THE CSDA Signet

"And thou shalt make a plate of pure gold, and grave upon it, like the engravings of a signet, HOLINESS TO YAH" (Exodus 28:36)

A bi-monthly publication of The Creation Seventh Day and Adventist Church

Small Causes,

Large Effects

One of the principles upon which the universe is created is the "law of cause and effect." It has been the basis of several topics covered in the Signet's articles, as well as a number of studies on the CSDA website, for it is indeed of Biblical origin.

We may read, to establish this, "As the bird by wandering, as the swallow by flying, so the curse causeless shall not come." (Pro 26:2)

"Surely the churning of milk bringeth forth butter, and the wringing of the nose bringeth forth blood: so the forcing of wrath bringeth forth strife." (Pro 30:33)

"Whoso diggeth a pit shall fall therein: and he that rolleth a stone, it will return upon him." (Pro 26:27)

Not surprisingly, a lot of the Biblical examples of the cause-and-effect idea are found in the Book of Proverbs, which is largely concerned with the practical side of our precious faith.

Despite the high reliability of this concept, the verses above should not be taken to indicate that Yahweh does not directly influence the course of events. He did not merely set the principles of the Universe in place and then sit back to observe its motion. We read, and I add emphasis, "If thou wilt diligently hearken to the voice of Yahweh thy Elohim, and wilt do that which is right in His sight, and wilt give ear to His commandments, and keep all His statutes, I will put none of these diseases upon thee, which I have brought upon the Egyptians, for *I am Yahweh that healeth thee*." (Exo 15:26)

It is the Almighty, the Heavenly Father, that provides the healing. It is Yahweh that causes His people to be blessed, above and beyond what mere cause-and-effect would provide. Of course, those who know the truth have the responsibility to do all they can to benefit from that, for Yahweh does not do for us what we can do for ourselves. But even so, we read an applicable teaching here, "For unto every one that hath shall be given, and he shall have abundance; but from him that hath not shall be taken away even that which he hath." (Mat 25:29)

Yahshua asks His disciples, "For what shall it profit a man, if he shall gain the whole world, and lose his own soul?" (Mark 8:36) In short: nothing. Those who follow the principles and teachings of the Almighty will benefit both in this life (from the law of cause and effect, from the refining power of righteousness, and from special "divine intervention") and also by obtaining life in the world to come. But those who do not, even if they appear to have some success in this life, gain no lasting benefit from the mere natural principles. Now it is true that this is not always readily apparent, since we also have the clear teaching, "Yea, and all that will live godly in Christ Jesus shall suffer persecution." (2Tim 3:12)

The world, and Satan, will actively work against the principles of those last few verses I have listed above. They would see the righteous punished, and the wicked exalted, to obscure the truths presented in the Word. It takes spiritual discernment to be able to see the blessings in even the trials that result from this. But we all must be able to say when sorely tried, as Paul did, "We are troubled on every side, yet not

In this issue…

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distressed; we are perplexed, but not in despair; Persecuted, but not forsaken; cast down, but not destroyed; Always bearing about in the body the dying of the Lord Jesus, that the life also of Jesus might be made manifest in our body.” (2Cor 4:8-10)

It is a common misconception, because on the surface it sounds logical, that the level of cause and the level of the corresponding effect must be at least roughly equivalent. They may say, for example, “If you do a lot of work, you get a lot of benefit. If you put little effort into something, don’t expect much.” Now to a very large degree, there is wisdom in that. Particularly in the things related to the way this world works, if we study hard in school, we tend to get better grades. If we do body building exercises, our muscles develop proportional to our effort. If we are lazy and careless in our daily affairs, our lives will fall into chaos.

But even on an earthly level, this does not always hold true. Some people work very hard, and enjoy very little success. Some are born into a life of ease, and go from cradle to grave with relatively few serious crises, doing little to merit their privileges. This is called, by those with a cynical outlook, the “real world.” “The real world,” they say, does not always reward honest work, and many evil people benefit. Patient, long-suffering Job was troubled by this fact, and Solomon the Wise observed this very thing also. He wrote, “Then I looked on all the works that my hands had wrought, and on the labor that I had labored to do; and, behold, all was vanity and vexation of spirit, and there was no profit under the sun. And I turned myself to behold wisdom, and madness, and folly, for what can the man do that cometh after the king? Even that which hath been already done.

“Then I saw that wisdom excelleth folly, as far as light excelleth darkness. The wise man's eyes are in his head; but the fool walketh in darkness, and I myself perceived also that one event happeneth to them all. Then said I in my heart, ‘As it happeneth to the fool, so it happeneth even to me; and why was I then more wise?’ Then I said in my heart, ‘That this also is vanity.’” (Ecc 2:11-15)

Yet in the long term, the Judgment does set things right on all counts. We read, “For yet a little while, and the wicked shall not be; yea, thou shalt diligently consider his place, and it shall not be. For Yahweh loveth judgment, and forsaketh not his saints; they are preserved for ever: but the seed of the wicked shall be cut off.” (Psa 37:10, 28)

The wicked are not always punished by the just consequences of their actions immediately, and large efforts sometimes fail. But on the other hand, sometimes very small causes have far-reaching effects. We read, for example, “Behold, we put bits in the horses’ mouths, that they may obey us; and we turn about their whole body. Behold also the ships, which though they be so great, and are driven of fierce winds, yet are they turned about with a very small helm, whithersoever the governor listeth. Even so the tongue is a little member, and boasteth great things. Behold, how great a matter a little fire kindleth! And the tongue is a fire, a world of iniquity: so is the tongue among our members, that it defileth the whole body, and setteth on fire the course of nature; and it is set on fire of hell.” (James 3:3-6)

We have a number of examples from Scripture of small actions leading to very large results. David’s transgression with Bathsheba, Moses’ striking the rock in anger, and of course Adam’s transgression in the Garden of Eden – these are all one-time, single acts of disobedience, but the consequences of them were national, even global, in scope. And even though all three of these individuals did repent, the repercussions have lingered on, and will do so until the close of the age.

But good experiences that relate to this idea are recorded as well. In the book of Joshua, the prostitute Rahab dealt kindly with the Hebrews that had been sent ahead to see the state of Jericho’s army, and because of this she and her family were spared. Ruth, for loyalty to her deceased husband’s mother, found her way out of a land polluted by the religion of Moloch, and both these women became ancestors of the Savior.

After a lifetime of disobedience and transgression, the king Manasseh, and the judge Samson both turned back to the truth at the very end; and, in the case of the latter, his single act of obedience freed the Israelites from a generation of Philistine oppression.

Sometimes, what men consider “small things” are not so small after all. And this works for both pure and impure actions.

We, in this last generation, are seeking individuals who have the eyesight of Heaven. Though the world lies in wickedness, we have this instruction from the Redeemer of the world, “I counsel thee to buy of me gold tried in the fire, that thou mayest be rich; and white raiment, that thou mayest be clothed, and that the shame of thy nakedness do not appear; and anoint thine eyes with eyesalve, that thou mayest see.” (Rev 3:18) The message that the servants of Yahweh bear is that thing, that test, that separates those who have the will and desire to see truth from those who do not.

Here is a ready example:

There may be many reasons that people can give for joining a Church body. They may be born into it. They may have friends or relatives that convince them to join. They may be living in an area where it is their only convenient spiritual fellowship. And yet, if they are not united with that movement because they are totally convinced that their fellowship is the Bride of Christ upon the earth (and not just one of several “brides”) they have not yet understood the importance that Yahweh places upon the *Membership Covenant*. Yahshua is not interested in nominal followers. He does not seek for people to obey Him merely to receive some temporal benefit.

But the only valid reason for joining a Church is because of a “small thing” as the world commonly counts size, popularity and scope.

We know that at certain points in His ministry, the Messiah had large crowds following Him. We read, for example, “And great multitudes came unto Him, having with them those that

were lame, blind, dumb, maimed, and many others, and cast them down at Jesus' feet; and He healed them." (Mat 15:30) "And there went great multitudes with Him." (Luke 14:25a)

But then we read an interesting passage, "Yahshua therefore answered and said unto them, 'Murmur not among yourselves.' Then "Yahshua said unto them, 'Verily, verily, I say unto you, Except ye eat the flesh of the Son of man, and drink His blood, ye have no life in you. Whoso eateth my flesh, and drinketh my blood, hath eternal life; and I will raise him up at the last day.'" (John 6:43, 53, 54) As a result of this statement, "From that time many of His disciples went back, and walked no more with Him." (John 6:66)

As the ministry of Christ drew to a close, the number of His followers diminished dramatically. By the Last Supper, He had only the 12 as intimate companions, although there were other friends and believers in different places as well. At the cross, He had two witnesses, His mother Mary, and John the Beloved. All the others had fled, or sunk into despair at His capture by the combined forces of the Jews and the Romans. And yet, it was because of this "small" event, for which there were only a handful of eye witnesses, that the Christian movement began.

In the last days, we are faced with a similar situation. We have the Scriptures that warn us of the events of the end times, and the Scriptures themselves are widely distributed and much discussed. And yet, the events that actually take place are prophesied as only affecting (in the sense of benefitting) a small remnant.

We read, for example, "Because strait is the gate, and narrow is the way, which leadeth unto life, and few there be that find it." (Mat 7:14) And again, "Yet a small number that escape the sword shall return out of the land of Egypt into the land of Judah, and all the remnant of Judah, that are gone into the land of Egypt to sojourn there, shall know whose words shall stand, mine, or theirs." (Jer 44:28)

The grand and terrible things described in Revelation are those things that affect God's people which, from these and other verses, are "a small number" composed of "few." And the question is asked, "Why all this work? Why would God set up such a system, warn the entire world, only for the benefit of so few when the time actually arrives?" The truth is that many have benefitted from these things that have already passed into the grave, to be resurrected with the Righteous in the last day. (1Th 4:16, 17) And of those few living that see these things unfold, it should not be a surprise that they are few in number. Since the Garden of Eden, there has been the promise of a Redeemer to come. As with the warnings of the last days, this promise has blessed countless people down through the ages; and yet, when Yahshua was born into the world, how few they were who recognized Him as anything greater than an ordinary human!

There were three magi that worshipped Him at His birth. There was an old man named Simeon, an old woman named Anna, (Luke 2:25-38) and a few others. He influenced many during His lifetime, but was essentially alone at His death.

And yet it is this life above any other that has given life to all humanity since the fall of Adam.

In my own experiences, when I speak to others about what happens when a church unites with a state power and begins to oppress the faithful, I am often met with little interest or, sometimes, a general sense of agreement that the practice is "bad." When I draw the lines of connection between the Mark of the Beast in the Book of Revelation and the trademark law initiated by the General Conference of Seventh Day Adventists, I generally get agreement that the prophecy fits the events, and the principles are clearly indicative that this is an evil action disguised as an attempt to "protect" an ecclesiastical organization. But when it comes to identifying one explicitly with the other (the trademark with the Mark), a far too common reaction is, "That's it? How can such a small thing be the mark of the beast?"

At times like this I point to the cross of Christ, and mention how few people actually knew about it when it took place. Most who heard about it, even in those days, heard by the testimony of those few that were there, or the disciples that – later on – witnessed the resurrection and the risen Savior. These are small causes, to the secular eye, yet the effects are infinitely disproportional in their scope, and what they mean to our lives.

It requires spiritual eyesight, which can only be obtained from the Savior, to be able to accurately discern what is truly important. Much of human history, the grand discoveries, the great works of art, even the world-changing battles, were not commonly known by the people who lived in the era of their occurrence. It is only afterwards, when examining the impact, that we see how significant they were. For many people, for far too many people, it will be thus with this latest union of Church and state. The time of testing will pass, and many who heard about it and dismissed it as trivial, not understanding the judgment of Heaven on this matter, nor how often and sternly humanity has been warned against this unholy union of powers, will come to understand only then what it is they tolerated. For many, they will be horrified to learn Yahweh's mind on the detestable thing that they supported so eagerly with their time, efforts, talents, and tithes.

But now is the acceptable time, now is the day of salvation, for those who will reject what God detests, and accept what He approves. There is a people upon the earth today with the voice of the Spirit coming forth from their mouths, speaking words of great judgment, but also great hope. Though the cause may appear small, with the certainty of the divine Savior, and the Spirit of Prophecy, the warning about the effects is sounding even now. And who will hear the message? Who will help them call, saying with a loud voice, "Babylon is fallen," and "come out of her, my people, that you receive not of her plagues?" These words, these testing words, are present truth for this last generation, and it is the prayer of the workers in the vineyard that there may be some left with eyes to see, and ears to hear, even the small causes that mean so much to the spiritually sensitive heart of Yahweh and His faithful people.

— D.P. Aguilar

Order in the Court

Dearest reader,

This issue of the Signet represents a great landmark in the history of the Church of Christ, and indeed, the entire human race. While this may seem to be a dramatic declaration, it is difficult – impossible, really – to overstate the significance of this particular point in the spiritual timeline. On May 27th of this year, a "death warrant" for the CSDA faith in the United States of America was signed into effect by a United States district judge, validating the claims of the General Conference Corporation of Seventh-day Adventists against those who, while compelled by conscience to stand apart from the prevailing apostasy within that organization, are likewise compelled to hold true to both the principles and distinctive name given to us by God for the purpose of identifying His Bride: "Seventh Day Adventist."

A "period of grace" was granted to Walter O. McGill, as representative of the CSDA Church, to comply with an order to remove the sign upon the Church's property in Guys, Tennessee that indicates it to be a place of "Creation Seventh Day and Adventist Church" worship and gathering. This period will expire on June 17th, after which time it is anticipated that federal agents will be sent to the property to enforce this order, with which NO genuine Protestant Christian, regardless of specific denomination, could possibly comply. Their standpoint that legal magistrates have no authority to dictate matters of religious worship or conscience, and that true "Churches" are founded on fundamentally different principles than for-profit organizations that may legitimately benefit from intellectual property protections, forbids it.

