



that SIBC and BPUPC were established by Leland Jensen for the purpose of carrying out the enjoined activity. NSA's reply will briefly address the matters raised in the response briefs.

## **II. The Guiding Legal Principles**

NSA set forth the guiding legal principles relating to privity in several prior submissions. In light of the alleged contemnors' post trial response briefs only a few salient principles are presented in reply. The privity analysis in civil contempt is not rigid and formulaic. Instead, it depends heavily upon an analysis of the facts particular to each case, including the relationships between those who were enjoined and those named as alleged contemnors. Relevant precedent has set forth general concepts to guide the privity analysis, foregoing exclusive criteria and instead suggesting indicators of the requisite legal identification or identity of interests that fairly support a finding of privity.

Moreover, "the reach of an injunction will accord with its purpose(s), subject to the limitations of due process." *Rockwell Graphic Sys. v. DEV Indus.*, 91 F.3d 914, 920 (7th Cir. 1996). Accordingly, in this contempt proceeding, the background and plain wording of the Permanent Injunction serve to frame the privity analysis. This Court's findings of fact and conclusions of law, made contemporaneous with the entry of the Permanent Injunction, guide the analysis and demonstrate that the purpose of the Permanent Injunction was to prevent confusion and damage caused by Mason Remey and his followers in the United States, who numbered approximately one-hundred and fifty persons. The wording of the Permanent Injunction is in accord with this purpose. On its face, the Permanent Injunction encompasses the UHG, its officers, agents, servants, employees, attorneys, and all persons that were in active concert or participation with them, including affiliated Local Spiritual Assemblies, groups, and individuals, or any of them.

## **III. The PNBC Respondents Are Bound By and In Violation of the Permanent Injunction**

The evidence is overwhelming that Joel B. Marangella, Franklin Schlatter and PNBC are bound. *See NSA Post Trial Brief at pp. 2-7*. The PNBC respondents' arguments, essentially that no one but Mason Remey was culpable for the infringements in the 1960s are implausible. Nothing forwarded by the PNBC respondents in response dispels the clear legal identifications now of record or otherwise justifies their continued use of the NSA's marks after the entry of the Permanent Injunction.

The PNBC respondents dispute violation of the Permanent Injunction. NSA, however, has demonstrated violation with respect to Joel B. Marangella, Franklin Schlatter and PNBC beyond any doubt. *See NSA Post Trial Brief at p. 15* (citing to evidence of violations throughout the record). The Permanent Injunction clearly proscribed use of the NSA's marks, including BAHA'I, and "*any other designation which by colorable imitation or otherwise is likely to be mistaken for or confused with the counterclaimant's name or marks as indicated above or is likely to create the erroneous impression that counter-defendant's religious activities, publications or doctrines originate with counterclaimant, and from otherwise competing unfairly with counterclaimant or infringing counterclaimant's rights.*"

Moreover, the "safe distance" rule applies in contempt proceedings. *See e.g., World's Finest Chocolate, Inc. v. World Candies, Inc.*, 409 F. Supp. 840, 844 (N.D. Ill. 1976) (finding contempt because it is "well established that the protection of a trademark requires that a party once convicted of infringement or unfair competition should keep a safe distance from the margin line between compliance with the order and a violation.").

#### **IV. SIBC and BPUPC Are Bound By and In Violation of the Permanent Injunction**

##### **A. SIBC's and BPUPC's Admissions Establish Privity**

By admission, SIBC and BPUPC established their legal identification, or privity, with Mason Remey with respect to the very subject matter of the Permanent Injunction - the trademarks. In order to convince the United States Patent and Trademark Office that their legal rights to BAHA'I-related trademarks are superior to NSA's legal rights, SIBC and BPUPC claimed dates of first trademark use that relied upon Mason Remey's prior use of the marks, thereby asserting that Mason Remey was their legal predecessor with respect to the trademarks. The context of SIBC's and BPUPC's statements and the background of this dispute make it clear that SIBC and BPUPC conclusively admitted their privity with Mason Remey through these sworn filings.

Hearing testimony established that the trademark applications and related submissions were filed by the president of the SIBC and BPUPC in the name of the SIBC and BPUPC. *Hearing Transcript, pp. 245:21-246:9; 250:15-24; 252:23-253:16; 254:24-255:9; 259:16-260:8*. Under the Lanham Act, only the owner of a trademark may request registration of its trademark in the United States Patent and Trademark Office. 15 U.S.C. § 1051(a)(1) (2007).

