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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92065178
Party	Defendant The General Conference Corporation of Seventh-day Adventists
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Philanthropist.com, Inc.

Petitioner,

vs.

General Conference Corporation
of Seventh-day Adventists

Registrant.

Cancellation No. 92065178 (parent case)
Cancellation No. 92065255

**REGISTRANT’S MOTION FOR SUMMARY JUDGMENT
AND SUPPORTING MEMORANDUM OF LAW**

I. INTRODUCTION

Pursuant to 37 C.F.R. §2.127 and §2.116 and Rule 56 of the Federal Rules of Civil Procedure, Registrant General Conference Corporation of Seventh-day Adventists (“GCCSDA” or “Registrant”) hereby moves the Board for summary judgment in favor of Registrant and against Petitioner Philanthropist.com, Inc. (“Petitioner”) in the consolidated proceedings captioned above.¹

This case is appropriate for summary judgment as, despite numerous opportunities during written discovery and deposition testimony, Petitioner has failed to point to any evidence that would support its claims or raise a genuine issue of material fact as to the genericness of the ADVENTIST mark (“ADVENTIST” or the “Mark”) for the goods and services with which it has been registered for nearly forty years.

First, the record shows that Petitioner does not have any standing to bring this proceeding, but is instead seeking to act as a self-appointed guardian of the Register and to get revenge on Registrant for its prior filing of a domain name complaint against Petitioner in another case that has already been decided.

¹ Pursuant to the Board’s order consolidating the Cancellation Nos. 92065178 and 92065255, 8 TTABVUE, Petitioner is filing the present motion in the parent case only (Cancellation No. 92065178) and is seeking summary judgment on all claims in both proceedings. Unless otherwise noted, citations to the record are to TTABVUE in the parent proceeding.

Furthermore, Petitioner has failed to introduce any evidence that would be sufficient to raise a material fact as to the distinctiveness of Registrant's ADVENTIST mark, let alone to overcome the strong presumption that the registered ADVENTIST mark is distinctive and non-generic. Petitioner's allegations that consumers primarily understand "Adventist" as a generic term for a class or category of religious services are unsupported and the mountain of evidence clearly shows that consumers identify the term "Adventist" solely with Registrant and the Seventh-day Adventist Church, including dictionary evidence, media usage, and survey evidence. Finally, the meager evidence upon which Petitioner relies relates solely to religious services; Petitioner has produced absolutely no evidence raising any genuine issue of fact as to whether Registrant's mark is generic in connection with the other goods and services covered by Registrant's registrations. Therefore, the Board should grant summary judgment to Registrant and dismiss this proceeding.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Registrant GCCSDA is a non-profit corporation established to hold title to the assets of the Seventh-day Adventist Church, including its trademarks. The Seventh-day Adventist Church (the "Church") is a world-wide denomination with over 20 million members, including over 1.1 million members and over 5,000 churches in the United States. The Seventh-day Adventist Church also operates more than 800 primary and 200 secondary schools; 11 colleges and universities; over 140 health care institutions, including 65 hospitals; more than 20 radio stations and two major satellite television networks in the United States. The Seventh-day Adventist Church is a unified body governed by a General Conference made up of divisions, union conferences, and local conferences. Use of the Seventh-day Adventist Church's trademarks, including the ADVENTIST marks which are the subject of this proceeding, is by license and/or under the control of GCCSDA. Ex. 4, Woods Dec., ¶4.

Registrant and its licensees have used the mark ADVENTIST to identify and distinguish the Church's goods and services since the early 1860s. Registrant is the owner of numerous trademark registrations consisting of or containing the word ADVENTIST, including the two registrations for its ADVENTIST mark which are the subject of this proceeding. The first, U.S. Reg. No. 1,218,657 (the

“‘657 Registration”), covers “religious observances and missionary services” in Class 42 (collectively “religious services”) and “educational instruction services in academics at grade school, high school, and college levels” in Class 41. The second, U.S. Reg. No. 1,176,153 (the ‘153 Registration”), covers “religious books, magazines, pamphlets, newsletters, brochures, encyclopedias, dictionaries, commentaries, fliers, bullets, booklets and bibles” in Class 16; “establishment and administration of employee health care and benefit programs and medical insurance programs” in Class 36; “film production and distribution services” in Class 41; and “health care services, namely, hospital, dental, pharmaceutical, nursing home, and medical laboratory services” in Class 42. The Church’s member entities are licensed to use the ADVENTIST mark under the terms of the Church’s General Conference Working Policy. Ex. 4, Woods Dec., ¶4.

Petitioner is a buyer and reseller of domain names. In June of 2016, Petitioner acquired the domain name <adventist.com>. Registrant subsequently sent a cease and desist letter to Petitioner in November of 2016 advising of Registrant’s rights in the ADVENTIST mark and requesting transfer of the domain name to Registrant. When Petitioner refused, Registrant filed a complaint with the National Arbitration Forum under the Uniform Domain Name Resolution Procedure (“UDRP”) seeking to have the <adventist.com> domain name transferred to Registrant. On January 23, 2017, the Forum issued a decision in favor of Petitioner. The Forum found that, while it was a “close case,” Registrant had not shown that the <adventist.com> domain name was registered in bad faith. 15 TTABVUE, Second Amended Petition for Cancellation (hereinafter, “Amended Petition”), Ex. D.

Petitioner filed the original Petition for Cancellation in this case on January 13, 2017, while the UDRP proceeding was still pending. 1 TTABVUE. After initially dismissing the Complaint for failure to adequately plead standing, the Board allowed the Petitioner to replead and ultimately found that, for purposes of the motion to dismiss, Petitioner had met its initial burden to plead allegations which, if proven, would establish its standing. 14 TTABVUE.