What this means for the worshippers who are present on, or responsible for, the Guys, TN property at the time of the enforcement of this order is not certainly clear, yet what *is* clear is that the Dragon has received both a green light and strong encouragement from the laws of this land to advance in apparent victory over the Woman, and to "make war with the remnant of her seed, which keep the commandments of God, and have the testimony of Jesus Christ." (Rev 12:17) By the time you read this, the events of June 17th, or whatever may take place shortly thereafter, will have already transpired. We therefore invite all Protestant Christians to make a stand against this turn of events, which, though termed "legal" by the standards of the world, is nevertheless "illegal" according to the Law of God.

Most, if not all, of the Signet's readers are already familiar with the spiritual principles that have led us to our distinct doctrines, including those relating to the Mark of the Beast - our protest against the Trademark law of the General Conference Corporation - therefore, we will not endeavor to restate them here. What we would like to do, however, is take this opportunity to briefly respond to some particulars of the judge's order (included on page 10 of this Signet edition) that incorrectly characterize pastor Walter O. McGill and, by extension, every member of the Creation Seventh Day and Adventist Church.

In the order adopting the magistrate judge's recommendation that the plaintiff should receive "permanent injunctive relief" against Creation Seventh Day Adventists, the judge makes several statements that are inaccurate regarding the process of the legal developments. Upon reading the order, those of us familiar with the case were surprised to find statements such as the following:

"Pursuant to the Second Mediation Order, the parties conferred with magistrate Vescovo's office and obtained several possible dates for mediation, and informed Magistrate Vescovo's office they would call back within the next few days to confirm the date for mediation, as well as the intent of the respective parties to attend mediation. However, shortly thereafter, Defendant's remaining counsel, Charles Holliday, indicated that Defendant would not attend, nor authorize counsel's participation on his behalf, in the mediation conference."

The judge has characterized this in the following way:

"[Walter O. McGill] claims that his religious beliefs prevented him from participating in mediation because he is theologically opposed to compromising his position in this dispute. But see Nick v. Morgan's Foods, Inc., 99 F. Supp. 2d 1056, 1061 (E.D. Mo. 2000) ("Good faith participation in ADR does not require settlement. In fact, an ADR conference conducted in good faith can be helpful even if settlement is not reached.") The Court finds the Defendant's position to be wholly inconsistent with his earlier actions in the litigation. During a telephone status conference on May 30, 2008, both parties agreed to mediation. (D.E. 66, 71.) Because of this mutual desire to mediate, the Court referred this case to Magistrate Judge Vescovo for the purpose of conducting a settlement conference. (D.E. 67.) The settlement conference was not unilaterally imposed on the Defendant, and his agreement to participate was voluntary. 4 (See D.E. 74, Order Denying Mot. to Amend, at 2 (noting that "both Plaintiffs' and Defendant's counsel, in good faith, agreed to this mediation"))."

Based upon this, the judge makes the following (to us, astonishing) conclusion:

"The Defendant's contradicting stances call into question the sincerity of his new-found convictions about the evils of settlement negotiations concerning this trademark dispute. In any regard, invoking religion does not give the Defendant free license to agree to participate in mediation and then, less than two months later, willfully disobey a court order by refusing to attend the conference or send a representative on his behalf."

It must be understood that Pastor McGill did not, **at any point**, agree to the mediation process. The attorney working on the

case at that time agreed to be present at the mediation without the defendant's knowledge or consent. The aforementioned attorney was thereafter dismissed from the case, and the discerning reader will note above that from that point forward, the "Defendant's **remaining** counsel, Charles Holliday" became the spokesperson. Further, Pastor McGill was in Africa on an evangelism trip at this point in time, having understood from his previous attorney that he could be represented in court without his physical presence at the trial. There was no attempt to flee or evade any public hearings that were designed to result in a decision between the two parties involved in the dispute, as was implied by footnote 2 of the legal document.

Those of us familiar with the case also find this statement to be astonishing:

"Magistrate Judge Bryant's statement (*i.e.*, "[Walter McGill] has further indicated through counsel that he will not participate should this matter go to trial") was based on the fact that "Counsel for Defendant further advised counsel for Plaintiffs that he did not believe Defendant would appear for any trial conducted in this matter."

This is then taken to be a significant statement, despite Pastor McGill's statement that he indeed intended to appear for the trial. While it was later acknowledged that there was a miscommunication, the belief that Pastor McGill would not appear for the trial was nevertheless an element of "what the magistrate judge noted in the report and recommendation" that the plaintiffs be given permanent injunctive relief. In other words, and by way of summarizing the above paragraph, the magistrate judge accepted an **incorrect** statement by the defendant's attorney and used this as an aspect of his recommendation against him.

In his conclusion, the judge specifically notes, "As a sanction for the Defendant's willful failure to comply with the scheduling order, default judgment will be awarded to the Plaintiffs on their remaining claims." Let this statement be understood for what it is. The "scheduling order" mentioned was based upon incorrect communication between Pastor McGill, his attorney, and the court. As a sanction, or penalty, for failing to comply with a "voluntary" mediation process **to which he never agreed in the first place**, the plaintiffs were granted a default judgment in their desire to forbid us to use "the name that God has given us" [*Selected Messages*, book 2, p 384] as a Protestant, Christian people.

It is our prayer that you, readers, will see in this the voice of the Dragon, speaking through what was once (and was intended to be) a lamb-like, gentle haven of religious freedom in a world dominated by the enemy of our souls. Yet despite these wicked and dark times, it is Yahweh, our God, who holds the reins of human history, and holds His Church, His People, in supreme regard. Though it may appear we are "about to fall," we will not fall, and there is indeed a judgment coming that will show the judgment of men for what it is. We hold, in this matter, no wrath against the people who in ignorance have brought persecution upon the Church of Jesus Christ in these very last days, but for the sake of religious freedom, and for the sake of the Gospel Message and those who may yet be saved thereby before the curtain closes on probation forever, we must say of the organization at whose request this great evil has come upon mankind: "Come out of her, my people, that ye be not partakers of her sins, and that ye receive not of her plagues. For her sins have reached unto heaven, and God hath remembered her iniquities. Reward her even as she rewarded you, and double unto her double according to her works: in the cup which she hath filled fill to her double. How much she hath glorified herself, and lived deliciously, so much torment and sorrow give her: for she saith in her heart, 'I sit a queen, and am no widow, and shall see no sorrow.'" (Revelation 18:4-7)

It is not too late to become, if you have never been one before, a true Protestant Christian. It is not too late to join your voice to those sounding the loud cry with urgency and with tears for those hardened hearts that can neither understand nor accept this final warning. Yahshua says, even now, as He prepares to replace His priestly garments with His kingly ones, "Behold, I stand at the door, and knock; if any man hear my voice, and open the door, I will come in to him, and will sup with him, and he with me. To him that overcometh will I grant to sit with me in my throne, even as I also overcame, and am set down with my Father in his throne. He that hath an ear, let him hear what the Spirit saith unto the churches. " (Revelation 3:20-22)

- D.P. Aguilar & L.J. Chartier

"If the principle is once established that religion or <u>religious observances</u> shall be interwoven with our legislative acts, we must pursue it to its ultimatum."

