

"IN THE 1950S, TWO BROTHERS FROM PHILADELPHIA, WILLIAM AND JAMES CONWAY, WERE BUSY DREAMING UP ... A MOBILE ICE CREAM UNIT. AT THE TIME, SOFT-SERVE MACHINES HAD BECOME POPULAR IN SODA SHOPS, AND THE CONWAYS SAW NO REASON THEY COULDN'T GO MOBILE. SO THEY BOLTED A SOFT-SERVE MACHINE TO THE FLOOR OF A TRUCK. ON ST. PATRICK'S DAY IN 1956, THE BROTHERS TOOK THEIR MISTER SOFTEE TRUCK ON ITS MAIDEN VOYAGE, HANDING OUT GREEN ICE CREAM TO EXCITED KIDS ON WEST PHILADELPHIA STREETS. BY 1958, THE COMPANY HAD BECOME SO SUCCESSFUL THAT THE BROTHERS BEGAN TO FRANCHISE. BEFORE LONG, THE TRADEMARK SAILBOAT-BLUE AND WHITE ICE CREAM TRUCKS WERE BEING SOLD TO VENDORS ALL OVER THE NORTHEAST AND MID-ATLANTIC. THE CONWAYS EVEN ONE-UPPED THE GOOD HUMOR BELL, HIRING GREY ADVERTISING TO PEN A JINGLE FOR THE COMPANY. BY 1960, THE 'MISTER SOFTEE (JINGLE AND CHIMES)' WAS PLAYING FROM TRUCKS ON A DRUM-AND-SPINDLE CONTRAPTION, LIKE A ROAMING MUSIC BOX. A MODERN DAY 'HOKEY POKEY,' MISTER SOFTEE'S NEVER-ENDING DITTY BECAME THE SIREN CALL TO A NEW GENERATION." ¹

THE ORIGINAL MISTER SOFTEE ICE CREAM

"AS ICE CREAM TRUCKS START TO HIT THE STREETS AGAIN, A LEGAL BATTLE IS BREWING BETWEEN MISTER SOFTEE AND A NEW COMPETITOR NAMED MASTER SOFTEE. THE NEW FLEET OF SOFT SERVE TRUCKS IS THE WORK OF DIMITRIOS TSIRKOS, AN ERRANT FORMER MISTER SOFTEE VENDOR, AND IS NOT EASY TO DISTINGUISH FROM THE REAL DEAL. MISTER SOFTEE OWNER JIM CONWAY IS CURRENTLY SUING TSIRKOS FOR TRADEMARK INFRINGEMENT, AND TELLS THE DAILY NEWS THAT MASTER SOFTEE IS ONLY THE MOST RECENT IN A LONG LINE OF COPYCATS DURING HIS COMPANY'S 58 YEARS IN BUSINESS. MASTER SOFTEE VENDORS ARE PREPARING TO FIGHT, SAYING THEY PREFER TO WORK FOR THE KNOCKOFF BECAUSE IT DOESN'T CHARGE THEM THE YEARLY \$3,400 ROYALTY FEE THAT THE ORIGINAL DOES." ²

"JUST ONE SHORT YEAR LATER, MISTER SOFTEE SUED THE UPSTART — OF COURSE — FOR TRADEMARK INFRINGEMENT, SINCE MASTER SOFTEE WAS USING THE SAME BLUE AND WHITE COLOR SCHEME, CURSIVE LETTERING, BOW TIE-CLAD ICE CREAM CONE MASCOT, AND DISTINCTIVE JINGLE. A JUDGE QUICKLY SIDED WITH MISTER SOFTEE, BANNING MASTER SOFTEE FROM THE STREETS OF NEW YORK." ⁴

