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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
Correspondence Address	BASSAM N IBRAHIM BUCHANAN INGERSOLL & ROONEY PC 1737 KING STREET, SUITE 500 ALEXANDRIA, VA 22314-1404 UNITED STATES SaundersA@gc.adventist.org, bassam.ibrahim@bipc.com 703-836-6620
Submission	Motion to Reopen
Filer's Name	Bryce J. Maynard
Filer's email	bryce.maynard@bipc.com
Signature	/Bryce J. Maynard/
Date	04/18/2019
Attachments	Motion to Reopen Discovery Final 4811-7873-4740 v.1.pdf(43637 bytes) Motion to Reopen Discovery Exhibits.pdf(838552 bytes)

**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)
Cancellation No. 92065255

**REGISTRANT’S MOTION
TO REOPEN DISCOVERY AND SUSPEND PROCEEDINGS**

I. INTRODUCTION

Pursuant to TBMP §509.01(b)(1), Registrant General Conference Corporation of Seventh-day Adventists (“GCCSDA” or “Registrant”) hereby moves the Board to reopen discovery in this proceeding, and to suspend proceedings pending the outcome of this Motion.¹

Registrant is requesting that the Board reopen discovery because it has recently become clear that Petitioner failed to comply with its discovery obligations during the original discovery period. Registrant originally served written discovery requests on Petitioner in January of 2018, and Petitioner produced approximately 800 pages of documents in response. Registrant reasonably believed that Petitioner had produced all documents responsive to Petitioner’s document requests, as Registrant did not indicate in its responses to Petitioner’s requests that it was withholding any documents.

¹ Petitioner has not consented to this Motion. Registrant’s counsel wrote to Petitioner’s counsel on April 15, 2019, requesting that Petitioner consent to reopening discovery for 60 days. Petitioner’s counsel responded via e-mail on April 16, 2019, stating that Petitioner would not consent to any reopening of discovery.

However, after Registrant filed its Motion for Summary Judgment on September 29, 2018, it became apparent that Petitioner had not fulfilled its original obligations in responding to Registrant's document requests. Petitioner cited numerous documents in its opposition to Registrant's Motion for Summary Judgment that Petitioner had never produced during discovery, and of which Registrant was completely unaware prior to receiving Petitioner's opposition brief. Petitioner has also referred to its intention to rely upon other documents at trial which it has not produced.

Now that the Board has denied summary judgment and the case will proceed to trial, it is clear that the discovery period will need to be reopened for a limited time so that Registrant can make sure that Petitioner fully responds to Registrant's original document requests, and so that Registrant can take follow-up discovery, including third party discovery, regarding Petitioner's newly disclosed documents.

Therefore, Registrant requests that the Board issue an order reopening the discovery period for 60 days, and resetting the trial dates accordingly.

Registrant also requests that the Board suspend proceedings pending the outcome of this Motion. The testimony period in this case is scheduled to open on May 4, 2019, and it would be inappropriate for the parties to proceed with taking testimony before they know whether or not there will be further discovery in this case.

II. STATEMENT OF FACTS

The discovery period in this case, as originally scheduled, ran from December 19, 2017 to June 17, 2018. On January 30, 2018, Registrant served a First Set of Document Requests on Petitioner (Exhibit 1). On March 6, 2018, Petitioner served its Responses to Registrant's First

Set of Document Requests (Exhibit 2). These responses were accompanied by 770 pages of documents. Petitioner has never supplemented this original document production.

Registrant filed a Motion for Summary Judgment on September 29, 2018. On October 29, 2018, Petitioner filed its Memorandum in Opposition to Registrant's Motion for Summary Judgment (28 TTABVUE). In this memorandum, Petitioner referred to numerous documents that it had never produced during discovery. For example, on page 6, Petitioner referred to "J. Gordan Melton's ENCYCLOPEDIA OF AMERICAN RELIGIONS," which supposedly classified Petitioner as merely one of several religious groups falling under the heading of "Adventist" (28 TTABVUE at 6). Likewise, on pages 11-12, Petitioner referred to several other publications, such as "the Fourteenth Edition of the HANDBOOK OF DENOMINATIONS IN THE UNITED STATES by Roger E. Olson"; a book titled "WILLIAM MILLER AND THE RISE OF ADVENTISM"; and "John Norton Loughborough's book THE GREAT SECOND ADVENT MOVEMENT, ITS RISE AND PROGRESS" (28 TTABVUE at 11-12). Petitioner argued that all of these publications supported its position that the term "Adventist" is used to refer to a class or category of religions, rather than solely to the Seventh-day Adventist Church.

