

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court TRENTON on the following Patents or Trademarks:

DOCKET NO. 08-41	DATE FILED 8/12/2008	U.S. DISTRICT COURT TRENTON
PLAINTIFF MISTER SOFTEE, INC.		DEFENDANT DIONISIOS VASILADIS <i>vs</i> DANNY'S SOFT SERVE CORP.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	2,128,918	SEE ATTACHED COMPLAINT
2	667,335	
3	2,218,017	
4	2,906,357	
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

WILLIAM T. WALSH, CLERK	(BY) DEPUTY CLERK <i>[Signature]</i>	DATE 8/18/2008
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

FISHER ZUCKER LLC
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By: Paul J. Cianci
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MISTER SOFTEE, INC.
901 E. Clements Bridge Road
Runnemede, NJ 08078

Plaintiff

v.

DIONISIOS VASILIADIS t/a DANNY'S
SOFT SERVE CORP.
209 Columbus Avenue
Roselle, NJ 07203

Defendant

CIVIL ACTION NO.

COMPLAINT

THE PARTIES

1. Plaintiff Mister Softee, Inc. ("Mister Softee") is a New Jersey corporation with an address at 901 E. Clements Bridge Road, Runnemede, New Jersey, 08078.
2. Defendant Dionisios Vasiliadis, t/a Danny's Soft Serve Corp. ("Vasiliadis" or "Defendant") is an adult individual with an address as set forth in the caption.
3. Vasiliadis conducts a business selling soft serve ice cream and similar products through the use of a mobile truck (NJ Lic. PL # XN-950J).

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 in that Mister Softee's claims against Defendant are based upon trademark and trade dress infringement under the Lanham Act, 15 U.S.C. § 1051, *et seq.*

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) in that Defendant resides in this judicial district and 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in this judicial district.

THE MISTER SOFTEE SYSTEM

6. Mister Softee is a family owned business which has been in operation since 1956. Mister Softee, through its affiliate, is the franchisor of Mister Softee mobile ice cream truck businesses which sell soft-serve ice cream, hard ice cream, frozen desserts, novelties, stick items and other products.

7. Mister Softee franchisees are licensed to use Mister Softee's trade names, service marks and trademarks and to operate under the Mister Softee business system, using specially designed mobile trucks with special equipment, equipment layouts, interior and exterior accessories, menu displays, identification schemes, products, management programs, standards, specifications, proprietary marks and information. The relationship between Mister Softee and its franchisees is governed by the terms and conditions of the Mister Softee Dealer Franchise Agreement entered into between Mister Softee and each franchisee.

8. Mister Softee owns the trademarks "Mister Softee" and related logos which are registered on the Principal Register of the United States Patent and Trademark Office at Registration Nos. 2128918 and 0667335. Mister Softee also owns and has registered a sensory

mark which consists of the Mister Softee musical jingle at Registration No. 2218017. Additionally, Mister Softee owns a federal trademark registration for the overall design of the Mister Softee ice cream truck, registered on the Principal Register of the United States Patent and Trademark Office at No. 2906357.

9. Mister Softee also created and uses the marks "Tu-Tone Cone", "Twinkletop Conehead", "Cherry Top Conehead", "Chocolate Top Conehead" and "Devil's Delight Conehead". The term "Conehead" refers to Mister Softee's cartoon logo of an ice cream cone with a smiling face and bow tie. Only authorized licensees are permitted to use Mister Softee's federally registered trademarks, trade dress and proprietary business system.

10. Since 1956, Mister Softee and its franchisees have continuously used and advertised Mister Softee's trademarks, trade names, trade dress and musical jingle throughout the region. Mister Softee's trademarks, trade names, trade dress and musical jingle distinguish its business and its franchises from similar businesses and are widely known and recognized by consumers. Mister Softee first began using its marks and trade dress in 1956 and first registered the above marks in 1958. The Mister Softee musical jingle was composed in 1960.

