

ESTTA Tracking number: **ESTTA1069362**

Filing date: **07/20/2020**

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

Proceeding	92065178
Party	Plaintiff Philanthropist.com, Inc.
Correspondence Address	C ALEXANDER CHIULLI BARTON GILMAN LLP ONE FINANCIAL PLAZA, 18TH FLOOR PROVIDENCE, RI 02903 UNITED STATES Primary Email: achiulli@bglaw.com Secondary Email(s): uspto@bglaw.com 401-273-7171
Submission	Rebuttal Brief
Filer's Name	C. Alexander Chiulli
Filer's email	achiulli@bglaw.com, uspto@bglaw.com
Signature	/C. Alexander Chiulli/
Date	07/20/2020
Attachments	ADVENTIST-REPLY BRIEF-UPLOAD-FINAL-7.20.20 .pdf(616232 bytes )

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

---

Philanthropist.com, Inc., )  
 )  
                                   Petitioner, )  
 )  
v. )  
 )  
 )  
The General Conference Corporation )  
of Seventh-Day Adventists, )  
 )  
                                   Registrant. )

---

Cancellation No. 92065178 (Parent)  
Cancellation No. 92065255

**PETITIONER'S REPLY TRIAL BRIEF**

**TABLE OF CONTENTS**

I. INTRODUCTION.....4

II. ARGUMENT .....4

    a. GCCSDA misstates the law in pursuit of a more favorable, but erroneous, legal standard. ....4

    b. The record is replete with highly probative evidence of genericness.....7

    c. The record is replete with evidence that Petitioner has standing.....11

    d. GCCSDA manufactures baseless procedural arguments to avoid the merits.....15

    e. GCCSDA’s evidentiary objections fail and attempt to distract the Board from the merits.....17

III. CONCLUSION .....24

**TABLE OF AUTHORITIES**

**Cases**

*Apollo Med. Extr. Techs., Inc. v. Med. Extr. Techs., Inc.*, 123 U.S.P.Q.2d 1844 (T.T.A.B. 2017).....21

*Azteca v. Martin*, 128 U.S.P.Q.2d 1786 (T.T.A.B. 2018) ..... 12, 14

*B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 6 U.S.P.Q.2d 1719 (Fed. Cir. 1988).....20

*Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 116 U.S.P.Q.2d 1869 (Fed. Cir. 2015) .....21

*Christ. Science B.O.D. v. Doris Evans, et. al*, 520 A.2d 1347 (N.J. 1987) .....6

*Data Packaging Corp. v. Morning Star, Inc.*, 212 U.S.P.Q. 109 (T.T.A.B. 1981) .....21, 23

*Estate of Biro v. Bic Corp.*, 18 U.S.P.Q.2d 1382 (T.T.A.B. 1991) ..... 11

*GCCSDA v. McGill*, 624 F.Supp.2d 883 (W.D. Tenn. 2008).....9

*GCCSDA v. Perez*, 97 F.Supp.2d 1154 (S.D. Fla. 2000) .....9

*GCCSDA v. Seventh-day Adventist Kinship, Int., Inc.*, CV 87-8113 MRP (Slip Op. 1992). .....9

*Genesco Inc. v. Martz*, 66 U.S.P.Q.2d 1260 (T.T.A.B. 2003).....18

*Hunt Ctrl. Systems Inc. v. Koninkijke Philips Elecs.*, 98 U.S.P.Q.2d 1558 (T.T.A.B. 2011).....18, 19, 20, 21, 22

*Hunter Publ'g Co. v. Caulfield Publ'g Ltd.*, 1 U.S.P.Q.2d 1996 (T.T.A.B. 1986) .....22, 23

*In re Cordua Rest., Inc.*, 823 F.3d 594 (Fed. Cir. 2016). .....8

*In re Hikari Sales USA, Inc.*, 2019 WL 1453259 (T.T.A.B. 2019).....8

*In re Nordic Naturals, Inc.*, 755 F.3d 1340 (Fed. Cir. 2014) .....4

*In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 U.S.P.Q. 961 (Fed. Cir. 1985) .....8, 19

*L.C. Licensing Inc. v. Berman*, 86 U.S.P.Q.2d 1883 (T.T.A.B. 2008) .....18

*Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024 (C.C.P.A. 1982).....12, 13, 14

*Mercado-Salinas v. Bart Enterprises Int'l, Ltd.*, 747 F. Supp. 2d 275 (D.P.R. 2010).....19

*Miller Brewing Co. v. Falstaff Brewing Corp.*, 655 F.2d 5 (1st Cir. 1981).....5, 6

*Nat'l Ass'n of Soc. Workers v. Harwood*, 69 F.3d 622 (1st Cir. 1995) .....19

*Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, 116 U.S.P.Q.2d 1102 (T.T.A.B. 2015).....17, 18

*Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 105 S. Ct. 658, 661 (1985) .....7

<i>Productos Lacteos Tocumbo v. Paeteria La Michoacana Inc.</i> , 98 U.S.P.Q.2d 1921 (T.T.A.B. 2011) .....	20
<i>Rocket Trademarks Pty. Ltd. v. Phard S.p.A.</i> , 98 U.S.P.Q.2d 1066 (T.T.A.B. 2011).....	20
<i>Royal Crown Co., Inc. v. The Coca-Cola Co.</i> , 892 F.3d 1358 (Fed. Cir. 2018) .....	5, 7
<i>Sindi v. El-Moslimany</i> , 896 F.3d 1 (1st Cir. 2018).....	19
<i>Stocker v. GCCSDA</i> , 39 U.S.P.Q.2d 1385 (T.T.A.B. 1996),.....	4, 5, 7, 8, 9, 19, 23
<i>Texas Dept. of Transpo. v. Richard Tucker</i> , Cancel. No. 92030882 (T.T.A.B. 2010).....	11
<i>U.S. Playing Card Co. v. Harbro LLC</i> , 81 U.S.P.Q.2d 1537 (T.T.A.B. 2006).....	17
<b>Treatises</b>	
<i>McCarthy on Trademarks and Unfair Competition</i> (5th ed.).....	passim
<i>Trademark Trial &amp; App. Board Prac. &amp; Proc.</i> , § 3:111 (Westlaw 2019).....	12
<b>Rules</b>	
<i>Fed. R. Evid. 201</i> .....	20
<i>Fed. R. Evid. 401-403</i> .....	21
<i>Fed. R. Evid. 803</i> .....	23
<i>Fed. R. Evid. 807</i> .....	21
<i>T.B.M.P. § 311.02(a)</i> .....	12
<i>T.B.M.P. § 539</i> .....	17
<i>T.B.M.P. § 704.08(b)</i> .....	18, 19
<i>T.B.M.P. § 801.03</i> .....	15, 16, 17
<i>T.B.M.P. § 801.05</i> .....	17
<i>T.M.B.P. § 704.12</i> .....	19
<i>T.M.B.P. § 707.01</i> .....	14, 18
<i>T.M.E.P. § 1209.01(b)</i> .....	5

## I. INTRODUCTION

The Petitioner, Philanthropist.com, Inc. (“Petitioner”), hereby submits this Reply Trial Brief replying to the Trial Brief of The General Conference Corporation of Seventh-Day Adventists (“GCCSDA”) and supporting Petitioner’s consolidated Petition to Cancel Reg. Nos. 1,218,657 and 1,176,153 (“Petition”). As anticipated by Petitioner, GCCSDA’s Trial Brief seeks to avoid the merits of the case by (a) misstating legal standards, (b) mischaracterizing and ignoring evidence, and (c) manufacturing procedural and evidentiary issues in a naked attempt to stop the Board from ruling on the merits. But GCCSDA’s attempts fail and Petitioner meets its burden.

