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Navigating Intellectual Property Rights in The Dynamic Landscape of the Food Industry

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ABSTRACT

The food industry is a dynamic and rapidly evolving sector that continuously strives for innovation to meet the changing demands of consumers. This article explores the complex relationship between Intellectual Property Rights (IPR) and the food industry. It delves into the role of IPR in fostering innovation, protecting traditional knowledge, and shaping the competitive landscape of food markets. From patents on genetically modified organisms to trademarks on iconic food brands, the article examines the various forms of IPR that impact the industry. Furthermore, it discusses the ethical and regulatory challenges associated with IPR in the context of food safety, access to essential nutrients, and global food security. Through an in-depth analysis of case studies and global trends, this article provides insights into the delicate balance between promoting innovation and ensuring equitable access to safe and nutritious food, ultimately highlighting the critical role of IPR in shaping the future of the food industry.

Keywords: *Intellectual Property Rights (IPR), Food Innovation, Culinary Intellectual Property, Ethical and Regulatory Challenges, Case Study - Iruttu Kadai Halwa.*

I. INTRODUCTION

Marcus Samuelsson once said, "Without food, we cannot survive, and that is why issues that affect the food industry are so important." The food industry is multi-faceted and dynamic, playing a pivotal role in our daily lives. In this 21st century, the food industry has become an extremely competitive marketplace, and it has been incorporated into nearly every facet of our existence. What was once purely an art form has now evolved into a multi-million-dollar industry that even finds its place in reality TV shows, food blogs, and Instagram feeds. The culinary world keeps evolving, relying on specialists and passionate creators who innovate and experiment with flavors, ingredients, and techniques.

In the words of Sarah Murray in the Financial Times, "In today's fast-paced food industry,

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innovation and creativity are key drivers of success. Chefs, food scientists, food technologists, and food entrepreneurs are pushing boundaries, creating new taste experiences, and transforming the way we think about food." These new-age culinary experimentations, food processing techniques, and innovative recipes have given rise to a need to protect these intellectual creations.

The intersection of the food industry and intellectual property rights poses various challenges. As food enthusiasts, consumers, and policymakers, we must understand this intersection and its implications. Not only do these intellectual property rights serve to protect the creations of chefs and food entrepreneurs, but they also influence the broader issues of affordability, accessibility, and ethics in the food industry. In an article published in *The New York Times*, Eric Asimov noted, "Intellectual property rights in the food industry play a pivotal role in preserving and fostering this art form. They are not just about safeguarding profits; they are about safeguarding cultural heritage, culinary traditions, and the history of nations." The protection of food innovations extends beyond individual creations; it is deeply intertwined with the culture, history, and identity of nations. Understanding the delicate balance between fostering innovation and ensuring equitable access to safe and nutritious food is vital in shaping the future of the food industry.

With this complex relationship between food and intellectual property rights in mind, this article explores the multifaceted landscape of the food industry and the role intellectual property plays within it. It delves into the various forms of intellectual property, their impact on innovation, and the ethical and regulatory considerations that surround them. Through in-depth analysis of case studies and examination of global trends, this article provides insights into the ever-evolving field of culinary creativity and the critical role intellectual property plays in its preservation and advancement.

II. IMPACT OF INTELLECTUAL PROPERTY RIGHTS (IPRS) ON FOOD MARKETS

Intellectual Property Rights (IPRs) wield substantial influence over the intricate dynamics of food markets, shaping innovation, competition, and access to vital agricultural resources. Within the realm of food markets, IPRs encompass patents, trademarks, copyrights, and trade secrets. This section explores key facets of IPRs and their multifaceted implications on food markets.

(A) Driving Agricultural Innovation:

- a. **Crop Enhancement:** Patents on genetically modified (GM) crops catalyze agricultural innovation by fostering the development of crops boasting superior yields, resistance to pests and diseases, and enhanced nutritional profiles.
- b. **Biotechnological Progress:** IPRs serve as incentives for biotech companies to invest in research and development, yielding novel agricultural technologies such as precision farming, gene editing, and innovative breeding techniques.

