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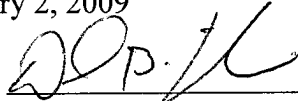
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187981
Party	Plaintiff The Lutheran Church - Missouri Synod
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Date	02/02/2009
Attachments	2009-02-02 Opposer's Request for Extension of Time.PDF (55 pages) (3561506 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is addressed to the Trademark Trial and Appeal Board, Hon. Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, and is being deposited via the Electronic System for Trademark Trials and Appeals (ESTTA) on February 2, 2009



David B. Jenkins

THE LUTHERAN CHURCH–MISSOURI SYNOD	:	
	:	
	:	
Opposer,	:	
	:	Opposition No. 91187981
	:	
v.	:	
	:	App. Ser. No. 77/487,948
	:	
HARRY B. MADSEN	:	
	:	
	:	
Applicant.	:	Atty. Ref. 46324-80132
	:	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

OPPOSER’S REQUEST FOR EXTENSION OF TIME TO RESPOND, IF NECESSARY
TO “OWNER’S RESPONSE IN THE ALTERNATIVE”

The Lutheran Church–Missouri Synod (“Opposer”) states as follows:

1. On December 2, 2008, Opposer filed this Opposition.
 2. On December 22, 2008, Applicant filed a motion to dismiss requesting that the Notice of Opposition be stricken, that the proceedings be cancelled, and that the registration be issued.
- The Board docketed Applicant’s *pro se* motion as a motion under Rule 12(b). *See Docket Entry No. 4 “D’S MOTION TO DISMISS – RULE 12(B).”*

3. On January 12, 2009, Opposer filed its opposition to Applicant's December 22, 2008 motion.

4. On January 21, 2009, the Board suspended these proceedings pending resolution of the outstanding motion.

5. On January 16, 2009, Applicant served Opposer with a "Notice of Filing" that includes "Owner's Response in the Alternative." A copy of Applicant's Response in the Alternative is attached as Exhibit 1.¹

6. Applicant's Response in the Alternative includes a "Preliminary Statement," argument, and exhibits. Exhibit 1, p. 1.

7. Applicant's Response in the Alternative includes "Response to Numbered Allegations." *See id.* pp. 4-15.

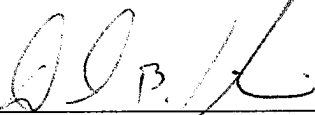
8. This Opposition is presently stayed pending resolution of Applicant's motion to dismiss. Therefore, Opposer believes that no response is required from Opposer at this time.

¹ As of the date of the filing of the instant response, Applicant's filing does not appear on the USPTO TTABVUE system. Exhibit 2. Applicant has indicated that a copy of "Owner's Response in the Alternative" was sent to the Board.

9. Opposer requests an extension of time until 20 days after the Board rules on Applicant's motion to dismiss, to respond to Applicant's Response in the Alternative.

Respectfully submitted,

THOMPSON COBURN LLP

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Attorneys for Opposer
The Lutheran Church—Missouri Synod

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on Harry B. Madsen by mailing said copy on February 2, 2009 via First Class Mail, postage prepaid to:

Harry B. Madsen
1850 Surrey Park Lane
Arlington Heights, IL 60005

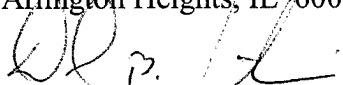

David B. Jenkins

EXHIBIT 1

1-16-09 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

The Lutheran Church - Missouri Synod)	
)	
Opposer)	
v.)	Opposition NO. 91187891
)	
Harry B. Madsen)	Serial No. 77487848
)	
Owner)	

NOTICE OF FILING

To Thomas A. Polcyn
 Thompson Colburn LLP
 One US Bank Plaza
 St. Louis, Missouri 63101

Please take notice that I had this date filed the following instrument, a copy of which is enclosed for your attention:

OWNER'S RESPONSE IN THE ALTERNATIVE
Consisting of This Notice
One Page Index to Madsen's Response
Pages 1-15 of the Response
Pages 101 to 131 of the Exhibits
Loose and Unbound as directed by TR

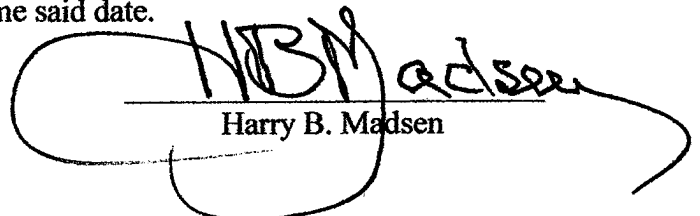
By placing a copy in the U S Mails, with proper first class postage affixed, addressed to:

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P. O. Box 1451
Alexandria, VA 22313-1451

Harry B. Madsen

I, Harry B. Madsen, state under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that a copy of the foregoing was served upon the persons above named at the addresses shown by depositing copies in a sealed envelope with proper postage affixed, in the U.S. Mail before 5 p.m. in Arlington Heights, Illinois, or by personal delivery, on the 16th day of January, 2009, and is so certified on the same said date.

Harry B. Madsen
1850 Surrey Park Lane
Arlington Heights IL 60005
847-368-0500


Harry B. Madsen

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By 30 days from Black Tuesday over 7000 from 32 countries, 42 non-Lutheran denominations and 49 states of the union joined ranks with those of us who want to and will rescue and return Issues, Etc. as Talk Radio For The Thinking Christian.	
By now we have at least ten times that number-----Talk about being on fire!	

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

The Lutheran Church - Missouri Synod)	
)	
Opposer)	
v.)	Opposition NO. 91187891
)	
Harry B. Madsen)	Serial No. 77487848
)	
Owner)	

OWNER MADSEN'S RESPONSE IN THE ALTERNATIVE

Now comes Harry B. Madsen (Madsen), Owner, pro se, having previously filed Madsen's Motion to Strike the thrice deficient Notice of Opposition filed by The Lutheran Church - Missouri Synod (LCMS), Opposer pursuant to the applicable Federal Rule of Civil Procedure 12 (f), does herewith, pending a ruling on Madsen's Motion to Strike, file Madsen's Response in the Alternative, responding specifically to each of the thirteen LCMS allegations, including argument, with **bold letters (and adjacent exhibit page numbers which begin with 101)** throughout to indicate the words and phrases of the appended exhibits and those "others", stating as follows:

PRELIMINARY STATEMENT

THOSE "OTHERS" Those "others" whose words are referenced herein from **St Louis, Missouri to Bucharest, Romania (105)** vigorously disparaged the March 18, 2008 attempt to throttle free speech at the expense of thwarting gospel proclamation, even as it is expected those same "others" will, with even greater vigor when they hear of it, decry this disingenuous redoubled effort by the filed Opposition to strangle honest and respectful commentary for **purely political (109)** ends with a cavalier indifference to the impact the sought **gag order (120)**, which will never be agreed to, would have on the outreach of this **talk radio for the thinking Christian (108)**.

THE SHOW ISSUES, ETC. is a trademark, but to hundreds of thousands, perhaps millions world-wide, ISSUES, ETC. is a Christian radio talk show which by commentary and guests from 1994 until March 17, 2008, under the auspices of LCMS, addressed matters of **theological substance, politics and contemporary culture** (121). While Issues, Etc never criticized the synod president or his colleagues, its attacks against shallow church marketing included mention of some approaches embraced by the current leadership. (109).

HOLY TUESDAY TERMINATION Despite the show's popularity, low cost and loyal donor base, Rev. Todd Wilken (Wilken) and Jeff Schwarz (Schwarz), the producer of "Issues, Etc." were dismissed without explanation on Tuesday of Holy Week. Within hours, the program's Web site—which provided access to past episodes and issues of its magazine—had disappeared. Indeed, all evidence that the show ever existed was removed. (108)

THE PRECIPITATOR The precipitator is the undisclosed natural person within LCMS, whose decision precipitated both the Holy Tuesday Termination and very likely the filing of the Opposition. LCMS President Gerald B. Kieschnick (Kieschnick) was quick to declare that the decision **"transpired with my awareness but neither by my order nor at my direction."** (123) Strand denied his participation in the decision and refused to say who made the decision. The fact that the identity of the precipitator is shielded by the two men most likely to know, the man who did the firing and the president of the synod, in itself suggests underhandedness of both intent and action. One Issues,Etc. fan said of obscurantist LCMS, **"Seriously, this has been like waking up in the hospital after surgery only to find that the wrong limb has been amputated and no one will admit who the surgeon was."** (110)

THE GAG ORDER Strand continued, with counsel, to be the channel of attempting to impose a gag-order on threat of withholding severance pay from the two. Wilken and Schwarz refused to bargain away their freedom of speech. The muzzling the precipitator failed to achieve by negotiation is now sought by contract trying to use the USPTO as a pawn in the process. The precipitator has no interest in perpetuating the goodwill of the ISSUES, ETC. trademark within LCMS, but does seek to control the mark temporarily so Kieschnick will be in a position of appearing magnanimously to "give" Wilken and Schwarz the privilege of using ISSUES, ETC. (of course with a gag order attached). That violation was described in a June 16, 2008 attorney letter as **use of the trademark in a way that disparages the LCMS or in any way casts LCMS in a negative light. (120)** The same language in August tendered agreement was coupled with the **LCMS right to terminate without notice or recitation of cause (128)**. Ergo, the precipitator would be the sole judge of what constituted disparagement while Wilken and Schwarz sat below a sword of Damocles.

MADSEN Madsen is a lay member of an LCMS church with a fifteen year personal relationship with the Issues, Etc, program as a listener and supporter. Madsen serves as president of Lutheran Public Radio, Inc. (LPR), an Illinois non-profit corporation, under the auspices of which since June 30, 2008 Issues, Etc. is now aired. Each broadcast includes the line, "Issues, Etc., is a program of Lutheran Public Radio."

TRADEMARK APPLICATION Wilken and Schwarz, as employees of LPR are appropriately in frequent communication with Madsen as president of their employer. Those discussions included reference to the trademark. However, Madsen by his independent decision,

without the consent or direction of the board of directors of LPR or Wilken or Schwarz, applied for the trademark intentionally as a sole proprietor. That Wilken and Schwarz “asked” Madsen to apply for the trademark in May 2008, and that Madsen made application thereafter, created no agency or other obligation as misapprehended by LCMS counsel in drafting the words “**shall cause Harry B. Madsen**” (128) in the proposed agreement. Nor do Wilken and Schwarz have any authority over LPR. The chain of authority, by design, runs in the other direction.