Extensive dictionary, encyclopedia, periodical, and reference evidence, as well as robust and unequivocal case law, supports the Board holding that “the generic term for the religion is ‘Adventist’ (or ‘Adventism’).” *Stocker v. General Conf. Corp. of Seventh-Day Adventists*, 39 U.S.P.Q.2d 1385 (T.T.A.B. 1996), 1996 WL 427638 at \*15. Moreover, Petitioner unquestionably possesses standing. GCCSDA has expressly admitted both that it (a) sent Petitioner a cease and desist letter asserting the at-issue “Adventist” registrations and (b) commenced litigation against Petitioner concerning its Adventist.com domain. Petitioner’s standing is further corroborated by the deposition testimony of James Douglas McGregor Everett (owner of Philanthropist.com, Inc., which owns Adventist.com) and the GCCSDA’s Answers to Interrogatories. Accordingly, for the reasons set forth herein, and in its Trial Brief, Petitioner meets its burden and respectfully requests that the Board CANCEL the subject marks pursuant to Section 14(3) of the Lanham Trademark Act (“Lanham Act”).

## II. ARGUMENT

### a. GCCSDA misstates the law in pursuit of a more favorable, but erroneous, legal standard.

Trademark law cannot be twisted to permit ownership of a generic term. A generic term “cannot acquire distinctiveness and cannot be registered as a trademark.” *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 1342 (Fed. Cir. 2014). Throughout its Trial Brief, GCCSDA wrongly assumes that the word “Adventist” is (a) descriptive in nature and (b) eligible to obtain secondary meaning (when it cannot). GCCSDA proffers no argument as to why the word “Adventist” would be descriptive in nature and merely assumes that it is for its own benefit. GCCSDA, however, disclaimed the term “Adventist” in its “Seventh-Day Adventist” registration challenged in the *Stocker* case. GCCSDA’s disclaimer prompted the *Stocker* Majority to remark, “[g]iven the genericness of ‘Adventist,’

we fully concur with respondent's voluntary disclaimer of this term in its registration [for "Seventh-Day Adventist]." See *Stocker*, 1996 WL 427638 at \*15; 42 *TTABVUE* 40-41 (Ex. 17); *McCarthy on Trademarks and Unfair Competition* § 12:12 (5th ed.) ("*McCarthy*") ("A kind of estoppel arises when the proponent of trademark use is proven to have itself used the term before the public as a generic name, yet now claims that the public perceives it as a trademark.").

"A mark is considered merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods or services." See *T.M.E.P.* § 1209.01(b). Generally, the English language utilizes the -ist suffix (e.g., "*Adventist*") to create a noun, while the -ism suffix (e.g., "*Adventism*") is used to create a belief or condition. As expressly admitted by GCCSDA, "Advent" "can refer to the coming or second coming of Jesus Christ." 17 *TTABVUE* 4 (*GCCSDA's Answer*); *McCarthy* § 12:10 (Though an adjective can also be generic, a "rule of thumb . . . to distinguish a generic name from a descriptive term is that generic names are nouns and descriptive terms are adjectives"); see also 77 *TTABVUE* 19 (*footnote 3*) (citing *Stocker* and explaining that GCCSDA conceded that trademark law recognizes the existence of generic adjectives and prohibits their registration the same as generic nouns); *Royal Crown Co., Inc. v. The Coca-Cola Co.*, 892 F.3d 1358, 1367 (Fed. Cir. 2018) ("a term can be generic for a genus of goods or services if the relevant public ... understands the term to refer to a key aspect of that genus."). It is difficult to understand what the word "Adventist" describes about "Adventism" and GCCSDA makes no attempt to argue that, or explain why, "Adventist" would be descriptive; it merely (wrongly) assumes so.

GCCSDA further misleads the Board by arguing that "it is possible that a term that was once viewed as generic can lose its generic significance if the relevant public no longer understands it to be generic." 78 *TTABVUE* 45. This argument is out-of-context and inaccurate. Without any legal support for its position, GCCSDA resorts to a truncated citation, writing in its Trial Brief:

As the Second Circuit explained in *Miller Brewing Co. v. Falstaff Brewing Corp.*, 655 F.2d 5 (1st Cir. 1981):

Where a generic association of a word or term has become obsolete and is discoverable only by resort to historical sources or dictionaries compiled on historical principles to preserve from oblivion obsolete

words, then, from the viewpoint of trademark and like law, the word or term is no longer a generic word.

78 TTABVUE 45. This citation, however, pertains to a wholly distinct factual situation from the instant matter in which the subject term (i.e., SINGER for sewing machines) was not generic to start, became generic due to the term's widespread use, and then lost that designation as more sewing machines entered the marketplace. *See Miller Brewing Co.*, 655 F.2d at 7-8 n.2. Even still, for the reasons set forth in Petitioner's Trial Brief and herein, the word "Adventist" presently exists in the public's everyday vernacular and is by no means "obsolete."

As the *Miller Brewing Court* actually explains:

Under no circumstances is a generic term susceptible of *de jure* protection under [section] 43(a) of the Lanham Act, 15 U.S.C. [section] 1125(a) or under the law of unfair competition . . . No matter how much money and effort the user of a generic term has poured into promoting the sale of its merchandise and what success it has achieved in securing public identification, it cannot deprive competing manufacturers of the product of the right to call an article by its name.

*Miller Brewing Co.*, 655 F.2d at 7-8 (quotations omitted). Clearly then, GCCSDA attempts to manipulate the Board into committing legal error.

"It has long been part of [trademark] law that one may not appropriate a generic word as a trademark." *In Re Minnetonka, Inc.*, 212 U.S.P.Q. 772 (T.T.A.B.) "The fact that there is only one source of the product to which the generic name has been applied over a period of time such that it may have acquired what has been described by some as *de facto* secondary meaning indicating that source does not alter [that] principle." *Id.* "When a producer [(e.g., GCCSDA)] selects as a trademark a term [(e.g., "Adventist")] that is deemed already to have been the commonly-recognized (generic) name of the goods [(e.g., religious observances, bibles, etc.)], then even if that producer [(e.g., GCCSDA)] successfully establishes '*de facto*' secondary meaning, it will not be recognized '*de jure*.'" *Christian Science Bd. of Dir. v. Doris Evans, et. al*, 520 A.2d 1347, 1354 (N.J. 1987).

Regardless of GCCSDA's size or influence, GCCSDA cannot possess rights to the generic term "Adventist." Myriad evidentiary sources, including those produced by GCCSDA itself, establish that the term "Adventist" has been commonly used to refer to followers of Adventism since the 19<sup>th</sup> Century. *See infra; see also generally 77 TTABVUE*. This is undeniable after a comprehensive review of the record. And presently, no term other than "Adventist" can be used to identify that "Seventh-Day Adventists" or any "Adventist" group or



denomination are indeed “Adventists” and follow Adventism. *See Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194, 105 S. Ct. 658, 661 (1985); *McCarthy* § 12:23 (“A term [is] the genus . . . when “no commonly used alternative effectively communicates the same functional information.”).

Additionally, Petitioner did not waive its arguments with respect to classes 16, 41, and 42. As GCCSDA itself explains in its Trial Brief, “a term can be generic for a genus of goods or services if the relevant public ... understands the term to refer to a key aspect of that genus.” *Royal Crown Co.*, , 892 F.3d at 1367. “Bibles” and “magazines” in class 16, as obvious examples, are certainly a “key aspect” of Adventism. *See id.* It makes little sense that a follower of Adventism could be restricted from using or seeing the word “Adventist” when finding, publishing, writing, or reading a book or magazine about Adventism. *See id.*

**b. The record is replete with highly probative evidence of genericness.**

GCCSDA’s submitted evidence primarily consists of self-serving declarations and conclusory opinions from its (as admitted in their declarations) own employees, former employees, attorneys, agents, and members. *See generally 47-60 TTABVUE.* However, “[t]rademark law is skeptical of the ability of an associate of a trademark holder to give an impartial account of the value of the holder's mark.” *McCarthy* § 12:13. Almost exclusively relying upon this biased testimony, GCCSDA argues that the term “Adventist” is not used outside of Seventh-day Adventism. GCCSDA’s declarants are not only biased but also lack the personal knowledge to offer viable testimony on the use of the word “Adventist” outside of Seventh-day Adventism. They each exist, if not make their living, within the world of Seventh-day Adventism. Their testimony is unavoidably (even anecdotally) skewed towards their respective experiences under GCCSDA and/or Seventh-day Adventism. GCCSDA’s proffered expert testimony from Dr. Clinton Whalen and Dr. George Reid also offers minimal insight. “It is the understanding of the public . . . and not that of the expert which is determinative [of genericness].” *Stocker*, 1996 WL 427638 at \*15.