11. Mister Softee trucks are inherently distinctive in appearance. The design and appearance of Mister Softee trucks are not arbitrary and nonfunctional. Each Mister Softee truck has, among others, the following distinctive appearance and characteristics:

a. Mister Softee trucks are white with a blue trim which borders the bottom of each truck. The wheels on Mister Softee trucks are also blue.

b. The front hood contains the statement "The Very Best" above the name "Mister Softee", both of which are in red, cursive print.

c. The sides of Mister Softee trucks are labeled with the words "Delicious Shakes" and "Sundaes" in red cursive print above which are painted pictures of a shake and a sundae, respectively.

d. Above the blue trim on the sides of the Mister Softee truck are the words "Shakes", "Sundaes", and "Cones" in blue, block, capital letters which have a green, frost-like trim.

e. The sides of Mister Softee trucks also contain two distinctive cartoon logos depicting a soft serve ice cream cone with a smiley face and bow tie.

f. The cartoon logo toward the rear of the truck has the words "Mister Softee" written above it in red cursive print.

g. Each side of a Mister Softee truck contains a sliding glass window used to service customers.

h. A menu display in each window titled "Mister Softee Treats" in red, cursive print advertises various ice cream products and their prices.

i. The display windows also contain designed advertisements printed on plastic for specialty products including, but not limited to, "Devil's Delight Conehead," "Cherry Top Conehead," "Chocolate Top Conehead," "Twinkletop Conehead," "Banana Boat," "Strawberry Sundae," "Hawaiian Pineapple Sundae," "Chocolate Nut Sundae," "Cherry Sundae," "Chocolate Sundae," "Tu-Tone Cone," and "Cart Wheel". The name "Mister Softee" is printed at the top and on the background of these designed advertisements.

j. There is also a designed advertisement in red, white and blue colors which states "Shakes" and displays a shake container with "Mister Softee" written at the top and with

the distinctive cartoon logo depicting the soft serve ice cream cone with a smiley face and bow tie.

k. Attached to the side of Mister Softee trucks is a sign which extends out for other vehicles to see which warns: "SLOW Children Crossing." The top rear of Mister Softee trucks contains the statement "Watch For Our Children SLOW!"

l. The bottom rear of Mister Softee trucks contains the distinctive cartoon logo depicting the soft serve ice cream cone with a smiley face and bow tie, and cartoon drawings of a boy and a girl with safety belts that read "Safety Club".

m. Each truck is also equipped with a music box and loudspeaker through which the Mister Softee musical jingle is played to attract customers.

12. Each of these elements make an authentic Mister Softee truck unique and distinctly identifiable to the consuming public as a Mister Softee mobile ice cream business. Photographs of an authentic Mister Softee truck are attached as Exhibit "A".

13. Mister Softee trucks solicit business by traveling through various neighborhoods and playing the Mister Softee musical jingle. Mister Softee's customer base predominately comprises young children and their parents.

THE INFRINGER

14. Vasiliadis has operated and continues to operate a mobile ice cream truck business for the sale of soft-serve ice cream, hard ice cream, frozen desserts, novelties, stick items and other products in New Jersey. Vasiliadis's truck is confusingly similar to Mister Softee's mobile trucks in that Vasiliadis's truck has the following characteristics:

- a. the truck is white with blue trim that borders the bottom of the truck;
- b. the wheels on the truck are blue;

c. each side of the truck contains a sliding glass window used to service customers;

d. the truck is equipped with a music box and loudspeaker which presumably plays the Mister Softee musical jingle to attract customers;

e. along the bottom side of the truck, above the blue trim, in big blue block letters are the words "Cones Sundaes Shakes Floats" ;

f. on the back of the truck, there is the word "SLOW" in red block letters accompanied by pictures of a boy and girl wearing their seatbelts;

g. on the front of the truck, there is wording in blue letters that read "The Very Best";

h. on the doors of the truck, there is wording that reads "Delicious Shakes" accompanied by a picture of a cup and straw; and

i. The truck also has a yellow stop sign that extends from the truck that instructs oncoming traffic to stop.

Photographs of Vasiliadis's truck and true and correct copies of a New Jersey Motor Vehicle Commission information sheet regarding registration of the truck are attached as Exhibit "B". The minutes of meeting of the Council of the Township of Westfield, New Jersey, dated June 3, 2008, which indicate that Defendant Dionisios Vasiliadis trades as Danny's Soft Serve, with an address of 209 Columbus Avenue, Roselle, New Jersey, are attached as Exhibit "C". (See page 8 of Exhibit "C" for reference to Vasiliadis).

