

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| COLD STONE CREAMERY, INC., et al. | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| SCOOPS GALORE, LLC., et al. | : | 05-6679 |

MEMORANDUM

Baylson, J.

February 28, 2006

The Plaintiffs in this case are Cold Stone Creamery, Inc. and Cold Stone Creamery Leasing Company, Inc. (collectively “Cold Stone”) which brought this action for injunctive relief and damages arising out of a franchise agreement to operate retail ice cream stores using Cold Stone’s trademark protected products. The Defendants are Scoops Galore, LLC and two of its shareholders, Richard and Joann Neumann.

Plaintiffs have filed a Motion for Preliminary Injunction, and the Court held an evidentiary hearing on February 16, 2006. Although there has been no appearance of counsel for Scoops Galore, LLC, Mr. Neuman has appeared pro se, and although originally indicating a desire to contest the Motion for Preliminary Injunction, he advised the Court by letter dated February 23, 2006 that he “will consent to the temporary injunction.”

Joann Neumann, who Mr. Neumann indicates is his wife, has not appeared, either pro se or by counsel, and although Mr. Neumann’s letter does not specifically state that Joann Neumann consents to the temporary injunction, Mr. Neumann had previously advised the Court that he was appearing in Court on behalf of himself and his wife. In view of the circumstances, the Court

will consider the Motion for Preliminary Injunction unopposed as to Joann Neumann as well.

As to Defendant Scoops Galore, LLC, the Court finds that, as a corporation, it must be represented by counsel. It has not answered the Complaint nor appeared in response to the Court's notice of the hearing on the Motion for Preliminary Injunction, but it has been served with process. Although Plaintiffs have not yet sought a default against Scoops Galore, LLC, the Court will also consider the Motion for Preliminary Injunction unopposed by Scoops Galore, LLC.

The basis for the preliminary injunction is that Scoops Galore, LLC has breached its obligations under a franchise agreement with the parties, yet continues to hold itself out as a franchisee and to occupy two locations, in Wayne, Pennsylvania and Ardmore, Pennsylvania, which Scoops Galore, LLC uses for the business of selling Cold Stone ice cream products. Under the terms of the agreements between the parties, Cold Stone is entitled to terminate the franchise and the subleases for the two properties and take possession of them because Scoops Galore, LLC is in default of its obligations under various agreements.

Although Mr. Neumann offered some testimony and other evidence at the hearing on December 16, 2005 in an effort to show that the defaults had been cured, the Court finds that the evidence proves Defendants are in default. In view of Mr. Neumann's advice to the Court that he will consent to the temporary injunction, the Court need not make more detailed findings. Plaintiffs' counsel has indicated an agreement to post a bond in the amount of \$50,000.

The Court concludes that the standards for a preliminary injunction have been met by the evidence which Cold Stone has put forward, that Defendants are in default and that Plaintiffs are entitled to preliminary injunctive relief.

The Court notes that Defendants Richard and Joann Neumann have filed a counterclaim against Cold Stone.

With the above summary, abbreviated in view of the consensual nature of this matter, the Court will enter the following Order.

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ORDER

AND NOW, this day of February, 2006, based on the facts and procedural history set forth in the foregoing Memorandum, and in the absence of any dispute as to the issuance of a preliminary injunction, it is hereby ORDERED as follows:

1. Scoops Galore, LLC and its agents, officers, members, representatives, and anyone acting on its behalf, including but not limited to Richard and Joann Neumann, are preliminarily enjoined, until further order of the Court, from using or displaying any of Cold Stone's trademarks, service marks, logos, or symbols in connection with the advertising, distribution or sale of products, and from operating a Cold Stone store.

2. Scoops Galore, LLC and its agents, officers, members, representatives, and anyone acting on its behalf, including but not limited to Richard and Joann Neumann, are preliminarily enjoined, until further order of the Court, from making any statement or representation suggesting that they are affiliated with Cold Stone or are licensed, authorized or approved by Cold Stone to sell, use or advertise Cold Stone products.

3. Within ten (10) days of the date of this Order, Scoops Galore, LLC and its agents, officers, members, representatives and anyone acting on its behalf, must vacate the Ardmore and Wayne, Pennsylvania Cold Stone locations in accordance with the terms of the franchise

agreements, leases and subleases, must turn over all operating manuals and other material in accordance with the terms of the franchise agreements, and must fully comply with its post-term obligations under the franchise agreements, leases and subleases.

4. Within twenty (20) days of the date of this Order, Defendants must serve a report, in writing, on Cold Stone representing that they have complied with this Order.

5. This Order shall take effect upon Cold Stone posting a bond in the amount of \$50,000.

6. Plaintiffs' Motion for Leave to File Reply in Response to Defendants' Reply to Plaintiffs' Motion for Preliminary Injunction (Doc. No. 15) is DENIED, as moot.

6. The Court sets the following scheduling order pursuant to Rule 16, F.R.Civ.P.

a. Discovery deadline: June 30, 2006.

b. Exchange of expert reports pursuant to Rule 26(a)(2).

Plaintiffs: May 12, 2006

Defendants: June 16, 2006.

c. Magistrate Judge David Strawbridge will contact counsel as to whether settlement discussions have taken place and to schedule a settlement conference.

d. Deadline for dispositive motions: July 14, 2006.

e. Pretrial Memoranda filed and served pursuant to Local Rule 16.1(c), and service of a copy of trial exhibits:

Plaintiffs: July 21, 2006

Defendants: July 28, 2006.

f. Date for trial or entry into trial pool: August 1, 2006.

The parties shall follow Judge Baylson's pretrial and trial procedures.

BY THE COURT:

s/Michael M. Baylson

Michael M. Baylson, U.S.D.J.