- U.S. Senate Report on Sunday Mails, 1829

"Let the principle once be established in the United States that the church may employ or control the power of the state; that <u>religious observances</u> may be enforced by secular laws; in short, that the authority of church and state is to dominate the conscience, and the triumph of Rome in this country is assured."

- Ellen G. White

"Registration number 1,177,185 protects the use of the SEVENTH-DAY ADVENTIST mark…for conducting <u>religious observances</u> and missionary services... Wherefore, premises considered, Plaintiffs pray for the following relief: That this Court issue a preliminary and permanent injunction enjoining Defendant… from directly or indirectly using the designation Seventh-day Adventist."

- General Conference of Seventh-day Adventists

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS, et al.,
Plaintiffs,

vs.

Civil Action No. 1:06-cv-01207-JDB

WALTER MCGILL d/b/a
CREATION SEVENTH DAY
ADVENTIST CHURCH, et al.,
Defendant.

DEFENDANT'S OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ON PLAINTIFFS' MOTION FOR SANCTIONS AND PERMANENT INJUNCTIVE RELIEF

The Defendant, Walter McGill ("Pastor McGill"), through counsel, files this Objection to the Magistrate Judge's Report and Recommendation on Plaintiffs' Motion for Sanctions and Permanent Injunctive Relief (D.E. 94). The issue before the Magistrate Judge can be summarized as follows:

Pastor McGill is a man of humble resources up against a well funded machine. The Court granted summary judgment to Plaintiffs on the major issue in this case—the trademark claim—and then ordered the parties to engage in mediation of collateral issues. Pastor McGill's religion does not allow him to compromise on the issues in dispute. Should he face a default judgment for failing to mediate, at great personal expense, something he cannot compromise?

The Magistrate Judge concluded that the sanction of a default judgment was appropriate based on the application of a four-factor test that considered: (1) the Defendant's willfulness; (2) the prejudice to the Plaintiffs; (3) prior warning to Defendant; and (4) the availability or use of less severe sanctions.

In most cases, the only thing that stands in the way of settlement is the location of the decimal point. In this case, the gap between the parties is intangible and as wide as the universe is long. Both parties claim the right to use three words: Seventh Day Adventist. Pastor McGill's religion requires him to use these words, and the Court already has granted the Plaintiffs summary judgment on this issue. Although a few ancillary claims remain, practically speaking, the case is over unless he can prevail on appeal.

The Magistrate Judge concluded that Pastor McGill's actions were willful, because he refused to mediate on grounds that his religion does not allow him to compromise his belief that he is required to use particular words to describe his faith. No consideration was given to whether his belief that his religion prevents him from compromising these issues could, or should, be accommodated. Courts have a long history of accommodating religious beliefs, such as allowing Quakers to testify by affirmation rather than oath and permitting religious attire that might otherwise violate court rules. Here, Pastor McGill was ordered to appear at mediation and participate in good faith after informing the Court that he could not compromise his beliefs. In accord with applicable U.S. Supreme Court precedent, the Court should have considered whether Pastor McGill should have been required to

attend the mediation personally and "in good faith participate" when he has stated that there is no room for compromise. It would be impossible for him to participate "in good faith" if his religion dictates that he cannot compromise on the issues in dispute, because mediation is premised on the idea that both parties "give ground" to settle a dispute.

For these reasons, Pastor McGill objects to the Magistrate Judge's conclusion that a default judgment should be entered when an order to "in good faith participate" in the mediation violates his free exercise rights since he cannot participate in good faith, because his religious beliefs prevent him from compromising on the issues in dispute.

In considering the fourth factor and ultimately concluding that default judgment was appropriate, the Magistrate Judge also found that Pastor McGill "will not participate should this matter go to trial." This is incorrect. Pastor McGill moved the Court to amend the pre-trial order to remove the requirement of mediation and have the case proceed to trial. While his attorney stated his opinion to Judge Breen during the Aug. 26, 2008, status conference that he believes Pastor McGill may not return for trial, Pastor McGill has never stated to the Court that he would not appear for trial.

Finally, the Magistrate Judge's report is premised on the Court's rulings that it has subject matter jurisdiction over this case, that judgment on the pleadings was not warranted, that Pastor McGill did not fairly raise the affirmative defense of the Religious Freedom Restoration Act, that he should not be allowed to amend his pleadings, and that summary judgment was appropriate on the trademark claim. Unfortunately, because only partial summary judgment was granted, Pastor McGill is in a position of being unable to appeal the above rulings, several of which would do away with the need for mediation, without permission from the Court.

For these reasons, Pastor McGill objects to the Magistrate Judge's Report and Recommendation on Plaintiffs' Motion for Sanctions and Permanent Injunctive Relief and respectfully requests that the Court reject the Magistrate Judge's findings so that he may move for an interlocutory appeal of the Court's rulings on jurisdiction, judgment on the pleadings, whether the RFRA was raised, if the RFRA was not raised, whether he should be allowed to amend, and whether summary judgment was appropriate.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS, et al.,
Plaintiffs,

vs.

Civil Action No. 1:06-cv-01207-JDB

WALTER MCGILL d/b/a
CREATION SEVENTH DAY
ADVENTIST CHURCH, et al.,
Defendant.

RESPONSE TO MOTION FOR SANCTIONS AND PERMANENT INJUNCTIVE RELIEF

Comes now, the Defendant, Walter McGill ("Pastor McGill"), and files this Response to Plaintiffs' Motion for Sanctions and Permanent Injunctive Relief (D.E. # 85). Pastor McGill admits that the factual summary of the procedural background is substantially correct. Pastor McGill also acknowledges that his conduct may support sanctions and/or a default judgment on the remaining claims that were not disposed of by the Court's June 11, 2008, Order granting in part, and denying in part, Plaintiffs' summary judgment motion. (D.E. # 70). The primary purpose of this Response is to make clear to the Court that Pastor McGill's actions are not intended to be "dilatory," "boasting," "evasive," or "flagrant." Pastor McGill humbly and respectfully submits to the Court that his actions amount only to civil disobedience.

