

IAFSDA. IAFSDA further denies that it is “continuing the counterfeit and unauthorized use of Plaintiff GCC’s federally registered and common law service marks and trademarks.”

II. JURISDICTION AND VENUE

1. The allegations of Paragraph 1 of the Complaint are jurisdictional or descriptive in nature and no response is required of IAFSDA. To the extent a response is required, IAFSDA admits the allegations of Paragraph 1 of the Complaint.

2. The allegations of Paragraph 2 of the Complaint are jurisdictional or descriptive in nature and no response is required of IAFSDA. To the extent a response is required, IAFSDA admits the allegations of Paragraph 2 of the Complaint.

3. IAFSDA denies that it has “committed tortious acts in Texas and in this District.” IAFSDA admits that “it issued a Certificate of Membership to the [Fort Worth NW Free Seventh-day Adventist Church],” as well as various affiliated churches located in Texas. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations of Paragraph 3 of the Complaint and on that basis denies the remaining allegations.

4. The allegations of Paragraph 4 of the Complaint are jurisdictional or descriptive in nature and no response is required of IAFSDA. To the extent a response is required, IAFSDA denies that GCC has alleged any proper or legally warranted “cause of action [that] arises in substantial part out of the activities of Defendants in this District.”

III. PARTIES

5. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 5 of the Complaint and on that basis denies each and every allegation therein.

6. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 6 of the Complaint and on that basis denies each and every allegation therein.

7. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 7 of the Complaint and on that basis denies each and every allegation therein.

8. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 8 of the Complaint and on that basis denies each and every allegation therein.

9. IAFSDA admits the address for Defendant Fort Worth NW Free Seventh-day Adventist Church is 632 N. Las Vegas Trail, White Settlement, Texas 76108. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations of Paragraph 9 of the Complaint and on that basis denies each and every allegation therein.

10. Admit.

11. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 11 of the Complaint and on that basis denies each and every allegation therein.

12. Paragraph 12 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA admits that GCC refers to Defendants Joe Gresham, Sterling Trice, Linda Trice, Bill Mathis, Gay Mathis, Fort Worth NW Free Seventh-day Adventist Church, and IAFSDA collectively as “Defendants” throughout the Complaint.

IV. BACKGROUND FACTS

A. The Structure and Organization of the Seventh-day Adventist Church and its Trademark Rights.¹

13. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 13 of the Complaint and on that basis denies each and every allegation therein.

14. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 14 of the Complaint and on that basis denies each and every allegation therein.

15. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegation that “GCC is the owner of all right, title and interest in and to US Registration No. 1,176,153 registered November 3, 1981 for the mark ‘ADVENTIST,’” and on that basis denies this allegation of Paragraph 15 of the Complaint. The statement that “[t]his mark and registration are valid and subsisting” is a legal conclusion that IAFSDA is not required to admit or deny.

16. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegation that “GCC is the owner of all right, title and interest in and to US Registration No. 1,177,185 registered November 10, 1981 for the mark ‘SEVENTH-DAY ADVENTIST,’” and on that basis denies this allegation of Paragraph 16 of the Complaint. The statement that “[t]his mark and registration are valid and subsisting” is a legal conclusion that IAFSDA is not required to admit or deny.

¹ IAFSDA does not consider the headings in Plaintiff’s Complaint to be either legal or factual allegations. To the extent a response is required or Plaintiff intends to make allegations through the headings, IAFSDA denies such allegations.

17. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegation that “GCC is the owner of all right, title and interest in and to US Registration No. 1,218,657 registered November 30, 1982 for the mark ‘ADVENTIST,’” and on that basis denies this allegation of Paragraph 17 of the Complaint. The statement that “[t]his mark and registration are valid and subsisting” is a legal conclusion that IAFSDA is not required to admit or deny.

18. Paragraph 18 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA admits that GCC uses the term “GCC’s Marks” to refer to “all statutory and common law trademark and service mark rights in and to ‘Fort Worth Northwest Seventh-day Adventist Church’ as associated with each of the above U.S. Registrations” throughout the Complaint.

19. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 19 of the Complaint and on that basis denies each and every allegation therein.

20. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 20 of the Complaint and on that basis denies each and every allegation therein.

B. Defendants’ Actions

21. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 21 of the Complaint and on that basis denies each and every allegation therein.

22. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 22 of the Complaint and on that basis denies each and every allegation therein.

23. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 23 of the Complaint and on that basis denies each and every allegation therein.

24. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 24 of the Complaint and on that basis denies each and every allegation therein. IAFSDA is not required to either admit or deny the second, third, or fourth sentence of Paragraph 24 because the referenced documents speak for themselves and on that basis IAFSDA denies each and every allegation contained therein.

25. IAFSDA denies that its use of the terms “Seventh-day Adventists” and “Adventist” is not licensed or authorized by GCC. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations of Paragraph 25 of the Complaint and on that basis denies each and every remaining allegation therein.

26. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations of Paragraph 26 of the Complaint and on that basis denies each and every allegation therein.

