

ESTTA Tracking number: **ESTTA972403**

Filing date: **05/08/2019**

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

Proceeding	92065178
Party	Plaintiff Philanthropist.com, Inc.
Correspondence Address	EVE J BROWN BARTON GILMAN LLP 10 DORRANCE STREET, SUITE 800 PROVIDENCE, RI 02903 UNITED STATES ebrown@bglaw.com 401-273-7171
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Date	05/08/2019
Attachments	Adventist Opposition Motion Final.pdf(253159 bytes ) Exhibits.pdf(719693 bytes )

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

Philanthropist.com, Inc.	)	
	)	
<i>Petitioner,</i>	)	Cancellation No.: 92065178 (Parent)
	)	Cancellation No.: 92065255
v.	)	
	)	
General Conference Corporation of Seventh-day Adventists	)	
	)	
<i>Registrant.</i>	)	

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

Petitioner Philanthropist.com, Inc. hereby opposes Registrant General Conference Corporation of Seventh-day Adventists’ Motion to Reopen Discovery and Suspend Proceedings.

Registrant has made an extraordinary request to reopen discovery nine months after the discovery cut-off, and to rely upon the testimony of eleven new witnesses never previously disclosed, some of whom appear to be relied upon as experts.<sup>1</sup> The expert discovery deadline closed ten months ago, in July of last year.

Registrant bases its motion exclusively on the grounds that, in its opposition to summary judgment motion, Petitioner cited four published books that were not produced during discovery. Registrant claims that, based on these books, it has “become clear that Petitioner failed to comply with its discovery obligations during the original discovery period.” This allegation is not supported by facts or law.

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<sup>1</sup> See Exhibit A, Registrant’s “Second Amended Initial Disclosures,” sent to Petitioner on April 11, 2019. Petitioner’s trial period was set to open on May 3, 2019. Petitioner sent its Pretrial Disclosures to Registrant on April 16, 2019.

As Registrant itself admits on page 1 of its Motion, Petitioner provided Registrant with approximately 800 pages of documents during the discovery period. Petitioner's corporate designee, James Douglas McGregor Everett, duly appeared for a deposition on June 20, 2018, and answered exhaustive questioning by Registrant. Petitioner thoroughly responded to each of Registrant's requests, in good faith, providing all information, documents, and things in Petitioner's possession, custody, and control.

The books that Registrant complains of were not in Petitioner's possession, custody, or control during the discovery period. They were purchased by Petitioner from public e-commerce site Amazon.com on October 15, 2018, after Petitioner was served with Registrant's motion for summary judgment. They were purchased for the narrow purpose of refuting assertions made by Drs. Wahlen and Reid in Registrant's motion. Specifically, Registrant set forth facts in its motion opening the door to discussing the history and definition of the word "Adventist." Petitioner then researched and identified contradictory dictionary and encyclopedic reference works regarding the same facts that Registrant had introduced. Once Petitioner referenced the books in its motion, Registrant had notice of their content and could have easily accessed the materials.

In this case, Registrant had more than just equal access to the challenged books. Yes, Registrant could have easily purchased the books from Amazon.com, just as Petitioner did. But here, two out of the four books were actually *published by Registrant* or Registrant's own subsidiaries.<sup>2</sup> Even if they were not already in Registrant's own possession, the books – which

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<sup>2</sup> Specifically, John Norton Loughborough's book RISE AND PROGRESS OF THE SEVENTH-DAY ADVENTISTS was published and copyrighted by Registrant, the General Conference Association of the Seventh-Day Adventists, in 1892. WILLIAM MILLER AND THE RISE OF ADVENTISM by George R. Knight, copyrighted in 2010, was published by Pacific Press Publishing Association, which is a subsidiary of Registrant. The copyright page of the Knight book directs those who wish to purchase the book to contact Registrant.

are extensively about Registrant - were surely known to Registrant, and could have presumably been accessed free of cost from their very own archive.

Given the origin of the challenged books, and the fact that the subject matter of the books is historical facts about Registrant itself, Registrant cannot credibly claim ignorance of their existence. Thus, Registrant's claims that it was "completely unaware" of these materials "prior to receiving Petitioner's opposition brief" and that it was "blindsided" by their mention are intentionally disingenuous and misleading.

Registrant's request to reopen discovery, to take sixteen additional depositions from eleven new witnesses, and to request countless new categories of information from Petitioner is massively out of proportion to the grounds it cites for its position. Registrant's only justification for reopening discovery is Petitioner's mention of four reference books in its opposition to summary judgment brief. As stated, this justification is flimsy in itself. It certainly does not justify the wholesale reopening of discovery.<sup>3</sup>

Accordingly, Petitioner respectfully requests that the Board deny Registrant's Motion to Reopen Discovery and resume these proceedings.

