



# **CORPORATE STRUCTURE IN THE SEVENTH-DAY ADVENTIST CHURCH**

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# OVERVIEW



- Corporation
- For Profit vs Non Profit
- Corporations in the Seventh-day Adventist Church
- Denominational Status
- Dual Structure of Conferences
- Relationship between churches and Conferences

# CORPORATION



- A company or group of people authorized to act as a single entity (legally a person) and recognized as such in law
- Unlike Associations, partnerships or sole proprietorships
- In Law, treated like person
- Perpetual life
- Empowered to enter contracts, leases, borrow money buy property, goods and services without imposing personal liability on individuals who carry out those activities
- Can sue or be sued
- Recourse only against legal entity not individuals\*
- Liability limited to assets of the corporation

# FOR PROFIT



- Owned by Shareholders
- Can sell shares to raise funds
- Entitled to make profits
  - Owners
  - Shareholders
- Profit driven
- Distribution of assets to owners
- Can be sold
- Directors can be compensated for serving on Boards

# NON-PROFIT/CHARITY



- Usually started by a group or individual for particular purpose
- Members
- Mission driven
- Can't be sold, can only be dissolved
- Directors are not usually compensated for serving on Board
- On dissolution assets turned over to another charity
- Who owns non profit?
  - Charities Exist for the public good-Public Purpose (religious, educational, poverty relief, beneficial to society)
- Greater scrutiny/oversight

# LEGAL “PERSONS” IN THE SDA CHURCH



- Conference/Mission Corporations
- Union Conference Corporations
- North American Division Corporation
- General Conference Corporation
- Institutional Corporations

# HOW CORPORATIONS ARE FORMED IN THE SDA CHURCH



- BA 25 05 - The incorporation or registration of legal entities of the Church, other than at the General Conference level, is subject to division policy which takes into consideration the principles of denominational organization and representation, laws of jurisdictions, and the specific needs of the Church in the geographic areas served. Unless local laws require otherwise, the local church operates under the legal structure of the local conference, mission, or union of churches and not as a separate legal entity.
- BA 25 10- Division Institutions and subsidiary organizations seeking to form corporations shall comply with division policy regarding the formation of corporations or, in the absence of such a policy, shall secure approval from the respective division executive committee.



# HOW CORPORATIONS ARE FORMED IN THE SDA CHURCH



- BA 25
- Most evangelistic and ecclesiastical work accomplished through unincorporated organizations
- Use of legal entities to exercise rights, privileges, duties, and to be held accountable for certain liabilities
- Corporations to serve General Conference must be authorized by Executive Committee
- NAD WP BA 25 10 - All organizations planning to form legal corporations, limited liability companies, or similar legal entities registered with the government, shall first secure approval from their union executive committee, if applicable, and the North American Division Committee (NADCOM), which shall also determine if the new entity qualifies for denominational status under NAD Working Policy

# CONFERENCE/UNION CORPUS



- Conference Association
  - Management of Gifts, Wills, Legacies and Trust Funds
  - Legal and trustee capacity
  - Hold, manage, and invest trust funds and channel unrestricted matured funds as directed by action of the Conference Executive Committee
- Property Holding Corporations (by Division or Union)
  - Hold title to denominational property, in trust for the denomination or institution

# INSTITUTIONS/AGENCIES/SERVICES



- Organizations that aren't ecclesiastical
- Subsidiary organizations, with defined administrative powers, established and operated by local missions or conferences, unions, divisions or the General Conference.
- These may include educational, healthcare, publishing, food industries, media centers etc.,
- participation in church mission and values occurs through selection, by a constituency, of church members in regular standing to serve as constituents, directors/trustees, administrators, and employees.

