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

Proceeding	92065178
Party	Plaintiff Philanthropist.com, Inc.
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Date	12/23/2019
Attachments	Eighth Notice of Reliance Philanthropist.pdf(171473 bytes ) Exhibit 18.pdf(50018 bytes ) Exhibit 19.pdf(348367 bytes ) Exhibit 20.pdf(283838 bytes )

**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

Mark: ADVENTIST

**PETITIONER PHILANTHROPIST.COM, INC.’S EIGHTH NOTICE OF RELIANCE**

Pursuant to 37 C.F.R. § 2.122 and Chapter 700 of the TBMP, Petitioner intends to rely on the documents, Internet materials, and printed publications submitted through these Notices of Reliance in support of its Petition for Cancellation.

**Exhibit 18:** A true and correct copy of Respondent’s “Trademark and Logo Usage” Notice, published at its publicly available website at <http://www.adventist.org>. This Notice shows Respondent’s use of generic words, including “Adventist,” to prevent others from practicing their religious beliefs. In addition to “Adventist,” Respondent claims exclusive use of similarly generic terms as “BIBLE STORY,” “CYCLE OF LIFE,” “DIALOGUE,” “EVIDENCE,” “FAMILY BIBLE STORY,” “IT IS WRITTEN,” “LIBERTY,” and “MINISTRY.”

**Exhibit 19:** The published opinion in *Virginia L. Stocker and William L. Perry v. The General Conference Corporation of Seventh-Day Adventists*, Cancellation Nos. 17,554 and 18,038

(TTAB Feb. 15, 1996). In the *Stocker* case, the Board considered a similar claim against Respondent’s “SEVENTH-DAY ADVENTIST” registration. In its opinion, the Board explicitly found that “the generic term for the type or category of religion is ‘Adventist’”. *Id.* at 15-16. The Board’s comprehensive treatment and analysis of the genericness of “Adventist” is relevant to the instant proceeding.

**Exhibit 20:** The Wikipedia page for “Adventism,” publicly available at:

<https://en.wikipedia.org/wiki/Adventism>. This exhibit shows that the public associates “Adventism” with various sects and churches, all of whom generally believe in the second coming, or “advent” of Jesus Christ. The exhibit is relevant to the genericness of the term “Adventist” for a broad spectrum of goods and services associated with the Adventist belief system.

Dated: December 23, 2019

BARTON GILMAN LLP



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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's Eighth Notice of Reliance was served upon counsel of record pursuant to the Federal Rules of Civil Procedure via email on December 23, 2019 as follows:

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# Trademark and Logo Usage

## **THE SEVENTH-DAY ADVENTIST NAME**

Church trademarks, such as “Seventh-day Adventist,” “Adventist,” and “Ministry,” may be used only in connection with denominational ministries and non-commercial activities of approved lay and professional groups. Use of these trademarks shall be controlled by the General Conference of Seventh-day Adventists through its Trademark Committee. Church trademarks shall not be used in any manner that will jeopardize the Church’s tax-exempt status.

## **THE SEVENTH-DAY ADVENTIST LOGO**

The registered trademark may be used by the Seventh-day Adventist Church, its entities,

Adventists, its divisions, unions, and conferences.

Trademarks shall not be utilized in commercial endeavors.

## **REGISTERED TRADEMARKS**

ADVENTIST®

ADVENTIST BOOK CENTER®

ADVENTIST COMMUNITY SERVICES®

ADVENTIST COMMUNITY SERVICES Design®

ADVENTIST HEALTH® (fancy)

ADVENTIST HEALTH SYSTEM®

ADVENTIST HEALTHCARE®

ADVENTIST INFORMATION MINISTRY®

ADVENTIST LAWYER®

ADVENTIST-LAYMEN'S SERVICES AND INDUSTRIES® (ASI)

ADVENTIST NEWSLINE®

ADVENTIST NEWS NETWORK®

ADVENTIST PIONEER LIBRARY®

ADVENTIST REVIEW®

ADVENTIST RISK MANAGEMENT®

ADVENTIST TELEVISION NETWORK

ADVENTIST TELEVISION NETWORK LOGO

ADVENTIST WHOLEHEALTH NETWORK

ADVENTIST WORLD

ADVENTIST WORLD RADIO

ADVENTURER CLUB and Design

ADVENTURER CLUB Design Only

A JOURNEY TEXCELLENCE

A PEOPLE OF HOPE PRODUCTION

ASI

ASI (Stylized)

AWR

BETTER LIVING CENTER

BIBLE MADE PLAIN SEMINARS

BIBLE STORY

BREATHE-FREE

CYCLE OF LIFE

DIALOGUE

DESIGN (Three Trumpets)(AWR)

DESIGN (ANN Log)/ A and Design

DESIGN (Globe with Swirls ARM log)

DESIGN (PeopleHolding Globe)

DESIGN (Seventh-day Adventist Log)

EVIDENCE

FAITH FOR TODAY

FAMILY BIBLE STORY

FAMILY BIBLE STORY Design

GENCON GENERAL CONFERENCE OF  
SEVENTH-DAY ADVENTISTS

GRACELINK

GRIGGS UNIVERSITY

GRIGGS UNIVERSITY Logo

HEALTH-WISE (Use according to license  
agreement)

HOPE CHANNEL

HOPE CHANNEL DESIGN

I LOVE BEING FREE FROM SMOKING

IT IS WRITTEN

JOURNAL OF ADVENTIST EDUCATION

LA VOZ DE LA ESPERANZA

LIBERTY

LIBERTY MAGAZINE

LIFESTYLE MAGAZINE

MINISTRY

MISSION SPOTLIGHT

PATHFINDER and DESIGN



PLANNING FOR THE CYCLE OF LIFE

POWERPOINTS

QUIT NOW!

QUIT NOW!and DESIGN

REAL TIME FAITH

SEVENTH-DAY ADVENTIST

SEVENTH-DAY ADVENTIST Logo

SONSCREEN

THE HOPE CHANNEL

THE JOURNAL OF ADVENTIST EDUCATION

WOMEN'S MINISTRIES (Log)

YOUTH ALIVE

YOUTH MESSENGER

## Our Beliefs

Seventh-day Adventist beliefs are meant to permeate your whole life. Growing out of scriptures that paint a compelling portrait of God, you are invited to explore, experience and know the One who desires to make us whole.



Adventist.org is the Official website of the  
Seventh-day Adventist world church • View  
Regions

**FACEBOOK**

**INSTAGRAM**

**TWITTER**

**YOUTUBE**

**VIMEO**

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Adventists

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**TTAB - Trademark Trial and Appeal Board - \*1  
VIRGINIA L. STOCKER AND WILLIAM L. PERRY v.  
GENERAL CONFERENCE CORPORATION OF  
SEVENTH-DAY ADVENTISTS Cancellation Nos.  
17,554; 18,038 February 15, 1996**

Trademark Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

**\*1 VIRGINIA L. STOCKER AND WILLIAM L. PERRY**

v.

GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS

Cancellation Nos. 17,554; 18,038

February 15, 1996

Hearing: April 25, 1994

Before Cissel, Quinn and Hohein

Administrative Trademark Judges

Opinion by Quinn

Administrative Trademark Judge

Petitions were filed individually by William L. Perry and Virginia L. Stocker [FN1] to cancel, in part, the registration issued to General Conference Corporation of Seventh-day Adventists (hereinafter "General Conference Corporation"), a District of Columbia corporation, for the mark SEVENTH-DAY ADVENTIST for "religious books, magazines, pamphlets, newsletters, brochures, encyclopedias, dictionaries, commentaries, fliers, bulletins, yearbooks, booklets and bibles" (International Class 16); "establishment and administration of employee health care and benefit programs and medical insurance programs" (International Class 36); "educational instruction services in academics at grade school, high school and college level; film production and distribution services" (International Class 41); and "health care services, namely hospital, dental, pharmaceutical, nursing home, and medical laboratory services; conducting religious observances and missionary services" (International Class 42). [FN2]

Both petitioners filed various amendments to their petitions, the final versions accepted by the Board being Ms. Stocker's third amended petition for cancellation and Mr. Perry's second amended petition for cancellation. As grounds for cancellation both petitioners allege that they are Seventh-day Adventists and members of the Seventh-day Adventist denomination, headed by the General Conference of Seventh-day Adventists (hereinafter "General Conference"); that they are rightfully concerned with the use or misuse of the name "Seventh-day Adventist" and with being forced to become participants in obtaining an illegal trademark and unwilling participants in fraud because they give tithes and gifts which help support such fraud; that this causes them frustration and mental anguish, and will continue to cause such harm as long as respondent is allowed to hold and enforce the registered trademark; that respondent is a major subordinate body of the General Conference of Seventh-day Adventists and is controlled by this Conference; that the First Amendment to the U.S. Constitution guarantees the right to express one's sincere faith and belief in a religion, using the descriptive name of the religion to identify oneself as a part of it; that the subject registration violates petitioners' First Amendment rights because unless petitioner's congregation is approved by respondent, it may not use the name "Seventh-day Adventist" to express its members' faith and belief; that the grant to respondent of the exclusive right to use the generic name "Seventh-day Adventist" constitutes an establishment of religion; that should petitioners practice their faith under the name "Seventh-day Adventist" without the express approval of respondent they would be subject to possible legal prosecution, and this would be religious persecution; that the subject mark is a common descriptive name of goods and services; that respondent has violated basic principles of Christian conduct as set forth in the Bible; that respondent has denied, by obtaining the trademark registration, its own avowed principles as embodied in the statement that people may have the same faith as those in the denominational organization and the name "Seventh-day Adventist" is not denied to them; and that respondent has fraudulently claimed first and exclusive use of the name "Seventh-day Adventist," because before respondent existed the name was used by separate congregational Seventh-day Adventist churches as a general classification of religious beliefs. [FN3]

**\*2** Respondent, in its answers to the various amended petitions, essentially denied all of the allegations, and raised several affirmative defenses. [FN4]

The record consists of the pleadings; the file of the registration sought to be canceled in International Classes 16 and 42; trial testimony, with related exhibits, taken by each party; [FN5] excerpts from printed publications, official records and various other documents, all listed in petitioners' notice of reliance; and excerpts from printed publications, a certified copy of respondent's registration, and several third-party registrations, all made of record by way of respondent's notice of reliance. The parties filed briefs on the case and were represented by counsel at an oral hearing held before the Board. [FN6]

One preliminary evidentiary matter requires our attention. Petitioners filed, on August 31, 1992, an objection to the testimony, in its entirety, of Robert Nixon (an attorney in the office of respondent's general counsel) and essentially moved to strike it from the record. [FN7] Petitioners contend that the entire testimony is irrelevant, and that certain portions of the testimony constitute hearsay and unfounded opinions.

The irrelevancy objection is not well taken. Petitioners state that Mr. Nixon's testimony regarding the use of SEVENTH-DAY ADVENTIST by the General Conference is irrelevant because the party involved in this case, and which claims to be the owner of the registered mark, is the General Conference Corporation, a separate and distinct legal entity. However, as set out below, the General Conference and the General Conference Corporation, although separate entities, are closely related, with the General Conference Corporation's creation being merely for the purpose of holding legal title to property, such as trademarks, for the General Conference. Mr. Nixon's testimony is relevant to the issues before us and petitioners' objection in this regard is overruled.

The hearsay and opinion objections raised by petitioners are broadly worded with little specificity given to assist the Board in identifying any truly objectionable testimony. Suffice it to say that, in reading Mr. Nixon's deposition, we have considered his testimony in light of petitioners' objections. We would add, however, that, by and large, petitioners' objections are not well taken.

## The Parties

William Perry and Virginia Stocker are each members of the Seventh-day Adventist Church, that is, the "Mother Church" administered by the General Conference. Mr. Perry and Ms. Stocker claim that they pay tithes and make other financial offerings to this church. Petitioners also are members of the Rolling Hills Seventh-day Adventist Church of Mt. Dora, Florida, a church which is not a constituent of the General Conference. This particular church, in Ms. Stocker's words, "has been disbanded by [the General Conference] and is now a congregational church." (Stocker dep., p. 9). In addition, both petitioners are involved in the Hartland Institute which, according to Mr. Perry, is "an independent Seventh-day Adventist ministry," and which uses "Seventh-day Adventist" without the approval of either the General Conference or the General Conference Corporation.

**\*3** With respect to respondent, an excerpt from The Encyclopedia of Religion (Vol. 13 1987) recounts the origins of Seventh-day Adventism:

SEVENTH-DAY ADVENTISM. The origins of Seventh-day Adventism run back to the interdenominational Millerite movement in the United States in the early 1840s, when William Miller, a Baptist lay minister and farmer, sought to rekindle a second awakening by predicting that Christ would soon return to earth. On the basis of Daniel 8:14 ("Unto two thousand and three hundred days; then shall the sanctuary be cleansed"), he calculated that the end would come "about the year 1843," two thousand and three hundred years after Artaxerxes of Persia issued a decree to rebuild Jerusalem. Following a series of failed time-settings, Millerites fixed their hopes for the second advent of Christ on 22 October 1844, the Day of Atonement, which, according to a Jewish calendar, fell on the tenth day of the seventh month. The "great disappointment" that resulted from this miscalculation splintered the movement into several factions. The majority, including Miller, admitted their exegetical error but continued to expect Christ's imminent return; eventually they coalesced into the Evangelical Adventist and Advent Christian churches. A much smaller number embraced the suggestion of Hiram Edson, an Upstate New York farmer, that only the event, not the date, had been wrong: "that instead of our High Priest coming out of the Most Holy of the heavenly sanctuary to come to this earth on the tenth day of the seventh month, at the end of the 2,300 days, he for the first time entered on that day the second apartment of that sanctuary and that he had a work to perform in the Most Holy before coming to this earth." Millerites of this persuasion formed the nucleus of what, in the early 1860s, evolved into the Seventh-day Adventist church.

Until 1860, no formal organizational church structure was developed due, in part, to the followers' belief in the immediacy of Christ's coming which made long range institutional planning seem unnecessary, and to their past experiences in the Protestant Churches from which they had separated. Nonetheless, the time came when Miller's followers began to organize and representative delegates convened for a meeting in October 1860 in Battle Creek, Michigan. These delegates, with the endorsement of Ellen White, a visionary and early leader of the Advent movement, adopted the name "Seventh-day Adventist" from among several different names by which the followers had come to be known. In October 1861, the first conference was formed--the Michigan Conference of Seventh-day Adventists. The first General Conference, comprising six local conferences, was held on May 21, 1863.

In 1904, the church headquarters relocated from Battle Creek to a suburb of Washington, D.C. At that time, respondent, namely, the General Conference Corporation of Seventh-day Adventists, was incorporated. Article IX, Section 2 of the Constitution and Bylaws of the General Conference of Seventh-day Adventists, that is, the spiritual church, provides as follows:

**\*4** The General Conference Corporation is a legal entity formed to hold title to General Conference assets, to serve the General Conference in carrying out its purposes, and to receive gifts and legacies for the General Conference unincorporated.