Accordingly, the corporations claimed ownership in the applied for trademarks, and it was the corporations that, therefore, claimed legal identification with Mason Remey in order to secure registrations. SIBC's and BPUPC's argument in response is misguided and at odds with the hearing testimony in that it attempts to substitute Neal Chase for the trademark applicants, SIBC and BPUPC. *See BPUPC Post Trial Response Brief, p. 5.* In response, SIBC and BPUPC go so far as to state "it is apparent that SIBC is not a successor," when exactly the opposite statement was submitted to the United States Patent and Trademark Office by SIBC and BPUPC.

In light of SIBC's and BPUPC's response, NSA briefly presents exemplary admissions in reply. As a factual predicate, Mason Remey unilaterally proclaimed himself guardian of the Baha'i Faith in 1960. *See Permanent Injunction, NSA 95 at ¶ 21.* Mason Remey did so in a written proclamation dated April 1960. *See NSA 110, p. 6.* As a result, in April 1960 Mason Remey split from the NSA and a small group of persons followed him eventually precipitating this litigation.

### **1. SIBC's Admissions**

The 1960 date is important, because in NSA 107, SIBC stated that:

[f]rom April 1960 forward Applicant [SIBC] and its legal representatives and affiliates have used and continue to use 'Universal House of Justice' in their evangelical and ministerial services, thus showing and demonstrating common law rights in its use of 'International Baha'i Council'; 'Universal House of Justice' 'Baha'i' and 'uhj'. This material fact is demonstrated in the continuous and uninterrupted documentation concerning the history of Applicant[']s usage from 1960 forward (citations omitted)."

*NSA 107, p. 9.* At the hearing, SIBC's president, who signed the document at NSA 107 on SIBC's behalf under penalty of perjury, explained that the legal representative referred to beginning in April 1960 was Mason Remey. *See Hearing Transcript, pp. 251:19-252:14.* Accordingly, SIBC's statement in NSA 107 was that SIBC's continuous use of the marks began with Mason Remey's use of Baha'i-related trademarks when Remey split from the NSA in April of 1960.

Clearly, SIBC relied upon its legal privity with Mason Remey to demonstrate that its trademark rights are superior to NSA's and to obtain any benefit from Mason Remey's first uses of the marks. Consequently, SIBC has admitted that Mason Remey is SIBC's predecessor-in-interest with respect to the subject matter of the Permanent Injunction, the trademarks.

**a. SIBC Stated that SIBC and “Universal House of Justice” Are the Same Entity**

According to SIBC, “Universal House of Justice” and “SIBC” are synonymous and they are one and the same entity. *Hearing Transcript, pp. 253:22-254:12; Woods Deposition, Docket No. 123, p. 15:12-16.* It follows that Neal Chase’s references to Mason Remey as a legal representative of the Universal House of Justice, in hearing testimony and in sworn documents, is a privity admission. It also illuminates SIBC’s sworn statements that the Universal House of Justice relocated from Israel to the Rocky Mountains in 1960 and then on January 9, 1991 re-established itself in its current name, “Second International Baha’i Council” eventually incorporating in 1993. *See NSA 107, p. 10-11.*

With such statements, SIBC explained that its activities in the United States began when Mason Remey left Haifa for the United States in 1960 and that SIBC has existed continually from that time, through predecessors-in-interest, in the Rocky Mountains. Again, SIBC has admitted its legal identification with Mason Remey and his following in the United States.

Apparently not satisfied with a first use date of 1960, SIBC also relied upon Mason Remey’s 1951 appointment as President of the International Baha’i Council in Haifa, Israel (prior to Remey’s split from the NSA) to convince the United States Patent and Trademark Office that SIBC’s trademark rights trump NSA’s trademark rights. SIBC stated that: “Applicant[’]s other application for ‘Universal House of Justice’ was also made in good faith . . . in evangelical and ministerial services which it has been conducting since January 9, 1951 through the function of its first president Charles Mason Remey . . .” *NSA 107, p. 16.* SIBC further clarified that SIBC was originally founded in 1951 when Mason Remey was named President to the International Baha’i Council in Haifa, Israel. *See id.* This 1951 date is, therefore, also tied to Mason Remey’s status and elucidates SIBC’s statement that SIBC moved from Israel to the United States in 1960, through this predecessor-in-interest. *NSA 107, p. 16; see also Hearing Transcript, 251:19-252:14.*