A. Default Judgment and Sanctions

From the outset, Pastor McGill has viewed this case as a challenge to his First Amendment right to religious freedom under the U.S. Constitution. The history of individuals who have religious beliefs that conflict with civil law is well established in the jurisprudence of this Country. It bears repeating that this country was founded by individuals seeking freedom to practice their religion. From the first settlements to today, the boundaries of acceptable religious expression have always been in a constant state of flux. In 1878, the United States Supreme Court posed these questions in a case involving religious freedom:

> Suppose one believed that human sacrifices were a necessary part of religious worship, would it seriously be contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?
>
> Can a man excuse his practices to the contrary because of his religious belief? T[o] permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Reynolds v. United States, 98 U.S. 145, 166-67 (1878). Certainly, this case deals with religious beliefs far less concerning than those hypothesized by the Supreme Court, but Pastor McGill does not seek to excuse his

actions. He has no disrespect for the law or the courts. In fact, he respectfully believes the law protects his right to use the words Seventh-Day Adventist in describing his faith. For Pastor McGill, however, his faith dictates that when the two collide, he is bound to follow the laws of God:

> Then went the captain with the officers, and brought them without violence: for they feared the people, lest they should have been stoned. And when they had brought them, they set them before the council: and the high priest asked them, Saying, Did not we straitly command you that ye should not teach in this name? and, behold, ye have filled Jerusalem with your doctrine, and intend to bring this man's blood upon us. Then Peter and the other apostles answered and said, We ought to obey God rather than men.

Acts 5:26-29.

As the Court of Appeals for the Tenth Circuit has observed, civil disobedience of the law can be an act of great religious and moral courage and society may ultimately benefit, but, the worthiness of one's motives cannot excuse the violation in the eyes of the law. *United States v. Platte*, 401 F.3d 1176, 1181 (10th Cir. 2005). Pastor McGill understands this; he only asks this Court to understand that his failure to attend the mediation is not an attempt to usurp the Court's authority.

This Court has previously recognized that Pastor McGill chose the name of his church based on a divine revelation and that it was not his intent to confuse the public into thinking he was affiliated with Plaintiffs' church. *See* Order Granting in Part and Denying in Part the Plaintiff's Motion for Summary Judgment, p. 22 (D.E. # 70). It is also undisputed that Pastor McGill is required to use the name of his faith in his church. Def's Response to SUF, ¶7 (D.E. #56-2). Pastor McGill did not participate in the mediation because doing so would infer that he has room to compromise on the name of his church when his convictions do not allow him to compromise his faith. Motion to Amend Pre-Trial Order, ¶4 (D.E. # 71). While Plaintiffs may view Pastor McGill's actions as a choice to disobey the Court, as Justice Souter has noted, "a Hobson's choice, is not a choice, whatever the reason for being Hobsonian." *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (Souter, J., dissenting).

For these reasons, Pastor McGill asks that Plaintiffs' motion for sanctions and default judgment be denied. He prays that the Court understands his position, and he realizes that the Court must take such actions as it deems appropriate for his failure to comply with the Court's orders.

B. Permanent Injunctive Relief

Pastor McGill denies Plaintiffs are entitled to injunctive relief. The proposed injunction is overly broad and unduly restrictive.

Respectfully submitted,

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Defendant's attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS, et al.,
Plaintiffs,

vs.

No. 06-cv-01207

WALTER MCGILL d/b/a
CREATION SEVENTH DAY
ADVENTIST CHURCH, et al.,
Defendant.

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION AS TO THE PLAINTIFFS' MOTION
FOR SANCTIONS AND PERMANENT INJUNCTIVE RELIEF

The Plaintiffs, the General Conference Corporation of Seventh-day Adventists and the General Conference of Seventh-day Adventists, brought the instant trademark infringement action against the Defendant, Walter McGill, a pastor of an unincorporated association known as the Creation Seventh Day Adventist Church. After the Defendant repeatedly displayed an unwillingness to appear at several court-ordered mediation conferences, the Plaintiffs filed a Motion for Sanctions and Permanent Injunctive Relief. This Court referred this motion to Magistrate Judge Edward G. Bryant for a report and recommendation. On April 16, 2009, the magistrate judge recommended that the Plaintiffs' motion be granted and a permanent injunction be issued. (Docket Entry ("D.E.") No. 94, R&R.) The Defendant filed an objection to this report and recommendation, and the Plaintiffs filed a limited exception. After considering the parties' positions, the Court ADOPTS the magistrate judge's report and recommendation.

PROCEDURAL BACKGROUND

The magistrate judge correctly noted that the procedural background was undisputed and summarized the facts leading to the Plaintiffs' motion as follows:

> During a May 30, 2008 telephone status conference in the instant matter (the "May Status Conference"), this Court, pursuant to the agreement of the parties, ordered the parties to participate in mediation. (See, D.E. 68). On that same date, the Court referred the matter to Magistrate Judge Diane Vescovo ("Magistrate Vescovo") for mediation. By notice dated June 3, 2008, Magistrate Vescovo set the mediation conference to be heard on July 15, 2008. (D.E. 69).
>
> On June 11, 2008, the Court entered an Order granting in part and denying in part Plaintiffs' Motion for Summary Judgment. (D.E. 70). Specifically, the Court granted summary judgment in Plaintiffs' favor as to their trademark infringement and unfair competition claims based on the "SEVENTH-DAY ADVENTIST" mark. However, the Court found there were factual issues remaining and therefore denied summary judgment as to Plaintiffs' trademark infringement and unfair competition claims premised on their "ADVENTIST" and "SDA" marks, as well as on Plaintiffs' remaining claims of cyberpiracy under 15 U.S.C. § 1125(d), and dilution claims brought under both 15 U.S.C. § 1125(c) and T.C.A. § 47 -25-513.

Shortly before July 15, 2008, Defendant, through then current counsel Ronald Michael, Esq. indicated he would not participate in the mediation conference, and on July 24, 2008, Defendant filed a Motion to Amend the Pretrial Order to delete the requirement of a mediation conference. (D.E. 71).

On July 25, 2008, through the Second Mediation Order, the Court denied Defendant's Motion to Amend the Pretrial Order, and directed the parties to confer with Magistrate Vescovo to reset the settlement conference for a time prior to the trial date, then set for October 6, 2008. In the Second Mediation Order, the Court warned the parties that failure to participate in the mediation conference in good faith could result in sanctions against the offending party, including dismissal of the lawsuit or entry of default judgment. (See Second Mediation Order, D.E. 74) ("Failure of any party to personally and in good faith participate in this mediation conference as the Court has directed may result in sanctions, including either dismissal of the lawsuit or default judgment against the offending party being entered").

Pursuant to the Second Mediation Order, the parties conferred with Magistrate Vescovo's office and obtained several possible dates for mediation, and informed Magistrate Vescovo's office they would call back within the next few days to confirm the date for mediation, as well as the intent of the respective parties to attend mediation. However, shortly thereafter, Defendant's remaining counsel, Charles Holliday, indicated that Defendant would not attend, nor authorize counsel's participation on his behalf, in the mediation conference. In light of Defendant's stated intent not to attend the mediation, the parties informed Judge Vescovo's office by voice mail that they could not confirm a mediation date. Counsel for Defendant further advised counsel for Plaintiffs that he did not believe Defendant would appear for any trial conducted in this matter. As a result, on August 15, 2008, Plaintiffs filed a motion to continue the trial and for a status conference. (D.E. 75).