# ORGANIZATIONAL STRUCTURE OF LEGAL ENTITIES



- BA 25 30
  - Purpose- to advance Adventist mission
  - Principles-
    - Defined membership or constituency
    - Corporate membership composition
    - Constituency session every 5 years
    - Board Composition
    - Election of Chairman of Board after consultation
    - Board accountable to constituency
    - Funds remaining at Dissolution as directed by sponsor

# GC CONSTITUENT CORPORATIONS



- Adventist Risk Management
- Adventist Development and Relief Agency
- Adventist University of Africa
- AIIAS
- Hope Channel
- Andrews University
- Loma Linda University
- Review & Herald Publishing Association
- Adventist Accrediting Association

# NAD CONSTITUENT CORPORATIONS



- NAD Corporation
- Adventist Media Center
- Adventist Community Services NAD, Inc.,
- Pacific Press Publishing Association
- Oakwood University
- Christian Record Services

# DENOMINATIONAL STATUS



- C 47- The North American Division Committee holds the authority and sole discretion to determine, confer, and evaluate denominational status for organizations within its territory in accordance with this policy. The North American Division Committee will consider the factors outlined in this policy as well as any other information it deems relevant to the decision. Compliance with the requirements of this policy shall not be the sole determining factor in the evaluation.

# DENOMINATIONAL STATUS- STRUCTURE, GOVERNANCE, AND OPERATION REQUIREMENTS



- must be affiliated with, and subject to, the general supervision/control of a recognized entity of the SDA Church,
- must comply with the following for denominational status:
  - Governing documents
    - Relationship-Affiliation with Church
    - Corporate Membership-all corporate members must be church members, majority shall be directors, officers, employees or members of executive committee of entity listed in Yearbook
    - Board appointed by of corporate membership/constituency
    - Majority of board shall be church members
    - On dissolution assets to be transferred to another organization holding denominational status
  - Operation in accordance with SDA beliefs
  - Property ownership



# DENOMINATIONAL APPROVAL PROCESS



- Prior approval by all higher organizational units before reaching NAD
- Application to be sent to NAD Secretary for review and final approval by NADCOM
- Full discretionary power in NADCOM
- If refused, written reasons to be provided
- Once initial approval granted subsequent reviews directly by NAD

# BENEFITS OF DENOMINATIONAL STATUS



- Listed in SDA Yearbook
- Permitted use of Trademarks
- Eligible to participate in retirement plans
- Eligible to be included in group tax exemption
- Master Insurance Policies

# HISTORICAL DUAL STRUCTURE OF CONFERENCES



- CONFERENCE
  - Unincorporated nonprofit association
  - All operational aspects of the Conference including employees
  - Ecclesiastical organization
- ASSOCIATION-CORPORATION
  - Nonprofit religious corporation
  - All legal aspects of property ownership, trusts
  - Legal organization
- Some conferences have merged the Corporation and the Unincorporated Conference Association into one (BA 25 12)

# DISTINCTION



- Corporate
  - Bound by local corporate law
  - Constitution and Bylaws
  - Board has fiduciary responsibility to members
- Ecclesiastical
  - Held together by Working Policy and Church Manual
  - Unincorporated
  - Executive Committee fiduciary responsibility to Constituency
  - Perhaps different set of laws depending on jurisdiction dealing with unincorporated associations

# STATUS OF CONFERENCE/CHURCH



- The local conference is the lowest level of legal identity recognized by the Church. The local congregation has representative delegated authority to conduct the local activities as part of the conference.
- The local church does not have the right to own property, sue or be sued directly, employ individuals, or conduct other legal activities except under the auspices of the local conference



# LOCAL ENTITIES RELATIONSHIP TO THE CONFERENCE

- Local church/school/community service center is typically not separate legal entity
- Actions of local board members/employees and volunteers may bind the conference
- Actual and apparent authority
- Local actions can and do have a direct legal impact on the conference

# THE CONFERENCE...



- Holds legal title to real estate;
- Sets policies;
- Is the Employer of all staff;
- Provides spiritual leadership
- Provides support to various ministries

# THE CONFERENCE DOES NOT ...



- Choose volunteers for ministry
- Determine church membership
- Determine church discipline issues
- Determine how local funds are spent.



