901 General Conference Session, that the union conferences and local conferences in the United States are semi-autonomous; that is, not fully under General Conference control?

Would it not then be expected that they would have to grant official permission for the General Conference to sue local Adventists, in localities here and there, throughout the United States?

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Which local conference offices have, in duly called board meetings, approved these trademark lawsuits against Seventh-day Adventist believers?

(If he says does not know:)

You do not know whether local conferences have approved these sweeping trademark lawsuits throughout America?

The local conference offices work directly with local Adventists and Adventist groups in their allotted territory. Can you name even one local conference which has officially approved these trademark lawsuits against Seventh-day Adventist believers?

(Narrow the scope at this point.)

It would be well if we narrowed the focus of this. Have the officers of the Southern Union Conference, based in Decatur, Georgia—which has authority over Seventh-day Adventists in the southeastern U.S.,—in a duly called board meeting, approved this lawsuit against the Perez group?

The Florida Conference, with headquarters in Winter Park, Florida, has jurisdiction over all local denominationally owned Seventh-day Adventist churches in the State of Florida; is that right?

Did the Florida Conference, in a duly called board meeting of their Executive Committee, vote approval of this lawsuit by the General Conference against this small group of Seventh-day Adventist believers in south Florida?

In view of these facts, does the General Conference have proper authorization to sue Seventh-day Adventist believers who do not happen to be on the church rolls?

We have spoken of legal administrative entities of your denomination in the United States. There are also individual Seventh-day Adventists. Is it true that individual Seventh-day Adventists, who are on the church rolls, only vote at (1) local church constituency meetings, (2) biennial (two year) local church constituency meetings, and (3) quinquennial (five year) General Conference Sessions; is that correct?

(If he questions this, say. By this I mean that, as a general rule, it is only at those three gatherings that they directly elect officers and vote on church business; is that correct?)

How many local congregations in the United States have been presented with, or have had the opportunity to vote on, whether they think these trademark lawsuits should be carried out?

Do you know of even one local congregation which has given its approval?

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Have any local congregations in the Florida Conference given their approval?

Have any in Greater Miami or Greater Orlando?

Have delegated representatives of individual Seventh-day Adventists, in attendance at local conference constituency meetings, been given an opportunity to go on record as either supporting or opposing this ongoing string of trademark lawsuits, carried on by the General Conference?

Have delegates, to the most recent biennial Florida Conference Constituency Meeting, voted to approve this current trademark lawsuit against the Perez group?

Have delegates, to any Florida Conference Constituency meeting, ever approved such a lawsuit?

Only if the General Conference in official Session voted on the trademark lawsuits, could it be said that delegates representing individual Adventists in the church had approved such an action; is that correct?

(He may argue on this point but it is correct. However, in reality, only 7%-10% of those delegates are laymen.)

Application for the name, "Seventh-day Adventist," was first filed on November 10, 1981; is that correct?

Within a few years, that filing resulted in a string of extremely hurtful lawsuits against small Adventist worship groups, which cost the General Conference millions of dollars in legal expenses; is that correct?

In order for that portentous 1981 filing to be made, it would be expected that consideration of the matter and a vote of approval at the preceding General Conference Session (which met in Dallas in summer 1980) was carried out. Was such a vote taken at the Dallas Session?

Beginning in 1987, a string of trademark lawsuits have been threatened or filed against small separated Seventh-day Adventist worship groups, which has placed devastating emotional and financial burdens on them. Did the preceding General Conference Session (summer 1885 in New Orleans) approve the initiation of those trademark lawsuits?

Have the delegates in attendance at any subsequent General Conference Session been given the opportunity to discuss, approve, or revoke those lawsuits?

Since there could be considerable disapproval of these trademark lawsuits by church members, why was such an important matter not placed before a General Conference Session, for its approval?

(If he replies that Session approval was not necessary:)

Are you aware that a significant number of church members have left the denomination in disgust because of these expensive and crippling lawsuits against Adventist brethren?

Are you aware that many church members, who have not left the denomination, have been deeply upset by this ongoing string of lawsuits, and reduced contributions have resulted?

