

Mister Softee Means Business This Holiday

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By Barbara Boyer
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Mister Softee doesn't mind competition, but he won't tolerate impostors, especially this weekend - the "Christmas of the ice cream season," said co-owner James Conway.

This summer, the mobile ice cream vendor, based in Runnemede, has escalated its longstanding battle against those who illegally use Mister Softee's name, smiling cone-head logo, and famous jingle.

The U.S. Marshal's Office last month confiscated two ice cream trucks from owners who had been ordered by a federal court judge to stop operating as lookalikes and to reimburse Mister Softee \$20,000 in legal fees.

"Competition is good. It's the American way," said Jeffrey Zucker, Mister Softee's Philadelphia attorney. "It's when someone steals someone else's trademark that it becomes illegal and unfair."

Mister Softee originated in 1956, when the first truck rolled through West Philadelphia and gave out green ice cream on St. Patrick's Day. There are now 600 privately owned trucks in 15 states. The firm's current owners are cousins James and John Conway, sons of the founders.

Franchisees pay an initial fee and annual royalties. When an impostor appropriates the trade name, Zucker said, it hurts the honest business owner.

Faux Softees have been known to track legitimate Softees on their routes and start roaming neighborhoods 20 minutes before they arrive, Zucker said.

"The children, they don't know the difference," Zucker said. He said that the company began suing unauthorized vendors several years ago.

Franchisees notified headquarters and private investigators were dispatched.

Danny's Soft Serve in North Jersey was among those sued last summer. Lawyer Dennis Gleason said that while there may be other vendors who violated Mister Softee's protected name, Danny's was not among them.

"I thought it was a silly suit to begin with," Gleason said. "We worked to settle it."

Danny's agreed to repaint its truck so it did not have blue stripes like Mister Softee's. The company was removed from the lawsuit, which proceeded against two New York vendors.

Those vendors, Soft Ice Cream Corp. and Akop Papazian, had authentic Mister Softee trucks that once were part of the franchise.

In January, the judge ordered them to stop using Mister Softee's protected material and to pay the company \$20,000 in legal fees. By the time ice cream season started in the spring, however, the money had not been paid. Worse, Mister Softee learned that the impostors were back on the road.

Conway said he spotted the trucks parked in a junkyard as he was going over the Greenpoint Avenue Bridge in Brooklyn. The environment, he said, was unsanitary for a food truck and "it makes us look bad from head to toe."

Last month, the U.S. Marshal's Office towed the vehicles to an undisclosed location, where Mister Softee's operatives removed the logos and trade names.

Zucker said that the refrigerated trucks cost about \$100,000 new and that the owners quickly paid the legal fees to get their trucks back.

New York lawyer Kerry John Catsorhis represented the owners of the impounded trucks. He said his clients simply never repainted the vehicles after they left the franchise.

"I don't think it's the logo in and of itself that attracts people to the vehicle. It's what they're selling," Catsorhis said. "Everyone loves to eat soft ice cream."

Zucker pointed out that the Conway cousins could have asked for some of the profits collected by competitors while using Mister Softee's logo.

"Mister Softee is on the soft side," Zucker said. "They are not trying to put anyone out of business."

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