

FOOD-LAW COPYRIGHT IN THE ITALIAN KITCHEN

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Abstract:

Copyright is a vast and sensitive matter applicable in different fields of analogical and digital daily life. Intellectual property protection lies in different forms and gathers itself the protection of ideas in any form and specific sphere. The kitchen is one of the main expression of human creativity and Italy represents a global excellence in this area for centuries. The application of intellectual property protection in the kitchen by the form of food or recipe presentation is a necessity recognized by culinary practices worldwide. Any form of communication, media and talk shows present advertising products, shapes, colors and flavors blended and based in human creativity, the chefs and their creations become brands and every brand, every recipe need legal protection from use and abuse. This work presents the analysis of the problem of copyright in the kitchen for recipes and forms.

Keywords: food-law, copyright, intellectual property, recipes, taste and shape

1. INTRODUCTION

Food Law represents a new interdisciplinary interesting subject suitable for multiple applications and new discipline for academic literature. It has a friendly approach, something that is perceived as an everyday and familiar matter without forgetting fundamental issues from the primary right such as the right to food. The theme is in any case, developed in the global contest of food regulation, law, policy, food safety and environmental sustainability.

The transition from mechanical gesture of cooking done daily becomes reasoning and later application, rigor and alchemy, all ingredients of a good invention. The new approach consists in considering food law from the intellectual capital point of view, generated by intellectual property in the kitchen, in a bakery, in a restaurant. A form of protection of copyright of the time taken and research idea which led to a new food preparation. New forms of protection in every innovation or invention linked to food or shape, color, presentation, preparation, explanation build chain. The food goes through in this way a new route from a primary right of sustenance to a culinary experimental journey until you reach the sublimation of idea in which the preparation and food presentation becomes art. In this way it deserves protection with an immediate return to the beginning at right precisely called food copyright law.

Cooking in such a vision is the result of inspiration and creativity that can't be demeaned by the mere reproduction of copies without direct about who was inspired. A principle already used in research to avoid any form of plagiarism.

This Equivalence between a famous chef and a researcher, an architect or a designer professionals that works with ideas and research creating and designing new forms of culinary application is the starting point for understanding how the copyright exists even in the kitchen.

The culinary arts represents a wealth of material and immaterial values derived over time, in households, social contexts, characterized by contamination and by the mix of knowledge and taste, from local tradition not globalized, from religious rules, the import of precepts and materials and new use of them. From this historical journey to our days of globalization and sophistication that generates new forms of creativity from the steam to the molecular cuisine.

The primary need is to understand if it's possible to talk about intellectual work in catering as in every noblest form of cooking and if all legal instruments formally recognized are capable of protecting similar products of creativity.

Creating something different and new in cooking, generating a strict application path for its success is a formula that can be presented to the community as the result of a research, the time invested and dedication paid in order to enjoy the benefits deriving therefrom in terms of notoriety and image by creating an exclusive. This form of protection, as in any case of invention will be helpful to new creations, new recipes inspired by it and this will generate more copyright and new rights such as in the field of music.

Certification and recognition of paternity of recipes is therefore a requirement in this scope, a form of success, which guarantees the return of vision rather than economic in a sort of personalization.

Many places in the world are famous for a particular sweet(Sacher Torte form 1832, identifies Austria and Wien in particular) for a special coffee(Caribbean), instead of a type of pasta (Amatrice in Italy) or pizza (Margherita in Naples from the name of the Queen) that takes even the name of the place of invention or the last name of the person who invented it, creating territorial marks or assonance sometimes known as" Italian sound"

A rather concrete solution consists of a registry search and culinary applications, similar to the patent register for brands, it would be an early form of protection if accompanied by a timestamp able to sculpt the recording time and to dispel doubts about the origin of the first application for registration in accordance with the principle" First come first served".

An accrual basis for a speedy and easy solution, quickly accessible and able to carve an indelible mark on the recording time of creation

2. RECIPE AS ART TO BE PROTECTED

The recipe is the proposed work, the primary teaching, the wording of the sequence capable of generating the product and involves several steps that lead to the final work. The ingredients, processing and mixing, application time and melting, the technique and the touch of the chef. The choice of products and refining their susceptibility, appearance, presentation mode. Other compulsory aspect, always part of the recipe is the instrumentation to achieve it, the use of specific tools from the kitchen sometimes created by the chef, the more forceful hand gesture and dexterity.