GCCSDA also cannot credibly cite a (purported) lack of use of the word “Adventist” by so-called competitors as evidence of its trademark rights. The rights granted by a trademark registration (i.e., its exclusive use) are not proof of its validity. Any (purported) lack of use of the word “Adventist” is not evidence of GCCSDA’s trademark rights, but instead the (unjust) result of its improper registration of a generic term.

Consider the representative example of the (formerly) Guthrie Memorial Adventist Chapel in which GCCSDA aggressively wielded the at-issue registrations as a sword to keep (formerly) Guthrie Memorial Adventist Chapel (and its followers of Adventism) from using the term “Adventist.” See 77 *TTABVUE* 43-45; see also *In re Hikari Sales USA, Inc.*, 2019 WL 1453259 \*12 (T.T.A.B. 2019) (assigning little weight to competitors discontinuing use of a mark upon threat of legal action because the decision is likely motivated by a desire to avoid costly litigation). Lastly, as discussed *supra*, GCCSDA’s survey evidence wrongly assumes that the term “Adventist” is descriptive in nature and eligible to obtain secondary meaning.<sup>1</sup>

Comparatively, Petitioner cites to numerous encyclopedias, dictionaries, periodicals, religious books, and reference works to meet its burden. See *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 U.S.P.Q. 961 (Fed. Cir. 1985) (evidence of public understanding of the term may be obtained from “any competent source”); see also 78 *TTABVUE* 23 (GCCSDA’s conceding same). This is the precise type of evidence relied on by the Board in its *Stocker* opinion when finding “Adventist” to be generic. The *Stocker* Majority wrote, “‘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.” *Stocker*, 1996 WL 427638 at \*15 (emphasis added); see also *McCarthy* § 12:13.

The *Stocker* Majority continued 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. By way of example, we point to petitioners' submission of excerpts from *J. Gordan [sic] Melton, Encyclopedia of American Religions (3d ed. 1989)*. Each section bears a “family” heading, as for example, “Lutheran Family” [ ] and “Adventist Family” . . . 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 . . . 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.

---

<sup>1</sup> *Arguendo*, the survey evidence supports genericness even if accepted as GCCSDA describes. “A term is generic if the relevant public understands the term [(i.e., “Adventist”)] to refer to part of the claimed genus of goods or services [(i.e., “Seventh-day Adventism”)], even if the public does not understand the term to refer to the broad genus [(i.e., “Adventism”)] as a whole.” *In re Cordua Rest., Inc.*, 823 F.3d 594, 605 (Fed. Cir. 2016).

*Id.* (emphasis added). Notably, Petitioner’s evidence also features *Melton’s Encyclopedia of American Religions* (8<sup>th</sup> Ed., 2009) by J. Gordon Melton including its “Adventist Family Chronology” that discusses multiple Adventist offshoots from 1844 to 1869 and its detailed “Adventist Family” section. 45 TTABVUE 6-8 (Ex. 22); 71 TTABVUE 13-50 (Ex. 3); 72 TTABVUE 13-44 (Ex. 4). And although GCCSDA contends that the Wikipedia entry contains inaccuracies concerning Adventism, Wikipedia is by design and definition a public-sourced encyclopedia that is representative of the public’s collective impressions and knowledge about a particular subject. See e.g., *General Conf. Corp. of Seventh-Day Adventists v. McGill*, 624 F.Supp.2d 883, 896 (W.D. Tenn. 2008), *aff’d* 617 F.3d 402 (6th Cir. 2010) (denying summary judgment because “the dictionary definition and the Wikipedia entry support the conclusion that the term ‘Adventist’ refers to a set of beliefs”).

Petitioner’s record is indeed replete with encyclopedias, dictionaries, periodicals, and reference works that consistently demonstrate that “the generic term for the religion is ‘Adventist’ (or ‘Adventism’).” *Stocker*, 1996 WL 427638 at \*15; see also *McGill*, 624 F.Supp.2d 883; *General Conf. Corp. of Seventh-Day Adventists v. Perez*, 97 F.Supp.2d 1154 (S.D. Fla. 2000); *General Conf. Corp. of Seventh-Day Adventists v. Seventh-day Adventist Kinship, International, Inc.*, Case No. CV 87-8113 MRP (Slip Op. 1992). Petitioner’s submissions feature evidence that is independent in nature, as well as evidence published by GCCSDA (or its subsidiaries).

A review of the evidence actually published by GCCSDA is critically informative. This is particularly true of materials authored or edited by Don F. Neufeld and Julia Neuffer, which materials GCCSDA barely attempts to discredit. Published by GCCSDA in 1966, Neufeld and Neuffer’s *First Edition of the Seventh-day Adventist Encyclopedia* includes detailed entries on “Adventist,” “Adventist Bodies,” “Marion Party,” “Seventh-day Adventist” and the “SDA Church.” See 44 TTABVUE 5-12 (Ex. 21). Similarly, the *Seventh-day Adventist Bible Students’ Source Book* edited by Neufeld and Neuffer and published by GCCSDA in 1962 provides detailed entries on Adventists including the “Advent Christian Church,” “Adventist Bodies,” “Adventists,” and the “Seventh-day Adventist Church.” See 73 TTABVUE 54-72 (Ex. 7). The *Second Revised Edition of the Seventh-day Adventist Encyclopedia* was published in 1996 by GCCSDA and again edited by Neufeld and Neuffer. Its update included new and further detailed entries on “Adventist,” “Adventist Bodies,” “Apostate Movements,” “Marion Party,” and “Seventh-day Adventist.” See 73 TTABVUE 13-29 (Ex. 5); 73 TTABVUE 30-52 (Ex. 6).

The GCCSDA published *Seventh-day Adventist Encyclopedia (2<sup>nd</sup> Rev. Ed.)* further explains that “Adventism” dates back to 1840 and that any person who observes or practices Adventism is referred to as “Adventist” regardless of whether they are, for example, the Advent Christians, the Davidian Seventh-day Adventist Association, the Seventh Day Adventist Reform Movement, the True and Free Adventists, the United Sabbath-Day Adventist Church, or the Seventh-Day Adventists. *See 73 TTABVUE 13-52 (Ex. 5-6)*. In corroboration, the GCCSDA published *Seventh-day Adventist Yearbook of Statistics for 1889* shows that the word “Adventist” has been known and used since 1840. *38 TTABVUE 14-15 (Ex. 5)*.

Petitioner’s evidence also contains numerous supportive writings from GCCSDA’s Dr. George R. Knight. Each writing was published by GCCSDA and shows both the history of Adventism and that the use of the word “Adventist” dates back to the mid-19<sup>th</sup> Century. These works include *A Search for Identity: The Development of Seventh-day Adventist Beliefs* published in 2000, *Organizing for Mission and Growth* published in 2006, *The Apocalyptic Vision and the Neutering of Adventism* published in 2008, *William Miller and the Rise of Adventism*, published in 2010, and *A Brief History of Seventh-day Adventists* published in 2012. *39 TTABVUE 7 (Ex. 7) (2000 Writing); 46 TTABVUE 5 (Ex. 25) (2006 Writing); 40 TTABVUE 5 (Ex. 10) (2008 Writing); 45 TTABVUE 11 (Ex. 23) and 70 TTABVUE 49 (Ex. 2) (2010 Writing); 39 TTABVUE 16 (Ex. 8) (2012 Writing)*.

