

"ISSUES, ETC." TRADEMARK TIMELINE

- OCT 1999 According to the US Patent and Trademark Office, the Lutheran Church - Missouri Synod abandoned its trademark on the name "Issues, Etc." Note: this was almost ten years ago.
- MAR 18 2008 The LCMS cancelled the radio program bearing the name "Issues, Etc."
- MAR 18 2008 The Executive Director of the LCMS Board for Communication Services, David Strand, directed KFUE-AM management to remove immediately all references to the name "Issues, Etc." from KFUE-AM broadcast programming and website. According to Strand,
- "Once the decision to discontinue 'Issues' had become public, modifications had to be made to the KFUE-AM website to reflect the changes in the programming schedule and to remove references and links to the discontinued program... Many things had to happen quickly on the afternoon of March 18 to make the necessary changes to the programming schedule on the AM website and to remove references and links to 'Issues, Etc.'"*
- MAY 10 2008 The LCMS Board for Communication Services passed a resolution,
- "to recommend to the Board of Directors to offer the name, Issues, Etc., and ancillary materials (booklets, promotional materials, etc.) to Rev. Wilken and Mr. Schwarz should they so desire to have them."*

At this meeting the Executive Director of the BCS stated that he had no future plans to use the name.

MAY 2008

Harry Madsen, upon being informed by Wilken and Schwarz of the LCMS's 1999 abandonment of the "Issues, Etc." trademark, made application for the name "Issues, Etc." with the US Patent and Trademark Office (US Trademark Application No. 77/487,948). Madsen made his application for the trademark "Issues, Etc." in his own name, as Sole Proprietor.

MAY 2008

Wilken had a phone conversation with Ron Schultz, CAO of the LCMS, wherein Schultz asked Wilken to submit a formal request to the LCMS BoD for the "Issues, Etc." name and related materials.

JUN 16 2008

LCMS legal counsel sent a memo stating that the LCMS intended to retain its alleged right to the trademark "Issues, Etc.,"

"solely for purposes of re-broadcasting archived shows, distributing archived transcripts, distributing its existing inventory of merchandise (but not for producing, distributing or broadcasting any new programs...)"

In other words, the LCMS has stated no intent to produce future radio shows under the name "Issues, Etc."

JUN 24 2008

Wilken informed Schultz in writing of Madsen's application for the "Issues, Etc." trademark, and of Wilken's and Schwarz's intent to begin broadcasting under the "Issues, Etc." name on

June 30. Neither the LCMS nor its legal counsel objected at the time.

JUL 2008

KFUO management inexplicably sent numerous boxes of Issues, Etc. merchandise (IE t-shirts, pens and IE mugs) to Wilken and Schwarz at their studio in Collinsville, IL.

AUG 2008

The LCMS published an article in the *Reporter* ("Directors Approve Revised Budget," August 28, 2008) stating,

"In other actions, the Board [of Directors]: # authorized its general counsel to prepare a release for use of the LCMS-owned trademark for the radio program 'Issues, Etc.,' the archived programs, and related materials to Rev. Todd Wilken and Jeff Schwarz. Wilken and Schwarz intend to continue the program, which was dropped by KFUO. According to Schultz, the Board expects the agreement will help bring the recent programming issues to a positive conclusion."

SEP 9 2008

The LCMS sent a proposed "Trademark Assignment and License Back" agreement to Wilken and Schwarz. Among other things, this proposed agreement would have required: 1) that Wilken and Schwarz concede that the LCMS still holds the trademark, 2) that Madsen abandon his application for the trademark, 3) that Wilken and Schwarz agree to a blanket non-disparagement clause regarding the LCMS, and 4) that Wilken and Schwarz waive their rights to a jury trial in the event of a breach in the agreement.

OCT 2008

The LCMS published another article in the "Board Briefs" section of the *Reporter* (vol. 2, no. 7, October 2008) stating,

"...the former host and producer would like to continue using the name "Issues, Etc." in connection with their new radio program. An agreement has been reached that has been approved by the Board of Directors in principle."

