

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CV 07

2805

-----X  
U.S.A. FAMOUS ORIGINAL RAY'S LICENSING  
CORP.

Plaintiff,

Civil Action No:

Trial by jury is demanded.

v.

**COMPLAINT**

RAY'S & SON PIZZA RESTAURANT and ISNIJE  
PRAPANIKU

Defendants..

SI  
SJ  
U.S. DISTRICT COURT E.D.N.Y.

★ JUL 11 2007 ★

SIFTON, J.  
BROOKLYN OFFICE

**GOLD, M.J.**

Plaintiff U.S.A.FAMOUS ORIGINAL RAY'S LICENSING CORP., by and through its undersigned counsel, for its Complaint against Defendants RAY'S & SON PIZZA RESTAURANT and ISNIJE PRAPANIKU, alleges upon information and belief as follows.

**PARTIES**

1. Plaintiff, U.S.A.FAMOUS ORIGINAL RAY'S LICENSING CORP. ("Original Ray's") is a New York corporation having a principal place of business located at 58-85 58<sup>th</sup> Avenue, Maspeth, New York
2. Defendant IZNIJE PRAPANIKU ("Isnije") obtained a license to operate a food service establishment at 1924 Richmond Terrace Staten Island, New York under the name RAY'S & SON PIZZA RESTAURANT (Ray's & Son").
3. Ray's & Son operates a food service establishment at 1924 Richmond Terrace, Staten

Island, New York that sells pizza and Italian food specialties.

4. Isnije operates a food service establishment at 1924 Richmond Terrace Staten Island, New York that sells pizza and Italian food specialties.
5. Isnije has control over the operation of Ray's & Son.
6. Prapaniku has control over the planning and management of Ray's & Son.

#### JURISDICTION AND VENUE

7. This is an action for trademark infringement and false designation of origin arising under the Trademark Act of 1946 as amended [the Lanham Act, 15 U.S.C. §§ 1051 et seq.] and both the statutes and common law of the State of New York.
8. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121 [Lanham Act § 39]. This Court also has jurisdiction over all state law claims herein as they are derived from a common nucleus of operative facts based upon principles of supplemental jurisdiction and as being part of the same case or controversy under 28 U.S.C. § 1367.
9. Because a substantial part of the events or omissions giving rise to the claim occurred in this district or, or a substantial part of the property that is the subject of this action is situated in this district, venue is properly placed in this district under 28 U.S.C. § 1391.

#### PLAINTIFF'S BUSINESS AND TRADEMARK RIGHTS

10. Plaintiff Original Ray's is engaged in the licensing of and operation of Italian style restaurants that sell Italian pizza and Italian food specialties .
11. Restaurants licensed and/or owned by Original Ray's and its predecessors have

continuously existed and been in operation since at least 1964.

12. Plaintiff Original Ray's exclusively owns the following incontestible, federally registered trademarks ("Marks") some of which are for restaurant services:
  - A) RAY'S PIZZA  
Reg. No. 2,196,832;
  - B) FAMOUS RAY'S PIZZA  
Reg. No. 2,196,830;
  - C) FAMOUS ORIGINAL RAY'S PIZZA and DESIGN  
Reg. No. 1,918,483;
  - D) FAMOUS ORIGINAL RAY'S PIZZA  
Reg. No. 1,918,484.
13. Over the last more than forty (40) years Original Ray's, and its predecessors, have extensively advertised and promoted its Marks and have achieved substantial commercial success in association with them which has caused customers and the public to associate quality restaurant services with Original Ray's Marks., most particularly for Italian pizza and Italian food specialties.
14. Original Ray's currently owns and operates and/or licenses approximately fifteen (15) restaurants using the Marks in the New York metropolitan area.
15. By reason of the activities described in Paragraph 10 through 14 above, Original Ray's has developed and owns valuable goodwill associated with the use of its Marks in the United States.
16. In accordance with the provisions of the Lanham Act, Original Ray's has registered

its Marks in the United States Patent and Trademark Office and is the owner of United States Registrations in the Marks for restaurant services. Copies of these Registrations are attached hereto as Exhibit A.