Petitioner’s independent (i.e., non-GCCSDA published) evidence includes the respectively highly probative Oxford English Dictionary definition of “Adventist ” and *Melton’s Encyclopedia of American Religions* as featured by the Board in *Stocker*, as well as Wikipedia’s public-sourced entry for “Adventism.” *See 38 TTABVUE 12 (Ex. 4)(Oxford English); 45 TTABVUE 6 (Ex. 22) (Melton’s); 71 TTABVUE 13-50 (Ex. 3) (Melton’s); 72 TTABVUE 13-44 (Ex. 4)(Melton’s); 43 TTABVUE 51-57 (Ex. 20) (Wikipedia)*. The independent reference works submitted by Petitioner include 2018’s *14<sup>th</sup> Edition of the Handbook of Denominations in the United States*, which categorized and discusses different “Adventist Churches,” and *The Edges of Seventh-day Adventism, Second Edition* by Lowell Tarling, which describes multiple Adventist movements existing apart from GCCSDA. *See 36 TTABVUE 3-24 (Ex. 1) (Handbook), 37 TTABVUE 3-21 (Ex. 2) and 38 TTABVUE 7-11 (Ex. 3); 74 TTABVUE 13 (Ex. 8) (Tarling)*.

Other religious books in Petitioner’s independent evidence are *Adventism Confronts Modernity* (2017) by Robert J. Mayer, which is an entire book about “Advent Christian” (First-day) Adventists and *It’s Okay Not to be a Seventh-day Adventist* by Teresa and Arthur Beem, the title of which is reflective of its contents. 70 TTABVUE 13-47 (Ex. 1) (Mayer); 39 TTABVUE 21-24 (Ex. 9) (Beem). Petitioner’s independent evidence lastly includes articles and excerpts from *Adventist Today*, which is published by the Adventist Today Foundation, a nonprofit organization independent of GCCSDA and not subsidized by the Seventh-day Adventist denomination. 41 TTABVUE 57-66 (Ex. 13), 74 TTABVUE 56-63 (Ex. 10) and 75 TTABVUE 19-21 (Ex. 12).

**c. The record is replete with evidence that Petitioner has standing.**

GCCSDA’s insistence that Petitioner lacks standing is logically untenable. GCCSDA simultaneously maintains, on one hand, that it is harmed by Petitioner’s ownership of Adventist.com but, on the other hand, that Petitioner lacks a “real interest” in this proceeding. Stated differently, GCCSDA claims that its at-issue registrations for “Adventist” confer property rights in Petitioner’s property (i.e., Adventist.com), but that Petitioner lacks standing to protect that property and/or clear it for sale. GCCSDA cannot assert Reg. Nos. 1,218,657 and 1,176,153 for “Adventist” against Petitioner yet credibly claim that Petitioner lacks an “objectively reasonable belief” that their continued registration will cause Petitioner harm.

As the Board appreciates, “the public interest is served in broadly interpreting the class of persons Congress intended to be allowed to institute cancellation proceedings.” *McCarthy* § 20:46. “Traditionally, all [a] petitioner need [ ] are facts supporting a reasonable belief that there is a likelihood of damage caused by the continuing registration of the mark.” *Id.* “[T]here is a low threshold for a plaintiff to go from being a mere intermeddler to one with an interest in the proceeding.” *Estate of Biro v. Bic Corp.*, 18 U.S.P.Q.2d 1382, 1991 WL 325858 (T.T.A.B. 1991). For example, in *Texas Department of Transportation v. Richard Tucker*, Cancellation Nos. 92030882 and Opposition No. 91165417 (T.T.A.B. 2010), the Board found that party had standing to cancel registration by virtue of being the defendant in another proceeding and because the registrant had actually asserted its registration against the petitioner. Similar to *Texas Department*, GCCSDA admits that it asserted registrations Reg. Nos. 1,218,657 and 1,176,153 for “Adventist” against Petitioner by instituting a UDRP

proceeding against Petitioner concerning its ownership of the Adventist.com domain name. *See 15 TTABVUE 2-4* (§§ 1-11) (*Petition to Cancel*) and *17 TTABVUE 49 2-4* (§§ 1-11) (*Answer*).

Here, GCCSDA would prefer the Board pretend that the November 10, 2016 cease and desist letter does not exist and that it has no effect in Petitioner's interest in this proceeding. The law permits no such thing. "Denials [of an allegation] shall fairly meet the substance of the averments denied [and] must not be evasive." *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1030 (C.C.P.A. 1982); *T.B.M.P.* § 311.02(a). "Equivocal admissions are not permitted under Rule 8 of the Federal Rules [of Civil Procedure and] [a]verments in a pleading ... are admitted when not denied in the responsive pleading." *Lipton Indus., Inc.* 670 F.2d at 1030. Thus, "[a]n answer which attempts to evade the pleading requirements of Rule 8 by the tactic of an equivocal admission or denial is an admission." *Id*; *see also Azteca v. Martin*, 128 U.S.P.Q.2d 1786 (T.T.A.B. 2018) ("[P]leadings . . . are automatically of record."); *Trademark Trial & App. Board Prac. & Proc.*, § 3:111 (*Westlaw 2019*) ("[T]he pleadings are, of course, automatically of record without any action by either party.").

In *Lipton Industries*, the registrant's answers to pleaded facts were deemed admissions sufficient to establish the petitioner's standing. *See Lipton Indus.*, 670 F.2d at 1030-1031. The same is true in this matter.

Paragraph 3 of the Petition provides:

*3. Soon after purchasing Adventist.com, Petitioner received a cease and desist letter from Respondent, alerting Petitioner to Respondent's ownership of the challenged registrations and demanding that Petitioner immediately surrender ownership of Adventist.com. See Exhibit B for a true and correct copy of Respondent's November 10, 2016 cease and desist letter to Petitioner.*

*15 TTABVUE 3* (§3) (*Petition*) (emphasis added). GCCSDA then responded in its Answer:

*3. Registrant admits that it sent a cease and desist letter to Petitioner, dated November 10, 2016.* Registrant lacks knowledge or information sufficient to form a belief as to any remaining allegations contained in Paragraph 3, and therefore denies the same.

*17 TTABVUE 3* (§3) (*Answer*) (emphasis added). Paragraph 3 not only specified the date of the cease and desist letter (November 10, 2016), but attached a copy of that exact letter to the Petition for GCCSDA to review before responding. Presented with both the date of the letter and a copy of that letter, GCCSDA admits that it sent a cease and desist letter to Petitioner on November 10, 2016. GCCSDA does not deny that the attached November

10, 2016 cease and desist letter is the letter that it admits that it sent to Petitioner, nor does GCCSDA object to it. Petitioner, as GCCSDA argues, did not simply attach an exhibit to its Petition and declare it part of the record in violation of T.B.M.P § 704.05. Instead, GCCSDA’s response (i.e., admission) to Paragraph 3 of the Petition makes the attached November 10, 2016 letter part of the pleadings of record.

Like in *Lipton Industries*, “the answers [to the Petition], which [GCCSDA], itself, placed in the record, [are] properly considered by the [B]oard for any relevant purpose [including standing].” *See Lipton Indus.*, 670 F.2d at 1031. GCCSDA nevertheless takes the specious position that it (a) admitted that it sent a cease and desist letter to Petitioner on November 10, 2016, but (b) never admitted that it sent the November 10, 2016 cease and desist letter attached to the very same paragraph of the Petition.<sup>2</sup> *See 78 TTABVUE 70 (Appendix A) (Footnote 21)*. This is certainly not GCCSDA’s response on its face, and if there is any doubt, then GCCSDA’s response concerning the attached November 10, 2016 cease and desist letter is equivocal and must be construed as an admission. *See T.B.M.P. § 311.02(a)*.