27. IAFSDA admits that it is a California corporation headquartered in Georgia. IAFSDA also admits that it has the authority to certify membership in the Free Seventh-day Adventist Church. IAFSDA further admits that it does not have any license from GCC to license GCC’s “ADVENTIST” or “SEVENTH-DAY ADVENTIST” Marks to the remaining Defendants and further denies that any such license is required under the law. IAFSDA admits that the address

for the Fort Worth NW Free Seventh-day Adventist Church is 632 N. Las Vegas Trail, White Settlement, Texas 76108. IAFSDA denies that it does not have any basis or right to use and allow others to use its “ADVENTIST” and “SEVENTH-DAY ADVENTIST” common law trademarks. IAFSDA also denies that it is using counterfeit and/or infringing marks. IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegation that the Fort Worth NW Free Seventh-day Adventist Church is “a splinter group from the Fort Worth Northwest Seventh-day Adventist Church” and on that basis denies this allegation of Paragraph 27 of the Complaint. IAFSDA is not required to either admit or deny the last sentence of Paragraph 27 because the referenced document speaks for itself and on that basis IAFSDA denies each and every allegation contained therein.

V. COUNT I

Federal Trademark Counterfeiting – 15 U.S.C. §§ 1114 and 1117

28. IAFSDA repeats and re-alleges its responses set forth in preceding paragraphs 1 through 27 as if fully set forth herein.

29. IAFSDA denies all allegations contained in Paragraph 29 of the Complaint.

30. IAFSDA denies all allegations contained in Paragraph 30 of the Complaint.

31. Paragraph 31 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

32. Paragraph 32 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

33. Paragraph 33 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA denies that Plaintiff is entitled to the relief sought in Paragraph 33 of the Complaint.

VI. COUNT II

Federal Trademark Infringement – 15 U.S.C. § 1114

34. IAFSDA repeats and re-alleges its responses set forth in preceding paragraphs 1 through 27 as if fully set forth herein.

35. IAFSDA denies all allegations contained in Paragraph 35 of the Complaint.

36. Paragraph 36 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

37. IAFSDA admits that its member church uses the name “Fort Worth Northwest Free Seventh-day Adventist Church.” IAFSDA lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations that “GCC has no control over Defendants’ use of GCC’s Marks and cannot control the fact that Defendants (not Defendant IAFSDA) have used GCC’s Marks to promote and identify their church as initially the Fort Worth Northwest Seventh-day Adventist Church,” and on that basis denies these allegations of Paragraph 37 of the Complaint. The remaining statements in Paragraph 37 of the Complaint contain neither factual nor legal allegations that require a response. To the extent a response is required, denied.

38. Paragraph 38 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

39. Paragraph 39 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

40. Paragraph 40 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA denies that Plaintiff is entitled to the relief sought in Paragraph 40 of the Complaint.

VII. COUNT III

Federal False Designation of Origin/Unfair Competition – 15 U.S.C. § 1125

41. IAFSDA repeats and re-alleges its responses set forth in preceding paragraphs 1 through 27 as if fully set forth herein.

42. Paragraph 42 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

43. Paragraph 43 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

44. Paragraph 44 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

45. Paragraph 45 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA denies that Plaintiff is entitled to the relief sought in Paragraph 45 of the Complaint.

VIII. COUNT IV

Injunctive Relief under Texas Anti-Dilution Statute – Tex. Bus. & Com. Code § 16.103(a)

46. IAFSDA repeats and re-alleges its responses set forth in preceding paragraphs 1 through 27 as if fully set forth herein.

47. Paragraph 47 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA denies that Plaintiff is entitled to the relief sought in Paragraph 47 of the Complaint.

48. IAFSDA denies all allegations contained in Paragraph 48 of the Complaint.

49. Paragraph 49 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA denies that Plaintiff is entitled to the relief sought in Paragraph 49 of the Complaint.

IX. COUNT V

Federal Trademark Dilution – 15 U.S.C. § 1125(c)(1)

50. IAFSDA repeats and re-alleges its responses set forth in preceding paragraphs 1 through 27 as if fully set forth herein.

51. Paragraph 51 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA denies that Plaintiff is entitled to the relief sought in Paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, denied.

53. Paragraph 53 of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA denies that Plaintiff is entitled to the relief sought in Paragraph 53 of the Complaint.

54. All allegations not heretofore admitted or denied are denied.

55. IAFSDA denies Plaintiff is entitled to any relief against it.

X. GENERAL PRAYER FOR RELIEF

This paragraph of the Complaint contains neither factual nor legal allegations that require a response. To the extent a response is required, IAFSDA denies that Plaintiff is entitled to any of the relief sought in this paragraph of the Complaint.

IAFSDA'S AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred, in whole or in part, based on IAFSDA's common law rights in and to the "ADVENTIST," "SEVENTH-DAY ADVENTIST" and "FREE SEVENTH-DAY ADVENTIST" marks.

3. The acts of which complaint is made against IAFSDA were expressly or impliedly ratified by Plaintiff.

4. Plaintiff's claims are barred due to acquiescence in that Plaintiff's acts and representations provided assurances to IAFSDA as to its rights to the "ADVENTIST," "SEVENTH-DAY ADVENTIST" and "FREE SEVENTH-DAY ADVENTIST" marks, IAFSDA relied on those representations and actions, and the remedies Plaintiff seeks would cause undue prejudice to IAFSDA.

5. Plaintiff's claims are barred, in whole or in part, by invalid registration and/or unclean hands, including Plaintiff's fraud in procuring trademark registration of the subject marks.

6. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches, including Plaintiff's delay in enforcement.

7. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

8. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

9. Plaintiff's claims are barred, in whole or in part, by the doctrines of fair use, nominative fair use, or descriptive use.

10. Plaintiff's claims are barred because "ADVENTIST" and "SEVENTH-DAY ADVENTIST" are generic and do not function as source identifiers for Plaintiff.