Are you aware that, due to the excessive amount of litigation expense by the General Conference, by the early 1990s, the union conferences got the Annual Council to reduce the annual budget allocated to the General Conference; and, as a result, they had to release a sizeable portion of their staff?

With all this in mind, are you aware that these lawsuits against Adventist believers have had a major impact in alienation and loss of funds to the church?

On a local level, these trademark lawsuits pit Adventists against Adventists, friends against friends, and one would think that considerable grief could be involved. How does the General Conference feel about the fact that it has taken this action without the approval of the General Conference Session, and without the approval of conference constituency meetings?

Does the General Conference recognize the fact that, by the trademark lawsuits, it is implicating every enrolled Seventh-day Adventist in the United States in these lawsuits—against their Seventh-day Adventist brethren? that is, it is making them partly responsible for these harassing suits?

Does the General Conference believe that it has authority, without having brought the matter before a General Conference Session, to make every enrolled church member responsible for these trademark lawsuits?

(If, at some point, the reply is made that the *North American Division* approved the action:)

Does the North American Division represent Adventist Church members in the United States? (Yes.)

Did church members vote the North American Division Executive Committee into office? [No.]

What percentage of North American Executive Committee members are high-level church officers? (Nearly all of them.)

Were the church members notified in advance that a vote would be taken on whether or not to sue faithful Adventists? (No.)

Were the church members notified in the *Adventist Review* and the eight local union papers

before or after that initial NAD vote was taken? (No.)

(If, at some point, the reply is made that the *Annual Council* approved the matter:)

Is the Annual Council the highest authority in the church? (No, the General Conference Session is.)

Is the Annual Council only to act on less-important matters, in between General Conference Sessions? (Yes.)

Since these lawsuits directly affected local church members, why then was this important decision not taken to the General Conference Session before this financially ruinous string of lawsuits was implemented? (The Annual Council is able to handle it.)

Do you not consider these trademark lawsuits to be an extremely significant development in the history of the Seventh-day Adventist Church?

Were such lawsuits against small, quiet Adventist worship groups carried on in the 19th century?

Were such lawsuits prosecuted earlier in the 20th century?

Has a string of lawsuits of any kind—one after the other—been conducted, by the church, against little groups of separated Adventist believers who were quietly worshiping God by themselves?

ARE THE OTHER CHURCHES SUING?

Do you know of any other denomination in America—Protestant, Catholic, Orthodox, Jewish, or non-Christian—which has carried on a string of trademark lawsuits against separated brethren over a period of 12 years, as has the SDA denomination?

There are 8 “Baptist” churches, 5 “Brethren” churches, 5 “Lutheran,” 7 “Methodist,” 5 “Presbyterian,” 4 “Reformed,” and on and on. Why is it, for example, that all the Methodist denominations—and several are quite large—have managed to co-exist in the same nation all these years without suing one another, to gain sole control of the church name?

You were sent here to represent the thinking of the General Conference. Do you believe that it would be proper for them to sue one another?

There are three “Methodist Episcopal” denominations; do you think they should sue one another?

There are two denominations which have a totally identical name: “Church of God (Anderson)”

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and “Church of God (Cleveland).” Should those churches sue one another?

Why then does the General Conference believe it is proper for it to sue little groups, whose only crime is that they worship the same God and tell others so?

Is not this unusual? Why is it that no other Christian denomination in America is conducting a string of trademark lawsuits against very small, relatively defenseless groups of former church members?

The General Conference has a reputation of defending “religious liberty.” Are these trademark suits in agreement with its position on religious liberty?

LACK OF BIBLICAL SUPPORT

Does the General Conference believe the Bible?

Does it believe that it should conduct its affairs in accordance with Bible principles?

Let me quote a statement of Scripture:

“Dare any of you, having a matter against another, go to law before the unjust, and not before the saints?

“.. I speak to your shame. Is it so, that there is not a wise man among you? no, not one that shall be able to judge between his brethren?

“But brother goeth to law with brother, and that before the unbelievers.

“Now therefore there is utterly a fault among you, because ye go to law one with another. Why do ye not rather take wrong? Why do ye not rather suffer yourselves to be defrauded?