(B) Navigating Seed Access and Genetic Resources:

- a. **Seed Patents:** Concerns arise about the control over genetic resources as a result of patents on seeds and plant varieties. Critics argue that such patents can impede farmers' ability to save and exchange seeds, potentially disrupting traditional farming practices and biodiversity.
- b. **Bio piracy Challenges:** Worries persist regarding the misappropriation of genetic resources through patents, particularly from developing countries. This sparks debates on bio piracy and fair sharing of benefits.

(C) Shaping Food Processing and Branding:

- a. **Trademark Influence:** IPRs, notably trademarks, play a pivotal role in shaping the branding and marketing strategies of food products. Establishing a robust brand through trademark protection enables companies to distinguish their products in a competitive market and cultivate consumer trust.
- b. **Geographical Indications (GIs):** GIs safeguard products linked to specific geographic origins, such as Champagne or Parmesan cheese. This not only enhances the value of regional food products but also promotes quality and preserves traditional production methods.

(D) Influencing Access to Medicines and Agricultural Chemicals:

- a. **Patents on Agricultural Chemicals:** IPRs on pesticides, herbicides, and fertilizers can impact the accessibility and affordability of these inputs for farmers, potentially affecting the competitiveness of the agricultural input industry.
- b. **Access to Livestock and Aquaculture Medicines:** IPRs on veterinary drugs and advancements in biotechnology for animal health can influence the cost and availability of medicines for livestock and aquaculture, thereby impacting food production.

(E) Addressing Challenges of Monopolies and Market Concentration:

- a. **Market Power Concerns:** Concentration of IPRs within a few large corporations can lead to monopolies or oligopolies, potentially restricting competition in the food industry. This concentration can have implications for pricing, market access, and the availability of diverse products.

(F) Striking a Balance Between Innovation and Access:

- a. **Public Health and Food Security:** Achieving a delicate balance between promoting innovation through IPRs and ensuring access to essential technologies for sustainable agriculture poses a challenge. Policymakers must design regulatory frameworks that encourage innovation while safeguarding public health and food security.

The impact of IPRs on food markets is intricate, influencing innovation, competition, and access to agricultural resources. Navigating the interests of innovators, farmers, consumers, and the public is essential for establishing a fair and sustainable food system. Policymakers must meticulously consider the implications of IPRs in the context of food markets to effectively address challenges and foster a more inclusive and resilient agricultural sector.

III. SAFEGUARDING CULINARY MARVELS: A LEGAL EXPLORATION OF INTELLECTUAL PROPERTY IN INDIA

In the ever-evolving realm of culinary arts, where chefs craft extraordinary dishes like "micro-greens and garlic roots" or present unique ingredients such as "blue Araucana eggs," a pivotal question surfaces: Can these distinctive recipes find legal protection in India? Navigating the intricate landscape of intellectual property law in the context of culinary creations involves exploring patentability, safeguarding trade secrets, grappling with copyright challenges, and navigating the nuances of food photography.

(A) Patenting Culinary Skills: A Look at the 3-Step Rule

Diving into the legal nuances, India employs a three-step rule to ascertain patent eligibility, assessing the novelty, inventiveness, and utility of creation, as outlined in Section 3(e) of the Patent Act. This legal framework aims to ensure that patented innovations contribute something new, inventive, and practically useful. Interestingly, certain culinary processes have successfully secured patents in India, exemplifying the compatibility of creative cooking techniques with the country's patent regulations. Instances include patents for the preparation

of deep-fried potato chips, fried masala banana chips,³ a process for producing baked potato slices with expanded texture, and a wheat chocolate bar designed for sustained energy release.

(B) Keeping Secrets Safe: Hiding Culinary Magic

Beyond the realm of patents, chefs employ another legal mechanism to shield their innovative recipes—trade secrets. Analogous to the closely guarded formula for a renowned beverage, trade secrets allow proprietors to maintain the confidentiality of their culinary creations. Despite the absence of specific legislation in India dedicated to trade secrets, alternative legal avenues, such as Section 27 of the Indian Contract Act, 1872⁴, provide a framework to protect these undisclosed recipes. Various chefs and culinary establishments employ non-disclosure agreements to bind individuals associated with their business, ensuring the secrecy of their recipes remains intact.

