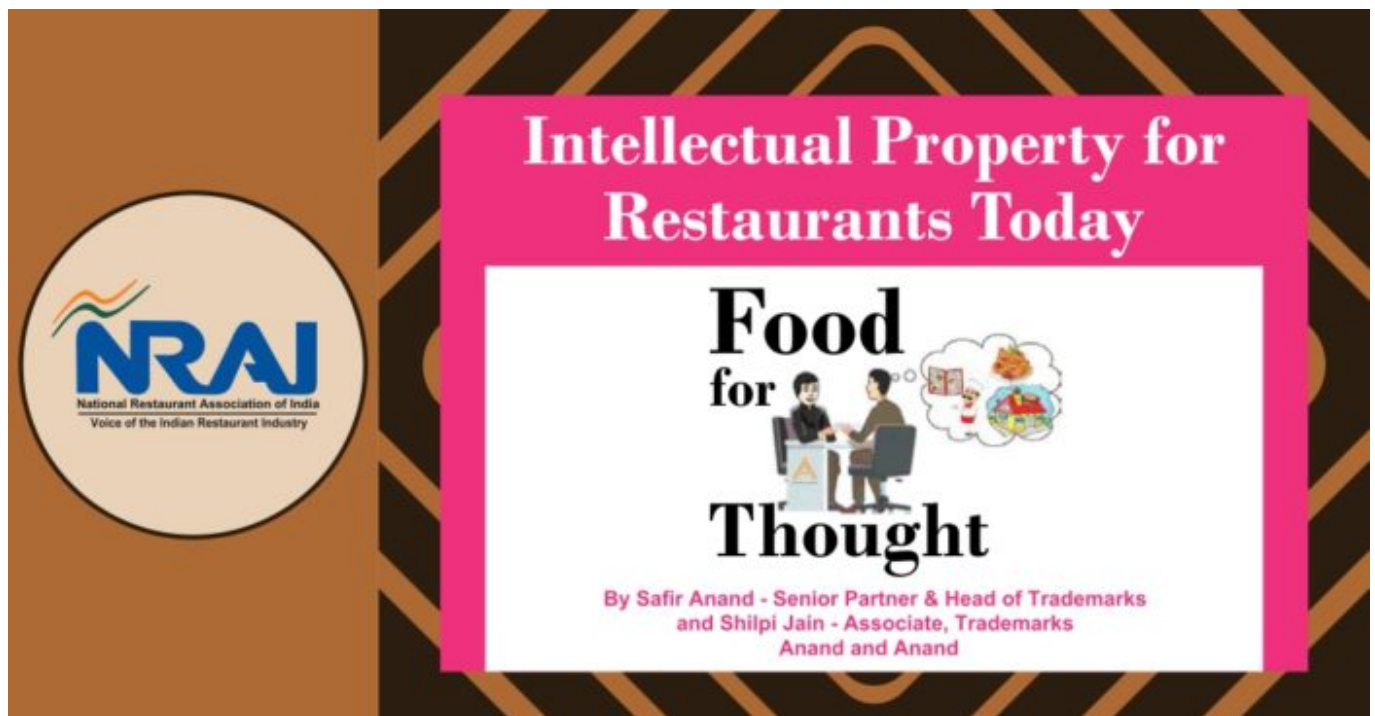




Intellectual Property for Restaurants Today

News & Updates • February 10, 2020

National Restaurant Association of India (NRAI) in its quarterly publication sought [Safir Anand's](#) perspective on the role of Intellectual Property in the commercial value of successful restaurants. The following article was first published in the [quarterly newsletter](#) of NRAI.



Few days back, a Restaurant Owner visited our office. While we were enamoured by the several restaurants he had set up, his media coverage and awards, he looked concerned about his intellectual properties, awareness, monetization, valuation, staff and about people ripping off his ideas. We realized how little the industry knows beyond basic trademark. Hence, this article intends to capture relevant thoughts on the different kinds of intellectual properties that can help a restaurant strive in a competitive environment and explains how the value of these rights can be maximized.

RESTAURANT NAME

Protecting names of restaurants is one of the foremost things that restaurateurs think of to identify their business. Adopting restaurant names with common Indian names and commonly used words in trade such as Delhi Chicken House, China Town, Mughlai Foods etc. is short-term gain for long-term pain. While choosing a name, it is important to consider its strength as a trademark. In a dispute Guest Column Features between the marks Pinch of Salt and Pinch of Spice, the Delhi High Court held that the word Pinch is a common word related to the restaurant industry and no proprietor can



monopolize this word. Restaurant names such as Indian Accent, Nobu (not a common name in India) and Plum can be examples of a few distinctive names that easily qualify as strong trademarks. Further, choosing a trademark that is already in use by a third party can also lead to dispute. Thus, it is always advisable to conduct a thorough search on the trademarks register before choosing a restaurant name.