In fact, no agreement had been reached. In addition, the so-called agreement described in the *Reporter* article bore little resemblance to the proposed "Trademark Assignment and License Back" agreement the LCMS had sent to Wilken and Schwarz in September. The *Reporter* article's description of the so-called agreement failed to include the three of the four requirements listed above (SEPT 9 2008).

NOV 4 2008

Madsen's application for the trademark on the name "Issues, Etc." was approved by the US Patent and Trademark Office, was published in the Official Gazette, and a Notice of Publication was issued.

NOV 13 2008

Wilken and Schwarz rejected in writing the LCMS's September 9 proposed "Trademark Assignment and License Back" agreement, stating that they were unwilling to stipulate to any common law trademark rights of the LCMS to the "Issues, Etc." name, were unwilling to cause Madsen to abandon his trademark application, were unwilling agree to a non-disparagement clause or any other limitations on their First Amendment free speech rights, and were unwilling to waive their rights to a jury trial that may exist relating to the breach and/or enforcement of the agreement.

DEC 2008 KFUCO management, while cleaning out Schwarz's former office, inexplicably threw away the entire CD/DAT show archive of the Sunday Night national edition of Issues, Etc. dating from October 1995 through July 2001 (approximately 250 archived shows). They also threw away numerous back issues of the Issues, Etc. Journal.

DEC 2 2008 The LCMS filed a Letter of Opposition to Madsen's trademark application with the US Patent and Trademark Office.

DEC 7 2008 Madsen filed a Motion to Dismiss the LCMS Objection on grounds with the US Patent and Trademark Office.

DEC 16 2008 **LCMS legal counsel sent a letter to the attorney representing Wilken and Schwarz, informing them of the LCMS's Letter of Opposition, and threatening legal action against Wilken and Schwarz:**

"Unless your client is willing to negotiate in good faith to finalize a mutually acceptable agreement in the near future, along the lines that were discussed last summer, we will be left with no alternative but to recommend that The Lutheran Church-Missouri Synod prosecute the opposition against Madsen's application and take action against your clients to enforce its rights to the trademark."

DEC 19 2008 Wilken and Schwarz were contacted by a third party, acting on his own, offering to mediate a face-to-face meeting between Wilken, Schwarz and Schultz.

Wilken and Schwarz agreed that they would be willing to meet with Schultz informally, with no attorneys present.

DEC 22 2009

Ron Schultz rejected the third party's request for an informal, face-to-face meeting with Wilken, Schwarz, with no attorneys present. Schultz wrote, in part:

"As I indicated when we talked, I needed to share the content of our conversation with our attorneys and ask them about the suggestion to meet with Todd and Jeff. They have advised me that, since both sides are represented by counsel, and that the attorneys have been involved in the communication/negotiation to this point, I should not meet with them."

JAN 16 2009

Madsen filed with the US Patent and Trademark Office's Trial and Appeal Board "Owner Madsen's Response in the Alternative," a detailed answer to the LCMS's Letter of Opposition.

JAN 17 2009

Wilken and Scharz sent an email to every member of the LCMS Board of Directors. It read:

"Dear LCMS Board of Directors Member,

"In the name of Jesus, greetings.

"We are writing to you and every member of the LCMS Board of Directors concerning what appears to be a change in the Board's position regarding our use of the 'Issues, Etc.' name for our new radio program.

"When we began dealing with the LCMS over the 'Issues, Etc.' name, we were under the

impression that the LCMS BoD was not opposed to our use of the name for our radio program.

"This remained our belief, especially after the Board's announcement in the August edition of the Reporter:

...the Board authorized its general counsel to prepare a release for use of the LCMS-owned trademark for the radio program 'Issues, Etc.,' the archived programs, and related materials to Rev. Todd Wilken and Jeff Schwarz. Wilken and Schwarz intend to continue the program, which was dropped by KFUD. According to Schultz, the Board expects the agreement will help bring the recent programming issues to a positive conclusion.

"However, recent action by and communication from synod's legal counsel (opposing a trademark application for the name, and threatening to recommend that the LCMS take legal action against us personally) have led us to believe otherwise.

