

**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. 4:07-cv-01733

DEFENDANT’S MOTION FOR A COURT DESIGNATED NEUTRAL MEDIATOR

COMES NOW Defendant Avis Meyer (hereinafter “Meyer”), and for his Motion and Memorandum In Support Of Designation of a Neutral Mediator states as follows:

1. Pursuant to the Alternative Dispute Resolution Order of May 5, 2008, this case has been referred to mediation. The parties have been ordered to designate a neutral by May 21, 2008.
2. On May 5, 2008, Meyer proposed three mediators to Plaintiff Saint Louis University (hereinafter “Plaintiff” or “SLU”). One of Meyer’s proposed mediators is Ms. Annette Heller. This case involves trademark law, and Ms. Heller has been a specialist in trademark law for over thirty years, having been trademark counsel for Ralston Purina and in private practice. (See Exhibit A, *curriculum vitae* of A. Heller). Ms. Heller has a billing rate of \$100/hr for mediation.
3. On May 12, 2008, Plaintiff rejected Meyer’s proposed mediators and in response proposed a single mediator, Richard Sher. (See Exhibit B, email from B. Hoy to B. Gill). SLU’s proposed mediator has a billing rate of \$350/hr and his *curriculum vitae*

- does not include any specialized experience in trademark law. (See Exhibit C, *curriculum vitae* of R. Sher).
4. However, Meyer does not object to Mr. Sher's qualifications, but rather that his billing rate of \$350/hr is not justified when Ms. Heller's experience in trademark law and much lower billing rate are considered. However, in an effort to compromise, Meyer proposed that if the Plaintiff's proposed mediator matched the billing rate of Ms. Heller or if the Plaintiff was willing to pay the additional cost beyond Meyer's portion of Ms. Heller's billing rate then Meyer would accept the Plaintiff's mediator.
 5. On May 20, 2008, Plaintiff proposed another mediator with a billing rate of \$1900 per day. (See Exhibit D, *curriculum vitae* of R. Weisenthal). For an eight-hour billing day, this mediator has an adjusted hourly billing rate of \$275/hour. If the mediation does not last a full day, this per day billing rate represents a cost of even greater than \$275 per hour.
 6. This suit alleges trademark infringement. In response, Meyer has alleged that he has undertaken no use of SLU's trademarks that would constitute use under trademark law. Therefore, in Meyer's view, a mediator with experience in trademark law is a requisite.
 7. Neither of SLU's proposed mediators indicates the level of experience in trademark law possessed by Ms. Heller's despite their billing rates being much higher than Ms. Heller's.
 8. Meyer, who is a SLU professor, is an individual without the vast resources of SLU. Therefore, for Meyer, cost is an issue in the selection of a mediator. SLU has the vast

resources of the university to prosecute this lawsuit. In line with SLU's resources, SLU has proposed mediators having only lofty hourly billing rates.

9. Since the parties have attempted to agree but cannot reach agreement with respect to a neutral mediator, Meyer moves that the Court designate Ms. Heller, a trademark attorney, as the neutral mediator.

WHEREFORE, Meyer respectfully requests that the Court enter Meyer's motion and for such other and further relief as the Court deems just and proper.

Respectfully Submitted,

By: s/ Brian J. Gill

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2008, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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