



PROCESSED
FOOD
INDUSTRY



This issue contain 60 pages including covers.



**ANIMAL-LESS
PLANT BASED &
LAB-GROWN MEAT**

Impact of Covid-19 on future direction of processed food industry

Intellectual Property Rights in the Food Industry

Chemical Factors of Processing Fermented Milk Products

HMMA Through Xtrusion Cooking of Soy Proteins and Microalgae



Intellectual Property Rights in the Food Industry

Exclusive rights associated with IPRs that apply to food industry, beginning with ingredients, recipes, processing, branding, labelling, and marketing of finished goods and services, play an essential role in obtaining a competitive advantage. Businesses in the food and beverage industry must be vigilant in the way they protect their trade secrets, explain **Krishan Singhania** and **Vanshaj Mehta**.

The first author is Managing Partner and Founder, while the second author is an Associate at K Singhania & Co., Mumbai. Authors were also assisted by Ayesha Guhathakurta, graduate from O.P. Jindal

THE food industry plays an essential role in each country's economies by accounting for multi-million-dollar revenues each year. Snack foods, packaging, bottling equipment, restaurants, and recipes all play a part in one of the world's largest industries. What drives innovations in the food and beverage industry is the ongoing quest to add more value and meet the evolving consumer demands. For instance, a new detox beverage, the technology to boost its shelf life or the process to create it, may propel the business to success.

Exclusive rights associated with Intellectual Property that may apply to many aspects of this industry, beginning with ingredients, recipes, manufacturing, branding, labelling, and marketing of finished goods and services, all play an essential role in obtaining and maintain a competitive

advantage. Companies must develop a strategic approach to protect and nurture their Intellectual Property.

Trade Secrets

Businesses in the food and beverage industry must be vigilant in the way they protect their trade secrets. The first step in this process is to understand what the trade secret is. Even though the laws about trade secrets differ from jurisdiction to jurisdiction, a trade secret is generally any information that derives economic value by being kept secret and is the subject of reasonable efforts to maintain its secrecy. Therefore, it is any secret information that gives a business a competitive advantage. This means that if the general public has access to this information, it cannot be a trade secret. Examples of this include special packaging for a beverage so that customers shall instantly recognize the brand or ingre-

dients identified in the packaging. Furthermore, if this information is readily ascertainable, which means that the ingredients can be easily determined, it cannot be a trade secret. In other words, only if a formula could be discovered in theory, but it would take years and would be very expensive or require improper means to be ascertained, should the formula be considered as a potential trade secret. However, there is no category of information that is automatically considered a trade secret, but categories could be regarded as potential trade secrets. In the food and beverages industry, the following are essential factors that should be considered, when determining whether there ex-

ists a trade secret or not:¹

1. Product formula/Recipe
2. Manufacturing/Processing methods and techniques
3. Technology used in a business even if it is not related to the preparation
4. Advertising/Marketing/Business plans of strategies and research
5. Designs and Concepts
6. Customer Lists and Vendors/Suppliers
7. Cost/Pricing/Profit information and financial data

In addition to this, even negative research, (i.e. what does not work), can be an important trade secret.²

Failure to protect trade secrets can allow competitors to take advan-

tage of the hard work and draw customers away.

A leading example of a food and beverage company that has been highly successful in protecting their trade secrets and capitalizing on them is that of the formula for *Coca-Cola*. The drink was invented in 1886 and the recipe has been passed down by word of mouth until 1919, when it was finally written down. At this time, a group of investors took a loan to purchase this company, and that's when the formula was provided as collateral. This written formula was kept locked in a bank, after which it was moved into a purpose-built vault, with a palm scanner, a numerical code pad, and an enormous steel door. Only two senior executives at the company, bound by a non-disclosure agreement, know the formula. Neither of these executive positions or names has ever been released. Over the years, several people have claimed to have cracked this original formula for Coca-Cola. Still, none of them have been confirmed as the official formula, which remains a well-guarded and valued secret. It is a rumor that the two executives are never allowed to be on a flight simultaneously since the secret is so well maintained that if they both die in an accident, the secret shall never be passed on. The one time Pepsi & Co. was said to have tried to recreate the same recipe, the FBI looked into the matter. That is the extent to which the trade secrets are protected.