According to Robert Nixon, the General Conference Corporation is a corporate entity established by the spiritual church to hold title to certain property, such as real estate and trademarks. The world-wide Seventh-day Adventist Church administrative structure comprises the General Conference, which is the governing body of the spiritual church and the church's highest organizational level, and its eleven divisions; the union conferences that make up the divisions; local

conferences that make up the union conferences; and local congregations that make up the local conferences. The North American Division of the General Conference comprises eight union conferences within the United States, and the Canadian Union Conference.

At the time of the formal organization of the Seventh-day Adventist Church, the Church comprised an estimated 3,500 members and fewer than thirty ministers. Today, the Church has grown world-wide in about 200 countries to include more than 32,000 churches, 11,000 ordained ministers, and more than 6.8 million members. The Seventh-day Adventist Church in the North American Division, which includes the United States, has 4,225 churches and approximately 721,000 members. [FN8] World statistics for 1990 also show that the General Conference administers 4,267 primary schools, 919 secondary schools, and 76 colleges and universities, including a medical school. The General Conference also operates over 150 hospitals and 70 retirement homes and orphanages. The Church owns 58 publishing houses, with publications appearing in 190 different languages. Through the years the General Conference has broadcast television shows as well as distributed films. The Seventh-day Adventist radio network in the United States comprises twelve affiliated stations, all of which are owned and operated by the Seventh-day Adventist Church.

According to Mr. Nixon, the "General Conference Working Policy" is a book setting forth church policies that have been voted on by the Executive Committee of the General Conference at annual councils. A trademark policy first appeared in written form in the 1988-89 "Working Policy" edition. Mr. Nixon testified that "it was in guideline form since the early '80s when we first had registered trademarks and thought that we should have a policy to govern their use." (Nixon dep., pp. 18-19). The pertinent portion of the 1991- 1992 edition of the "General Conference Working Policy" reads as follows:

#### B 80 General Conference of Seventh-day Adventists Trademark

B 80 05 Statement of Philosophy--The Seventh-day Adventist Church has an historical, evangelical, and proprietary interest in trademarks, service marks, and trade names (referred to collectively herein as "trademarks") developed by the Church and its related organizations. This policy shall apply to the General Conference of Seventh-day Adventists, the world divisions and departments of the General Conference of Seventh-day Adventists, and other services, organizations, and corporations listed as General Conference entities in the current Seventh-day Adventist Yearbook (referred to collectively herein as "General Conference"). This policy shall also apply to other Seventh-day Adventist entities or organizations utilizing trademarks owned or controlled by the General Conference. It shall be the policy of the General Conference to obtain maximum legal protection under applicable law in harmony with procedures and guidelines listed below.

**\*5 B 80 10 Ownership**--All legal rights in any trademark utilized by the General Conference, as defined, shall be vested in the General Conference Corporation with use by a related or subsidiary entity subject at all times to approval and review by the General Conference Corporation.

B 80 15 Registration and Fees--Trademark registration shall be obtained through the General Conference Trademark Committee pursuant to an enabling action of the General Conference Corporation. Legal fees and other expenses incidental to maximizing trademark protection shall be paid in full by any department, subsidiary, or related organization of the General Conference initiating the process or utilizing the trademark with the understanding that ownership at all times shall be vested in the General Conference Corporation.

B 80 20 Unauthorized Use--It shall be the responsibility of the Trademark Committee to monitor and review any unauthorized use of the trademark, including recommendations to the General Conference Corporation with respect to any legal or other action that should be taken to protect the proprietary interests of the Church as well as its good name. Approval by the General conference Officers shall be obtained prior to the implementation of any legal action.

B 80 25 Other Trademarks--Seventh-day Adventist entities other than the General Conference shall be entitled to maintain trademark ownership and registration for various marks in their own names so long as such application, ownership, and use does not conflict with existing trademarks, legal rights, and/or policy of the General Conference. The General Conference Trademark Committee shall provide assistance and direction to non-General Conference entities as necessary.

B 80 30 Limitation of Rights--Nothing in this policy shall be construed or interpreted as limiting any of the legal rights of the General Conference with respect to its ownership and use of any and all of its trademarks.

B 80 35 Use of Existing Marks--The use of any existing trademarks including, but not limited to, "Seventh-day Adventists" and/or "Adventist" or any derivative of such trademarks, including, but not limited to "SDA," are authorized as follows:

1. Church entities that have denominational status and are included in the current Seventh-day Adventist Yearbook shall have license to use these trademarks in their names and ministries unless specifically revoked by the General Conference Corporation. Such trademarks shall not be utilized in commercial endeavors.

2. Local churches and companies may use these trademarks in their names and ministries following approval of status by the local conference or mission. Such trademarks shall not be utilized in commercial endeavors.



3. Lay and professional groups may not utilize trademarks owned by the General Conference Corporation without its express written approval. Applications for such use shall be made to the secretary of the Seventh-day Adventist Trademark Committee of the General Conference. Use of such trademarks by lay and professional groups must be solely for noncommercial purposes. Granting such license to use trademarks owned by the General Conference Corporation shall be at the sole discretion of the General Conference based on the following conditions:

\*6 a. Recommendation by the local conference or mission that the lay or professional group requesting trademark usage be granted the license;

b. The activities of the lay or professional group shall be in harmony with the teachings of and specifically supported by the Seventh-Day Adventist Church;

c. The organization's board and membership shall consist of Seventh-day Adventists in good and regular standing;

d. The anticipated use of the trademark shall not be in conflict with previously granted license(s); and

e. The trademark shall be utilized solely in noncommercial functions.

B 80 40 Right to Revoke--The General Conference Corporation shall maintain the right to revoke permission for the use of any trademarks by any denominational entity or lay group at any time, with or without cause.

The Issues

The following issues are before us for consideration:

- 1) fraud; and
- 2) genericness.

We now turn our attention to the merits of these claims.

## Fraud

The pleadings and subsequent arguments made in petitioners' brief on this issue hardly are models of clarity. To complicate matters, petitioners, in their brief, continued to intermingle averments of alleged fraud with allegations that respondent does not own the registered mark. [FN9] The only fraud issue up for consideration, as worded in the Board's February 26, 1992 order, is "that respondent allegedly fraudulently claimed first and exclusive use of the mark." Specifically, petitioners allege that respondent, in obtaining the involved registration, committed fraud because "before respondent existed the name was used jointly by separate congregational Seventh-day Adventist churches as a general classification of religious beliefs."

In order to prove that a party obtained its registration fraudulently, the party charging fraud must establish that the acts alleged to be fraudulent were made in bad faith with a fraudulent purpose and an intent to secure a registration by deception. Further, a fraud claim must be proved "to the hilt". *Bonaventure Associates v. Westin Hotel Co.*, 218 USPQ 537, 540 (TTAB 1983).

Where, as in the present case, the affiant reasonably believed and was claiming that the General Conference Corporation had a right to the designation "Seventh-day Adventist" superior to that of other parties who might have used or might be using it, fraud is not shown by proof that the registrant was aware of those other uses. See: *Heaton Enterprises of Nevada Inc. v. Lang*, 7 USPQ2d 1842, 1849 (TTAB 1988). The prescribed application statement regarding ownership of a designation constitutes a claim only of the exclusive right to use the same as a mark. In that regard, "the declarant need not consider whether fair, non-trademark uses of the word or design may be made or, if the declarant is already aware of such uses, then they need not be disclosed, since they are not antithetical to the applicant's claim." *Kelly Services Inc. v. Greene's Temporaries Inc.*, 25 USPQ2d 1460, 1463 (TTAB 1992).

**\*7** In the present case, the General Conference Corporation believed, when it filed the application for registration, that its rights to SEVENTH-DAY ADVENTIST as a trademark and/or service mark, dating back to the General Conference's inception in 1863, were superior to those of any other groups which might have used the same or similar designation in connection with their activities. Simply put, there is no proof of fraud here and that portion of petitioners' claims must fail.

## Genericness

In terms of Board inter partes proceedings, we are presented here, by all accounts, with a case of first impression. There are no prior published Board decisions regarding the genericness of church/religion names. There has been some litigation regarding this issue in the federal courts. We would point out, however, that virtually all of the trademark infringement cases involving religious institutions have been suits brought by the Mother Church in a particular religion

enjoin a splinter church from using the Mother Church's name. The instant case presents a twist to that scenario. Here, we have a suit brought by members of a splinter church to cancel a trademark registration owned by the Mother Church. In short, there is little reported case law wherein a splinter group has sought to cancel, on the ground of genericness, a federal trademark registration owned by its Mother Church.

Trademark law generally surfaces in commercial settings and, thus, as one court opined, its language is awkward to fit when the principles are applied to religious institutions. *The Christian Science Board of Directors of the First Church of Christ, Scientist v. Doris Evans, et. al*, 520 A.2d 1347, 1351, 2 USPQ2d 1093 (N.J.1987). After grappling with the law and facts in reaching our conclusion in this case, we wholeheartedly share the Court's view regarding the difficulties of applying traditional trademark law in these types of cases. It will be readily apparent to readers of the opinions in this area of the law that courts have struggled in reaching their decisions. One court even expressed its "discomfiture" in analyzing these types of cases in terms "more appropriate to the commercial world." *Evans, supra* at 1355. Nonetheless, it has been established that religious institutions are entitled, no less than are commercial enterprises, to the protection of trademark laws. See, e.g.: *Evans, supra* at 1351; and *Purcell v. Summers*, 145 F.2d 979 (4th Cir.1944). See generally: *Annotation, Right of Charitable or Religious Association or Corporation to Protection Against Use of Same or Similar Name by Another*, 37 A.L.R.3d 177 (1971). In the present case, therefore, we are constrained to evaluate the issue of genericness under principles of law more commonly applied to commercial entities.

**\*8** A term is generic if it names the class of the goods or services to which it is applied. See: *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed.Cir.1986), and *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed.Cir.1985). The test for determining whether a term is generic is its primary significance to the relevant public, that is, whether the term is used or understood, by purchasers or potential purchasers of the goods or services at issue, primarily to refer to the class of such goods or services. See: *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed.Cir.1991); *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed.Cir.1987); *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, *supra*; and *In re Leatherman Tool Group, Inc.*, 32 USPQ2d 1443 (TTAB 1994). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including direct testimony of consumers, consumer surveys, newspapers, magazines, dictionaries, catalogs, and other publications. See: *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, *supra*, and *In re Northland Aluminum Products, Inc.*, *supra*.

Registration on the Principal Register of respondent's mark is prima facie evidence of the validity of that registration, "and that includes the presumption that the mark subject thereof is not .... generic in relation to the goods [or services listed in the registration]". *Editorial America, S.A. v. Gruner & Jahr AG & Co.*, 213 USPQ 498, 504 (TTAB 1982). See also: *Coca-Cola Co. v. Overland, Inc.* 692 F.2d 1250, 216 USPQ 579, 582 (9th Cir.1982). In the present case, the burden of proof rests squarely on petitioners who are asserting invalidity.

Our primary reviewing court has stated that a party charging genericness must prove its claim by a preponderance of the evidence. See: *Magic Wand Inc.*, *supra* at 1554. See also: *Martahus v. Video Duplication Services Inc.*, 3 F.3d 417, 27 USPQ2d 1846, 1850 (Fed.Cir.1993). Thus, petitioners here have the burden of overcoming the registration's presumption of validity

and must show by a preponderance of the evidence that the term SEVENTH-DAY ADVENTIST is used or understood, by the relevant public, primarily to refer to the class of the goods and/or services with which the term is registered. [FN10]

A review of the genericness cases involving religious institutions reveals mixed results. Compare: Evans, supra ["Christian Science" is generic] with Jandron v. Zuendel, 139 F.Supp. 887, 889 (N.D. Ohio 1955) ["'Christian Science Church' has one meaning, i.e., that it is a bona fide church of the Christian Science denomination related to The Mother Church"]; also compare McDaniel v. Mirza Ahmad Sahrab, 27 N.Y.S.2d 525 (N.Y. Sup. Ct.), aff'd without published opinion, 29 N.Y.S.2d 509 (1941) [use of name "Baha'i" could not be enjoined inasmuch as it is the name of a religion] with The National Spiritual Assembly of the Baha'is of the United States of America Under the Hereditary Guardianship, Inc. v. The National Spiritual Assembly of the Baha'is of the United States of America, Inc., 150 USPQ 346 (N.D. Ill. 1966) [enjoining use of the name "Baha'i"]. See also: Self-Realization Fellowship Church v. Ananda Church of Self-Realization, 59 F.3d 902, 35 USPQ2d 1342 (9th Cir. 1995) [[[vacating the district court's order to cancel, based on genericness, the registrations of "Self-Realization Fellowship" and "Self-Realization Fellowship Church" for religious educational, ministerial and book publication services]. This split in the courts illustrates the difficulties in determining the trademark rights of religious institutions. It should come as no surprise, then, that the present Board panel has differing views on the issue.

**\*9** In reviewing the cases in which the plaintiff Mother Churches' marks were found to be generic, we cannot help but sense that the courts' decisions were driven in large part by concerns other than those associated with traditional commercial trademark law. Without exception, the courts expressed a concern about the free exercise of religion, and the decisions clearly reflect a sensitivity to that concern. Although these courts found the names pleaded by the plaintiff Mother Churches to be generic, some of the courts' comments, although dicta, cause us to speculate about their views had the parties' roles been reversed and cancellation of a registered mark had been sought. The majority in Evans, supra at 1355, specifically recognized that "[p]laintiffs [the Mother Church] are not facing cancellation of a registered mark." Even in General Conference Corporation of Seventh-day Adventist (see discussion infra), the decision upon which petitioners based their motion for summary judgment in the present proceedings, the court appeared to recognize that "Seventh-day Adventist," in a certain context, could function as a source identifier:

Arguably, use of the name "Seventh-day Adventist" in conjunction with "Church" would require a different result. See Evans, 520 A.2d at 1360 (Garibaldi, J., dissenting) (finding that a term is generic when used to refer to a religion does not answer question of whether it is generic or descriptive when used to name a church). But that question is not before the Court.... [emphasis added]

So as to be clear on this point, the present case involves a splinter group raising genericness as a sword rather than as a shield, thereby directly challenging a long-standing registration. Only one of the reported cases involved this situation.

At this point, we need to dispose of another matter. Respondent was involved in a prior civil action it brought against a third party. As noted above, petitioners filed a motion for summary judgment in the present case based on the final determination in that civil action. Petitioners relied upon the decision (unpublished) of the U.S. District Court for the Central District of California in a case styled General Conference Corporation of Seventh-day Adventists v. Seventh-day

Adventist Kinship, International, Inc. (Case No. CV 87-8113 MRP). Petitioners asserted that the Court, in a decision dated October 3, 1991, found that the term "Seventh-day Adventist" is generic and not entitled to trademark protection. Thus, according to petitioners, they were entitled to judgment in the present proceedings on the "grounds of res judicata."

