

ESTTA Tracking number: **ESTTA502741**

Filing date: **10/30/2012**

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	Fox Restaurant Concepts LLC
Granted to Date of previous extension	10/31/2012
Address	4455 East Camelback Road, Suite B100 Phoenix, AZ 85018 UNITED STATES

Attorney information	Glenn S. Bacal Bacal Law Group, P.C. 6991 East Camelback Road, Suite D-102 Scottsdale, AZ 85251 UNITED STATES glenn.bacal@bacalgroup.com,jamie.tuccio@bacalgroup.com,david.andersen@bacalgroup.com Phone:4802456233
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**Applicant Information**

Application No	85525829	Publication date	07/03/2012
Opposition Filing Date	10/30/2012	Opposition Period Ends	10/31/2012
Applicant	Rufus, Jimmy 5501 Fort Ave Lynchburg, VA 24502 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 043. All goods and services in the class are opposed, namely: Bar services; Restaurant services
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3620050	Application Date	08/09/2007
Registration Date	05/12/2009	Foreign Priority Date	NONE
Word Mark	ZINBURGER		

Design Mark	<h1>ZINBURGER</h1>		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2007/12/17 First Use In Commerce: 2007/12/17 Full service restaurant services featuring sit down service of wine and gourmet burgers made with meat		


U.S. Registration No.	4098996	Application Date	07/05/2011
Registration Date	02/14/2012	Foreign Priority Date	NONE

Word Mark	ZINBURGER
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Design Mark	<h1>ZINBURGER</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2007/12/17 First Use In Commerce: 2007/12/17 Hamburger sandwiches		

U.S. Registration No.	3578742	Application Date	12/19/2007
Registration Date	02/24/2009	Foreign Priority Date	NONE

Word Mark	ZINBURGER WINE & BURGER BAR
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Design Mark			
Description of Mark	<p>The mark consists of the of the word "ZINBURGER" above the words "WINE &amp; BURGER BAR". The color red appears in the letters "ZIN" of "ZINBURGER". The letters "BURGER" of "ZINBURGER" and the words "WINE &amp; BURGER BAR" all appear in the color black.</p>		
Goods/Services	<p>Class 043. First use: First Use: 2007/12/17 First Use In Commerce: 2007/12/17 Wine bar services and cafe services featuring sit down service of gourmet burgers made with meat</p>		

U.S. Registration No.	3582319	Application Date	12/19/2007
Registration Date	03/03/2009	Foreign Priority Date	NONE

Word Mark	ZINBURGER WINE & BURGER BAR
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Design Mark			
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Description of Mark	<p>The mark consists of the design of a cow with its nose in a glass of wine above the word "ZINBURGER". The words "WINE &amp; BURGER BAR" appear below the word "ZINBURGER". The colors red and white appear in the body of the cow design. The color red appears in the wine in the wine glass and in the letters "ZIN" of "ZINBURGER". The outline of the cow and the wine glass are in the color black. The letters "BURGER" of "ZINBURGER" and the words "WINE &amp; BURGER BAR" all appear in the color black.</p>		
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Goods/Services	<p>Class 043. First use: First Use: 2007/12/17 First Use In Commerce: 2007/12/17 Wine bar services and cafe services featuring sit down service of gourmet burgers made with meat</p>		
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Attachments	<p>77251739#TMSN.jpeg ( 1 page )( bytes ) 85363525#TMSN.jpeg ( 1 page )( bytes ) 77356291#TMSN.jpeg ( 1 page )( bytes ) 77356293#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 7 pages )(71712 bytes )</p>		
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/Glenn S. Bacal/
Name	Glenn S. Bacal
Date	10/30/2012

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

Fox Restaurant Concepts LLC  
Opposer,

v.

Jimmy Rufus  
Applicant.