"A brief review of the events surrounding the 'Issues, Etc.' name may be helpful:

"According to the US Trademark office, in October of 1999, the LCMS cancelled its trademark on the name 'Issues, Etc.' Please note that this was almost ten years ago.

"On March 18 2008, the LCMS cancelled the radio program bearing the name 'Issues, Etc.'

"In May 2008, we asked Mr. Harry Madsen, president of Lutheran Public Radio, to make application for the name 'Issues, Etc.' with the US Trademark Office. Mr. Madsen applied on May 31, agreeing to arrange for us to use the name for our new radio program.

"On September 9 2008, an attorney for the LCMS BoD sent us a proposed 'Trademark Assignment

and License Back' agreement. Among other things, this proposed agreement would have required, 1) that we concede that the LCMS still holds the trademark, 2) that we cause Mr. Madsen to abandon his application for the trademark, 3) that we submit to a broad non-disparagement clause regarding the LCMS, and 4) that we waive our rights to a jury trial in the event of a breach in the agreement.

"For obvious reasons, we found this proposal unacceptable and informed the Board's attorney of such on November 13.

"On November 4, Mr. Madsen's application for a trademark on the name 'Issues, Etc.' was published by the US Trademark office in the Official Gazette, and a Notice of Publication was issued.

"On December 7, the LCMS filed a Letter of Opposition to Mr. Madsen's trademark application.

"Finally, on December 16, the attorney for the LCMS BoD sent a letter to our attorney, informing us of the Board's Letter of Opposition, and threatening to recommend legal action against us personally. You will find this letter, as well as the Letter of Opposition attached to this email.

"The argument in the LCMS's Letter of Opposition indicates that the LCMS BoD is now opposed to our use of the name 'Issues, Etc.' in principle. The threat of legal action against us personally makes it appear that the Board now opposes our use of the name for our radio show in particular.

"Since no vote regarding this matter is recorded in the minutes of the BoD's most recent, November meeting, we are at a loss to explain this apparent change in the Board's position.

"In any case, we find the BoD's apparent change of position regrettable. We fail to see how opposition to Mr. Madsen's trademark application or a threat of legal action against us personally will serve to 'bring the recent programming issues to a positive conclusion.'"

JAN 30 2009

LCMS legal counsel sent a letter to the attorney representing Wilken and Schwarz, acknowledging their BOD email and urging them to meet with LCMS CAO Ron Schultz and LCMS attorneys early in February.

FEB 6 2009

Wilken and Schwarz were contacted again by the same third party --this time, acting upon the request of Sherri Strand, Chief Legal Counsel for the LCMS.

In an email sent to Wilken, Schwarz, Strand, Schultz and Polcyn, the third party asked both sides to meet and attempt to resolve the dispute over the "Issues, Etc." trademark. Wilken and Schwarz responded to the third party's email, saying in part:

"At this time we have no plans to meet with Schultz & Co. Here are our reasons.

"1) The LCMS BOD is still opposing Harry Madsen's trademark application for the IE name. We have no authority or standing in that dispute.

"2) The LCMS BOD is still threatening to take legal action against us personally. We're not going to enter into any negotiations under the threat of a lawsuit.

"3) The LCMS BOD hasn't proposed anything new, and what they proposed before remains unacceptable. We're not going to concede that

LCMS owns the trademark. We're not going to ask Harry to abandon his application (nor would he do so even if we asked). And, we're not going to sign away our First Amendment or Seventh Amendment rights.

"If the BOD offers another proposal that does not include any of these ridiculous demands or others like them, we will consider a meeting.

"4) The meeting the LCMS BOD is requesting would be costly in legal fees. We prefer to spend our donor's money on the Gospel, not on lawyers."

FEB 8 2009

Wilken and Schwarz sent a similar email to every member of the LCMS Board of Directors, informing them that they had no present plans to meet with Ron Schultz and LCMS legal counsel. The email read:

"Dear LCMS Board of Directors Member,

"In the name of Jesus, greetings.

"Again, we are writing to you and every member of the LCMS Board of Directors concerning events that have transpired since our January 17 email to you regarding the trademark "Issues, Etc."