TRADEMARK STATUS Madsen as sole proprietor applied for and personally paid all costs in connection with the ISSUES, ETC. trademark application, seeking no reimbursement from LPR. As owner, with LPR board approval, Madsen has licensed the use of the trademark to LPR at a license fee of \$9.00 per year, the first installment of which has been paid by an LPR check and deposited into Madsen’s personal account. Madsen is the owner-licensor. LPR is the licensee. Wilken and Schwarz, as employees of LPR, are authorized to broadcast under the name of ISSUES, ETC.

RESPONSE TO NUMBERED ALLEGATIONS

LCMS ¶ 1. Applicant seeks to register ISSUES, ETC. as a trademark for *production and distribution of radio programs* in commerce under Lanham Act Section 1(b), as shown by publication in the Official Gazette on November 4, 2008.

Response: Admitted.

LCMS ¶ 2. Since at least as early as 1992, Opposer has used the mark ISSUES, ETC. as a trademark in interstate commerce in connection with *entertainment services in the nature of a radio program series*. Through such use, Opposer has acquired protectable common law trademark rights in the ISSUES, ETC., mark.

RESPONSE: Denied for several for several reasons:

A. The allegation implies continuous use of the mark ISSUES, ETC. up to the date of the Opposer's filing on December 22, 2008, which is not true. The opposer, through its agents, precipitously, without prior notice, abandoned its prior use of the ISSUES, ETC. mark on March 18, 2008. **The blogosphere erupted (121) reporting the show had been peremptorily yanked from the air. There was not a trace of the show's ever having existed. Archives: gone. (111)**

B. The Opposer's calculated oversight that it had in fact sought and received a USPTO registration of the ISSUES, ETC. trademark in or about October of 1994 and allowed its registration to lapse in or about October of 1999, attempts to resurrect its common law right, which it knowingly terminated by its October, 1994 registration under federal statute, which like all statutes abrogates the common law addressed.

C. Opposer claims no statutory right, and its claim under common law is insufficient because:

(1) There is no allegation laying the groundwork for the possibility of reinstatement of a new period of common law rights after the Opposer abandoned its statutory rights in 1999.

(2) Even if such a new common law period was established it is irrelevant without proof satisfying the requirements of *Lazar v. Cecella Co.*, C.C.N.Y., 30 F. Supp.768, 771 which holds a trademark "is not subject to property rights except in connection with an existing business."

(3) A 1994 application for statutory trademark protection by A for trademark T, and thereafter granted to A for five years, abrogates any common law claim of A to trademark T. If A allows his rights to lapse in 1999, his only remedy is to reapply for trademark protection subject to the prior rights of any intervening applicant. A cannot in 1999 tack a new period onto his prior abandoned common law rights which were indisputably abrogated by his 1994 application. Nor can A claim to embark on a new common law period commencing coincidentally with his 1999 lapse. The 1994 application of A does not abrogate the common law for everyone, but only for A. If B in the year 2000 had independently and in good faith, coincidentally without knowledge of A's use or application, been using trademark T in commerce for an extended period, B would have a valid basis for a timely objection to the application of C for trademark T citing common law rights. A is not in the position of B. As to trademark T, A by his 1994 application, and grant thereunder, is forever barred resort to common law as to A and trademark T.

(4) The law stands as stated in (3) foregoing because it has to be the law. An interpretation as incorporated in the LCMS reliance on a common law right would result in commercial chaos, not to mention that it would undercut the underlying purpose of the USPTO regulations involved. In 2009 LCMS is now ten years beyond its lapse. To give credence to the LCMS allegation would create a precedent that would give every holder of a trademark registration the option to save the trouble and fees connected with reapplication on a perpetual basis. It would also create a whole new body of law under the heading of "The Resurrection of Abrogated Rights." USPTO regulations are a valuable source of commercial stability where a registration certificate dispenses with the litigation expense of

competing common law claims. That stability comes at a modest price, the price of reapplication after five years. LCMS elected not to pay that modest price.

LCMS ¶ 3. Opposer has promoted and provided the services identified in paragraph 2 in interstate and intrastate commerce under Opposer's ISSUES, ETC. mark prior to any use by Applicant of the mark for which it seeks registration.

RESPONSE: Admitted as a stand alone statement, but it is irrelevant in light of (1) abandonment of statutory rights in 1999; (2) abandonment of all equitable trademark claims on March 18, 2008; and (3) no *Lazar* proof of use in existing business as of December 22, 2008

LCMS ¶ 4. As a result of the use, promotion, and advertising of Opposer's ISSUES, ETC. mark, said mark has become well known to the relevant trade and to the public, and has accordingly acquired significant goodwill. Opposer's ISSUES, ETC. mark identifies and distinguishes Opposer's services from the goods and services of others, and identifies the source and origin thereof to both the relevant trade and the public.

RESPONSE: Denied as to the present tense assertions of both sentences.

(1) The first sentence implies not only acquisition but the existence at the present time of goodwill vis a vis the current use by LCMS of the ISSUES, ETC. mark. In one fell swoop on March 18, 2008 some one person whom neither **Strand who offered no specifics (115) nor Kieschnick) (123)** will identify, in a single act converted an admitted mass of goodwill into badwill.

(2) The move was such a **public relations misstep (111) that the archives were restored due to public outcry (117)**, but only in extremely limited form not nearly as accessible as previously.

(3) In the second sentence the “es” of “identifies” and “distinguishes” also implies a present state of goodwill which is not the case. All reports and publicity are to the contrary. LCMS has not submitted a single instrument or word outside corporate headquarters which reflects positively upon the LCMS attempt to summarily destroy ISSUES, ETC..

(4) That there was “significant goodwill” prior to March 18, 2008 is an understatement. That prior goodwill is precisely what generated **over seven thousand petition signers worldwide within 30 days (106).**

LCMS ¶ 5 Upon information and belief, Applicant has made no use of the mark for which it seeks registration, nor of any word, letter or design confusingly similar thereto as a trademark or service mark, in connection with the services identified in U.S. Trademark Application No. 77/487,948, prior to the first use by Opposer of its mark as claimed herein.

RESPONSE Admitted, but allegation is irrelevant in light of LCMS abandonment.

LCMS ¶ 6 Applicant’s registration and use of the ISSUES, ETC. mark is likely to cause confusion in the minds of the trade and of the public that Applicant’s services emanate from or are licensed, sponsored, endorsed or otherwise authorized by Opposer, whereas in fact they are not.

RESPONSE: As the exhibits show the public is not in the least confused, and actions of LCMS agents since Holy Tuesday Termination show there is no real concern as to such confusion, nor is there an LCMS intent to be further identified with Issues, Etc..

(1) The press from the **Wall Street Journal (108)** to **The St. Louis Despatch (114)** know exactly what is going on. ISSUES, ETC. fans from **32 countries, Afghanistan to Venezuela, and from 42 non-Lutheran denominations (106)** were among the more than 7000 fans who

registered their awareness and objections to the Holy Tuesday Termination within thirty days.

(2) On May 10, 2008 the LCMS Board of 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.” As president of LPR, I express our appreciation. Such a resolution does not, however, bespeak intent to be further identified with Issues, Etc.

(3) LCMS officials caused the July, 2008 delivery of numerous boxes of Issues, Etc. merchandise such as t-shirts and mugs to the Issues, Etc. studio in Collinsville. As president of LPR, I express our appreciation. Such delivery does not, however, bespeak intent to be further identified with Issues, Etc.

(4) In August 2008 LCMS published an article in the *Reporter* (its official newspaper) stating, “In other actions 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 KFUE. According to Schultz, the Board expects the agreement will help bring the recent programming issues to a positive conclusion.” As president of LPR, I express our appreciation. Such LCMS Board authorization does not, however, bespeak intent to be further identified with Issues, Etc.

(5) On November 12, 2008 LCMS counsel sent a **Trademark Assignment and License Back (126)** agreement with provisions that made it impossible for Wilken and Schwarz to accept. While the proposed agreement was refuted, its content reveals a lack of intent to be further identified with Issues, Etc.

(6) In December 2008 KFUE management 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 600 archived shows). They also threw away numerous boxes of back issues of the Issues, Etc. Journal. These actions do not bespeak intent to be further identified with Issues, Etc.

LCMS ¶ 7 Applicant's mark for which it seeks registration so resembles Opposer's ISSUES, ETC. mark previously used in the United States by Opposer and not abandoned, as to be likely, when applied to Applicant's services, to cause confusion or to cause mistake or to deceive, and is an attempt to deceive the public and to benefit from the reputation and goodwill developed by the Opposer.

RESPONSE Admitted as to resemblance, but denied as to abandonment, confusion and deception.

(1) ABANDONMENT For LCMS there were three phases of claims to the trademark ISSUES,ETC. and there were three abandonments.

A. The first phase of claim was by common law for an unknown period prior to 1994. which was properly and intentionally abandoned through abrogation by the LCMS 1994 application for trademark certification. The first abandonment was of a common law claim..

B. The second phase of trademark claim was by statute and commenced in 1994. The

second abandonment was in 1999 when LCMS failed to make application for extension of its statutory registration. The second abandonment was of a statutory claim.

C. The third phase of trademark claim was equitable and commenced immediately upon the failure of LCMS to apply for re-certification of its statutory claim in 1999. During the period after 1999 up to and including St Patrick's Day, March 17, 2008, with uninterrupted continuous airing of the Issues, Etc. Program, LCMS had neither a common law claim (abandoned) nor a statutory claim (abandoned). Common law is grounded in history. Equity is grounded in fairness, or as Justinian expressed it, "to live honestly, to harm nobody, to render unto every man his due." With each new program aired and with each new mailing for support the equitable claim of LCMS for the use of the trademark was enhanced right up to and including the program featuring the history of St. Patrick On March 17, 2008. At that point, by a single act (as will be confirmed by case law below), the Holy Tuesday Termination constituted the third abandonment which was of all the equitable trademark claim capital that had been built up to that point since 1999.

D. Had Madsen applied for the trademark any time prior to March 18, 2008, and had LCMS not executed the Holy Tuesday Termination and had LCMS made an immediate re-application for certification with manifest expressions of intent to continue the program indefinitely, LCMS would very likely have prevailed, and properly so. The fact that Madsen's application in this scenario would have been senior to that of LCMS by a couple of months would not have foreclosed a decision for LCMS. In the instant cause the very fact of LCMS having been informed of Madsen's May, 2008 application by Schwarz in June

with no action by LCMS to cover its claim by a prompt application for a trademark in its own name serves as near proof that LCMS has no present interest in the mark beyond its utility as a club to control dialogue on the Issues, Etc. program. The USPTO was not constituted, nor was the trademark legislation enacted for such a purpose.

