

MY REACTION

Who is like unto the beast? who is able to make war with him? [Rev. 13:4b]

The United States Court of Appeals for the 6th Circuit, composing a panel of three judges, has issued an opinion, affirming the decisions of the United States District Court for the Western District of Tennessee at Jackson in the trademark lawsuit styled as *General Conference Corporation of Seventh-day Adventists v. McGill et al.*

In this essay I am purposefully leaving out portions of the opinion and my commentary dealing with the Religious Freedom Restoration Act (RFRA) defense. You may do extensive research online if you have time, but for the most part, the controversy and confusion surrounding the Act is hardly sorted out by the courts, much less by ordinary laity. If our attorney sees the way clear to file an appeal with the United States Supreme Court, perhaps the RFRA will be briefed therein.

Let me begin by quoting some of the text of the opinion and providing *My Reaction* respectively.

So far, no one has questioned the sincerity of McGill's belief that God requires him to continue his infringing use of the plaintiffs' marks. Being compelled to stop could substantially burden his religious practice. [page 10]

I find this admission to be significant. In addition, I am thankful that the judges saw fit to make these statements, though I am perplexed that a court in America would approve or uphold a law or the interpretation of said law that "substantially burden[s] [one's] religious practice." This runs counter to the long-standing view that America is "the land of the free and home of the brave." It seems that the intentions of the United States Constitution are lost in the complex, and often contradictory, maze of case law. This rightly fulfills what Ellen G. White wrote in the following:

By the decree enforcing the institution of the papacy in violation of the law of God, our nation will disconnect herself fully from righteousness. When Protestantism shall stretch her hand across the gulf to grasp the hand of the Roman power, when she shall reach over the abyss to clasp hands with spiritualism, when, under the influence of this threefold union, our country shall repudiate every principle of its Constitution as a Protestant and republican government. [*Testimonies for the Church*, Vol. 5, page 451]

The panel offers this information for some unknown reason.

There is a second three-member church associated with his, which has the same name and is located in British Columbia, Canada. In addition, there are other congregations that the defendant "raised up" in the United States, which have been apostatized, or diverted from the faith. [page 3]

I believe this is the first time any legal record has made mention of our extended work. While this panel quoted the mistaken record of a three-member Guys congregation, taken from my deposition, at least they indicated that the CSDA is not and has not been confined to the Guys church.

Continuing with information from my deposition, they write the following:

In 1990, McGill formed his current church, taking its name from a divine revelation. While the Defendant was aware that the Plaintiffs had trademarked the name "Seventh Day Adventist," he used it anyway, because he believed that he was divinely mandated to do so. [page 3]

I am pleased for this inclusion of truth. Generally, when I am quoted from my deposition it can be considered reliable. There were few incidents of faulty understanding therein.

On page four of the 6th Circuit opinion, the plaintiffs' original complaint filed in federal district court was summarized. They alleged many things including trademark infringement, unfair competition, cybersquatting, unfair and deceptive trade practices, injury to business, and dilution of marks. My answer raised affirmative defenses such as the First Amendment, the Commerce Clause, laches, fair use, failure to state a claim, the fact that the trademarked terms are generic and that our use of similar terms do not cause confusion, and the assertion that the plaintiffs had lost their right to trademark protection "by deviation of doctrine from the religion of Seventh Day Adventism as it was originally formed." Our strongest argument was that Seventh Day Adventism is a religion and thus inherently generic and incapable of being trademarked. The verdict has been that none of my defenses were adequate to prevail in the courts.

McGill argues that "Seventh-day Adventism" refers to a religion, is therefore a generic term, and thus cannot be trademarked. [page 13] McGill's argument is certainly logical: well-known terms that society understands to refer to a particular faith in general are generic, and no single party can prevent others from using them. [...] "Christian Science" is a religion and therefore a generic name not entitled to trademark; [...] Baha'ism is a religion and that the use of the word "Baha'i" could not be enjoined because "members of the same religion have an equal right to use the name of the religion"; [page 14]

The problem seems to be tied to the perception of the public. "The appropriate test for genericness is whether the public perceives the term primarily as the designation of the article." [page 14] This may be demonstrated by the decision for the word "Baha'i" above (from 1941) and the 1966 decision "enjoining defendants' use of 'Baha'i' because 'the public has come to recognize the designation 'Baha'i' ... as identifying the [plaintiff organization] and the Baha'i Faith as administered by [it].'" I am personally perplexed by the concept of "mutating religion." What was once a *religion* can cease being a religion based on the way society views the term.

I am also confused by the contradictory findings of different courts. For example, in *Gen. Conference Corp. of Seventh-day Adventists v. Seventh-day Adventist Congregational Church* (1989), "judgment on the pleadings was improper because defendants argued that Seventh-day Adventism was a religion and thus generic." In our lawsuit, the district court judge rendered a partial summary judgment in favor of plaintiffs even though we "argued that Seventh-day Adventism [is] a religion and thus generic." It does not meet my logical mind that in one court the judge could not hand down a judgment, and in ours, he could.