## **I. FACTS**

The discovery period in this case ran from December 19, 2017 to August 16, 2018 per the Board's scheduling order. During this period, Registrant deposed Petitioner, and identified three experts -- Dr. Clinton Wahlen, Dr. George Reid, and Dr. Sara Parikh. *See* Registrant's Notice of Expert Witnesses, dated July 18, 2018, Docket No. 20. During the eight-month discovery

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<sup>3</sup> Registrant notes on page 2 of its Motion that "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....". Petitioner disagrees. It is not clear at all why discovery needs to be reopened. To the contrary, in making this statement, Registrant admits that it is only pursuing more aggressive discovery because it lost summary judgment. Being afraid that it might lose at trial does not qualify as "excusable neglect" under TBMP 509.01(b)(1).

window, Registrant also served Petitioner with two separate sets of Interrogatories and Requests for Production. Petitioner fully and completely responded to Registrant's thirty-nine Interrogatories and twenty-nine Requests for Production.

Petitioner did not engage in motion practice concerning Petitioner's responses and/or move to extend the discovery period at any point. Nor did Petitioner seek to depose any of the eleven new witnesses it has now identified, despite most of the witnesses being Registrant's own employees and agents, of whom Registrant has been aware for many years prior to this litigation.<sup>4</sup>

On September 29, 2018, six weeks after discovery closed, Registrant filed for summary judgment, which Petitioner opposed on October 28, 2018. On March 28, 2019, the Board denied Registrant's Motion for Summary Judgment. Thereafter, on April 11, 2019, Registrant attempted to serve Petitioner with "Second Amended Initial Disclosures," **449 days** after Initial Disclosures were due. The purported "Second Amended Initial Disclosures" listed eleven new previously undisclosed witnesses, including both expert and fact witnesses.

Petitioner objected on the same day, April 11, 2019, asking for the belated Amended Initial Disclosures to be withdrawn. *See* April 11 Email, attached hereto as Exhibit B. Registrant responded two days later, on April 13, 2019, that it would not withdraw its Amended Initial Disclosures and further that it "reserve[d] the right to move to re-open the expert disclosure period and to submit additional expert reports," in contravention of and with apparent disregard to the TBMP and Federal Rules. *See* April 13 Email, attached hereto as Exhibit C.

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<sup>4</sup> The list of new witnesses identified in Registrant's Second Amended Initial Disclosures contains persons all known to Registrant prior to or during the discovery period. Most are long-time employees or affiliates of Registrant and its subsidiaries who are on Registrant's own payroll.

Thereafter, on April 15, 2019, “After reviewing the parties’ summary judgment briefs and the Board’s decision,” Registrant sought to file a consented to motion to reopen discovery for 60 days. *See* April 15 Email, attached hereto as Exhibit D. Registrant stated that if consent was not provided that it would file a motion to reopen discovery on April 18, 2019.<sup>5</sup>

On April 16, 2019, Petitioner responded to Registrant that it would not consent to reopening discovery ten months after the close of discovery, post summary judgment, and mere days from trial. *See* April 16 Email, attached hereto as Exhibit E. Thereafter, on April 18, 2019, Registrant filed instant Motion to Reopen Discovery. For the reasons set forth above and expanded upon herein, Petitioner zealously objects.

## **II. STANDARD OF REVIEW**

Fed. R. Civ. P. 6(b) sets forth the standard for reopening discovery. It provides, “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time on motion made after the time has expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b); *see also* TBMP § 509.01(b)(1) (“[the] movant must show that its failure to act during the time previously allotted therefor was the result of excusable neglect.”).

Citing Fed. R. Civ. P. 6(b)(1)(B), TBMP § 509.01(b)(1) continues that:

the excusable neglect determination must take into account all relevant circumstances surrounding the party’s omission or delay, including (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.

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<sup>5</sup> Registrant cited “extreme prejudice” to Registrant if discovery was not reopened, but did not explain the actual prejudice or harm caused by Petitioner’s mention of four historical reference books in its opposition to summary judgment motion, nor why Registrant did not object to these books in its reply brief to that motion.

TBMP § 509.01(b)(1) further explains that “[i]t has been held that the third factor, i.e., ‘the reason for the delay, including whether it was within the reasonable control of the movant,’ may be deemed to be the most important of the factors in a particular case.” Additionally, “[a] party moving to reopen its time to take required action must set forth with particularity the detailed facts upon which its excusable neglect claim is based; mere conclusory statements are insufficient.” TBMP § 509.01(b)(1).

