

ESTTA Tracking number: **ESTTA62463**

Filing date: **01/18/2006**

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

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	RA Scottsdale Corp.
Granted to Date of previous extension	01/18/2006
Address	3815 N. Scottsdale Road Scottsdale, AZ 85251 UNITED STATES

Attorney information	Glenn Spencer Bacal Jennings, Strouss & Salmon, P.L.C. 201 East Washington Street 11th Floor Phoenix, AZ 85004 UNITED STATES gbacal@jsslaw.com Phone:480.663.2160
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### Applicant Information

Application No	76574049	Publication date	09/20/2005
Opposition Filing Date	01/18/2006	Opposition Period Ends	01/18/2006
Applicant	2 Manatees, L.L.C. 2237 East 33rd Street Tulsa, OK 74105 UNITED STATES		

### Goods/Services Affected by Opposition

Class 043. First Use: 1998/02/01 First Use In Commerce: 1998/09/01  
All goods and services in the class are opposed, namely: Restaurants featuring sushi and other Japanese cuisine

Attachments	RAnoticeofopposition.pdf ( 11 pages )
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Signature	/Glenn Spencer Bacal/
Name	Glenn Spencer Bacal
Date	01/18/2006

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

Mark: In The Raw (block letters)

Serial No.: 76/574049

Applicant: 2 Manatees, LLC

Opposer: RA Scottsdale Corp.

NOTICE OF OPPOSITION

1. RA Scottsdale Corp., a Delaware corporation (hereafter “Ra Scottsdale”), is the owner of a federal registration for RA and design® (Registration No. 2209246) and a pending application for RA (block letters) (Serial No. 78/641586) and “It’s More Fun In The RA” (Serial No. 78/641594). RA Scottsdale has used each of these marks since 1997. Registration No. 2209246 is incontestable.

2. RA Scottsdale, and its predecessor, uses its mark in connection with RA Sushi Bar restaurants in California, Arizona, Nevada and Illinois. A new restaurant in Texas will open shortly.

3. RA Scottsdale’s RA Sushi Bar restaurants have achieved great commercial success, favorable reviews and public acclaim.

4. Upon information and belief, one or more of the principals of the Applicant visited at least one or more of RA Scottsdale’s RA Sushi Bar restaurants in Arizona prior to choosing the name “In The Raw Sushi” for their restaurant in Oklahoma.

5. Applicant has been operating its restaurant in Tulsa, Oklahoma as “In The Raw Sushi.”

6. Applicant’s restaurant is regularly listed as “In The Raw Sushi” in telephone, web and other listings, and not just as “In The Raw.”

7. Applicant's In The Raw Sushi restaurant was copied from Opposer, not just as to the name, but also as to the concept.

8. Upon information and belief, attorneys for Applicant, namely Jones Givens Gotcher & Rogan, acting on behalf of Applicant, signed a false declaration in connection with the application for In The Raw.

9. Applicant knew of Opposer's use of RA and RA Sushi prior to adoption of the applied-for mark.

10. Applicant also knew of Opposer's use of "In The RA!" as part of "It's More Fun In The RA!" prior to adoption of the applied-for mark.

11. Applicant, at the time of filing for the applied-for mark, knew of Opposer's rights in and uses of RA, RA Sushi and "In The RA!" as part of "It's More Fun In The RA!"

12. In the course of the examination of its application, Applicant tried to mislead the examiner as to the actual manner in which it uses In The Raw.

13. Upon information and belief, in the course of the examination of its application, Applicant provided one false specimen that didn't show the mark as actually used by Applicant.

14. The examination procedure for Serial No. 76/574049 was flawed, and the Applicant's application should not have been passed on to publication.

15. Applicant's In The Raw sushi restaurant has received numerous poor reviews in the press and on the internet.

16. For example, on the website "Sushi Reference," In The Raw Sushi was described as being "generally disappointing," with small overcooked entrees, having over salted and overpriced food, and having average to poor service. (Exhibit 1).

