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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MISTER SOFTEE, INC., et al.,

Plaintiffs,

No 14 Civ. 1975 (LTS) (RLE)

v.

DIMITRIOS TSIRKOS,

Defendant.  
-----X

**THIS MATTER** having been brought before the Court on the motion by Plaintiffs Mister Softee, Inc., SPABO Ice Cream Corp. and Mister Softee of Queens, Inc. (collectively, "Mister Softee") for the entry of an order of ~~criminal~~ contempt against the defendant Dimitrios Tsirkos for his violation of this Court's orders dated June 5, 2014, and July 2, 2014, and the Court having considered the papers submitted and the arguments of counsel, if any,

IT IS this 1 day of August, 2014 **ORDERED** as follows:

1. Mister Softee's contempt motion is **GRANTED**; to the following extent: *ju*
2. The Defendant Dimitrios Tsirkos is in <sup>civil</sup> contempt of court as a result of his failure to *ju* comply with this Court's Orders dated June 5, 2014 (the "Preliminary Injunction Order") (Docket No. 52) and July 2, 2014 (the "Contempt Order") (Docket No. 77) (collectively, the "Orders");
3. The Defendant shall immediately comply with the terms of this Court's Orders;
4. A writ of body attachment shall be issued directing the United States Marshal's Office to arrest Dimitrios Tsirkos and incarcerate him <sup>on August 12, 2014</sup> ~~until he agrees to comply with the Court's~~ *unless Tsirkos files with the Court by* *ju* ~~Contempt Order by~~: (a) producing <sup>August 11, 2014 a sworn affidavit</sup> all of his records of all retail ice cream sales by him, his controlled entities, employees, agents and persons working in concert with him, in any and all geographic areas covered by the Preliminary Injunction Order, and all such sales from any truck

*and supporting documentation*  
*consisting of* identifying *ju*

since June 6, 2014, and to the extent he claims to have sold any such truck, the date and

decorated with the "Master Softee" or similar trade dress incorporating elements of the Mister Softee trade dress in any geographic area, since June 6, 2014; and (b) identifying by license plate and vehicle identification number all trucks he owns, directly or indirectly, on his own or through or with another person or through any corporation, limited liability company, or other entity.

documentation of such sale and the identity of the buyer (and, if the buyer is an entity, the person acting for the buyer)

or has owned

5. The United States Marshal Service is authorized to take all necessary steps using whatever force necessary, including breaking open, entering and searching for the following ice cream trucks or any other ice cream trucks identified by their vehicle identification number or property of Dimitrios Tsirkos, wherever they may be located, to secure and under the supervision of the U.S. Marshal Service have the property removed from its location, including, without limitation, trucks with Vehicle Identification Numbers: (1) 1GDJP32K9L3500625; (2) 5B4HP42W423340962; (3) 1GCJP32K2N3314268; (4) 1GCJP32J5H3313370; (5) 5B4KP32R5Y3322666; (6) 1GCJP32J4J3318761; (7) 1GDKP32YXV3502816; (8) 1GBHP32M5F3306607; (9) 1FCJE39H0XHB10289; (10) 1GDHP32Z5L3500472; (11) 1GCJP32J1H3325368; and (12) 1GCJP32J3J3318735. Mister Softee is responsible for transporting the property to the appropriate storage facility;

6. Plaintiff Mister Softee, Inc., on whose behalf the Court issues this Order, will act as substitute custodian of any and all items seized pursuant to the Order and shall hold harmless the U.S. Marshal Service and its employees from any and all claims, asserted in any Court or tribunal, arising from any acts, incidents, or occurrences in connection with the seizure and possession of the defendant's property, including any third party claims. Mister Softee shall store the trucks for two years from the date the U.S. Marshal Service seizes the trucks;

7. Anyone interfering with the execution of the Order is subject to arrest by the U.S. Marshal Service;

If an arrest warrant issues, it will direct the Marshal's service to hold Mr Tsirkos until he files the affidavit and documentation described in this paragraph, unless the Court orders otherwise.

8. Mister Softee, Inc., on whose behalf the Court issues this Order, will account completely for all property seized and/or found in these vehicles and shall compile a written inventory of all such property and shall provide a copy to the U.S. Marshal, who shall include such a copy with his or her return to the Court;

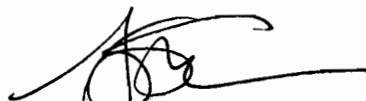
9. Mister Softee, Inc., on whose behalf the Court issues this Order, may remove and/or paint over any of Mister Softee's proprietary trademarks, trade names and trade dress or any colorable imitation thereof on the property;

10. Pursuant to 28 U.S.C. §566(c), the United States Marshal Service is authorized to inventory all of Dimitrios Tsirkos' property and equipment seized as set forth in paragraph 5 above;

11. Mister Softee, Inc. shall act as the custodian of the property seized pursuant to this Order until this Court enters an order determining the disposition of the property; and

12. Dimitrios Tsirkos shall reimburse Mister Softee for the attorney's fees, investigator expenses and other expenses it incurred in connection with the preparation and prosecution of this Motion. Mister Softee shall, within seven (7) days after it receives all bills from third party vendors, submit to the Court and serve on the Defendant an itemization of all costs ~~(including costs to tow, transport, store and, if necessary, paint the trucks subject to this Order)~~ and attorneys' fees incurred in bringing this Motion, and Defendant shall file any objections to the itemization of costs and attorney's fees within seven (7) days of Mister Softee's submission. The Court shall then resolve any dispute regarding the attorney's fees and enter an appropriate order.

SO ORDERED.



LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE