

For Mister Softee, it's not just ice cream

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WHEN IT comes to trademark infringement, Mister Softee is hard as nails.

The Runnemede, Camden County, ice-cream company has been dishing out soft-serve smiles for more than 50 years with its trademark jingle and fleet of blue-and-white trucks.

But Mister Softee isn't so happy about the countless impersonators who use its street cred - and often its jingle - to lure children out of their houses for a fraudulent vanilla with rainbow jimmies.

"Everybody acts like it's not that big a deal, or say, 'Oh, it's just ice cream,' " said Jim Conway Jr., the company's vice president. "My cousin and I paid millions to buy Mister Softee. It's more than just ice cream."

Last month, Mister Softee filed a trademark-infringement lawsuit in federal court against three ice-cream vendors operating out of New York and New Jersey.

The suit is one of about 15 that Mister Softee has filed in the past eight years to protect its 400 franchise dealers against copycats. It has never lost a case.

Conway knows that the whimsical Mister Softee tune has created a Pavlovian response all across the Northeast: Kids hear it and blow the hinges off their front doors.

Once kids make a mad dash across hot asphalt with their dollar bills waving in the air, they'll buy the ice cream, whether it's an official Mister Softee truck or an impostor, Conway says.

"It's just not right for [the impostors] to be fooling the public," he said.

Mister Softee's legal team deploys undercover surveillance to scour the streets all summer long. They keep their eyes and ears open for the fakes, taking pictures of frauds who use the blue and white colors and conehead lookalikes, and recording others who use their song.

"It's really everywhere you look," said Jeff Zucker, a Philadelphia-based Mister Softee attorney. "Some of them try to act innocent and say, 'Come on, you can't own the colors blue and white.' "

Mister Softee doesn't own blue or white, technically, but when it comes to painting an ice-cream truck, Zucker says upstarts might want to stick with something red or black.

Whatever you do, don't use their jingle or use a mascot with a vanilla soft-serve ice cream cone as a head. His name is Conehead, and he's the public face of Mister Softee.

"We own many of the specifics and the overall appearance of the trucks," Zucker said. "It's really the overall look and feel."

One of the latest offenders was nabbed when Conway himself heard the Mister Softee tune while traveling through Newark earlier this summer. Conway called Zucker right away.

"That obviously got the ball rolling," Conway said.

The alleged renegade, Danny's Soft Serve, not only was playing the Softee song, but also the truck had blue wheels, blue and white trim and the phrase "The Very Best" painted on its front.

Even if Danny's was serving up decent ice cream, Mister Softee owns "The Very Best," Zucker said.

"We paid the federal government money to own these," he said. "If I wanted to open a hamburger shop, I wouldn't put up the golden arches."

The two other defendants are both based out of North Jersey, and they too were whistling Softee's tune, the lawsuit alleges. None of the three owners cited in the case could be reached for comment.

Conway said that Mister Softee franchise owners are currently caught in a vicious economic circle that starts with gas prices: Each truck has a gas engine and diesel generator. Plus, the cost of dairy products is going up because corn, which feeds the cows, is in hot demand for ethanol.

"We're getting whacked on many levels," he said. "These are quintessential small-business owners putting down a life savings to get a franchise."

And so, Conway is helping out his people on the legal end by putting trademark violators on ice. He's also issuing a not-so-subtle warning to future Mister Softee wannabes.

"If you don't want to be part of our franchise, that's fine," he said. "You do your thing and we'll do ours."