

**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 OPPOSITION TO  
DEFENDANT’S MOTION FOR A COURT DESIGNATED NEUTRAL MEDIATOR,  
CROSS MOTION FOR DESIGNATION OF RICHARD P. SHER AND  
REQUEST FOR CONFERENCE REGARDING SAME**

COMES NOW Plaintiff Saint Louis University, and opposes Defendants’ unilateral request that the Court designate Annette P. Heller as the Neutral Mediator in this case, requests that the Court appoint Richard P. Sher as the Neutral Mediator, and further requests that to the extent the Court is not inclined to designate Mr. Sher as the Neutral Mediator, the Court set this matter for a conference to discuss the parties’ apparent impasse with regard to selection of a mediator for the above-referenced matter.

As the Court is aware, this is an intellectual property case involving Defendant Avis Meyer’s wrongful registration of a non-profit organization and other conduct using Plaintiff Saint Louis University’s trademarks and intellectual property. On May 5, 2008, the Court appointed Frank B. Janoski, counsel for Plaintiff, as lead counsel with respect to the Court’s referral of the case to ADR and ordered that a designation of neutral and ADR conference report

be filed by lead counsel no later than May 21, 2008. Thereafter, the parties engaged in discussions regarding selection of a neutral.

Counsel for Plaintiff has successfully mediated numerous intellectual property cases utilizing Richard P. Sher and based upon that positive experience and Mr. Sher's excellent reputation in the community for effectively assisting parties in resolving disputes, Plaintiff initially suggested to Defendant that the parties conduct the Court-ordered mediation in this case before Mr. Sher. Defendant rejected Mr. Sher solely based upon Mr. Sher's hourly rate (listed on the Court's website as \$350/hour). Understanding the concern of cost, Plaintiff thereafter researched alternatives with similar mediation experience and success in resolving such disputes, and suggested that the parties agree to Ronald G. Wiesenthal, the St. Louis Mediation Center, LLC. Mr. Wiesenthal's hourly rate, as listed on the Court's website, is \$250 per hour, although he represented to counsel for Plaintiff that he would attempt to work with the parties for a fee structure that would not hamper the mediation process. Mr. Wiesenthal lists "trademark claims" as one of his specialty areas. Plaintiff rejected that suggestion as well.

Prior to completion of discussions with regard to possible mediators, Defendant prematurely filed its Motion for a Court Designated Neutral Mediator requesting that the Court designate Annette Heller, who charges an hourly rate of \$100. Plaintiff opposes that designation and requests that the Court schedule a conference (perhaps by telephone) during which feasible alternatives can be discussed.

WHEREFORE, Plaintiff Saint Louis University requests that the Court deny Defendant's Motion, grant Plaintiff's Cross Motion for Designation of Richard P. Sher, or alternatively set this case for a conference to discuss the designation of a Neutral Mediator in this case, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

**LEWIS, RICE & FINGERSH, L.C.**

By: /s/ Frank B. Janoski  
Frank B. Janoski, #3480  
Bridget Hoy, #109375  
500 North Broadway, Suite 2000  
St. Louis, MO 63102  
Telephone: (314) 444-7600  
Fax: (314) 612-1307  
Email: [fjanoski@lewisrice.com](mailto:fjanoski@lewisrice.com)  
Email: [bhoy@lewisrice.com](mailto:bhoy@lewisrice.com)

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of June, 2008, 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  
Frank B. Janoski, #3480  
LEWIS, RICE & FINGERSH, L.C.  
500 N. Broadway, Suite 2000  
St. Louis, MO 63102  
Telephone: (314) 444-7600  
Facsimile: (314) 612-1307  
E-mail: [fjanoski@lewisrice.com](mailto:fjanoski@lewisrice.com)