

The Honorable James L. Robart

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY



08-CV-01360-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PINKBERRY, INC., a California corporation,

Plaintiff,

v.

YOBERRY, INC., a Washington corporation,
DOES 1 to 10, inclusive

Defendant.

NO. C08-1360JLR

CONSENT JUDGMENT
AND PERMANENT INJUNCTION

Pursuant to the parties' stipulation, and good cause appearing, IT IS HEREBY ORDERED that final judgment be and hereby is entered as follows:

1. Pinkberry owns all rights in and to the United States Trademark Registrations for the following marks (collectively, "PINKBERRY Marks"):

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS AND SERVICES</u>
PINKBERRY	3,302,143	October 2, 2007	Frozen yogurt; frozen yogurt based dessert, combined with fruit, nuts, cereal and shaved ice and rice cakes; and smoothies
PINKBERRY	3,460,697	July 8, 2008	Restaurant services; restaurants; take-out restaurant services, café-restaurants; fast-food restaurants

1	<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS AND SERVICES</u>
2	Stylized Leaf and Berry Swirl Design	3,461,027	July 8, 2008	Express restaurant services, food kiosk services, and carry-out restaurant services featuring frozen yogurt-based desserts, frozen dairy desserts, smoothies and shaved ice
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5	PINKBERRY & Stylized Leaf and Berry Swirl Design	3,460,702	July 8, 2008	Restaurant services; restaurants; take-out restaurant services; café-restaurants; fast-food restaurants
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8 2. The PINKBERRY Marks are coined, arbitrary and famous marks that are entitled to
9 broad protection.

10 3. Defendant has operated at least one restaurant in which it sells frozen yogurt under
11 the mark, "Yoberry," and a corresponding logo (collectively, the "YOBERRY Marks"), attached
12 hereto as Exhibit A.

13 3. On or about September 10, 2008, Pinkberry commenced an action against Defendant
14 for damages and equitable relief in the United States District Court for the Western District of
15 Washington at Seattle, entitled Pinkberry, Inc. v. Yoberry, Inc., CV 08-1360 JLR (the "Action").

16 4. Defendant has represented to Pinkberry that it will: (1) cease and refrain from using
17 the YOBERRY Marks; (2) cease and refrain from using any other name or mark that uses the word
18 "BERRY" in a non-descriptive manner; and (3) cease and refrain from using any mark or logo that
19 consists of a swirl design. To that end, the parties have entered into a Settlement Agreement
20 containing the full terms and conditions of their settlement.

21 5. Pursuant to the Settlement Agreement containing the full terms and conditions of
22 their settlement, Defendant has consented to a Permanent Injunction and Consent Judgment as
23 follows:

1 **A. Permanent Injunction**

2 Defendant, its subsidiaries, affiliates, agents, servants, employees, representatives, successors
3 and assigns, and all persons, firms or corporations in active concert or participation with Defendant,
4 shall be permanently restrained and enjoined from:

5 (1) Using any of the YOBERRY Marks; using any name or logo similar to any of the
6 PINKBERRY Marks in a manner that is likely to cause consumer confusion or mistake or to
7 deceive; and using any mark that uses the word "BERRY" in a non-descriptive manner, after
8 midnight of November 30, 2008, in connection with the sale, distribution or promotion of goods or
9 services, including such use on or with any and all signage, uniforms, cups, napkins, decor, menus,
10 banners, advertisements, Internet websites, coupons and any other promotional materials;

11 (2) Using any mark or logo that consists of a "swirl" or "swirl-like" design in connection
12 with the sale, distribution or promotion of any goods or services, including on or with Defendant's
13 signage, uniforms, cups, napkins, decor, menus, banners, advertisements, Internet websites, coupons
14 and any other promotional materials;

15 (3) Engaging in any conduct that falsely represents, or is likely to confuse, mislead or
16 deceive consumers or members of the public that Defendant's actions, sales, services, and/or
17 products are sponsored by, endorsed by, licensed by, or connected or otherwise affiliated with
18 Pinkberry or its subsidiaries; and

19 (3) Diluting, blurring or tarnishing the distinctive nature of Pinkberry's name and the
20 PINKBERRY Marks.

21 **B. Destruction of Materials**

22 Within thirty (30) days of entry of judgment for Pinkberry, Defendant, its subsidiaries,
23 affiliates, agents, servants, employees, representatives, successors and assigns, and all persons, firms
or corporations in active concert or participation with Defendant, shall destroy or deliver up for
destruction to Pinkberry:

1 (1) Any and all remaining goods, apparel, merchandise, products, labels, signs,
2 packaging wrappers, containers, advertising or promotional materials, letterhead, business cards, and
3 any other writing materials used in its business, which display, reproduce, consists, or bear the
4 YOBERRY Marks; and

5 (2) Any remaining screens, designs, blueprints, drafts, patterns, plates or negatives used
6 specifically in connection with the YOBERRY Marks.

7 **C. Violation of Injunction**

8 Violation of this Consent Judgment and Permanent Injunction shall subject Defendant to
9 contempt and any remedy available at law or equity, including, but not limited to, injunctive relief,
10 monetary damages and the award of reasonable attorneys' fees and costs in enforcing this injunction.

11 **D. Jurisdiction**

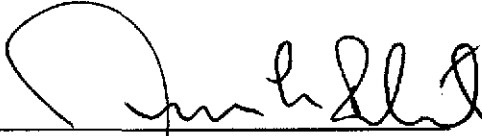
12 This Court shall retain jurisdiction over any enforcement action of this injunction.

13 **E. Judgment**

14 Judgment on all claims and causes of action shall be, and is hereby, entered in favor of
15 Plaintiff Pinkberry, Inc. accordingly and all claims and causes of action dismissed with prejudice.
16 Except as provided for in the Settlement Agreement, each side is to bear its own attorneys' fees,
17 costs and expenses.

18 **IT IS SO ORDERED.**

19 DATED: Dec. 1, 2008

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21 United States District Judge
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**STIPULATED AND
CONSENTED TO:**

SEED IP Law Group PLLC

11/26/08
Date

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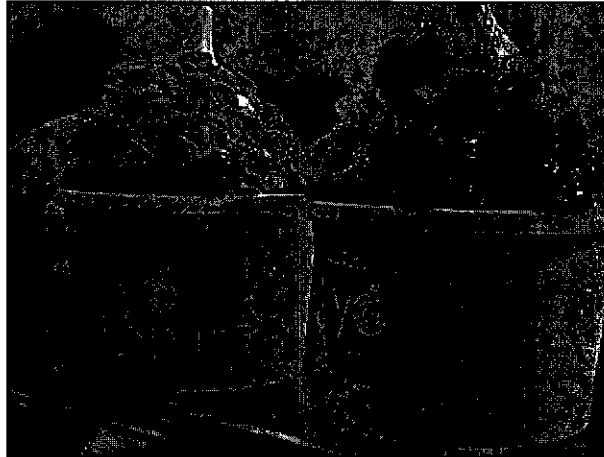
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Date

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PINKBERRY, INC.

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Exhibit A



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Exhibit B



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 26, 2008 a copy of the foregoing **[PROPOSED]**
3 **CONSENT JUDGMENT AND PERMANENT INJUNCTION** was served on attorneys
4 registered to receive service by email through the Western District of Washington Electronic Case
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