11. Plaintiff's claims are barred, in whole or in part, because none of IAFSDA's actions, statements, or omissions was deceptive, false, or misleading, and no consumers were actually deceived or misled.

12. Plaintiff is not entitled to relief due to a lack of likelihood of mistake, confusion, or deception.

13. Plaintiff's purported trademarks are not famous such that Plaintiff has no claim for trademark dilution.

14. Plaintiff's alleged damages were proximately caused or contributed to by persons other than IAFSDA, including, but not limited to, Plaintiff. Liability on the part of IAFSDA is therefore excused and/or limited as a result of the acts of such persons.

15. Plaintiff has failed to mitigate its damages, if any.

16. Plaintiff is not entitled to relief to the extent it has abandoned any trademark rights that it may have had in the asserted marks by failing to adequately police, monitor, or control third parties using the asserted marks or by failing to treat the asserted marks as trademarks.

17. Pursuant to Fed. R. Civ. P. 8, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Plaintiff's Complaint. Therefore, IAFSDA reserves the right to amend this Answer to Plaintiff's First Amended Complaint to allege additional affirmative defenses should subsequent investigation so warrant.

IAFSDA'S COUNTERCLAIMS

For its Counterclaims against GCC, IAFSDA hereby alleges as follows:

I. PARTIES

1. IAFSDA is a California corporation, with its principal place of business located in Hoshton, Georgia.

2. On information and belief based on Paragraph 5 of Plaintiff's Complaint as pleaded by GCC, GCC is a corporation formed under the laws of the District of Columbia with its principal place of business located at 12501 Old Columbia Pike, Silver Spring, Maryland 20904.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter under at least 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

4. The Court has personal jurisdiction over GCC by virtue of GCC having submitted itself to the jurisdiction of the Court by filing the Complaint.

5. Venue is proper in this District pursuant to at least 28 U.S.C. § 1391.

III. FACTUAL BACKGROUND

A. History of IAFSDA and the Free Seventh-day Adventist Denomination

6. In 1897, the General Conference of Seventh-day Adventist Church (the “General Conference”)² issued Lewis Sheafe (“Sheafe”) a ministerial license. However, Sheafe resigned on September 11, 1915 due to his displeasure with the General Conference’s “tacit confirmation of [racial] injustice,” which he believed the General Conference failed to “redress.” Shortly thereafter, Sheafe became the spiritual leader of Berean Church of Free Seventh-day Adventists, later known as IAFSDA.

7. IAFSDA was incorporated in the State of California on December 21, 1916, under the name Berean Church of Free Seventh-day Adventists, Inc.

8. IAFSDA became the first Seventh-day Adventist Church on record to register a corporation using the words “Free Seventh-day Adventists” in its name.

B. Long Time Use of “Free Seventh-day Adventist” by Groups Unaffiliated with General Conference/GCC

9. IAFSDA has used the terms “ADVENTIST,” “SEVENTH-DAY ADVENTIST,” and “FREE SEVENTH-DAY ADVENTIST” (collectively, the “Marks”) since its inception in

² Plaintiff purports to be the “enforcement arm” of the General Conference.

1920 in association with the religious services and related goods and services it offers. As such and as admitted by Plaintiff, IAFSDA has common law rights to the Marks.

10. Upon information and belief, since its inception, the General Assembly of Free Seventh Day Adventists has also used the terms “ADVENTIST,” “SEVENTH-DAY ADVENTIST,” and “FREE SEVENTH-DAY ADVENTIST” in association with the religious services and related goods and services it offers.

11. Upon information and belief, beginning as early as 1915 and throughout the time GCC submitted sworn trademark applications to the PTO, there have been numerous churches not affiliated with the GCC and/or General Conference that used the terms “ADVENTIST,” “SEVENTH-DAY ADVENTIST,” and/or “FREE SEVENTH-DAY ADVENTIST,” including, but not limited to, the Berean Church of Free Seventh-day Adventists, Temple of Truth Church of Free Seventh Day Adventists, Dallas Church of Free Seventh Day Adventists, New Light Free Seventh Day Adventist Church, New York Church of Free Seventh Day Adventists, Chicago Church of Free Seventh Day Adventists, Des Moines Church of Free Seventh Day Adventists, Bethel Church of Free Seventh Day Adventists, and others.

12. Upon information and belief, the Free Seventh Day Adventist movement was so prominent before the time GCC submitted the applications for the trademarks-at-issue that churches were also formed outside of the United States, including in Jamaica (*e.g.*, the Kingston Church of Free Seventh Day Adventists), Cuba (*e.g.*, the Moron Church of Free Seventh Day Adventists), Panama (*e.g.*, the Panama Church of Free Seventh Day Adventists), and Costa Rica (*e.g.*, the Port Limon Church of Free Seventh Day Adventists).

13. On information and belief, GCC has been aware of IAFSDA’s common law rights to the Marks since at least as early as May 1, 1980. In fact, GCC and/or the General Conference

previously acknowledged that (a) IAFSDA was incorporated in the early 1900s; (b) pre-dates the registration of Plaintiff's trademarks; and (c) has common law rights to the name "Free Seventh-day Adventist." **Exhibit 1**, January 27, 2015 correspondence from GCC to Denton Church of Free Seventh-day Adventists (Berean/IAFSDA 030-31).