“Nay, ye do wrong, and defraud, and that your brethren.”—*1 Corinthians 6:1, 5-8.*

Is the General Conference aware of the existence of that passage in Paul’s writings?

On the basis of that quotation, does the General Conference believe it has Biblical approval for these lawsuits against Seventh-day Adventist believers?

(Answer will be: “They are not our brethren.”)

ARE THEY BRETHREN?

In what way is each of these little worship groups “not brethren”?

(Not on the church rolls; not part of us; separated; etc.)

What specifically constitutes them as not being brethren?

(Not members of the church?)

Are you saying that membership is the only cri-

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terion of whether someone, *who fully believes the historic beliefs of Seventh-day Adventism*,—is a “brother”?

They believe what Seventh-day Adventists have always believed, yet they are not brethren?

Then being on the church rolls is the issue, not beliefs?

So then, anyone who believes the Bible and Spirit of Prophecy fully, with all his heart, is not a “brother in the faith”—unless he is registered on the church rolls?

This leads us to a related question: Does anyone have a right to be a Seventh-day Adventist without the permission of the General Conference?

(When he offers some excuse, add this:)

Does any little group of Seventh-day Adventist worshipers, who is not on your church rolls, have a right to tell others that they are Seventh-day Adventists?

How publicly can they tell them?

Do they have a right to tell others about their worship services?

(Yes, yes; but they must use some other name.)

They are not permitted by you to call themselves Seventh-day Adventists?

Even though they have the faith of Seventh-day Adventists?

(No, they must use some other name.)

According to you, it is not permissible for those Seventh-day Adventist believers—to call themselves Seventh-day Adventists?

Jesus mentioned something about a golden rule. If you were in their place—on a small, fixed income—would you want the General Conference to sue you?

WHO WOULD YOU SUE?

If a Seventh-day Adventist left the church, and then told others he was a Seventh-day Adventist,

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would the General Conference sue him? (No.)

If he met with several other former Adventists and began worshiping with them, would you sue the little group?

Would you sue them if there were only 11 people in the group, including children (which quickly reduced to 9), and all they did was place an old weather-beaten wooden sign outside their rented quarters, saying that an independent Seventh-day Adventist church group met inside—with no other advertising of any kind; would the General Conference sue them?

—This is exactly what the General Conference did in the Hawaii case, which dragged on for years. How much did the Hawaii trademark lawsuit cost the General Conference? (They probably will not tell you; it is estimated at over \$5 million.)

In the Hawaii lawsuit, did not two legal firms (one in Honolulu and the other in Annandale, Virginia) handle that case?

Did not the two legal firms work on the Hawaii case for four years, from 1987 to 1991?

How much did the Hawaii case cost?

Was any part of it paid from tithe income allocated to the General Conference? (Yes, all or most of it, according to a signed letter by Robert Nixon, a General Conference in-house attorney.) [You should have a copy available. It is found on p. 63 on my book, *Story of the Trademark Lawsuits*.]

In what way did that little group of 9 people—with their one little plywood sign and no other advertising of any kind—injure your “business,” that you found it necessary to carry on, through two legal firms, a four-year suit against them?

Specifically, how did their little hand-painted sign interfere with your business?

How small would a group of unregistered Adventists have to become, before you would leave them alone?

LANHAM ACT DOES NOT APPLY

The Lanham Act (commonly called the Trade-

mark Law) was enacted by Congress in 1944 to protect commercial products and business operations; is that correct?

Is my set of religious beliefs trademarkable?

Is yours?

Is the package of religious beliefs—which present Seventh-day Adventists have inherited from their 19th century forefathers—trademarkable?

Can a set of religious beliefs be equated with commercial products and business operations?

Congress intended that only industry and commercial businesses be governed by the Lanham Act. Do you think they intended it to also apply to religious faiths?

In order to clarify this, let me quote from the Lanham Act:

"[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.

Do you believe that applies to the religious faith of Seventh-day Adventists?

