

Keeping Your Thanksgiving Recipes Out of (IP) Food Court

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Your Family's Favorite Stuffing



What Is a Trade Secret?

Information that is:

- ▶ “Sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and
- ▶ The subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.”

765 ILCS 1065/2(d)

Can a Recipe Be a Trade Secret?



Trade secret = information that includes “but [is] not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers”

765 ILCS 1065/2(d)

How To Protect a “Food” Trade Secret?

Efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality :

- ▶ Very few people (perhaps no one) has the full recipe
- ▶ Lock and key (physical, digital)
- ▶ Preparation steps in different facilities
- ▶ Educating employees
- ▶ Non-disclosure agreements and non-competes

765 ILCS 1065/2(d)

Illustrative Trade Secret Food Cases

- ▶ *Bimbo Bakeries USA, Inc. v. Botticella*, 613 F.3d 102, 104 (3d Cir. 2010)



Illustrative Trade Secret Food Cases

- ▶ 2/3 T Salt
- ▶ 1/2 T Thyme
- ▶ 1/2 T Basil
- ▶ 1/3 T Oregano
- ▶ 1 T Celery Salt
- ▶ 1 T Black Pepper
- ▶ 1 T Dried Mustard
- ▶ 4 T Paprika
- ▶ 2 T Garlic Salt
- ▶ 1 T Ground Ginger
- ▶ 3 T White Pepper



Can a Recipe Have Copyright Protection?

Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

17 USC § 102(a)

What Does It Mean to Be Fixed?

A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

17 USC § 101

What Does It Mean to Be Original?

No definition of originality in the statute

Case law

- ▶ Owes its origin to the author
- ▶ “Some minimal degree of creativity”

Negative Requirement

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 USC § 102(b)

U.S Copyright Office

- ▶ No protection for “mere listings of ingredients”
- ▶ But maybe for “substantial literary expression—a description, explanation, or illustration, for example—that accompanies a recipe or formula or to a combination of recipes, as in a cookbook”

What about Copyright Protection for:

- ▶ Thanksgiving cornucopia centerpiece?
- ▶ Menu design?
- ▶ Visual presentation of food itself?

What about Background Music While Guests Eat?

- ▶ Home?
- ▶ Restaurant?
- ▶ Church hall?

Fits an exception or

Contact Harry Fox Agency and ASCAP/BMI/SESAC

Food and Trademarks

Trademark = “a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others”

USPTO

Everyone recognizes:

LETTUCE ENTERTAIN YOU



Do You Also Recognize?

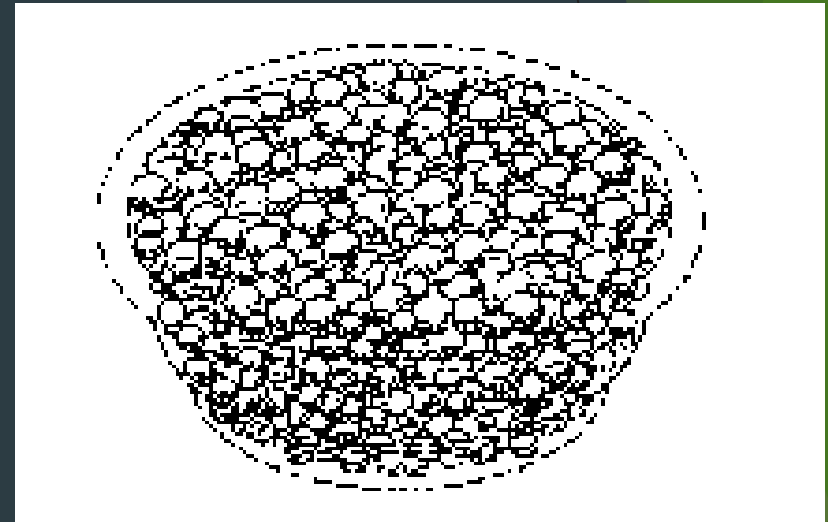
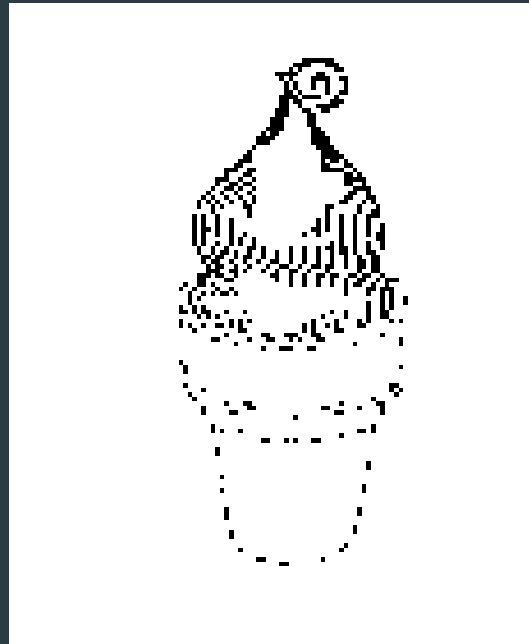


What Is Trade Dress?

- ▶ "total image and overall appearance" of a product, or the totality of the elements, and "may include features such as size, shape, color or color combinations, texture, graphics."

USPTO citing *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763

Trademark or Trade Dress Protection for Food Itself



Can Food Obtain Patent Protection?

Requirements = invention that is:

- ▶ Statutory (processes, machines, articles of manufacture, and compositions of matter)
- ▶ New
- ▶ Useful
- ▶ Non-obvious

Examples of Food Patents

Food technologies, manufacturing processes, and compositions, such as:

- ▶ Quorn
- ▶ Sealed crustless sandwich
- ▶ Fried burrito on a stick
- ▶ New GMO plants

What will you invent this Thanksgiving?

Questions??

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