

Copyright Protection for Recipes?

A chef was fired from a restaurant. The restaurant continues to operate without her, but still using the detailed, written recipes she created nonetheless (and not cooking them very well, she claims).

Who owns the recipes - the chef or the restaurant? Jurisdiction is Virginia.

Isn't that a separate question from the matter of copyright?

My recollection is that recipes are not subject to copyright, but they can be treated as trade secrets. Might also be work-for-hire issues in the scenario you describe.

Looking forward to what folks in the IP trenches have to offer.

Robert Link, California

Recipes, like patterns, are not copyrightable.. though any book they appear in would be.

I think you need more information such as did the chef design these recipes as part of her job for the restaurant? Did she just decide to use them and the restaurant agree? Did they exist before she was hired or created during? Is there an employment contract?

Generally something you create, in the position of your employment, for your employment, belongs to the employer absent some other agreement between the parties.

If you write code for Microsoft and then leave the company, Microsoft gets to keep using the code.

Erin M. Schmidt, Ohio

Recipes are generally not covered by copyright. Whether they constitute a trade secret—and who owns them—is going to be a function of the agreement between the parties, if any, and perhaps whether she was working for the restaurant when she created them. Without knowing any more facts, my guess is that unless there is a pretty clear written agreement favoring the chef, the recipes will not be protected.

Kevin Grierson, Virginia

Right! Trade secrets, not copyright. Thanks - this gives me a place to start to research this.

I see now that my question should address trade secrets, not copyrights.

I recall from 1L shop rights that apply to patents created within the scope of employment using company resources and equipment. Do shop rights exist uniformly for all intellectual property, or do standards vary?

I seem to recall trade secrets being more a function of state law than federal law, which could mean, I suppose, that the law varies from state to state.

Gerald Gilliard, Washington, D.C.

Trade secret protection is tough to enforce. You will have to demonstrate the procedures the cook and the restaurant used to protect the recipes and to prevent them from being disclosed to people who are not bound by a confidentiality agreement.

Mike Phillips, North Carolina

You mean like... keeping the recipe in a vault? I seem to recall Coca-Cola, KFC, or some cookie company doing something like that.

Gerald Gilliard

Perhaps not that extreme, but certainly if there wasn't some kind of confidentiality agreement with anyone that the recipe was shared with a claim for a trade secret is going to be hard to maintain.

Kevin W. Grierson

Supposedly, many secrets of this type are kept in a vault somewhere.

Having said that, however, it may or not mean much.

One can go to a private-label soda company, and request a cola that tastes like Coca-Cola or like Pepsi-Cola or like RC Cola, or like whatever, and it will be delivered. Similarly, you can get a lemon-lime version that tastes like Sprite, or like 7-Up, or like Bubble-Up, and it can be delivered.

So, the exact formula may not be available, but a product can be delivered that tastes (substantially) the same—without violating anything.

Brian H. Cole, California

And now, a moment of silence for parking-lot perfume-salespersons.

Robert Link