### **III. ARGUMENT**

#### **a. Losing Summary Judgment and Desiring More Aggressive Trial Discovery Does Not Constitute “Excusable Neglect”**

As is readily apparent from the facts and by Registrant’s own admission, Registrant seeks the Board’s permission to conduct discovery for a second time because it lost summary judgment. In order to manufacture grounds to do so, Registrant has claimed that Petitioner did not fulfill its discovery obligations. But Registrant has not, and cannot, articulate the necessary excusable neglect to reopen discovery, ten months after the deadline passed. Fed. R. Civ. P. 6(b); TBMP § 509.01(b)(1). Registrant, in fact, expressly asserts in its Motion to Reopen Discovery that it “is not guilty of any ‘neglect,’ excusable or otherwise.” *See* Registrant’s Motion, page 5. Indeed, Registrant engaged in extensive discovery during the regularly allotted discovery period, and felt confident enough in its discovery efforts to move for summary judgment. It is not “excusable neglect” that Registrant now believes itself unprepared for trial after losing at summary judgment.

Registrant had fair and full opportunity to conduct comprehensive discovery to support its arguments and/or defenses. Registrant elected to file no motions to compel during the discovery period, nor attempted to conduct any of the discovery it now cites in its Motion as essential.

Registrant should not be granted a second bite at discovery (and Petitioner should not be subjected to the cost, expense, and stress arising from the same) merely because it now believes that its earlier efforts were inadequate for the purposes of an actual trial, which it previously assumed it would be able to avoid. *See* TBMP § 509.01(b)(1) (“the reason for the delay, including whether it was within the reasonable control of the movant, may be deemed to be the most important of the factors.”) The opportunity to conduct “follow up” discovery and/or seek further production from Petitioner expired ten months ago at the June 18, 2018 deadline and cannot now be revisited.

**b. Reopening Discovery is the Improper Procedure to Address Registrant’s Purported Concerns**

Registrant’s justification for reopening discovery is obvious pretext. To the extent that any evidence was introduced by Petitioner while opposing Registrant’s summary judgment motion, the proper procedural vehicle was/is for Registrant to move pursuant to Fed. R. Civ. P. 37(c)(1), rather than reopening discovery after the Board’s ruling was delivered.

Moreover, the evidence to which Registrant objects may properly be made part of the record through Notice of Reliance. Registrant specifically, and exclusively, objects to the following publications: (1) *ENCYCLOPEDIA OF AMERICAN RELIGIONS* by J. Gordon Melton; (2) *HANDBOOK OF DENOMINATIONS IN THE UNITED STATES* (14th ed.) by Roger E. Olson; (3) *RISE AND PROGRESS OF THE SEVENTH-DAY ADVENTISTS* by John Norton Loughborough; and (4) *WILLIAM MILLER AND THE RISE OF ADVENTISM* by George R. Knight. *See* Registrant’s Motion, page 3. Registrant cites no other publications, articulates no other information that was not produced, and uses the non-production of these specific publications as the sole justification for reopening discovery.



However, 37 C.F.R. § 2.122(e) expressly permits the Petitioner to add these publications to the record through notices of reliance. TBMP § 704.11 provides:

A party that has obtained documents from another party through disclosure or under Rule 34 of the Federal Rules of Civil Procedure may not make the documents of record by notice of reliance alone, except to the extent that they are admissible by notice of reliance under the provisions of § 2.122(e) or the party has obtained an admission or stipulation from the producing party that authenticates the documents.

As cited, 37 C.F.R. § 2.122 explains in part that:

(e)(1) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant in a particular proceeding, and official records, if the publication or official record is competent evidence and relevant to an issue, may be introduced in evidence by filing a notice of reliance on the material being offered in accordance with paragraph (g) of this section.<sup>6</sup> (Emphasis added).

Here, each publication is a “book” that is “available to the general public.” See TBMP § 704.11; 37 C.F.R. § 2.122. Each publication can be borrowed from a library or purchased online or at a bookstore. Additionally, two of the books cited by the Registrant were copyrighted and published by Registrant or its subsidiary, rendering them even more accessible to Registrant than to Petitioner.

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<sup>6</sup> Section (g) provides:

Notices of reliance. The types of evidence admissible by notice of reliance are identified in paragraphs (d)(2) and (e)(1) and (2) of this section and § 2.120(k). A notice of reliance shall be filed during the testimony period of the party that files the notice. For all evidence offered by notice of reliance, the notice must indicate generally the relevance of the evidence and associate it with one or more issues in the proceeding. Failure to identify the relevance of the evidence, or associate it with issues in the proceeding, with sufficient specificity is a procedural defect that can be cured by the offering party within the time set by Board order.

Each challenged publication may “be introduced into evidence by filing a notice of reliance.” *See* TBMP § 704.11; 37 C.F.R. § 2.122. Registrant will thus have fair and adequate notice of each publication that may be relied upon by the Petitioner at trial.