Registrant was blindsided by Petitioner's citation of these publications, as Petitioner had not produced any of these documents in discovery, despite the fact that these documents were directly responsive to several of Registrant's document requests. For example, Registrant's Document Request No. 2 asked Petitioner to provide "[a]ll documents supporting Petitioner's allegation in Paragraph 13 of the Second Amended Petition for Cancellation that '[t]he word 'Adventist' is a generic term.'" Ex. 1 at No. 2. Petitioner represented that it "ha[d] produced all documents responsive to this Request that were located after a reasonable search," Ex. 2 at No. 2,

yet it never produced these excerpts that it later relied upon to support this very allegation in its opposition to Registrant's Motion for Summary Judgment.

These excerpts were also directly responsive to Petitioner's Request Nos. 3 ("All documents referring or relating to any persons and organizations, other than members of the Seventh-day Adventist Church, whom Petitioner claims refer to themselves as 'Adventists'") and 7 ("All documents regarding the meaning or significance of the term 'Adventist' to the general public"). Ex. 1. Furthermore, if Petitioner somehow believed that these publications were not responsive to these requests, they would still have been responsive to Petitioner's Request No. 23 ("All documents not covered by the above requests on which Petitioner intends to rely to support or prove Petitioner's case in this proceeding"), and yet Registrant never produced them during discovery. Even if Registrant was not aware of these particular publications at the time it originally responded to Petitioner's document requests in March of 2018, Registrant had a duty under Fed. R. Civ. P. 26(e) and TBMP 408.03 to supplement its production once it became aware of these documents.

The Board denied Registrant's Motion for Summary Judgment on March 28, 2019. Shortly thereafter, Registrant's counsel wrote to Petitioner's counsel and requested that Petitioner consent to a Motion to Reopen Discovery for 60 days to allow Petitioner to make sure that Registrant fully responds to Petitioner's initial discovery requests, and for Petitioner to conduct any necessary follow-up discovery in light of the newly disclosed documents (Exhibit 3). Petitioner's counsel responded via e-mail on April 16, 2019, stating that she would not consent to a reopening of the discovery period (Exhibit 4). Petitioner's counsel argued that Petitioner did not have any obligation to produce the publication excerpts and other documents that it relied upon in its response to Registrant's Motion for Summary Judgment because these

were “publicly available documents.” *Id.* Petitioner’s counsel also claimed that these documents were protected by the work product doctrine. *Id.*

III. THE STANDARD FOR A MOTION TO REOPEN TIME

The standard for a motion to reopen time before the Board is governed by TBMP 509.01(b)(1), which states that a movant “must show that its failure to act during the time previously allotted therefor was the result of excusable neglect.” This motion presents an unusual situation, as Registrant is not seeking to reopen time because of its failure to meet a prior deadline or to timely act in accordance with the Board’s schedule. Instead, Registrant is seeking to reopen the discovery period because of Petitioner’s failure to comply with its discovery obligations, which Registrant only became aware of after the discovery period had closed. Therefore, Registrant is not guilty of any “neglect,” excusable or otherwise.

Nevertheless, for purposes of this Motion, Registrant will discuss its request in accordance with the factors governing “excusable neglect” as set forth in *Pioneer Investment Services Co. v. Brunswick Assocs. L.P.*, 507 U.S. 380 (1993) and adopted by the Board in *Pumpkin Ltd. v. The Seed Corps.*, 43 U.S.P.Q.2d 1582 (TTAB 1997). These factors are (1) the danger of prejudice to the nonmovant; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith.

IV. THE BOARD SHOULD REOPEN DISCOVERY

In this case, all four of the *Pioneer* factors strongly support Registrant’s Motion to Reopen Discovery.

First, there is no danger of prejudice to Petitioner in reopening discovery. It is true that Petitioner may have to produce additional documents; however, this does not constitute

“prejudice,” since Petitioner should have produced these documents over a year ago in response to Registrant’s original document requests. Any “inconvenience and delay” to Petitioner also does not rise to the level of prejudice. TBMP 509.01(b)(1).

The second factor is the length of the delay and its potential impact on judicial proceedings. In this case, Registrant is seeking to reopen discovery for 60 days, which will not significantly impact the proceedings. Registrant notes that neither party has sought any extensions of any deadlines thus far in this proceeding.

Third, Registrant has a very good reason for seeking to reopen discovery, namely, Petitioner’s failure to comply with its discovery obligations during the original discovery period. Petitioner has provided absolutely no valid justification for its failure to produce the documents that it relied upon in its opposition to Registrant’s Motion for Summary Judgment. Petitioner’s counsel argued in her April 16, 2019 e-mail to Registrant’s counsel that Petitioner was not obligated to produce these documents because they are “public documents that are equally available to all parties.” Ex. 4. However, courts have consistently rejected the argument that parties do not have to produce documents such as books or articles merely because they are “publicly available.” As one recent decision explained:

The Federal Rules do not shield publicly available documents from discovery merely because of their accessibility. A limitation of this nature would lead to patently absurd consequences. Indeed, it would require litigants to scour the public domain for nuggets of information that their adversaries could potentially use against them—a task that is as Herculean as it is nonsensical. Litigation is not, nor has it ever been, an elaborate parlor game of “blind man’s bluff.” To the contrary, the federal discovery rules are designed to make litigation a “fair contest with the basic issues and facts disclosed to the fullest practicable extent.” A system that would require litigants to divine from an ever-increasing universe of public data what their opponents *might* use to support their claims is hardly “fair” and it is certainly not just. It would to put it mildly, do a grave disservice to our adversarial system.