The case is now ripe for summary judgment. Discovery closed on August 16 and both parties have responded to written discovery. Registrant took the deposition of Petitioner's owner and principal, Greg Everett, on June 20. Petitioner has not noticed any depositions.

III. THE STANDARD FOR SUMMARY JUDGMENT

In a motion for summary judgment, the moving party has the burden of establishing the absence of any genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A "genuine issue of material fact" only exists if sufficient evidence is presented that a reasonable finder of fact could decide the issue in favor of the non-moving party. *Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F.2d 847 (Fed. Cir. 1992). Disputes over facts which will not affect the outcome are not material and will not prevent the entry of summary judgment. *Id.* The non-moving party may not rest on the mere allegations of its pleadings or assertions of counsel, but must point to specific evidence in the record showing the existence of a genuine issue of material fact for trial. *Id.*

A two-part inquiry is used to determine whether a designation is generic: (1) What is the genus of goods or services at issue? (2) Does the relevant public understand the designation primarily to refer to that genus of goods or services? *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). "The standard to be applied to determine whether a term is a generic name or is a mark is not whether the term has some significance to the public as the generic name of an article, but whether its generic meaning is its principle significance." McCarthy on Trademarks and Unfair Competition §12:6 (5th Ed. 2016) (emphasis added).

The petitioner bears the burden of establishing that the challenged mark is generic by a preponderance of the evidence. *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991). "[T]he inquiry involved in a ruling on a motion for summary judgment...necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Moreover, where the ultimate burden of proof on the underlying legal claim or defense rests on the nonmoving party, the summary judgment burden of the

moving party may be met by showing "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

IV. PETITIONER CANNOT ESTABLISH STANDING AS A MATTER OF LAW

First, Petitioner's claims should be dismissed without any further analysis of the substance of the claims because the record shows that Petitioner cannot establish standing as a matter of law. Standing is a threshold issue that must be proven by a plaintiff in every inter partes case. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999). "The facts regarding standing... are part of a petitioner's case and must be affirmatively proved." *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1028, 213 USPQ 185 (CCPA 1982). Standing must not only be present at the pleading stage, but must also be present at any time the question of the plaintiff's real interest is before the Board. *Id.*

In order to establish standing, Petitioner must prove both that Petitioner has a "real interest" in the proceedings and that it has a basis for its belief of damage that has a "reasonable basis in fact." *See Ritchie*, 170 F.3d at 1095 (citations omitted). This "is to preclude meddlesome parties from instituting proceedings as self-appointed guardians of the purity of the Register." *Lipton Indus.*, 670 F.2d at 1027 (CCPA 1982) (citation omitted).

Petitioner was able to survive Registrant's second Motion to Dismiss for lack of standing by alleging facts that the Board found, if taken as true, would be sufficient to establish standing. 14 TTABVUE. However, for purposes of proving its case, or surviving summary judgment, Petitioner cannot rest solely on its allegations, but must be able to point to evidence which proves those allegations. The evidence adduced during the discovery period shows that Petitioner's allegations regarding standing are without any factual basis and that Petitioner cannot survive summary judgment on this issue.

First, Petitioner has alleged that it is "[unable] to sell Adventist.com or to realize a reasonable return on its investment." Amended Petition, ¶10. This assertion is directly contradicted by the evidence. Petitioner's owner and principal, Greg Everett, testified in his deposition² that Petitioner purchased the

² Registrant took the deposition of Mr. Everett as both a 30(b)(6) corporate representative of Petitioner and in his personal capacity.

domain name for \$8,811, Ex. 1, Everett Dep., at 26:12-19, and that he originally set the resale price at \$120,000, adding that he “would have been happy to get that or half that or whatever.” *Id.* at 191:1-8. However, after Registrant sent Petitioner a letter advising Petitioner of Registrant’s rights in the ADVENTIST mark and requesting transfer of the domain name, Petitioner immediately raised the listed purchase price of the domain to up to \$6,000,000 before settling on \$1,200,000, with the admitted sole goal of preventing Registrant (or any other party related to Registrant) from purchasing the domain from Petitioner, explaining he is “not interested in selling” the domain. *Id.* at 46:21-47:7-20, 181:24-184:5; *see also* Ex. 6, Petitioner’s Responses to Registrant’s First Set of Interrogatories, Response No. 20.

Mr. Everett further confirmed in his deposition that the present proceeding is “not related to the value of the domain name” and explained that “it’s not a money thing,” but is instead about “seeing it through,” meaning the cancellation of the Church’s trademarks, Ex. 1, Everett Dep., at 48:4-11, 191:9-20, on “behalf of all the people,” *id.* at 46:21-47:7. Indeed, Mr. Everett rejected an offer to purchase the domain name for \$120,000 – his original asking price and nearly 14 times what he had paid for it – after this proceeding was already pending. *Id.* at 56, 60-63. He also confirmed that no other parties had been “deterred” from purchasing the domain name, apart from the party referenced above to whom he refused to sell the domain. *Id.* at 69:18-22, 70:11-13. Mr. Everett further testified that he would not currently sell the domain for \$1,200,000 or indeed for any price. *Id.* at 183:24-184:5, 191:9-20.

It is clear from Mr. Everett’s testimony that the Petitioner has no “alleged belief of economic damage,” reasonable or otherwise, as he confirmed that this proceeding is “not related to the value of the domain” and is “not a money thing.” *Id.* at 191:9-20. Rather, Mr. Everett’s testimony clearly demonstrates that Petitioner’s sole motivation for continuing with this proceeding is to “act as [the] self-appointed guardian[] of the purity of the Register,” *Lipton Indus.*, 670 F.2d at 1027 (CCPA 1982) (citation omitted), due to his spite at the Church for filing the original UDRP complaint, Ex. 1, Everett Dep., at 190:6-23.