17. On the same "Sushi Reference" website, RA Sushi was reviewed as having very good sushi overall. (Exhibit 2).

18. On their own web promotions, Applicant regularly refers to itself as "In The Raw Sushi." (Exhibit 3).

19. Third party listings for Applicant's restaurant regularly refer to Applicant's restaurant as In The Raw Sushi.

20. Applicant's In The Raw mark, whether with or without the word "Sushi," is likely to be confused with Opposer's "RA," "RA Sushi" and "It's More Fun In The RA!" marks.

21. Applicant's adoption of In The Raw was done in bad faith.

22. Applicant is not entitled to a registration for In The Raw.

23. Opposer will be damaged by registration of In The Raw by Applicant.

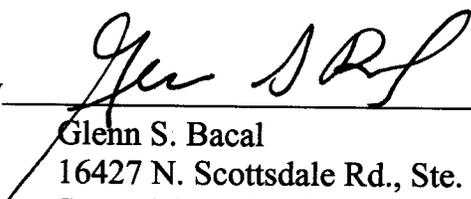
24. Applicant's In The Raw mark so resembles Opposer's "It's More Fun In The RA!," "RA" and RA and design marks as to make it likely, when applied to Applicant's services, to cause mistake, to cause confusion and to deceive, with consequential injury to Opposer, to the trade and to the public.

THEREFORE, Opposer believes it would be damaged by approval for registration of Applicant's application to register In The Raw, and respectfully asks that Application Serial No. 76/574049 be denied.

Respectfully submitted this 18<sup>th</sup> day of January, 2006.

JENNINGS, STROUSS & SALMON, PLC

By

  
Glenn S. Bacal

16427 N. Scottsdale Rd., Ste. 300

Scottsdale, AZ 85254-1597

Telephone: 480.663.2160

Attorneys for Opposer RA Scottsdale Corp.

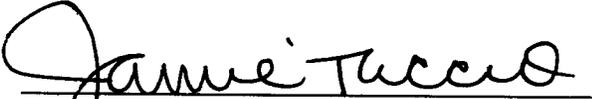
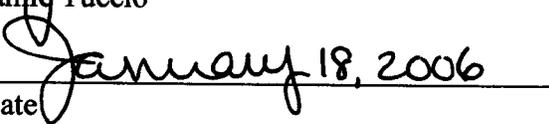
CERTIFICATE OF MAILING OR TRANSMISSION PURSUANT TO 37 C.F.R. §1.8

Application No.: 76/574049  
Mark: IN THE RAW  
Opposer: RA ScottsdaleCorp.  
Type of Filing: Notice of Opposition

I hereby certify that this Notice of Opposition is being filed electronically with the United States Trademark Trial and Appeal Board 37 C.F.R. § 1.8.

I hereby further certify that this Notice of Opposition is being deposited with the United States Postal Service addressed to:

Dana Yeatman Baldwin  
Jones Givens Gotcher & Rogan PC  
15 E 5<sup>th</sup> Street Suite 3800  
Tulsa, OK 74103-4309  
Counsel for 2 Manatees, LLC

  
\_\_\_\_\_  
Jamie Tuccio  
  
\_\_\_\_\_  
Date

# EXHIBIT 1

The World-Wide Sushi Restaurant Reference - Restaurants in Tulsa

## *In The Raw Sushi*

Update the address and facilities of this location.

### General links:

- Update the general restaurant information (name, sample prices, URL).
- Report another location of this establishment.
- Add comments about this restaurant.
- Get email when new information arrives.

### Comments about this restaurant:

- From J. Taylor (last visit August 2005)

*Variety of sushi:* Very limited selection.

*Freshness of sushi:* Seemed stale.

*Presentation of sushi:* Average.

*Generosity of sushi portions:* Small portions.

*Promptness of service:* Slow.

*Courtesy of service:* Courteous.

*Accuracy of service:* Accurate.

*Cleanliness - dining and visible kitchen areas:* Clean.