"THE JUNE 5 RULING WAS A SCORE FOR MISTER SOFTEE. THE SUMMERTIME TREAT POWERHOUSE HAD SUED ITS FORMER FRANCHISEE, DIMITRIOS TSIRKOS, WHO RUNS HIS BUGGIES IN QUEENS, MANHATTAN AND THE BRONX OUT OF A DEPOT IN LONG ISLAND CITY. "THESE GUYS ARE BAD GUYS ON ALL LEVELS," SAID CONWAY, WHOSE FAMILY FOUNDED THE NEW JERSEY-BASED CHAIN IN 1956. 'WE DON'T HAVE AN ALTERNATIVE BUT TO WORK THROUGH THE COURT SYSTEM.' CONWAY AND HIS LAWYER, JEFF ZUCKER, HAVE SPENT MORE THAN A DECADE SUING KNOCKOFF MISTER SOFTEE ICE CREAM TRUCKS. THEY SAY THEY HAVE NEVER LOST A CASE." ³

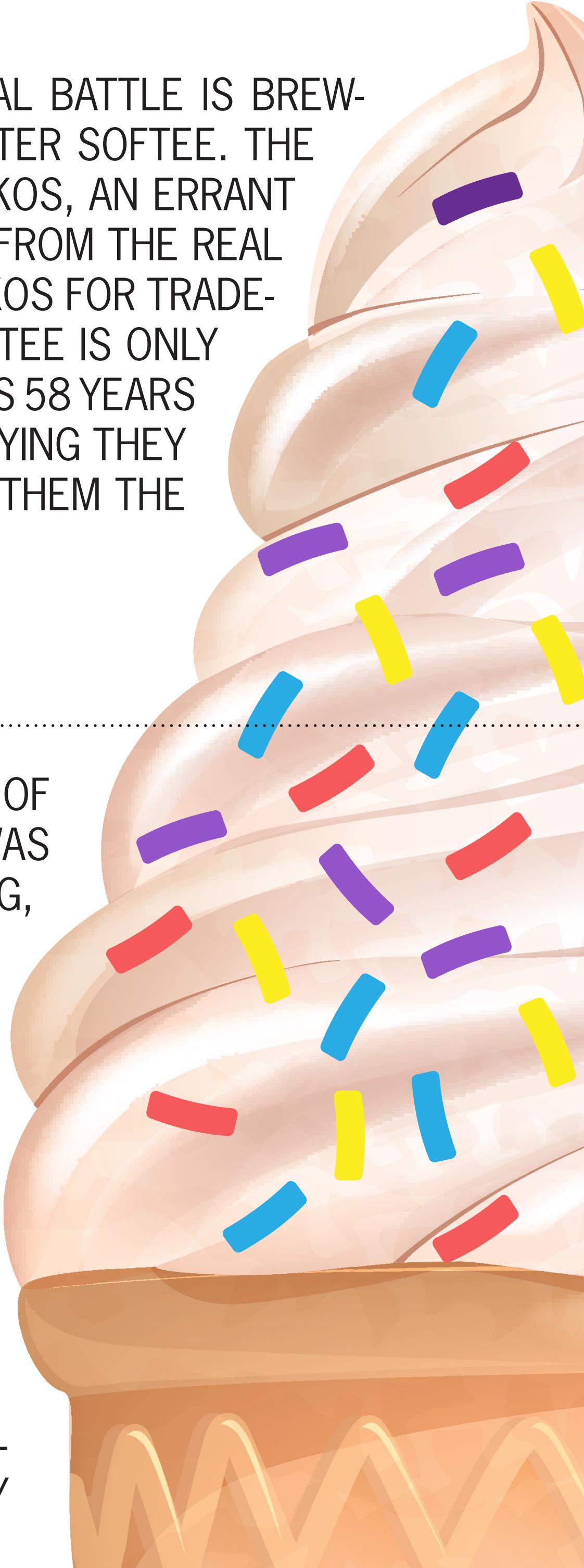
"THIS WEEK, MISTER SOFTEE IS SUING THE OWNER OF THE NEW YORK ICE CREAM TRUCK FOR USING ITS TRADEMARKED JINGLE, 'THE MISTER SOFTEE SONIC MARK' REPORTS GOTHAMIST. ACCORDING TO THE SUIT, THE JINGLE IS 'FAMOUS' AND IF IT'S USED BY UNAUTHORIZED TRUCKS LIKE THIS ONE 'THE GOODWILL ASSOCIATED WITH MISTER SOFTEE'S SONIC MARK WILL BE DILUTED AND TAKEN FROM MISTER SOFTEE'S CONTROL.' ⁴

