

## The name of that tune: Mister Softee takes hard line on knockoffs

**BY JEFF WHELAN**

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Jim Conway Jr. was driving through Newark this summer when he saw a familiar scene: happy kids surrounding a blue and white ice cream truck blaring that catchy -- some might say cloying -- Mister Softee jingle.

And then Conway did something you might not expect: He picked up his cell phone and called his lawyer.

"They are playing my song," Conway complained.

The attorney soon dispatched private investigators who confirmed the truck wasn't an authorized Mister Softee franchise truck at all, but a knockoff. The alleged impostor, Danny's Soft Serve, is one of three defendants in a trademark infringement lawsuit Mister Softee filed in federal court in Trenton last month.

The suit is the latest effort to crack down on what company officials describe as a pervasive threat to their business.

"It's not just ice cream. It's how we make a living," Conway said in a recent interview.

Conway's father, James Conway Sr., co-founded the company in 1956. The Mister Softee jingle was composed four years later and soon became as familiar in some area neighborhoods as its white trucks with blue trim and cartoon logo of an ice cream cone with a smiling face and bow tie. Mister Softee registered those trademarks as well as its signature products, such as the "Tu-Tone Cone" and the "Twinkletop Conehead."

Today, the Camden County company has more than 600 trucks across the country, and even two in China. Each truck is its own franchise and pays Mister Softee a royalty fee of between \$3,000 and \$3,500 per year, said Conway, who is the vice president of the Runnemede-based company.

But with success, company officials say, came imitation. Others began copying the color scheme, logos and signature song.

"It's easier to attract people to get out of their houses if they think it's Mister Softee. If you want to get into the hamburger business and thought you could get away with putting up a store with golden arches, wouldn't you do that?" Conway said.

He said imitators are not subject to Mister Softee's standards for proper refrigeration or cleaning machinery. He also said his product, which comes from one dairy in New York City and another in Pennsylvania, is of a high quality that customers expect.

About eight years ago, Mister Softee took a more aggressive approach toward impostors and enlisted private investigators who use covert surveillance in annual stings. The company has since filed a raft of lawsuits to stop more than 100 fakes from trading on the distinctive look and sound of Mister Softee's trucks, said Jeffrey Zucker, the company's attorney.

Mister Softee is entitled to profits defendants have earned through trademark infringement, said Zucker. But he said the company is willing to settle when violators agree to repaint their trucks, stop using the jingle and pay fees for attorneys and investigators.

It was video surveillance that nabbed Danny's Soft Serve outside a Newark school, according to the lawsuit. The owner of the truck has not been identified. Investigators traced the truck's license to a post office box in Westfield where Mister Softee served court papers. Zucker said they are still researching a better way to identify the truck owner.

Lafi Rahman, a legitimate Mister Softee vendor who works the same neighborhood in Newark's Ironbound section, said he hasn't seen the knock-off truck around since school let out for the summer. He said the impostor learned his route and would show up an hour earlier to head him off.

"It's not fair to do that. They've stolen my business," said Rahman, a 53-year-old Palestinian immigrant who has operated his Mister Softee truck for 14 years. "The kids don't care. They don't wait."

Sandra Sousa, a Newark resident and one of Rahman's loyal customers, said she's an ice cream lover who has taught her two sons to steer clear of imitations.

"The taste of the ice cream is not the same with the make-believe Mister Softee," she said in between licks of a double chocolate and vanilla cone. "We know the difference, trust me."