In the Los Angeles trademark lawsuit, by the General Conference against Seventh-day Adventist Kinship International, Inc. (commonly known as the Kinship Case), the General Conference sued a group who called themselves Seventh-day Adventists—and were advertising heavily, and widely, on Adventist college and university campuses throughout the world for Adventists to join their unapproved organization which, among other activities, held independent worship services. In the Kinship Case, *Judge Pfaelzer ruled against the General Conference*. Let me quote from her ruling, since it is so significant:

"[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 com-

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modity 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. Sporhouse*, 208 Neb. 703, 305 N.W. 2d 614, 610 (1981).

According to that ruling, it appears that the Lanham Act does not apply to these General Conference rulings against advertising Seventh-day Adventist groups—even though they may be large; is that correct?

Why then does the General Conference continue to harass small groups, with their occasional missionary activities and newspaper ads?

SPECIFIC DAMAGE

Specifically, how does the existence of our defendant worship group hurt your business?

What is the specific commercial damage which the defendant group is doing to the business and products of the General Conference?

The General Conference is going to great expense to sue this little group. What is the purpose, the objective of the General Conference in this lawsuit?

(Press for one or more specific points.)

You are a General Conference representative. They sent you to represent their beliefs; is that right?

Is it right for the General Conference to sue Seventh-day Adventist believers, with the objective in mind that they will abandon Adventism or only believe in secretly?

(If claimed that this is not their objective, reply that, later in the questioning, you will refer to the wording of their Settlement Agreement.)

You claim that the defendant is hurting your business. Are you aware of the fact that these ongoing trademark lawsuits, and their great expense, is causing many faithful Seventh-day Adventists to leave the denomination? Is not that hurting your business more than the activities of the defendant?

INSPIRED STATEMENT: WE SHOULD NOT SUE FELLOW BELIEVERS

Do historic Seventh-day Adventists believe that Ellen G. White was a special messenger—even a divinely inspired prophet—to the Seventh-day Adventist Church?

Does the General Conference believe that Ellen G. White was a special messenger—even a divinely inspired prophet—to the Seventh-day Adventist Church?

Does the General Conference believe that what Ellen G. White wrote is true, accurate, and fully in-

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spired of Heaven?

Here is a statement from a book, *Acts of the Apostles*, written by Ellen G. White, the prophet to the Seventh-day Adventist Church and people:

"Another grave evil that had arisen in the church was that of brethren going to law against one another .. .

"Lawsuits between brethren are a reproach to the cause of truth. Christians who go to law with one another expose the church to the ridicule of her enemies and cause the powers of darkness to triumph. They are wounding Christ afresh and putting Him to open shame. By ignoring the authority of the church, they show contempt for God, who gave to the church its authority."—E.G. White, *Acts of the Apostles*, pp. 304, 306, commenting on 1 Corinthians 6:1-8.

Do you believe that, what I have just read, is an inspired statement by God's special messenger to the Seventh-day Adventist Church?

Why do you then sue brethren?

(If the comment is, "They're not fellow believers":)

A "believer" has beliefs. Their beliefs are essentially the same as those of Seventh-day Adventists in earlier decades. In what way are they not fellow believers?

(If "No":)

The 27 Fundamental Beliefs of the Seventh-day Adventist Church, prepared by a General Conference Session in April 1980 at Dallas, Texas, and revised in June/July 1995 at Utrecht, the Netherlands, is the closest approximation that the church has to a creed; is that correct? [A copy of the *Fundamental Beliefs* can be obtained from the General Conference; it is also to be found in the front of the *Seventh-day Adventist Yearbook*.]

I have in my hand a copy of the 27 Fundamental Beliefs. I would like to know which of them does the little group which you are now suing—not believe, or is in violation of? (None.)

(If he quibbles about something or other:)

Is the point you are mentioning listed in the 27 Fundamental Beliefs? (No.)

In what way then are they not fellow believers?

(If they comment, "They are not brethren in the church"; they are not church members:)

Does the General Conference believe that, because a little group of devoted Seventh-day Adventist worshipers is not in the church, it is free to apply a crippling lawsuit against them?

Does kindness and mercy stop at the church door?

THE NAME IS GENERIC

What does the name, "Seventh-day Adventist," stand for? (It is the name of the church organization, and so is trademarkable)

Is it true that, in the Kinship Trademark Case which the General Conference lost, Judge Pfaelzer ruled that the name, "Seventh-day Adventist," was generic—and stood for a type of person who considers himself to hold certain religious beliefs?