Courts in other circuits, bearing these principles in mind, have compelled parties to produce relevant, publicly available material that they intend to use to bolster their claims or defenses....Accordingly, plaintiffs were obligated to produce any and all material in their possession, custody, or control—regardless of whether it was publicly available—that they deemed relevant to their case.

Shatsky v. Syrian Arab Republic, 312 F.R.D. 219, 223-24 (D.D.C. 2015) (citations omitted); *see also Phillips v. Hanover Ins. Co.*, No. 14-cv-871R, 2015 WL 1781873, at *2 n.1 W.D. Okla. April 20, 2015) (“Courts consistently hold that parties have an obligation to produce even publicly available information”); *St. Paul Reinsurance Co. v. Commercial Fin Corp.*, 198 F.R.D. 508, 514 (N.D. Iowa 2000) (“Courts have unambiguously stated that this exact objection is insufficient to resist a discovery request”); *City Consumer Services v. Horne*, 100 F.R.D. 740, 747 (D. Utah 1983) (stating that it is “not usually a ground for objection that the information is equally available to the interrogator or is a matter of public record”).

Registrant thus had – and continues to have – a responsibility to produce any articles, books, or other publications that are responsive to Petitioner’s document requests or that Registrant intends to use to support its case. There are likely hundreds of thousands of books and articles on various religious denominations in America, and as explained by the court in *Shatsky*, it would be grossly unfair to expect Petitioner to review all of these publications to determine which publications Registrant might attempt to use to support its claims.

Registrant’s counsel’s other excuse - that Registrant was not required to produce these documents because they are “attorney work product” - is equally baseless. The work product doctrine covers attorney-created documents such as notes and memoranda that memorialize the thoughts and mental impressions of an attorney. It does not cover articles or books written by others that an attorney intends to use to support her client’s case.

It is thus clear that there is good cause for reopening the discovery period in light of Petitioner's failure to comply with its discovery obligations. First, Registrant needs this additional time to make sure that Petitioner produces all documents that are responsive to Registrant's original document requests. In addition to the unproduced documents that Petitioner cited in its summary judgment response brief, Petitioner also apparently intends to rely upon even more documents that it has not yet produced. On April 16th, Petitioner served its Pretrial Disclosures, in which Petitioner indicated that it intended to rely upon numerous additional "publicly available" documents that have not been produced, such as "media, news and opinion articles"; "scholarly journals and publications"; and "documents reflecting consumer views or comments about the word 'Adventist,'" along with "as yet unascertained" documents allegedly showing the genericness of Registrant's mark (Ex. 5).² It is clear that the discovery period will need to be reopened so that Petitioner can be sure that Registrant has provided Petitioner with fair notice of all documents upon which Registrant intends to rely to support its case.

Furthermore, Registrant also may need to conduct follow-up discovery regarding the statements made in all of the documents disclosed for the first time in Petitioner's summary judgment opposition brief, as well as any other documents that Petitioner has not yet produced.³ Registrant also deserves the opportunity to take third-party discovery; Petitioner claims that the newly disclosed documents show that other religious organizations also use the term "Adventist," and, if this is true, Registrant may elect to seek discovery from these organizations regarding the manner in which they use this term.

² Petitioner also stated in its summary judgment response brief that it would introduce evidence of "generic use by competitors" at trial, despite the fact that Petitioner has not produced any such evidence to Registrant. 28 TTABVUE at 4.

³ It is true that the rules do not automatically grant a party the right to take follow-up discovery if there is not enough time remaining in the discovery period. In this case, however, Registrant served its initial discovery requests on February 6, 2018 and the original discovery period did not close until June 17, 2018, meaning that Petitioner would have had ample time to take follow-up discovery if Registrant had produced all responsive documents in a timely manner.

The fourth and final factor is whether the movant acted in good faith. In this case, Registrant has acted in a good faith and in a timely manner. Registrant had no way of knowing that Petitioner had not produced all documents responsive to Registrant's initial discovery requests until it received Petitioner's Memorandum in Opposition to Registrant's Motion for Summary Judgment, in which the undisclosed documents were cited, on October 29, 2018. However, at that time, the proceedings were suspended pending the outcome of the summary judgment motion (*see* 26 TTABVUE), and Registrant could not file any discovery-related motions until the suspension was lifted. Once the Board denied the motion for summary judgment and lifted the suspension on March 28th, Registrant acted promptly in asking for Petitioner's consent to reopening of discovery on April 15th, and in filing this motion on April 18th when Petitioner refused to consent.