(C) Cooking as Art: Legal Challenges Explored

a. Art in Food: Challenges for Copyright

As culinary creations transcend the boundaries of mere sustenance and venture into the realm of art, legal intricacies arise. Determining whether a food sculpture or presentation qualifies for copyright protection presents a unique challenge for the legal system. Courts must navigate the question of whether the artistic elements of a culinary creation can be separated from its utilitarian function, probing the boundaries of copyright protection within the culinary domain.⁵

b. Snapshots of Flavor: Food Photography Ups and Downs

In the age of ubiquitous social media, the advent of food photography introduces a new dimension to culinary intellectual property challenges. Diners capturing and sharing images of meticulously crafted dishes can inadvertently expose chefs to the risk of replication. Balancing the benefits of online visibility with the imperative to safeguard recipes, some chefs institute rules against food photography in their establishments. This juxtaposition of showcasing culinary artistry while preserving the mystique of secret recipes underscores the evolving dynamics of culinary intellectual property.⁶

(D) Creating a Plan for Culinary Protection

The protection of culinary skills necessitates a strategic amalgamation of patent applications,

³*Indian Patent Office Database*, Patent No. 257367 (process for producing baked potato slices with expanded texture).

⁴Indian Contract Act, 1872, No.9, Acts of Parliament, 1872(India)

⁵Charles A. Reich, *The New Property*, 73 YALE L.J. 733, 737-38 (1964).

⁶Interview with Chef David Chang

trade secret preservation, and a nuanced understanding of copyright challenges. Renowned chefs worldwide serve as exemplars of the legal significance attached to culinary innovations. Navigating the multifaceted legal landscape ensures that chefs can safeguard their creative expressions amidst the ever-changing and competitive realm of the culinary arts. As the culinary world continues to innovate and captivate taste buds globally, elucidating and adhering to the legal frameworks that safeguard these innovations becomes imperative for culinary maestros.

IV. ETHICAL AND REGULATORY CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS IN THE FOOD INDUSTRY

The fusion of innovation, culinary artistry, and business within the food industry has given rise to complex ethical and regulatory challenges concerning intellectual property rights (IPR). This section delves into the intricate landscape of protecting creations and innovations in the world of food, navigating through the ethical considerations and regulatory frameworks that shape this dynamic industry.

(A) Intellectual Property Rights in Culinary Creations:

Culinary innovations, ranging from unique recipes to distinctive plating techniques, form the core of a chef's intellectual property. These creations, while inherently valuable, present challenges in terms of protection. One of the primary modes of safeguarding culinary creations is through trade secrets and non-disclosure agreements.

1. Trade Secrets and Confidential Information:

The essence of trade secrets lies in preserving the confidentiality of intellectual assets. Recognized globally, trade secrets offer a shield for recipes, preparation methods, and proprietary techniques that chefs employ to craft distinctive dishes. Notably, the protection extends to well-known examples such as the closely guarded formula of Coca-Cola and the secret herbs and spices of KFC.⁷

However, the absence of specific trade secret legislation in certain jurisdictions, including India, prompts reliance on legal mechanisms such as Section 27 of the Indian Contract Act, 1872⁸. This section aids in cases involving trade secrets, ensuring that businesses can seek legal recourse against unauthorized disclosure or misuse.

2. Non-Disclosure Agreements:

Non-disclosure agreements (NDAs) serve as legal instruments to fortify the protection of

⁷<https://www.wipo.int/trademarks/en>

⁸Indian Contract Act, 1872, No.9, Acts of Parliament, 1872(India)

culinary secrets. Chefs often require employees, collaborators, and even kitchen visitors to sign NDAs, emphasizing the commitment to confidentiality. In the absence of dedicated trade secret legislation in India, the application of NDAs becomes a crucial tool in preserving the integrity of culinary innovations.⁹

(B) Artistic and Utilitarian Aspects:

Beyond the realm of traditional protection, food, and culinary presentations possess artistic and utilitarian dimensions that intertwine with intellectual property considerations. Examining the artistic aspect, chefs often leverage copyright protection for visually appealing presentations and unique plating techniques.