"WHILE MISTER SOFTEE HAS TAKEN ON KNOCKOFFS BEFORE, THIS IS THE FIRST TIME THE CUSTARD KING HAS GONE AFTER A COMPETITOR SOLELY FOR SWIPE ITS SIGNATURE SONG, SAID ITS LAWYER, JEFFREY ZUCKER." ⁵

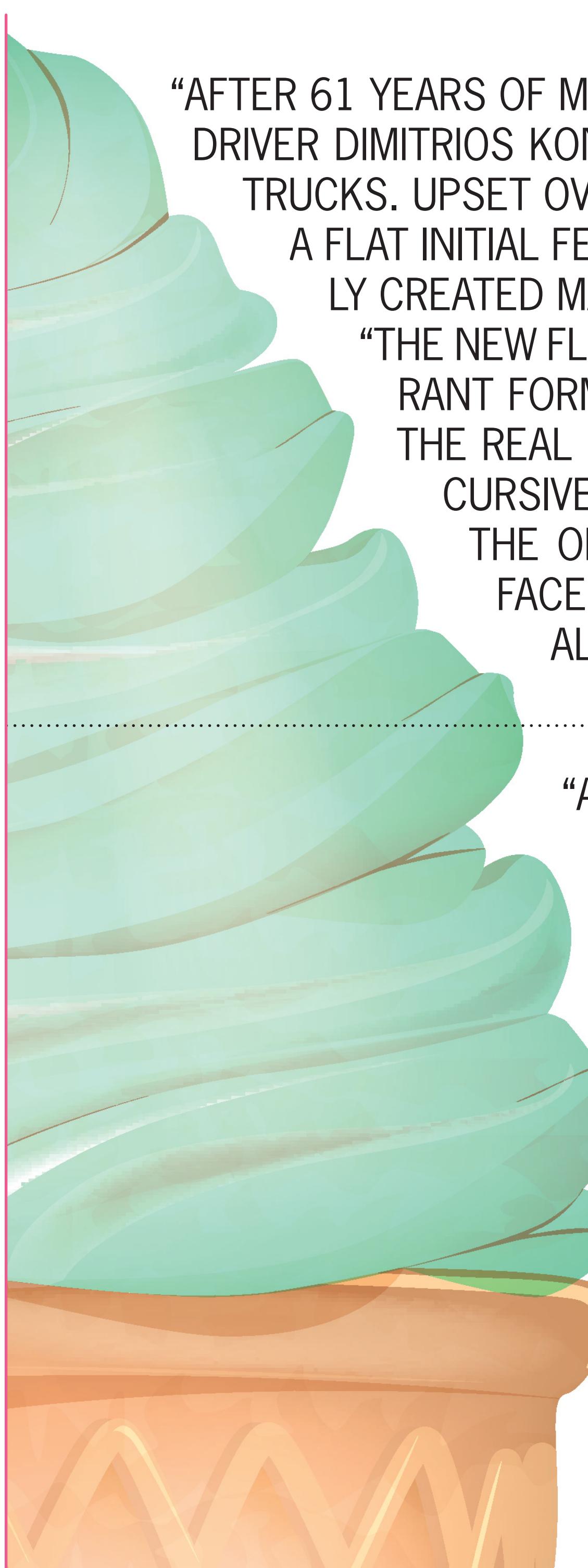
"WITH THE LAWSUIT STILL UNDERWAY, REPORTS STARTED TO LEAK OF THE INTIMIDATION TACTICS USED BY NEW YORK ICE CREAM AGAINST MISTER SOFTEE. A NEW YORK TIMES STORY TOLD OF PHYSICAL FIGHTS AND BULLYING, WITH ONE MISTER SOFTEE OPERATOR SAYING, 'IF ONE OF MY DRIVERS GOES TO MIDTOWN, THEY'LL [NEW YORK ICE CREAM] BRING THEIR TRUCKS IN AND SURROUND THEM — A BUNCH OF GUYS . . . THEY'LL START BANGING ON THE WINDOWS.' ACCORDING TO ONE DRIVER, MISTER SOFTEE TRUCKS STOPPED VENTURING TO MIDTOWN IN FEAR OF NYIC AND STARTED CARRYING BASEBALL BATS JUST IN CASE. ALL THE PRESS EVEN CAUSED STEPHEN COLBERT TO WEIGH IN ON THE DRAMA." ⁴

