ESTTA Tracking number: **ESTTA657004**
Filing date: **02/19/2015**

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

Proceeding	91217154
Party	Defendant Janoskians LLC
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Signature	/Jason DeFrancesco/
Date	02/19/2015
Attachments	JO2M2C.pdf(1265865 bytes)

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

In the matter of trademark application Serial Nos. 86/085,785
For the respective mark: DIRTY PIG
Published in the Official Gazette March 4, 2014

NASTY PIG, INC,	)	
Opposer,	)	Opposition No. 91217154
vs.	)	
JANOSKIANS, LLC,	)	
Applicant.	)	

JANOSKIANS LLC'S OPPOSITION TO OPPOSER'S
MOTION TO CONSOLIDATE

Pursuant to Rule 42 of the Federal Rules of Civil Procedure and TBMP § 305, Applicant Janoskians LLC (Janoskian) hereby responds in opposition to Nasty Pig Inc.'s ("Opposer") Motion to Consolidate Opposition Proceedings and in support thereof provides the attached Declarations of Chris Swanson ("Decl. Swan") and Declaration of Jeremy Skaller ("Decl. Skaller") and further states,

BACKGROUND

Janoskian (a/k/a Just Another Name Of Silly Kids In Another Nation) originated from the efforts of a group of five young men from Australia, who beginning in 2011 at the ages of 15-18 drew world-wide fame and attention from original pranks they published on YouTube. *Decl. Skaller*, ¶ 2. Janoskian would soon become a business identity in the United States and embark on expanding its name through branding for goods and services including a clothing line. *Id.*

Currently, Janoskian is a registered Delaware company and has a business address New York. *Id.* ¶ 2. Janoskian currently owns US Trademark Registration No. 4533375 (JANOSKIANS) for goods and services that include t-shirts and entertainment services, and also has another mark pending for clothing (DIRTY PIG) US Serial No. 86085785 — *the application which forms the basis of this instant proceeding*. *Id.* ¶ 3.

In efforts to help with its expansion and branding, Janoskian hired the Putnam Accessory Group, Corp. ("Putnam Group") to provide services related to its DIRTY PIG brand, not the JANOSKIAN trademark. *Id.* ¶ 5. On April 21, 2014, Opposer sent Janoskian a cease and desist demanding it abandon the DIRTY PIG application in view of Opposer's registration for NASTY PIG. *Id.* ¶ 6. Chris Swanson, Vice President of the Putnam Group, responded to the demand in attempt to compromise and or negotiate resolution and avoid the expense and burden in having to engage in a legal battle. *Id.* ¶ 8.

As the basis of its Motion to Consolidate, Opposer relies upon this letter. See Motion to Consolidate, pp. 2-7. *The letter sent by Mr. Swanson was a statement made about the claim and was offered as an attempt to compromise the claim. See FRE 408. Accordingly, the statements are not admissible as evidence and should not have been disclosed by Opposer or Opposer's counsel and should be stricken from the record thereby mooting the instant motion and even perhaps the Opposition against Fitumi and Janoskian for sanctions.*

On May 14, 2014, Chris Swanson acting on behalf of Fitumi LLC ("Fitumi") as its operations manager, filed for registration on the Principal Register of the USPTO, a trademark application Serial No. 86280433, for RAUNCHY PIG. *Decl. Swan*, ¶ 13. The RAUNCHY PIG application was not filed on behalf of Janoskian or under the authorization, consent, or approval of Janoskian. *Id.* On January 28, 2015, Opposer filed its opposition to RAUNCHY PIG alleging

fraud and confusion (forming the basis of co-pending proceeding, Opposition No. 91220407). Before Fitumi could even answer the Opposition, Opposer moved the Board to consolidate the RAUNCHY PIG proceeding with the instant DIRTY PIG.

ARGUMENT

The Board should preliminarily deny the Motion to consolidate because it is based on a communication that is inadmissible. See Fed. R. Evid. 408 (a party may not offer evidence concerning settlement negotiations which is directed towards a party's claim). Furthermore, the motion is premature as Fitumi has yet to answer the Notice of Opposition against it. Also, the Board should deny the Motion to Consolidate because it does not meet the standard as the marks at issue are different, the goods at issue are different, the issues are different and the parties are different.