# HOW LOCAL ENTITIES EXPOSE CONFERENCE



- Liability arises through:
  - Behavior of entity
  - Legal structure
  - Actions, Behavior or Knowledge of employees or volunteers who become agents of Conference

# ASCENDING LIABILITY



- The principal becomes liable for the acts of the agent.
  - Who is agent? Pastor, Teacher, Volunteer
- The “Parent” Organization becomes liable for the acts of the “Subordinate” Organization

# RATIFICATION OR REPUDIATION



- When a principal has notice that an illegal/unauthorized act has taken place, there is a **DUTY TO REPUDIATE**
- When there is a duty to act and the principal fails to act the principal may **RATIFY** fraudulent or unauthorized act by **DOING NOTHING**

# NAD WORKING POLICY REQUIREMENT



NAD WP S04 48-Dealing with Offenders

When a volunteer or an employee of a Seventh-day Adventist organization performs an act in violation of the laws of the country and of the financial trust or responsibility reposed in him/her, discipline shall be administered, and the Church will report the violation(s) to appropriate law enforcement.

# HOW LOCAL ENTITIES EXPOSE CONFERENCE EXAMPLES



- Selecting unsuitable volunteers
- Failing to supervise volunteers
- Hiring their own employees
- Entering into contracts binding the Conference
- Renting property
- Allowing use of church owned property for non-church related activities without proper safeguards
- Maintenance and selection of vehicles



# LEGAL ISSUES

# ISSUES



- Confidentiality
- Conflict of interest
- Contracting
- Property ownership
- Employee/IC/Volunteer status
- Affinity Fraud
- Vehicles
- Trademark
- Copyright

# HANDLING CONFIDENTIAL INFORMATION



- Some Information shared on Board is Confidential
- Legal Protections
  - Executive Session
- What can you not do with the board member who can not keep it confidential?
  - Exclude them from the information
  - Meet without them
  - Withhold information from the board
- What can you do?
  - Remove them from the board



# CONFLICT OF INTEREST



- Definition
  - NAD WP E 85- “such a substantial personal interest in a transaction or in a party to a transaction that it reasonably might affect judgment”
  - Exercise of a power or duty at the same time knowing that in the performance of the duty or exercise of power there is opportunity to further own private interest.
- Principle: One cannot profit from their position at the expense of the organization
  - Engaging in outside work that interferes with needs of your employer
  - Associating your name or work with external activity in way that implies endorsement by Church/School
  - Using Church/School assets to develop personal business opportunity
  - Receiving compensation from others for doing something that was part of your employment

# CONTRACTING ON BEHALF OF CONFERENCE



- Real Estate Purchases or Rentals
- Equipment Contracts
- Hotel, Bus, Activity contracts
- Other Independent Contracts-cleaning, construction
- Vehicle Purchases
- What limits on authority has conference placed?



# RENTAL OF FACILITIES

- Source of additional revenue
- What activities will be allowed
- What key terms will you want included in contract
- What restrictions on activities will you impose
  - Candles, sports, alcohol, smoking, gay marriage
- Additional restrictions on renters
- Insurance, Hold Harmless, Indemnification?
- Who has authority to enter into agreement?
- Rental Policy for Church/School
  - Conference Involvement
  - Is this another Conference church/school or group

# CHURCH POLICY FOR PROPERTY TITLE



- **S 55 05 Property Ownership-** Church properties and other assets shall be held in the name of an appropriate denominational corporate entity, not by individuals, trustees, or local congregations. Where this is not legally possible, divisions shall make alternative arrangements in consultation with the General Conference Office of General Counsel.
- **Church Manual NAD Supplement-** In order to safeguard denominational property it is necessary to have the title vested in a corporation created by a conference organization according to the laws governing in the locality where the property is located. Title to all local church properties should be held by the conference corporation. When properties are acquired for the use of local churches or conference organizations, the titles should be held by the corporate organizations,.