The protection must cover every single step and the methods chosen by the creator of the recipe to scientifically explain the contents.

The protection of intellectual property from this point of view belongs to copyright Italian law of 1941 number 633 for which the protection of creative intellectual works regardless of the mode of presentation and the presentation context.

The decisive criterion is the novelty expressed as an original recipe comparing to the landscape of known culinary science. For the protection of both valid and supported should relate to the field of Arts and Sciences. Normally it is considered and remarked that a law generated in 1941, still acted requires subsequent updates or an evaluation and an interpretation of the precepts contained that cannot contain in time the State of knowledge that is always subject to change.

This list is absolutely generic and cannot fail to include the new forms of intellectual property just considering those generated by the web that in 1941 didn't exist.

especially if you consider the recipe to the equal value of literary works that are using the word tend to explain the procedures decided by the author. A form of communication similar to literary works where words and creativity are immediately recognizable by the protection.

Once rated as a whole to the recipe and existing creation, development and processing complexity, it must be characterized by name, shape, originality and presentation form through the means of communication chosen by the inventor or the chef. Originality is a sort of specificity or considerable as the new value of known techniques or composing ingredients already known and otherwise used in a new way of preparation, combination, sequencing, editing, presentation.

A new expression of idea that deserves protection considerable as an application of intellectual property. In the field of music, for example, notes are always known and familiar in the world of musicians, readable in the same way but their sequence, repetition, transformation always creates new music for which the ingredients and preparation are new music sheet . Is this process protectable by copyright or it have to be open without protection.

The kitchen intended as science and idea propagation and culinary processes enhanced protection just if ideas are shared through images photos and videos propagated by social-networks became available or know in form and preparation processed by the inventor.

In other word culinary ideas are protectable if materialized in any form that gives the possibility to recognize it and refer it to a given person. The recipe, therefore becomes protectable if it is presented in a correct form of expression as video recording of choice and preparation of ingredients, quantity and quality, mix, timing, rules, variables, presentation and flat name possibly with reference to the author.

The famous Sicilian Cassata cake was known was restored by different chefs in various ways, in version, salted, baked or decomposed, generating a new product created by a new idea on something that already exists some sort of restricted copyright of copyright as it does for music tracks mixed or remixed on existing tracks.

Even in painting from realism to abstraction, from landscapes to cubism, all styles are made from the same colors with similar shades but the way of using colors, painting, drawing, using or not using the brushes, dilute or do not dilute colors generates specificity and originality.

Recipe protection, in presence of those quality and specificity, is similar to the brand protection, protected or not generates assonance with the author's name and priority, making easier the recognition and the possibility that the recipe itself may become protectable trademark (Grandma's cookies with Grandma's name and his recipe become protectable trademark).

Finally, the processed food, its name and its structure should not be illegal, obscene, offensive of common decency though often legitimate forms are accepted also if culinary allusive in everyday practice. It is true that not always what it seems to be in bad taste actually has a bad taste and it is known that the palate forgives everything.

3. THE SECRET- REQUIREMENT TO PROTECT THE RECIPE

In the Italian system of intellectual property protection and patents a key requirement is confidence of the information. In the case of recipe protection it doesn't joins easily with the disclosure that creates the time stamp mentioned in the previous paragraph, A condition for protection is that we are in front of a technical knowledge not common, a sort of private corporate information or technical-industrial experience (knowledge of the process of making a product or how to assembly it ,doses, common general knowledge for the state technical notes) this is the easy way in the field of brand industry as happened to a famous Italian chocolate cream brand, known in the world.

In this case the management preferred to use the recipe as a patent and license. From this point of view the recipe, although not industrial but private is protectable if it has the same requirements and it is not easy to reproduce at State of Art from the technical separation of parts and ingredients of the recipe. It means that this operation as to be very difficult also for a famous chef.

The requirement to consider the result so important is that the recipe is absolutely secret and not accessible and it have to be not easily obtainable and reproducible by competitors. Nothing takes away that someone can be able to reproduce.

The most important requisite to do it legally is that the indicted chef doesn't have learned it with fraudulent means or culinary spying or for being employed by the inventor or have with him worked in his office or in his kitchen. Such acts would be conducted serious industrial espionage and would create liability and unfair competition if created the revelation of the recipe or a faithful reproduction of the recipe.

