

**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,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 1:06-cv-01207-JDB
)	
WALTER MCGILL d/b/a CREATION)	
SEVENTH DAY ADVENTIST CHURCH)	
<i>et al.</i> ,)	
)	
Defendant.)	

**NOTICE OF ADDITIONAL VIOLATIONS OF COURT ORDERS
AND MOTION FOR ORDER SETTING EVIDENTIARY SHOW CAUSE HEARING**

Plaintiffs, General Conference Corporation of Seventh-day Adventists and General Conference of Seventh-day Adventists (collectively the “Plaintiffs”), submit this notice of additional violations by Defendants and/or individuals acting as agents, servants, and/or acting in concert with Defendant Walter McGill (the “Defendant”), of this Court’s orders, and respectfully move this Court for an Order Setting an Evidentiary Show Cause Hearing and ask the Court to require that Mr. Lucan Chartier (“Mr. Chartier”), an individual acting as an agent, servant, and/or acting in concert with Defendant, attend such evidentiary hearing and show cause as to why he should not be held in contempt for willfully and repeatedly violating this Court’s orders.

Procedural History and Contempt Rulings

On May 28, 2009, this Court issued a permanent injunction against the Defendant, permanently enjoining him from using the mark SEVENTH-DAY ADVENTIST, including the use of the words SEVENTH-DAY or ADVENTIST, or the acronym SDA, either together, apart, or as a part of, or in combination with any other words, phrases, acronyms or designs or any marks similar thereto or likely to cause confusion therewith, in the sale, offering for sale, distribution, promotion, provision or advertising of any products and services, and including on the Internet, in any domain name, key words, metatags, links, and any other use for the purpose of directing Internet traffic, at any locality in the United States. (D.E. No. 98, the “Injunction Order”). This Injunction Order expressly applies to “Defendant and his agents, servants and employees, and all those persons in active concert or participation with them[.]” (D.E. No. 98 and Fed. R. Civ. P. 65(d)(2)) (emphasis supplied).

In short, Defendant failed to obey the Injunction Order. Accordingly, Plaintiffs filed a Motion and Memorandum for Order to Show Cause. (D.E. No. 102). On August 5, 2009, “based upon an optimistic presumption that Defendant will henceforth comply with this Court’s order,” this Court denied Plaintiffs’ motion without prejudice. (D.E. No. 103). Thereafter, Defendant continued to violate the Injunction Order. As a result, Plaintiffs filed a Renewed Motion and Memorandum for Order to Show Cause. (D.E. No. 105).

By Docket Entry dated October 20, 2009, Plaintiffs’ renewed motion was set for hearing on November 5, 2009. The Defendant neither responded to the motion nor appeared at the hearing. At the hearing, the Plaintiffs requested that they be allowed to conduct limited discovery in order to determine the extent of Defendant’s violation of the Injunction, including third party discovery to ascertain the identities of and/or the extent to which Defendant’s agents,

servants, employees, and those persons in active concert or participation with Defendant have assisted Defendant in violating the Permanent Injunction. (D.E. No. 111, p. 9).

On December 14, 2009, a Report and Recommendation on Contempt and Sanctions (“R&R”) was entered recommending that Plaintiffs’ Motion for Sanctions be granted. (D.E. No. 111). On January 6, 2010, this Court entered an Order Adopting Report and Recommendation in full. (D.E. No. 112). Specifically, the January 2010 Order held:

...that Plaintiffs or their agents should be and are permitted to remove and permanently dispose of Defendant’s signs and promotional materials that violate the Injunction Order, with the costs of such removal and disposal to be taxed to Defendant.

(D.E. No. 112, pp. 2-3).

In February 2010, Plaintiffs’ agents carried out the January 2010 Order and removed the signs and other infringing materials in Guys, Tennessee. Among other violations of the orders of this Court, on or about March 8, 2010, the signs were repainted by Lucan Chartier, thereby replacing the former infringing name of the church in direct willful violation of the Order and Injunction Order.

