

ESTTA Tracking number: **ESTTA551297**

Filing date: **07/30/2013**

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

Proceeding	91209682
Party	Defendant Chilly Horseman, LLC DBA Chilly Fillmore's Frozen Yogurt
Correspondence Address	BRIAN J DONLINGER CHILLY HORSEMAN LLC 2023 NORTH STREET SUITE 101 NACOGDOCHES, TX 75965-4000 UNITED STATES brian@chillyfillmores.com
Submission	Motion for Summary Judgment
Filer's Name	Brian J. Donlinger
Filer's e-mail	brian@chillyfillmores.com
Signature	/Brian J. Donlinger/
Date	07/30/2013
Attachments	yosocoolagreement1.pdf(1725197 bytes) yosocoolagreement2.pdf(1445957 bytes)

AGREEMENT

This agreement made this 1st day of May, 2013, the statements, terms and conditions of which are as follows:

RECITATIONS

Whereas; YO SO COOL, LLC is the holder and owner of the Word Mark, YO SO COOL, US registration No. 3854838, and dated 9/28/2010, and

Whereas; Chilly Horseman, LLC, on or about May 7, 2012, filed a service mark application, No. 85618648, for YOU'RE COOL, and

Whereas; YO SO COOL, out of concern related to confusion of the names and similarity of the products/services, opposed such application through and by a filing; which was followed by the filing of an answer in opposition by Chilly Horseman, LLC, and

Whereas; the principals of YO SO COOL, LLC (Henry Kalisky) and of Chilly Horseman, LLC (Brian J. Donlinger) have discussed this matter by telephone, and

Whereas; there is a desire to resolve this matter, In consideration herein the undersigned agree as follows:

DELIVERABLES

After this date, YO SO COOL, LLC shall no longer seek to oppose the application of Chilly Horseman, LLC for said mark;

The Parties promise that the name YOU'RE COOL or any similar facsimile thereof shall not be used as the publicly used or advertised name for any enterprise or establishment selling yogurt or ice cream;

Further, Donlinger makes the same representation for himself and may not serve as an employee, owner, partner, shareholder, investor or sole proprietor of any such enterprise or establishment that violates the above paragraph.

MISCELLANEOUS PROVISIONS

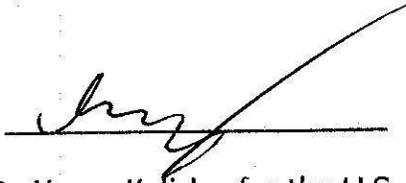
This agreement constitutes the full understanding of the parties, and supersedes any oral or written previous agreements between the parties;

This agreement may only be modified by a writing signed by both parties;

This agreement shall be enforceable against the parties and their successors, permitted assignees, heirs, and legal representatives;

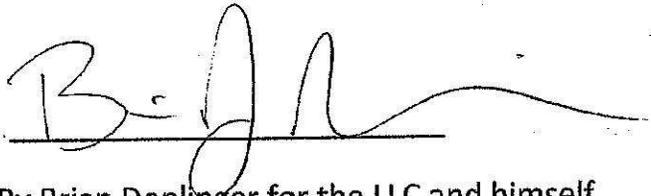
This agreement shall be governed by the laws of the State of Texas; jurisdiction over this matter shall lie exclusively in the courts sitting in Travis County, Texas;

In the event of a dispute arising out of this agreement, either party may seek equitable and/or legal remedies. The prevailing party in any action shall be entitled to recovery of attorney's fees and court costs.



By Henry Kalisky, for the LLC

YO SO COOL, LLC



By Brian Dolinger for the LLC and himself

Chilly Horseman, LLC and Brian Dolinger

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