Petitioner’s second alleged basis for standing is its claim that its “quiet enjoyment” of the <adventist.com> domain name “is subject to and significantly diminished by Respondent’s active threat

to bring a federal action for trademark infringement.” Amended Petition, ¶8. Petitioner admits that this allegation is based solely upon a letter that was sent by the Church to Petitioner in November of 2016 regarding Petitioner’s ownership of the <adventist.com> domain name. Ex. 1, Everett Dep., at 44:1-6, 10-14. As an initial matter, the TTAB has previously recognized that the “mere threat of a suit for infringement and/or the filing and litigation of an opposition proceeding does not, per se, constitute damage.” *Yard-Man, Inc. v. Getz Exterminators, Inc.*, 157 U.S.P.Q. 100, 105 (TTAB 1968) (citations omitted); *see also Continental Specialties Corporation v. Continental Connector Corporation*, 192 U.S.P.Q. 449 (TTAB 1976) (“Lastly, it is well settled that the threat of a suit for infringement...or the filing and litigation of an opposition proceeding, or a combination of both contingencies, does not by itself constitute damage within the meaning of [the Lanham Act].”).

Moreover, even if certain threats of litigation could be sufficient to support standing, the Church’s November 2016 letter is clearly insufficient in this case. Registrant has already fulfilled any purported “threats” that it made in the letter by filing a UDRP complaint on December 8, 2016, requesting transfer of the <adventist.com> domain name to Registrant. That claim was subsequently decided in Petitioner’s favor in January of 2017. Registrant did not appeal that decision and, as Petitioner has admitted, Registrant has not filed or threatened any further legal action against Petitioner. Ex. 1, Everett Dep., at 41-42. Indeed, since the filing of the UDRP complaint, Petitioner is the only party that has threatened or pursued legal action. *Id.* at 182:21-183:4. Nevertheless, Petitioner still baselessly alleges that its ownership of the <adventist.com> domain name “is subject to and significantly diminished by Respondent’s active threat to bring a federal action for trademark infringement.” Amended Petition, ¶8.

The Board has stated that in order to establish standing, a party’s belief that it will be damaged by the registration of another party’s trademark must be “objectively reasonable.” *NSM Resources Corp. and Huck Doll LLC v. Microsoft Corp.*, 113 U.S.P.Q.2d 1029, 1033 (TTAB 2014). Petitioner’s belief that he is still under threat of litigation from the Church, nearly two years after the sending of the cease and desist letter and with no further threats of legal action, does not rise to the level of an “objectively reasonable” belief of damage. In fact, Mr. Everett testified that he would continue to believe he was

under threat as long as he owns the domain, Ex. 1, Everett Dep., at 45:18-23, while also testifying that he wouldn't sell the domain to Registrant or any other party at any price, *id.* at 191:9-20. The mere sending of a letter by Registrant does not give the recipient the unfettered right to challenge the sender's trademarks in perpetuity.

As set forth above, it is clear that Petitioner has no reasonable belief in damage or fear of future litigation, that it could easily sell the <adventist.com> domain name for a price far exceeding its acquisition cost, and that its continued ownership of the domain name is merely to provide a sham basis for bringing the present cancellation proceeding. As such, the Board should grant summary judgment to Registrant on the ground of Petitioner's lack of standing.

V. PETITIONER CANNOT SUCCEED AS A MATTER OF LAW ON ITS CLAIM THAT THE ADVENTIST MARK IS GENERIC FOR RELIGIOUS SERVICES

Petitioner's primary argument in this case is that Registrant's ADVENTIST Mark is generic in connection with religious services (covered only by Class 42 of the '657 Registration) because the primary significance of the term "Adventist" allegedly refers to adherents of any religious denomination which believes in the imminent Second Coming of Christ, rather than primarily or solely to the Seventh-day Adventist Church.

Petitioner has a high burden in seeking to establish that Registrant's ADVENTIST Mark is generic. A federal registration "constitutes a strong presumption that the term is not generic and defendant bears the burden of overcoming the presumption." McCarthy on Trademarks and Unfair Competition §12:12 (5th Ed. 2016). In order to establish that Registrant's Mark should be cancelled on the grounds of genericness, Petitioner must show by a preponderance of the evidence that the mark has "become[] the generic name for the goods or services, or a portion thereof, for which it is registered." 15 U.S.C. §1064(3).

The primary consideration in determining whether a term is generic is the primary significance of the mark to the relevant public. 15 U.S.C. §1064(3). In this case, the relevant public for Registrant's religious services is Protestant Christians, since the Seventh-day Adventist Church is a Protestant

Christian denomination, as are all of the other denominations that Petitioner alleges are referred to as “Adventist.” Therefore, in order to succeed on its claim with regard to religious services, Petitioner must be able to establish that Protestant Christians view “Adventist” as the generic name for a class or category of “religious observances and missionary services” covered by the ‘657 Registration.

The Federal Circuit has stated that evidence of the public’s understanding of a mark may be obtained from “any competent sources, such as consumer surveys, dictionaries, newspapers, and other publications.” *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1559 (Fed. Cir. 1985); *see also McCarthy* §12:13. In the present case, all of this evidence indisputably establishes that the primary significance of Registrant’s ADVENTIST Mark is as a distinctive mark identifying Registrant as the source of religious services offered under the mark, rather than a generic term for a class or category of religious services.