# WHO OWNS THE PROPERTY



- The Seventh-day Adventist Church owns all church property for use by the Church and its members who are faithfully part of the Church.
- No individual or congregation that becomes disaffected has any claim to the church property.
- Local congregations enjoy the right to use the property with the inherent obligation for maintaining it.
- Such use right gives no ownership interest to the congregation even if the current members funded the acquisition costs.
- Church representatives should select their language carefully – avoid using statements such as “the Conference holds title to the Church property in trust for the members of the local church.” This is an incorrect statement.

# EMPLOYMENT ISSUES



- Independent contractors
- Employees
- Volunteers



# INDEPENDENT CONTRACTORS

- Definition:
  - A person or business who performs services for another person under an express or implied agreement and who is not subject to the other's control, or right to control, the manner and means of performing the services; not as an employee. One who is in a position to make a profit or loss based on how they manage their enterprise.
- One who engages an independent contractor is not liable to others for the acts or omissions of the independent contractor.

# “ABC” TEST



- 2/3 of all States follow this Test
- A – The worker is free from control or direction in the performance of the work
- B – The work is done outside the usual course of the company’s business and may be done off premises of business
- C – The worker is customarily engaged in an independent trade, occupation, profession or business



# WHY IS IC STATUS IMPORTANT



- Employment laws apply to employees
- Payroll Deductions/Social Security Taxes
- ADA /FLSA don't apply
- No need for I-9
- No Minimum wage and OT requirements
- 1099 v. W2

# EMPLOYEES



- TWO CLASSES
  - Non-Exempt (hourly)
    - Overtime
  - Exempt
    - Salary Level Test
      - Minimum Salary \$455 per week/\$23,660 year
    - Duties Test
      - Primary duty is management-white collar, executive, admin
      - Directs work of two or more other employees

# I-9 REQUIREMENTS



- Conference is employer so all subsidiary entities (churches, schools, daycares) fall under conference.
- Three business days following hire to gather the information
- The law does not require you to keep copies of documents you review, but keeping them helps show that you did review them
- Keep I-9 documentation for three years after hire or one year after employee leaves, whichever comes last

# VOLUNTEERS



- Types of Volunteers
- Can we pay a volunteer?
  - Stipend?
  - Can Reimburse for out-of-pocket Expenses
- Can't volunteer for same work normally does for pay
- FB 20 Child Protection And Volunteer Screening Policies for Children And Youth Ministries
  - Background checks

# AFFINITY FRAUD



- Fraud among people with some common bond
- Bond could be religious, ethnic, racial or professional
- What was so attractive?
  - Returns
  - Finders Fees



## Marguerite Jean, Alleged Ponzi Schemer, Fleeced Her Own Pastor Out of \$70,000

By Michael Miller

published: Tue., Apr. 19 2011 @ 9:06AM



Marguerite Martial Jean, accused of running a \$3.4 million Ponzi scheme that targeted her fellow Seventh Day Adventists

Seventh Day Adventist? More like Seventh Day A-hole.

According to investigators, Marguerite Martial Jean ran a \$3.4 million Ponzi scheme targeting nearly 300 of her fellow Haitian-Americans. As if that wasn't cynical enough, her former pastor says Jean scammed at least 25 fellow members of the Eden Seventh Day Adventist Church on N. Miami Ave. and 78th St. -- all while overseeing Bible study at the church.

"She was a church officer!" says retired minister Michel Lamartine Porcena, who invested over \$200,000 of his own money into Jean's bogus business. "As her pastor, I never thought that this person, a church member, wasn't telling the truth."

Porcena says Jean first contacted his wife with a "business offer" back in 2007 while he was on vacation in Georgia. Jean claimed to have found a cheap shipment of rice that she could re-sell to foreign buyers for a nifty 22 percent profit, if Porcena put up some cash.

Trusting his fellow Seventh Day Adventist, he gave Jean \$7,000.

"She promised us \$1,600 (in interest payments)," Porcena says. "And within a few days, we got it."

