Jenny, they got your number; now 2 firms fighting over it

By Sacha Pfeiffer, Globe Staff | May 19, 2007

If you're a radio listener of a certain age, the telephone number 867-5309 is burned forever in your brain.

It was made famous -- or, for the unfortunates who actually had the number, infamous -- by Tommy Tutone, the one-hit wonder California band whose song "867-5309/Jenny" reached number four on the Billboard Hot 100 chart in 1982 and still has cult status.

Two years ago, Gem Plumbing & Heating of Lincoln, R.I., sensing a marketing opportunity, trademarked 867-5309 for its phone number, making it the centerpiece of an ad campaign. The family-owned firm also uses the number in a spoof of the song on TV and radio ads in southern New England.

Now Gem is battling in court with a national company, Clockwork Home Services, that has been using a toll-free version of the number. In an early victory for Gem, a federal judge in Boston recently ordered Florida-based Clockwork to stop using it in New England, effective this week.

The order was welcome news to Gem's president, Anthony P. Gemma.

"People can't get the number out of their heads," said
Gemma, whose parents founded the company in 1949. "So if they ever have a plumbing problem, they think of the number, and they think of our company without having to go to the phone book -- and that instant recall is a big deal for us."

Clockwork, which provides plumbing and heating services as well as consulting services to home maintenance contractors, says that Gem's trademark registration is invalid, in part because such a legal designation applies only to vanity phone numbers that describe the product being offered, such as 1-800-FLOWERS or 1-800-MATTRESS.

By itself, 867-5309 has nothing to do with plumbing, argues Clockwork's Boston lawyer, Carrie J. Fletcher. It "doesn't make any sense without the music, but Gem doesn't have any rights to the music," she added.

Still, Gem plans to keep fighting for its prized numerical possession, which it uses in the 401 and 617 area codes.

For years, the phone number belonged to Brown University, which gave it to Gem several years ago at the company's request when the school grew tired of the prank calls it attracted. Now, it is a "major differentiator for us," said Gemma, who believes the song is widely known to people ranging from high schoolers to those in their mid-50s.

"People have a lot of fun with it," he said, "so they look at our company as having a personality."

Tommy "Tutone" Heath, however, doesn't see much fun in the dispute. Reached by phone yesterday in Northern California, he said he would prefer that neither company use 867-5309. "It's ridiculous," said Heath, who is working on a new album. "If I wanted to get into it, I could probably take the number away from both of them."

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