In conclusion, it is clear from the *Pioneer* factors that there is good cause for reopening the discovery period in this case. Registrant therefore requests that the Board issue an order reopening the discovery period for 60 days, and resetting all other deadlines accordingly.

In the alternative, if the Board finds that there is not good cause for reopening discovery, Registrant requests at the very least that the Board issue an order compelling Petitioner to fully respond to all of Registrant's original discovery requests, including producing all documents that Petitioner has been withholding on the grounds that they are "publicly available."

V. CONCLUSION

For the reasons set forth above, Registrant requests that the Board issue an order reopening the discovery period for 60 days. Registrant also requests that the Board suspend proceedings pending the outcome of this motion.

Respectfully submitted,

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS

By /Bryce J. Maynard/
Bassam N. Ibrahim
Bryce J. Maynard
Laura K. Pitts
Buchanan Ingersoll & Rooney, PC
1737 King Street
Alexandria, VA 22314-2727
Telephone: 703/836-6620
Facsimile: 703/836-2021

Attorneys for Registrant

Date: April 18, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing REGISTRANT'S MOTION TO REOPEN DISCOVERY AND SUSPEND PROCEEDINGS was served this 18th day of April, 2019, by e-mail only, upon:

Eve J. Brown
Barton Gilman LLP
10 Dorrance Street, Suite 800
Providence, RI 02903
ebrown@bglaw.com

/Bryce J. Maynard/
Bryce J. Maynard

Exhibit 1

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

PHILANTHROPIST.COM, INC.,

Petitioner,

v.

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS,

Registrant.

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: Cancellation No. 92065178 (Parent)
: Cancellation No. 92065255
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REGISTRANT’S FIRST SET OF DOCUMENT REQUESTS TO PETITIONER

Registrant General Conference Corporation of Seventh-Day Adventists (“Registrant”), in accordance with Fed. R. Civ. P. 34 and other applicable rules of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, hereby requests that Petitioner Philanthropist.com, Inc. (“Petitioner”) respond to Registrant’s First Set of Document Requests (“Requests”) set forth below within thirty days. These Requests shall be deemed continuing in nature pursuant to Rule 26(e)(2) of the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

Registrant incorporates by reference the Definitions and Instructions included in Registrant’s First Set of Interrogatories to Petitioner, served concurrently with these Requests.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

All documents identified, requested to be identified, or relied on in responding to Registrant’s First Set of Interrogatories to Petitioner.

DOCUMENT REQUEST NO. 2:

All documents supporting Petitioner's allegation in Paragraph 13 of the Second Amended Petition for Cancellation that "[t]he word 'Adventist' is a generic term."

DOCUMENT REQUEST NO. 3:

All documents referring or relating to any persons and organizations, other than members of the Seventh-Day Adventist Church, whom Petitioner claims refer to themselves as "Adventists."

DOCUMENT REQUEST NO. 4:

All documents regarding any third party usage of ADVENTIST, either alone or in conjunction with other elements, as a name, trade name, trademark, services mark, business name, or title.

DOCUMENT REQUEST NO. 5:

All documents regarding the relevant genus of goods and services for determining whether Registrant's ADVENTIST Mark is generic for purposes of this proceeding.

DOCUMENT REQUEST NO. 6:

All documents regarding the meaning or significance of the term "Adventist" to consumers of the relevant genus of goods and services for determining whether Registrant's ADVENTIST Mark is generic for purposes of this proceeding.

DOCUMENT REQUEST NO. 7:

All documents regarding the meaning or significance of the term "Adventist" to the general public.

DOCUMENT REQUEST NO. 8:

All documents regarding Petitioner's acquisition of the <adventist.com> domain name, including but not limited to documents sufficient to identify the purchase, purchase price, and the seller from whom Petitioner purchased the domain name.

DOCUMENT REQUEST NO. 9:

All documents concerning Petitioner's awareness of Registrant, including documents sufficient to identify the date upon which Petitioner first became aware of Registrant.

DOCUMENT REQUEST NO. 10:

All documents concerning Petitioner's awareness of Registrant's ADVENTIST Mark, including documents sufficient to identify the date upon which Petitioner first became aware of Registrant's ADVENTIST Mark.

DOCUMENT REQUEST NO. 11:

All documents concerning Petitioner's awareness of U.S. Reg. Nos. 1,176,153 and 1,218,657, including documents sufficient to identify the date upon which Petitioner first became aware of Registrant's U.S. Reg. Nos. 1,176,153 and 1,218,657.

DOCUMENT REQUEST NO. 12:

All documents referring or relating to any reports, investigations, research, surveys, or studies concerning Registrant or Registrant's ADVENTIST Mark.

DOCUMENT REQUEST NO. 13:

All documents relating or referring to any investigations, research, reports, surveys, focus groups, or studies concerning consumer perception, awareness, or understanding of the term "Adventist."

