

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SAINT LOUIS UNIVERSITY,)
a Missouri benevolent corporation,)
)
Plaintiff,)
)
v.)
)
AVIS MEYER,)
)
Defendant.)

Case No. 4:07CV1733 CEJ

**PLAINTIFF’S MOTION FOR LEAVE TO FILE SUR-REPLY REGARDING
DEFENDANT’S MOTION FOR ATTORNEY’S FEES UNDER THE LANHAM ACT**

COMES NOW Plaintiff Saint Louis University (“Plaintiff”), by and through its undersigned counsel, and moves this Court for Leave to file a short four page Sur-Reply to address new issues raised by Defendant for the first time in his Reply in support of his Motion for Attorney’s Fees. In support of this Motion, Plaintiff states as follows:

1. On March 17, 2009, Defendant filed his Motion for an Award of Attorney’s Fees Under the Lanham Act [dkt # 128] and Memorandum in Support thereof [dkt # 129].
2. Defendant’s Motion raises the issue of Defendant’s use of Plaintiff’s intellectual property and argues Plaintiff lacked sufficient evidence of such use to provide a reasonable basis for filing this lawsuit thus making this an “exceptional case” under 15 U.S.C. § 1117.
3. On April 2, 2009, Plaintiff filed its Response in Opposition [dkt # 132] addressing the issue of Defendant’s “use” and the reasonable basis for Plaintiff’s claims in this suit.
4. On April 13, 2009, Defendant filed his Reply in support of his Motion [dkt # 135]. The Reply goes well beyond the prior briefing, however, and raises new meritless and

misleading issues regarding the scope of goods and services listed on Plaintiff's federal registration of the mark SAINT LOUIS UNIVERSITY, Registration No. 1,729,449, and the public availability of a letter Defendant sent to the Missouri Secretary of State on Plaintiff's official letterhead.

5. Plaintiff seeks leave to file the short four page Sur-Reply attached hereto to address these newly raised issues and to clarify the record.

6. Plaintiff does not make the instant Motion for any improper purpose or to delay these proceedings.

WHEREFORE, Plaintiff Saint Louis University requests that this Court grant Plaintiff's Motion for Leave to file Plaintiff's Sur-Reply in opposition to Defendant's Reply in support of Defendant's Motion for Attorney's Fees, and for such other and further relief as the Court deems just under the circumstances.

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I further certify that on the 22nd day of April, 2009, the foregoing was filed with the Clerk of Court to be served via the Court's ECF system upon all counsel of record.

/s/ Frank B. Janoski

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