17. These Registrations constitute *prima facie* evidence of Plaintiff's incontestable ownership of the Marks for restaurant services and of Plaintiff Original Ray's exclusive right to use these Marks, and prohibit the use of any mark by others that might be confusingly similar thereto, in association with restaurant services.

#### DEFENDANT'S ACTIVITIES

18. Defendants do not have Plaintiff's permission to use any of Plaintiff's Marks including Plaintiff's "Ray's Pizza" or "the words Ray's & Son Pizza Restaurant. "
19. Defendants operate an Italian style pizza restaurant and identify to the public the products and services they sell as being supplied by "Ray's & Son" and/or "Ray's Pizza,
20. Defendants are using and/or contributing to the use of the words "Ray's & Son" and/or "Ray's Pizza." as marks to sell Italian pizza and Italian food specialties.
21. Defendants are using and/or contributing to the use of the words " Ray's & Son" and/or "Ray's Pizza." as marks in their signage, menus, telephone listings and/or telephone answering and the like.
22. A copy of a menu that Ray's & Son Pizza Restaurant uses is attached hereto as Exhibit B.
23. A copy of a telephone listing that Ray's & Son uses in which its presence is advertised to the public as "Ray's Pizza" is annexed as Exhibit C.

24. All of the acts of Defendants that are alleged herein are without the license, permission, or consent of Plaintiff.
25. These acts have caused and unless restrained by this Court will continue to cause serious and irreparable harm to Plaintiff and to the valuable goodwill associated with Plaintiff's Marks.
26. The marks "Ray& Son" and/or "Ray's Pizza." as used by Defendants are confusingly similar to Plaintiff's use of Plaintiff's Marks.
27. Defendants' use of the words "Ray's & Son" and/or "Ray's Pizza." for restaurant services constitutes a false designation of origin in view of Plaintiff's prior use and registration of its distinctive Marks.
28. On or about June 8, 2007, and several times thereafter, the Plaintiff gave actual written notice to Defendants that Defendants' use of the marks and names "Ray's & Son" and/or "Ray's Pizza." infringes Plaintiff's valuable trademark rights, and demanded that Defendants immediately terminate all use of these marks and names.
29. Upon information and belief Defendant Isnije, since at least 2005, has had actual knowledge of a restaurant located at 325 Victory Boulevard on Staten Island, New York that sells pizza..
30. The restaurant at 325 Victory Boulevard was operated in the year 2006 by a person with the last name of Propaniku or "Prapaniku," hereinafter "Propaniku."
31. In the year 2003 the restaurant at 325 Victory Boulevard was operated and identified to the public under the name "It's Ray's Pizza." or "Ray's Pizza."
32. Plaintiff brought a law suit naming Propaniku as a Defendant demanding that

Propaniku cease and desist from using these words as marks and any other marks or words that are confusingly similar to Plaintiff's Marks.

33. The aforesaid law suit was brought against Propaniku in the Southern District of New York with Docket Number 03-CV-4311 and was terminated in Plaintiff's favor..
34. Upon information and belief, Defendant Isnije organized and formed Defendant Ray's & Son, with knowledge of the aforesaid lawsuit.
35. Upon information and belief, Defendant Isnije formed Defendant Ray's & Son, Inc. with knowledge of Plaintiff's claims of owning a registration of "Ray's Pizza" and Plaintiff's claim to rights to the exclusive use of Plaintiff's mark "Ray's Pizza."
36. Defendant Isnije has had knowledge since at least March 31, 2005 of Plaintiff's right to exclude others from the use of "Ray's Pizza" as a mark in connection with restaurants selling Pizza and that Defendant's use of "Ray's Pizza" or "Ray's & Son Pizza" would constitute infringement..
37. Even after having actual knowledge and notice of Plaintiff's claim of infringement, Defendant wilfully continued to use "Ray's Pizza" and "Ray's & Son" as marks and refused to stop this unlawful infringement.
38. By reason of the facts alleged herein, Defendants have been and are infringing Plaintiff's valuable trademark rights in violation of 15 U.S.C. § 1114 (1) [Lanham Act § 32(1)], and 15 U.S.C. § 1125 (a) [Lanham Act § 43(a)].
39. Defendant Isnije having knowledge that Isnije's use of "Ray's & Son Pizza" and "Ray's Pizza" in conjunction with the sale of Italian Pizza and Italian food specialties without Plaintiff's permission, as described herein, constituted infringement and

having had personal control over the planning and use of said words or marks in advertising and promotion is personally liable for the infringement and damages caused.