To the extent that Registrant may take issue with any publication or information, it may file a Motion to Strike Notice of Reliance pursuant to TBMP § 532, which provides that:

An adverse party may also move to strike a notice of reliance, in whole or in part, on the ground that the notice of reliance does not comply with the procedural requirements of the particular rule under which it was submitted. For example, a party may move to strike a notice of reliance on a printed publication pursuant to 37 C.F.R. § 2.122(e), on the ground that it does not include a copy of the printed publication, or does not indicate the general relevance thereof, *see* TBMP § 707.02(b)(2), or that the proffered materials are not appropriate for introduction by notice of reliance.

Accordingly, not only will Registrant have fair and full notice of all evidence and/or publications upon which Petitioner may rely upon at trial, but it may behoove itself of the opportunity to strike such evidence and/or publications if it so elects and if grounds exist. There is thus no justification, nor any need for discovery to be reopened because the rules already account for the Registrant’s expressed concerns.

**c. Registrant Seeks to Disproportionately Reopen Discovery Far Beyond the Limited Evidentiary Issues It Cites in its Motion**

Discovery should not be reopened. However, should the Board determine otherwise, the scope of discovery that Registrant seeks is vastly overbroad in relation to Registrant’s stated concerns. In the event that the Board agrees to allow additional discovery, the discovery that may be conducted should be limited to the four books complained of in Registrant’s Motion.

As detailed in the above Fact section, Registrant has sought and/or seeks to subpoena and/or depose non-parties, engage Petitioner in voluminous discovery-related motion practice, and amend its initial disclosures to include numerous new expert and/or fact witnesses for trial.

This is wholly disproportionate and extends far beyond the justification offered by Registrant; namely, Petitioner's purported failure to produce four publications – publications that are most likely already in Registrant's own possession, and two of which were published and are distributed by Registrant itself.

Registrant has set forth no reasoning or facts as to why discovery should be reopened to this great extent. *See* TBMP § 509.01(b)(1) (“A party moving to reopen its time to take required action must set forth with particularity the detailed facts upon which its excusable neglect claim is based; mere conclusory statements are insufficient.”). Thus, if the Board were to decide to reopen discovery, it should do so in a manner proportionally limited to Registrant's expressed and supported concerns.<sup>7</sup>

#### **IV. CONCLUSION**

Registrant is not entitled to a second bite at the discovery apple simply because it did not take this proceeding seriously until it lost summary judgment. Nor is Registrant entitled to take sixteen additional depositions, including at least six experts, nearly a year after the expert disclosure and discovery cut-off deadlines have past. Petitioner has already served its Pretrial Disclosures in this case, and its trial period should have already begun. Further delay is unwarranted, unjustified, and would cause undue prejudice.

Registrant has not shown the excusable neglect required to justify reopening discovery on the eve of trial. In fact, it doesn't even try. It merely states that it needs to engage in more aggressive discovery because it unexpectedly lost summary judgment. It argues that, because Petitioner mentioned four publicly available reference books – again, two of which were

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<sup>7</sup> Petitioner, for example, could list those publications and/or books it will rely upon at trial. Of course, this will already be achieved through upcoming Notices of Reliance.

published and copyrighted by Registrant itself – in a brief, Registrant should be entitled to go back and redo discovery to an extraordinarily broad extent.

If Registrant wants to move to strike the now-controversial books, it may do so after Petitioner files its Notice of Reliance. If Registrant wishes to argue that the books should be afforded little probative value, it may do that in its trial brief. But to reopen discovery, take sixteen additional depositions, and introduce new experts ten months after its opportunity to do so has past, is entirely disproportionate to the circumstances, unnecessary, and unjust.

Petitioner respectfully requests that the Board DENY Registrant’s exceedingly tardy request to reopen discovery, and allow this proceeding to resume.

Dated: May 8, 2019

/Eve J. Brown/  
Eve J. Brown  
[ebrown@bglaw.com](mailto:ebrown@bglaw.com)  
BARTON GILMAN LLP  
160 Federal Street, 10<sup>th</sup> Floor  
Boston, Massachusetts 02110  
(401) 273-7171  
ATTORNEY FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document 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 on this day, May 8, 2019.

/Eve J. Brown/  
Eve J. Brown

## **EXHIBIT A**

## Eve Brown

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**From:** Goodman, Florence J. <florence.goodman@bipc.com>  
**Sent:** Thursday, April 11, 2019 1:57 PM  
**To:** Eve Brown  
**Cc:** Ibrahim, Bassam; Maynard, Bryce; Pitts, Laura K.; Goodman, Florence J.  
**Subject:** Philanthropist.com, Inc. v. The General Conference Corporation of Seventh-Day Adventists; Cancellation No. 92065178; Our Ref.: 1034138-000530  
**Attachments:** Registrant's Second Amended Initial Disclosures.pdf

Ms. Brown,

Attached please find Registrant's Second Amended Initial Disclosures.