A. Petitioner’s Evidence Is Insufficient to Establish That The Mark is Generic

Petitioner has failed to come forth with even the minimal quantum of evidence necessary to establish a genuine issue of material fact and avoid summary judgment regarding the generic nature of the registered marks. In the Amended Petition, Petitioner primarily relies upon the Wikipedia entry for “Adventism” to support its claim. This entry alleges that Adventism is a branch of Protestant Christianity comprised of multiple denominations which share a belief in the imminent Second Coming of Christ, including but not limited to the Seventh-day Adventist Church. Amended Petition, Exhibit H. However, as the Board has recognized, Wikipedia entries “may contain significant misinformation, false or debatable information, ‘unencyclopedic’ content, unexpected oversights and omissions, vandalism, or unchecked information.” *In re IP Carrier Consulting Group*, 84 U.S.P.Q.2d 1028, 1032 (TTAB 2007); *see also In re Steven Madden, Ltd.*, Serial No. 85/313,681, at 3 (TTAB Nov. 29, 2013) (“Wikipedia is a source whose accuracy may be questioned.”). Therefore, while Wikipedia evidence may be admissible, it must be corroborated by other sources in order to be accorded any weight. *IP Carrier*, 84 U.S.P.Q.2d at 1032-33.

In this case, the cited Wikipedia entry is highly flawed and almost entirely uncorroborated. Most of the statements upon which Petitioner relies, such as the statement in the second paragraph that “William Miller started the Adventist movement in the 1830s,” are not supported by references to any external sources. Amended Petition, Ex. H.³ Moreover, even for those statements which do have citations, the purportedly corroborating sources often do not support the statements in the Wikipedia entry. For example, the fourth paragraph states that “in 2010, Adventism claimed some 22 million believers scattered in various independent churches,” citing to a December 2011 Pew Research Center report on Global Christianity. *Id.* However, the cited report does not support this statement. Ex. 5, Bazil Dec., ¶2. The Wikipedia entry upon which Petitioner relies is thus not reliable and is insufficient to create a genuine question of material fact.

Petitioner has also referred in its interrogatory responses to the alleged dictionary definitions of the term “Adventist,” and stated that it would produce these definitions in its document production. Ex. 6, Petitioner’s Responses to Registrant’s First Set of Interrogatories, at 1. However, Petitioner’s document production did not include any dictionary entries.⁴ Ex. 5, Bazil Dec., ¶4. Moreover, the Merriam-Webster Dictionary, which Petitioner claims supports its position, also defines “Adventism” as referring to “the principles and practices of Seventh-Day Adventists.”⁵ *Id.* at ¶5. Likewise, both the Cambridge Dictionary and MacMillan Dictionary entries for “Adventist” direct to “Seventh-day Adventist,” indicating that these terms are synonymous. *Id.* at ¶6-7. These definitions thus in fact support Registrant’s position. Furthermore, even if the Board does grant any consideration to any dictionary definitions which may support Petitioner’s arguments, dictionary definitions are not the end of the inquiry: the question is how the term is actually used and understood by relevant consumers. *See Te-Ta-Ma Truth Found. – Family of Uri v. World Church of the Creator*, 297 F.3d 662, 666 (7th Cir. 2002)

³ As discussed in more detail below, there is no evidence that the Millerite movement was referred to as “Adventist,” or that the term “Adventist” was in common usage before the 1860s.

⁴ Petitioner has testified that Petitioner has produced all responsive documents in its possession. Ex. 1, Everett Dep. at 192:10-23, 193:15-20.

⁵ It must also be noted that the registered mark is ADVENTIST, not “Adventism.”

(criticizing party moving for cancellation of registered trademark for relying solely on dictionary evidence, rather than “evidence about how religious adherents use or understand” the term at issue).

Petitioner has also focused on allegations regarding the historical use of “Adventist” in attempting to show that the term is generic. These arguments are largely irrelevant, since the question at issue is the meaning of the term “Adventist” to relevant consumers today, not 150 years ago. *See id.* (focusing on usage in “contemporary culture” rather than “historical meanings” in determining whether the name of a religious denomination is generic).

Moreover, Petitioner’s allegations regarding the historical meaning of “Adventist” are demonstrably false. Petitioner alleges that “the first sect to use ‘Adventist’ to identify itself was the Millerites” and that there were multiple new Christian denominations formed in the 1850s that “refer[ed] to themselves generally as ‘Adventists.’” Amended Petition, ¶21-22. In fact, as thoroughly explained in the attached expert reports of Clinton Wahlen and George Reid, both of whom have doctorate degrees in theology or religious history, there is no evidence that the Millerites referred to themselves as “Adventists,” or that the term “Adventists” was commonly used prior to the adoption of the name “Seventh-day Adventists” in 1860. Ex. 2, Wahlen Report, at ¶10, 14; Ex. 3, Reid Report, at ¶10. Prior to this conference, the scattered congregations that shared a belief in the imminent Second Coming of Christ during the 1840s and 1850s were referred to by a variety of names, including the “Church of God,” the “Scattered Remnant,” and the “Sabbath Keepers.” *Id.* In September of 1860, approximately 20 of the leaders of these congregations held a conference in Battle Creek, Michigan, at which they adopted the name “Seventh-day Adventists.” Ex. 3, Reid Report, at ¶13. The General Conference of the Seventh-day Adventist Church was officially established at a second conference in 1863. *Id.* at ¶15. Ever since then, the General Conference and its member entities have used the terms “Adventist” and “Seventh-day Adventist” interchangeably to identify members of the Seventh-day Adventist Church.

Petitioner also claims in the Amended Petition that other denominations besides the Seventh-day Adventist Church currently use the term “Adventist” or are referred to as “Adventists.” However, Petitioner has been unable to point to any evidentiary support for these allegations in discovery.