"Shortly before our last email, we approached Ron Schultz through a third party, and offered to meet with Mr. Schultz without attorneys present. Mr. Schultz refused, stating that he had been advised by LCMS legal counsel that he should not meet with us without counsel present.

"On January 30, the attorney for the LCMS BoD sent a letter to our attorney, acknowledging our email January 17 to each of you, and urging us to meet with him and Mr. Schultz sometime early in February.

"On February 6, while still considering that request, we were contacted the same third party again, this time acting on a request from Sherri Strand, Chief Legal Counsel for the LCMS.

"In an email addressed to us, Sherri Strand, Ron Schultz and Tom Polcyn, the third party urged both sides to meet, with legal counsel present, and attempt to resolve the dispute over the "Issues, Etc." trademark.

"After careful consideration, we must decline to meet with Ron Schultz and LCMS legal counsel at this time. We believe that you, as a member of the LCMS BoD, should be fully informed of our reasons. We also plan to publicly inform our listeners of our current situation and of these reasons. They are as follows:

"1) The LCMS BoD still actively opposes Harry Madsen's trademark application for the "Issues, Etc." name. We have no authority or standing in that dispute.

"2) The LCMS BoD still threatens to take legal action against us personally. We will not enter into any negotiation under the threat of a lawsuit.

"3) The LCMS BoD proposes nothing new, and what they have proposed before (the "Trademark Assignment and License Back") remains unacceptable on several points. We will not concede that LCMS owns the "Issues, Etc." trademark. We will not ask Mr. Madsen to abandon his trademark application. And, we will not sign away our First Amendment or Seventh Amendment rights.

"If the BoD offers another proposal that does not include any of these egregious demands, or others like them, we will consider a meeting.

"4) Finally, the meeting that LCMS legal counsel is requesting would be costly. We prefer to spend our donors' money on the broadcast of the Gospel, not on lawyers. Again, we have offered, and continue to offer to meet with Mr. Schultz without attorneys present.

"As some of you may have already realized, the easiest, cheapest and smartest way to resolve this situation would be for the LCMS BoD to withdraw its Letter of Opposition to Mr. Madsen's trademark application, and withdraw its threat of legal action against us.

"That would immediately end this entire dispute, cost nothing, and achieve the BoD's stated goal to 'help bring the recent programming issues to a positive conclusion.'"

FEB 10 2009

Wilken and Schwarz posted a recorded public statement "The Issues, Etc. Trademark Dispute and LCMS Legal Threat" on the Issues, Etc. website, explaining to their listeners and supporters the LCMS BoD's opposition to Mr. Madsen's trademark application, and the LCMS's threat of legal action against them.

FEB 15 2009

LCMS CAO Ron sent an email to the LCMS BOD stating:

"contrary to what you may have heard, nor has the LCMS threatened to sue them. Apparently, Rev. Wilken has been telling people that the LCMS has threatened to sue him by referring to a letter our attorney wrote to his attorney encouraging them to negotiate in good faith. Rev. Wilken has taken part of the letter out of context and mischaracterized it as a threat by the LCMS."

FEB 16 2009

Wilken and Schwarz sent an email to every member of the LCMS Board of Directors, informing them of their disappointment at Ron Schultz's denial of the LCMS BOD legal threat against them:

"Dear LCMS Board of Directors Member,

"In the name of Jesus, greetings.

"We are writing you again concerning one of the recent developments in the LCMS BOD's threat of legal action against us.

"It has come to our attention that Ron Schultz has been responding to inquiries regarding the LCMS BOD's threat, denying that any threat has been made.

"In a response to one inquiry, Mr. Schultz wrote:

'...contrary to what you may have heard, nor has the LCMS threatened to sue them. Apparently, Rev. Wilken has been telling people that the LCMS has threatened to sue him by referring to a letter our attorney wrote to his attorney encouraging them to negotiate in good faith. Rev. Wilken has taken part of the letter out of context and mischaracterized it as a threat by the LCMS.'

"As we have before, we are attaching a PDF file of the actual letter, dated December 16, 2008, which our attorney received from Tom Polycyn. The relevant section reads:

'Unless your client is willing to negotiate in good faith to finalize a mutually acceptable agreement in the near future, along the lines that were discussed last summer, we will be left

with no alternative but to recommend that The Lutheran Church-Missouri Synod prosecute the opposition against Madsen's application and take action against your clients to enforce its rights to the trademark.'