Let me quote from Judge Pfaelzer's ruling:

"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.

How is the case, which you are now prosecuting, different than the Kinship Case?

(If they comment, "They are doing more advertising":)

Are you aware of the fact that Seventh-day Adventist Kinship International has, since the early 1980s, carried on one of the largest advertising campaigns ever done?

The Kinship case decided that the term, "Seventh-day Adventist," is generic and therefore could be used by anyone who considered himself a Seventh-day Adventist, even though he is not a member of the church; is that right?

If the term, "Seventh-day Adventist," is generic, would that mean that the General Conference can control the name and specify those who can use it?

In order to clarify this, let me read two brief legal opinions:

"A generic trademark is not entitled to [trademark] protection, even if the trademark has become uncontested."—*Op. cit.*, p. 11; see *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 194-195 (1985).

"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.

THE NAME IS A FAITH AND A SET OF BELIEFS

Is not the name, "Seventh-day Adventist," used to define a certain religious faith and set of historic beliefs?

To clarify this point, Judge Pfaelzer ruled that the name applied to the name of a religion. Here was the ruling:

"Use of the name 'Baha'i could not be enjoined [forbidden to be used by others] because it is 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.*

Are you aware of the outcome of the Christian Science case?

Here was the decision in that case:

"'Christian Science' is a generic term."—*Op. cit., p. 12; see Evans, 520 A.2d at 1352.*

"In holding that 'Christian Science' is 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.*

Would the General Conference hold claim to the term, "Seventh-day Adventist," if "the religion pre-existed the organization"?

THE HISTORY OF THE NAME

When did the Seventh-day Adventist people begin calling themselves "Seventh-day Adventists"? (As early as 1850.)

When was the name, "Seventh-day Adventist," officially adopted as the name of the believers? (1860.)

Did a Seventh-day Adventist denomination exist then? (No.)

When did the Seventh-day Adventist Church, as an organization, come into existence? (1863; it was chartered in the State of Michigan.)

When did the General Conference come into existence? (1863.)

Here is an interesting legal opinion about whether something can be trademarked:

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

Is it not therefore true that the term, "Seventh-day Adventist," originated and was used by the believers prior to the time that the organization began?

If individual Adventists, as well as unorganized Seventh-day Adventist congregations, have called themselves Seventh-day Adventist since before the

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denomination was organized, does the denomination today have the right to say that it—not the believers—has the prior claim to the term?

Judge Pfaelzer, in her ruling in the Kingship Case against the General Conference, stated that her decision was partly based on this historical sequence of events; is that correct?

Here is the statement:

"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, August 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).*

OUR PROPHET GAVE US THAT NAME FIVE YEARS BEFORE THE DENOMINA- TION AND GENERAL CONFERENCE WAS ORGANIZED

We have an interesting situation here: The General Conference says it owns the name, "Seventh-day Adventist"; yet your prophet gave the name to the believers *five years* before the General Conference and the denomination existed. Is this true?

Here are two statements from the writings of Ellen G. White:

"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).*

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"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).

According to those statements, the name was given to the people by the prophet at least five years before church organization occurred; is that right?

Why then does the General Conference think it has a right to control the name, and forbid Seventh-day Adventists from using and proclaiming it?

THE NAME WAS HELD BY OTHER CHURCH ORGANIZATIONS PRIOR TO THE GENERAL CONFERENCE TRADEMARK

Has the Seventh-day Adventist Reform Movement used this official name for decades before the 1981 General Conference filing of the trademark on the term, "Seventh-day Adventist"?

Here is a statement on this:

"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.

The Reform Church was using the name for 39 years before the 1981 trademark filing. On what basis would the General Conference have a legal right to trademark the name, if others had been using it for decades?

Another denomination which has used the name, "Seventh-day Adventist" prior to 1981 is the Davidian Seventh-day Adventists; is that correct?

Here are two clarifying statements:

"An offshoot launched by Victor T. Houteff, member of an SDA church in Los Angeles, California, in 1929, popularly called the 'Shepherd's

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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.