Furthermore, GCCSDA expressly relied upon the attached November 10, 2016 cease and desist letter to respond to Petitioner’s Paragraphs 4 and 5. GCCSDA equivocally answered, “[t]o the extent this paragraph refers to documents, such documents [(i.e., the November 10, 2016 cease and desist letter)] speak for themselves, and Petitioner’s characterization thereof is denied.” *See 17 TTABVUE 3 (GCCSDA Answer)* (emphasis added). GCCSDA only denies Petitioner’s “characterizations.” GCCSDA does not deny the contents of the (already identified and admitted) November 10, 2016 letter, but rather relies upon it. Paragraphs 4 and 5 of the Petition directly quote the November 10, 2016 cease and desist letter from GCCSDA:

4. In relevant part, Respondent’s November 10, 2016 letter accused Petitioner of “intentionally trading on the goodwill of the Church by using a trademark that is confusingly similar” to the challenged marks, alleging that “The domain name ADVENTIST.com confuses and misdirects customers seeking the Church’s website to Philanthropist.com’s website,” which activity, Respondent wrote, “is actionable under federal law.”

---

<sup>2</sup> GCCSDA seems to believe that the November 10, 2016 cease and desist letter must be of record for Petitioner to have standing. This is overly technical and not true. It also contravenes the “real interest” and “reasonable belief of damage” standard as well as the public policy and recognized public benefits of conferring standing liberally.

5. Respondent has warned Petitioner, in writing, that “Respondent may “enforce its legal rights” against Petitioner by seeking remedies for trademark infringement and dilution, “including, but not limited to,” preliminary and permanent injunctive relief, money damages, attorneys' fees and “possible treble money damages.”

*17 TTABVUE 3*. More so, GCCSDA admits that it commenced litigation against Petitioner through a UDRP proceeding concerning the at-issue marks and Petitioner’s ownership of the Adventist.com domain name. *See 15 TTABVUE 3* (¶2, ¶7) (*Petition*) (attaching UDRP proceeding papers) and *17 TTABVUE 2* (¶2, ¶7) (*GCCSDA’s Answer*) (“Registrant admits that Registrant filed a proceeding against Petitioner under ICANN's Uniform Domain-Name Dispute Resolution Policy (UDRP).”).

To escape these admissions, GCCSDA attempts to mislead the Board by conflating its own admissions with Petitioner’s assertions. GCCSDA cites to T.B.M.P. § 704.06(a), which provides “[s]tatements made in pleadings cannot be considered as evidence on behalf of the party making them.” (Emphasis added.) A party therefore cannot state an allegation in a petition and then feature it as evidence without more. Here, however, Petitioner does not do anything of the sort. T.B.M.P. § 704.06(a) is inapplicable because Petitioner does not rely upon its own statements, but the admission(s) of GCCSDA in its pleading (*Answer*). *See Azteca*, 128 U.S.P.Q. 2d 1786; *Lipton Indus.*, 670 F.2d at 1030-1031.

Even still, “[w]hen evidence has been made of record by one party in accordance with these rules, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence.” *T.M.B.P.* § 707.01. Here, the deposition testimony of Mr. Everett entered into the record by GCCSDA is enough on its own to confer standing, but also corroborates GCCSDA’s *Answer*. *See 78 TTABVUE 8, 10* (GCCSDA entering Mr. Everett’s depositions into the record); *see also 61 TTABVUE; 62 TTABVUE 15-16, 19-24, 30-32, and 35-36*. Mr. Everett’s June 20, 2018 deposition includes multiple passages evidencing, among other thing, that Petitioner sells generic domain names, Petitioner owns Adventist.com, Petitioner received GCCSDA’s November 10, 2016 cease and desist letter threatening legal action, and GCCSDA asserted Reg. Nos. 1,176,153 and 1,218,657 against Petitioner in a UDRP proceeding. *See 62 TTABVUE 14-83* (notably *page 19: lines 11-14, page 20: lines 1-12, pages 20-21: lines 25 and 1-9, pages 23-24: lines 1-25 and 1-23, pages 29-30: lines 14-25 and 1-20, pages 33-34: lines 15-25 and 1-24, page 37: lines 7-12, page 40: lines 16-22, and page 43: lines 11-25*). Additionally, the November



10, 2016 cease and desist letter is “marked as Exhibit 2” to the deposition by GCCSDA. *See 62 TTABVUE 19 (lines 11-14).*

Mr. Everett’s more recent February 13, 2020 deposition features additional testimony directly pertinent to standing including, but not limited to, multiple passages in which Mr. Everett discusses and testifies about the November 10, 2016 cease and desist letter and UDRP proceeding. *See 61 TTABVUE 1-343 (notably page 22: lines 5-25, page 23: lines 1-5, page 32: lines 24-25, page 33: lines 1-3, 8-14, page 34: lines 1-12, page 35: lines 4-20, and page 105: lines 10-20).* As a representative example of this testimony, Mr. Everett testified:

I can't sell [Adventist.com] until this petition to cancel the trademark is wrapped up. Because you-all claim a trademark on it. You sent me a letter saying you'd go after me for treble damages and file a federal lawsuit against me. You filed the UDRP against me. So, I mean, it would be totally disingenuous and dishonorable to a potential buyer if I didn't get this thing worked out in advance . . .

*61 TTABVUE 22 (lines 16-25).* Petitioner clearly believes that it does not hold essentially “clean or marketable title” to Adventist.com due to GCCSDA’s Reg. Nos. 1,218,657 and 1,176,153 for “Adventist.” Petitioner, or likely any subsequent buyer or owner of the domain name, cannot benefit from “quiet enjoyment” of the domain name because of GCCSDA’s looming threat. Not disclosing the possibility of a legal dispute with the litigious and well-resourced GCCSDA over the Adventist.com domain to a buyer exposes Petitioner to possible legal action from him/her/it, while disclosure of the same affects the marketability of the Adventist.com domain.

Petitioner’s Answer to Interrogatories (also introduced by GCCSDA) further corroborate GCCSDA’s admissions and Mr. Everett’s testimony. *See 62 TTABVUE 87 (¶21, ¶23); 78 TTABVUE 10 (GCCSDA’s description of the record entering excerpts of Petitioner’s Answer to Interrogatories).* Lastly, Petitioner is not a “vicarious avenger” for raising the public policy arguments implicated by this matter and which unquestionably inform this dispute. This is particularly true where the public policy arguments directly relate to Petitioner’s business interests; Petitioner sells generic domain names.

**d. GCCSDA manufactures baseless procedural arguments to avoid the merits.**

The baseless procedural arguments manufactured by GCCSDA against the Petitioner should not distract the Board from the merits of this case. Petitioner must address them, however. To this end, it is GCCSDA and not Petitioner that has failed to comply with the T.B.M.P. Section 801.03 of the T.B.M.P. provides that “[t]ext in

an electronic submission must be filed in at least 11-point type and double-spaced” and “[e]ach brief shall contain an alphabetical index of cases cited.” It continues that “a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary.” *T.B.M.P.* § 801.03.

GCCSDA’s Trial Brief includes a single-spaced two (2) page table of authorities (i.e., index of cases) in violation of *T.B.M.P.* § 801.03, and is exactly fifty-five (55) total pages in its submitted form when necessarily counting the mandatory index of cases (i.e., table of authorities).<sup>3</sup> Changing the single-spaced two (2) page table of authorities to double-spaced makes GCCSDA’s table of authorities four (4) pages long and adds another two (2) pages to GCCSDA’s Trial Brief. GCCSDA thus exceeds the fifty-five (55) page limit because adding two (2) more pages to its Trial Brief brings its total number of pages to fifty-seven (57) pages, which is a violation of *T.B.M.P.* § 801.03. GCCSDA also does not provide the Board with a table of contents for its Trial Brief, and used an eleven (11) point font (or possibly less)<sup>4</sup> in its Trial Brief, which is the smallest font size permitted under *T.B.M.P.* § 801.03.