15. Defendant has not entered into a Franchise Agreement with Mister Softee and is not otherwise authorized or licensed to use Mister Softee's trade dress or trademarks.

16. Defendant has utilized in commerce and benefited from Mister Softee's trademarks, trade dress and trade names in the operation of his mobile ice cream truck businesses.

17. Defendant's operation of the infringing truck inhibits Mister Softee's ability to sell franchises in the markets in which Defendant operates and causes direct financial injury to Mister Softee and the existing authorized Mister Softee franchisees operating in proximity of Defendant.

18. Defendant is intentionally trading on Mister Softee's trademarks, trade dress and trade names and is deliberately appropriating and diluting Mister Softee's goodwill for Defendant's own benefit.

19. Also, because Defendant is not part of Mister Softee's franchise system, Mister Softee does not have the ability to oversee quality control to ensure Defendant's conformity to system standards and state and local laws, including laws regarding health inspections, insurance and licensing.

COUNT I

Trademark and Trade Dress Infringement

20. Mister Softee incorporates the foregoing averments as though fully set forth in this paragraph.

21. Defendant has utilized and benefited from Mister Softee's trademarks, trade dress and trade names in the operation of Defendant's mobile truck business.

22. Defendant willfully intended to trade on Mister Softee's reputation and cause dilution of Mister Softee's trademarks and trade dress.

23. Defendant is guilty of trademark and trade dress infringement pursuant to the Lanham Act, 15 U.S.C. §1051, *et seq.* Defendant's use of confusingly similar trade names and trade dress constitutes a false designation of origin and is likely to cause confusion, mistake or deception as to his being affiliated, connected or associated with Mister Softee in violation of 15 U.S.C. § 1125(a). Defendant's conduct is also a violation of the common law of unfair competition and is an unfair trade practice under the common law.

24. Defendant's continued operation also causes dilution of Mister Softee's famous marks in violation of 15 U.S.C. § 1125(c).

25. Defendant's continued operation as set forth above has caused and will cause Mister Softee irreparable injury in that Mister Softee will have difficulty franchising Defendant's trading area; business will be diverted from Mister Softee and its authorized franchisees; the goodwill related to Mister Softee's trademarks, trade dress, trade names and business system will be diluted and taken from Mister Softee's control; and Mister Softee will lose profits and revenues which, because of Defendant's conduct, cannot be readily calculated.

26. Mister Softee has no adequate remedy at law because it cannot be adequately compensated for the deprivation and dilution of the consumer recognition and goodwill built up under the Mister Softee trademarks, trade names and business system as a result of Defendant's conduct.

27. Mister Softee's immediate and irreparable harm will continue unless Defendant is enjoined from continuing to use Mister Softee's trademarks, trade dress, and trade names.

WHEREFORE, Plaintiff Mister Softee, Inc. demands judgment in its favor and against Defendant as follows:

i. A preliminary and permanent injunction enjoining Defendant and Defendant's agents, employees, shareholders, owners and any person acting in concert with them from using Mister Softee's proprietary trademarks and trade names or any colorable imitation in any manner whatsoever;

ii. An accounting of and a judgment for the profits to which Mister Softee is entitled;

iii. Treble damages pursuant to 15 U.S.C. § 1117;

iv. An order requiring Defendant to deliver up and destroy all labels, signs, prints, packages, wrappers, receptacles, and advertisements in his possession bearing the word and/or symbol that is the subject of the trademark or trade name violation or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same pursuant to 15 U.S.C. § 1118;

v. Punitive damages;

vi. Attorneys' fees;

vii. Costs of this action; and

viii. Such further relief as this Court deems just and proper.

FISHER ZUCKER LLC

Date: July 31, 2008

BY: /s/ Jeffrey Zucker

Jeffrey Zucker
Paul J. Cianci
Attorneys for Plaintiff Mister Softee, Inc.

CERTIFICATION PURSUANT TO L.CIV.R. 11.2

The matter in controversy is not the subject matter of any other action pending in any other court, or of any pending arbitration or administrative proceeding.

FISHER ZUCKER LLC

Date: July 31, 2008

BY: /s/ Jeffrey Zucker
Jeffrey Zucker
Paul J. Cianci
Attorneys for Plaintiff Mister Softee, Inc.