14. At all relevant times, IAFSDA's and others' use of the terms "ADVENTIST," "SEVENTH-DAY ADVENTIST," and/or "FREE SEVENTH-DAY ADVENTIST" was open and notorious. Indeed, IAFSDA's correspondence with Plaintiff expressly describes IAFSDA's long-standing use of these terms and evidences that IAFSDA was not hiding its use of these terms. **Exhibit 2**, 2008-2009 and 2015-2016 correspondence between IAFSDA and GCC (Berean/IAFSDA 008-9, 012-13, 025-26, 032-035, 038, and 045-46).

15. In fact, such third-party use was so open and notorious that it is featured prominently as a matter of historical record in the General Conference's own encyclopedia. <https://encyclopedia.adventist.org/article?id=FCFO&highlight=sheafe>.

C. GCC's Application to Register "ADVENTIST" (App. 73/261,132; Reg. No. 1,176,153)

16. On or about May 7, 1980, Plaintiff filed an application with the United States Patent and Trademark Office ("PTO") seeking registration of the designation "ADVENTIST" as a trademark for use in connection with, among other things, books, magazines, pamphlets, newsletters, brochures, yearbooks, encyclopedias, dictionaries, bibles, and commentaries, providing opportunities for religious observance and mission services, providing health-care, retirement homes and nursing home services, as well as providing grade school, high school and college educational services (the "'132 Application"). A true and correct copy of the '132 Application is attached hereto as **Exhibit 3** (GCC-000001-207).

17. The '132 Application included the sworn declaration of GCC's then-Secretary, Robert E. Osborn, who stated that "all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true." Ex. 3 at GCC-000074.

18. In the '132 Application, GCC represented to the PTO that "to the best of [its] knowledge and belief, no other person, firm, corporation or association has the right to use 'said mark' in commerce, *either in the identical form or in such near resemblance thereto* as may be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive." Ex. 3 at GCC-000074 (emphasis added).

19. In the '132 Application, GCC additionally represented to the PTO that "the words Adventists and Seventh-day Adventists (either singular or plural) are synonymous and they have, in fact, been *exclusively* appropriated by applicant." Ex. 3 at GCC-000086 (Supplemental Amendment, Feb. 13, 1981) (emphasis added).

20. In reliance upon GCC's representations, the PTO issued Registration No. 1,176,153 (the "'153 Registration") for the designation "ADVENTIST" for use in connection with "religious books, magazines, pamphlets, newsletters, brochures, encyclopedias, dictionaries, commentaries, fliers, bulletins, booklets and bibles" in Class 016, "establishment and administration of employee health care and benefits programs and medical insurance programs" in Class 036, "film production and distribution services" in Class 041, and "health care services-namely, hospital, dental, pharmaceutical, nursing home, and medical laboratory services" in Class 042.

D. GCC's Application to Register "SEVENTH-DAY ADVENTIST" (App. 73/261,134; Reg. No. 1,177,185)

21. On or about May 7, 1980, GCC filed an application with the PTO requesting registration of the designation "SEVENTH-DAY ADVENTIST" as a trademark for use in connection with, among other things, books, magazines, pamphlets, newsletters, brochures,

yearbooks, encyclopedias, dictionaries, bibles, and commentaries, providing opportunities for religious observance and mission services, providing health-care, retirement homes and nursing home services, as well as providing grade school, high school and college educational services (the “’134 Application”). A true and correct copy of the ’134 Application is attached hereto as **Exhibit 4** (GCC-000208-461).

22. The ’134 Application also included the sworn affidavit of Mr. Osborn, who stated that “all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true.” Ex. 4 at GCC-000385.

23. In the ’134 Application, GCC represented to the PTO that “to the best of [its] knowledge and belief, no other person, firm, corporation or association has the right to use ‘said mark’ in commerce, *either in the identical form or in such near resemblance thereto* as may be likely, when applied to the goods or such other person, to cause confusion, or to cause mistake, or to deceive.” Ex. 4 at GCC-000385 (emphasis added).

24. In reliance upon GCC’s representations, the PTO issued Registration No. 1,177,185 (the “’185 Registration”) for the designation “SEVENTH-DAY ADVENTIST” for use in connection with “religious books, magazines, pamphlets, newsletters, brochures, encyclopedias, dictionaries, commentaries, fliers, bulletins, booklets and bibles” in Class 016, “establishment and administration of employee health care and benefits programs and medical insurance programs” in Class 036, “educational instructional services in academics at grade school high school and college level; film production and distribution services” in Class 041, and “health care services—namely, hospital, dental, pharmaceutical, nursing home, and medical laboratory services” and “conducting religious observances and missionary services” in Class 042.

E. GCC's Application to Register "ADVENTIST" (App. 73/312,118; Reg. No. 1,218,657)

25. On or about May 22, 1981, GCC filed an application with the PTO requesting registration of the designation "ADVENTIST" as a trademark for use in connection with, among other things, "educational instruction services in academics at grade school, high school, and college levels" and "religious observances and missionary services" (the "*'118 Application*").³ A true and correct copy of the '118 Application is attached hereto as **Exhibit 5** (GCC-000462-610).

26. The '118 Application included the sworn affidavit of Mr. Osborn, who stated that "all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true." Ex. 5 at GCC-000531.

27. In the '118 Application, GCC represented to the PTO that "to the best of [its] knowledge and belief, no other person, firm, corporation or association has the right to use 'said mark' in commerce, *either in the identical form or in such near resemblance thereto* as may be likely, when applied to the goods or such other person, to cause confusion, or to cause mistake, or to deceive." Ex. 6 at GCC-000531 (emphasis added).

28. In the '118 Application, GCC also cited both the '153 Registration and the '185 Registration as a same or analogous mark to support a claim of acquired distinctiveness of the ADVENTIST mark.