**b. SIBC’s Chain of Title**

In NSA 110, SIBC set forth its chain of title in order to convince the U.S. Patent and Trademark Office that its trademark rights are superior to those of NSA. This chain of title was the subject of NSA Demonstrative 142, which was used at the hearing for illustrative purposes and is attached hereto at Exhibit A. Mr. Chase, who signed NSA 110 on SIBC’s behalf under

penalty of perjury, was questioned about SIBC's chain of title at the hearing. He confirmed the "Mason" referred in the chain of title is Mason Remey and that "Mason's son Pepe," referred to in the fifth link in the chain of title, is Joseph Pepe Remey.<sup>1</sup> *Hearing Transcript, p. 258:5-9.*

SIBC further cemented its legal identification with Mason Remey and his following in NSA 110:

"Mason was then forced in April 1960 . . . to exercise and assert his legal rights and authority as the president and living Executive of the Universal House of Justice [SIBC] in order to protect it from those who sought to dismantle the Universal House of Justice [SIBC] and hijack the faith and Baha'i properties for themselves. The Universal House of Justice [SIBC] then moved to the United States of America . . . in the Rocky Mountains . . . where it has been located ever since 1960."

*NSA 110, p. 9-10.*

SIBC has admitted its legal identification with Mason Remey, in connection with the subject matter of the Permanent Injunction, such that it should be bound.

## **2. BPUPC's Admissions**

BPUPC made similar sworn statements in the U.S. Patent and Trademark Office's Trademark Trial and Appeal Board, asserting its right to the BAHA'I mark through essentially the same chain of title that SIBC relied upon in NSA 110:

"Applicant [BPUPC] has been using the term 'BAHA'I' with common law rights to it since April 1, 1863, when Baha'u'llah proclaimed the Baha'i faith as a separate and distinct revelation from God. The use of 'Baha'i' by Applicant [BPUPC] has further been in continuous and uninterrupted use since proclaimed by Applicant [BPUPC] and it[s] legal predecessors to office in Europe in 1868 until 1892; and then subsequently by 'Abdu'l-Baha 1892-1921, Shoghi Effendi 1921 to 1957 and the institution (1951 to present) of the Universal House of Justice with Abdu'l-Baha's son Mason Remey Aghsan, then Mason's son Pepe [Remey] Aghsan and currently now Pepe's son Neal [Chase] Aghsan as its president . . ."

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<sup>1</sup> The relationships detailed by SIBC and BPUPC in their sworn filings are legal relationships. According to SIBC, the legal document that determines all legal entitlements to the Baha'i properties, real and intellectual is the Will and Charter and SIBC states that no entity, except the Universal House of Justice [SIBC] with the living guardian as its president has right to chain of title. *See NSA 110, p. 5.* SIBC further stated that it "can show legal chain of title" and that Applicant [SIBC] is the true and legitimate head of the Baha'i Faith according to the Legal charter. *See id, p. 6.* SIBC referenced the "true line of legal successors and legal heirs to all baha'i property which would also include all trademarks such as 'universal house of justice' as well as all other intellectual and material baha'i property." *Id., p. 7.* SIBC even contrasted its property rights to those of NSA, asserting that NSA has no legal chain of title and requesting that the U.S. PTO, therefore, grant SIBC registration of the trademark. *Id., p. 15.*

*NSA 115*, p. 7. Accordingly, BPUPC has also admitted its privity with Mason Remey with respect to the mark BAHA'I, the subject matter of the Permanent Injunction. SIBC and BPUPC stated that NSA's discussion of this admission is inaccurate based on the fact that BPUPC's trademark application posited a first use date of 1971. *See BPUPC Post Trial Response Brief*, p. 6. What SIBC and BPUPC fail to acknowledge, however, is that NSA opposed BPUPC's trademark application and in response BPUPC entered the above-quoted admissions found in NSA 115. NSA 115 is a sworn pleading stating that BPUPC used the BAHA'I mark continuously through its legal predecessors, namely Mason Remey and Pepe Remey. The BAHA'I mark is clearly the salient element of the mark in BPUPC's application, BAHA'IS UNDER THE PROVISIONS OF THE COVENANT.

BPUPC's chain of title, as set forth above, mirrors that of SIBC. This is not surprising because SIBC and BPUPC are very closely related privies and part of the small organization that Leland Jensen founded in 1969 and dubbed "the Baha'is Under the Provisions of the Covenant." *Woods Deposition*, Docket No. 123 at 24:21-24; *see also NSA 113 (specimen of trademark use in support of the trademark BAHA'IS UNDER THE PROVISIONS OF THE COVENANT)*. The activities of, and the persons involved with, SIBC and BPUPC overlap significantly. *See e.g., Woods Deposition*, Docket No. 123 at 19:14-21:11. SIBC is essentially the governing board of the organization, and BPUPC is the affiliated publishing trust supporting its activities.