DOCUMENT REQUEST NO. 14:

All communications between Petitioner and any third party concerning Registrant or Registrant's ADVENTIST Mark.

DOCUMENT REQUEST NO. 15:

All documents concerning National Arbitration Forum UDRP Case No. 1706357.

DOCUMENT REQUEST NO. 16:

All communications between Petitioner and any third party concerning National Arbitration Forum UDRP Case No. 1706357.

DOCUMENT REQUEST NO. 17:

All documents concerning any effort by Petitioner to sell or offer for sale the <adventist.com> domain name.

DOCUMENT REQUEST NO. 18:

All offers, inquiries, or other communications received by Petitioner from third parties concerning the <adventist.com> domain name.

DOCUMENT REQUEST NO. 19:

All documents referring or relating to any purported threats of legal action by Registrant against Petitioner.

DOCUMENT REQUEST NO. 20:

All agreements entered into by Petitioner with any third party concerning the <adventist.com> domain name, including but not limited to licenses, consent agreements, coexistence agreements, and settlement agreements.

DOCUMENT REQUEST NO. 21:

All documents regarding any objection by any third party to Petitioner's registration, use, or sale of any domain name other than <adventist.com>, including but not limited to cease and desist letters, court orders, arbitration documents, and settlement agreements.

DOCUMENT REQUEST NO. 22:

All communications between Petitioner and any third party concerning this cancellation proceeding.

DOCUMENT REQUEST NO. 23:

All documents not covered by the above requests on which Petitioner intends to rely to support or prove Petitioner's case in this proceeding.

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS

By 

Bassam N. Ibrahim

Bryce J. Maynard

Laura K. Pitts

Attorneys for Registrant

Buchanan Ingersoll & Rooney PC

1737 King Street, Suite 500

Alexandria, Virginia 22314-2727

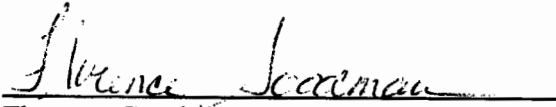
Telephone: 703-836-6620

Date: January 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing REGISTRANT'S FIRST SET OF DOCUMENT REQUESTS TO PETITIONER was served this 30th day of January, 2018, via electronic mail upon:

Eve J. Brown
Bricolage Law LLC
128 School Street
Walpole, MA 02081
ejbrown@bricolagelaw.com



Florence Goodman

Exhibit 2

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

PHILANTHROPIST.COM, INC.,

Petitioner,

v.

GENERAL CONFERENCE CORPORATION

OF SEVENTH-DAY ADVENTISTS,

Registrant.

Cancellation No.: 92065178 (Parent)

Cancellation No.: 92065255

**PETITIONER'S RESPONSES TO REGISTRANT'S FIRST SET OF
DOCUMENT REQUESTS**

Petitioner Philanthropist.com ("Petitioner") hereby responds to Registrant General Conference Corporation of Seventh-Day Adventists ("Registrant")'s First Set of Document. These responses are based upon information and records presently available to Petitioner. As discovery is ongoing, Petitioner reserves the right to supplement its responses as necessary.

GENERAL OBJECTIONS

The following general objections are incorporated by reference into each and every response set forth below and are not waived with respect to any response.

1. Petitioner objects to Registrant's definitions to the extent they exceed the requirements of, or purport to create obligations greater than, those imposed by the FRCP, the Trademark Rules of Practice, or the TBMP.

2. Petitioner objects to the extent that any Request seeks information protected

from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or other limitation on discovery. Petitioner objects to the extent that any Request seeks information not relevant to this proceeding or not reasonably calculated to the lead to the discovery of admissible evidence.

3. Petitioner objects to the extent that any Request seeks information not in Petitioner's possession, custody, or control.

4. Petitioner objects to the extent that any Request is overbroad, lacks reasonable specificity, or seeks information that would be unduly burdensome for Petitioner to provide.

REQUESTS FOR PRODUCTION AND RESPONSES

REQUEST FOR PRODUCTION NO. 1:

All documents identified, requested to be identified, or relied on in responding to Registrant's First Set of Interrogatories to Petitioner.

RESPONSE:

Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 2:

All documents supporting Petitioner's allegation in Paragraph 13 of the Second Amended Petition for Cancellation that "[t]he word 'Adventist' is a generic term."

RESPONSE:

Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 3:

All documents referring or relating to any persons and organizations, other than members

of the Seventh-Day Adventist Church, whom Petitioner claims refer to themselves as "Adventists."

RESPONSE:

Petitioner objects to the extent that this Request seeks information not in Petitioner's custody, possession, or control. Without waiving this objection, Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 4:

All documents regarding any third-party usage of ADVENTIST, either alone or in conjunction with other elements, as a name, trade name, trademark, services mark, business name, or title.