40. Plaintiff's remedy at law is not adequate to compensate for the injury threatened by the Defendants' continuing infringement of Plaintiff's Marks.

### COUNT I

#### INFRINGEMENT OF REGISTERED MARKS UNDER THE LANHAM ACT

[Lanham Act Section 32 , et seq.(15 U.S.C. §1114, et seq.)]

41. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.
42. This Count arises under 15 U.S.C. §1114, et seq of the Trademark Act of 1946, as amended, also referred to herein as the Lanham Act.
43. Defendants' unauthorized use and promotion of the words "Ray's & Son Pizza" and "Ray's Pizza" as marks to identify products and services infringes Plaintiff's rights to its registered Marks in violation of this Section of said Lanham Act.
44. Defendants' unauthorized use and promotion of "Ray's & Son Pizza" and "Ray's Pizza" with the knowledge and intent that such imitation of Plaintiff's registered marks will cause confusion, or cause mistake and deceive, all resulting in damage to Plaintiff.

### COUNT II

#### FALSE DESIGNATION OF ORIGIN AND DILUTION UNDER THE LANHAM ACT

[Lanham Act Section 43 (15 U.S.C. § 1125)]

45. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 44 of this Complaint as if fully set forth herein.
46. Plaintiff is the owner of famous marks that have become known to the consuming public as representing uniform standards of quality and reliability and have achieved and become associated with valuable goodwill.
47. By reason of the foregoing acts of Defendants as alleged herein, Defendant has falsely described, represented and designated the origin of the services and/or goods it supplies.
48. Defendants knowingly and wilfully infringed Plaintiff's marks with the bad faith intent to profit from Plaintiff's marks.
49. These activities have already caused confusion and are likely to cause greater confusion amongst the public, and have already deceived customers and are likely to deceive more of the public concerning the source of the services and/or goods provided by Defendant, and have or may cause dilution of Plaintiff's marks.
50. By reason of the foregoing acts of Defendant, as alleged herein, Plaintiff has been damaged, and said acts, unless restrained, will continue to do greater damage to the Plaintiff in the future.

### COUNT III

[Unfair Competition Under New York Common Law]

51. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 50 of this Complaint as if fully set forth herein.



52. This Count is for Unfair Competition under New York common law.
53. By reason of the foregoing acts of Defendant as alleged herein, there exists a likelihood of injury to the reputation and valuable goodwill of Plaintiff.
54. Defendant has unlawfully used Plaintiff's trademark(s) which unlawful use has created a likelihood of confusion and mistake on the part of the public as to the source or origin of the services provided by Defendants.
55. Defendant's actions have caused, and are likely to continue to cause, Plaintiff's customers to be misled into believing that Defendant is licensed, sponsored by, associated, or connected with Plaintiff.
56. Defendant's conduct, as set forth herein, constitutes unfair competition and infringement of Plaintiff's trademark rights under New York common law =

#### COUNT IV

[Deceptive Acts and Practices in Violation of N.Y. Gen. Business Law §349 ]

57. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 56 as if fully recited and set forth herein.
58. This Count arises under Section of the General Business Law of the State of New York.
59. By reason of the foregoing acts of Defendant as alleged herein, there exists a likelihood of injury to the Plaintiff's business reputation, and a likelihood of injury to the distinctive quality of Plaintiff's trademarks within the meaning of Section 368-d of the General Business Law of the State of New York.

### COUNT V

[False Advertising in Violation of N.Y. General Business Law §350-a]

60. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 59 as if fully recited and set forth herein.
61. Defendant has advertised its business, and continues to do so, intentionally misleading the public in material respects and failing to reveal material facts creating the false impression that it is associated with or approved by Plaintiff causing injury to both the public and Plaintiff.