"MISTER SOFTEE HAS HIRED A TEAM OF PRIVATE EYES IN ITS ONGOING BATTLE WITH UPSTART COMPETITOR NEW YORK ICE CREAM — WITH ONE INVESTIGATOR LIKENING THE COMPANIES' RIVALRY TO A 'MAFIA TURF WAR.' GIGLIO, A FORMER MARINE WHO WORKED WITH THE SECRET SERVICE, AND HIS CREW KEEP TABS ON NEW YORK ICE CREAM TRUCKS TO MAKE SURE THEY ARE NOT MASQUERADE AS MISTER SOFTEE BY PLAYING THE COMPANY'S UNMISTAKABLE, SOUND-OF-SUMMER JINGLE OR STEALING ITS VANILLA-SOFT-SERVE-SWIRL HEADED MASCOT, BOTH OF WHICH THEY HAVE DONE IN THE PAST, ACCORDING TO COURT RECORDS." ⁶

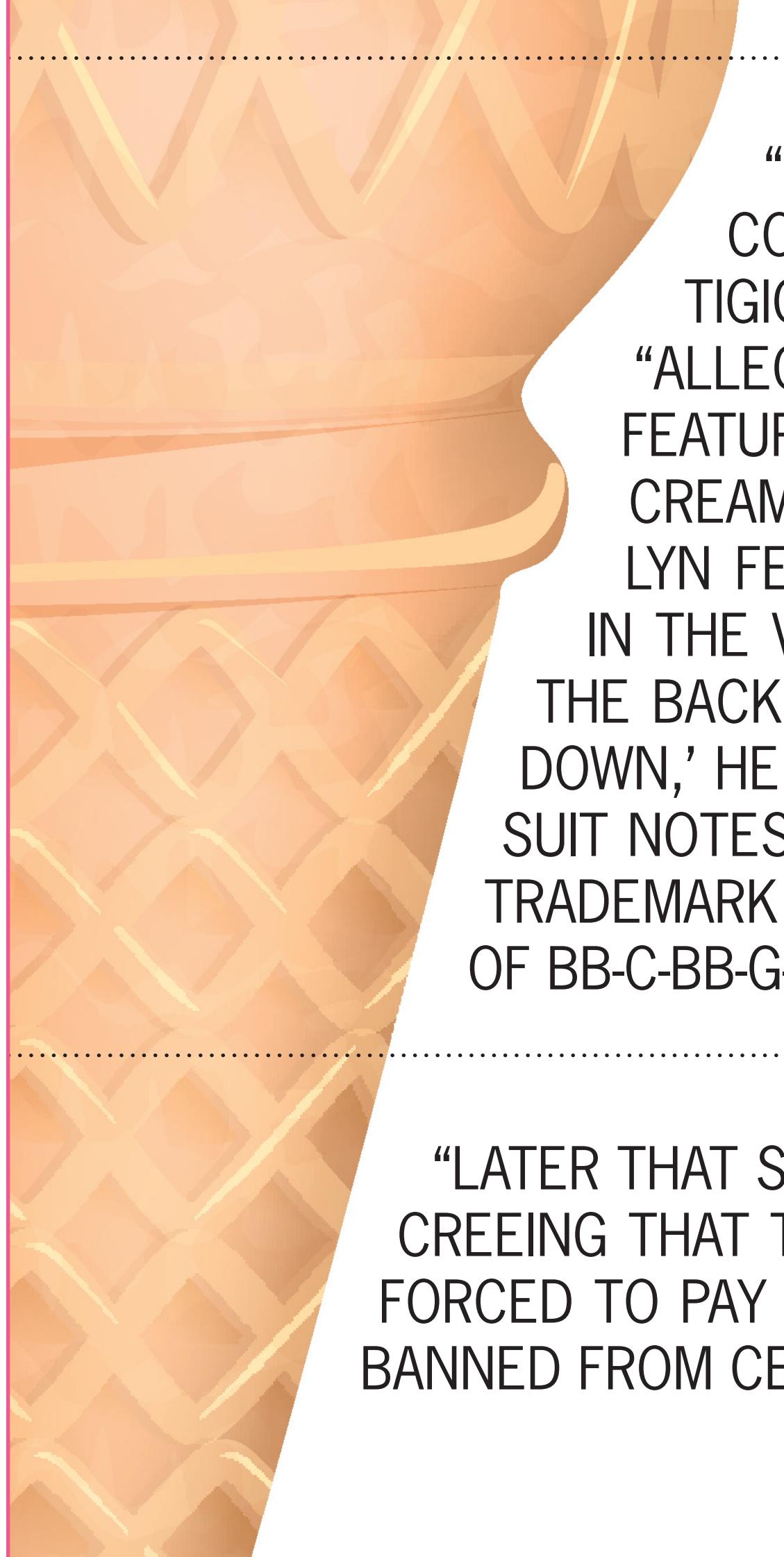
2013



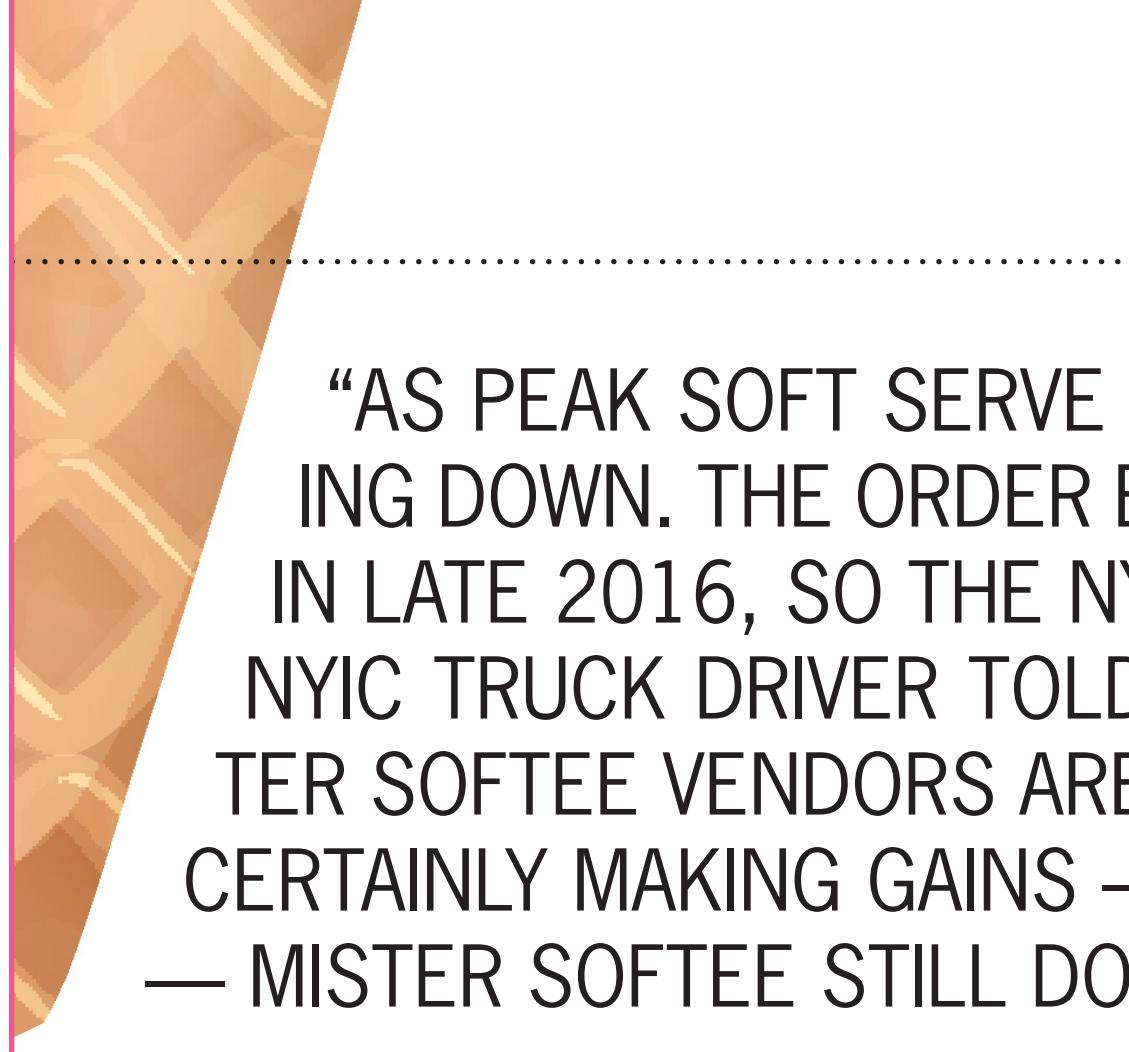
2014



2015



2016



2017



NEW YORK CITY ICE CREAM COMPANY