### **3. SIBC and BPUPC Have Provided No Plausible Evidence or Explanation To Counter the Admissions**

Interestingly, SIBC and BPUPC chose not to examine Mr. Chase regarding these admissions at the hearing. Moreover, despite NSA's continued reference to certain of these admissions throughout this proceeding, including with NSA's opening Motion for a Rule to Show Cause, SIBC and BPUPC have never addressed these admissions in a brief. Now that Mr. Chase is no longer subject to examination in this proceeding, SIBC and BPUPC present mere attorney argument seeking to recast the meaning and context of the admissions.

These admissions, however, cannot be contraverted with *post hoc* argument by counsel in a post trial brief. SIBC and BPUPC made the admissions in sworn documents filed with the United States Patent and Trademark Office. The documents were signed under penalty of perjury on SIBC's and BPUPC's behalf by their President Neal Chase. *See e.g., NSA 110*, p. 15. Some of the documents containing the admissions were signed and submitted before the

contempt proceeding, and others were signed and submitted even after SIBC and BPUPC had notice of this contempt proceeding. *NSA 107 (December 16, 2006)*, *NSA 110 (May 23, 2005)* and *NSA 115 (December 21, 2006)*. Moreover, the filings involve essentially the same subject matter as this proceeding - the NSA's trademarks - and the proceedings in the United States Patent and Trademark Office involve the rights of parties to this proceeding, NSA, SIBC, and BPUPC.

Nevertheless, SIBC and BPUPC seek to reduce the weight of the admissions, arguing that they were not made in this proceeding. At the hearing, however, Mr. Chase was questioned by NSA's attorney regarding the admissions. Mr. Chase confirmed that he signed the documents containing the sworn admissions on behalf of SIBC and BPUPC, and he explained that the April 1960 date referenced Mason Remey. *Hearing Transcript 250:19-21; 251:19-2:52:14; 258:21-259:6*. Mr. Chase never repudiated or otherwise said anything to contradict the admissions during the hearing. As Judge Posner has explained, even in the case of evidentiary admissions, if the declarant "makes no attempt at explanation, he is stuck with those statements." *Seshadri v. Kasraian*, 130 F.3d 798, 804 (7th Cir. 1997) (stating that an affidavit should not be allowed, without explanation, to controvert the affiant's prior written evidentiary admissions in documents).

Here, SIBC's and BPUPC's attorney argument regarding religious succession and their other reinterpretations of the sworn statements are implausible and unsupported by the hearing transcript and the remainder of the record. Accordingly, they should be given no credit when compared with SIBC's and BPUPC's sworn admissions. *See Seshadri*, 130 F.3d at 802 (explaining that where a witness' explanation regarding prior evidentiary admissions is so internally inconsistent or implausible that a reasonable fact-finder would not credit it, or where documents or objective evidence contradict the witness' explanation of the evidentiary admissions, the court of appeals may well find clear error even in a finding purportedly based on a credibility determination).

**B. SIBC and BPUPC Are Bound By the Permanent Injunction Because Leland Jensen Was Bound**

NSA has established beyond doubt that Leland Jensen remained affiliated with NSAUHG. As set forth at the hearing and in NSA's post trial brief, documents generated by the UHG contemporaneously with the events at issue, including membership lists, election results

and correspondence logs all demonstrate that Leland and Opal Jensen remained in the group. *NSA Post Trial Brief at pp. 11-15*. Accordingly, the evidence demonstrates that Leland Jensen was bound directly under the plain terms of the Permanent Injunction. SIBC and BPUPC's arguments discounting Leland Jensen's status as a bound person are misguided because they fail to account for the express language of the Permanent Injunction which directly bound people, such as Leland Jensen, who were affiliated with the UHG, its affiliated Local Spiritual Assemblies and its affiliated groups.

By means of a short summary, the UHG membership lists include Leland Jensen and Opal Jensen throughout UHG's existence. *NSA 21 and 22; Hearing Transcript at pp. 86:20-89:23*. There is not a single document or any testimony casting doubt on the accuracy of the membership lists or the specific entries regarding Leland and Opal Jensen. Moreover, Mr. Schlatter testified to a completed form received by UHG that affirmatively indicated Leland Jensen's membership in the Hereditary Guardianship group as of December 5, 1965. *NSA Post Trial Brief at p. 12*.