(2) With thousands of witnesses from **32 countries and 42 non-Lutheran denominations (106)** joining thousands more who are Americans and Lutherans there is an overwhelming declaration that LCMS with the Holy Tuesday Termination was an abandonment of all equitable claims. In concord there followed votes by two boards not to press claims, but to pass on the interest in the trademark, if any. To the same end there was the distribution and discard of Issues, Etc. programs and materials. These facts foreclose, eliminate, and serve to ABANDON, any equitable argument to oppose the registration of the trademark which at this very minute is being actively used to continue its effective message to those **32 countries and 42 non-Lutheran denominations (107)** and to those thousands more who are Lutherans and Americans, but there is yet a wrinkle.

(3) The wrinkle is the precipitator, who seeks only to restrain the voice of ISSUES, ETC. and not in the least to conserve or promote the trademark. From the LCMS Board of Directors on down at every level there was agreement not to interfere with the ISSUES, ETC. broadcast now in its eighth month at its new location. Only the precipitator, who does not dare admit who he is, but who has a direct pipeline to counsel for the Opposer, would rather silence the outreach to **32 countries and 42 non-Lutheran denominations (106)** plus thousands of Lutherans and Americans if he cannot have his hands around the throat of the host as a one man court to judge what is to be said.

(4) Confusion was dealt with. As for deception, the greatest is by he who will not reveal himself.

(5) CASE LAW ON ABANDONMENT

A. Generally, “abandonment” can arise from a single act or from a series of acts. *Holly Hill Lumber Co. V. Grooms*, 16 S. E.2d 816, 821, 198 S.C. 118

The record discloses LCMS abandoned its statutory claim by the single act of failing to refile with USPTO in 1999, and abandoned its equitable claim for preference in reapplication by single act of the Holy Tuesday Termination. Further, LCMS could only redeem its claim by reapplication and by a manifestation of genuine intent for positive trademark use which is wholly inconsistent with its series of acts including board resolutions, destruction of archives, discard of Issues, Etc. materials.

B. “Abandonment” includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry...*Boatman v. Andre*, 43 Wyo.352, 12 P.2d 370, 373.

The only LCMS reference to abandonment is as a conclusion without a thread of supporting evidence in a subordinate clause in Opposition ¶ 7 declaring “and not abandoned.” As to the case law first and paramount object of “intention” there is not a hint to offset series of acts (board resolutions, destruction of archives and discard of Issues, Etc. materials) indicating a total lack of intent to reapply.

C. [Abandonment is described as the] voluntary relinquishment of possession of thing by owner with intention of terminating his ownership, but without vesting it in any other person. *Foulke v. New York Consol. R. Co.*, 228 N.Y. 269, 127 N.E.237, 238, 9 A.L.R.1384..

Within hours of the Holy Tuesday Termination LCMS deleted the entire Issues, Etc. archives from the internet. Pressured by the public uproar evidence in this Response, LCMS weakly posted selected materials under a system not nearly as accessible as previously, but gone forever are the month by month, day by day, hour by hour, program by program archives that had been there minutes before the deletion. Even a massive swath of those selected materials were discarded in December 2008 by LCMS when it threw away the entire CD/DAT show archive of the Sunday Night national edition of Issues, Etc. dating from October 1995 through July 2001. These facts bring the abandonment of LCMS well within the definition in *Foulke v. New York Consol R. Co.*

LCMS ¶ 8 Prior to Applicant's adoption of its mark, if any, Opposer's ISSUES, ETC. mark was distinctive and became "famous" within the meaning of 15 U.S.C. § 1125 (c).

RESPONSE Admitted.

LCMS ¶ 9 Registration and use of the mark for which Applicant's seeks registration would cause dilution to Opposer's ISSUES, ETC. trademark.

RESPONSE Denied. The precipitator has so destroyed goodwill that there is nothing to dilute.

LCMS ¶ 10 Opposer will be injured and damaged by the registration of Applicant's mark, because such mark, when applied to the goods of Applicant:

- (A) is likely to cause confusion, or to cause mistake, or to deceive;
- (B) falsely suggests a connection with Opposer;
- (C) will cause dilution of the distinctive quality of Opposer's ISSUES, ETC. mark, and
- (D) will damage Opposer's valuable goodwill in its ISSUES, ETC. mark; and

RESPONSE (A), (B) and (D) are repetitious and have been answered. (C) is new in its implication that suggesting a connection with LCMS is a negative. That may be the case for the precipitator,

but for all others that connection is cherished. Every board member and employee of both LPR and the Issues, Etc. station in Collinsville is a member of an LCMS church. We are united in our confessions as set out in the Book of Concord. Our struggle to revitalize ISSUES, ETC. after Holy Tuesday Termination is for purposes in full harmony with the purpose clause of the LCMS constitution. The connection between LCMS, LPR, its officers and personnel is a given. Further, just as every LCMS church is of sovereign independent polity, so also is LPR. Let's walk together, which is what "synod" means.

LCMS ¶ 11 Upon information and belief, Applicant never had or no longer has a bona fide intention to use the mark shown in U.S. Trademark Application No. 77/487,948 in commerce in connection with any of the services listed in the application.

RESPONSE: Denied. Word is going out under the mark to thousands in **32 countries and 42 non-Lutheran denominations (106)** plus thousands of Americans and Lutherans.

LCMS ¶ 12 Applicant was not the person or entity with a bone fide intention to use the mark in commerce at the time the application was filed.

RESPONSE Denied.

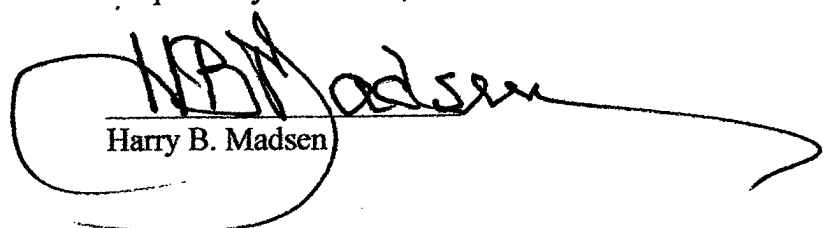
LCMS ¶ 13 By reason of the foregoing, Applicant is not entitled to the registration sought by its application.

RESPONSE Denied.

WHEREFORE, Harry B. Madsen prays that the Opposition be rejected and the trademark certification be granted to Harry B. Madsen, Sole Proprietor. ORAL ARGUMENT REQUESTED.

Harry B. Madsen
1859 Surrey Park Lane
Arlington Heights, IL 60005
847-368-0500

Respectfully submitted,


Harry B. Madsen

INDEX TO EXHIBITS

IN SUPPORT OF MADSEN'S RESPONSE

TO OPPOSITION NO. 91187891

SERIAL NO. 77487848

WITH PAGE NUMBERED HIGHLIGHTS

FROM EACH OF THE EXHIBITS

TWO PAGE INDEX TO EXHIBITS IN SUPPORT OF MADSEN'S RESPONSE
TO OPPOSITION NO. 91187891-----SERIAL NO. 77487848
WITH PAGE NUMBERED HIGHLIGHTS FROM EACH OF THE EXHIBITS

PETITION ON LINE, started March 21, 2008 surging to surging to over 7000 in 30 days

- 104 Petition subscribed by over 7500 individuals randomly, not in orchestrated blocks
- 105 Read the comment of a History Professor from Bucharest, Romania
- 105 This one page (of 500+) has fans from nine states, SD MI NE IA ND WY MD ME MO
- 106 32 countries from Afghanistan to Venezuela; from the army in Iraq and from ships at sea
- 107 Faithfully Lutheran, the show draws fans from 42 denominations, Anglican to Wesleyan

WALL STREET JOURNAL, March 28, 2008

- 108 Rev Todd Wilken interviewed the brightest lights from across the theological spectrum
- 108 ...had disappeared. Indeed, all evidence that the show ever existed was removed.
- 109 “ ‘Issues, Etc.’ is the most listened to, most popular and generates more income than any other program at the station and perhaps more even than the others combined. This decision is purely political”

Father John Neuhaus' FIRST THINGS BLOG, March 19, 2008

- 111 ...sound apologetics...not a trace of the show's ever having existed. Archives gone.
- 111 YouTube: Yes, there is now a video calling attention to this debacle.

NATIONAL REVIEW ON LINE, March 21, 2008

- 112 Though the show held fast to its confessional Lutheran theology, it was really a show for the broader Christian community---wide range of religious, cultural and political issues
- 112 ...in just the last month included everything from the story of St. Patrick, Sigmund Freud and guilt, tithing, ethics of sex changes ...the popular show was inexplicably cancelled...

ST LOUIS POST DISPATCH, April 15, 2008

- 114 75 protestors gathered Monday outside world headquarters of LCMS asking, “Why?”
- 115 cancelled for “Programmatic and business” reasons but offered no specifics.
- 115 aired locally from 3-6 p.m. weekdays, was syndicated to 11 Midwestern markets

SECOND PAGE OF INDEX TO EXHIBITS IN SUPPORT OF MADSEN'S RESPONSE

ST LOUIS POST DISPATCH, April 19, 2008

- 117 Kieschnick: the decision to cancel the show was largely an economic one.
117 explanation that the show was cancelled for "programmatic and business" reasons
118 Strand also said the program's audience was too narrow..(??32 countries/42 sects??)
118 Strand said that politics had nothing to do with the decision to pull "Issues, Etc."

ATTORNEY THOMAS A. POLCYN, in letter of June 16, 2008

- 119 LCMS may be willing to permit the use of the "Issues, Etc." name and related materials
on certain conditions, which are set forth below for discussion purposes only.
120 disparages LCMS or in any way casts LCMS in a negative light

WORLD MAGAZINE, May 17, 2008

- 121 Fans suspected another reason: The mode of outreach the current LCMS administration
favors comes from the church growth movement, which *Issues, Etc.* consistently criticized.
121 Though Issues, Etc. was careful to avoid intra-LCMS controversies, recent programs
included hard-hitting critiques of Islam, Women's ordination, and superstar preacher

CHRONICLES MAGAZINE, July 1, 2008

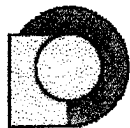
- 123 President...Kieschnick was quick to declare that the decision "transpired with my
awareness but neither by my order nor at my direction."
123 As a regular guest on Issues I was always cautioned never to speak ill of Ablaze on air

ST LOUIS DISPATCH, July 5, 2008

- 124 The popular radio program "Issues, Etc." was back on the air this week...at Bott Radio
Network, KSIV, 1320 AM; and their website, issuesetc.org.
124 Fans reacted strongly, though, demanding to know whether the show's conservative
theological bent was the real reason for its cancellation.