Petitioner claims that a “large subset” of Christian denominations, not limited to the Seventh-day Adventist Church, are today referred to as “Adventists.” Amended Petition, ¶21. Petitioner identifies nine specific groups in the Amended Petition. However, with the exception of two small splinter groups of the Seventh-day Adventist Church, none of the groups listed in the Amended Petition currently refer to themselves or are commonly referred to by others as “Adventists”:

- The first group identified by Petitioner, the “Evangelical Adventists,” refers to members of the Seventh-day Adventist Church who have an evangelical bent and who contrast themselves with “Progressive Adventists.” Ex. 4, Woods Dec., ¶8. Petitioner has not provided any evidence that any groups outside of the Church use the term “Evangelical Adventists.”
- The “Advent Christians” and “Primitive Advent Christian Church” are two branches of a separate denomination that shares some beliefs with the Seventh-day Adventist Church; however, the members of these congregations are referred to as “Advent Christians,” not “Adventists.” Ex. 4, Woods Dec., ¶9-10. Apart from unfounded speculation and easily disproven statements in his deposition, Petitioner has offered no support for this position.⁶ Ex. 1, Everett Dep., at 93-94, 96.
- The “True and Free Adventists” were a Russian splinter group of the Seventh-day Adventist Church which kept the beliefs of the Church alive in Russia during the Soviet era; there is no evidence that they were ever active in the United States. Ex. 4, Woods Dec., ¶14. Mr. Everett claimed in his deposition that he believed that this group was based in Texas, “maybe [from] a Wikipedia entry,” (Ex. 1, Everett Dep., at 103-04), but there is no support for this claim in the record.
- The “Creation Seventh-Day Adventists” is a group against whom Registrant won an injunction from the Western District of Tennessee in 2008, which was subsequently affirmed by the Sixth Circuit, prohibiting the group from using the ADVENTIST mark. Ex. 4, Woods Dec., ¶16-19. Registrant is not aware of any current activity by this group, and Petitioner has not identified any current activity in its deposition testimony or discovery responses. *Id.* at ¶20.
- The “United Sabbath-day Adventist Church” was an African American offshoot of the Seventh-day Adventist Church in New York City, which broke away from the mother Church in the mid-twentieth century. Ex. 4, Woods Dec., ¶21. Petitioner stated in his deposition that he did not know if this was an active congregation, or how many members it currently has. Ex. 1, Everett Dep., at 104:22-106:3. According to Wikipedia, “[a]s of 2007, a small number of people remain[ed] in a single congregation in New York City,” Ex. 4, Woods Dec., ¶21, but Petitioner has not introduced any evidence that this congregation is still active.

⁶ When asked in his deposition if he had any evidence that members of these groups refer to themselves as “Adventists,” Mr. Everett claimed that it was “very clear” from the “About Us” page of the Advent Christian General Conference (“ACGC”) web site that members of this church referred to themselves as “Adventists.” Ex. 1, Everett Dep., at 93:17-94:3. However, the web site consistently refers to members of this church as “Advent Christians.” Ex. 5, Bazil Dec., ¶8. Mr. Everett later changed his story to say that the ACGC web site only referred to the “forefathers” of the Advent Christians as “Adventists.” Ex. 1, Everett Dep., at 94:11-25.

Petitioner also listed several other purported “Adventist” churches or congregations in its discovery responses, such as the “Christadelphians,” the “Church of God,” the “Church of God and Saints of Christ,” and the “United Seventh-Day Brethren.” Ex. 6, Petitioner’s Responses to Registrant’s First Set of Interrogatories, at No. 2. However, in his deposition testimony, Mr. Everett admitted that he did not know the size of these groups, had never spoken to any members of these congregations, and was not aware of any documents in which members of these churches referred to themselves as “Adventists.” Ex. 1, Everett Dep., at 108-09. Petitioner has also not produced any documents showing that any of these groups refer to themselves or are commonly referred to by others as “Adventists.”

The only groups identified in the Amended Petition or Petitioner’s discovery responses that actually use the term “Adventist” are the Seventh-day Adventist Reform Movement and the Davidian Seventh-day Adventists, two small offshoots of the Seventh-day Adventist Church that split off from the Church in the early twentieth century.⁷ Ex. 4, Woods Dec., ¶¶11-14. Petitioner has not produced any evidence regarding the current size of these groups, the scope of their use, or whether relevant consumers use or interpret the term “Adventist” as referring to these groups in addition to the Seventh-day Adventist Church. Registrant is also unaware of the size of these groups; however, a previous case involving Registrant’s SEVENTH-DAY ADVENTIST Mark, a representative of the SDARM testified that the group had about 500 members in the United States, and a representative of the Davidian Seventh-day Adventist Association testified that the Davidians had fewer than 100 members. *Stocker v. Gen. Conf. Corp. of Seventh-day Adventists*, 39 U.S.P.Q.2d 1385, 1395 (TTAB 1996). Furthermore, as Mr. Everett admitted, many members of these groups identify themselves as Seventh-day Adventists, even though they are not members of the mother Church. Ex. 1, Everett Dep., at 103; *see also Stocker*, 39 U.S.P.Q.2d at 1395 (noting that “many [Davidian Seventh-Day Adventists] quietly belong to constituent congregations of the General Conference”). Finally, to the extent these groups use “Adventist” in their

⁷ The Seventh-day Adventist Reform Movement is actually made up of two separate groups, the Seventh-day Adventist Reform Movement and the International Missionary Society Seventh-day Adventist Reform Movement. Ex. 4, Woods Dec., ¶14.

name, it is in a nominative manner to inform consumers that these groups used to be affiliated with the Seventh-day Adventists but have since broken away from the mother Church, not as a generic term.

This *de minimis* use of “Adventist” by organizations outside of the General Conference, which are themselves offshoots of the Seventh-day Adventist Church and in connection with other wording (rather than standing alone), is wholly insufficient to create a genuine issue of material fact that the primary significance of the term ADVENTIST is generic for the registered religious services. See *Magic Wand*, 940 F.2d at 641 (finding that Board did not err in determining that mark TOUCHLESS was not generic where petitioner had shown only “limited” generic use of mark); see also 15 U.S.C. §1064(3), McCarthy, § 12:6.