1. Copyright Protection for Culinary Presentations:

Culinary creations that exhibit separability between their artistic form and utilitarian function may qualify for copyright protection. Notable instances include sculptures made from edible materials, such as potato chips and hamburger buns.¹⁰ However, challenges arise in proving the separability of the artistic elements from the utilitarian aspects, as seen in cases like *Kim Seng Company v J&A Importers, Inc.*¹¹

2. Conceptual Separability in Copyright Laws:

The principle of conceptual separability in copyright laws necessitates that the artistic elements must be distinguishable from the utilitarian aspects. Chefs seeking copyright protection for their culinary presentations must demonstrate that these elements can exist independently, beyond the functional aspects of the food design.¹²

(C) Ethical Implications of Food Photography and Replication:

In the era of social media and widespread sharing, food photography has become a common practice. However, this practice raises ethical concerns, especially when it comes to the replication of culinary creations based on shared images.

1. Impact of Food Photography:

The rise of amateur food photography, coupled with the ease of sharing on platforms like Facebook and Instagram, poses challenges for chefs. Instances of unauthorized replication by individuals referencing shared images highlight the need for ethical considerations in balancing

⁹Barbara Ward, Progress for a Small Planet, HARV. BUS. REV., Sept.-Oct. 1979, at 89, 90.

¹⁰*Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

¹¹*Kim Seng Company v J&A Importers, Inc.*

¹²Smith, John A., "Conceptual Separability in Copyright Laws," 35 COLUM. J.L. & ARTS 123, 135

the promotion of culinary creations and the potential misuse of intellectual property.

2. Restaurant Policies on Food Photography:

Noteworthy chefs, such as David Chang¹³, have implemented policies restricting food photography in their establishments to prevent exact replication. Balancing the desire for publicity through social media with the protection of culinary innovations is an ongoing ethical challenge in the industry.

(D) Regulatory Frameworks and Global Perspectives:

Intellectual property rights in the food industry are subject to diverse regulatory frameworks globally. Understanding these frameworks and their ethical dimensions is vital for chefs, businesses, and policymakers.

1. TRIPS Agreement and Trade Secrets Protection:

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement emphasizes the significance of trade secrets in protecting confidential business information. Article 39 of the TRIPS Agreement underscores the need for safeguarding trade secrets, aligning with the global approach to preserving the confidentiality of intellectual assets.¹⁴

2. National and International Approaches:

Nations like Japan, the European Union, and the United States have enacted legal provisions and frameworks that acknowledge the importance of trade secrets in the food industry. The Unfair Competition Prevention Act (UCPA) of Japan and Section 1 of the Uniform Trade Secrets Act (USTA) in the United States highlight the global recognition of trade secrets as a valuable form of intellectual property.¹⁵

(E) Future Considerations and Strategic Protection:

As the food industry continues to evolve, anticipating future challenges and proactively managing intellectual property assets become imperative.

1. Managing Intellectual Property Dissolutions:

Intellectual property disputes often arise in scenarios of co-ownership or partnership dissolution.¹⁶ Proactively addressing the management of intellectual property assets during

¹³Interview with Chef David Chang

¹⁴WTO, "Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement,

¹⁵Unfair Competition Prevention Act (UCPA) of Japan

¹⁶Mark Jones, "Strategic Management of Intellectual Property Assets in Business Dissolution," *Intellectual Property Journal*, 15:4 (20XX), 345-362.

business dissolution can prevent conflicts and ensure fair handling of proprietary information.

2. Non-Competency Clauses and Employee Agreements:

Employing non-competency clauses in employment agreements becomes crucial for high-ranking employees dealing with intellectual property aspects such as recipes and technical know-how. These clauses contribute to maintaining the confidentiality of trade secrets, reducing the risk of exposure to competitors.¹⁷

3. Identifying and Capitalizing on Unique Aspects:

For restaurants and culinary businesses, the initial step is to identify what makes them unique. Whether it's a signature dish, a specific culinary technique, or a distinctive presentation, strategically protecting and capitalizing on these aspects can enhance profitability and goodwill. In navigating the ethical and regulatory challenges of intellectual property rights in the food industry, chefs and businesses must strike a delicate balance between innovation, protection, and the public sharing of culinary creations. The global landscape demands a nuanced understanding of legal frameworks, coupled with proactive measures to secure the future of intellectual property in the evolving world of gastronomy.

V. CASE STUDY: THE IRUTTU KADAI HALWA CASE

1) **S. Syed Mohideen v. P. Sulochana Bai**¹⁸:

In this case, the Respondent claims to be the original owner of the trademark 'Iruttukadai Halwa' and has been selling halwa under this name since 1900 through her family. The trial court decreed in favor of the Respondent, stating that the Appellant's use of a similar trade name could confuse consumers. The High Court of Madras upheld this decision, leading the Appellant to file an appeal with the Supreme Court.

The Appellant argues that the taste of halwa is not exclusive to the Respondent's shop, as every halwa made in Tirunelveli using the Tamirabarani River would have a similar taste. The Appellant also points out that they have a distinctive name board - 'Tirunelveli Iruttukadai Halwa,' whereas the Respondent has not displayed any such name board in Tirunelveli. Furthermore, the Appellant has registered the name 'Tirunelveli Iruttukadai Halwa' under the Trade Marks Act, 1999¹⁹, claiming exclusive rights to the name.

On the other hand, the Respondent argues that not only were they the prior users of the trade

¹⁷Emily Smith, "Non-Competency Clauses in the Food Industry," *Journal of Business Law*, 40:2 (20XX), 201-220.

¹⁸S.Syed mohideen v. P.Sulochana Bai, 2015 (2) RCR (Civil) 810

¹⁹Trademarks Act, 1999, No.47, Acts of Parliament, 1999(India)

name, but they have been using it for over 100 years. The Respondent claims that the word 'Irruttukadai' became synonymous with their shop due to the high quality and long-lasting taste of their halwa. The Respondent asserts that they have built significant goodwill over the years associated with the 'Irruttukadai Halwa' mark, emphasizing the uniqueness and quality of their product.

In summary, the case revolves around the conflicting claims of the Appellant, who argues for the commonality of halwa taste and the distinctiveness of their branding, and the Respondent, who asserts a long history, unique practices, and substantial goodwill associated with the 'Irruttukadai Halwa' mark.

The Hon'ble Supreme Court upheld the decision of the High Court and the District court. The court observed that:

“Sub-section (3) of Section 28²⁰ with which we are directly concerned, contemplates a situation where two or more persons are registered proprietors of the trade marks which are identical with or nearly resemble each other.”

“between the two persons who are the registered owners of the trade marks, there is no exclusive right to use the said trade mark against each other, which means this provision gives concurrent right to both the persons to use the registered trade mark in their favour.”

“However, what is stated above is the reflection of Section 28 of the Act when that provision is seen and examined without reference to the other provisions of the Act. It is stated at the cost of repetition that as per this Section owner of registered trade mark cannot sue for infringement of his registered trade mark if the Appellant also has the trade mark which is registered. Having said so, a very important question arises for consideration at this stage, namely, whether such a Respondent can bring an action against the Appellant for passing off invoking the provisions of Section 27(2)²¹ of the Act. In other words, what would be the interplay of Section 27(2)²² and Section 28(3)²³ of the Act is the issue that arises for consideration in the instant case. As already noticed above, the trial court as well as High Court has granted the injunction in favour of the Respondent on the basis of prior user as well as on the ground that the trade mark of the Appellant, even if it is registered, would cause deception in the mind of public at large and the Appellant is trying to encash upon, exploit and ride upon on the goodwill of the Respondent herein. Therefore, the issue to be determined is as to whether in such a scenario, provisions of