Pursuant to the Plaintiffs' motion, on August 26, 2008, this Court held a status conference, during which this Court ordered the parties to contact Magistrate Vescovo's chambers regarding setting a date for mediation, and ordered the parties to certify with the Court, subsequent to the setting of the mediation conference, that their respective clients will be available and present for the mediation conference. (D.E. 80). Pursuant to the order given at the August 26, 2008 status conference (the "Third Mediation Order"), the parties contacted Magistrate Vescovo's office and agreed upon a date of October 2, 2008 for the mediation conference (the "October Mediation Conference").

In accordance with the Third Mediation Order, on September 4, 2008, Plaintiffs' counsel filed a Certification of Counsel, therein confirming Plaintiffs' intent to appear at and participate in good faith in the October Mediation Conference. (D.E. 83). On that same date, Defendant's counsel filed a Certification of Counsel, therein confirming that Defendant would not appear at or participate in the October Mediation Conference. (D.E. 82).

In response to Defendant's Certificate of Counsel, on September 29, 2008 Magistrate Vescovo held a telephone status conference, during which Defendant's counsel confirmed that Defendant would not attend the October Mediation Conference. Accordingly, Magistrate Vescovo cancelled the October Mediation Conference. (D.E. 84).

Considering that neither of the parties' briefs raise objections to the magistrate judge's factual summary, this Court adopts this portion of the report.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 72(b) permits a magistrate judge to make a recommendation regarding a "pretrial matter dispositive of a claim or defense." The parties may file an objection ten days after being served with a copy of the magistrate judge's report and recommendation. Fed. R. Civ. P. 72(b)(2).

Upon receiving a proper objection, the district court reviews the magistrate judge's recommendation de novo, and it "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Id.

ANALYSIS

The magistrate judge considered the issue of whether default judgment would be an appropriate sanction for the Defendant's refusal to attend the settlement conference. Rule 16(a)(5) permits the district courts to issue orders regarding pretrial conferences for the purpose of facilitating settlement, and Rule 16(f) provides that sanctions may be imposed against a party who fails to appear at a pretrial conference or fails to obey a pretrial order.[3] As explained by a cross-reference to Rule 37, the available sanctions under Rule 16(f) include "rendering a default judgment against the disobedient party. Fed. R. Civ. P. 37(b)(2)(A)(vi). In addition to the Federal Rules of Civil Procedure, the Court has the "inherent power to 'protect[] the due and orderly administration of justice and . . . maintain[] the authority and dignity of the court . . . .'" Bowles v. City of Cleveland, 129 Fed. App'x 239, 241 (6th Cir. 2005) (quoting Cooke v. United States, 267 U.S. 517, 539, 69 L. Ed. 767, 45 S. Ct. 390 (1925)) (alterations in original).

In determining whether default judgment was an appropriate sanction for the Defendant's refusal to appear at the mediation conferences, the magistrate judge considered the four factors listed in Regional Refuse Systems, Inc. v. Inland Reclamation Co., 842 F.2d 150, 155 (6th Cir. 1988) (superceded on other grounds). These factors include: "(1) whether the party's failure to comply with the order is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the party's failure to abide by court orders; (3) whether the party subject to the default was warned that failure to cooperate could lead to default; and (4) whether less dramatic sanctions were imposed or considered before default was ordered." ((D.E. 94, R&R, at 5.) Applying this legal standard to the circumstances of this case, the magistrate judge determined that the Defendant's failure to appear was willful, that the Plaintiffs were prejudiced because of the time and money wasted as a result of the delay, that the Court warned the Defendant about the consequences of failing to comply with its orders on several occasions, and that lesser sanctions would be ineffective. (Id. at 5-6.) Thus, the magistrate judge concluded that awarding the Plaintiff a default judgment was the appropriate sanction for the Defendant's conduct. The Defendant raises no specific objections to the legal standard utilized by the magistrate judge, but he makes essentially three objections to the way the law was applied in his case.

I. Defendant's Objections

First, the Defendant objects to the magistrate judge's finding of "willfulness." He claims that his religious beliefs prevented him from participating in mediation because he is theologically opposed to compromising his position in this dispute. But see Nick v. Morgan's Foods, Inc., 99 F. Supp. 2d 1056, 1061 (E.D. Mo. 2000) ("Good faith participation in ADR does not require settlement. In fact, an ADR conference conducted in good faith can be helpful even if settlement is not reached.") The Court finds the Defendant's position to be wholly inconsistent with his earlier actions in the litigation. During a telephone status conference on May 30, 2008, both parties agreed to mediation. (D.E. 66, 71.) Because of this mutual desire to mediate, the Court referred this case to Magistrate Judge Vescovo for the purpose of conducting a settlement conference. (D.E. 67.) The settlement conference was not unilaterally imposed on the Defendant, and his agreement to participate was voluntary. (See D.E. 74, Order Denying Mot. to Amend, at 2 (noting that "both Plaintiffs' and Defendant's counsel, in good faith, agreed to this mediation")). The Defendant's contradicting stances call into question the sincerity of his new-found convictions about the evils of settlement negotiations concerning this trademark dispute. In any regard, invoking religion does not give the Defendant free license to agree to participate in mediation and then, less than two months later, willfully disobey a court order by refusing to attend the conference or send a representative on his behalf. See Nick, 99 F. Supp. 2d at 1061 (observing that "[w]hen a party representation," and "[i]mplicit in the concept of good faith participation is the assurance that the parties will participate in ADR in accordance with the Court's order"). agrees to participate in a mediation process in

good faith, the Court is entitled to rely on that representation," and "[i]mplicit in the concept of good faith participation is the assurance that the parties will participate in ADR in accordance with the Court's order").

Second, the Defendant objects to the magistrate judge's statement that "[h]e has further indicated through counsel that he will not participate should this matter go to trial." ((D.E. 94, R&R, at 6.) Magistrate Judge Bryant's statement was based on the fact that "Counsel for Defendant further advised counsel for Plaintiffs that he did not believe Defendant would appear for any trial conducted in this matter." (Id. at 3.) McGill contends that this is incorrect and he actually did plan to participate in the trial, as evidenced by his motion on July 24, 2008 in which he requested that this Court remove the requirement of mediation and allow the case to proceed to trial. (D.E. 71.) However, the Defendant does not refute the fact that his lawyer communicated a disbelief regarding his willingness to return and participate in trial, and that is precisely what the magistrate judge noted in the report and recommendation. The statement to which McGill objects is in accord with the factual summary of the procedural background, which the Defendant previously admitted was substantially correct. (D.E. 89, Def.'s Response, at 1.) Thus, this Court does not find the disputed comment to be inaccurate or objectionable.

