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What's in a Name? And Other Intellectual Property Issues for Religious Groups

Most churches will never have to answer this question, but a recent case out of the U.S. District Court for the District of South Carolina, Charleston Division, highlights the fact that even churches can run into trademark and intellectual property issues. The case, *vonRosenberg v. Lawrence* (<https://casetext.com/case/vonrosenberg-v-lawrence-1124>), provides a textbook analysis of a trademark dispute between The Episcopal Church and a diocese that broke away from the church hierarchy.

The national church had registered several trademarks in 2007, including “The Protestant Episcopal Church in the United States” and “The Episcopal Church.” Those marks were registered and achieved incontestable status with the United States Patent and Trademark Office. The Protestant Episcopal Church in the State of South Carolina subsequently registered several trademarks with the South Carolina secretary of state, including “Diocese of South Carolina,” “The Episcopal Diocese of South Carolina” and “The Protestant Episcopal Church in the Diocese of South Carolina” in 2010.

By 2012, The Protestant Episcopal Church in the State of South Carolina was the subject of a church schism that resulted in two competing entities. Defendant Lawrence began to lead a Disassociated Diocese that withdrew from The Episcopal Church, along with 55 parishes. Meanwhile, The Episcopal Church appointed Bishop Charles vonRosenberg to lead the portion of the South Carolina diocese that remained affiliated with the national church.

Upon its departure, the Disassociated Diocese continued to use both the federal and state trademarked names and engaged in litigation over the property of the parishes that joined the Disassociated Diocese. In 2017, the South Carolina Supreme Court held that The Episcopal Church owned most of the property in dispute and that 28 of the parishes in the Disassociated Diocese merely held their real and personal property in trust for The Episcopal Church. The practical effect was to preserve the property to the national church and the remaining affiliated part of the former diocese. At that point, The Episcopal Church intervened in the trademark case between the two South Carolina entities over trademark infringement and false advertising.

At issue were claims of trademark infringement against the national church’s federally registered trademarks, which it claimed were infringed and diluted based on the use of substantially similar marks by the Disassociated Diocese. The defendant attempted unsuccessfully to challenge “The Episcopal Church” as a generic term that could not be protected as a trademark or as a descriptive mark, lacking “secondary meaning” (i.e., acquired distinctiveness through use over time). The defendant also attempted unsuccessfully to demonstrate prior use of the marks, where it was determined not to be the legal successor organization to the original South Carolina diocese. The incontestable status of the trademark registrations supported the court’s analysis.

Having rejected the defendant’s challenges and defenses, the court addressed the national church’s assertions and found that the national church had proven both trademark

infringement (a likelihood of confusion among consumers in the public) and trademark dilution (a blurring of the goodwill associated with the marks). The court's analysis of the state trademarks followed a similar path as the federal trademarks. Therefore, the court permanently precluded (enjoined) the Disassociated Diocese from using any of the trademarked names or any other confusingly similar mark to refer to itself or to its religious goods and services.

It's too early to know whether the case will be appealed, or what new name the Disassociated Diocese will adopt as it goes forward. But it's never too early to give some thought to what intellectual property issues should be on the radar for churches and other religious organizations.

Here, we recommend a few of the areas where we see the most issues come up for our clients:

Copyright

In short, protect material you publish and own, while making sure you don't infringe on material someone else owns. The first part consists of tracking what content your organization produces and owns, then putting the world on notice that it's yours. Religious organizations may produce books, artwork, music, liturgies, religious curricula or other materials that can all be copyright protected. Using copyright notices is the best strategy for getting that notice out there, and the works don't have to be formally registered to have copyright protection or to use the copyright symbol © (although we recommend registering your more important copyrighted works, and registration is a prerequisite to a copyright infringement suit). Also, give some thought to who the creator of the work is, especially if the person doing the writing, art, music or curriculum development is an employee or contractor. Employee handbooks and independent contractor agreements should specify that the completed works are the property of the church or other religious organization. If such organizations find their work is being used without permission, consult legal counsel about the available options.

The flip side to copyright protection is to make sure you aren't infringing on anyone else's work. Infringement could include a number of things that happen pretty frequently, such as copying excerpts of books for a study group without publisher permission; using an image found online as part of a website, brochure or annual report; or using music or plays without proper licensing. Many religious groups assume these actions are not copyright violations because they are being used by a nonprofit organization, because they include a credit identifying the author, or because they are "only using a little bit" of a work. These are all factors that may be considered in your favor by a court, but they aren't a cure-all for copyright violations.

Trademark

With the rare exception of a church schism, as in *vonRosenberg v. Lawrence* discussed above, it may seem that trademarks are not as much of an issue. However, many religious organizations create logos to use as part of their identity; these may have trademark protection if they are sufficiently creative and distinctive in identifying the good or service being provided. Note that many nonprofits try to develop a logo inexpensively by using publicly available art and images (and assuming that permission to use the art and images is either obtained or not required). That's fine for general use, but don't expect to gain quick trademark protection by simply customizing a piece of clip art. On the other hand, if a parishioner or staffer helps develop an original logo, make sure ownership of the work is transferred to the religious organization, either by contract or as part of your employment agreement. Also, like copyrights, trademarks can be registered, but they don't have to be. If the trademark is registered with the U.S. Patent and Trademark Office, you can use the ® symbol; otherwise, you can still use the ™ symbol on your mark.

Other intellectual property areas for which churches may want to get guidance include:

- A website or other online presence
- Electronic privacy policies
- Music licensing
- Social media

Intellectual property issues don't have to be as dramatic as losing your organization's name. Getting the right legal guidance early can help religious organizations be good stewards of their creative gifts, while avoiding problems that can distract from their core missions.



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