

Opinion (Breen): Plaintiff, the General Conference Corporation of Seventh Day Adventists (GCC), filed trademark infringement and other claims against the Defendant, Walter McGill (McGill). The GCC is the corporation of the Seventh Day Adventist religion and hold trademarks for the title and for “Adventist.” The trademarks have been held for over five years and are incontestable. McGill was once a subscriber to the religion but separated himself and sought to start a new branch called “A Creation Seventh Day and Adventist Church” knowing that GCC held trademarks. McGill argued the terms “Seventh Day Adventist” have been in use for so long they have become generic and describe a set of religious beliefs, not a specific church. The court found once a trademark has been designated incontestable, it can still be challenged as generic but the burden of proof lies on the defendant. The court rejected McGill’s argument based on case precedence and public perception that the terms can apply to only one form of goods/services. The court granted summary judgment for GCC on the trademark claim for “Seventh Day Adventist.” [Summarized by Lindsey Duggins]

And so it is that I am “hated of all men for His name’s sake.” But, you say, how is it that you figure that you have been so hated, and that, “for His name’s sake.” Let me develop my thesis within the remaining space.

In a deposition taken May 15, 2007, by General Conference counsel, Jeffrey Tew, I testified under oath. I have selected segments from that deposition as follows:

“A. (McGill): And we [David Labatad and myself] took those things [copies of our three-month research taken from Seventh-day Adventist materials at Andrews University] back with us to Spring City, Tennessee, and spent prayer and several weeks going through these documents. And it was—it was shown to us by divine revelation that we were to take the name ‘Creation Seventh Day Adventist.’ [...] [the James White Library] had a file there on trademark prosecutions. We were not aware of these kinds of things. And there were people that had been sued and persecuted for the use of the name Seventh Day Adventist, which we saw as – from scripture, as a violation, not only of the writings of Paul in Corinthians, but also the writings of all the pioneer Seventh Day Adventist writers. The use of the civil power by the church to regulate and control religion is considered, from the Bible, as an image to the beast.

“And so, we could not – we didn’t feel at liberty to take the name Seventh Day Adventist as it stood with the General Conference, because we had no desire at all to be – claiming to be General Conference Seventh Day Adventists. We were given the name – God told us to take the name ‘Creation Seventh Day Adventist,’ distinguishing us from the General Conference. [...] It wasn’t a feeling, it was a divine mandate, in our eyes. [...] You know, our belief is that if God tells us to do something, we must obey it, because he’s—he’s above us, and we worship him, and we must obey him. We did not see that the trademark particularly applied to us, because it

appeared to us that the name Creation Seventh Day Adventist shouldn’t even be a violation of that in the first place.

Q. (Tew): But even if it did, since you believe you were acting under a mandate from God, you would have—in your mind, you would have taken and adopted the name Creation Seventh Day Adventist irrespective of any federal law, any civil law?

A. (McGill): We would take the position of the Bible and the disciples, which says we must obey God rather than men. [...]

Q. (Tew): And am I correctly understanding your position, that having that mandate from God in your mind, that whether or not the General Conference objected to it or not, you were going to follow that mandate and use that name; is that fair?

A. (McGill): Yes, that’s fair.

Q. (Tew): Is it fair to say that your view of the General Conference’s enforcement of federal trademark rights in court, that that is a deviation from what you consider to be the proper conduct of the Seventh Day Adventist religion?

A. (McGill): I, along with all the pioneer Seventh Day Adventists, regard this behavior as patently anti-Christian.

Q. (Tew): You understand we’re in litigation in federal court here in Tennessee to get the judge to order you and your church not to use the name Seventh Day Adventist in any combination of words, including Creation Seventh Day Adventist. If the judge orders you to stop using that name, will you obey that order?

A. (McGill): I will ask God what he wants me to do, and I will obey him.

Q. (Tew): So you don’t know whether you’d obey the federal judge or not?

A. (McGill): I have a judge that’s above that federal judge, and I have to obey that judge. [...] I would be conscientiously bound to obey God and his instructions, if they came in conflict with men’s mandates.

Q. (Tew): Well, there doesn’t seem to be any doubt in your mind that the trademark law is contrary to the God’s will in terms of the use of the name Seventh Day Adventist?

A. (McGill): At this point, in my experience, I would have to say that.

Q. (Tew): Now, when you were at Andrews [University in 1991], you said you had the divine revelation to use the name Seventh Day Adventist as part of your church name?