ATTORNEY THOMAS A. POLCYN, August, 2008 tender of six page proposed Trademark
Assignment and License Back (TALB) included on 126 a revealing disclosure:

- 126 TALB ¶ 1 (a) Assignment discloses an intent to assign which totally contradicts the core
Opposition ¶ 4 feigning possessiveness and defense of goodwill, identity and origin.
128 3 (b) iii disparages the LCMS or in any way casts the LCMS of its members in a negative
light (which by the contrasting termination provisions)
128 6 (a) for the assignees elaborate time periods, notices, writings, submissions, but
128 6 (b) for LCMS a blank check to cancel without reason, cause or delay



Expelled – Ben Stein

Why is Big Science suppressing the evidence
of Intelligent Design?

Saint Athanasius LCMS

Confessional Lutheran Congregation Vienna,
VA 22180 (Fairfax County)

Ads by Google

Issues Etc.

[View Current Signatures](#) - [Sign the Petition](#)

To: Lutheran Church Missouri Synod - KFUEO

To: KFUEOam

Dear Sirs,

We the undersigned would like to formally protest the decision to cancel "Issues Etc." from the KFUEOam programming lineup. Additionally, we'd like to dispute the termination of Todd Wilken and Jeff Schwarz.

The mission of the LC-MS, and all Christians, is preaching the gospel. Issues Etc. fulfilled this mission by being a Christ-centered and Cross-focused program that stayed true to scripture and the Lutheran Confessions. The archives are a priceless resource to missionaries, chaplains, ministers of all denominations and laypeople.

We call for the reinstatement of these gentlemen to their positions and for the restoration of Issues Etc. to its regularly scheduled time slots. We ask for the archives of the programming to be preserved for the edification of many.

Sincerely,

The Undersigned

[Click Here to Sign Petition](#)

[View Current Signatures](#)

The Issues Etc. Petition to Lutheran Church Missouri Synod - KFUEO was **created by KFUEO listeners and supporters and written by Jennifer Balaska** (issuesetcpetition@hotmail.com). This petition is hosted here at www.PetitionOnline.com as a public service. There is no endorsement of this petition, express or implied, by Artifice, Inc. or our sponsors. For technical support please use our simple [Petition Help](#) form.

tags: [Etc.](#) [issues](#) [KFUEO](#) [LCMS](#) [Lutheran](#).

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7191. Carol Viles
Greeley, CO
Trinity Lutheran
Church Rock
Springs, WY 82901

7190. Gene Viles
Trinity Lutheran
Church Rock
Springs, WY 82901

7189. Kurtis Vertz MD
I learned about this program through a friend of mine back home. Never really took the faith that seriously before. Now that Im moving soon Im actually looking to move near a Lutheran congregation. Issues helped me see the importance of finding a faithful church.

7188. Rev. Edward J. Balfour
Redeemer
Evangelical Lutheran
Church, Gorham,
Maine

7187. Anna Brandt
St. Paul Lutheran
Church, Des Peres,
MO

7186. Christopher Brandt
St. Paul Lutheran
Church Des Peres

7185. Sarah Rausch
Concordia, Cresbard,
SD

7184. Debbie LoCascio
St. Mark's Lutheran
Church, West
Bloomfield, MI

7183. Damian Liviu Romania, Bucharest
I am teaching history at Bucharest University (I also hold a degree in theology) and I received a lot of help from your program in talking to intelligent people who are not christians. I cannot believe the news that Issues etc is no longer available. Please reconsider the importance of Issues etc.

7182. Rev Matt Conrad
Good Shepherd
Lutheran Church,
Gretna, NE

7181. Roryon D. Davis
The podcasts were invaluable for my private study, please put Issues back on the air!
I don't always agree with the opinions on the show. But it has helped me tremendously in thinking critically. This show must go on...

7180. Rev. J.R. Wheeler
Immanuel L.C.,
Osceola, IA
How many people will it take to reach an important enough number to reverse the spiritually poor decision to expel "Issues"?

7179. Brenda Drefs
Immanuel, Dimock,
SD

7178. Rev. Michael Swofford
Tolley ND

Robert Redeemer

**This is only 1 of
over 500 pages
viewable on the
internet**

Afghanistan 3681,
 Africa 466, 474
 Austrailiab 7422,
 Australiaa 360, 1804, 2113, 2285, 2219, 3166, 3584, 3585, 3840, 4481, 4610, 4994, 6202, 7311,
 Austria 4367, 6069,
 Bosnia 445, 2306,
 Brazil 2347, 5264,
 Canadaa 32, 45, 110, 111, 115, 181, 261, 362, 397, 449, 659, 698, 718, 875, 1005, 1464, 1460,
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 Taiwan 3060, 4237,
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 xAnglican 1417, 1464, 2173, 2295, 2506, 4088, 5180, 5297, 6167, 6776, 7422,
 xAssembly of God 6404,
 xBaptista 449, 494, 653, 863, 926, 1249, 1404, 1599, 1621, 1712, 1812, 1875, 1947, 1937,
 xBaptistb 1983, 1976, 2088, 2208, 2205, 2204, 2281, 2280, 2856, 3166, 3357, 3387, 3383,
 xBaptistc 3580, 3579, 3751, 4055, 4099, 4165, 4160, 4549, 4743, 4802, 5008, 5006, 5039, 5076,
 xBaptistd 5189, 5221, 5256, 5270, 5520, 5562, 5821, 5826, 5843, 6022, 6060, 6073, 6069, 6099,
 xBaptiste 6271, 6335, 6539, 6762, 6769, 6768, 6883, 7139, 7311, 7344, 7380, 7504, 7535, 7526,
 xBible 51, 2945, 3114, 5601,

This page and the page following shows that the over 7500 petitioners objecting to the Holy Tuesday Termination within 30 days thereafter came from 32 countries and 42 non-Lutheran denominations. There were also names from 49 states of the union. They are still on the net for you to count.

xCalvary 7249, 7546,
 xChurch of Christ 5413,
 xCMA 1379, 5344, (Christian Missionary Alliance), 5404,
 xCommunity 1979, 1978, 2297, 5186, 5880, 6048, 6149, 6394, 7231, 7256, 7285, 7443,
 xCornerstone 2725,
 xCovenant 2718,
 xECUSA 2641,
 xEFCA 3498,
 xELCA 420, 3055, 3568, 4451, 4748, 5167, 5587,
 xELS 560, 2705,
 xEPC 5509,
 xEpiscopal 2859, 4242, 5121, 7213,
 xFBC 350, 3251,
 xFree Church 4205, 5571,
 xHarvest 6432,
 xMessianic Jewish 7200
 xMethodist 1244, 3098, 3335, 4725, 5235, 6564,
 xNazarene 6544, 7480,
 xNon-Denominational 2749, 2962, 3997, 5937, 6337, 6574, 7517,
 xNon-LCMS 4463,
 xNot LCMS 507
 xNot Lutherans 747, 1165, 6786,
 xOCA 2783,
 xOPCa 718, 1020, 1971, 1992, 2066, (Orthodox Presbyterian Church), 2230, 2594, 2561, 3570,
 xOPCb3994, 6077, 6072, 6245, 7168, 7557,
 xOrthodox 3149, 3768, 3999, 4184, 4424, 5000, 5164,
 xPCAa 1262, 1982, 2267, 2565, 2692, 2723, 2941, 3001, 3025, 3062, 3211, 3221, 3254, 3263,
 xPCAb 3695, 3880, 3899, 3922, 4427, 4589, 4772, 5134, 5516, 5818, 5997,
 xPresbyteriana 50, 158, 307, 342, 349, 365, 363, 631, 619, 845, 1019, 1262, 1509, 1790, 1778,
 xPresbyterianb 1773, 1800, 1853, 1848, 1860, 1933, 2022, 2044, 2213, 2311, 2575, 2623, 2752,
 xPresbyterianc 2762, 2973, 2987, 3071, 3226, 3224, 3286, 3356, 3426, 3454, 3581, 3693, 3830,
 xPresbyteriand 3840, 4369, 4622, 5252, 5393, 5382, 5432, 5452, 5480, 5610, 5779, 5908, 5924,
 xPresbyteriane 6043, 6132, 6215, 6377, 6517, 6532, 6563, 6561, 6837, 6938, 7091, 7177, 7265,
 xPresbyterianf 7482, 7515, 7556, 7558,
 xReformeda 377, 432, 589, 1516, 1738, 1811, 1925, 1940, 2343, 2366, 2364, 2369, 3108, 3223,
 xReformedb 3323, 3348, 3474, 3510, 3508, 3625, 3844, 3843, 3922, 4131, 4170, 5109, 5105,
 xReformedc 5430, 5827, 5919, 6334, 6436, 7485,
 xRomana Catholic 3147, 3470, 3935, 4430, 4602, 4794, 5208, 5437, 5457, 6027, 6218, 6217,
 xRomanb Catholic 6535, 6868, 7204, 7291,
 xSELK 656
 xUAC 4097,
 xULC 1637,
 xUMC 3521,
 xUnchurched 3164, 6954,
 xUnitarian 3152
 xURC 2893, 4759,
 xURNCA 3646,
 xVineyard 7152,
 xWELS 2144, 4776, 5010, 5222, 5884, 6441, 6490, 6603, 6923, 6923, 7164,
 xWeslayan 2062, 4679,
 xWFB 5837,

This page and the page preceding shows that the over 7500 petitioners objecting to the Holy Tuesday Termination within 30 days thereafter came from 32 countries and 42 non-Lutheran denominations. There were also names from 49 states of the union. They are still on the net for you to count.

THE WALL STREET JOURNAL. ONLINE

March 28, 2008

HOUSES OF WORSHIP

Radio Silence

By MOLLIE ZIEGLER HEMINGWAY
March 28, 2008

Usually radio hosts have to offend sacred moral sensibilities to be thrown off the air. Opie and Anthony were fired after they encouraged a couple to have sex in St. Patrick's Cathedral. Don Imus lost his job after using racist and sexist epithets against the Rutgers University women's basketball team.



What would Martin Luther do?

But when the Lutheran Church-Missouri Synod canceled its popular, nationally syndicated radio program "Issues, Etc.," listeners were baffled. Billed as "talk radio for the thinking Christian," the show was known for its lively discussions analyzing cultural influences on the American church. It seemed like precisely the thing that the Missouri Synod, a 2.4-million-member denomination whose system of belief is firmly grounded in Scripture and an intellectually rigorous theology, would enthusiastically support.

Broadcast from the nation's oldest continuously run religious radio station, KFZO-AM in St. Louis, and syndicated throughout the country, "Issues, Etc." had an even larger audience world-wide, thanks to its podcast's devoted following. With 14 hours of fresh programming each week, the show was on the leading edge of what's happening in culture, politics and broader church life. The Rev. Todd Wilken interviewed the brightest lights from across the theological spectrum on news of the day.

Guests included Oxford University's Dr. Alister McGrath, Southern Baptist Theological Seminary's Albert Mohler and more postmodern types, like Tony Jones, national coordinator for a church network called Emergent Village.