STANDARD

When the same parties are involved in co-pending proceedings, which involve common questions of law or fact, the Board may order the consolidation. See Fed. R. Civ. P. 42 (a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *and Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). The Board, however, should not consider a motion to consolidate until an answer has been filed in each case to be consolidated. See TBMP § 511. In ultimately deciding on a motion to consolidate, the Board should weigh any savings in time, effort, and expense gained from consolidation, against any prejudice or inconvenience. *See, for example, Wright & Miller, Federal Practice and Procedure*: Civil 2d § 2383 (1999).

I. **Opposer's Motion to Consolidate should be preliminarily refused because Fitumi has not filed an Answer to the Opposition.**

Opposer filed its Notice of Opposition against Fitumi on January 28, 2015 (No. 91220407) and two days later, *without any answer* from Fitumi, motioned the Board to combine the proceeding with the instant Janoskian proceeding. Not only does the Notice of Opposition against Fitumi perpetuate a relationship between Fitumi and Janoskian, but it also attempts to implicate Janoskian for fraud (*see for e.g., Notice of Opposition, Nasty Pig, Inc. v Fitumi, LLC*; No. 91220407, ¶¶ 13, 14 and 16). Accordingly the prejudice alone that Janoskian would face being exposed to and/or implicated in a dispute concerning fraud would greatly outweigh any savings in time, effort, and expense gained from consolidation.

Furthermore, Fitumi should have the opportunity to first answer the Notice of Opposition to explain any connection to Janoskian as a matter of right, before Opposer is allowed to even seek consolidation which as it stands is based purely on conjecture, for, the only connection Janoskian has with Fitumi is the Putnam Group. Although Janoskian contracted with the Putnam Group and the Putnam Group has common employees, like Chris Swanson, the companies are independent. *See Decl. Swanson.* Nevertheless, any relationship between the Putnam Group and Fitumi, however intimate, cannot prove or suggest, that Janoskian (an unrelated party) may impute Fitumi or vice versa.

Although the Opposer cites TBMP § 511 to support the proposition that the Board may consolidate a proceeding when an answer has yet to be filed this is an exception that may be applied when parties are identical and or agree to consolidate. Janoskian does not agree to consolidate, and Opposer is aware of this limited exception in view of the fact it cited *Checkpoint Sys., Inc. v. Check Point Software Techs., Ltd.*, 2002 TTAB LEXIS 333, at *4 & n.6 (T.T.A.B. May 31, 2002). The Board in *Checkpoint Sys., Inc.* consolidated before an answer was filed but only after it determined that "the parties are identical, the goods are identical, the marks

are highly similar, and the proceedings involve common questions of law and fact." *Id.* While *Checkpoint Sys., Inc.* Is Not Citable As Precedent Of The T.T.A.B., it would suggest that consolidation is not appropriate in this instance before an answer is filed because the parties are not identical, the goods are not identical, the marks are not similar, and or the proceedings do not involve common questions of law and fact (as further explained herein). If anything, TBMP § 511 guides the Board not to consider a motion to consolidate until an answer has been filed, suggestively, to iron out mischaracterizations of the record by a moving party - *as in this case.*

II. **Opposer's Motion to Consolidate should be denied because (i) the parties are different, (ii) the marks and associated goods are different, such that (iii) the proceedings involve uncommon questions of law or fact and are different such that prejudice outweighs any savings.**

(i) APPLICANTS IDENTIFIED IN THE PROCEEDINGS ARE SEPARATE AND DISTINCT

Janoskian, the applicant in the instant proceeding is a company that emerged out of Australia from a group of young comedic men. *Decl. Skaller* ¶ 2. Janoskian is a registered Delaware company and has a business address in New York. *Id.* ¶ 3.

Janoskian hired the Putnam Accessory Group to assist it with brand development. *Id.* ¶ 5. The Putnam Accessory Group is an accessory design, product development, production and logistics company based in California. *Decl. Swanson* ¶ 4.

While Fitumi and the Putnam Accessory Group may collaborate and/or have common ownership (as argued by the Opposer), the two companies are independent of each (*id.* ¶ 5) but regardless, *any relationship that Putnam Accessory Group has with Fitumi is independent* of Janoskian.