In addition, documents generated by UHG demonstrate that Leland Jensen was elected a delegate to UHG's National Convention in 1964, 1965 and 1966. *NSA Post Trial Brief at pp. 13-14*. It is also clear that a large percentage of the select twenty-five delegates to the National Convention voted to elect Leland Jensen to the UHG board in 1965 and 1966. *See id.* In 1965, Leland Jensen missed election to the UHG by only one vote. *See id.* In 1966, Leland Jensen was reported to be a "runner-up" in the board election. *See id.*

The fact that Leland Jensen was elected a delegate in every year of UHG's existence and that a large percentage of the select twenty-five delegates voted to elect him to the UHG every year cannot be brushed aside. Considering the importance of the UHG to the assembled delegates and the gravity of its mission in their minds, it is completely implausible that seven or more delegates would spend their votes on a person who was inactive, let alone one who had disassociated from the group. After all, the nine-member UHG was the group's supreme administrative body in the United States and the primary organized force for achieving their goals. SIBC's and BPUPC's theory simply does not make sense and rings more like a *post hoc* invention of either Leland Jensen during his lifetime or SIBC and BPUPC in the current day, designed to avoid the Permanent Injunction.

Deposition testimony taken in April of 1965, contemporaneously with the events, corroborates all of the other evidence that Leland Jensen and Opal Jensen were affiliated with UHG. *NSA Post Trial Brief at p. 14.* A.S. Petzoldt, then Chairman of UHG, testified at his April 1965 deposition that UHG had an affiliated group in Missoula, Montana. This was a clear reference to Leland Jensen's and Opal Jensen's affiliation with UHG, because they were the only UHG members in the Missoula, Montana community. *NSA Post Trial Brief at pp. 12, 14.*

Additional documents indicate that UHG leaders considered Leland Jensen to be an active member. *NSA Post Trial Brief at p. 14-15.* On March 30, 1966, James and Marilyn Meyer suggested Leland Jensen as a speaker at the National Convention. At the hearing, Mr. Schlatter testified that he and other UHG members did not favor the recommendation and opposed it in the Spring of 1966. If the UHG believed that Mr. Jensen was no longer affiliated, there would have been nothing to oppose. *Id.* The hearing transcript regarding the Meyers' recommendation of Jensen, at pages 166:22-167:3, is informative and indicates that Jensen was an active teacher for the UHG in 1966:

*Q. You were against having Dr. Jensen as a speaker?*

*A: Very much so.*

*Q: And why is that?*

*A: I didn't agree with his form of teaching.*

*Q: And how about other members of the NSA UHG? Were they also against having Dr. Jensen as a speaker in 1966?*

*A: There were a number of us who felt the same way.*

Apparently, none of the UHG board members believed that Leland Jensen was disassociated in May of 1966. Instead, a number of them expected his speech would reflect his teaching methods with which they did not agree.

### **1. SIBC's and BPUPC's Attempts To Demonstrate Leland Jensen's "Disassociation" Failed**

All of the relevant contemporaneous documents and contemporaneous deposition testimony, such as Mr. Petzoldt's deposition, corroborate Leland Jensen's and Opal Jensen's continued affiliation. The record is well-developed with UHG documents and not a single one, or any other document from the relevant period, supports SIBC's and BPUPC's theory that Leland Jensen was no longer affiliated. SIBC and BPUPC, therefore, rely only upon Mr.

Schlatter's carefully phrased speculations and a single utterly unreliable document, dated 1990, that SIBC and BPUPC produced just four weeks prior to the hearing.<sup>2</sup>

Contrary to SIBC's and BPUPC's response brief, Mr. Schlatter never once endorsed the idea that Leland Jensen had disassociated. Instead, he carefully hedged his responses. For example, when asked by SIBC's and BPUPC's attorney "[s]o, is it fair to say the Montana group was not an active local group of the UHG?" Mr. Schlatter responded "we didn't consider him all that active." *See Hearing Transcript*, p. 156:19-21. When SIBC's and BPUPC's attorney asked "[s]o it's fair to say that Dr. Jensen disassociated with the UHG after he was not re-elected in 1964?," Mr. Schlatter carefully responded, "[h]e has made that statement . . . on the Internet."<sup>3</sup> *See id.* at 164:9-15.