On its last show, on March 17, listeners learned about the life and faith of St. Patrick; scientific and philosophical arguments in defense of the human embryo; the excommunication of two Roman Catholic women who claimed ordination; and the controversy surrounding the sermons of Barack Obama's pastor, Jeremiah Wright.

Despite the show's popularity, low cost and loyal donor base, Mr. Wilken and Jeff Schwarz, the producer of "Issues, Etc.," were dismissed without explanation on Tuesday of Holy Week. Within hours, the program's Web site -- which provided access to past episodes and issues of its magazine -- had disappeared. Indeed, all evidence that the show ever existed was removed.

So what happened? Initially, the bureaucrats in St. Louis kept a strict silence, claiming that the show had been canceled for "business and programmatic" reasons. Yesterday the synod cited low

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local ratings in the St. Louis area and the low number of listeners to the live audio stream on the Web site. But the last time the synod tracked the size of the audience was three years ago, and it did not take into account the show's syndicated or podcast following. The synod also claimed that the show lost \$250,000 a year, an assertion that is at odds with those of others familiar with the operating budget of the station.

The Rev. Michael Kumm, who served on three management committees for the station, said that the explanation doesn't add up. " 'Issues, Etc.' is the most listened to, most popular and generates more income than any other program at the station and perhaps even the others combined. This decision is purely political," he said.

He may well be right. The program was in all likelihood a pawn in a larger battle for the soul of the Missouri Synod. The church is divided between, on the one hand, traditional Lutherans known for their emphasis on sacraments, liturgical worship and the church's historic confessions and, on the other, those who have embraced pop-culture Christianity and a market-driven approach to church growth. The divide is well known to all confessional Christian denominations struggling to retain their traditional identity.

The Rev. Gerald Kieschnick, the synod's current president, has pushed church marketing over the Lutherans' historic confession of faith by repeatedly telling the laity, "This is not your grandfather's church."

Since Mr. Kieschnick narrowly won election in 2001, the church has embarked on a program, called Ablaze!, that has the admirable goal of "reaching 100 million unreached and uncommitted people with the Gospel by 2017," the 500th anniversary of the Reformation. Historically the church kept statistics on baptisms. Now, however, it keeps a tally of what it calls "critical events." On March 17 a man reported discussing Jesus with his waitress -- and the Ablaze! count went up by one.

One congregation near St. Louis took a \$25,000 Ablaze! grant and used it to put up billboards with kitschy statements purporting to come from the devil (e.g., "JeffersonHills Church Sucks," signed "Satan"). A Michigan mission congregation replaced the historical message of Lent with a speaker series on sex. Following marketing principles, neither congregation uses the word "Lutheran" in its name or advertising campaign.

While "Issues, Etc." never criticized Mr. Kieschnick or his colleagues, its attacks against shallow church marketing included mention of some approaches embraced by the current leadership. It opposed, for instance, the emergent church -- an attempt to accommodate postmodern culture by blending philosophies and practices from throughout the church's history -- and the Purpose Driven Church movement, which reorients the church's message toward self-help and self-improvement.

This isn't the first time the Missouri Synod has been divided between confessional Lutherans and those enamored with the latest religious fads. In the 1970s, alert confessional laity thwarted a top-down imposition of chic liberal theology in the church's seminaries.

A similar grass-roots movement may now have begun among the radio show's fans. Within days of the cancellation of "Issues, Etc.," public outcry forced the synod to repost the archived broadcasts on KFUD's Web site. A petition calling for the show's return has been signed by thousands of people from 49 states, 27 denominations and 25 countries. Many of the signers

explained how "Issues, Etc." introduced them to Lutheranism. Young listeners have started a Facebook group to share information about the fate of the show.

Jim Kruta of Collinsville, Ill., was the 4,056th petition signer. An adult convert, he says that he listened to "Issues, Etc." for engaging discussions grounded in confessional Lutheranism. Mr. Kruta explained that Missouri Synod members should have drawn the line sooner about how much deviation they would tolerate in the church. "Seriously, this has been like waking up in the hospital after surgery only to find that the wrong limb has been amputated and no one will admit who the surgeon was," he said.

As synod bureaucrats support congregations that hide their Lutheran identity while terminating the strong witness of "Issues, Etc.," members of the denomination are asking if they can have their grandfather's church back.

Ms. Hemingway, a writer in Washington, is a former member of the Lutheran Church-Missouri Synod's Board for Communication Services.

URL for this article:

<http://online.wsj.com/article/SB120667366412170875.html>

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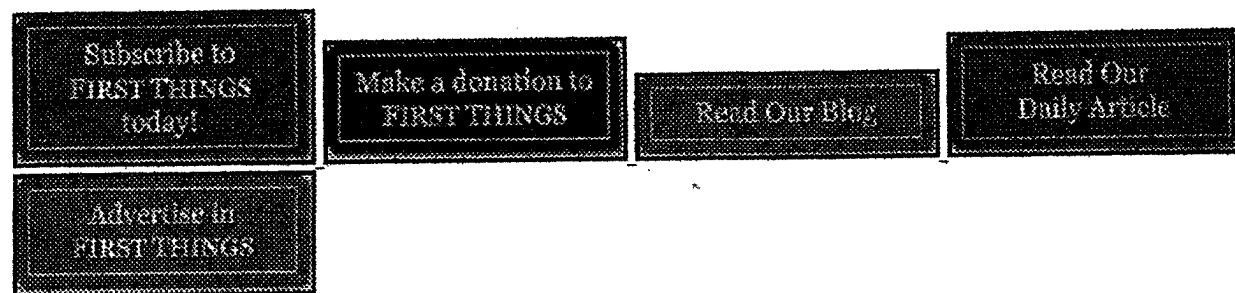
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What Happened to Issues, Etc.? (UPDATED EASTER SUNDAY)

Posted by Anthony Sacramone on March 19, 2008, 10:38 AM

KFUO radio, the voice of the Lutheran Church–Missouri Synod, for many years has broadcast a popular interview program, *Issues, Etc.*, hosted by Todd Wilken. It offered sound apologetics and a panoply of interesting guests offering orthodox Christian commentary on the issues of the day.

I should say “used to broadcast,” as the show seems to have been peremptorily yanked from the air. Last night, the KFUOam.org website was down. This morning: There is not a trace of the show’s ever having existed. Archives: gone.

There is, however, a centrally placed photo of LCMS president Gerald B. Kieschnick.

Would love to know what happened to Rev. Wilken and Jeff Schwarz, who produced that fine, serious, and *confessionally Lutheran* program. I will resist the temptation to link to some of the angrier blog posts around the Web. Right now what we need is an explanation for what by all appearances is a precipitate and callous act.

UPDATE: I see that a short message has been added to the KFUOAM.org homepage regarding how for “programmatic and business reasons,” *Issues, Etc.* had been discontinued. The archives have also been restored. Weird.

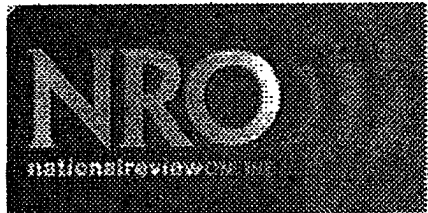
YouTube: Yes, there is now a video calling attention to this debacle. (Although, it was made before the archives were restored to the website. I guess the lingering idea of a “purge” and the making of Wilken and Schwarz “nonpersons” was seen as a PR misstep by some.)

UPDATED AGAIN (3/20—10:30am): There is an online petition available for anyone interested in persuading the LCMS communications board to reconsider this decision.

SUPPORT TODD WILKEN AND JEFF SCHWARZ: There’s an opportunity to donate to a fund for these two gentleman on the right-hand side of this Wittenberg Trail page (scroll down).

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Q: Which candidate was ranked 894 out of 899 students in college?



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the corner

Friday, March 21, 2008

Get "Issues, Etc." Back on the Air [\[Mark Hemingway\]](#)

My church denomination, the Lutheran Church Missouri Synod, owns a radio station in St. Louis where the church is headquartered. Far and away the most popular thing on that radio station, [KFUO](#), was a program they produced called "[Issues, Etc.](#)" The show was widely syndicated across the country and had a rabid podcast following.

Though the show held fast to its confessional Lutheran identity, it was really a show for the broader Christian community, covering a wide range of religious, cultural and political issues. Topics on the program in just the last month included everything from the story of St. Patrick, Sigmund Freud and guilt, tithing, the ethics of sex changes to the latest news of interest regarding abortion and stem cell research. Religious heavyweights such as Fr. Richard John Neuhaus of *First Things*, Dr. Alister McGrath, and Dr. Albert Mohler of the Southern Baptist Theological Seminary could frequently be found as guests on the program. Guests on the program of interest around these parts include Edwin Meese, Robert George, Rod Dreher and our own [Ramesh Ponnuru](#).

Earlier this week, the popular show was inexplicably canceled — during holy week no less — and no reason was given by the synod. Further, the two men who host and produce the show were given no warning whatsoever. The show's website was completely removed, though the archives were restored due to public outcry. In the meantime, an online petition is circulating. Some 2600+ people have signed the petition to get the show back on the air in less than 48 hours.

If you've ever enjoyed listening to "Issues, Etc." — and I know many of the readers

here have — please go and sign the petition. I'm sure the the bureaucrats in St. Louis had no idea what they were doing and could be swayed by the public outcry.

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Missouri-Synod Lutherans protest cancellation of radio show



April 14, 2008 — Left to right: Roxanna West, 17, of Webster Groves, Kaellyn Marrs, 15, of Clayton and Bill Densmore of Pocahontas, Illinois protest the pulling of a KFUD radio show outside the headquarters of the Missouri Synod of the Lutheran Church in Kirkwood.
(Christian Gooden/P-D)

By Tim Townsend

ST. LOUIS POST-DISPATCH

04/15/2008

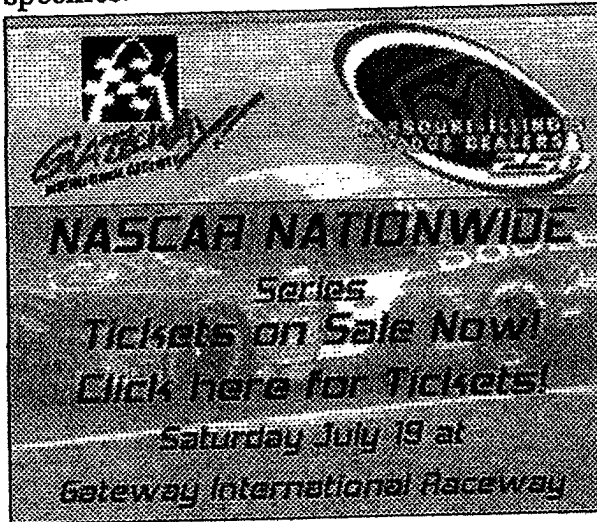
Kirkwood — About 75 protesters gathered Monday outside the world headquarters of the Lutheran Church-Missouri Synod, many holding signs that asked simply, "Why?"

