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Filing date: **06/20/2006**

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

|                        |   |
|------------------------|---|
| Proceeding             | 91168732  |
| Party                  | Defendant<br>2 Manatees, L.L.C.<br>2 Manatees, L.L.C.<br>2237 East 33rd Street<br>Tulsa, OK 74105       |
| Correspondence Address | DANA YEATMAN BLADWIN<br>JONES GIVENS GOTCHER & ROGAN PC<br>15 E 5TH ST STE 3800<br>TULSA, OK 74103-4309 |
| Submission             | Other Motions/Papers  |
| Filer's Name           | John W. Cannon  |
| Filer's e-mail         | jcannon@jonesgotcher.com  |
| Signature              | /John W. Cannon/  |
| Date                   | 06/20/2006  |
| Attachments            | 7581-0020.pldgs.respns to motion to amend.21.pdf ( 8 pages )(327170 bytes )                             |

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

|                     |   |                         |
|---------------------|---|-------------------------|
| RA SCOTTSDALE CORP. | ) |                         |
|                     | ) |                         |
| Opposer,            | ) |                         |
|                     | ) |                         |
| v.                  | ) | Opposition No. 91168732 |
|                     | ) | Serial No.: 76/574049   |
| 2 Manatees, L.L.C., | ) |                         |
|                     | ) |                         |
| Applicant.          | ) |                         |

**RESPONSE TO OPPOSER'S  
MOTION TO AMEND NOTICE OF OPPOSITION**

COMES NOW Applicant, 2 Manatees, L.L.C. ("Manatees"), and hereby submits its objection to Opposer's, RA Scottsdale Corp. ("Opposer"), Motion to Amend its Notice of Opposition. Opposer seeks to amend its Notice of Opposition to plead newly-issued registrations and allege "newly-discovered grounds for opposition" of Manatees' "IN THE RAW" mark. In response to Opposer's Motion to Amend, Manatees objects and alleges and states as follows:

1. On or about June 2, 2006, Opposer filed its Motion to Amend Notice of Opposition.
2. Opposer states in its Motion the legal argument upon which it bases the Motion making only short statements that two new registrations have been issued and that Opposer has allegedly discovered "technical" problems with Manatees Application presenting additional grounds for opposition. Opposer goes on to state that it has made "minor amendments" to its allegations in the Notice of Opposition.
3. Attached as Exhibit 1 to Opposer's Motion to Amend is Opposer's proposed First Amended Notice of Opposition which makes more than "minor" amendments.

4. Granting Opposer's Motion to Amend Notice of Opposition would be highly prejudicial to Manatees and should therefore be denied.

### ARGUMENTS & AUTHORITIES

Opposer filed its application for registration of the mark RA (block letters) and "ITS MORE FUN IN THE RA!" on June 1, 2006, long after Manatees' application date of January 26, 2004. During pendency of this opposition, and clearly after Manatees filed for registration of the mark "IN THE RAW," Opposer's two additional marks were granted registration. Opposer seeks to amend its Notice of Opposition to add alleged new facts and bases in an attempt to lessen deficiencies in its arguments, deficiencies which Manatees brought to the attention of Opposer and this board. During discovery, Manatees questioned Opposer about the fact that Opposer's applications to register the additional two marks, which Opposer seeks leave to amend to include, were filed after Manatees' application to register "IN THE RAW." (See Interrogatory No. 9, Request for Admission Nos. 1, 2, and 3, attached hereto as Exhibit "A"). It is Manatees' position that its mark "IN THE RAW" does not create confusion with the marks owned by Opposer, but in any event Manatees' mark was filed before the application for registration of the marks which Opposer seeks to include; therefore registration of those marks is not relevant and can only prejudice Manatees' position.

Manatees was not granted registration of its mark due to Opposer filing its Notice of Opposition, thereby preventing its registration from being issued. If Opposer had not filed its opposition, Manatees likely would have had their mark registered and the additional two marks which Opposer claims would not have been granted registration before Manatees' mark was registered. Allowing Opposer to add two additional grounds for opposition would be prejudicial, when those grounds did exist when Manatees filed its original application and Opposer filed its

Notice of Opposition. Manatees believes the facts in existence at the time Opposer filed its opposition should remain static.

Opposer includes additional factual allegations in their amendments, which have arisen since the filing of its original Notice. First, Opposer has added approximately five new restaurant locations that either did not exist, or were overlooked in its original Notice of Opposition. Opposer's use of the mark should only relate back to the time the Opposition was filed, not how the mark is being used after the fact. Opposer is attempting to mislead this Board by asserting the addition of new locations, which shows that Opposer's mark was more widely used and known than it was when Manatees began using its mark "IN THE RAW." Opposer also adds to its amendment that it has been granted "more than a dozen "Best of" awards," apparently to allege that "IN THE RAW" will negatively effect its apparently good name. This factual allegation is not relevant and had not occurred at the pendency of the opposition.

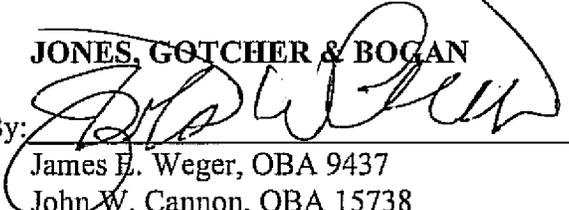
Opposer also seeks to add the argument that Manatees' mark as it has been used is "just like Opposer uses a circle design behind RA." Such position is baseless and without merit upon a cursory review of the marks. Manatees' use of their mark in no way resembles Opposer's mark or circular design used in its mark, as shown in Exhibit "B" attached hereto. To allow confusion to be inferred or alleged based on the allegation that the designs are similar, when they are in fact very dissimilar, is prejudicial to Manatees' application and therefore Opposer's Motion to Amend should be denied.