"AFTER 61 YEARS OF MISTER SOFTEE AS AMERICA'S REIGNING SOFT SERVE PROVIDER, FORMER DRIVER DIMITRIOS KONSTANTAKAKOS FORMED RIVAL MASTER SOFTEE WITH HIS FLEET OF 12 TRUCKS. UPSET OVER HIGH FRANCHISING FEES — A 2011 FRANCHISE AGREEMENT SHOWS A FLAT INITIAL FEE ON TOP OF A CUT FROM EVERY CONE SOLD — TSIRKOS INTENTIONALLY CREATED MASTER SOFTEE TO COMPETE." ¹

"THE NEW FLEET OF SOFT SERVE TRUCKS IS THE WORK OF DIMITRIOS TSIRKOS, AN ERRANT FORMER MISTER SOFTEE VENDOR, AND IS NOT EASY TO DISTINGUISH FROM THE REAL DEAL. THE TRUCKS HAVE THE SAME BLUE AND WHITE COLOR SCHEME, CURSIVE LETTERING, AND THE SAME BOW TIE-CLAD ICE CREAM CONE MASCOT. THE ONLY DIFFERENCE IS THAT MASTER SOFTEE HAS A SUGAR CONE FOR A FACE, WHILE MISTER SOFTEE HAS A CAKE CONE. THE ICE CREAM ITSELF IS ALSO ALLEGEDLY DIFFERENT." ²

"A FEDERAL COURT JUDGE BANNED MASTER SOFTEE FROM OPERATING ITS ROGUE FLEET OF ICE CREAM TRUCKS THAT BLATANTLY RIP OFF THE MISTER SOFTEE BRAND — BUT SO FAR, THE MASTER'S RAPSCALLION CAST OF DESSERT VENDORS REFUSES TO BUDGE. 