B. The Evidence of Record Demonstrates Beyond Any Genuine Issue of Fact that the Term “Adventist” is Used and Understood to Refer Solely to the Seventh-day Adventist Church

As discussed above, Registrant is entitled to a presumption that its mark is not generic, and the burden is on Petitioner to show that the primary significance of the term “Adventist” is as the name of a class or category of “religious observances and missionary services.” Nevertheless, to demonstrate the complete absence of any genuine issue of material fact, Registrant will review the substantial body of evidence establishing that the ADVENTIST mark is a distinctive term commonly used and understood to refer solely to the Seventh-day Adventist Church.

First, Registrant and its member churches only use the term “Adventist” to refer to members of the Seventh-day Adventist Church. For example, on the “Beliefs” page of the Church’s web site, the Church states that “Adventists hold 28 fundamental beliefs that can be organized into six categories.” Ex. 5, Bazil Dec., ¶10. Likewise, a page explaining Seventh-day Adventists’ devotion to the Sabbath states that “Each week, Adventists have a special date with God.” *Id.* at ¶11. The context makes clear that these uses of “Adventist” refer only to members of the Seventh-day Adventist Church, not to other religious groups which may share a belief in the Second Coming. Likewise, the General Conference’s member churches commonly use the term “Adventist” to refer to members of the Church. In fact, many member churches have names which contain “Adventist” rather than the full “Seventh-Day Adventist”

name. Ex. 4, Woods Dec., ¶24. Petitioner has not alleged or shown that the Seventh-day Adventist Church or its members use the term “Adventist” in a generic manner to refer to congregations outside of the Seventh-day Adventist Church that share a common belief in the imminent Second Coming.

Furthermore, as discussed above, aside from a few tiny splinter groups, there is no evidence that any religious denominations outside of the Seventh-day Adventist Church commonly refer to themselves as “Adventists,” or otherwise use the term generically. This is further evidence that the term is not generic, since it demonstrates that allowing the Seventh-day Adventist Church to protect ADVENTIST as a trademark “leaves ample options for other sects to distinguish themselves and achieve separate identities.” *Te-Ta-Ma Truth Found.*, 297 F.3d at 667.

In addition to the Church and its members, the media commonly uses the term “Adventists” to refer exclusively to members of the Seventh-day Adventist Church. For example, in March of 2011, USA Today published an article titled “Adventists’ back-to-basics faith is fastest growing U.S. church.” Ex. 5, Bazil Dec., ¶12. The article was about the recent membership growth of the Seventh-day Adventist Church, which at the time was the fastest-growing Christian denomination in North America. The article repeatedly used the terms “Adventist” and “Seventh-day Adventist” interchangeably to refer to members of the Seventh-day Adventist Church. *Id.* Similarly, in November of 2015, CNN published an article on its web site examining the beliefs of Seventh-day Adventists in light of Seventh-day Adventist Ben Carson’s candidacy for President. *Id.* at ¶13. This article referred to the “one million Adventists in the United States and estimated 18 million worldwide,” clearly referring to the membership numbers of the Seventh-day Adventist Church, and repeatedly used the term “Adventist” to refer to the core beliefs of the Seventh-day Adventist Church. *Id.* The New York Times, The Washington Post, The Los Angeles Times, Newsweek, and other large mainstream media publications have also published articles in the last few years in which these publications used the term “Adventist” to refer solely to members of the Seventh-day Adventist Church. *Id.* at ¶14-18.

In addition to large mainstream media outlets, specialized media outlets targeting Protestant Christian believers also use the term “Adventist” to refer solely to members of the Seventh-day Adventist

Church. For example, in January of 2015, Christianity Today published an article titled “The Season of Adventists: Can Ben Carson’s Church Stay Separatist Amid Booming Growth?” *Id.* at ¶19. The article discussed worries among some members of the Seventh-day Adventist Church that the Church’s North American Division was becoming too mainstream as a result of its recent growth. As with the mainstream news articles referenced above, the Christianity Today article consistently used the term “Adventist” to refer to members of the Seventh-day Adventist Church rather than to members of other denominations. *Id.*

This media usage is strong evidence that the term “Adventist” is associated by relevant consumers and by the public exclusively with the Seventh-day Adventist Church, rather than being viewed as the name of a broad group of independent churches that share common beliefs. See McCarthy §12:13 (explaining that use by the media is a “strong indication of the general public’s perception” as to whether a term is generic) (quoting *Murphy Door Bed Co. v. Interior Sleep Sys., Inc.*, 874 F.2d 95 (2nd Cir. 1989)). In contrast, Petitioner has not put forward any evidence showing media usage of the term “Adventist” to refer generally to multiple denominations that share a belief in the Second Coming.

Likewise, other public usage of the term “Adventist” also demonstrates that the term is commonly understood to identify members of the Seventh-day Adventist Church. For example, in January of 2010, acclaimed documentary filmmaker Martin Doblmeier (who is not a member of the Church) made a documentary film called “The Adventists,” which was shown on PBS stations throughout the United States. Ex. 5, Bazil Dec., ¶25. The film explored the history and current health and wellness practices of the Seventh-day Adventist Church, and repeatedly used the term “Adventists” to refer solely to members of this Church. *Id.*

In summary, all of the available evidence regarding contemporary usage of the term “Adventist” indicates that this term is used as shorthand for “Seventh-day Adventist,” and that this is the primary significance of the term to the relevant consumers. This is far more probative evidence of consumer interpretation of the term than the uncorroborated Wikipedia entry upon which Petitioner relies, which cannot be relied upon to create a material question of fact. See *In re Well Living Lab Inc.*, 122

U.S.P.Q.2d 1777, 1781 (TTAB 2017) (“The modern-day usage of the term ‘well-living’ has more significance and probative value than the dictionary meaning in terms of the likely perception of consumers.”). Registrant’s evidence is enough on its own to demonstrate beyond any genuine issue of fact that Registrant’s ADVENTIST mark is not generic. *See Te-Ta-Ma Truth Found.*, 297 F.3d at 666 (finding that CHURCH OF THE CREATOR mark was not generic where “contemporary usage does not treat [the mark] as the name for any genus of religion”).