That is 39 years of prior usage. Did the General Conference notify the Trademark Commission of this fact of prior usage, when it applied for that November 1981 trademark on the name?

If it did, it would not have received approval for the trademark; is that correct?

If it did not, it did not provide what, in legal terms, is called "full disclosure"; is that right?

Do you have a valid legal right to sole control over a name which has been used for decades by other, separate church organizations?

If Coca Cola tried to trademark the name, and there were two other business firms elsewhere in America, also called "Coca Cola"—one which had been using the name for 39 years and the other for 44 years,—would Coca Cola's trademark application be approved by the Trademark Commission—if it provided full disclosure of that prior usage by those other firms?

Does the General Conference then hold a valid trademark to the name, "Seventh-day Adventist"?

"SEVENTH-DAY ADVENTIST" IS LIKE "LUTHERAN"

Is the word, "Lutheran," a word which can be trademarked?

Does the word, "Lutheran," represent a set of beliefs?

Do several different denominations use the word, "Lutheran?"

Does not the name, "Seventh-day Adventist," also apply to a set of beliefs?

Do not several different church bodies hold that name?

Why then should the General Conference be able to control the name, when other denominations are unable to do so?

OUR PROPHET COMMANDS US TO CALL OURSELVES BY THAT NAME

Let me inquire again: Does the General Conference believe that Ellen G. White is a divinely inspired prophet of God, and that Seventh-day Adventists should obey her writings?

Let me submit two statements from her writings, and then ask you about them:

"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 2 Selected 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 2 Selected Messages, page 384 (written in 1903).*

Both statements say, "We are Seventh-day Adventists." Does the phrasing of those statements indicate that they were written to every Seventh-day Adventist believer, or *only* to the organization and its officers?

Should we take these statements in a literal sense or should we seek to spiritualize them away?

According to these statements, would a faithful believer apostatize from the faith if he forsook the name, "Seventh-day Adventist"? (Yes.)

Are you aware of the fact that there are reported to be hundreds of small groups of Seventh-day Adventists who meet secretly for worship, for fear of being discovered and sued?

Yet this is happening in America! The prophet of the Seventh-day Adventist Church says they must continue to call themselves "Seventh-day Adventists." In view of that fact, do you think they should stop doing so?

The General Conference, in its dealings with little groups which it sues over usage of the name, has repeatedly told them that they can use any other name except "Seventh-day Adventist." Is that right? (Yes; any name but "Seventh-day Adventist.")

What other name should they use?

Would that name agree with the command of

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Ellen G. White, as given in the above two statements? (No.)

Should those little groups then obey the General Conference or should they obey Ellen White?

The truth is that any other name which they might select will not be the exact phrase which the prophet told them they must adhere to; is that correct?

If you were in their place, and being sued by the General Conference, would you obey the General Conference or would you obey the prophet?

THE MEANING OF RELIGIOUS LIBERTY

What does the phrase, "Religious Liberty," mean?

Does the First Amendment of the U.S. Constitution guarantee those religious freedoms to citizens of the United States?

Does religious liberty include the right to designate the religious faith you will have?

Does religious liberty include the right to openly worship with others of like faith?

Does religious liberty include the right to share your faith with others, who are not of your faith?

Does religious liberty include the right to advertise the name of your meeting place?

Does religious liberty include the right to hold public meetings and invite others to join your faith?

Does religious liberty include the right to advertise various articles of your faith in newspapers?

FIRST AMENDMENT RIGHTS

The following statement is part of the Settlement Agreement, which your attorneys have sent to our client to sign, as the only way to settle this suit out of court. First I will read a small portion to you; then I will ask you to comment on it: *[Have a copy of the Settlement Agreement. It is part 2 of my book, Legal Defense against a Trademark Lawsuit plus the Notorious Settlement Agreement.]*

[1] [You must] "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

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Church.”—*Vincent Ramik, attorney representing General Conference of SDA, letter dated March 17, 1998, stating the terms of the Settlement Agreement [full caps his].*

According to those stipulations—and others in the Settlement Agreement not quoted here,—in order to keep this expensive lawsuit from going to court, the defendant church group must totally stop using what they consider to be a God-given phrase, “Seventh-day Adventist,” in all conversation, writing, preaching, and social and religious contacts—forever! This must be done in violation of an explicit command of the prophet. Is that true?