In the civil action, the General Conference sued Seventh-day Adventist Kinship [FN11] on grounds of, inter alia, trademark infringement. The General Conference sought injunctive relief against Seventh-day Adventist Kinship because of that group's use of "Seventh-day Adventist." Seventh-day Adventist Kinship claimed that there was no likelihood of confusion and raised several affirmative defenses, including genericness.

**\*10** The court found in favor of the defendant. In its opinion, the Court indicated it "is persuaded that the term 'Seventh-day Adventist' has a dual meaning: it refers not only to the Church, but to adherents of the religion of Seventh-day Adventism" and that "SDA Kinship is entitled to use the term 'Seventh-day Adventist' because it is the generic name for an adherent of the religion of Seventh-day Adventism." The Court ultimately held that, "as used by Seventh-day Adventist Kinship, the term 'Seventh-day Adventist' [is] generic." (emphasis added)

The Board, in a decision on February 26, 1992, denied petitioners' motion for summary judgment. In denying the motion the Board pointed out that the appropriate judicial doctrine to consider was collateral estoppel (or issue preclusion), not res judicata (or claim preclusion), because petitioners were not parties to the civil action. The Board ruled that the Court's finding "is not applicable to the present case." In so deciding, the Board reasoned as follows:

In the civil action the Court held that "Seventh-day Adventist" is the generic name for an adherent of the religion of Seventh-day Adventism, and that, as used by the defendant in that proceeding to identify the religion of the group's membership, the term is generic. Here, however, petitioners challenge respondent's registration of SEVENTH-DAY ADVENTIST as being generic for magazines, pamphlets, newsletters, etc. in Class 16 (Mr. Perry's cancellation action) and for religious observances and missionary services in Class 42 (Ms. Stocker's cancellation petition). The decision of the District Court did not touch on the issue of whether "Seventh-day Adventist" is generic for such goods or services, and therefore we cannot accord that decision any collateral estoppel effect insofar as the present proceedings are concerned. We also note, in terms of the registration of the mark for the service of conducting religious observances, that the Court pointed out:

Arguably, use of the name "Seventh-day Adventist" in conjunction with "Church" would require a different result. [referring to the finding that SDA Kinship was entitled to use the term "Seventh-day Adventist" to identify the religion of the group's membership] See Evans, 520 A.2d at 1360 (Garibaldi, J., dissenting) (finding that a term is generic when used to refer to a religion does not answer question of whether it is generic or descriptive when used to name a church). But that question is not before the Court since SDA Kinship has never used the name "Seventh-day Adventist Church." Slip op. p. 15

Petitioners did not request reconsideration of the Board's decision, nor have they specifically asked the Board to revisit the matter at final hearing. Thus, we see no reason to do so now sua sponte. However, lest there be any doubt on this point, we agree with the prior Board panel that issue preclusion does not apply here. Unlike the situation in this prior

court decision or, for that matter, in any of the other reported decisions in this specific area of the law, the survival of a long-existing registration is at stake in the present proceedings. We would add that notwithstanding the court's decision, respondent's registration, which was cited in the court's opinion, was not ordered to be canceled, but rather remained a valid and subsisting registration. Simply put, although the Court's decision certainly is a factor to be considered here, it is not dispositive.

#### Relevant Public

**\*11** As our primary reviewing court has noted, the legislative history of the 1984 amendment to the Trademark Act clarifies that the relevant public, for a genericness determination, is the purchasing or consuming public. The Federal Circuit has stated that "[i]n sum, the 1984 amendment makes the test for genericness the primary significance of the mark to the relevant public limited to actual or potential purchasers of the goods or services." *Magic Wand Inc.*, supra at 1553.

We confess that the target audience is not easy to define here. While the majority of persons coming into contact with respondent's religious publications and religious services undoubtedly will be members of the General Conference of Seventh-day Adventists, there are others, of course, who will be exposed to the registered mark "Seventh-Day Adventist." Nonetheless, we tend to agree with Dr. Smith's testimony (Smith dep., pp. 7-8) that the relevant public here comprises Christians and, more specifically, Adventist Christians (that is, those who believe in the nearness of the second coming of Christ). It is these persons who are most likely to avail themselves of respondent's publications and services.

#### Testimony

Mr. Perry's and Ms. Stocker's testimony is replete with their personal opinions about the validity of respondent's registered mark. [FN12] Petitioners have no hesitation in opining that "Seventh-day Adventist" is generic.

Both Mr. Perry and Ms. Stocker are members of churches which are constituents of the General Conference. They also are members of The Rolling Hills Seventh-day Adventist Church of Mt. Dora, Florida, which is not a constituent church of the General Conference. It is this disassociation with the General Conference that causes petitioners concern. As Ms. Stocker testified:

Any independent ministry which disagrees loudly with the policies and principles espoused by the General Conference of SDA or its leadership is under threat because of the use of the trademark. See Exhibit 10.

All Seventh-day Adventist independent ministries use the name Seventh-day Adventist more or less. They are certainly not ashamed of the name and use it when convenient. I know of no independent ministry that has express written approval to use the name. Next is to disfellowship them from the General Conference of SDA system of churches. Then, if they continue to use the name Seventh-day Adventists, threaten them, then sue them.

Many think that the trademark was designed to be used mainly as a threat, a weapon to control dissidents. Any independent ministry will feel the pressure. See the review article about dissident groups, Exhibit 10. Note that this article especially mentions John Osborne, principal speaker of Prophecy Countdown, an independent ministry disfellowshipped because of apostasy. He disagreed with the leadership of the General Conference of SDA. This church was ordered disbanded as under the General Conference of SDA umbrella and has become a congregational church. Also, John Osborne is pastor of the Rolling Hills SDA Church of which I am a member.

**\*12** I am certain that sooner or later the General Conference will take on the Rolling Hills SDA and it's widely believed that it will be the mother of all lawsuits.

Ms. Stocker further testified that she has not been directly threatened with a lawsuit by respondent nor has she been involved in any publications bearing the designation "Seventh-day Adventist."

Mr. Perry likewise testified that the General Conference has never directly taken action against him, although he testified that he is "expecting something." Further, Mr. Perry indicated that he neither renders any services nor publishes any material under the designation "Seventh-day Adventist." (Perry 4-14-92 dep., pp. 27-28)

Also of record is the testimony of individuals involved with other splinter groups/churches: Don Adair of the Association of Davidian Seventh-day Adventists; Alfredo Sas and Benjamin Burec of the Seventh-day Adventist Reform Movement; and Anthony Hilbert of the Davidian Seventh-day Adventists.

Mr. Adair described the General Association of Davidian Seventh-day Adventists as follows:

We do not claim to be a separate church as such; although we are a separate religious association. We are more like an independent ministry within the church. Wherever possible and whenever we are allowed, we prefer to remain within the General Conference of Seventh-day Adventist sisterhood of churches. Then we attend Sabbath school and church in the morning and the Shepherd's Rod meetings in the afternoon.

(Adair dep., p. 8). Mr. Adair also testified that his group does not have a church building (Adair dep., p. 40) and that his group numbers fewer than 100 members (Adair dep., p. 9).

Mr. Hibbert described his group, the Davidian Seventh-day Adventists, as follows:

We believe and teach all the fundamental doctrines of the Seventh-day Adventist Church. We are apparently separated from the mother church because many of those who embraced the Shepherd's Rod message were disfellowshipped and some were physically thrown out.

We still consider the denominational churches our churches and seek membership there if granted the opportunity. We do not consider the association a church nor are we registered as such.

Generally, members of the association attend local denominational services when not barred, and we hold regular Bible studies, seminars, lectures, or discussions on Sabbath afternoons after denominational services, usually in the homes of church members or interested parties. And on occasion, we use rented halls.

The contributing and the student membership is conservatively estimated at just under a few thousand worldwide. Part of the association's general membership still hold membership in the local SDA denominational churches. Some even hold posts as elders, deacons, Sabbath school teachers, but attend our company meetings and contribute financially as well as invite other church members to attend our meetings in their homes or the homes of others.

**\*13** We do not discourage membership with the denominational churches. We instead encourage it. We do not claim to be a church or separate denomination but rather a layman's ministry.

(Hibbert dep., pp. 8-9). Mr. Adair went on to state that "Davidian Seventh-day Adventists are actually an independent ministry within the church ... we do not claim to be a church and do not hold regular church services." (Hibbert dep., p. 10) Mr. Hibbert reiterated these views in an interview in the Muncie Star dated March 7, 1993. The article indicated that Mr. Hibbert and his fellow Davidian Seventh-day Adventists do not consider themselves a separate church and that many quietly belong to constituent congregations of the General Conference. (respondent's notice of reliance, ex. 8)

Messrs. Burec and Sas are members of the Seventh Day Adventist Reform Movement. [FN13] Membership in the United States is approximately 500. (Sas dep., p. 6).

The above testimony is hardly the kind upon which to base a holding of genericness, and to cancel a longstanding registration. To the contrary, the testimony is revealing in that the deponents used "Seventh-day Adventist" to identify the Mother Church to which they and others belong. Further, the figures given by the witnesses show that the splinter groups are quite small, with the inevitable result being de minimis exposure of their uses of "Seventh-day Adventist" to the relevant public.

Respondent took the testimony of Dr. Timothy Smith, a professor of history and director of the program in American religious history at The Johns Hopkins University in Baltimore, Maryland. Dr. Smith testified as an expert and his qualifications and expertise have not been challenged by petitioners. [FN14]

Dr. Smith testified that the designation "Seventh-day Adventist" is not generic for publications and religious-type services. Dr. Smith stated that the term "calls to mind people, but it is also source specific because it means the Seventh-Day Adventist Church when used on or in connection with publications, books, church services, religious observances and missionary services. The source of these goods and services is the Seventh-day Adventist Church." (Smith dep., p. 6) Dr. Smith went on to state that

[t]he primary significance of the term Seventh-day Adventist to the relevant public, as this term relates to publications or church services, essentially means such publications and services as are published by, sponsored by, performed by or associated with the Seventh-Day Adventist Church.



(Smith dep., p. 8) With respect to uses of "Seventh-day Adventist" by anyone other than respondent, Dr. Smith testified as follows:

I know of no other publications, books or the like which bear the term Seventh-day Adventist that are other than those printed and published by the Seventh-day Adventist Church.

Likewise, I know of no churches other than Seventh-day Adventist Churches which are so identified by their church signs and road signs, all of which bear the term Seventh-day Adventist and under which term Sabbath services are performed.

**\*14** Id. Dr. Smith acknowledged that there "might have been some type of limited use" of "Seventh-day Adventist" by the Seventh-day Adventist Reform Movement, but that "I would expect that today any such limited use has become virtually nonexistent." (Smith dep., pp. 9-10) Dr. Smith also testified that he had no knowledge of the use of "Seventh-day Adventist" by two other small offshoot groups, namely the Davidians or the Shepherd's Rod. (Smith dep., p. 11) As a basis for his views, Dr. Smith stated the following:

I am convinced from all of the evidence I have encountered during my experience that Seventh-day Adventist is a term which identifies as a source of products and services the Seventh-day Adventist Church, and much of this stems from the fact that the Seventh-day Adventist Church has for over one hundred years published a tremendous amount of materials through its publishing houses and has disseminated information through its television and radio outreach which could have no other effect than establishing as the primary significance of the term Seventh-day Adventist to the relevant public the Seventh-day Adventist Church as the source of Seventh-day Adventist publications and church services. The relevant public understands that Seventh-day Adventist means the Seventh-day Adventist Church.

(Smith dep., pp. 10-11)

We recognize the shortcomings of expert testimony on the issue of whether a trademark/service mark is understood by the purchasing public to be a generic name. It is the understanding of the public, of course, and not that of the expert which is determinative. See, e.g.: *Tanners' Council of America, Inc. v. Scott Paper Company*, 185 USPQ 630, 637 (TTAB 1975). Here, too, Dr. Smith's testimony is not dispositive, but nonetheless it adds credence to our view that the relevant public will perceive SEVENTH-DAY ADVENTIST as identifying a source or origin of the religious publications and services at issue.

#### Dictionary Evidence

The record also includes dictionary evidence. The following examples are representative:

Seventh-day Adventist: A member of a sect of Adventism distinguished chiefly for its observance of the Sabbath on Saturday. See Adventist.

Adventist: A member of any of several Christian denominations that believe Christ's second coming and the end of the world are near at hand.

American Heritage Dictionary of the English Language (1992).

\*\*\*\*\*

Seventh-day Adventist: See under Adventist.

Adventist: One who believes in the second coming of Christ and the imminent end of the world.... The term is now applied to a member of any of the following sects, all descended from the church founded by Miller: Advent Christian Church, Seventh-day Adventists, Church of God (Adventist), Life and Advent Union.

Brittanica Dictionary (1956).

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Seventh-day Adventist: Adventist

Adventist: A believer in the doctrine of Adventism [the doctrine that the second coming of Christ and the end of the world are near at hand]; a member of any of various religious bodies emphasizing this doctrine.

Webster's Third New International Dictionary (1986).

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**\*15** Although not determinative, these dictionary definitions are relevant to our analysis. Contrary to petitioners' arguments, the definitions tend to support, if anything, our view that the generic term for the religion is "Adventist" (or "Adventism"), not "Seventh-day Adventist." However, this evidence is not conclusive of genericness, "if for no other reason than that this would endow editors of such works with the power to destroy trademarks merely by defining them generically." *In re Minnetonka, Inc.*, 212 USPQ 772 (TTAB 1981).

Encyclopedia Evidence

The encyclopedia evidence, just as in the case of dictionaries, is not dispositive, but is, nonetheless, a factor to be considered in this case. Again, this evidence tends to support that the generic term for the type or category of religion is "Adventist" and not "Seventh-day Adventist."

"Adventism," as shown by the dictionary and encyclopedia evidence, is the name given to a core of beliefs, most significantly, a belief in the nearness of the second coming of Christ. In the encyclopedia excerpts of record, the Seventh-day Adventist Church invariably is classified under the heading "Adventism." The encyclopedias include both general and religious ones. The excerpts identify Seventh-day Adventism as just one, albeit the largest and most significant by far, of the branches or denominations of Adventism. By way of example, we point to petitioners' submission of excerpts from J. Gordon Melton, *Encyclopedia of American Religions* (3d ed. 1989). Each section bears a "family" heading, as for example, "Lutheran Family," "Reformed-Presbyterian Family," "Baptist Family," "Pietist-Methodist Family" and "Adventist Family." Under each "family" the various religious groups falling within that category of religion are listed. Under the "Adventist" heading, the encyclopedias variously identify, in addition to the Seventh-day Adventist Church, other "Adventist" denominations that have existed through the years as follows: Advent Christian Church; Church of God of the Abrahamic Faith; Church of God (Adventist); Primitive Advent Christian Church; Evangelical Adventists; and Life and Advent Union. The central core of beliefs of these Adventist groups is essentially the same, with various differences over doctrinal interpretations of the nature of the millennium, the nature of man, the ministry of Christ, the return of the Jews, the Sabbath, and spiritual gifts. As noted above, the Seventh-day Adventist Church is by far the largest branch (6.8 million) of Adventists. From the evidence of record, it appears that the second largest group is the Advent Christian Church, with about 33,000 members in nine countries, followed by the Church of God of the Abrahamic Faith, with over 5,000 members in the United States and Canada. Other Adventist groups range in size from a few hundred to a few thousand.