Furthermore, there is also survey evidence in this case showing that relevant consumers identify the term “Adventist” as the name of a single denomination, rather than as the generic term for a group of independent denominations. Registrant has provided Petitioner with the attached Expert Report of Dr. Sarah Parikh, which discusses the results of a survey conducted in June of 2018. Ex. 7, Parikh Report. The survey found that among Protestant Christians, 63% of respondents associated the term “Adventist” with one denomination, as compared to only 20% who believed that the term “Protestant” identified a single denomination. *Id.* at ¶¶37, 43. Furthermore, 47% of these respondents spontaneously mentioned Seventh-Day Adventists when asked what the term “Adventist” means to them. *Id.* at ¶44. This is further evidence that relevant consumers associate the term “Adventist” with the Seventh-day Adventist Church rather than with a group of separate independent denominations.

In conclusion, in addition to the presumption of distinctiveness afforded by the ‘657 Registration, Registrant has introduced a substantial body of evidence showing that its ADVENTIST mark is not generic in connection with religious services. In light of this evidence, Petitioner’s reliance upon a flawed and uncorroborated Wikipedia entry is not sufficient to raise a genuine issue of material fact to preclude summary judgment. Therefore, the Board should grant summary judgment to Registrant in connection with the Class 41 religious services in the ‘657 Registration.

VI. PETITIONER HAS NOT PRODUCED ANY EVIDENCE IN SUPPORT OF ITS CLAIM THAT REGISTRANT’S MARK IS GENERIC FOR REGISTRANT’S OTHER GOODS AND SERVICES

Finally, Petitioner has produced absolutely no evidence that the term “Adventist” is generic in connection with the other goods and services covered by Registrant’s two registrations, such as

educational services, health care services, film production services, and printed publications. Petitioner's position that the mark is generic for these goods and services is based on its argument that "Adventist" is a "generic word" which should be free for anyone to use, regardless of the goods and services. Amended Petition, at ¶¶13-14. However, this is not the test for determining whether a mark is generic. In order to establish that Registrant's registrations for its ADVENTIST mark should be cancelled, Petitioner must demonstrate that the mark is generic as applied to the goods and services covered by the registrations at issue. See *Elliott v. Google*, 860 F.3d 1151, 1156 (9th Cir. 2017) (clarifying that "a claim of ...genericness must be made with regard to a particular type of good or service"). As the Ninth Circuit recently explained:

If there were no requirement that a claim of [genericness] relate to a particular type of good, then a mark like IVORY, which is arbitrary as applied to soap, could be cancelled outright because it is generic when used to describe a product made from the tusks of elephants. This is not how trademark law operates: Trademark law recognizes that a term may be unprotectable with regard to one type of good, and protectable with regard to another type of good.

Id. at 1157.

Therefore, Petitioner may not successfully petition for cancellation of Registrant's registrations merely by arguing that "Adventist" is a "generic word," or even by showing that the term "Adventist" is generic in connection with religious services; instead, Petitioner must show that the term "Adventist" is generic in connection with each of the classes of goods and services covered by Registrant's registrations, i.e. that "Adventist" is recognized by relevant consumers as the generic name for the category, sub-category, or class of the goods and services covered by the registrations. Petitioner is unable to make any such showing and has proffered no evidence throughout this proceeding to support its position; therefore, its claims for cancellation must be dismissed.

A. Educational Services

Registrant's '657 Registration covers "educational instruction services in academics at grade school, high school, and college levels." Petitioner has failed to produce any evidence showing that the

ADVENTIST mark is generic in connection with these services, despite being asked for such evidence numerous times in written discovery and deposition testimony.

First, Registrant asked Petitioner in an interrogatory for the basis of Petitioner's position that the term "Adventist" is generic in connection with educational services at the grade school, high school, and college levels. Petitioner responded that "it is Petitioner's belief that the word 'adventist' is a generic word signifying any person, group, or entity believing in the imminent coming of a messiah," and referred to the dictionary definitions of the term "adventist." Ex. 8, Petitioner's Responses to Registrant's Second Set of Interrogatories, at No. 29. None of these definitions refer or relate to educational services.

Registrant also asked Petitioner to identify any third party uses of "Adventist" in a generic manner in connection with educational services. Petitioner responded by referring to its document production and stating that it had not identified any additional third parties. *Id.* at No. 34.⁸ Registrant has thoroughly reviewed Petitioner's document production, and the only document that relates to use of "Adventist" in connection with educational services is a copy of U.S. Reg. No. 2,176,712 for the mark SOUTHERN ADVENTIST UNIVERSITY. Ex. 5, Bazil Dec., ¶21. This university is a denominational entity of the General Conference and uses the ADVENTIST mark with the permission of the GCCSDA. Ex. 4, Woods Dec., ¶5. This document obviously does not support Petitioner's position that the mark is generic for educational services.

Petitioner also had ample opportunity to introduce evidence that the ADVENTIST mark is generic for educational services in its deposition testimony. However, the only group outside of the Seventh-day Adventist Church that Mr. Everett could name which supposedly used the term "Adventist" in connection with educational services is the "Intercollegiate Gay Student Alliance" or "Intercollegiate Gay Student Adventist." Ex. 1, Everett Dep., at 139. Mr. Everett was apparently referring to the Intercollegiate Adventist GSA Coalition ("IAGC") which is a group that provides support services for gay and lesbian students on officially sanctioned Seventh-day Adventist college and university campuses. Ex.