Regards,

### **Florie Goodman**

IP Practice Assistant to Bassam N. Ibrahim

### **Buchanan Ingersoll & Rooney PC**

1737 King Street  
Suite 500  
Alexandria, VA 22314-2727  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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Philanthropist.com, Inc.	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
The General Conference Corporation of	)	Cancellation No. 92065178 (Parent)
Seventh-Day Adventists	)	Cancellation No. 92065255
	)	
Registrant	)	
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**REGISTRANT'S SECOND AMENDED INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, The General Conference Corporation of Seventh-Day Adventists ("Registrant") hereby provides the following Second Amended Initial Disclosures. These Initial Disclosures are being made on the basis of information reasonably available to Registrant at the present time; Registrant may supplement these disclosures, as necessary, in accordance with the Federal Rules of Civil Procedure. In addition, Registrant provides these Initial Disclosures without any concession, agreement, admission or waiver of any ultimate determination of relevance, discoverability or admissibility of particular information for any purpose, and without waiver of any attorney-client, work-product, or other privilege.



**A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information. [Fed. R. Civ. P. 26(a)(1)(A)].**

Dr. David Trim  
Director of Archives and Statistics  
General Conference Corporation of Seventh Day Adventists  
12501 Old Columbia Pike  
Silver Spring, Maryland 20904

Subject matter: Registrant's history; the origins and history of the Seventh-day Adventist Church; Registrant's adoption of the ADVENTIST mark; Registrant's current and historical use of the ADVENTIST mark; Registrant's goods and services offered under the ADVENTIST mark; Registrant's advertising and promotion of the ADVENTIST mark; the meaning and significance of the ADVENTIST mark to consumers; media coverage of the ADVENTIST mark; the fame and distinctiveness of Registrant's ADVENTIST mark; Registrant's monitoring and enforcement of the ADVENTIST mark; breakaway congregations of the Seventh-day Adventist Church; and all related matters.

Dr. Clinton Wahlen  
Associate Director  
Biblical Research Institute  
General Conference of Seventh Day Adventists  
12501 Old Columbia Pike  
Silver Spring, Maryland 20904

Subject matter: Registrant's history; the origins and history of the Seventh-Day Adventist Church; Registrant's adoption of the ADVENTIST mark; Registrant's current and historical use of the ADVENTIST mark; Registrant's goods and services offered under the ADVENTIST mark; Registrant's advertising and promotion of the ADVENTIST mark; the meaning and significance of the ADVENTIST mark to consumers; media coverage of the ADVENTIST mark; the fame and distinctiveness of Registrant's ADVENTIST mark; breakaway congregations of the Seventh-Day Adventist Church; and all related matters.

Dr. George R. Knight  
Professor Emeritus  
Andrews University  
8975 Old 31  
Berrien Springs, Michigan 49104

Subject matter: Registrant's history; the origins and history of the Seventh-Day Adventist Church; Registrant's adoption of the ADVENTIST mark; Registrant's current and historical use of the ADVENTIST mark; Registrant's goods and services offered under the ADVENTIST mark; Registrant's advertising and promotion of the ADVENTIST mark; the meaning and significance of the ADVENTIST mark to consumers; media coverage of the ADVENTIST mark; the fame and distinctiveness of Registrant's ADVENTIST mark; breakaway congregations of the Seventh-Day Adventist

Church; and all related matters.

Dr. Brian E. Strayer  
Professor Emeritus  
Andrews University  
8975 Old 31  
Berrien Springs, Michigan 49104

Subject matter: Registrant's history; the origins and history of the Seventh-Day Adventist Church; Registrant's adoption of the ADVENTIST mark; Registrant's current and historical use of the ADVENTIST mark; Registrant's goods and services offered under the ADVENTIST mark; Registrant's advertising and promotion of the ADVENTIST mark; the meaning and significance of the ADVENTIST mark to consumers; media coverage of the ADVENTIST mark; the fame and distinctiveness of Registrant's ADVENTIST mark; breakaway congregations of the Seventh-Day Adventist Church; and all related matters.

James R. Nix  
Director  
Ellen G. White Estate  
12501 Old Columbia Pike  
Silver Spring, Maryland 20904

Subject matter: Registrant's history; the origins and history of the Seventh-Day Adventist Church; Registrant's adoption of the ADVENTIST mark; Registrant's current and historical use of the ADVENTIST mark; Registrant's goods and services offered under the ADVENTIST mark; Registrant's advertising and promotion of the ADVENTIST mark; the meaning and significance of the ADVENTIST mark to consumers; media coverage of the ADVENTIST mark; the fame and distinctiveness of Registrant's ADVENTIST mark; breakaway congregations of the Seventh-Day Adventist Church; and all related matters.