Opposition No. \_\_\_\_\_

Serial No.: 85525829

For the mark: SIN BURGER

Published for Opposition:  
July 3, 2012

**NOTICE OF OPPOSITION**

Opposer Fox Restaurant Concepts LLC (“Opposer”) will be harmed by registration of the applied for mark Sin Burger that is the subject of Application Ser. No. 85525829 (the “Application”) filed by Jimmy Rufus (“Applicant”). Therefore, Opposer hereby opposes the Application on the basis that SIN BURGER is likely to cause confusion with Opposer’s registered marks for and incorporating ZINBURGER®.

**The Parties**

1. Opposer is an Arizona limited liability company corporation with its principal place of business at 4455 E. Camelback Rd., Ste. B100, Phoenix, Arizona 85018.

2. Opposer is one of the premiere restaurateurs in the United States, currently with nearly a dozen original restaurant concepts and with restaurant locations across the U.S. under various marks.



3. On information and belief, Applicant is an individual citizen of the United States residing at 5501 Fort Ave., Lynchburg, Virginia 24502.

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**Opposer’s Registration and Use of Its Marks**

4. Opposer owns federal registrations for the following marks (collectively, the “ZINBURGER Marks”):

<b>Mark</b>	<b>Reg. No.</b>	<b>Services</b>
ZINBURGER (words only)	3,620,050	Class 43—Full service restaurant services featuring sit down service of wine and gourmet burgers made with meat
ZINBURGER (words only)	4,098,996	Class 35—Hamburger sandwiches
	3,578,742	Class 43—Wine bar services and café services featuring sit down service of gourmet burgers made with meat
	3,582,319	Class 43 for wine bar services and café services featuring sit down service of gourmet burgers made with meat

5. Opposer has used one or more of the ZINBURGER Marks in connection with Opposer’s restaurants since at least as early as December 2007.

6. Opposer and/or its licensees already are operating multiple ZINBURGER restaurants in Arizona and New Jersey and have plans to open other ZINBURGER restaurants in several other states.

7. Opposer has expended substantial time and resources in marketing its ZINBURGER restaurants and building consumer recognition in the ZINBURGER Marks.

8. Opposer has extensively marketed its ZINBURGER restaurants in various marketing channels, including on the Internet and through various social media platforms.

9. As a result of Opposer's significant efforts to develop the reputation of the ZINBURGER Marks and consumers' widespread recognition of the ZINBURGER Marks, such marks have become famous.

10. From time to time, consumers have referred to Opposer's ZINBURGER restaurants and/or its menu items as "SIN BURGER", "SIN-BURGER" and "SINBURGER."

11. Opposer has taken steps to enforce its rights against third-party users of marks that are likely to cause confusion with the ZINBURGER Marks.

**Applicant's Attempts to Use and Register SIN BURGER and Opposer's Objection**

12. On or around January 4, 2012, Applicant registered the domain name SINBURGERS.COM with the registrar GoDaddy.com.

13. Applicant is still the listed registrant of the domain name SINBURGERS.COM.

14. On January 26, 2012, Applicant filed an application (Ser. No. 85525829) (the "Application") with the USPTO to register the standard character mark SIN BURGER.

15. The Application was filed in Class 43 for bar services and restaurant services.

16. The Application was filed on an intent-to-use basis.

**Standing**

17. Opposer began using its ZINBURGER Marks in commerce prior to the date that Applicant first applied to register or attempted to make any use of SIN BURGER.

18. Applicant's use and registration of the SIN BURGER mark would be likely to cause confusion with Opposer's ZINBURGER Marks.

19. Applicant's use and registration of its SIN BURGER mark would impair the value of Opposer's rights in the ZINBURGER Marks.

20. Applicant's use of its SIN BURGER mark would trade on Opposer's good will in the ZINBURGER Marks.

21. Use and registration of SIN BURGER by Applicant for the applied for services would dilute the distinctiveness of Opposer's ZINBURGER marks.

