

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

GENERAL CONFERENCE CORPORATION)
OF SEVENTH-DAY ADVENTISTS and)
GENERAL CONFERENCE OF)
SEVENTH-DAY)
ADVENTISTS, an Unincorporated Association,)

Plaintiffs,)

v.)

WALTER McGILL, d/b/a CREATION)
SEVENTH DAY ADVENTIST CHURCH,)
et al.,)

Defendants.)

Case No. 1:06-cv-01207

REPORT AND RECOMMENDATION

On referral to this Court for Determination and/or Report and Recommendation and for a hearing and Order and/or Report and Recommendation as to sanction, if warranted [D.E.149], is the Plaintiff's Notice of Additional Violations of Court Orders and Motion for Order Setting Evidentiary Show Cause Hearing [D.E. 148].

Previously, this Magistrate Judge recommended that both the Defendant McGill and his agent Lucan Chartier be found in contempt of violating the District Court's Orders [D.E. 111 and 136].

Defendant McGill apparently remains elsewhere in this world, with some indication he may be located on the Continent of Africa. Wherever he is, Defendant has

internet access through which he effectively uses to continue to guide and direct his agent Mr. Chartier of McNairy County, Tennessee.

During the most recent Evidentiary Hearing on December 16, 2010, Plaintiff and Defendant were represented by their attorneys. Again, Defendant McGill was not in attendance. The only witness present, Mr. Chartier, testified and admitted he has again replaced Church signs after Plaintiff had properly removed them, pursuant to District Court Order, on October 10, 2010. He further acknowledged that he still publishes and edits information on the websites, even though such actions were expressly prohibited by the United States District Court in previous Orders [D.E. 98 and 112]. Mr. Chartier readily conceded his actions were in violation of the District Court's Orders, and testified that he will continue to violate these Orders.

According to the testimony of Mr. Chartier, Defendant McGill and he exchanged messages about his latest sign restorations in October. As such, the Court again finds that Messrs. McGill and Chartier continue to operate in tandem to violate the District Court's Orders, and that their actions are intentional and in contempt of said Orders. It is clear that Defendant McGill is able to instruct and manipulate his young protégé to accomplish these contemptible acts. It continues to be apparent that Defendant McGill accomplishes this from a distance, well beyond the reach of this Court.

Based on the above, the Magistrate determines that Defendant McGill again is guilty of contempt in violating the Court's aforementioned Orders. As the principal, he is liable for the actions of his agent, Mr. Chartier. Additionally, the Defendant is directly

responsible for these violations since it appears he instructed and otherwise aided Mr. Chartier to perform these acts in violation of the District Court's Orders.

As to Mr. Charier, he has testified during both hearings, and it appears he seeks a passive confrontation with the Court. Through statements readily admitting the contemptuous acts and affirming, that regardless of what the Court says or does, he will continue in his disobedience, he seems to invite the Court to sanction him with jail time. With some understanding of his youth, his misguided efforts and the instructive influences of Defendant McGill, this Court has been most lenient, even permitting Mr. Chartier not to answer questions that he determines conflict with his beliefs. This Magistrate Judge has had no interest in providing this young man opportunity for a degree of "martyrdom" by recommending jail as a sanction. Nevertheless, Mr. Chartier is in contempt of the District Court Orders, and he indicates he is resolute to remain so.

On balance with the leniency shown Mr. Chartier, it is time to hold him accountable for the contemptible actions, misguided or not. During Mr. Chartier's presentation in court, on both occasions, he has attempted to set out the reasoning why he and Defendant McGill are entitled to use the Plaintiff Church's name. Mr. Chartier argues that they are entitled to do so because they believe the Plaintiff Church has strayed at some level from the beliefs of the founder(s), and as such, Defendant McGill and Mr. Chartier, as ones who more closely follow the founder(s), are now able to use the name. As consistently pointed out by the Magistrate Judge, this dispute should have been resolved within their Church channels. Understandably, the Courts have no role in such controversies.

However, Defendant McGill and Mr. Chartier chose a radically different path by starting their own church, creating websites and co-opting the name of Plaintiff Church. Thus, relying on their own interpretation of Biblical scripture,¹ the two ignore the federal trademark law.

In doing so, they fail to grasp two significant concepts important to civil government and religion in this Country. First, they fail to grasp the importance of obeying the federal trademark law. Such law exists for the protection of the original, so that the user of a trademarked service, product or in this case, church name, knows it is the real thing and not something else. If Plaintiff Church did not have its name protected with a trademark, anyone could use the Plaintiff's name, regardless of beliefs. How many McGills and Chartiers, with differing theologies, would it take for the name of Plaintiff Church to become diluted to the point of non-recognition? Extending Defendant's logic, one could open a Church using the name of Plaintiff, support it with websites and then attempt to make, for example, Presbyterians or Buddhists of the congregants. Trademark laws protect against such practices, and like it or not, protect against what Defendant McGill is doing on his own and through Mr. Chartier, even though Defendant "believes" he is more correct in his dogma than Plaintiff Church. Second, Defendant McGill and Mr. Chartier still have the freedom to practice their own religious beliefs and may form

¹ Acting in this fashion, Messrs. Chartier and McGill ignore the numerous exhortations within Bible for believers to obey the civil authorities, institutions and law. *See* Romans 13:1, 2, 4 and 7; 1 Peter 2:13 and 16; and Titus 3:1. Matthew 22:21 contains the spoken words of Jesus, "Render unto Caesar the things that are Caesar's and to God the things that are God's."

churches from South McNairy County, Tennessee to Africa and back again, so long as their church name is different and distinguishable from Plaintiff Church.²

In conclusion, this Court can no longer ignore the continuing and contemptible violations of the District Court Orders by both Defendant McGill and Mr. Chartier. Therefore, it is the recommendation of this Magistrate Court that Messrs. McGill and Chartier, each be fined \$500, that Defendant McGill reimburse Plaintiff for its attorneys' fees associated with the filing of this current motion and appearing in Court on December 16, 2010 and finally, that Defendant McGill and Mr. Chartier each be sentenced to serve thirty (30) days in the custody of the U.S. Marshal Service. Further, the Court recommends that twenty (20) days of Mr. Chartier's sentence be suspended pending his good behavior.

Respectfully submitted this 23rd day of December, 2010,

s/Edward G. Bryant
EDWARD G. BRYANT
U.S. MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.

² Acts 4 and 5 of the Bible involve Peter and others disobeying civil authority when they are ordered not to speak of Jesus or in His name, which is clearly not analogous in the present case.