Dr. George Reid  
Former Director (Retired)  
Biblical Research Institute  
General Conference of Seventh Day Adventists  
12501 Old Columbia Pike  
Silver Spring, Maryland 20904

Subject matter: Registrant's history; the origins and history of the Seventh-day Adventist Church; Registrant's adoption of the ADVENTIST mark; Registrant's current and historical use of the ADVENTIST mark; Registrant's goods and services offered under the ADVENTIST mark; Registrant's advertising and promotion of the ADVENTIST mark; the meaning and significance of the ADVENTIST mark to consumers; media coverage of the ADVENTIST mark; the fame and distinctiveness of Registrant's ADVENTIST mark; the breakaway congregations of the Seventh-day Adventist Church; and all related matters.

Robert Nixon  
Former General Counsel (Retired)  
c/o Bassam N. Ibrahim  
Buchanan Ingersoll & Rooney PC  
1737 King Street, Suite 500  
Alexandria, Virginia 22314

Subject matter: Registrant's use of the ADVENTIST mark; Registrant's goods and services offered under the ADVENTIST mark; Registrant's advertising and promotion of the ADVENTIST mark; the meaning and significance of the ADVENTIST mark to consumers; media coverage of the ADVENTIST mark; the fame and distinctiveness of Registrant's ADVENTIST mark; Registrant's monitoring and enforcement of the ADVENTIST mark; Registrant's policies regarding use of the ADVENTIST mark; Registrant's licensing of the ADVENTIST mark; and all related matters.

Daisy Jane Orion  
Secretary  
General Conference Corporation of Seventh Day Adventists  
12501 Old Columbia Pike  
Silver Spring, Maryland 20904

Subject matter: Registrant's use of the ADVENTIST mark; Registrant's policies regarding the use of the ADVENTIST mark; Registrant's licensing of the ADVENTIST mark; and all related matters.

Jennifer Woods  
Associate General Counsel  
General Conference Corporation of Seventh Day Adventists  
12501 Old Columbia Pike  
Silver Spring, Maryland 20904

Subject matter: Registrant's U.S. trademark registrations for Registrant's ADVENTIST mark; Registrant's licensing of Registrant's ADVENTIST mark; Registrant's monitoring and enforcement of Registrant's ADVENTIST mark; breakaway congregations of the Seventh-day Adventist Church; use of "Adventist" by others; and all related matters.

Jefferey S. Bromme, Esq.  
Chief Legal Officer  
AdventHealth  
900 Hope Way  
Altamonte Springs, Florida 32714

Subject matter: Registrant's U.S. trademark registrations for Registrant's ADVENTIST mark; Registrant's use and licensing of Registrant's ADVENTIST Mark in connection with health care services; use of "Adventist" by others; and all related matters.

Meredith Jobe, Esq.  
Chief Legal Officer  
Adventist Health West

2100 Douglas Boulevard  
Roseville, California 95661-3804

Subject matter: Registrant's U.S. trademark registrations for Registrant's ADVENTIST mark; Registrant's use and licensing of Registrant's ADVENTIST Mark in connection with health care services; use of "Adventist" by others; and all related matters.

Dr. Richard Hart  
President  
Loma Linda University  
24851 Circle Drive  
Loma Linda, California 92354

Subject matter: Registrant's U.S. trademark registrations for Registrant's ADVENTIST mark; Registrant's use and licensing of Registrant's ADVENTIST Mark in connection with educational services; use of "Adventist" by others; and all related matters.

Dr. Lisa Beardsley-Hardy  
Director of Education  
General Conference of Seventh-day Adventists  
12501 Old Columbia Pike  
Silver Spring, Maryland 20904

Subject matter: Registrant's U.S. trademark registrations for Registrant's ADVENTIST mark; Registrant's use and licensing of Registrant's ADVENTIST Mark in connection with educational services; use of "Adventist" by others; and all related matters.

Sara Parikh, PhD.  
President  
Willow Research  
5215 N. Ravenswood Ave., Suite 305  
Chicago, Illinois 60640

Subject matter: Consumer recognition of Registrant's ADVENTIST Mark; the meaning of the term "Adventist" to consumers; distinctiveness of Registrant's ADVENTIST Mark; and all related matters.

Greg Everett  
Philanthropist.com, Inc.  
1177 Parish Way  
Myrtle Beach, South Carolina 29577

Subject matter: Petitioner's allegations of standing; Petitioner's ownership of the <adventist.com> domain name; Petitioner's efforts to sell the <adventist.com> domain name; Petitioner's allegations in the Amended Petition for Cancellation; the use of the term "Adventist" by others; and all related matters.