Finally, the Defendant essentially argues that, if this Court had ruled in his favor on previous occasions, then mediation would have been unnecessary. This is true, of course, but irrelevant to the question of whether sanctions should be imposed because the Defendant willfully refused to follow this Court's orders. See, e.g., Olcott v. Del. Flood Co., 76 F.3d 1538, 1555-56 (10th Cir. 1996) (noting that "sanctions imposed pursuant to Rule 16(f) were, at least in part, designed to punish noncompliance with pretrial orders"); Resolution Trust Corp. v. Williams, 165 F.R.D. 639, 646 (D. Kan. 1996) (stating that "[t]he predominate purpose of both [Rule 16(f) and Rule 37(b)] is to punish litigants and attorneys for their noncompliance with discovery and pretrial orders"). Irrespective of whether this Court misinterpreted or misapplied the law in previous dispositive motions, all parties are required to follow the scheduling order while the matter is under the jurisdiction of this Court. Cf. Walker v. Birmingham, 388 U.S. 307, 314, 87 S. Ct. 1824, 18 L. Ed. 2d 1210 (1967) (quoting Howat v. Kansas, 258 U.S. 181, 190, 42 S. Ct. 277, 66 L. Ed. 550 (1922)) (observing that, after a court has made a ruling, "until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished"). If a party disagrees with a particular ruling, then he may file a motion for reconsideration, apply for interlocutory review, or appeal as a matter of right after a final decision has been reached. Simply disregarding an unfavorable ruling or order, however, may expose a party to sanctions.

Upon a de novo review of the magistrate judge's recommendation, this Court finds the objections raised by the Defendant to be unavailing. In fact, one panel of the Sixth Circuit recently upheld a trial court's imposition of dismissal as a sanction under similar factual circumstances. See Rogers v. City of Warren, 302 Fed. App'x 371 (6th Cir. 2008) (upholding dismissal where the plaintiff failed to appear at two court-ordered settlement conferences). Because this Court agrees with the reasoning in the report of the magistrate judge, it hereby adopts the recommendation that default judgment should be entered against the Defendant as a sanction.

II. <u>The Plaintiffs' Limited Exception</u>

The Plaintiffs fully agree with the magistrate's ruling as to the appropriate sanction, but requests that their alternative argument supporting injunctive relief, which was raised in their motion, be addressed by this Court. The Plaintiffs argue that, regardless of the issue of sanctions, the Defendant should be permanently enjoined from using the words "Seventh-day," "Adventist," and "SDA" because of this Court's previous award of summary judgment regarding the mark "Seventh-day Adventist." (D.E. 70, Order on Mot. For S.J., at 28.) This Court now considers whether this would provide adequate grounds for adopting the language of the Plaintiffs' proposed injunction.

In a previous order, this Court found that the Defendant had infringed the Plaintiffs' "Seventh-day Adventist" mark, but there remained questions of fact with regard to the "Adventist" and "SDA" marks. (Id. at 9-17.) The Plaintiffs' "Seventh-day Adventist" and "Adventist" marks had incontestable status under 15 U.S.C. § 1065, but the Defendant raised the defense that they had become generic. (Id. at 8-9.) The Court found that "the evidence presented by the Defendant is not sufficient to overcome the presumption that the Plaintiffs' 'Seventh-day Adventist' mark is not generic" and held that the Plaintiffs were entitled to summary judgment on this claim. (Id. at 11.) With regard to the "Adventist" mark, however, the Court found a triable issue of fact after considering evidence–from the dictionary and Wikipedia–that indicated that this term could refer to a broader religious doctrine. (Id. at 15.) The Court also declined to award summary judgment with regard to the term "SDA" because it was not registered and the Plaintiffs presented no evidence to establish secondary meaning. (Id. at 16-17.)

The Plaintiffs now argue that, as a remedy for the Defendant's infringement of their "Seventh-day Adventist" mark, this Court should apply the "safe distance rule" and issue a permanent injunction that also prohibits the Defendant from using the terms "Seventh Day," "Adventist," and "SDA." To support this argument, they cite to Broderick & Bascom Rope Co. v. Manoff, 41 F.2d 353 (6th Cir. 1930). In that case, the plaintiff used the trademark "Autowline" to describe a special rope used to tow automobiles, and the defendant used "Au-Tow-Line" to describe a similar product. Id. at 353. After the court enjoined the defendant from using either of those names, the defendant's general manager began selling products under the name of "Auto-Tow-Line" to circumvent the literal prohibitions of the injunction. Id. In a contempt proceeding, the defendant argued that the new phrase was merely descriptive and not entitled to trademark protection, but, upon appeal, the Sixth Circuit determined that the safe-distance rule prevented the defendant from using "Auto-Tow-Line" even if others could. Id. at 353-54. It found that the defendant "was disqualified to claim the full competitive rights which might be open to a stranger." Id. at 354. Its reasoning was that a defendant who had been found to have infringed a trademark "should thereafter be required to keep a safe distance away from the margin line–even if that requirement involves a handicap as compared with those who have not disqualified themselves." Id. In other words, the injunction against the defendant had the effect of barring his "use of any word in such close imitation or resemblance [to the prohibited trademark] as to mislead the public." Id. The goal was to prevent the defendant from preserving "good will acquired through fraud." Id.

While the issue in Broderick & Bascom Rope concerned the interpretation of an injunction at a contempt proceeding, other cases have considered the safe-distance rule when determining the appropriate scope of the language in drafting an injunction. Vining Indus. v. M.B. Walton, Inc., 106 F. Supp. 2d 966, 973 (S.D. Ohio 1997) (citing Chevron Chemical Co. v. Voluntary Purchasing Groups, 659 F.2d 695, 705-06 (5th Cir. 1981); Imagineering, Inc. v. Van Klassens, Inc., 851 F. Supp. 532 (S.D.N.Y. 1994); Kimberly Knitwear, Inc. v. Kimberley Stores of Mich., 331 F. Supp. 1339, 1341-42 (W.D.Mich. 1971)). In this context, however, district courts have equitable discretion in drafting an injunction, which could involve whether to include explicit prohibitions about additional marks aside from the one found to have been infringed. Id. (citing Badger Meter, Inc. v. Grinnell Corp., 13 F.3d 1145 (7th Cir. 1994)); see also eBay Inc., et al. v. MercExchange, LLC, 547 U.S. 388, 391, 126 S. Ct. 1837 164 L. Ed. 2d 641 (2006) ("The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion"); Audi AG v. D'Amato, 469 F.3d 534, 550 (6th Cir. 2006) ("The scope of injunctive relief is reviewed for abuse of discretion.").