### COUNT VI

[Injury to Business Reputation Under N.Y. General Business Law § 360-1]

62. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 61 as if fully recited and set forth herein.
63. Defendants' acts have already caused and/or are creating a substantial likelihood of injury to the business reputation of Plaintiff and the dilution of the distinctive quality of its marks, all to the damage of Plaintiff.

### COUNT VII

[Appropriation of Name, Brand, Trademark, Reputation or Goodwill in Violation of N.J.S. 56:4]

64. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 63 as if fully recited and set forth herein.
65. Defendant's conduct as set forth herein constitutes misappropriation of Plaintiff's name, brand, trademark, reputation and goodwill in violation of N.J.S. 56:4 all to Plaintiff's damage.

WHEREFORE, Plaintiff prays for the following relief:

- (1) The Defendant(s) and all those acting in concert with Defendant each and all of them, be permanently enjoined from engaging in or performing any and all of the following:
  - (A) Using or displaying the name or marks words “Ray’s & Son Pizza” and “Ray’s Pizza” or any other names or marks confusingly similar to Plaintiff’s registered trademarks, RAY’S PIZZA, FAMOUS RAY’S PIZZA, THE ORIGINAL RAY’S PIZZA, FAMOUS ORIGINAL RAY’S PIZZA, and FAMOUS ORIGINAL RAY’S PIZZA and DESIGN, as a service mark, trade mark, trade name or part thereof, alone or in combination with other words, symbols, styles, titles or marks in connection with restaurant services, including, but not limited to use on signage, menus, and packaging;
  - (B) Performing any act or using or displaying any words, names, trade dress or marks which are likely to cause confusion, to cause mistake or to deceive, or otherwise mislead the public into believing that Plaintiff and Defendant(s) are one and the same; that Plaintiff and Defendant(s) are in some way connected; that Plaintiff is a sponsor of Defendant(s) or the restaurant of Defendant(s); and in some way licensed, affiliated, associated with or under the supervision or control of Plaintiff; or that the services of Defendant(s) originate from or are approved by Plaintiff or are likely in any way to lead the public to associate Defendant(s) with Plaintiff.

- (2) That Defendant(s) be required to deliver up for destruction all products, printed matter, stationery, business forms, signs, advertisements, menus, promotional material, boxes, labels, packages, containers and all other materials bearing the name or mark words "Ray's & Son Pizza" and "Ray's Pizza" or any confusingly similar names together with all means, including plates, molds, matrixes etc. for making or reproducing the same pursuant to 15 U.S.C. § 1118 and the common law.
- (3) That Plaintiff recover as a monetary award from Defendant(s) an amount equal to the sum of the profits Defendant(s) derived from, and the damages Plaintiff was caused by, the infringing acts of Defendant(s), plus all the costs of bringing this action, including reasonable attorney fees, as well as exemplary damages pursuant to 15 U.S.C. §1117 and all other applicable laws.
- (4) That Plaintiff have such other, further or additional relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable

DATED: New York, New York  
June 18, 2007

Respectfully submitted,

FELDMAN LAW GROUP, P.C..

By: 

Robert H. Morse (RM 1613)  
Attorneys for Plaintiff,  
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### Typed Drawing

Word Mark RAY'S PIZZA

Goods and Services IC 042. US 100. G & S: restaurant services. FIRST USE: 19640000. FIRST USE IN COMMERCE: 19640000

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 74549355

Filing Date July 14, 1994

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition July 28, 1998

Registration Number 2196832

Registration Date October 20, 1998

Owner (REGISTRANT) U.S.A. Famous Original Rays Licensing Corp. CORPORATION NEW YORK 203 West 82nd Street New York NEW YORK 10024

Attorney of Record Stephen E. Feldman

Prior Registrations 1646353;1918484

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PIZZA" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

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**THE ORIGINAL RAY'S PIZZA**