(ii) THE MARKS AND RESPECTIVE GOODS AT ISSUE ARE NOT IDENTICAL

The application pending for Janoskian is DIRTY PIG. The application pending for Fitumi is RAUNCHY PIG.

DIRTY and RAUNCHY are different, so to the extent Opposer is claiming exclusive ownership to the word PIG in International Class 025, this is preposterous. The following is a list of marks currently pending and or registered in IC 025 that have the term PIG as part or all of the mark.

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	86425056		WARPIGS	TSDR	LIVE
2	86430384		WHEN PIGS FLY SOUTH BBQ CHALLENGE SUNNFUN	TSDR	LIVE
3	86363289		GORGEOUS PIG	TSDR	LIVE
4	86518214		PIGS DON'T SWEAT	TSDR	LIVE
5	86512105		KPIG	TSDR	LIVE
6	86280433		RAUNCHY PIG	TSDR	LIVE
7	86326895		FLAMING PIG	TSDR	LIVE
8	86396847		THE GOLDEN PIG	TSDR	LIVE
9	86295184	4670921	PIG GUY NYC	TSDR	LIVE
10	86295263	4667197	SLAP THAT PIG	TSDR	LIVE
11	86287386	4663515	GO PIG OR GO HOME	TSDR	LIVE
12	86270233		PIGSKINS	TSDR	LIVE
13	86135735		FINCK'S DETROIT-SPECIAL OVERALLS WEAR LIKE A PIG'S NOSE	TSDR	LIVE
14	86218465		CHECKER PIG	TSDR	LIVE
15	86465754		SNOW PIG	TSDR	LIVE
16	86220319	4644202	P.I.G. POLITICALLY INCORRECT GROUP	TSDR	LIVE
17	86111127		THE GROWLER PIG	TSDR	LIVE
18	86115616	4631160	NP	TSDR	LIVE
19	86340156		DREAMWORKS HITPIG	TSDR	LIVE
20	86295354		PIG GUY NYC * SLAP THAT PIG *	TSDR	LIVE
21	86280431		SEXY NASTY PIG	TSDR	LIVE
22	86085785		DIRTY PIG	TSDR	LIVE
23	86295326		PIG GUY NYC SLAP THAT PIG	TSDR	LIVE
24	86015445	4459297	WOOO PIG SOOIE	TSDR	LIVE
25	85514511	4194498	THE TIPSY PIG	TSDR	LIVE
26	85145670	4630508	ROCKIN' PIG SALOON	TSDR	LIVE

27	85973864		COOK PIGS SO. CAL	TSDR	LIVE
28	85973871		COOK PIGS SO.CAL	TSDR	LIVE
29	85907149	4440098	PIGS PROTECTING IDIOTS GONE STUPID	TSDR	LIVE
30	85689548	4413185	BAD PIG	TSDR	LIVE
31	85644924	4394752	PIGPAC	TSDR	LIVE
32	85500615	4306372	PIG OR PERISH	TSDR	LIVE
33	85470706	4548021	PIG	TSDR	LIVE
34	85409689	4262209	BIGOLPIG	TSDR	LIVE
35	85293691	4073486	SMOK'N PIG B-B-Q EXPRESS	TSDR	LIVE
36	85215308	4095503	THE BUNGANUT PIG	TSDR	LIVE
37	85208238	3997814	PIG EVIL	TSDR	LIVE
38	85145630	4058628	ROCKIN' PIG SALOON	TSDR	LIVE
39	85116398	4021668	PHILTHY PIG	TSDR	LIVE
40	79142552		THE CHRISTMAS PIG	TSDR	LIVE
41	79129760	4427290	RIG PIG	TSDR	LIVE
42	79080918	3853979	INKPIG	TSDR	LIVE
43	78647153	3663706	PEPPA PIG	TSDR	LIVE
44	78515842	3103215	RED PIG INN	TSDR	LIVE
45	78038667	2983772	IRON PIGS	TSDR	LIVE
46	78492336	3238009	DAYTONA PIG STAND	TSDR	LIVE
47	78196163	2800386	NASTY PIG	TSDR	LIVE
48	77650643	4324643	PIGS GONE WILD	TSDR	LIVE
49	77942284	3856406	PIGFISH: EAT LIKE PIGS DRINK LIKE FISH	TSDR	LIVE
50	77701599	4006603	BLACK PIG MEAT CO.	TSDR	LIVE
51	77598917	4314952	GREENPIG	TSDR	LIVE
52	77047871	3524689	IRON PIGS	TSDR	LIVE
53	77486153	3560588	COME IN & PIG OUT	TSDR	LIVE
54	77382230	3620390	LEGALIZE POT BELLY PIGS	TSDR	LIVE
55	77081174	3311176	FASHION PIG	TSDR	LIVE
56	76138436	2952037	SICK PIG	TSDR	LIVE
57	75792846	2408345	CINCINNATI FLYING PIG MARATHON	TSDR	LIVE
58	75710872	2399505	PIG WHEELS	TSDR	LIVE
59	75551259	2488136	FLYING PIG MARATHON	TSDR	LIVE
60	75489562	2255638	PIG	TSDR	LIVE
61	75015239	2011937	BLIND PIG	TSDR	LIVE
62	75013298	2010096	BLIND PIG	TSDR	LIVE
63	74496547	1929180	ALL MEN ARE PIGS	TSDR	LIVE
64	74483707	2096230	WILD PIGS	TSDR	LIVE
65	74334868	1793735	SUN PIG	TSDR	LIVE
66	74023117	1797895	POWDER PIGS OF ASPEN	TSDR	LIVE
67	73728166	1524614	BIG PIG JIG	TSDR	LIVE

