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Filing date: **12/17/2009**

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

Proceeding	94002382
Party	Applicant YES YES, INC.
Correspondence Address	WILLIAM L. KLIMA KLIMA LAW OFFICES, P.L.L.C. 25 Winsome Lane Fredericksburg, VA 22555-2855 UNITED STATES klima@midatlanticbb.com
Submission	Response to Board Order/Inquiry
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Signature	/William L. Klima/
Date	12/17/2009
Attachments	2009.12.17.response.pdf ( 2 pages )(66301 bytes ) 2009.12.17.original.agreement.pdf ( 3 pages )(494373 bytes ) 2009.12.17.Second.Addendum.pdf ( 2 pages )(213136 bytes )

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

Concurrent Use Applicant:	<b>Yes Yes, Inc.</b>
Application Serial Number:	<b>76621541</b>
Application Filing Date:	<b>November 22, 2004</b>
Mark:	<b>YES YES</b>
Registrant	<b>24/7 Service Corporation</b>
Current Owner:	<b>American Residential Services, L.L.C.</b>
Registrant's Application Serial Number:	<b>78367862</b>
Registrant's Application Filing Date:	<b>February 13, 2004</b>
Registrant's Mark	<b>YES!</b>
Registrant's Registration Number:	<b>3573896</b>
Concurrent Use No.	<b>94002382</b>

**RESPONSE**

In response to the request by the TTAB dated November 27, 2009, Yes Yes, Inc., 2 Cedar Lane, Stafford, VA 22554, 24/7 Service Corporation, 5075 S. Cameron, Suite D, Las Vegas, NV 89118, and American Residential Services, L.L.C. (DBA ARS/Rescue Rooter Limited Liability Company), 965 Ridge Lake Blvd., Ste. 201, Memphis, TN 38120 respectfully submit a copy of the Settlement Agreement dated August 17, 2005, and a Second Addendum to Agreement attached hereto submitted on behalf of the parties.

It is noted that American Residential Services, L.L.C. is the current owner of Registration Number 3573896 (Serial No. 78367862) assigned during this proceeding from 24/7 Service Corporation to American Residential Services, L.L.C. on February 17, 2009. Further, it is noted that a copy of the Second Addendum signed on behalf of 24/7 Service Corporation will be forthcoming as represented by counsel for 24/7 Service Corporation.

Respectfully submitted,  
/William L. Klima/  
12/17/2009  
**William L. Klima, Esq.**  
**Klima Law Offices, PLLC**  
**25 Winsome Lane**  
**Fredericksburg, VA 22406**  
**UNITED STATES**  
**klima@midatlanticbb.com**  
**540-657-9344**

; and

/Ira M. Schwartz/  
12/17/2009  
**Ira M. Schwartz, Esq.**  
**DeConcini McDonald Yetwin & Lacy**  
**7310 N. 16th St., Suite330**  
**Phoenix, AZ 85020**  
**UNITED STATES**  
**trademarks@dmylphx.com, ischwartz@dmylphx.com**  
**602-282-0500**

## Settlement Agreement

Date: August 17, 2005.

Parties: 24/7 Service Corporation  
5075 S. Cameron, Suite D  
Las Vegas NV 89118  
("24/7")

Yes Yes, Inc.  
2 Cedar Lane  
Stafford VA 22554  
("YYI")

### 1) Background:

- a) 24/7 is the owner of U.S. Trademark Application Ser. No. 78/367,862 for the mark YES! for the following services: plumbing services, namely installation, maintenance, and repair and air conditioning services, namely installation, maintenance and repair (the "24/7 Services").
- b) 24/7 Service has made use of the mark in commerce and has a good faith basis to use the mark YES! in connection with the 24/7 Services, in the Western United States and in Florida and has a desire to continue to use and expand the use of the mark YES! in those geographic areas.
- c) YYI is engaged in the business of providing the following services: air conditioning services, namely installation, repair and maintenance of air conditioning apparatus (the "YYI Services").
- d) YYI uses and has used the mark YES YES in connection with the YYI Services in the eastern United States and has a desire to use and expand the use of the mark YES YES in those geographic areas.
- e) YYI has filed a Notice of Opposition before the United States Patent and Trademark Office opposing the registration of 24/7's trademark application for the mark YES!
- f) Pursuant to that Notice of Opposition, a trademark opposition proceeding is now pending between the parties before the United States Patent and Trademark Office as Opposition Number 91-163597. (the "Opposition Proceeding").
- g) 24/7 has filed an Answer disputing the allegations in the Notice of Opposition.
- h) The parties now wish to resolve their dispute on the terms set forth in this agreement.

2) **Limitations on Use of Marks:**

- a) 24/7 agrees that it shall only use the YES! mark in connection with the 24/7 Services in the United States in those states which are west of the Mississippi River and in the State of Florida (the "24/7 Service Area").
- b) YYI agrees that it shall only use the mark YES YES in connection with the YYI Services in those states east of the Mississippi River, excluding the State of Florida (the "YYI Service Area")
- c) 24/7 agrees that it will not use the mark YES! in connection with the 24/7 Services or in connection with the sale, advertising, marketing or promotion of the 24/7 Services in the YYI Service Area.
- d) YYI agrees that it will not use the mark YES YES in connection with the YYI Services, or in the sale, advertising, marketing or promotion of the YYI Services in the 24/7 Service Area.
- e) Each party further agrees that it shall not use any mark which is confusingly similar to the other party's trademark identified in this agreement in connection with their respective services.
- f) Each party further agrees that it shall use its best efforts to prevent any potential customer confusion between their respective businesses.
- g) The parties are entering into this agreement to resolve their differences in the Opposition Proceeding without the need for further proceedings and in order to avoid the costs, expense, time, effort and risk associated with further proceedings.