Another example is that of Kentucky Fried Chicken and their original recipe, developed by the founder, Colonel Harlan Sanders. The original recipe has been locked in a 770-pound high technology safe within a vault with two feet thick concrete walls. In addition to this, some portions of this original recipe are locked away in safe deposit boxes at undisclosed locations as a backup. They outsource production of the seasoning to two different suppliers that are both subject to Non-disclosure agree-

A leading example of a food and beverage company that has been highly successful in protecting their trade secrets and capitalizing on them is that of the formula for *Coca-Cola*. The drink was invented in 1886 and the recipe has been passed down by word of mouth until 1919, when it was finally written down.





Another example of a recipe that no longer enjoys a trade secret status is McDonald's famous special sauce. Initially, this was a vigorously protected recipe by McDonald's, so much so that they ended up losing track of the original recipe.

ments, wherein each supplier has access to and produce only half of the recipe. These two halves are then combined, thereby creating the complete recipe. The contents are so well guarded that only very few undisclosed employees know the actual ingredients. Sanders' nephew, Joe Ledington, claimed to be in possession of an old scrapbook that belonged to his aunt Claudia, the second wife of the Colonel. He initially claimed that this scrapbook had the recipe. However, later when he was contacted to confirm this information, he said he was not sure if that was the recipe. However, this secret was out, and several outlets that had used this recipe declared it to be the real recipe, thereby causing the original recipe to lose its status as a trade secret.

Another example of a recipe that

no longer enjoys a trade secret status is McDonald's famous special sauce. Initially, this was a vigorously protected recipe by McDonald's, so much so that they ended up losing track of the original recipe. This forced them to change the recipe for the special sauce for a couple of years. Eventually, they recovered the original recipe from an outside company that produced the same special sauce for McDonald's, many years earlier. After this, McDonald's posted a tutorial on YouTube, showing their consumers how to make their hamburgers, including their special sauce, and this is when it lost its trade secret protection. Once a trade secret has been lost, there is no way that it can be brought back, and it follows the notion of trying to get a "cat back in the bag."

In the case of *Dumpling Daughter*

*v. Dumpling Girl*¹, it was noted that it is key to a perfectly crafted dumpling isn't just in the stuffing but also in the name. This case rumbled Boston, since Nadia Spellman, the owner of a popular casual Chinese restaurant, Dumpling Daughter, brought charges against two of their ex-employees, the chef Ying Yao Xiong the former assistant, Jie Lin. Spellman claimed that these two ex-employees pilfered the original recipe to establish a separate, new dumpling venture, called Dumpling Girl. These recipes were passed down through Spellman's family for generations. The uniqueness and fundamental concept of Dumpling Daughter were inextricably tied to preserving the secrecy and integrity of her family recipes. Therefore, when she discovered that her two ex-employees had opened a new venture of their own, with a name, brand, menu and recipes that she says was virtually identical to hers, she filed a federal case for Trademark infringement against Dumpling Daughter. However, the case of double dumplings has now been settled, and Dumpling Girl has gone through a serious rebranding, with a new name, Star Dumplings, and an altered menu that excludes the signature dishes of Dumpling Daughter. The only way in which Spellman could have avoided or prevented this entire dispute was if she had made these two ex-employees sign a Non-disclosure agreement, which would bar them from spilling out any trade secrets.

There is no specific legislation that deals with the protection of trade secrets and confidential information in India. However, over time, the courts have upheld the protection of trade secrets in accordance with the principles of equity, and at certain instances, relied on common law action upon the breach of confidence, which amounts to a violation of a contractual obligation. Remedies that are available to owners of trade secrets

CONTD. ON PAGE 24

ship took an ugly turn that caused them to split from the business and to establish separate restaurants, but the dispute arose over who would get to keep the Trademark of Khan Cha Cha. As per an agreement from 2012, the trademark's rights were handed over to Kalra's company, the authenticity of which is being disputed. Furthermore, a new food joint has been opened by them, named "Rule the Rolls" since the dispute has become a rather messy affair that continues to go on.

