Patenting of Plating Techniques: Safir Anand interviews with Business Standard

News & Updates • November 10, 2022

Business Standard recently carried a 6-column anchor spread on patenting cuisines and plating techniques as chefs and restaurants work on upping their game with innovation in plating. To substantiate the article, the newspaper approached Safir Anand who shared the various modes in which the food industry could innovate and secure itself.



2 COMPANIES

NEW DELHI | WEDNESDAY, 9 NOVEMBER 2022 Business Standard

Intellectual property on food platter? Proof is in the pudding

While some restaurants abroad have successfully protected their recipes, prior art can prove to be a hurdle in patenting innovative cuisine

DIVISHA MISHRA
New Delhi, 8 November

Dipender Tiwari, executive chef at Qila restaurant in Mehrauli, says he is constantly on the lookout for new native ingredients to come up with unique dishes at the restaurant. He says he sometimes spends months developing and perfecting the look and feel of his dishes.

When asked if his any creation is protected by law, Tiwari says he does not know the legal process of protecting his creations in the food industry.

Safir Anand, senior partner at Anand and Anand, explains there are many reasons why patenting is not rampant in the food industry for plating techniques. "One of the main reasons is that it is extremely tough to beat the concept of prior art to be able to secure a patent," he says.

Simply put, prior art means knowledge or information already available in the public domain and to secure a patent, one of the primary requirements is that the new cuisine should be inventive.

The law defines a new invention as "...any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of a patent application with complete specification, i.e., the subject matter has not fallen in the public domain or that it does not form part of the state of the art;..."

However, this does not mean that a unique curation cannot be protected by law, although it's a tough task. Some of the options that can be considered are copyright protection, design protection, and even trade dress protection, although even here many criteria need to be met before being considered for protection.

Fans of the TV show *MasterChef Australia* might remember the iconic desserts of Reynold Poernomo. One of the most recent ones was his recreation of the golden snitch dessert from the Harry Potter movies or, if you're a purist, from the books. The resemblance was uncanny and the golden snitch was complete with a golden ball, and wings made out of chocolate, and resting over a heap of white sorbet.

The look of the dish is invariably the first thing a person notices before eating. The appearance of dishes and food plating style are among other aspects of trade dress that can be protected if they are sufficiently reputed to indicate the source of the dish.

"It can be said that the presentation of a dish is akin to a painting or any other original piece of art. A recipe, if reduced to writing, may get protected as a literary work," says Meghna Mishra, partner at Karanjawala & Company.

Whether the presentation of food can be protected as copyright, as well, is yet to be decided, but there have been instances abroad where restaurants have claimed rights to the appearance of their dishes. "For example, one case involved trade dress infringement of Breakfast at Tiffany's cupcake featuring a vanilla cake, blue cream cheese frosting, and silver and white gems," says Anand.

A series of court cases internationally protected the distinctive décor of Mr Schnarrie 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 and the golden arches of McDonald's, have all been protected as trademarks.

Additionally, recipes may be protected as trade secrets as they form business information that derives value from 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.

Manish Mehrotra, chef at Indian Accent restaurants, says there are several problems regarding the protection of plating styles, one particular is the novelty of the plating. "Our dish may be served with a unique style in our restaurant but the same dish may be served outside without the unique plating style. How will one protect such a recipe?" he asks.

To be eligible for patent protection, an invention must be novel, have an inventive step, and be capable of industrial application. These criteria are tough to meet for recipes or plating styles as there are explicit exceptions in the Patents legislation also which specifically indicates that a substance obtained by mere admixture results only in the aggregation of the properties of the components thereof or a process for producing such substance is not considered patentable.

The legislation also specifically rules out patent protection for artistic work or any other aesthetic creation whatsoever.

"Assuming plating is considered as an artistic work or an aesthetic representation to qualifying for copyright protection, it specifically cannot be protected as a patent," Anand said.

Another aspect of the Intellectual Property issues in the food business is the protection of recipes under copyright law. The idea-expression dichotomy prevents the recipes to be protected by copyright. "The dichotomy is the distinction between ideas and expression which establishes a boundary between ideas that are not covered by copyright law and the expression of those ideas that may be covered by copyright law," said Anu Monga, partner at Anant Law.

However, when there is a distinction between basic recipes and those that communicate more than simply the guidelines for preparing a given recipe, such recipes may be protected by copyright. Such recipes must be accompanied by "substantial literary expression." In other words, there must be an explanation or detailed directions.

Even when recipes cannot be protected under copyright, they can be protected under trade secrets. For example, the signature 11-spice blend of KFCs chicken marinate and the Coca-Cola recipe are not public knowledge and are protected as a trade secret, known only to a handful of employees.

"If the chefs decide to share these techniques, they make sure that they are covered by non-disclosure and confidentiality agreements. However, such recipes are not protected under copyright as such unless the recipe is artistically explained by the chef itself," says Monga.

Fans of the TV show *MasterChef Australia* might remember the iconic desserts of Reynold Poernomo. One of the most recent ones was his recreation of the golden snitch dessert from the Harry Potter movies or, if you're a purist, from the books

More on www.business-standard.com

NEW DELHI : Printed and Published by Nandan Singh Rawat on behalf of Business Standard Private Limited and printed at The Indian Express (P) Ltd. A-8, Sector-7, Noida, Gautam Budh Nagar-201301 and published at Business Standard Private Limited, Nehru House, 4 Bahadur Shah Zafar Marg, New Delhi 110002
Editor : Shalini Gokhar RNI NO. 57376/1994 Readers should write their feedback at feedback@bsmail.in Ph. 011-23720202, Fax : +91-11-23720201
For Subscription and Circulation enquiries, please contact Ms. Mansi Singh Head-Customer Relations, Business Standard Private Limited, Hill & I/1, Building H,Paragon Centre, Opp. Birla Centurion, P.B.Marg, Worli, Mumbai - 400013 E-mail: subs_hl@bsmail.in * or sms REACHES TO 57575. NO AIR SURCHARGE

KEY CONTACT



Safir Anand

Senior Partner

View Bio of Safir Anand

RELATED INDUSTRIES

ARTIFICIAL INTELLIGENCE

RELATED PRACTICES

COPYRIGHT