3) **Dismissal of Opposition Proceeding.** The parties agree that the Opposition Proceeding shall be dismissed. Each party agrees that it shall direct its counsel to prepare and file the proper documents to cause the Opposition to be dismissed. YYI agrees, that as long as 24/7 is not in breach of this agreement, it shall not further oppose or seek to cancel 24/7 Service's trademark application for the mark YES! or any resulting trademark registration, nor shall it assist any third party to do so. Each party shall bear its own costs and attorneys' fees incurred in such action. Each party agrees that it shall take appropriate steps in connection with its trademark applications to implement the terms of this agreement, including, if necessary, amending its application in accordance with the terms of this agreement.

4) **No Opposition of Application for YYI Mark:** 24/7 agrees that it shall not oppose YYI's trademark application for the mark YES YES now pending before the United States Patent and Trademark Office (U.S. Application numbers 76/621,541 (or any related applications) nor shall it file any petition to cancel any resulting registrations, nor shall it assist any third party to do so. To the extent reasonably requested to do so by YYI, 24/7 shall reasonably cooperate with YYI to assist it in obtaining registration of its mark YES YES described above, including, if necessary, cooperating in any concurrent use application process for such marks.

5) **Mutual Release:** 24/7 on the one hand, and YYI on the other hand, hereby release and discharge each other, and their respective owners, officers, directors, members, managers, employees, agents and representatives from any and all claims, actions, causes of action, demands, judgments and liabilities, each may have or may have had against the other, arising out of or related to either party's use of the marks YES! and/or YES YES in connection with the services described in this agreement prior to the date of this agreement.

6) **General Provisions:**

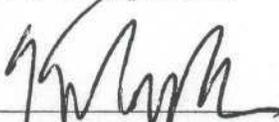
- a) This agreement shall be binding upon and shall inure to the benefit of each party's heirs, successors and assigns.
- b) This agreement may be modified only in a written document signed by both parties.
- c) This agreement represents the complete understanding of the parties with regard to this subject matter.
- d) In any legal action arising out of or related to this agreement the prevailing party in such action shall recover its court costs and reasonable attorneys' fees.

This agreement is made on the date first set forth above.

24/7 Service Corporation

By

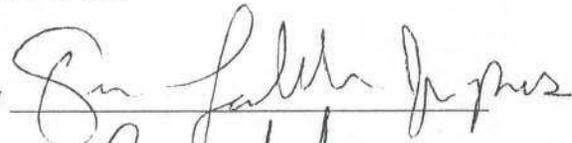
Its

  
\_\_\_\_\_  
Kenneth D. Goodrich  
President

Yes Yes Inc.

By

Its

  
\_\_\_\_\_  
President

Second Addendum (v02)  
12-14-09

**Settlement Agreement (Second Addendum)**

Date: December 14, 2009.

Parties: American Residential Services, L.L.C.  
(DBA ARS/Rescue Rooter Limited Liability Company)  
965 Ridge Lake Blvd., Ste. 201  
Memphis, TN 38120  
("ARS")

24/7 Service Corporation  
5075 S. Cameron, Suite D  
Las Vegas, NV 89118  
("24/7")

Yes Yes, Inc.  
2 Cedar Lane  
Stafford, VA 22554  
("YYI")

Further to the Settlement Agreement by and between 24/7 and YYI dated August 17, 2005, and the Settlement Agreement (Addendum) dated September 30, 2009, the following additional terms and conditions are agreed to by the parties.

ARS, 24/7, and YYI agree to be bound by the terms and conditions of the earlier Settlement Agreement dated August 17, 2005, as revised by Settlement Agreement (Addendum) dated September 30, 2009, and this Settlement Agreement (Second Addendum).

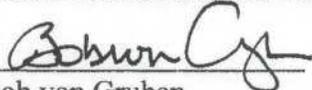
ARS, 24/7, and YYI agree and consent to amendment of Registration No. 3573896 and Application Serial No. 76621541 under this Concurrent Use Proceeding. In particular, the parties consent to the amendment of Registration No. 3573896 and Application Serial No. 76621541 to reflect the geographic limitations of each mark as set forth in the Settlement Agreement dated August 17, 2005, as amended by the Settlement

Second Addendum (v02)  
12-14-09

Agreement (Addendum) dated September 30, 2009 and as further amended by this Settlement Agreement (Second Addendum), or, if necessary to reflect any other conditions or restrictions set forth in the Settlement Agreement, as amended. The Settlement Agreement, the Settlement Agreement (Addendum) and this Settlement Agreement (Second Addendum) may be made part of the record in the Concurrent Use Proceeding.

This Agreement is made on the date first set forth above.

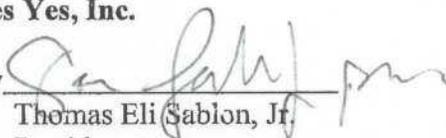
**American Residential Services, L.L.C.**

By   
Bob von Gruben  
Sr. Vice President, General Counsel

**24/7 Service Corporation**

By \_\_\_\_\_  
Kenneth D. Goodrich  
President

**Yes Yes, Inc.**

By   
Thomas Eli Sablon, Jr.  
President