**Word Mark** THE ORIGINAL RAY'S PIZZA  
**Goods and Services** IC 043. US 100 101. G & S: restaurant services. FIRST USE: 19590624. FIRST USE IN COMMERCE: 19590624  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Design Search Code**  
**Serial Number** 78968975  
**Filing Date** September 7, 2006  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** April 24, 2007  
**Owner** (APPLICANT) U.S.A. Famous Original Ray's Licensing Corporation CORPORATION NEW YORK 58-85 58th Avenue Maspeth NEW YORK 11378  
**Attorney of Record** Stephen E. Feldman  
**Prior Registrations** 1918483;1918484;2196830;AND OTHERS  
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**Register** PRINCIPAL  
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**Mark Drawing Code** (1) TYPED DRAWING

**Design Search Code**

**Serial Number** 74541825

**Filing Date** June 24, 1994

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 28, 1998

**Registration Number** 2196830

**Registration Date** October 20, 1998

**Owner** (REGISTRANT) U.S.A. Famous Original Rays Licensing Corp. CORPORATION NEW YORK 203 West 82nd Street New York NEW YORK 10024

**Attorney of Record** Stephen E. Feldman

**Prior Registrations** 1646353;1918484.

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**Register** PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR).

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 Serial Number 73615418  
 Filing Date August 18, 1986  
 Current Filing Basis 1A  
 Original Filing Basis 1A  
 Published for Opposition September 22, 1992  
 Registration Number 1918484  
 Registration Date September 12, 1995  
 Owner (REGISTRANT) U.S.A. FAMOUS ORIGINAL RAY'S LICENSING CORPORATION CORPORATION NEW YORK 58-85 58th AVENUE MASPETH NEW YORK 11378  
 Assignment Recorded ASSIGNMENT RECORDED  
 Attorney of Record STEPHEN E. FELDMAN  
 Prior Registrations 1646353  
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**Word Mark** FAMOUS ORIGINAL RAY'S PIZZA EST. 1964  
**Goods and Services** IC 042. US 100. G & S: RESTAURANT SERVICES. FIRST USE: 19640000. FIRST USE IN COMMERCE: 19640000  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 03.07.01 - Cattle; Oxen, cows, calves, bulls; Steers  
 05.07.02 - Bundles, grain; Haystacks; Stalks (grain)  
 05.11.04 - Tomatoes  
 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon  
 24.01.03 - Shields or crests with letters, punctuation or inscriptions contained therein or superimposed thereon  
 24.07.07 - Prize ribbons; Ribbons, prize  
 24.11.02 - Crowns open at the top  
**Serial Number** 73615252  
**Filing Date** August 18, 1986  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** September 22, 1992  
**Registration Number** 1918483  
**Registration Date** September 12, 1995



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**Owner** (REGISTRANT) U.S.A. FAMOUS ORIGINAL RAY'S LICENSING CORPORATION CORPORATION NEW YORK 58-85 58TH AVENUE MASPETH NEW YORK 11378

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** STEPHEN E. FELDMAN

**Prior Registrations** 1646353

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FAMOUS", "PIZZA" and "EST. 1964" APART FROM THE MARK AS SHOWN

**Description of Mark** THE LINING IN THE DRAWING IS FOR SHADING PURPOSES ONLY AND DOES NOT REPRESENT COLOR.

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20050701.

**Renewal** 1ST RENEWAL 20050701

**Live/Dead Indicator** LIVE

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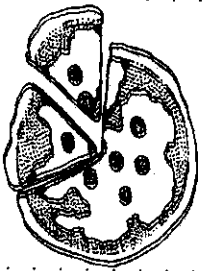
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B

