

the grant of the license in order to make them marketable. He further testified that there was no need for additional developmental know-how once the patented compositions had been established, which occurred before June 1960. The patents themselves adequately taught the preparation and use of the licensed products.²

Even if the rights to plaintiffs' services acquired by Denver in the 1959 agreement were deemed to subsist beyond the inception of the 1960 license, those rights were merely incidental to Denver's right to use the patented compositions and do not save plaintiffs' royalty arrangement from the defense of patent misuse by reason of extending payments for a monopoly beyond the life of the patent. See *Rocform Corp. v. Acitelli-Standard Concrete Wall, Inc.*, 237 F.Supp. 34, 143 USPQ 405 (E.D. Mich. 1964), *aff'd*, 367 F.2d 678, 151 USPQ 305 (6th Cir. 1966). As indicated by the testimony of Dr. Ochs, the services which plaintiffs were obliged to furnish under the 1959 agreement were minimal. They related to merchandising the products and were essentially those which any licensor interested in the net sales would undertake in self interest.

Moreover, plaintiffs failed to establish what part, if any, of the percentage royalty was allegedly intended to be compensation for consideration other than the patent license. The 1962 modification eliminated any notion of divisibility of the royalties upon expiration of the patents. The evidence does not establish any intent of the parties to apportion the royalties between the license and the other rights allegedly acquired by Denver.

[5] The 1960 agreement contemplated that all its parts and the consideration therefor should be interdependent. This is not a case where the performance of each party under the agreement was divided into two or more parts; the number of parts due from each party was the same; and the performance of each part by one party was the agreed exchange for the performance of a corresponding part by the other party. Consequently, the agreement is not severable (*First Savings & Loan Association*

v. American Home Assurance Co., 29 N.Y.2d 297 (1971)) and the post-expiration royalty provisions are unenforceable.

Accordingly, plaintiffs are not entitled to any recovery on their complaint, and the action is dismissed as to all named defendants herein.

The foregoing establishes that Denver's counterclaim for a declaratory judgment is redundant and has become moot, and it is accordingly dismissed. See 6 *Wright and Miller, Federal Practice and Procedure* §1406 (1971), cited with approval in *Aldens, Inc. v. Packel*, 524 F.2d 38, 51-52 (3d Cir. 1975), cert. denied, 44 U.S.L.W. 3593 (April 19, 1976).

The foregoing shall constitute the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a).

District Court, C.D. California

The Urantia Foundation
v. King, et al.

No. CV 74-2837 Decided Mar. 21, 1977

² It should also be noted that plaintiff Ochs testified that plaintiff Veltman held some 100 patents, yet the evidence was that he had not offered Denver an opportunity to evaluate or secure a license to market those products. Apparently Veltman did not consider himself bound by the language of the 1959 agreement to give Denver any such first refusal rights for the ensuing 25 years.

Action by The Urantia Foundation, against William Burton King, Urantian Research, Urantian School of Research, Doris George, and Barbara King, for copyright, trademark, service mark, and trade name infringement, and unfair competition. Judgment for plaintiff.

Stuart Lubitz, W. Robert Spensley, and Spensley, Horn, Jubas & Lubitz, all of Los Angeles, Cal., and Lloyd C. Root, and Johnson, Dienner, Emrich & Wagner, both of Chicago, Ill., for plaintiff.

Gray, District Judge.

Findings Of Fact

After a hearing held on March 7, 1977, in this Court, and upon the record before this Court, the Court makes the following findings:

1. Plaintiff, URANTIA FOUNDATION (Foundation) is an Illinois foundation created by Declaration of Trust in 1950; is a resident of the State of Illinois, and is engaged in furnishing to the general public religious educational goods and services, including The URANTIA Book.

2. URANTIA Brotherhood, a licensee of Foundation, is a social and fraternal organization with a religious objective, and was formed in January, 1955 for the purpose of providing a vehicle for the dissemination, discussion, understanding and socialization of the teachings of The URANTIA Book.

