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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191016
Party	Defendant Kendal M. Sheets
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Submission	Other Motions/Papers
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Date	11/30/2009
Attachments	response_strike.pdf ( 3 pages )(74849 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____	)	
INTELLECTUAL RESERVE, INC.	)	
Plaintiff	)	Cancellation No. 91191016
v.	)	
	)	
SHEETS, KENDAL M.	)	
Defendant	)	
_____	)	

**APPLICANT’S RESPONSE TO OPPOSER’S  
MOTION TO STRIKE EVIDENTIARY MATTERS PLEADED IN THE  
ANSWER AND COUNTERCLAIMS**

Applicant Kendal M. Sheets hereby files this Response in opposition to Opposer’s Motion to Strike Evidentiary Matters.

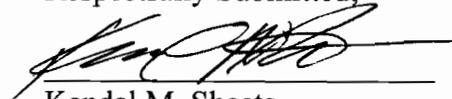
Applicant filed a proper Answer and Counterclaim to Opposer’s Notice of Opposition to Applicant’s mark, SECRET MORMON, and therefore the Motion to Strike should be denied. TBMP § 309.03(a)(2) states that evidentiary matters “should” be left out of a complaint. However, there is no prohibition to exclude such matter of proof under the rules. In fact, Opposer has asked for matter of proof related to Applicant’s petition. In its Motion to Dismiss, Opposer stated that Applicant should “provide a plain statement of facts” supporting grounds of its petition. This allegation is obviously in direct opposition to Opposer’s demands in its Motion to Strike that Applicant’s petition be “kept short” without any evidentiary statements or exhibits. These positions are confusing at best. IRI has also alleged that responding to such evidence would be unduly burdensome. However, this allegation is without basis and itself has no proof

or evidence submitted.

CONCLUSION

Board rules do not prohibit fact pleadings with evidentiary matters of proof, therefore Opposer's Motion should be denied. However, if the Board determines that it would be helpful to clarify the issues by withholding such matters of proof until substantive pleadings filed during or after discovery, then Applicant is amenable to filing an amended petition.

Respectfully Submitted;



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Applicant

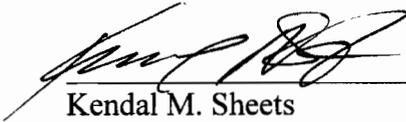
## CERTIFICATION OF SERVICE

I do hereby certify that on this 30th day of November, 2009, I served a copy of the above and foregoing pleading, **APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO STRIKE EVIDENTIARY MATTERS PLEADED IN THE ANSWER AND COUNTERCLAIMS**, on all counsel for all parties to this proceeding, namely

Mr. Douglas R. Bush  
Mr. Michael A. Grow  
Arent Fox LLP  
1050 Connecticut Ave.NW  
Washington, DC 20036

Mr. Todd Zenger  
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1800 Eagle Gate Tower  
60 E. South Temple  
Salt Lake City, UT 841111

by mailing same via United States Mail, properly addressed and first class postage prepaid.

  
Kendal M. Sheets                      11/30/09  
Date