Andrei Borz  
Victoria, Brasov  
Romania

Subject matter: Petitioner's allegations of standing; Petitioner's efforts to sell the <adventist.com> domain name; and all related matters.

**B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment. [Fed. R. Civ. P. 26(a)(1)(B)].**

- i. Documents regarding the history of Registrant and the Seventh-day Adventist Church;
- ii. Documents regarding the adoption of Registrant's ADVENTIST Mark;
- iii. Documents regarding the current and historical use of Registrant's ADVENTIST Mark;
- iv. Documents regarding Registrant's products and services;
- v. Documents regarding the consumers and channels of trade for Registrant's products and services;
- vi. Documents regarding media coverage of Registrant's ADVENTIST Mark;
- vii. Documents regarding consumer recognition of Registrant's ADVENTIST Mark;
- viii. Documents establishing the fame and distinctiveness of Registrant's ADVENTIST Mark;
- ix. Documents regarding Registrant's licensing of Registrant's ADVENTIST Mark;
- x. Documents regarding breakaway congregations of the Seventh-day Adventist Church;
- xi. Documents regarding the use of "Adventist" by others;
- xii. Documents relating to the management of Registrant's trademark portfolio; and
- xiii. Documents relating to Registrant's monitoring and enforcement of Registrant's ADVENTIST Mark;

All documents located at:

General Conference Corporation of Seventh Day Adventists  
12501 Old Columbia Pike  
Silver Spring, Maryland 20904

In addition, Registrant may rely on documents held by third parties that are not currently in Registrant's possession, custody or control.

**C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered. [Fed. R. Civ. P. 26(a)(1)(C)].**

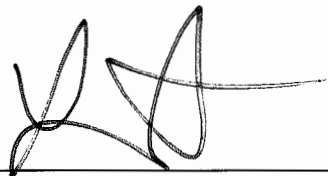
Not applicable.

**D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. [Fed. R. Civ. P. 26(a)(1)(D)].**

Not applicable.

Respectfully submitted,

THE GENERAL CONFERENCE  
CORPORATION OF SEVENTH-DAY  
ADVENTISTS



By: \_\_\_\_\_

Bassam N. Ibrahim  
Bryce J. Maynard  
Laura K. Pitts  
Attorneys for Opposer  
Buchanan Ingersoll & Rooney PC  
1737 King Street, Suite 500  
Alexandria, Virginia 22314-2727  
Telephone: 703-836-6620


*Attorneys for Registrant*

Date: April 11, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing REGISTRANT'S SECOND AMENDED INITIAL DISCLOSURES was served this 11<sup>th</sup> 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

  
Florence Goodman

## **EXHIBIT B**



## Eve Brown

---

**From:** Eve Brown  
**Sent:** Thursday, April 11, 2019 2:04 PM  
**To:** Goodman, Florence J.  
**Cc:** Ibrahim, Bassam; Maynard, Bryce; Pitts, Laura K.; C. Alexander Chiulli  
**Subject:** Re: Philanthropist.com, Inc. v. The General Conference Corporation of Seventh-Day Adventists; Cancellation No. 92065178; Our Ref.: 1034138-000530

Dear Ms. Goodman, et al.:

We object to these newly named witnesses, as the discovery period has already closed. In particular, to the extent that many of these individuals appear to be testifying as experts, the deadline to serve expert disclosures, as reset, was July 17, 2018. Now that we are proceeding to trial, it is too late to add new witnesses that would not be subject to cross-examination.

Please confirm that you will be withdrawing this Amended "Initial" Disclosures as untimely.

Regards,  
Eve Brown

Eve J. Brown  
Of Counsel



**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:** "Goodman, Florence J." <florence.goodman@bipc.com>  
**Date:** Thursday, April 11, 2019 at 1:56 PM  
**To:** Eve Brown <ebrown@bglaw.com>  
**Cc:** "Ibrahim, Bassam" <bassam.ibrahim@bipc.com>, "Maynard, Bryce" <bryce.maynard@bipc.com>, "Pitts, Laura K." <laura.pitts@bipc.com>, "Goodman, Florence J." <florence.goodman@bipc.com>  
**Subject:** Philanthropist.com, Inc. v. The General Conference Corporation of Seventh-Day Adventists; Cancellation No. 92065178; Our Ref.: 1034138-000530

Ms. Brown,

Attached please find Registrant's Second Amended Initial Disclosures.

