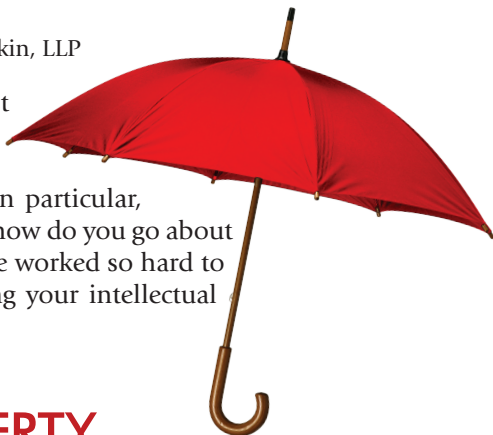


IS YOUR BRAND PROTECTED?

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Reputation and brand don't just happen. They are the result of years of hard work. And in the restaurant and food industry in particular, they're often the Holy Grail to success. So how do you go about preserving the reputation and brand you've worked so hard to build? Focus on identifying and protecting your intellectual property, or IP.



IDENTIFYING YOUR INTELLECTUAL PROPERTY

The first step to protecting your brand is to identify your IP. The focus will be on items protected under trademark, copyright and trade secret laws.

TRADEMARK: Trademark law typically protects phrases, slogans, labels, names, and appearance/design that distinguish your company's services or products. Start with your company's name and any associated design, signage, logo, or slogan. These are often the most prominent features of your business recognized by the public. Don't forget special dishes, service offerings or products that you've given a distinctive name, and that have or may become specially known to your customers.



COPYRIGHT: Next, move on to your website, and any Facebook or Twitter accounts. Those contain photographs, images, copy and music, all of which can be protected under copyright laws. Consider your print advertising, and any photographs or ad copy included there. In many instances, photographs are professionally prepared for you, and include special lighting or layout. How about menus or brochures used to promote your business? Their design and some wording can also enjoy copyright protection.

TRADE SECRET: Recipes are often very valuable, since they define the taste and popularity of a dish or product and often are associated by the public with a particular restaurant or food company. Recipes are a trade secret in the food industry that can be protected. Maybe your customer list is critical to you, or information provided by customers making reservations. How about written procedures or training manuals designed to make your service or product consistently excellent? Those too can be trade secrets.

TOOLS FOR BRAND PROTECTION

Once you've identified your company's intellectual property, steps to protection can begin. Those steps should protect not only your existing IP, but any developed in the future. The tools for protection are registration, contract, policy enforcement, and vigilance.

REGISTRATION: Trademark rights begin with using a distinctive mark in commerce, but registration at the federal and state level provides significant protection against infringing users. Registrations also serve as a record of first

use that cuts off the rights of subsequent users of identical or similar marks. Copyright protection arises when a work is published, but registration with the U.S. Copyright Office is necessary to pursue an infringer in court, and registration within three months of publication can afford you critical statutory damages protection. Consider registering your name, slogan, logos and special dish/service names as trademarks, and critical advertisements, photographs, images, and menus/brochures. Also, be sure to use appropriate trademark and copyright symbols to inform the public of your claimed rights.

CONTRACT: The number one issue with IP is ownership, since only the owner has the right to protect its IP from infringement. Who designed your logo, took that photograph, drew that image, or wrote that ad copy? For these copyrightable items, if an employee performed the work, you have ownership rights under the “work-made-for-hire” doctrine.

Otherwise, you may need to get those rights from the particular individual/company, which can present sticky issues. A contract performs this function. Going forward, examine your IP vendor contracts (ad agency, web designer, photographer, videographer, artist) to make sure that special web content, ad copy/design, or photo will be owned by you or assigned later if it is not. In addition, consider non-disclosure/confidentiality and non-competition contracts for critical personnel or vendors with access to proprietary business information. Qualified IP counsel should be consulted, and often have form contracts that can be adapted for your situation.

POLICY ENFORCEMENT AND VIGILANCE:

When it comes to trade secrets, your protection is automatic but only if what you seek to protect is non-public information and you take reasonable precautions to keep it secret.

Develop policies that control sensitive information and label it proprietary. Recipes, training or operations manuals, customer lists or information all fall into this category. Don't release recipes to the public, or if you do, revise them slightly so as to protect the original. And in all things IP, be vigilant for issues that require attention. Look for potential infringers. Review and maintain secrecy policies.



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