3. From time to time URANTIA Brotherhood authorizes qualified local groups of persons to identify themselves as a "URANTIA Society", each of which is a social and fraternal group with a religious objective, and is formed for the purpose of studying and discussing The URANTIA Book and its teachings. Currently there are ten such authorized URANTIA Societies in the United States, including one in Los Angeles, identified as the First URANTIA Society of Los Angeles.

4. The individual Defendants herein were, at one time, members of the First URANTIA Society of Los Angeles.

5. Defendant William Burton King (King) is, and at all times material hereto was, a resident of the State of California, County of Los Angeles.

6. Defendant Barbara A. King (B. King) is, and at all times material hereto was, a

resident of the State of California, County of Los Angeles.

7. Defendant Doris George (George) is, and at all times material hereto was, a resident of the State of California, County of Los Angeles.

8. Defendant, Urantian School of Research, was incorporated as a California corporation in 1966, and changed its name to Urantian Research in 1971.

9. Defendant, Urantian Research is a California corporation and the same legal entity as Urantian School of Research, which became Urantian Research by change of name.

10. Dr. William S. Sadler, Sr. had possession of the original unpublished handwritten manuscript of The URANTIA Book.

11. Dr. Sadler had said manuscript typed, and from the typed manuscript he had approximately two thousand two hundred (2200) plates made for the printing of The URANTIA Book, which plates were paid for by monies which were contributed for that purpose.

12. Foundation was formed in 1950 by a group of individuals who were Trustees of Foundation, and to whom possession of said plates was given by Dr. Sadler.

13. After Foundation was formed said plates were held in trust by it for the purposes for which Foundation was formed.

14. Foundation published The URANTIA Book on October 12, 1955 with a notice of copyright on the verso of the title page thereof and was the owner of the plates used to print The URANTIA Book.

15. The notice of copyright appearing on the verso of the title page of The URANTIA Book at the time of publication stated "copyright © 1955", and below that appeared "URANTIA FOUNDATION".

16. This same notice of copyright has appeared on all copies of The URANTIA Book published by Foundation or under its authority since October 12, 1955.

17. After publication of The URANTIA Book, Foundation applied to the Copyright Office to register its claim to copyright in said book, and on January 3, 1956 the Copyright Office issued to Foundation Certificate of Registration No. A 216,389, which is the registration of Foundation's claim to copyright in The URANTIA Book, as the proprietor thereof.

18. The URANTIA Book is an original work.

19. The tract entitled "References regarding the NATURE, ORIGIN and ORGANIZATION of the Fifth Revelation", (annexed to the Complaint as Exhibit "A"), published and distributed by Defendants, was copied in its entirety from The URANTIA Book.

20. The tract entitled "PAGES AND REFERENCES REGARDING PERSONALITIES AND SPIRITUAL BEINGS, etc. WHO HAVE A RELATION TO US ON THIS PLANET." (annexed to the Complaint as Exhibit "B"), published and distributed by Defendants, was copied largely from The URANTIA Book.

21. The pamphlet entitled "REVELATION vs. SCIENCE" (annexed to the Complaint as Exhibit "C"), published and distributed by Defendants, was copied almost entirely from The URANTIA Book.

22. The pamphlet entitled "THE REALITY OF THE HEAVENLY WORLDS" (annexed to the Complaint as Exhibit "D"), published and distributed by Defendants, consists almost entirely of direct quotations from The URANTIA Book.

23. The pamphlet entitled "MAN: HIS MANY ORIGINS AND ETERNAL DESTINY" (annexed to the Complaint as Exhibit "E"), published and distributed by Defendants, consists almost entirely of matter copied directly from The URANTIA Book.

24. The pamphlet entitled "THE WHY OF SPIRITUAL AUTHORS" (annexed to the Complaint as Exhibit "F"), published and distributed by Defendants, includes six pages which contain "The Titles of the Papers" copied from pages VII-XII of The URANTIA Book.

25. The pamphlet entitled "THE SILENT YEARS OF JESUS" (annexed to the Complaint as Exhibit "G"), published and distributed by Defendants, consists largely of material copied from The URANTIA Book.

26. The pamphlet entitled "THE RELATION OF THE HIGHER WORLDS TO OUR WORLD AND THEIR LIFE TO OUR LIFE" (annexed to the Complaint as Exhibit "H"), published and distributed by Defendants, was copied entirely from The URANTIA Book.