RESPONSE:

Petitioner objects to the extent that this Request seeks information not in Petitioner's custody, possession, or control. Without waiving this objection, Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 5;

All documents regarding the relevant genus of goods and services for determining whether Registrant's ADVENTIST Mark is generic for purposes of this proceeding.

RESPONSE:

Petitioner objects to the extent that this Request requires Petitioner to draw a legal conclusion. Without waiving this objection, Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 6:

All documents regarding the meaning or significance of the term "Adventist" to consumers of the relevant genus of goods and services for determining whether Registrant's ADVENTIST Mark is generic for purposes of this proceeding.

RESPONSE:

Petitioner objects to the extent that this Request seeks information not in Petitioner's custody, possession, or control. Without waiving this objection, Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 7;

All documents regarding the meaning or significance of the term "Adventist" to the general public.

RESPONSE:

Petitioner objects to the extent that this Request seeks information not in Petitioner's custody, possession, or control. Without waiving this objection, Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 8:

All documents regarding Petitioner's acquisition of the <adventist.com> domain name, including but not limited to documents sufficient to identify the purchase, purchase price, and the seller from whom Petitioner purchased the domain name.

RESPONSE:

Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 9;

All documents concerning Petitioner's awareness of Registrant, including documents sufficient to identify the date upon which Petitioner first became aware of Registrant.

RESPONSE:

Petitioner had only a general awareness of Registrant prior to receiving Registrant's cease and desist letter and does not recall the date upon which Petitioner first became aware of Registrant. As such, no responsive documents exist.

DOCUMENT REQUEST NO. 10:

All documents concerning Petitioner's awareness of Registrant's ADVENTIST Mark, including documents sufficient to identify the date upon which Petitioner first became aware of Registrant's ADVENTIST Mark.

RESPONSE:

Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 11:

All documents concerning Petitioner's awareness of U.S. Reg. Nos. 1,176,153 and 1,218,657, including documents sufficient to identify the date upon which Petitioner first became aware of Registrant's U.S. Reg. Nos. 1,176,153 and 1,218,657.

RESPONSE:

Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 12:

All documents referring or relating to any reports, investigations, research, surveys, or

studies concerning Registrant or Registrant's ADVENTIST Mark.

RESPONSE:

Petitioner has not undertaken any formal or professional reports, investigations, research, surveys, or studies as of the date of these responses. However, Petitioner has produced all informal and layperson documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 13:

All documents relating or referring to any investigations, research, reports, surveys, focus groups, or studies concerning consumer perception, awareness, or understanding of the term "Adventist."

RESPONSE:

Petitioner has not undertaken any formal or professional reports, investigations, research, surveys, focus groups, or studies as of the date of these responses. However, Petitioner has produced all informal and layperson documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 14:

All communications between Petitioner and any third party concerning Registrant or Registrant's ADVENTIST Mark.

RESPONSE:

Petitioner has produced all non-privileged documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 15:

All documents concerning National Arbitration Forum UDRP Case No. 1706357.

RESPONSE:

Petitioner has produced all non-privileged documents responsive to this Request.

DOCUMENT REQUEST NO. 16:

All communications between Petitioner and any third party concerning National Arbitration Forum UDRP Case No. 1706357.

RESPONSE:

Petitioner has produced all non-privileged documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 17:

All documents concerning any effort by Petitioner to sell or offer for sale the <adventist.com> domain name.

RESPONSE:

Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 18:

All offers, inquiries, or other communications received by Petitioner from third parties concerning the <adventist.com> domain name.

RESPONSE:

Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 19:

All documents referring or relating to any purported threats of legal action by Registrant against Petitioner.

RESPONSE:

Petitioner has produced all documents responsive to this Request.

DOCUMENT REQUEST NO. 20:

All agreements entered into by Petitioner with any third party concerning the <adventist.com> domain name, including but not limited to licenses, consent agreements, coexistence agreements, and settlement agreements.

RESPONSE:

Petitioner has not entered into any agreement with any third party concerning the <adventist.com> domain name. As such, no responsive documents exist.

DOCUMENT REQUEST NO. 21:

All documents regarding any objection by any third party to Petitioner's registration, use, or sale of any domain name other than <adventist.com>, including but not limited to cease and desist letters, court orders, arbitration documents, and settlement agreements.

RESPONSE:

Petitioner has produced all documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 22:

All communications between Petitioner and any third party concerning this cancellation proceeding.

RESPONSE:

Petitioner has produced all non-privileged documents responsive to this Request that were located after a reasonable search.

DOCUMENT REQUEST NO. 23:

All documents not covered by the above requests on which Petitioner intends to rely to support or prove Petitioner's case in this proceeding.

RESPONSE:

Petitioner has not yet completed its fact discovery in this case and is therefore not yet in possession of the universe of documents upon which Petitioner will ultimately rely in this proceeding. Petitioner has produced all documents responsive to this Request that are currently in Petitioner's custody, possession, or control and will supplement its response as additional information is obtained or uncovered.

