



## **Intellectual Property**

There are various intellectual property rights that you can use to protect different aspects of your business and some of these are discussed below...

### **Trade Marks**

Your brand name is an important asset as customers make decisions based on the brand and the reputation that goes with the brand... the brand indicates the quality of food and services and reassures purchasers of their decision to buy.

The best way to protect your brand and to prevent others from taking advantage of your reputation is to register your brand as a trade mark. A registered trade mark should allow you to prevent someone else using the same or confusingly similar trade mark for the same or similar goods. Whilst you may have rights in your unregistered trade mark, it is much easier to prevent unlawful use of a registered trade mark as you do not need to prove reputation and goodwill in the brand name to prevent another from using it.

A registered trade mark can also be licensed, allowing you to expand your business where you might not otherwise be able to. For example restaurants can set up franchises in countries they would not be able to access themselves.

### **Design Rights**

When selling food products, packaging is an important element as it is this that draws the consumer to the food. Where you create new packaging designs that have not been seen before in relation to any product (whether the shape of the packaging or the actual pattern on the packaging), you may be able to register your design gaining registered design rights. It is important that the design is new... a bicycle shaped packaging design might be new in the food industry but as the shape itself is not new, it would not be possible to gain protection.

Registration of your design should allow you to prevent others from using the design (or a similar design) on any product for up to 25 years. Registered designs can also be licensed allowing you, for example, to source cheaper manufacturing your packaging abroad if necessary.

### **Copyright**

Copyright arises automatically in certain works offering "free" protection as it does not need to be registered. Copyright protects artistic works, such as the surface decoration on packaging, graphics (for example those used on

menu cards, websites, promotional leaflets etc) and text (such as the text in promotional leaflets)...all providing that the graphics and text etc have not been copied from another work. It is important that you keep a record of your designs/drafts to prove you are the original creator of the work.

Text contained in a recipe such as the list of ingredients is not likely to be protected by copyright and is likely instead to be protected by the law of confidentiality (see below).

### **Patents**

Registering a patent is the only way you can protect an "idea" and because the idea must be completely new, can often be difficult to obtain.

Business processes cannot be patented and the kinds of things that you might want to consider patent protection for in the food industry are packaging (e.g. a new method of assembling packaging not been seen before), formulations or equipment used in the manufacture of foods/packaging.

### **Confidentiality**

As mentioned above, as recipes are not likely to be protected by copyright, chefs and food manufacturers usually rely on the law of confidentiality to protect the recipe as a trade secret (such as Coca Cola's secret formula!). The best protection, therefore, is to make sure you ask any supplier/producer to sign a Confidentiality Agreement preventing them from disclosing your products and the way they are made.

### **Next Steps**

- Seek legal advice as to what intellectual property rights you may have, registered and unregistered... the above information does not give exclusive examples of how intellectual property can be used by you
- Protect your intellectual property
- Consider how you can exploit it, making the most out of your business

### **BRIFFA**

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