A. (McGill): It didn’t happen at Andrews. It was after we

“McGill was once a subscriber to the religion but separated himself and sought to start a new branch...”

Nothing could be farther from the truth. I never departed from *the religion* of Seventh-day Adventism. In fact, I subscribe to the pioneer version of the Seventh-day Adventist *faith*. Ellen White penned, “That which I have written is what the Lord has bidden me write. I have not been instructed to change that which I have sent out. I stand firm in the Adventist faith; for I have been warned in regard to the seducing sophistries that will seek for entrance among us as a people. The Scripture says, ‘Some shall depart from the faith, giving heed to seducing spirits, and doctrines of devils.’” [*Advent Review and Sabbath Herald*, January 26, 1905; para 19]

“The court rejected McGill’s argument based on case precedence and public perception that the terms can apply to only one form of goods/services.”

What this says is that there were two definitive principles employed in deciding the case:

- 1) The first one was *tradition* (viz., the outcomes of previous trademark conflicts decided by the courts). “[Wycliffe] did not set himself deliberately in opposition to Rome. But devotion to truth could not but bring him in conflict with falsehood. The more clearly he discerned the errors of the papacy, the more earnestly he presented the teaching of the Bible. He saw that Rome had forsaken the word of God for human tradition...” [*The Great Controversy*, p. 81]
- 2) The second principle applied was *public perception* (viz., the general considerations and interpretations of a godless society being considered as “consumers”). “Very many in every age and station of life are without principle or conscience; and with their idle, spendthrift habits they are rushing into vice and are corrupting society, until our world is becoming a second Sodom.” [*Child Guidance*, pp. 440, 441]

“The fact that two other small churches utilize the name does not establish that the relevant public does not associate it with the ‘mother’ church.”

How can “two other small churches utilize the name” without showing to “all men” that “the name” is not exclusively referring to “the ‘mother’ church?” Common sense speaks loudly here. A name that is *strictly applied* to one thing cannot be used to describe other things. The fact that “two other small churches utilize the name” bears unimpeachable witness that the term Seventh-day Adventist describes “a set of religious beliefs.”

“[McGill’s] church has three members.”

This statement is not entirely accurate and deserves my clarification. Suffice it to say that the Guys congregation in particular is very small, and that “little flock” is the group of worshipers under fire in this contest.

“Defendant did not present any survey evidence that showed whether the relevant public believes that the term ‘Seventh-day Adventist’ refers to a religion or to a specific denomination.”

It is my contention that God’s word carries more weight than *opinions* of “the relevant public.” It was further admitted in the legal record that the survey conducted by the General Conference was flawed enough to render it inconclusive (“the court agreed that SDA’s survey questions were misleading”).

“The district court found it doubtful that the capitalized ‘D’ and the ampersand would be immediately noticeable to passers-by.”

This statement is in context to our name “A Creation Seventh Day & Adventist Church.” The Court did not mention the article “A” at the beginning of the name. Furthermore, the Court’s conclusion was “doubtful,” that is, not certain. The ampersand between “Day” and “Adventist” certainly breaks up the “three-word mark” of the General Conference Plaintiffs. Interestingly and ironically, it is highly likely that few “passers-by” would even notice the name of the church at all. Our building was originally a convenience store with gas pumps in front. Though the word “Church” in our name has been conspicuously displayed in large letters on the building for years, many who have stopped for travel information or other services would ask, “What kind of business is this?”

“The district court sustained defendant’s view that it was difficult to imagine someone accidentally becoming a member of his church, while believing that it is affiliated with the General Conference.”

Is this not really where “the rubber meets the road?” A significant reason for seeking trademark protection is to avoid fraud in the consuming of goods and services. If our goods/services and advertising are *not* so similar that “consumers” would be duped into joining our church or giving money to our church through actual confusion with Plaintiffs’, then where is the reasonable complaint? Of course, any “Christian” organization that observed the principles of the Bible would rather be defrauded than to bring such matters to bear before the civil court.

“The intent of the defendant in selecting the mark, weighed in favor of defendant, in the absence of evidence that defendant intended to confuse the public into believing that his church was one of the plaintiffs”

This factor speaks congruently with the previous point. If there was no “bad faith” or “ill intent” on my part, and no *actual* harm has been done, what is the *intent* of the complaint? It reminds me of the Scripture that says, “But whereunto shall I liken this generation? It is like unto children sitting in the markets, and calling unto their fellows, And saying, We have piped unto you, and ye have not danced; we have mourned unto you, and ye have not lamented. For John came neither eating nor drinking, and they say, He hath a