"As you can see, this letter threatens to recommend to you, the members of the LCMS BOD, two actions. **First**, 'to... prosecute the opposition against Madsen's application.' **Second**, 'to... take action against your clients to enforce its rights to the trademark.'

"The LCMS BOD has acted on the first recommendation, and is actively opposing Harry Madsen's trademark application for the 'Issues, Etc.' name.

"Therefore, it is reasonable to expect that the LCMS BOD will also act on the second recommendation, 'to... take action against your clients to enforce its rights to the trademark.'

"In any event, we have neither taken out of context, nor mischaracterized anything in this December 16th letter.

"We have received no communication from the LCMS BOD that in any way indicates that its threat of legal action against us has been withdrawn or retracted.

"We are disappointed that Mr. Schultz would deny the BOD's threat of legal action. We are further disappointed that he would accuse us of taking part of the December 16th letter out of context, and of mischaracterizing the content of the letter.

"If the LCMS BOD has withdrawn or retracted its threat of legal action against us, or wishes to do so, then we would appreciate it

if this withdrawal or retraction would be communicated to us in writing."

FEB 19 2009

The LCMS BOD passed a resolution: *"Resolved, That the Board of Directors withdraw opposition to the Issues, Etc. trademark application and to the use of the trademark by Todd Wilken and Jeff Schwarz."*

FEB 23 2009

LCMS CAO Ron Schultz sent a letter to Wilken and Schwarz, which read in part:

"The purpose of this letter is to share with you a resolution passed by The Lutheran Church-Missouri Synod Board of Directors last week relating to the trademark "Issues, Etc." Specifically, the Board passed the following resolution:

"Resolved, That the Board of Directors withdraw opposition to the Issues, Etc. trademark application and to the use of the trademark by Todd Wilken and Jeff Schwarz.

"In light of this resolution, on behalf of the Board, I am writing to inform you that our legal counsel will be preparing and filing an appropriate document to withdraw the LCMS's opposition to the trademark application filed by Harry Madsen and, further, to advise you that the LCMS will not oppose your use of the trademark "Issues, Etc." Accordingly, this will also serve as notice of the LCMS's withdrawal of the proposed agreement sent to you previously through our respective legal counsel."

FEB 26 2009

Dr. Gerald Kieschnick, President of the LCMS, sent a memorandum to the LCMS Council of Presidents reading:

"Dear Brothers in Christ:

"Grace and peace be with you, from God our Father and from our Lord and Savior, Jesus Christ!

"In order to assist you in responding to inquiries and/or rumors about my involvement in an alleged lawsuit involving "Issues, Etc.," I am providing this memo, which you may share as you deem appropriate.

"As indicated during our Council of Presidents discussion of that topic earlier this week, contrary to allegations and rumors you and I have recently received, I have not filed, initiated, supported, or encouraged any lawsuit against Rev. Todd Wilken or Mr. Jeff Schwarz, nor have I ever had a desire to do so. Any allegations or rumors to the contrary are simply untrue. As an individual Christian, as a Lutheran pastor, and as President of The Lutheran Church—Missouri Synod, I take seriously the Holy Spirit-inspired words of St. Paul in 1 Corinthians 6:1-7 regarding such matters.

"Furthermore, the LCMS Board of Directors has not filed a lawsuit against these brothers in Christ and in fact has taken action that effectively ends any and all legal considerations regarding this matter and is designed to restore relationships with them through fraternal conversation, mutual respect, and genuine humility. A communication from the Board with additional information about this matter will be forthcoming.

"It is my prayer that this memo will be helpful to you in responding to anyone in your district who has expressed concern regarding this issue. I know you join me in prayer that it will be resolved under the leading, guiding, and directing of God's Holy Spirit."

FEB 26 2009

Wilken and Schwarz posted a recorded public statement "A Response to Dr. Gerald Kieschnick's 'Issues, Etc.' Memo" on the Issues, Etc. website.