The question was directed at church leaders who, during Holy Week last month, pulled the plug on a popular radio program on the denomination's KFUD-AM station called "Issues, Etc."

The host, the Rev. Todd Wilken, and producer, Jeff Schwarz, were fired without

warning, and all reference to the show was taken off KFUE's website. Fans were left confused and angry.

The following day, a statement went up on the church's website explaining that "Issues, Etc." had been canceled for "programmatic and business" reasons but offered no specifics.



"Issues, Etc." was "a beacon of light" for Bill Eggers, 72, a retired engineer from west St. Louis County who stood outside the denomination's glass offices in Kirkwood. "It gave my own faith a real boost."

The show, which aired locally from 3-6 p.m. weekdays, was syndicated to 11 Midwestern markets and available everywhere by podcast. Topics ranged from bioethics to the

role of women in the church, to the theology of God's love.

Since the cancellation, supporters have collected more than 7,000 signatures and raised more than \$30,000 in a fund to help the Wilken and Schwarz families.

The former host and producer could not be reached for comment.

On Sunday, 200 "Issues, Etc." supporters gathered at Emmaus Lutheran Church in St. Louis to pray and eat bratwurst.

The chief complaint at Monday's protest was that the present synod leadership has become caught up in marketing, focus groups and statistics in an effort to grow.

"They'd like to be more in the mainstream of American evangelicalism as opposed to distinctly Lutheran," said the Rev. Randy Asburry, pastor of Hope Lutheran Church in St. Louis.

"Issues, Etc." battled against that trend in the church, and many of the protesters said they thought that was the real reason the program was canceled.

But David Strand, the executive director of the church's communications board, said the cancellation was based on economics, not politics.

He said KFUO-AM (the church also runs KFUO-FM, a classical music station) has lost \$3.5 million since 2001, including more than \$600,000 last year.

"We have tried every cost-cutting measure we can think of for a long time," Strand said. "And we've tried every fundraising measure we can think of. ... 'Issues' was the largest and most obvious cut at our disposal."

Strand would not say whether the church was considering a sale of its stations. He pointed out that the 7,000 signatures make up one-third of 1 percent of the church body.

In the vacated time slot, the church has launched a new program called "The Afternoon Show," with topics Strand said should have a broader appeal.

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Lutheran radio program's demise is a symptom of larger ills

By **Tim Townsend**

ST. LOUIS POST-DISPATCH

Saturday, Apr. 19 2008

When about 75 people gathered outside the international headquarters of the Lutheran Church-Missouri Synod this week, it was a rare display of public dissension among the members of a relatively quiet Christian denomination.

Catholics, Episcopalians and evangelicals have grabbed the headlines lately. Lutherans, even those of the more conservative Missouri-Synod stripe, have largely dealt with their differences internally. (The Evangelical Lutheran Church of America, a separate Lutheran body, is considered more liberal.)

But that changed last month when church officials silenced one of its own public voices. When the church pulled the plug on its KFJO-AM program, "Issues, Etc.," and fired its host and producer, the show's fans turned up the volume.

"Issues, Etc." aired from 3 to 6 p.m. daily locally and was available by podcast around the world. The show also aired Sunday evenings and was syndicated to 11 markets outside St. Louis. Tina Finch, 44, an audiologist from Ida Grove, Iowa, drove eight hours to be at Monday's protest. She said 19 members of her family — spread out from Wyoming to South Carolina — had become Lutherans over the last decade primarily because of "Issues, Etc."

The show had a conservative, traditionalist theological bent that stressed a strict adherence to the Book of Concord, the 16th-century work that defined the central doctrines of Lutheranism. Christians whose spiritual lives are guided strictly by that work are often called confessional Lutherans.

Reaction to the show's cancellation has escalated in the last four weeks.

Bloggers have been particularly aggressive in pressing church officials to explain the surprise move.

An op-ed piece in the Wall Street Journal condemned the decision to pull the show and said the church was divided over how to attract new members. The denomination's president, the Rev. Gerald Kieschnick, responded with a letter to the editor denying there is division.

But Kieschnick's words, and a church statement explaining that the decision to cancel the show was largely an economic one, had anything but a calming effect on the unhappy, confused — and by this time angry — "Issues, Etc." fans.

Earlier this week, 200 supporters from around the country met at a St. Louis church for fellowship, prayer and bratwurst, and the next day many staged the protest at the denomination's headquarters in Kirkwood. Outside the church's gleaming glass building, some of the show's fans wore "I've got Issues, Etc. with the LCMS" T-shirts, sported "God made me a Christian. 'Issues Etc.' made me a Lutheran" buttons, and carried signs asking, simply, "Why?"

The church stuck to its earlier explanation that the show was canceled for "programmatic and business" reasons. In an interview earlier this week, David

Strand, the executive director of the church's communications board, said the station had lost \$3.5 million in the last seven years.

Strand also said the program's audience was too narrow. —"Issues' was a strong show, but where we stand now in terms of listenership, it seems wise to try some new things to broaden our reach," he said.

Critics say the church's audience numbers don't include the large number of people who listened to the show online via podcasts. Strand said that "Issues, Etc." was downloaded more than any other KFUD-AM program, but that in order to succeed, the station needs "live listeners" and that "it's not accurate to say every download translates to a listener."

The church currently produces seven religious shows, one of which is a replacement for "Issues, Etc." The new program, called "The Afternoon Show," is different from "Issues, Etc.," said Strand, in that "it doesn't dwell largely on Lutheran apologetics at a sophisticated level. It still takes its Gospel proclamation seriously, but it finds new ways to capture attention."

Despite Kieschnick's message to the contrary, there is a disagreement among Lutheran Church-Missouri Synod factions that have differing visions for the church's future.

"There is, and has been for some time, notable division in Synod on a number of issues," said Korey Maas, a theology professor at Concordia University in Irvine, Calif., which is affiliated with the church. "Though I don't know if anyone can say definitively if these differences were the cause of the termination of 'Issues, Etc.'"

Many of the protesters said the current administration is too focused on recent evangelical megachurch growth models instead of on traditional Lutheran doctrine. That, they say, is watering down 500 years of Lutheran history.

"This is a symptom of a much larger problem," said the Rev. Charles Henrickson, pastor of St. Matthew Lutheran Church in Bonne Terre, Mo. "This is about whether we retain our Lutheran identity or just blend in with American evangelicalism."

Strand said politics had nothing to do with the decision to pull "Issues, Etc." "This was a financial decision. All 2.5 million of our members would call themselves confessional Lutherans, so I'm not sure where this idea of division comes from," he said. "Like most denominations, we have differences of opinion on things ... but Dr. Kieschnick wants a deeper sense of peace throughout the church."

That sense of peace would be much easier to attain, some say, if the denomination were on stronger financial footing.

"It's no secret synod is not in great financial health," said Maas.

Strand would not say whether the church is considering a sale of its stations (it also owns classical station KFUD-FM), but he did say they were in financial trouble and that —"Issues' was the largest and most obvious cut at our disposal."

That explanation is unlikely to satisfy the most vocal "Issues, Etc." supporters who see something more than money in the reasons for its cancellation.

"The Missouri Synod is a highly volatile church body right now," said the Rev. Frederic W. Baue, pastor of Bethany Evangelical Church in Fairview Heights.

"There is a definite split between those who favor the megachurch marketing approach to outreach ministry," said Baue, "and those who trust the word of God and the sacraments to do the job of bringing people to the faith."

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June 16, 2008

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VIA E-MAIL (twilken@htc.net) & U.S. MAIL

Rev. Todd Wilken
1437 Jamie Lane
Waterloo, IL 62298

Re: Request for "Issues, Etc." Name and Materials
Our Ref. 46324-55406

Dear Rev. Wilken:

As you may know, we represent the Lutheran Church – Missouri Synod ("LCMS") in legal matters. On behalf of the Board of Directors of the LCMS, we are responding to your June 2, 2008 e-mail message to Ron Schultz, which included a formal request to use the "Issues, Etc." name and related materials.

While we do not yet have the authority to make a binding offer on behalf of the LCMS, we have discussed your request with our client, and we understand that LCMS may be willing to permit the use of the "Issues, Etc." name and related materials on certain conditions, which are set forth below for discussion purposes only. The terms below are still subject to approval by the Board of Directors of the LCMS, and in any event would not be binding until a formal agreement is executed by the parties.

We would propose that the LCMS assign its entire right, title and interest in and to the ISSUES ETC. service mark, as used in connection with the production and distribution of radio programs, and for publications and merchandise associated with the program (the "Mark"), at no charge, on an "as is" basis, to you, Mr. Schwarz and/or a business entity that you form to operate the business ("Assignee"), provided that:

(1) except as set forth in part (4) below, the LCMS retains ownership and possession of all media on which archived shows are recorded (including online archives, CDs, written transcripts, etc.) as well as all associated merchandise;

Chicago

St. Louis

Southern Illinois

Washington, D.C.

Rev. Todd Wilken
June 16, 2008
Page 2

(2) The LCMS retains the right to use the Mark 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, merchandise, etc.);

(3) Assignee shall not use any LCMS trademarks or other intellectual property (including, without limitation, the "LCMS" mark, the "Lutheran Church - Missouri Synod" name, the LCMS Logo Cross and the official "Seal" of The Lutheran Church - Missouri Synod) in any manner that:

(i) suggests an affiliation with the LCMS that does not exist,

(ii) suggests that the LCMS endorses or sponsors Assignee or its products/services, or

(iii) disparages the LCMS or in any way casts LCMS in a negative light; and

(4) Assignee will be given limited permission to use copies of archived shows so long as all references to the LCMS are deleted/removed before being published or re-broadcast, so as to avoid confusion regarding the source of the publication/re-broadcast or any interpretation that the limited use of the archived materials by Assignee is somehow sponsored or endorsed by the LCMS.

Subject to the foregoing conditions, the LCMS would also have no objection to Assignee's (or its designee's) use of the internet domain name www.issuesetc.org.

Finally, we wish to bring to your attention that pending U.S. Trademark App. No. 77/487,948 for the mark ISSUES, ETC. was filed May 31, 2008 in the name of Harry B. Madsen of Arlington Heights, IL. We assume Mr. Madsen is associated with you in this endeavor, but we would like to confirm it and learn more about the relationship.

If these terms are acceptable to you, we will submit them to the LCMS and, if formally approved, would be glad to draft a formal agreement for review by the parties. We look forward to hearing from you.