29. In reliance upon GCC's representations, the PTO issued Registration No. 1,218,657 (the "*'657 Registration*")⁴ for the designation "ADVENTIST" for use in connection with, among other things, "religious observances and missionary services."

³ The '132 Application, '134 Application, and '118 Application are collectively referred to as the "Applications."

⁴ The '153 Registration, '185 Registration, and '657 Registration are collectively referred to as the "Registrations."

F. GCC Made False and Material Representations of Fact in the Applications

30. Upon information and belief, at the time of GCC's representations in the Applications, GCC knew of the genericness of the terms "ADVENTIST" and "SEVENTH-DAY ADVENTIST." Moreover, upon information and belief, GCC knew at the time it filed the Applications that numerous entities (including those listed above) used the term "ADVENTIST" alone and/or in combination with other terms, such as "FREE" and "SEVENTH-DAY" in connection with identical goods and services offered by the General Conference (*e.g.*, religious observances and missionary services).

31. At the time of the filing of the Applications, GCC knew that the terms "ADVENTIST," "SEVENTH-DAY ADVENTIST," and/or "FREE SEVENTH-DAY ADVENTIST" are commonly known as adherents of the Adventist branch of Protestant Christianity, which have (with some variations) certain general beliefs and/or practices, including:

- a. the belief in the imminent Second Coming of Jesus Christ;
- b. identification of the Millerite movement founded by William Miller in the 1830s;
- c. recognition of Saturday as the Sabbath;
- d. literal belief of the (Christian) Bible;
- e. practice of healthy or vegetarian dietary practices; and
- f. adherents who identify as a Seventh-day Adventist and/or Adventist.

32. In addition to the Free Seventh-day Adventist churches listed above, other third-party denominations and sects using the terms "ADVENTIST" and/or "SEVENTH-DAY ADVENTIST" include, but are not limited to, the following:

- a. The Church of God (Seventh Day) which is a several thousand body formed in 1853 by a line of "Sabbatarian Adventists" that rejected the visions and teachings of Ellen G. White before the formation of the General Conference.

- b. The Seventh Day Adventist Reform Movement, which lists the membership of several thousand individuals in churches all over the United States and over 131 countries and territories. The Seventh Day Adventist Reform Movement was born from a schism with the General Conference in 1914-18. It identifies itself “with a conservative Seventh-Day Adventist theological and eschatological heritage.”
- c. The group of people commonly known as Shepherd’s Rod, which was a breakaway from the Seventh-day Adventist Church in 1930. Shepard’s Rod later splintered into several manifestations. In its most common form, it was identified as the General Association of Davidian Seventh-day Adventists. The Davidian Seventh-day Adventist Association was incorporated in Missouri in 1973, and the General Conference of Davidian Seventh-day Adventists was incorporated in South Carolina in 1971. On October 21, 2021, the PTO issued Registration No. 6,540,553 to the Davidian Seventh-Day Adventist Association for the mark “THE DAVIDIAN SEVENTH DAY ADVENTIST ASSOCIATION” in among other categories IC 45 for among other services conducting religious ceremonies. The application lists a first use date of 10/20/1965. The GCC has filed a TTAB cancellation proceeding, which is currently pending.
- d. The Branch Davidians, which was formed by vocal General Conference applicant clergy, including David Koresh, Steven Schneider, and Marc Breault in the 1970s. The Branch Davidians were located in Waco, Texas and mostly died during a firefight with the Federal Bureau of Investigations. The Branch Davidians claimed beliefs superior to the General Conference dating to the “Adventist” before that and to the Millerite movement.
- e. Good News Unlimited, which was founded by Dr. Desmond Ford, a member of the General Conference’s Biblical Research Committee in the United States and Australia, whose employment was terminated in 1980 after critiquing the General Conference’s teachings of the “investigative Judgement.”
- f. True and Free Seventh-day Adventists, which was formed in Germany during World War I. It is considered an offshoot of the Seventh Day Adventist Reform Movement.
- g. The United Seventh-Day Brethren, which was an Adventist Christian group formed in Marion, Indiana in 1947. It was active at the time the GCC filed the Applications but disbanded in the 1980s.
- h. The Advent Christian Church, also known as the Advent Christian General Conference (ACGC), which is an offshoot body of Millerite movement.
- i. The Primitive Adventist Christian Church, which is a body of Adventist Christians located in central West Virginia. It was formed before the General

Conference was formed and considered a separatist movement from the Advent Christian Church.

- j. The Adventist Church of Promise (a/k/a “Adventista de Promessa”) which is a “Sabbatical Adventist” church formed in Brazil in 1932. It has known branches in the United States.
- k. The International Missionary Society of Seventh-Day Adventist Church Reform Movement (IMSSDARM), which is a body that separated from the General Conference in 1915. It began in Denver, Colorado but is currently located in Cedartown, Georgia. It may be affiliated with the Seventh-Day Adventist Church Reform Movement.
- l. The Holy Flesh Adventism Movement, which was a controversial Adventist sect occurring between 1890 and 1901 in Indiana. The General Conference’s leadership sharply criticized the Holy Flesh Adventism Movement. It was subsequently carried into Pentecostalism.
- m. United Sabbath-Day Adventist Church, which is an offshoot of the General Conference, separated in 1928 and originally had several locations. It is currently located in New York City and became affiliated with IAFSDA in 2010.
- n. The Advent Christ Church, which was founded in 1860. It is now known as the Advent Christian General Conference.