Furthermore, while the marks are different, goods identified by Janoskian are not identical to Fitumi, and are:

> Belts; Blouses; Bottoms; Flip flops; Footwear; Headbands; Headwear; Hosiery; Jackets; Jeans; Knitted underwear; Leggings; Lingerie; Long underwear; Loungewear; Mukluks; Neckwear; Pajamas; Pants; Pantyhose; Robes; Sandals; Sarongs; Scarfs; Shirts; Shorts; Sleepwear; Slipper socks; Slippers; Suits; Sweat bands; Sweat jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Thermal underwear; Tops; Underwear; Wearable blankets in the nature of blankets with sleeves; Wrist bands.
>
> *See US Trademark Application Serial No.* 86085785*, subject to the instant Opposition proceeding.*

Whereas, goods identified by Fitumi are:

> Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Children's and infant's apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments; Thong beachwear; Thong footwear; Thong underwear; Thongs
>
> *See US Trademark Application Serial No. 86280433, subject to Opposition 91220407: Nasty Pig, Inc. v Fitumi, LLC.*

(ii) QUESTIONS OF LAW AND FACT ARE NOT COMMON

In addition to the dissimilarities of the parties and respective marks, the questions of fact and or law that would have to be determined include:

- How Janoskian's DIRTY PIG mark should be interpreted *versus*

  How Fitumi's RAUNCHY PIG mark should be interpreted;

And, based on the interpretations thereof,

- Whether Janoskian's DIRTY PIG is confusingly similar to Opposer's NASTY PIG mark *versus*

Whether Fitumi's RAUNCHY PIG mark is confusingly similar to Opposer's NASTY PIG mark.

The Board in *Compagnie Gervais Danone v. Precision Formulations*, LLC, 2009 TTAB LEXIS 1 (Trademark Trial & App. Bd. Jan. 5, 2009) exercised its discretion in consolidating motions in different proceedings finding that the two oppositions (Nos. 91179589 and 91184174) involved not only the same parties, but common questions of law and fact. In the oppositions either party challenged the others right to register the mark FRUITOLOGY in two separate proceedings asserting the same marks and goods respectively.

Another example includes *No Fear, Inc. v. Des Prez*, 1997 TTAB LEXIS 140, 11-12 (Trademark Trial & App. Bd. Nov. 4, 1997). In consolidating cases, the Board - in first noting the pleadings for both cases - determined the issues in both proceedings to be the priority of use of Applicant's marks and the extent of protection to be afforded the same. *Id.* Notwithstanding the fact that the Applicant in each proceeding was identical, Applicant's marks being opposed were NO BULL and NO BS (i.e., "BULLs@$%") in view of Opposer's NO FEAR mark and allegations were same, unlike the instant proceeding. In the Opposition against Fitumi, Opposer has alleged, among other things, fraud. There are no allegations to fraud against Janoskian to wit, the matters are dissimilar.