March 6, 2018

/s/ Eve J. Brown

Eve J. Brown

BRICOLAGE LAW, LLC
128 School Street
Walpole, MA 02081
Telephone: (508) 734-3404
E-mail: ejbrown@bricolagelaw.com

Attorney for

Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITIONER'S RESPONSES TO REGISTRANT'S FIRST DOCUMENT REQUESTS has been served upon the attorneys for Registrant, Bassam N. Ibrahim, Bryce J. Maynard, and Laura K. Pitts of Buchanan Ingersoll & Rooney PC, via email.

/s/ Eve J. Brown
Eve J. Brown

Exhibit 3

Randolph, Soenya

From: Maynard, Bryce
Sent: Monday, April 15, 2019 5:49 PM
To: ebrown@bglaw.com
Cc: Ibrahim, Bassam; Goodman, Florence J.; Pitts, Laura K.
Subject: Philanthropist.com v. General Conf. Corp. of Seventh-day Adventists (Cancellation No. 92065178) (Our Ref.: 1034138-000529)

Eve:

After reviewing the parties' summary judgment briefs and the Board's decision, it has become clear that we will need to reopen discovery in this case. Petitioner cited numerous publications and documents in its brief that it never produced during discovery, such as J. Gordan Melton's "Encyclopedia of American Religions"; the Fourteenth Edition of the "Handbook of Denominations in the United States" by Roger E. Olson; John Norton Loughborough's "The Great Second Advent Movement, Its Rise and Progress," and others. These publications are clearly directly responsive to several requests in Registrant's First Set of Document Requests to Petitioner, yet Petitioner failed to produce these publications in its production in response to Registrant's requests (and in fact has still not produced them). Even if Registrant was unaware of these documents at the time it originally responded to Petitioner's document requests, Registrant had an obligation under Fed. R. Civ. P 26(e) and TBMP 408.03 to supplement its production once it became aware of these documents.

In light of Petitioner's failure to produce these documents, which Petitioner apparently intends to rely upon in support of its case at trial, Registrant needs additional time to confirm that Petitioner has fully complied with all of Registrant's other discovery requests, and to conduct follow-up discovery regarding the statements in these publications. It would be extremely prejudicial for Registrant to have to proceed to trial without having copies of all documents that Petitioner may rely upon to support its case.

We believe that it would be in both parties' interests to agree to a consented motion for reopening of the discovery period, so that we can avoid having to bring Petitioner's failure to comply with its discovery obligations to the attention of the Board. Accordingly, please let us know by the close of business on **Wednesday, April 17th** if Petitioner will consent to a motion to re-open the discovery period for 60 days. Otherwise, we intend to file an unconsented motion with the Board on Thursday.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

Bryce J. Maynard
Shareholder

1737 King Street
Suite 500
Alexandria, VA 22314-2727
703 838 6625 (o)
703 549 3278 (c)
bryce.maynard@bipc.com

[vCard](#) | [Bio](#) | [BIPC.com](#) | [Twitter](#) | [LinkedIn](#)

Buchanan Ingersoll & Rooney PC

Exhibit 4

Randolph, Soenya

From: Eve Brown <ebrown@bglaw.com>
Sent: Tuesday, April 16, 2019 2:59 PM
To: Maynard, Bryce; Ibrahim, Bassam; Goodman, Florence J.; Pitts, Laura K.
Cc: C. Alexander Chiulli
Subject: Re: Philanthropist.com v. General Conf. Corp. of Seventh-day Adventists (Cancellation No. 92065178) (Our Ref.: 1034138-000529)
Attachments: Pretrial Disclosures Philanthropist.pdf

[This Email Originated From ebrown@bglaw.com Which Is External To The Firm]

Dear Bryce,

We will strongly oppose any motion to reopen discovery at this late date.

Reopening discovery is not justified. Your accusation that we failed to comply with discovery obligations is incorrect.

The materials Petitioner introduced during its summary judgment argument are publicly available. As you know, discovery is not required for public documents that are equally available to all parties. Further, none of the books, documents, or articles you refer to have ever been in the custody, possession, or control of Petitioner. Instead, the materials were located by counsel when researching this case, making them attorney work product. Certainly, you are not taking the position that counsel is required to purchase you copies of books from Amazon.com that counsel has itself located in preparation for trial. To the extent that we will rely on these books or materials at trial, you will be duly and appropriately noticed of each document through Petitioner's Notices of Reliance.

Your attempt at a second bite at the discovery apple after losing your summary judgment motion is not well taken. I expect the Board will not take it well either.

In keeping with the Board's existing schedule in this case, attached are Petitioner's Pretrial Disclosures.