Porcena, like two dozen other members of his own church, was intrigued by the promise of easy money. He coughed up another \$1,000 for Jean's business, believing that she had a warehouse full of rice somewhere. Again, Jean paid as promised.

"She was always on the phone with supposed clients," Porcena recalls. "She would tell them, 'I can't send you so much (rice) right now,' to prove that the business was real. But I found later that there was no one on the phone, that she had no business."

At first, the pastor was fooled. He even took out a \$75,000 loan on his house in order to invest in Jean and her husband Gary's businesses: MMJ Warehouse and VLM Enterprise, LLC. Then the payments dried up and Jean started making excuses, Porcena says. By mid 2009, he knew he was being bilked.

Ultimately, the pastor lost a third of his \$203,270 investment in the Ponzi scheme. He also lost a bit of his faith in his flock.

"These were people that I trusted," Porcena says of Jean and her husband. "I never thought they could do something like this. But they did."



**Banks Forced to Forgive Credit Card Debt**  
Find Out If You Qualify for Debt Settlement

**SHOCKING: Apple Ipad's Selling for \$24.09**

REPORT: Over 1,000 Apple Ipad's being sold now for \$24.09 each!





**U.S. Department of Justice**

**Debra Wong Yang**  
*United States Attorney  
Central District of California*

United States Courthouse  
312 North Spring Street  
Los Angeles, California 90012



## **PRESS RELEASE**

For Information, Contact Public Affairs  
Thom Mrozek (213) 894-6947

### **FLORIDA MAN SENTENCED TO NEARLY 13 YEARS IN PRISON FOR RUNNING AFFINITY FRAUD SCHEME THAT TARGETED MEMBERS OF SEVENTH-DAY ADVENTIST CHURCH**

**Los Angeles, CA** - A Florida man was sentenced today to 155 months in prison for running a fraud scheme in which he promoted a fraudulent investment program to members of the Seventh-day Adventist Church and collected more than \$6.5 million from over 250 victims.

Winston George Ross, 57, of Apopka, Florida, was sentenced this afternoon by United States District Judge Manuel Real in Los Angeles. In addition to the nearly 13-year prison term, Judge Real ordered Ross to pay more than \$4.3 million in restitution to his victims.

In July, Ross was convicted by a federal jury of 11 felony counts, including mail fraud, wire fraud and money laundering. The evidence presented during a week-long trial showed that Ross operated a company called 4J Financial Services LLC, and that Ross made a series of presentations to members of the Church and other potential victims across the United States. During his seminars, Ross encouraged attendees to incorporate themselves so they could avoid paying federal income taxes. For a fee of \$600, Ross would assist in preparing paperwork to become incorporated.

At his presentations, Ross also promoted three investment programs. For two of the investments, Ross acted as a middleman, collecting money that would be invested by others. But the third program, the "10% Program," was managed by Ross out of his Apopka residence. Ross told investors that the 10% Percent program was completely risk-free and would provide guaranteed returns of at least 10 percent a month for 15 months. Investors who deposited more than \$100,000 were told they would be paid 12 percent a month, and those who invested more than \$300,000 were guaranteed 15 percent a month. Ross encouraged victims to refinance their homes or to take cash advances on their credit cards so they could invest in the 10% Program.

Ross' management of the money invested in the 10% Program generated little, if any, income. Ross made 10 percent interest payments to some investors, but that money was either their

# SO WHAT



- As loses occurred, investors looked to Church
- WHY?
  - Church leaders promoted investment
  - Church locations used for meetings
  - Presentations made at Pastor's meetings
  - Presentations made at churches after AY meetings
  - Testimonials by church leaders gave credence to their proposals



# 15 PASSENGER VANS



NAD WP  
S 60 31-7

7. Fifteen-Passenger Van Use —In the interest of safety, denominational organizations shall not purchase, lease, rent or use fifteen-passenger vans for sponsored activities under any circumstances. Alternatives to fifteen-passenger vans include: minivans and SUVs, mini-school busses, fifteen-passenger buses with dual rear wheels.