(ii) ANY SAVINGS IN CONSOLIDATING THE PROCEEDINGS WOULD BE OUTWEIGHED BY THE PREJUDICE SUFFERED BY JANOSKIAN.

Opposer has no basis for imputing Janoskain in its case for fraud against Fitumi. If anything, the attempt by Opposer to combine proceedings against unrelated parties suggests that Opposer's intent is to interfere with any business or prospect of doing business between Janoskian and other parties. Therefore, while there would be no judicial equity because the

parties are different, there would be an injustice imputing Janoskian in a matter regarding another mark that would further subject it to fraud allegations (not plead by Opposer against it). *See Decl. Skaller* ¶ 15. Furthermore, to the extent Opposer alleges DIRTY PIG and RAUNCHY PIG are identical; Opposer would be attempting to create a cause of action between Janoskian and Fitumi and possibly make it face having to waive privilege with Fitumi to defend itself - a right it rejects having to part with. *Id.*

Notwithstanding prejudice to Janoskian's rights, as stated above, the Board has found prejudice when the defendant was the same party, but the marks were different, when Opposer merely asserted a likelihood of confusion. *See Envirotech Corp. v. Solaron Corp*, 211 USPQ 724 (TTAB 1981). Based on the bar set by *Envirotech Corp.* consolidation should be denied in view of the parties being different, the marks and goods being different, the claims including fraud and likelihood of confusing being different.

III. **Janoskian requests that the Board DENY Opposer's Motion and in doing so, Order that Fitumi Answer the Opposition.**

As previously stated, Fitumi has no ownership or control over Janoskian and/or its DIRTY PIG mark. Based on unsupported allegations made by Opposer, Janoskian is eager to have Fitumi answer the outstanding Notice of Opposition against it, so same will be made of record. Accordingly, Janoskian asks the Board, in denying Opposer's motion as improper for violating Rule 408, for it being premature, or for not meeting the standard, Order Fitumi to thereafter answer the Notice of Opposition against it.

Dated: February 19, 2015

BAKER AND RANNELLS, P.A.
By:/Jason DeFrancesco/
Jason DeFrancesco
575 Rte. 28, Ste. 102
Raritan, NJ 08869
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the Applicant's Opposition to Opposer's Motion to Consolidate has been served on Opposer c/o its counsel, by first class mail on this 19th day of February 2015, to,

Joel Karni Schmidt
COWAN LIEBOWITZ & LATMAN PC
1133 Avenue of The Americas
New York, NY 10036

/Jason DeFrancesco/
Jason DeFrancesco

DECLARATION OF CHRIS SWANSON:
(1) IN SUPPORT OF JANOSKIANS LLC'S OPPOSITION TO OPPOSER'S MOTION TO CONSOLIDATE
&
(2) IN SUPPORT OF JANOSKIAN'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL PRODUCTION

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

In the matter of trademark application Serial Nos. 86/085,785
For the respective mark: DIRTY PIG
Published in the Official Gazette March 4, 2014

NASTY PIG, INC,	)	
Opposer,	)	Opposition No. 91217154
vs.	)	
JANOSKIANS, LLC,	)	
Applicant.	)	

DECLARATION OF CHRIS SWANSON:
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(2) IN SUPPORT OF JANOSKIAN'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL PRODUCTION

Chris Swanson declares and says:

1. I am Vice President of the Putnam Accessory Group, Corp. (the "Putnam Group") an S corporation that is registered with the State of California having a mailing address at 2133 E. 38th Street, Los Angeles, CA 90058, which is a physical address in Vernon, CA.

2. I am also Operations Manager at Fitumi, LLC ("Fitumi"), a limited liability company registered with the State of California having an address at 2133 E. 38th Street, Los Angeles, CA 90058, which is a physical address in Vernon, CA.

3. Fitumi and the Putnam Group conduct business at 2133 E. 38th Street, Los Angeles, CA 90058, at a building owned by John Putnam.

