

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

SAINT LOUIS UNIVERSITY,)	
a Missouri benevolent corporation,)	
)	
Plaintiff,)	
)	Case No. <u>4:07-cv-01733</u>
v.)	
)	
AVIS MEYER,)	
)	
Defendant.)	

**DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL
DISPUTED FACTS (d/e 65) REGARDING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AS TO
NO MONETARY DAMAGES DUE IN FAVOR OF PLAINTIFF**

Reply to Additional Disputed Facts Precluding Summary Judgment

9. Immaterial. Meyer's actions of creating and dissolving a non-profit corporation with the Missouri Secretary of State is not use of a trademark that constitutes trademark infringement. Therefore, Meyer's creation of such corporation does not constitute willful trademark infringement. *Modular Cinemas of Amer., Inc. v. Mini Cinemas Corp.*, 348 F.Supp 578, 582 (S.D.NY. 1972).

10. Immaterial. This paragraph is immaterial because it is not a fact, but an opinion that includes a legal conclusion as to the deliberateness and willfulness of Meyer's actions. *Murphy v. Missouri Dep't of Corr.*, 372 F.3d 979, 982 (8th Cir.2004)(court disregards portions of affidavits that purport to state legal conclusions as fact).

11. Immaterial. This alleged "fact" relies on unsupported statements from the self-serving Affidavits of Mr. Weixlmann and Ms. Hoy and, therefore, is immaterial. Meyer objects

to Affidavit of J. Weixlmann, ¶8 as unsupported conclusory allegations. *Jeseritz v. Potter*, 282 F.3d 542, 545 (8th Cir.2002)(conclusory statements in affidavit do not create genuine issue of material fact). Meyer further objects to Affidavit of B. Hoy, ¶3 and Tab A as hearsay and lacking foundation. *Murphy v. Missouri Dep't of Corr.*, 372 F.3d 979, 982 (8th Cir.2004) (court disregards portions of affidavits that consist of hearsay).

Respectfully Submitted,

POLSTER, LIEDER, WOODRUFF & LUCCHESI, L.C.

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 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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