33. In addition to knowing at the time of filing the Applications that there were numerous denominations and sects (including at least three Free Seventh-day Adventist denominations/sects) using the terms ADVENTIST, SEVENTH-DAY ADVENTIST, and/or FREE SEVENTH-DAY ADVENTIST as a descriptor of their collective faith, the GCC knew of the genericness of the terms ADVENTIST and/or SEVENTH-DAY ADVENTIST, including specifically that the terms were used ubiquitously by other non-Adventist or Seventh-Day Adventists churches.

34. Additionally, as to the use of the term “SEVENTH-DAY ADVENTIST,” upon information and belief the GCC and/or the General Conference knew that Seventh-day Adventist Kinship International (“*SDA Kinship*”) began using the term as early as 1976 to provide support to homosexual Adventists who came together for support against reported General Conference

discrimination based on sexual orientation. As early as April 1981, the North American Division Committee of the General Conference noted the need to seek counsel to stop the SDA Kinship from using the mark. The GCC warned SDA Kinship that it would take legal action if the SDA Kinship did not abandon its use of the term. In fact, the GCC subsequently sued SDA Kinship, alleging violations of the Lanham Act and other common law and state law claims. In 1991, U.S. District Judge Phalzer found that the term “Seventh-day Adventist” was generic, noting:

[The term] has a dual meaning: it refers not only to the [General Conference] but to adherents of the religion of Seventh-day Adventism. The *American Heritage Dictionary of the English Language* (1969) defines “Seventh-day Adventist” as “[a] member of a sect of Adventism distinguished chiefly for its observance of the Sabbath on Saturday.” Although not determinative, the Court finds it significant that the term “Seventh-day Adventist” appears in a standard American language dictionary. The use of the name “Seventh-day Adventist” by at least two breakaway churches, The Seventh-day Adventist Church, Reform Movement, and the Davidian Seventh-day Adventist Association, without opposition by the General Conference also tends to support the view that the term “Seventh-day Adventist” has significance other than to indicate membership in the mother church. More importantly, there is no term that adequately describes an adherent to the religion of Seventh-day Adventism, other than “Seventh-day Adventist”; the only possible alternative would be “Adventist” and that term is too broad.

Gen. Conf. Corp. of Seventh Day v. Seventh-Day Adventist Kinship, Int’l, No. CV-87-8113-MRP, 1991 WL 11000345, *6 (C.D. Cal. Oct. 7, 1991) (internal citations omitted).

35. Upon information and belief, the GCC knew that the term “SEVENTH DAY” certainly was not distinctive or fancifully derived from the GCC as an ancient term/practice:

- a. Chapter 1, verses 1-2 of the Book of Genesis in the Hebrew bible states, “God blessed the seventh day and made it holy, because God rested from all his work he had done on Creation.”
- b. Chapter 16, verses 23-30 of the Book of Exodus in the Hebrew bible states, “Six days you shall gather it, but on the seventh day ... remain each of you in place; let no one go out his place on the seventh day.”

- c. The Ten Commandments in chapter 20, verses 8-11 of the Book of Exodus in the Hebrew bible state, “Remember that the (seventh) Sabbath day, to keep it holy.”

36. Upon information and belief the GCC and/or the General Conference also knew that in deference to the Hebrew bible, at least three significant religions, whose use for some stems thousands of years before the use of any ADVENTIST or SEVENTH-DAY ADVENTIST, refer to the “seventh day” as the day of their Sabbath (sundown Friday night to sundown Saturday night). These include the Eastern Orthodox Church (the second largest Christian church in the world dating back to before the common era), all denominations of Judaism, and Seventh Day Baptists (dating back to the 17th century).

37. Upon information and belief, the GCC and/or the General Conference also knew that there are or were several minor sects and/or denominations of Christians who refer to and practice the “seventh day” Sabbath, including the Assembly of Yahweh, 7th Day, Assemblies of Yahwaye, Hebrew Roots, House of Yahway, La Iglesia de Dios Incorporada, Masonic Judaism, Remnant Fellowship, the Seventh-day Remnant Church, and Founded in Truth Fellowship.

38. As to the terms “ADVENTIST” (and relatedly “ADVENTISM”), upon information and belief the GCC and/or the General Conference knew that English dictionaries, linguistic guides, and historical sources discredited the GCC’s view that the words are a sole source indicator of the GCC:

- a. “Adventist” has encyclopedic and dictionary definitions as a member of any one of a group of Protestant Christian churches that trace their origin to the United States in the mid-19th century and that are distinguished by their emphasis on the belief that the personal, visible return of Christ in glory (*i.e.*, the Second Coming) is close at hand, a belief shared by many Christians.
- b. The etymology of the linguistic form Adventism is ADVENT and ISM.
 - i. “Advent” is utilized in many Christian faiths, particularly Lutheran and Catholicism, as it means (among other definitions) the coming or second coming of Christ and/or the beginning of the liturgical year in Western

Christianity and/or the four-week wait until Christmas. As to Catholics in the U.S. diocese, Advent has a special meaning in their theological learnings (analogizing the advent before Christmas to Mary and Joseph's wait for Christ's birth and Miriam and Moses' wait in Exodus. Advent is also in the name of numerous Lutheran churches (New York City; Westminster, Colorado; Maple Grove, Minnesota; and Cederberg, Wisconsin, among others).