Sincerely,

Thompson-Coburn LLP

By 

Thomas A. Polcyn

WORLD MAGAZINE

■ THOUGHTS | "Return of the Lion" May 17, 2008

'Issues' no longer

Cancellation of LCMS radio show raises ruckus | *Gene Edward Veith*

The Lutheran Church—Missouri Synod has 2.4 million members, a vigorous Christ-centered theology, and the largest Protestant network of Christian schools. And yet much of Christendom and the secular culture hardly knows it exists. So a hallmark of synodical president Gerald Kieschnick's administration has been the "Ablaze" program, focusing on personal witnessing, church planting, and evangelism.

So why did that administration suddenly eliminate what may be its best known, most respected, and most effective vehicle for evangelizing the lost, interacting with other Christians, and bringing Lutheranism into the public square?

Issues, Etc. was a radio talk show hosted by Todd Wilken, a pastor who combined wit, charm, and theological substance. The show's producer, Jeff Schwarz, arranged conversations with theological heavyweights (Alister McGrath, N.T. Wright) and lightweights (Bishop Spong, Jesus Seminar members). He also put together discussions of movies, politics, and contemporary cultural issues. (Disclosure: I belong to the LCMS and was a guest on the show.)

Much of the show's content appealed to Christians of all stripes, but it was also distinctly Lutheran. Many people reported becoming converted to Christianity through *Issues, Etc.* Many listeners became Lutherans.

Then on March 18, Wilken and Schwarz were called to LCMS headquarters in St. Louis. David Strand, executive director of the Board for Communication Services, told them they were fired. According to an official statement from the LCMS, the show was canceled because it was too expensive to operate and did not reach a big enough audience.

Fans of the show suspected another reason: The mode of outreach the current LCMS administration favors comes from the church growth movement, which *Issues, Etc.* consistently criticized.

Under church growth methodology, traditional worship styles, theological rigor, and denominational distinctives can be "obstacles" to church growth. Being "negative," as in theological polemics of the sort that *Issues, Etc.* was known for, "turns people off."

Though *Issues, Etc.* was careful to avoid intra-LCMS controversies, recent programs included hard-hitting critiques of Islam, women's ordination, and superstar preacher Joel Osteen. Such treatments could only be embarrassing for officials wanting to project a kinder, gentler Lutheranism.

But when news of the cancellation came out, the blogosphere erupted. An online petition to bring back the show collected over 7,000 signatures. Congregations and entire denominational districts registered their disapproval.

The last time grassroots Missouri Synod Lutherans got this angry was in the "Battle for the Bible" of the 1970s. Then the issue was whether the LCMS would reject biblical authority to join mainline liberal Protestantism. Now the issue is whether the denomination will reject its theological identity to join generic megachurch Protestantism.

And those are "Issues" not just for Lutherans, but for the Reformed, Baptists, Wesleyans, Pentecostals, and every other Christian tradition.

Chronicles

July 2008

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Plus: An Excerpt From
Mexico Way, the new novel
by Chilton Williamson, Jr.

Out With the Old

My grandfather has congestive heart failure. I hate to say it, but I probably won't see him this time next year. "Gramp," as I've called him since I can remember, taught me how to shoot and hunt, taught me how to change the oil, taught me how to drive a truck, taught me how to run a trot line and how to shake a catalpa tree for worms. He helped me buy a hotrod and a Fender strat. His daddy's gun sits by my bed, and I have paper money from Okinawa that he brought back from the War. For half of my life, we lived in the same house. I named a son (Carl) after him.

I sometimes wish he would have joined me in going over to the Lutheran church, but Gramp is a hardcore Baptist and just never was interested in learning why we do all of that standing up and sitting down, why we say some of the same words every week. ("The Lord be with you. / And with thy spirit.") On the other hand, had he joined me in the Lutheran Church-Missouri Synod, I wonder what he would have made of LCMS President Gerald R. Kieschnick's signature slogan: "This is not your grandfather's church."

It was on the basis of that breathtaking statement that President Kieschnick launched Ablaze!™ in 2004—a "missions movement" designed to "share the Good News of Jesus with 100 million unreached or uncommitted people by . . . 2017." From the get-go this business of counting "critical events," as Kieschnick puts it, seemed very un-Lutheran. Tallying up decisions for Christ makes sense after a Billy Graham Crusade, but it does not square with the Augsburg Confession—a document once known in a Church that respected Her grandfathers.

"When one person gives a clear presentation of the Gospel of Jesus Christ to another person," says the Ablaze!™ website, "so that there is an opportunity for that person to respond, this activity 'counts' toward the 100 million goal." But how is one to know whether he has

participated in an activity that fits the bill? Here is some helpful guidance:

A congregation puts 1,500 flyers in the local paper. The 1,500 flyers *do not count*. But, any inquiries that came as a result of the flyers and opened the door for the congregation to share the Good News with an unreached or uncommitted person will count toward the 100 million goal.

Another thing that *did not count* was a long-running and surprisingly popular radio program called *Issues, Etc.*—"Talk radio for the thinking Christian." Every weekday from three to six in the afternoon, and for two hours during a nationally syndicated broadcast on Sunday evenings, the Rev. Todd Wilken talked about current events, politics (Srdja Trifkovic was often interviewed on foreign affairs), popular culture, and—above all else—Lutheran theology. As Lutheran theology has something to do with "the Good News"—Lutheran churches were first called "*evangelische*"—it should come as no surprise that, quite often during *Issues, Etc.*, the Gospel was "shared." And while it is really impossible to "count" the work of the Holy Spirit, it is safe to say that the program produced results. An ever-growing audience testified to this. Countless lifelong Lutherans discovered their own Church's doctrine and learned why we say those same words every week. Unbelievers called in with questions, and many became catechumens in Lutheran congregations. *Issues, Etc.* live broadcasts from parish halls across the heartland reflected the excitement of the faithful who had a renewed sense of their own identity.


When David Strand, a layman and the chairman of the LCMS Board of Communication Services, fired the Rev. Wilken and his veteran producer, Jeff Schwarz, on March 18 (Holy Tues-



day), there was an immediate backlash. Over 7,500 signed a petition, and several districts (dioceses) issued formal complaints. President Clinton . . . er, Kieschnick was quick to declare that the decision "transpired with my awareness but neither by my order nor at my direction." Soon thereafter, fellow LCMSer Mollie Hemingway wrote critically of the "Holy Tuesday Treachery" in the *Wall Street Journal*, tying this "critical event" to the theological aberrations of Ablaze!™. (As a regular guest on *Issues, Etc.*, I was always cautioned never to speak ill of Ablaze!™ on the air.) President Kieschnick fired back a letter to the WSJ editor, explaining in carefully selected detail that this decision was all about money and denouncing Hemingway for suggesting that our synod is "deeply divided." (How ridiculous!)

Speaking of money, even as the plan to ax *Issues, Etc.* was entering President Kieschnick's "awareness," one new LCMS congregation was using \$25,000 in Ablaze!™ dollars to pay for billboards around suburban St. Louis that read, for example, "JeffersonHills Church sucks." As KSDK NewsChannel 5 in St. Louis reported, "Beneath those messages is a hyphen, followed by 'Satan,' as if it's a note from the biblical Prince of Darkness."

"I seen that thing and I about fell over," one passerby told KSDK. "I just thought maybe some atheist group might have put it up, or something," said another. "We're getting a lot of responses," said "Lead Pastor Steve Benke."

Actually, I think President Kieschnick is right. *This* is not my grandfather's church. 

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Interfaith group explores prophetic preaching in the black church

By Tim Townsend

07/05/2008

Three months after it was canceled by the Lutheran Church - Missouri Synod, the popular theological radio program "Issues, Etc." was back on the air this week. But it hasn't returned to its original home at the LCMS-owned KFUD-AM. The host, the Rev. Todd Wilken, and producer, Jeff Schwarz, could be found down the dial this week at Bott Radio Network, KSIV, 1320 AM; and on their website, issuesetc.org.



Religion writer Tim Townsend

The show, which says it brings "a biblical, Christian and Reformation perspective to the issues of the day," had been canceled by the church in March. Church officials said that the station had lost \$3.5 million in the last seven years and that the elimination of "Issues, Etc." was the largest and most obvious cut it could make.

Fans reacted strongly, though, demanding to know whether the show's conservative, traditionalist theological bent was the real reason for its cancellation. Bloggers collected e-signatures, and a protest outside LCMS headquarters in Kirkwood in April drew 75 angry fans.

An op-ed in the Wall Street Journal condemned the decision to pull the show and said the church was divided over how to attract new members. The denomination's

president, the Rev. Gerald Kieschnick, responded with a letter to the editor denying there was division.

As the "Issues" duo set up shop in their new Collinsville studio.



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TRADEMARK ASSIGNMENT AND LICENSE BACK

This Trademark Assignment and License Back agreement (the "Agreement") is by and between **The Lutheran Church-Missouri Synod**, a Missouri nonprofit corporation with offices at 1333 South Kirkwood Road, Kirkwood, Missouri 63122 ("the LCMS") on the one hand, and **Rev. Todd Wilken**, an individual residing at _____ ("Wilken"), and **Mr. Jeff Schwarz**, an individual residing at _____ ("Schwarz") on the other hand. Hereinafter, Wilken and Schwarz may be referred to collectively as the "Assignees," and the LCMS and the Assignees may be referred to collectively as the "Parties." The effective date of this Agreement shall be the date of the last signature required for full execution of this Agreement by the LCMS and both Assignees.

WHEREAS, the LCMS has used the trademark "ISSUES, ETC." (the "Trademark") for many years in connection with the production and distribution of a radio program on its radio station, KFUE-AM, and by virtue of such use has acquired common law trademark rights therein; and

WHEREAS, the LCMS recently discontinued producing new installments of its radio program, but possesses a substantial library of archived broadcasts and related materials that bear the Trademark, including, without limitation, all media on which archived broadcasts are recorded (including online archives, CDs, written transcripts, etc.) as well as all associated merchandise (collectively, the "LCMS Archived Materials"), which the LCMS intends to continue using on a limited basis, including for purposes of re-broadcasting such archived broadcasts and distributing the related materials; and

WHEREAS, Assignees desire to use the Trademark in connection with a new radio program that they are producing independently from the LCMS and KFUE-AM; and

WHEREAS, the Parties now desire to have the LCMS assign all of its right, title and interest in and to the Trademark to the Assignees, subject to a license back to the LCMS to continue using the LCMS Archived Materials, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. ASSIGNMENT

(a) Assignment. Subject to Sections 2 and 3 of this Agreement, the LCMS hereby assigns to Assignees all of its right, title and interest in and to the Trademark, together with the goodwill of the business associated with and symbolized by the Trademark, and all causes of actions, claims, demands or other rights in respect of any

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1. ASSIGNMENT

(a) Assignment. Subject to Sections 2 and 3 of this Agreement, the LCMS hereby assigns to Assignees all of its right, title and interest in and to the Trademark, together with the goodwill of the business associated with and symbolized by the Trademark, and all causes of actions, claims, demands or other rights in respect of any

infringement or other violation of rights, including, without limitation, any past infringement or other violation of rights, with respect to the Trademark ("Assignment").