27. The tract entitled "THE HUMAN JESUS" (annexed to the Complaint as Exhibit "I"), published and distributed by Defendants, was copied in its entirety from The URANTIA Book.

28. The booklet entitled "THE WORLDS OF SPACE" (annexed to the Complaint as Exhibit "J"), published and distributed by Defendants, was copied largely from The URANTIA Book.

29. The pamphlet entitled "WHAT PEOPLE ARE LIKE ON OTHER WORLDS" (annexed to the Complaint as Exhibit "K"), published and distributed by Defendants, consists entirely of the complete text of thirteen pages of The URANTIA Book.

30. The series of 12 tracts annexed to the Complaint as Exhibit "L" and each entitled "THE LIFE OF THE SON OF MAN", published and distributed by Defendants, were copied largely from The URANTIA Book.

31. The three pamphlets annexed to the Complaint as Exhibit "M" and entitled, respectively, "THE LUCIFER REBELLION", "CAUSES OF THE REBELLION (Part 2)", and "RESULTS OF THE REBELLION (Part 3)", published and distributed by Defendants, constitute a condensation of approximately 27 pages of The URANTIA Book including Paper 53, Paper 54 and Paper 67, and, essentially the texts of these pamphlets were lifted from The URANTIA Book.

32. The tract entitled "THE TALK WITH NATHANIEL" (annexed to the Complaint as Exhibit "N"), published and distributed by Defendants, was lifted in its entirety directly from The URANTIA Book.

33. The tract entitled "QUESTIONS AND ANSWERS (that apply to paper 11-72)", (annexed to the Complaint as Exhibit "O") published and distributed by Defendants, was copied largely from The URANTIA Book.

34. The tract entitled "RELIGIONS AS THEY APPLY TO THIS WORLD" (annexed to the Complaint as Exhibit "P"), published and distributed by Defendants, was copied largely from The URANTIA Book.

35. The tract entitled "QUESTIONS AND ANSWERS (that apply to paper 12-72)" (annexed to the Complaint as Exhibit "Q"), published and distributed by Defendants, was copied largely from The URANTIA BOOK.

36. The tract entitled "RELIGIONS AS THEY APPLY TO THIS WORLD" (annexed to the Complaint as Exhibit "R") published and distributed by Defendants, was copied largely from The URANTIA Book.

37. The tract entitled "QUESTIONS AND ANSWERS (that apply to paper 1-73)" (annexed to the Complaint as Exhibit "S") published and distributed by Defendants, was copied largely from The URANTIA Book.

38. All of the copying from The URANTIA Book which has been done by Defendants has been without any permission from Foundation.

39. Defendant King knew of The URANTIA Book as early as 1963 and, in 1964 he requested permission from Foundation to use the word "Urantia" as a part of the name of his proposed "school" of research.

40. Foundation refused permission to Defendant King to use the word or name "Urantia" in his proposed school.

41. Defendant King agreed that he would not use "Urantia" in the name of his school, and thereafter began operating as "Christian School of Research".

42. While operating as "Christian School of Research", Defendants began publishing and distributing literature largely copied from The URANTIA Book, to which Foundation objected in writing.

43. Without the knowledge of or permission from Foundation, Defendant King changed the name of his school to "Urantian School of Research", and continued to publish and distribute material copied from The URANTIA Book.

44. Defendants have used and are now using the word URANTIAN as the dominant part of the corporate name "Urantian Research" with full knowledge of the prior use thereof by Foundation as a part of its trade name and as a trademark and service mark.

45. Registration No. 915,734 is a registration of the trademark "URANTIA" for Books and was issued to Foundation by the United States Patent Office on June 29, 1971.

46. Registration No. 948,104 is a registration of the service mark "URANTIA" for religious educational services, namely religious teaching, and was issued to Foundation by the United States Patent Office on November 28, 1972.

47. California State registration No. 1,355 is a registration of the service mark "URANTIA" for religious educational services and was issued to Foundation by the Secretary of State for the State of California on July 30, 1971.

