

ESTTA Tracking number: **ESTTA660029**

Filing date: **03/09/2015**

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

Proceeding	91220407
Party	Defendant Fitumi, LLC
Correspondence Address	FITUMI, LLC FITUMI, LLC 2133 E 38TH ST VERNON, CA 90058-1616 UNITED STATES chris@putnamag.com
Submission	Motion to Strike
Filer's Name	Stephen L. Baker
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Signature	/Stephen L Baker/
Date	03/09/2015
Attachments	RAUNCHY PIG - Motion to Strike - Redacted.pdf(142254 bytes)

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

In re: Serial No. 86/280,433
Filing Date: May 14, 2014
Mark: RAUNCHY PIG

NASTY PIG, INC.)	REDACTED
)	
Opposer,)	
)	
v.)	Opposition No. 91220407
)	
FITUMI, LLC,)	FILED UNDER SEAL PURSUANT
)	TO TBMP § 412.05
Applicant.)	

**MOTION TO STRIKE PURSUANT TO RULE 408
FEDERAL RULES OF EVIDENCE AND TO EXTEND APPLICANT'S
TIME TO RESPOND TO THE NOTICE OF OPPOSITION PENDING
DISPOSITION OF THIS MOTION**

Applicant, FITUMI, LLC ("Fitumi") hereby moves to strike paragraphs 13 and 14 of the Notice of Opposition and to suppress correspondence from the Fitumi to Opposer dated May 13, 2015, identified as Exhibit B to the Notice of Opposition on the grounds that the inclusion of the same in the Notice of Opposition is in violation of Rule 408 of the Federal Rules of Evidence.

RULE 408 OF THE FEDERAL RULES OF EVIDENCE

Rule 408. Compromise Offers and Negotiations

(a) **Prohibited Uses.** Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 408 makes evidence of settlement or attempted settlement of a disputed claim inadmissible when offered as an admission of liability or the amount of liability. The purpose of this rule is to encourage settlements which would be discouraged if such evidence were admissible.

While the correspondence sought to be suppressed does not reference Rule 408, which is understandable given it was written by a non-lawyer, it does invite settlement — see the penultimate paragraph of Exhibit B which includes **REDACTED**

REDACTED

REDACTED The ultimate paragraph is clearly an invitation to discuss settlement and reads

REDACTED

Rule 408 is absolute and is there to encourage settlement. As such, even the most obtuse attempt to settle should not be made available to the public, much less the trier of fact.

Because the within motion is to strike portions of the Notice of Opposition, the proceedings should be suspended pursuant to TBMP § 528.03, and Applicant's time to respond to the Notice of Opposition be extended pending disposition of this motion.

WHEREFORE, Applicant requests that paragraphs 13 and 14 of the Opposer's Notice of Opposition be stricken and that Exhibit B to the Notice of Opposition be suppressed.

Dated: March 9, 2015

BAKER AND RANNELLS, PA

By:



Stephen L. Baker
Attorney for Applicant
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on Opposer by first class mail this 9th day of March 2015:

Joel Karni Schmidt
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036



Stephen L. Baker