*Quality of nonsushi food:* Adequate.

"I've eaten at In-the-Raw three times recently. The sushi were generally disappointing, the non-sushi food was adequately presented, but the small entrees were overcooked, oversalted and overpriced (sides extra); service was average to poor, with limited attention, some mistakes, little courtesy; clientele - mostly younger adults, some family; atmosphere - some tables enjoy good view of city, but the main bar in the dining area made the place loud, smoky, distracting, uneasy. I'll not go back."

- From Jack Splat (last visit July 2004)

*Variety of sushi:* Usual selection.

*Freshness of sushi:* Seemed stale.

*Presentation of sushi:* Average.

*Generosity of sushi portions:* Somewhat smaller than usual.

*Promptness of service:* Very slow.

*Courtesy of service:* Courteous.

*Accuracy of service:* Accurate.

*Cleanliness - dining and visible kitchen areas:* Not that clean.

*Cleanliness - restrooms:* Clean.

*Quality of nonsushi food:* Poor.

"The last time I'd eaten at ITR was so much better than this time. Maybe the fact that they're the only sushi bar in town that has two locations makes them feel over-confident, like they're so far ahead

### ***At this site***

Up to: [Tulsa](#) - [Oklahoma](#) - [USA](#) - [North America](#) - [Worldwide](#) - [Top](#).

Go to: [FAQ](#) - [Glossary](#) - [Updates](#) - [Index](#).

Ads by Goooooogle

### **Chicago Sushi**

Find local Chicago Sushi Phone Numbers, Website, & Maps.  
[www.ChicagoLandYp.com](http://www.ChicagoLandYp.com)

### **Restaurant Latour & Wine**

Fine Dining And Expansive Wine List Rated Excellent With 4 Stars  
[www.CrystalGolfResort.cc](http://www.CrystalGolfResort.cc)

### **Fresh Sushi and Sashimi**

Sushi delivered to your home Uni, Tuna, Yellowtail, Abalone etc  
[catalinaop.com](http://catalinaop.com)

### **Free Benihanas \$250**

Enjoy Delicious Japanese Steaks Sushi More Participate Survey Now  
Benihanas.OnlinerewardC

Advertise on this site

***Other sites:***  
[The Urban Pug](#).  
[Primetime](#)

of the competition that they don't have to try as hard. *Wrong!* Fuji, Tsunami and Asahi have surpassed ITR in almost every category. Get with it Dunwell, or should I say Dun-not-so-well-anymore?"

Wellness.  
New Orleans Food  
Community.

- From G. Mac (last visit August 2004)

*Variety of sushi:* Usual selection.  
*Freshness of sushi:* Seemed stale.  
*Presentation of sushi:* Average.  
*Generosity of sushi portions:* Small portions.

*Promptness of service:* Slow.  
*Courtesy of service:* Courteous.  
*Accuracy of service:* Inaccurate.  
*Cleanliness - dining and visible kitchen areas:* Not that clean.  
*Cleanliness - restrooms:* Not that clean.  
*Quality of nonsushi food:* Adequate.

``This is a yuppie hell-hole, and nothing more. The chef I had would not converse with us, and it wasn't because he was too busy. The portions were dinky, the wait too long, the atmosphere is overdone and too trendy. It seems more like a dance club or singles bar than a restaurant. This is where you go if you are looking for an aesthetically pleasing if not overstimulating atmosphere, but an overall bland food experience. Or, if you're looking for a rich yuppie sugar daddy with a penchant for raw fish, this is the place to go. I'd recommend Fuji over this place any day, because even though they're wicked slow, the portions are better and it feels more homey.

``"

***Disclaimer.*** Make sure you have read the full disclaimer located in the overview to this restaurant guide. Basically: I cannot vouch for the accuracy of any information on this page; remember that the comments are no more than the opinions of strangers; before you venture out to explore the places listed here, it would be a good idea to make sure they are still open, and to verify their exact locations.