4. THE RECIPE AND THE PATENT

The food is not a religion, it can draw inspiration from religion. The Food is a cult, one of the most important part of the day and one of the better chance of expression of creativity. Is not only a human right but a right to expression of human creativity. The recipe can be considered direct high expression of human genius as some other products or invention, but it is reasoning applied to chemistry to mathematics. Saying that the recipe is subject to copyright it needs to demonstrate the originality and novelty of the recipe and the repetitiveness of it in industrial form without variables, like a normal industrial product reproducible in large amount and always with the same level of quality, consistency and amount. It happens in the case of food and beverage famous at any latitude in the world.

They are produced with the same result with the same recipe and possibly the same ingredients. Hand-made artisan inventors of kitchen products, in restaurants, in pastry, in bakery shops do not seem to have this

requirement, and usually this is considered a sign of freshness and authenticity with slight differences hardly perceivable in the result, but it still exist.

The craftsmanship in culinary art scope is considered less important and valuable if the process is always the same in a standard mode, only industrial and busted similar appearance of the product in multiple specimens does not mean that identical precisely because of manual skill and dexterity.

Direct human input is a sign of originality and craftsmanship but also of impossibility of constant repetition of a given conduct manual. Also in the best chef presentation there is always the variable of time, the atmosphere of product, quality, provenance and conservation of goods, which does not happen in industrial processes where the supply chain, warehousing and cold food storage take place with identical and standardized procedures on a large scale.

A similar result is not an identical one. Only the field of bakery allows to achieve results similar to those industrial process.

5. APPEARANCE AND FORM DEFENSE

For the Italian law design is protected under various forms, as drawing or recordable model regardless of artistic value, but also for the aesthetic perceptible and the functionality of the object in specificity. This involves the process of application of protection and copyright even for food industry. It is well known that many companies invest huge resources in design and packaging of their products.

For instance, a particular shaped bottle, with of a particular red with stylized strip design of a famous drink, round performed shape famous candies, symbols on the bottles of wine and spirits, characters and comics related to advertising and products.

Advertising and design world are very close also to the food and drinks fields always more engaging and active in the production of ideas and flavours.

The ice cream world, for example, is full of examples of protection of shapes from the cone shape registered for the first time in 1963, and then under different shapes in 1964, the external shape of the ice cream (moon, ellipse, circular, round, biscuit), the ice cream case packaging Kit (type jewel box).

Even in the case of pasta is possible to underline some cases of particular shape as doughnut, sleeve, valve, butterfly, pen, wheels, threads, shells. All these shapes and these profiles constitute protectable even more if they add an artistic value to the creation.

Equality among the artworks expressed in design, painting, sculpture, products to culinary preparations is certainly reasonable while from different aspects of nutrition and cultural and intellectual fulfilment. The aesthetic expressed in the concept of beauty is related to art even a well presented course, incredibly inspiring and aesthetically perfect for features like colours, refined and even fragrant which exceeds the fundamental concept of body nutrition by purchasing the concept of mind and senses nutrition.

The process from project idea leads to the final work passes through the acquisition of raw materials, through experience and aesthetic presentation that relies on good taste and elegance. All these steps are comparable to the artist's path from idea to raw material to completion until the presentation. The vernissage is presenting the results on the table.

The Italian cultural and artistic movement of the famous "Poor Art" in sixties made use of materials intended for other daily use such as wood, aluminum, tar or salt to create art in the form of paintings, sculptures and installations by changing the main purpose of materials. In this approach the kitchen preparation, at a certain level, is art. Moral rights and economic rights shall, in the presence of these features, acknowledged to the chef author of the food creation.

6. CONCLUSION

The concept of food as art and exploitation of rights that arise from this statement is an incoming emerging world developing in parallel with the functions that the food takes in life from primary right to the expression of the intellect work. Globalization with its breadth of discussion and comparison, import materials, customs and foods unknown to the Western world and It export of materials and foods even those unknown in the rest of the planet.

The food as an expression of culture and religion by abandoning the geography place of birth and cultivation spreading into the planet looking for consensus and approval. As in every mixture and intersection, already happened among men, even in food crossroads and comparison that build new knowledge and new foods. Those who practice this ability create something new and it is a believed and expected to be protected in their intention for the work and contribution of ideas and passion over this work as anyone working in the field of with invention. If the planet is ready to recognize these rights as it did for the rights on the web there should be no problem to add the copyright on food. The rights to discover and protect are not yet known

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