48. Defendants have used, and are now using, URANTIA and/or URANTIAN on and in connection with its various

publications and the dissemination thereof deliberately and with full knowledge of Foundation's prior use thereof in the same connection.

49. The defendants' place of business is listed in the yellow pages of the Los Angeles telephone directory, on page 1748 thereof as "Urantian Research Centre", immediately below the listing of the authorized "Urantia First Society of Los Angeles".

50. The word URANTIA has come to be associated by the public with Foundation, the URANTIA Brotherhood, or the URANTIA Societies authorized thereby.

51. The word URANTIA has also come to be associated by the public with the goods and services furnished by Foundation or those organizations associated therewith or authorized thereby.

52.

53. The word URANTIA is a unique word in the English language, and was unknown to the public prior to the publication of The URANTIA Book.

Conclusions of Law

1. This Court has jurisdiction of the parties and the subject matter of this case for copyright, trademark, service mark and trade name infringement, and for unfair competition, and venue is proper.

2. Each of the 28 claims for relief states a claim upon which relief may be granted.

3. Foundation owns the copyright in The URANTIA Book.

4. All copies of The URANTIA Book have been published with the proper notice of copyright.

5. The copyright in The URANTIA Book is valid.

[1] 6. The Certificate of Registration of Foundation's claim to copyright in The URANTIA Book No. A 216,389, is prima facie evidence of originality, ownership, and the copyrightability thereof.

7. Ownership of the common law copyright in the subject matter of The URANTIA Book was in Dr. William S. Sadler, Sr. who transferred title therein to Foundation.

8. Foundation was the owner of the common law copyright in The URANTIA Book, and had the right to obtain the statutory copyright therein.

[2] 9. There is no statutory requirement that an author be named in the Certificate of Registration of a claim to copyright, and failure to name an author, or naming a wrong author, or naming fewer than all

authors does not affect the validity of a copyright.

10. Each of the publications attached to the Complaint and identified as Exhibits "A", "H", "I", "K", and "N", published and disseminated by Defendants was copied in its entirety from The URANTIA Book and constitutes an infringement of the copyright therein.

11. Each of the publications attached to the Complaint and identified as Exhibits "D", "E", "F", "G", "J", "L", and "O" through "S" was copied largely from The URANTIA Book and constitutes an infringement of the copyright therein.

12. Foundation owns the trademark URANTIA for books, pamphlets, and other types of religious educational material.

13. Foundation owns the service mark URANTIA for religious educational services.

14. Registrations Nos. 915,734 and 948,104 issued by the United States Patent Office for the trademark and service mark URANTIA are owned by Foundation, and are valid and subsisting.

15. The word "URANTIAN" is a colorable imitation of "URANTIA".

[3] 16. Defendants' use of URANTIA or URANTIAN in the name of the corporate defendant and on pamphlets and other literature constitutes an infringement of Foundation's trademark and service mark rights and of its trade name.

[4] 17. The word URANTIA is unique in the English language and is neither descriptive nor geographical, nor does it have any primary significance other than to identify Foundation and those authorized by it and the services performed by them.

18. There has been actual confusion, and therefore a likelihood of confusion, in the public mind as to the relationship between Defendant "Urantian Research" and Foundation and its authorized organizations.

19.

20. Defendants' actions constitute unfair competition with Foundation.

21. Foundation is entitled to an injunction enjoining Defendants and each of them from continuing to use URANTIA or any colorable imitation thereof, in connection with their publications, services and as a business name, except in an identification of the subject matter of the defendants studies.

22. Foundation is also entitled to injunctive relief enjoining Defendants from copying material from The URANTIA Book.

23. Foundation is also entitled to damages.

[The following decision was designated by the board to appear in digest form only.]

Patent and Trademark Office Trademark Trial and Appeal Board

In re Pharmavite Pharmaceutical Corporation

Decided Mar. 22, 1977

Released May 21, 1977

Appeal from Examiner of Trademarks.

Application for registration of trademark of Pharmavite Pharmaceutical Corporation, Serial No. 37,012. From decision refusing registration, applicant appeals. Affirmed.

Patent and Trademark Office Board of Appeals

Ex parte Razavi

Opinion dated June 14, 1973

Patent issued Nov. 9, 1976