Regards,

**Florie Goodman**

IP Practice Assistant to Bassam N. Ibrahim

**Buchanan Ingersoll & Rooney PC**

1737 King Street

Suite 500

Alexandria, VA 22314-2727

703 838 6575 (o)

[florence.goodman@bipc.com](mailto:florence.goodman@bipc.com)

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## **EXHIBIT C**

## Eve Brown

---

**From:** Maynard, Bryce <bryce.maynard@bipc.com>  
**Sent:** Saturday, April 13, 2019 10:54 AM  
**To:** Eve Brown  
**Cc:** Goodman, Florence J.; Ibrahim, Bassam; Pitts, Laura K.; C. Alexander Chiulli  
**Subject:** Re: Philanthropist.com, Inc. v. The General Conference Corporation of Seventh-Day Adventists; Cancellation No. 92065178; Our Ref.: 1034138-000530

Eve:

Thank you for your e-mail. However, we will not be withdrawing our Amended Initial Disclosures.

We are surprised by your position that Petitioner would need to take deposition testimony from any newly identified expert witnesses, given that Petitioner did not seek to depose any of the multiple expert witnesses for whom Registrant has already produced reports.

Nonetheless, our current intention is that all of the newly disclosed witnesses will be testifying as lay witnesses, meaning that they will be subject to cross-examination. However, we reserve the right to move to re-open the expert disclosure period and to submit additional expert reports, particularly given Petitioner's failure to comply with its discovery obligations and its apparent intention to rely upon documents that were not produced during discovery.

We trust that this addresses your concerns. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Bryce J. Maynard  
Buchanan Ingersoll & Rooney PC  
E-mail: [bryce.maynard@bipc.com](mailto:bryce.maynard@bipc.com)<<mailto:bryce.maynard@bipc.com>>  
Phone: (703) 838-6625

Sent from my iPad

On Apr 11, 2019, at 1:04 PM, Eve Brown <[ebrown@bglaw.com](mailto:ebrown@bglaw.com)<<mailto:ebrown@bglaw.com>>> wrote:

[This Email Originated From [ebrown@bglaw.com](mailto:ebrown@bglaw.com)<<mailto:ebrown@bglaw.com>> Which Is External To The Firm]

Dear Ms. Goodman, et al.:

We object to these newly named witnesses, as the discovery period has already closed. In particular, to the extent that many of these individuals appear to be testifying as experts, the deadline to serve expert disclosures, as reset, was July 17, 2018. Now that we are proceeding to trial, it is too late to add new witnesses that would not be subject to cross-examination.

Please confirm that you will be withdrawing this Amended "Initial" Disclosures as untimely.

Regards,  
Eve Brown

Eve J. Brown

Of Counsel

<image001.png><<http://bglaw.com/>>

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LLP

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401 273 7171

Boston

Barton Gilman

LLP

160 Federal Street  
Boston, MA 02110  
617 654 8200

From: "Goodman, Florence J." <[florence.goodman@bipc.com](mailto:florence.goodman@bipc.com)<<mailto:florence.goodman@bipc.com>>>  
Date: Thursday, April 11, 2019 at 1:56 PM  
To: Eve Brown <[ebrown@bglaw.com](mailto:ebrown@bglaw.com)<<mailto:ebrown@bglaw.com>>>  
Cc: "Ibrahim, Bassam" <[bassam.ibrahim@bipc.com](mailto:bassam.ibrahim@bipc.com)<<mailto:bassam.ibrahim@bipc.com>>>, "Maynard, Bryce" <[bryce.maynard@bipc.com](mailto:bryce.maynard@bipc.com)<<mailto:bryce.maynard@bipc.com>>>, "Pitts, Laura K." <[laura.pitts@bipc.com](mailto:laura.pitts@bipc.com)<<mailto:laura.pitts@bipc.com>>>, "Goodman, Florence J." <[florence.goodman@bipc.com](mailto:florence.goodman@bipc.com)<<mailto:florence.goodman@bipc.com>>>

Subject: Philanthropist.com<<http://Philanthropist.com>>, Inc. v. The General Conference Corporation of Seventh-Day Adventists; Cancellation No. 92065178; Our Ref.: 1034138-000530

Ms. Brown,

Attached please find Registrant's Second Amended Initial Disclosures.

Regards,

Florie Goodman  
IP Practice Assistant to Bassam N. Ibrahim

Buchanan Ingersoll & Rooney PC  
1737 King Street  
Suite 500  
Alexandria, VA 22314-2727  
703 838 6575 (o)  
[florence.goodman@bipc.com](mailto:florence.goodman@bipc.com)<<mailto:florencegoodman@bipc.foundationip.com>>

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## **EXHIBIT D**

## Eve Brown

---

**From:** Maynard, Bryce <bryce.maynard@bipc.com>  
**Sent:** Monday, April 15, 2019 5:49 PM  
**To:** Eve Brown  
**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 17<sup>th</sup>** 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](mailto:bryce.maynard@bipc.com)

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

**Buchanan Ingersoll & Rooney PC**



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## **EXHIBIT E**

## Eve Brown

---

**From:** Eve Brown  
**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

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



**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:

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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 17<sup>th</sup>** 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

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