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

Proceeding	91191016
Party	Plaintiff Intellectual Reserve, Inc.
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In The United States Patent & Trademark Office
Before the Trademark Trial and Appeal Board

INTELLECTUAL RESERVE, INC., *Opposer/Registrant,* *v.* KENDAL M. SHEETS, *Applicant/Petitioner.*	Opposition No. 91191016

ANSWER TO AMENDED COUNTERCLAIM FOR CANCELLATION OF MARKS

Opposer/Registrant Intellectual Reserve, Inc. ("IRI"), by and through its undersigned counsel, hereby responds to the amended Counterclaim for Cancellation of Marks ("Counterclaim") filed by Applicant/Petitioner Kendal M. Sheets ("Petitioner") on July 19, 2010, as follows:

1. IRI denies the allegations in the first unnumbered paragraph of Petitioner's Counterclaim for Cancellation of Marks.

2. IRI denies the allegations in the second unnumbered paragraph of Petitioner's Counterclaim.

3. IRI denies the allegations in Paragraph 1 of Petitioner's Counterclaim.

4. IRI denies the allegations in Paragraph 2 of Petitioner's Counterclaim.

5. IRI denies the allegations in Paragraph 3 of Petitioner's Counterclaim.

6. IRI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Counterclaim and therefore denies the same.

7. IRI admits that it is a corporation organized under the laws of the State of Utah. IRI denies the remaining allegations in Paragraph 5 of the Counterclaim.

8. IRI admits the allegations in Paragraph 6 of the Counterclaim.

9. IRI admits that it was the owner of the application serial number 77179068, but notes that the application has matured into a registration, *i.e.*, Registration No. 3715744. IRI admits the remaining allegations in Paragraph 7 of the Counterclaim.

10. IRI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Counterclaim and states that the trademark prosecution history speaks for itself. IRI therefore denies the allegations in Paragraph 8 of the Counterclaim.

11. IRI denies the allegations in Paragraph 9 of the Counterclaim.

12. IRI denies the allegations in Paragraph 10 of the Counterclaim.

13. The allegations in Paragraph 11 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 11, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 11.

14. IRI denies the allegations in Paragraph 12 of the Counterclaim.

15. IRI denies the allegations in Paragraph 13 of the Counterclaim.

16. IRI denies the allegations in Paragraph 14 of the Counterclaim.

17. The allegations in Paragraph 15 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 12-13, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 15.

18. IRI denies the allegations in Paragraph 16 of the Counterclaim.

19. IRI denies the allegations in Paragraph 17 of the Counterclaim.

20. The fraud claims including the allegations in Paragraph 18 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 18.

21. The fraud claims including the allegations in Paragraph 19 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 19.

22. The fraud claims including the allegations in Paragraph 20 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI states that the trademark prosecution history speaks for itself. IRI therefore denies the allegations in Paragraph 20.

23. The fraud claims including the allegations in Paragraph 21 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 21.

24. The fraud claims including the allegations in Paragraph 22 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 22.

25. The fraud claims including the allegations in Paragraph 23 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 23.

26. The fraud claims including the allegations in Paragraph 24 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 24.

27. The fraud claims including the allegations in Paragraph 25 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 25.

28. The fraud claims including the allegations in Paragraph 26 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI states that the trademark prosecution history speaks for itself. IRI therefore denies the allegations in Paragraph 26.

29. The fraud claims including the allegations in Paragraph 27 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 27.

30. The fraud claims including the allegations in Paragraph 28 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 28.

31. The fraud claims including the allegations in Paragraph 29 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 29.

32. The fraud claims including the allegations in Paragraph 30 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI states that the trademark prosecution history speaks for itself. IRI therefore denies the allegations in the first two sentences of Paragraph 30. IRI also denies the remaining allegations in Paragraph 30.

33. The fraud claims including the allegations in Paragraph 31 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 31.

34. The fraud claims including the allegations in Paragraph 32 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 32.

35. The fraud claims including the allegations in Paragraph 33 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 33.

36. The fraud claims including the allegations in Paragraph 34 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI states that the trademark prosecution history speaks for itself. IRI therefore denies the allegations in the first three sentences of Paragraph 34. IRI also denies the remaining allegations in Paragraph 34.

37. The fraud claims including the allegations in Paragraph 35 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 35.

38. The fraud claims including the allegations in Paragraph 36 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 36.

39. The fraud claims including the allegations in Paragraph 37 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 37.

40. The fraud claims including the allegations in Paragraph 38 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI states that the trademark prosecution history speaks for itself. IRI therefore denies the allegations in Paragraph 38.

41. The fraud claims including the allegations in Paragraph 39 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, due to the vagueness and ambiguity of the terms "Opposer and its predecessors," "author," and "Book of Mormon," IRI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Counterclaim and therefore denies the allegations in Paragraph 39.

42. The fraud claims including the allegations in Paragraph 40 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 40.

43. The fraud claims including the allegations in Paragraph 41 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 41.

44. The fraud claims including the allegations in Paragraph 42 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 42.

45. The fraud claims including the allegations in Paragraph 43 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 43.

46. The fraud claims including the allegations in Paragraph 44 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI states that the trademark prosecution history speaks for itself. IRI therefore denies the allegations in Paragraph 44.

47. The fraud claims including the allegations in Paragraph 45 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 45.

48. The fraud claims including the allegations in Paragraph 46 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 46.

49. The fraud claims including the allegations in Paragraph 47 of the Counterclaim have been dismissed by the Board and thus require no response. *See* 8/22/2011 Order at 18, 19. To the extent a response may be required, IRI denies the allegations in Paragraph 47.

50. IRI denies the allegations and averments contained in the "WHEREFORE" clause on page 18 of the Counterclaim.

51. IRI denies all allegations that it has not expressly admitted above.

AFFIRMATIVE DEFENSES

IRI hereby asserts the following affirmative defenses to the Counterclaim:

1. Petitioner's counterclaims are barred on the grounds that Petitioner lacks standing.

2. Petitioner's counterclaims are barred for failure to state a claim upon which relief may be granted.

3. Petitioner's counterclaims are barred by res judicata and/or the law of the case.

4. Petitioner's counterclaims are barred on the grounds that Petitioner lacks a bona fide intent to use his alleged mark.

5. Petitioner's counterclaims are barred on the grounds that Petitioner has unclean hands in that Petitioner has made willful false statements in its pleadings and Petitioner has engaged in other inequitable conduct directly related to the subject matter of this litigation.

6. Petitioner's counterclaims are barred by the doctrine of acquiescence.

7. Petitioner's counterclaims are barred by the doctrine of laches.

8. Petitioner's counterclaims are barred by the doctrine of estoppel.

9. Petitioner's counterclaims are barred by the doctrine of waiver.

Respectfully submitted,

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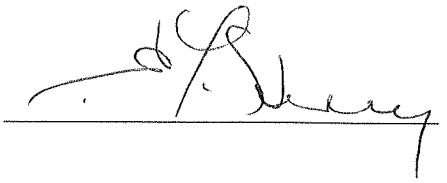
CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2011, I caused the foregoing *Answer to Counterclaim for Cancellation of Marks* to be served via first-class mail, postage prepaid, on the following:

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