Nonetheless, GCCSDA brazenly accuses Petitioner of providing an insufficient description of the record and committing “subterfuge” to avoid exceeding the fifty-five (55) page limit for trial briefs. GCCSDA argues that the sample description of the record set forth (as an example) by *T.B.M.P.* § 801.03 is mandatory when it is not. *See T.B.M.P.* § 801.03 (“[t]he description of the record should comprise a list of the evidence properly introduced by the parties, such as, “[t]he evidence of record consists of Opposer’s Registration No. 1,234,567...””) (emphasis added); *compare id.* (“a main brief on the case shall not exceed fifty-five pages in length in its entirety”) (emphasis added) and (“[t]ext in an electronic submission must be filed in at least 11-point type and double-spaced”) (emphasis added).

An allegation of “subterfuge” is also wholly illogical. Petitioner increased its Trial Brief to twelve (12) point font because it had space to do so and for the Board’s ease of reading. Had Petitioner needed additional

---

<sup>3</sup> For its table of authorities, GCCSDA used roman numerals (i and ii) rather than the page numbers included in the fifty-three (53) page count for its Trial Brief.

<sup>4</sup> Adobe Reader indicates that GCCSDA appears to have utilized 10.98 size font in its Trial Brief, which is less than the smallest 11-point font size permitted under *T.B.M.P.* § 801.03. This is not necessarily reliable.

pages (as GCCSDA alleges it did) it could simply have used an eleven (11) point font as permitted by T.B.M.P. § 801.03. Using an eleven (11) point font reduces Petitioner’s Trial Brief to forty-six (46) pages including Petitioner (voluntarily) numbering the Trial Brief’s title page and certification of service.

Furthermore, the remedy GCCSDA seeks is disproportionate and draconian, as well as unsupported by *T.B.M.P.*<sup>5</sup> GCCSDA provides no support that the Board “should strike Petitioner’s brief in its entirety,” nor do the T.B.M.P. support such a drastic outcome. Certainly not where any harm is either non-existent or *de minimis*. Petitioner’s record is organized and identifiable for each the parties and the Board’s reference. In its Trial Brief, Petitioner provides the particular evidence it cites including a description of it. GCCSDA also provides a full description of the record in its Trial Brief, as do Petitioner’s notices of reliance and rebuttal notices of reliance. GCCSDA suffered no disadvantage or prejudice as a result of the description of the record provided by Petitioner. In any event, it is GCCSDA that has actually committed the “subterfuge” that it wrongly accuses Petitioner of undertaking. Should any Trial Brief be struck, it is GCCSDA’s submission.

**e. GCCSDA’s evidentiary objections fail and attempt to distract the Board from the merits.**

GCCSDA attempts to weaponize the rules of evidence to shield its improper registrations from scrutiny. *See McCarthy* § 20:7 (the public benefits from evaluation of trademarks that may have “fatal defect under the law and should not be given federal registration”). In addition to portions of its Trial Brief, GCCSDA devotes an additional fourteen (14) pages to evidentiary objections in its Appendix A. GCCSDA’s objections should not distract the Board from the merits of this matter. *See U.S. Playing Card Co. v. Harbro LLC*, 81 U.S.P.Q.2d 1537, 1540 (T.T.A.B. 2006) (“[B]ecause an opposition is akin to a bench trial, the Board is capable of assessing the proper evidentiary weight to be accorded the testimony and evidence, taking into account the imperfections surrounding the admissibility of such testimony and evidence.”). “Ultimately, the Board is capable of weighing the relevance and strength or weakness of the objected-to testimony and evidence in this specific case, including any inherent limitations, and this precludes the need to strike the testimony and evidence.” *Hunt Control Systems Inc. v. Koninkijke Philips Elecs.*, 98 U.S.P.Q.2d 1558, 1564 (T.T.A.B. 2011).

---

<sup>5</sup> GCCSDA did not file a motion to strike. *See T.B.M.P.* § 801.05. Alternatively, “[i]f a brief is stricken because of a format violation, the Board may, in its discretion, allow the offending party time to submit a substitute [complying] brief.” *T.B.M.P.* § 539. To the extent necessary, Petitioner seeks such opportunity.

GCCSDA must specifically object to Petitioner's evidence for it to be (possibly) excluded. *See Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, 116 U.S.P.Q.2d 1102, 1108 n.14 (T.T.A.B. 2015) (because non-offering party treated sales history reports as being of record, Board construed exhibit as having been stipulated into the record by the parties); *L.C. Licensing Inc. v. Berman*, 86 U.S.P.Q.2d 1883, 1886 n.6 (T.T.A.B. 2008) (materials considered as stipulated into the record because opposer set forth in its brief that they are part of the record); *Genesco Inc. v. Martz*, 66 U.S.P.Q.2d 1260, 1266 (T.T.A.B. 2003) (documents deemed to be of record since applicant did not object to the materials and treated them as of record). Here, GCCSDA objects only to Petitioner's Opening NOR Exhibits 11, 15, 16 (only pages 41 *TTABVUE* 18-20, 31-39), and 20 and Petitioner's Rebuttal NOR Exhibits 1-10, 11, and 13 (only handwritten comments). GCCSDA further objects to the Parties' Pleadings, Exhibits to the Complaint, and Summary Judgment Briefing.<sup>6</sup> All other evidence is unchallenged and available for Petitioner's use and the Board's consideration.<sup>7</sup>

*Petitioner's Deposition and Opening NOR Exhibits 11, 15, 16, and 20*

GCCSDA entered "[t]he transcript of the testimony deposition of Petitioner's owner Mr. Everett, along with the exhibits thereto (61 *TTABVUE*)" into the record. 78 *TTABVUE* 8 (GCCSDA's Trial Brief) (emphasis added). This entry resolves many of the evidentiary objections raised by GCCSDA because exhibits 6 through 11 thereto are Petitioner's second, third, fourth, fifth, seventh, and eighth opening notices of reliance including their exhibits. *See* 61 *TTABVUE* 5, 157-343; *T.M.B.P.* § 707.01 ("When evidence has been made of record by one party in accordance with these rules, it may be referred to by any party for any [proper] purpose."). The evidence made of record by GCCSDA through its entry of the deposition and its exhibits includes Petitioner's Opening NOR Exhibits 11 (Guthriememorial.org Webpages), 15 (Vance Ferrell Letter to Trademark Judge), 16 (Various Non-Seventh-day Adventist Webpages), and 20 (Adventism Wikipedia Entry<sup>8</sup>).

---

<sup>6</sup> GCCSDA objects to "Inadmissible Hearsay Evidence" without identifying any specific evidence.

<sup>7</sup> Petitioner is not conceding that any evidence is inadmissible generally, or if it does not specifically address it.

<sup>8</sup> Further, both the URL and date of publication are set forth on the Wikipedia submission and on its according notice of reliance. *See* 43 *TTABVUE* 56-57; *see also* *T.B.M.P.* § 704.08(b). GCCSDA's expert witness Dr. George W. Reid also testifies in depth about the public-sourced "Adventist" Wikipedia entry. *See* 50 *TTABVUE* 7-12 (paragraphs 21-48). Sophisticated, the Board may assess the entry and use its discretion to assign the appropriate weight. *See* *Hunt*, 98 U.S.P.Q.2d at 1564.

“Inadmissible Hearsay”

General objections do not suffice. GCCSDA’s “Inadmissible Hearsay” objection fails to specifically identify which “printed publications and Internet evidence” it pertains. The objection further fails to identify “what truth of the matter” the unidentified “printed publications and Internet evidence” seek to prove. As a result, Petitioner is deprived of its due opportunity to meaningfully defend against the objection(s) and is prejudiced. See *Hunt*, 98 U.S.P.Q.2d at 1564. “When a party’s contentions ‘lack both coherence and development,’ [they are] ordinarily deem[ed] . . . procedurally defaulted.” *Sindi v. El-Moslimany*, 896 F.3d 1, 27 (1st Cir. 2018). “This principle, sometimes inexactly called the ‘raise-or-waive rule,’ is ‘founded upon important considerations of fairness, judicial economy, and practical wisdom.’” *Sindi*, 896 F.3d at 27 (citing *Nat’l Ass’n of Soc. Workers v. Harwood*, 69 F.3d 622, 627 (1st Cir. 1995)); see also *Mercado-Salinas v. Bart Enterprises Int’l, Ltd.*, 747 F. Supp. 2d 275, 278 (D.P.R. 2010), *aff’d*, 671 F.3d 12 (1st Cir. 2011) (“[I]f the parties fail to raise specific objections, they waive any such arguments.”). GCCSDA’s amorphous objection is undeveloped and it should not be considered or given any effect by the Board.