# PIZZA

personal pizza Medium Large

Cheese.....	3.99	9.00	10.00
Extra Cheese.....	4.99	10.00	12.00
Pepperoni.....	4.99	10.00	12.00
Sausage.....	4.99	10.00	12.00
Ground Beef.....	4.99	10.00	12.00
Meatball.....	4.99	10.00	12.00
Anchovy.....	10.00	12.00	12.00
Peppers.....	10.00	12.00	12.00
Mushrooms.....	4.99	10.00	12.00
Onion.....	10.00	12.00	12.00
Garlic.....	10.00	12.00	12.00
Ham.....	10.00	12.00	12.00
Broccoli.....	5.49	11.00	13.50
Spinach.....	5.49	11.00	13.50
White.....	5.49	11.00	13.50
Chicken.....	5.49	11.00	13.50
Buffalo Chicken.....	5.49	11.00	13.50
Ricotta.....	11.00	12.00	12.00
Eggplant.....	11.00	13.50	13.50
Black Olives.....	11.00	13.50	13.50
Hot Peppers.....	11.00	13.50	13.50
Baby Clams.....	11.00	13.50	13.50
Ray's Special.....	15.00	18.00	18.00
Pan (16").....	12.00	13.00	13.00
Sicilian.....	18.00	15.00	15.00
Ray's Sicilian Special.....	13.00	14.00	14.00
Chicago Pizza.....	13.00	14.00	14.00
Buffalo Pizza.....	13.00	14.00	14.00
Chicken Pizza.....	13.50	14.50	14.50
Howine.....	13.50	14.50	14.50



## EXTRA TOPPINGS

Extra Cheese, Pepperoni, Sausage, Ground Beef, Meatballs, Anchovies, Peppers, Mushroom, Onion or Garlic	1.50
Additional Half Item	2.00
Additional Full Item	2.00
Ham, Broccoli, Spinach, White, Ricotta, Eggplant, Baby Clams, Hot Peppers	2.00
Additional Half Item	3.00
Additional Full Item	3.00

## BURGERS

Hamburger.....	3.50
Hamburger Platter.....	5.50
Cheeseburger.....	4.00
Cheese burger Platter.....	6.00

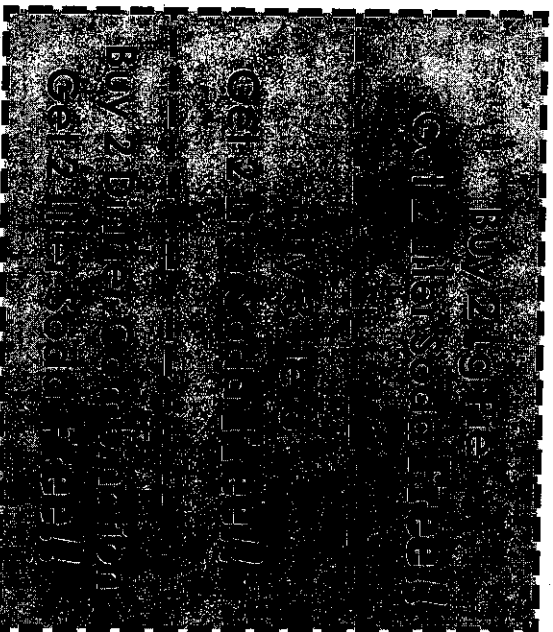
# RAY'S & Son PIZZA

Restaurant

Tel: (718) 876-6060

Fax: (718) 896-6065

**Grand Opening!!**



RAY'S



Std

Ask For Ray's

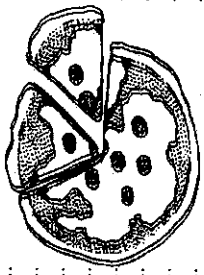
**Tel:**

**Fax:**

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Anchovy.....	10.00	10.00	12.00
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Chicken.....	5.49	11.00	13.50
Buffalo Chicken.....	5.49		
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Fax: (718) 896-6065

Grand Opening!!

BUY 2 Big Me  
Get 1 Large Soda FREE!!

BUY 2 Big Me  
Get 2 Large Soda FREE!!

BUY 2 Big Me & 1 Large Soda  
Get 2 Large Soda FREE!!

# RAY'S



St

Ask For Ray  
Tel:  
Fax:

C



Finding People, Places, and Businesses

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Find old friends and reconnect with them!

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Get a \$150,000 Loan for \$450 a month.

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Reach new customers in your area!

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### FIND A BUSINESS OR PERSON BY PHONE NUMBER

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718

Telephone Number *Required*

2735555

TIP: Cell phone numbers are not available

You searched for: 718 2735555

Results 1 - 1 of 1

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##### Rays Pizza

325 Victory Blvd  
Staten Island, NY 10301

718-273-5555

##### Maps & Directions

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