This policy changed from previous years



## 3 Adventists Killed in U.S. Road Tragedy After Men's Retreat

A tractor-trailer plows into a van carrying seven church members in New York state.

POSTED MAY 5, 2015

Updated at 2 p.m. ET

By **Andrew McChesney**, news editor, *Adventist Review*

**A** Seventh-day Adventist church in the U.S. state of New York was reeling with grief after three of its members, including a teenager, were killed in a road tragedy as they left a church-organized men's prayer conference.

A van carrying five men and two teens from the Bethesda French Seventh-day Adventist Church in Brooklyn was entering a highway in upstate New York at around 10:30 a.m. Sunday when it was struck by a tractor-trailer, police said.

The van's occupants had just attended a three-day Men's Prayer Convention organized by the Adventist Church's Greater New York Conference in the city of Ellenville, a 2-hour, 20-minute drive north of Brooklyn.

# TRADEMARK?



- A trademark is a distinctive word, phrase, logo or sign that identifies certain goods or services produced or provided by an individual or a company.
- The system helps consumers to identify and purchase a product or service
- Must be:
  - Distinctive
  - Used in Commerce
  - Distinction between ® and TM symbols



- The General Conference owns and has registered a number of trademarks in many countries including:
  - SEVENTH-DAY ADVENTIST
  - ADVENTIST
  - CHURCH LOGO



# USE OF MARKS OWNED BY THE GC CORPORATION



- Trademarks that are owned by the General Conference Corporation may be authorized as follows:
  - Church entities that have denominational status and are included in the current Seventh-day Adventist Yearbook.
  - Local churches and companies may use these trademarks in their names and ministries following approval of status by the local conference/mission/field.
    - No commercial or for profit endeavors\*
  - Deceased church members who were in regular standing upon death may have the denominational logo placed on their tombstones as an emblem of belief.

# USE BY OTHERS



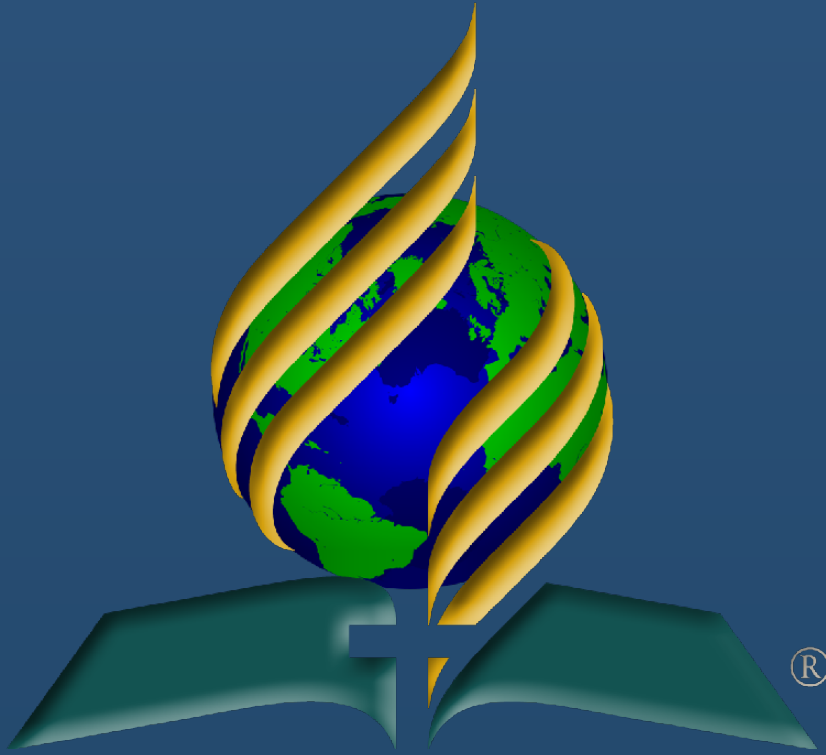
- Church members, supporting ministries, and business or professional groups are allowed to use trademarks owned by the General Conference Corporation only with its express written approval:
  - Recommendation by the local conference/mission/field or other denominational entity
  - The activities shall be in harmony with the teachings of and specifically supported by the Seventh-day Adventist Church;
  - board and membership shall consist of Seventh-day Adventists in regular standing;
  - not be in conflict with previously granted license(s); and
  - not utilized for commercial or for-profit endeavors, except as approved by the GC