4. Based on my position with the Putnam Group and Fitumi, I am knowledgeable of the operations of both businesses, whereby Fitumi is a holding company for property owned by John Putnam (managing member of Fitumi) such as real property and intellectual property including patents and trademarks; and the Putnam Group is an accessory design, product development, production and logistics company for private label and branded fashion. The Putnam Group has been contracted by Janoskians, LLC ("Janoskian") to assist with its brand DIRTY PIG.

5. Fitumi does not conduct business with Janoskian and neither Fitumi nor the Putnam Group has any ownership of Janoskian. Furthermore, Fitumi and the Putnam Group among each, do not share financial books or property ownership, and are separate and distinct companies having separate and distinct purposes. Like Janoskian, Fitumi is merely a client of the Putnam Group.

6. The Putnam Group maintains documents and materials pertaining to the DIRTY PIG mark on behalf of Janoskian at its location in Vernon, California. As with all property of the Putnam Group's clients, documents of each client are maintained separately.

7. Sometime around the end of April-beginning-of-May, 2014, I became aware of a demand sent from the company Nasty Pig, Inc. that alleged ownership of the mark NASTY PIG and demanded that the Putnam Group's client, Janoskian, cease and desist from registering and or using its DIRTY PIG mark.

8. On or about May 13, 2014, I wrote a letter directly to Nasty Pig, Inc. with the clear purpose and intent to compromise and or negotiate resolution and avoid the expense and burden in having to engage in a legal battle.

9. It has since come to my attention that this communication protected by Federal Rule 408, was prohibitively use by Nasty Pig, Inc. in furtherance of an Opposition against Fitumi (later discussed) as well as in a motion to consolidate it with the instant Opposition against Janoskian.

10. At this point, I understand that Nasty Pig, Inc. would like the files that the Putnam Group maintains for its client, Janoskian.

11. The Putnam Group has been instructed by Janoskian to make the files available for inspection and copying by Nasty Pig, Inc. and the Putnam Group has never denied or objected to these instructions.

12. The files are available for Nasty Pig, Inc. to inspect, however the Putnam Group has never been noticed of any attempt by Nasty Pig, Inc. or its attorneys to ever have attempted any request to inspect.

13. On May 14, 2014, I filed for the trademark RAUNCHY PIG on behalf of Fitumi. The mark was not filed under the direction or authority of Janoskian (or the Putnam Group for that matter) as Fitumi does not need authorization from anyone with regards to its business as the RAUNCHY PIG mark is owned by Fitumi and no other.

14. Nevertheless, the RAUNCHY PIG mark was not filed with any intent or purpose by Fitumi as a means to compete with or be confused with Janoskian's DIRTY PIG mark particularly due to the fact the marks are different and the goods are different.

15. I understand that Fitumi's RAUNCHY PIG mark has been reviewed by the USPTO which did not find confusion with either the NASTY PIG or DIRTY PIG mark and allowed the mark to publish.

16. I understand that Nasty Pig, Inc. has since engaged in yet another legal battle over Fitumi's RAUNCHY PIG mark alleging that Fitumi perpetuated a fraud before the USPTO and also that RAUNCHY PIG is somehow confusingly similar to NASTY PIG.

17. While I reject the claims, I am aware that Nasty Pig, Inc. is currently asking the USPTO to join the proceeding against Fitumi with the proceeding against Janoskian. I also understand that Opposer has prohibitively used my communication protected by the Federal Rule 408 as evidence to consolidate these proceedings.

18. Fitumi does not agree to be forced to join with Janoskian regarding a legal dispute as it fears it could irreparably harm its relationship with the Putnam Group. Furthermore, it does not wish to face the possibility of having to disclose and or waive confidences with Janoskian as this would irreparably harm its ability to do business. Additionally, it does not wish to have to raise arguments and or allegations adverse to Janoskian just to preserve its business interests.

19. Fitumi believes that the motion to compel production and the opposition against it, including the motion to consolidate is a calculated attempt by Nasty Pig, Inc. to harass and embarrass Fitumi with the sole purpose of negatively impacting its business for its own personal gain.

20. Furthermore, I do not waive Rule 408 and believe my communication in regards to settlement should not be given further attention.

I HEREBY declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the Declaration herein presented is factual, true and correct.

Executed at Vernon, CA
on February 19, 2015.