22. Applicant's use and registration of the SIN BURGER mark would cause actual harm to Opposer and its business.

### **Likelihood of Confusion**

23. Applicant's use and registration of its SIN BURGER mark would be likely to cause confusion or mistake among, or to deceive, consumers as to the source, affiliation, association, connection, sponsorship, and/or approval of Applicant and its goods and services, on the one hand, and Opposer and its goods and services, on the other hand.

24. Applicant's SIN BURGER mark is substantially similar in appearance to Opposer's mark ZINBURGER.

25. Applicant's SIN BURGER mark is audibly virtually identical to Opposer's ZINBURGER Marks.

26. Word of mouth recommendations are important to restaurant consumers.

27. If restaurant names are audibly similar, there is an enhanced likelihood of confusion in the course of word of mouth recommendations.

28. Applicant's SIN BURGER mark conveys a commercial impression that is substantially similar to Opposer's ZINBURGER Marks.

29. From time to time, some consumers have mistakenly referred to Opposer's ZINBURGER as "Sin burger," "Sin-burger," and/or "Sinburger."



30. From time to time, some consumers, knowing that Opposer's mark is ZINBURGER, have intentionally referred to a menu item of Opposer as a "Sinburger."

31. The use by some consumers of Applicant's applied for mark SIN BURGER or a variation thereof to refer to Opposer's ZINBURGER restaurants and food products establishes that confusion would be highly likely if Applicant commences use of SIN BURGER in commerce.

32. Applicant's Application covers services—namely, bar services and restaurant services—which are identical to the services Opposer offers under the ZINBURGER Marks.

33. Applicant's registration of the domain name SINBURGERS.COM shows that Applicant intends to market his goods and services on the Internet and likely other marketing channels, which would overlap with Opposer's use of its ZINBURGER Marks.

34. On information and belief, Applicant would provide its goods and services under its SIN BURGER mark to the same kinds of consumers to whom Opposer provides its goods and services under its ZINBURGER Marks.

35. Applicant's SIN BURGER mark so resembles Opposer's ZINBURGER Marks so as to make it likely, when applied to Applicant's goods and services, to cause mistake and confusion among, and to deceive, the trade and the public.

36. The likelihood of confusion caused by use of Applicant's SIN BURGER mark would cause harm to Opposer.

### **Dilution**

37. Applicant's use and registration of SIN BURGER would create an association with Opposer's famous ZINBURGER Marks in a manner that dilutes the strength and distinctiveness of Opposer's ZINBURGER marks.

38. Opposer's ZINBURGER Marks are widely recognized among consumers, who associate the ZINBURGER Marks with the high quality of Opposer's goods and services.

39. Opposer's ZINBURGER Marks are famous.

40. The dilution caused by use of Applicant's SIN BURGER mark would cause harm to Opposer.

**Conclusion**

41. Applicant is not entitled to a registration for the mark SIN BURGER.

42. Applicant's SIN BURGER mark is likely to cause confusion and to dilute Opposer's prior registered ZINBURGER Marks.

43. Opposer will be damaged by Applicant's use and registration of SIN BURGER.

THEREFORE, Opposer respectfully requests that Application Serial No. 85525829 be refused registration.

Respectfully submitted this 30<sup>th</sup> day of October, 2012.

BACAL LAW GROUP, P.C.

By: /s/Glenn Spencer Bacal  
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Certificate of Mailing or Transmission Pursuant to 37 C.F.R. § 1.8

Application No.: 85525829  
Mark: SIN BURGER  
Opposer: Fox Restaurant Concepts LLC  
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 pursuant to 37 C.F.R. §1.8.

I hereby further certify that this Notice of Opposition is being sent via express mail addressed to correspondent of record as required by the rules:

Jimmy Rufus  
5501 Fort Ave.  
Lynchburg, Virginia 24502

\_\_\_\_\_  
/s/ Jamie Tuccio

\_\_\_\_\_  
October 30, 2012  
Date