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## EXHIBIT 2

## The World-Wide Sushi Restaurant Reference - Restaurants in Phoenix

**Ra**

3815 North Scottsdale Road.

Scottsdale, Arizona

Just opposite Bandera.

Voice: +1 990-9256.

Dinner hours: daily 5pm-1am.

Update the address and facilities of this location.Links: generate a map of the area.

## Sample prices:

- Ebi nigiri (shrimp), 2 pieces, \$5.-
- Maguro nigiri (tuna), 2 pieces, \$5.-
- Tobiko gunkan maki (smelt/flying fish roe), 2 pieces, \$5.-
- Uni gunkan maki (sea urchin), 2 pieces, \$9.-

## General links:

- Update the general restaurant information (name, sample prices, URL).
- Report another location of this establishment.
- Add comments about this restaurant.
- Get email when new information arrives.

## Other local restaurant guides:

- Phoenix New Times

## Comments about this restaurant:

From Jamie Fike (last visit July 2003)*Variety of sushi:* Somewhat broader than average.*Freshness of sushi:* Very fresh.*Presentation of sushi:* Somewhat nicer than average.*Generosity of sushi portions:* Average.*Promptness of service:* Prompt.*Courtesy of service:* Courteous.*Accuracy of service:* Accurate.*Cleanliness - dining and visible kitchen areas:* Clean.*Cleanliness - restrooms:* Clean.

“Overall sushi is very good and they have some great rolls with a southwestern flavor. Atmosphere is more important here. Chic decor and very loud modern music. Fun place. But, don't go here if you're planning on a nice, quiet sushi experience.”

**Disclaimer.** Make sure you have read the full disclaimer located in the overview to this restaurant guide. Basically: I cannot vouch for the accuracy of any information on this page; remember that the comments are no more than the opinions of strangers; before you venture out to explore the places listed here, it would be a good idea to make sure they are still open, and to verify their exact locations.

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**At this site**

Up to: Phoenix -  
Arizona - USA -  
North America -  
Worldwide - Top.  
 Go to: FAQ -  
Glossary -  
Updates - Index.

## Ads by Goooooogle

**Free Sushi Making Kit**

Complete Sushi Kit Incl  
 Cookbook Fresh  
 Ingredients Complete  
 Survey  
 SushiKit.OnlinerewardCen

**Sushi**

Find great Sushi in San  
 Francisco. Review &  
 compare  
 sanfrancisco.citysearch.co

**Other sites:**

The Urban Pug.  
Primetime  
Wellness.  
New Orleans Food  
Community.

# **EXHIBIT 3**

locations/directions   menus   our partners   the art of sushi   about us

## about us

**In The Raw Sushi is an experience in every sense of the word. It is a destination, not merely a place to eat, because In The Raw appeals to all of your senses the minute you enter the space. The architecture inspires, mixing a sleek modern style and a progressive Japanese vibe. The Sushi Bar is center stage and our cuisine, the star. Master chef Cody Stell and his team will prepare a wide array of unique, delicious dishes – from the fire-roasted Lobster Roll prepared tableside to the award-winning filet mignon with portabella mushroom demiglace – creating their own brand of theatrics.**

**The service is A-list-ready, from the front of the house to the back. Attention to detail is second nature to every member of the staff. Appearance, presentation, interaction – every aspect of service is considered a critical part of the operation. And every patron will feel important, from reservation to departure.**

**Our state-of-the-art sound system lends a subtle energy to the entire space, setting themes of casual luxury and undeniable hipness. From Al Green to Green Day, 80s remix to pure funk, the music is a critical element to the overall experience. And, as the night rolls on, the music gets louder and more upbeat, but never too loud to kill a conversation.**

**It's sushi with a pulse. Cool and hip, but casual and inviting, In The Raw is truly an experience that you'll remember. The atmosphere, the music, the sights, and oh yes, the sushi – all come together to give you a sensory celebration. An experience you'll talk about, again and again.**

take a minute to join our mailing list  
receive special offers exclusively for our online friends.