Regards,
Eve

Eve J. Brown
Of Counsel

**barton
gilman**
bglaw.com

Providence
Barton Gilman LLP
10 Dorrance Street
Providence, RI 02903
401 273 7171

Boston
Barton Gilman LLP
160 Federal Street
Boston, MA 02110
617 654 8200

From: "Maynard, Bryce" <bryce.maynard@bipc.com>
Date: Monday, April 15, 2019 at 5:49 PM

To: Eve Brown <ebrown@bglaw.com>

Cc: "Ibrahim, Bassam" <bassam.ibrahim@bipc.com>, "Goodman, Florence J." <florence.goodman@bipc.com>, "Pitts, Laura K." <laura.pitts@bipc.com>

Subject: Philanthropist.com v. General Conf. Corp. of Seventh-day Adventists (Cancellation No. 92065178)
(Our Ref.: 1034138-000529)

Eve:

After reviewing the parties' summary judgment briefs and the Board's decision, it has become clear that we will need to reopen discovery in this case. Petitioner cited numerous publications and documents in its brief that it never produced during discovery, such as J. Gordan Melton's "Encyclopedia of American Religions"; the Fourteenth Edition of the "Handbook of Denominations in the United States" by Roger E. Olson; John Norton Loughborough's "The Great Second Advent Movement, Its Rise and Progress," and others. These publications are clearly directly responsive to several requests in Registrant's First Set of Document Requests to Petitioner, yet Petitioner failed to produce these publications in its production in response to Registrant's requests (and in fact has still not produced them). Even if Registrant was unaware of these documents at the time it originally responded to Petitioner's document requests, Registrant had an obligation under Fed. R. Civ. P 26(e) and TBMP 408.03 to supplement its production once it became aware of these documents.

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If you have any questions, please do not hesitate to contact us.

Very truly yours,

Bryce J. Maynard
Shareholder

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bryce.maynard@bipc.com

[vCard](#) | [Bio](#) | [BIPC.com](#) | [Twitter](#) | [LinkedIn](#)

Buchanan Ingersoll & Rooney PC

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Exhibit 5

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

PHILANTHROPIST.COM, INC.

Petitioner,

v.

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS

Respondent.

Cancellation No. 92065178 (parent)
Cancellation No. 92065255

Registration No. 1176153

Mark: ADVENTIST

PETITIONER PHILANTHROPIST.COM, INC.'S PRETRIAL DISCLOSURES

Pursuant to 37 C.F.R. § 2.121(e), Rule 26(a)(3) of the Federal Rules of Civil Procedure, and T.B.M.P. § 702.01, Petitioner hereby makes the following pretrial disclosures of the witnesses from whom Petitioner may take testimony during its testimony period and of the likely evidence that may be introduced as exhibits during the testimony of such witnesses. Petitioner's disclosures represent a good faith effort to identify information reasonably believed to be required by the applicable rules. Petitioner reserves the right to supplement its disclosures.

A. WITNESSES

At this time, Petitioner does not intent to take trial testimony from any witness.

B. DOCUMENTS

Petitioner identifies the following documents and things that Petitioner may introduce

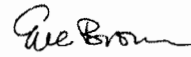
as exhibits through Notice(s) of Reliance:

- Respondent's and Petitioner's discovery responses;
- Respondent's and Petitioner's documents produced in this proceeding;
- Screenshots of Respondent's websites, social media sites, and other websites featuring Respondent or services bearing Respondent's mark;
- Publicly available media, news, and opinion articles concerning Respondent and Respondent's marks;
- Evidence of third-party use, advertisement, and promotion of the word "Adventist";
- Prior judicial and administrative opinions regarding the genericness of the term "Adventist";
- Publicly available dictionary, encyclopedia, and reference book excerpts relating to the history, etymology, meaning, and use of the word "Adventist";
- Publicly available scholarly journals and publications relating to the word "Adventist" and the Adventist religion;
- Respondent's registrations for Respondent's marks as identified in Petitioner's Petition for Cancellation and the prosecution history thereof;
- Documents relating to Respondent's use of Respondent's mark;
- Publicly available documents reflecting consumer views or comments about the word "Adventist";
- Other documents, as yet unascertained, showing the genericness of Respondent's mark in connection with Respondent's goods and services.

Petitioner reserves the right to amend and/or supplement these disclosures in accordance with the Federal Rules of Civil Procedure and 37 C.F.R. Part 2-Rules of Practice in

Trademark cases.

Dated: April 16, 2019



Eve J. Brown, Esq.
BARTON GILMAN LLP
10 Dorrance Street, Suite 800
Providence, RI 02903
(401) 273-7171
ebrown@bglaw.com

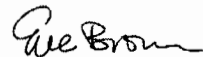
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's Pretrial Disclosures was served upon counsel of record pursuant to the Federal Rules of Civil Procedure via email on April 16, 2019 as follows:

Bryce J. Maynard
Buchanan Ingersoll & Rooney PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727
bryce.maynard@bipc.com

Dated: April 16, 2019



Eve J. Brown, Esq.
BARTON GILMAN LLP
10 Dorrance Street, Suite 800
Providence, RI 02903
(401) 273-7171
ebrown@bglaw.com