*Arguendo*, “evidence of public understanding of the term [facing a genericness challenge] may be obtained from any competent source, such as consumer surveys, dictionaries [and encyclopedias], newspapers and other publications.” *In re Northland*, 777 F.2d 1556 (emphasis added); see also *Stocker*, 1996 WL 427638 at \*15 (relying upon dictionary and encyclopedia evidence to make genericness determination) (“[i]t is the understanding of the public . . . which is determinative [of genericness].”); *McCarthy* § 12:13 (“Types of evidence relevant to genericness”). In this respect, *T.B.M.P.* § 704.08(a) permits “printed publications . . . available to the general public in libraries or of general circulation among members of the public . . . if the publication is competent evidence and relevant to an issue in the proceeding, [to be] introduced in evidence by filing a notice of reliance.” See also *T.B.M.P.* § 704.08(b) (Internet Evidence).

Furthermore, *T.M.B.P.* § 704.12 permits the Board to take judicial notice of facts that are “either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” “To that end, dictionaries

and encyclopedias may be consulted [by the Board by way of judicial notice].”<sup>9</sup> *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 6 U.S.P.Q.2d 1719 (Fed. Cir. 1988); *see Productos Lacteos Tocumbo S.A. de C.V. v. Paeteria La Michoacana Inc.*, 98 U.S.P.Q.2d 1921, 1934 n.61 (T.T.A.B. 2011) (information from encyclopedias taken on judicial notice), *aff’d*, 188 F. Supp. 3d 222 (D.D.C. 2016), *aff’d*, 743 F. App’x 457, 128 U.S.P.Q.2d 1172 (D.C. Cir. 2018); *Rocket Trademarks Pty. Ltd. v. Phard S.p.A.*, 98 U.S.P.Q.2d 1066, 1075 n.17 (T.T.A.B. 2011) (dictionary definitions taken on judicial notice); *see also Fed. R. Evid. 201*.

*Pleadings and GCCSDA’s Summary Judgment Motion*

Concerning the parties’ pleadings, Petitioner directs the Board to its arguments made *supra* concerning GCCSDA’s admissions. Concerning GCCSDA’s summary judgment motion, Petitioner cites only to statements made by GCCSDA in its motion for summary judgment, which are almost all part of the record elsewhere, so as to provide context to the Board. *See Hunt*, 98 U.S.P.Q.2d at 1564 (Board is sophisticated and capable of weighing evidence and its inherent limitations). GCCSDA does not dispute the substance of its statements, and suffers no prejudice as a result of their consideration by the Board.

*Rebuttal Ex. No. 11*

Paragraph 28 of Jennifer Gray Woods’ declaration misrepresents Steve Lawson, Executive Director, Advent Christian General Conference, to suggest that only “Seventh-Day Adventists” are and/or use the term “Adventist.” 48 *TTABVUE* 7. Asked by GCCSDA to sign a declaration to that effect to be entered into evidence in this matter, Mr. Lawson wrote to Ms. Woods: “After discussing your questions and the document we felt we could not sign [the declaration] on behalf of the Advent Christian General Conference because many Advent Christians do use the term ‘Adventist’ in referring to our group and it is used regularly in our history.” 75 *TTABVUE* 13-17 (*Ex. 11*) (emphasis added). The letter attached to Ms. Woods’ declaration was ostensibly included because Mr. Lawson would not himself testify. GCCSDA disingenuously argues that “the submission of an e-mail allegedly from Mr. Lawson is not a substitute for proper testimony deposition for declaration, and

---

<sup>9</sup> GCCSDA concedes that judicial notice of such materials is appropriate by arguing only that “Petitioner refers to the web site of the ‘American Heritage Dictionary of the English Language’ in its brief [but . . .] the Board cannot take judicial notice of a web page.” 78 *TTABVUE* 25 (n.5) (citing no legal authority for its contention). To the extent applicable, Petitioner prevails upon the Board to take judicial notice of any submitted materials.

allowing this email into evidence would substantially prejudice [GCCSDA], as [GCCSDA] does not have any opportunity to cross examine Mr. Lawson.” 78 *TTABVUE* 67. GCCSDA and its associate general counsel, however, have long been aware of Mr. Lawson’s email and (though they attempted) were unable to secure the cooperation of Mr. Lawson as a declarant on GCCSDA’s behalf. Nor did GCCSDA ever notice Mr. Lawson’s deposition, likely concerned that the resulting testimony would include the substance of Mr. Lawson’s unfavorable contention that “many Advent Christians do use the term ‘Adventist’ in referring to our group and it is used regularly in our history.” GCCSDA suffers no identifiable prejudice as a result of Petitioner’s rebuttal evidence.

In the interest of creating a more complete record for the Board, and protecting Mr. Lawson from being misrepresented, Petitioner submitted Mr. Lawson’s February 26, 2020 email with its former counsel verifying its authenticity under the pains and penalties of perjury. Conspicuously, GCCSDA does not contest that Mr. Lawson communicated with Ms. Woods as set forth in the subject February 26, 2020 email. Once again, “the Board is capable of weighing the relevance and strength or weakness of the objected-to testimony and evidence . . . including any inherent limitations, [precluding] the need to strike the testimony and evidence.” *Hunt*, 98 U.S.P.Q.2d at 1564; *see also Fed. R. Evid. 807 (Residual Hearsay Exception); Fed. R. Evid. 401-403 (Relevant Evidence)*. Rebuttal Exhibit No. 11 should therefore be admitted.

#### Rebuttal Exhibits Nos. 1-10

Rebuttal evidence is “submitted for the proper purpose of denying, explaining or discrediting [registrant’s] case.” *The Wet Seal, Inc. v. Fd Mgmt., Inc.*, 82 U.S.P.Q.2d 1629 (T.T.A.B. 2007). “The function of rebuttal evidence is ‘to explain, repel, counteract, or disprove the evidence of the adverse party.’” *Apollo Med. Extr. Techs., Inc. v. Med. Extr. Techs., Inc.*, 123 U.S.P.Q.2d 1844 (T.T.A.B. 2017) (citing *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 116 U.S.P.Q.2d 1869, 1883 (Fed. Cir. 2015)). “The fact that evidence might have been offered in chief does not preclude its admission as rebuttal.” *Data Packaging Corp. v. Morning Star, Inc.*, 212 U.S.P.Q. 109, 113 (T.T.A.B. 1981).

During its testimony period, GCCSDA introduced declaration testimony from fifteen (15) witnesses and eighty (80) exhibits. Petitioner’s rebuttal notices of reliance set forth an additional fourteen (14) exhibits to rebut

GCCSDA's extensive submissions. Petitioner's rebuttal notices of reliance specifically set forth what GCCSDA evidence or testimony is being rebutted, as well as the submission's specific relevance to the matter and Petitioner's burden. Then, in its Trial Brief, Petitioner permissibly relies upon its rebuttal evidence to preempt GCCSDA's arguments, which Petitioner anticipated from its review of GCCSDA's exhibits and declarations. The majority of Petitioner's rebuttal evidence consist of extensions of excerpts submitted in Petitioner's opening period, which Petitioner uploaded to rebut the (explicit and implicit) criticism of its case-in-chief materials by GCCSDA's lay witnesses Jennifer Gray Woods, David Trim, George R. Knight, Bill Knott, and Jonah Perry and expert witnesses Clinton Wahlen and George W. Reid. *See Hunter Publ'g Co. v. Caulfield Publ'g Ltd.*, 1 U.S.P.Q.2d 1996 (T.T.A.B. 1986) (finding that rebuttal materials that constituted full text or expanded version of previously noticed exhibits were part of the record and properly considered by the Board).