We find the encyclopedia evidence supports our view that Adventist (or Adventism) is the generic name of the category of religion, while Seventh-day Adventist is a trademark/service mark identifying a specific origin or source of products and services within that category. Seventh-day Adventism is but one branch of Adventism. Given the genericness of "Adventist", we fully concur with respondent's voluntary disclaimer of this term in its registration.

#### Other Printed Publications

**\*16** Respondent introduced numerous excerpts from printed publications, namely newspaper articles and periodicals of general circulation. These articles are replete with uses of "Seventh-day Adventist" to identify the Mother Church, that is, the Seventh-day Adventist Church administered by the General Conference. In every instance, the designation specifically identifies respondent and its activities, and distinguishes respondent and its activities from those of others. By way of example, several of the articles concern the confrontation at the Branch Davidian compound in Waco, Texas in February 1993. The articles traced leader David Koresh and his followers from their days as members of the Mother Church, recounting their later disassociation with the General Conference. The articles contain numerous references to the "Seventh-day Adventist Church," often pointing out the absence of any connection between the Branch Davidians in Waco and the Mother Church.

In addition to the above, respondent introduced a representative sample of its wide variety of publications. Periodicals, books, college catalogs and informational brochures identify the Seventh-day Adventist Church as the source of the publications and/or services described therein.

## Third-Party Registrations

The third-party registrations introduced by respondent are of no help in deciding the issue of genericness. They show, at most, that the Office has registered some church names for various religious publications and services. Some include disclaimers (as, for example, disclaimers of "Presbyterian" in Reg. Nos. 1,012,486 and 1,431,066), while others do not ("The Lutheran" (stylized) in Reg. No. 1,085,986). While uniform treatment under the Trademark Act is an administrative goal, our task here is to determine whether respondent's particular mark is generic. We are not privy to the file records of the registrations upon which respondent has relied. In any event, simply put, the registrations have no bearing on the ultimate question here, namely, what is the primary significance of "Seventh-day Adventist" to the relevant public.

## Survey Evidence

There is no direct survey evidence in this case to assist us in determining the primary significance of "Seventh-day Adventist" to the relevant public. What is of record is a study commissioned by respondent in 1970 (Nixon dep., ex. 57). The study, captioned "The Public's Attitudes Toward The Seventh-day Adventist Church" was administered by Gallup International "to determine the public's image of this church and attitudes toward Seventh-day Adventist beliefs and activities." Sixty-five percent of the respondents had heard or read about the Seventh-day Adventist Church. Respondents were asked to indicate the first thing that comes to mind when they hear the name "Seventh-day Adventists." The response given most often was: "They observe the Sabbath on Saturday." The second most frequently given response was that the Seventh-day Adventists are a religious group or church. (study, p. 4) In 1986, the results of a follow up survey showed that seventy percent of the respondents had heard or read about the Seventh-day Adventist Church.

**\*17** We agree with respondent that the studies indicate a fairly high recognition of the Seventh-day Adventist Church. Nevertheless, we are unable to extrapolate the results, to any significant degree, in analyzing the primary significance of the registered mark to the relevant public.

## Decision

As often stated, each case must be decided on its own facts. In reaching our decision we are, of course, confined to the record introduced by the parties. We find that petitioners have not established by a preponderance of the evidence that the registered mark is generic. To the contrary, we find that the evidence of record shows that for a period of over 130 years, the primary significance of the designation "Seventh-day Adventist" has been to identify the source or origin of religious publications and services emanating from respondent. Although we view the term "Adventist" as generic, we cannot conclude that the present record establishes that the registered mark "Seventh-day Adventist" ("Adventist" disclaimed) is also generic. The testimony of Mr. Nixon and Dr. Smith, as well as the documentary evidence, comprising

dictionary listings, encyclopedia excerpts, newspapers, and periodicals, indicate that SEVENTH-DAY ADVENTIST is used and recognized as a source indicator for respondent's goods and services. Respondent is engaged in wide-ranging activities, including its administration of churches, schools, hospitals, and colleges. In every instance made of record, the relevant public is exposed to the registered mark, with the result that the primary significance of SEVENTH-DAY ADVENTIST to them is as an indicator of the source or origin of respondent's various goods and/or services.

Based on the record before us, we conclude that the term indicates products and/or services of a single source (i.e., General Conference) and, therefore, the term functions as a trademark/servicemark. That a particular church publishes books and renders services with recognizable characteristics of the religion guiding the church does not convert the designation of source to a common or generic name. As the Federal Circuit has stated in another case:

... To the contrary, it is the trademark function to so identify a product that the consumer is assured of the quality and characteristics that it has come to associate with a particular source of that product.

Congress has reinforced, by statutory enactment, that it is not destructive of the trademark function to identify a product by the name coined by its purveyor. "A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service." 15 U.S.C. 1064(c).

In re Montrachet S.A., 878 F.2d 375, 11 USPQ2d 1393, 1395 (Fed.Cir.1989) [[[finding MONTRACHET is not generic for cheese].

In summary, the burden of proof to show genericness, resting squarely on petitioners, has not been met. Rather, the evidence of record leads us to conclude that the primary significance to the relevant public of SEVENTH-DAY ADVENTIST is that of a trademark/service mark when used in connection with religious books and/or services.

**\*18** As a postscript, we would point out that we have considered numerous arguments in petitioners' brief other than those we have discussed. Suffice it to say that we find the majority of them to be irrelevant, and we find it unnecessary to comment specifically on any of these arguments.

Decision: The petitions to cancel are dismissed.

R.F. Cissel

T.J. Quinn

Administrative Trademark Judges, Trademark Trial and Appeal Board

FN1. Mr. Perry's petition seeks to cancel the registration insofar as it pertains to the publications listed in International Class 16, and Ms. Stocker's petition seeks cancellation with respect to the religious observance and missionary services in International Class 42. The Board, in an order dated December 20, 1989, consolidated the two cancellation proceedings inasmuch as they involve common questions of law and fact. The Board noted that while the parties are not the same, both petitioners claimed to be members of the same church and were seeking cancellation on the same grounds. Upon consolidation, the cases were presented on the same record and briefs.

FN2. Registration No. 1,177,185, issued November 10, 1981; combined Sections 8 and 15 affidavit filed. The dates of first use are claimed as follows: Class 16--1861; Class 36--1973; Class 41--1894; and Class 42--1860. The registration includes the following disclaimer: "No claim is made to the exclusive right to use the word 'Adventist' with respect to the goods of Class 16, apart from the mark as shown." The disclaimer was entered by the Commissioner on August 21, 1990 pursuant to an amendment.

FN3. The Board, in a February 26, 1992 order denying cross-motions for summary judgment in this case, stated the following at footnote (2):

It is noted that petitioners' pleadings include a large number of irrelevant allegations. The only grounds for cancellation stated in the petitions which may be entertained by the Board are that SEVENTH-DAY ADVENTIST is generic for the Class 16 (publications) goods identified in the registration and for "conducting religious observances and missionary services" and that the registration was obtained by fraud in that respondent allegedly fraudulently claimed first and exclusive use of the mark. The case will go to trial solely on the issues of standing and genericness and fraud.

FN4. One of the affirmative defenses was based on respondent's claim that petitioners lack standing to bring the petitions for cancellation. The Board, in the February 26, 1992 decision regarding summary judgment, ruled that petitioners had set forth allegations which, if proved, are sufficient to confer standing. Respondent, in its brief on the case (p. 3), acknowledges that petitioners have a "real interest in the proceeding." Respondent then withdrew its defense predicated on lack of standing. Thus, this issue is no longer in dispute. We would add, that, in any event, the record establishes each petitioner's interest in this case beyond that of the general public. See: *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490 ??Missing Text?? USPQ2d 2021, 2023 (Fed.Cir.1987).

FN5. The Board, in an order dated September 30, 1992, granted respondent's motion to strike the deposition of Virginia Stocker taken on April 30, 1992 inasmuch as it took place after the close of petitioners' testimony period.

FN6. Petitioners handled this case pro se until counsel for petitioners entered an appearance at the oral hearing.

FN7. The Board, in the order dated September 30, 1992, deferred consideration of the substantive objections until final hearing. Such action is in accordance with established Board practice.

FN8. The statistics are shown in Seventh-day Adventist 1992 Yearbook (respondent's exhibit no. 9) and reflect totals as of 1990.

FN9. The Board, in an order dated December 20, 1989, considered a proposed amended pleading to include a claim that respondent was not the owner of the mark at the time the application for registration was filed and that respondent is not now the owner of the mark. The Board ruled that since the involved registration was more than five years old at the time the petition for cancellation was filed, petitioners were limited to the grounds specifically set forth in Section 14(3) of the Act, and that lack of ownership was not one of those limited grounds. See: ABC Moving Co., Inc. v. Brown 218 USPQ 336 (TTAB 1983). The Board commented on petitioners' attempt to circumvent this statutory bar by asserting fraud in the procurement of the registration:

There has been no pleading of a willful withholding from the Office by respondent of ownership information which, if disclosed to the Examining Attorney, would have resulted in the disallowance of the registration sought, as is required for a pleading of fraudulent procurement of a registration (citation omitted]

Further, to the extent that petitioners pleadings can be construed in any way to include such a fraud claim, the claim must fail for lack of proof.

FN10. Some courts have required that a charging party show by "conclusive evidence" that a term is generic and, at least in an ex parte context, the Patent and Trademark Office has the burden of establishing genericness by adducing "clear evidence." See: In re Merrill Lynch, Pierce, Fenner, and Smith Inc., supra at 1143. And, one commentator, in summarizing the cases, observed: "...the courts tend to favor the trademark owner and are reluctant to hold that valuable trademark rights have been lost....Plainly, the burden of proof on the party asserting that a trademark has become generic is considerable." J. Gilson, Trademark Protection and Practice, § 2.02[1] (1990).

We are reminded of remarks given by another commentator, Kenneth Germain, in connection with the hearings on the 1984 amendments to the Act:

..... cancellation of the federal registration of a trademark is likely to have disastrous consequences for the affected trademark owner. Not only is the loss of federal protection a loss of major proportions, but the cancellation of federal rights is likely to be followed by the loss of state based protections either directly, due to principles of res judicata and/or collateral estoppel, or indirectly, due to application of state decisional law following in the footsteps of the federal determination.

FN11. The court's opinion describes Seventh-day Adventist Kinship essentially as a support group for gay and lesbian Seventh-day Adventists who felt isolated, discriminated against and abandoned by the Mother Church.

FN12. The Perry (4-14-92) and Stocker (4-15-92) depositions are essentially identical, both taken by way of written questions.

FN13. Mr. Sas pointed out that the group does not hyphenate "Seventh Day."

FN14. After receiving his Ph.D. at Harvard University, and garnering numerous academic awards, Dr. Smith held several faculty positions at different universities, as well as pastoral positions at churches. Dr. Smith is a member of various professional organizations. In addition, Dr. Smith has authored numerous books, journal articles and essays.

#### CONCURRING IN PART AND DISSENTING IN PART

Hohein

Administrative Trademark Judge

Evidentiary Objections

**\*19** I concur with the majority's treatment of the evidentiary objections raised by petitioners to the testimony, on behalf of respondent, of Robert Nixon.

Fraud



While I agree with the majority's disposition of the issue of fraud and would dismiss the petitions for cancellation as to such claim, it nevertheless strikes me as a bit peculiar--at least at first blush--that the duty of disclosure required of an applicant for registration extends only to informing the Patent and Trademark Office ("PTO") of any equal or superior proprietary rights which the applicant knows, or reasonably should know, are possessed by one or more third parties in the matter sought to be registered. In particular, there appears to be no obligation to disclose any generic usages of an asserted mark by third parties of which the applicant is aware. Such a usage, like an equal or superior proprietary right of another, would usually suffice to defeat an applicant's attempt to obtain a registration since, in the case of an application based upon use in commerce, the applicant would not be the "owner" of the matter sought to be registered, as required by Section 1(a) of the Trademark Act, and in the instance of an intent-to-use application, the applicant would lack "a bona fide intention, under circumstances showing the good faith of such person," as mandated by Section 1(b) of the statute.

The apparent dichotomy with respect to what is necessary for an applicant to disclose when seeking a registration would seem to be explained, however, by the interpretation which has been placed upon the statutorily prescribed oath. [FN1] As pointed out in *Kelly Services Inc. v. Greene's Temporaries Inc.*, 25 USPQ2d 1460, 1463 (TTAB 1992) (emphasis in original; citations omitted):

[There has not been] cited any decision which holds that fraud may be found where the ownership [or the exclusive right to use] statement is made by an applicant with knowledge of another's right to use the applied for mark in a descriptive sense, in an ornamental manner, or in any way that would be protected from the threat of litigation as a fair use.

Registration of a word or design carries with it only the presumption of an exclusive right to use the same as a mark. It has been clearly held, in many cases, that registration of a word by one party does not preclude others from making descriptive or non-trademark uses of the word..... In view thereof, the statutorily prescribed application statement regarding ownership [or the right to exclusive use] of a word or design constitutes a claim only of the exclusive right to use the same as a mark.....

Thus, even if respondent, at the time the underlying application for its registration was executed, knew that the designation "SEVENTH-DAY ADVENTIST," as alleged by petitioners, "was used jointly by separate congregational Seventh-day Adventist churches as a general classification of religious beliefs," such knowledge of generic use and the failure to disclose it to the PTO would not constitute fraud.

## Genericness

**\*20** Turning to the issue of genericness, I disagree with the majority that petitioners have failed to meet their burden of showing, by a preponderance of the evidence, that the designation "SEVENTH-DAY ADVENTIST" is a generic term for religious observances, missionary services and publications of the kinds offered by respondent. While, as the majority points out, there seemingly are no prior published Board decisions concerning the genericness of names of religions, other tribunals have faced the type of question posed by this case. Although only one reported case includes a request for cancellation of a registration of a mark asserted to be the generic name of a religious group, [FN2] the litigation context in which the genericness issue arises should have no bearing upon the proper standard for establishing genericness and, hence, whether the terminology in question is generic. The fact that proceedings raising a claim of genericness have generally been infringement actions brought by a mother church to enjoin a splinter church or group from using a name asserted to be confusingly similar to that of the mother church, rather than suits by the splinter church or group to cancel

a registration for a mark owned by the mother church, affects only the issue of which party bears the burden of proof (i.e., the ultimate burden of persuasion) that a designation is generic, but it otherwise should make no difference in the result. That is, whether genericness is raised by the splinter church or group as an affirmative defense to a suit by the mother church for injunctive relief or is instead asserted by the splinter church or group in either a declaratory judgment action against the mother church or in a petition for cancellation of the registration of the name used by the mother church, the same test for genericness should be involved [FN3] and must be satisfied in order for the party claiming that the name is generic for religious activities and/or publications pertaining thereto to prevail.