'IT IS OBVIOUS THAT (TSIRKOS) ADOPTED HIS TRUCK DESIGNS WITH THE OBJECT OF ACHIEVING AN APPEARANCE SIMILAR TO PLAINTIFF'S MISTER SOFTEE TRUCKS,' JUDGE LAURA TAYLOR SWAIN WROTE IN COURT PAPERS. 'THE TRUCKS ARE DESIGNED TO APPEAL TO CHILDREN, WHO ARE RELATIVELY UNSOPHISTICATED CONSUMERS.' SWAIN BARRED TSIRKOS FROM USING THE NAME MASTER SOFTEE OR ANY OTHER CONFUSING NAMES OR MARKS, AND PROHIBITED TSIRKOS FROM INVOLVEMENT IN ANY FACET OF THE RETAIL ICE CREAM INDUSTRY WITHIN 5 MILES OF HIS FORMER MISTER SOFTEE FRANCHISE TERRITORIES UNTIL FEBRUARY 2016." ³

"BUT MASTER SOFTEE WASN'T DOWN AND OUT FOR LONG. THE CREATIVE COMPANY RETURNED AS NEW YORK ICE CREAM, AGAIN PROMPTING THE Litigious MISTER SOFTEE TO SUE FOR USE OF ITS DISTINCTIVE JINGLE." ⁴