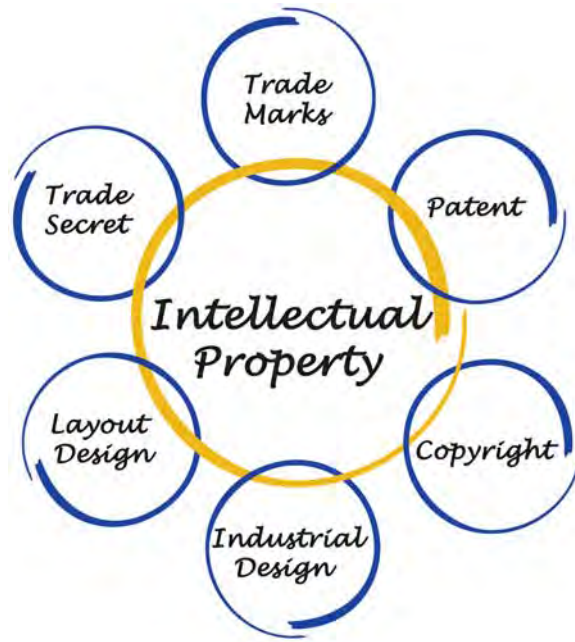
In the Burger King cases, there have been several instances where burger joints have infringed on the name Burger King in order to draw more customers on false pretenses, using the famous name. A Varanasi-based restaurant called Burger King, too, changed its name to Taste King after a Delhi High Court injunction.⁴

Geographical Indication

Geographical Indications are specific strategies used to protect and promote the quality of food products linked with certain territories. These Geographical Indications enable producers to obtain market recognition, and therefore also often a premium price. Some foods are associated with specific Geographical locations, which are meant to be signature food items for that particular place. Some food items that are under process for registration as Geographic Indications (GIs) in India are:

Food Item	Place
Krishnanagar Sarbhaja	West Bengal
Silao Khajo	Bihar
Surti Locho	Gujarat
Odishara Rasagola	Odisha
Krishnanagar Sarpuria	West Bengal

There are still many food items left



Geographical Indications are specific strategies used to protect and promote the quality of food products linked with certain territories. These Geographical Indications enable producers to obtain market recognition, and therefore also often a premium price.

which can be applied for Geographical Indications and these are:

Food Item	Place
Galauti Kebab	Lucknow
Gustaba	Srinagar
Rabri	Banaras
Bisi Bele Bhat	Bangalore
Vada Pav	Mumbai
Mysore Pak	Mysore
Jaipur	Dal Batichurma
Amritsar	Makkiki Roti
Goa	Prawn Gassi
Patna	LittiChockha
Ahmedabad	Dhokla
Bhubaneshwar	Dalma
Coorg	Pork Curry

Conclusion

It is important that we consider the protection of food items in terms of trade secrets, trade practices, as well as names and designs that are signa-

ture to the item, because if they are not protected, they are open to being copied by competitors, thereby making one's effort fruitless.

The Indian food industry is highly competitive with several multi-national food corporations trying to monopolize the Indian market. Very few Indian companies are correctly utilizing the Intellectual Property regime in place and taking advantage of creating a monopoly. Therefore, it is essential that all the companies that play an active role in the industry must protect their trade secrets, recipes as patents, and trademarks to ensure that the law protects them.

References

- Edelson, R. and Solano Suarez, X. (2019). *Don't Spill Your Trade Secrets: Protecting Your Competitive Advantage in the Food and Beverage Industry (Part 1 of 2)*. [online] The National Law Review. Available at: <https://www.natlawreview.com/article/don-t-spill-your-trade-secrets-protecting-your-competitive-advantage-food-and> [Accessed 11 Dec. 2019].
- Id.*
- Didi Kendall Square, Llc D/B/A Dumping Daughter v. Dumpling Girl, Llc, Jie Lin, Ying Yao Xiong, and Huanchen Li*; Case 1:15-cv-13514-DLC.
- Narayanan, P. (2004). *Law of Trade Marks and Passing off* (6th ed.). Kolkata: Eastern Law House. p. 3. ISBN 9788171772322.
- Bentley, A., Jones, L., Gaskill, M., Watson, B., Mercy, S., Egan, J., Turner, P., Friel, K., Brzostowski, C. and Sandler, E. (2019). *Torchy's Tacos sues Houston-based Texas Taco over "Taco Bible"*. [online] CultureMap Austin. Available at: <http://austin.culturemap.com/news/restaurants-bars/10-22-13-torchys-tacos-lawsuit-alleges-stolen-taco-bible-led-to-competitors-ripping-recipes/#slide=0> [Accessed 11 Dec. 2019].
- Burger King Corporation v. Ranjan Gupta and Ors*; CS COMM-229/2018.