- ii. "Ism" is defined by dictionary.com as a specific practice, system, or philosophy (*e.g.*, relativism, Judaism, communism, consumerism).
- c. That there were (and still are) many non-General Conference Adventists including ones who "define 'ADVENTIST' in a broad sense, beyond the official members of one denomination, including a number of groups within the Adventist faith tradition, inactive and former members of these groups, and many denominations or faith communities or no religion at all."
- d. That prominent critics of the General Conference distinguished "Adventism" from the General Conference (one specifically stating: "Authentic Adventism seeks to practice Ellen White's (teachings... Is this (the GCC) the church of James and Ellen White, of J.N. Andrews, of A.T. Jones? It is not.").

G. GCC's Declaration of Incontestability Submitted with the '118 Application Was Fraudulent.

39. On or about April 8, 1988, the GCC filed a Combined Declaration of Use and Incontestability under Sections 8 and 15 of the Lanham Act. Pursuant to the Section 15 declaration of incontestability, the GCC affirmed that there was "no proceeding involving any of said [trademark] rights pending and not finally disposed of" in the PTO or in the courts. Ex. 5 at 550.

40. This representation was false or, at best, made with reckless disregard for the truth. Specifically, before and during the filing of the '118 Application, GCC was embroiled in a trademark infringement case, referenced in ¶ 34 above, in which the GCC defended issues on whether SEVENTH-DAY ADVENTIST, which it had sworn on two occasions is synonymous with ADVENTIST, suffered from genericide. The Court specifically addressed the term ADVENTIST as a descriptor and found that the term was broader than Seventh-day Adventist.

Gen. Conf. Corp. of Seventh Day, 1991 WL 11000345 at *6.

IV. FIRST COUNTERCLAIM

Cancellation of Trademark Registration Due to Genericness

41. The allegations of paragraphs 1 through 40 of these Counterclaims are re-alleged and incorporated herein by reference.

42. According to Dictionary.com, the word “ADVENTIST” is a generic dictionary term that means “a member of any of certain Christian denominations that maintain that the Second Advent of Christ is imminent.” See <https://www.dictionary.com/browse/adventist>.

43. Independent of the historical GCC spin-offs listed above, there are at least nine other Millerite but non-GCC affiliated denominations that are Adventist, with eight observing the Sabbath on the *seventh day* (defined as Sabbatarian Adventists), including the Advent Christian Church, the Chistadephians, the Church of God (Seventh Day), The Church of God and Saints of Christ, the Church of God General Conference, The Grace Communion International, the Philadelphia Church of God, the United Church of God, and the Watch Tower Bible and Tract Society.

44. There are a plethora of Christian denominations and sects that worship their Sabbath on the *seventh day* (Friday night to Saturday night), including Seventh Day Baptists, Sabbatarian Adventists, Sabbatarian Pentecostals (including the True Jesus Church, and Soldiers of the Cross Church), Armstrongism (including the Church of God International, House of Yahway, International Church of God, and United Church of God), the modern day Hebrew Roots movement, the Seventh-Day Evangelist Church.

45. Those that use the term SEVENTH DAY to describe their worship precede the GCC’s use of the term by several centuries. For example, Seventh Day Baptists were founded in 1681 and are represented by the Seventh Day Baptist World Federation.

46. The terms “ADVENTIST” and “SEVENTH-DAY ADVENTIST” generally refer to a religion or a person holding certain beliefs.

47. These terms are or have, with current circumstances, become generic, non-distinctive, and used to refer to any large number of individuals, entities, and groups, and do not uniquely identify GCC as the source of goods or services.

48. Because the relevant market understands that “ADVENTIST” and “SEVENTH-DAY ADVENTIST” generally refer to a religion, or a person holding certain beliefs, IAFSDA and others have a legitimate need and right to freely use these terms without GCC’s permission to identify their religion or beliefs.

49. As noted above, in addition to IAFSDA’s own use of the words, numerous third parties regularly use the terms “ADVENTIST” and “SEVENTH-DAY ADVENTIST” to refer to their religion or beliefs, and without any affiliation with GCC.

50. GCC’s claimed trademarks “ADVENTIST” and “SEVENTH-DAY ADVENTIST” are generic, non-distinctive, and do not uniquely identify GCC as the source of goods or services.

51. IAFSDA has been and is being damaged by GCC’s claim of exclusive trademark rights in invalid, unprotectable, and unenforceable designations that the relevant consumers primarily understand to be generic for the subject goods and services.

52. IAFSDA is entitled to an order, and declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 15 U.S.C. §§ 1052, 1064, and 1119, including that (a) “ADVENTIST” and “SEVENTH-DAY ADVENTIST” are invalid, unprotectable, and unenforceable marks on the ground of genericness, and (b) that the Director of the PTO shall direct the cancellation of GCC’s

Registrations on the ground of genericness according to this Court's power over trademark registrations pursuant to 15 U.S.C. § 1119.

V. SECOND COUNTERCLAIM

Cancellation of Trademark Registration Due to Abandonment

53. The allegations of paragraphs 1 through 52 of these Counterclaims are re-alleged and incorporated herein by reference.

54. As noted above, in addition to IAFSDA's own use of the words, numerous third parties regularly use the terms "ADVENTIST" and "SEVENTH-DAY ADVENTIST" to refer to their religion or beliefs, and without any affiliation with GCC.

55. Because of this widespread use and GCC's failure to enforce its trademark rights, the terms "ADVENTIST" and "SEVENTH-DAY ADVENTIST" have lost any connection to GCC in the minds of the relevant public, and GCC's purported rights in these terms have been abandoned.

