

## Follow That Truck! Mister Softee Shows Hard Side



Robert Caplin/The New York Times

Trailing Mister Softee look-alikes on Saturday, a private investigator photographed one in Queens.

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The black sport utility vehicle blended in perfectly with the row of cars parked along a Queens street on Saturday, but behind its tinted windows, three private investigators huddled inside, staking out their suspect.

There were staccato commands, the rapid snapping of long-lens cameras and the recording of license plate numbers in extensive dossiers.

"Is that him?" one investigator murmured. "O.K., now don't lose him. All right, we got him."

It was a surveillance job that would lead to car chases through side-street labyrinths. But the chases were all at very low speeds. After all, the target this day was not some elusive spy, desperate fugitive or stealthy adulterer, but rather a lumbering white truck stopping to sell soft-serve ice cream to sugar-crazed children, all while blaring the repetitive Mister Softee jingle.

"We're lucky," whispered one investigator named Joe, who, like his colleagues, would give only his first name because in his line of work, he makes a lot of enemies. "It's a good ice cream day."

He opened a leather portfolio and began scribbling notes in a packet titled, "Mister Softee Surveillance, Queens Location."

The investigators, from North American Investigations, are used to adultery cases and have worked as bodyguards from the streets of Haiti to Manhattan's most expensive strip clubs.

On this job, however, the sleuths were on the trail of ice cream trucks, specifically Mister Softee look-alikes. The company hired them to identify independent trucks that it says resemble the well-known Mister Softee franchise vehicles so closely that they deceive

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customers.

In the past several months, the investigators say, they have gathered enough evidence against 30 operators of "rip-off trucks" in New York City and on Long Island for Mister Softee to name them as defendants in a trademark and copyright infringement lawsuit that company officials say they plan to file this week in federal court in Manhattan.

They said they were preparing similar suits in Philadelphia and possibly northern New Jersey.

Jeffrey Zucker, a lawyer for Mister Softee, said that under federal trademark law, a competitor infringes on a company's trademark when its look or design is "confusingly similar" in the eyes of the general public. Mister Softee owns the trademark on the blue and white color scheme, he said, as well as the name.

Many truck owners from other companies defend their operations, saying that white is the color of an ice cream truck, and that they are not trying to imitate Mister Softee. Some add that they were unaware that Mister Softee owned the jingle, which they call a necessary tool to lure customers.

Mister Softee, based in Runnemede, N.J., is one of the largest franchisers of soft ice cream in the country, with 600 trucks, 250 of them in the New York area.

Official Mister Softee operators must pay a franchise fee, work in designated areas and serve only Mister Softee ice cream. But Mister Softee officials say hundreds of other operators buy used trucks and slap on a blue and white paint job, create identical or similar menu boards and logos, including the famous cone-head trademark, and bootleg the famous jingle copyrighted to the Mister Softee company.

They wind up effectively posing as Mister Softee, company officials say, while avoiding the fees and standards.

In addition to depriving 10-year-olds of the true taste of Mister Softee, the practice means missed profits for the Mister Softee company and the independent contractors who drive its trucks, said James Conway Jr., 49, vice president of Mister Softee. Mr. Conway says he is determined to track down the entrepreneurs who operate look-alike trucks.

Mr. Conway said that the Mister Softee look, sound, taste and reputation had taken five decades to perfect, adding that the ice cream used on his New York-area trucks is made at a dairy in Long Island City according to a longstanding company formula. Now, he said, opportunistic ice cream vendors are unfairly cashing in on this by deceiving customers into thinking they are buying the real deal.

Mr. Conway said he had filed other lawsuits in years past to force look-alike truck operators to look less alike. Those suits were somewhat successful, he said, but added, "It's like insects: you think you kill them all, and just as many show back up again."

On Saturday, some Mister Softee look-alikes showed up on 11th Street and 34th Avenue in Long Island City, where the investigators had staked out an ice cream truck depot.

Virtually every truck was white with blue trim around its base and a red, white and blue color scheme on its menu board, all similar to the Mister Softee design. Some trucks had spelling variations on the word softee, and some remained nameless. Many bore the Mister Softee motto in red script: "The very best."

Tony, a 39-year-old former marine, shot photographs of one such truck, zeroing in on its license plate. The target had departed the depot at 11:48 a.m. and wended its way through a labyrinth of Queens streets, all recorded by Joe, a 41-year-old Long Island man who is

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the lead investigator. The driver, Steve, 50, kept a safe distance behind the truck to avoid being spotted.

At one point, the men were in danger of suffering the ultimate embarrassment for a gumshoe: being outrun by an ice cream truck. But finally they watched as the truck parked in front of Sagar Sari Palace in Jackson Heights, on a stretch of 74th Street lined with Indian jewelry, music and clothing stores. The familiar Mister Softee jingle, that carnival-like ditty, came wafting from the truck, and up came the customers.

Even as the investigators leaned over the hood of their vehicle snapping photos of the ice cream truck - with a New York Times photographer behind them shooting the entire scene - the driver did not appear to notice.

Later, he told this reporter that several customers had asked him why his truck was being photographed. When told the reason, he scoffed and said his customers cared only about ice cream, not about the brand on the truck.

But Mr. Conway said, "All we want is for them to change their trucks, so they don't look just like ours." He added, "Some private truck drivers have held tape recorders up to our trucks and stolen our jingle to play on their own trucks."

The Mister Softee case is but one example of the lengths that popular companies will go to protect their brand names and copyrighted material against competitors.

Mr. Conway said Mister Softee had already spent \$120,000 this year on legal fees, investigators and marketing researchers who have surveyed children in playgrounds to prove that the average 10-year-old does not distinguish between an official Mister Softee truck and a look-alike.

As for the investigators, they confided that although they get more harrowing jobs, the ice cream assignment has taken its toll.

"Every time the truck comes up my block playing that jingle, my two sons scream for ice cream, and I have to stop myself from taking down his license plate," Joe said.

Tony turned and added, "Yeah, I hear that jingle in my sleep."

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