Chris Swanson

DECLARATION OF JEREMY SKALLER:
(1) IN SUPPORT OF JANOSKIANS LLC'S OPPOSITION TO OPPOSER'S MOTION TO CONSOLIDATE
&
(2) IN SUPPORT OF JANOSKIAN'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL PRODUCTION

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Jeremy Skaller declares and says:

1. I am the manager of Janoskians, LLC ("Janoskian").

2. Janoskian (a/k/a Just Another Name Of Silly Kids In Another Nation) originated from the efforts of a group of five young men from Australia, who beginning in 2011 at the ages of 15-18 drew world-wide fame and attention from original pranks they published on YouTube. Janoskian would soon become a business identity in the United States and embark on expanding its name through branding for goods and services including a clothing line.

3. Currently, Janoskian is a limited liability company registered with the State of Delaware and has a business address at 209 East 31st Street, New York, NY 10016.

4. Janoskian currently owns US Trademark Registration No. 4533375 (JANOSKIANS) for goods and services that include t-shirts and entertainment services, and also has another mark pending for clothing (DIRTY PIG) US Serial No. 86085785 — *the application which forms the basis of this instant proceeding.*

5. In efforts to help with its expansion and branding, Janoskian hired the Putnam Accessory Group, Corp. ("Putnam Group") to provide services related to its DIRTY PIG brand, not the JANOSKIAN trademark.

6. On April 21, 2014, Nasty Pig, Inc. sent Janoskian a cease and desist demanding it abandon the DIRTY PIG application in view of its alleged NASTY PIG mark.

7. I understand that Chris Swanson, Vice President of the Putnam Group, responded to that demand in attempt to compromise and or negotiate resolution and avoid the expense and burden in having to engage in a legal battle. I also understand that these sort of communications are protected by Federal Rule 408, and that they are not admissible and are not to be used as evidence.

8. I understand that Opposer and or its counsel violated this Rule by relying on the communication which is considered a prohibitive use. Janoskian does not waive FRE 408 and believe the communication in regards to settlement should not be given further attention.

9. Janoskian does not do business with Fitumi, and neither Fitumi nor the Putnam Group has any ownership interest in Janoskian.

10. The Putnam Group maintains documents and materials pertaining to the DIRTY PIG mark on behalf of Janoskian at its location in Vernon, California. The Putnam Group has been instructed by Janoskian to make these files available for inspection and copying by Nasty Pig, Inc. And, the files are available for Nasty Pig, Inc. to inspect.

11. Janoskian has never been noticed of any attempt by Nasty Pig, Inc. or its attorneys to ever have attempted any request to inspect its documents at the Putnam Group.

12. Through these proceedings, I have come to understand that Fitumi has a mark RAUNCHY PIG that has been reviewed by the USPTO, and which it did not find confusion with either the NASTY PIG or DIRTY PIG mark and allowed the mark to publish.

13. I understand that Nasty Pig, Inc. has since engaged in yet another legal battle over Fitumi's RAUNCHY PIG mark alleging that Fitumi perpetuated a fraud before the USPTO and also that RAUNCHY PIG is somehow confusingly similar to NASTY PIG.

14. While Janoskian has no interest in the proceeding regarding Fitumi's RAUNCHY PIG mark, I am aware that Nasty Pig, Inc. is currently asking the USPTO to join the proceeding against Fitumi with the instant proceeding against Janoskian. It is understood that a basis for the consolidation is the inadmissible communication subject to Rule 408.

15. Notwithstanding, Janoskian does not agree to be forced to join with Fitumi regarding a legal dispute as it fears it could irreparably harm its relationship with the Putnam Group. Furthermore, it does not wish to face the possibility of having to disclose and or waive confidences with Fitumi as this would irreparably harm its ability to do business. Additionally, it does not wish to have to raise arguments and or allegations adverse to Fitumi just to preserve its business interests.

16. Janoskian believes that the motion to compel production and the opposition against it, including the motion to consolidate is a calculated attempt by Nasty Pig, Inc. to harass and embarrass Janoskian with the sole purpose of negatively impacting its business for its own personal gain.

I HEREBY declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the Declaration herein presented is factual, true and correct.

Executed at Los Angeles, CA
on February 19, 2015.

Signed: _/Jeremy Skaller/

Jeremy Skaller