# ADVENTIST IDENTITY GUIDELINES



- found at: [www.identity.adventist.org](http://www.identity.adventist.org)
- In order to maintain the integrity of the trademarks, it is important to avoid any treatment that would tend to weaken or distort the visual strength of our identifiers.
- The basic form of the symbol must not be modified or distorted.
- Elements must not be added to, or subtracted from, the symbol.
- The symbol must not be altered in any way that would alter the symbolism of the design.

# MISUSE





# COPYRIGHT



- A set of rights granted to creators of “original works of authorship” that are fixed in “a tangible form of expression”
- Copyright is obtained automatically when an original work of authorship is fixed in a tangible form.
- Ownership Rights
  - Copy
  - Distribute
  - Publicly Perform
  - Display
  - Create Derivatives

# A CAUTIONARY TALE



- A church ministry creates a power point.
- They go online to find images.
- Years later they receive....



# THE INFRINGEMENT LETTER



**Re: Unauthorized Use of StockFood America, Inc.'s Imagery - Case# 381141347 (Ref: 0369-9246-7334)**

StockFood America, Inc., a global provider of digital imagery, has become aware of an instance(s) of **its represented imagery being used on your company's website**. Our records **do not indicate that valid licensing has been issued to your company** for the use of the image(s). If your company does in fact hold a valid license(s) for the image(s) in question, please email any relevant documentation (valid license, purchase records, documentation of authorization). We will review your documentation and update our records if appropriate.

This letter has been sent to you by License Compliance Services, Inc. ("LCS"), a company that specializes in assisting copyright holders with the management and protection of their content. With regards to this case, StockFood America, Inc. has mandated LCS to resolve the matter of your online use of StockFood America, Inc.'s imagery.

Use of imagery represented by StockFood America, Inc. without proper licensing is considered **copyright infringement** and entitles StockFood America, Inc. to pursue compensation for infringing uses (Copyright Act, Title 17, United States Code).

*At the bottom of this letter we have attached a visual showing the imagery and its use on your website. For all details go to <https://settle.lcs.global/036992467334>*

# COPYRIGHT INFRINGEMENT



- Use of whole or part of copyrighted material without permission
- Use beyond the scope of a license;
- Adaptation
  - i.e. changing an image without permission (art rendering, book cover);
  - Recreating an image-substantially similar
- Penalties

# WHO IS RESPONSIBLE?



- The entity that directly infringed
- Employees who participated in the infringement or should have supervised
- Anyone who publishes an infringing image or work whether they had knowledge or not
- Intent to violate law is not required.
- Copyright infringement occurs innocently, people may not realize that what they are doing is wrong
- Not knowing is no excuse
- Can't violate for the greater good.

# CONSIDERATIONS



- Public Domain
- Fair Use
- Using material from the web
- Work for Hire
- Licensing

# THINK ABOUT....



- Intent to violate law is not required.
- Copyright infringement occurs innocently, people may not realize that what they are doing is wrong
- Not knowing is no excuse
- Can't violate for the greater good.

# “RISKY BUSINESS” MYTHS



- We can't be sued because we are a church
- We are doing the Lord's work
- We are protected by Law
- We can't control every action of our employees/volunteers, so we can't be liable
- If we don't know about it, we're not responsible





# QUESTIONS

[woodsje@gc.adventist.org](mailto:woodsje@gc.adventist.org)