As a result, on or about March 24, 2010, Plaintiffs filed a Motion and Memorandum for Sanctions and Order Setting Show Cause Hearing, as well as a Motion and Memorandum for Order Setting Evidentiary Show Cause Hearing (“Plaintiffs’ Show Cause Motions”). (See D.E. Nos. 116 and 117).

On May 25, 2010, an evidentiary show cause hearing was held, during which Lucan Chartier, the acting pastor of Defendant’s church, testified at length regarding his current efforts on behalf of Defendant. Included in this testimony was Mr. Chartier’s admission that he repainted and replaced the signs at the church location in Guys, Tennessee, that he routinely is in contact with Defendant, and that he repainted and replaced the signs following consultation with

Defendant. Additionally, Mr. Chartier testified that he would continue his “civil disobedience” if necessary to keep the church signage in place, would continue maintaining the website(s) and postings on other sites, and would not fully answer questions about others who were involved in activities in possible violation of the Injunction and Order. (*See* D.E. No. 136, pp. 4-5).

Plaintiffs’ Show Cause Motions were referred to the Magistrate Judge for determination. On June 24, 2010, the Magistrate Judge issued a Report and Recommendation. Among other things, the Magistrate Judge found that in light of the above mentioned testimony from Mr. Chartier, Mr. Chartier willfully violated the Court’s Injunction and Order, and that his actions were the result of his communications with Defendant. (D.E. No. 136, pp. 6-7). Thus, the Magistrate Judge recommended that Plaintiffs’ Show Cause Motions be granted, and that Defendant and Mr. Chartier be found in “willful contempt” of the Court’s Injunction and Order, and that they both be “sanctioned appropriately.” (D.E. No. 136, pp. 2 & 8).

There were no objections taken to the Report and Recommendation. It is presently pending before the Court.

On August 10, 2010, the Sixth Circuit Court of Appeals issued its Opinion and Judgment Affirming this Court’s orders and judgment in all respects. (D.E. No. 146).

Subsequent Additional Acts In Willful Contempt Of This Court’s Orders

On October 6 2010, Plaintiffs’ agents again carried out the January 2010 Order¹ and again removed the signs and other infringing materials at the Guys, Tennessee property. Mr. Chartier was present on that date and stated his intent to thereafter repaint the signs. On October 12, 2010, Plaintiffs discovered that the signs had been repainted and replaced in direct willful

¹ At the May 25, 2010 hearing, Magistrate Judge Bryant confirmed that under the standing authority of the prior Orders of the Court, Plaintiffs had ongoing authority to remove and permanently dispose of Defendant’s signs and promotional materials that violate the Injunction Order despite their replacement by Defendant and/or his agents. (*Exhibit 1*, 5/25/10 Hearing Transcript, p. 104, l. 21 – p. 105, l. 14).

violation of the Order and Injunction Order. (See *Exhibit 2*, October 12, 2010 photograph of repainted sign) On information and belief, the signs were repainted and replaced by Mr. Chartier.

Accordingly, this Court should issue an order setting an evidentiary show cause hearing requiring Mr. Chartier to appear and show cause as to why he should not be held in contempt of Court for again violating the terms of the orders issued by this Court. Upon the conclusion of the evidentiary hearing, Plaintiffs respectfully request that the Court hold Mr. Chartier in contempt, and enter any and all sanctions and remedies that the Court deems proper to coerce compliance with the Court's orders and to compensate Plaintiffs for the losses sustained.

Respectfully submitted,

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General Conference of Seventh-day
Adventists*

CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of October, 2010, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to Charles L. Holliday, 312 East Lafayette Street, P.O. Box 2004, Jackson, TN 38302. Parties may also access this filing through the Court's electronic filing system.

A copy of the foregoing document will also be served on this the 20th day of October 2010 by overnight courier and subsequent personal service upon the following:

Lucan Chartier
1162 Old Highway 45 South
Guys, Tennessee 38339-5216

/s/ Joel T. Galanter
Joel T. Galanter