⁸ Petitioner has also testified that Petitioner has produced all responsive documents in its possession. Ex. 1, Everett Dep. at 192:10-23, 193:15-20.

5, Bazil Dec., ¶22. The IAGC is not itself an educational institution and does not provide any educational courses. *Id.* This page also includes a disclaimer stating that the IAGC is not affiliated with the Seventh-day Adventist Church, which indicates that the IAGC recognizes the Church’s trademark rights.

Despite several follow-up questions, Mr. Everett was unable to identify any other organizations outside of the Church and its members that use the term “Adventist” in connection with educational services. Mr. Everett merely stated he “suspect[ed]” that some of the offshoot groups, such as the SDARM, “must do some education,” but was unable to point to any examples. Ex. 1, Everett Dep., at 142. He also stated that he was not aware of any schools outside of the Church’s General Conference with names containing “Adventist.” *Id.* at 143. Petitioner also has failed to produce any evidence showing that consumers of educational services, the media, or the public at large use “Adventist” in a generic manner to refer to a category or class of educational services. *See Magic Wand*, 940 F.2d at 641 (upholding TTAB’s finding that TOUCHLESS mark was not generic where petitioner “supplied no survey evidence of consumer understanding, no letters or testimony from consumers, and no affidavits from consumers showing generic use or understanding of TOUCHLESS”).

Therefore, as Petitioner cannot point to any evidence supporting a claim that the term “Adventist” is generic in connection with educational services, the Board must grant summary judgment to Registrant as to Class 41 in the ‘657 Registration.

B. Health Care Services

The other registration at issue in this proceeding, the ‘153 Registration, covers four classes of goods and services, including health care services in Class 42. Petitioner has failed to identify any evidence sufficient to raise a genuine issue of fact as to whether Registrant’s Mark is generic for any of these goods or services. Mr. Everett testified as follows with regard to health care services:

Q: Is it your position that the term Adventist is commonly used and understood to refer to a category or subcategory of health care services?

A: There’s an Adventist hospital. I’m aware of the – there’s lots of Adventist hospitals.

Q: Yeah. We'll get to that. But I'm just asking about whether your understanding is that the term Adventist is commonly used to refer to a category or subcategory of health services, like "Adventist" health care services or –

A: I don't know. I do not know.

Q: Okay. So are you aware of any use of "Adventist" or names containing "Adventist" in connection with health care services by parties other than the General Conference or its members, anybody outside of the General Conference?

A: I'm not aware of any right now.

Ex. 1, Everett Dep., at 144-145.

Likewise, in its response to Registrant's interrogatories, Petitioner was unable to explain why it believes the term "Adventist" is generic in connection with health care services, or to identify any third party use of "Adventist" in connection with health care services. Ex. 8, Petitioner's Responses to Registrant's Second Set of Interrogatories, at Nos. 30, 35. Petitioner did produce two federal registrations for marks containing the term ADVENTIST in connection with health care services, but the owners of these registrations are both denominational entities of the Church's General Conference. Ex. 4, Woods Dec., ¶5. Petitioner has also not produced any evidence showing that the media or members of the public use "Adventist" in a generic manner in connection with health care services.

Therefore, as Petitioner is unable to point to any evidence raising a genuine issue of fact as to the alleged genericness of the ADVENTIST mark in connection with health care services, Petitioner's claim must also be dismissed as it pertains to Registrant's Class 42 services.

C. Film Production and Distribution Services

Registrant's '153 Registration also covers "film production and distribution services" in Class 41. Petitioner was unable to identify any generic usage of "Adventist" for these services in its responses to Registrant's interrogatories. Ex. 8, Petitioner's Responses to Registrant's Second Set of Interrogatories, at Nos. 31, 36. When asked if he was aware of any generic use of "Adventist" for film production services in his deposition, Mr. Everett mentioned a film titled "Seventh Gay Adventist," which Mr. Everett believed was produced by a company unaffiliated with the Church. Ex. 1, Everett Dep., at 149.

Finally, Registrant's '153 Registration covers "religious books, magazines, pamphlets, newsletters, brochures, encyclopedias, dictionaries, commentaries, fliers, bullets, booklets and bibles" in Class 16. Petitioner did not produce or identify any third party use of "Adventist" as a generic term for printed publications in its responses to Registrant's discovery requests. Ex. 8, Petitioner's Responses to Registrant's Second Set of Interrogatories, at Nos. 33, 38. In his deposition testimony, Mr. Everett stated that it was "principally" the GCCSDA and "all the other churches" (presumably meaning members of the General Conference) that would produce "Adventist" publications. Ex. 1, Everett Dep., at 154. Mr. Everett also identified several purported publications by name, such as "Adventist Today," "Adventist Online," and "Adventist Review," but admitted that he did not know which of these were "owned by the General Conference."⁹ *Id.* at 155. Again, this evidence falls far short of demonstrating any genuine issue of material fact as to whether the term "Adventist" is generic for printed publications. Petitioner's claim thus must also be dismissed with regard to Registrant's Class 16 products.

VII. CONCLUSION

For the reasons set forth above, Registrant requests that the Board grant this Motion for Summary Judgment and dismiss the cancellation with prejudice.

Respectfully submitted,

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS



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Date: September 29, 2018

⁹ "Adventist Review" is the official newsmagazine of the Seventh-day Adventist Church, which has been published under various names since 1849. Ex. 4, Woods Dec., ¶23. "Adventist Online" is not a publication (printed or otherwise), but an online social network for Seventh-day Adventists. Ex. 5, Bazil Dec., ¶24.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Summary Judgment and Supporting Memorandum of Law was served this 29th day of September, 2018, via electronic mail upon:

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