

World Trademark Review *Daily*

**Church's mark valid - even though religions cannot be trademarked
United States - McDermott Will & Emery LLP**

Confusion

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In *General Conference Corporation of Seventh-Day Adventists v McGill (d/b/a Creation 7th-Day Adventist Church)* (Case 09-5723, August 10 2010), the US Court of Appeals for the Sixth Circuit has affirmed the denial of a pastor's motion to dismiss and affirmed a partial summary judgment in favour of the plaintiff that the pastor's use of the mark SEVENTH-DAY ADVENTIST created a likelihood of confusion.

The plaintiff, *General Conference Corporation of Seventh-day Adventists*, was formed in 1863, marking the official organisation of the Seventh-Day Adventist Church. The name Seventh-Day Adventist has been used as the church's name since the official formation of the church, and the plaintiff owns the trademark to that name and related names. Defendant Walter McGill was a former member who broke away and founded his own church, but uses the plaintiff's SEVENTH-DAY ADVENTIST mark. McGill created many websites using the mark, including '7th-day-adventist.org'. The plaintiff has not granted McGill any licences or permission to use its marks.

After the plaintiff filed a complaint and was issued a default judgment, McGill appealed. The Sixth Circuit Court considered McGill's arguments despite the default.

McGill claimed that enforcement of the plaintiff's trademarks violated his free exercise rights under the [First Amendment](#) because his religion mandated him to call his church 'Creation Seventh-Day Adventist'. McGill argued that strict scrutiny must be applied to a restraint on the Free Exercise Clause because of the [Religious Freedom Restoration Act 1993](#). The Sixth Circuit, citing decisions from the Seventh and Ninth Circuits, concluded that the act applied only in suits against the government and not in suits between private parties. Since strict scrutiny was not applied, the Free Exercise Clause did not relieve McGill of his duty to comply with valid and neutral laws of general applicability, such as trademark law.

McGill also argued that 'Seventh-Day Adventism' refers to a religion and, therefore, is a generic term which cannot be trademarked. While the Sixth Circuit found that McGill's argument was "logical" and that no single party can prevent others from using the name of a religion, the court held that the evidence presented at the summary judgment stage was insufficient to show that the public considered 'Seventh-Day Adventist' to refer to a religion. McGill had not presented sufficient evidence to show that the relevant public - identified as Christians, or even Adventist Christians - understood 'Seventh-Day Adventist' as referring to specific religious beliefs, rather than to the plaintiff's church.

The court affirmed as to a likelihood of confusion, finding that every factor of the applicable test weighed in the plaintiff's favour, since the relevant public would have been confused as to the source of McGill's published materials relating to his church.

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