Petitioners, as the majority correctly points out, bear the burden of proving by a preponderance of the evidence that the designation "SEVENTH-DAY ADVENTIST" is in fact a generic term for the religious observances, missionary services and religious publications set forth in respondent's registration. Moreover, in light of the provisions of Section 7(b) of the Trademark Act, the registration, which issued on the Principal Register, is presumed valid and, as noted by the majority, such validity includes a presumption that the subject matter thereof is not generic in relation to the goods or services listed in the registration. [FN4] Although the majority, citing *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed.Cir.1986), also states that "[a] term is generic if it names the class of the goods or services to which it is applied," the majority expresses some uneasiness with a straightforward application of genericness principles to terminology employed in a religious context. In particular, the majority seizes upon dicta in several cases which found religious designations to be generic to speculate that the results therein would have been different "had the parties' roles been reversed and cancellation of a registered mark had been sought." I doubt, however, that in the specific cases mentioned by the majority, a difference in which party has the burden of proving genericness and/or the statutory presumption of validity attached to the presence of a Principal Register registration would change the results with respect to the particular names actually in issue, given the facts established at trial and the reasoning expressed by the courts.

**\*21** Nevertheless, notwithstanding the majority's discomfort in applying traditional trademark law principles to a case such as this one, and while the reported decisions dealing with conflicts over religious designations and/or church names plainly contain overtones reflecting First Amendment concerns with the free exercise of a religion, it seems to me that, when dealing with names or other designations used by religious institutions and/or adherents to a religion, the proper standard for evaluating whether the terminology in question is generic for certain goods or services should be the same test as that which is utilized in commercial settings. Specifically, as noted by the Board in *In re Leatherman Tool Group Inc.*, 32 USPQ2d 1443, 1449 (TTAB 1994):

The test for determining whether a designation is generic, as applied to the goods [or services] set forth in an application or registration, turns upon how the term is perceived by the relevant public. See *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552-53 (Fed.Cir.1991) and cases cited therein at 1553. Such perception is the primary consideration in a determination of genericness. See *Loglan Institute Inc. v. Logical Language Group Inc.*, 962 F.2d 1038, 22 USPQ2d 1531, 1532 (Fed.Cir.1992). As Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), makes clear, "[a] ... mark shall not be deemed to be the generic name of goods [or services] solely because such mark is also used as a name to identify a unique product [or service]"; instead, "[t]he primary significance of the ... mark to the relevant public rather than purchaser motivation shall be the test for determining whether the ... mark [is or] has become the generic name of the goods [or service] on or in connection with which it has been used." Consequently, if the designation sought to be registered is understood by the relevant public primarily to refer to the class or genus of goods at issue, the term is generic. See *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, supra. Evidence of the relevant public's

understanding of a term may be obtained from any competent source, including newspapers, magazines, dictionaries, catalogs and other publications. See *In re Northland Aluminum Products, Inc.*, 777 F.2d 1566, 227 USPQ 961, 963 (Fed.Cir.1985).

Applying the above test, I agree with petitioners that, upon consideration of the entire record, the designation "SEVENTH-DAY ADVENTIST" is a generic term for respondent's religious publications, observances and missionary services. The evidence indicates that the primary significance of such designation to the relevant public is to name adjectivally a particular class or category of religious beliefs which, taken together, constitute the religion known nominatively as Seventh-Day Adventism. [FN5]

**\*22** As a starting point for analysis of the factual record, this case is analogous in significant respects to the situation in *Loglan Institute Inc. v. Logical Language Group Inc.*, 962 F.2d 1038, 22 USPQ2d 1531 (Fed.Cir.1992). Our principal reviewing court in that case upheld the Board's holding, in a cancellation proceeding, that the term "LOGLAN," which was registered for goods identified as "dictionaries and grammars," was generic. Specifically, as noted by the court, the Board ordered cancellation of the registration "on the ground that Loglan 'is a generic designation identifying a language rather than a trademark to indicate the source of the goods.' " 22 USPQ2d at 1532. In reviewing the Board's holding, the court stated that:

The parties do not dispute that if Loglan is used generically to designate a language, the term cannot be registered as a trademark for "dictionaries and grammars" any more than English can be registered for a dictionary. That Loglan is not as well known as English is immaterial. Because a language is not "goods" or "services" under the Act, 15 U.S.C. § 1127 ..., a name originated for a new language is inherently not registrable for the language. By the same token, a generic name of a language alone cannot function as a trademark to indicate origin of a dictionary describing that language. Thus, our determination hinges on whether the Board was correct in concluding that the term Loglan is, "a generic designation identifying a language."

*Id.* Similarly, since a religion itself is neither "goods" nor "services" within the statutory framework of the Lanham Act, a name originated for a new religion, including the adjectival form thereof, is inherently unregistrable for the religion inasmuch as it cannot function either as a trademark for publications pertaining to the religion or as a service mark for religious observances and missionary services based upon the religion. The preponderance of the evidence in this case shows that "Seventh-Day Adventism" is the name for a new religion which was in existence by no later than 1850 and was formally organized as early as the 1860s. The adjectival form of such name, "SEVENTH-DAY ADVENTIST," is thus a generic designation for religious publications, observances and missionary services grounded on the doctrines that form the basis of Seventh-Day Adventism.

#### Issue Preclusion

Preliminarily, as noted by the majority, there is the issue of whether the finding, in a prior civil action involving respondent, that the words "Seventh-Day Adventist" are generic and not entitled to trademark protection constitutes issue preclusion (collateral estoppel) in these proceedings. Respondent, as the plaintiff in Case No. CV 87-8113 MRP, sought injunctive and monetary relief in the U.S. District Court for the Central District of California against Seventh-day

Adventist Kinship, International, Inc. ("Kinship"), which the district court described as "a mutual support group for gay and lesbian Seventh-day Adventists," on account of "Kinship's use of the name 'Seventh-day Adventist' and its acronym 'SDA.'" (Slip op. at 1.) Among other claims, respondent asserted that Kinship's use of the name "Seventh-day Adventist" constituted trademark infringement of its federally registered mark "SEVENTH-DAY ADVENTIST," which is the subject of the registration involved herein. Kinship, while claiming that there was no likelihood of confusion, raised and lost on the defenses of fair use, laches and unclean hands (since each was found to be inapplicable), but prevailed on its affirmative defense that the designation "SEVENTH-DAY ADVENTIST" is generic because it refers to the name of a religion.

**\*23** In particular, the district court, properly stating that the relevant test for genericness under Section 14(3) of the Trademark Act "is what the 'primary significance of the registered trademark [is] to the relevant public' " and correctly noting that such test "was adopted by statute as part of the Trademark Clarification Act of 1984" (slip op. at 12), made the following findings of fact: [FN6]

The parties stipulated that the basic tenets of the religion practiced by the Seventh-day Adventist Church were established by 1850, and that no formal organizational structure was established until 1860. The name "Seventh-day Adventist" was officially adopted by the Battle Creek Conference in 1860. Prior to that time, Seventh-day Adventists were known by a variety of names.... But the name "Seventh-day Adventist" was clearly in use prior to its adoption at the Battle Creek Conference.... The Court finds, therefore, that Seventh-day Adventism, the religion, pre-existed the Seventh-day Adventist Church.

....

This Court is persuaded that the term "Seventh-day Adventist" has a dual meaning: it refers not only to the Church, but to adherents of the religion of Seventh-day Adventism. The American Heritage Dictionary of the English Language (1969) defines "Seventh-day Adventist" as "[a] member of a sect of Adventism distinguished chiefly for its observance of the Sabbath on Saturday." Id. at 1186. Although not determinative, the Court finds it significant that the term "Seventh-day Adventist" appears in a standard American language dictionary. The use of the name "Seventh-day Adventist" by at least two breakaway churches, The Seventh-day Adventist Church, Reform Movement, and the Davidian Seventh-day Adventists Association, without opposition by the General Conference [Corporation of Seventh-day Adventists] also tends to support the view that the term "Seventh-day Adventist" has significance other than to indicate membership in the mother church. More importantly, there is no term that adequately describes an adherent to the religion of Seventh-day Adventism, other than "Seventh-day Adventist"; the only possible alternative would be "Adventist," and that term is too broad.

(Slip op. at 13-14.) The district court, in view thereof, further found that "Kinship is entitled to use the term 'Seventh-day Adventist' to identify the religion of the group's membership" and held that, "as used by ... Kinship, the terms 'Seventh-day Adventist,' and its acronym 'SDA' are generic, and are not entitled to trademark protection." (Slip op. at 15.)

The majority, in discussing the Board's February 26, 1992 denial of petitioners' motion for summary judgment, categorically states that, "lest there be any doubt on this point, we agree with the prior Board panel that issue preclusion does not apply here." [FN7] However, as pointed out in the prior panel's decision, it was respondent who requested, pursuant to Trademark Rule 2.117(a), [FN8] to suspend proceedings herein pending disposition of the civil action it had brought against Kinship because the question of whether its "SEVENTH-DAY ADVENTIST" mark is generic was also an issue in the civil action. Suspension was granted and petitioners, after the district court rendered its decision, moved for

summary judgment on the genericness claim. Respondent opposed the motion, contending (in a striking change of position) that the district court's finding the designation "Seventh-day Adventist" to be generic for a religion was not applicable to these proceedings.

**\*24** Although the prior panel agreed with respondent, reasoning that "[t]he decision of the District Court did not touch on the issue of whether 'Seventh-day Adventist' is generic for ... goods or services, and therefore we cannot accord that decision any collateral estoppel effect insofar as the present proceedings are concerned," [FN9] it seems to me that a compelling argument can be made that in holding "Seventh-day Adventist" to be a generic name for a religion, the district court essentially decided the genericness issue in these proceedings. Clearly, under the rationale expressed in Loglan, the holding that "Seventh-day Adventist" generically names the religion practiced by Kinship's members is tantamount to a finding that such designation is generic for the religious observances, missionary services and religious publications which form an integral part of the practice of Seventh-day Adventism. To state the obvious, the members of Kinship who attend "Seventh-day Adventist" religious observances, participate in "Seventh-day Adventist" missionary services, and/or read "Seventh-day Adventist" publications are not going to encounter in such activities any religion other than that of Seventh-day Adventism. Kinship's members, like other adherents to that particular religion, are practicing Seventh-day Adventists and the practice of such religion necessarily extends to religious observances, missionary services and publications customarily associated with the expression and free exercise of that religion. It thus would seem to be too fine a distinction in these circumstances to say that what was actually litigated in and decided by the district court was only the narrow issue of the genericness of a designation for a religion, particularly when all of the other requisite elements for application of issue preclusion [FN10] have unquestionably been satisfied. [FN11] At the very least, the district court's finding that "Seventh-day Adventist" is a generic name for a religion and is not entitled to trademark protection is strong evidence of the genericness of the designation "SEVENTH-DAY ADVENTIST" when used in connection with the religious publications, observances and missionary services set forth in respondent's involved registration.

#### Relevant Public

While, as the majority notes, the relevant public is not easy to define in these proceedings, I think that in embracing Dr. Smith's testimony, the majority too narrowly adopts the view that "the relevant public here comprises Christians and, more specifically, Adventist Christians (that is, those who believe in the nearness of the second coming of Christ)." Seventh-day Adventism, like most Protestant denominations, is a proselytizing religion. It seeks converts from all faiths and from anyone else who would be interested in its teachings about God and Jesus Christ. Consequently, while most of the persons who come into contact with respondent's religious observances, missionary services and religious publications will no doubt be members of respondent's parent entity, the General Conference of Seventh-day Adventists ("General Conference"), since it is by far the largest Adventist group, I think that the relevant public should be viewed as encompassing the general public and not just Christians or Adventist Christians. By so restricting its focus, I believe that the majority has been led astray since it is understandable that members of the General Conference would perhaps regard "SEVENTH-DAY ADVENTIST" as signifying religious materials and activities which emanate from their mother church.

#### Evidentiary Record and Testimonial Evidence

**\*25** As stated previously, the preponderance of the evidence herein establishes to my satisfaction that, to the relevant public, the primary significance of the designation "SEVENTH-DAY ADVENTIST" is that of a class or category of religious observances, missionary services and publications which are based upon the tenets of the Seventh-day Adventist religion. Petitioners' undisputed testimony reveals that they are Seventh-day Adventists; that is, they are adherents to the religion of Seventh-day Adventism. Both Mr. Perry and Ms. Stocker belong to churches which are constituents of the General Conference, although they are also members of The Rolling Hills Seventh-day Adventist Church of Mt. Dora, Florida, which significantly is not a constituent church of the General Conference. Moreover, as noted by the majority, petitioners "are involved in the Hartland Institute which, according to Mr. Perry, is 'an independent Seventh-day Adventist ministry,' and which uses 'Seventh-day Adventist' without the approval of either the General Conference or [respondent]." Likewise, as testified to by Ms. Stocker, "[a]ll Seventh-day Adventist independent ministries use the name Seventh-day Adventist more or less" even though she "know[s] of no independent ministry that has express written approval to use the name."

Similar testimony was presented by individuals belonging to other splinter groups or churches. Specifically, Mr. Adair of the General Association of Davidian Seventh-day Adventists described his group as "a separate religious association" which is "more like an independent ministry within the church." Mr. Hibbert of the Davidian Seventh-day Adventists indicated that such group is essentially a "layman's ministry" which "believe[s] and teach[es] all the fundamental doctrines of the Seventh-day Adventist Church," while Messrs. Burec and Sas belong to a group or church known as the Seventh Day Adventist Reform Movement.

The proper significance of such testimony lies in the fact that uses of the designation "SEVENTH-DAY ADVENTIST" in the names of ministries and other groups independent of the General Conference supports the view that such designation has a meaning to the relevant public other than merely indicating membership or affiliation with the mother church. Although the majority categorizes such usages as "de minimis" and maintains that "the testimony is revealing in that the deponents used 'Seventh-day Adventist' to identify the Mother Church to which they and others belong," the extent of such individual usages has minimal bearing where, as here, the critical fact is that the record shows that there are several other ministries and groups which, without objection from respondent, freely use the designation "SEVENTH-DAY ADVENTIST," in the very same manner as do respondent and the General Conference, as the generic name of the religion practiced by their members. In an analogous case, *Christian Science Board of Directors of the First Church of Christ, Scientist v. Evans*, 520 A.2d 1347, 1352, 2 USPQ2d 1093, 1096 (N.J.1987), the court majority, in concluding that the term "Christian Science Church" is generic for church services in which the Christian Science religion is practiced and that such term is thus not entitled to trademark protection, pointed out that (emphasis added):

**\*26** The fact that defendants seek here to use the name "Christian Science Church" now, after plaintiffs have used the phrase with little competition for a long period, makes no difference. Plaintiffs simply cannot appropriate, from the public domain, the common name of a religion and somehow gain an exclusive right to its use and the right to prevent others from using it. This principle is fundamental to the law of trademarks, the body of law under which plaintiffs seek relief.