You say that the wording is not really that strong. But the wording of the Settlement Agreement must be read as it reads; is not that correct?

Is it not a legal document, to be binding upon being signed? [Have a copy of the Settlement Agreement in hand—and previously read,—so you can refer to it if necessary.]

Judge Pfaelzer, in her Kinship ruling, recognized that the First Amendment was being violated by the General Conference position. I will read it to you, and then ask for your comment:

“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, 223-224, requiring that Seventh-day Adventist believers identify themselves by that name.*

Would you agree that the Settlement Agreement would, quoting Judge Pfaelzer, require that “the claimant is to act in a way that his religion forbids or that it prohibits him from doing something that his religion requires”?

Is it not remarkable that, here in free America, such a document as the Settlement Agreement would be sent to Americans to sign,—when signing it, they sign away their rights, as they know them, to a distinctive part of their religion?

Is it not true that, historically, the U.S. court system has protected the First Amendment rights of the individual?

Here are several examples, which bear on First Amendment rights:

“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).*

“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 Amend-

ment.”—*Fowler v. Rhode Island, 345 U.S. 67 (1953).*

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

“[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).*

THE RIGHT TO SHARE ONE’S BELIEFS

A key issue in this case is the right of the defendant group to share its faith. Does the General Conference believe they have a legal right to share their faith with others?

Here are statements bearing on this legal right:

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

“[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).*

“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.*

“[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.*

It seems strange to ask a representative of the General Conference, which, for years, has published a magazine called *Liberty*, this question; but here it is: Does the U.S. federal government have the right to inhibit religion?

(If yes:)

Then has the General Conference repudiated the religious liberty beliefs of its people, as clearly and repeatedly stated, for example, in Ellen G. White's book, *Great Controversy*?

(If no:)

Then why is the General Conference suing my defendant?

Consider these legal opinions:

"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.

STATEMENTS IN THE NEWSPAPERS

It is the understanding of the defendant that the General Conference opposes their newspaper ads. Which portions of those ads is the General Conference in disagreement with?

Which portions of those ads do they not want published?

Which portions do they consider in error?

Which portions agree with the historic teachings of the Seventh-day Adventist Church?

(Or do it this way:)

This paid doctrinal statement says that the seventh day is the Bible Sabbath. Is this a belief of the General Conference?

This paid doctrinal statement says that . . Is this a belief of the General Conference? (etc. Take time to go right on through the entire newspaper ad. Be prepared to quote statements from *Bible Readings*, etc., which agree with points expected to be controverted!) [You should have a copy of a sample newspaper ad.]

CONCLUDING STATEMENTS BY JUDGE PFAELZER

On October 3, 1991, Judge Pfaelzer issued her decision in the Kinship Case (*General Conference Corporation of Seventh-day Adventists v. Seventh-*

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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:

"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*.

"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]*.

"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" was the contested phrase in the name "Seventh-day Adventist Kinship, International" in that case. Judge Pfaelzer ruled against the General Conference, and said that (1) they could retain that phrase in their organizational name, (2) that they could individually call themselves Seventh-day Adventists, and (3) that they could use the phrase in their extensive advertising. "Seventh-day Adventist" is the contested phrase in the current trademark lawsuit. Should not the defendants I represent, individually and as a group, also be able to identify themselves and their advertising as "Seventh-day Adventist"?

That concludes the questions. Thank you. I have learned a lot from your answers, as I am sure you have learned a lot from my questions.

AFTERMATH—A few days after the above deposition was completed, I received a phone call and was told that the General Conference representative had a difficult time with a number of the questions.

When asked whether church leaders believed in the Spirit of Prophecy, there was a long silence and then, in a soft, low tone, he said, "Yes, we believe."

When asked why the General Conference does not sue the Seventh-day Adventist Reform Church, he replied, "We have good relations with them. We work together, and have a representative on their committee." Puzzling indeed. So I phoned an expert on the subject and was told it was a false statement.

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