**CONCLUSION**

Manatees will be unduly prejudiced if Opposer is allowed to amend its Notice of Opposition at this time and in this manner. Accordingly, Manatees respectfully requests that Opposer's leave to amend be denied.

Respectfully submitted,

**JONES, GOTCHER & BOGAN**

By: 

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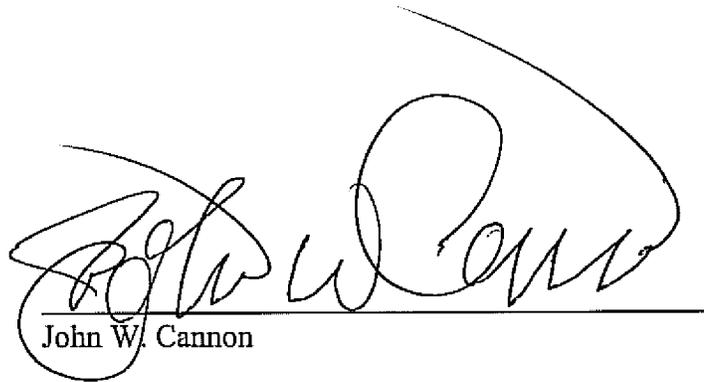
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**Attorneys for 2 Manatees, L.L.C.**

**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2006, I filed this Response to Opposer's Motion to Amend Notice of Opposition electronically with the United States Trademark Trial and Appeal Board pursuant to 37 C.F.R. Section 1.8, and I further certify that I caused to be mailed in the United States Mail with proper postage fully prepaid thereon a true and correct copy of the above and foregoing to:

Glenn S. Bacal, Esq.  
Jennings, Strouss & Salmon, PLC  
16427 N. Scottsdale Rd., Suite 300  
Scottsdale, AZ 85254-1597



John W. Cannon

**INTERROGATORY NO. 3:** State the Factual Basis for your allegation that "IN THE RAW" is likely to be confused with "RA," "RA Sushi," and "It's More Fun In the RA!"

**INTERROGATORY NO. 4:** Identify and describe any instances where any third party communicated with you regarding a relationship, if any, between RA restaurants and "IN THE RAW."

**INTERROGATORY NO. 5:** Identify any and all times in which you used the mark "IN THE RAW."

**INTERROGATORY NO. 6:** Identify all services in which you use the mark "RA," and describe how the mark is used in connection with those services.

**INTERROGATORY NO. 7:** Identify all locations in which your mark is used in connection with restaurants and any other business establishment owned by you.

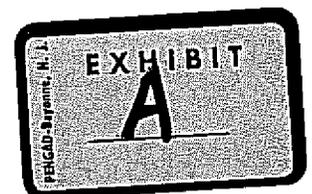
**INTERROGATORY NO. 8:** State the Factual Basis for your allegation that Applicant's adoption of the name "IN THE RAW" for its sushi restaurant was done in bad faith.

**INTERROGATORY NO. 9:** List the dates on which you filed your application for registration of "RA" (block letters) and "It's More Fun In The RA!."

**INTERROGATORY NO. 10:** State the Factual Basis for your allegation that you will be damaged by approval of Applicant's registration of the mark "IN THE RAW."

**INTERROGATORY NO. 11:** Identify all witnesses you may call to testify in this matter and provide the substance of the anticipated testimony and knowledge concerning the subject matter of this action.

**INTERROGATORY NO. 12:** Identify the author(s), source, and internet address or other location for the reviews attached to your Notice of Opposition as Exhibit "1" which describe IN THE RAW.



**INTERROGATORY NO. 13:** Describe the relationship or any communication you have had with any and all of the authors listed in Exhibit "1" of your Notice of Opposition who submitted reviews of "IN THE RAW."

**INTERROGATORY NO. 14:** List and describe any and all occasions on which you visited any of Applicant's restaurants in Tulsa, Oklahoma, including but not limited to IN THE RAW.

**REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Admit you filed your application to register "IT'S MORE FUN IN THE RA!" after Applicant filed its application to register "IN THE RAW."

**REQUEST FOR ADMISSION NO. 2:** Admit you filed your application to register "RA" (block letters) after Applicant filed its application to register "IN THE RAW."

**REQUEST FOR ADMISSION NO. 3:** Admit you were aware of Applicant's application to register the mark "IN THE RAW" when you filed your application to register "IT'S MORE FUN IN THE RA!"

**REQUEST FOR ADMISSION NO. 4:** Admit that Exhibit "1" attached to your Notice of Opposition does not include the entire display of the web page in which it was printed. Specifically, admit that Exhibit "1" does not include the "Disclaimer" on the page which states that the accuracy of the reviews cannot be vouched for and that the comments are "no more than opinions of strangers...".

**REQUEST FOR ADMISSION NO. 5:** Admit that you did not, and have not to date, registered the mark RA SUSHI.

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



two locations

34th & peoria in brookside | 918.744.1300

61st & skeridan on the hill | 918.524.0063

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Serial Number: 75432503 Assignment Information

Registration Number: 2209246 Assignment Information

Mark



(words only): RA

Standard Character claim: No

