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Secret Ingredients: How to Protect Recipes

New York, June 6, 2022 – How can a business keep the secret to its “special sauce” out of the hands of competitors when recipes generally are not protectable under copyright law? The New York City Bar Association has issued a [report](#) exploring the circumstances under which a recipe may be protected under copyright law and offering ideas for protecting recipes beyond the protections of copyright law.

The report, authored by the City Bar’s Hospitality Law Committee, explains that recipes generally are not protected by copyright law because of the “idea-expression dichotomy,” which “creates a dividing line between ideas, which are not protected, and the expression of those ideas, which can be protected by copyright law.” For example, when a recipe merely lists the ingredients and the quantity of those ingredients, the idea of the recipe is so intertwined with the expression of the idea of the recipe that the list of ingredients will usually not be protectable under copyright law. The Copyright Office has not only stated that “mere listing of ingredients or contents is not copyrightable,” but also that “a simple set of directions is uncopyrightable.”

On the other hand, as explained in the report, recipes may be protectable where they “convey more than simply the directions for producing a certain dish.” For example, where the recipe includes suggestions for presentation, optimal wine pairings, or tales of the recipe’s historic or ethnic origins, or where the recipe is accompanied by original commentary, like, “Heat oil in heavy skillet. Add sugar and let it brown and bubble. This is the secret to the unique taste!” such descriptions and commentary may move the recipe from the realm of unprotected facts to protected expression.

Beyond copyright, the committee offers other ideas for protecting recipes, including treatment as a “trade secret” – which would require reasonable efforts to keep the recipe secret, as well as enforcing policies and procedures to maintain the recipe’s secrecy among owners, employees and others who may have access to the recipe. Another option may be to seek a “process patent” – which would require showing that (1) it is the type of invention that qualifies for patent protection, (2) the invention is useful; (3) the recipe is novel; and (4) the invention is non-obvious. Some examples of recipes that have obtained “process patent” protection include the “uncrustable” sandwich and the process for making popcorn chicken.

Practically speaking, and beyond legal theory, the report states: “the chef would be best suited to enter into a non-disclosure and confidentiality agreement with the sous chef (and all other employees with access to the recipe) at the commencement of the employment. This is the most cost-efficient way to communicate to the sous chef and other employees that the chef is serious about protecting the recipe and all other confidential information without creating burdensome rules ... likely to get in the way of daily practices.”

The full report is available here: <https://bit.ly/3GX3ttu>

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. www.nycbar.org