(b) Further Documents. The LCMS agrees to execute any further documents that Assignees may reasonably request to fully effectuate this Assignment, at Assignees' expense.

(c) No Warranties. The Assignment is made by the LCMS on an "AS IS" basis. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO BE A REPRESENTATION OR WARRANTY BY LCMS WITH RESPECT TO THE OWNERSHIP, VALIDITY OR ENFORCEABILITY OF THE TRADEMARK. LCMS SHALL HAVE NO LIABILITY WHATSOEVER TO ASSIGNEES FOR OR ON ACCOUNT OF ANY LOSS OR DAMAGE, OF ANY KIND OR NATURE, SUSTAINED BY, OR ANY DAMAGE ASSESSED OR ASSERTED AGAINST, OR ANY OTHER LIABILITY INCURRED BY OR IMPOSED ON ASSIGNEES, ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM ASSIGNEES' USE OF THE TRADEMARK, INCLUDING WITHOUT LIMITATION ANY LOSS OR DAMAGE ARISING OUT OF THIRD PARTY INFRINGEMENT CLAIMS.

2. OWNERSHIP/USE OF THE LCMS ARCHIVED MATERIALS

(a) Ownership of the LCMS Archived Materials. Notwithstanding the Assignment, the LCMS shall retain ownership and possession of the LCMS Archived Materials.

(b) License. Assignees hereby grant to the LCMS a perpetual, royalty-free, exclusive (except as set forth in Section 4 of this Agreement), worldwide license to use the Trademark in association with the LCMS Archived Materials (the "License"). Without limiting the generality of the foregoing, the License includes the right to re-broadcast the archived broadcasts and distribute the LCMS Archived Materials, but does not include the right to produce, distribute or broadcast new programs or new merchandise bearing the Trademark. The License shall be deemed to include the right to grant sublicenses to affiliates of the LCMS that control, are controlled by, or are under common control with the LCMS, as necessary to allow the LCMS to make use of the LCMS Archived Materials as intended by this Agreement.

(c) Quality Control. In order to preserve the reputation and integrity of the licensed Trademark, the LCMS agrees that its use of the Trademark in connection with the LCMS Archived Materials will meet the same standards of quality that were met by the LCMS prior to the Assignment, which Assignees acknowledge is an acceptable level of quality. The LCMS agrees that its use of the Trademark pursuant to the License shall inure to the benefit of Assignees and that the LCMS shall not, at any time, acquire or represent that it has any rights in the Trademark by virtue of any use it may make of the Trademark, other than as contemplated by this Agreement.

3. COVENANTS OF ASSIGNEES

(a) Assignees shall cause Harry B. Madsen, an individual residing in Arlington Heights, Illinois ("Madsen") to abandon U.S. Trademark App. No. 77/487,948 for the mark ISSUES, ETC., which was filed with the U.S. Patent and Trademark Office by Madsen on May 31, 2008 (the "Madsen Application").

(b) Assignees shall not use any LCMS trademarks or other intellectual property (including, without limitation, the "LCMS" mark, the "Lutheran Church-Missouri Synod" name, the LCMS Logo Cross and the official "Seal" of the LCMS) in any manner that: (i) suggests an affiliation with the LCMS that does not exist, (ii) suggests that the LCMS endorses or sponsors Assignees or its products/services, or (iii) disparages the LCMS or in any way casts the LCMS or its members in a negative light.

4. LIMITED USE OF ARCHIVED MATERIALS BY ASSIGNEES

Assignees shall be permitted to make limited use of copies of archived ISSUES, ETC. broadcasts and materials, provided that all references to the LCMS (including, without limitation, all LCMS trademarks) are deleted/removed before such broadcasts and materials are published or re-broadcast, so as to avoid confusion regarding the source of the publication/re-broadcast or any interpretation that the limited use of the archived ISSUES, ETC. broadcasts and materials by Assignee is sponsored or endorsed by the LCMS.

5. TERM

The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until terminated in accordance with the termination provisions of this Agreement.

6. TERMINATION:

(a) Assignees may terminate the License upon one-hundred eighty (180) days' written notice to the LCMS following a material breach of this Agreement by LCMS (the "Notice Period"), unless (i) such material breach is cured within the Notice Period, or (ii) a plan to remedy such material breach is submitted to Assignees in writing within the Notice Period and approved by Assignees (such approval not to be unreasonably withheld) within thirty (30) days of submission (the "Approval Period"). In the event that Assignees do not respond within the Approval Period, their failure to respond shall be deemed an approval.

(b) The LCMS shall have the right to terminate the License upon written notice to Assignees.

(c) The Assignment is conditioned upon Assignees' compliance with Section 3(a) of this Agreement and upon Assignees' continuing compliance with Sections 3(b) and 4

of this Agreement. In the event either of the Assignees, or those acting in coordination with them, materially breach any of the provisions of Sections 3 or 4 of this Agreement, the LCMS may provide written notice of such material breach to Assignees, and the Assignment shall become null and void one-hundred eighty (180) days' following said written notice (the "Notice Period"), except with respect to a material breach of Section 3 (b) of this Agreement in which case the Assignment shall become null and void fifteen (15) days' following said written notice (the "Accelerated Notice Period"), and all rights to the Trademark shall revert to the LCMS, unless (i) such material breach is cured within the Notice Period or Accelerated Notice Period, as the case may be, or (ii) a plan to remedy such material breach is submitted to the LCMS in writing within the Notice Period or Accelerated Notice Period, as the case may be, and approved by the LCMS (such approval not to be unreasonably withheld) within thirty (30) days of submission (the "Approval Period"). In the event that the LCMS does not respond within the Approval Period, its failure to respond shall be deemed an approval.

(d) The rights and remedies of the Parties set forth in this Section 6 are not exclusive of any other right or remedy conferred by this Agreement or otherwise conferred by law or in equity; rather, all of such rights and remedies are cumulative of every other such right or remedy and may be exercised concurrently or separately from time-to-time.

7. NOTICES

(a) Any notice required by this Agreement shall be given as follows:

If to LCMS: The Lutheran Church-Missouri Synod
1333 South Kirkwood Road
Kirkwood, Missouri 63122
Attention: Ronald P. Schultz, Chief Administrative Officer

With a copy to:

Sherri C. Strand, Esq.
Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101

and

If to Assignees: Rev. Todd Wilken

and

Mr. Jeff Schwarz

or to such other person(s) and/or address(s) as the party to be noticed shall hereafter designate to the other party in writing.

(b) All notices or other communications required to be sent to either party shall be in writing and sent by Registered or Certified Mail, postage prepaid, return-receipt requested or by a nationally recognized overnight delivery service, charges prepaid.

8. GENERAL

(a) Assignability of Rights. Neither of the Parties may assign or otherwise convey any of the rights or obligations arising under this Agreement without prior written approval from the other of the Parties, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that a Party may assign this Agreement to an entity that controls, is controlled by, or is under common control with that Party, or in connection with any merger, acquisition or other corporate reorganization of that Party, upon notice to the other Party. All terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the permitted successors and assigns of the Parties.

(b) Independent Contractors. It is agreed and understood that each of the Parties is an independent contractor and not an agent or employee of the other party. Neither of the Parties has a proprietary interest in the other party, and neither of the Parties has an interest in the business of the other party, except to the extent set forth in this Agreement. Nothing in this Agreement shall be construed as creating a partnership between the Parties.

(c) Governing Law. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to any conflict of laws principles. In any action between the Parties arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement: (i) each party irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of each of (A) the state courts located in St. Louis County, Missouri, and (B) the United States District Court for the Eastern District of Missouri, (ii) each party irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, and (iii) each party irrevocably waives any and all rights to a trial by jury in any legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby. The prevailing party in any litigation in connection with this Agreement may recover attorneys' fees and litigation costs incurred in prosecuting or defending such litigation from the nonprevailing party.

(d) Waiver. No waiver by either party of a breach or a default hereunder shall be deemed a waiver by such party of a subsequent breach or default of a like or similar

nature and either party may, within the time provided by applicable law, commence appropriate legal proceedings to enforce any such rights.

(e) Integration and Severability. This Agreement supersedes any and all prior agreements, and it embodies the entire Agreement of the Parties hereto relating to the subject matter hereof. Any changes or modifications to this Agreement shall be in writing, executed by all of the Parties hereto, and any attempt at oral modification of this Agreement, or through writing signed by fewer than all of the Parties, shall be void. If any of the provisions of this Agreement are void or unenforceable, the remaining provisions shall nevertheless be effective, the intent being to effectuate this Agreement to the fullest extent possible.

(f) Execution. This Agreement may be executed in multiple, identical counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

The Lutheran Church-Missouri Synod
By:

Rev. Todd Wilken

Signature

Signature

Printed Name and Title

Date

Date

Mr. Jeff Schwartz

Signature

Date

EXHIBIT 2



United States Patent and Trademark Office

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Opposition

Number: 91187981**Filing Date:** 12/05/2008**Status:** Pending**Status Date:** 12/11/2008**Interlocutory Attorney:** ROBERT COGGINS**Defendant****Name:** Harry B Madsen**Correspondence:** HARRY B MADSEN
HARRY B MADSEN
1850 W SURREY PARK LN
ARLINGTON HEIGHTS, IL 60005-3473
bringthebible@aol.com**Serial #:** 77487948Application File**Application Status:** Opposition Pending**Mark:** ISSUES, ETC.**Plaintiff****Name:** The Lutheran Church - Missouri Synod**Correspondence:** David B. Jinkins
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
ipdocket@thompsoncoburn.com**Prosecution History**

#	Date	History Text	Due Date
<u>7</u>	12/29/2008	<u>D'S MOTION TO STRIKE</u>	
<u>6</u>	01/21/2009	<u>SUSPENDED PENDING DISP OF OUTSTNDNG MOT</u>	
<u>5</u>	01/12/2009	<u>P'S OPPOSITION/RESPONSE TO MOTION</u>	
<u>4</u>	12/29/2008	<u>D'S MOTION TO DISMISS - RULE 12(B)</u>	
<u>3</u>	12/11/2008	PENDING, INSTITUTED	
<u>2</u>	12/11/2008	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	01/20/2009
<u>1</u>	12/05/2008	<u>FILED AND FEE</u>	

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