A footnote in the opinion on page 14 reads as follows: "In their reply to McGill's response to their summary-judgment motion below, the plaintiffs stated that their organization's 'members are followers of the Christian faith.'" So, it is implied that Seventh-day Adventists are not adherents of a "peculiar faith" but only an organization administering "the Christian faith."

Will men and women professing the most solemn truths ever borne to mortals be true to principle? If they would have an influence to lead the world to serious reflection they must be; their dress and conversation must be in strict accordance with their peculiar faith. [*Testimonies for the Church*, Vol. 5, pages 128, 129]

I was told that men will employ every policy to make less prominent the difference between the faith of Seventh-day Adventists and those who observe the first day of the week. In this controversy the whole world will be engaged, and the time is short. This is no time to haul down our colors. [13MR 69; 1896]

The panel of judges continues their discussion of "Whether 'Seventh-day Adventism' Can Be Trademarked" on page 15. Citing a result from *Gen. Conference Corp. of Seventh-day Adventists v. Perez* (2000), they write, "[a] court, sitting as factfinder after a bench trial, found that 'Seventh-day Adventist' referred to the plaintiffs' church, not a religion, in the eyes of the public." The panel mentions the Trademark Trial and Appeal Board contest, *Stocker v. Gen. Conference Corp. of Seventh-day Adventists* (1996), saying that "petitioners had not met burden of establishing genericness for cancellation of [the

Seventh-day Adventist] trademark,” but made no mention of the sound reasoning by the dissenting judge in that case.

I am totally amazed at the “legal gymnastics” applied by the panel to sidestep what actually happened in *Benn v. Seventh-day Adventist Church* (2004). In that case, the district court “remarked that ‘the Seventh-Day Adventist Church *is a religion*, not a cognizable legal entity.’” [italics supplied] In that same case, the General Conference Corporation *argued* the following: “By naming the ‘Seventh-day Adventist Church’ as a defendant, Plaintiff attempts to sue *a religion* rather than a religious institution.... [T]he Seventh-day Adventist Church *is a religion* that may be treated as an ‘unincorporated association’ only by resorting to an unconstitutional fiction.” [italics supplied] Our 6th Circuit panel concludes, “It is clear that the General Conference Corporation gained no unfair advantage in *Benn* from that court’s crediting its argument that ‘Seventh-day Adventist Church’ refers to a religion.” [page 16] It tends to thoroughly puzzle me how a litigant can *successfully* argue one side in a particular case and then argue the exact opposite in a later case.

Another statement from page 20 deserves *My Reaction*. The panel writes, “But while it may indeed be hard to envision a person mistakenly joining the wrong church, it is not at all difficult to imagine a person consuming McGill’s published materials and ascribing his teachings to the General Conference especially in light of the relatedness of the parties’ services and similarity of the marks.” I am tempted to say, if our “published materials” and “services” are so defective that anyone would ascribe our “teachings to the General Conference,” then we need to disband and give up “that worthy name by the which [we] are called.” [James 2:7] The above conclusion, arrived at by the panel, should be motivation enough to ensure that our “published materials” and “services” are *not* “so defective.” And, as a matter of fact, had any one of the panel members taken a little time to read our works or examine our services, they would have been embarrassed to deliver such a finding.

When the law of God is being made void, when His name is dishonored, when it is considered disloyal to the laws of the land to keep the seventh day as the Sabbath, when wolves in sheep's clothing, through blindness of mind and hardness of heart, are seeking to compel the conscience, shall we give up our loyalty to God? No, no. The wrongdoer is filled with a Satanic hatred against those who are loyal to the commandments of God, but the value of God's law as a rule of conduct must be made manifest. The zeal of those who obey the Lord will be increased as the world and the church unite in making void the law. [13MR 71]

While I appreciate what good points the panel made in our behalf, I perceive that they maintained a “safe posture,” seeking to remain comfortably within the confines of what they saw to be established case law. I believe they had some latitude in which to move, but the age-old carnal principle has been repeated.

The same argument eighteen hundred years ago was brought against Christ by the "rulers of the people." "It is expedient for us," said the wily Caiaphas, "that one man should die for the people, and that the whole nation perish not." (JOHN 11:50) This argument will appear conclusive; and a decree will finally be issued against those who hallow the Sabbath of the fourth commandment, denouncing them as deserving of the severest punishment [court-ordered sanctions], and giving the people liberty, after a certain time, to put them to death [or “root out the hated sect”]. [*The Great Controversy*, pages 615, 616; brackets mine]

So, the questions are rightfully asked, “*Who is like unto the beast? who is able to make war with him?*” *My Reaction* is the same as yours should be—only YAHWEH.

Writing from Africa
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