

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

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS, *et al.*,

Plaintiffs,

v.

No. 1:06-cv-01207-JDB-egb

WALTER MCGILL d/b/a CREATION
SEVENTH DAY ADVENTIST CHURCH, *et al.*,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE REPLY IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION TO ADD FURTHER SPECIFICS TO THE COURT'S
PERMANENT INJUNCTION ENTERED MAY 28, 2009, AS FURTHER DEFINED BY
ORDER ENTERED JANUARY 6, 2010**

COME NOW Plaintiffs and respectfully move the Court to be allowed to file a Reply to Defendants' Response, titled, "Objection to Plaintiffs' Motion to Add Further Specifics to the Court's Permanent Injunction," in this matter and for grounds state as follows:

1. Defendants filed their Objection to Plaintiffs' Motion to Add Further Specifics to the Court's Permanent Injunction [D.E. 205] ("Objection") on or about October 29, 2015 wherein Defendants, *inter alia*, denied involvement with the websites which were part of what Plaintiffs sought to specifically add to the Court's Permanent Injunction entered May 28, 2009, as further defined by Order entered January 6, 2010 (hereafter the "Injunction"). Defendants challenged the Plaintiffs' need for any further specifics to the Injunction based upon changes in internet practices/technology since the date of entry of the Injunction.

2. Subsequent to the filing of Defendants' Objection, the Court, *sua sponte*, requested that the Parties/Counsel appear for a conference with the Court, which occurred on or

about November 3, 2015. During that conference, in response to Defendants' challenge to the need for further specifics, Plaintiffs' counsel made some mention of the push-back of some companies with regard to enforcement of the Injunction, and advised the court and Defendant of Plaintiff's desire to take Mr. McGill's deposition and file a Reply to the Objection in order to present the Court with information from said deposition and address arguments made by Defendants in their Response. The Court advised Plaintiffs' counsel to file a formal motion making that request.

3. On November 5, 2015, Plaintiffs filed a motion to be allowed to depose Mr. Walter McGill and to thereafter have three (3) weeks within which to get the transcript of the deposition and file Plaintiffs' Reply. [D.E. 211]. The Court granted that motion by order on November 6, 2015. [D.E.212].

4. The Plaintiffs deposed Mr. McGill on the scheduled date of November 12, 2015, and the transcript of that deposition is some 115 pages in length. Therein, among other things, Mr. McGill identified uses of Plaintiffs' mark in some of the pictorial exhibits presented to him; and admitted that at least some of the websites Plaintiffs seek to add to the Injunction were operated by his wife or Dr. David Aguilar, persons who the historical record reflect were clearly connected with Mr. McGill. (*See* pages 78–105 of the Deposition of Walter McGill, along with corresponding pictorial exhibits, attached hereto as collective **Exhibit 1.**)¹

5. As is set forth in Plaintiffs' Motion to Compel and for Extension of Time to File a Reply [D.E. 213], Plaintiffs sought to obtain some requested, late-filed exhibits to the deposition of Mr. McGill to include with other information and exhibits from the deposition in their forthcoming Reply. Included was a list of some 100–300 names, e-mail addresses and/or

¹ For references to Mr. McGill's wife, Barbara McGill, please see pp. 81, 82, 102. For references to Dr. David Aguilar, please see pp. 81-85, 87, 88, 104.

distributees to whom Mr. McGill communicates, and to whom he sent copies of the Motion for Further Specifics to the Court's Permanent Injunction after having received it. Plaintiffs felt that the requested exhibits to the deposition were relevant and probative on the issues before the court in the pending underlying Motion for Further Specifics, and would make the Reply more comprehensive.

6. By Order entered February 17, 2016 [D.E. 216], the Court denied the Motion to Compel and for Extension, and denied the underlying Motion for Further Specifics, without granting additional time within which the Plaintiffs may file their Reply without the denied exhibits.

7. Plaintiffs hereby seek leave of the Court to be allowed to present the Court with information from the deposition that was scheduled for the purpose of Plaintiffs being able to prepare and file a Reply. Without the Reply, the Court is without the information and arguments from the deposition of Mr. McGill, as well as Plaintiffs' response to Mr. McGill's claims for lack of need for more specifics to consider. Plaintiffs took the deposition dependent upon the ability to file the Reply to present the Court with facts and testimony from the deposition, as well as responding to Defendants' denials of the need for the underlying motion, and respectfully request the Court for leave to file the Reply without the late-filed exhibits which were the subject of the Motion to Compel, and request ten (10) days from the date of entry of the Order on this motion within which to do so, as Plaintiffs' counsel has been heavily involved in preparation for the taking of depositions in a patent infringement case pending in the Western District of Louisiana since the Court's Order of February 17, 2016, and those depositions are scheduled to be taken March 1 and 10, 2016 in Houston, Texas.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court grant Plaintiffs leave to file their Reply and allow Plaintiffs ten (10) days from the date of entry of the Order on this motion within which to file and serve their Reply.

Respectfully Submitted,

/s/ Philip M. Kirkpatrick
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CERTIFICATE OF SERVICE

Undersigned counsel for the Plaintiffs hereby certifies that a true and correct copy of the foregoing Motion has been sent via Electronic Mail and First Class Mail this 29th day of February, 2016 to:

Walter McGill
P.O. Box 424
Idyllwild, CA 92549

Sda_trademark_lawsuit@yahoo.com

/s/ Philip M. Kirkpatrick