Furthermore, while the majority herein quotes extensively from the "General Conference Working Policy" regarding the trademark guidelines established for respondent by the General Conference in the early 1980s, the record is devoid of any indication that such guidelines have been successfully enforced against any splinter churches, ministries or other groups which practice Seventh-day Adventism. Although the majority also relies heavily on the expert testimony presented by Dr. Smith as lending "credence to our view that the relevant public will perceive SEVENTH-DAY ADVENTIST as identifying a

source or origin of the religious publications and services in issue," Dr. Smith's factual assertions, [FN12] as opposed to his academic opinion on the issue of genericness, [FN13] at best demonstrate only that the relevant public primarily recognizes the General Conference (which apparently is unofficially known as the "Seventh-day Adventist Church") simply as the largest or principal sect of Seventh-day Adventists due to the fact that, for over one hundred years, it is practically the only group which has published materials and conducted church services based upon the doctrines which constitute the religion of Seventh-day Adventism.

The mere fact, however, that the General Conference is regarded by the relevant public as essentially being synonymous with the practice of Seventh-day Adventism in the United States does not mean that respondent necessarily possesses proprietary rights in the designation "SEVENTH-DAY ADVENTIST". As noted by the court majority in Evans:

Plaintiffs demonstrated before the trial court that the Christian Science church organization centered in Boston is referred to, by itself and by the public, as the "Christian Science Church." It is natural that this usage would develop. It is equally natural and likely that new churches in which Christian Science is practiced will be called, regardless of their corporate names or formal designations, "Christian Science Churches." This is because, as a matter of pure common sense, "Christian Science Churches" is a generic name for churches in which Christian Science is practiced.....

520 A.2d at 1352, 2 USPQ2d at 1096-97. By the same token, "SEVENTH-DAY ADVENTIST" has adequately been shown to be a generic name for respondent's religious publications, observances and missionary services since they each have as their subject matter the doctrines of Seventh-day Adventism. Any recognition or association by the general public of such goods and services with respondent (or, more likely, its parent entity, the General Conference) is, by longstanding authority, no more than a de facto secondary meaning, which in legal effect can neither confer nor maintain trademark or service mark rights in the designation "SEVENTH-DAY ADVENTIST". See, e.g., J. Kohnstam, Ltd. v. Louis Marx & Co., Inc., 280 F.2d 437, 126 USPQ 362, 364 (CCPA 1960); Schulmerich Electronics, Inc. v. J.C. Deagan, Inc., 202 F.2d 772, 97 USPQ 141, 145-46 (CCPA 1953); and Kellogg Co. v. National Biscuit Co., 385 U.S. 111, 39 USPQ 296, 299 (1938).

## Dictionary Evidence

**\*27** The representative dictionary excerpts quoted by the majority define the words "Seventh-day Adventist" as a member of a sect of, or a believer in, Adventism and define the term "Adventist" as one who belongs to, or believes in the doctrines expounded by, any of various denominations which emphasize that both the second coming of Christ and the end of the world are near at hand. Such evidence, contrary to the majority's viewpoint, is indicative of the genericness of the designation "SEVENTH-DAY ADVENTIST" since it shows that, to the relevant public, the primary significance of the designation is to connote an adherent to or sect follower of certain essential beliefs which make up the particular religion known solely as Seventh-day Adventism. [FN14] Interestingly, while the majority readily concedes that the dictionary evidence supports a finding that "the generic term for the religion is 'Adventist' or 'Adventism')," the record additionally and plainly discloses that, as applied to respondent's goods and services, such terminology is much too broad. The reason this is the case is that the core doctrines or basic tenets which comprise the religion of Seventh-day Adventism encompass not only beliefs in the imminent second coming of Christ and the nearness of the end of the world, which are beliefs common to any Adventist creed, but also include an essential belief in the seventh day of the week--Saturday--as the Sabbath. [FN15] The dictionary definitions, when considered in conjunction with what the record discloses are the fundamental elements of Seventh-day Adventism, clearly demonstrate that the sole designation which adequately describes adherents to and believers in that religion is "SEVENTH-DAY ADVENTIST". Thus, such designation is generic for publications, observances and missionary services pertaining to the religion of Seventh-day Adventism.

## Encyclopedia Evidence

The encyclopedia evidence likewise supports the above conclusion. In fact, the majority admits that "'Adventism,' as shown by the dictionary and encyclopedia evidence, is the name given to a core of beliefs, most significantly, a belief in the nearness of the second coming of Christ." While, in particular, the majority finds that the encyclopedia excerpts "identify Seventh-day Adventism as just one, albeit the largest and most significant by far, of the branches or denominations of Adventism," the record also clearly reveals that not all Adventists are Seventh-day Adventists. Nevertheless, the majority further finds that "the encyclopedia evidence supports our view that Adventist (or Adventism) is the generic name of the category of religion, while Seventh-day Adventist is a trademark/service mark identifying a specific origin or source of products and services within that category."

It is plain from the encyclopedia evidence, however, that Seventh-day Adventism is not just "one branch of Adventism," as the majority states. Merely because all Adventist groups share a core belief in the nearness of the second coming of Christ does not mean that "various differences over doctrinal interpretations of the nature of the millennium, the nature of man, the ministry of Christ, the return of the Jews, the Sabbath, and spiritual gifts," as the majority puts it, are insignificant or trivial. The various Adventist denominations, and their associated acts of worship, missionary ministries, and/or spiritual publications, are simply not fungible, given their doctrinal differences in basic emphasis. In consequence thereof, one Adventist creed is plainly not the same as, nor a substitute for or reasonable approximation of, another Adventist faith.

**\*28** Instead, as the encyclopedia and other evidence of record shows, it is the designation "SEVENTH-DAY ADVENTIST" which is the only terminology which names the particular religion practiced by the largest and best known group of Adventists. [FN16] No other alternative name in fact exists. It is impossible, therefore, to describe or otherwise talk about such religion without using, as the generic term therefor, the designation "SEVENTH-DAY ADVENTIST". See *Primal Feeling Center of New England, Inc. v. Janov*, 201 USPQ 44, 50 (TTAB 1978) [[phrase "PRIMAL THERAPY," registered for "psychotherapeutic services," held generic], cited in *Evans*, 52??Missing Text?? A.2d at 1352 and 2 USPQ2d at 1096. "Adventist," while clearly a generic term, is an overbroad and hence insufficient generic description for the specific set of beliefs constituting the religion practiced not only by certain church congregations affiliated with the General Conference and respondent, but also by petitioners and others independently of the General Conference and respondent.

Accordingly, because no designation other than "SEVENTH-DAY ADVENTIST" adequately describes the particular religion which forms the subject matter of the publications, observances and missionary services involved herein, and because petitioners, as adherents to that religion, share the right to so refer to their religion, respondent cannot be permitted--despite the large size and attendant influence of the General Conference--to maintain a registration for the name by which the religion is known generically to the relevant public. Stated otherwise, the designation "SEVENTH-DAY ADVENTIST" primarily signifies a category, class or "branch" of religious publications, observances and missionary services; it does not identify and distinguish their source.



## Remaining Evidence

The excerpts from other printed publications, along with representative samples of respondent's various books, periodicals, bulletins and other literature, all contain references in which the designation "SEVENTH-DAY ADVENTIST" is used to identify the religion practiced by congregations affiliated with the General Conference and respondent. While the majority finds such evidence to be "replete with uses of 'Seventh-day Adventist' to identify the Mother Church, that is, the Seventh-day Adventist Church administered by the General Conference," and it indeed is the case that the phrase "Seventh-day Adventist Church" is often used as an unofficial designation for the particular religious denomination governed by the General Conference, it is also clear that the words "Seventh-day Adventist" primarily signify the religion practiced by members of the mother church and are so understood by the relevant public.

Such evidence, concededly, is by no means definitive. The difficulty it presents arises from the fact that recommended trademark and service mark usage typically dictates that a mark should be used in the manner of an adjective and that it should be capitalized or otherwise set apart from a generic term for particular goods and services. Such usage, however, is of limited practical assistance in these proceedings. This is due to the fact that in the English language, the names of religions are treated as proper nouns and adjectives rather than as common nouns and adjectives. Hence, in accordance with standard English usage, the names of religions and their adjectival forms are always capitalized. Consequently, when used in the phrase "Seventh-day Adventist Church," the words "Seventh-day Adventist" may appear to some to have the look and feel of a mark, but they actually function to designate the religion associated with the principal governing organization of that particular religion.

**\*29** The third-party registrations offered by respondent are also of limited evidentiary value. Nevertheless, they are interesting to the extent that they show that at least some religious organizations have acknowledged, by virtue of disclaimers, that as applied to missionary services and/or publications, they possess no proprietary rights in the name of the religion (e.g., "Presbyterian") practiced by their members because, to their adherents and members of the general public alike, such name is a generic term. In addition, the survey evidence presented by respondent, while by no means dispositive, tends to indicate that the general public is familiar with the name "Seventh-day Adventists" as chiefly denoting adherents to, or those who belong to a church or group which practices, a particular religion which observes Saturday as their Sabbath. Such evidence is consistent with the view that the designation "SEVENTH-DAY ADVENTIST" primarily signifies the name of a religion to the relevant public.

## Trademark Clarification Act of 1984

As a final consideration, a brief discussion is in order of the Trademark Clarification Act of 1984, Pub.L. 98-??Missing Text?? (98 Stat. 3335), which among other things amended, in pertinent part, former Section 14(c) of the Trademark Act of 1946 to provide, as set forth in 15 U.S.C. § 1064(3), that:

A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

The majority, except for a passing reference (in footnote 10) to "the hearings on the 1984 amendments to the Act," never mentions the Trademark Clarification Act of 1984. Instead, the majority quotes certain language pertaining thereto, as set forth in *In re Montrachet S.A.*, 878 F.2d 375, 11 USPQ2d 1393, 1395 (Fed.Cir.1989), [FN17] apparently to support the proposition that the "single source" or uniqueness of respondent's goods and services [FN18] justifies the continued registration of the designation "SEVENTH-DAY ADVENTIST". Such reliance, however, is misplaced for several reasons, starting with the fact that these proceedings do not involve a situation where what originally was unquestionably a valid mark at the time of its registration later becomes generic through improper usage.

By way of background, it should be noted in this regard that, while having its impetus as a private bill which was designed to resurrect the trademark status of the designation "MONOPOLY" as applied to a real estate board game, the broader purpose behind the Trademark Clarification Act of 1984 was to reject purchaser motivation as the test for genericness. Instead, as accurately pointed out by the court majority in *Evans*:

**\*30** The [statutory] amendments addressed the problem of "dual-function" marks--marks that may serve to identify both a product and its source..... It is clear that the Lanham Act was amended in response to the Ninth Circuit decision in *Anti-Monopoly, Inc. v. General Mills Fun Group*, 611 F.2d 296, 305 [204 USPQ 978, 985] (1979), after remand, 684 F.2d 1316 [216 USPQ 588] (1982), cert. denied sub nom. *CPG Products Corp. v. Anti-Monopoly, Inc.*, 459 U.S. 1227 ..., reh'g denied, 460 U.S. 1104 ... (1983).

In *Anti-Monopoly* the court held that the registered trademark "Monopoly" had become the generic name for real estate board games. In reaching that conclusion the court deviated from the previously well-recognized test that focused on the primary significance of the term to the consuming public, and adopted instead a "motivation" test ... which looked essentially to the reasons the consumer bought the product. Based on that test and because "Monopoly" served to identify the product--a real estate board game--the court held that "Monopoly" had lost its trademark status, i.e., it had become generic.

The *Anti-Monopoly* decision created an uproar among commentators and practitioners..... Congress responded by amending the Lanham Act to make clear that trademarks and service marks may distinguish unique products and products whose source is unknown.... The legislation also provided that registered marks will not be deemed to have become common descriptive (generic) names of goods or services solely because they are also used to identify a unique product or service..... Congress rejected the Ninth Circuit approach out of hand and restored the "primary significance" test. Significantly, Congress emphasized that the amending legislation was designed to clarify the test for determining whether a registered mark has become the common descriptive name of an article or service--that is, has become generic.....

520 A.2d at 1354-55, 2 USPQ2d at 1098-99. It is especially important to note that the court majority in *Evans* went on to point out that (emphasis added):

The amendments were not intended to change existing trademark law. Among the many doctrines left securely in place was the basic principle that no producer may usurp a generic term..... The legislation recognized that there are two types of generic words or terms: those that are inherently generic, and those that originated as trademarks but through usage suffered the loss of their distinctive sense, characteristic, or meaning..... The Lanham Act amendments dealt only with the latter.

520 A.2d at 1355, 2 USPQ2d at 1099.

It is clear from the record that the designation "SEVENTH-DAY ADVENTIST" falls in the former category instead of the latter. Specifically, as mentioned earlier, the record shows that by no later than 1850, "Seventh-day Adventism" was established as the name of a new religion which was formally organized by the 1860s. Although the early adherents thereto were known by several different names, including "Seventh-day Adventists," it is plain that such name was in use to refer to followers of Seventh-day Adventism prior to the formal organization of the religion in the form of its governing administrative body, the General Conference. Thus, because the Seventh-day Adventist religion pre-existed the formation of the Seventh-day Adventist Church (as the General Conference is often informally referred to), it is clear that these proceedings involve a designation which was inherently generic rather than one which initially was a valid mark. [FN19] This clearly is not a situation of a once valid mark which, through third-party or other usage, has become a generic term for the goods and/or services it formerly identified and distinguished as to source.

**\*31** Instead, where, as here, the primary significance of the registered term names a particular religion, the term is generic for the publications, observances and missionary services customarily associated with the expression of that religion. Accordingly, notwithstanding any de facto secondary meaning, such term is not entitled to remain registered. Although it is undeniable that the publications and religious services emanating from a specific denomination, such as the General Conference, are unique and distinguishable from those of other denominations, the reason therefor is that each religious denomination, while often sharing some of the same basic beliefs as other groups, fundamentally has its own irreducible set of principles, tenets or precepts which collectively make the religion it offers one of a kind. Thus, when a particular church publishes books and renders services with recognizable characteristics of the religion guiding the church, that does not convert the name of the religion into a designation of source for the church's publications and religious activities. The name of the religion, as applied to publications and religious services based upon the religion, remains a generic designation which all adherents thereto, as well as other members of the general public, are free to use to describe the religion. Such name is simply not the property of the largest organized group of practitioners of the religion, even if the general public, due to the happenstance that the largest group usually is the most prominent or best known, associates that group with the religion.