"ALLEGED TUNE-TAKER DIMITRIOS KONSTANTAKAKOS' TRUCK WAS RECENTLY FEATURED IN A STORY AND VIDEO HEADLINED "A DAY IN THE LIFE OF A NYC ICE CREAM OPERATOR" ON THE WEBSITE GOTHAMIST, ACCORDING TO THE BROOKLYN FEDERAL COURT LAWSUIT. ONE OF HIS DRIVERS, IDENTIFIED AS 'VICTOR' IN THE VIDEO, TALKS ABOUT THE ICONIC TUNE WHILE IT IS HEARD PLAYING IN THE BACKGROUND. 'I HEAR THEM BELLS IN MY SLEEP, I HEAR THEM WHEN I LAY DOWN,' HE SAYS... KONSTANTAKAKOS IS A FORMER MISTER SOFTEE VENDOR, THE SUIT NOTES, SO HE SHOULD HAVE KNOWN THAT THE ICONIC COMPANY OWNS THE TRADEMARK TO THE JINGLE — 16 NOTES 'IN THE KEY OF E FLAT, IN THE SEQUENCE OF BB-C-BB-G-F-EB-F-EB-C-EB-D-EB-F-BB-G-EB THEN REPEATED." ⁵

"LATER THAT SUMMER, A JUDGE RULED IN FAVOR OF MISTER SOFTEE ONCE AGAIN, DECREING THAT THE JINGLE WAS THEIRS ALONE TO USE. KONSTANTAKAKOS WAS ALSO FORCED TO PAY MISTER SOFTEE'S MORE THAN \$10,000 IN LEGAL FEES AND NYIC WAS BANNED FROM CERTAIN AREAS OF MIDTOWN." ⁴

"AS PEAK SOFT SERVE SEASON HEADS INTO FULL SWING, NEW YORK ICE CREAM IS NOT BACKING DOWN. THE ORDER BANNING NYIC FROM CERTAIN AREAS OF MIDTOWN REPORTEDLY EXPIRED IN LATE 2016, SO THE NYIC TRUCKS ARE COMING OUT IN FULL FORCE. 'WE OWN MIDTOWN,' ONE NYIC TRUCK DRIVER TOLD THE POST, WHILE A MISTER SOFTEE PRIVATE INVESTIGATOR SAID MISTER SOFTEE VENDORS ARE STILL 'AFRAID' TO HEAD TO THE BUSY NEIGHBORHOOD. WHILE [NYIC] IS CERTAINLY MAKING GAINS — WITH 46 STREET VENDOR LICENSES THIS YEAR, UP FROM 16 IN 2014 — MISTER SOFTEE STILL DOMINATES THE FIELD, WITH 126 OF 228 PERMITS ISSUED IN 2017." ⁴

Ice Cream Turf Wars

SOURCES: (1) A Brief History of the Ice Cream Truck; Gillian Reagan; Aug 1, 2016; <http://mentalfloss.com/article/52281/brief-history-ice-cream-truck>. (2) Mister Softee Wages War on Master Softee Copycat; Marguerite Preston, May 1st 2014; <https://ny.eater.com/2014/5/1/6232499/mister-softee-wages-war-on-master-softee-copycat>. (3) Can You Spot What's Wrong With This Ice Cream Truck; Joe Coscarelli; June 10 2014; <http://nymag.com/daily/intelligencer/2014/06/mister-softee-verys-mad-at-master-softee-rip-off.html>. (4) As Summer Begins, NYC's Soft-Serve Turf War Reignites; Stephanie Tuder; May 30th 2017; <https://ny.eater.com/2017/5/30/15713060/mister-softee-new-york-ice-cream-turf-war>. (5) Mister Softee sues rival ice cream truck over jingle use; John Marzulli; August 18, 2015; <http://www.nydailynews.com/new-york/mister-softee-sues-rival-ice-cream-truck-jingle-article-1.2328601> (6) Mister Softee has team spying on rival ice cream truck; Max Jaeger and Kevin Sheehan; May 29th, 2017; <https://nypost.com/2017/05/29/mister-softee-has-team-spying-on-rival-ice-cream-truck/>