Not once, despite significant prompting and leading questions, did either PNBC witness say that Leland Jensen disassociated or that he was inactive.<sup>4</sup> It would have been a simple

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<sup>2</sup> NSA objected to this document in *NSA's Objections to BPUPC's and SIBC's Exhibits SB-21 and SB-22*, *Docket No. 96* and at trial on the grounds that the document was hearsay, hearsay within hearsay, and lacked foundation. *Hearing Transcript*, p. 279:19-283:7. At trial, Mr. Chase was not able to establish foundation, and confirmed that the "transcription" was not complete, was not verified by Jensen, and contained handwritten changes by an unidentified author. *Id.* Further, SIBC and BPUPC attempted to explain away only one level of hearsay, stating that the SB-21 established Jensen's state of mind. *Id.* As NSA pointed out at the hearing, the "state of mind" exception cannot be used to establish events, particularly those that occurred approximately 25 years before the interview took place. *Id.*

<sup>3</sup> Leland Jensen died in 1996. It is very unlikely that he made whatever Internet comments Mr. Schlatter referenced. In any event, Mr. Schlatter's response is hearsay and is unsupported by documentary evidence in the record.

<sup>4</sup> Mr. Schlatter explained that UHG's Missoula group numbered two people – a married couple – Leland and Opal Jensen. *See Hearing Transcript*, p. 155:1-6. Mr. Schlatter then testified that he was not aware of reports or new member declaration cards from the Missoula group. *Id.*, p. 156:10-12. It would be surprising if this two person group had submitted detailed reports of their activities from 1965-1966 when UHG dissolved. It would also be surprising if, having just moved to Missoula, Montana, Leland and Opal Jensen had attracted adherents to Mason Remy's unique and little known beliefs in the two years before UHG dissolved. Mr. Schlatter's testimony was clear that he very much disliked Leland Jensen and wanted nothing to do with him. *Id.*, pp. 160:14 – 162:6. Accordingly, Mr. Schlatter's testimony that he did not have personal contact with Leland Jensen after 1964 is not surprising. Importantly, this lack of contact also means that Mr. Schlatter is not qualified to testify as to Leland Jensen's activities on behalf of the UHG and Mason Remy in Missoula, Montana. Mr. Schlatter's testimony that Jensen did not attend NSAUHG meetings after he was not re-elected in 1964 is not informative. Jensen was no longer a board member and there would be no reason, or authority, for him to attend the NSAUHG meetings. Mr. Schlatter's testimony related to the NSAUHG board, not the other activities of Remy's group. *See id.*, p. 145:23-24 (attorney Bower defining "NSAUHG" as the nine member board). The testimony is also speculative, because Mr. Schlatter never indicated whether he himself attended whatever meetings he was referencing. Marilyn Meyer's comments were similarly inconclusive. She stated only that she did not recall if she had communications with the Jensens after

matter, if true, for Mr. Schlatter or Mrs. Meyer to say “Leland Jensen disassociated,” but they never did. It is informative that both witnesses refused to adopt SIBC’s and BPUPC’s theory.

In the end, Mr. Schlatter’s and Mrs. Meyer’s testimony confirmed the information recorded in NSA’s trial exhibits and only created an issue as to the extent of Leland Jensen’s direct involvement with Frank Schlatter and Marilyn Meyer during 1965 and 1966. Documents from the period prove that Leland Jensen remained a member of the group and affirmed his membership during that period. *NSA 29; Hearing Transcript, pp. 91:2-94:4; see also Seshadri*, 130 F.3d at 804 (explaining that documents composed before the litigation carry more conviction than sworn testimony during it).

## **2. SIBC’s and BPUPC’s Attempt To Disconnect UHG’s Local Spiritual Assemblies from UHG Fails**

Confronted with the fact that Leland Jensen and Opal Jensen were the sole members of an affiliated group in Missoula, Montana, SIBC and BPUPC state “it is undisputed that no local spiritual assemblies or other local groups were parties to this litigation” citing to BPUPC/SIBC Agreed Fact at ¶ 7. *See BPUPC Post Trial Response Brief, p. 12*. The agreed fact to which BPUPC and SIBC cite actually reads, “[t]he Counter-Claimant and the NSAUHG were the only named parties to Case No. 64-CV-1878.” *BPUPC/SIBC Agreed Fact, Docket No. 86, at ¶ 7*.