Lastly, to the extent that the designation "SEVENTH-DAY ADVENTIST" may arguably be said to have a dual function or meaning, such duality lies, as the court in *Kinship* found and the record herein supports, in the fact that "it refers not only to the [Mother] Church, but to adherents of the religion of Seventh-day Adventism." (Slip op. at 14.) The record, as stated previously in this opinion, shows that the designation "SEVENTH-DAY ADVENTIST" has significance other than to indicate membership or affiliation with the largest group of practitioners of a particular religion. Indeed, the record establishes that the primary significance of such term is to designate generically the particular religion practiced by all adherents to the faith known as Seventh-day Adventism, and not just those who exclusively belong to or attend churches affiliated with the General Conference.

Conclusion

Petitioners have proven, by a preponderance of the evidence, that the situation herein involves an improperly issued registration for a designation which clearly, from virtually the time of its inception and for more than a century before its registration by respondent, has been a generic term. In particular, the findings of the district court in the Kinship case, together with the testimony, dictionary definitions, encyclopedia articles and various other publications of record, establish that the designation "SEVENTH-DAY ADVENTIST" primarily signifies a category or class of religion. As such, under the authority of the Loglan and Evans cases, it is generic for the kinds of publications, observances and/or missionary services which are customarily associated with the expression or practice of that religion, including those provided by respondent and the General Conference. In fact, the record demonstrates that the designation "SEVENTH-DAY ADVENTIST" has been used in the names of other groups and ministries which practice the religion of Seventh-day Adventism independently of, and without successful objection by, respondent and the General Conference. More importantly, the record shows that no alternative name exists which adequately describes an adherent to, or any of various publications, observances and missionary services based upon, the core teachings and beliefs which collectively constitute the religion of Seventh-day Adventism. By contrast, the term "Adventist," which the majority readily concedes is generic for respondent's goods and services, is shown by the record to be too broad.

**\*32** Furthermore, the concerns which led to enactment of the Trademark Clarification Act of 1984 are simply not present in these proceedings. The Act was not intended to change existing trademark law and the concepts governing genericness, other than to reject the purchaser motivation test formulated by the Ninth Circuit in the Anti-Monopoly case and thereby make uniform the longstanding rule that the primary significance of a term to the relevant public is the proper standard for determining whether a term is generic. Instead, the Act was designed to deal with situations where a term, although plainly a trademark or service mark at its inception and/or when it was registered, is alleged to have become generic through use in connection with unique (that is, one of a kind) products or services emanating from a single source.

Here, the record satisfactorily demonstrates that the designation "SEVENTH-DAY ADVENTIST" was a generic term, describing a unique set of basic religious beliefs, prior to its adoption and use by the General Conference and long before its registration by respondent. Moreover, merely because the relevant public happens in certain contexts to associate such designation with the General Conference, due to its being by far the largest and most significant group of those practicing the religion of Seventh-day Adventism, does not mean that the sole name by which the particular religion is known to the relevant public also becomes a source indicator for publications and services which, while emanating from the General Conference and/or respondent, are based upon or have as their subject matter the core doctrines that comprise the religion. For the majority to conclude otherwise is to ignore the fact that it is the specific religious content of respondent's publications, observances and missionary services which makes them unique. There is simply nothing, however, which is unique about religious publications, observances and missionary services in general since such goods and services are common to all Protestant religions. It is only the particular religion itself that differentiates such goods and services. Like other names of familiar religious denominations which have been recognized or considered to be generic, such as "Christian Science" in Evans and both "Methodist" and "Episcopal" in Purcell v. Summers, 145 F.2d 979, 988 (4th Cir.1944), the designation "SEVENTH-DAY ADVENTIST" primarily signifies the name of a religion to the relevant public. It is therefore a generic term for respondent's goods and services inasmuch as it primarily signifies a category or class of publications, observances and missionary services which have such religion as their subject matter.

Accordingly, because petitioners have met their burden of proof, I would grant the petitions for cancellation on the ground that the designation "SEVENTH-DAY ADVENTIST" is generic for respondent's religious publications, religious observances and missionary services.

FN1. Sections 1(a)(1)(A) and 1(b)(1)(A), besides respectively requiring, among other things, that an application contain a verified statement that the declarant believes that the applicant is the owner of the mark sought to be registered or is entitled to use such mark in commerce, require in each case a verified statement in the application that the person making the verification believes that "no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person cause confusion, or to cause mistake, or to deceive".

FN2. See *Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 59 F.3d 902, 35 USPQ2d 1342, 1344-45 (9th Cir.1995). In this regard, Section 37 of the Trademark Act empowers a federal court as follows (emphasis added):

In any action involving a registered mark the court may determine the right to registration, order the cancellation of registrations, in whole or in part, restore cancelled registrations, and otherwise rectify the register with respect to the registrations of any party to the action.....

FN3. The test, of course, should be applied with the same degree of sensitivity and circumspection to religious designations as is the case with a genericness determination in any other context, such as names for commercial products and services.

FN4. The evidentiary presumption that a registration is valid is, however, a prima facie one and thus may be rebutted by evidence from the party seeking cancellation. See, e.g., *Dan Robins & Assoc., Inc. v. Questor Corp.*, 599 F.2d 109, 202 USPQ 100, 105 (CCPA 1979).

FN5. Counsel for respondent candidly and admirably conceded at the oral hearing in this case that trademark law recognizes the existence of generic adjectives and prohibits their registration, just as it more commonly deals with generic nouns and likewise precludes registration thereof. See, e.g., *In re Pennzoil Products Co.*, 20 USQP2d 1753, 1758-60 (TTAB 1991) ["MULTI-VIS" is generic for multiple viscosity motor oil] and *Miller Brewing Co. v. G. Heileman Brewing Co., Inc.*, 561 F.2d 75, 195 USPQ 281, 285 (7th Cir.1977), cert. denied, 434 U.S. 1025, 196 USPQ 592 ["The fact that 'light' is an adjective does not preclude it from being a generic or common descriptive word" as applied to beer]. Interestingly, while respondent's counsel ventured that there probably are even such things as generic adverbs, the point is simply that for purposes herein, if the nominative term "SEVENTH-DAY ADVENTISM" is generic for a religion, then its adjectival form "SEVENTH-DAY ADVENTIST" is a fortiori generic, not only for the religion but also, in my view, for goods and/or services which are based upon, pertain to or otherwise have such religion as their subject matter.

FN6. As is plain from the district court's opinion, references therein to the "Seventh-day Adventist Church" mean the General Conference of Seventh-day Adventists, which is the same entity (and parent of respondent) which the majority herein refers to as the "General Conference" or "Mother Church". The district court, by way of background, also noted the following facts:

Seventh-day Adventism had its origins in the early Nineteenth Century prophecies of William Miller. Miller lectured in small towns in New York and New England, teaching that the Second Advent of Christ was imminent, that it would be a literal, visible event, and predicting that it would occur sometime between March 21, 1843 and March 21, 1844. An interchurch revival movement developed, drawing members from existing churches of various demoninations. The movement spread throughout the northeast and midwest and, by about 1840, had developed a following in larger cities of the United States. Its adherents were referred to as "Adventists" because of their belief that the Second Advent was imminent.

When Miller's prediction failed to come true, the Millerites experienced their first disappointment. Samuel Snow, a follower of Miller, began then to spread the word that Christ would come ... on October 22, 1844..... When October 22, 1844 passed uneventfully, the "Seventh Month" movement (as Snow's followers had come to be known) endured its "Great Disappointment" and the movement lost many adherents.

But some, including ... James and Ellen White, ... who became key figures in the early Seventh-day Adventist Church, remained faithful and searched for an explanation of the failed prophecy..... They believed that the Second Coming was still imminent, although most abandoned efforts to predict the date.

By 1850, although there were still differences in interpretation, the essential doctrines of what was to become known as Seventh-day Adventism had been established: 1) the Bible alone as the rule of faith and practice; 2) the Old Testament law as binding and immutable, including the Seventh-day Sabbath; 3) the imminent second coming of Christ; 4) the immortality of the soul; and 5) the doctrine of sanctuary. The first congregation of practicing Seventh-day Adventists was formed in Washington, New Hampshire in May of 1845, although there is no persuasive evidence that they called themselves that at the time.....

No formal organizational structure was established until 1860. This was in part due to the fact that the belief in the immediacy of Christ's coming made long range institutional planning seem unnecessary. Moreover, some Adventists continued to set dates for Christ's coming in 1845, 1846, 1849, and the 1850s. In September 1860, James White called a conference in Battle Creek, Michigan. The delegates at the conference selected the name "Seventh-Day Adventist" from among several by which they had come to be known. In October 1861, the Michigan Conference of Seventh-day Adventists was formed. Shortly thereafter, several other state conferences were formed.

The General Conference of Seventh-day Adventists was formed in May of 1863, marking the official organization of the Seventh-day Adventist Church. Since that time, the names "Seventh-day Adventist" and "SDA" have been used by the Seventh-day Adventist Church as the church name, and thereafter as its trade name in advertising and publishing.....

(Slip op. at 3-5.)

FN7. While no one on the present panel also served on the panel for the prior Board decision, it should be noted that because a decision denying summary judgment is interlocutory in nature, this panel is not bound by the doctrine of the law of the case to adhere automatically to the prior decision, especially when it involves an issue of first impression before the Board. As noted in 1B J. Moore, J. Lucas & T. Currier, Moore's Federal Practice ¶10.404[1] (2d ed. 1984) (footnotes omitted)

At the trial level, the doctrine of the law of the case is little more than a management practice to permit logical progression toward judgment. Prejudgment orders remain interlocutory and can be reconsidered at any time, but efficient disposition of the case demands that each stage of the litigation build on the last, and not afford an opportunity to reargue every previous ruling. In the end, however, the doctrine of the law of the case does not require or encourage a trial court to render a judgment erroneous in law.

Although the majority is correct that petitioners did not timely request reconsideration, pursuant to Trademark Rule 2.127(b), of the Board's denial of summary judgment, and did not specifically ask that this panel revisit such ruling at final hearing, petitioners' counsel at oral argument relied upon the Kinship case as supporting petitioners' position both factually as well as legally. Given the novelty of the genericness issue presented herein, the Board in this rare instance may properly exercise its discretion and reconsider the denial of summary judgment. The majority, despite "see[ing] no reason to do so now sua sponte," has in effect done just that by its unequivocal pronouncement that the Board's prior ruling was correct. Accordingly, I see no reason not to offer my thoughts on the question of issue preclusion.

FN8. Such rule provides that "[w]henver it shall come to the attention of the ... Board that parties to a pending case are engaged in a civil action which may be dispositive of the case, proceedings before the Board may be suspended until termination of the civil action."

FN9. It should be noted in any event that there is nothing which indicates that the judgment of the district court was on appeal or otherwise was not final, a factor which would prevent application of collateral estoppel.

FN10. See, e.g., *Mother's Restaurant Inc. v. Mama's Pizza, Inc.*, 723 F.2d 1566, 221 USPQ 394, 397 (Fed.Cir.1983), which lists the following as essential requirements for the application of issue preclusion:

(1) the issues to be concluded are identical to those involved in the prior action; (2) in that action the issues were raised and "actually litigated"; (3) the determination of those issues in the prior action was necessary and essential to the resulting judgment; and (4) the party precluded ... was fully represented in the prior action.

FN11. Nevertheless, in light of *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1475-76 (Fed.Cir.1992), there seems to be some reluctance on the part of our principal reviewing court to uphold, on summary judgment, a finding by the Board of issue preclusion where the issue is genericness. However, in the event that an appeal of the majority's decision is taken, petitioners may, of course, elect to seek review of the Board's denial of their motion for summary judgment as part of their appeal.

FN12. While the majority, with respect to the various usages of "SEVENTH-DAY ADVENTIST" testified to by petitioners and other witnesses on their behalf, notes that "Dr. Smith acknowledged that there 'might have been some type of limited use' of 'Seventh-day Adventist' by the Seventh-day Adventist Reform Movement," his further comment, quoted by the majority,

that he "would expect that today any such limited use has become virtually nonexistent" is clearly speculative and does not detract from or otherwise lessen the weight to be accorded the testimony of Messrs. Burec and Sas regarding the Seventh Day Adventist Reform Movement. Similarly, Dr. Smith's testimony that he lacks personal knowledge concerning use of the designation "SEVENTH-DAY ADVENTIST" by such small groups as the Davidians and the Shepherd's Rod does not serve to undermine the testimony offered with respect thereto by witnesses for petitioners.

FN13. As stated by the Board in *Tanners' Council of America, Inc. v. Scott Paper Co.*, 185 USPQ 630, 637 (TTAB 1975):

[I]t is well established that the expressions of opinion by witnesses, including persons considered to be experts in a particular field on any question before the Board, is not binding upon the Board for "if such testimony were adopted without considering other aspects of the case, the effect would be to substitute the opinion of the witnesses for the ultimate decision to be reached by the Court and would therefore be improper." *The Quaker Oats Company v. St. Joe Processing Company, Inc.*, [232 F.2d 653,] 109 USPQ 390 at 391 (CCPA, 1956)....

Consequently, the views offered by respondent's expert witness on the issue of genericness, unlike his testimony as to factual matters within his area of expertise and personal knowledge, are essentially of no probative value in this case. See *Mennen Co. v. Yamanouchi Pharmaceutical Co., Ltd.*, 203 USPQ 302, 305 (TTAB 1979) at n. 4. In particular, there is nothing in this record to indicate that Dr. Smith is knowledgeable in trademark law or that he is otherwise familiar with and understands the appropriate application of the proper test for genericness. See *In re Pennzoil Products Co.*, supra at 1759. Thus, while the underlying factual basis for Dr. Smith's views is entitled to consideration, his opinion as to the "primary significance of the term Seventh-day Adventist to the relevant public" can scarcely be said to add credence to the result reached by the majority.

FN14. In this regard, judicial notice may properly be taken that *The Random House Dictionary of the English Language* (2d ed. 1987) lists "Adventist" at 29 as a noun denoting "a member of any of certain Christian denominations that maintain that the Second Advent of Christ is imminent" and as an adjective meaning "of or pertaining to Adventists." The same dictionary also defines "Seventh-Day" at 1753 as an adjective which means: "designating certain Christian denominations that make Saturday their chief day of rest and religious observance: Seventh-Day Adventists."

FN15. It is judicially noticed that, for instance, *The Random House Dictionary of the English Language* (2d ed. 1987) defines "Sabbath" at 1687 as, inter alia, a noun signifying "1. the seventh day of the week, Saturday, as the day of rest and religious observance among Jews and some Christians. Ex. 20:8-11. 2. the first day of the week, Sunday, similarly observed by most Christians in commemoration of the Resurrection of Christ. 3. any special day of prayer: rest resembling the Sabbath: Friday is the Muslim Sabbath. 4. (sometimes l.c.) a period of rest".