56. IAFSDA has been and is being damaged by GCC's claim of exclusive trademark rights in trademarks that have been abandoned.

57. IAFSDA is entitled to an order, and declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 15 U.S.C. §§ 1052, 1064, and 1119, including that (a) "ADVENTIST" and "SEVENTH-DAY ADVENTIST" are invalid, unprotectable, and unenforceable marks on the ground of abandonment, and (b) that the Director of the PTO shall direct the cancellation of GCC's Registrations on the ground of genericness according to this Court's power over trademark registrations pursuant to 15 U.S.C. § 1119.

VI. THIRD COUNTERCLAIM

Cancellation of Trademark Registration Due to Fraud

58. The allegations of paragraphs 1 through 57 of these Counterclaims are re-alleged and incorporated herein by reference.

59. At the time of filing its Applications, GCC was aware that IAFSDA, as well as other third parties, used “ADVENTIST” and “SEVENTH-DAY ADVENTIST” in connection with similar goods and services listed in the Applications.

60. At the time of filing its Applications, GCC also knew that members of the general public encountering “ADVENTIST” and “SEVENTH-DAY ADVENTIST” understood the marks to mean anyone who believed in the second coming of Jesus Christ or to refer to any of a number of different Adventist belief systems, denominations, and organizations.

61. GCC’s representations to the PTO in the Applications (*e.g.*, that no other person, firm, corporation, or association has the right to use “ADVENTIST” and “SEVENTH-DAY ADVENTIST” in commerce) were false, made with knowledge that the representations were false, and intended to mislead the PTO into issuing the Registrations, which GCC was not entitled to receive.

62. GCC was aware that the foregoing false or fraudulent statements would be relied upon by the PTO in making its determination during the examination and approval of the Applications.

63. GCC is not entitled to the continued registration of the “ADVENTIST” and “SEVENTH-DAY ADVENTIST” marks because GCC misled the PTO into believing statements concerning the Applications that, had the PTO known the truth thereof, the PTO would not have approved the registration of the mark as provided by statute.

64. IAFSDA alleges and seeks a judicial declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that the designations “ADVENTIST” and “SEVENTH-DAY ADVENTIST” are not valid trademarks and that GCC’s alleged trademark rights in and to the designations “ADVENTIST” and “SEVENTH-DAY ADVENTIST” are invalid and unenforceable on the grounds of fraudulent procurement.

VII. FOURTH COUNTERCLAIM

Civil Liability for False or Fraudulent Registration

65. The allegations of paragraphs 1 through 64 of these Counterclaims are re-alleged and incorporated herein by reference.

66. 15 U.S.C. § 1120 states that “[a]ny person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.”

67. GCC obtained the “ADVENTIST” and “SEVENTH-DAY ADVENTIST” Registrations by false or fraudulent declaration in writing in its Applications and/or by false means through its representations during the prosecution of the Applications.

68. IAFSDA has sustained harm and damages as a consequence of representations made by GCC in connection with the applications for the Registrations for which IAFSDA is entitled to recover damages pursuant to 15 U.S.C. § 1120.

69. IAFSDA alleges and seeks an award of damages pursuant to 15 U.S.C. § 1120 as a result of its damages resulting from GCC’s procurement of U.S. Trademark Registration Nos. 1,176,153, 1,218,657, and 1,177,185 by false or fraudulent declarations or representations or by other false means.

VIII. FIFTH COUNTERCLAIM

Declaratory Judgment of Non-infringement

70. The allegations of paragraphs 1 through 69 of these Counterclaims are re-alleged and incorporated herein by reference.

71. IAFSDA does not infringe the invalid, unenforceable, generic, abandoned and/or fraudulently procured registered trademarks “ADVENTIST” and “SEVENTH-DAY ADVENTIST.”

72. IAFSDA should be permitted to continue using these marks as it has been doing for more than a century.

73. IAFSDA alleges and seeks a judicial declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that IAFSDA has not infringed, and does not infringe, any alleged trademark rights GCC may have in and to the “ADVENTIST” and “SEVENTH-DAY ADVENTIST.”

IX. PRAYER FOR RELIEF

WHEREFORE, IAFSDA prays that the Court enter judgment:

- a. dismissing all claims in GCC’s Complaint with prejudice and ordering that GCC take nothing by way of this action;
- b. declaring that GCC’s alleged trademark rights in and to the generic designations “ADVENTIST” and “SEVENTH-DAY ADVENTIST” are invalid and unenforceable;
- c. declaring that IAFSDA has not infringed and does not infringe any alleged trademark rights of GCC in and to the generic designations “ADVENTIST” and “SEVENTH-DAY ADVENTIST”;
- d. directing, in a decree or order certified by the Court to the United States Patent and Trademark Office, that U.S. Trademark Registration Nos. 1,176,153, 1,218,657, and 1,177,185 be cancelled pursuant to 15 U.S.C. § 1119;
- e. that IAFSDA recover, pursuant to 15 U.S.C. § 1120, all damages it has sustained as a consequence of the false and fraudulent procurement of U.S. Trademark Registration Nos. 1,176,153, 1,218,657, and 1,177,185;
- f. that IAFSDA recover its reasonable attorneys’ fees;

- g. that IAFSDA recover the costs of this action and pre- and post-judgment interest; and
- h. granting IAFSDA such other and further relief, whether at law or in equity, as the Court deems just and proper.

Dated: April 3, 2023

Respectfully submitted,

/s/ Steven C. Lockhart

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2023, a true and correct copy of the above and foregoing document was served via ECF and/or email to the following:

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