PREVENTION OF BRAND DILUTION

Further, there have been various instances such as Panchhi Petha of Agra and Giani Ice cream where the uniqueness of a 'once unique' trademark was weakened over the course of time due to diluted use by the unauthorized parties. One of the major reasons of such brand dilution appears to be poor enforcement of rights and failure of proprietors to take timely action against entities misusing the brands.

LOGOS AND TAGLINES

In addition to names, logos of brands such as McDonald's and Domino's and slogans such as "I'm Lovin' It" should also be protected as trademarks to ensure that there is no misuse of the same by any third party.

NAMES OF SIGNATURE DISHES

Unique names given to signature dishes such as Dal Bukhara of ITC Hotels also qualify as trademark. Many caterers do the mistake of calling Kaali Dal / Black Dal as Bukhara Dal. Also, Burger King has obtained trademark registration for its signature sandwich Whopper and Nirula's has secured registration for its recognized ice cream 21 LOVE.

UNIQUE PACKAGING AND SHAPE OF FOOD

Unique packaging / shape of food also deserves trademark protection. Eg. Starbucks has obtained registration for the mark in UK that consists of the configuration of a transparent plastic cup, bearing its emblem.

CHEF NAMES

Chefs can trademark their own names, which they can then license to restaurants. For example: Jiggs Kalra and Zorawar Kalra, the names of Indian celebrity chefs are duly protected as trademarks.

'LOOK AND FEEL' OF A RESTAURANT

The overall appearance of a restaurant i.e. its 'look and feel' consisting of unique colour combinations, custom furniture and other decors, falls within the meaning of trade dress and is a



protectable form of trademark. There are cases where distinctive interiors and decors of a restaurant have been protected. For example, a series of court cases protected the distinctive décor of Mr. Submarine restaurants, which included a red and white striped exterior, wallpapered interiors, and signage bearing a certain font and colours. Likewise, the distinct elements of a restaurant such as Ronald McDonald, a clown character used as the Primary Mascot of the McDonald's and the unique interiors of Domino's also ought to be protected as trademarks.

PRESENTATION OF DISHES

In the recent years, plating of dishes has increasingly become a way of distinguishing restaurants because a customer may agree to buy a dish only because of its visual presentation on food delivery websites like Zomato or Swiggy or other online portals. Appearance of dishes and food plating style is also among other aspects of trade dress that can be protected by restaurants if it has earned sufficient reputation to indicate the source of the dish. Whether presentation of food can be protected as a copyright as well, is a question yet to be decided but there have been several cases in other countries where restaurants have claimed exclusive rights on the appearance of their dishes and have attempted to prevent third parties from using the same. For example, a case involved trade dress infringement of Breakfast at Tiffany's cupcake featuring vanilla cake, blue cream cheese frosting & silver & white gems.

MENUS

Apart from logos, signage, photograph and graphics having artistic elements, that will often be protected as artistic works, the menus of a restaurant can also be protected by copyright, if it can be shown that the restaurateur had used skill and judgement in choosing and describing the menu items and in selecting and arranging the menu's layout.

FOOD PREPARATION PROCESS AND RECIPES

Food preparation processes may potentially be patentable, if they are novel, useful and not obvious. Additionally, recipes may be protected as trade secrets, as it is a business information which derives value from its secrecy. Currently there is no specific law in India for trade secrets but courts have upheld trade secrets protection under various statutes and common law actions based on principles of equity.

PREVENTION OF MISUSE OF INTELLECTUAL PROPERTY BY PROPER NOTIFICATION

In addition to protecting intellectual property, it is equally important to prevent its unauthorized use. This can be done by identifying trademark rights using the symbols ® (registered marks) and TM (marks pending for registration), and by other means such as by depicting the 'look and feel' of restaurant in advertisements and by posting appropriate notices on-site.



CAREFULLY DRAFTED CONTRACTS

There must be written agreements between restaurants and chefs regarding the ownership of names of dishes, chef names, presentation of food and trade secrets in recipes. A restaurateur must take all the reasonable measures to protect its secrecy by notifying any recipient of the recipe that the recipe is a trade secret, signing non-disclosure and non-competition agreements. The court battle regarding the ownership of the brand Haldiram's, where lack of clarity eventually led the family into court, is one of the many examples that shows how relying on verbal agreements can affect a business.

WELL-WRITTEN FRANCHISE AGREEMENTS

With the market expanding globally and tense competition, legal issues in the restaurant industry are quite predictable, and thus it is also of paramount importance to have well-written franchise agreements with clear provisions with respect to intellectual property rights.

TECHNOLOGY, 3D MARKS AND HOLOGRAMS

It is also important for the restaurant owners to be careful about their intellectual property rights in any particular technology that is unique to them or unconventional trademarks such as 3D marks and holograms, which can distinguish their business from others. Intellectual property plays a vital role in the commercial value of every successful restaurant. Proper protection of intellectual property rights and ensuring that the uniqueness of the restaurant is not watered-down by unscrupulous entities is therefore the key to preserve its long-term success

RELATED POSTS

[FOOD FOR THOUGHT...](#)