On the contrary this Court found that, pursuant to UHG’s Articles of Incorporation, UHG had jurisdiction and authority over the activities of UHG’s members and followers, including affiliated Local Spiritual Assemblies. *See NSA 95, p. 13 at ¶ 28*. The Court also found that there were several Local Spiritual Assemblies and groups and individuals, all affiliated with UHG, that were infringing upon NSA’s trademarks and causing confusion in their respective territories. *See NSA 95, ¶¶ 29-34*. This Court concluded that UHG “has control and authority over its so-called Local Spiritual Assemblies and groups and individuals affiliated with it” and that “these Local Spiritual Assemblies and affiliated groups are acting in concert with and under the control and authority of UHG.” *NSA 95, p. 23 ¶ 17*.

## **3. Leland Jensen Had Notice of the Permanent Injunction**

Leland Jensen’s notice of the Permanent Injunction has been established beyond any reasonable doubt. *NSA Post Trial Brief at p. 10-11*. UHG provided written notice to the people

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they moved to Missoula, Montana and that she did not recall whether they attended annual conferences. *Id.*, pp. 234:21-235:25.

on its mailing lists, including Leland Jensen and Opal Jensen in a variety of forms, including several notice letters and the *Glad Tidings* publication. Against all of the documents, testimony and circumstances demonstrating notice, SIBC and BPUPC insist that notice is not proven. The standard SIBC and BPUPC would have this Court apply on proof of notice is obviously unworkable, and it is well-established that actual notice can be established through circumstantial evidence. *Waffenschmidt v. Mackay*, 763 F.2d 711, 725 (5th Cir. 1985) (upholding district court's reliance on circumstantial evidence to support alleged contemnor had actual notice). For example, in *Graves v. Kemsco Group, Inc.*, notice of an order was inferred when contemnor's counsel was mailed a copy of the order and it was not returned undeliverable. 676 F. Supp. 1411, 1414 (N.D. Ind. 1987). Proof that someone had read the mailing was not required. In fact, actual notice merely means that the non-party contemnor has "any knowledge" of the injunction no matter how acquired. *Hexacomb v. GTW*, No. 93 C 3107, 1994 U.S. Dist. LEXIS, at \*12 (N.D. Ill. April 29, 1994). In addition, in civil contempt, notice of the court order is notice of its existence, not of its precise terms. See *Perfect Fit Indus., Inc. v. Acme Quilting Co., Inc.*, 646 F.2d 800, 808-09 (2d Cir. 1981). It is inconceivable, under the circumstances of Leland Jensen's involvement with Mason Remey, Pepe Remey, and UHG and its followers, including his wife, that Leland Jensen was not aware of the fact of the Permanent Injunction. In any event, Leland Jensen was an agent and servant of UHG, not a stranger to the case, so constructive notice is sufficient to bind him.

Neal Chase's statements that the *Glad Tidings* found in Leland Jensen's home were in a sealed envelope (with the implication that they remained unopened from 1966 until 1990) and that after opening the envelopes in 1990 Mr. Chase only looked at the covers, underscores the very reason that courts infer notice according to the circumstances. Interestingly, while testifying about the *Glad Tidings* he found in Jensen's home, Neal Chase indicated that he had already seen the issues on a prior occasion and then he abruptly stopped speaking. See *Hearing Transcript*, at p. 288:5-23 (stating "and I already had – we already had copies of them from Ethel May. So you know, I don't – yup.").<sup>5</sup> In any event, Neal Chase's hearing testimony

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<sup>5</sup> NSA's response to SIBC's hearsay objection on NSA 31 was preserved at *NSA's Response to Objections to Contempt Hearing Exhibit List, Docket No. 109 at p. 8* (non-hearsay purpose of demonstrating that Leland Jensen and Opal Jensen were in contact with former NSAUHG members even after the Permanent Injunction issued, and that Leland and Opal Jensen's address matched their address as reflected in the NSAUHG mailing lists). The Court admitted the document for purposes of notice.

neglected to address the fate of the additional notice letters sent by UHG to the people on its mailing lists, including Leland and Opal Jensen. *See e.g., NSA 38, 79, 124; Hearing Transcript at pp. 99:19-100:3.*

#### **4. Leland Jensen Was Subject to the Order When He Founded SIBC and BPUPC**

SIBC and BPUPC argue in the alternative that even if Jensen was bound at one time, he was not bound when he founded SIBC or BPUPC. This is untenable under the wording of the Permanent Injunction and relevant precedent. Notably, SIBC's and BPUPC's position ignores that injunctions against corporations survive dissolution, such that injunctions will not be thwarted by the dissolution of an enjoined corporation and the resumption of the enjoined activity by the former corporation's agents.

SIBC's and BPUPC's reliance upon *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832 (2d Cir. 1930) is misplaced, because the holding of *Alemite* is narrow and does not extend to the present facts. In their leading Treatise on Federal Practice and Procedure, Wright & Miller comment directly on *Alemite*. Section 2956 states:

Although the holding in *Alemite* is that an injunction or restraining order is not enforceable against a third person merely because he has knowledge of the decree, the decision clearly does not grant immunity to someone who knowingly aids, abets, assists, or acts in concert with a person who has been enjoined from violating the injunction.

Nonparties with notice of the order who fall into these categories can be held in contempt even though they were not named or served with the original process in the injunction suit or even served with a copy of the decree.

In effect the *Alemite* principle places a duty upon someone with knowledge of an injunction not to act in concert with those who have been enjoined.

*11A Charles Allen Wright, et al., Federal Practice & Procedure § 2956 (2007).*

Based on his affiliations, Leland Jensen was directly bound by the express terms of the Permanent Injunction, such that *Alemite*, an aiding and abetting case, is not informative. Several U.S. Supreme Court, Seventh Circuit, and Second Circuit decisions, discussed in NSA's previous filings and all subsequent to *Alemite*, relate more directly to the facts of this case. *See, e.g., Walling v. Reuter*, 321 U.S. 671 (1944); *Regal Knitwear Co. v. NLRB*, 324 U.S. 9 (1945); *Panther Pumps & Equipment Co., Inc. v. Hydrocraft, Inc.*, 566 F.2d 8 (7th Cir. 1977); *Rockwell*

*Graphic Sys. v. DEV Indus.*, 91 F.3d 914 (7th Cir. 1996); *People of State of New York by Vacco v. Operation Rescue Nat'l*, 80 F.3d 64 (2d Cir. 1996).

All else failing, SIBC and BPUPC simply attack the language of the Permanent Injunction. *BPUPC Post Trial Response Brief*, p. 12. SIBC's and BPUPC's position regarding the wording of the Permanent Injunction is misguided, however, because it is well-settled that "the terms of the judgment or of the injunction cannot be attacked in a civil contempt proceeding as they are *res judicata*." See e.g. *World's Finest Chocolate, Inc. v. World Candies, Inc.*, 409 F. Supp. 840, 844 (N.D. Ill. 1976).

Here, the Permanent Injunction was crafted to proscribe damage caused by a finite group of persons and their organizations. The wording of the Permanent Injunction clearly encompassed Leland Jensen based on his extensive role with UHG, his continued membership and his involvement with affiliated groups. Accordingly, it is proper to find his creatures BPUPC and SIBC bound.

#### **V. SIBC and BPUPC Are Violating the Permanent Injunction**

SIBC and BPUPC failed to deny NSA's allegations regarding violation of the Permanent Judgment in any pleading during this proceeding and they failed to do so at the hearing. Having failed to deny the charge of violation, violation should be deemed admitted regarding SIBC and BPUPC. See *Shakman v. Democratic Organization Of Cook County*, 533 F.2d 344, 352 (7th Cir. 1976).

Remarkably, SIBC and BPUPC assert that BPUPC was formed to "distribute Baha'i literature" and not to infringe the trademarks. *BPUPC Post Trial Response Brief*, p. 8. The unauthorized distribution of literature bearing the BAHAI mark, or "Baha'i literature" was in large part the subject of the Permanent Injunction. *NSA 95*, pp. 12-17 at ¶¶ 23-27, 29-32; pp. 19-20, 22-24 at ¶¶ 6-9, 14-18. Accordingly, SIBC and BPUPC have admitted that BPUPC was formed to violate the Permanent Injunction. "[C]orporations which are formed essentially for the purpose of carrying out the enjoined activity" are bound. *Rockwell Graphic Sys. v. DEV Indus.*, 91 F.3d 914, 919-20 (7th Cir. 1996). In any event, the evidence of record on violation by SIBC and BPUPC is overwhelming. See *Post Trial Brief* at pp. 15-16.

**VI. Conclusion**

NSA respectfully submits that this Court should find each of the alleged contemnors bound by the Permanent Injunction and in violation of its terms, providing them a reasonable amount of time to comply.

Respectfully submitted,

Dated: February 4, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of February 2008, the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's CM/ECF. Parties may access the filing through the Court's system.

/s/ Christopher M. Dolan

Christopher M. Dolan