Due to space restrictions (and in the interest of brevity), Petitioner is unable to fully write out which of GCCSDA's evidence or testimony its rebuttal evidence refutes and/or discredits. Petitioner instead directs the Board to its proper rebuttal notices of reliance that specifically identify which of GCCSDA's evidence or declaration testimony its rebuttal evidence rebuts as well as the relevance. *See Hunt*, 98 U.S.P.Q.2d at 1564. Petitioner's rebuttal of the declarations of Dr. George R. Knight and Dr. George W. Reid are representative of Petitioner's rebuttals.

Dr. George R. Knight testified, "I understand that Philanthropist.com, the Petitioner in the above-identified action, has introduced excerpts from several of my books as evidence . . . and I believe that the Petitioner has misrepresented my writings and specifically my use of the term 'Adventist.'" 56 *TTABVUE* 5 (¶17-18). It follows logically that Petitioner should and may rebut Dr. Knight's testimony by submitting a fuller breadth of his own writings so that the Board may determine for itself if their contents have been misrepresented. *See 70 TTABVUE* 49 (Ex. 2) (*William Miller and the Rise of Adventism by George R. Knight*). Dr. Knight similarly criticizes the accuracy of the 14<sup>th</sup> *Handbook of Denominations of the United States* submitted by Petitioner and states, "I am unaware of any religious denominations in the United States that refer to themselves as 'Adventists' . . . other than the Seventh-day Adventist Church and a few small splinter groups of [its] former members." 56 *TTABVUE* 10. Petitioner thus submitted extended portions of other sources to corroborate the



Handbook. Petitioner specifically submitted *Melton's Encyclopedia of American Religions* to discredit Dr. Knight's contention that "[other] denominations in the United States [than Seventh-Day Adventists do not use or] refer to themselves as "Adventists." See *Data Packaging*, 212 U.S.P.Q. at 113; see *Hunter*, 1 U.S.P.Q.2d 1996.

Moreover, Dr. George W. Reid's expert testimony alone justifies the validity and acceptance of rebuttal exhibit nos. 1-10. In his sixty-three (63) paragraph declaration, Dr. Reid surveys the Seventh-day Adventist Church and the other religious denominations that arose out of the Adventist movement in the 19<sup>th</sup> Century, believing that the term "Adventist" is "not commonly used to identify members of other denominations other than the Seventh-day Adventist church." See *50 TTABVUE 3-14* (for example, ¶¶ 6, 11, 20, 22, 26, 29, 33, 39, 47, 51, 56, 59, and 62, especially paragraphs 6, 22 and 62); see also *Stocker*, 1996 WL 427638 at \*15 ("It is the understanding of the public . . . and not that of the expert which is determinative [of genericness].").

While Dr. Reid devotes notable effort towards attacking Petitioner's Wikipedia and *Handbook of Denominations* evidence (but no other materials), he provides no specific support or foundation for his opinions on Adventism. See *50 TTABVUE 3-14*. Dr. Reid fails to cite to an encyclopedia, religious book, or reference work to support his opinions, except briefly *The Advent Review and Sabbath Herald* (October 23, 1860 and May 29, 1860). See *50 TTABVUE 5* (¶14). Perhaps as a deliberate evidentiary tactic (see *Fed. R. Evid. 803*), but regardless, Petitioner is thereby prejudiced from rebutting or discrediting any specific sources or resources (of GCCSDA's expert witness) because none are provided. This does not mean that Dr. Reid's testimony is not rebuttable, but instead significantly broadens the scope of what qualifies as rebuttal evidence. Petitioner then rebuts Dr. Reid's testimony by contrasting his unsupported and uncited opinions on Adventism with additional or expanded upon encyclopedias, religious books, reference works, and/or periodicals. A representative, but not exhaustive, list of these materials follows.

*Adventism Confronts Modernity* (2017) by Robert J. Mayer is an entire book about "Advent Christian" Adventists that directly rebuts Dr. Reid's testimony including its paragraphs 20, 22, 26, 29 and 62. See *70 TTABVUE 14 (Ex. 1)*. *Melton's Encyclopedia of American Religions, Eighth Edition* (2009) edited by J. Gordon Melton provides an in-depth exploration of groups that fall under the "Adventist Family" and directly rebuts Dr. Reid's testimony including its paragraphs 6, 11, 22, 26, 29, 33, 47, 50, 51, 56, 59, 61 and 62. See *71 TTABVUE*

13-50 (Ex. 3) and 72 TTABVUE 13-44 (Ex. 4). The *Second Revised Edition of the Seventh-day Adventist Encyclopedia* (1996) edited by Don F. Neufeld and Julia Neuffer features entries on “Adventist,” “Adventist Bodies,” “Apostate Movements,” “Davidian Seventh-day Adventists,” “Marion Party,” “Seventh-day Adventist,” “Seventh-day Adventist Church,” “Seventh-day Adventist Reform Movement,” “United Sabbath Day Adventists,” and directly rebuts Dr. Reid’s testimony including its paragraphs 11, 22, 26, 29, 33, 39 and 47. See 73 TTABVUE 13 (Ex. 5) and 73 TTABVUE 30 (Ex. 6). The *Seventh-day Adventist Bible Students’ Source Book* (1962) also edited by Don F. Neufeld and Julia Neuffer features entries on the “Advent Christian Church,” “Adventist Bodies,” “Adventists,” “Millerites,” and “Seventh-day Adventist Church” and directly rebuts Dr. Reid’s testimony including its paragraphs 11, 20, 22, 26 and 29. See 73 TTABVUE 54 (Ex. 7). *The Edges of Seventh-day Adventism, Second Edition* (2012) by Lowell Tarling describes multiple Adventist movements and directly rebuts Dr. Reid’s testimony including its paragraphs 11, 20, 22, 26, 29, 33, 39, 59, 61 and 62. See 74 TTABVUE 13 (Ex. 8). Lastly, published by GCCSDA in July 1974, the “*Make Us a Name*” article (especially its first four paragraphs) from *Adventist Heritage, A Magazine of Adventist History* directly rebuts Dr. Reid’s 2020 expert testimony including its paragraph 11, as well as Clinton Wahlen’s expert testimony including its paragraphs 7, 9, and 10 (49 TTABVUE 8-9). See 74 TTABVUE 47 (Ex. 9). This *Adventist Heritage* article was originally provided by Dr. Reid in his 2018 expert testimony (see 24 TTABVUE 114-121) but is conspicuously removed from his 2020 expert testimony (see 50 TTABVUE 3-14). Unquestionably, the totality of Petitioner’s rebuttal evidence is considered and proper.

### **III. CONCLUSION**

In conclusion, the Petitioner meets its burden and respectfully requests that this Board CANCEL Reg. Nos. 1,218,657 and 1,176,153 pursuant to Section 14(3) of the Lanham Act.

Respectfully submitted,  
*Attorney for Petitioner,*

/C. Alexander Chiulli/  
C. Alexander Chiulli | RI Bar No.: 9139  
achiulli@bglaw.com  
Barton Gilman LLP  
One Financial Plaza, 18<sup>th</sup> Floor  
Providence, RI 02903

Date: July 20, 2020

**CERTIFICATE OF SERVICE**

I, C. Alexander Chiulli, hereby certify that a true copy of the foregoing document has been served this  
20<sup>th</sup> day of July 2020 by electronic mail on:

Bassam N. Ibrahim  
Bassam.ibrahim@bipc.com

Bryce J. Maynard  
Bryce.maynard@bipc.com

Laura K. Pitts  
Laura.pitts@bipc.com

Buchanan Ingersoll & Rooney, PC  
1737 King Street, Suite 500  
Alexandria, Virginia 22314

/C. Alexander Chiulli/  
C. Alexander Chiulli, Esq.