

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Baxley

Mailed: April 9, 2015

Cancellation No. 92059147

Outback Flashlights, LLC

v.

Anthony William Jones DBA Coral  
Reef

**Andrew P. Baxley, Interlocutory Attorney:**

The following is supplemental to the Board's March 27, 2015 order, wherein the Board, citing to Federal Rule of Evidence 408, noted that Petitioner inappropriately included copies of settlement correspondence as exhibits to its brief in response to Respondent's motion to extend time to respond to discovery requests.

Even if Rule 408 is not directly applicable because the correspondence at issue is not being used as evidence "either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction," the underlying intent behind that rule informs the circumstances herein. As the Advisory Committee stated in its Notes to Rule 408, public policy favors compromise and settlement of disputes. *See* Advisory Committee, Notes on Rule 408, Federal Rules of Evidence. Placing correspondence related to settlement in the public record of this proceeding,

all of which posted on the Internet at <http://ttabvueint.uspto.gov/ttabvue/>, runs contrary to “[t]he public policy favoring free and frank negotiations which may lead to the compromise and amicable settlement of disputes.” *Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 197 (TTAB 1976) (responding party not required to produce documents relating to settlement negotiations, but is required to produce settlement agreements). That is, parties generally should be able to negotiate to settle Board proceedings without their statements made in those negotiations being posted on the Board’s website in connection with Board motion practice.

Accordingly, Respondent’s brief in response to the motion to extend has been placed under seal and removed from the public record of this case. Respondent is directed to file a redacted copy of that brief which excludes specific references to the parties’ settlement negotiations and any copies of settlement correspondence within ten days of the mailing date set forth in this order. *Cf.* Trademark Rule 2.126(c); TBMP § 412.04 (2014).

The March 27, 2015 order otherwise stands.