In this case, the Plaintiffs assert that the injunction should be sufficiently broad to remedy past actions and protect against future conduct. Upon considering the appropriate remedial action, however, this Court would be reluctant to broadly enjoin the Defendant's use of "Seventh-day," "Adventist," and "SDA" solely to remedy infringement of the term "Seventh-day Adventist." The Court has held that there are issues of fact with regard to whether the term "Adventist" is generic, which is the weakest category of mark.[6] Champions Golf Club, Inc. v. The Champions Golf Club, Inc., 78 F.3d 1111, 1117 (6th Cir. 1996). As such, it would be more appropriate to defer the Court's ruling concerning the term "Adventist" until the strength of the mark could be

ascertained. As for the term “Seventh-day,” the Plaintiffs have not presented evidence that would establish secondary meaning. Given the limited information currently in the record, the Court would be unwilling to enjoin all uses of the term “Seventh-day,” regardless of the context. Likewise, as this Court noted in its previous order, “SDA” is not a registered mark and the Plaintiffs have presented no proof as to how the public perceives this mark. Thus, when issuing an injunction strictly as a remedy for infringement of the “Seventh-day Adventists” mark, the Court, in exercising its discretion, would not explicitly prohibit all uses of the terms “Adventists,” “Seventh-day,” or “SDA” without affording the Defendant an opportunity to present proof regarding the remaining claims on the merits.

Of course, application of the safe-distance rule is but one alleged ground upon which the Plaintiffs request injunctive relief. As noted in the magistrate judge’s report and recommendation, default judgement as a sanction provides an alternative and independent ground upon which this Court may grant the Plaintiffs’ request for a permanent injunction. Because the Court agrees with Magistrate Judge Bryant that the Plaintiffs’ proposed language is narrowly tailored to permit default judgment on the remaining claims, it adopts this recommendation.[9]

[9] The language of the injunction will be as follows:

Defendant and his agents, servants and employees, and all those persons in active concert or participation with them, are forever enjoined from using the mark SEVENTH-DAY ADVENTIST, including the use of the words SEVENTH-DAY or ADVENTIST, or the acronym SDA, either together, apart, or as part of, or in combination with any other words, phrases, acronyms or designs, or any mark similar thereto or likely to cause confusion therewith, in the sale, offering for sale, distribution, promotion, provision or advertising of any products and services, and including on the Internet, in any domain name, key words, metatags, links, and any other use for the purpose of directing Internet traffic, at any locality in the United States. Subject to the foregoing, Defendant may use these terms in a non-trademark sense, such as oral or written use of the marks to refer to the Plaintiffs, or oral or written use of certain terms in a non-trademark descriptive sense, such as “this Church honors the Sabbath on the ‘seventh day,’” or “the members of this church believe in the ‘advent’ of Christ.”

As it pertains to all labels, signs, prints, packages, wrappers, receptacles, and advertisements bearing the SEVENTH-DAY ADVENTIST mark, or bearing the words SEVENTH-DAY or ADVENTIST, or the acronym SDA, either together, apart, or as part of, or in combination with any other words, phrases, acronyms or designs, or any mark similar thereto or likely to cause confusion therewith, and all plates, molds, matrices, and other means of making the same (collectively, “Defendant’s Infringing Articles”), Defendant shall either: (1) deliver Defendant’s Infringing Articles to Plaintiffs’ attorney within twenty (20) days after issuance of the Order, to be impounded or permanently disposed of by Plaintiffs; or (2) permanently dispose of Defendant’s Infringing Articles himself within twenty (20) days of this Order, and also within twenty (20) days of this Order certify in writing and under oath that he has personally complied with this Order. Regardless of the manner of disposal of Defendant’s Infringing Articles, Defendant shall file with the Clerk of this Court and and serve on Plaintiffs, within twenty (20) days after issuance of this Order, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has complied with the foregoing injunction.

CONCLUSION

For the reasons articulated herein and upon de novo review, the Court **ADOPTS** the magistrate judge’s report and recommendation. As a sanction for the Defendant’s willful failure to comply with the scheduling order, default judgment will be awarded to the Plaintiffs on their remaining claims. This Court hereby enjoins the Defendant in accordance with the language approved by the magistrate judge.

IT IS SO ORDERED this 27th day of May, 2009.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE

Online Petition: Amend the Lanham Act

As most of our readers know, Creation Seventh Day Adventists have been fighting against religious trademark legislation for almost twenty years now. While our attention has primarily been focused on the trademark of the name Seventh-day Adventist, the truth is that all religious trademarks are a violation of the separation of Church and State promised in the U.S. Constitution regardless of the views of that particular denomination regarding the Sabbath day and rest in Christ as the Protector of the Church.

Consequently, we are as opposed to religious trademarks and similar legislation as a whole just as fully as the Seventh-day Adventists who opposed the Blair Sunday Rest Bill would have opposed a law requiring proper Sabbath observance on the seventh day of the week. In all cases, the principle is the same—that the consciences of men cannot be coerced by other mere men.

An online petition has been drafted recently and has already received a number of signatures. It may be accessed by visiting **www.LanhamAct.us**

It is not enough to simply fight against the Seventh-day Adventist trademark, any more than it would be enough to fight against the enforcement of Sunday upon all with an exception granted to Sabbath-keepers. The laws which provide for such a situation must be amended, that the path to such legislation be forever barred shut.

Some may be surprised to know that Class 42, under which "Religious observances and missionary services" is registered in the Seventh-day Adventist trademark has absolutely nothing to do with such a use in it's stated intent. According to the United States Patent and Trademark Office website, the designation of Class 42 is as follows:

CLASS 42

(Computer and scientific)

Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

Explanatory Note

Class 42 includes mainly services provided by persons, individually or collectively, in relation to the theoretical and practical aspects of complex fields of activities; such services are provided by members of professions such as chemists, physicists, engineers, computer programmers, etc.

This Class includes, in particular:

* the services of engineers who undertake evaluations, estimates, research and reports in the scientific and technological fields;
* scientific research services for medical purposes.

This Class does not include, in particular:

* business research and evaluations (Cl. 35);
* word processing and computer file management services (Cl. 35);
* financial and fiscal evaluations (Cl. 36);
* mining and oil extraction (Cl. 37);
* computer (hardware) installation and repair services (Cl. 37);
* services provided by the members of professions such as medical doctors, veterinary surgeons, psychoanalysts (Cl. 44);
* medical treatment services (Cl. 44);
* garden design (Cl. 44);
* legal services (Cl. 45).

The designation has nothing to do with the regulation of religious observances whatsoever. As a result, religious trademarks can be considered as nothing short of an abuse of commercial laws.

We would like to see the Lanham Act amended to disallow Class 42, and any other class, to be registered as "Religious Observances and Missionary Services" or any other similar wording. As Ellen White wrote, "Let the principle once be established in the United States that the church may employ or control the power of the state; that religious observances may be enforced by secular laws; in short, that the authority of church and state is to dominate the conscience, and the triumph of Rome in this country is assured." [The Great Controversy, p. 581]

When enough signatures are collected, we will send the petition to every Senator and Representative we are able to find an address for. Please sign and pass this petition along to all who value freedom of conscience and religious liberty.

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