FN16. One of the problems presented herein is that, according to the record, the source for most Seventh-day Adventist publications and services is, as a practical matter, the General Conference. While other Seventh-day Adventist groups not affiliated therewith have ministries preaching such faith, the record discloses that, especially in the case of religious publications, the General Conference is and has been virtually the only publisher of books, magazines, newsletters and



other literature dealing with the Seventh-day Adventist creed. This virtual singleness of source, however, does not necessarily mean that the designation "SEVENTH-DAY ADVENTIST" functions as a source indicator. As pointed out in 2 J. McCarthy, McCarthy on Trademarks & Unfair Competition § 12.15[3] (3d ed. 1995) at 12-95:

During the single source period, it is difficult but possible to determine whether the name is generic or a mark. The prime question is: What does the public call this "thing"? If, to the public, the "thing" is named by the term that the seller intends as a trademark, then it is not a mark at all--it is generic. But if the public calls the "thing" by some name other than the mark, then the mark probably does function as a mark even though there is, temporarily, no one else on the market with the "thing"....

Such likewise would be true where there are or have been a few other minor sources since, in practical effect, unless those sources are or have had more than a de minimis exposure, the public essentially is aware of only a single source.

FN17. The court, in reversing the Board's finding that "MONTRACHET" was unregistrable as a generic name for cheese, was particularly careful to point out that:

It is undisputed that the term MONTRACHET originated as a designation of the source of appellant's goat cheese..... The issue is whether MONTRACHET has lost its original trademark significance; that is, whether MONTRACHET is now the ... generic name for appellant's cheese. If through usage MONTRACHET has become the ... generic name of the cheese, and is no longer an indication of source, it would no longer be entitled to trademark status, for generic names are incapable of indicating source.....

11 USPQ2d at 1394. Such case, however, is factually distinguishable from the circumstances presented by the current proceedings.

FN18. According to the majority, not only does the designation "SEVENTH-DAY ADVENTIST" function as a source indicator for such goods and services, but the mere fact "[t]hat a particular church publishes books and renders services with recognizable characteristics of the religion guiding the church does not convert the designation of source to a common or generic name."

FN19. While it should be acknowledged that Judge Pfaelzer stated in the Kinship case that "this Court would place less significance on that fact than the Evans court did" (slip op. at 13), finding instead that it was relevant "only insofar as it sheds light on the current primary significance of the term 'Seventh-day Adventist' " (slip op. at 13, 14). I concur with the approach of the court majority in Evans that it is meaningful that the concerns prompting the enactment of the Trademark Clarification Act of 1984 are simply not present in these proceedings. It was in this light that the court majority in Evans made the statement, relied upon by the majority herein, that "[p]laintiffs are not facing cancellation of a registered mark." 520 A.2d at 1355, 2 USPQ2d at 1099.

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# Adventism

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**Adventism** is a branch of Protestant Christianity<sup>[1]</sup> that believes in the imminent Second Coming (or "Second Advent") of Jesus Christ. It originated in the 1830s in the United States during the Second Great Awakening when Baptist preacher William Miller first publicly shared his belief that the Second Coming would occur at some point between 1843 and 1844. His followers became known as Millerites. After the Great Disappointment, the Millerite movement split up and was continued by a number of groups that held different doctrines from one another. These groups, stemming from a common Millerite ancestor, became known collectively as the Adventist movement.

Although the Adventist churches hold much in common, their theologies differ on whether the intermediate state of the dead is unconscious sleep or consciousness, whether the ultimate punishment of the wicked is annihilation or eternal torment, the nature of immortality, whether the wicked are resurrected after the millennium, and whether the sanctuary of Daniel 8 refers to the one in heaven or one on earth.<sup>[1]</sup> The movement has encouraged the examination of the whole Bible, leading Seventh-day Adventists and some smaller Adventist groups to observe the Sabbath. The General Conference of Seventh-day Adventists has compiled that church's core beliefs in the 28 Fundamental Beliefs (1980 and 2005), which use Biblical references as justification.

In 2010, Adventism claimed some 22 million believers scattered in various independent churches.<sup>[2]</sup> The largest church within the movement—the Seventh-day Adventist Church—had more than 19 million baptized members in 2015.<sup>[3][4]</sup>

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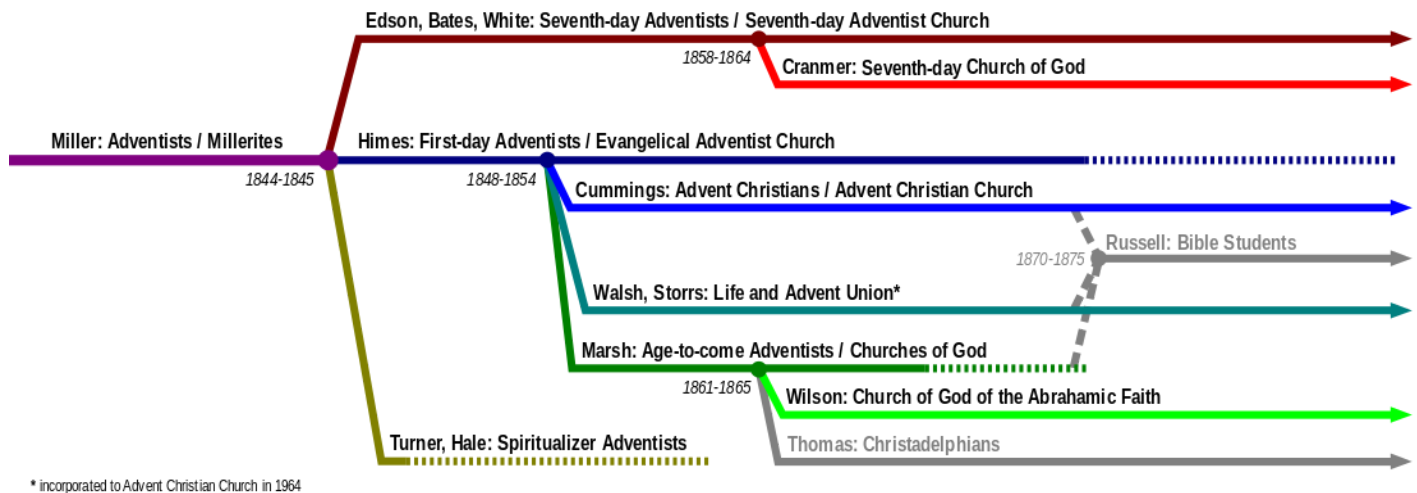
### References

## History

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Adventism began as an inter-denominational movement. Its most vocal leader was William Miller. Between 50,000 and 100,000 people in the United States supported Miller's predictions of Christ's return. After the "Great Disappointment" of October 22, 1844, many people in the movement gave up on Adventism. Of those remaining Adventist, the majority gave up believing in any prophetic (biblical) significance for the October 22 date, yet they remained expectant of the near Advent (second coming of Jesus).<sup>[1][5]</sup>

Of those who retained the October 22 date, many maintained that Jesus had come not literally but "spiritually", and consequently were known as "spiritualizers". A small minority held that something concrete had indeed happened on October 22, but that this event had been misinterpreted. This belief later emerged and crystallized with the Seventh-day Adventist Church, the largest remaining body today.<sup>[1][5]</sup>



The development of branches of Adventism in the 19th century.

### Albany Conference (1845)

The Albany Conference in 1845, attended by 61 delegates, was called to attempt to determine the future course and meaning of the Millerite movement. Following this meeting, the "Millerites" then became known as "Adventists" or "Second Adventists". However, the delegates disagreed on several theological points. Four groups emerged from the conference: The Evangelical Adventists, The Life and Advent Union, the Advent Christian Church, and the Seventh-day Adventist Church.

The largest group was organized as the American Millennial Association, a portion of which was later known as the Evangelical Adventist Church.<sup>[1]</sup> Unique among the Adventists, they believed in an eternal hell and consciousness in death. They declined in numbers, and by 1916 their name did not appear in the

United States Census of Religious Bodies. It has diminished to almost non-existence today. Their main publication was the *Advent Herald*,<sup>[6]</sup> of which Sylvester Bliss was the editor until his death in 1863. It was later called the *Messiah's Herald*.

The Life and Advent Union was founded by George Storrs in 1863. He had established *The Bible Examiner* in 1842. It merged with the Adventist Christian Church in 1964.

The Advent Christian Church officially formed in 1861 grew rapidly at first. It declined a little during the 20th century. The Advent Christians publish the four magazines *The Advent Christian Witness*, *Advent Christian News*, *Advent Christian Missions* and *Maranatha*. They also operate a liberal arts college at Aurora, Illinois; and a one-year Bible College in Lenox, Massachusetts, called Berkshire Institute for Christian Studies.<sup>[7]</sup> The Primitive Advent Christian Church later separated from a few congregations in West Virginia.

The Seventh-day Adventist Church officially formed in 1863. It believes in the sanctity of the seventh-day Sabbath as a holy day for worship. It publishes the *Adventist Review*, which evolved from several early church publications. Youth publications include *KidsView*, *Guide* and *Insight*. It has grown to a large worldwide denomination and has a significant network of medical and educational institutions.

Miller did not join any of the movements, and he spent the last few years of his life working for unity, before dying in 1849.

## Denominations

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The *Handbook of Denominations in the United States*, 12th ed., describes the following churches as "Adventist and Sabbatarian (Hebraic) Churches":

### Christadelphians

The Christadelphians were founded in 1844 by John Thomas and had an estimated 25,000 members in 170 ecclesias, or churches, in 2000 in America.

### Advent Christian Church

The **Advent Christian Church** was founded in 1860 and had 25,277 members in 302 churches in 2002 in America. It is a "first-day" body of Adventist Christians founded on the teachings of William Miller. It adopted the "conditional immortality" doctrine of Charles F. Hudson and George Storrs, who formed the "Advent Christian Association" in Salem, Massachusetts, in 1860.

### Primitive Advent Christian Church

The **Primitive Advent Christian Church** is a small group which separated from the Advent Christian Church. It differs from the parent body mainly on two points. Its members observe foot washing as a rite of the church, and they teach that reclaimed backsliders should be baptized (even though they had formerly been baptized). This is sometimes referred to as rebaptism.

### Seventh-day Adventist

The **Seventh-day Adventist Church**, founded in 1863, had over 19,500,000 baptized members (not counting children of members) worldwide as of June 2016.<sup>[8]</sup> It is best known for its teaching that Saturday, the seventh day of the week, is the Sabbath and is the appropriate day for worship. However, it is the second coming of Jesus Christ along with the Judgement day, based on the three angels message in Revelation 14:6–13, that is the main doctrine of SDA.

### **Seventh Day Adventist Reform Movement**

The **Seventh Day Adventist Reform Movement** is a small offshoot with an unknown number of members from the Seventh-day Adventist Church caused by disagreement over military service on the Sabbath day during World War I.

### **Davidian Seventh-day Adventist Association**

The **Davidians** (originally named **Shepherd's Rod**) is a small offshoot with an unknown number of members made up primarily of voluntarily disfellowshipped members of the Seventh-day Adventist Church. They were originally known as the Shepherd's Rod and are still sometimes referred to as such. The group derives its name from two books on Bible doctrine written by its founder, Victor Houteff, in 1929.

### **Branch Davidians**

The Branch Davidians were a split ("branch") from the Davidians.

A group that gathered around David Koresh (the so-called *Koreshians*) abandoned Davidian teachings and turned into a religious cult. Many of them were killed during the infamous Waco Siege of April 1993.

### **Church of God (Seventh Day)**

The **Church of God (Seventh-Day)** was founded in 1863 and it had an estimated 11,000 members in 185 churches in 1999 in America. Its founding members separated in 1858 from those Adventists associated with Ellen G. White who later organized themselves as Seventh-day Adventists in 1863. The Church of God (Seventh Day) split in 1933, creating two bodies: one headquartered in Salem, West Virginia, and known as the Church of God (7th day) – Salem Conference and the other one headquartered in Denver, Colorado and known as the General Conference of the Church of God (Seventh-Day). The Worldwide Church of God splintered from this.<sup>[9]</sup>

### **Church of God and Saints of Christ**

The **Church of God and Saints of Christ** was founded in 1896 and had an estimated 40,000 members in approximately 200 congregations in 1999 in America.

### **Church of God General Conference**

Many denominations known as "Church of God" have Adventist origins.

The **Church of God General Conference** was founded in 1921 and had 7,634 members in 162 churches in 2004 in America. It is an Adventist Christian body which is also known as the *Church of God of the Abrahamic Faith* and the *Church of God General Conference (Morrow, GA)*.

## Creation Seventh-Day Adventist

Creation Seventh Day Adventist Church

### United Seventh-Day Brethren

The **United Seventh-Day Brethren** is a small Sabbatarian Adventist body. In 1947, several individuals and two independent congregations within the Church of God Adventist movement formed the *United Seventh-Day Brethren*, seeking to increase fellowship and to combine their efforts in evangelism, publications, and other .

### Other minor Adventist groups

- **True and Free Adventists**, a Soviet Union offshoot
- At least two denominations and numerous individual churches with a charismatic or Pentecostal-type bent have been influenced by or were offshoots – see **charismatic Adventism** generally
- **United Sabbath-Day Adventist Church**, an African-American offshoot of the Seventh-day Adventist Church in New York City
- **Celestia**, a Christian communal town near Laporte in Sullivan County, Pennsylvania, founded by Millerite Peter E. Armstrong. It disintegrated before the end of the 19th century<sup>[10]</sup>

### Other relationships

The Bible Students movement founded by Charles Taze Russell had in its early development close connections with the Millerite movement and stalwarts of the Adventist faith, including George Storrs and Joseph Seiss. The various groupings of independent Bible Students has currently have a cumulative membership about less than 20,000 worldwide. Although both Jehovah's Witnesses and Bible Students do not categorize themselves as part of the Millerite Adventist movement (or other denominations, in general), some theologians do categorize the group and schisms as Millerite Adventist because of its teachings regarding an imminent Second Coming and use of specific dates. As of January 2014 there are approximately 8 million Jehovah's Witnesses worldwide.

## See also

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- Advent Christian Church
- Adventist and related churches
- List of Christian denominations#Millerites and comparable groups
- Seventh-day Adventist Church
- Other movements in Adventism
  - Great Disappointment
  - William Miller (preacher)
  - Millennialism
  - Millerites
  - Second Great Awakening

### General:

- Christian revival
- Christianity in the 19th century

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## External links

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- History of the Millerite Movement (<https://web.archive.org/web/20141019224444/http://washington.netadvent.org/history.html>), a reprint from the *Seventh-day Adventist Encyclopedia* 10:892–898, 1976.
- Graphical timeline of major Millerite groups (<https://web.archive.org/web/20130617184112/http://www.wcg.org/lit/aboutus/roots.htm>) from the Worldwide Church of God official website
- Seventh-day Adventist Beliefs (<http://www.albanyadventist.org/about/our-beliefs.html>), list of beliefs of the Seventh-day Adventist Church movement.

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