

ESTTA Tracking number: **ESTTA125013**

Filing date: **02/14/2007**

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	EllenJ.Rosenthal
Granted to Date of previous extension	02/14/2007
Address	P.O. Box 30566 Phoenix, AZ 85046 UNITED STATES

Attorney information	Susan Daly Stearns Greenberg Traurig 2375 E. Camelback Rd Suite 700 Phoenix, AZ 85016 UNITED STATES phxipmail@gtlaw.com Phone:602 445 8000
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### Applicant Information

Application No	76600962	Publication date	10/17/2006
Opposition Filing Date	02/14/2007	Opposition Period Ends	02/14/2007
Applicant	Dinner by Design, Inc. 1166 East Washington Street Grayslake, IL 60030 UNITED STATES		

### Goods/Services Affected by Opposition

Class 043. First Use: 2003/09/01 First Use In Commerce: 2003/09/01 All goods and services in the class are opposed, namely: Home meal preparation services
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Attachments	Notice of Opposition Dinner by Design.pdf ( 3 pages )(130021 bytes )
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Signature	/Susan Daly Stearns/
Name	Susan Daly Stearns
Date	02/14/2007

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

ELLEN J. ROSENTHAL	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
DINNER BY DESIGN, LLC	)	
Applicant.	)	

NOTICE OF OPPOSITION

In the matter of application to register a trademark under the Trademark Act of 1946, Serial No. 76/600962, for the mark DINNER BY DESIGN, filed July 7, 2004, in the name of Dinner by Design, LLC, published for opposition in the Trademark Official Gazette of October 17, 2006, the Opposer, Ellen J. Rosenthal, believes she will be damaged by registration of said alleged trademark and hereby opposes same. The grounds for opposition are as follows:

1. The Opposer, Ellen J. Rosenthal ("EJR") is an individual, residing in Phoenix, Arizona and having a place of business in Phoenix, Arizona. Opposer markets and operates a full service in-home or in-facility catering, meal planning and in-home personal chef business. ("EJR Services").

2. EJR has been operating the EJR Services in connection with the mark DINNER BY DESIGN since August 1996.

3. Since prior to the filing date of the application opposed herein, EJR has, and is now, engaged in advertising, marketing, and providing the EJR Services in connection with the trade name and mark DINNER BY DESIGN. (the "EJR Mark"). Opposer has continuously used the EJR Mark in connection with the EJR Services, and has advertised, promoted, marketed, and used the EJR Mark to identify, designate, and distinguish the EJR Services from those of others.

4. Opposer EJR currently owns a State of Arizona Trade Name registration issued by the State of Arizona on September 7, 1999 and has an application pending with the U.S. Patent and

Trademark Office (“USPTO”) under Application Serial No. 78/745637 for “*catering*”. Opposer will rely herein on her State of Arizona Trade Name Registration, USPTO Application Serial No. 78/745637 and her common law rights in the EJR Mark.

5. Since Opposer's initial use of the EJR Mark, EJR has continuously used, advertised, promoted and offered the EJR Services to her consumers through various trade channels and in commerce, with the result that Opposer’s customers and the general public have come to know and associate the EJR Services with the EJR Mark and trade name.

6. On July 7, 2004, Applicant filed an application to register the mark DINNER BY DESIGN. The Application was assigned serial no. 76/600962, and was published for opposition in the Official Gazette of October 17, 2006, identifying the services as follows: “*home meal preparation.*” (the “Application”)

7. Applicant in its Application claims September, 2003 as the date of first use of its mark DINNER BY DESIGN.

8. On September 20], 2006 EJR commenced a civil action for unfair competition against Applicant and others in the Arizona Superior Court in and for Maricopa County in connection with Applicant’s use of the mark DINNER BY DESIGN.

9. The mark sought to be registered by Applicant is identical and confusingly similar to, Opposer's EJR Mark.

10. On information and belief, the services identified in the Application opposed herein are commercially related to the EJR Services marketed and provided by Opposer under the EJR Mark and trade name; and are/or will be promoted through the same and/or similar channels of trade, and/or to the same general class of purchasers, in and to which the EJR Services are marketed and/or sold.

11. The registration and use of Applicant's mark is likely to cause confusion, mistake, and/or will deceive the general public as to the origin, sponsorship, and/or association of Applicant's services with Opposer's EJR Mark and trade name, and/or will mislead the general purchasing public into believing that Applicant's services are sold by, emanate from, and/or are in some way, directly or indirectly, associated with EJR, and/or the EJR Mark and trade name, to the damage and detriment of EJR.

12. If Applicant is granted registration of the Application, and Applicant obtains such rights as conferred under the Principal Register of the Trademark Act of 1946, Applicant will unlawfully gain an advantage to which it is not entitled under the Trademark Act of 1946, to the detriment and harm of Opposer.

**WHEREFORE**, this Opposer, Ellen J. Rosenthal, believes and alleges that she will be damaged by registration of Serial No. 76/600962, for the mark DINNER BY DESIGN, as aforesaid, and prays that the present opposition be sustained and judgment in the present opposition be entered in favor of Opposer refusing registration of application serial no. 76/600962.

Respectfully submitted,

ELLEN J. ROSENTHAL

By: 

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