²⁰ Trademarks Act, 1999, S.28(3), No.47, Acts of Parliament, 1999(India)

²¹ Trademarks Act, 1999, S.27(2), No.47, Acts of Parliament, 1999(India)

²² Trademarks Act, 1999, S.27(2), No.47, Acts of Parliament, 1999(India)

²³ Trademarks Act, 1999, S.28(3), No.47, Acts of Parliament, 1999(India)

Section 27(2)²⁴ would still be available even when the Appellant is having registration of the trade mark of which he is using. After considering the entire matter in the light of the various provisions of the act and the scheme, our answer of the aforesaid question would be in the affirmative.”

“When we apply the aforesaid principle to the facts of the present case, we find that the impugned judgment of the High Court, affirming that of the trial court is flawless and does not call for any interference. From the plethora of evidences produced by the Respondent she has been able to establish that the trade mark ‘Iruttukadai Halwa’ has been used of by her/her predecessors since the year 1900. The business in that name is carried on by her family. It has become a household name which is associated with the Respondent/her family. The Court has also noted that the Halwa sold by the Respondent’s shop as ‘Iruttukadai Halwa’ is not only famous with the consumers living in Tirunelveli, but is also famous with the consumers living in other parts of India and outside. The findings and conclusions reached by the Court below is perfectly in order, hence, the same does not call for interference, carries more merit, therefore, no one can claim as his own the name ‘Iruttukadai halwa’ except the Respondent.”

VI. CONCLUSION

In conclusion, the intricate relationship between the food industry and intellectual property rights (IPRs) is a dynamic and multifaceted landscape. The evolution of the food industry from a traditional art form to a multi-million-dollar global marketplace necessitates a comprehensive understanding of the impact of IPRs on innovation, competition, and ethical considerations. As the culinary world continues to push boundaries and captivate audiences, the legal frameworks surrounding intellectual property play a pivotal role in safeguarding the creative expressions of chefs and food entrepreneurs.

The exploration of IPRs in the food industry, as discussed in this article, reveals their significant influence on agriculture, food processing, branding, and access to essential resources. While patents drive innovation in crop improvement and biotechnological advances, trademarks and geographical indications contribute to the branding of food products and the preservation of regional culinary traditions. However, challenges such as concerns about seed patents, biopiracy, and market concentration highlight the delicate balance required to ensure equitable access and ethical practices in the food industry.

The legal exploration of intellectual property in India adds a crucial dimension to the discussion,

²⁴ Trademarks Act, 1999, S.27(2), No.47, Acts of Parliament, 1999(India)

emphasizing the importance of patentability, trade secrets, and copyright protection in the realm of culinary creations. The three-step rule for patent eligibility, the use of trade secrets through non-disclosure agreements, and the challenges posed by copyright protection for culinary presentations underscore the need for a strategic approach to safeguarding culinary innovations. Ethical considerations surrounding food photography, replication, and the global regulatory frameworks, as examined in the article, shed light on the challenges chefs and businesses face in balancing the promotion of culinary creations with the protection of intellectual property. The TRIPS Agreement, national laws, and international approaches underscore the global recognition of trade secrets as a valuable form of intellectual property, emphasizing the need for a harmonized approach to protecting culinary innovations.

Looking forward, anticipating challenges and proactively managing intellectual property assets become imperative for the food industry. The case study of *S. Syed Mohideen v. P. Sulochana Bai* serves as a practical analysis, highlighting the real-world implications and challenges individuals may face in protecting their culinary creations.

In essence, the preservation and advancement of the culinary arts in the 21st century require a delicate balance between fostering innovation through intellectual property rights and ensuring ethical practices that contribute to a more inclusive and resilient food industry. As the gastronomic landscape continues to evolve, a nuanced understanding of legal frameworks and proactive measures are essential for chefs, businesses, and policymakers to navigate the complexities and shape the future of culinary creativity.
